

RE: HF 2354

Jim Sehl
1387 216th Street
Garvin, MN 56132
(507) 220-3409

I support the enactment of proposed Drainage Registry Portal Bill (HF 2354)

Chair Hansen and committee members, I want to thank you for allowing me to submit written comments regarding the Drainage Registry Information Portal Bill (HF 2354).

As a recently retired 34-year career hydrologist with the Department of Natural Resources (MNDNR) in the southwestern portion of Minnesota I have many years of experience working with local drainage authorities (DA) on drainage projects including new systems, drainage improvement projects, reestablishment of records proceedings, and repairs. My life experiences including growing up on a beef cattle and corn/soybean farm in the Rochester, MN area and I continue to help manage two family farms that belong to my wife's family in Murray County. These experiences, coupled with my professional career as a hydrologist, have given me a unique perspective on the benefits of agricultural drainage and the environmental impacts of such activities.

My comments below regarding HF 2354 are mine and not the MNDNR.

Amending Minnesota Statute Chapter 103E to include the proposed language would:

- Provide a central location where drainage authorities can enter projects that must be reviewed by DNR, DNR & BWSR, NGO's and affected landowners. Currently, the drainage code requires DA and WSD to submit all projects to the MNDNR. WSD must also submit all projects to the BWSR as well. It has been my experience that DA's send the projects to the MNDNR Commissioner directly. As a result, it may take several days to weeks for the proposal to get to the appropriate field staff which can slow down the review process for everyone. Having an electronic registry will allow DAs Authorities to document when projects have been deposited and make it easier for MNDNR and BWSR to review the proposals in a timely manner.
- Provide MNDNR and BWSR staff time to prioritize which projects, based on deadlines, much be reviewed first.
- Allow MNDNR staff to determine if there is a need to conduct an Ordinary High-Water Level (OHWL) survey of any public water basin that may be affected by the project. The

OHW survey is a precise determination of the jurisdictional boundary of the MNDNR to regulate public waters. MNDNR Has a single crew that conducts all OHW surveys statewide. The survey crew can make these surveys a priority.

- Provide the MNDNR and BWSR staff time to review their files to determine if the state has any records that may show the original grade and design, and sometimes as-constructed plans, of a drainage system where the DA is proposing a Reestablishment of Record due to plans having been lost or destroyed at the county or WSD level.
- Trigger a review by MNDNR field staff on a Reestablishment of Record to determine if the project will affect a public water basin. This would allow MNDNR staff to connect with the DA and project engineer to conduct soil borings to determine the original grade and elevation which will reduce the likelihood of appeal by MNDNR on the grade.
- Provide MNDNR time to evaluate potential options to enhance public water basins that are currently managed as Game Lakes by coordinating with the DA on projects.
- Avoid situations where a project engineer proposes a project that affects public waters that cannot be approved under a permit as outlined in MN Statute Chapter 103G.245. Current, MNDNR staff only become aware of projects after the project engineer has completed the Preliminary Engineer's Report. At this point, the petitioners have expended a large amount of money. The Registry Bill will allow for earlier coordination between the project engineer and the regulatory agencies and thereby reduce costs and delays.
- It is my opinion that the Registry bill, if enacted, be modified so the MNDNR is responsible for implementation. I base this on the fact that **all** drainage projects must be submitted to the MNDNR for review. As currently written, MN Statute 103E only require Watershed Districts to submit projects to the MNDNR and BWSR. Having the Registry housed within BWSR may add a level of confusion and frustration to the current process of notification.

Thank you for review and considerations of these comments.

DATE: March 7, 2023

TO: Environment and Natural Resources Finance and Policy

FROM: Mark Ten Eyck, Ted Suss, Scott Sparlin, Peg Furshong

RE: HF 2354 (Pursell) Drainage registry information portal

Note: A revised version of this testimony has been accepted for publication by Outdoor News with an anticipated publication date of March 8, 2023.

Chair Hansen and Members of the Committee:

Current notice requirements in the Minnesota Drainage Code fail to provide effective notice of proposed drainage projects to downstream landowners, state and local government units, and people who live outside the drainage area but hunt, fish and otherwise recreate on public lands and waters inside that area. Notice need only be provided, typically in local news outlets, at the time a Preliminary Engineer's Report has already been prepared and key engineering determinations already made.

HF2354 changes things by establishing a state-wide electronic data base that lists drainage projects at the time they are first considered. This will facilitate early coordination for all interested stakeholders. Drainage projects that enhance natural resources as well as crop production will have time to develop. Thanks to the internet this modernization will be a very low-cost undertaking.

HF2354 comes a time when considerable replumbing of drainage systems is at hand – brought on by aging and crumbling existing infrastructure, more land in crop production, ever expanding private drainage, and precipitation patterns altered by climate change. Decisions made in this context will shape the future of both agricultural production and the health of our lakes, streams, uplands, and groundwater for generations.

The threats are severe. For example, the Minnesota River is badly impaired by excess sediment and other pollutant loads. Streambank erosion is largely to blame. The State of Minnesota has committed to reducing current sediment loads by 50%, largely by reducing the erosion from frequent, "low flow" storm events. Such events are ones that new drainage projects often have the potential to increase rather than decrease.

Protection and improvement our fisheries, and macro invertebrate and mollusk populations are a concern. Altered hydrological flows, temperature changes, algae blooms, and aquatic habitat destruction can all bring down these numbers.

Erosion caused by increased stream flows also often interferes with use and enjoyment of downstream properties. Take, for example, the Waskosky family, whose house now teeters on the LeSueur River bluff, at great risk from additional erosion. Or downstream farmers like Sever Peterson, who have been flooded off their historically productive cropland.

The increased volume of water being drained through our Minnesota watersheds is driving these impacts. For example, the flow of the Minnesota River has doubled in the last 80 years.

Combined with the expanded use of fertilizers and pesticides, erosive bank flows, major floods along the Minnesota, Mississippi, and Red Rivers, and expensive taxpayer funded flood control projects, this is not something we can ignore. New drainage work presents both the opportunity to do something positive and the threat of missing that opportunity.

Wetland losses continue. In 2014 the U.S. Fish & Wildlife Service documented continuing wetland losses in the Prairie Pothole Region. Emergent wetland losses, often from agricultural development, were greatest overall. Minnesota had the greatest such losses among the five states evaluated, measured in terms of both lost acres and lost basins. Subsequent monitoring by the Minnesota Department of Natural Resources shows continuing wetland losses on agriculture lands.

In locations where public drinking water supplies are taken from lakes and rivers, even public health is at stake.

Climate also figures into the equation. Recent reports conclude that agriculture is the one economic sector not making progress toward carbon reduction goals. Climate resiliency built into drainage systems may prove to be the best bet to reverse this trend and, at the same time, provide both crop protection and natural resource benefits. Drainage design and construction that, for example, integrates water storage and soil health along with pollution reduction features can achieve both these goals and reduce carbon emissions.

While threats from agricultural drainage can seem dire at times, the good news is that the need for some replumbing presents a once in a generation opportunity to design and build drainage projects that accomplish multiple purposes: increased and less risky crop production, healthy water, abundant habitat, safe drinking water, and flood damage reduction. New state and federal funding – for example through the federal Infrastructure Investment & Jobs Act and the Inflation Reduction Act and the Minnesota’s new Water Quality and Storage Program – can help make this happen.

However, when many affected persons are in the dark as drainage proposals proceed, it is unlikely that multipurpose features will be included in project designs. Readily accessible public notice at the outset and early coordination are the keys to designing multipurpose projects and establishing partnerships to fund them.

HF2354 would not make any substantive change to current drainage law. It would simply require drainage authorities to file an electronic copy of the petition initiating a drainage project with the Board of Water and Soil Resources. BWSR would then post those filings on a searchable electronic database.

We have heard concerns raised by some whose organizations serve along with ours on Minnesota’s Drainage Work Group, that HF2354 might unduly burden drainage authorities with substantial new administrative costs. In response, HF2354 is narrowly tailored to avoid this result. We have also heard concerns that drainage repairs should not be addressed in HF2354. In response, repairs were removed from early drafts of bill. HF2354 does not mention repairs.

It's time to pass this updated public notice process for drainage expansions. We need ALL affected people involved in the process of modernizing and improving our watersheds.

David Minge, Izaak Walton League, Minnesota Division

Ted Suss, Friends of the Minnesota Valley

Scott Sparlin, Coalition for a Clean Minnesota River

Peg Furshong, CURE (Clean Up the River Environment)

DATE: March 7, 2023
TO: Environment and Natural Resources Finance and Policy
FROM: Barry Thoele, Lincoln Bait LLC.
RE: HF 2354 (Pursell) Drainage registry information portal

On the issue of monitoring and informing the continued use of drain tiles and ditches for the management of agricultural land.

Chair Hansen and Members of the Committee: This is an issue that impacts wetland ecology, aquaculture, and bait culture throughout MN. Increased waterflow allows for the movement of undesirable fish into wetlands and culture ponds.

Drain tiles are being installed upstream of wetlands and aquaculture ponds, currently without input from those directly impacted by the nearly continuous stream of water from these tiles and ditches. In many cases this water can be laden with pesticide or herbicide. Often killing fish and invertebrates that serve as a food source for waterfowl.

It is difficult to move toward a sustainable future in our wetlands without the ability to monitor changes that affect those wetlands. The same can be said for aquaculture when drainage directly impacts water levels and the inflow of pesticides and herbicides.

I am happy to discuss this further with Legislators and regulators. My contact information is below.

Thank you for this opportunity to address the impacts of this issue.

Barry Thoele

Lincoln Bait LLC.
48301 County 21
Staples, MN 56479
218-296-0446



March 8, 2023

House Environment and Natural Resources Finance and Policy
Chair Rick Hansen
407 State Office Building
St. Paul, MN 551155

Dear Chair Hansen, Republican Lead Heintzeman, and Members of the Committee,

The Red River Watershed Management Board (RRWMB) appreciates the opportunity to submit written testimony on H.F. 2354. A bill proposing to establish a drainage registry portal for drainage projects. The proposal to create a drainage registry portal was introduced in March 2022 and included in the Omnibus bill and the bill was referred to the Drainage Workgroup (DWG). The DWG, born through a legislative directive has been meeting since 2006 for the following purposes:

- Foster science-based, mutual understanding about drainage topics and issues; and
- Develop recommendations for drainage system management and related water management, with a focus on updates of Minnesota Statutes Chapter 103E Drainage and related provisions.

The DWG brings together a diverse set of interests with a vested stake in drainage including drainage authorities, engineers, attorneys, state agencies, local units of government, environmental organizations, and agriculture groups. The DWG operates on consensus and recently updated and adopted the DWG process (2019).

The DWG has discussed the drainage registry portal since the end of the 2022 legislative session up until February of 2023, but unfortunately consensus could not be reached on the drainage registry portal despite several suggestions by DWG members for alternatives to help accomplish the goals of modernizing current public notice requirements for drainage projects. We are concerned that a drainage registry portal could make the process for petitioned drainage projects including repairs and improvements more costly, cumbersome, and increase the timelines for completing projects.

Further and to complicate the issue, the Department of Natural Resources (DNR) brought forward legislative language for consideration to improve early coordination of drainage projects between landowners, state agencies, and drainage authorities in December 2022. Several DWG members raised concerns on the proposed legislative language and since the DWG had not been given time to discuss and reach consensus, the DNR agreed not to move forward with legislation this session and instead work with a subgroup of DWG stakeholders on the proposed language in the interim to work towards consensus for 2024.



The DNR early coordination proposal and the drainage registry both aim to improve and modernize coordination and public notice of drainage projects earlier in the process. Therefore, we feel strongly that discussions should continue on the drainage registry portal through the DWG subgroup process with the DNR on early coordination, instead of acting on the drainage registry portal this legislative session.

The DWG is capable of reaching consensus on changes to drainage law and process, but sometimes it is a multi-year process. In 2019, the DWG reached consensus after a multi-year process for a "drainage system repair costs apportionment option." The consensus agreement from the DWG was contained in 2019 legislation that was ultimately adopted by the legislature and signed into law. That is the most recent example of how this process can be successful. The DWG has a history of reaching consensus on proposals and we strongly believe the DWG process should also apply to HF 2354.

The public drainage law and process currently has robust statutory processes that require checks and balances and numerous public hearings. Changes to one part of the process has implications for other parts of the process, which is why the DWG continues to be the best venue for vetting and working towards consensus on changes to drainage law and process.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Sip".

Robert L. Sip
Executive Director

March 8, 2023

House Environment and Natural Resources Finance and Policy
Chair Rick Hansen
407 State Office Building
St. Paul, MN 551155

Dear Chair Hansen, Republican Lead Heintzeman and Members of the Committee,

The undersigned organizations appreciate the opportunity to submit written testimony on H.F. 2354, which proposes to establish a drainage registry portal for drainage projects.

The proposal for a creation of a drainage registry portal was first introduced in March of 2022. Although the introduced bill was included in the omnibus House Environment and Natural Resources Finance and Policy bill, the Legislature did not act on the final proposal and the issue was referred to the Drainage Work Group (DWG). The Drainage Work Group has been meeting since 2006 for the following purposes:

- Foster science-based, mutual understanding about drainage topics and issues; and
- Develop recommendations for drainage system management and related water management, with a focus on updates of Minnesota Statutes Chapter 103E Drainage and related provisions.

The DWG brings together a diverse set of interests with a vested stake in drainage including drainage authorities, engineers, attorneys, state agencies, local units of government, environmental organizations and agriculture groups. The DWG operates on consensus and we are including as part of our written testimony, a process summary document updated and adopted by the members of the DWG in 2018.

The DWG did have multiple discussions on the drainage registry portal since the end of the 2022 legislative session up until February of 2023, but unfortunately consensus could not be reached on the drainage registry portal despite several suggestions by DWG members for alternatives to help accomplish the goals of modernizing current public notice requirements for drainage projects. We are concerned that a drainage registry portal could make the process for petitioned drainage projects including repairs and improvements more costly, cumbersome and increase the timelines for completing projects.

The DWG is capable of reaching consensus on changes to drainage law and process, but sometimes it is a multi-year process. In 2019, the DWG reached consensus after a multi-year process for a “drainage system repair costs apportionment option.” The consensus agreement from the DWG was contained in 2019 legislation that was ultimately adopted by the legislature and signed into law. That is the most recent example of how this process can be successful. The DWG has a history of reaching consensus on proposals and we strongly believe the DWG process should also apply to HF 2354.

Further, in December of 2022, the Department of Natural Resources brought forward legislative language for consideration to improve early coordination of drainage projects between landowners, state agencies and drainage authorities. Several DWG members raised concerns on the proposed legislative language and since the DWG had not been given time to discuss and reach consensus, the DNR agreed not to move forward with legislation this session and instead work with a subgroup of DWG stakeholders on the proposed language in the interim to work towards consensus for 2024.

The DNR early coordination proposal and the drainage registry both aim to improve and modernize coordination and public notice of drainage projects earlier in the process. Therefore, we feel strongly that discussions should continue on the drainage registry portal through the DWG subgroup process with the DNR on early coordination, instead of acting on the drainage registry portal this legislative session.

The public drainage law and process currently has robust statutory processes that require checks and balances and numerous public hearings and changes to one part of the process has implications for other parts of the process, which is why the DWG continues to be the best venue for vetting and working towards consensus on changes to drainage law and process.

Sincerely,

Minnesota AgriGrowth Council

Minnesota Association of Wheat Growers

Minnesota Barley Growers Association

Minnesota Corn Growers Association

Minnesota Farm Bureau Federation

Minnesota Soybean Growers Association

Minnesota State Cattleman's Association

Minn-Dak Farmers Cooperative

Red River Valley Sugarbeet Growers Association

Drainage Work Group Process Summary

Purposes

The stakeholder Drainage Work Group (DWG) has been meeting since 2006 for the following purposes:

- Foster science-based, mutual understanding about drainage topics and issues; and
- Develop recommendations for drainage system management and related water management, with a focus on updates of Minnesota Statutes Chapter 103E Drainage and related provisions.

Membership

- Open to all drainage stakeholders who are willing to invest time in DWG meetings and associated work on behalf of a drainage stakeholder organization they represent.

General Work Process

- The Board of Water and Soil Resources (BWSR) coordinates the DWG in accordance with MN Statutes [Section 103B.101, Subd. 13. Drainage stakeholder coordination](#), as recommended by the DWG.
- The DWG generally meets monthly on second Thursdays of the month between legislative sessions, but can add or cancel meetings as necessary and workable.
- DWG work involves a group decision-making, informed consent process. Members can participate in identification of priority topics / issues and associated investigation, development and refinement of recommendations or other applicable documentation of DWG work and conclusions (products).
- The DWG uses subgroups for some topics between DWG meetings to best utilize time and expertise of members and others to investigate topics and provide recommendations to the full DWG.
- Topic experts are invited to present information to the DWG to inform and enhance topic discussions.
- When the DWG began in 2006, it agreed to operate by consensus for its products. Full consensus provides the Legislature, Governor and all stakeholders the best assurance that recommendations have been fully vetted by stakeholders, and is a DWG goal. The need for an alternative to full consensus has arisen. If, after extensive DWG discussion and subgroup efforts, full consensus cannot be achieved, a consensus report and non-consensus report option can be used to deliver DWG products to stakeholder organizations and the Legislature.
- A timing goal is to typically have policy recommendations complete by November 15 to enable effective stakeholder and legislator communications before the next legislative session.

Definition of Consensus

- A drainage stakeholder member and the organization(s) s/he represents **can live with** the applicable DWG recommendations, which can involve compromise.
- A drainage stakeholder member and the organization(s) s/he represents **will not oppose** the applicable DWG consensus recommendations.

Member Responsibilities

- Attend DWG meetings to represent their stakeholder organization(s) and perspectives. Review meeting materials, provide input, and communicate with their stakeholder organization and others between meetings, as appropriate. Participation is necessary to have a voice and to respect the DWG process.
- Respect the perspectives of DWG members, including taking turns speaking at meetings, actively listening to differing viewpoints, and helping to resolve disagreements by finding common ground.
- Support the goal of full consensus for DWG recommendations and honor the definition of consensus above. State any opposition early and clearly, including explanation. If full consensus can't be achieved, respect the consensus report and non-consensus report process.
- Share DWG consensus recommendations, non-consensus report (if applicable), and associated information with the stakeholder organization the member represents and legislators, as appropriate.

Process Notes:

- 1) When the consensus report and non-consensus report option is used, the consensus report shall include consensus of the Drainage Work Group members representing:
 - *Drainage Authorities:* Association of Minnesota Counties (AMC), and Minnesota Association of Watershed Districts (MAWD)
 - *Environmental Group:* Minnesota Center for Environmental Advocacy (MCEA)
 - *Farm Groups:* Minnesota Farm Bureau (MFB), Minnesota Farmers Union (MFU), Minnesota Corn Growers Association (MCGA), and Minnesota Soybean Growers Association (MSGA)
 - *State Agencies:* Minnesota Department of Natural Resources (DNR), Minnesota Department of Agriculture (MDA), Minnesota Pollution Control Agency (MPCA), Minnesota Department of Transportation (MnDOT), and Board of Water and Soil Resources (BWSR)
- 2) When the consensus report and non-consensus report option is used:
 - The non-consensus member(s) are responsible to prepare a non-consensus report in a timely manner, including their concerns, rationale and alternatives to the consensus report recommendations they can't live with. Assistance will be provided by the DWG Coordinator to help clarify and verify pertinent facts.
 - The consensus report and non-consensus report should be provided together to drainage stakeholder organizations and the Legislature.