

## **Drainage Work Group (DWG) Meeting**

November 16, 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

## **Notification Requirements and Recommendations Update**

Tom Gile gave an overview of the concepts developed for the 103E notification section.

Comments:

- Putting the modes of notice in the definitions seems logical. 103E.033 talks about defective notice, have it next to that.
- The environmental groups expressed concerns that the statutory changes can't be separated from early notification. Publication in a newspaper isn't adequate to meet public notice requirements. The changes are too procedural for a separate section.
- If there isn't agreement on what is non-personal notification, don't send the report to the legislature.
- Notification that is currently in statute is in place for specific reasons. We should not undo a process that was deemed necessary. How can we be sure that combining them will not result in unintended consequences?
- There are no proposed changes to the current requirements. There are some places where notice could be added.
- It doesn't seem clear that we need legislative changes. For the report, the DWG is tasked with assessing what is in statute and what could be done to improve notification.
- The environmental groups believe we are on a continuous treadmill to get nowhere. This is the easy stuff. They desire to accomplish something.
- The present system isn't broken, how and why will what we are doing improve it? There are places where notification could be made better. If the DWG doesn't make recommendations for change, we need to explain why.
- These are legitimate questions because there is so much nuance in the statute. If we don't have the language right, it's OK. The report can state that we think there are things that need to be done. The proposed changes don't get at the issues the public notice group wants changed.
- The environmental groups want to know if "all interested persons" is defined in statute. They are not concerned about final hearing notices. Would the proposed notice changes require a drainage authority to provide notice to someone who asks to receive notice?
- Viewers commented that they are considered a disinterested party. When they consider "interested party" it is someone who has a financial or fiduciary interest in the drainage system versus a curiosity seeker.
- The environmental groups believe there is fundamental disagreement on what the DWG should be doing regarding notification.
- The environmental groups appreciate the review of notice and the work that has been done. Their concern is that they don't want a report that doesn't address public notice. The intention is to get there. We need to agree on the structure.

- To let “everyone” know adds one more layer to a gray area in statutory obligation. Will the drainage authority then have to deal with someone who says they were interested but not notified? How do the environmental groups feel that this will be a cure all for everyone to know what’s going on?
- What’s the driving force for doing this? Part of it is to address language in the statute by removing ambiguity. There is discussion happening in a subcommittee regarding early notice or notice to those that are interested. We will take the results of those discussions and integrate them into the statutory restructuring, with the intent of clarifying the statute.
- What goes to the legislature would be agreed upon. The report will explain deliberations, what is recommended regarding modernizing notice to interested parties, including proposed statute and definition changes with explanations for the changes.
- To add to the complexity, interested party is used differently throughout 103E. It is defined in 103D.
- If the registry is enacted, interested person doesn’t need to be defined.
- If someone is interested in something specific, all they must do is contact that entity and make a request. That option is already available.
- Environmental groups believe that they can’t know if they are interested because they don’t know what is happening.
- The notification document is a lot of fluff and too many questions. All drainage authorities already provide access to a website and anyone can get information. The public can also notify us and get information.
- The environmental groups are not interested in mailed notice. They don’t believe publication in a newspaper is sufficient. They want some form of electronic communication in a centralized location. There is an issue of inconsistency of drainage authority websites. They want a website or centralized database for a state agency to manage. The subcommittee is discussing what makes the most sense.
- Who is an interested person changes by section of the statute or what is involved. Every process has a different audience. We are trying to work through the early notice part of this.
- It would be helpful to the DNR if the DWG looked at the definition of commissioner and redefined it to DNR commissioner and regionally delegated official.
- If another section is added to statute that expands notice to more “interested parties”, it should be done to ensure it isn’t appealable by an “interested party” to delay the project.
- The notification subcommittee met on November 1. They are taking information back to their members and will meet again on November 27.

### **Outlet Adequacy Technical Committee Update**

Rita Weaver attempted to give an update on the draft report. In giving the update, there were many interruptions and much discussion. Discussion included:

- The environmental groups recently submitted a letter expressing concerns about the draft report. The letter stated that the report should not be sent to the DWG because it was incomplete. They requested a redlined copy of the previous draft to determine where changes were made. Rita responded that the technical subcommittee is responsible for submitting the draft report to the DWG. What is the point of the subcommittee if they are getting input before the report is complete? As of the last subcommittee meeting, there were two outstanding items that needed to be addressed. Once those are resolved, a revised document will be distributed. That version will be discussed by the DWG.
- Randy Kramer stated that most of us are just seeing this report for the first time. There was confusion about the redlined version. Rita replied that everyone on the subcommittee had the opportunity to work with others as they worked through document. It was not meant to be a secret group without outside input. She did not think it was appropriate for people outside the subcommittee to expect their comments to be addressed until the draft report was presented to DWG as a final document.

There are two outstanding comments that need to be addressed. Once addressed, anyone in the DWG is welcome to comment.

- Brian Martinson said that most of us just saw the report two days ago. He needs time to thoroughly review the report. He hasn't been actively involved in drafting the report. In his initial review, it appears that the technical group has done their work to address the technical issues. This is not the report to the legislature. It is to the DWG. We are responsible for reporting on this issue. We take feedback from the technical group and decide what should be in the report to the legislature. We don't want the DWG to be responsible for writing the technical report. We have our own report to write.
- Rita explained that the subcommittee last met on October 30. She sent the updated version of the report to them on November 8 or 9. She asked for comments by the following Monday. At the meeting, everything was agreed upon except one item from Phil on the stability analysis. There are also some changes to the research and education section that need to be incorporated. The letter from the environmental groups elaborates on the non-consensus items. To jump in with comments confuses the approach.
- Allen Wold commented that to have other people looking over the shoulder of a subcommittee defeats the purpose.
- Mark Ten Eyck stated that BWSR went forward with distributing the draft report without consensus from the subcommittee. The DWG gave the subcommittee a charge but we didn't tell them the purpose for the outlet to be adequate. That is a legal question that the committee can't answer and it requires including water quality and habitat. We have a report that doesn't answer the question they were directed to address.
- Brian Martinson said that the letter from the environmental groups critiquing the report mentioned a September letter and a white paper. Can those documents be shared? It appears that environmental groups were involved throughout the process. In January, the DWG developed a document that laid out parameters for the technical group to accomplish. There was an initial direction for what they should work on. That may have shifted when the legislature added this charge to the DWG. The issues being raised are not technical issues regarding what should be components of adequate.
- This group coming to agreement may be an impossible task.
- Ray Bohn stated that he was confused by the conversation. He expected the report would provide an analysis of what is working and what the considerations for policymaking are in terms of what is an adequate outlet. Chris Otterness said that those items are addressed in the report. If consensus can't be brought to the legislature, at least there are points of value that came out of this process for drainage engineers, drainage authorities, and environmental groups. It will change how he provides clarity in reports.
- Rita explained that this report is doing what it was supposed to. There are a few outstanding items that some people feel have not been adequately addressed. There are issues that we didn't get to and it is up to the DWG to determine how those should be addressed.
- Don Arnosti expressed concerns about non-transparent models. Chris Otterness replied that what Don was characterizing is not accurate. Models are available if a person has the software to use them. Models cost money and are developed by private companies. They don't make free versions for everyone to use. As an engineer developing an analysis, he wants to use the best software to provide answers. Just using open source software would be doing a disservice to our landowners. Don Arnosti responded that it was not up to Chris to solve this problem. Non-transparent models are not acceptable because they can't be reviewed by the public. Chad Engels stated that he didn't agree with the idea of closed systems. Software is available for anyone to purchase. Engineers can't be told

not to advance or do things better that would cost less for our clients. We need to keep up with times and technology. If an individual needs help through the review, we can help.

- Mark Ten Eyck stated that the report started out with a false premise. It is necessary to have scientists identify all the impacts of a drainage system. Once that information is available, the DWG can figure out what is considered in an adequate outlet.
- Carly Griffith said that she would provide the September 22 letter and white paper. MCEA signed on to the letter because they had representation on the subcommittee. It is important for everyone to look at those documents and consider them. There is fundamental disagreement on the technical analysis to capture flood impacts.
- Ted Suss disagreed that the report is largely done and only needs wordsmithing. Several of the people on the technical subcommittee are concerned. There is also the major issue of how this group is going to submit a report to the legislature and what the nature of that report going to be. Rita responded that determining those things would be the best use of our time. This report is finished for the subcommittee. There are time constraints and expertise constraints. There are things that came up that we did not address. We took the time to hear everyone's concerns, but did not come to consensus. Discussion isn't over, but it was time to wrap up the report. There is a lot of open ended concern that has not been addressed. There is also concern about the amount of time the subcommittee members have put into this work. If there is a wish for DWG to discuss on non-consensus items, it might be necessary for a new group formed.
- Myron Jesme stated that we spent hours to write this report and present it. Rita did a wonderful job in paraphrasing. This is the document we are presenting. If you don't like the final outcome of a book, you don't get to go back to the author to rewrite the end of the story. If there are concerns about the report, hash them out with the DWG.
- Brian Martinson stated that the definition or guidelines for outlet adequacy were not a technical decision. The subcommittee offered their analysis. We don't need to send this back to them. The DWG needs to sort this out from a policy standpoint. Mark Ten Eyck replied that there is disagreement that there are only two places in statute where adequate outlet is mentioned. The report is prejudiced by the representation that was limited to those two places. The DWG needed to take the science position. Carly Griffith responded that there needs to be resolution of significant objections to the subcommittee process. They have clearly communicated the issues in a September letter, white paper, and another letter in November. Characterization that there are two issues that can be wrapped up for the report to be done is not true.
- Rita explained that when they left the October 30 subcommittee meeting, short of Phil, there were no outstanding issues. Everyone was on the same page about what was going into the report. The letter the environmental groups provided addresses much of the information that is included in the report or the report states that it falls short. The subcommittee wasn't ignoring the feedback. Time after time, there was consensus in the subcommittee meeting until the environmental group representatives left. Then a comment letter was submitted.
- Brian Martinson said that there seems to be an expectation to wrap this up quickly. Last January, the DWG decided to put the group together because we knew this would be a difficult task. Environmental considerations are currently contemplated in 103E.261, Subd. 2 under dismissal. It is there as a consideration. It is its own entity to be considered. There won't be time to resolve this issue before the report is due. Chad Engels explained that each of these items have their own merit in 103E.015. All nine criteria have equal weight and merit. That's what the subcommittee focused on in considering flooding and outlet adequacy. They made progress in including stability of the downstream channel as a consideration. Those have been worthwhile discussions.

- Mark Ten Eyck stated that we don't want to send an incomplete report to the legislature. All environmental considerations must be included in adequate outlet. Lukas Croaker responded that there is case law that shows there is no consideration for environmental water quality in determining outlet adequacy.
- Next steps. Tom will include in the report the deliberations that have happened. For the report, it is OK to state that there is no consensus and we have more work to do. Policy recommendations need consensus. The idea of the report is to speak to what needs additional work. Many people indicated that they did not have sufficient time to digest the report. He asked that the report be read prior to the next meeting. Tom will schedule small group meetings and topics for November 30, December 7, December 21, and January 4.
- The report purposely left out causation because there was no way for the subcommittee to come to an agreement.

### **Runoff and Sediment Repair Cost Apportionment**

The DWG will need to make a recommendation on this.

### **Next Meeting**

December 14 in St. Paul

The meeting adjourned at 2:00 p.m.

Meeting notes by Jan Voit