

Minnesota Board of Water and Soil Resources. Minutes.

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Version 3
August 20, 2018

STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES

90 W. Plato Blvd.
St. Paul, Minnesota 55107
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February 5, 1988

TO: BWSR Board Members and Staff

FROM: Jim Birkholz

SUBJECT: February 24 and 25 Board Meeting and Retreat

Plans for the Board's February meeting and retreat are coming together. The location will be at the Sheraton Northwest hotel near the I-694 and US 169 exit (a map is attached). Lodging and organized meals will be on a master billing paid directly by this office. Please return the attached sheet indicating whether you will attend as soon as possible. A stamped, self-addressed envelope is included for your convenience.

Also enclosed is the tentative agenda for the two days. We are fortunate to have Dr. James Connolly from the University of Minnesota as a facilitator on February 25. Dr. Connolly has worked extensively with governmental organizations and private industry in helping them improve their management and direction, enhance communications and deal with change. He is a dynamic communicator who can help our new organization really take off. I hope you all can participate.

Please call the Board office if you have any questions.

JB:lb
Encs:

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Please indicate in the spaces below the arrangements you need for the BWSR meeting and retreat on February 24 and 25.

Name: _____

Yes	No	
___	___	Tuesday night, February 23 lodging reservation
		Wednesday, February 24
___	___	Attend Board meeting (9 a.m. - 12 noon)
___	___	Lunch reservation
___	___	Attend retreat (1:00 p.m. - 5:30 p.m.)
___	___	Lodging reservation Dinner is on your own
		Thursday, February 25 Breakfast is on your own
___	___	Attend retreat (9:00 a.m. - 4:30 p.m.)
___	___	Lunch reservation

Please return this form in the enclosed stamped, self-addressed envelope as soon as possible.

Board of Water and Soil Resources Meeting and Retreat

Sheraton Northwest Hotel

I 694 and U.S. 169, Brooklyn Park

TENTATIVE AGENDA

Wednesday, February 24, 1988

9:00 a.m. - 12:00	Board Business Meeting
12:00 - 1:00 p.m.	Lunch
1:00 - 1:20 p.m.	Introduction - Don Ogaard Purpose of retreat Overview of Agenda - Jim Birkholz
1:20 - 4:30 p.m. concurrent sessions: -40 minutes each -rotate	Small Group Presentations & Discussion - Grants Administration Greg Larson (W. Edgerton, D. Apelgrain, H. Anderson, R. Ness) - Comprehensive Water Planning Mel Sinn (D. Steward, K. Benson, M. Nelson) - Administrative Support to Local Governments Dennis Pond (D. DeFrates, J. Nielsen) - Policy and Operation Planning Jim Birkholz (C. Hofstede, D. Peterson)
4:30 - 5:30 p.m.	Wrap Up
6:00 p.m.	Dinner (on your own)
7:00 p.m.	Informal Social

Thursday, February 25, 1988

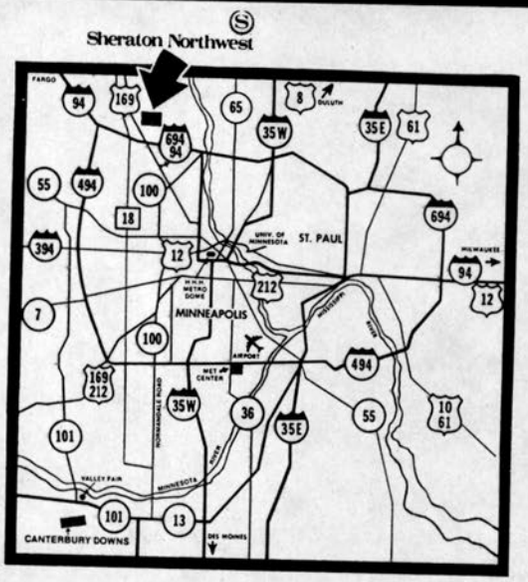
9:00 a.m. - 12:00	Defining the Mission of the Board Professor James Connolly
12:00 - 1:00 p.m.	Lunch
1:00 - 4:00 p.m.	Defining the Board and Staff Relationship
4:00 - 4:30 p.m.	Where are We Headed?

MINNEAPOLIS, MINNESOTA

Sheraton Northwest

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February 12, 1988

TO: Advisors, Board of Water and Soil Resources

FROM: Jim Birkholz, Office Manager

SUBJECT: February BWSR Retreat

The Board of Water and Soil Resources retreat has been scheduled immediately following the regularly scheduled meeting on the morning of Wednesday, February 24th. The Board would like to limit attendees at the retreat to Board members and Board staff only. The Board would appreciate however, any written or verbal feedback you may have which would shed light on the retreat topics. The retreat topics are as follows:

1) Small group presentations and discussion on Board programs.

- Grants Administration
- Comprehensive Water Planning
- Administrative Support to Local Governments
- Policy and Operation Planning

2) Defining the Board and Staff Working Relationship

3) Defining the Mission of the Board

If you have any input on the retreat topics, please submit that to the Board office or bring your comments to the Board meeting.

As a reminder, the February Board meeting will run from 9:00 a.m. to 12 noon on Wednesday, February 24th. It will be at the Sheraton NW Hotel near the intersection of I694 and U.S. 169 in Brooklyn Park.

JB:mja
cc: Donald Ogaard

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February 16, 1988

TO: Board of Water and Soil Resources Members and Advisors

FROM: Jim Birkholz, Office Manager

SUBJECT: February 24th Board Meeting

Attached is the preliminary agenda and some support information for the Board meeting. The meeting will be held at the Sheraton Northwest Hotel near the intersection of Hwy. 694 and Hwy. 169. The meeting will begin at 9:00 and should end by noon. Following is some information related to the agenda items:

- Pioneer Sara Watershed Management Organization Plan Review. Staff has completed their review of this plan and will present their findings to the Board. It is expected that the Board will be able to take action on approval of the plan at the meeting.

- State Cost-Share Program. An issue has been raised by the legislature about amending the cost-share program rules to allow on an exceptional basis exceeding the 75% cost-share rate, which is now mandated in the rule. Board policy direction is needed on this issue. Staff will present background information for consideration at the Board meeting.

- Legislative Commission on Minnesota Resources. Currently the LCMR is requesting opinions concerning the issues and needs of Minnesota's natural resources. The Commission will consider these issues as it makes recommendations to the legislature for 1989 program funding. This is the opportunity for the Board to suggest issues which LCMR which consider for funding. LCMR staff will hopefully be at the meeting to brief members on the background, history, and role of the LCMR. The Board can then engage in some brainstorming to generate new issues.

If you have additional agenda items, please call them into the Board office at 296-3767. Two additional reminders, first, please remember to bring your information packet to the meeting and secondly, be sure to note the change in location of the meeting to the Sheration Northwest Hotel.

JB:mja
Enc.

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February 17, 1988

TO: BWSR Members and Staff

FROM: Jim Birkholz, Office Manager

SUBJECT: BWSR Retreat

Attached is the agenda for the BWSR retreat at the Sheraton Northwest Hotel near the exit of I694 and U.S. 169. The retreat will start immediately after lunch at 1:00 on Wednesday, February 24. It will conclude at 4:30 on Thursday, February 25.

Details of the retreat will be shared at the beginning of the meeting. The expected goals are to provide an opportunity for quality communication between board members and staff, assess where the organization is today and set basic direction for the future.

Attached is a copy of a speech delivered by Senator Gary DeCramer this week at the Water '88 Conference in St. Paul. As you recall, Senator DeCramer authored the legislation which created the Board. In his speech, Senator DeCramer shared some of his thoughts on water policy responsibilities and the role of this Board. This is a good example of the emerging issues on which the Board needs to develop responsible policies, considering its resource protection mission.

The retreat should be an ideal opportunity for some challenging thinking and to develop the treamwork between board members and staff which is so critical to our future success. I look forward to seeing you there.

JB:mja
Enc.

AN EQUAL OPPORTUNITY EMPLOYER

AGENDA

Wednesday, February 24, 1988

9:00 a.m. - 12:00	Board Business Meeting - LaPaz
12:00 - 1:00 p.m.	Lunch - Fountain Courtyard
1:00 - 1:20 p.m.	Introduction - Don Ogaard - LaPaz Purpose of Retreat Overview of Agenda - Jim Birkholz
1:20 - 4:30 p.m. concurrent sessions: - 40 minutes each - rotate	Small Group Presentations and Discussion - Grants Administration Room 109 Staff - Greg Larson (W. Edgerton, D. Apelgrain, H. Anderson, R. Ness) - Comprehensive Water Planning Room 111 Staff - Mel Sinn (D. Steward, K. Benson, M. Nelson) - Administrative Support to Local Governments Room 113 Staff - Dennis Pond (D. DeFrates, J. Nielsen) - Policy and Operational Planning Room 115 Staff - Jim Birkholz (C. Hofstede, D. Peterson)
4:30 - 5:30 p.m.	Wrap Up - LaPaz
6:00 p.m.	Dinner
7:00 p.m.	Informal Social

Thursday, February 25, 1988

9:00 a.m. - 12:00	Defining the Board and Staff Relationship - LaPaz Professor James Connolly
12:00 - 1:00 p.m.	Lunch - Fountain Courtyard
1:00 - 4:00 p.m.	Defining the Mission of the Board - LaPaz Professor James Connolly
4:00 - 4:00 p.m.	Where Are We Headed?

MINUTES OF FEBRUARY 24, 1988 MEETING
OF THE
BOARD OF WATER AND SOIL RESOURCES

Appointed Members in Attendance

Don Ogaard
John Boulton
Don Warner
Eugene Kalmes
Douglas Bade
Lowell Moen
James Hoese
Natalie Haas-Steffen
John Brooks, Jr.
Loni Kemp
Howard Peterson
Jack Graba
William Cofell
Loren Harste
Ken Schellack

Others in Attendance

Mary Peterson, Minnesota Association of Soil & Water Conservation Districts
Gary Nordstrom, Soil Conservation Service
Joe Gibson sitting in for Steve Thorne, Department of Natural Resources
Nels Nelson, Barr Engineering
George Orning, Staff, Legislative Commission on Minnesota Resources
Joel Settles, Hennepin County Soil & Water Conservation District

Staff in Attendance

Jim Birkholz
Mel Sinn
Dan Steward
Mark Nelson
Greg Larson
Kim Benson
Denice DeFrates
Dennis Pond
Darrell Apelgrain
Hal Anderson
Dave Peterson
Chris Hofstede
Jeff Nielsen
Mary Jo Anderson

Call Meeting to Order - Chairman Ogaard called the meeting to order at 9:04 a.m., at the Sheraton Northwest, Brooklyn Park, Minnesota.

Adopt Agenda - Chairman Ogaard asked that an additional item be added to the
88-46 agenda: 5a., regarding newsletter review and authorization. Moved by Hoese, seconded by Warner, to adopt the agenda as presented. Affirmative: Ogaard, Boulton, Warner, Kalmes, Bade, Schellack, Moen, Hoese, Haas-Steffen, Brooks, Jr., Harste, Peterson, Graba, Kemp, and Cofell. Opposed: None. Carried.

88-47 **Approval of Minutes from January 27, 1988** - Moved by Schellack, seconded by Boulton, to approve the minutes of January 27, 1988 as circulated. Affirmative: Ogaard, Boulton, Warner, Kalmes, Bade, Schellack, Moen, Hoese, Haas-Steffen, Brooks, Jr., Harste, Peterson, Graba, Kemp, and Cofell. Opposed: None. Carried.

Chairman's Report - Chairman Ogaard reported on the statewide groundwater hearings conducted by Senator Dave Durenberger. Chairman Ogaard attended the hearing in Moorhead. William Cofell attended the hearing in St. Cloud. Loni Kemp attended and testified in Rochester on behalf of the Minnesota Project, and felt that specific funding should be looked at for pest and nutrient management. Loni felt that strong congressional leadership is needed for groundwater protection. It was noted that there was very good attendance at the hearings in St. Cloud and Rochester.

Update on Executive Director Status - Chairman Ogaard gave a brief update on the Executive Director's status. Fifteen applications have been received. Chairman Ogaard will be meeting with the Personnel Committee tonight to discuss a format to be used for the interview process.

Report on 1988 Water Conference - Chairman Ogaard reported that 400 people were in attendance for the conference. There was tremendous participation by various joint powers organizations involved in the water planning effort. Chairman felt that the BWSR has an added responsibility of getting properly funded and staffed to properly serve these joint powers. Doug Bade attended the conference and felt that it was very informative. The BWSR needs to emphasize prevention of problems through planning for water management. Loni Kemp attended the conference and stated that Martha Brand, Chair of the Environmental Quality Board/Water Resources Committee, made a presentation on the groundwater and pesticide/nutrient strategies and water priorities. Senator DeCramer in a speech outlined his plans on recodification of all water laws in Minnesota.

Board Consideration of Logo Design - Denice DeFrates distributed copies of the redesigned logo. The colors proposed for use in stationery and business
88-48 cards would be light grey and teal blue. Moved by Bade, seconded by Kalmes, to accept the logo as presented. Affirmative: Ogaard, Boulton, Warner, Kalmes, Bade, Schellack, Moen, Hoese, Haas-Steffen, Brooks, Jr., Peterson, Graba, Kemp, and Cofell. Opposed: None. Carried.

The BWSR discussed the need for business cards for Board members. It was decided that business cards that have blanks so names could be added would best fit the needs the members at this time.

Newsletter Review and Authorization - Denice DeFrates reported that she met with Hal Anderson, Board Representative; Allen Dornfeld, President, MN Association of Watershed Districts; and Mary Peterson, Executive Director, MN Association of Soil and Water Conservation Districts; to discuss combining newsletters. It was decided that a joint newsletter would be titled, "Conservation Mentor Newsletter". The masthead color will be blue. 3,000 issues will be printed for circulation. The two Associations will divide the cost, $5,000 annually. The newsletter would be published bi-monthly.

88-49 Moved by Schellack, seconded by Peterson, to have a cooperative agreement with the two Associations for the "Conservation Mentor Newsletter". Affirmative: Ogaard, Boulton, Warner, Kalmes, Bade, Schellack, Moen, Hoese, Haas-Steffen, Brooks, Jr., Harste, Peterson, Graba, Kemp, and Cofell. Opposed: None. Carried.

Pioneer-Sarah Water Management Organization - Dan Steward introduced Joel Settles, Hennepin SWCD Limnologist, is in attendance to answer any questions the Board members may have. Dan stated that he and Kim Benson toured the WMO as part of the review process and felt that the WMO had prepared a good plan. The Pioneer-Sarah WMO is located in the west central part of Hennepin County and outlets into the South Crow River. Staff recommends approval of

88-50 the draft order. Moved by Hoese, seconded by Cofell, to accept the staff recommendation for approval of the draft order for the Pioneer-Sarah WMO Plan. Affirmative: Ogaard, Boulton, Warner, Kalmes, Bade, Schellack, Moen, Hoese, Haas-Steffen, Brooks, Jr., Harste, Peterson, Graba, Kemp, and Cofell. Opposed: None. Carried. James Hoese commended Joel Settles and Hennepin County on the work they have done on this project. It was felt that it would be a good opportunity for BWSR to educate other WMO's of the need for implementation of these plans. Copies of the plans are available in the office if Board members are interested in reviewing them. Hopefully, staff will be able to review one plan per month for the next six months.

509 Plans - Needed Uniformities - Jim Birkholz reported that a bill has been introduced in the Senate to develop a uniform erosion and sediment control program in the metro area. There is some disagreement on how to accomplish this. Difference in erosion and sediment control methods is creating problems as communities consider amending their local controls to conform with 509 plans. A leadership role is needed through the 509 process to add consistency. BWSR staff needs direction of promulgating rules for the 509 planning process from the Board. The adoption of a uniform E & S Control Program could be dealt with now by persuasion and then be included in the rules as a requirement

88-51 for WMO plan updates. Moved by Cofell, seconded by Warner, that staff is empowered to begin development of 509 rules. Affirmative: Ogaard, Boulton, Warner, Kalmes, Bade, Schellack, Moen, Hoese, Haas-Steffen, Brooks, Jr., Harste, Peterson, Graba, Kemp, and Cofell. Opposed: None. Carried.

The Board further directed staff to bring to the Board at its March meeting a strategy for preparing rules for 509 water planning.

Background Information on the Legislative Commission on Minnesota Resources - George Orning, LCMR staff, briefed the BWSR on LCMR. He distributed a listing of the present LCMR programs for the BWSR's information. LCMR's mission is improve natural resource management through the development or acceleration of new and innovative natural resource programs. The funding source of LCMR is from cigarette tax, approximately $8 million per year. LCMR has been in existence for twenty-five years, with various name changes throughout the

years. LCMR is responsible for recommending appropriations to the legislature for state agencies in the general areas of fisheries, wildlife, recreation, forestry, minerals, soils and water. LCMR is known for efficiency and dependability. They have a small staff, and the work is farmed out in projects. Mr. Orning reported that money is not released from LCMR until a work program has been done by the agency and approved by LCMR. The federal reimbursement account has about $500,000 in it, which is used for special projects. All reports that are compiled are distributed by the agency doing the project (with the cost of the report built into their work plan). All reports are cataloged in the Legislative Reference Library. Jim Birkholz informed the BWSR that the Streambank, Lakeshore, and Roadside (SLR) Program was originally an LCMR project. Also the Big Stone and Clearwater Lakes Nonpoint Source-Information Project (Tri-County Project) was also from LCMR. Mr. Orning stated that LCMR tends to look at combined things, such as matching funds approach, when researching projects. Gary Nordstrom reported that SCS has worked with LCMR federally on the soil survey program, and it has worked very well. Chairman Ogaard thanked Mr. Orning for coming before the BWSR today. Jim Birkholz distributed a listing of ideas for BWSR members to discuss.

State Cost-Share Program - Rules Revision Request to Exceed 75 percent Cost-Share Rate - Greg Larson reported that Chapter 40 does not specify cost-share rates; the state board is directed to establish cost-share rates in program rules. Program rules adopted in 1985 specify a maximum 75 percent cost-share rate for high priority problems and a maximum 50 percent rate for lower priority problems. A maximum rate of 75 percent was adopted because it is compatible with federal cost-share program rates and is generally accepted as a reasonable public contribution for controlling high priority problems. Cost-share program rules include a variance procedure allowing the state board, with certain restrictions, to waive cost-share rule requirements. These restrictions include: 1) variances may not be granted if it is in conflict with any statute; 2) variances must be initiated by a district board; and 3) variance requests must be specific. Based on this information, the BWSR could approve a request from a district board to increase the cost-share rate for a certain practice or situation. The issue is however, more complicated: Rule part 8400.0300 states that "changes to the list of eligible practices and cost-share rate schedule must be made pursuant to Minnesota Statutes, Chapter 14." (Chapter 14 pertains to rulemaking). Staff recommended that BWSR authorize a revision of the cost-share rules. The revision would remove the reference to Chapter 14. This change would allow the BWSR to consider a variance request from a district board to increase the cost-share rate for a certain practice or situation on a case-by-case basis. Greg Larson stated that no variance requests have been received to-date. Discussion followed. The BWSR felt that a change is not necessary to the cost-share rules at this time.

Legislative Update - Chairman Ogaard stated that both the Senate and House advised the BWSR to do a supplemental funding request. Staff has put together that supplemental funding request, with copies distributed to the BWSR members.

Recodification of Chapter 40 and Chapter 112 - Jim Birkholz reported that recodification means no changes to the statutory intent. A hearing has been scheduled for Friday, February 26, on Chapter 40.

Changes to Chapter 112 to Make Consistent with Chapter 106A - Jim Birkholz stated that 106A was reworked last session. Chapter 112 as it pertains to drainage activities was to be revised at the same time, but was not. Senator DeCramer is working with Chairman Ogaard and Mel Sinn to make 106A, consistent with Chapter 112.

Environmental Trust Fund - Jim Birkholz stated that this has been introduced in both the Senate and the House. It's being heard today in the Senate, next week in the House. It is proposed to be funded by the cigarette tax. A potential lottery represents another funding source. A press conference has been schedule for Monday, February 29, in Senator Moe's office. Staff will be tracking the hearing process and keep BWSR informed.

Chairman convened the meeting for lunch at 12:00. The meeting reconvened at 1:00 p.m.

Environmental Quality Board/Water Resources Committee - Loni Kemp reported that the Water Resources Committee met on February 4th to discuss the groundwater and pest and nutrient management and strategies. Eight public hearings will be held in April, statewide, for review of the strategy. Ms. Kemp asked the BWSR members to try and get their local groups involved in the hearings. After the hearings have been held, then the process of prioritization begins. The Water Resources Committee also discussed the review of legislative issues and initiatives. The Minnesota Department of Health is pursuing a bill for public water analysis, and also wants the Environmental Protection Agency certification of labs.

Mel Sinn reported on the Vadnais Lake Water Management Organization in the metro area. They are amending their joint powers, regarding the arbitration process. A uniform arbitration law is on the books, this process would be used for resolving problems should they exist. The arbitration panel would like to use the BWSR to select a third person for the panel. This issue will be brought up again at the March meeting, with representatives from the Vadnais Lake WMO present at that meeting. Mel Sinn also reported on the proceedings on the formation of the proposed Rabbit-Mustinka Watershed District. The administrative law judge will make a report to the BWSR in early March. Four BWSR members will develop a recommendation one week prior to the meeting.

Mel Sinn reported on the appeal regarding the Coon Creek Watershed District levy for a ditch maintenance fund. A hearing has been held, the final memo date expired, and the deadline for the appealant was February 22nd. Paul Strandberg, Attorney General's office, was asked to respond to that. A target date is needed from the administrative law judge to get his report back.

Jim Birkholz reviewed the budget summary with the BWSR members for their information.

Chairman Ogaard distributed the "19th Annual Report" from the Wild Rice Watershed District, showing the BWSR an example of the annual report that watershed districts needed to submit to the Water Resources Board. Mel Sinn has sent a memo to the watershed districts requesting them to submit their annual reports to the BWSR.

A memo from John Wells, Environmental Quality Board, sent to Jim Birkholz regarding the missions of the Environmental Quality Board and the Board of Water and Soil Resources was distributed for the BWSR's information.

88-52 Moved by Warner, seconded by Kalmes, to adjourn the meeting at 1:40 p.m. Affirmative: Ogaard, Boulton, Warner, Kalmes, Bade, Schellack, Moen, Hoese, Haas-Steffen, Brooks, Jr., Harste, Peterson, Graba, Kemp, and Cofell. Opposed: None. Carried.

Respectfully submitted,

Donald Ogaard

Donald Ogaard
Chairman

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TENTATIVE AGENDA

Wednesday, February 24, 1988

9:00 a.m. - 12:00	Board Business Meeting
12:00 - 1:00 p.m.	Lunch
1:00 - 1:20 p.m.	Introduction - Don Ogaard Purpose of retreat Overview of Agenda - Jim Birkholz
1:20 - 4:30 p.m. concurrent sessions: -40 minutes each -rotate	Small Group Presentations - Grants Administration Greg Larson (W. Edgerton, D. Apelgrain, H. Anderson, R. Ness) - Comprehensive Water Planning Mel Sinn (D. Steward, K. Benson, M. Nelson) - Administrative Support to Local Governments Dennis Pond (D. DeFrates, J. Nielsen) - Policy and Operational Planning Jim Birkholz (C. Hofstede, D. Peterson)
4:30 - 5:30 p.m.	Wrap Up
6:00 p.m.	Dinner
7:00 p.m. -	Informal Social

Thursday, February 25, 1988

9:00 a.m. - 12:00	Defining the Mission of the Board Professor James Connolly
12:00 - 1:00 p.m.	Lunch
1:00 - 4:00 p.m.	Defining the Board and Staff Relationship
4:00 - 4:30 p.m.	Where are We Headed?

BOARD OF WATER AND SOIL RESOURCES
AUTHORITY PERTAINING TO SWCD
VIOLATIONS OF PROGRAM RULES
AND
GRANT CONTRACT AGREEMENTS

BACKGROUND

The Board of Water and Soil Resources presently has rules for the Cost Sharing and RIM Reserve Programs. After adoption by the Board, rules have the same authority as law, consequently all provisions must be followed.

As a requirement for receiving any grant from the Board, a SWCD must enter into a Contractual Agreement with the State. The contract outlines the provisions and requirements in which the funds are being granted.

The Board is responsible for auditing the expenditure of funds granted to SWCDs as outlined in Chapter 40.03, subd. 4, paragraph 2. This function has traditionally been performed by Board staff. Occasionally violations of program rules and regulations or contract agreements are discovered. When this occurs, staff has followed the policy estabilshed by the former Soil and Water Conservation Board (see atachment).

BOARD AUTHORITY

The authority of the Board in dealing with rule or contract violations was recently clarified by the Attorney General. Their authority is as follows:

1) Violations of Rules

   Since rules have the same authority as law, any violation involving the expenditure of funds should result in the return of funds. The Board has the authority to determine whether a rule violation has occurred and the method of repayment to the State.

2) Violations of Contractual Agreements

   When a violation of a contractual agreement occurs, the Board has the authority to amend a contract if they believe there was just cause for the violation to have been committed.

Policy for Dealing with Violations of Board Policies

All Board staff are well versed in the rules, guidelines, and policies governing Board programs. When a District violates rules, guidelines, or policies, the following action shall be taken by the Board:

1) If an action or activity is clearly in opposition to a Board rule, guideline or policy, the staff person discovering the violation shall call it to the attention of the District Board. If the District Board does not resolve the issue in a timely manner, a letter stating this shall be sent to the District Board. A copy of this letter shall be sent ot the Executive Director.

2) If action or activity is questionable but clearly does not violate Board rule, guidelines, or policy, the staff person making the discovery has the discretion to address the issue in a manner they deem appropriate. This may include, but is not limited to a verbal or written response to the Board.

3) If an action or activity is questionable and produces difficulties in establishing a specific course of action, the staff person shall immediately consult with the Executive Director.

Role of the Executive Director

After consultation with the Chair of the Board and its staff, the Executive Director shall determine the action to be taken on violations of Board rules, guidelines, and policies.

This decision shall be based on the severity of the violation and whether the violation is a repeat or first offense. If a resolution to the violation cannot be negotiated the Executive Director shall refer the action to the Board.

Role of the Board

The Soil and Water Conservation Board's action on violations may include but is not limited to: requesting the return of state funds, a letter of reprimand, and withholding state funds.

This policy shall be sent to the Soil and Water Conservation Districts.

Adopted 1-11-83

Appeals Pertaining to Violations
of Rules and Contract Agreements
January 27, 1988

Lyon SWCD

On April 23, 1985, the Lyon SWCD entered into a cost-sharing contract with Joe Van Uden for $4,033 for a terrace system. Construction of the terraces had begun on April 19, 1985, four days prior to the SWCD approval. As documented in the SWCD minutes, the Supervisors were aware of this situation. The Cost-Share Program rules state that "Practices begun prior to district approval are ineligible for financial assistance."

The Lyon SWCD is no longer challenging the decision for the return of the funds and requests that the $4,033 be withheld from their FY89 allocation.

Staff recommendation is to withhold the funds from their FY89 Cost-Share allocation.

Itasca SWCD

An audit of the Itasca SWCD state grants discovered that $476.13 of their FY87 TED (Technical, Education and Conservation Tillage Demonstration) grant remained on June 30, 1987. Provisions of the Contract Agreement require that any funds remaining unspent after the end of the fiscal year shall be returned to the Agency within one month of that date. The contract was signed by the SWCD Board Chairman.

The Itasca SWCD is appealing the return of the funds for reasons stated in their letter dated October 14, 1987.

Staff recommendation is to withhold the $476.13 from their FY89 TED allocation.

Koochiching SWCD

An audit of the Koochiching SWCD state grants discovered that a balance of $998.93 of the General Services grant, $1,538.46 of the TED grant, and $515.50 of Cost-Share grant for FY86 remained unspent on June 30, 1986. Provisions of the Contract Agreements require that any funds remaining unspent after the end of the fiscal year shall be returned to the Agency within one month of that date. The contracts were signed by the Board Chairman.

The Koochiching SWCD is appealing the return of these funds for reasons stated in their letter dated October 7, 1987.

Staff recommendation is to withhold these amounts from their FY89 grant allocations.

withhold ~~gen. ser. 998.93 & C-S 515.50~~
let them keep ~~TED~~ 1,538.46 - amendment
Kalmes

STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES

90 W. Plato Blvd.
St. Paul, Minnesota 55107
Telephone: (612) 296-3767

Regional Offices

Northwest Region
1819 Bemidji Ave.
Bemidji, MN 56601
218-755-3963

Northeast Region
Government Service Center
320 W. 2nd Street
Room 603
Duluth, MN 55802
218-723-4752

West Central Region
611 Iowa Avenue
Staples, MN 56479
218-894-1692

South Central Region
Box 756
New Ulm, MN 56073
507-354-2196

Southeast Region
Friedell Bldg., Room 100
1200 S. Broadway
Rochester, MN 55904
507-285-7458

Southwest Region
Box 111
1400 E. Lyon Street
Marshall, MN 56258
507-537-7260

East Central Region
90 W. Plato Blvd.
St. Paul, MN 55107
612-296-3767

WHEREAS, Minnesota's water and soil resources are precious and valuable to all residents of the state; and

WHEREAS, the state's natural resources form the basis for the economic and social well being of Minnesota's citizens, and

WHEREAS, the protection of these resources assures their continued use and enjoyment by all the state's residents and visitors, and

WHEREAS, throughout his legislative career, Representative Willard Munger has worked to protect and conserve Minnesota's natural resources through his progressive legislation and leadership;

BE IT THEREFORE RESOLVED, the Minnesota Board of Water and Soil Resources extends its appreciation and gratitude to Representative Willard Munger for his contribution to Minnesota's conservation efforts and his work in protection and enhancing Minnesota's natural resources for future generations.

Minnesota Board of Water and Soil Resources

Donald Ogaard

Donald Ogaard, Chairman
January 27, 1988

AN EQUAL OPPORTUNITY EMPLOYER

1988 FUNDING NEEDS OF THE MINNESOTA BOARD OF WATER AND SOIL RESOURCES

INTRODUCTION

The Board of Water and Soil Resources (BWSR) was created by State law during the 1987 legislative session (MS Ch. 110B). The Board came into existence on October 1, 1987. The Board inherits the responsibilities formerly carried out by the Soil and Water Conservation Board, the Water Resources Board, and the Southern Minnesota Rivers Basin Council. In addition, it has broad responsibilities for encouraging and coordinating intergovernmental cooperation for the management of our state's water and soil resources.

The Board has specific responsibilities under the statewide and metropolitan comprehensive Water Planning Acts (MS Ch. 110B and MS Ch. 473.875 - .881, respectively) to provide direct technical and coordinative assistance to local governments doing planning, to coordinate other state agency involvement in assisting local governments prepare plans and ultimately to review and approve local water plans. Comrehensive local waters plans tie together all aspects of a community's water and related land resources with the choices which that community has to make about the present and future use of those resources. Currently in the Twin Cities Metropolitan area, 46 Watershed Management Organizations are in various stages of plan development. Forty-two of these plans remain to be reviewed by the BWSR. In greater Minnesota, the 80 counties are responsible for preparing comprehensive local water plans. Fifty-four counties have initiated plan development with seed grants obtained from the Legislative Commission on Minnesota Resources. Because future participation in state grant programs such as the Clean Water Partnership and the Statewide Flood Damage Reduction Program will depend on the adoption of comprehensive local water plans, it is anticipated that the remaining 26 counties will initiate plan development in the near future.

Also of critical importance to the success of the new Board of Water and Soil Resources is adequate funding for the members of the Baord itself to meet and carry out their statutory responsibilities. The Board is currently underfunded. The reasons are: administrative budget cuts to the former Soil and Water Conservation Board which carried over to a lower base budget for the new Board, the membership of the BWSR is larger than that accounted for in the biennial budget document, and the cummulative responsibilities of the new Board exceed the sum responsibilities of the former boards which requires more overall Board activity. If formulation of responsible state policy related to local government implementation of water and soil resource management efforts is to be achieved, funding for Board member per diem, travel, expenses and support services such as policy analysis, printing and copying must be provided.

COMPREHENSIVE LOCAL WATER PLANNING FUNDING REQUIREMENTS

Positions Requested: (5)

Classification	Begin Date	Salary	Fringe	Total
Senior Engineer	7/1/88	37187 (21%)	7809	44,996
Hydrologist 3	7/1/88	37208 (21%)	7813	45,021
Hydrologist 3 (groundwater)	7/1/88	37208 (21%)	7813	45,021
Planner Principal	7/1/88	33450 (21%)	7024	40,474
Research Analysis Specalist	7/1/88	30046 (21%)	6310	36,356
				211,868

Position Responsibilities:

Planner Principal
- Lead staff person for BWSR water planning activities
- Provide technical support to local government for land use regulations and ordinance development
- Policy development support to BWSR
- Coordinate state agency assistance to local governments

Civil Engineer, Senior
- Provide technical staff leadership commensurate with staff capability of local government clientele.
- Work directly with engineers representing local government
- Develop, adapt and implement computer modelling approaches to plan development and review

Hydrologist 3 (2)
- Direct assistance to local governments in preparing for, developing and implementing local water plans
- Both surface and groundwater expertise would be provided
- Plan review

Research Analysis Specialist
- Manage and provide water planning data to local government
- Coordinate data management with other agencies
- Coordinate with LMIC to create a statewide water management data base

Water Planning Budget Explanation:

Object Code	Explanation	FY 88	FY 89
01	Personnel Services (five technical staff positions)	$ 0	$211,868
10	Rents and Leases Office space for staff)	0	10,000
14	Printing and Binding (An Information and Education Program is mandated in MS Ch. 110B. These costs are associated with such a program)	5,000	12,000
16	Professional/Technical Services (Needed expertise in computers and engineering applications which will be provided by outside contractors and clerical assistance for six regional offices	5,000	25,000
18	Purchased Services (Support for meetings, training sessions and conferences)		2,000
20	Communications (Telephone and related communications)		10,000
21	Travel, In-State (Vehicle expenses, mileage, expenses commensurate with need to work closely with local governments)		25,000
22	Travel, Out-State (Training sessions/professional conferences)		1,000
30	Supplies and Materials		4,000
40	Equipment (FY 88 includes purchase of necessary computer capability in central and regional offices to accommodate greatly expanded data base and user needs. FY 89 includes office and technical equipment for additional staff positions)	45,000	15,000
		$55,000	$315,868

BOARD OPERATING EXPENSES FUNDING REQUIREMENTS

Option 1

Object Code	Explanation	FY 88	FY 89
08	Miscellaneous Payroll (BWSR member per diems)	1,550	3,100
21	Travel/Expenses, In-state	10,762	21,500
22	Travel/Expenses, Out-state	1,000	2,000
		13,312	26,600

Assumptions:

- per diem remains $35/meeting
- $32,000 from State Planning Agency as part of merger went to make up salary deficit
- Average per month board operating cost has increased opportunity $2,000/month over former WRB and SWCB, including:

  -One regular BWSR meeting per month
  -Each board member attends an average one other related meeting per month
  -Chairman attends 5 related meetings per month
  -Despite Resolution Committee averages one meeting per month
  -Other Board Committees meet a total of once every 2 months

- Past reductions to administrative budgets have eliminated available funds from other accounts to fund the board operation

Option 2

Object Code	Explanation	FY 88	FY 89
08	Miscellaneous Payroll (BWSR member per diems)	8,880	17,760
21	Travel/Expenses, In-state	19,710	39,420
22	Travel/Expenses, Out-state	1,200	2,400
		29,790	59,580

Assumptions:

- Per diem raises to $75/meeting
- Each Board member averages 1.5 related meetings per month
- Chairman attends seven related meetings/month
- Despite Resolution Committee meets average of once per month
- Other committees meet once per month, total

BUDGET SUMMARY

Item	FY 88	FY 89
Personnel Services (5 positions and fringe)	0	211,868
Operational Budget	10,000	89,000
Equipment	45,000	15,000
BWSR Member Operational Budget (Option 1)	13,312	26,600
TOTAL	$68,312	$342,468

total
$410,780

STATE OF
MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

500 LAFAYETTE ROAD • ST. PAUL, MINNESOTA • 55155-40_____

DNR INFORMATION
(612) 296-6157

January 27, 1988

DRAFT

County Ditch Authorities
c/o County Board Chairman and
President of Watershed District

Dear Chairman or President:

The Drainage Code, Minnesota Statutes 106A, was revised during the 1987 legislative session. Enclosed is a copy of Chapter 106A which includes the recent revisions. I would like to call your attention to several significant changes.

Grass strips - The drainage authority is required to bring a property into compliance and collect the expense when the property owner does not establish or maintain grass strips as required (106A.021, Subds. 4 & 5 and 106A.705). The area to be acquired to maintain a grass strip must be shown on the Detailed Survey Report map (106A.285, Subd. 2.8) and the ditch right-of-way acreage to be taken (106A.285, Subd. 6) and must be included in the Detailed Survey Report. For property that violates the grass strip provisions, the drainage authority may charge an additional assessment for repair of the ditch (106A.728). The provision passed in 1978, requiring the taking of the grass strip for all repairs requiring a redetermination of benefits remains the same.

Public Waters - Before a repair which may affect public waters is ordered, the drainage authority must notify the Commissioner of the DNR. If the Commissioner disagrees with the repair depth, the DNR, along with the ditch engineer and a Soil and Water Conservation technician, must be involved in determining the repair depth and recommending the repair depth to the drainage authority (106A.701, Subd. 1a). The Viewers Report must include additional information on acreage which involves public waters and where permits from other agencies might have been required for drainage of the area (106A.321, Subd. 1).

Attorney Fees - If the DNR appeals an order of the drainage authority and the DNR does not prevail, the court may award attorney fees to the prevailing party (106A.097).

County Attorney Review - The county attorney must review each petition and bond to determine whether it meets the requirements of the proceedings for which it is intended (106A.238).

Viewers - Viewers now may be any disinterested, qualified resident of the state (106A.305, Subd. 1). The Viewers' Report is expanded to include more information on the acreage as described under Public Waters. The Viewers' Report also must include a benefits and damages statement for each property owner (106A.321, Subd. 1a).

Assessment of Drainage Benefits and Damages - The basis on which benefits are determined is defined (106A.315, Subd. 5), as is the extent of damages to be paid (106A.315, Subd. 8). Additional direction is given for the assessment within a watershed of outlet benefits on property that contributes increased sedimentation, maintenance or capacity to the area of a drainage project or that is provided additional capacity by a drainage project (106A.315, Subd. 6.c. and Subd. 7)

Property Owners' Report - Following the filing of the Viewers' Report, the auditor must make a report for each property owner benefited or damaged by the proposed drainage project and mail a copy of the report to the property owner (106A.323).

Unauthorized Outlets - The drainage authority must notify the owner of an unauthorized outlet to block that outlet until the outlet is approved and an outlet fee is paid. If the property owner does not comply, the drainage authority must do the work and collect the expenses and fee (106A.401, Subds. 7 & 8).

The recent changes to the public drainage law were the result of recommendations from a multi interest committee chaired by the Association of Minnesota Counties. As a result of the broad support for the changes they passed unanimously by the legislature. The revised law was effective August 1, 1987, and public drainage authorities should be adhering to these changes for all initiatives after that date.

The Department has and will exercise appropriate oversite of the public drainage law as directed by the legislature. We do believe that through the Directors report and assistance from the regional DNR staff, the Department can provide the ditch authority with technical and environmental concerns and alternative considerations that will enhance the decision making process.

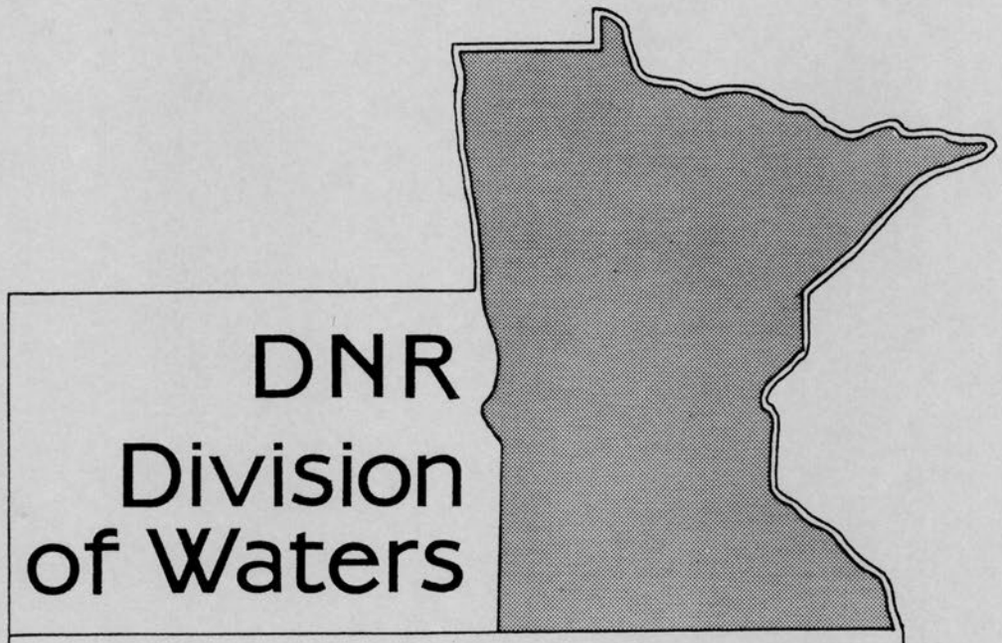
Sincerely,

DIVISION OF WATERS

Ron Nargang
Director

RN/RH:fw

Enclosure
cc: Regional Hydrologist
Area Hydrologist
Soil Water Conservation Districts



DNR
Division
of Waters

Minnesota DRAINAGE CODE

Chapter 106A
[Includes 1987 Amendments]

CHAPTER 106A
DRAINAGE

106A.005 Definitions.

GENERAL DRAINAGE PROVISIONS

106A.011 Drainage authority powers.
106A.015 Considerations before drainage work is done.
106A.021 Ditches must be planted with permanent grass.
106A.025 Procedure for drainage project that affects state land or water area used for conservation.
106A.031 Connection with drains in adjoining states.
106A.035 Defective notice.
106A.041 Personal service in lieu of other methods of notice.
106A.043 Informal meetings.
106A.045 Failure of drainage authority to attend hearings.
106A.051 Defective proceedings.
106A.055 Reimbursement of cost of former surveys when used later.
106A.061 Right of entry.
106A.065 Drainage inspectors.
106A.071 County attorney.
106A.075 Obstruction of drainage system.
106A.081 Crimes related to drainage systems; penalties.
106A.085 Enforcement.
106A.091 Appeals.
106A.095 Appeal from orders dismissing or establishing drainage systems.
106A.097 Payment of attorney fees on appeal.
106A.101 Drainage proceeding and construction records.

PROCEDURE TO ESTABLISH DRAINAGE SYSTEMS

106A.202 Petitions.
106A.212 New drainage system projects.
106A.215 Improvement of drainage system.
106A.221 Improvement of outlets.
106A.225 Laterals.
106A.231 Dismissal or delay of proceedings by petitioners.
106A.235 Drainage system in two or more counties.
106A.238 County attorney review of petition and bond.
106A.241 Engineer.
106A.245 Preliminary survey and preliminary survey report.
106A.251 Filing preliminary survey report.
106A.255 Commissioner's preliminary advisory report.
106A.261 Preliminary hearing.
106A.265 Order for detailed survey and detailed survey report.
106A.271 Detailed survey.
106A.275 Engineer's variance from drainage authority

order.
106A.281 Soil survey.
106A.285 Detailed survey report.
106A.291 Filing detailed survey report.
106A.295 Revision of engineer's detailed survey report after acceptance.
106A.301 Commissioner's final advisory report.
106A.305 Viewers' appointment and qualification.
106A.311 Viewers' duties.
106A.315 Assessment of drainage benefits and damages.
106A.321 Viewers' report.
106A.323 Property owners' report and final petition notice.
106A.325 Final hearing.
106A.331 Jurisdiction of property by drainage authority.
106A.335 Proceedings at the final hearing.
106A.341 Drainage authority final order.
106A.345 Apportionment of cost for joint county drainage systems.
106A.351 Redetermination of benefits and damages.

OUTLETS FOR DRAINAGE SYSTEMS

106A.401 Use of drainage system as an outlet.
106A.405 Outlets in adjoining states.
106A.411 Drainage system as outlet for municipality.

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106A.505 Awarding the construction contract.
106A.511 Procedure if contract is not awarded due to bids or costs.
106A.515 Damages, payment.
106A.521 Supervision of construction.
106A.525 Construction and maintenance of bridges and culverts.
106A.526 Construction of road instead of bridge or culvert.
106A.531 Inspection of drainage construction and partial payments.
106A.535 Partial payment of retained contract amounts.
106A.541 Extension of time on contracts.
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106A.551 Contractor's default.
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FUNDING, COLLECTION, AND PAYMENT OF DRAINAGE SYSTEM COSTS

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106A.605 Effect of filed drainage lien.
106A.611 Payment of drainage liens and interest.
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106A.631 Apportionment of liens.

106A.635 Drainage bond issues.
106A.641 Drainage funding bonds.
106A.645 Allowance and payment of fees and expenses.
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106A.705 Repair procedure.
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106A.715 Procedure for repair by petition.
106A.721 Replacement and hydraulic capacity of bridges and culverts.
106A.725 Cost of repair.
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106A.805 Removal of property from and partial abandonment of a drainage system.
106A.811 Abandonment of drainage system.

CHAPTER 106A
DRAINAGE

106A.005 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Affected.** "Affected" means benefited or damaged by a drainage system or project.

Subd. 3. **Auditor.** "Auditor" means the auditor of the county where the petition for a drainage project was properly filed.

Subd. 4. **Board.** "Board" means the board of commissioners of the county where the drainage system or project is located.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subd. 6. **Director.** "Director" means the director of the division of waters in the department of natural resources.

Subd. 7. **Dismissal of proceedings.** "Dismissal of proceedings" means that the petition and proceedings related to the petition are dismissed.

Subd. 8. **Ditch.** "Ditch" means an open channel to conduct the flow of water.

Subd. 9. **Drainage authority.** "Drainage authority" means the board or joint county drainage authority having jurisdiction over a drainage system or project.

Subd. 10. **Drainage lien.** "Drainage lien" means a lien recorded on property for the costs of drainage proceedings and construction and interest on the lien, as provided under this chapter.

Subd. 10a. **Drainage project.** "Drainage project" means a new drainage system, an improvement of a drainage system, an improvement of an outlet, or a lateral.

Subd. 11. **Drainage system.** "Drainage system" means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established by, and constructed by a drainage authority. "Drainage system" includes the improvement of a natural waterway used in the construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system.

Subd. 12. **Engineer.** "Engineer" means the engineer for a drainage project appointed by the drainage authority under section 106A.241, subdivision 1.

Subd. 13. **Established.** "Established" means the drainage authority has made the order to construct the drainage project.

Subd. 14. **Lateral.** "Lateral" means any drainage construction by branch or extension, or a system of branches and extensions, or a drain that connects or provides an outlet to property with an established drainage system.

Subd. 15. **Municipality.** "Municipality" means a statutory or home rule charter city or a town having urban powers under section 368.01, subdivision 1 or 1a.

Subd. 16. **Notice by mail.** "Notice by mail" means a notice mailed and addressed to each person entitled to receive the notice, if the address is known to the auditor or can be determined by the county treasurer of the county where the affected property is located.

Subd. 16a. **Owner.** "Owner" means an owner of property or a buyer of property under a contract for deed.

Subd. 16b. **Passes over.** "Passes over" means in reference to property that has a drainage project or system, the 40-acre tracts or government lots and property that is bordered by, touched by, or underneath the path of the proposed drainage project.

Subd. 17. **Person.** "Person" means an individual, firm, partnership, association, or private corporation.

Subd. 18. **Political subdivisions.** "Political subdivisions" means statutory and home rule charter cities, counties, towns, school districts, and other political subdivisions.

Subd. 19. **Proceeding.** "Proceeding" means a procedure under this chapter for or related to drainage that begins with filing a petition and ends by dismissal or establishment of a drainage project.

Subd. 20. **Property.** "Property" means real property.

Subd. 21. **Publication.** "Publication" means a notice published at least once a week for three successive weeks in a legal newspaper in general circulation in each county affected by the notice.

Subd. 22. **Public health.** "Public health" includes an act or thing that tends to improve the general sanitary condition of the community by drainage, relieving low wetland or stagnant and unhealthful conditions, or preventing the overflow of any property that produces or tends to produce unhealthful conditions.

Subd. 23. **Public waters.** "Public waters" has the meaning given in section 105.37, subdivision 14.

Subd. 24. **Public welfare or public benefit.** "Public welfare" or "public benefit" includes an act or thing that tends to improve or benefit the general public, either as a whole or as to any particular community or part, including works contemplated by this chapter, that drain or protect roads from overflow, protect property from overflow, or reclaim and render property suitable for cultivation that is normally wet and needing drainage or subject to overflow.

Subd. 25. Repealed, 1987 c 239 s 139

Subd. 26. **Road.** "Road" means any road used by the public for transportation purposes.

HIST:1985 c 172 s 1; 1987 c 239 s 2-14

106A.011 DRAINAGE AUTHORITY POWERS.

Subdivision 1. **Generally.** The drainage authority may make orders to:

(1) construct and maintain drainage systems;

(2) deepen, widen, straighten, or change the channel or bed of a natural waterway that is part of the drainage system or is located at the outlet of a drainage system;

(3) extend a drainage system into or through a municipality for a suitable outlet; and

(4) construct necessary dikes, dams, and control structures and power appliances, pumps, and pumping machinery as provided by law.

Subd. 2. **Drainage of waterbasins and watercourses.** A drainage authority may not drain a water body or begin work or activity regulated by section 105.42 in a watercourse until the commissioner determines that the water body or watercourse is not public waters. If a water body or watercourse is determined to be public waters, the drainage proceedings are subject to section 105.391, subdivision 3, relating to replacing public waters and the water bank program.

Subd. 3. **Permission of commissioner for work in public waters; application.** (a) The drainage authority must receive permission from the commissioner to:

(1) remove, construct, or alter a dam affecting public waters;

(2) establish, raise, or lower the level of public waters; or

(3) drain any portion of a public water.

(b) The petitioners for a proposed drainage project or the drainage authority may apply to the commissioner for permission to do work in public waters or for the determination of public waters status of a water body or watercourse.

Subd. 4. **Flood control.** The drainage authority may construct necessary dams, structures, and improvements and maintain them to impound and release flood water to prevent damage. The dams, structures, and improvements may be constructed with or without a drainage project. For a water body or watercourse that is not public waters the drainage authority may:

(1) lower, or establish the height of water in the water body or watercourse to control flood waters;

(2) build structures and improvements to maintain a water body or watercourse for flood control or other public purposes; and

(3) construct dikes or dams in a water body to maintain water at the height designated by the drainage authority and to drain part of the water body.

HIST:1985 c 172 s 2; 1987 c 239 s 15,16

106A.015 CONSIDERATIONS BEFORE DRAINAGE WORK IS DONE.

Subdivision 1. **Environmental and land use criteria.** Before establishing a drainage project the drainage authority must consider:

(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;

(3) the present and anticipated land use within the drainage project or system;

(4) flooding characteristics of property in the drainage project or system and downstream for 5, 10, 25, and 50-year flood events;

(5) the waters to be drained and alternative measures to conserve, allocate, and use the waters including storage and retention of drainage waters;

(6) the effect on water quality of constructing the proposed drainage project;

(7) fish and wildlife resources affected by the proposed drainage project;

(8) shallow groundwater availability, distribution, and use in the drainage project or system; and

(9) the overall environmental impact of all the above criteria.

Subd. 2. **Determining public utility, benefit, or welfare.** In any proceeding to establish a drainage project, or in the construction of or other work affecting a public drainage system under any law, the drainage authority or other authority having jurisdiction of the proceeding must give proper consideration to conservation of soil, water, 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.

HIST:1985 c 172 s 3; 1987 c 239 s 17

106A.021 DITCHES MUST BE PLANTED WITH PERMANENT GRASS.

Subdivision 1. **Spoil banks must be spread and grass planted.** In any proceeding to establish, construct, improve, or do any work affecting a public drainage system under any law that appoints viewers to assess benefits and damages, the authority having jurisdiction of the proceeding shall order spoil banks to be spread consistent with the plan and function of the drainage system. The authority shall order that permanent grass, other than a noxious weed, be planted on the banks and on a strip 16-1/2 feet in width or to the crown of the leveled spoil bank, whichever is the greater, on each side of the top edge of the channel of the ditch. The acreage and additional property required for the planting must be acquired by the authority having jurisdiction.

Subd. 2. **Reseeding and harvesting grass.** The

authority having jurisdiction over the repair and maintenance of the drainage system shall supervise all necessary reseeding. The permanent grass must be maintained in the same manner as other drainage system repairs. Harvest of the grass from the grass strip in a manner not harmful to the grass or the drainage system is the privilege of the fee owner or assigns. The county drainage inspector shall establish rules for the fee owner and assigns to harvest the grass.

Subd. 3. **Agricultural practices prohibited.** Agricultural practices, other than those required for the maintenance of a permanent growth of grass, are not permitted on any portion of the property acquired for planting.

Subd. 4. **Compliance work by drainage authority.** If a property owner does not bring an area into compliance with this section as provided in the compliance notice, the inspection committee or drainage inspector must notify the drainage authority. If a property owner does not bring an area into compliance after being notified under section 106A.705, subdivision 1a, the drainage authority must issue an order to have the work performed to bring the property into compliance. After the work is completed, the drainage authority must send a statement of the expenses incurred to bring the property into compliance to the auditor of the county where the property is located and to the property owner.

Subd. 5. **Collection of compliance expenses.** (a) The amount of the expenses to bring an area into compliance with this section is a lien in favor of the drainage authority against the property where the expenses were incurred. The auditor must certify the expenses and enter the amount in the same manner as other drainage liens on the tax list for the following year. The amount must be collected in the same manner as real estate taxes for the property. The provisions of law relating to the collection of real estate taxes shall be used to enforce payment of amounts due under this section. The auditor must include a notice of collection of compliance expenses with the tax statement.

(b) The amounts collected under this subdivision must be deposited in the drainage system account.

HIST:1985 c 172 s 4; 1985 c 248 s 70;; 1987 c 239 s 18,19

106A.025 PROCEDURE FOR DRAINAGE PROJECT THAT AFFECTS STATE LAND OR WATER AREA USED FOR CONSERVATION.

Subdivision 1. **Areas subject to this section.** If a land or water area owned by the state and held or used to protect or propagate wild animals, provide hunting or fishing for the public, or for any other purpose relating to the conservation, development, or use of soil, water, forests, wild animals, or related natural resources will be affected by any public project or proceeding for drainage under any law, all procedures relating to the project or proceeding are subject to this section, if applicable.

Subd. 2. **Conditions to take or damage state land and water areas.** (a) Any part of the state land or water area may be taken or damaged for a public project after payment of just compensation as provided by law and under the provisions of this subdivision.

(b) The authority having jurisdiction of the drainage project or proceeding shall first find and determine that there is public necessity for the taking or damage that is greater than the public interest in the purposes for which the affected land and water areas are held or used by the state.

(c) In determining the compensation to be paid for the taking or damage, the authority must give proper consideration to the value of the land and water area for the purposes it is held or used by the state and other material elements of value.

(d) Public waters may not be taken, damaged, or impaired except as otherwise expressly authorized by law, and a provision of any other law for the protection or conservation of public waters may not be abridged or superseded by this subdivision.

Subd. 3. **Considerations in determining benefits.** In determining benefits to the state land or water area in any proceeding to levy assessments or offset benefits against damages, proper consideration must be given to the value of the area for the purpose it is held or used by the state, with other material elements of value.

Subd. 4. **Amounts paid to state.** Any amounts paid to the state for taking or damaging the state land or water area in a proceeding must be credited to the proper account for acquisition, development, or maintenance of the areas, and the amount is appropriated to the commissioner for those purposes to remain available until expended.

Subd. 5. **Money to pay assessments.** Assessments for benefits made against the state land or water area in a proceeding must be paid out of money appropriated and available to pay assessments as provided by law.

HIST:1985 c 172 s 5

106A.031 CONNECTION WITH DRAINS IN ADJOINING STATES.

Subdivision 1. **Procedure.** If it is necessary to construct a drainage project at or near the boundary between this state and another state or country and the work cannot be done in a proper manner without extending the drainage project into the adjoining state or country, the drainage authority may join with the board or tribunal of the adjoining state or country having jurisdiction to plan and construct public drainage systems. The drainage authority in this state may enter into contracts or arrangements with the board or tribunal of the adjoining state or country to construct the drainage project. The proceeding and construction related to property in this state and, as applicable, the drainage authority in relation to the joint drainage work, are governed by this chapter.

Subd. 2. **Payment of costs.** The adjoining county or district in another state or country must pay its proper share of the necessary costs of the construction of any drainage work including damages. If the benefits to property in the adjoining state or country are not sufficient to pay all the costs of construction of the drainage project in that state or country, including damages, the drainage authority may authorize or direct the affected counties to contribute sufficient funds to complete the construction of the drainage project in the adjoining state or country, if the construction will be of sufficient benefit to the affected property in this state to warrant the contribution.

HIST:1985 c 172 s 6; 1987 c 239 s 20

106A.035 DEFECTIVE NOTICE.

If notice is required under this chapter and proper notice has been given to some parties but the notice is defective or not given to other parties, the drainage authority has jurisdiction of all parties that received proper notice. The proceedings may be continued by order of the drainage authority for the time necessary to publish, post, or mail a new notice. The new notice needs only be given to those not properly notified by the first notice.

HIST:1985 c 172 s 7

106A.041 PERSONAL SERVICE IN LIEU OF OTHER METHODS OF NOTICE.

If notice is to be given under this chapter, personal service at least ten days before the date of hearing may be given in lieu of the manner provided. The notice must be served in the manner provided for the service of summons in a civil action in district court.

HIST:1985 c 172 s 8

106A.043 INFORMAL MEETINGS.

A drainage authority may hold informal meetings in addition to the meetings and hearings required in this chapter to inform persons affected by the drainage system about the drainage proceedings and provide a forum for informal discussions.

HIST:1987 c 239 s 21

106A.045 FAILURE OF DRAINAGE AUTHORITY TO ATTEND HEARINGS.

If an order has been made and notice for a hearing given under this chapter, and the drainage authority does not appear at the time and place specified for any reason, the auditor shall continue the hearing to a date set by the auditor. The auditor shall notify the drainage authority of the continuance and the date of hearing. The jurisdiction is continued until the date set by the auditor.

HIST:1985 c 172 s 9

106A.051 DEFECTIVE PROCEEDINGS.

(a) A party may not take advantage of an error in a drainage proceeding or an informality, error, or defect appearing in the record of the proceeding or construction, unless the party complaining is directly affected. The modification of the benefits or damages to any property, or the enjoining of collection of any assessment, does not affect any other property or the collection of any assessment on other property.

(b) If a drainage project has been established and a contract awarded in good faith, without collusion, and at a reasonable price:

(1) a defect or lack of notice in awarding, making, or executing the contract does not affect the enforcement of an assessment; and

(2) if the contract is performed in good faith in whole or in part, a defect does not invalidate the contract.

HIST:1985 c 172 s 10; 1987 c 239 s 22

106A.055 REIMBURSEMENT OF COST OF FORMER SURVEYS WHEN USED LATER.

If after a proceeding has begun a survey has been made and a proceeding to establish a drainage project has been dismissed or the drainage project has not been established, and all or a part of the former survey is used by the engineer for a drainage proceeding in the same area, the amount saved in the subsequent proceedings must be paid to the proper parties according to this section. If the parties who paid the expense of the former survey make a petition, the drainage authority shall:

(1) determine the amount of benefit that was derived by the subsequent proceedings from the former survey;

(2) order the amount of the benefit to be paid to the proper parties; and

(3) charge the amount paid as a cost of the subsequent drainage proceeding.

HIST:1985 c 172 s 11; 1987 c 239 s 23

106A.061 RIGHT OF ENTRY.

In proceedings under this chapter, the engineer, the engineer's assistants, the viewers, and the viewers' assistants may enter any property to make a survey, locate a drain, examine the property, or estimate the benefits and damages.

HIST:1985 c 172 s 12

106A.065 DRAINAGE INSPECTORS.

In counties where constructed drainage systems have an aggregate cost of more than $50,000, the board shall appoint a competent person as county drainage inspector. The inspector may be the county highway engineer. The inspector shall examine the drainage systems designated by the board. The board shall specify the appointment period and compensation.

HIST:1985 c 172 s 13

106A.071 COUNTY ATTORNEY.

The county attorney shall represent the county in all drainage proceedings and related matters without special compensation. A county attorney, the county attorney's assistant, or any attorney associated with the county attorney in business, may not otherwise appear in any drainage proceeding for any interested person.

HIST:1985 c 172 s 14

106A.075 OBSTRUCTION OF DRAINAGE SYSTEM.

Subdivision 1. **Notification to responsible party.** If the board determines that a drainage system has been obstructed, including by the installation of bridges or culverts of insufficient hydraulic capacity, the board shall notify the person or public authority responsible for the obstruction as soon as possible and direct the responsible party to remove the obstruction or show the board why the obstruction should not be removed. The board must set a time and location in the notice for the responsible person to appear before the board.

Subd. 2. **Obstruction on private property.** If the obstruction is on private property, the owner is responsible for the obstruction unless the owner proves otherwise. The owner must be notified by certified mail at least ten days before the hearing.

Subd. 3. **Obstruction hearing.** The board shall hear all interested parties and if the board determines that the drainage system has been obstructed by a person or public authority, the board shall order the obstruction removed by the responsible party within a reasonable time set in the order. If the obstruction is not removed by the prescribed time, the board shall have the obstruction removed and the auditor shall make a statement of the removal cost. The statement must be filed in the county recorder's office as a lien on the property where the obstruction is located or against the responsible party. The lien must be enforced and collected as liens for drainage repairs under this chapter, except that a lien may not be filed against private property if the board determines that the owner of the property is not responsible for the obstruction. The lien may be enforced against the responsible party by civil action.

HIST:1985 c 172 s 15

106A.081 CRIMES RELATED TO DRAINAGE SYSTEMS; PENALTIES.

Subdivision 1. **Unauthorized drain outletting into drainage system.** A person may not cause or construct a drain that outlets into a lawfully constructed drainage system except as provided in this chapter.

Subd. 2. **Obstruction or damage of a drainage system.** A person may not willfully obstruct or damage a drainage project

or system.

Subd. 3. **Altering engineer's marking of stakes.** A person may not willfully change the location or alter markings of stakes set by the engineer in a drainage project or system.

Subd. 4. **Penalty.** Violation of this section is a misdemeanor.

HIST:1985 c 172 s 16; 1987 c 239 s 24,25

106A.085 ENFORCEMENT.

Subdivision 1. **Warrants and arrests.** An enforcement officer, as defined in section 97A.015, subdivision 18, may execute and serve warrants, and arrest persons detected in actual violation of sections 106A.005 to 106A.811 as provided in sections 97A.205 and 97A.211.

Subd. 2. **Prosecution.** The county attorney shall prosecute all criminal actions arising under this chapter.

HIST:1985 c 172 s 17; 1986 c 444; 1987 c 149 art 2 s 7

106A.091 APPEALS.

Subdivision 1. **Grounds for appeal.** A party may appeal to the district court from a recorded order of a drainage authority made in a drainage proceeding that determines:

(1) the amount of benefits;

(2) the amount of damages;

(3) fees or expenses allowed; or

(4) whether the environmental and land use requirements and criteria of section 106A.015, subdivision 1, are met.

Subd. 2. **Procedure for appeals related to benefits and damages.** (a) A person who appeals the amount of benefits or damages may include benefits and damages affecting property not owned by the appellant. Notice of the appeal must be served to the auditor and to the owner or occupant of property included in the appeal or to the attorney representing the property owner in the proceedings.

(b) The appellant must file a notice of appeal with the auditor within 30 days after the order to be appealed is filed. The notice must state the particular benefits or damages appealed and the basis for the appeal. Within 30 days after the notice is filed, the auditor must file the original notice with the court administrator of the district court.

Subd. 3. **Procedure for appeal related to allowance of fees or expenses.** An appeal related to the allowance of fees or expenses may be to the district court of any county where the affected property is located. The appeal must be made within 30 days after the order allowing or disallowing the claim and is governed as applicable by the provisions of subdivision 4.

Subd. 4. **Appeal trial.** (a) The issues in the appeal are entitled to a trial by a jury in the district court of the county where the drainage proceeding was pending.

(b) At the request of the appellant, the trial must be held at the district court of the county where the affected property

is located. The court administrator of the district court where the appeal is first filed shall make, certify, and file with the court administrator of the district court of the county where the trial is transferred, a transcript of the papers and documents on file in the court administrator's office in the proceedings related to the matters of the appeal. After the final determination of the appeal, the court administrator of the district court that tried the appeal shall certify and return the verdict to the district court of the county where the drainage proceedings were filed.

(c) The appeal shall take precedence over all other civil court matters. If there is more than one appeal to be tried in one county, the court may, on its own motion or the motion of an interested party, consolidate two or more appeals and try them together, but the rights of the appellants must be determined separately. If the appellant does not prevail, the cost of the trial must be paid by the appellant.

(d) The court administrator of the district court where the appeal is filed shall file a certified copy of the final determination of the appeal with the auditor of the affected counties.

Subd. 5. **Effect of determination.** For all appeals, the amount awarded by the jury as a determination of the issue appealed shall replace the amount that was appealed.

HIST:1985 c 172 s 18; 1Sp1986 c 3 art 1 s 82; 1987 c 239 s 26

106A.095 APPEAL FROM ORDERS DISMISSING OR ESTABLISHING DRAINAGE SYSTEMS.

Subdivision 1. **Notice of appeal.** A party may appeal an order made by the board that dismisses drainage proceedings or establishes or refuses to establish a drainage project to the district court of the county where the drainage proceedings are pending. The appellant must serve notice of the appeal to the auditor within 30 days after the order is filed. After notice of the appeal is served, the appeal may be brought to trial by the appellant or the drainage authority after notifying the other party at least ten days before the trial date.

Subd. 2. **Trial.** The appeal must be tried by the court without a jury. The court shall examine the entire drainage proceeding and related matters and receive evidence to determine whether the findings made by the board can be sustained. At the trial the findings made by the board are prima facie evidence of the matters stated in the findings, and the board's order is prima facie reasonable. If the court finds that the order appealed is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed is arbitrary, unlawful, or not supported by the evidence, it shall make an order, justified by the court record, to take the place of the appealed order, or remand the order to the board for further proceedings. After the appeal has been determined by the court, the board shall proceed in conformity with the court

order.

Subd. 3. **Determination of benefits and damages after court order.** If the order establishing a drainage project is appealed, the trial of appeals related to benefits or damages in the drainage proceeding must be stayed until the establishment appeal is determined. If the order establishing the drainage project is affirmed, appeals related to benefits and damages must then be tried.

Subd. 4. **Procedure if appeal order establishes drainage project.** If an order refusing to establish a drainage project is appealed, and the court, by order, establishes the drainage project, the auditor shall give notice by publication of the filed order. The notice is sufficient if it refers to the drainage project or system by number or other descriptive designation, states the meaning of the order, and states the date the court order was filed. A person may appeal the establishment order to the district court as provided in this section.

Subd. 5. **Appeal of appellate order.** A party aggrieved by a final order or judgment rendered on appeal to the district court may appeal as in other civil cases. The appeal must be made and perfected within 30 days after the filing of the order or entry of judgment.

HIST:1985 c 172 s 19; 1987 c 239 s 27-29

106A.097 PAYMENT OF ATTORNEY FEES ON APPEAL.

If the commissioner of natural resources is a party making an appeal under section 106A.091 or 106A.095 and the commissioner does not prevail on the issues appealed, the court may award attorney fees to the party prevailing on the appeal. If more than one issue is appealed and the commissioner prevails on some issues and does not prevail on others, the court shall determine the amount of the attorney fee to be awarded.

HIST:1987 c 239 s 30

106A.101 DRAINAGE PROCEEDING AND CONSTRUCTION RECORDS.

Subdivision 1. **Documents are public records.** All maps, plats, charts, drawings, plans, specifications, and other documents that have been filed, received in evidence, or used in connection with a drainage proceeding or construction are subject to the provisions on public records in section 15.17.

Subd. 2. **Record requirements.** All maps, plats, profiles, plans, and specifications prepared and used in relation to a proceeding must:

(1) be uniform;

(2) have each sheet bound and marked to identify the proceeding by the drainage project and system number;

(3) show the name of the person preparing the sheet;

(4) show the date the sheet was prepared; and

(5) conform to rules and standards prescribed by the director of the division of waters.

Subd. 3. **Index of proceedings and records.** The auditor shall keep all orders, exhibits, maps, charts, profiles, plats, plans, specifications, and records of the proceedings. These records may not be removed except when the board makes a written order to remove them. The auditor shall keep an accurate index of the proceedings and related documents in a bound book.

Subd. 4. **Engineer's documents.** All original plats, profiles, records, and field books made by the engineer during the proceedings or the construction of a drainage project are public records and the property of the drainage authority. These public records must be filed with the auditor under the direction of the drainage authority when construction is completed or when the engineer stops acting for the drainage project, whichever is earlier.

Subd. 5. **Filing and storage facilities.** County boards shall provide the auditor with necessary filing and storage facilities to protect the files and records of all proceedings. The county boards may provide for the copying and filing of the documents and records of proceedings by photographic devices as provided for public records under section 15.17. In the event of loss of the originals, the photographic copies are originals after authentication by the auditor.

Subd. 6. **Records are prima facie evidence.** The record of proceedings under this chapter and of orders made by the drainage authority or the district court in the proceedings, or a certified copy of a record or order, is prima facie evidence of the facts stated in the record or order and of the regularity of all proceedings prior to the making of the order.

HIST:1985 c 172 s 20; 1987 c 239 s 31,32

PROCEDURE TO ESTABLISH DRAINAGE SYSTEMS

106A.201 Repealed, 1987 c 239 s 139

106A.202 PETITIONS.

Subdivision 1. **Applicability.** This section applies to a petition for a drainage project and a petition for repair.

Subd. 2. **Signatures on petition.** (a) A petition must be signed by a requisite number of owners of 40-acre tracts or government lots and property that the drainage project described in the petition passes over, or by the property owners of the required percentage of the property area determined by the total and percentage of area of 40-acre tracts or government lots that the proposed drainage project passes over, excluding areas in and holders of easements for utilities and roads. A petition may be signed by the commissioner of transportation or by a political subdivision if the property is in their jurisdiction and is passed over by the proposed drainage project.

(b) Each separate parcel of property counts as one signature but must be signed by all owners to count as a

signature. The signature of each entity regardless of the number of parcels of property owned counts as one signature on the petition.

(c) Paragraph (a) does not apply to a petition for an improvement of an outlet.

Subd. 3. **Withdrawal of a petitioner.** After a petition has been filed, a petitioner may not withdraw from the petition except with the written consent of all other petitioners on the filed petition.

Subd. 4. **Filing petition and bond.** A petition for a drainage project and a bond must be filed with the auditor. If a drainage system is within two or more counties, the petition must be filed with the auditor of the county with the greatest area of property that the proposed drainage project passes over.

Subd. 5. **Petitioners' bond.** One or more petitioners must file a bond with the petition for at least $10,000 that is payable to the county where the petition is filed, or for a petition for a proposed joint county drainage system or a petition for a drainage project affecting a joint county drainage system, the bond must be payable to all of the counties named in the petition. The bond must have adequate surety and be approved by the county attorney where the petition is filed. The bond must be conditioned to pay the costs incurred if the proceedings are dismissed or a contract is not awarded to construct the drainage system proposed in the petition.

Subd. 6. **Expenses not to exceed bond.** The costs incurred before the proposed drainage project is established may not exceed the amount of the petitioners' bond. A claim for expenses greater than the amount of the bond may not be paid unless an additional bond is filed. If the drainage authority determines that the cost of the proceeding will be greater than the petitioners' bond before the proposed drainage project is established, the drainage authority must require an additional bond to cover all costs to be filed within a prescribed time. The proceeding must be stopped until the additional bond prescribed by the drainage authority is filed. If the additional bond is not filed within the time prescribed, the proceeding must be dismissed.

HIST:1987 c 239 s 33
106A.205 Repealed, 1987 c 239 s 139
106A.211 Repealed, 1987 c 239 s 139

106A.212 NEW DRAINAGE SYSTEM PROJECTS.

Subdivision 1. **Procedure.** To establish a new drainage system under this chapter, the petitioners and drainage authority must proceed according to this section and the provisions applicable to establishment of drainage projects.

Subd. 2. **Signatures on petition.** The petition for a new drainage system must be signed by a majority of the owners of the property that the proposed drainage system described in the petition passes over, or by the property owners of at least

60 percent of the area that the proposed new drainage system passes over.

Subd. 3. **Petition requirements.** The petition must:

(1) describe the 40-acre tracts or government lots and property where the proposed new drainage system passes over, including names and addresses of the property owners from records in the county assessor's office;

(2) describe the starting point, the general course, and the terminus of the proposed drainage system;

(3) state why the proposed drainage system is necessary;

(4) state that the proposed drainage system will benefit and be useful to the public and will promote public health; and

(5) state that the petitioners will pay all costs of the proceedings if the proceedings are dismissed or the contract for the construction of the proposed drainage system is not awarded.

HIST:1987 c 239 s 34

106A.215 IMPROVEMENT OF DRAINAGE SYSTEM.

Subdivision 1. **Procedure.** The procedure in this section must be used to improve an established and constructed drainage system.

Subd. 2. **Definition.** In this section "improvement" means the tiling, enlarging, extending, straightening, or deepening of an established and constructed drainage system including construction of ditches to reline or replace tile and construction of tile to replace a ditch.

Subd. 3. **Limit of extension.** An improvement may only extend a drainage system downstream to a more adequate outlet and the extension may not exceed one mile.

Subd. 4. **Petition.** (a) A petition must be signed by:

(1) at least 26 percent of the owners of the property affected by the proposed improvement;

(2) at least 26 percent of the owners of property that the proposed improvement passes over;

(3) the owners of at least 26 percent of the property area affected by the proposed improvement; or

(4) the owners of at least 26 percent of the property area that the proposed improvement passes over.

(b) The petition must be filed with the auditor or, for a drainage system in more than one county, with the auditor of the county having the largest area of property the improvement is located on.

(c) The petition must:

(1) designate the drainage system proposed to be improved by number or another description that identifies the drainage system;

(2) state that the drainage system has insufficient capacity or needs enlarging or extending to furnish sufficient capacity or a better outlet;

(3) describe the starting point, general course, and terminus of any extension;

(4) describe the improvement, including the names and addresses of owners of the 40-acre tracts or government lots and property that the improvement passes over;

(5) state that the proposed improvement will be of public utility and promote the public health; and

(6) contain an agreement by the petitioners that they will pay all costs and expenses that may be incurred if the improvement proceedings are dismissed.

Subd. 5. **Subsequent proceedings.** When a petition and the bond required by section 106A.205 are filed, the auditor shall present the petition to the board at its next meeting or, for a joint county drainage system, to the joint county drainage authority within ten days after the petition is filed. The drainage authority shall appoint an engineer to examine the drainage system and make an improvement report. The improvement proceedings must proceed under this chapter as provided for the original proceedings for the establishment of a drainage project. The benefits and damages determined must be as a result of the proposed improvement. Assessments for the repair of the improvement must be based on the benefits determined for the improvement.

Subd. 6. **Petition for separable part of the drainage system needing repair.** (a) If the existing drainage system needs repair and the petition for the improvement is for a separable part only of the existing drainage system, the engineer may include in the detailed survey report a statement showing the proportionate estimated cost of the proposed improvement required to repair the separable part of the existing system and the estimated proportionate cost of the added work required for the improvement. The notice of hearing on the detailed survey report must be given by publication and mailing to all persons owning property affected by the existing drainage system. The hearing may be held at the same time and location as the establishment hearing for the improvement.

(b) At the hearing, if the drainage authority determines that only a separable portion of the existing drainage system will be improved and that the portion needs repair, the drainage authority shall determine and assess, by order, the proportionate cost of the improvement that would be required to repair the separable portion of the drainage system to be improved. The order must direct that:

(1) the repair portion is allocated as repairs and assessed against all property benefited by the entire drainage system, as provided by section 106A.731; and

(2) the balance of the cost of the improvement is assessed in addition to the repair assessment against the property benefited by the improvement.

HIST:1985 c 172 s 24; 1987 c 239 s 35,36

106A.221 IMPROVEMENT OF OUTLETS.

Subdivision 1. **Conditions for improvement of outlets.** If a public or private, proposed drainage project or existing drainage system has waters draining into an existing drainage system, watercourse, or body of water, and the construction or proposed construction of the drainage project causes an overflow of the existing drainage system, watercourse, or body of water on adjoining property, an affected county or the owners of the overflowed property may start outlet improvement proceedings under this section.

Subd. 2. **Petition.** (a) A petition must be signed by the board of an affected county, by at least 26 percent of the owners of adjoining overflowed property, or by the owners of at least 26 percent of the area of the overflowed property. The petition must:

(1) describe the property that has been or is likely to be overflowed including the names and addresses of the property owners from records in the county assessor's office;

(2) state in general terms by number or otherwise the drainage systems that have caused or are likely to cause the overflow;

(3) describe the location of the overflowed drainage system, watercourse, or body of water and the outlet;

(4) show the necessity of the improvement by enlarging the system or controlling the waters by off-take ditches, additional outlets, or otherwise;

(5) show that the outlet improvement will protect the adjoining property from overflow;

(6) state that the improvement will be of public benefit and utility and improve the public health; and

(7) state that the petitioners will pay all costs incurred if the proceedings are dismissed or a contract for the construction outlet improvement is not awarded.

(b) The petitioners, except for a petition made by the board, shall give the required bond.

Subd. 3. **Filing of petition.** The petition shall be filed with the county auditor. If the board makes the petition, it must be addressed to the drainage authority and filed with the auditor. If part of the improvement or the overflowed property is located in more than one county, the petition must be filed with the auditor of the county with the greatest affected area.

Subd. 4. **Jurisdiction of drainage authority.** After the petition is filed, the board or joint county drainage authority where the petition is filed, has jurisdiction of the petition, the improvement, the affected property, and all proceedings for the establishment and construction of the outlet improvement and the assessment of property benefited by the outlet improvement, as provided for establishment and construction of a drainage project under this chapter.

Subd. 5. **Preliminary survey report requirements.** In

the preliminary survey report, the engineer shall show the existing or proposed drainage projects or systems that cause the overflow, the property drained or to be drained by the drainage project, and the names of affected property owners.

Subd. 6. **Benefited property to be determined by viewers.** If, after the preliminary survey report hearing, a detailed survey is ordered and viewers appointed, the viewers shall determine and report the benefits to all property from the outlet improvement including property drained or to be drained by the existing drainage system and proposed drainage project.

HIST:1985 c 172 s 25; 1987 c 239 s 37

106A.225 LATERALS.

Subdivision 1. **Petition.** (a) Persons that own property in the vicinity of an existing drainage system may petition for a lateral that connects their property with the drainage system. The petition must be signed by at least 26 percent of the owners of the property or by the owners of at least 26 percent of the area of the property that the lateral passes over. The petition must be filed with the auditor, or for property in more than one county, the petition must be filed with the auditor of the county with the largest property area passed over by the lateral. The petition must:

(1) describe in general terms the starting point, general course, and terminus of the proposed lateral;

(2) describe the property traversed by the lateral including the names and addresses of the property owners from records in the county assessor's office;

(3) state the necessity to construct the lateral;

(4) state that, if constructed, the lateral will be of public benefit and utility and promote the public health;

(5) request that the lateral be constructed and connected with the drainage system; and

(6) provide that the petitioners will pay all costs incurred if the proceedings are dismissed or if a contract for the construction of the lateral is not awarded.

(b) The petitioners shall give the bond required by section 106A.202, subdivision 5.

Subd. 2. **Establishment procedure.** After the petition is filed, the procedure to establish and construct the lateral is the same as that provided in this chapter to establish a drainage project.

Subd. 3. **Authority necessary for property not assessed.** A lateral may not be constructed to drain property that is not assessed benefits for the existing drainage system until express authority for the use of the existing drainage system as an outlet for the lateral has been obtained under section 106A.401.

HIST:1985 c 172 s 26; 1987 c 239 s 38

106A.231 DISMISSAL OR DELAY OF PROCEEDINGS BY PETITIONERS.

Subdivision 1. **Dismissal.** (a) A proceeding under this chapter may be dismissed by a majority of the petitioners if they own at least 60 percent of the area owned by all of the petitioners as described in the petition.

(b) The proceeding may be dismissed at any time before the proposed drainage project is established after payment of the cost of the proceeding. If the costs cannot be collected, each and all petitioners are liable for unpaid assessments. The drainage authority shall determine and assess the cost of the proceeding against the persons liable. After the proceeding is dismissed any other action on the proposed drainage project must begin with a new petition.

Subd. 2. **Delay.** The drainage authority may delay drainage proceedings and drainage project construction under this chapter if a majority of the petitioners petition for a delay and the drainage authority holds a hearing on the petition. The delay may be for a period determined by the drainage authority. The drainage authority shall determine the cost of the proceedings up to the time the proceedings are delayed and when the costs are to be paid. The costs may include interest on the costs due.

HIST:1985 c 172 s 27; 1987 c 239 s 39

106A.235 DRAINAGE SYSTEM IN TWO OR MORE COUNTIES.

Subdivision 1. **Designation.** A petition for a proposed drainage project in two or more counties must be designated as a joint county drainage system with a number assigned by the auditor of the county with the largest area of property in the drainage system.

Subd. 2. **Joint county drainage authority.** The board where a petition for a proposed joint county drainage project is filed shall notify the board of each county where property is affected by the drainage system and request the boards to meet jointly and consider the petition. The boards shall select five of their members at the meeting to be the drainage authority. At least one member must be from each board. The drainage authority shall be known as the joint county drainage authority with a joint county drainage project or system number. A vacancy in the membership of the joint county drainage authority must be filled by joint action of the boards.

Subd. 3. **Transfer of drainage systems to watershed districts not affected.** This section does not affect the transfer of a drainage system to the board of managers of a watershed district under section 112.65.

HIST:1985 c 172 s 28; 1987 c 239 s 40,41

106A.238 COUNTY ATTORNEY REVIEW OF PETITION AND BOND.

The county attorney must review each petition and bond filed with the county to determine if it meets the requirement

of the proceedings for which it is intended. The county attorney must review the petition and bond within 30 days after it is filed. The county attorney must:

(1) refer the petition and bond back to the petitioners if it does not meet the requirements, with the county attorney's opinion describing the deficiencies of the petition; or

(2) refer the petition to the drainage authority.

HIST:1987 c 239 s 42

106A.241 ENGINEER.

Subdivision 1. **Appointment.** Within 30 days after receiving a petition and bond from the county attorney, the drainage authority shall, by order, appoint an engineer to make a preliminary survey within a prescribed time. The engineer must be the county highway engineer of a county where the affected property is located or a professional engineer registered under state law. The engineer is the engineer for the drainage project throughout the proceeding and construction unless otherwise ordered. Each appointed engineer must file an oath and bond. The engineer may be removed by the drainage authority at any time. If the engineer position is vacant, the drainage authority shall appoint another engineer as soon as possible.

Subd. 2. **Oath; bond.** An appointed engineer must subscribe to an oath to faithfully perform the assigned duties in the best manner possible and file a bond with the auditor. Within ten days after being appointed, the drainage authority shall set an amount of at least $5,000 for the bond. The bond must have adequate surety and be payable to the county where the petition is filed, or for a proposed joint county drainage project to all counties in the petition. The bond must be conditioned to pay any person or the drainage authority for damages and injuries resulting from negligence of the engineer while the engineer is acting in the proceedings or construction and provide that the engineer will diligently and honestly perform the engineer's duties. The bond is subject to approval by the auditor. The aggregate liability of the surety for all damages may not exceed the amount of the bond.

Subd. 3. **Assistants; compensation.** The engineer may appoint assistant engineers and hire help necessary to complete the engineer's duties. The engineer is responsible for the assistant engineers and may remove them. The compensation of the engineer, assistant engineers, and other employees is provided by section 106A.645.

Subd. 4. **Engineer's reports.** The engineer shall make an expense report every two weeks after the beginning of the engineer's work until the construction contract is awarded. The report must show costs incurred by the engineer and expenses incurred under the engineer's direction relating to the proceeding, and include the names of the engineer, engineer assistants, and employees and the time each was employed, and

every item of expense incurred by the engineer. The engineer must file this report with the auditor as soon as possible and may not incur expenses for the proceeding greater than the petitioners' bond.

Subd. 5. **Consulting engineer.** After the engineer is appointed and before construction of the drainage project is finished, the drainage authority may employ an engineer as a consulting engineer for the proceeding and construction. A consulting engineer shall advise the engineer and drainage authority on engineering matters and problems that may arise related to the proceeding and construction of the drainage project. The drainage authority shall determine the compensation for the consulting engineer.

HIST:1985 c 172 s 29; 1987 c 239 s 43-45

106A.245 PRELIMINARY SURVEY AND PRELIMINARY SURVEY REPORT.

Subdivision 1. **Survey.** The engineer shall proceed promptly to:

(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 criteria in section 106A.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.

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. The preliminary survey must consider the impact of the proposed drainage project on the environmental and land use criteria in section 106A.015, subdivision 1. The drainage authority may have other areas surveyed after:

(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.

Subd. 3. **Adoption of federal project.** The engineer may approve and include as a part of the report, a project of the United States relating to drainage or flood control that is within the proposed drainage project area, and may accept data, plats, plans, or information relating to the project furnished

by United States engineers. The engineer does not need to make the preliminary survey if the material furnished by the United States is sufficient for the engineer to make the preliminary survey report.

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 criteria in section 106A.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 likely to be affected and its known owners. The plan must show:

(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 criteria in section 106A.015, subdivision 1; and

(7) other information as ordered by the drainage authority.

HIST:1985 c 172 s 30; 1987 c 239 s 46

106A.251 FILING PRELIMINARY SURVEY REPORT.

The engineer shall file the completed preliminary survey report in duplicate with the auditor. The auditor shall send one copy of the report to the director. If the proposed drainage project involves a joint county drainage project or system, a copy of the report must be filed with the auditor of each affected county.

HIST:1985 c 172 s 31; 1987 c 239 s 47

106A.255 COMMISSIONER'S PRELIMINARY ADVISORY REPORT.

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

under the public waters determination in section 105.37, and the environmental and land use criteria in section 106A.015, subdivision 1, and cite specific portions of the preliminary survey report that are 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.
HIST:1985 c 172 s 32

106A.261 PRELIMINARY HEARING.

Subdivision 1. **Notice.** When the preliminary survey report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall set a time, by order, not more than 30 days after the date of the order, for a hearing on the preliminary survey report. At least ten days before the hearing, the drainage authority after consulting with the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the proposed drainage project in the preliminary survey report.

Subd. 2. **Hearing.** The engineer shall attend the preliminary hearing and provide necessary information. The petitioners and all other interested parties may appear and be heard. The commissioner's advisory report on the preliminary plan must be publicly read and included in the record of proceedings.

Subd. 3. **Sufficiency of petition.** (a) The drainage authority shall first examine the petition and determine if it meets the legal requirements.

(b) If the petition does not meet the legal requirements of this chapter, the hearing shall be adjourned until a specified date by which the petitioners must resubmit the petition. The petition must be referred back to the petitioners who, by unanimous action, may amend the petition. The petitioners may obtain signatures of additional property owners as added petitioners.

(c) When the hearing is reconvened, if the petition is not resubmitted or does not meet the legal requirements, the proceedings must be dismissed.

Subd. 4. **Dismissal.** (a) The drainage authority shall dismiss the proceedings if it determines that:

(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 criteria in section 106A.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.

(b) If the proceedings are dismissed, any other action on the proposed drainage project must begin with a new petition.

Subd. 5. **Findings and order.** (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 the petition, including changes necessary to minimize or mitigate adverse impact on the environment, if it determines that:

(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 criteria in section 106A.015, subdivision 1; and

(4) the outlet is adequate.

(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.

Subd. 6. **Outlet is existing drainage system.** If the outlet is an existing drainage system, the drainage authority may determine that the outlet is adequate and obtain permission to use the existing drainage system as an outlet. The drainage authority shall assign a number to the proposed drainage project and proceed under section 106A.401 to act in behalf of the proposed drainage project.

Subd. 7. **Effect of findings.** (a) For all further proceedings, the order modifies the petition and the order must be considered with the petition.

(b) The findings and order of the drainage authority at the preliminary hearing are conclusive only for the signatures and legal requirements of the petition, the nature and extent of the proposed plan, and the need for a detailed survey, and only for the persons or parties shown by the preliminary survey report as likely to be affected by the proposed drainage project. All questions related to the practicability and necessity of the proposed drainage project are subject to additional investigation and consideration at the final hearing.

HIST:1985 c 172 s 33; 1987 c 239 s 48-53

106A.265 ORDER FOR DETAILED SURVEY AND DETAILED SURVEY REPORT.

Subdivision 1. **Order.** When the preliminary hearing order is filed with the auditor, the drainage authority shall

order the engineer to make a detailed survey with plans and specifications for the proposed drainage project and submit a detailed survey report to the drainage authority as soon as possible.

Subd. 2. **Waiver.** The drainage authority may waive the order for and the detailed survey if it determines that adequate data, plans, and specifications have been furnished by a United States engineer.

HIST:1985 c 172 s 34; 1987 c 239 s 54

106A.271 DETAILED SURVEY.

Subdivision 1. **Survey and examination.** When an order for a detailed survey is filed, the engineer shall proceed to survey the lines of the proposed drainage project in the preliminary hearing order, and survey and examine affected property.

Subd. 2. **Survey requirements.** All drainage lines must be surveyed in 100-foot stations and elevations must be based on standard sea level datum, if practical. Bench marks must be established on permanent objects along the drainage line, not more than one mile apart. Field notes made by the engineer must be entered in bound field books and preserved by the engineer until they are filed with the auditor.

HIST:1985 c 172 s 35; 1987 c 239 s 55

106A.275 ENGINEER'S VARIANCE FROM DRAINAGE AUTHORITY ORDER.

(a) In planning a proposed drainage project, the engineer may vary from the starting point and the line and plan described by the preliminary hearing order if necessary to drain the property likely to be assessed in the proposed drainage project.

(b) The engineer may:

(1) survey and recommend the location of additional necessary ditches and tile;

(2) where better results will be accomplished and more desirable outlets secured, provide for the extension of the outlet; and

(3) provide for different parts of the drainage to flow in different directions with more than one outlet.

(c) The open ditches do not have to connect if they drain the area to be affected in the petition. The variance must be reported with similar information in the detailed survey report.

HIST:1985 c 172 s 36; 1987 c 239 s 56

106A.281 SOIL SURVEY.

The engineer shall make a soil survey if: (1) the drainage authority orders a soil survey; (2) the commissioner requests a soil survey; or (3) the engineer determines a soil survey is necessary. The soil survey must show the nature and character of the soil in the proposed drainage project area and include the engineer's findings from the soil survey. The report on the

soil survey must be included in the detailed survey report or reported and filed separately before the final hearing.
HIST:1985 c 172 s 37; 1987 c 239 s 57

106A.285 DETAILED SURVEY REPORT.

Subdivision 1. **Report and information required.** The engineer shall prepare a detailed survey report that includes the data and information in this section.

Subd. 2. **Map.** A complete map of the proposed drainage project and drainage system must be drawn to scale, showing:

(1) the terminus and course of each drain and whether it is ditch or tile, and the location of other proposed drainage works;

(2) the location and situation of the outlet;

(3) the watershed of the proposed drainage project and the subwatershed of main branches, if any, with the location of existing highway bridges and culverts;

(4) all property affected, with the names of the known owners;

(5) public roads and railways affected;

(6) the outline of any lake basin, wetland, or public water body affected;

(7) other physical characteristics of the watershed necessary to understand the proposed drainage project and the affected drainage system; and

(8) the area to be acquired to maintain a grass strip under section 106A.021.

Subd. 3. **Profile of drainage lines.** A profile of all proposed drainage lines must be presented showing, graphically, the elevation of the ground and gradient at each 100-foot station, and the station number at each section line and at each property line. The profile must show information necessary to understand it, including, in the case of an open ditch, the bottom width and side slope and, in the case of a tiled ditch, the size of tile.

Subd. 4. **Bridge and culvert plans.** Plans for private bridges and culverts to be constructed by and as a part of the proposed drainage project and plans for other works to be constructed for the proposed drainage project must be presented. A list must be made that shows the required minimum hydraulic capacity of bridges and culverts at railways and highways that cross ditches, and at other prospective ditch crossings where bridges and culverts are not specified to be constructed as part of the proposed drainage project. Plans and estimates of the cost of highway bridges and culverts must be prepared for the viewers to determine benefits and damages.

Subd. 5. **Tabular statement of excavation, construction, and cost.** A tabular statement must be prepared showing:

(1) the number of cubic yards of excavation, linear feet of tile, and average depth on each tile line;

(2) the bridges, culverts, and works to be constructed

under the plans for the drainage project; and

(3) the estimated unit cost of each item, a summary of the total cost, and an estimate of the total cost of completing the proposed drainage project that includes supervision and other costs.

Subd. 6. **Right-of-way acreage.** The acreage must be shown that will be taken for ditch right-of-way on each government lot, 40-acre tract, or fraction of a lot or tract under separate ownership. The ditch right-of-way must include the area to be taken to maintain a grass strip under section 106A.021.

Subd. 7. **Drain tile specifications.** Specifications for drain tile must be given that comply with the requirements of the American Society for Testing Materials standard specifications for drain tile, except where the engineer requires tile of a special, higher quality for certain tile depths or soil conditions.

Subd. 8. **Soil survey report.** If required under section 106A.281, the report on the soil survey must be included in the detailed survey report or reported and filed separately before the final hearing.

Subd. 9. **Recommendation for division of work.** If construction of the proposed drainage project would be more economical, the engineer may recommend: (1) that the work be divided into sections and contracted separately; (2) that the ditch and tile work or tile and labor on the project be contracted separately, or (3) the time and manner for the work to be completed.

Subd. 10. **Other information on practicability and necessity of drainage project.** 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 criteria in section 106A.015, subdivision 1.

Subd. 11. **Outlet in another state.** If an outlet is only practical in an adjoining state, the engineer shall describe the right-of-way needed and the cost of obtaining the right-of-way and constructing the outlet.

Subd. 12. **Completion.** The engineer shall prepare the detailed survey and complete the detailed survey report, in duplicate, as specified in this section.

HIST:1985 c 172 s 38; 1987 c 239 s 58-63

106A.291 FILING DETAILED SURVEY REPORT.

The engineer must file the detailed survey report with the auditor where the proceedings are pending and the auditor must deliver a copy of the detailed survey report to the commissioner. The engineer must also file copies of the detailed survey report with the auditors of any affected counties.

HIST:1985 c 172 s 39

106A.295 REVISION OF ENGINEER'S DETAILED SURVEY REPORT AFTER ACCEPTANCE.

After the final acceptance of the proposed drainage project, the engineer shall revise the plan, profiles, and designs of structures to show the drainage project as actually constructed on the original tracings. The engineer shall file the revised detailed survey report with the auditor. The auditor shall forward the original or a copy to the director as a permanent record.

HIST:1985 c 172 s 40; 1987 c 239 s 64

106A.301 COMMISSIONER'S FINAL ADVISORY REPORT.

(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:

(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 criteria in section 106A.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.

(b) The commissioner shall direct the final advisory report to the drainage authority and file it with the auditor.

HIST:1985 c 172 s 41; 1987 c 239 s 65

106A.305 VIEWERS' APPOINTMENT AND QUALIFICATION.

Subdivision 1. **Appointment.** When the order for a detailed survey is made, the drainage authority shall, by order, appoint viewers consisting of three disinterested residents of the state qualified to assess benefits and damages. The drainage authority may establish qualifications for viewers.

Subd. 2. **Auditor's order for first meeting.** Within five days after the detailed survey report is filed, the auditor shall, by order, designate the time and location for the first meeting of the viewers, and issue a copy to the viewers of the auditor's order and a certified copy of the order appointing the viewers.

Subd. 3. **First meeting.** At the first meeting and before beginning their duties, the viewers shall subscribe to an oath to faithfully perform their duties. If an appointed viewer does not qualify for any reason, the auditor shall designate

another qualified person to take the disqualified viewer's place.
HIST:1985 c 172 s 42; 1987 c 239 s 66

106A.311 VIEWERS' DUTIES.

The viewers, with or without the engineer, shall determine the benefits and damages to all property affected by the proposed drainage project and make a viewers' report.
HIST:1985 c 172 s 43; 1987 c 239 s 67

106A.315 ASSESSMENT OF DRAINAGE BENEFITS AND DAMAGES.

Subdivision 1. **State land.** Property owned by the state must have benefits and damages reported in the same manner as taxable lands subject to the provisions relating to conservation areas in section 106A.025.

Subd. 2. **Government property.** The viewers shall report the benefits and damages to the state, counties, and municipalities from the proposed drainage project. The property within the jurisdiction of a municipality, whether owned by the municipality or by private parties, may be assessed as benefits and damages to the municipality.

Subd. 3. **Public roads.** If a public road or street is benefited or damaged, the state, county, or political subdivision that is the governmental unit with the legal duty of maintaining the road or street, must be assessed benefits or damages to the road or street, except that benefits and damages for bridges and culverts must be assessed to the governmental unit that has the legal duty to construct and maintain the bridge or culvert under section 106A.525.

Subd. 4. **Railway and other utilities.** The viewers shall report the benefits and damages to railways and other utilities, including benefits and damages to property used for railway or other utility purposes.

Subd. 5. **Extent and basis of benefits.** (a) The viewers shall determine the amount of benefits to all property within the watershed, whether the property is benefited immediately by the construction of the proposed drainage project or the proposed drainage project can become an outlet for drainage, makes an outlet more accessible, or otherwise directly benefits the property. The benefits may be based on:

(1) an increase in the current market value of property as a result of constructing the project;

(2) an increase in the potential for agricultural production as a result of constructing the project; or

(3) an increased value of the property as a result of a potential different land use.

(b) Benefits and damages may be assessed only against the property benefited or damaged or an easement interest in property for the exclusive use of the surface of the property.

Subd. 6. **Benefits for proposed drainage project as outlet.** (a) If the proposed drainage project furnishes an outlet to an existing drainage system and benefits the property

drained by the existing system, the viewers shall equitably determine and assess:

(1) the benefits of the proposed drainage project to each tract or lot drained by the existing drainage system;

(2) a single amount as an outlet benefit to the existing drainage system; or

(3) benefits on a watershed acre basis.

(b) Assessments that conform with the provisions in this subdivision are valid. If a single sum is assessed as an outlet benefit, the lien for the assessment must be prorated on all property benefited by the existing drainage system in proportion to the benefits determined for the existing drainage system.

(c) Within the watershed that drains to the area where a project is located, the viewers may assess outlet benefits on:

(1) property that is responsible for increased sedimentation in downstream areas of the watershed; and

(2) property that is responsible for increased drainage system maintenance or increased drainage system capacity because the natural drainage on the property has been altered or modified to accelerate the drainage of water from the property.

Subd. 7. **Benefits for project that increases drainage capacity.** If part of a drainage project increases drainage capacity and the increased capacity is necessary due to increased drainage in the project watershed rather than increased drainage in a specific area, the viewers may assess benefits on property in the project watershed on a pro rata basis.

Subd. 8. **Extent of damages.** Damages to be paid may include:

(1) the fair market value of the property required for the channel of an open ditch and the permanent grass strip under section 106A.021;

(2) the diminished value of a farm due to severing a field by an open ditch;

(3) loss of crop production during drainage project construction; and

(4) the diminished productivity or land value from increased overflow.

HIST:1985 c 172 s 44; 1987 c 239 s 68-73

106A.321 VIEWERS' REPORT.

Subdivision 1. **Requirements.** (a) 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:

(1) a description of the lot or tract, under separate ownership, that is benefited or damaged;

(2) the names of the owners as they appear on the current tax records of the county and their addresses;

(3) the number of acres in each tract or lot;

(4) the number and value of acres added to a tract or lot

by the proposed drainage of public waters;

(5) the damage, if any, to riparian rights;

(6) the damages paid for the permanent grass strip under section 106A.021;

(7) the total number and value of acres added to a tract or lot by the proposed drainage of public waters, wetlands, and other areas not currently being cultivated;

(8) the number of acres and amount of benefits being assessed for drainage of areas which before the drainage benefits could be realized would require a permit to work in public waters under section 105.42, to excavate or fill a navigable water body under United States Code, title 33, section 403, or a permit to discharge into waters of the United States under United States Code, title 33, section 1344;

(9) the number of acres and amount of benefits being assessed for drainage of areas that would be considered conversion of a wetland under United States Code, title 16, section 3821, if the area was placed in agricultural production;

(10) the amount of right-of-way acreage required; and

(11) the amount that each tract or lot will be benefited or damaged.

Subd. 1a. **Benefits and damages statement.** (a) The viewers' report must include a benefits and damages statement that shows for each property owner how the benefits or damages for similar tracts or lots were determined. For similar tracts or lots the report must describe:

(1) the existing land use, property value, and economic productivity;

(2) the potential land use, property value, and economic productivity after the drainage project is constructed; and

(3) the benefits or damages from the proposed drainage project.

(b) The soil and water conservation districts and county assessors shall cooperate with viewers to provide information required under paragraph (a).

Subd. 2. **Disagreement of viewers.** If the viewers are unable to agree, each viewer shall separately state findings on the disagreed issue. A majority of the viewers may perform the required duties under this chapter.

Subd. 3. **Filing.** When the viewers complete their duties, they shall file the viewers' report with the auditor of each affected county. A detailed statement must be filed with the viewers' report showing the actual time the viewers were engaged and the costs incurred. The viewers shall perform their duties and complete the viewers' report as soon as possible after their first meeting.

HIST:1985 c 172 s 45; 1987 c 239 s 74,75

106A.323 PROPERTY OWNERS' REPORT AND FINAL PETITION NOTICE.

Subdivision 1. **Report to property owners.** Within 30

days after the viewers' report is filed, the auditor must make a property owners' report from the information in the viewers' report showing for each property owner benefited or damaged by the proposed drainage project:

(1) the name and address of the property owner;

(2) each lot or tract and its area that is benefited or damaged;

(3) the total number and value of acres added to a tract or lot by the proposed drainage of public waters, wetlands, and other areas not currently being cultivated;

(4) the number of acres and amount of benefits being assessed for drainage of areas which before the drainage benefits could be realized would require a permit to work in public waters under section 105.42, to excavate or fill a navigable water body under United States Code, title 33, section 403, or a permit to discharge into waters of the United States under United States Code, title 33, section 1344;

(5) the number of acres and amount of benefits being assessed for drainage of areas that would be considered conversion of a wetland under United States Code, title 16, section 3821, if the area was placed in agricultural production;

(6) the damage, if any, to riparian rights;

(7) the amount of right-of-way acreage required;

(8) the amount that each tract or lot will be benefited or damaged;

(9) the net damages or benefits to each property owner;

(10) the estimated cost to be assessed to the property owner based on the cost of the drainage project in the engineer's detailed survey report; and

(11) a copy of the benefits and damages statement under section 106A.321, subdivision 1a, paragraph (a), relating to the property owner.

Subd. 2. **Mailing.** The auditor must mail a copy of the property owners' report to each owner of property affected by the proposed drainage project, and may prepare and file an affidavit of mailing.

HIST:1987 c 239 s 76

106A.325 FINAL HEARING.

Subdivision 1. **Time.** Promptly after the filing of the viewers' report and the commissioner's final advisory report, the drainage authority after consulting with the auditor shall set a time and location for the final hearing on the petition, the detailed survey report, and the viewers' report. The hearing must be set 25 to 50 days after the date of the final hearing notice.

Subd. 2. **Notice.** (a) The final hearing notice must state:

(1) that the petition is pending;

(2) that the detailed survey report is filed;

(3) that the viewers' report is filed;

(4) the time and place set for the final hearing;

(5) a brief description of the proposed drainage project and affected drainage system, giving in general terms the starting point, terminus, and general course of the main ditch and branches;

(6) a description of property benefited and damaged, and the names of the owners of the property; and

(7) the municipal and other corporations affected by the proposed drainage project as shown by the detailed survey report and viewers' report.

(b) Names may be listed in a narrative form and property affected may be separately listed in narrative form by governmental sections or otherwise.

(c) For a joint county proceeding, separate notice may be prepared for each county affected, showing the portion of the proposed drainage project and the names and descriptions of affected property in the county.

Subd. 3. **Method of notice.** The auditor shall notify the drainage authority, auditors of affected counties, and all interested persons of the time and location of the final hearing by publication, posting, and mail. A printed copy of the final hearing notice for each affected county must be posted at least three weeks before the date of the final hearing at the front door of the courthouse in each county. Within one week after the first publication of the notice, the auditor shall give notice by mail of the time and location of the final hearing to the commissioner, all property owners, and others affected by the proposed drainage project and listed in the detailed survey report and the viewers' report.

Subd. 4. **Defective notice.** If the final hearing notice is not given or is not legally given, the auditor shall properly publish, post, and mail the notice or provide the notice under the provisions to cure defective notice in section 106A.035.

HIST:1985 c 172 s 46; 1987 c 239 s 77,78

106A.331 JURISDICTION OF PROPERTY BY DRAINAGE AUTHORITY.

After the final hearing notice is given, the drainage authority has jurisdiction of all property described in the detailed survey report and viewers' report, of the persons and municipalities named in the reports, and of persons having an interest in a mortgage, lien, or encumbrance against property described in the reports.

HIST:1985 c 172 s 47

106A.335 PROCEEDINGS AT THE FINAL HEARING.

Subdivision 1. **Consideration of petition and reports.** At the time and location for the final hearing specified in the notice, or after the hearing adjourns, the drainage authority shall consider the petition for the drainage project, with all matters pertaining to the detailed survey report, the

viewers' report, and the commissioner's final advisory report. The drainage authority shall hear and consider the testimony presented by all interested parties. The engineer or the engineer's assistant and at least one viewer shall be present. The director may appear and be heard. If the director does not appear personally, the final advisory report shall be read during the hearing. The final hearing may be adjourned and reconvened as is necessary.

Subd. 2. **Changes in drainage plan.** If the drainage authority determines that the general plan reported by the engineer may be improved by changes, or that the viewers have made an inequitable assessment of benefits or damages to any property, the drainage authority may amend the detailed survey report or the viewers' report, and make necessary and proper findings in relation to the reports. The drainage authority may resubmit matters to the engineer or to the viewers for immediate consideration. The engineer or viewers shall proceed promptly to reconsider the resubmitted matters and shall make and file the amended findings and reports. The amended reports are a part of the original reports.

Subd. 3. **Reexamination.** If the drainage authority determines that property not included in the notice should be included and assessed or that the engineer or viewers, or both, should reexamine the proposed drainage project or the property benefited or damaged by the system, the drainage authority may resubmit the reports to the engineer and viewers. If a report is resubmitted the final hearing may be continued as is necessary to make the reexamination and reexamination report. If the reexamination report includes property not included in the original report, the drainage authority may, by order, adjourn the hearing and direct the auditor to serve or publish, post, and mail a final hearing notice with reference to all property not included in the previous notice. The jurisdiction of the drainage authority continues in the property given proper notice, and new or additional notice is not required for that property.

HIST:1985 c 172 s 48; 1987 c 239 s 79,80

106A.341 DRAINAGE AUTHORITY FINAL ORDER.

Subdivision 1. **Dismissal of proceedings.** The drainage authority must dismiss the proceedings and petition, by order, if it determines that:

(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

(3) the proposed drainage project is not practicable after considering the environmental and land use criteria in section 106A.015, subdivision 1.

Subd. 2. **Establishment of proposed drainage project.** (a) The drainage authority shall establish, by order, a proposed

drainage project if it determines that:

(1) the detailed survey report and viewers' report have been made and other proceedings have been completed under this chapter;

(2) the reports made or amended are complete and correct;

(3) the damages and benefits have been properly determined;

(4) the estimated benefits are greater than the total estimated cost, including damages;

(5) the proposed drainage project will be of public utility and benefit, and will promote the public health; and

(6) the proposed drainage project is practicable.

(b) The order must contain the drainage authority's findings, adopt and confirm the viewers' report as made or amended, and establish the proposed drainage project as reported and amended.

HIST:1985 c 172 s 49; 1987 c 239 s 81

106A.345 APPORTIONMENT OF COST FOR JOINT COUNTY DRAINAGE SYSTEMS.

For joint county proceedings, the auditor where the petition is filed shall file a certified copy of the viewers' report with the auditor of each affected county within 20 days after the date of the final order establishing the system. When the final order to establish the drainage project is made, the drainage authority shall determine and order the percentage of the cost of the drainage project to be paid by each affected county. The cost shall be in proportion to the benefits received, unless there is a contrary reason. An auditor of an affected county may petition the drainage authority after the final order is made to determine and order the percentage of costs to be paid by the affected counties. The drainage authority shall hold a hearing five days after giving written notice to the auditor of each affected county. After giving the notice to the auditors of the affected counties, the drainage authority may, at any time that it is necessary, modify an order or make an additional order to allocate the cost among the affected counties.

HIST:1985 c 172 s 50; 1987 c 239 s 82

106A.351 REDETERMINATION OF BENEFITS AND DAMAGES.

Subdivision 1. **Conditions to redetermine benefits and damages; appointment of viewers.** If the drainage authority determines that the original benefits or damages determined in a drainage proceeding do not reflect reasonable present day land values or that the benefited or damaged areas have changed, or if more than 50 percent of the owners of property benefited or damaged by a drainage system petition for correction of an error that was made at the time of the proceedings that established the drainage system, the drainage authority may appoint three viewers to redetermine and report the benefits and damages and the benefited and damaged areas.

Subd. 2. **Hearing and procedure.** (a) The redetermination of benefits and damages shall proceed as provided for viewers and the viewers' report in sections 106A.311 to 106A.321.

(b) The auditor must prepare a property owners' report from the viewers' report. A copy of the property owners' report must be mailed to each owner of property affected by the drainage system.

(c) The drainage authority shall hold a final hearing on the report and confirm the benefits and damages and benefited and damaged areas. The final hearing shall proceed as provided under sections 106A.325, 106A.335, and 106A.341, except that the hearing shall be held within 30 days after the property owners' report is mailed.

Subd. 3. **Redetermined benefits and damages replace original benefits and damages.** The redetermined benefits and damages and benefited and damaged areas must be used in place of the original benefits and damages and benefited and damaged areas in all subsequent proceedings relating to the drainage system.

Subd. 4. **Appeal.** A person aggrieved by the redetermination of benefits and damages and benefited and damaged areas may appeal from the order confirming the benefits and damages and benefited and damaged areas under section 106A.091.

HIST:1985 c 172 s 51; 1987 c 239 s 83

OUTLETS FOR DRAINAGE SYSTEMS

106A.401 USE OF DRAINAGE SYSTEM AS AN OUTLET.

Subdivision 1. **Commissioner must recognize drainage outlet proceedings when purchasing wetlands.** If the commissioner purchases wetlands under section 97A.145, the commissioner must recognize that when a majority of landowners or owners of a majority of the land in the watershed, petition for a drainage outlet, the state should not interfere with or unnecessarily delay the drainage proceedings if the proceedings are conducted according to this chapter.

Subd. 2. **Express authority necessary.** After the construction of a drainage project, a public or private drainage system that drains property not assessed for benefits for the established drainage system may not be constructed to use the established drainage system as an outlet without obtaining express authority from the drainage authority of the drainage system proposed to be used as the outlet. This section is applicable to the construction of a public or private drainage system that outlets water into an established drainage system regardless of the actual physical connection.

Subd. 3. **Petition.** A person seeking authority to use an established drainage system as an outlet must petition the drainage authority. When the petition is filed, the drainage

authority in consultation with the auditor shall set a time and location for a hearing on the petition and shall give notice by mail and notice by publication of the hearing. The auditor must be paid a fee of $5 plus 30 cents for each notice mailed in excess of ten.

Subd. 4. **Hearing.** At the hearing the drainage authority shall consider the capacity of the outlet drainage system. If express authority is given to use the drainage system as an outlet, the drainage authority shall state, by order, the terms and conditions for use of the established drainage system as an outlet and shall set the amount to be paid as an outlet fee. The order must describe the property to be benefited by the drainage system and must state the amount of benefits to the property for the outlet. The property benefited is liable for assessments levied after that time in the drainage system, on the basis of the benefits as if the benefits had been determined in the order establishing the drainage system.

Subd. 5. **Private drainage system may not be constructed without payment of outlet fee.** A private drainage system may not be constructed to use the established drainage system as an outlet until the outlet fee, set by order, is paid by the petitioner to the county treasurer where petitioner's property is located.

Subd. 6. **Payment of outlet fee.** The outlet fee for a proposed drainage project is a part of the cost of the proposed drainage project and is to be paid by assessment against the property benefited by the proposed drainage project, under section 106A.601, and credited to the established drainage system account.

Subd. 7. **Unauthorized outlet into drainage system.** (a) The drainage authority must notify an owner of property where an unauthorized outlet into a drainage system is located and direct the property owner to block the outlet or otherwise make the outlet ineffective by a specified time. The outlet must be blocked and remain ineffective until:

(1) an outlet fee is paid, which is determined by the drainage authority based on the benefits received by the property for the period the unauthorized outlet was operational; and

(2) the drainage authority approves a petition for the outlet and establishes the outlet fee.

(b) If a property owner does not block or make the outlet ineffective after being notified, the drainage authority must issue an order to have the work performed to bring the outlet into compliance. After the work is completed, the drainage authority must send a statement to the auditor of the county where the property is located and to the property owner where the unauthorized outlet is located, containing the expenses incurred to bring the outlet into compliance and the outlet fee based on the benefits received by property during the period the unauthorized outlet was operational.

Subd. 8. **Collection of unauthorized outlet compliance expenses.** (a) The amount of the expenses and outlet fee is a lien in favor of the drainage authority against the property where the unauthorized outlet is located. The auditor must certify the expenses and outlet fee and enter the amount in the same manner as other drainage liens on the tax list for the following year. The amount must be collected in the same manner as real estate taxes for the property. The provisions of law relating to the collection of real estate taxes shall be used to enforce payment of amounts due under this section. The auditor must include a notice of collection of unauthorized outlet compliance expenses with the tax statement.

(b) The amounts collected under this subdivision must be deposited in the drainage system account.

HIST:1985 c 172 s 52; 1987 c 149 art 2 s 8; 1987 c 239 s 84-87

106A.405 OUTLETS IN ADJOINING STATES.

In any drainage proceeding, at the hearing on the detailed survey report and viewers' report, if the drainage authority determines that a proper outlet for the drainage system does not exist, except through property in an adjoining state, the drainage authority may adjourn the hearing. If the hearing is adjourned the drainage authority shall require the auditor or, for a joint county drainage system, the auditors of affected counties to procure an option to acquire the needed right-of-way at an expense not exceeding the estimated cost specified in the detailed survey report. The order establishing the drainage project may not be made until the option is procured. If the option is procured and the drainage project established, the option shall be exercised and the cost of the right-of-way shall be paid as a part of the cost of the drainage project.

HIST:1985 c 172 s 53; 1987 c 239 s 88

106A.411 DRAINAGE SYSTEM AS OUTLET FOR MUNICIPALITY.

Subdivision 1. **Petition.** A municipality may use a drainage system as an outlet for its municipal drainage system or the overflow from the system under the provisions of this section. The municipality must petition to the drainage authority to use the drainage system. The petition must:

(1) show the necessity for the use of the drainage system as an outlet;

(2) show that the use of the drainage will be of public benefit and utility and promote the public health;

(3) be accompanied by a plat showing the location of the drainage system and the location of the municipal drainage system; and

(4) be accompanied by specifications showing the plan of connection from the municipal drainage system to the drainage system.

Subd. 2. **Approval by pollution control agency.** The

plan for connecting the municipal drainage system to the drainage system must be approved by the pollution control agency.

Subd. 3. **Filing; notice.** (a) If proceedings to establish the drainage project to be used as an outlet are pending, the petition must be filed with the auditor. The municipal drainage system petition must be presented to the drainage authority at the final hearing to consider the detailed survey report and viewers' report. Notice of the municipal drainage system petition must be included in the final hearing notice.

(b) If the drainage system to be used as an outlet is established, the municipal drainage system petition must be filed with the auditor. When the petition is filed, the drainage authority in consultation with the auditor shall, by order, set a time and place for hearing on the petition. Notice of the hearing must be given by publication and by mailed notice to the auditor of each affected county.

Subd. 4. **Hearing and order.** (a) At the hearing the drainage authority may receive all evidence of interested parties for or against the granting of the petition. The drainage authority, by order, may authorize the municipality to use the drainage system as an outlet, subject to the conditions that are necessary and proper to protect the rights of the parties and safeguard the interests of the general public, if the drainage authority determines:

(1) that a necessity exists for the use of the drainage system as an outlet for the municipal drainage system or the overflow from the system;

(2) that use of the drainage system will be of public utility and promote the public health; and

(3) that the proposed connection conforms to the requirements of the pollution control agency and provides for the construction and use of proper disposal works.

(b) The drainage authority must, by order, make the municipality a party to the drainage proceedings and determine the benefits from using the drainage project or system as an outlet.

Subd. 5. **Benefits and assessments if drainage system is established.** If the drainage system is established, the drainage authority must determine the amount the municipality must pay for the privilege of using the drainage system as an outlet. The amount must be paid to the affected counties and credited to the account of the drainage system used as an outlet. The municipality is liable for all subsequent liens and assessments for the repair and maintenance of the drainage system in proportion to the benefits, as though the benefits were determined in the order establishing the drainage system.

HIST:1985 c 172 s 54; 1987 c 239 s 89,90

106A.501 CONTRACT AND BOND.

Subdivision 1. **Preparation.** The county attorney, the engineer, and the attorney for the petitioners shall prepare the contract and bond. The contract and bond must include the provisions required by this chapter and section 574.26 for bonds given by contractors for public works and must be conditioned as provided by section 574.26 for the better security of the contracting counties and parties performing labor and furnishing material in performance of the contract. The prepared contract and bond must be attached and provided to the contractor for execution.

Subd. 2. **Contractor's bond.** The contractor shall file a bond with the auditor for an amount not less than 75 percent of the contract price of the work. The bond must have adequate surety and be approved by the auditor. The bond must provide that the surety for the bond is liable for all damages resulting from a failure to perform work under the contract, whether the work is resold or not, and that any person or political subdivision showing damages from the failure to perform work under the contract may maintain an action against the bond in their own names. Actions may be successive in favor of all persons injured, but the aggregate liability of the surety for all the damages may not exceed the amount of the bond. The surety is liable for the tile work guaranteed by the contractor. The contractor is considered a public officer and the bond an official bond within the meaning of section 574.24 construing the official bonds of public officers as security to all persons and providing for actions on the bonds by a party that is damaged.

Subd. 3. **Contract.** The contract must contain a specific description of the work to be done, either expressly or by reference to the plans and specifications, and must provide that the work must be done and completed as provided in the plans and specifications and subject to the inspection and approval of the engineer. The contract must provide that time is of the essence of the contract, and that if there is a failure to perform the work according to the terms of the contract within the time given in the original contract or as extended, the contractors shall forfeit and pay counties an amount stated in the contract as liquidated damages. The amount must be fixed by the auditor for each day that the failure of performance continues.

Subd. 4. **Contract provisions for changes during construction.** 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 section 106A.015, subdivision 1.

Subd. 5. **Contract with federal unit.** If any portion of the work is to be done by the United States or an agency of the United States, a bond or contract is not necessary for that portion of the work, except that a contract must be made if the United States or its agencies require a contract with the local governmental units. The contract must contain the terms, conditions, provisions, and guaranties required by the United States or its agencies to proceed with the work.

Subd. 6. **Guaranty of tile work.** If tile is used to construct any part of the drainage project, a majority of the persons affected may file a written request with the auditor to contract the tile work separately. The request must be filed before advertising for the sale of the work has begun. If the request is properly made, the tile work must be contracted separately. The contractor must guarantee the tile work under the contract for three years after its completion against any fault or negligence on the part of the contractor. The advertisement for bids must include this requirement.

Subd. 7. **Modification of contract by agreement.** This chapter does not prevent the persons with property affected by the construction of a drainage project from uniting in a written agreement with the contractor and the surety of the contractor's bond to modify the contract as to the manner or time when any portion of the drainage project is constructed, if the modification is recommended, in writing, by the engineer and approved by the drainage authority.

HIST:1985 c 172 s 55; 1987 c 239 s 91-93

106A.505 AWARDING THE CONSTRUCTION CONTRACT.

Subdivision 1. **Auditors and drainage authority to proceed.** Thirty days after the order establishing a drainage project is filed, the auditor and the drainage authority or, for a joint county drainage project, a majority of the auditors of the affected counties shall proceed to award the contract to construct the drainage project.

Subd. 2. **Pending appeal of benefits and damages.** If an appeal regarding the determination of benefits and damages is made within 30 days after the order establishing the drainage project has been filed, a contract may not be awarded until the appeal has been determined, unless the drainage authority orders the contract awarded. The auditor of an affected county or an interested person may request the drainage authority to make the

order. If the request is not made by an affected auditor, the auditors of affected counties must be given notice five days before the hearing on the request.

Subd. 3. **Notice of contract awarding.** The auditor of an affected county shall give notice of the awarding of the contract by publication in a newspaper in the county. The notice must state the time and location for awarding the contract. For a joint county drainage project the auditors shall award the contract at the office of the auditor where the proceedings are pending. If the estimated cost of construction is more than $3,000, the auditor must also place a notice in a drainage construction trade paper. The trade paper notice must state:

(1) the time and location for awarding the contract;

(2) the approximate amount of work and its estimated cost;

(3) that bids may be for the work as one job, or in sections, or separately, for bridges, ditches and open work, tile, or tile construction work, if required or advisable;

(4) that each bid must be accompanied by a certified check or a bond furnished by an approved surety corporation payable to the auditors of affected counties for ten percent of the bid, as security that the bidder will enter into a contract and give a bond as required by section 106A.501; and

(5) that the drainage authority reserves the right to reject any and all bids.

Subd. 4. **Engineer shall attend awarding of contract.** The engineer shall attend the meeting to award the contract. A bid may not be accepted without the engineer's approval of compliance with plans and specifications.

Subd. 5. **How contract may be awarded.** The contract may be awarded in one job, in sections, or separately for labor and material and must be let to the lowest responsible bidder.

Subd. 6. **Bids exceeding 30 percent of estimated cost not accepted.** Bids that in the aggregate exceed the total estimated cost of construction by more than 30 percent may not be accepted.

Subd. 7. **Affected counties contract through auditor.** The chair of the drainage authority and the auditor of each affected county shall contract, in the names of their respective counties, to construct the drainage project in the time and manner and according to the plans and specifications and the contract provisions in this chapter.

Subd. 8. **Work done by federal government.** If any of the drainage work is to be done by the United States or its agencies, a notice of awarding that contract does not need to be published and a contract for that construction is not necessary. Affected municipalities may contract or arrange with the United States or its agencies for cooperation or assistance in constructing, maintaining, and operating the drainage project and system, for control of waters in the district, or for making a survey and investigation or reports on the drainage project or

system. The municipalities may provide required guaranty and protection to the United States or its agencies.
HIST:1985 c 172 s 56; 1986 c 444; 1987 c 239 s 94-98

106A.511 PROCEDURE IF CONTRACT IS NOT AWARDED DUE TO BIDS OR COSTS.

Subdivision 1. **Conditions to use procedure in this section.** The procedure in this section may be used if, after a drainage system is established:

(1) the only bids received are for more than 30 percent in excess of the engineer's estimated cost, or in excess of the benefits, less damages and other costs; or

(2) a contract is awarded, but due to unavoidable delays not caused by the contractor, the contract cannot be completed for an amount equal to or less than the benefits, less damages and other costs.

Subd. 2. **Petition after cost estimate error or change to lower cost.** A person interested in the drainage project may petition the drainage authority if the person determines that the engineer made an error in the estimate of the drainage project cost or that the plans and specifications could be changed in a manner materially affecting the cost of the drainage system without interfering with the efficiency. The petition must state the person's determinations and request that the detailed survey report and viewers' report be referred back to the engineer and to the viewers for additional consideration.

Subd. 3. **Petition after excessive cost due to inflation.** (a) A person interested in the drainage project may petition the drainage authority for an order to reconsider the detailed survey report and viewers' report if the person determines:

(1) that bids were received only for a price more than 30 percent in excess of the detailed survey report estimate because inflation increased the construction cost between the time of the detailed survey cost estimate and the time of awarding the contract; or

(2) that after the contract was awarded there was unavoidable delay not caused by the contractor, and between the time of awarding the contract and completion of construction inflation increased construction costs resulting in the contract not being completed for an amount equal to or less than the assessed benefits.

(b) The person may request in the petition that the drainage authority reconsider the original cost estimate in the detailed survey report and viewers' report and adjust the cost estimate consistent with the increased construction cost.

Subd. 4. **Hearing ordered after receipt of petition.** After receiving a petition, the drainage authority shall order a hearing. The order must designate the time and place of the hearing and direct the auditor to give notice by publication.

Subd. 5. **Hearing on cost petition.** (a) At the

hearing the drainage authority shall consider the petition and hear all interested parties.

(b) The drainage authority may, by order, authorize the engineer to amend the detailed survey report, if the drainage authority determines that:

(1) the detailed survey report cost estimate was erroneous and should be corrected;

(2) the plans and specifications could be changed in a manner materially affecting the cost of the drainage project without interfering with the efficiency; and

(3) with the correction or modification a contract could be awarded within the 30 percent limitation and equal to or less than benefits.

(c) If the drainage authority determines that the amended changes affect the amount of benefits or damages to any property or that the benefits should be reexamined because of inflated land values or inflated construction costs, it shall refer the viewers' report to the viewers to reexamine the benefits and damages.

(d) The drainage authority may, by order, direct the engineer and viewers to amend their detailed survey report and viewers' report to consider the inflationary cost increases if the drainage authority determines that:

(1) bids were not received; or

(2) because of inflationary construction cost increases, construction under the awarded contract cannot be completed for 30 percent or less over the detailed survey cost estimate or in excess of the benefits, less damages and other costs.

(e) The drainage authority may continue the hearing to give the engineer or viewers additional time to amend the reports. The jurisdiction of the drainage authority continues at the adjourned hearing.

(f) The drainage authority has full authority to consider the amended reports and make findings and orders. A party may appeal to the district court under section 106A.091, subdivision 1.

HIST:1985 c 172 s 57; 1987 c 239 s 99-102

106A.515 DAMAGES, PAYMENT.

The board of each county where the damaged property is located must order the awarded damages to be paid, less any assessment against the property, before the property is entered for construction of the drainage project. If a county or a municipality that is awarded damages requests it, the assessment may not be deducted. If there is an appeal, the damages may not be paid until the final determination. If it is not clear who is entitled to the damages, the board may pay the damages to the court administrator of the district court of the county. The court shall direct the court administrator, by order, to pay the parties entitled to the damages.

HIST:1985 c 172 s 58; 1Sp1986 c 3 art 1 s 82; 1987 c 239 s

106A.521 SUPERVISION OF CONSTRUCTION.

The drainage authority shall require the engineer to supervise and inspect the construction under contract. The drainage authority shall cause the contracts under this chapter to be performed properly.

HIST:1985 c 172 s 59

106A.525 CONSTRUCTION AND MAINTENANCE OF BRIDGES AND CULVERTS.

Subdivision 1. **Hydraulic capacity.** A public or private bridge or culvert may not be constructed or maintained across or in a drainage system with less hydraulic capacity than specified in the detailed survey report, except with the written approval of the director of the division of waters. If the detailed survey report does not specify the hydraulic capacity, a public or private bridge or culvert in or across a drainage system ditch may not be constructed without the director's approval of the hydraulic capacity.

Subd. 2. **Road authority responsible for construction.** Bridges and culverts on public roads required by the construction or improvement of a drainage project or system must be constructed and maintained by the road authority responsible for keeping the road in repair, except as provided in this section.

Subd. 3. **Notice; changing cost.** The auditor shall notify the state and each railroad company, corporation, or political subdivision that they are to construct a required bridge or culvert on a road or right-of-way under its jurisdiction, within a reasonable time in the notice. If the work is not done within the prescribed time, the drainage authority may order the bridge or culvert constructed as part of the drainage project construction. The cost must be deducted from the damages awarded to the corporation or collected from it as an assessment for benefits. If the detailed survey report or viewers' report shows that the construction of the bridge or culvert is necessary, the drainage authority may, by order, retain an amount to secure the construction of the bridge or culvert from amounts to be paid to a railroad, corporation, or political subdivision.

Subd. 4. **Construction on line between two cities paid equally.** The costs of constructing a bridge or culvert that is required by construction of a drainage project on a public road that is not a state trunk highway on the line between two statutory or home rule charter cities, whether in the same county or not, must be paid jointly, in equal shares, by the cities. The cities shall pay jointly, in equal shares, for the cost of maintaining the bridge or culvert.

Subd. 5. **Construction on town and county lines.** The cost of constructing and maintaining bridges and culverts on a

town or county road across a drainage system ditch constructed along the boundary line between towns or counties, with excavated material deposited on the boundary line or within 33 feet of the line, must be paid equally by the town or county where the bridge or culvert is located and the other town or county adjoining the boundary.

HIST:1985 c 172 s 60; 1987 c 239 s 104-106

106A.526 CONSTRUCTION OF ROAD INSTEAD OF BRIDGE OR CULVERT.

If the drainage authority finds that constructing a private road would be more cost effective or practical than constructing a bridge or culvert, the drainage authority may order that a private road be constructed. The private road must be constructed and maintained in the same manner as a bridge or culvert. The private road must be constructed in a manner suitable for farm vehicles, but may not have a right-of-way wider than 33 feet. The drainage authority has jurisdiction over the land required for the private road and the road is part of the drainage system.

HIST:1985 c 102 s 1

106A.531 INSPECTION OF DRAINAGE CONSTRUCTION AND PARTIAL PAYMENTS.

Subdivision 1. **Inspection and report.** The engineer shall inspect and require the work as it is being completed to be done in accordance with the plans, specifications, and contract for construction. Each month during the work, the engineer shall report to the drainage authority, in writing, showing the work completed since the previous report and all materials furnished under the contract.

Subd. 2. **Preliminary certificate.** The engineer shall issue with the monthly report a preliminary certificate for work done and approved or materials delivered. The certificate must contain the station numbers of the work covered by the certificate and the total value of all work done and the materials furnished according to the contract. For each ditch section, the certificate must show the actual volume, in cubic yards, of the excavation completed. For joint county drainage systems the certificate must also show the percentage of the total value to be paid by each county in the proportion fixed by the drainage authority order. Each certificate must show that a loss will not occur as a result of a partial payment. A duplicate of the certificate must be delivered to the auditor of each affected county.

Subd. 3. **Partial payment.** The affected counties must pay the contractor, based on the certificate, 90 percent of the total value of work done and approved and 90 percent of the total value of material furnished and delivered. The materials may only be delivered as required in the course of construction and authorized by the engineer.

HIST:1985 c 172 s 61

106A.535 PARTIAL PAYMENT OF RETAINED CONTRACT AMOUNTS.

Subdivision 1. **Petition for partial payment of retained value.** If a single contract exceeds $50,000, and the contract, exclusive of materials furnished and not installed, is one-half or more complete and the contractor is not in default, the contractor may file a verified petition with the auditor stating these facts and requesting that an order be made to pay 40 percent of the retained value of work and material.

Subd. 2. **Notice of hearing.** When the petition is filed, the auditor shall set a time and location for a hearing on the petition before the drainage authority. At least five days before the date of hearing, the auditor shall give notice by mail of the date and location of hearing to the engineer, the attorney for the petitioners, the surety of the contractor's bond, and auditors of the affected counties.

Subd. 3. **Hearing.** At the hearing the drainage authority shall hear all parties interested. If the drainage authority determines that the facts in the petition are correct, the work has been performed in a satisfactory manner, and a portion of the retained percentage may be released without endangering the interests of affected counties, the drainage authority shall state the findings and may order not more than 40 percent of the retained value of work and material to be paid.

HIST:1985 c 172 s 62

106A.541 EXTENSION OF TIME ON CONTRACTS.

The auditors of affected counties may extend the time for the performance of a contract as provided in this section. The contractor may apply, in writing, for an extension of the contract. Notice of the application must be given to: (1) the engineer and the attorney for the petitioners; and (2) for a joint county drainage project, to the auditors of the affected counties. The auditors may grant an extension if sufficient reasons are shown. The extension does not affect a claim for liquidated damages that may arise after the original time expires and before an extension or a claim that may arise after the time for the extension expires.

HIST:1985 c 172 s 63; 1987 c 239 s 107

106A.545 REDUCTION OF CONTRACTOR'S BOND.

Subdivision 1. **Application to drainage authority.** The contractor, at the end of each season's work and before the contract is completed, may make a verified application to the drainage authority to reduce the contractor's bond and file the application with the auditor. The application must state:

(1) the work certified as completed by the engineer;

(2) the certified work's value;

(3) the amount of money received by the contractor and the amount retained;

(4) the amount unpaid by the contractor for labor or material furnished on the contract; and

(5) a request for an order to reduce the amount of the contractor's bond.

The application must be filed with the auditor.

Subd. 2. **Notice for hearing.** When an application is filed, the auditor, by order, shall set the time and location for a hearing on the application. Ten days before the hearing, notice of the hearing must be published in each affected county and notice by mail given to the engineer, the attorney for the petitioners, and the auditor of each affected county. The contractor must pay the cost of the hearing notice by publication.

Subd. 3. **Hearing; reduction of bond.** The drainage authority may, by order, reduce the contractor's bond if it determines that the contractor is not in default and that a loss will not result from reducing the bond. The bond may be reduced to an amount sufficient to protect the affected counties from loss and damage, but the reduction:

(1) may not be more than 35 percent of the amount already paid to the contractor;

(2) may not affect the remaining amount of the bond;

(3) does not affect liability incurred on the bond before the reduction; and

(4) does not affect a provision for a three-year guaranty of tile work.

HIST:1985 c 172 s 64

106A.551 CONTRACTOR'S DEFAULT.

Subdivision 1. **Notice.** If a contractor defaults in the performance of the contract, the auditor shall mail a notice of the default to the contractor, the surety of the contractor's bond, the engineer, and the auditors of the affected counties. The notice must specify the default and state that if the default is not promptly removed and the contract completed, the unfinished portion of the contract will be awarded to another contractor.

Subd. 2. **Completion of contract by surety.** If the surety of the contractor's bond promptly proceeds with the completion of the contract, the affected auditors may grant an extension of time. If the contract is completed by the surety, the balance due on the contract must be paid to the surety, less damages incurred by the affected counties from the default.

Subd. 3. **Awarding of contract; recovery on bond.** If the surety of the contractor's bond does not undertake the completion of the contract or does not complete the contract within the time specified or extended, auditors of the affected counties shall advertise for bids to complete the contract in the manner provided in the original awarding of contracts. The drainage authority may recover the increased amounts paid to a subsequent contractor after reselling the work, and damages

incurred by affected counties, from the first contractor's bond.
HIST:1985 c 172 s 65

106A.555 ACCEPTANCE OF CONTRACT.

Subdivision 1. **Engineer's report and notice.** When a contract is completed, the engineer shall make a report to the drainage authority showing the contract price, the amount paid on certificates, the unpaid balance, and the work that is completed under the contract. When the report is filed, the auditor shall set a time and location for a hearing on the report. The auditor shall give notice of the hearing by publication or notice by mail at least ten days before the hearing to the owners of affected property. The notice must state that the report is filed, the time and location for the hearing, and that a party objecting to the acceptance of the contract may appear and be heard.

Subd. 2. **Hearing.** At the hearing the drainage authority may, by order, direct payment of the balance due if it determines that the contract has been completed in accordance with the plans and specifications. If good cause is shown, the drainage authority may waive any part of the liquidated damages accruing under the contract. When the order is filed, the auditor shall draw a warrant on the treasurer of the county for the balance due on the contract. For a joint county drainage project or system the auditor shall make an order to the auditors of the affected counties to pay for their proportionate shares of the balance due on the contract. After receiving the order, the auditor of each affected county shall draw a warrant on the treasurer of the county for the amount specified in the order.
HIST:1985 c 172 s 66; 1987 c 239 s 108

FUNDING, COLLECTION, AND PAYMENT OF DRAINAGE SYSTEM COSTS

106A.601 DRAINAGE LIEN STATEMENT.

Subdivision 1. **Determination of property liability.** When the contract for the construction of a drainage project is awarded, the auditor of an affected county shall make a statement showing the total cost of the drainage project with the estimated cost of all items required to complete the work. The cost must be prorated to each tract of property affected in direct proportion to the benefits. The cost, less any damages, is the amount of liability for each tract for the drainage project. The property liability must be shown in the tabular statement under subdivision 2, opposite the property owner's name and description of each tract of property. The amount of liability on a tract of property for establishment and construction of a drainage project may not exceed the benefits determined in the proceedings that accrue to the tract.

Subd. 2. **Drainage lien statement.** The auditor of each affected county shall make a lien statement in tabular form

showing:

(1) the names of the property owners, corporate entities, or political subdivisions of the county benefited or damaged by the construction of the drainage project in the viewers' report as approved by the final order for establishment;

(2) the description of the property in the viewers' report, and the total number of acres in each tract according to the county tax lists;

(3) the number of acres benefited or damaged in each tract shown in the viewers' report;

(4) the amount of benefits and damages to each tract of property as stated in the viewers' report and confirmed by the final order that established the drainage project unless the order is appealed and a different amount is set; and

(5) the amount each tract of property will be liable for and must pay to the county for the establishment and construction of the drainage project.

Subd. 3. **Supplemental drainage lien statement.** If any items of the cost of the drainage project have been omitted from the original drainage lien statement, a supplemental drainage lien statement with the omitted items must be made and recorded in the same manner provided for a drainage lien statement. The total amount of the original drainage lien and any supplemental drainage liens may not exceed the benefits.

Subd. 4. **Recording drainage lien statement.** The lien against property in the drainage lien statement and supplemental drainage lien statements must be certified by the auditor and recorded on each tract by the county recorder of the county where the tract is located. The county recorder's fees for recording must be paid if allowed by the board. The drainage lien statement and any supplemental drainage lien statements, after recording, must be returned and preserved by the auditor.

HIST:1985 c 172 s 67; 1987 c 239 s 109

106A.605 EFFECT OF FILED DRAINAGE LIEN.

The amount recorded from the drainage lien statement and supplemental drainage lien statement that each tract of property will be liable for, and the interest allowed on that amount, is a drainage lien on the property. The drainage lien is a first and paramount lien until fully paid, and has priority over all mortgages, charges, encumbrances, and other liens, unless the board subordinates the drainage lien to liens of record. The recording of the drainage lien, drainage lien statement, or a supplemental drainage lien statement is notice to all parties of the existence of the drainage lien.

HIST:1985 c 172 s 68; 1987 c 239 s 110

106A.611 PAYMENT OF DRAINAGE LIENS AND INTEREST.

Subdivision 1. **Payment of drainage lien principal.** (a) Drainage liens against property benefited under this chapter are payable to the treasurer of the county in 20 or less equal

annual installments. The first installment of the principal is due on or before November 1 after the drainage lien statement is recorded, and each subsequent installment is due on or before November 1 of each year afterwards until the principal is paid.

(b) The drainage authority may, by order, direct the drainage lien to be paid by 1/15 of the principal on or before five years from November 1 after the lien statement is recorded, and 1/15 on or before November 1 of each year afterwards until the principal is paid.

(c) The drainage authority may order that the drainage lien must be paid by one or two installments, notwithstanding paragraphs (a) and (b), if the principal amount of a lien against a lot or tract of property or against a county or municipality is less than $50.

Subd. 2. **Interest.** (a) Interest is an additional drainage lien on all property until paid. The interest rate on the drainage lien principal from the date the drainage lien statement is recorded must be set by the board, but may not exceed the rate determined by the state court administrator for judgments under section 549.09.

(b) Before the tax lists for the year are given to the county treasurer, the auditor shall compute the interest on the unpaid balance of the drainage lien at the rate set by the board. The amount of interest must be computed on the entire unpaid principal from the date the drainage lien was recorded to August 15 of the next calendar year, and afterwards from August 15 to August 15 of each year.

(c) Interest is due and payable after November 1 of each year the drainage lien principal or interest is due and unpaid.

Subd. 3. **Collection of payments.** Interest and any installment due must be entered on the tax lists for the year. The installment and interest must be collected in the same manner as real estate taxes for that year by collecting one-half of the total of the installment and interest with and as a part of the real estate taxes.

Subd. 4. **Prepayment of interest.** Interest may be paid at any time, computed to the date of payment, except that after the interest is entered on the tax lists for the year, it is due as entered, without a reduction for prepayment.

Subd. 5. **Payment of drainage liens with bonds.** The board may direct the county treasurer to accept any outstanding bond that is a legal obligation of the county under this chapter issued on account of a drainage lien in payment of drainage liens under the provisions of this chapter. The bonds must be accepted at their par value plus accrued interest.

Subd. 6. **Drainage lien record.** The auditor shall keep a drainage lien record for each drainage project and system showing the amount of the drainage lien remaining unpaid against each tract of property.

Subd. 7. **Collection and enforcement of drainage liens.** The provisions of law that exist relating to the collection

of real estate taxes are adopted to enforce payment of drainage liens. If there is a default, a penalty may not be added to an installment of principal and interest, but each defaulted payment, principal, and interest draws interest from the date of default until paid at the rate determined by the state court administrator for judgments under section 549.09.
HIST:1985 c 172 s 69; 1987 c 239 s 111-114

106A.615 ENFORCEMENT OF ASSESSMENTS.

Subdivision 1. **Municipalities.** Assessments filed for benefits to a municipality are a liability of the municipality and are due and payable with interest in installments on November 1 of each year as provided in section 106A.611. If the installments and interest are not paid on or before November 1, the amount due with interest added as provided in section 106A.611 must be extended by the county auditor against all property in the municipality that is liable to taxation. A levy must be made and the amount due must be paid and collected in the same manner and time as other taxes.

Subd. 2. **County or state-aid road.** If a public road benefited is a county or state-aid road, the assessment filed is against the county and must be paid out of the road and bridge fund of the county.

Subd. 3. **State trunk highway.** An assessment against the state for benefits to trunk highways is chargeable to and payable out of the trunk highway fund. The commissioner of transportation shall pay assessments from the trunk highway fund after receipt of a certified copy of the assessment against the state for benefits to a trunk highway.

Subd. 4. **Assessment for vacated town roads.** If a town is assessed for benefits to a town road in a drainage project proceeding under this chapter and the town road is later vacated by the town board under section 164.07, the town board may petition the drainage authority to cancel the assessment. The drainage authority may cancel the assessment if it finds that the town road for which benefits are assessed has been vacated under section 164.07.

Subd. 5. **State property.** State property, including rural credit property, is assessable for benefits received. The assessment must be paid by the state from funds appropriated and available for drainage assessments after the state officer having jurisdiction over the assessed property certifies the assessment to the commissioner of finance.

Subd. 6. **Assessments on wildlife lands to be paid from wildlife acquisition fund.** An assessment against state land acquired for wildlife habitat shall be paid from the wildlife acquisition fund as provided in section 97A.071, subdivision 4.

Subd. 7. **Railroad and utility property.** Property owned by a railroad or other utility corporation benefited by a drainage project is liable for the assessments of benefits on the property as other taxable property. From the date the

drainage lien is recorded, the amount of the assessment with interest is a lien against all property of the corporation within the county. Upon default the assessment may be collected by civil action or the drainage lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens. The county where the drainage lien is filed has the right of action against the corporation to enforce and collect the assessment.

HIST:1985 c 172 s 70; 1987 c 149 art 2 s 9; 1987 c 239 s 115,116

106A.621 SATISFACTION OF LIENS.

When a drainage lien with the accumulated interest is fully paid, the auditor shall issue a certificate of payment with the auditor's official seal and record the certificate with the county recorder. The recorded certificate releases and discharges the drainage lien. The auditor may collect 25 cents for each description in the certificate. The auditor's fee and the fee of the county recorder must be paid from the account for the drainage system.

HIST:1985 c 172 s 71

106A.625 SUBDIVISION BY PLATTING MUST HAVE LIENS APPORTIONED.

A tract of property with a drainage lien that is subdivided by platting is not complete and the plat may not be recorded until the drainage liens against the tracts are apportioned and the apportionment filed with the county recorder of the county where the tract is located.

HIST:1985 c 172 s 72

106A.631 APPORTIONMENT OF LIENS.

Subdivision 1. **Petition.** A person who has an interest in property that has a drainage lien attached to it may petition the drainage authority to apportion the lien among specified portions of the tract if the payments of principal and interest on the property are not in default.

Subd. 2. **Notice.** When the petition is filed, the drainage authority shall, by order, set a time and location for a hearing on the petition. The drainage authority shall give notice of the hearing by personal service to the auditor, the occupants of the tract, and on all parties having an interest in the tract as shown by the records in the county recorder's office. The service must be made at least ten days before the hearing. If personal service cannot be made to all interested persons, notice may be given by publication. The petitioner shall pay the costs for service or publication.

Subd. 3. **Hearing.** The drainage authority shall hear all related evidence and, by order, apportion the lien. A certified copy of the order must be recorded in the county recorder's office and filed with the auditor.

HIST:1985 c 172 s 73

106A.635 DRAINAGE BOND ISSUES.

Subdivision 1. **Authority.** After the contract for the construction of a drainage project is awarded, the board of an affected county may issue the bonds of the county in an amount necessary to pay the cost of establishing and constructing the drainage project.

Subd. 2. **Single issue for two or more drainage systems.** The board may include two or more drainage systems in a single drainage bond issue. The total amount of the drainage bond issue may not exceed the total cost, including expenses, to be assessed to pay for the drainage systems. The total cost to be assessed must be determined or estimated by the board when the drainage bonds are issued.

Subd. 3. **Security and source of payment.** The drainage bonds must be issued in accordance with chapter 475 and must pledge the full faith, credit, and resources of the county for the prompt payment of the principal and interest of the drainage bonds. The drainage bonds are primarily payable from the funds of the drainage systems financed by the bonds or from the common drainage bond redemption fund of the county. The common drainage bond redemption fund may be created by resolution of the county board as a debt redemption fund for the payment of drainage bonds issued under this chapter.

Subd. 4. **Payment period and interest on drainage bonds.** (a) The board shall determine, by resolution:

(1) the time of payment for the drainage bonds not exceeding 23 years from their date;

(2) the rates of interest for the drainage bonds, with the net average rate of interest over the term of the bonds not to exceed the rate established under section 475.55; and

(3) whether the drainage bonds are payable annually or semiannually.

(b) The board shall determine the years and amounts of principal maturities that are necessary by the anticipated collections of the drainage systems assessments, without regard to any limitations on the maturities imposed by section 475.54.

Subd. 5. **Temporary drainage bonds maturing in two years or less.** The board may issue and sell temporary drainage bonds under this subdivision maturing not more than two years after their date of issue, instead of bonds under subdivision 4. The county shall issue and sell definitive drainage bonds before the maturity of bonds issued under this subdivision and use the proceeds to pay for the temporary drainage bonds and interest to the extent that the temporary bonds are not paid for by assessments collected or other available funds. The holders of temporary drainage bonds and the taxpayers of the county have and may enforce by mandamus or other appropriate proceedings:

(1) all rights respecting the levy and collection of assessments sufficient to pay the cost of drainage proceedings

and construction financed by the temporary drainage bonds that are granted by law to holders of other drainage bonds, except the right to require levies to be collected before the temporary drainage bonds mature; and

(2) the right to require the offering of definitive drainage bonds for sale, or to require the issuance of definitive drainage bonds in exchange for the temporary drainage bonds, on a par for par basis, bearing interest at the rate established under section 475.55 if the definitive drainage bonds have not been sold and delivered before the maturity of the temporary drainage bonds.

Subd. 6. **Definitive drainage bonds.** The definitive drainage bonds issued in exchange for an issue of temporary drainage bonds must be numbered and mature serially at times and in amounts to allow the principal and interest to be paid when due by the collection of assessments levied for the drainage systems financed by the temporary bond issue. The definitive bonds are subject to redemption and prepayment on any interest payment date by the county notifying each definitive bondholder who has registered their name and address with the county treasurer. The bondholders must be notified by mail 30 days before the interest payment date. The definitive bonds must be delivered in order of their serial numbers, lowest numbers first, to the holders of the temporary drainage bonds in order of the serial numbers of the bonds held by them.

Subd. 7. **Sale of definitive drainage bonds.** The board must sell and negotiate the definitive drainage bonds for at least their par value. The definitive bonds must be sold in accordance with section 475.60.

Subd. 8. **County investment, purchase, and selling of temporary drainage bonds.** (a) Funds of the issuing county may be invested in temporary drainage bonds under sections 471.56 and 475.66, except that the temporary drainage bonds may be:

(1) purchased by the county when the temporary drainage bonds are initially issued;

(2) purchased only out of funds that the board determines will not be required for other purposes before the temporary drainage bonds mature; and

(3) resold before the temporary drainage bonds mature only if there is an unforeseen emergency.

(b) If a temporary drainage bond purchase is made from money held in a sinking fund for other bonds of the county, the holders of the other bonds may enforce the county's obligation to sell definitive bonds at or before the maturity of the temporary drainage bonds, or exchange the other bonds, in the same manner as holders of the temporary drainage bonds.

Subd. 9. **Delivery of bonds as drainage work proceeds.** The board may provide in the contract for the sale of drainage bonds, temporary drainage bonds, and definitive drainage bonds, that the bonds are delivered as the drainage work proceeds and the money is needed, and that interest is paid

only from the date of delivery.

Subd. 10. **Bond recital.** Each drainage bond, temporary drainage bond, and definitive drainage bond must contain a recital that it is issued by authority of and in strict accordance with this chapter. The recital is conclusive in favor of the holders of the bonds as against the county, that the drainage project has been properly established, that property within the county is subject to assessment for benefits in an amount not less than the amount of the bonds, and that all proceedings and construction relative to the drainage systems financed by the bonds have been or will be made according to law.

Subd. 11. **How bonds may be paid.** The board may pay drainage bonds, temporary drainage bonds, and definitive drainage bonds issued under this chapter from any available funds in the county treasury if the money in the common drainage bond redemption fund or in the drainage fund for the issued bonds is insufficient. The county treasury funds that money is transferred from must be reimbursed, with interest at a rate of seven percent per year for the time the money is actually needed, from assessments on the drainage systems or from the sale of drainage funding bonds.

HIST:1985 c 172 s 74; 1Sp1985 c 16 art 2 s 21-23; 1987 c 239 s 117,118

106A.641 DRAINAGE FUNDING BONDS.

Subdivision 1. **Authority.** The board may issue drainage funding bonds under the conditions and terms in this section.

Subd. 2. **Conditions for issuance.** Drainage funding bonds may be issued if:

(1) money in a drainage system account or in the common drainage bond redemption fund will not be sufficient to pay the principal and interest of the drainage bonds payable from the funds and becoming due within one year afterwards; or

(2) the county has paid any of the principal or interest on any of its drainage bonds from county funds other than the fund from which the bonds are payable, or by the issuance of county warrants issued and outstanding.

Subd. 3. **Auditor's certificate.** (a) Before drainage funding bonds are authorized or issued under this section, the county auditor shall first sign and seal a certificate and present the certificate to the board. The board shall enter the certificate in its records. The certificate must state in detail, for each of the several drainage systems:

(1) the amount that will be required to pay an existing shortage under subdivision 2; and

(2) the probable amount that will be required to pay the principal and interest of the county's outstanding drainage bonds that become due within one year afterwards.

(b) The certificate is conclusive evidence that the county has authority to issue bonds under the provisions of this

section in an amount that does not exceed the aggregate amount specified in the auditor's certificate.

Subd. 4. **Issuance of bonds.** When the auditor's certificate is entered in the board's records, the board may issue and sell, from time to time, county drainage funding bonds for the same drainage purposes as the funds listed in the certificate were used. The bonds must be designated drainage funding bonds. The board shall authorize issuance of the drainage funding bonds by resolution. The drainage funding bonds must be sold, issued, bear interest, and obligate the county as provided in section 106A.635 for drainage bonds. The drainage funding bonds must mature serially in annual installments that are payable within 15 years.

Subd. 5. **Application of bond proceeds.** The proceeds of drainage funding bonds that are paid into the treasury must be applied to the purpose for which they are issued.

Subd. 6. **County bond obligation.** Drainage funding bonds are general obligations of the county but are not included in determining the county's net indebtedness under any law.

HIST:1985 c 172 s 75

106A.645 ALLOWANCE AND PAYMENT OF FEES AND EXPENSES.

Subdivision 1. **Fees and expenses.** The fees and expenses in this section are allowed and must be paid for services provided under this chapter.

Subd. 2. **Engineer, engineer's assistants, and other employees.** The compensation of the engineer, the engineer's assistants, and other employees is on a per diem basis and must be set by order of the drainage authority. The order setting compensation must provide for payment of the actual and necessary expenses of the engineer, the engineer's assistants, and other employees, including the cost of the engineer's bond.

Subd. 3. **Viewers.** Each viewer may be paid for every necessary day the viewer is engaged on a per diem basis and for the viewer's actual and necessary expenses. The compensation must be set by the drainage authority.

Subd. 4. **Board members.** Each member of the board may be paid a per diem under section 375.055, subdivision 1, and actual and necessary expenses incurred while actually employed in drainage proceedings or construction, or in the inspection of any drainage system if the board member is appointed to a committee for that purpose.

Subd. 5. **Auditor, attorney for the petitioners, and other county officials.** The county auditor and the attorney for the petitioners must each be paid reasonable compensation for services actually provided as determined by the drainage authority. The fees and compensation of all county officials in drainage proceedings and construction are in addition to other fees and compensation allowed by law.

Subd. 6. **Petitioners' bond.** The cost of the petitioners' bond must be allowed and paid.

Subd. 7. **Payment.** The fees and expenses provided for in this chapter for a drainage project or system in one county must be audited, allowed, and paid by order of the board or for a drainage project or system in more than one county must be audited, allowed, and paid by order of the drainage authority after ten days' written notice to each affected county. The notice must be given by the auditor to the auditors of affected counties. The notice must state the time and location of the hearing and that all bills on file with the auditor at the date of the notice must be presented for hearing and allowance.
HIST:1985 c 172 s 76; 1987 c 239 s 119

106A.651 DRAINAGE SYSTEM ACCOUNT.

Subdivision 1. **Funds for drainage system costs.** The board shall provide funds to pay the costs of drainage projects and systems.

Subd. 2. **Drainage system account.** The auditor shall keep a separate account for each drainage system. The account must be credited with all money from the sale of bonds and bond premiums and all money received from interest, liens, assessments, and other sources for the drainage system. The account must be debited with every item of expense made for the drainage system.

Subd. 3. **Investment of surplus funds.** If a drainage system account or the common drainage bond redemption fund has a surplus over the amount required for payment of obligations presently due and payable from the account or fund, the board may invest any part of the surplus in bonds or certificates of indebtedness of the United States or of the state.

Subd. 4. **Dormant drainage system account transferred to general revenue fund.** If a surplus has existed in a drainage system account for a period of 20 years or more and there have not been any expenditures from the account during the period, the board, by a unanimous resolution, may transfer the surplus remaining in the drainage system account to the county general revenue fund of the county.
HIST:1985 c 172 s 77; 1987 c 239 s 120

106A.655 PAYMENT OF DRAINAGE SYSTEM COSTS.

Subdivision 1. **Payment made from drainage system account.** The costs for a drainage project proceeding and construction must be paid from the drainage system account by drawing on the account.

Subd. 2. **Insufficient funds; transfer from other accounts.** If money is not available in the drainage system account on which the warrant is drawn, the board may, by unanimous resolution, transfer funds from any other drainage system account under its jurisdiction or from the county general revenue fund to the drainage system account. If the board transfers money from another account or fund to a drainage system account, the money plus interest must be reimbursed from

the proceeds of the drainage system that received the transfer. The interest must be computed for the time the money is actually needed at the same rate per year charged on drainage liens and assessments.

Subd. 3. **Warrant on account with insufficient funds; interest on warrant.** If a warrant is issued by the auditor under this chapter and there is not enough money in the drainage system account to pay the warrant when it is presented, the county treasurer shall endorse the warrant "Not paid for want of funds," with the date and sign the endorsement. Interest on the warrant must be at the rate of six percent per year and paid annually from available funds until the warrant is called in and paid by the treasurer. Interest may not be paid on a warrant after money is available to the treasurer to pay the warrants. The warrant is a general obligation of the county issuing the warrant.

HIST:1985 c 172 s 78; 1987 c 239 s 121

106A.661 ESTABLISHMENT OF DRAINAGE SYSTEM ACCOUNTS BY STATE AUDITOR.

Subdivision 1. **State auditor must establish accounts upon application.** A county may apply, by resolution, to the state auditor to examine the accounts and records of any or all drainage systems in the county. The auditor must establish a system of accounts for each drainage system applied for in the county.

Subd. 2. **Payment of expenses.** The compensation and travel and hotel expenses of the examining accountant must be audited, allowed, and paid into the state treasury by the board. The money must be credited to the revolving fund of the state auditor. The county auditor shall apportion the expenses among the drainage systems in the county.

HIST:1985 c 172 s 79

PROCEDURE TO REPAIR DRAINAGE SYSTEMS

106A.701 REPAIRS.

Subdivision 1. **Definition.** The term "repair," as used in this section, means to restore all or a part of a drainage system as nearly as practicable to the same condition as originally constructed and subsequently improved, including resloping of ditches and leveling of waste banks if necessary to prevent further deterioration, realignment to original construction if necessary to restore the effectiveness of the drainage system, and routine operations that may be required to remove obstructions and maintain the efficiency of the drainage system.

Subd. 1a. **Repairs affecting public waters.** Before a repair is ordered, the drainage authority must notify the commissioner if the repair may affect public waters. If the commissioner disagrees with the repair depth, the engineer, a

representative appointed by the director, and a soil and water conservation district technician must jointly determine the repair depth using soil borings, field surveys, and other available data or appropriate methods. Costs for determining the repair depth beyond the initial meeting must be shared equally by the drainage system and the commissioner. The determined repair depth must be recommended to the drainage authority. The drainage authority may accept the joint recommendation and proceed with the repair.

Subd. 2. **Repair of town ditches.** The town board has the power of a drainage authority to repair a town drainage system located within the town.

Subd. 3. **Bridges and culverts.** (a) Highway bridges and culverts constructed on a drainage system established on or after March 25, 1947, must be maintained by the road authority charged with the duty of maintenance under section 106A.525.

(b) Private bridges or culverts constructed as a part of a drainage system established by proceedings that began on or after March 25, 1947, must be maintained by the drainage authority as part of the drainage system. Private bridges or culverts constructed as a part of a drainage system established by proceedings that began before March 25, 1947, may be maintained, repaired, or rebuilt and any portion paid for as part of the drainage system by the drainage authority.

(c) For a repair of a drainage system that has had redetermination of benefits under section 106A.351, the drainage authority may repair or rebuild existing bridges or culverts on town and home rule charter and statutory city roads constructed as part of the drainage system and any portion of the cost may be paid by the drainage system.

Subd. 4. **Construction of road instead of bridge or culvert.** In a repair proceeding under sections 106A.701 to 106A.745, if the drainage authority finds that constructing a private road is more cost-effective or practical than constructing a bridge or culvert, a drainage authority may order a private road to be constructed under section 106A.526, instead of a bridge or culvert.

HIST:1985 c 172 s 80; 1Sp1985 c 16 art 2 s 19; 1987 c 239 s 122,123

106A.705 REPAIR PROCEDURE.

Subdivision 1. **Inspection.** After the construction of a drainage system has been completed, the drainage authority shall maintain the drainage system that is located in its jurisdiction including grass strips under section 106A.021 and provide the repairs necessary to make the drainage system efficient. The drainage authority shall have the drainage system inspected on a regular basis by an inspection committee of the drainage authority or a drainage inspector appointed by the drainage authority.

Subd. 1a. **Grass strip inspection and compliance notice.**

(a) The drainage authority having jurisdiction over a drainage system must inspect the drainage system for violations of section 106A.021. If an inspection committee of the drainage authority or a drainage inspector determines that permanent grass strips are not being maintained in compliance with section 106A.021, a compliance notice must be sent to the property owner.

(b) The notice must state:

(1) the date the ditch was inspected;

(2) the persons making the inspection;

(3) that spoil banks are to be spread in a manner consistent with the plan and function of the drainage system and the drainage system has acquired a grass strip 16-1/2 feet in width or to the crown of the spoil bank, whichever is greater;

(4) the violations of section 106A.021;

(5) the measures that must be taken by the property owner to comply with section 106A.021 and the date when the property must be in compliance; and

(6) that if the property owner does not comply by the date specified, the drainage authority will perform the work necessary to bring the area into compliance with section 106A.021 and charge the cost of the work to the property owner.

(c) If a property owner does not bring an area into compliance with section 106A.021 as provided in the compliance notice, the inspection committee or drainage inspector must notify the drainage authority.

(d) This subdivision applies to property acquired under section 106A.021.

Subd. 2. **Drainage inspector report.** For each drainage system that the board designates and requires the drainage inspector to examine, the drainage inspector shall make a drainage inspection report in writing to the board after examining a drainage system, designating portions that need repair or maintenance of grass strips and the location and nature of the repair or maintenance. The board shall consider the drainage inspection report at its next meeting and may repair all or any part of the drainage system as provided under this chapter. The grass strips must be maintained in compliance with section 106A.021.

Subd. 3. **Inspection report to drainage authority.** If the inspection committee or drainage inspector reports, in writing, to the drainage authority that maintenance of grass strips or repairs are necessary on a drainage system and the report is approved by the drainage authority, the maintenance or repairs must be made under this section.

Subd. 4. **Repairs less than $50,000.** If the drainage authority finds that the estimated cost of repairs and maintenance of one drainage system for one year will be less than the greater of $50,000 or $1,000 per mile of open ditch in the ditch system, it may have the repair work done by hired labor and equipment without advertising for bids or entering into a contract for the repair work.

Subd. 5. **Annual repair assessment levy limits.** The drainage authority may give notice of and hold a hearing on the repair levy before ordering the levy of an assessment for repairs. In one calendar year the drainage authority may not levy an assessment for repairs or maintenance on one drainage system for more than 20 percent of the benefits of the drainage system, $1,000 per mile of open ditch in the ditch system, or $50,000, whichever is greater, except for a repair made after a disaster under subdivision 6 or under the petition procedure.

Subd. 6. **Repair and construction after disaster.** The drainage authority may repair and reconstruct the drainage system without advertising for bids and without regard to the $1,000 per mile of open ditch or $50,000 limitation if:

(1) a drainage system is destroyed or impaired by floods, natural disaster, or unforeseen circumstances;

(2) the area where the drainage system is located has been declared a disaster area by the President of the United States and federal funds are available for repair or reconstruction; and

(3) the public interests would be damaged by repair or reconstruction being delayed.

HIST:1985 c 172 s 81; 1987 c 239 s 124

106A.711 COST APPORTIONMENT FOR JOINT COUNTY DRAINAGE SYSTEMS.

Subdivision 1. **Repair cost statement.** For a joint county drainage system the auditor of a county that has made repairs may present a repair cost statement at the end of each year, or other convenient period after completion, to each affected county. The repair cost statement must show the nature and cost of the repairs to the drainage systems and must be based on the original apportionment of cost following the establishment of the drainage system. If a board approves the repair costs, the statement must be paid to the county submitting the statement.

Subd. 2. **Repair cost statement not paid.** (a) If a county does not pay the repair cost statement, the board of an affected county may petition the joint county drainage authority. The petition must:

(1) show the nature and necessity of the repairs made to the drainage system in the county during the period;

(2) show the cost of the repairs; and

(3) request the drainage authority to apportion the costs, by order, among the affected counties.

(b) When the petition is filed, the drainage authority shall, by order, set a time and location for a hearing to apportion the costs, and direct the auditor to give notice of the hearing to each affected county by publication and notice by mail to its auditor. At or before the hearing, the auditor of each affected county, except the petitioner, shall file with the drainage authority a statement showing:

(1) all repairs made to the drainage system in that county, not previously reimbursed;

(2) the nature and necessity of the repairs; and

(3) the cost of the repairs.

(c) The drainage authority has jurisdiction over the affected counties and shall hear all interested parties. The drainage authority shall determine which repairs were necessary and reasonable and proper costs. For the allowed repairs the drainage authority shall balance the accounts among the affected counties, by charging each county with its proportionate share of the cost of all repairs made and crediting each county with the amount paid for the repairs. The drainage authority shall order a just reimbursement among the affected counties. A certified copy of the order must be filed by the auditor with the auditors of affected counties, and the boards shall make the required reimbursement.

HIST:1985 c 172 s 82

106A.715 PROCEDURE FOR REPAIR BY PETITION.

Subdivision 1. **Repair petition.** An individual or an entity interested in or affected by a drainage system may file a petition to repair the drainage system. The petition must state that the drainage system needs repair. The auditor shall present the petition to the board at its next meeting or, for a joint county drainage system, to the drainage authority within ten days after the petition is filed.

Subd. 2. **Engineer and repair report.** If the drainage authority determines that the drainage system needs repair, the drainage authority shall appoint an engineer to examine the drainage system and make a repair report. The report must show the necessary repairs, the estimated cost of the repairs, and all details, plans, and specifications necessary to prepare and award a contract for the repairs. The drainage authority may give notice and order a hearing on the petition before appointing the engineer.

Subd. 3. **Notice of hearing.** When the repair report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall set a time, by order, not more than 30 days after the date of the order for a hearing on the repair report. At least ten days before the hearing, the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the repair in the repair report.

Subd. 4. **Hearing on repair report.** (a) The drainage authority shall make findings and order the repair to be made if:

(1) the drainage authority determines from the repair report and the evidence presented that the repairs recommended are necessary for the best interests of the affected property owners; or

(2) the repair petition is signed by the owners of at least

26 percent of the property area affected by and assessed for the original construction of the drainage system, and the drainage authority determines that the drainage system is in need of repair so that it no longer serves its original purpose and the cost of the repair will not exceed the total benefits determined in the original drainage system proceeding.

(b) The order must direct the auditor and the chair of the board or, for a joint county drainage system, the auditors of the affected counties to proceed and prepare and award a contract for the repair of the drainage system. The contract must be for the repair in the repair report and as determined necessary by the drainage authority, and be prepared in the manner provided in this chapter for the original drainage system construction.

Subd. 5. **Apportionment of repair cost for joint county drainage system.** For the repair of a joint county drainage system, the drainage authority shall, by order, apportion the repair cost among affected counties in the same manner required in the original construction of the drainage system.

Subd. 6. **Repair by resloping ditches, leveling waste banks, installing erosion control and removing trees.** (a) For a drainage system that is to be repaired by resloping ditches, leveling waste banks, installing erosion control measures, or removing trees, before ordering the repair, the drainage authority must appoint viewers to assess and report on damages and benefits if it determines that:

(1) the resloping, leveling, installing erosion control measures or tree removal will require the taking of any property not contemplated and included in the original proceeding for the establishment of the drainage system;

(2) any waste bank leveling will directly benefit property where the bank leveling is specified; and

(3) the installation of erosion control measures will aid the long-term efficiency of the drainage system.

(b) The viewers shall assess and report damages and benefits as provided by sections 106A.315 and 106A.321. The drainage authority shall hear and determine the damages and benefits as provided in sections 106A.325, 106A.335, and 106A.341. The hearing shall be held within 30 days after the property owners' report is mailed. Damages must be paid as provided by section 106A.315 as a part of the cost of the repair, and benefits must be added to the benefits previously determined as the basis for the pro rata assessment for the repair of the drainage system for the repair proceeding only.

HIST:1985 c 172 s 83; 1986 c 444; 1987 c 239 s 125

106A.721 REPLACEMENT AND HYDRAULIC CAPACITY OF BRIDGES AND CULVERTS.

Subdivision 1. **Report on hydraulic capacity.** If the engineer determines in a drainage system repair proceeding that because of added property under section 106A.741 or otherwise, a

bridge constructed or replaced or culvert installed or replaced as a part of a drainage system provides inadequate hydraulic capacity for the efficient operation of the drainage system to serve its original purpose, the engineer shall make a hydraulic capacity report to the drainage authority. The hydraulic capacity report must include plans and specifications for the recommended replacement bridges and culverts, the necessary details to make and award a contract, and the estimated cost.

Subd. 2. **Notice.** When the hydraulic capacity report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall, by order, set a time not more than 30 days after the date of the order, for a hearing on the report. At least ten days before the hearing, the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the repair in the repair report. The notice may be given in conjunction with and as a part of the repair report notice, but the notice must specifically state that increasing the hydraulic capacity will be considered by the drainage authority at the hearing.

Subd. 3. **Report hearing.** At the hearing on the hydraulic capacity report, the drainage authority shall hear all interested parties. If the drainage authority finds that existing bridges and culverts provide insufficient hydraulic capacity for the efficient operation of the drainage system as originally constructed or subsequently improved, the drainage authority shall make findings accordingly, and may order that the hydraulic capacity be increased by constructing bridges or installing culverts of a sufficient capacity. The drainage authority shall determine and include in the order the type and plans for the replacement bridges or culverts. The order must direct the state, political subdivision, railroad company, or other entity to construct bridges or culverts required by the order for its road or right-of-way within a reasonable time stated in the order. The auditor shall notify the state, political subdivision, railroad company, or other entity to construct the bridges and culverts in accordance with the order.

Subd. 4. **Construction not completed within specified time.** If the work is not done within the time specified, the drainage authority may order the bridges and culverts built and the cost collected as an assessment for benefits.

Subd. 5. **Request for culvert or bridge to be installed as part of repair.** If a political subdivision, railroad company, or other entity, at the hearing or when notified to construct a bridge or install a culvert, requests that the bridge or culvert be installed as part of the repair of the drainage system, the drainage authority may, by order, direct the cost of the construction and installation assessed and collected from the political subdivision, railroad company, or other entity in the manner provided by section 106A.731.

HIST:1985 c 172 s 84

106A.725 COST OF REPAIR.

All fees and costs incurred for proceedings relating to the repair of a drainage system, including inspections, engineering, viewing, and publications, are costs of the repair and must be assessed against the property and entities benefited.

HIST:1985 c 172 s 85

106A.728 APPORTIONMENT OF REPAIR COSTS.

Subdivision 1. **Generally.** The cost of repairing a drainage system shall be apportioned pro rata on all property and entities that have been assessed benefits for the drainage system except as provided in this section.

Subd. 2. **Additional assessment for agricultural practices on grass strip.** (a) The drainage authority may, after notice and hearing, charge an additional assessment on property that has agricultural practices on or otherwise violates provisions related to the permanent grass strip acquired under section 106A.021.

(b) The drainage authority may determine the cost of the repair per mile of open ditch on the ditch system. Property that is in violation of the grass requirement shall be assessed a cost of 20 percent of the repair cost per open ditch mile multiplied by the length of open ditch in miles on the property in violation.

(c) After the amount of the additional assessment is determined and applied to the repair cost, the balance of the repair cost may be apportioned pro rata as provided in subdivision 1.

Subd. 3. **Soil loss violations.** The drainage authority after notice and hearing may make special assessments on property that is in violation of a county soil loss ordinance.

HIST:1987 c 239 s 126

106A.731 ASSESSMENT; BONDS.

Subdivision 1. **Repair cost of assessments.** If there is not enough money in the drainage system account to make a repair, the board shall assess the costs of the repairs on all property and entities that have been assessed benefits for the drainage system.

Subd. 2. **Number of installments.** The assessments may be paid in annual installments specified in the assessment order. If the assessments are not more than 50 percent of the original cost of the drainage system, the installments may not exceed ten. If the assessments are greater than 50 percent of the original cost of the drainage system, the board may order the assessments to be paid in 15 or less installments.

Subd. 3. **Interest on assessments.** If the order provides for payment in installments, interest on unpaid assessments from the date of the order for assessments must be

set by the board in the order. The interest rate may not exceed seven percent per year and must be collected with each installment.

Subd. 4. **Collection of assessments.** If the assessment is not payable in installments, a lien does not need to be filed, and the assessment, plus interest from the date of the order to August 15 of the next calendar year, must be entered on the tax lists for the year. The assessment and interest are due and payable with and as a part of the real estate taxes for the year. If an assessment is levied and payable in installments, the auditor shall file for the record in the county recorder's office an additional tabular statement in substance as provided in section 106A.601, and all the provisions of sections 106A.605, 106A.611, and 106A.615 relating to collection and payment must apply to the assessment. Upon the filing of the tabular statement, the installment and interest are due and payable and must be entered on the tax lists and collected in the same manner as the original lien.

Subd. 5. **Conditions to sell bonds for repair.** If a contract for drainage system repair has been entered into under this chapter or the repair has been ordered to be constructed by hired labor and equipment, and the board has ordered the assessments to be paid in installments, the board may issue and sell bonds, as provided by section 106A.635.

Subd. 6. **Repair of state drainage system when no benefits were assessed.** For the repair of a drainage system established by the state where benefits were not assessed to the property, the drainage authority shall proceed to appoint viewers to determine the benefits resulting from the repair and collect assessments for the repair as provided in this chapter.

HIST:1985 c 172 s 86; 1987 c 239 s 127

106A.735 DRAINAGE SYSTEM REPAIR FUND.

Subdivision 1. **Authority and limits of fund.** To create a repair fund for a drainage system to be used only for repairs, the drainage authority may apportion and assess an amount against all property and entities assessed for benefits in proceedings for establishment of the drainage system, including property not originally assessed and subsequently found to be benefited according to law. The fund may not exceed 20 percent of the assessed benefits of the drainage system or $40,000, whichever is greater. If the account in a fund for a drainage system exceeds the larger of 20 percent of the assessed benefits of the drainage system or $40,000, assessments for the fund may not be made until the account is less than the larger of 20 percent of the assessed benefits or $40,000. Assessments must be made pro rata according to the determined benefits. Assessments may be made payable, by order, in equal annual installments. The auditor shall file a tabular statement as provided in section 106A.731, subdivision 4, with the county recorder. Assessments must be collected as provided in section

106A.731.

Subd. 2. **Transfer of drainage system.** If a drainage system within the county has been taken over by a watershed district under section 112.65, subdivision 1, or if responsibility for repair and maintenance of the drainage system has been assumed by any other governing body, the board may transfer any remaining surplus of the drainage system repair fund to the repair fund of the watershed district or to the appropriate fund of any existing governing body having responsibility for repair and maintenance of the drainage system.

HIST:1985 c 172 s 87

106A.741 INCLUSION OF PROPERTY THAT HAS NOT BEEN ASSESSED BENEFITS.

Subdivision 1. **Consideration by engineer.** In a proceeding to repair a drainage system, if the engineer determines or is made aware that property that was not assessed for benefits for construction of the drainage system has been drained into the drainage system or has otherwise benefited from the drainage system, the engineer shall submit a map with the repair report. The map must show all public and private main ditches and drains that drain into the drainage system, all property affected or otherwise benefited by the drainage system, and the names of the property owners to the extent practicable. The property owners must be notified of the hearing on the repair report at least ten days before the hearing. The auditor must give notice of the time and location of the hearing by mail.

Subd. 2. **Appointment of viewers.** At the hearing on the repair report, if the drainage authority determines that property not assessed for benefits for the construction of the drainage system has been benefited by the drainage system, the drainage authority shall appoint viewers as provided by section 106A.305 before the repair contract is awarded. The viewers shall determine the benefits to all property and entities benefited by the original construction of the drainage system and not assessed for benefits arising from its construction. The viewers shall make a viewers' repair report to the drainage authority as provided by section 106A.315. When the viewers' repair report is filed, the auditor shall give notice of a hearing as required by section 106A.325 and the drainage authority has jurisdiction of each tract of property described in the viewers' report as provided in section 106A.331.

Subd. 3. **Viewers' repair report hearing.** At the hearing on the viewers' repair report, the drainage authority shall hear all interested parties and determine the benefits to property and entities benefited by the original construction of the drainage system and not assessed for benefits.

Subd. 4. **Appeal of assessment order.** A person may appeal from the order determining the assessments as provided by section 106A.091.

Subd. 5. **Property benefited in hearing order included**

in future proceedings. For the repair of the drainage system under this section that included the property that was not assessed and in all future proceedings relating to repairing, cleaning, improving, or altering the drainage system, the property benefited in the viewers' report hearing is part of the property benefited by the drainage system and must be assessed, in the same manner provided for the assessment of the property originally assessed for and included in the drainage system.
HIST:1985 c 172 s 88; 1987 c 239 s 128

106A.745 COST OF REPAIR EXCEEDING BENEFITS.

If the cost of the repair of a drainage system exceeds the benefits determined in the original proceedings for the establishment of the drainage system, the requirements of section 106A.215 for improvements of drainage systems apply if:

(1) the repair will result in the drainage of 100 or more acres of public waters in Anoka county;

(2) the public waters have existed for 15 or more years;

(3) the drainage system has not been substantially repaired for more than 25 years; and

(4) the physical repair was not started before July 1, 1980.
HIST:1985 c 172 s 89

CONSOLIDATION, DIVISION, AND ABANDONMENT OF DRAINAGE SYSTEMS

106A.801 CONSOLIDATION OR DIVISION OF DRAINAGE SYSTEMS.

Subdivision 1. **Authority to consolidate or divide.** After the benefited area of a drainage system has been redetermined by the drainage authority under section 106A.351 or in connection with drainage proceedings, the drainage authority may divide one system into two or more separate systems, consolidate two or more systems, transfer part of one system to another, or attach a part of a system that has been abandoned as provided in section 106A.805 or 106A.811 to another system to provide for the efficient administration of the system consistent with the redetermination of the benefited area.

Subd. 2. **Initiation of action.** The consolidation or division may be initiated by the drainage authority on its own motion or by any party interested in or affected by the drainage system filing a petition. If the system is under the jurisdiction of a drainage authority, the petition must be filed with the auditor. If the system is under the jurisdiction of a watershed board, the petition must be filed with the secretary of the board.

Subd. 3. **Hearing.** (a) When a drainage authority or watershed board directs by resolution or a petition is filed, the drainage authority in consultation with the auditor or secretary shall set a time and location for a hearing. The auditor or secretary shall give notice by publication to all persons interested in the drainage system. The drainage authority may consolidate or divide drainage systems, by order,

if it determines that the division of one system into two or more separate systems, the consolidation of two or more systems, the transfer of part of one system to another, or the attachment of a previously abandoned part of a system to another system:

(1) is consistent with the redetermination of the benefited areas of the drainage system;

(2) would provide for the efficient administration of the drainage system; and

(3) would be fair and equitable.

(b) An order to consolidate or divide drainage systems does not release property from a drainage lien or assessment filed for costs incurred on account of a drainage system before the date of the order.

HIST:1985 c 172 s 90

106A.805 REMOVAL OF PROPERTY FROM AND PARTIAL ABANDONMENT OF A DRAINAGE SYSTEM.

Subdivision 1. **Petition.** After the construction of a drainage system, the owner of benefited property may petition the drainage authority to remove property from the drainage system or abandon any part of the drainage system that is not of public benefit and utility and does not serve a substantial useful purpose to property remaining in the system if:

(1) waters are diverted from property assessed for benefits so that the drainage from the property does not use or affect the drainage system; or

(2) a dam authorized by law is constructed in the drainage system so that the property above the dam cannot use or receive benefits from the drainage system.

Subd. 2. **Filing.** If the drainage system is under the jurisdiction of a drainage authority, the petition must be filed with the auditor. If the system is under the jurisdiction of a watershed district, the petition must be filed with the secretary of the district.

Subd. 3. **Hearing.** (a) When the petition is filed, the drainage authority in consultation with the auditor or the secretary shall set a time and location for a hearing on the partial abandonment petition and shall give notice by publication of the hearing to all persons interested in the drainage system.

(b) At the hearing, the drainage authority shall make findings and shall direct, by order, that the petitioners' property is removed from the drainage system if the drainage authority determines:

(1) that the waters from the petitioners' property have been diverted from the drainage system, or that a dam has been lawfully constructed and the property cannot use the drainage system;

(2) that the property is not benefited by the drainage system and does not use or affect the drainage system; and

(3) that removing the property from the drainage system

will not prejudice the property owners and property remaining in the system.

(c) The drainage authority shall make findings and direct, by order, that part of the drainage system be abandoned if the drainage authority determines that part of the drainage system does not serve a substantial useful purpose to any property remaining in the system and is not of a substantial public benefit and utility.

Subd. 4. **Effect of removing property from drainage system.** The property that has been removed from the drainage system is not affected by the drainage system at any later proceeding for the repair or improvement of the drainage system and a drainage lien or assessment for repairs or improvements may not be made against the property that has been removed on or after the date of the order.

Subd. 5. **Liens and assessments on property removed or abandoned.** An order under this section does not release the property from a drainage lien filed on account of the drainage system before the date of the order. An order under this section does not release the property from any assessment or a drainage lien filed on or after the date of the order for costs incurred on account of the drainage system before the date of the order.

HIST:1985 c 172 s 91

106A.811 ABANDONMENT OF DRAINAGE SYSTEM.

Subdivision 1. **Drainage lien payment period must expire.** After the period originally fixed or subsequently extended to pay the assessment of the drainage liens expires, a drainage system may be abandoned as provided in this section.

Subd. 2. **Petitioners.** A petition must be signed by at least 51 percent of the property owners assessed for the construction of the drainage system or by the owners of not less than 51 percent of the area of the property assessed for the drainage system. For the purpose of the petition, the county is the resident owner of all tax-forfeited property held by the state and assessed benefits for the drainage system, and the board may execute the petition for the county as an owner.

Subd. 3. **Petition.** The petition must designate the drainage system proposed to be abandoned and show that the drainage system is not of public benefit and utility because the agricultural property that used the drainage system has been generally abandoned or because the drainage system has ceased to function and its restoration is not practical.

Subd. 4. **Filing petition; jurisdiction.** If all property assessed for benefits in the drainage system is in one county, the petition must be filed with the auditor unless the petition is signed by the board, in which case the petition must be made to the district court of the county and filed with the court administrator. If property assessed for benefits is in two or more counties, the petition must be filed with the

auditor. When the petition is filed, the drainage authority in consultation with the auditor, or the court administrator with the approval of the court, shall set a time and location for a hearing on the petition. The auditor or court administrator shall give notice by publication of the time and location of the abandonment hearing to all persons interested. The drainage authority or the district court where the petition is properly filed has jurisdiction of the petition.

Subd. 5. **Abandonment hearing.** (a) At the hearing, the drainage authority or court shall examine the petition and determine whether it is sufficient and shall hear all interested parties.

(b) If a property owner assessed benefits for the drainage system appears and makes a written objection to the abandonment of the drainage system, the drainage authority or court shall appoint three disinterested persons as viewers to examine the property and report to the drainage authority or court. The hearing must be adjourned to make the examination and report and a date set to reconvene. The viewers, if appointed, shall proceed to examine the property of the objecting owner and report as soon as possible to the drainage authority or court with the description and situation of the property and whether the drainage system drains or otherwise affects the property.

(c) When the hearing is reconvened, the drainage authority or court shall consider the viewers' report and all evidence offered, and:

(1) if the drainage authority determines that the drainage system serves any useful purpose to any property or the general public, the petition for abandonment must be denied; or

(2) if the drainage authority determines that the drainage system does not serve any useful purpose to any affected property and is not of public benefit and utility, the drainage authority or court shall make findings and shall, by order, abandon the drainage system.

Subd. 6. **Effect of abandonment.** After abandonment of a drainage system, a repair petition for the drainage system may not be accepted and the responsibility of the drainage authority for the maintenance of the drainage system ends.

HIST:1985 c 172 s 92; 1Sp1986 c 3 art 1 s 82; 1987 c 239 s 129-131

DRAFT MINNESOTA GROUNDWATER PROTECTION STRATEGY

BWSR Small Group Discussions for January 27, 1988 Meeting

Because they deal most closely with possible BWSR roles in groundwater protection, the following proposed recommendations were selected from the stragegy as topics for small group policy discussions.

1. Draft Recommendation: "Funds should be made available to encourage those counties not currently developing county water plans to do so. Implementation funds should be made available for those counties which have completed their county water plans. Review of county water plans should include aquifer-specific protection measures which cross county lines."

   Questions to Consider:

   A. Will additional funding motiviate counties to start planning, if they haven't begun already?

   B. How can the state best insure implementation of completed county water plans?

   C. Will BWSR take the lead in the review process to ensure that aquifer which cross county lines get similiar protection?

2. Draft Recommendation: "Local SWCDs should be encouraged to allow cost-share money to be used for feedlot upgrade."

   Questions to Consider:

   A. What is the status of PCA feedlot regulations and enforcement?

   B. Should SWCDs have a role in groundwater protection?

   C. What other groundwater protection practices should qualify for SWCD cost-share money?

3. Draft Recommendation: "A mechanism should be established which would facilitate forming a committee of local government reps which would be used to provide input and comment to developing state and federal groundwater programs. This could possibly be done through the BWSR."

   Questions to Consider:

   A. What federal and state groundwater programs are likely to develop in the next few years?

   B. Should BWSR itself be the conduit for local input on groundwater?

   C. Should BWSR set up outside advisory committees to funnel input to the state and federal government on ground water?

Loni Kemp
1/21/88

JAN 2 8 1988

STATE OF MINNESOTA

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January 23, 1988

To: Board of Water and Soil Resources

From: Chris Hofstede, Board Representative

Subject: Actions in Isanti (update from 11/19/87 attached)

On December 15th the Isanti Board passed a resolution approving the action plan as attached. The District or I have taken the following action since their approval of their action plan:

12/15/87 District: passed action plan;

12/15/87 District: directed District Technician to log all activities in preparation of performance evaluation;

12/15/87 District: hired Chris Hanson as Administrative Assistant (position description is same as BWSR District Manager standard);

12/16/87 Board Rep: worked with Laurence Collin on minutes of the 12/15/87 Board meeting and indicated that they needed to send the approved action plan to BWSR, St. Paul, and begin working on the action items in the plan as soon as possible. Recommendations will be based on "action" and not merely the existence of an "action plan";

1/4/88 Administrative Assistant began work;

1/4/88 District: Personnel Committee gave new employee an orientation:

1/4/88 Board Rep: talked to Administrative Assistant Hanson and made an appointment for formal orientation;

1/4/88 District: Personnel Committee attempted to evaluate the District Technician (see attached letter dated 1/5/88);

1/7/88	Board Rep: talked with Administrative Assistant Hanson and Board members Collin and Earle Stoeckle about the need to re-evaluate the District Technician and the District's activities;
1/8/88	Board Rep: met with Administrative Assistant Hanson to review materials in the operational handbook;
1/14/88	District: Administrative Assistant Hanson met BWSR staff in St. Paul and received training on bookkeeping (NOTE minimal training due to Dennis Pond's illness);
1/15/88	District: Administrative Assistant Hanson met with neighboring clerk to review District procedures;
1/19/88	Board Rep: talked to Administrative Assistant Hanson in preparation for District Board meeting and performance evaluation:
1/19/88	District: evaluated Administrative Assistant and District Technician on the basis of their respective Position Annual Plans:
1/21/88	Board Rep: discussed performance reviews over the telephone with Administrative Assistant Hanson and told her they would need to be in St. Paul by 1/26/88.

I have told the Chairman and Administrative Assistant that I would like to communicate with them at least once a week until I feel confident with their program direction.

It appears that the Isanti Board is doing their best to follow their action plan as written. I would suggest that the RIM service grant for Isanti be processed and that actions be monitored over the next five months to make determinations for FY 89 grants.

Encs.

cc: Don Warner, NE BWSR member
Earle Stoeckle, Isanti Chairman

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To: Board of Water and Soil Resources

From: Chris Hofstede, NE Board of Water and Soil Resources Representative

Subject: Recommended Actions on Isanti Violations

Date: November 19, 1987

The Isanti Soil and Water Conservation District has violated State laws and State rules relating to the Cost-Share program since 1984. In all likelyhood they have been in violation prior to 1984, however, my records only go back to February of 1984 (I began service for you in the northeast region in January 1984).

The enclosed materials include ten pieces of formal correspondence to Isanti indicating violations, recommendations on how to correct their errors and their response if received. Please note that the formal correspondence is only a fraction of the correspondence between the Board of Water and Soil Resources and Isanti on these issues. I, other Board of Water and Soil Resources staff and the old State Board have been extremely lenient in giving Isanti every opportunity to correct their errors. Legal action by the State Board on August 19, 1987 was most tolerant in allowing Isanti to repay misappropriated FY-86 and 87 funds with future Cost-Share allocations rather than from county funds. Isanti questioned the State Boards action of August 19,1987 in regard to FY-86. Although the contracts had been previously audited by three Soil and Water Conservation Board staff on seperate occasions I requested Isanti to submit photocopies of the FY-86 contracts in question. Upon receipt of those contracts I found signatures where required. I further found that those signatures were forgeries. At this point we consulted the Attorney General's office and asked for legal opinion on what action could or should be taken (see attached letter). I immediately proceeded to pass the forgery information on to the Isanti Board. The Isanti Board has since been in contact with their county attorney and finally appear to be taking these issues and implications of these issues seriously. As indicated in the Attorney General's letter misappropriation and illegal

activities would indicate "inappropriate" assistance and that the State Board has the authority to withold all State funds.

At the request of the Isanti county attorney I have made the following recommendations for action:

LETTER OF RESIGNATION

A copy of the letter of resignation from Barbara Krueger admitting forgery of FY-86 contracts and mismanagement of the Cost-Share program should be submitted to the Board of Water and Soil Resources.

ACTION PLAN

The Isanti SWCD personnel committee should develope position descriptions, position annual plans and evaluation procedures consistant with the recommended State format (see Operational Handbook pages G23-47).

The SWCD personnel committee should conduct formal evaluations of staff on a monthly basis until a District Manager is hired. The District Manager should meet the minimum recommended qualifications as recommended on pages G26, G30 and G31 of the Operational Handbook. Upon placement of a District Manager evaluations of district staff should be carried out by the District Manager on a quarterly basis and reviewed by the personnel committee. The District Manager position should be evaluated by the personnel committee on a quarterly basis for the first two years. The above mentioned evaluations should be submitted to the Board of Water and Soil Resources for review.

I recommend the State Board should continue funding State programs in Isanti IF and ONLY IF the above action is taken by the Isanti Soil and Water Conservation District. I further recommend that the State Board should uphold it's previous action to retrieve misappropriated funds from FY-86 and 87. There is no doubt as to the malfeasance of the Isanti Soil and Water Conservation District Board (also agreed to by three Isanti Board members). Malfeasance action would be very difficult and may prove ineffective in dealing with the base problem. I have recommended to the Isanti Soil and Water Conservation District Board that they strictly follow parliamentary procedures and exercise control over individual members office involvement.

CH/wc

STATE OF MINNESOTA
SOIL AND WATER CONSERVATION BOARD
DEPARTMENT OF AGRICULTURE
90 W. Plato Blvd.
St. Paul, MN 55107
Telephone: (612) 296-3767

January 5, 1988

Regional Offices

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To: Chairperson, Personnel Committee, Isanti SWCD

From: Chris Hofsted, BWSR Rep

Subject: Performance Evaluation

I am in receipt of your performance evaluation for Mark DeMuth and am confused. The evaluation form lists objectives 1 through 4 which does not correspond to the position description I have on file that lists Duties and Responsibilities 1 through 6. I have enclosed a copy of the Position Description and Position Annual Plan that I have on file. If my file is incorrect, please send me a current Position Description and Position Annual Plan. If my files are correct, please re-evaluate your technician.

In relation to the evaluation, the most important sections are the 1) comments, 2) recommended action and 3) training needs. You need to make comments in the comments section for two reasons; first, so you have clear, undisputable communications with the employee, and second, so there is a sound record on file. Please note the *starred items on the enclosed materials as examples. Where the Position Annual Plan indicates working with a particular group or individual, they should be contacted occasionally to see if the indicated action is working well:

i.e. 1c) ask DNR hydrologist if water permits are O.K. and in on time;
1d) ask D.C. the status on CRP plans;
1e) ask DNR hydrologist about the well monitoring program.

Now that you have a district administrator on board she could be assigned to make some of the necessary calls.

Please let me know if you have any questions or would like to discuss these issues in more depth.

Encs.

cc: Jim Birkholtz, BWSR Acting Director

STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES

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January 27, 1988

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To: BWSR Members

From: Mark Nelson, Board Representative

Subject: Metropolitan Erosion and Sediment Control Issue/509 Process

At the December 23 meeting, I presented a slide show on development site erosion control. Currently, in the Twin Cities area, a uniform program for accomplishing development site erosion control does not exist.

The BWSR can guide the development of this program by offering leadership through policy and rules or legislative directiion. By guiding the process the BWSR can assure that erosion control sections of Water Management Organization plans will be implemented. Clear direction from the BWSR can clarify roles for development erosion control, i.e., who is responsible?

Staff recommends the following items as options to guide development of a Metropolitan Erosion and Sediment Control Program:

1. When 509 plans are forwarded for BWSR final approval, staff completes a preliminary review. During this review, we can strongly urge adoption of the BWSR program which is based upon general criteria. They are as follows:

   GC - 1: Stablization of Denuded Areas and Soil Stockpiles.
   GC - 2: Establishment of Permanent Vegetation.
   GC - 3: Protection of Adjacent Properties.
   GC - 4: Timing and Stabilization of Sediment Trapping Measures.
   GC - 5: Sediment Basin.
   GC - 6: Cut and Fill Slopes:
   GC - 7: Stormwater Management Criteria for Controlling Off-Site Erosion.
   GC - 8: Stabilization of Waterways and Outlets.
   GC - 9: Storm Sewer Inlet Protection.
   GC - 10: Working in or Crossing Waterbodies.
   GC - 11: Underground Utility Construction.
   GC - 12: Construction Access Routes.
   GC - 13: Disposition of Temporary Measures.
   GC - 14: Maintenance of Practices.

   Staff can make this information available to WMOs now.

AN EQUAL OPPORTUNITY EMPLOYER

In review process add when feasible

2. Rules can be adopted for the 509 planning process. Rules take time. The adoption of the E & S Control Program can be dealt with now by persuasion and then be included in the rules as a requirement for WMO plan updates.

3. Legislation could be pursued mandating an E & S Control Program at the WMO or county level. The board will need to secure cooperation from local entities for passage of legislation. More lead time would be involved.

Inherent in any of the options will be the need for the BWSR to have communications with all affected parties. Meetings between WMOs and SWCDs are in the preliminary stages of planning and will be a good forum to discuss this issue.

At this meeting Board discussion is needed to develop direction on how to proceed. Staff then can develop resolutions for consideration at the next meeting.

MN:lb

Senator Dave Durenberger

U.S. Senator for Minnesota

This document provides a summary description of the Ground Water Protection Act, legislation to be introduced by Senator Dave Durenberger (R-Mn) in the United States Senate.

Ground Water Protection Act

Goals

The principal goal of the Ground Water Protection Act (GWPA) is to protect the physical, chemical and biological integrity of the nation's ground water resources and to ensure that they are not degraded in any way that may have any adverse effect on the health of persons or the environment. This is a non-degradation goal. It is similar to the goal contained in the Clean Water Act which protects the surface waters from pollution. This goal applies to all waters, whatever their current use.

Additional goals contained in the legislation are to:

* adequately map and identify ground water resources;
* assist state and local government programs to protect ground water;
* provide health protection for private drinking water wells; and
* conserve ground water supplies.

Policy

Consistent with the non-degradation goal, it shall be the policy of the United States Government to provide a minimum level of protection for all ground water resources. This policy would specifically prohibit any Federal classification of ground water that would lower the level of protection afforded by current law. The Environmental Protection Agency has been developing a ground water classification system and is expected to issue guidance on the use of that classification system in regulatory decisions in the next few months. That guidance would be explicitly overturned by this legislation.

In addition, the bill would encourage broad flexibility for States implementing ground water protection programs and would provide that States might set more stringent standards than would result from adoption of the Ground Water Protection Act. Nothing in the legislation would disrupt water appropriations policies or water rights decisions made by the States.

All Federal agencies with jurisdiction over potential sources of ground water contamination would be required to abide

by State and local government standards, regulations and requirements.

Prevention

The Ground Water Protection Act would use a series of strategies to protect ground water resources from potential sources of contamination. These strategies combine various regulatory approaches -- permits, water quality standards and technology controls -- at both the Federal and State level in programs that are intended to provide each State with flexibility to tailor the regulatory tools to the ground water contamination problems found in that State.

Discharge Permits

Each facility which discharged contaminants to ground water would be required to obtain a discharge permit. This requirement would not be effective until 1990. Applications would be required by July of 1988. The term discharge is defined very broadly to include most sources of contamination -- from underground storage tanks to solid waste landfills to surface mining.

These permits would be much like permits that are required of industrial and municipal dischargers under the Clean Water Act, the so-called NPDES permits. Like the Clean Water program, EPA will be authorized to delegate the administration of the permit program to the States.

The permits will have a term of five years. They will limit the amount of any contaminants that may be discharged to a level that assures that ground water will continue to be safe for human consumption and as a source of recharge to surface waters.

General Permits

There are significant differences between ground water and surface water pollution. One major difference is the number of sources that are potential polluters. Under the Clean Water Act, EPA and the States have issued about 60,000 permits. But there are millions of potential sources of contamination for ground water -- 17 million septic tanks, 4 million underground storage tanks, 2 million miles of pipelines, 200 thousand surface impoundments, and thousands of oil and gas wells and surface mines. A facility-by-facility permitting process would be extremely cumbersome for some of these sources in some states.

To solve the problem of numbers, the Ground Water Protection Act will allow States to issue general permits covering classes of facilities that are in compliance with a general State regulatory program.

The Environmental Protection Agency will publish a guidance document for each of several potential sources of ground water contamination. That guidance document will outline the minimum

elements of a State program that would be adequate to protect human health and the environment from that specific source of contamination. States may then develop regulatory programs for those sources which are numerous or of particular concern in that State. If the State program is approved by EPA, facilities which are located in that State and are in compliance with the State's regulations will not be required to obtain a discharge permit from the Federal government.

The guidance established by EPA would not require the use of best available technology for any particular source, but would establish a level of care that was practicable and which would be appropriate for application in all areas of the nation. Guidance would cover such items as design, siting, construction, installation, operation, maintenance, monitoring, record-keeping and closure of facilities that have the potential to contaminate ground water resources.

Guidance would be issued for the following sources of contamination: septic tanks; surface impoundments; landfills; oil and gas operations; mining; injection wells; wastewater collection and treatment systems; abandoned wells; pesticide applications; fertilizer applications; irrigation practices; urban runoff; feedlots; and bulk storage facilities.

Aquifer Protection Areas

For some especially vulnerable ground water resources, the protection afforded by the discharge and general permit program will not be sufficient to prevent contamination. In those cases, State and local governments will have another option available under this legislation. In addition to the guidance documents discussed above which establish a practicable level of protection, EPA will also promulgate regulations for the same categories of sources which establish best available technology requirements.

These BAT requirements will not apply to all facilities, but only to facilities located within the boundaries of special aquifer protection areas designated by the States and only if the State believes that level of protection is necessary for a particularly vulnerable resource. These special aquifer protection areas would be similar to the protection areas established for "sole source" aquifers and "wellhead protection" areas under the Safe Drinking Water Act. The boundaries of these areas would be established by the State and the management of the area would be delegated to a local government management district which would receive financial assistance directly from the Federal government. Funds for this program would come from a tipping fee on the disposal of solid waste which would be put into a dedicated trust fund that could only be used to support these local programs.

Ground Water Quality Standards

The legislation would establish an independent Ground Water Protection Standards Board that would set standards for the contaminants that are known to occur in ground water supplies. These numerical standards would be set at the level necessary to protect human health or sensitive environmental resources from any adverse effects.

Facilities receiving discharge permits and State programs for general permits would be required to demonstrate that the ground water standards would not be exceeded by the operation of a facility or category of facilities under the permit or program.

To assure that the data necessary to set standards is available, EPA would be given authority to require toxicity and health testing by the manufacturers of the chemicals for any contaminant found in ground water.

Detection

Water Quality Inventory

The United States Geological Survey would be given authority to conduct an ongoing survey of the nation's ground water to determine its overall quality and to identify specific problems of concern. This program would be in addition to authorizations for the existing Federal-State cooperative program and the Regional Aquifer System Analysis which provide data on the quantity and quality of ground water for specific regions or aquifers in the nation.

Well Drilling

Each State which received a Federal grant under this legislation would be required to implement a licensing program for water well drilling. This program would collect information on each new water well drilled and integrate that data into a national computer network on ground water quality and supply. Each new well would be tested for quality, before it could be put into service and wells drawing contaminated water would be closed and filled immediately.

Drinking Water Supply

The Ground Water Protection Act includes a new program to provide assistance in testing the water quality of privately owned wells. Under the Safe Drinking Water Act all public wells are monitored for potential contaminants. But the drinking water law does not apply to the nearly 14 million private wells serving one in every ten Americans. A test for all potential contaminants at one well can cost from $500 to $1,000. The GWPA sets up a cooperative program to be administered by the States that will provide a Federal contribution for well testing costs. The Federal contribution will be 50%, the State 30% and the well owner is required to contribute 20% of the cost. States may

limit eligibility for this program to low income families or in areas where ground water contamination is expected to be a significant and recurring problem.

Data Collection and Management

EPA and USGS are authorized to work together to develop national protocols and procedures for sampling and analyzing ground water supplies. The agencies would also develop an integrated data management network to make ground water information more widely available and to routinize the format for reporting and storing such information.

Correction

Water Well Replacement

The Ground Water Protection Act contains a new program to replace water supplies that have been lost due to contamination. This program is based on legislation that was recently adopted in Wisconsin. It is available for both private wells and for wells owned by small communities. Financing would be part Federal and part State. The well owner would be required to pay 20% of the cost or $500 whichever is less. Replacement would not be available for wells contaminated by nitrates or by biological contaminants. The costs of replacement could be recovered from the person responsible for the contamination.

Corrective Action

The legislation contains new provisions requiring those who cause contamination to take corrective action. Owners and operators of facilities which are potential sources of contamination would be required to maintain insurance for cleanup costs, property damage and bodily injury. Corrective action would be defined to include removal of any immediate threats to health, steps to immediately stop contaminants from spreading, cleanup of the ground water resource and compensation for personal and economic losses.

Corrective Action Standards

The Ground Water Protection Standards Board established by this legislation would be authorized to issue numerical ground water correction standards. These standards would be contaminant specific and would be established according to the application of best available treatment technologies to specific hydrogeologic settings. The standards would apply under this legislation and would also be available for use in taking corrective action under other EPA programs including Superfund and RCRA.

Research

EPA R&D

The Ground Water Protection Act authorizes a new research and development program on ground water contamination to be run by EPA. The program would be coordinated through a media-specific ground water research committee which would integrate the ground water concerns of the various offices at EPA, including the offices for water, drinking water, solid waste and emergency response. The committee would prepare an annual research plan which would match upcoming ground water policy decisions with available information to anticipate research needs.

EPA would be authorized to conduct a research program to demonstrate new control technologies for various potential sources of ground water contamination. Each year EPA would finance at least 10 demonstrations, the results of which would be made broadly available through programs of technical assistance and technology transfer.

The legislation authorizes EPA to establish four university-based ground water research institutes. The institutes would conduct general programs in the ground water sciences and train individuals interested in careers related to ground water protection.

Organization

EPA's new responsibilities would be carried out by the Office of Ground Water Protection which would be headed by an assistant administrator for ground water.

The President would be required to create an interagency committee to coordinate the ground water protection activities of all of the Federal agencies and to report on the legislative and administrative changes necessary to protect the ground water resources under the jurisdiction of the various Federal agencies.

The Administrator of EPA would establish a Ground Water Protection Advisory Committee to include officials of State and local governments and persons from private organizations with an interest in ground water protection.

The legislation creates an independent Ground Water Protection Standards Board to set ground water quality standards.

Senator Dave Durenberger

U.S. Senator for Minnesota

Preserving Ground Water for Future Generations"
The Case for a Comprehensive Federal Ground Water Protection Law
Remarks by U.S. Senator Dave Durenberger
to Minnesota Water: 1988
February 15, 1988
St. Paul, Minnesota

Thanks very much for the opportunity be with you this noon, to share some thoughts on the need to protect this nation's ground water resources for both present and future generations.

The timing for our discussion today couldn't be better. Last week, I held six hearings around the state to identify the top priority ground water concerns of Minnesotans. And, next week -- when I get back to Washington -- the Senate Environment and Public Works Committee will begin a series of national hearings on federal ground water protection legislation.

Both sets of hearings will confirm what most of you already know -- that concerns about ground water contamination are no longer confined to a few environmentalists and local officials in communities like Lakeland and Goodhue. Ground water is rapidly emerging as the environmental issue of the late 1980's and the 1990's.

* * * * *

Over the past dozen years, the federal government's attention to ground water has been piecemeal. And, it has been largely driven by events.

Love Canal makes news, and Congress passes a hazardous waste law.

Leaking Underground Storage Tanks make news, and Congress passes a new tank program.

Pesticide contamination forces state action, and Congress begins to amend the pesticide law.

That pattern of piecemeal action has continued right up to the recent oil spill near Pittsburgh. True-to-form, there is now legislation pending to prevent ground water contamination from above ground storage tanks. After creating LUST to clean up underground tanks, we're now discussing LAST for tanks above ground.

But, we have yet to pass a comprehensive national program for ground water ... a program like the Clean Air Act and the Clean Water Act, which were adopted to protect this country's air and surface water. We have yet to devise a national strategy with which the intergovernmental system and the private sector can work.

I said last week as I traveled around the state that the

absence of a comprehensive national ground water strategy is an environmental shortcoming which we can ill-afford.

This past week's hearings convinced me again that we must not allow that shortcoming to continue.

That's why next week in Washington I will introduce the comprehensive federal ground water protection bill, which we Minnesotans have been working on for the past several years.

Because it's so far-reaching, this is not the kind of legislation that Congress will pass right away. You and I will have many opportunities to discuss its details and to adjust its specific provisions before this bill goes to the President for his signature.

* * * * *

What I'm calling the "Ground Water Protection Act of 1988" is built around five main themes or principles ...

The first of these principles is that a comprehensive ground water protection program must place its highest priority on prevention.

You've heard many times before the statistics which help document the importance of our ground water resources...

Ground water provides drinking water to half our nation's population -- about 117 million Americans.

Ninty-seven percent of Americans in rural areas rely on ground water for their household needs.

Ground water is the source of thirty percent of the water in our rivers and streams. And, it may be the entire source in critical low flow periods when surface runoff is absent.

You also know about the millions of potential sources of ground water contamination..

The 20 million septic tanks ... the six million storage tanks ... the two million miles of pipelines ... the 250,000 injection wells ... the 180,000 surface impoundments ... the 240 million acres of cropland sprayed with pesticides and fertilizers.

Ground water is a vast and complex resource ... vital to the health and environment of Americans ... and under siege from a multitude of threatening sources of contamination.

Let me add just two more numbers to help complete the picture.

First, the cost of the Superfund program ... Superfund's budget is now $1.5 billion per year. 80 percent is directed at cleaning up ground water pollution. That's $1.2 billion per year for ground water cleanup. Superfund sites are so numerous and so

expensive that we had to go to a broad-based federal tax -- a corporate surtax -- to clean them up.

The second number is much smaller. The federal Environmental Protection Agency provides grants of only $6.0 million to the states for ground water protection strategies.

Those two numbers mean the federal government spends 200 times as much money each year on ground water cleanup as it spends on preventing ground water contamination in the first place.

For a generation which is already loading its children and grand children with high costs, high debt and scarcer resources, that's an upside down set of priorities...

But when we tried to get the Congress to provide a paultry $8.0 million to help the states implement the new wellhead protection program -- an amount which probably equals the paperclip budget for the Superfund office -- we were told there just isn't $8.0 million worth of room in the federal budget for new ideas.

I believe we need to turn that kind of thinking around.

We need to reverse our priorities partly because of the unique and special nature of the ground water resource.

As you well know, most ground water is not tested or treated before we drink it. That's not true for surface water. Cities like St. Paul and Minneapolis thoroughly treat drinking water before it comes out of the tap. The water is disinfected with chlorine to kill the biological contaminants and then filtered to take out the solids and other pollutants.

But ground water -- especially for small communities and those relying on private wells -- most often goes right to the tap without any treatment. We drink it as we find it.

We also need to focus on preventing ground water contamination because it's often much more concentrated than surface water pollution.

Waters in rivers and lakes move rapidly and pollutants introduced at one point are quickly diluted by mixing with large volumes of water. The recent Ashland oil spill in Pittsburgh is a good example of how nature works to "self-correct" the effects of surface water pollution.

But, ground water moves very slowly and there is little mixing. A spill of liquid chemicals on the surface or a leak from a landfill or underground tank will create a plume of contaminants which will stay concentrated for long periods of time as it moves through the aquifer. There's a 100,000 gallon plume of fuel oil headed for the ground water near Pittsburgh this very moment.

This translates into vast differences in the strength of contamination in ground water and in surface water.

While a serious incident of surface water pollution might produce contaminants in the range of 10 or even 100 parts per million, the same contaminant may be found in ground water at several thousand parts per million. Drinking that kind of water -- untreated -- can pose a very serious threat to human health.

Finally, we need to focus more on prevention because it's practically impossible to clean up an underground aquifer once contaminated. In fact, despite Superfund and all our other efforts, no one has ever restored a contaminated aquifer to its original condition.

We've made great strides as a nation in restoring surface water quality over the past two decades. We've spent billions of dollars in federal appropriations and industry expenditures.

And, our efforts have been rewarded.

Rivers and streams are resilient. When we quit polluting, they are regenerated by the forces of nature. Measurable progress has been made.

But, we can't count on doing the same for ground water, should it become widely contaminated, either by intention or by neglect.

* * * * *

The second principle behind the "Ground Water Protection Act of 1988" is that all ground water should be protected.

That sounds simple, but on this issue there are two sharply contrasting views.

One position favors a strategy that is sometimes called "non-degradation." Those who favor a non-degradation goal want the resource to be broadly defined and want all ground water to be protected.

The competing view is called "differential protection." It argues that aquifers can be classified by their value or vulnerability and that some ground water can be allocated to uses that allow -- even invite -- degradation. "Aquifer A" will be an industrial dump, for example. Or, "Aquifer B" will be given over to uncontrolled contamination by agricultural chemicals.

This is currently the big issue in the debate on the Ground Water Safety Act, legislation I introduced last year which amends the federal pesticide law, FIFRA.

The issue is one of definition ... How much of the resource are we to protect?

Some would argue we need only protect water that is likely to reach a drinking water well ...

Waters that are shallow ... waters that are remote from settled places ... waters that are already contaminated by brine or nitrates or other sources do not deserve protection from pesticide, using this line of reasoning.

Others want to protect ground water, period ... all of it. That's the non-degradation side. And, that's where I've come down.

I want to protect the entire resource partly because its so different from surface water or air. It's so vulnerable. And, it's not so capable of self-correction.

But, even more important, I do not believe that a decision to use an aquifer as a planned dumping place for hazardous substances is a decision which we alone can make.

That kind of decision -- to degrade a particular aquifer on purpose -- can't be reversed when our generation is gone. That kind of decision will affect the opportunities and choices available to our children, and their children as well.

Who's to say where the Americans of thirty or fifty or a hundred years from now will want to place a drinking water well. I'm not prepared to make parts of this country unliveable for future generations.

Ground water is not simply a source of today's drinking water -- to be kept and used safely by today's generation. Ground water is a link to the future. We are its stewards. And, it's our job -- all of us -- to protect that resource for those will need it in the future.

* * * * *

The third principle reflected in this legislation is that public health protection should be provided for the drinking water supply of all Americans ... including those who depend on private wells.

The Safe Drinking Water Act is a <u>public</u> health law. It establishes standards -- maximum contaminant levels -- which apply to water supplied by <u>public</u> drinking water systems. And, it requires that public supplies be monitored periodically to assure that the standards are met.

But 25 million Americans who rely on private wells or very small public systems are not covered by the Safe Drinking Water Act.

That's rural America we're talking about ... excluded from the fundamental protections of federal law.

And, because of the high cost of testing and treating

individual wells, many of these Americans cannot afford the laboratory analysis needed to assure that their drinking water is safe.

There are some who do not believe there is a public health problem from ground water contamination. That was the message of a recent EPA report called "Unfinished Business." This report presented a comparative assessment of 31 major health and environmental problems facing the country. It was based on the collective judgment of senior management and staff professionals all across EPA.

This report concluded that problems associated with ground water contamination -- hazardous waste dumps, leaking underground tanks, surface impoundments -- were a "low priority concern."

Relatively few people are currently exposed to ground water pollution, EPA argued. So even though the risks to some may be quite high -- as they often are at Superfund sites -- the problem ranks low among EPA's concerns. High risk to small numbers does not drive the EPA's agenda.

You can quickly see the bias in that judgment. It's not fair to rural America. Our system of government promises equal protection under the law for all Americans -- not just those who live in big cities. It shouldn't ignore high level cancer risks for Americans who happen to live in rural areas simply because they have few neighbors and drink from private wells.

In fact, our program must place an even higher priority on small towns and rural areas because it is those Americans who rely most often ground water. And, it is those Americans who can least afford the testing and treatment that assures a safe supply.

* * * * *

The fourth principle in this legislation is that our prevention strategy should focus on controlling sources of contamination by requiring better technology or practices.

Everyone agrees that prevention ought to be the focus of a comprehensive ground water protection program. But, there is not universial agreement on how we go about it.

The EPA is now putting together a classification scheme as the cornerstone of its ground water protection strategy. It divides aquifers into three classes -- offering extraordinary protection for the highly valuable, most vulnerable supplies; more moderate protection for most potential drinking water; and an authorization to degrade some aquifers it considers to be of low value.

I don't think the federal government should be in the business of deciding what aquifers should be used as dumps for this nation's hazardous substances.

And, as I indicated a few moments ago, even if there are only

fifty or a hundred families in a small town using an aquifer, their drinking water deserves every bit as much protection as the water supplies of Long Island, or Miami, or Spokane, Washington.

Others have suggested that ambient ground water quality standards should be at the heart of the prevention strategy.

EPA would establish numerical, health-based standards for the 200 chemical and other agents which threaten ground water quality. And, states would enforce the standards through well monitoring programs.

I also have grave reservations about dependence on standards in a ground water protection program.

No question that standards are needed. They answer the question "how clean is clean?" They make enforcement against polluters possible.

But, standards are not preventive.

If you are monitoring a contaminant in ground water, the release has already occurred ... perhaps years ago. If it exceeds the standard, the damage is already done. Corrective action on the surface won't do any good.

We've had experience with standards in other environmental programs ... air toxics in the Clean Air Act ... maximum contaminant levels in the Safe Drinking Water Act ... food tolerances in the pesticide program.

But, standard setting has been a uniformly negative experience.

Years are spent on the research. Few standards are set. When they are -- and when they're tough enough -- the user often switches to some other, more potent poison not yet regulated.

Rather than classification or standard setting, my efforts have been directed at a third approach to prevention strategy ... controlling sources.

I believe it would be most effective to require technology and practices that will directly reduce the threat of contamination from the sources that are of concern.

The specific method of source control depends on the specific source of contamination.

Catholic protection and leak detection for underground storage tanks ... best management practices for pesticide and fertilizer use ... liners and leachate collection systems for land fills ... spacing requirements for septic tanks.

These and other source controls focus on the problems.

They're easily defined ... They work against today's myriad of chemicals, and those not yet invented.

Where the control technology is not currently available, government and private research programs can, and do, make a contribution.

Those of you following the underground storage tank industry know that -- in the few months since LUST programs have been in effect -- there has been a revolution in technology ...

Tank design, leak detection, computerized monitoring systems ... all new technologies to prevent a problem we didn't even know existed until a hearing I held in my subcommittee a couple of years ago.

* * * * *

The fifth and final principle that guided development of this legislation is that state and local government must be our first line of protection. Federal guidance or direction must allow flexibility to address specific sources of contamination which vary greatly around the country.

I take that position even though I am also an advocate for a strong federal role.

Federal taxpayers, after all, now pay 80 percent of the $1.5 billion spent each year for ground water cleanup. Taxpayers need a prevention program to protect their investment. We can't afford to be creating more Superfund sites.

In the hearings I held last week around Minnesota, I heard again and again, "Leave the decision-making to us here at the state and local level. But keep sending the money."

That's an understandable argument. But, if the federal government is expected to pay 90 cents of every dollar -- as it does under Superfund -- it must insist that prevention be a primary theme of state and local action on ground water.

Once that commitment to prevention is made, however, there are strong arguments for state and local flexibility in designing and carrying out ground water protection programs.

As you well know, the ground water resource isn't the same everywhere.

Where the resource is found as an unconfined aquifer with the water table near the surface, wellhead protection areas make a lot of sense.

Where the aquifer is deep and confined and the recharge area is miles from the wellfield, some other protection strategy might be more appropriate.

Many of the threats to the resource also have regional character.

Minnesota doesn't have an oil and gas production industry. Pesticides, nitrates, and leaking chemical tanks are the big problem here.

But oil and gas is the principal problem in Kansas, Oklahoma, and New Mexico.

We have to make room in a national program for each problem to get priority attention where it is a priority concern.

* * * * *

My position in favor of assigning major responsibility for ground water protection to states -- and especially to local governments -- assumes we are prepared as a nation to provide local governments in rural America with adequate financial tools to deal with their enforcement responsibilities.

Not all parts of this country are equally endowed with the fiscal capacity to handle the responsibilities which may be best and most efficiently handled at the local level.

In the past few years, Washington has sent back to the city halls and county court houses responsibility for welfare and social services ... and for infrastructure financing ... added to the traditional burdens of paying for schools and public safety, and creating jobs.

At the same time, rural America has experienced deflation and deregulation ... pushing costs for many services up ... and pushing the fiscal resources available to local governments down.

Any national ground water protection strategy which depends on local governments for enforcement will depend on efforts in both Washington and state capitals to reduce fiscal disparities among local governments in this country and provide local governments with the financial resources to do the jobs they can do best.

* * * * *

My natural inclination to leave substantial responsibilities with state and local government was reinforced during the six hearings I held last week.

I have chaired many hearings in Washington on ground water problems across the country. And, I came to these forums last week thinking I had a pretty good grasp on the issues concerning Minnesota. In my opening statement I focused on underground storage tanks and pesticides and hazardous waste. And, the testimony from the forty plus witnesses also touched on these threats.

But, by far the largest concern identified by those hearings was one Washington has not yet heard ... the threat of abandoned or poorly constructed wells.

At the hearing here in St. Paul, Vaughn Bien, the mayor of Goodhue, showed a videotape of a journey through 110 feet of his now contaminated municipal well. It demonstrated that a lack of casing allowed polluted water from near the surface to cascade into the well carrying it deep into the aquifer.

Then we went to Lakeland where 85 families have lost their private wells to contamination.

A variety of sources may be implicated in the damage. But, the real news was that the State of Minnesota is now prohibiting these homeowners from drilling new wells into the deeper aquifer for fear that they would serve as a pollution pipeline to deeper sources of ground water.

At the Rochester hearing, wells were called "manmade sinkholes," implying that all geology can act like Karst geology, because we've poked it full of holes ... water wells ... that allow rapid transport of pollutants to the ground water below.

Local officials had thought about the abandoned well problem in Adrian, too. And, they had a solution. Ask the township assessor to include a survey for abandoned wells as part of the normal assessment process.

When we got to St. Cloud, the discussion of abandoned wells turned in a more troubling direction. We learned that they are frequently used as disposal pits for old machinery, pesticide containers -- even dead animals and household garbage.

In the Red River Valley -- where drinking water availability is a problem -- where there are large rural water systems connecting hundreds of farms by pipe to wells that are drying up -- there is fear that even test well drilling will open small aquifers to contamination from surface pollutants.

We heard estimates that there are tens of thousands of abandoned wells in some regions of the state. There are 2000 in Benton County alone. And, we heard that it costs $1200 to $2000 to cap an abandoned well.

If there are two million such wells nationally -- and that may be a low estimate -- it would cost three to four billion dollars to close out just this one potential source of ground water contamination.

* * * * *

You can be sure that I will be working on the abandoned well problem as part of the broader ground water protection effort which is about to begin.

But, I gave you this little report on my hearings last week to help illustrate how the national debate can never be fully

informed on all the problems that people who are actually engaged in protecting the resource every day can see.

* * * * *

So those are the five principles. The problem must focus on prevention ... the resource should be broadly defined and all ground water should be protected ... Public health protection should be provided for the drinking water of all Americans ... Our strategy should be to control the sources of contamination through better technology and practices ... And, finally, state and local government must be given a strong role,the flexibility to set their own priorities, and the financial resources to do it right.

Each of those principles involve fundamental issues ... issues that will be hotly contested as the national ground water debate unfolds.

I hope that each of you will consider this to be your debate as well. Ground water is too important a resource -- and too important an issue -- to be debated and decided only in Washington, D.C.

* * * * *

As I said when I started, ground water has special characteristics which set it apart from our other natural resources. Protecting ground water with the same strategy we used for surface water and air just won't work.

The only way to write comprehensive ground water protection legislation is to learn all you can about the resource and then let your understanding of the resource be your guide. That's what last week's hearings around Minnesota were all about. And, that's why your expertise is so important as this debate now moves to the halls of Congress.

Putting together this comprehensive ground water protection bill has taken a long time. I owe a great debt to all of you who have been patient and who have shared your insights as this project has come together.

This issue is worth that kind of time because we aren't the only beneficiaries of clean, safe ground water. Our collective efforts will determine not only how we use this resource, but what kind of opportunities and choices we will leave to future generations.

Thank you very much for this opportunity to be with you here today.

Dave Durenberger news

U.S. Senator for Minnesota



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DURENBERGER PROPOSES NATIONAL GROUND WATER PROTECTION LAW

Legislation focuses on prevention; strong state/local role
Reverses current EPA plan to allow some aquifers to be polluted

(St. Paul, Mn.) -- U.S. Senator Dave Durenberger today outlined a major new legislative proposal establishing a comprehensive national ground water protection program.

The legislation -- to be introduced later this week in the Senate -- focuses on preventing ground water contamination before it occurs. It assumes a strong role for state and local governments and places a high priority on protecting drinking water supplies in rural areas.

Durenberger outlined the principles behind his "Ground Water Protection Act" in a speech to "Minnesota Water: 1988," a statewide conference on water issues in St. Paul.

Durenberger also used the speech to report the major findings of a series of six hearings on ground water issues he held around Minnesota last week in his capacity as a member of the Senate Environment and Public Works Committee.

"Those hearings helped confirm," Durenberger said, "that ground water is no longer just the concern of a few far-sighted environmentalists and local officials."

"Ground water is rapidly emerging as the environmental issue of the late 1980's and the 1990's," he said.

Legislation rejects policy which invites selected polluting

Under his proposed legislation, Durenberger said, all ground water would be protected.

This reverses current Environmental Protection Agency plans to classify the nation's ground water resources, allowing -- or even encouraging -- certain sources of ground water to be polluted.

"Under the EPA approach," Durenberger said, "some aquifers could be designated as industrial dumps; others could be given over to uncontrolled contamination by agricultural chemicals."

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Durenberger said his legislation rejects that approach, "because ground water is so different from surface water or air. It's so vulnerable. And, it's not so capable of self-correction once polluted."

"But, even more important," Durenberger said, "I do not believe that a decision to use an aquifer as a planned dumping place for hazardous substances is a decision which we alone can make."

"Who's to say where the Americans of thirty or fifty or a hundred years from now will want to place a drinking water well," Durenberger said. "I'm not prepared to make parts of this country unliveable for future generations."

Prevention must be first priority in federal policy

Durenberger's proposed "Ground Water Protection Act" uses a number of strategies to protect ground water resources from potential sources of contamination.

"The special qualities of ground water demand that we place our emphasis on preventing contamination in the first place," Durenberger said.

Much of the ground water consumed by families in very small communities and those using private wells is not treated, Durenberger noted.

And, because contamination often occurs over a long period of time, corrective action on the surface may not do any good.

Ground water contamination can also be more toxic, Durenberger said, because ground water does not mix and dispurse pollution the way surface water does.

Durenberger's legislation would use a system of permits, water quality standards and technology controls -- at both the state and federal level -- to encourage prevention of ground water contamination.

The program is designed to provide each state with flexibility to tailor its regulatory tools to the particular kind of ground water contamination problems it has.

Rural areas must be prime focus of protection efforts

Current federal law and policies are biased against protecting the ground water resources used by rural residents, Durenberger said.

He noted that the 25 million Americans who rely on private wells or very small public systems are not covered, by the federal "Safe Drinking Water Act."

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"Our system of government promises equal protection under the law for all Americans," Durenberger said, "not just those who live in big cities."

"Federal law shouldn't ignore high level cancer risks for Americans who happen to live in rural areas simply because they have few neighbors and drink from private wells," he said.

To counter this current policy, Durenberger said, "we must place an even high priority on small towns and rural areas because it is those Americans who rely most often on ground water."

Currently, Durenberger said, ninety-seven percent of rural residents rely on ground water for their household use.

To help monitor ground water quality in rural areas, Durenberger's legislation sets up a cost-sharing program to help pay for private well testing. Under the program, the federal contribution would be 50 percent of the cost of doing well tests. The state would pay 30 percent of the cost and the well owner is required to contribute the remaining 20 percent.

The proposal gives states the flexibility to focus the program on low income families or for areas where ground water contamination is expected to be a significant and recurring problem.

Strong state and local government role

Many of the threats to ground water are local or regional in nature, Durenberger noted.

"That helps make a strong case for state and local flexibility in designing and carrying out ground water protection programs".

"Minnesota doesn't have an oil and gas production industry, like they do in Kansas, Oklahoma, and New Mexico," Durenberger noted. "Pesticides, nitrates, and leaking chemical tanks are the big problem here."

"We have to make room in a national program for each problem to get priority attention where it is a priority concern."

But, local governments -- especially in hard-pressed rural areas -- will need help in paying for ground water protection, Durenberger said.

"Rural America in the 1980's has experienced the 'three D's'," Durenberger said, "devolution, deflation, and deregulation."

Local governments have been forced to pick up more responsibility for paying for social services and public works, Durenberger noted.

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"And, at the same time," Durenberger said, "rural America has experienced both deflation and deregulation."

"This has increased the cost of many services and reduced the fiscal resources available to local governments."

Durenberger's proposal includes a number of grant programs to states and local government including a new program for replacing water supplies that have been lost to contamination, including private wells. Financing would be part federal and part state, with the well owner required to pay 20 percent of the cost, up to $500.

Well problems dominated recent series of hearings

Durenberger said the series of six hearings he held in Minnesota February 8-10 demonstrated broad based concerns about ground water issues throughout the state.

"By far the largest concern identified by the hearings is the threat of abandoned or poorly constructed wells," Durenberger said.

"At the Rochester hearing," Durenberger said, "wells were called 'manmade sinkholes,' that allow rapid transport of pollutants to the ground water below."

"We heard estimates that there are tens of thousands of abandoned wells in some regions of the state," Durenberger said. "Many of them are being used as disposal pits for old machinery, pesticide containers -- even dead animals and household garbage."

"One conservative estimate is that there are two million abandoned wells nationally," Durenberger said. "At that rate, it would cost three to four billion dollars to close out just this one potential source of ground water contamination."

Durenberger said he intends to introduce his "Ground Water Protection Act" on Friday. Hearings on ground water issues are scheduled to begin in the Senate Environment and Public Works Committee on February 23.

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