Drainage Work Group Meeting Notes

November 16, 2023

11:00AM -2:00PM

MNDOT District 3

St. Cloud Office and Training Center

3725 12th Street North

St. Cloud, MN 56303

*Attendees (in person): Tom Gile and Travis Germundson with BWSR, Ron Staples BWSR Board, Chris Otterness Houston Engineering, , Randy Kramer AMC, Mark TenEyck Ikes, Susanne Jiwani DNR, Don Asnosti FUM, Doug Krueger MRC-McLoed Co., Chad Engels Moore Eng, Bill Petersen RRWMB, Jan Voit MW, Allen Perish MFU, Ted Suss FMV-IWLA, Craig Austinson and Ryan Hinker Blue Earth Co., Chuck Holtman Smith Partners, Alex Trunnell MN Cron Growers, Kaythlin Bemis Farm Bureau, Brian Martinson AMC, Linda Vavra MW, Allen Wold BDSWD, Lukas Croaker Ohnstad Law, Greg Holmvik, Bill Petersen, and Rob Sip RRWMB, Ray Bohm MNW (on line attendees), Rita Weaver BWSR, Randall Doneen, Tim Gieseke, Bruce Kleven , Ashlee Ricci and Bryon Haley DNR, Carly Griffith MCEA, , Britta Torkelson MN Rural Co, , Chuck Brandel, Mark Dittrich MDA, Ian Marsh Red Board, Jacob Rischmiller, Jenny B. MN LICA, Jill Crafton BWSR Board, Joe Jacobs, Kevin Paap AMC, Kristine Altrichter BdSWD, Scott MacLean MPCA, Myron Jesme Red Board,*

Sharing of Information on upcoming drainage related events:

* MN Watersheds Annual Conference Nov 28-Dec 1, Arrowwood Conference Center Alexandria, MN
* Drainage workshop session on Nov 29th, Arrowwood Conference Center Alexandria, MN -currently posted on website.
* AMC Annual Conference Dec 4 – Dec 6 Hyatt Regency Minneapolis, MN
* AMC Drainage Workshop scheduled for February.
* Farm Bureau Annual Meeting this coming weekend

Notification Requirements and Recommendations Update :

The draft statute language on Notification and Notice (103E.033) was again shared with the group. Tom Gile discussed two parallel tracks to the noticing piece and how they can be laid out differently. Specifically, the three different notice sections of non-personal, personal, and notice by mail. It would be much easier to make changes if all noticing requirements were in one section as purposed. It was also mentioned that these noticing types could be added to the definition section.

(Discussion) There seemed to be some agreement that this would be a responsible approach. There were some concerns that it would be awkward to include these terms in the definition section since these are more procedural actions. Concerns and comments were raised about adequate notification, specifically with newspapers. Non personal notification needs further agreement on what that entails. There was some frustration with doing nothing and some concerns about the number of changes being proposed. Some of the concerns centered around the phrase of “all interested persons” and “personal notification”. Randall Doneen mentioned that the definition of Commissioner needs to be expanded beyond DNR Commissioner. Tom G. asked if there is a structural preference on how we want to do this? Really want to think about and discuss the structure of this proposal. Some concerns were raised about failure to notify properly to avoid holding up the process and added appeals. Chuck Holtman mentioned that the driving force is that the statute has numerous ambiguous noticing requirements. The report would provide a narrative. This is an opportunity to make things more efficient and less murky. If we can get to a recommendation, it would go the to the legislature. Tom G. mentioned that the process can be addressed later if we can agree upon a method.

(General Consensus) There was not a fundamental problem with doing this, just needs some more discussion/review. It was mentioned that option 1A (publishing on websites) is pretty simple and is the best approach. The group seemed fairly comfortable with 1A as an approach. Tom G. will revise this concept approach and ask for further feedback. The intension is not to expand noticing requirements but simplify the current notification requirements. A comment was made that consistency among drainage authority websites does not exist. The subgroup on this topic is trying to work through the early notice process piece and registry concept. Jane Voit mentioned that this group initially met on November 1st and will meet again on November 27th. Tom Gile will frame up the structure on broader notification and bring back to the group in December.

Outlet Adequacy

Rita Weaver provided and overview of the draft report. This is not intended to replace statute or the drainage manual. This is an outcome of the subcommittee that came together to work on this report. The table of Summary of Consensus Items in the report is important in summarizing where there was consensus and non-consensus on various issues by the subcommittee. It’s clear that consensus was not reached on every topic. Appendix B is where all the parking lot items went. Those were items where consensus among the subcommittee was not obtained. The purpose statement on page 6 is also important to note. That purpose is to reduce conflict and improve efficiencies in proposed drainage review. The report tried to stay away from policy and focus on technical discussion. Splitting up terminus and outlet made sense as illustrated in the diagram on page 8. The report just defines flooding impacts.

(Discussion) There were some comments that this was not what the legislature intended, and the report is incomplete. It needs more attention, and the DWG hasn’t had enough time to review it. It was mentioned that the September 22, 2023 Comment letter and White Paper from Carly Griffith, Mark Ten Eyck and other subcommittee members regarding the report has not been addressed. Rita W. explained that those comments came in after the comment period and will not be addressed. There are only two comments that remain to be address. Those were highlighted in the draft report and include sections on Stability Analysis and Future Considerations. There was a lot of discussion on process and that the DWG was not prepared to review the document at this time. In addition, there were a few questions around software transparency. Rita W. indicated that the majority of the report is information and focuses on flood evaluation. Page 20 of the report proposes a number of questions to the DWG. It was made clear that feedback and comments raised today will not be included in the report. Only the two outstanding comments/issues. Environmental type concerns go beyond the outlet discussion. It was noted that Minnesota case law is very clear that water quality is not an environmental concern when addressing outlet adequacy (that decision will be shared with the group). Rita W. explained that this is a report from the Technical Subcommittee is to the DWG.

(Next steps) The report clearly speaks to where we need to spend more time. It was suggested that the DWG members need to read through the report before the next meeting. The sections highlighted in the report need further discussion. It was noted that the January 2024 DWG meeting will be the hard stop for any more discussion on the report since it needs to go the BWSR Board for approval prior to sending off the legislature. Tom agreed to send out to the group documents referenced by MCEA regarding the letter and white paper.

Runoff and Sediment Repair Cost Apportionment

Tom Gile mentioned that a report was provided to the DWG at the last meeting by Rice Creek WD. There was a fair amount of interest and questions from the group following the presentation. Along with discussion of extending this option in statute before it sunsets. It would be good to come to some consensus on this answer soon. Would like to discuss this issue again at the next meeting and see if we can get consensus.

Next DWG Meeting Date

Next DWG meeting, 11:00 a.m. - 2:00 p.m., Thursday December 14, 2023

IN PERSON @ ST Paul at MN Farmers Union

2:00 Adjourn