



## Brief Summary of Minnesota Drainage Law and Buffer Strip Provisions

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### **Drainage Law Origin, Purposes, Scope and Current Statute**

The first drainage law in Minnesota was enacted in 1858, the same year Minnesota became a state.<sup>1</sup> The law's key purposes were to facilitate drainage systems across property lines and jurisdictions to better enable agricultural drainage and land use, as well as roads, public health and economic activity. These drainage systems have included both open ditches and subsurface tile (including clay, concrete and, more recently, plastic tile). In the late 1800s, restrictions were placed on draining deeper meandered lakes. As public waters, wetland and related law developed from the mid-1900s to the present time, additional requirements, permissive authorities and considerations were added for environmental, land use and, most recently, multipurpose water management criteria. State drainage law currently is in Minnesota Statutes Chapter 103E Drainage. Although Chapter 103E drainage systems are called "public" drainage systems, it is more precise to refer to these systems as "publicly administered" drainage systems. The landowners benefitting from a drainage system are co-owners of the system who pay for establishment, improvement and/or repair of the system, while local government units administer the system in accordance with Minnesota drainage law.

### **Drainage Authorities and Drainage System Identifiers**

State drainage law initially authorized drainage corporations of multiple landowners, with drainage plans filed at the registrar of the applicable county(ies). Townships could serve as drainage authorities at one time and counties have served as drainage authorities since the 1870s. Over the years, drainage authorities have also included an 8-county commission in the Red River Basin, a State Drainage Commission, district courts, drainage and conservancy districts, a State Drainage Commissioner, the Division of Drainage and Waters in the Department of Conservation (precursor of the MDNR) and, since 1959, watershed districts.<sup>1</sup> Minnesota's various Chapter 103E drainage system identifiers reflect the different entities that have had drainage authority, including: town ditches, county ditches, state ditches, judicial ditches and watershed district project ditches, all of which can involve open ditches and/or subsurface tile systems. Drainage systems and identifiers also include laterals or branches of drainage systems. Current Chapter 103E drainage authorities are county, joint county or watershed district boards. These drainage authorities are responsible for administering all drainage systems established under Minnesota drainage law in accordance with all applicable current law.

### **General Drainage Law Processes**

Drainage proceedings under Chapter 103E are initiated by petition to the applicable drainage authority, with varying requirements for who can petition and/or the required percent of affected landowners (or owners of a percent of affected land) that must petition for different types of proceedings. Drainage system maintenance / repairs and redetermination of benefits and damages (defined below under Viewing) can be petitioned or initiated by the drainage authority based on drainage system inspection and knowledge of need. Many drainage system proceedings or administrative actions require notice and hearings, including, but not limited to: establishment, improvement, partial or complete abandonment, petitioned repairs that require land rights acquisition, redetermination of benefits and damages, and petitioned transfer of drainage authority. Drainage authorities act on behalf of the benefited landowners, in accordance with Chapter 103E drainage law and other applicable law.

<sup>1</sup>"A History of Drainage Law in Minnesota with Emphasis on the Legal Status of Wet Lands", K. Elton King, UMN Water Resources Research Center, Bulletin 106, November 1980

### **Drainage Authority Key Advisors**

Engineers (county or contracted private), attorneys (county or contracted private), county auditors, viewers and drainage inspectors are key advisors to drainage authorities for implementation of drainage proceedings and other administrative actions, including drainage system inspection, repair and ditch buffer strip enforcement, in accordance with Chapter 103E.

### **Viewing**

Since 1883, Minnesota drainage law has required the appointment of viewers to determine or redetermine benefits and damages of Chapter 103E drainage systems.<sup>1</sup> Viewers are disinterested residents of the state qualified to assess benefits and damages, and are appointed by drainage authorities in teams of three. The economic benefits and costs determined are generally based on mass appraisal methods and are used in drainage law to enable required benefit-cost analyses, certain repair cost limitation, and to assess, pro rata, all costs of the associated drainage system to the benefited landowners. Drainage system economic benefits are determined at one point in time. There is no provision in drainage law to allow indexing of benefits for inflation.

### **Ditch Buffer Strips**

In 1959, drainage authorities were given permissive authority in drainage law to level spoil banks and establish minimum 1-rod (16.5 ft.) wide grass buffer strips along Chapter 103E drainage ditches when viewers were appointed to determine or redetermine benefits and damages (including drainage system right-of-way costs for the buffer strips). The purposes presumably were to improve ditch bank stability and reduce ditch maintenance by eliminating spoil piles adjacent to ditch banks and planting buffer strips of perennial vegetation, which may have also had a purpose of trapping wind-blown sediment from adjacent fields. In 1977, this permissive authority was changed to a requirement to establish minimum 16.5-ft. wide grass buffer strips when viewers are appointed. Since that time, approximately 20% of Chapter 103E drainage ditches statewide have had viewers appointed and buffer strips established during ditch establishment, improvement, repairs requiring right-of-way acquisition, or redetermination of benefits and damages.

In 2007, the stakeholder Drainage Work Group (coordinated by the Board of Water and Soil Resources in accordance with Section 103B.101, Subd. 13) recommended, and the Legislature adopted, a provision in Chapter 103E enabling drainage authorities to incrementally establish 16.5 ft. ditch buffer strips using repair funds where necessary to control erosion and sedimentation, improve water quality, or maintain the efficiency of the drainage system. Since 2007, drainage authorities have been required to annually report Chapter 103E ditch buffer strip establishment and enforcement actions to the BWSR.

The new **Section 103F.48 Riparian Protection and Water Quality Practices** requires landowners with ditches within the benefited area of Chapter 103E public drainage systems to have continuous 16.5 ft. buffer strips of perennially rooted vegetation along those ditches, subject to certain exemptions, or alternative water quality practices, by November 1, 2018. Existing Chapter 103E ditch buffer strips fulfill this requirement for those ditches. Section 103F.48, Subd. 10 enables drainage authorities to use certain drainage law provisions in advance or retroactively to acquire or provide compensation for all or part of the buffer strip establishment or alternative riparian water quality practices within the benefited area of the Chapter 103E public drainage system. The process must be done in accordance with the applicable provisions in Chapter 103E. Because many Chapter 103E public drainage systems have outdated determinations of benefited areas and benefits, it is anticipated that Section 103F.48 requirements will cause an accelerated need for redetermination of benefits and damages. The stakeholder Drainage Work Group and the BWSR are investigating how to provide optional method(s) for more streamlined redetermination of benefits and damages.