

**Drainage Work Group
Consensus Recommendations
to Update Minnesota Statutes Chapter 103E Drainage
2-14-14**

Summary of Recommendations

Section 103E.015 CONSIDERATIONS BEFORE DRAINAGE WORK IS DONE.

- a. Update and clarify Subd. 1 Environmental and land use criteria, including updated text and consideration of alternative measures for water management identified in applicable local water management plans.
- b. Add Subd. 1a. Investigating potential use of external sources of funding and technical assistance. This new subdivision includes connection to Section 103E.011, Subd. 5 Use of external sources of funding, for wetland protection or restoration, water quality improvement or flood control and to the alternative measures considered in Subd. 1, clause (2). It requires investigation of potential external sources of funding and technical assistance, including early coordination with applicable local water planning authorities and optional request for information from the Board of Water and Soil Resources.
- c. Update and clarify 103E.015, Subd. 2 Determining public utility, benefit or welfare, to more clearly include repairs and to include reference to wetlands.

An associated goal of recommendations a. and b. above is to better enable integration of public and private funding for multipurpose water management involving drainage projects and petitioned repairs.

Update other sections of Chapter 103E that refer to section 103E.015, Subd. 1, to reflect the recommended revisions to the heading for Subd. 1.

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

Recommended Drainage Law Updates	Explanations
<p>103E.015 CONSIDERATIONS BEFORE DRAINAGE WORK IS DONE.</p> <p>Subdivision 1. Environmental, and <u>land use, and multipurpose water management</u> criteria.</p> <p>Before establishing a drainage project, the drainage authority must consider <u>each of the following criteria</u>:</p> <ul style="list-style-type: none"> (1) private and public benefits and costs of the proposed drainage project; (2) the present and anticipated agricultural land acreage availability and use in the drainage project or system <u>alternative measures, including measures identified in applicable state approved and locally adopted water management plans, to:</u> <ul style="list-style-type: none"> <u>(i) conserve, allocate, and use drainage waters for agriculture, stream flow augmentation, or other beneficial uses;</u> <u>(ii) reduce downstream peak flows and flooding;</u> <u>(iii) provide adequate drainage system capacity;</u> <u>(iv) reduce erosion and sedimentation; and</u> <u>(v) protect or improve water quality;</u> (3) the present and anticipated land use within the drainage project or 	<p>Clarifications are to update and more clearly define the criteria to be considered, including multipurpose water management criteria. Connection added to alternative measures identified in applicable state approved and locally adopted water management plans.</p>

<p>system, <u>including compatibility of the project with local land use plans;</u></p> <p>(4) <u>current and potential flooding characteristics of property in the drainage project or system and downstream for 5-, 10-, 25-, and 50-year flood events, including adequacy of the outlet for the drainage project;</u></p> <p>(5) the waters to be drained and alternative measures to conserve, allocate, and use the waters, including storage and retention of drainage waters <u>the effects of the proposed drainage project on wetlands;</u></p> <p>(6) the effects of the proposed drainage project on water quality of constructing the proposed drainage project;</p> <p>(7) the effects of the proposed drainage project on fish and wildlife resources affected by the proposed drainage project;</p> <p>(8) the effects of the proposed drainage project on shallow groundwater availability, distribution, and use in the drainage project or system; and</p> <p>(9) the overall environmental impact of all the above criteria.</p>	<p>Clarify what to consider regarding land use.</p> <p>More clearly include adequacy of the outlet criteria from Section 103E.261 PRELIMINARY HEARING, Subd. 4. (4).</p> <p>Update considerations criteria to more clearly include wetlands.</p> <p>Use consistent language for criteria (6) - (8).</p>
<p><u>Subd. 1a. Investigating potential use of external sources of funding and technical assistance.</u></p> <p><u>When planning a drainage project or a repair under section 103E.715, and prior to making an order on the engineer’s preliminary survey report for a drainage project or the engineer’s report for a repair, the drainage authority shall investigate the potential use of external sources of funding to facilitate the purposes indicated in section 103E.011, subdivision 5 and alternative measures in subdivision 1, clause (2). This investigation shall include early coordination with applicable soil and water conservation district, county and watershed district water planning authorities about potential external sources of funding and technical assistance for these purposes and alternative measures. The drainage authority may request additional information about potential funding or technical assistance for these purposes and alternative measures from the executive director of the Board of Water and Soil Resources.</u></p>	<p>New subdivision makes connection to: Section 103E.011, Subd. 5, which was added to Chapter 103E in 2000 to enable drainage systems to use external sources of funding for wetland preservation or restoration, water quality improvements or flood control; and to alternative measures in Subd. 1, clause (2). Requires investigation, including early coordination with applicable local water planning authorities.</p>
<p><u>Subd. 2. Determining public utility, benefit, or welfare.</u></p> <p>In any proceeding to establish a drainage project, or in the construction of, <u>repair</u> or other work affecting a public drainage system under any law, the drainage authority or other authority having jurisdiction over the proceeding must give proper consideration to conservation of soil, water, <u>wetlands</u>, forests, wild animals, and related natural resources, and to other public interests affected, together with other material matters as provided by law in determining whether the project will be of public utility, benefit, or welfare.</p>	<p>This provision first added to drainage law in 1955. The word “repair” was deleted during recodification. “Repair” added back for clarity. “Wetlands” added to update the list of natural resources.</p>
<p>103E.091 APPEALS.</p> <p>Subdivision 1. Grounds for appeal.</p> <p>A party may appeal to the district court from a recorded order of a drainage authority made in a drainage proceeding that determines:</p>	

<p>(1) the amount of benefits; (2) the amount of damages; (3) fees or expenses allowed; or (4) whether the environmental, and land use, <u>and multipurpose water management</u> requirements and criteria of section 103E.015, subdivision 1 are met.</p>	<p>Update to reflect revision of heading for Section 103E.015, Subd. 1.</p>
<p>103E.245 PRELIMINARY SURVEY AND PRELIMINARY SURVEY REPORT.</p> <p>Subdivision 1. Survey. The engineer shall proceed promptly to:</p> <ol style="list-style-type: none"> (1) examine the petition and order; (2) make a preliminary survey of the area likely to be affected by the proposed drainage project to enable the engineer to determine whether the proposed drainage project is necessary and feasible with reference to the environmental, and land use, <u>and multipurpose water management</u> criteria in section 103E.015, subdivision 1; (3) examine and gather information related to determining whether the proposed drainage project substantially affects areas that are public waters; and (4) if the proposed drainage project requires construction of an open channel, examine the nature and capacity of the outlet and any necessary extension. <p>Subd. 2. Limitation of survey. The engineer shall restrict the preliminary survey to the drainage area described in the petition, except that to secure an outlet the engineer may run levels necessary to determine the distance for the proper fall of the water. The preliminary survey must consider the impact of the proposed drainage project on the environmental, and land use, <u>and multipurpose water management</u> criteria in section 103E.015, subdivision 1. The drainage authority may have other areas surveyed after:</p> <ol style="list-style-type: none"> (1) giving notice by mail of a hearing to survey additional areas, to be held at least ten days after the notice is mailed, to the petitioners and persons liable on the petitioners' bond; (2) holding the hearing; (3) obtaining consent of the persons liable on the petitioners' bond; and (4) ordering the additional area surveyed by the engineer. <p>Subd. 4. Preliminary survey report. The engineer shall report the proposed drainage project plan or recommend a different practical plan. The report must give sufficient information, in detail, to inform the drainage authority on issues related to feasibility, and show changes necessary to make the proposed plan practicable and feasible including extensions, laterals, and other work. If the engineer finds the proposed drainage project in the petition is feasible and complies with the environmental, and land use, <u>and multipurpose water management</u> criteria in section 103E.015, subdivision 1, the engineer shall include in the preliminary survey report a preliminary plan of the drainage project showing the proposed ditches, tile, laterals, and other improvements, the outlet of the project, the watershed of the drainage project or system, and the property</p>	<p>Update to reflect revision of heading for Section 103E.015, Subd. 1.</p> <p>Ditto.</p> <p>Ditto.</p>

<p>likely to be affected and its known owners. The plan must show:</p> <ol style="list-style-type: none"> (1) the elevation of the outlet and the controlling elevations of the property likely to be affected referenced to standard sea level datum, if practical; (2) the probable size and character of the ditches and laterals necessary to make the plan practicable and feasible; (3) the character of the outlet and whether it is sufficient; (4) the probable cost of the drains and improvements shown on the plan; (5) all other information and data necessary to disclose the practicability, necessity, and feasibility of the proposed drainage project; (6) consideration of the drainage project under the environmental, and land use, and multipurpose water management criteria in section 103E.015, subdivision 1; and (7) other information as ordered by the drainage authority. 	<p>Ditto.</p>
<p>103E.255 COMMISSIONER'S PRELIMINARY ADVISORY REPORT.</p> <p>The commissioner shall make a preliminary advisory report to the drainage authority with an opinion about the adequacy of the preliminary survey report. The commissioner shall state any additional investigation and evaluation that should be done relating to public waters that may be affected and environmental, and land use, and multipurpose water management criteria in section 103E.015, subdivision 1, and cite specific portions of the preliminary survey report that are determined inadequate. The commissioner shall file an initial preliminary advisory report with the auditor before the date of the preliminary hearing. The commissioner may request additional time for review and evaluation of the preliminary survey report if additional time is necessary for proper evaluation. A request for additional time for filing the commissioner's preliminary advisory report may not be made more than five days after the date of the notice by the auditor that a date is to be set for the preliminary hearing. An extension of time may not exceed two weeks after the date of the request.</p>	<p>Update to reflect revision of heading for Section 103E.015, Subd. 1.</p>
<p>103E.261 PRELIMINARY HEARING.</p> <p>Subd. 4. Dismissal.</p> <p>(a) The drainage authority shall dismiss the proceedings if it determines that:</p> <ol style="list-style-type: none"> (1) the proposed drainage project is not feasible; (2) the adverse environmental impact is greater than the public benefit and utility after considering the environmental, and land use, and multipurpose water management criteria in section 103E.015, subdivision 1, and the engineer has not reported a plan to make the proposed drainage project feasible and acceptable; (3) the proposed drainage project is not of public benefit or utility; or (4) the outlet is not adequate. <p>(b) If the proceedings are dismissed, any other action on the proposed drainage project must begin with a new petition.</p> <p>Subd. 5. Findings and order.</p> <p>(a) The drainage authority shall state, by order, its findings and any changes that must be made in the proposed drainage project from those outlined in</p>	<p>Update to reflect revision of heading for Section 103E.015, Subd. 1.</p>

<p>the petition, including changes necessary to minimize or mitigate adverse impact on the environment, if it determines that:</p> <ul style="list-style-type: none"> (1) the proposed drainage project outlined in the petition, or modified and recommended by the engineer, is feasible; (2) there is necessity for the proposed drainage project; (3) the proposed drainage project will be of public benefit and promote the public health, after considering the environmental, and land use, <u>and multipurpose water management</u> criteria in section 103E.015, subdivision 1; and (4) the outlet is adequate. <p>(b) Changes may be stated by describing them in general terms or filing a map that outlines the changes in the proposed drainage project with the order. The order and accompanying documents must be filed with the auditor.</p>	<p>Ditto.</p>
<p>103E.285 DETAILED SURVEY REPORT.</p> <p>Subd. 10. Other information on practicability and necessity of drainage project.</p> <p>Other data and information to inform the drainage authority of the practicability and necessity of the proposed drainage project must be made available including a comprehensive examination and the recommendation by the engineer regarding the environmental, and land use, <u>and multipurpose water management</u> criteria in section 103E.015, subdivision 1.</p>	<p>Update to reflect revision of heading for Section 103E.015, Subd. 1.</p>
<p>103E.301 COMMISSIONER'S FINAL ADVISORY REPORT.</p> <p>(a) The commissioner shall examine the detailed survey report and within 30 days of receipt make a final advisory report to the drainage authority. The final advisory report must state whether the commissioner:</p> <ul style="list-style-type: none"> (1) finds the detailed survey report is incomplete and not in accordance with the provisions of this chapter, specifying the incomplete or nonconforming provisions; (2) approves the detailed survey report as an acceptable plan to drain the property affected; (3) does not approve the plan and recommendations for changes; (4) finds the proposed drainage project is not of public benefit or utility under the environmental, and land use, <u>and multipurpose water management</u> criteria in section 103E.015, subdivision 1, specifying the facts and evidence supporting the findings; or (5) finds a soil survey is needed, and, if it is, makes a request to the engineer to make a soil survey. <p>(b) The commissioner shall direct the final advisory report to the drainage authority and file it with the auditor.</p>	<p>Update to reflect revision of heading for Section 103E.015, Subd. 1.</p>
<p>103E.341 DRAINAGE AUTHORITY FINAL ORDER.</p> <p>Subdivision 1. Dismissal of proceedings.</p> <p>The drainage authority must dismiss the proceedings and petition, by order, if it determines that:</p> <ul style="list-style-type: none"> (1) the benefits of the proposed drainage project are less than the total cost, including damages awarded; (2) the proposed drainage project will not be of public benefit and utility; or 	

<p>(3) the proposed drainage project is not practicable after considering the environmental, and land use, and multipurpose water management criteria in section 103E.015, subdivision 1.</p>	<p>Update to reflect revision of heading for Section 103E.015, Subd. 1.</p>
<p>103E.501 CONTRACT AND BOND.</p> <p>Subd. 4. Contract provisions for changes during construction.</p> <p>The contract must give the engineer the right, with the consent of the drainage authority, to modify the detailed survey report, plans, and specifications as the work proceeds and as circumstances require. The contract must provide that the increased cost resulting from the changes will be paid by the drainage authority to the contractor at a rate not greater than the amount for similar work in the contract. A change may not be made that will substantially impair the usefulness of any part of the drainage project or system, substantially alter its original character, or increase its total cost by more than ten percent of the total original contract price. A change may not be made that will cause the cost to exceed the total estimated benefits found by the drainage authority or that will cause any detrimental effects to the public interest under <u>the environmental, land use, and multipurpose water management criteria in section103E.015, subdivision 1.</u></p>	<p>Update to reflect revision of heading for Section 103E.015, Subd. 1.</p>