

## Drainage Work Group (DWG) Meeting

September 8, 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. Information of particular interest to watershed organizations is highlighted in gray.

- 11<sup>th</sup> International Drainage Symposium. This was held August 30 to September 2 in Des Moines, Iowa. Rita Weaver, BWSR gave an update.
- Minnesota Association of Drainage Inspectors. This meeting was held August 17-18 in Alexandria. Ryan Hiniker and Tom Gile gave an update.
- AMC Policy Committees will meet on September 15-16. Randy Kramer gave an update.
- Red River Partners Summer Tour. This event was held on August 23-25 in Grand Forks, ND. Jan Voit and Tom Gile gave an update.

### *DWG Process Summary*

Tom Gile gave an overview of the DWG Process Summary that was adopted on October 11, 2018.

Comments from attendees:

- It is in the best interest of drainage authorities and the state to work together.
- This document was developed as a non-binding commitment to foster respectful dialogue. If a topic doesn't gain support from the DWG, an entity is entitled to work through the public process to put forth legislative proposals. In the past, there has been a commitment from the legislature to return drainage issues to the DWG for discussion.
- This document was developed because it was important for the DWG to understand the decision-making process. The goal is consensus. If there is difficulty in reaching consensus there is a common understanding and process for preparing a consensus and non-consensus report.
- It is necessary to remember that nothing gets done in one legislative session. Deferring one session may be the only way to ensure we can find a way to move forward to come to consensus.
- While the November 15 deadline is ideal timing for organizations to consider recommendations from the DWG at their annual conferences, if consensus hasn't been reached, there are no set deadlines for moving forward.

### *"Needs Justification" in Support of Early Coordination Improvement*

Ted Suss gave an overview of the "Modernize Public Notice for Drainage Projects and Major Repairs Statement of the Situation to be Addressed by the Drainage Work Group". This document was a group effort submitted on behalf of the Izaak Walton League, Minnesota Center for Environmental Advocacy, Friends of Minnesota Valley, Clean Up Our River Environment, Coalition for a Clean Minnesota River, and several individuals.

He specifically addressed:

- The repair suggestion is only for those repairs of significance that require sealed bids, not small, incidental repairs.
- There is a problem with the current notice requirements. People that are downstream of a drainage project usually do not learn about it until a significant amount of the process is complete, when money has been spent on engineering and administration. When we feel we are adversely affected and object to the project, it must be redesigned. If we are not satisfied, legal remedies are pursued.

## Discussion:

- What is meant by downstream? There is no hard and fast answer. That's why it is important to have conversations with downstream constituents so they can learn about a project early enough to have meaningful input through statewide public notice.
- The authors of the document intentionally stayed away from specific solutions because there hasn't been agreement on the problem.
- It's not about public notice, it's about the consequences of it. One option is to have the drainage authority post hearing notices on their website. They are available to anybody. The entire project isn't upended because public notice is done. What are the issues that need to be addressed as part of this? The direct and indirect consequences of public notice need to be understood.
- Public notice doesn't change the drainage code. It changes when people who have a concern can engage with a drainage authority. It doesn't change the drainage authority's ability to issue orders.
- Supporters of the bill are open to discussions on how to deal with repair and maintenance. As soon as we heard that repairs were an issue, we looked for ways to solve that. Early notice is key to getting that into the process.
- Repairs are still part of the discussion as far as this document goes. Part of the concern about this proposal is debating what public notice is and how and when it is done. Public notice doesn't address the issues brought forward. This is getting into how far downstream and needing to be statewide because we are getting into consideration of cumulative impacts. Those are bigger issues. Just being more involved in system decisions isn't going to solve those. What's really being sought are fundamental considerations regarding drainage projects. There are considerations for downstream and environmental impacts that as drainage authorities we believe are considered as part of the process. We trust that the people we work with (drainage inspectors, engineers, attorneys) are giving due diligence and consideration to the requirements in the law. This is not a matter of what the public notice requirements are. These are differences of opinion about what the law should be.
- Key threshold issues need to be identified and discussed. We are not going to solve the issue of notice until we identify the impact issue. What does environmental impact mean and who does it apply to? If there is agreement on that, the notice issue falls into place. At this point, we don't know who we are noticing. We need to figure out the threshold issues or we will talk in circles.
- Is there some sort of technical scientific fix that needs to happen? If there are conversations about concerns earlier in the process, expenditures can be avoided.
- Landowners don't petition for a project until they understand the estimated cost, who pays, and who benefits. It makes no sense to get involved earlier than the preliminary hearing.
- What happens if the project harms or doesn't benefit someone? There is conversation that happens before petitions are submitted. If concerns are discussed that are not relevant, then you go into the preliminary hearing knowing you have assessed those concerns. There is an element of the repair piece that needs discussion.
- The trigger for public notice is the petition. It is a prerequisite to a preliminary survey. The affected people are not just downstream landowners. They are people who hunt, fish, recreate, and drink the water. How far downstream doesn't address the need. The need is statewide. There are groups of Minnesotans that suffer the damages. At some point, they pay for damages. It's a cost to them as well as landowners. Minnesotans are paying the cost of houses falling into the stream and cleaning up their drinking water.
- Not every concern about surface water is a result of drainage.
- It doesn't make sense to discuss repairs in this dialogue.

- These groups can fill out a data request and get sent agendas and board packets for meetings. They can go through this process instead of us having to notify them.
- Regardless of the size, there is a review and consideration requirement to whether the repair can be conducted in a way to incorporate best management practices or other scopes of repair to address the ecological considerations. There is a lack of trust that has developed. A lot of that is unjustified. There have been instances where drainage authorities have not been as conscientious as they could have been. Implementing ecological benefits are possible in any given situation.
- We were asked to prepare a document that identified the need. We did a good job of that. If there are bigger questions to be answered first, a comparable document should be drafted. There isn't a connection between the two. Notice isn't intended to solve the problems in the drainage world. If we have to define what consideration means, we won't get to the notice questions for years.
- What is meant by consideration could be discussed at the next meeting. Whether standards are being met is different than public notice. It is important for that to discussion happen. Trust needs to go both ways. There appears to be more common ground in public notice for projects than in repairs.

[Break from 1:00 to 1:15]

- Discussion was held regarding the language and timing for the drainage registry bill and the connection between the filing of an amicus brief by environmental organizations in conjunction with the Limbo Creek case.

#### *Items Needed to Support Drainage Projects*

Tom Gile presented the idea of clarifying documentation to support drainage projects. That included early coordination, outlet adequacy, what constitutes sufficiency of a drainage project, level of standards that can or can't be met within the drainage code - projects, petitions for improvements, and new systems, environmental considerations, what constitutes "considered", outside funding, creating some sort of "regulatory certainty" for drainage authority, and BWSR grant eligibility.

Discussion:

- This discussion has been on the board for 30 years, not just in drainage, but in flood damage mitigation. There is some disagreement that this is necessary for drainage projects. This is not a decision-making exercise; it is an exercise on what information needs to be on the table to review.
- There are differences between the issues that need to be addressed in various watersheds – Red River Basin versus Minnesota River.
- These items are of great interest to the Department of Natural Resources (DNR). Sometimes multiple drainage reports are submitted in the same day. People believe it is a DNR strategy to get them comments at the last minute. There are not consistencies in reports about outlet adequacy. The DNR is seeking consistency across the board. The DNR is putting together submittal requirements. Those requirements are going through internal review in the next two weeks. The submittal requirements should be available in the next two months.
- From the reviewer's standpoint, it is always easier to have a checklist. From BWSR's standpoint, what needs to be submitted for adequate outlet isn't clear. It's not BWSR's place to force that discussion. Can we decide as a group what needs to be addressed? As far as BWSR grant eligibility, 103E improvements are not eligible at this time. As a group, we need to talk through what needs to be done to make that happen. There are always going to be gray areas. How much of this do we want to decide with the DWG or would the group like to have the state agencies throw things at you and see what you think?
- To go down the road of developing ideas, it would be better to have a subcommittee. If agency representatives already have some ideas to share, that's OK. The initial concern with this is having

some official guidance that takes us down a road coming from a state agency before it has some more eyes, ears, and advice from stakeholders.

- We value state agency participation in this process, but we don't think they should provide suggestions at us that way. We don't want to be telling our members that the recommendations came from state agencies.
- Having a group to talk things through is helpful. Bringing other folks into the Drainage Management Team (DMT) to make sure different interest groups are represented is good. The DMT is still interested in discussion on our end. There could be a subgroup developed with the DMT and DWG.
- MAWD members are not likely to be receptive of ideas coming directly from state agencies. If we are going to pursue these items, we need to work in partnership to develop something that is acceptable.
- Many projects require DNR permits. Having a checklist of items to be considered in an application is necessary. That is what DNR is doing. There are lots of things occurring – TMDL, 1W1P - set objectives that require more than what is implied by 103E. The DWG needs to address some of those issues.
- We can set up a group that can present to the DWG. It has to be a group of people involved in the DWG and not just state agencies. We want good discussion around good ideas; another approach other than state agencies throwing something at us.
- Some drainage projects require DNR permits. There are statutory requirements and other considerations. Drainage authorities are familiar with projects being held up when more information is needed. We need to communicate sooner in the process so every entity has a sense of what is needed to have a project move forward.
- Environment groups also have concerns about recommendations that come just from state agencies. Recommendations need to be worked through the DWG or a subcommittee that includes science people.

Tom Gile said that he would be happy to develop something for the group to review. It would be ideas to discuss, not something that is foisted upon the group. It would be created to react to in good faith, not behind the back without clear communication. Having a constructive dialogue is important. On the grant side – MDM and storage – BWSR has to take some effort to develop this. The DWG is an avenue to have those conversation. He could craft a needs statement for that.

Discussion:

- As the facilitator, Tom has the license to develop documents for the DWG to review. It is important to mark everything draft.
- Any discussion needs to be facilitated. When BWSR puts something together, it looks like it is their position. Before anything is drafted, there should be agreement on what needs to be considered.

*Next Meeting*

Thursday, October 13, 11 am to 2 pm in person and virtual at Minnesota Farmers Union.

The meeting adjourned at 2:01 p.m.

Meeting notes by  
Jan Voit