

**Drainage Work Group
2012 Consensus Recommendations
for Clarification of Minnesota Statutes Chapter 103E Drainage
Final Revised 1-11-13**

Summary of Recommendations

- Clarify definition of “Board” to include joint county boards and watershed district boards that serve as the drainage authority.
- Update definition of “Director” to reflect change in the name of the former DNR Division of Waters.
- Add definition for “Secretary” of a watershed district drainage authority.
- Clarify watershed district secretary’s responsibilities for keeping records of drainage systems for which the watershed district serves as the drainage authority.
- Update and clarify requirements for an index of drainage system proceedings and records.
- Add a subdivision in Section 103E.101 to more clearly enable reestablishment of drainage system records that are lost, destroyed or incomplete, including definition of reference information to be used and due process.
- Clarify requirements for a watershed district to provide necessary filing and storage facilities to protect drainage system files and records for which it serves as the drainage authority.
- Clarify transfer of drainage system records between a county and a watershed district when drainage authority is transferred.
- Clarify authority for wetland and water quality improvement elements in projects implemented under Section 103E.227 and 103E.701.
- Enable a multi-stage ditch cross-section for petitioned repairs, and correct text in Section 103E.715, Subd. 6.

In the following table, strikethrough indicates recommended text deletion and underline indicates recommended text addition.

Recommended Drainage Law Clarifications	Explanations
<p>103E.005 DEFINITIONS.</p> <p>Subd. 4. Board. “Board” means the board of commissioners of the county, a joint county board, the board of managers of the watershed district, or a metropolitan watershed management organization that serves as the drainage authority where the drainage system or project is located.</p> <p>Subd. 6. Director. “Director” means the director of the Division of Waters<u>Ecological and Water Resources</u> in the Department of Natural Resources.</p> <p>Subd. 28.a. Secretary. “Secretary” means the secretary of the watershed district that serves as the drainage authority for the applicable drainage system.</p> <p><i>Note to Revisor of Statutes: Please include all associated Chapter 103E revisions to make all references to “director” consistent with Subd. 6. and “watershed district secretary” consistent with the addition of Subd. 28.a.</i></p>	<p>Clarification is needed to more clearly recognize watershed district boards as drainage authorities, and Metro WMO boards per Section 103B.211.</p> <p>Update to reflect recent DNR division name change.</p> <p>Definition needed to help clarify references to responsibilities of the watershed district secretary when a watershed district serves as the drainage authority.</p>

103E.101 DRAINAGE PROCEEDING AND CONSTRUCTION RECORDS.

Subd. 2. Record requirements.

All maps, plats, profiles, plans, and specifications prepared and used in relation to a proceeding must:

- (1) be uniform;
- (2) have each sheet ~~bound and~~ marked to identify the proceeding by the drainage project and system number;
- (3) show the name of the person preparing the sheet;
- (4) show the date the sheet was prepared; and
- (5) conform to rules and standards prescribed by the director ~~of the Division of Waters.~~

Subd. 3. Index of proceedings and records.

The auditor or secretary shall keep all orders, exhibits, maps, charts, profiles, plats, plans, specifications, and records of the proceedings. These records may not be removed except when the board makes a written order to remove them. The auditor or secretary shall keep an accurate index of the proceedings and related documents in a readily usable, resilient and secure manner ~~bound book~~.

Subd. 4. Engineer's documents.

All original plats, profiles, records, and field books made by the engineer during the proceedings or the construction of a drainage project are public records and the property of the drainage authority. These public records must be filed with the auditor or secretary under the direction of the drainage authority when construction is completed or when the engineer stops acting for the drainage project, whichever is earlier.

Subd. 4.a. Reestablishment of drainage system records.

(a) If, after thorough investigation of drainage system records, a drainage authority finds that records establishing the alignment, cross-section, profile, or right-of-way of a drainage system that it administers are lost, destroyed or otherwise incomplete, it may, by order, reestablish records defining the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions and elevations; or right-of-way of the drainage system as originally constructed or subsequently improved in accordance with this chapter. The procedure for reestablishing drainage system records must involve, at minimum, investigation and a report of findings by a professional engineer licensed in Minnesota supported by existing records and evidence, including, but not limited to, applicable aerial photographs, soil borings or test pits, culvert dimensions and invert elevations, and bridge design records. The existing and reestablished records together must define the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions and elevations; and right-of-way of the drainage system. Drainage system records reestablished under this subdivision do not interrupt prescriptive occupation.

(b) The description of a drainage system under this subdivision may be initiated by the drainage authority on its own motion or by any party

Clarification of current practice.

Update to conform with updated DNR division name change in **103E.005 DEFINITIONS**. Subd. 6. **Director**.

Clarifications of watershed districts as drainage authorities and the secretary's roles and responsibilities to keep drainage system records. Also updates and clarifies requirements for an index of proceedings and related documents.

Reference Smith Partners, PLLP, LCCMR Report "Minnesota Drainage Law Analysis and Evaluation, August 15, 2011", recommendation 4.a.

Many drainage system records are very old and some have been lost or destroyed, or are incomplete. This becomes a problem when a drainage system needs repair or modification, or for hydraulic analysis of the drainage system. A provision exists in Section **103E.701 REPAIRS**, Subd. 2. **Repairs affecting public**

affected by the drainage system filing a petition. If the system is under the jurisdiction of a county board, the petition must be filed with the auditor. If the system is under the jurisdiction of a joint county drainage authority, the petition must be filed with the auditor of the county with the largest area of property in the drainage system. If the system is under the jurisdiction of a watershed district board, the petition must be filed with the secretary.

(c) When a drainage authority directs by resolution, or a petition is filed under this subdivision, the drainage authority, in consultation with the auditor or secretary, shall set a time and location for a hearing after the engineer's report is complete. The auditor or secretary shall give notice of the hearing by mail to the commissioner of natural resources, the executive director of the board of water and soil resources, the petitioner(s) and all property owners benefited or damaged by the drainage system, and shall give notice to other interested parties either in a newspaper of general circulation in the drainage system area or by publication on a website of the drainage authority.

(d) Drainage system records reestablished under this subdivision constitute official drainage system records. A finding of drainage system right-of-way in the applicable order is a defense to a trespass claim and will be given due weight in any subsequent court proceeding to establish the existence or nature of a property encumbrance.

Subd. 5. Filing and storage facilities.

County boards shall provide the auditor, and watershed district boards shall provide the secretary, with necessary filing and storage facilities to protect the files and records of all proceedings under its jurisdiction. The county boards and watershed district boards may provide for the copying and filing of the documents and records of proceedings by photographic devices as provided for public records under section 15.17. In the event of loss of the originals, the photographic copies are originals after authentication by the auditor or the secretary.

Subd. 5.a. Transfer of drainage system records.

(a) When a watershed district assumes authority for a drainage system in accordance with section 103D.625, the county or joint county board transferring authority shall transfer all of the original records for the drainage system to the watershed district, except as provided in paragraph (b).

(b) Copies of drainage system records, both hard copy or electronic, authenticated by the county auditor having the original records may be used in place of the originals by the watershed district until the watershed district has necessary records storage facilities to protect the original records, or in the case of a partial transfer of a drainage system, until the entire drainage system is transferred to the watershed district.

waters., which provides authority and process to define the repair depth. Drainage law currently does not define authority and due process to otherwise reestablish drainage system records.

This recommended addition of a subdivision would provide clarity of authority, methods and due process, including notification of the DNR and BWSR when drainage system records are to be reestablished.

Clarifications regarding watershed district roles and responsibilities for filing and storage facilities for files and records of drainage systems under its jurisdiction.

This recommendation is to clarify transfer of drainage system records from a county to a watershed district when authority for a drainage system is transferred in accordance with Section 103D.625 of watershed district law.

<p>103E.227 IMPOUNDING, REROUTING, AND DIVERTING DRAINAGE SYSTEM WATERS.</p> <p>Subd. 1. Petition.</p> <p>(a) To conserve and make more adequate use of our water resources <u>or to incorporate wetland or water quality enhancing elements as authorized by section 103E.011, subdivision 5</u>, a person, public or municipal corporation, governmental subdivision, the state or a department or agency of the state, the commissioner of natural resources, and the United States or any of its agencies, may petition to impound, reroute, or divert drainage system waters for beneficial use.</p>	<p>Reference Smith Partners, PLLP, LCCMR Report “Minnesota Drainage Law Analysis and Evaluation, August 15, 2011”, recommendation 4.b. Clarification of authority to include wetland and water quality improvement elements in projects under this section.</p>
<p>103E.525 CONSTRUCTION AND MAINTENANCE OF BRIDGES AND CULVERTS.</p> <p>Subd. 1. Hydraulic capacity.</p> <p>A public or private bridge or culvert may not be constructed or maintained across or in a drainage system with less hydraulic capacity than specified in the detailed survey report, except with the written approval of the director of the division of waters. If the detailed survey report does not specify the hydraulic capacity, a public or private bridge or culvert in or across a drainage system ditch may not be constructed without the director’s approval of the hydraulic capacity.</p>	<p>Update to conform with updated DNR division name change in 103E.005 DEFINITIONS. Subd. 6. Director.</p>
<p>103E.701 REPAIRS.</p> <p>Subd. 1. Definition.</p> <p>The term "repair," as used in this section, means to restore all or a part of a drainage system as nearly as practicable to the same condition <u>hydraulic capacity as originally constructed and subsequently improved, including resloping of ditches and leveling of waste spoil banks if necessary to prevent further deterioration, realignment to original construction if necessary to restore the effectiveness of the drainage system, and routine operations that may be required to remove obstructions and maintain the efficiency of the drainage system.</u> "Repair" also includes:</p> <p>(1) incidental straightening of a tile system resulting from the tile-laying technology used to replace tiles;</p> <p>(2) replacement of tiles with the next larger size that is readily available, if the original size is not readily available.</p> <p>Subd. 6. Wetland restoration and mitigation replacement; water quality protection and improvement.</p> <p>Repair of a drainage system may include the preservation, restoration, or enhancement of wetlands; wetland replacement under section <u>103G.222</u>; and the realignment of a drainage system to prevent drainage of a wetland; <u>and the incorporation of measures to reduce channel erosion and otherwise protect or improve water quality.</u></p>	<p>Replacement of “condition” with “hydraulic capacity” enables repair of a ditch using a multi-stage cross-section. “Spoil” is the term used in Section 103E.021.</p> <p>Reference Smith Partners, PLLP, LCCMR Report “Minnesota Drainage Law Analysis and Evaluation, August 15, 2011”, recommendation 4.b. Clarifies authority to incorporate channel erosion reduction and water quality measures in a repair project.</p>

103E.715 PROCEDURE FOR REPAIR BY PETITION.

Subd. 6. **Repair by resloping ditches, incorporating a multi-stage ditch cross-section, leveling ~~waste~~ spoil banks, installing erosion control, ~~and~~ removing trees.**

(a) For a drainage system that is to be repaired by resloping ditches, incorporating a multi-stage ditch cross-section, leveling ~~waste~~ spoil banks, installing erosion control measures, or removing trees, before ordering the repair, the drainage authority must appoint viewers to assess and report on damages and benefits if it determines that:

(1) the resloping, incorporating a multi-stage ditch cross-section, spoil bank leveling, installing erosion control measures, or tree removal will require the taking of any property not contemplated and included in the ~~original~~ proceeding for the establishment or subsequent improvement of the drainage system; or

(2) any ~~waste~~ spoil bank leveling or tree removal will directly benefit property where the spoil bank leveling or tree removal is specified; ~~and~~

~~(3) the installation of erosion control measures will aid the long-term efficiency of the drainage system.~~

(b) The viewers shall assess and report damages and benefits as provided by sections [103E.315](#) and [103E.321](#). The drainage authority shall hear and determine the damages and benefits as provided in sections [103E.325](#), [103E.335](#), and [103E.341](#). The hearing shall be held within 30 days after the property owners' report is mailed. Damages must be paid as provided by section [103E.315](#) as a part of the cost of the repair, and benefits must be added to the benefits previously determined as the basis for the pro rata assessment for the repair of the drainage system for the repair proceeding only.

These recommendations would enable the use of a multi-stage ditch cross-section for a petitioned repair, such as where perennial low flow has created a relatively stable 2-stage ditch.

The term “or” is the correct conjunction here, because paragraph (a) clause (1) is a damage and paragraph (a) clause (2) is a benefit.

Paragraph (a) clause (3) is not an appropriate criteria for determining whether or not to appoint viewers, and is not necessary. This provision was added via Laws of 1987, Chapter 239, Section 125 when “installing erosion control” was added to this subdivision.