

Submitted to the Lower Minnesota River Watershed District (LMRWD) Listening Session Held Jan. 8, 2025:

Summary

Agricultural drain tile is a major contributor to water quality and flooding issues in the Minnesota River.

There are two specific issues that together contribute to (a) the lack of information needed to understand the water quality and flooding issues associated with drain tile systems, and (b) the lack of tools required to implement solutions related to agricultural drain tile projects.

Issue number 1 – Lack of information

Minnesota River drain tile questions/answers:

- How many drain tile projects are in the Minnesota River watershed- No one knows
- How many miles of drain tile are in the Minnesota River watershed- No one knows
- Where are these drain tile projects located- No one knows
- How much of an impact does drain tile have on water quality and flooding in the Minnesota River watershed- No one knows

Why are all these questions unknown?

- Wording in the Federal Farm Bill makes all information about agricultural drain tile projects confidential.

Possible Solution

- Contact members of Congress including ranking agriculture committee members Rep. Craig and Sen. Klobuchar, ask them why this language exists in the Farm Bill, point out the issues it creates when attempting to solve state water quality and flood issues, and ask that the language be changed.
- This is a state level issue not unique to the Minnesota River watershed. Engage affected local and state organizations and agencies, state legislators, and other concerned parties to assist in getting this language changed.

Issue number 2 – Lack of tools required to implement solutions

We do not have a permit, review, and approval process for agricultural drain tile projects in the majority of the state and in the majority of the Minnesota River watershed. This means:

- No review of the design to determine water quality and flooding impact to downstream properties
- No opportunity to notify downstream properties of potential impact
- No opportunity to improve the design
- Lack of a permit process is also a significant reason why the number of drain tile projects, their locations, and their effect on local and watershed level water quality and flooding issues is unknown and undocumented.

Possible Solutions:

- Watershed Districts that require a permit process to install drain tile systems.
 - Currently in use in some areas of the state- Implementation varies but can include:

- Requires a review of the project that includes an analysis for potential impact to downstream areas.
- Requires downstream property owners to be notified of proposed projects so they can determine if they will be impacted and can voice any concerns.
- After analysis and public concerns are addressed, the project will be either approved or denied by the Watershed District.
- All of the information on the drain tile projects in these Watershed Districts is public information and available to any organization or agency that may have a use for the information.
- Alternatively, this permit/analysis/review process could be handled at a county level by authorizing county commissioners to perform these duties, this is currently done for many county drainage ditch systems.
- This Watershed District or county approach to a permit process, that allows open access to drain tile project information, is essentially the opposite of the Farm Bill wording situation that makes all drain tile information that the FSA and NRCS obtains confidential.

In order to fully understand and develop solutions to the impact of agricultural drain tile systems on the Minnesota River, the two issues described above need to be addressed and resolved.

Additional and Background Information

1. Wording in the Federal Farm Bill is significantly impacting the ability of Minnesota agencies and organizations as they attempt to address water quality and flooding issues on the states lakes, streams, and rivers.

Wording in the Farm Bill forces the USDA and its agencies, the Farm Service Agency (FSA) and the Natural Resources Conservation Service (NRCS), to treat all information on agricultural drain tile projects as confidential information. This means that the two agencies that work with farmers on agricultural drain tile projects and have the most information about the projects, are prohibited from sharing that data. These agencies are not allowed to notify downstream property owners even if they know or suspect those properties will be impacted. The agencies are also prevented from providing information about the projects to any local, state, or federal agency, or the general public, even when requested to do so.

Most people involved in the effort to improve water quality and flooding issues in Minnesota would agree that the effect agricultural drain tile projects have on these issues is a significant factor. It does not seem possible to fully address these issues without understanding the impact of drain tile projects. Not having access to information on these projects, due to the wording in the Farm Bill, prevents state agencies and organizations from being able to understand this impact so that the best solutions can be developed.

During the LMRWD Listening Session, one of the speakers who works with farmers on proposed agricultural drainage projects, indicated that his organization is highly successful in improving the design of those projects to provide more protection for water quality and flood control, when they get the opportunity to work directly with the farmers when the projects are in the initial planning stage.

However, this only works when these organizations are aware of proposed projects. As mentioned above, currently any drain tile projects submitted to local FSA/NRCS offices are treated as confidential information and the FSA/NRCS is not allowed to notify groups or agencies of proposed projects.

This past fall I observed a new agricultural drain tile project under construction in greater Minnesota. The outlet waters of this project flowed into a nearby U.S. Fish and Wildlife Service (USFWS) Waterfowl Production Area causing impairment of those waters. I contacted the local USFWS office and asked about this project and if they had reviewed it in advance to determine if there would be any impact. Their office was not aware of this project. I contacted the local FSA office which is located about 5 miles from the USFWS office and asked them if they notify downstream private landowners, state landowners such as MNDNR, or federal landowners such as USFWS. They indicated that they are not allowed to do so due to wording in the Farm Bill. Since that time I have contacted numerous county, state, and federal organizations including MNDNR and regional USFWS offices and received the same information that they are not contacted in advance, and are unable to get information upon request, for potential damaging projects upstream or adjacent to their properties, due to confidentiality requirements in the Farm Bill. This confidentiality wording in the Farm Bill was confirmed by the NRCS Assistant State Conservationist for Compliance in Minnesota.

It is known that there are about 19,150 miles of drainage ditches in Minnesota installed and maintained under Chapter 103E of Minnesota drainage law. These ditches and their locations are documented so their contributions to water quality and flooding issues can be addressed. Conversely, the number of miles of agricultural drain tile in Minnesota and their locations is unknown, so their contributions to water quality and flooding issues is essentially undocumented and unknown.

Questions related to the Minnesota River watershed (these questions also apply at the overall state level):

1. How many miles of drain tile are in the Minnesota River watershed?
2. How do these drain tile systems affect the hydrology and water quality of the river and what agencies are responsible for providing this information?
3. Is it possible to fully understand the scope of the flooding and water quality issues without this information?
4. How does the LMRWD, or any other similar organization in the state, come up with the best solutions if the full extent of the issues is not understood?

Recommendations:

1. If the answers to questions 1 and 2 are not known, it is suggested that the LMRWD, along with other organizations, contact the responsible state agencies and ask them for this information. If the information is not available, is there a plan to create this information, what is the status of that plan, and what issues impact or prevent completion of this plan?
2. Contact state legislators regarding the lack of information available on agricultural drain tile systems and their impact on the Minnesota River watershed (and the entire state), and point out that it is not possible to develop the best and most cost effective solutions to the issues when the problem is not fully understood. Request their assistance to encourage state agencies to provide the necessary information and to help those agencies complete these tasks by removing any roadblocks they may encounter.

2. In the majority of the state, and in the majority of the Minnesota River watershed, there is no permit, review, or approval process associated with agricultural drain tile systems.

In the current farming environment drain tile systems are a necessity and have significant value in many areas of the state. Well designed drain tile systems can improve flooding and water quality issues. However, in the majority of the state, and in the majority of the Minnesota River watershed, there is no permit, review, or approval process associated with agricultural drain tile systems as it relates to water quality and flooding issues. Without such a process, drain tile projects are implemented in a haphazard approach with very little if any accountability to nearby downstream property owners on a small scale and watershed level issues on a larger scale. For the majority of cases, a farmer planning to install a drain tile system contacts the local FSA office indicating the property to be tiled. The FSA passes this information to the NRCS who checks the property for any qualified wetland areas that need to be avoided by the drain tiles, per federal regulation, and provides the location of those wetlands back to the farmer. The project information is also provided to the local SWCD office which checks the project for compliance with state rules regarding drainage of wetlands. NRCS and SWCD basically do the same process of checking the drain tile project for impact to wetlands on the property to be tiled, the only difference being that each agency looks at compliance with its own set of rules affecting setbacks/impacts to those wetlands. In both cases the NRCS and SWCD **ONLY** look at potential impact to wetlands on the property, they **DO NOT** do any review or analysis of potential impact to downstream properties for water quality, flooding issues, etc.

In summary, for the majority of the state and the majority of the Minnesota River watershed, there is no permit, review, or approval process on agricultural drain tile systems regarding their impact on water quality or flooding issues.

Possible solutions to this current lack of an adequate permit/review/approval process for agricultural drain tile systems:

1. One example of a solution that is currently working in Minnesota: In a few areas of the state there are Watershed Districts that require a permit process to install drain tile systems. Along with the permit requirement, many of these Watershed Districts require a review of the project that includes analysis for potential impairment of downstream properties. Along with this review there is a requirement for downstream property owners to be notified of proposed projects so they can also determine if they will be impacted and can voice any concerns. After analysis and public concerns are addressed, the project will be either approved or denied. All of the information on the drain tile projects in these Watershed Districts is public information and available to any organization or agency that may have a use for the information. This approach is essentially the opposite of the Farm Bill wording situation that makes all drain tile information that the FSA and NRCS obtains confidential.

2. The example from above using organized Watershed Districts with a permit process is one solution to help understand and have some control over drain tile systems. Other solutions using similar methods of permitting and review would also be possible. An example would be to handle the permit/analysis/review process at a county level by authorizing county commissioners to perform these duties, as this is what is often currently done for county drainage ditch systems.

Respectfully submitted,
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