2018 MAWD Resolutions
Background Information

Proposing District: Rice Creek Watershed District
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Background that led to the submission of this resolution:

The State enacted a number of laws related to water resources after the establishment of the public drainage systems. However, there was a commitment that these laws would not restrict existing rights including those related to the existence of, and obligation to maintain public drainage systems.

The public waters inventory was never intended to restrict the right to maintain existing drainage systems. The legislature specifically exempted repairs from DNR permitting; gave the DNR a mechanism to ensure proposed work was repair; and directed the DNR to provide for the lawful function of public drainage systems that affected public waters. The DNR also adopted a rule exempting repairs from permitting and announced a policy in 1980 that stated repair of public drainage systems should be allowed without permits.

More recent DNR practices have departed from the 1980 policy. The agency has increasingly required permits, approvals, and conditions specifically contrary to current law and the 1980 policy. The DNR issued new guidance in February 2018 that has not addressed the public drainage authority concerns while creating more uncertainty, expense, and delays in the public waters regulatory program and for drainage system repairs.

HF2687 and SF2419 were introduced during the 2018 legislative session to restate the protections given to drainage system repairs. These bills were placed on hold in committee when the DNR indicated that its new guidance would address the concerns that drainage authorities had with its current practices (relating to permitting and permission requirements for work affecting public waters). Though these bills were never withdrawn by their authors, the start of a new biennium (2019-2020) requires that they be reintroduced for consideration in the new biennium.

The DNR policy and its implementation do not adequately address drainage authority concerns. Reintroduction and approval of new legislation modeled after HF2687 and SF2419 would restate in clear terms the DNR’s role in drainage system repairs.
Ideas for how this issue could be solved:

Current issues with the DNR could be resolved through protracted litigation (least desirable course of action) or by clear legislative directive. New legislation, modeled after HF2687 and SF2419, will provide this clear legislative directive. The legislation would reinforce existing law regarding the DNR’s and the drainage authorities’ requirements when maintaining the public drainage systems.

Anticipated support or opposition from other governmental units?

All public drainage authorities (counties, watershed districts, and watershed management organizations) should support this legislation.

Non-governmental environmental organizations in the state and the DNR may oppose this legislation.

This issue is of importance to (Check one)

- To the entire state  XXX
- Only our region  
- Only our district  

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2018 MAWD Resolution

Regarding DNR Regulatory Authority over Public Drainage Maintenance and Repairs

WHEREAS, many watershed districts are drainage authorities 103E for all public drainage systems within their jurisdictional boundaries pursuant to statute chapter; and

WHEREAS, statute chapter 103E places an obligation on drainage authorities to maintain public drainage systems on behalf of benefitted landowners; and

WHEREAS, courts have identified the rights of benefitted landowners to have public drainage systems maintained as a property right; and

WHEREAS, the State enacted laws related to water resources after the establishment of the public drainage systems with the commitment that these laws would not restrict existing rights to maintain public drainage systems; and

WHEREAS, DNR practices have departed from past policy and extended its authority by regulating, permitting and restricting drainage system repairs; and

WHEREAS, HF2687 and SF2419 were introduced during the 2018 legislative session to restate the protections given to drainage system repairs and were placed on hold in committee to await new DNR guidance that would address the concerns of the drainage authorities; and

WHEREAS, the DNR issued new guidance in February 2018 that did not address the public drainage authority concerns and has created more uncertainty, expense and delays in the public waters regulatory program and for drainage system repairs; and;

WHEREAS, Though HF2687 and SF2419 were never withdrawn by their authors, the start of a new biennium (2019-2020) requires that they be reintroduced for consideration in the new biennium.

NOW, THEREFORE, BE IT RESOLVED that Minnesota Association of Watershed Districts supports the introduction of new legislation, modeled after HF2687 and SF2419, and commit its lobbying efforts toward promoting passage of the bills.