

**Drainage Work Group
Drainage System Acquisition and Compensation of Buffer Strips
Overview of Recommendations**

Purpose

To better enable public drainage systems to acquire, compensate and maintain ditch buffer strips.

Summary of Recommendations

- 1) *Clarify Section 103E.021, Subd. 6. **Incremental implementation; vegetated buffer strips and side inlet controls** to expressly state that, upon findings and an order, the drainage authority is vested with jurisdiction over property rights acquired for 16.5-ft. ditch buffer strips.* This is in response to a Court of Appeals unpublished opinion (Zimmermann, et al. vs. Sauk River Watershed District, 2-16-16), which concluded that this subdivision currently does not adequately define drainage authority jurisdiction. This subdivision provides permissive authority for Chapter 103E drainage authorities, “where necessary to control erosion and sedimentation, improve water quality, or maintain the efficiency of the drainage system”, and is implemented as a repair, without a requirement to appoint viewers.
- 2) *Revise Section 103E.351 **Redetermining Benefits and Damages** to enable 26 percent of benefited landowners, or owners of 26 percent of the benefited lands, to petition for a redetermination of benefits in order to update benefited area(s) and benefits of record and more equitably apportion drainage system costs, including for ditch buffer strips.* The drainage authority has discretion to appoint viewers to determine benefits and damages. (Drainage system improvement, improvement of an outlet, and laterals require 26% for a petition.)
- 3) *Clarify Section 103E.071 **County Attorney**, to make it clear that drainage authorities, including counties, may hire outside legal counsel per Section 388.09, Subd. 1.* This would clarify and connect Chapter 103E to an applicable authority in statute enabling counties to hire private attorneys to assist the county attorney.
- 4) *For a ditch system that does not have adequate cash flow capability, modify an existing or create a new loan program for buffer strip acquisition and establishment.* The Section 17.117 **Agricultural Best Management Practices Loan Program** includes ditch buffer strips as an eligible practice for low interest loans. It is recommended that Section 17.117 more clearly enable a Chapter 103E drainage system, which typically involves multiple landowners, to use program loan funds for acquisition and compensation of ditch buffer strips without a separate project cost limitation.

Pertinent History

- 1) In 2007, Section 103E.021, Subd. 6 was added to drainage law based on a DWG recommendation, with language and intent to provide separate, permissive authority for buffer strip and side inlet control implementation, permanent land rights acquisition, and maintenance by Chapter 103E drainage systems.
- 2) In 2013, update of redetermination of benefits and damages provisions in Chapter 103E was first added to the DWG Prioritized Discussion Topics List, in light of problems encountered by the Bois de Sioux Watershed District with use of Section 103E.351.
- 3) County use of private attorneys for Chapter 103E work has not been consistently recognized and used.
- 4) In 2017, the Minnesota Legislature directed the Board of Water and Soil Resources in coordination with the DWG to evaluate and make recommendations to accelerate public drainage system acquisition of ditch buffer strips and alternative practices. The associated report to the Legislature is at: [“Recommendations for Accelerating Public Drainage System Acquisition and Establishment of Buffer Strips and Alternative Practices, February 1, 2018”](#).