

Drainage Work Group (DWG) Meeting

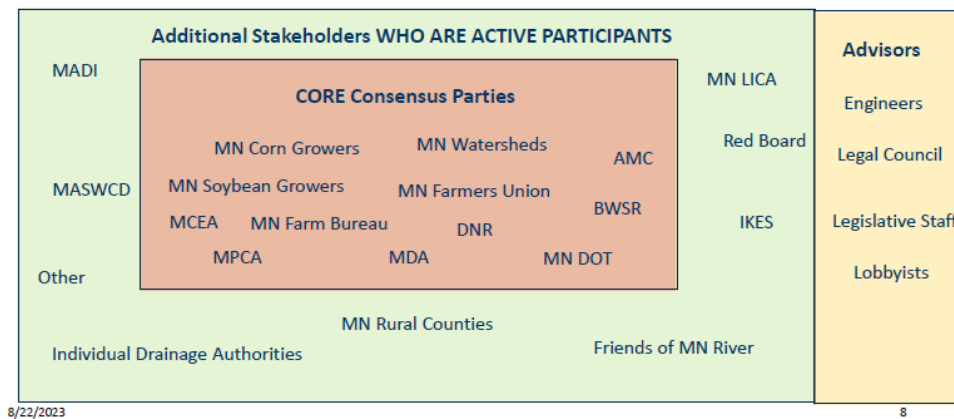
January 9, 2025

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.

- AMC Drainage Conference, February 4-6, 2025, Arrowwood, Alexandria
- MADI Annual Conference, March 6, Willmar
- RRRWMB Conference, March 18 and 19, Moorhead

Revised Memo on the Repeal of M.S. Chapter 103E.067

Tom reviewed the consensus process.



Tom reviewed the draft memo and the changes that were made.

Discussion

- None of the core consensus stakeholders stated that they could not live with the memo.
- Allen Wold, Bois de Sioux WD (BdSWD) read a statement in opposition to the memo. It was his opinion that a change in law is not necessary.
- The intent is to delete the requirement for the report. We have the information at the local level. There is no need to have it collected and shared at the state level. Reporting on buffer compliance is done at the state level. By repealing the language, we are getting a break on reporting something no one wants or needs.
- If M.S. Chapter 103.067 is repealed, there is no intent to move the language to another location in statute.
- The information hasn't been used. There is no need on BWSR's end to continue collecting it. This is unnecessary reporting.
- Local units of government have to do many reports a year. What is intended to be repealed is a report that no one wants or needs. Does BdSWD value and use the statewide data? They do not use statewide data because it doesn't apply to them.
- The change in the memo has nothing to do with reporting requirements, only about the way it is presented. In the past, BWSR has shown buffer compliance on a county-by-county basis. They could provide compliance data by township, section, elected representative.
- MCEA's constituency cares about a statewide public notice tool. This reporting doesn't have much utilitarian use. There is much greater spatial compliance data through M.S. Chapter 103F. They do not have a problem with the memo as it is currently written.
- If people miss this data, they can make a request for it. If BWSR isn't doing anything with it on a state level, why do it?

- BWSR and drainage authority staff spend time on this reporting process every year. There is a cost with doing it. There is no apparent use for it with any of our work. What harm is there if this occurs? Where is the negative outcome?
- Does BWSR intend to propose any changes to M.S. Chapter 103F in the 2025 session? They are not.
- The data collected under M.S. Chapter 103F is more comprehensive. Much of it is not publicly available. There is a map on a broad scale, without a lot of utility to the public. The language in the memo states that BWSR will review how the data is administratively shared.
- Historically, all drainage systems needed the right of way to build the ditch. M.S. Chapter 103E.021 required systems to acquire a grass strip through time. M.S. Chapter 103E.067 was enacted to track compliance. Chapter 103F.48 trumps all of that. There is no need for M.S. Chapter 103E.067 now.
- An alternative practice under M.S. Chapter 103F.48 is an option if the practice provides comparable water quality benefits.
- Tom will bring the memo to the Buffers, Soils, and Drainage Committee as the next step in the process.

Draft Minnesota Public Drainage Manual (MPDM) Maintenance Plan

Tom provided an overview of the maintenance plan revisions that were agreed to at the December meeting. He also provided the following revised footnote language. *BWSR staff may add a footnote within the Drainage Manual to note enacted such as changes statute or published case law that may impact drainage practice. The Drainage Work Group will review the change and make a timely recommendation to BWSR concerning the ultimate revision, if any, in the Manual.*

Discussion

- Tom explained that there may be instances when BWSR needs flexibility to note items other than enacted changes.
- MCEA believes that enacted change in statute, rule, or case law are the only appropriate things for a footnote like this.
- BWSR was not comfortable that enacted would capture everything. This language encompasses that and provides added discretion.
- What do you anticipate would need to be noted in the manual as a potential change that couldn't wait until it was an actual change. Tom said that this would create the necessary wiggle room, if something comes up. It was noted that change comes through the work group process.
- Why would we add a footnote if something hasn't happened?
- Enacted is an odd word in this. It is like case law, which is not enacted.
- It is not so important to have additional flexibility. This is something we haven't done before.
- Examples of areas where additional flexibility may be needed were a BWSR policy for grant funding, external documents that may be superseded, and templates for different types of actions a drainage authority may take. There are all sorts of things that we may not envision, but they are incorrect or superseded that are much broader than statute, rule, or case law.
- Those are substantive changes that would go through the process.
- Tom stated that in the interest of time, he would remove "such as" and add "rule" and see if the BWSR Board has any comments. The footnote would then read: *BWSR staff may add a footnote within the Drainage Manual to note enacted such as changes to statute, rule, or published case law that may impact drainage practice. The DWG will review the change and make a timely recommendation to BWSR concerning the ultimate revision, if any, in the Manual.*

Proposed Revision of M.S. Chapter 103E.321 - Viewers' Report

Brian Martinson explained that the current statutory language seems to make a requirement for a report at the quarter section level. The information could be provided at that level if it is helpful. The proposed change

provides flexibility to provide the information in the most appropriate format to understand the benefits and damages. It doesn't change the viewers' report requirements.

- MCEA wants to have the opportunity to modernize the viewers' report. Rather than take away the reference, use other language for property identification and the use of NRCS documents.
- NRCS documents cannot be used. That is private data.
- The assessment role is driven by the parcel number. From an assessment standpoint, the proposed change makes no change to the assessment process.
- MCEA believes it is necessary to add language to the statute to assure conformity with the assessor's office.
- The purpose of the proposed change is simply to clean up the language. If there is interest in creating a whole new requirement for the viewers' report, we will drop this and never bring it up again.
- There is already enough detail in the statute to meet the auditor's requirements to report the data to landowners. What happens with the 40-acre tract requirement is doubling up the reporting in GIS. There is more opportunity for error and adds cost. Removing the 40-acre tract requirement wouldn't negatively impact the landowner's ability to identify benefits on the property. There is really no substantive purpose for having the 40-acre requirement.
- In the past, the reason for the 40-acre requirement was that the viewers physically walked the property to assure the public that due diligence was done.
- As a taxpayer, I care about my bottom line – what it will cost me by parcel number. That is what is important. The proposed change makes perfect sense.
- No one was aware of concerns from the viewers association.
- Tom asked if the DWG could live with this as proposed. MCEA is interested in a broader discussion about the viewers' report requirements and cannot give approval. The item will not move forward as a DWG recommendation.

M.S. Chapter 103E Notice Requirements

Tom explained that the next step for the M.S. Chapter 103E notice framework would be to have the respective legal counsel meet and begin the process of drafting the changes throughout statute. MCEA and IWL have concerns about moving forward without discussion on a statewide notice system. He will individually reach out to those that served on the notice committee. MCEA and IWL are interested in further discussion and want the committee to reconvene. He would like to have this group get together before asking legal counsels put time into this.

Outlet Adequacy

MCEA asked about the next steps for outlet adequacy. Tom stated that the DWG will revisit the prioritization effort. He will work with Rita Weaver and other BWSR staff to develop something for the DWG to respond to.

Wetland Conservation Act

The WCA rule making process is continuing. The draft preliminary rule is on the website. It is not too late to review and comment. The intent is to take the draft to the BWSR Board in April.

Next Meeting

The next meeting will be held in June or July at 11:00 a.m. in St. Cloud.

The meeting adjourned at 12:50 p.m.

Meeting notes by Jan Voit

Ditch Buffer Strip History and Statutory Language

In 2007, [Section 103E.067 Ditch Buffer Strip; Annual Reporting](#) was added to M.S. Chapter 103E Drainage law. This provision requires county, joint county, and watershed district drainage authorities to annually submit a report to the Board of Water and Soil Resources (BWSR) providing information about public drainage ditch buffer strip establishment, inspection, and enforcement that was conducted during the previous calendar year.

103E.067 DITCH BUFFER STRIP; ANNUAL REPORTING.

The drainage authority shall annually submit a report to the Board of Water and Soil Resources for the calendar year including:

- (1) the number and types of actions for which viewers were appointed;
- (2) the number of miles of buffer strips established according to section [103E.021](#);
- (3) the number of drainage system inspections conducted; and
- (4) the number of violations of section [103E.021](#) identified and enforcement actions taken.

History:

[2007 c 57 art 1 s 111](#)

The M.S. Chapter 103E ditch buffer strip requirement is triggered by the appointment of viewers to determine benefits and damages. This includes a total of eight types of M.S. Chapter 103E proceedings. Every “drainage project”, petitioned repair, and other proceeding that appoints viewers requires the reporting of ditch buffer strip miles once the buffer strips are established. Drainage system inspections, including ditch buffer strips, are required by the [Section 103E.705 Repair Procedure](#). M.S. Chapter 103E also includes several buffer strip enforcement requirements.

Reporting Process, Information, and Annual Summaries

Each year, typically in mid-December, BWSR notifies M.S. Chapter 103E drainage authorities of the Ditch Buffer Strip Annual Reporting requirement in Section 103E.067 and provides a form to submit the requested information for the applicable calendar year. This notification is sent via email using a Drainage Authority “Point-of-Contact” list. The following ditch buffer strip reporting information is requested.

1. For the applicable calendar year, the number of actions for which viewers were appointed for each of the following types of M.S. Chapter 103E proceedings, and the number of miles of ditch buffer strip established in accordance with Section 103E.021 for each of the proceedings:
 - a) [Section 103E.021 Planting Ditches with Perennial Vegetation](#), Subd. 6
Incremental establishment; vegetated buffer strips and side inlet controls
 - b) [Section 103E.212 New Drainage System Projects](#)

- c) [Section 103E.215](#) **Improving Drainage Systems**
 - d) [Section 103E.221](#) **Improving Outlets**
 - e) [Section 103E.225](#) **Laterals**
 - f) [Section 103E.351](#) **Redetermining Benefits and Damages**
 - g) [Section 103E.715](#) **Repair by Petition**, Subd. 6. Repair by resloping ditches, incorporating multistage ditch cross section, leveling spoil banks, installing erosion control, or removing trees
 - h) [Section 103E.741](#) **Property not Assessed Benefits; Hearing**
- 2. The number of drainage system inspections conducted.
 - 3. The number of violations of Section 103E.021 identified.
 - 4. For each of the violations, the enforcement action(s) taken. ([Sec. 103E.705](#), Subd. 1. and 2.; [Sec. 103E.021](#), Subd. 4. and 5.; [Sec. 103E.728](#), Subd. 2.)

Annual reporting summaries are posted on the BWSR Drainage Page under the “[Chapter 103E Ditch Buffer Reporting](#)” tab.

M.S. Chapter 103F.48 Impact and Applicability of M.S. Chapter 103E.067 Specific Data related to vegetative strip compliance.

As noted above, the intention of the M.S. Chapter 103E.067 reporting was initially tied to collection of data to better understand the pace of progress for M.S. Chapter 103E related buffer implementation and establishment which was triggered by the various provisions of drainage law.

With the current implementation of the [M.S. Chapter 103F.48](#) Riparian Protections and Water Quality Practices requirements, there is ongoing comprehensive reporting related to the implementation of buffers by the SWCDs following BWSR’s adopted “[reporting and progress tracking](#)” procedure. Enforcement monitoring is completed through statutorily required copying of BWSR on notifications of non-compliance, corrective action notices and APOs. The statutory requirements in M.S. Chapter 103F.48, Subd. 3 (2) is consistent with the requirements found under M.S. Chapter 103E: permanent strips of perennial vegetation shall be 16-1/2 feet in width measured outward from the top edge of the constructed channel resulting from the proceeding, or to the crown of the leveled spoil bank, whichever is the greater. The vegetative strip requirement is similarly between 103F.48 & 103E.067 with the exception of the allowance for use of alternative practice under 103F.48.

Because of the regulatory aspect associated with 103F.48 and the coordination between SWCDs and enforcement entities as well as reporting to BWSR the level of detail associated with reporting M.S. Chapter 103F.48 calls for greater resolution and spatial detail than the data which is captured under the current requirements in M.S. Chapter 103E.067.

While BWSR's 'reporting and progress tracking' procedure captures compliance data with greater spatial detail than 103E.067, 103F.48 compliance data is currently shared with the general public at the aggregate county level (via this [map](#)).” BWSR will be reviewing how the

reporting of compliance data is shared publicly under 103F.48 in the coming year due to changes to 103F.48 Subd 1 (j) during the 2024 legislative session.

M.S. Chapter 103E.067 Specific Data related to drainage actions which require appointment of viewers.

The number and type of actions for which viewers were appointed, and the number of drainage inspections conducted, would be lost without a replacement under the proposed changes to 103E.067, and that while BWSR is notified when an enforcement entity receives notification of non-compliance and reports are generated to communicate this information publicly the individual details reported are not currently accessible to the public.

While some trends may be identifiable under the M.S. Chapter 103E.067 reporting, the data doesn't gather sufficient detail at a scale beyond the Drainage Authority which is reporting. As a result, the data is rarely if ever utilized and provides minimal value. Even when eventual vegetative strip enforcement would come into play under either 103E or 103F.48 communication directly with the Drainage authority would be needed to confirm specific locations where there is a 103E system acquired strip to identify the appropriate enforcement entity and methods and this data is not called for or gathered through the tracking of actions which appoint viewers called for under 103E.067.

Drainage Work Group Review and Recommendation

The DWG has assessed the value of the current statutory reporting requirements in M.S. Chapter 103E.067, as well as the potential redundancy with M.S. Chapter 103F.48 reporting requirements as it relates to violations and enforcement of the 16.5' vegetative strips.

The DWG has concluded that the requirements established in M.S. Chapter 103E.067 in 2007 have fulfilled the objectives set at the time enacted, that they provide less substantive data, and that they are no longer needed due to the duplicative nature with reporting now utilized under M.S. Chapter 103F.48. If data of substance on these topics was desired it could be made available on a case-by-case basis from a Drainage Authority considering the public nature of the information.

Therefore, the DWG proposes repealing the requirements found in M.S. Chapter 103E.067.

~~103E.067 DITCH BUFFER STRIP; ANNUAL REPORTING.~~

~~The drainage authority shall annually submit a report to the Board of Water and Soil Resources for the calendar year including:~~

- ~~(1) the number and types of actions for which viewers were appointed;~~
- ~~(2) the number of miles of buffer strips established according to section [103E.021](#);~~
- ~~(3) the number of drainage system inspections conducted; and~~
- ~~(4) the number of violations of section [103E.021](#) identified and enforcement actions taken.~~

REVISIONS TO MPDM MAINTENANCE PLAN 1/9/25

Summary of Pertinent Background Information

1. The Minnesota Public Drainage Manual (MPDM) was first published in September 1991 as a hard copy document in a 3-ring binder.
2. A key purpose for the MPDM continues to be to promote consistent implementation of Minn. Stat. Chapter 103E Drainage. The MPDM is a guidance document, not law or rule.
3. The Board of Water and Soil Resources (BWSR) received a legislative appropriation in 2014 to update the MPDM. The project team included Houston Engineering, Inc. and Rinke Noonan Attorneys at Law. A stakeholder Project Advisory Committee (PAC) assisted the MPDM update.
4. In October 2016, the updated MPDM was published on the BWSR website in a Wiki format to better enable access, use, and periodic revision. The Wiki format is no longer supported by Minnesota IT Services (MNIT) and the MPDM was moved to the BWSR website in 2022.
5. Several members of the stakeholder Drainage Work Group (DWG) served on the PAC for the MPDM update.
6. During the 2024 legislative session M.S. Chapter 103B.101, Subd. 13 was amended directing BWSR to work with drainage stakeholders to adopt and provide recommendations for updating the MPDM.

Guiding Principles

- 1) Maintain the MPDM to keep it current.
- 2) Provide for timely revisions.
- 3) Utilize an efficient stakeholder advisory input process.

The following recommendations are provided by the DWG to the BWSR Board to achieve the guiding principles;

- The DWG will serve as a standing stakeholder advisory group for revisions of the MPDM.
- Consideration of potential changes to the MPDM at least annually via the DWG consensus process.
- Revisions proposed to the DWG will be provided with track change or some other similar method to allow review of proposed changes related to the prior language.
- The DWG may use committees, workgroups, or teams to review specific topics based on interest or areas of expertise.
- BWSR Staff will oversee resolution of any major revision content issues not resolved through DWG advisory review and discussion and make recommendations to the BWSR Board.

Roles and Coordination Category of Revision		
Involved Entity and Role	<i>Minor Revisions</i> including links, grammar, spelling, text clarity, or notes where future change may be prudent? etc.	<i>Major Revisions</i> based on: changes in Chapter 103E, other statute, rule, case law, or policy; new information; major comments received in the MPDM Wiki; etc.
BWSR Drainage Staff: Lead revisions and coordination	✓	✓
Drainage Work Group: Stakeholder advisory review and discussion	Informed	✓
BWSR Staff: Oversee resolution of any content issues not resolved by advisory review and discussion and make recommendations to the BWSR Board.		✓
BWSR Board	Informed	Approve

BWSR staff may add a footnote within the Drainage Manual to note enacted changes to statute, rule or published case law that may impact drainage practice. The Drainage Work Group will review the change and make a timely recommendation to BWSR concerning the ultimate revision, if any, in the Manual.

MEMO

TO: Drainage Work Group

FROM: Brian Martinson, Association of Minnesota Counties

RE: Viewers Report Proposal - MN § 103E.321 VIEWERS' REPORT

The existing statutory requirement to divide land descriptions into 40-acre tracts or smaller may have been to enhance clarity in situations where a parcel encompassed extensive acreage. In such cases, it may have been challenging for landowners to discern precisely where the benefits were allocated.

Current Statute:

103E.321 VIEWERS' REPORT.

Subdivision 1. Requirements.

The viewers' report must show, in tabular form, for each lot, 40-acre tract, and fraction of a lot or tract under separate ownership that is benefited or damaged

However, viewers now can provide landowners and Drainage Authorities with precise maps detailing the benefited acres. It becomes evident that this requirement has become obsolete and is no longer essential.

We believe that striking the "40-acre tract" language will provide clarity that viewers can use the technologies and mapping available to them to make a report that is more informative and understandable for all parties.

The change would not restrict a viewer or obligate them to a particular product but allow them to better meet the needs of those seeking to understand the benefits and damages as detailed in the report.

This would not be unique in statute, MN § 103E.729 requires the listing of lands by property identification number or parcel PIN. This would bring MN § 103E.321 up to similar standard.

103E.729 APPORTIONING REPAIR COSTS; ALTERNATIVE OPTION.

Subd. 2. Report to apportion repair costs.

(c) . . . The report must present data and results in a format so that individual property owners, political subdivisions, and utilities can clearly examine the information applicable to their property, public road, street, railway, or other utility, including for each parcel having a separate property identification number.

This change had been suggested to AMC in the past, but interest was renewed and shared with us at the 2023 Drainage Inspectors Conference. I have since shared the proposal with others. I have received positive feedback and not be made aware of any concerns.

I would like to propose that the following be added to the recommendations from the DWG for the 2025 legislature:

103E.321 VIEWERS' REPORT.

Subdivision 1. Requirements.

The viewers' report must show, in tabular form, for each lot, ~~40-acre tract~~, and fraction of a lot or tract under separate ownership that is benefited or damaged:

Brian Martinson

Association of Minnesota Counties

651-246-4156