

# Le Sueur County Drainage Manual and Guidelines

January 2024  
Revisions: January 2025



This manual has been developed in collaboration with:



Architecture  
Engineering  
Environmental  
Planning  
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## Inventory & Map

Ditch No.	Established Date	Improved Date	Redetermination Date	Benefit Acres	Benefit Dollars
CD #2	3/20/1889		4/30/1986	1807	\$19,925.00
CD #4	2/22/1890		2/10/1983	1360	\$10,816.00
CD #6	12/11/1891		7/6/2021	2275.5	\$3,516,583.84
CD #9	2/5/1898	7/1/1949		2565.4	\$17,426.00
CD #15	7/9/1900			381	\$1,472.22
CD #16	5/2/1901		10/27/2015	345.5	\$276,843.58
CD #17	9/19/1901			219.5	\$2,381.00
CD #19	6/22/1903	2/9/1916, 1/12/1949	12/12/2017	1975	\$1,569,597.49
CD #21			7/6/2021	2174.48	\$3,436,253.84
CD #22	10/6/1903	5/25/1926, 3/14/1944	7/21/2020	659.92	\$1,000,317.77
CD #23	5/7/1904		8/17/2021	7010.45	\$12,873,204.53
CD #26	7/26/1904		10/6/2020	325.58	\$413,114.14
CD #28	4/27/1906		12/12/2017	1423	\$692,200.25
CD #29	4/26/1907	4/22/1964	6/27/2024	2686.58	\$3,245,295.45
CD #31	4/27/1907		8/1/1980	2193.82	\$11,268.00
CD #32	9/28/1908		7/6/2021	401.39	\$540,109.44
CD #34	6/17/1909	11/18/1941, 2/28/1956		1930.76	\$23,100.00
CD #35	5/17/1909	8/24/1954	7/21/2020	1287.08	\$1,217,798.24
CD #36	6/27/1911			559.9	\$5,776.90
CD #37	6/28/1911	11/25/1938, 6/24/1975	10/6/2020	5183.83	\$9,568,119.21
CD #40	1/15/1915			946.39	\$41,767.00
CD #41	1/14/1915	2/4/2021	2/23/2021	348.85	\$444,148.25
CD #42	2/9/1916	1/12/1949	12/12/2017	475.5	\$688,509.47
CD #43	04/1916		10/6/2020	2346.57	\$4,242,106.42
CD #44	2/10/1916	4/19/1963	10/6/2020	2167.92	\$4,271,783.73
CD #45	6/25/1917		1/21/2025	5,262.23	\$7,136,000.29
CD #45 Spur 7 and CD#45 Lateral 1, Spur 7 consolidated into CD #45 – 1/21/2025					
CD #46	1/15/1918		6/17/1986, 6/27/2024	1120.47	\$974,546.21
CD #47	5/20/1918			137.57	\$6,130.90
CD #48	1/15/1918	4/11/1951	7/21/2020	1595.44	\$2,425,525.00
CD #49	5/14/1920		7/21/2020	1783.75	\$1,959,840.30
CD #50	10/19/1948		7/6/2021	2332.26	\$4,586,909.38
CD #51	2/5/1948			4282.41	\$67,628.00
CD #51, Lat 1, Spur 2	8/6/1964			651	\$26,226.00

Ditch No.	Established Date	Improved Date	Redetermination Date	Benefit Acres	Benefit Dollars
CD #52	08/1950		12/12/2017	543.5	\$769,091.90
CD #53	6/26/1951			4474.77	\$34,859.00
CD #56	6/26/1953	6/14/1983		1450	\$48,754.00
CD #57	5/19/1953			376	\$11,630.00
CD #58	1/18/1955		7/6/2021	3596.79	\$6,419,320.06
CD #59	5/15/1956			4443	\$64,419.00
CD #60	4/25/1957		10/6/2020	3312.68	\$6,568,241.08
CD #61	11/21/1958	2/4/2021	2/23/2021	824.58	\$1,312,375.85
CD #62	5/19/1959		8/2/2022	2822.53	\$3,750,057.54
CD #64	6/30/1959			2900.2	\$67,934.32
CD #65	5/22/1960		10/6/2020	3485.99	\$6,517,110.33
CD #67	6/4/1963		7/6/2021	1725.96	\$3,063,849.92
CD #68	1/3/1963			1146	\$29,909.00
CD #69	2/27/1964		9/11/1992, 12/12/2017	807.50	\$1,083,424.62
CD #70	10/18/1966		6/27/2024	1439.59	\$2,079,792.51
LS-BE JD #1	5/28/1907	4/2/1942	1/11/2022	2322.32	\$2,370,904.73
LS-BE JD #2	9/30/1975		1/11/2022	388.64	\$681,806.28
LS-BE JD #15	5/12/1907	5/2/2023	2/12/2019	866.50	\$1,363,371.79
LS-R JD #5	5/5/1965		1/10/2019	957	\$441,014.35
LS-R JD #18	9/18/1901		11/29/2018	1485.5	\$655,531.40
LS-R JD #38	6/7/1912		7/26/1983, 3/23/2017	6544.50	\$1,384,262.11
LS-R JD #54	10/18/1967		7/21/2020	15361.16	\$20,548,925.14
LS-R JD #63	9/22/1959		11/29/2018	2578	\$1,087,479.00
LS-S JD #1	03/1950		2/24/2022	5026.03	\$7,504,916.12
LS-S JD#1 Lateral 2 consolidated into LS-S JD #1 – 2/24/2022					
LS-S JD #3				8/24/2022	\$8,690,080.35
LS-S JD #4	5/1958		2/24/2022	8175.61	\$7,457,597.68
LS-W-BE JD #11			8/29/23	49348.57	\$15,641,341

Definitions:

CD – County Ditch

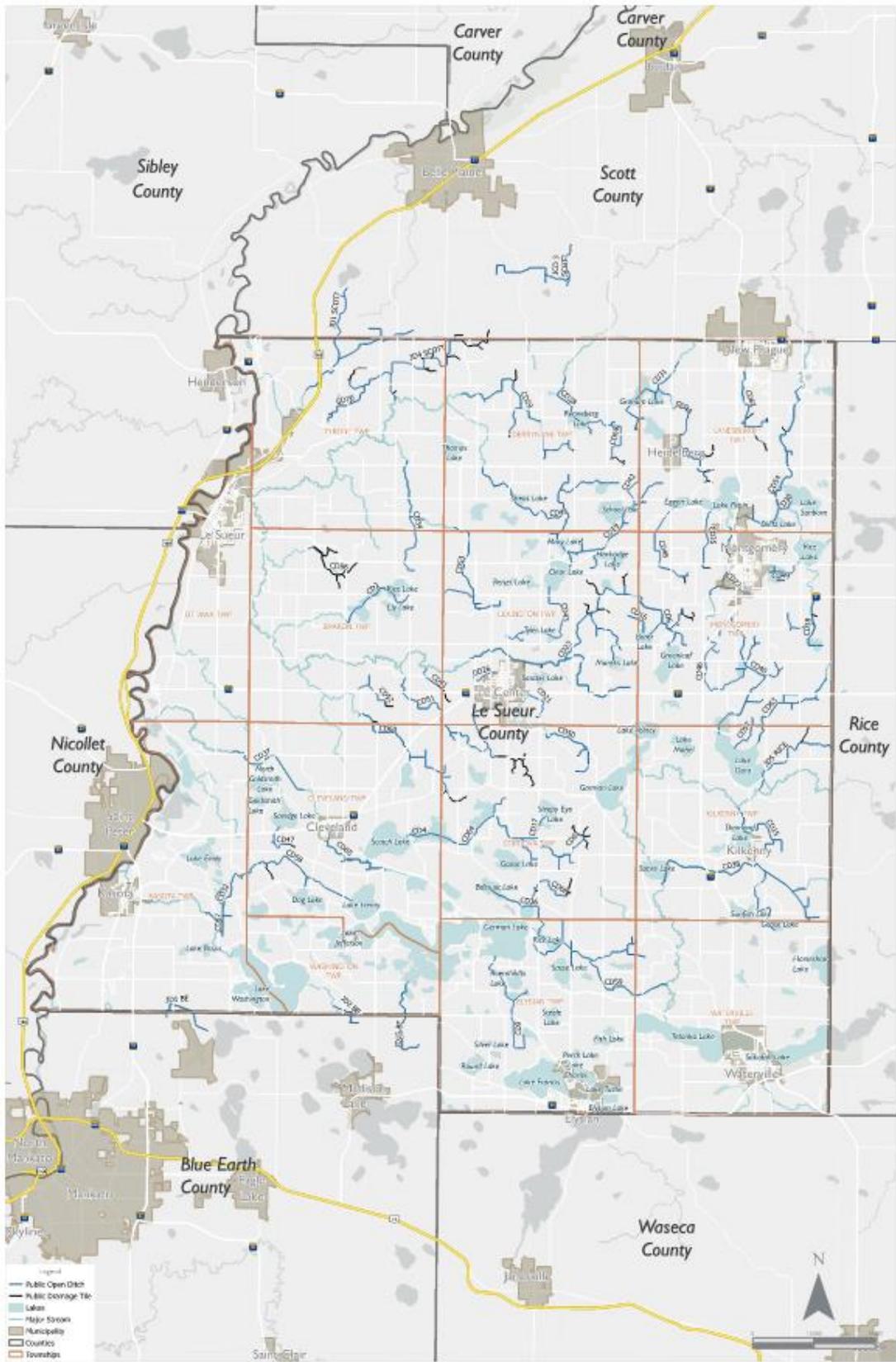
JD – Joint Ditch

LS-BE – Le Sueur & Blue Earth Counties

LS-R – Le Sueur & Rice Counties

LS-S – Le Sueur & Scott Counties

LS-W-BE – Le Sueur, Waseca & Blue Earth Counties



## Introduction

Drainage systems were originally created to make agricultural land more productive, to build and protect roadway embankments, to protect public health from stagnant waters and insect-carried disease, and to promote commerce. In 1887, the State of Minnesota made significant changes to its public drainage laws. With these changes, along with several historical elements including, changing weather cycles, increases in population, international conflict, and increases in agricultural commodity prices, the potential benefits of better drainage and public drainage projects were identified. A petition, or request, procedure was established by the State of Minnesota for establishing, maintaining, or improving a drainage system. From 1888 to 1918, 49 separate county ditch systems were established in Le Sueur County. Due to a drop in price for agricultural commodities, drier weather, and decreased land values, no new county ditch systems were established from 1918 to 1948. With the end of World War II, the start of Cold War, and an increase in demand of food, new drainage projects became popular again. From 1948 to 1966, an additional 21 systems were created in the county. In addition, there were many improvement projects that deepened and widened older existing systems.

In addition to the county ditch system, drainage projects that crossed county lines are called joint ditches. There were originally seven joint ditch systems in Le Sueur County. With recent redeterminations of benefits, a few county ditch systems were changed to joint ditches when benefitted lands were found in an adjoining county.

The newest establishment of a public drainage system was in 1972. Since then, a handful of improvement projects have been approved but most of the drainage work has been limited to maintenance and repairs. The County currently administers 50 county ditch systems and is a part of 12 joint ditch systems. These systems contain 236-miles of open ditch and 27-miles of public drainage tile.



*Figure 1: Blue Earth - Le Sueur County Judicial Ditch 15, September 18, 2020*

## Relationship with Le Sueur County SWCD

For additional information on the Drainage Authority's relationship with the Le Sueur County Soil & Water Conservation District, see "Inspections and Inspectors" or the Memorandum of Agreement, found in Appendix C.

## Purpose Statement

The purpose of this manual is to serve as a tool for landowners, staff, and stakeholders to use in planning projects.

## Definitions

Definitions found in Minnesota Statute [103E.005](#) are used in this document. Definitions not found in 103E.005 are found below.

Normal agricultural practices: Activities normally undertaken for the purposes of raising an agricultural crop and include traditional methods tilling, planting, cultivating, and harvesting.

Drainage Authority Representative: A person appointed by the County Board to act on behalf of the Drainage Authority where the repairs are contemplated and may include drainage inspectors, engineers and their assistants or other individuals appointed to perform duties as required by Minnesota drainage law.

Drainage Inspector: The person appointed by the Drainage Authority, pursuant to Minnesota Statute 103E.065, to inspect and administer the drainage systems of the Drainage Authority.

## Environmental, Land Use, and Multipurpose Water Management

As stated in Minnesota Statute 103E.015 Subd. 1, before establishing a drainage project, the Drainage Authority must consider each of the following criteria:

1. Private and public benefits and costs of the proposed drainage project.
2. Alternative measures, including measures identified in applicable state-approved and locally adopted water management plans, to:
  - a. Conserve, allocate, and use drainage waters for agriculture, stream flow augmentation, or other beneficial uses.
  - b. Reduce downstream peak flows and flooding.
  - c. Provide adequate drainage system capacity.
  - d. Reduce erosion and sedimentation.
  - e. Protect or improve water quality.
3. The present and anticipated land use within the drainage project or system, including compatibility of the project with local land use plans.
4. Current and potential flooding characteristics of property in the drainage project or system and downstream for 5-, 10-, 25-, and 50-year flood events, including adequacy of the outlet for the drainage project.
5. The effects of the proposed drainage project on wetlands.
6. The effects of the proposed drainage project on water quality.
7. The effects of the proposed drainage project on fish and wildlife resources.
8. The effects of the proposed drainage project on shallow groundwater availability, distribution, and use.
9. The overall environmental impact of all the above criteria.

When planning a drainage project or repair and before making an order on the preliminary engineer's report, the Drainage Authority will investigate the potential use of external sources of funding, including but not limited to coordinating with applicable soil and water conservation districts as well as county and watershed district water planning authorities. Minn. Stat. § 103E.015, subd. 1(a).

When considering work affecting a public drainage system, the Drainage Authority must consider conservation of soil, water, wetlands, 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. Minn. Stat. § 103E.015, subd. 2.

## Drainage System Repairs

### Definition

The Drainage Authority holds the responsibility of decisions relating to repairs to the public drainage system. The term "repair," as used in Minn. Stat. § 103E.701, subd. 1, means to restore all or a part of a drainage system as nearly as practicable to the same hydraulic capacity as originally constructed and subsequently improved, including re-sloping of ditches and leveling of spoil 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. "Repair" also includes:

- (1) incidental straightening of a tile system resulting from the tile-laying technology used to replace tiles; and
- (2) replacement of tiles with the next larger size that is readily available, if the original size is not readily available.

### Procedure to Initiate Repairs

To initiate a repair, either the Drainage Authority may order a repair after receiving an inspection report or an individual may file a petition with the Drainage Authority. Minn. Stat. § 103E.705, subd. 1; Minn. Stat. § 103E.715, subd. 1. Additionally, individuals may inform the Drainage Authority of potential repair sites.

If the repair procedure is initiated via petition, the Drainage Authority shall appoint an engineer to examine the system and create a report. Minn. Stat. § 103E.715, subd. 2. Public hearings will be held by the Drainage Authority when an engineer writes their report, and property owners and political subdivisions likely affected will be mailed notices at least 10 days before the hearing. Minn. Stat. § 103E.715, subd. 3. If a repair is filed via petition, the Drainage Authority shall make findings and order the repair to be made if:

- a. 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
- b. 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.

Minn. Stat. § 103E.715, subd. 4. Bids are required to be initiated if the repair system cost exceeds \$175,000.00. Minn. Stat. § 103E.705, subd. 5. The only exception to this limit would be for repairs and construction after a disaster. Minn. Stat. § 103E.705, subd. 7.

A sample repair request form can be found in Appendix B.

## Replacement of Drain Tile

When replacing old or non-functioning tile lines, any new tile installed must be of the same or nearest size possible, but not smaller than, the original tile. New tile must be installed to the same depth and as close as possible to the location of the original lines. Exceptions are:

- Minnesota Statute 103E.701 Subd. 6 allows: a tile or open ditch to be realigned as a repair if the realignment is for the “preservation, restoration, or enhancement of wetlands.”
- Minnesota Statute 103E.701 Subd. 1 allows: (1) incidental straightening of a tile system resulting from the tile-laying technology used to replace tiles; and (2) replacement of tiles with the next larger size that is readily available if the original size is not readily available.

Subsidence of peat ground or erosion may expose drain tile lines or reduce the cover to the point where drain tile lines are being damaged by normal agricultural activities. Replacing drain tile deeper than originally installed is considered an improvement and will rarely be allowed, except under specific conditions. If more cover is necessary to protect the drain tile, realignment of the drain tile short distances into side hills is preferred where practicable. All of the following conditions must be met before the Le Sueur County Drainage Authority will allow a drain tile line to be realigned or replaced at a lower depth than originally constructed:

1. A written report from the Drainage Inspector or engineer must state that the drain tile line must be replaced to maintain the efficiency of the drainage system.
2. Subsidence or erosion must have occurred during normal agricultural practices.
3. Replacing the drain tile at its original location and depth will result in a situation where damage by normal agricultural practices is likely to occur.
4. The realignment or replacement of the drain tile at a lower depth will not result in additional lands being drained.
5. The realignment or replacement of the drain tile at a lower depth will not increase the efficiency of a private drain tile beyond the drain tile’s original construction.
6. The Drainage Authority must consider the total cost of the repair and whether the repair is in the best interest of the drainage system.



Figure 2: Le Sueur County Ditch 61, November 5, 2021

## Open Ditch Repairs

Cleaning is recommended every eight to 10 years, or as needed and recommended by the Drainage Inspector. Assuming the system has accumulated sediment along the channel bottom above legal grade, a majority of the open ditch will need to be cleaned. Accumulated sediment leads to vegetation growth and bank erosion within the channel. The repair will include cleaning the open ditch to legal grade and legal cross section width.



Figure 3: Blue Earth - Le Sueur County Judicial Ditch 15, September 18, 2020



Figure 4: Le Sueur County Ditch 23, March 26, 2021

## Permits

Local, state, and federal environmental regulations that are not specifically listed in Minnesota Statue 103E may also apply to public drainage projects and repairs. The project's design, timeline, budget, and overall project success may be impacted by regulatory requirements.

The following table summarizes local, state, and federal rules that potentially apply to drainage projects and repairs. The table is meant to be a general guideline. There may be more specific requirements or nuances to each permit as it pertains that that project. Applicable permit needs should be reviewed in detail for each project.

Agency	Topic	Applicable Statutes and Rules	Applicability
<b>Local Government</b>			
County	County highway right of ways		Activities within county highway right-of-way require county permits. Activities may include but are not limited to utility installation, culverts, or borings.
<b>State</b>			
BWSR	Minnesota Wetland Conservation Act	MN Rule 8420 and Statute 103G	The Minnesota Wetland Conservation Act (WCA) regulates activities that drain, fill, or excavate within wetland areas. Applications for WCA impacts are reviewed by the designated Local Government Unit in coordination with state and federal agencies. Activities that result in wetland impacts may require replacement or mitigation.
DNR	Public Waters Program	MN Rule 6115 and Statute 103G	Activities affecting the course, current, or cross-section of a Public Water may require a public waters work permit. Exemptions may be applicable to drainage projects if the activities are located in an altered natural watercourse or do not substantially affect public waters.
	Calcareous Fen Program	MN Statute 103G.223	Calcareous fens have special protections under WCA. According to WCA, calcareous fens may not be filled, drained, or otherwise degraded wholly or partially by any activity, unless the commissioner of natural resources, under an approved management plan, decides some alteration is necessary.
	Threatened and Endangered species program	MN Rule 6134 and MN Statute 84.0895 Sub 2	The endangered species program regulates activities that may affect plants and animal species that are classified as Threaten or Endangered by the DNR commissioner. Refer to MN Statutes 84.0895 Sub 2, for a list of activities and land classifications where this rule does not apply to state-listed plant species.

Agency	Topic	Applicable Statutes and Rules	Applicability
	Water appropriation/ dewatering permit	MN Statute 103G.265	A water use permit is required for all users withdrawing 10,000 gallons of water per day or 1 million gallons of water per year is required.
Environmental Quality Board	Environmental Review	MN Rule 4410	Public drainage system project may trigger mandatory EAW through impoundments; changes to course, current or cross section of public water or wetland; or diversion, realignment, or channelization of trout streams or natural watercourse. This Environmental Review could be mandatory, discretionary, or by petition. Minnesota administrative Rule 4410 describes specific threshold triggers when an EAW or an EIS needs to be prepared in order to assess the environmental effects of a proposed project.
MnDOT	State highway right of ways	MN Statute 160 and 161	Activities within state highway right-of-way require MnDOT permits. Activities may include but are not limited to excavation, embankments, utility installation, borings, or tree removals.
MPCA	Stormwater permits	MN Rule 7090	Construction stormwater permits are generally required for activities that disturb one acre or more of soil.
<b>Federal</b>			
USACE/EPA	Clean Water Act Section 404		Applies to activities that result in the discharge of dredged or fill material in Waters of the United States, including wetland areas.
MnPCA	Clean Water Act Section 401		In Minnesota, the MPCA administers section 401 of the Clean Water Act, which includes water quality certification. This applies to projects that require federal authorization and have a point source discharge that would affect "Waters of the U.S."

Agency	Topic	Applicable Statutes and Rules	Applicability
USDA/NRCS	Food Security Act (Swampbuster)		This program discourages altering wetlands by withholding Federal farm program benefits from any person who: plants an agricultural commodity on a converted wetland that was converted by drainage, dredging, leveling, or any other means after December 23, 1985. Or, converts a wetland for the purpose of or to make agricultural commodity production possible (after November 28, 1990).
USFWS	Section 10 of Endangered Species Act		Section 10 permits are required for activities that "take" Federally listed Threatened and Endangered species.
	Bald and Golden Eagle Protection Act		The BGEPA prohibits anyone from "taking" bald or golden eagles, including their parts, without a permit.
	Migratory Bird Treaty Act		The MBTA prohibits the "take" of protected migratory bird species without authorization from USFWS.
MnSHPO	National Historic Preservation Act		Minnesota's State Historic Preservation Office administers and coordinates state and federal preservation programs that include historic and archaeological resources.

### Payment of Damages During a Repair

When land is enrolled in a government-sponsored program that requires maintenance of vegetative cover, damages to buffer strips/other non-crop land are eligible to be paid. However, if the contractor is replanting cover during the repair, damages will not be paid. Additionally, crops that are found to have been planted in violation of a previous buffer strip easement will not be paid if damaged.

### Emergency Repairs

When there is disaster-related event where Le Sueur County is designated as a Federal Emergency the Drainage Staff may apply for Federal Emergency Management Agency (FEMA) assistance funds.

### Classification of High Maintenance Ditch Systems in the County

Certain ditch systems in the County require more repair and maintenance work than others. Based on past performance, we would categorize the following ditch systems as high maintenance systems. If you own land in a high maintenance system, you can expect more frequent repair and maintenance assessments.

The following systems have historically required more frequent repairs and maintenance:

County Ditches: 6, 23, 29, 37, 40, 41, 43, 45, 46, 51, 56, 58, 59, 60, 61

Joint Ditches: 1 (Scott), 4 (Scott), 38 (Rice), 54 (Rice), 63 (Rice)

## Drainage System Improvements

### Definition

Minnesota Statute 103E.215 Subd. 2 defines a drainage system improvement as “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.”

### Petition Requirements

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.

Minn. Stat. § 103E.215, subd. 4(a).

The petition must be filed with the Le Sueur County Auditor-Treasurer. 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, in the form of a bond, by the petitioners that they will pay all costs and expenses that may be incurred if the improvement proceedings are dismissed.

Minn. Stat. § 103E.215, subd. 4(c).

### Subsequent Proceedings

When a petition and the bond required by Minn. Stat. § [103E.202](#) are filed, and deemed sufficient, the auditor will present the petition to the board, or for a joint county drainage system, to the joint county Drainage Authority. The Drainage Authority shall appoint an engineer to examine the drainage system and make an improvement report. The improvement proceedings must be conducted under this chapter for the original proceedings for the establishment of a drainage project. The benefits and damages determined must be a result of the proposed improvement. Assessments for the repair of the improvement must be based on the benefits determined for the improvement.

### Laterals, New Systems, and Impoundments

When a petition for an improvement of a separable portion of a drainage system or lateral has been filed, it may be necessary to provide for a fair distribution of the separable maintenance costs and for assessment of future repairs.

Additionally, Minn. Stat. § 103E.225 can be referred to when seeking petition requirements for laterals. Petitioners should be aware of potential lateral location and reasoning for construction before creating the petition for approval. After said petition has been filed, lateral construction procedure will continue as normal for an established drainage project. Laterals will not be constructed to drain properties that are not being assessed for benefits, unless express authority has been obtained, which can be referred to within Minn. Stat. § 103E.401.

New drainage system projects are established under Minn. Stat. § 103E.212. A petition is required to be signed for a new system, which must be signed by either:

- 60% of the property owners of the area the proposed system passes; or
- A majority of the owners of the property the petition described area passes over.

A signature is counted as one separate parcel of property; however, all owners of a single parcel must be included. The signature of each entity regardless of the number of parcels of property owned counts as one signature on the petition.

Requirements for the information a petition must contain, include:

1. A description of 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. A description of the starting point, the general course, and the terminus of the proposed drainage system.
3. A statement about why the proposed drainage system is necessary, how it will benefit and/or be useful to the public, and how it will promote public health.
4. A statement that 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.

Minnesota Statutes, Chapter 103E authorizes the Drainage Authority to enhance wetland or water quality to make more adequate use of water resources. Impounding may be petitioned for by a person or group, including rerouting or diverting drainage system waters for beneficial use. A bond must also be filed, unless the petition has been filed by the state, a state agency or department, the commissioner of natural resources, the United States or any of its agencies, a soil and water conservation district, a watershed district, or a municipality.

An engineer will analyze potential installation effects and a report will be filed, and a public hearing will follow. The Drainage Authority shall consider the separable repair costs that will be avoided as a result of the petitioned project, as well as any other benefits of the project to the drainage system, when determining whether or how much to contribute to the petitioned project.

## Inspections and Inspectors

The Drainage Authority will appoint a person as the Drainage Inspector. The inspector must not be a county commissioner. The inspector examines the drainage systems designated by the Drainage Authority. Minn. Stat. § 103E.065.

The Drainage Authority has appointed the Drainage Inspector position to the Le Sueur County Soil and Water Conservation District through a Memorandum of Agreement dated November 16, 2021. A copy of the MOA is located in Appendix C.

## Inspector Responsibilities

Le Sueur County will retain a Drainage Inspector who will monitor all drainage systems within the county for necessary repairs/maintenance.

Inspection and maintenance are the responsibility of the Drainage Authority, but is often carried out by the Drainage Inspector, hired to advise the Drainage Authority regarding proper management of the public drainage systems. The following are specific requirements of Drainage Inspectors imposed by state law.

1. Must inspect the drainage systems within the county on a regular basis.
2. Must inspect open ditches at a minimum of every five years if no violations have been found. If violations have been found, the violation area must be inspected every year until one year after the violations have been corrected.
3. The inspection process includes the inspection of vegetative strips along a ditch. If a violation is found, the inspector must send the property owner a notice. Minn. Stat. § 103E.021, subd. 4.
4. If a property owner does not bring an area into compliance with Minn. Stat. § 103E.021, as provided in the compliance notice, the Drainage Inspector must notify the Drainage Authority.
5. For each drainage system that the board designates and requires the Drainage Inspector to examine, the Drainage Inspector must prepare a written drainage inspection report and submit it to the board upon completion of that inspection.

Additionally, subject to the limits in “Contracts and Bidding” the Drainage Inspector is responsible for:

- Submitting repair requests for presentation to the Drainage Authority for their approval.
- Obtaining contractors to do the repair work and approve their claims for submittal to the Drainage Authority for their approval.

All repair work documentation will become part of the drainage system permanent file. The Drainage Inspector and contractors are required to attempt contact with landowners before entering their property concerning all drainage issues. A sample repair request is available in Appendix B.

## Violation Procedure

Drainage Inspectors will create violation reports with appropriate information identifying the violation. Examples of inspection information are GPS locations, photos or drawings, written descriptions, and identifying methods of repairing violations. This information can be found on the Le Sueur County Drainage Database website. Minn. Stat. § [103E.081](#) defines crimes and violations related to drainage systems. Individuals who violate these can be subjected to misdemeanor punishment or criminal prosecution. Minn. Stat. § [103E.085](#) provides guidance of seeking violation enforcement.

## System Funding

### Common Costs Incurred by Drainage Systems

Drainage system incur common costs including, but not limited to:

- Major Repairs: see “Drainage System Repairs”
- Drainage-Authority-set interest rates, funding provided by a general fund advance
- Time or dollars spent by the ditch, allocated but not necessarily directly linked to any single ditch
- Flood Repair: Refer to Minn. Stat. § [103E.011](#)
- Improvements: see “Drainage Improvements”
- Legal and audit fees, per diems, inspection, and other administrative costs
- Engineer Costs
- Viewers Expenses

- Board member’s pay, or per diems, with regards to committee appointment for drainage system inspection, or when the board member is employed in construction/drainage proceedings
- Petitioner’s bond cost

Table 1. Fee Schedule

Item	Cost
<b>Drainage Assessments</b>	
<b>New Lien – Minimum Charge</b>	\$10.00
New Levy – Minimum Charge	\$5.00
<b>Interest on assessments</b>	4%
<b>Ditch Assessment Fee</b>	\$2 per entry
<b>Drainage Systems Annual Auditor-Treasurer Fee (Based on benefited acres)</b>	\$30,000
<b>Ditch Inspector Fee</b>	Varies annually

### How are Costs Assessed

Drainage system costs are determined and assessed by the Auditor-Treasurer's office as needed based off funds available and spent on each drainage system. Drainage systems undergoing larger repair projects or have a need for more routine maintenance and repairs may be assessed more frequently than other drainage systems. When assessments are placed, the Auditor-Treasurer shall assess for a fund balance reserve of \$10 per benefit acre of the drainage system to help offset the cost of future expenditures.

The Auditor-Treasurer shall bring assessment rolls forward to the Drainage Authority for approval. Landowners will receive a bill by mail and will have the ability to pre-pay, in full or partial, for the remainder of the current calendar year without interest. If prepayment in full is not received, the assessment shall be placed on the tax rolls as an assessment, with interest. The number of years that landowners will have to pay the assessment in the taxes will be dependent upon those landowners with the largest assessment. The Auditor-Treasurer will attempt to leave assessments on a specific drainage system at approximately \$2,000 per year, with a maximum of fifteen (15) years.

Le Sueur County is in the process of developing a strategy to place annual drainage assessments. The goal of annual drainage assessments would be to build up a fund balance to pay for the routine annual expenditures on each drainage system. Annual assessments may be placed at \$1-\$3 per benefit acre dependent upon the needs of each particular drainage system. Excess costs incurred on the drainage system may be assessed at higher rates. An annual assessment, or drainage levy, shall bear no interest.

### Redetermination of Benefits

#### What is a Redetermination of Benefits and Why Does Drainage Authority Conduct Them?

In simple terms, a redetermination benefits is a formal process the drainage authority conducts to ensure a proper accounting of identifying all lands benefitting and using the drainage system and giving those lands different values for their drainage. Minn. Stat. § 103E.351. These values are used to determine the amount each parcel owes when maintenance and repair work needs to be completed on the system.

Many of Le Sueur County ditch systems have not received updated redeterminations for decades, so original benefits no longer reflect current market values. Additionally, through tile drainage, many lands are using the ditch system, but have not been officially included in the benefits rolls and have not been paying for repair and maintenance work on the system.

An additional important step in the redetermination process is the acquisition of a 16.5-foot buffer easement on each side of the ditch with restrictions that going forward, the easement must remain in permanent vegetation.

The benefitting landowners in the entire system pay the “damages” or costs of acquiring the easement, with payment made to landowners who own those buffers. While this has been in State law for decades, the Le Sueur County Drainage Authority had rarely gone through the process of obtaining these easements. The acquisition of the buffer strips is a one-time process, so once the drainage authority conducts redeterminations on all ditch systems and formally acquires these easements, the acquisition will not need to be repeated.

### **Statutory References**

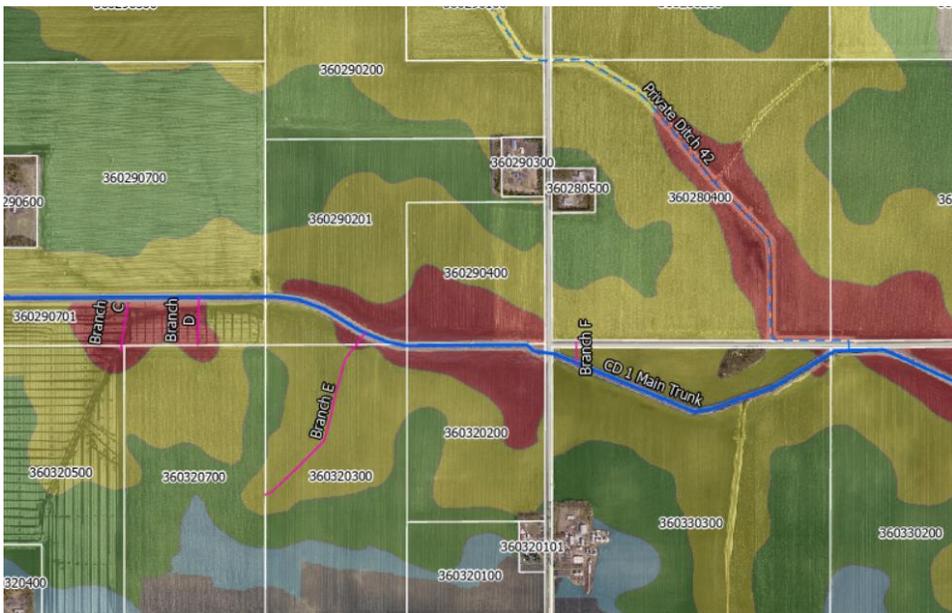
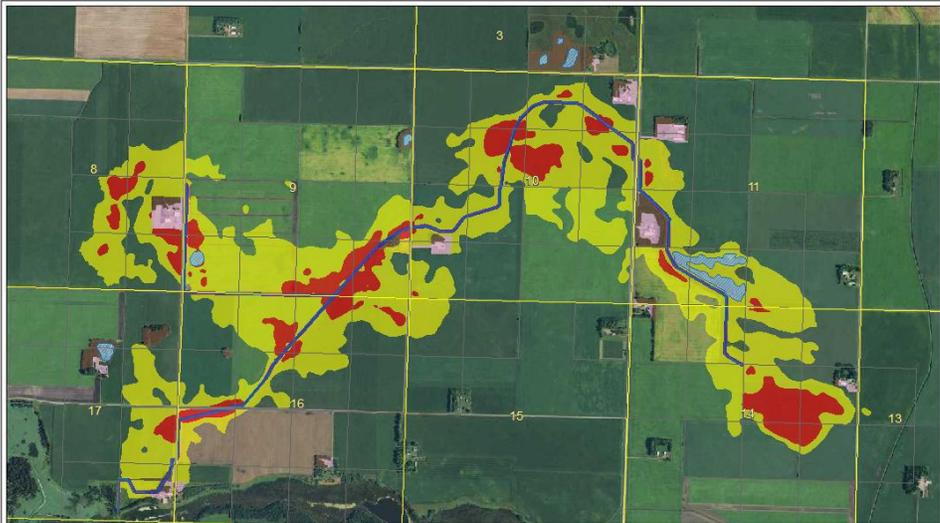
- Minn. Stat. § 103E. 705, subd. 1: The drainage authority shall inspect and maintain the efficiency of the drainage system.
- Minn. Stat. § 103E.315, subd. 5, 6: Requirements for viewers being appointed by the drainage authority to ensure all lands are properly accounted for that use the drainage system and they are given a value for their drainage.

### **Process of Redetermination of Benefits**

1. If:
  - a. the drainage authority determines that the benefits or damages of record determined in a drainage proceeding do not reflect reasonable present-day land values or that the benefited or damaged areas have changed; or
  - b. more than 26 percent of the owners of property or owners of 26 percent of the property that is benefited or damaged by a drainage system petition to redetermine benefits and damages, the drainage authority must make a determination on the petition according to paragraph (a).the drainage authority may appoint three viewers to redetermine and report the benefits and damages and the benefited and damaged areas. Minn. Stat. § 103E.351, subd. 1.
2. The viewers will review historic drainage system records, identify lands currently utilizing the system, review maps and photos to identify proper accounting of lands, evaluate land use of the parcels, determine property values, and identify 16.5-foot buffer areas.
  - a. The factors used in the viewer’s analysis include land values based on extracted sales data, drainage values based on drainage system operations, proximity to ditch system, crop productivity indexes to evaluate soils for their production potential.
  - b. The viewers shall submit a report pursuant to the requirements in Minn. Stat. §§ 103E.311 to 103E.321.
3. After the viewers submit a report, the Drainage Authority shall send affected landowners notice of a hearing on the redetermination of benefits. At the final hearing, the Drainage Authority must determine if the benefits and damages, as redetermined by the viewers, accurately reflect the value of the benefits provided by the drainage system and the damages caused by the drainage system.

### **Assigning Different Values**

Viewers will assign lands differing values, generally in Class 1 through 4. With class 1 benefitting the most and class 4 the least. Class 1 acres benefit the most from the drainage system and will thus pay more for any future costs related to the system.



A video is available on the Le Sueur County drainage page (<https://www.co.le-sueur.mn.us/517/Drainage>) or by visiting <https://vimeo.com/454885289> that goes into more detail on the viewing process for a Redetermination of Benefits.

### Removing Property from Drainage System

Minnesota Statutes, chapter 103E outlines that established drainage systems have procedures for changing benefits. Sufficient documentation is required for changing benefits after system establishment, including a petition and a following hearing. Clerical errors will be corrected after this documentation is provided.

According to Minn. Stat. § 103E.805, after construction of a drainage system, an owner of benefited property may petition the Drainage Authority to remove property from the drainage system. The petition must be filed with the auditor of Le Sueur County. The auditor will set a time and location for a hearing on the petition and

shall notify owners of all property benefited by the drainage system of the hearing by mail. At the hearing, the Drainage Authority will order that the petitioners' property be removed from the drainage system if:

- The waters from the petitioners' property have been diverted from the drainage system.
- The property is not benefited by the drainage system.
- Removing the property from the drainage system will not prejudice the property owners and property remaining in the system.

Property that has been removed from the drainage system will not be affected by the drainage system when any later repairs or improvements are made to the system. 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 order. The property removed shall not be released from a drainage lien or assessment filed before the removal of the property.

### **Petition to Remove Benefits but Not Land**

The placement of land into a temporary or permanent conservation easement program is not sufficient cause to remove or reduce a landowner's ditch benefits. The Le Sueur County Drainage Authority may remove benefits from lands as part of a wetland restoration project only after a certified engineer has shown that the impoundment is a benefit to the drainage system in the form of reduced maintenance or an increase in the efficiency of all or part of the system. Each petition for removal of benefits must be filed in accordance with Minnesota Statute 103E.805 and will be handled individually based on the merits of the restoration project. Benefits may be reduced without impoundment or diversion only if a redetermination of benefits of the entire ditch system is performed.

### **Parcel Splits on Ditches**

When a parcel containing drainage benefits is split or combined, the drainage benefits must be reallocated. Drainage benefits are assessed in 40-acre increments (quarter quarters). Benefits must always remain within the same 40. Ditch benefits to any individual 40 can vary greatly and it is in the interest of the buyer and seller to discuss the division of benefits as part of the land transaction. Le Sueur County encourages all buyers and sellers to allocate the benefits prior to or during the time of transfer.

The Le Sueur County Auditor's Office is available to assist individuals with allocating their benefits. If ten (10) business days pass after the parties have recorded their deed and they have not submitted the division of benefits form, the Le Sueur County Office will assign benefits to each parcel.

Parcels will be assessed benefits proportionally based on the percentage of land they have in any 40-acre benefited area. Whatever percentage of land is owned in a particular 40 will then be multiplied by the total assessed benefits of that 40 and assigned to that parcel. To the extent possible, the Auditor-Treasurer may look at and use maps created during the Redetermination of Benefits process and take land classifications into consideration when apportioning benefits.

For example, if one owns 12 acres out of 40, which has \$7,000 in benefits, then that individual's parcel would be assigned \$2,100 in benefits (12 acres / 40 acres = 30%) ( $\$7,000 \times .30 = \$2,100$ ). If individuals dispute the way the Auditor-Treasurer's Office has allocated the benefits between parcels, they are welcome to come to the office to fill out and sign a division of benefits form after the fact. On ditches that are currently undergoing redetermination, parcel splits will be submitted to the viewers to divide, up until the mailing of the maintenance cost assessment. After, that mailing goes out, splits will be processed according to the policy above.

## **Building Structures Over Tile Lines**

Permanent structures of any type shall not be built over or near a public drain tile line.

Landowners who do build any type of structure over or near a drain tile line assume liability for any damage caused by the failure of the drain tile line. The landowner is responsible for the cost of moving a drain tile line away from a structure. Before a drain tile line is moved, the landowner must submit a plan to the Drainage Authority showing the new location of drain tile in relation to the old drain tile and all surrounding structures, a list of the materials to be used, and the name of the contractor doing the work. The Drainage Authority may require a licensed engineer to review the plan before construction. If the drain tile cannot be moved without harming the ditch system, the structure will have to be removed.

## **Buffer Acquisition**

The Drainage Authority must order a permanent strip of perennial vegetation according to Drainage Code, including ensuring they are the correct legal width for the system (ex. At least 16.5 feet for open ditch drainage systems). Underlying property has ownership retained by landowners, and acquisition area does not restrict all uses for the vegetation strip. The land may be used for various agricultural activities so long as the buffer acquisition is not harmful to the vegetation or drainage system.

Fair market value may not match buffer strip damage awards, due to various agricultural activities being permitted that may result in damages. Fair market value of a damaged permanent strip of perennial vegetation will be directly correlated with land use prior to buffer installation, determined by the viewers and Drainage Authority.

Drainage system repair and buffer strip costs are apportioned in accordance with the benefited properties and benefits on record. Guidelines and laws pertaining to buffer acquisition can be found in Minnesota Statute 103E, however these buffer laws do not supersede Drainage Law.

Minnesota Statute 103E.021 Subd. 6 states that the Drainage Authority may have property jurisdiction for ditch buffer strips. This section says that Drainage Authority has legal authority "where necessary to control erosion and sedimentation, improve water quality, or maintain the efficiency of the drainage system".

## **Contracts and Bidding**

### **Bidding and Quotes**

The Ditch Manager/Inspector has the authority to initiate any ditch work that is \$25,000 or less for repairs and work with preferred contractors. All other repair work above \$25,000 must go before the Drainage Authority for approval and bids received.

When an existing project reaches the \$25,000 mark, and there is additional work to be completed, the Ditch Manager/Inspector has the authority to work with the County Administrator for approval up to an additional \$15,000. This option should only be exercised for extraneous circumstances, such as when waiting for a County Board Meeting may cause additional damage to the drainage system, or there is clear weather or contractor-related issues.

Before this option is exercised, the County Administrator/Ditch Manager will consult with the Drainage Authority. If work is approved, the County Administrator/Ditch Manager will provide information on the approval at the next available board meeting.

Under Minn. Stat. § 471.345, when contracts exceed \$175,000, sealed bids will be solicited by public notice from Le Sueur County. If a contract exceeds \$25,000 but not \$175,000, the contract may be made either upon

sealed bids or by direct negotiation. Two or more quotes must be obtained if using direct negotiation. Quotes obtained must be kept on file for at least one year. If a contract is \$25,000 or less, the contract may be made either via quotes or in the open market. If made with quotes, two quotes, if obtained, must be kept on file for one year. Under Minn. Stat. § 103E.505, bids that exceed the total estimated cost of construction by more than 30 percent may not be accepted.

### **Solicitation of Quotes**

Any non-emergency public drainage system related work over \$10,000 will follow this process:

1. Ditch inspector identifies the scope of work and prepares a brief description of work that needs to be completed along with deadline of when bids need to be received and work completed.
2. Information is forwarded to Auditor/Treasurer's office who will then email a list of contractors the information and solicit bids with the established deadline. This email will also outline how the bid should be assembled. (e.g. detailed breakdown of work, hours, materials, labor, etc.)
3. Auditor/Treasurer staff will forward all bids received to the Ditch Manager/Inspector who will determine the winning bid. This bid may or may not go to the Drainage Authority for approval depending on project complexity and cost.

A sample of the bid form can be found in Appendix A.

Project exceptions may exist for specific project types such as beaver dam removal and trapping, and emergency repairs.

### **Soliciting of Contracts – Constructing Drainage Project**

According to Minn. Stat. § 103E.501, contracts and bonds will be prepared by the county attorney, the engineer, and the attorney for the petitioners. The contract must contain a specific description of the work to be done or refer to the plans and specifications. The contract must state that time of the essence and if there is a failure to perform work according to the terms of the contract within the time frame stated by the contract, the contractors will forfeit and pay Le Sueur County 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.

Contractors must file a bond with the Le Sueur County auditor for an amount not less than 75 percent of the contract price of the work. The bond must be approved by the auditor. The bond must provide that the contractor is liable for all damages resulting from a failure to perform work under the contract, and failure to perform work under the contract may maintain an action against the bond in their own names. Liability for all damages may not exceed the amount of the bond.

### **Awarding of Contract – Constructing Drainage Project**

Minn. Stat. § 103E.505 references accepted procedure regarding awarding construction contracts. If the estimated cost of construction is more than \$25,000, the auditor must place a notice in a drainage construction trade newspaper. For notifying the public, the statute says the following must be stated in all trade newspaper notices:

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 a contract and give a bond as required by Minnesota Statute, section 103E.501; and
5. that the Drainage Authority reserves the right to reject any and all bids.

## Private Crossings and Culverts

Pursuant to a conversation with Dick Bradshaw on October 9<sup>th</sup>, 2002, it has been determined that the following active Le Sueur County Ditches will have landowners provide their own culverts when replacements are necessary:

CD 2	CD 4	CD 15	CD16	JD 18
CD 19	CD 21	CD26	CD 28	CD 31
CD 36	CD 40	CD 45	CD 49	CD 53
CD 59				

### **EXISTING PRIVATE CROSSINGS**

Private crossings currently existing on drainage systems may or may not have been constructed as part of the drainage system. See Minnesota Statutes, section [103E.285, subd. 4](#). Upon a request to repair, improve, or remove an existing, private crossing, the Drainage Inspector shall first determine:

1. Whether the crossing was established as part of the drainage system;
2. Whether the crossing constitutes an obstruction of the drainage system; and
3. Whether the crossing could be eliminated by consolidation.

### **PRIVATE CROSSINGS ESTABLISHED AS PART OF THE DRAINAGE SYSTEM**

If the Drainage Inspector determines an existing, private crossing was established as part of the drainage system, the Drainage Inspector shall investigate the request to repair, improve, or remove the crossing. There are many areas in the County where tracts of land would be land-locked if not for the installation of private crossings over open drainage ditch. Existing crossings may be too narrow to accommodate modern farm equipment or have deteriorated pipe materials. Older crossings with reinforced concrete pipe (RCP) may consist of multiple sections of pipe, which were not tied together. This leads to separation over time and, potentially, failure of the private crossing. In relation to these issues for existing, private crossings established as part of the drainage system, the following policies pertain:

1. On RCP crossings that require only the sections be tied and/or relayed to grade to make the crossing useable, the drainage system will pay for labor to perform such work. The Drainage Inspector will arrange for and observe this work to ensure the crossing does not present an obstruction to the hydraulic capacity of the drainage system.
2. Where landowners wish to add sections of RCP and widen the crossing, the landowner is responsible for all related costs. The work must be coordinated through the Drainage Inspector so that the Drainage Inspector may observe the work. The Drainage Inspector will inspect the work post-installation to ensure the crossing does not present an obstruction to the hydraulic capacity of the drainage system.

Increasing the width or capacity of an existing crossing that is part of the drainage system may be an improvement, and not a repair, and must only be approved under the procedures for an improvement in Minnesota Statutes, chapter 103E.

The Drainage Authority reserves the right to use alternative measures to maintain a landowner's right of access, including but not limited to, replacement of a bridge or culvert with another suitable material, or obtaining an alternative legal right-of-way. A landowner wishing to remove a private crossing constructed as part of the drainage system must submit a written request and receive permission from the Drainage Inspector prior to removal. As a condition to the permission authorizing removal of the crossing, the landowner must execute and record a Field Crossing Removal Agreement on the property to acknowledge that the crossing shall no longer be part of the drainage system. The Field Crossing Removal Agreement shall release the Drainage Authority of any obligation to maintain or reconstruct the private crossing.

A template of the Field Crossing Removal Agreement can be found in Appendix D.

## **PRIVATE CROSSINGS NOT CONSTRUCTED AS PART OF THE DRAINAGE SYSTEM**

### **Obstructions:**

If the Drainage Inspector determines an existing, private crossing was not constructed as part of the drainage system and constitutes an obstruction, the Drainage Inspector shall make a report and present such findings to the Board. If the Board determines that the drainage system has been obstructed, including by the installation of bridges or culverts of insufficient 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 shall set a time and location in the notice for the responsible person to appear before the Board.

See Minnesota Statutes, sections [103E.525, subd. 1](#) & [103E.075](#).

### **Requests to Repair, Modify, Improve, or Construct:**

A landowner wishing to repair, modify, improve, or construct a private crossing over a drainage system must submit a written permit application and receive permission from the Drainage Inspector prior to repair, modification, improvement, or construction in accordance with the terms of this section. A template of the request form can be found in Appendix E.

The Drainage Inspector shall set the width, depth, and size of the private crossing and shall inspect the crossing after the repair, modification, improvement, or construction. The Drainage Inspector may seek the advice of a licensed engineer to determine if the proposed crossing will impair the hydraulic capacity of the drainage system. The landowner shall be responsible for the costs of design, including engineers' costs, if necessary, and all other costs incurred by the Drainage Authority because of the private crossing request. If the Drainage Authority grants the request for a private crossing or culvert, the Drainage Authority and the landowner shall enter into a permanent agreement memorializing the landowner's and future landowner's permanent obligation to be financially or otherwise responsible for the private crossing. The agreement, titled Declaration and Covenant, shall be recorded on the landowner's property as a deed restriction.

Private crossings not built as part of the drainage system are the responsibility of the landowner. If a landowner did not originally construct the private crossing, the current landowner is still the party responsible for the private crossing. If a private crossing not built as part of the drainage system must be removed or repaired by the Drainage Authority, the costs may be charged to the landowner.

In addition, the landowner must observe the following requirements:

1. All costs incurred by the Drainage Authority in repairing, modifying, improving, installing an additional culvert, widening, or extending the crossing, or constructing the crossing must be paid by the landowner requesting the repair, modification, improvement, or construction.
2. Any new culvert, including repair that involves replacing or relaying a culvert, must be bedded properly, and installed at the as-constructed and subsequently improved elevation of the drainage system.
3. All materials used in the installation must be of the same or better quality than the original construction.
4. The flow under the crossing or through the culvert, to the extent practicable, must remain the same as the original flow characteristics.
5. The landowner responsible for repairing or constructing the crossing shall be responsible for all maintenance, repairs, or reconstruction to the crossing or drainage system caused by improper installation.
6. If at some future date a crossing must be repaired or replaced as part of a repair to the drainage system, the landowner shall be responsible for the costs of repairing or replacing the crossing.
7. As a condition to the permission authorizing installation of the crossing, the landowner must execute and record a restriction on the property to acknowledge that the crossing shall not be part of the drainage

system and subjecting the property, and any additional real estate added thereto, to ongoing operations and maintenance of the culvert.

A template Declaration and Covenant is attached to this policy as Appendix F.

The Drainage Authority reserves the right to remove, at the landowner's expense, any improperly constructed crossing or culvert, extension of a crossing or culvert, or any crossing or culvert installed without prior approval from the Drainage Inspector. The Drainage Authority has no obligation to grant permission for installing or modifying a crossing or culvert. To the extent possible, the Drainage Authority will require the consolidation of crossings and culverts.



Figure 5: Le Sueur County Ditch 58, May 8, 2020

## Erosion Control

### Vegetation Management

Vegetation control must be performed regularly to prevent growth of trees or brush within the drainage system and its right-of-way to reduce future repair and maintenance costs. The Drainage Inspector will conduct regular inspections of the system and may recommend a spraying or mechanical removal program to the Drainage Authority for approval. Only State and Federally approved chemicals may be applied to eliminate unwanted vegetation within the public system.

If the Landowner does not wish to control vegetation via chemical application, the Drainage Inspector must be notified in writing each year. The Landowner reserves the right to remove all trees and brush in the drainage system's right-of-way at their own expense instead. If removal of vegetation is deemed satisfactory upon inspection, that portion of the drainage system will be removed from the spraying area. If unsatisfactory, the Drainage Authority will make arrangements to bring vegetation to acceptable levels.

### Seeding and Erosion Control Measures

Below outlines recommended seeding and erosion control specification specific to drainage systems and rural water resources projects with seeding restoration. The specifications outlined below can be used as a guide for best outcomes for seed establishment and reduced erosion.

Each site and project will vary on the seed mix type and erosion control that is appropriate based on the location, moisture/expected wetness, slopes, and concentration of water flow among other considerations.

*Seeding Schedule:*

The contractor shall seed all portions of the disturbed areas that have not been actively worked in accordance with Table 9219-2

**Table 9219-2  
Non-Actively Worked Seeding Schedule**

Type of Slope or Disturbance Area	Time Area can remain open without being actively worked	
	Normal Water	Special/Impaired Water
Steeper than 3:1	14 days	7 days
10:1 to 3:1	14 days	7 days
Flatter than 10:1	14 days	7 days
Ditch Buffers	14 days	7 days
Ditch Side Slopes	2,500 Linear Feet	
Within 200 feet of Surface Water	1 day	

Seeding shall take place in accordance with the dates aligned in Table 9219-3. If work is completed outside of the seeding window, temporary stabilization is required.

Temporary seeding consists of fast establishing varieties of non-native cover crops such as wheat grass, rye grass alfalfa, and clover. Temporary seed mixes allow for 2-5 years stabilization and should be permanently seeded with varietal mix once within seeding window. Common temporary seed mixes include MnDOT Seed Mix 22-111 and 22-112.

**Table 9219-3  
Season of Planting**

<b>Seed Mixture Number</b>	<b>Spring</b>	<b>Fall</b>
21-111	May 1 – Aug. 1	---
21-112	---	Aug. 1 – Oct. 1
22-111*	April 1 – July 20	July 20 – Oct. 1
25-142*	April 1 – July 20	July 20 – Sept. 1
32-241	April 15 – July 20	Sept. 20 – Oct. 20**
33-261	April 15 – July 20	Sept. 20 – Oct. 20**
34-181	April 15 – July 20	Sept. 20 – Oct. 20**
34-262	April 15 – July 20	Sept. 20 – Oct. 20**
35-241	April 15 – July 20	Sept. 20 – Oct. 20**
Any mix beginning with a 3	April 15 – July 20	Sept. 20 – Oct. 20**
Low Diversity Buffer General – BWSR pilot mix	April 15 – July 20	Sept. 20 – Oct. 20**
Supplemental native wildflower mix	---	Sept. 20 – Oct. 20**
* For the portion of Minnesota north of, and including T.H. 2, plant seed mixtures from 22-111 to 25-142 from April 15 to Sept 20.		

*Seeding Methods:*

Applicable seeding methods include:

Hand broadcasting: use this seeding method for areas that are too small or inaccessible with large equipment

Mechanical seeding with seed drill: use seed drill method for seeding areas that are easily accessible by large equipment such as buffer strips, benches, road ditches, and side slopes with less than 2:1 grade.

Hydroseeding: use this seeding method for areas that are easily accessible by large equipment as well as side slopes that may not be drivable. Hydroseeding is not recommended for use with native plant seed mixes. All hydroseeding must be performed with 2-stage application with seed mix sprayed onto prepared sites followed by hydro-mulch.

Interseeding: perform interseeding if seeding into temporary mulch areas or if drilling additional seed into previously seeded areas such as seeding native seed into temporarily seeded cover crops.

*Erosion Control Methods:*

Mulch or hydro-mulch should be considered on all areas where seeding is completed. The most common types of mulch utilized for drainage systems include Type 1, Type 3, or Type 8, with Type 3 recommended for native plant mixes.

Rolled erosion control such as erosion control blanket should be considered in areas of seeding with steep side slopes or concentrated flow.



Figure 6: Le Sueur & Rice Joint County Ditch 54 riprap erosion control, June 22, 2020

### **Trees and Tree Removal**

Trees to be removed from a drainage system must be removed in a manner that will prevent any erosion. Trees may be chipped, piled, and burned when dry, or buried. Trees that have been removed cannot be left in the ditch right-of-way or buffer area. Landowners may remove trees at their own expense and are liable for damages to the drainage system by removal. All trees within the ditch in-slopes and 16.5 feet of top of ditch may be removed with exceptions considered for windbreaks and excessively steep slopes.



Figure 7: Le Sueur County Ditch No. 56, November 8, 2019

### **Drop Inlet Pipe Structure and Alternative Side Inlets (ASIs)**

Inadequate structures to control side inlet water flow into a ditch is the most common cause of erosion in public drainage systems. Drop inlet pipe structures and/or ASIs will be installed in areas where erosion is a potential issue. The Drainage System is responsible for paying for the following expenses incurred for materials and labor to install.

## Buffers

The Le Sueur County Drainage Authority encourages the use of the grass buffer strips beyond the one rod (16.5-foot) buffer established under Minn. Stat. § 103E.021 and the use of the grass buffer strips where the one rod buffer has not been established under Minn. Stat. § 103E.021. Buffer strips (or alternative practices) will be required on all waters in accordance with Minn. Stat. § 104F.48. For buffer strips that are not in compliance with Minn. Stat. § 104F.48, the Drainage Authority will follow the procedure found in Appendix G.

## Inspection

Grass buffer strips are required on the 16.5 ft. easement on each side of channels or open ditches that have had a redetermination of benefits. The 16.5-foot buffer strip shall be measured from the crown of the spoil bank which is the top of the existing ditch. Any permanent vegetation at a width of 16.5 feet qualifies as an adequate buffer. For example, alfalfa for hay, pasture mixes, and native grasses.

All parcels in Le Sueur County are to be reviewed at least once every three years. These checks may be conducted via aerial photo review or on-site review depending on availability of updated aerial photos and the practice that is being checked/access to farms. Random spot checks will be done in addition to the tracking of all parcels. These checks may be conducted via aerial photo review or on-site review depending on availability of updated aerial photos and the practice that is being checked/access to farms. A combination of both aerial and on-site review may also be used. Le Sueur County will conduct 5% of parcels in a random spot check every year. Additionally, Le Sueur County will review parcels of emphasis more frequently. These include:

- Previously non-compliant
- No-till/Conservation tillage or cover crop alternative practice plans
- Other Alternative Practice Plans
- Cost-share funded projects
- Parcels of further emphasis

## Compliance Violations

Agricultural practices such as plowing, tilling, pasturing, or other practices which are not consistent with the purpose of the grass buffer strip are prohibited under Minn. Stat. § 103E.021, subd. 3. Buffers can be hayed, grazed, hunted, or used for other activities as long as the vegetation remains permanent. Landowners retain ownership; buffers are private property that are not open to public hunting.

The Le Sueur County Drainage Authority is required to notify landowners of a violation of a grass buffer strip established under Minn. Stat. § 103E.021. The landowner shall have 60 days to bring the area of non-compliance into compliance. If the area is not brought into compliance during this period, the Drainage Authority will proceed in a manner described in Minn. Stat. § 103E.021, subd. 4 and 5. Le Sueur County will review any violation complaints from the public and other agencies. Le Sueur County will maintain a record of this complaint and determine if the complaint requires further investigation.

## Spraying and Mowing

The Drainage Authority may, if cost effective, consider using a mower to control weeds along a system to prevent possible contamination of the water from spray. Only sprays that are approved for use around and over water should be used. Communication will be made with other counties before spraying and mowing occurs on a joint drainage system.

## Municipalities

Municipalities are encouraged to request transfer of all or part of a public drainage system being used for municipal drainage to the Municipality. The laws regarding such transfers are found in Minn. Stat. § 103E.812.

Municipalities using a Drainage System as an outlet must comply with State Law. Land within a municipality which is not already listed as benefiting from a drainage system, may not use a Drainage System without a petition under Minn. Stat. § 103E.411.

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 Minn. Stat. § 103E.611. If the installments and interest are not paid on or before November 1, the amount due with interest added as provided in Minn. Stat. § 103E.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.

## Drainage System Abandonment

The procedures to be followed during abandonment of a drainage system are fully defined in Minn. Stat. §§ 103E.806 and 103E.811.

### **Partial Abandonment of Drainage System**

Partial abandonment is referred to in Minn. Stat. § 103E.806. An owner of benefited property within a drainage system may petition the Drainage Authority to abandon any part of the drainage system that is not of public benefit and utility to property remaining in the system. The petition must be filed with the Le Sueur County Auditor. A hearing time and location shall be set by the auditor and notice shall be given of the hearing by mail to the owners of all property benefited by the drainage system. If it is determined at the hearing that part of the drainage system does not serve a substantial useful purpose and is no longer of public benefit, that portion of the system shall be abandoned. Any subsequent petitions for repairs or improvements may not be accepted, and the Drainage Authority is no longer responsible for that portion of the drainage system.

### **Abandoning Drainage System**

To abandon a drainage system as outlined in Minn. Stat. § 103E.811, the drainage lien payment period must be expired. A petition must also be signed by at least 51 percent of the property owners assessed for construction of the drainage system. The petition must designate the drainage system is no longer of public benefit or has ceased to function and repairing it is not practical. The petition must be filed with the Le Sueur County Auditor. The auditor shall set a time and location for a hearing on the petition shall give notice by publication of the time and location for all persons interested. At the hearing, the Drainage Authority shall examine the petition and determine whether it is sufficient and shall hear all interested parties. 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 shall appoint three disinterested persons as viewers to examine the property and report to the Drainage Authority. The hearing must be adjourned to make the examination and report and shall reconvene later at an appointed time and location. When the hearing is reconvened, the viewers' report and all evidence shall be considered.

If the Drainage Authority determines that the drainage system still serves a useful purpose to any property or the public, the petition for abandonment must be denied. If the drainage authority determines that the drainage system does not serve any useful purpose to affected property or properties and is no longer of public benefit, the system shall be abandoned. Once abandoned, repair/improvement petitions for the system may no longer be accepted, and responsibility of the Drainage Authority for the maintenance of the system ends.

## Miscellaneous Drainage Issues

### **Burning Restriction in Easement Area**

No private burn site shall be in the easement area. This is to prevent spread of fire to the buffer area or potential ignition of peat fires. Burning may be allowed as part of a drainage project and overseen by the County Drainage Inspector.

### **Beaver Control**

When beavers are reported or discovered by the Ditch Inspector, a trapper will be retained by the Drainage Authority to remove the beaver. It will be the trapper's responsibility to ensure proper procedures and permits are followed. The Drainage Authority will solicit local experienced trappers on an annual basis to establish yearly trapping fees.

More information can be found on the Minnesota Department of Natural Resources beaver resource site ([https://www.dnr.state.mn.us/livingwith\\_wildlife/beaver/index.html](https://www.dnr.state.mn.us/livingwith_wildlife/beaver/index.html)).

### **Fencing**

Permanent fencing is prohibited from being installed within 16.5 feet from the top of ditch. Fencing within the 16.5-foot buffer along open ditches may be removed during maintenance, repairs and improvements at the landowner's expense. Gates may be installed in property-line fence next to each side of a ditch during repairs to allow for access for maintenance or inspection.

### **Landowner Rights**

Policies outlined in this manual are not intended to allow additional access to landowner's property not already allowed by law. Land within a drainage system remains private property, and is classified as an easement, with no right to public access. Drainage authority, county staff, and contractors will make reasonable efforts to contact landowners before accessing property within the drainage system.

### **Feedlot Runoff**

Feedlot runoff is not permitted to be discharged into the drainage system and must be mitigated through appropriate methods.

### **Septic Systems**

Septic systems are not permitted to discharge into any drainage system.

### **Deer Stands and Structures**

Any deer stands or other structures utilized for recreation may not be placed closer than 16.5 feet from the top of the ditch. Deer stands or other facilities will be removed from the 16.5-foot buffer at the landowner's expense during repairs and improvements along open ditches. Any structure which prevents maintenance or inspection of the ditch may be removed regardless of its distance from the ditch or crops may be damaged going around the structure and no damage payment will be made.

### **Water Retention**

Implementing storage basins on drainage systems provides drainage and water quality benefits. Having additional storage capacity within the system allows excess water to be stored during large rainfall events and prevents downstream areas from flooding. Allowing for water storage with controlled inlets and outlets, ponds are engineered to reduce flow rates in the system and protect downstream waters. Reduced flow rates and velocities in ditches produces less potential for erosion, undercutting, and sloughing due to bank failures. The Drainage Authority will actively work to seek financing and other water storage partnerships.

## Rock and Debris

Rocks and debris are prohibited from being dumped within the in-slope of a drainage ditch. Rock and debris must also not be placed within 16.5 feet of the crown of the ditch or within 100 feet from the center of the ditch, whichever is greater. This section does not apply if rock is being placed during the course of a drainage project.

## Livestock

Livestock are prohibited from drainage ditches and the acquired ditch buffer, except to cross at approved locations. Approvals need to be in writing. If livestock must cross a ditch, the preferred method is through installation of a crossing (culvert, bridge, etc.) to prevent livestock from entering the water. Grazing of the ditch buffer may be allowed, but measures need to be taken at the expense of the landowner to ensure livestock are kept from entering the ditch bank. This may include temporary fencing.

## Damages

The drainage authority will pay damages on agricultural lands that are disturbed/destroyed due to maintenance or construction-related activities. NOTE: Existing fences within the drainage/construction easement that were removed will NOT be replaced by the drainage authority. Replacement cost is responsibility of landowner.

### *Cropland*

The drainage authority will NOT pay crop damages on crop land that has NOT been planted unless the drainage authority's work prevents seeding of the land.

For planted crop land, damages will be paid on a basic formula:

$$\text{lost yield} \times \text{commodity price} \times \text{disturbed acres} = \text{Payment.}$$

For yield the drainage authority will use the land's Actual Production History (APH) and the USDA-RMA set reference/projected prices which are used in crop insurance policies.

Damage payments will be made at the close-out of the project. The Drainage Authority may request crop insurance records for reconciliation of damage payments.

### *Pasture, Hay Land, Conservation Lands*

Any pasture, hay land or conservation lands that have been disturbed by the drainage authority will be reseeded by the drainage authority.

For pasture or hay land disturbed or destroyed, the drainage authority will make payments based on the following formula.

### *Alfalfa*

Lost yield (not to exceed 3 tons per acre) x commodity price (weighted average report price from USDA-NASS report from Pipestone Hay and Straw Auction during month of October) x disturbed acres=Payment

### *All hay ground or pasture*

Lost yield (not to exceed 2.5 tons per acre) x commodity price (weighted average report price from USDA-NASS report from Pipestone Hay and Straw Auction during month of October) x disturbed acres=Payment

NOTE: Landowner may request the drainage authority to make a second payment the following year if reseeded is unsuccessful, leading to shortage of normal yields.

Damages may be paid above the crop and non-crop rate for special circumstances at the discretion of the drainage authority. Examples include lands disturbed that are used for a special purpose, when seeding is unable to be completed by the contractor, etc.

### **Shallow Lake Drawdowns**

With proper authorization, public drainage systems may be used as outlets for shallow lake drawdowns and dewatering activities. In all instances, the impact of additional capacity demand (rate, volume and duration) will be evaluated to ensure the activity does not impair use of the drainage system for other benefitted lands. In some cases, an outlet authorization must be petitioned under 103E.401.

The Drainage Authority will work in conjunction with its staff to determine the best course of action for the drainage system. Required actions include application and authorization. In some cases, agreements regarding the discharge and limitations on the use of the drainage system as an outlet will be required. Each project is unique and must be evaluated to address the needs of both the applicant, the resources involved and the drainage system.

### **Grants**

The Drainage Authority shall apply for grants in conjunction with the Le Sueur County Soil and Water Conservation District. When seeking grants, the Grant Policy in the Le Sueur County Finance Policy should be followed to the best extent possible.

Appendix A – Project Bid Form

Project Bids

Le Sueur County Ditch System:

Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
Total of all extended prices for Estimated Quantities of Work					\$

Notes:

Appendix B – Repair Request Form

REPAIR REQUEST

We, the undersigned landowners, do hereby request the Le Sueur County Board of Commissioners to clean out and repair Le Sueur County Ditch # \_\_\_\_\_ located in \_\_\_\_\_ township.

Signed

Address/Phone #

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Description of problem: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Appendix C – Le Sueur County and Le Sueur County SWCD Memorandum of Agreement

### SCOPE OF SERVICES

#### SWCD PROVISION OF DRAINAGE INSPECTOR AND STAFF SUPPORT

#### TERM

Notwithstanding the signatures of the Parties to the Agreement to which this Appendix is attached and incorporated, services provided to the SWCD by the County as of November 16, 2021 are subject to the terms provided herein.

#### PURPOSE OF SERVICE

For the SWCD to assist and/or provide the County services for a Drainage Inspector or support in accordance with Minnesota Statutes, Chapter 103E.

#### SCOPE OF SERVICES

##### A. County's Obligation

The County Ditch Manager shall provide administrative service to the SWCD including, but not limited to; petitions, bonds, appeals, determination and redetermination of drainage benefits, notification to landowners, newspaper publications, drainage proceedings, construction records, schedule and attend public hearings and informal meetings, maintain property owner's report, drainage system accounting (e.g., drainage assessments, enforcement of assessments, drainage lien statement, payment for damages, payments to contractors and other drainage related expenditures), and provide support as needed.

##### B. SWCD's Obligation

1. The SWCD staff shall attend public hearings, informal meetings, pre-construction conferences or workshops when drainage will be discussed.
2. Provide guidance and solutions to the Drainage Authority and landowners on drainage issues and projects related to open ditch or tile, or both, to drain property, including

laterals, improvements, and improvements of outlets, established and constructed by a drainage authority.

3. Present annually a report on drainage projects and activities previous, unresolved and potential to the Le Sueur County Drainage Authority
4. Provide assistance to landowners, and other resource professionals to promote and install best management practices for drainage projects to protect natural resources.
5. Coordinate direct communication to the landowners, County Drainage Authority, Joint Drainage Authority, County Auditor-Treasurer's Office, County Highway Department, Appointed Engineer, Minnesota Department of Natural Resources, Minnesota Board of Water and Soil Resources, Minnesota Pollution Control Agency, Minnesota Department of Agriculture, United State Fish and Wildlife, United States Army Corps of Engineers and other agencies on drainage projects.
6. Seek quotes from contractors for drainage repairs and maintenance, schedule contractors, inspect and oversee project details for accuracy of repair. Projects over \$25,000 require bids.
7. Coordinate and/or perform tree spraying and weed control on drainage systems and buffers strips.
8. Maintain detailed records of pertinent project activities, including, but not limited to, inspection reports, the contractor's daily operations, quantities of material received or used, survey and inspection notes, material test results, elevations and/or locations of project installations.
9. Enforcement of buffer strips and compliance work under Minnesota Statute, Section 103E.021, Subdivision 4, and 103E.705.
10. Complete the annual reporting requirements on the ditch buffer strips according to Minnesota Statute, Section § 103E.067.
11. Perform various types of inspections for compliance with Minnesota Statute, Chapter 103E, including requirement of open drainage ditches shall be inspected at a minimum of every five years.
12. Work with Ditch Consultants to prepare plans, proposals and maps of future construction or repair projects.
13. Ensure projects meet all Federal, State and local design and construction standards, guidelines and permits.
14. SWCD will provide the County with a Ditch Inspector Budget Annually.
15. SWCD will provide updated billable rates to the County Board for support staff in January of each year for services.
16. SWCD will continue to search for Grants that benefit the Ditch Systems.
17. SWCD will work with FEMA when appropriate events take place to inventory Ditch System damages which may be eligible for FEMA assistance.
18. SWCD shall provide a separate drainage management budget, which outlines budget request to pay for ditch specialist position. These budget expenses are traditionally paid for via State Riparian Aid and ditch assessment funds.

19. In conjunction with SWCD budget presentation, SWCD shall present updated professional services contract that outlines yearly billable rates.

#### PAYMENT TERMS

The SWCD agrees to provide the County services provided in this Appendix based on terms mutually agreed upon. Payments to the SWCD shall be made on a quarterly basis, or upon receipt, through presentation of invoice from the SWCD to the County Auditor-Treasurer Office.

## Appendix D – Le Sueur County Field Crossing Removal Agreement

### FIELD CROSSING REMOVAL AGREEMENT

**THIS FIELD CROSSING REMOVAL AGREEMENT** is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (the “Landowner”) and the Le Sueur County Board of Commissioners, sitting as the public drainage authority for Le Sueur County Ditch No. \_\_\_\_ (the “Drainage Authority”).

**WHEREAS**, Landowner is the owner of certain real property located in Le Sueur County, Minnesota, legally described in **Exhibit A** attached hereto, together with all improvements thereon (collectively the “Property”); and

**WHEREAS**, Le Sueur County Ditch No. \_\_\_\_\_, a duly established and existing public drainage system established and operated under Minn. Stat. ch. 103E, crosses the Property; and

**WHEREAS**, as part of the establishment of Le Sueur County Ditch No. \_\_\_\_\_, the Drainage Authority ordered construction of a private crossing on the Property in the location generally depicted on **Exhibit B** attached hereto; and

**WHEREAS**, Landowner acknowledges the above described crossing no longer serves any useful purpose and is of no benefit to Landowner.

**NOW, THEREFORE**, the Landowner hereby authorizes the Drainage Authority to remove the crossing, at the Landowner’s expense. Landowner and their heirs, successors, or assigns furthermore agree to waive all future responsibility of the Drainage Authority to provide a crossing or alternative access to the Property. This Agreement shall become party of the Le Sueur County Ditch No. \_\_\_\_\_’s records and shall be filed with the Le Sueur County Recorder.

**IN WITNESS WHEREOF**, the undersigned has executed this instrument the day and year first set forth.

[Signature Pages to Follow]

**SIGNATURE PAGE**









Appendix E – Le Sueur County Declaration and Covenant

<p><b>STATE OF MINNESOTA</b>  <b>LE SUEUR COUNTY BOARD OF</b>  <b>COMMISSIONERS</b>  <b>SITTING AS DRAINAGE AUTHORITY FOR</b></p> <hr style="width: 80%; margin: 0 auto;"/> <p><b>Name/Number of Drainage System</b></p>		<p><b>APPLICATION FOR AUTHORIZATION</b>  <b>TO DO WORK IN PUBLIC DRAINAGE SYSTEM</b></p>
--	--	--

**ATTACH A SKETCH OF THE PROPOSED WORK AREA AND RELATION TO THE DRAINAGE SYSTEM. INCLUDE A DESCRIPTION OF THE WORK PROPOSED TO BE PERFORMED.**

<b>Applicant</b>	<b>Telephone</b>	<b>Address</b>	
<b>Property Owner</b>	<b>Telephone</b>	<b>Address</b>	
<b>Party Performing Work</b>	<b>Telephone</b>	<b>Address</b>	
<b>Location of Proposed Work</b>			
<u>Quarter</u> <u>Quarter</u>	<u>Section</u>	<u>Township</u>	<u>County</u>

**APPLICANT’S ACCEPTANCE, WAIVER, AND INDEMNIFICATION**

The undersigned applicant hereby agrees to comply with applicable statutes, rules, and the standard conditions and special provisions of this permit to the satisfaction of the drainage authority. The applicant understands and agrees that no work in connection with this application will be started until the application has been approved and the permit issued. The applicant also understands that this permit is granted by the drainage authority for work under Minn. Stat. Ch. 103E and that the proposed work may also be the subject to applicant’s compliance with the rules and regulations of other governmental agencies. The applicant is aware of circumstances or hazards that may arise while performing the work associated with this application that could result in injury, loss, damage or death, and the applicant assumes the risk of such circumstances, dangers, and hazards, whether reasonably foreseeable or not. The undersigned applicant expressly agrees that the applicant or his/her agents or contractor shall assume all liability for, and save the drainage authority, its agents and employees, harmless from any and all claims for damages, actions or causes of action arising out of the work to be done in connection with this application and permit.

Name & Title \_\_\_\_\_ Email Address \_\_\_\_\_  
 Date \_\_\_\_\_

Signature \_\_\_\_\_

**DO NOT WRITE BELOW THIS LINE**

<b>PERMIT NOT VALID UNLESS BEARING SIGNATURE</b>	<b>AUTHORIZATION OF PERMIT</b>	<b>SEE PAGE 2 FOR PERTINENT CONDITIONS</b>
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It is expressly understood that this permit is conditioned upon restoration of the drainage system to its original condition or to a satisfactory condition as described herein. In consideration of the applicant’s agreement to comply in all respects with the applicable laws and the conditions of the drainage authority pertaining to this permit, permission is hereby granted for the work to be performed as described in the above application, said work to be performed in accordance with the following special provisions:

**SEE ATTACHED STANDARD AND SPECIAL PROVISIONS**

\_\_\_\_\_  
Date Work to be Completed By      Authorized Drainage Authority Signature      Date of Authorized Signature

**DATE WORK COMPLETED**

**STANDARD CONDITIONS OF AUTHORIZATION  
TO DO WORK IN PUBLIC DRAINAGE SYSTEM**

1. The authorized party must comply with all applicable laws and regulations, including Minnesota Statutes, Chapter 103E, to the satisfaction of the drainage authority and its staff.
2. As a condition of this authorization, the drainage authority may require a security deposit to ensure that work is completed to the drainage authority's satisfaction. Work is not authorized until all authorization and deposit (if required by drainage authority) requirements are met and the applicant has received the approved authorization. The drainage authority or its authorized staff will determine the actual amount and type of deposit to be submitted based on the specific situation. Deposits may be in the form of a certified check, cashier's check, or surety bond made payable to the drainage authority. Deposits must be irrevocable and cannot expire. An authorization will not be issued until the required deposit is received.
3. The authorized party is responsible for the entire costs of their work activities, including all costs required to stay or come into compliance with the terms and conditions of this authorization to the satisfaction of the drainage authority.
4. No work shall be authorized that in any manner exceeds the scope of a "repair" as defined in Minn. Stat. § 103E.701, subd. 1. The term "repair," as used in Minn. Stat. § 103E.701, means to restore a part of the drainage system as nearly as practicable to the same hydraulic capacity as originally constructed and subsequently improved, including resloping of ditches and leveling of spoil 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.
5. No work shall be authorized that constitutes an obstruction of the drainage system as described in Minn. Stat. 103E.075.
6. All work authorized herein is limited to the scope of work as described in the application and approved herein.
7. If any portion of the drainage system is damaged, same shall be restored to a condition satisfactory to the drainage authority, in its sole discretion.
8. If settlement occurs or excavation caves in so that replaced materials settle, same shall be restored to a condition satisfactory to the drainage authority, in its sole discretion.
9. The authorized party is responsible for ensuring that all private or public laterals, drain tiles, or ditches remain connected to the drainage system in which work is done.
10. After the work is completed, the authorized party must notify the drainage authority or its staff that such work has been completed and is ready for final inspection and acceptance by the drainage authority. If the work is satisfactory, the deposit will be returned to the applicant.

**SPECIAL CONDITIONS**

See Attached Addendum, if any.

Appendix F – Le Sueur County Declaration and Covenant  
**DECLARATION AND COVENANT**

**THIS DECLARATION** is made in the County of Le Sueur, State of Minnesota, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (the "Declarant").

**WHEREAS**, Declarant is the owner of certain real property located in Le Sueur County, Minnesota, legally described in **Exhibit A** attached hereto, together with all improvements thereon (collectively the "Property"); and

**WHEREAS**, Declarant has requested a permit from the Le Sueur County Board of Commissioners, Drainage Authority for \_\_\_\_\_ (the "ditch"), in Le Sueur County, in order to place a \_\_\_\_\_ culvert in the ditch to serve as a crossing point on the ditch; and

**WHEREAS**, the Drainage Authority has granted the permit conditioned upon and in consideration of the execution and recording of this Declaration and Covenant; and

**WHEREAS**, the culvert shall not become part of the ditch; and

**WHEREAS**, Declarant desires to acknowledge that the culvert shall not be part of the ditch by subjecting the Property, and any additional real estate added thereto to this Declaration to ensure that ongoing operations and maintenance of the culvert remain the responsibility of the Declarant, its successors in interest or assigns, and the Property.

**THEREFORE**, the Declarant undertakes and acknowledges the following restrictions to be placed upon and to run with the Property:

1. The Declarant, its heirs, successors, or assigns is responsible for maintenance of the culvert; and
2. The Declarant, its heirs, successors, or assigns is responsible to keep the culvert free from obstruction; and
3. Should the Declarant, its heirs, successors, or assigns fail to maintain or keep the culvert free from obstruction, the Drainage Authority may either remove the culvert and or repair or maintain the culvert, remove debris or obstruction from the culvert or perform other work necessary to ensure proper function of the ditch given the existence of the culvert; and
4. The Property shall be subject to a tax lien for the cost of work undertaken by the Drainage Authority as described above.

**IN WITNESS WHEREOF**, the undersigned has executed this instrument the day and year first set forth.

By \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

## Appendix G – Process for Addressing Non-Compliant Buffers

### **Initial Steps to Address Non-Compliance**

1. Ditch Inspector identifies non-compliance as part of normal inspection duties.
2. Ditch inspector notifies landowner of non-compliance and requests the ditch buffer be seeded.
3. If landowner is not cooperative in reseeding buffer, ditch inspector informs County Environmental Services of non-compliance.
4. County Environmental Services issues landowner formal Notification of Noncompliance, along with a formal Corrective Action Notice (CAN) with a timeline for compliance in 11-months.
  - The CAN will include specific actions that need to be taken to correct the issue along with timelines for completion. Will also include a statement that failure to complete CAN will result in civil and administrative enforcement and assessment of administrative penalties.
5. If the landowner communicates to Environmental Services that the buffer has been seeded within the timeline given, the County will send ditch inspector to verify compliance. If the ditch inspector verifies compliance, county will send validation of compliance, and consider issue resolved. If the property continues to be in non-compliance, move to next phase of regulatory and penalty steps.

### **Initial Violation Penalty Order Steps**

1. After 11 months of non-compliance, the County Environmental Services Department will prepare an Administrative Penalty Order (APO) to be issued to the landowner. Once completed, the APO and corresponding CAN will be served or mailed to the landowner, informing them of the date when the Board of Commissioners will discuss and act upon the APO.
  - a. The APO must contain language in Sec. 6.2.2, and include proposed fine, language that penalty is ongoing and will be assessed until CAN is satisfied, and language that if landowner contacts and cooperates with County prior to approval by County Board, the APO may be modified. *For example, fines may be reduced or waived if landowner cooperates and becomes compliant between issuance of the APO and the Board date.*
2. The Board of Commissioners will be presented with each individual APO to discuss and act upon, where they will approve a fine, as established in the ordinance. The ordinance calls for fines up to \$200 per parcel, per month for the first six months, and \$500 per parcel, per month after six months.
  - a. Once an APO is approved, County Environmental Services will notify landowner, SWCD and BWSR. All APOs and corresponding fines approved by the Board are final after 30-days, as the landowner has 30-day appeal rights to BWSR.

### **Issuance of 2<sup>nd</sup> APO After 6-months of Non-Compliance**

1. If the landowner fails to come into compliance after 6-months, a second APO will be prepared by Environmental Services to be issued to the landowner. The APO will include the following:
  - a. Date when the Board will hear the APO
  - b. Reissuance of the CAN

- c. Language about increased fines, which are up to \$500 per parcel, per month
- 2. The Board of Commissioners will be presented with each individual APO to discuss and act upon, where they will approve a new fine level.
  - a. Once the APO is approved, County Environmental Services will notify landowner, SWCD and BWSR. All APOs and corresponding fines approved by the Board are final after 30-days, as the landowner has 30-day appeal rights to BWSR.

---

**Repeat Secondary Enforcement/Penalty Steps for Non-Compliance After 12-months of Active APO**

- 1. After a landowner has been subject to an APO for 12-months, a third APO will be prepared following the same steps as the prior APOs, and a new fine set.
  - 1. Authority for additional fines is \$200 per parcel, **per day** up to 180 days and \$500 per parcel, per day following.

---

**Board of Commissioner Actions**

- 1. The Board of Commissioners will potentially act on APOs one to three times.
  - a. The initial APO issuance
  - b. The second APO issuance after 6-months of non-compliance from initial APO
  - c. Third APO issuance after 12 months from receiving the initial APO and continued non-compliance.
  - d. Note: The Board will **NOT** consider reducing fines once APOs are approved.

---

**Placement of Unpaid Fines on Property Taxes**

All property owners with unpaid fines as of November 15 will receive a letter informing them they have until December 15 to pay their fine amount, and any unpaid amount will be placed on their next year's property tax with interest.

## Resources

2021 Minnesota Statutes Chapter 103E. Drainage

<https://www.revisor.mn.gov/statutes/cite/103E>

Agricultural and Urban Water Quality Treatment Analysis

[https://www.isginc.com/uploads/store/2021-06-](https://www.isginc.com/uploads/store/2021-06-24_agriculturalUrbanRunoffWaterQualityTreatmentAnalysis_PhaseII_ISG.pdf)

[24\\_agriculturalUrbanRunoffWaterQualityTreatmentAnalysis\\_PhaseII\\_ISG.pdf](https://www.isginc.com/uploads/store/2021-06-24_agriculturalUrbanRunoffWaterQualityTreatmentAnalysis_PhaseII_ISG.pdf)

Drainage System Guidelines Brown County, Minnesota

[https://www.co.brown.mn.us/images/Department/Auditor-](https://www.co.brown.mn.us/images/Department/Auditor-Treasurer/drainage/Brown20County20Ditch20Manual1.pdf)

[Treasurer/drainage/Brown20County20Ditch20Manual1.pdf](https://www.co.brown.mn.us/images/Department/Auditor-Treasurer/drainage/Brown20County20Ditch20Manual1.pdf)

Drainage Work Group Recommendations Report

[https://static1.squarespace.com/static/5963dafa4c8b03a819ee618d/t/5c4a87f2b914431dad1a1f9/15](https://static1.squarespace.com/static/5963dafa4c8b03a819ee618d/t/5c4a87f2b914431dad1a1f9/1548388353385/2019+DWG+Legislative+Packet+-+FINAL.pdf)

[48388353385/2019+DWG+Legislative+Packet+-+FINAL.pdf](https://static1.squarespace.com/static/5963dafa4c8b03a819ee618d/t/5c4a87f2b914431dad1a1f9/1548388353385/2019+DWG+Legislative+Packet+-+FINAL.pdf)

Le Sueur County Soil and Water Conservation District

<http://www.lesueurswcd.org/buffers.html>

MPDM Outreach Workshops

[https://bwsr.state.mn.us/sites/default/files/2018-12/B8-](https://bwsr.state.mn.us/sites/default/files/2018-12/B8-MPDM_Broad_Users_Drainage_Sys_Acquisition_of_Buffer_Strips.pdf)

[MPDM Broad Users Drainage Sys Acquisition of Buffer Strips.pdf](https://bwsr.state.mn.us/sites/default/files/2018-12/B8-MPDM_Broad_Users_Drainage_Sys_Acquisition_of_Buffer_Strips.pdf)

Redwood County Drainage Policy and Guidance

[https://redwoodcounty-mn.us/wp-content/uploads/2020/04/Redwood-County-Ditch-Guidance-and-](https://redwoodcounty-mn.us/wp-content/uploads/2020/04/Redwood-County-Ditch-Guidance-and-Policy-Version-1.5.pdf)

[Policy-Version-1.5.pdf](https://redwoodcounty-mn.us/wp-content/uploads/2020/04/Redwood-County-Ditch-Guidance-and-Policy-Version-1.5.pdf)

Sauk River Drainage Authority (SRDA) Drainage Policy

[https://srwdmn.org/wp-content/uploads/2021/09/2021.09.21-Drainage-Policy-SRWD-Adopted-](https://srwdmn.org/wp-content/uploads/2021/09/2021.09.21-Drainage-Policy-SRWD-Adopted-082217-updated-2021.09.21.pdf)

[082217-updated-2021.09.21.pdf](https://srwdmn.org/wp-content/uploads/2021/09/2021.09.21-Drainage-Policy-SRWD-Adopted-082217-updated-2021.09.21.pdf)