



Minnesota Board of Water and Soil Resources.
Minutes.

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155 South Wabasha St., Suite 104
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612-296-3767

DATE: January 20, 1993

TO: Board of Water and Soil Resources Members, Advisors,
and Staff

FROM: Ronald D. Harnack, Executive Director

SUBJECT: January 27th Meeting

The Board of Water and Soil Resources will meet on Wednesday, January 27, 1993, beginning at 9:00 a.m. The meeting will be held in the Ramsey West Room at the Ramada Hotel, 1870 Old Hudson Road, St. Paul (I-94 and White Bear Avenue - see map attached). Parking is available on the west end of the building. The agenda and informational materials are enclosed for your review.

Agenda Summary:

*** WETLANDS UPDATE:** We expect the report of the hearing examiners in early February. To facilitate review of the report by Board members prior to the February Board meeting I suggest that staff schedule a meeting with small groups of the members during the week of February 15. The staff would go through the report with the Board members and provide any additional information the members may want for the formal discussion at the February Board meeting. In addition, I feel that we should schedule a two-day Board meeting for February to ensure that sufficient time is available to discuss and make final decisions on the wetland rules. If we do not finalize the rules at the February meeting a special meeting will need to be scheduled in early March to take final action.

I also expect that the Wetland Heritage Advisory Committee will be meeting in February to review the hearing examiners report and make some final recommendations to the Board for consideration.

*** WATER QUALITY STANDARDS RULE AMENDMENTS:** The Minnesota Pollution Control Agency (MPCA) is currently updating the rules for water quality standards of the state. This includes elements that relate to wetlands and may have an impact on the wetland conservation act. MPCA will review their current efforts in updating the water quality rules.

* **FEEDLOTS:** The MPCA has asked for some time to discuss their initiatives in development of a plan of action for feedlot management in Minnesota. The Feedlot Advisory Group (FLAG) is the forum for much of the discussion regarding the feedlot program. Some of the issues that have been discussed include: timeliness of permitting, technical assistance to landowners, financial assistance to landowners, flexibility of the feedlot rules, roles of state and local government, research needs, manure application plans, short-term and long-term objectives of the program.

* **ROOT RIVER SWCD RIM PILOT:** In order to move the pilot along it is proposed that the Board authorize and allocate a specific number of sign-ups and related \$'s to Root River SWCD for this pilot. The average sign-ups is 5, 3 RIM and 2 PWP, and \$85,000. It is staff recommendation that the Board authorize these elements for the pilot initiative. Staff can then begin to work out the details of the agreements to get the initiative going. **ACTION.**

* **AUDUBON SOCIETY:** Jim Reynolds member of the Audubon Society has asked for some time with the Board to discuss some concerns of his organization with respect to the status of WMO plan approvals in the Metro area. His experience with a project in the Nine Mile Creek Watershed District has been of concern as it relates to the WMO plan process. An overall issue is the lack of progress by some of the WMO's to develop plans and what action if any does the Board intend to take to facilitate timely completion and approval of plans. Bruce Sandstrom has developed some background information regarding this issue for your review. **DISCUSSION.**

* **COST-SHARE FUNDING:** Staff reviewed with the members the criteria for the roll-over cost-share funding last month. This month we have the applications and suggest that the Board review the options for allocation, provide some direction with respect to geographical or activity targeting of the funds. Considerations include activities such as feedlots, soil conservation erosion control, leveraging federal \$'s, Minnesota River watershed, Lake Superior watershed. The potential implications of the state not meeting the phosphorus reduction requirements for the Minnesota River may be a consideration. Indications are that Minnesota could be fined up to \$25,000 per day and lose eligibility for federal nonpoint funds if the agreement objectives are not achieved. It is my intent to have EPA, MPCA, Met Council, and Metro Waste Management Commission discuss the Minnesota River compliance issues and concerns at the February meeting. You may wish to defer action on the cost-share allocation until March to permit more consideration of these issues. **DISCUSSION.**

* **CORE:** The Commission on Reform and Efficiency, Environmental Services Committee has taken final action with respect to the government reorganization. You will find a summary of their decision in your packet. **DISCUSSION.**

BWSR Members, Advisors, Staff
January 20, 1993
Page Three

* CITY OF FRIDLEY APPEAL - see attached

* RICHFIELD/BLOOMINGTON WMO BOUNDARY CHANGE HEARING - see attached

* MCLEOD SWCD REQUEST FOR CHANGE IN NOMINATION DISTRICT - see attached

If you have any questions regarding items or need additional clarification, please feel free to call. Travel safely, I look forward to seeing you on the 27th!

RDH:mja
Enc.

**BOARD OF WATER AND SOIL RESOURCES
RAMADA HOTEL - RAMSEY WEST ROOM
1870 OLD HUDSON ROAD
ST. PAUL, MINNESOTA 55119
JANUARY 27, 1993**

PRELIMINARY AGENDA

9:00 a.m.

1. Call to Order
2. Adopt Agenda
3. Approve Minutes of December 16, 1992
4. Introduction of New BWSR Members
Commendation to Outgoing BWSR Member
5. Reports
 - Chairman's Report - Jim Nielsen
 - Executive Director's Report - Ron Harnack
 - BWSR Committee Reports
 - Dispute Resolution Committee
 - Education Committee - Don Ogaard
 - Advisory Council on Wells and Borings - Warren Rodning
 - Feedlot Advisory Committee - Jim Rossman
 - Pesticide Advisory Committee -
 - RIM Strategic Plan -
 - Wetlands Committee - Jim Nielsen
 - Finance Committee - Barbara Cobb
 - BWSR Agency Coordination Committee - Howard Peterson

9:30 a.m.

6. Wetlands Update - Greg Larson
7. Water Quality Standards and Rule Amendments - Howard Marcus, Pollution Control Agency
8. Feedlots - Dave Nelson, PCA

11:00 a.m.

9. CORE - Ron Harnack
10. Root River SWCD RIM Proposal - Marybeth Block
11. City of Fridley Appeal - Bruce Sandstrom

Noon

LUNCH

-2-

1:00 p.m.

12. Cost-Share Funding - Chuck Niska
13. Nine Mile Creek - Jim Reynolds, Audobon Society
14. Richfield/Bloomington WMO Boundary Change Hearing -
Bruce Sandstrom
15. McLeod SWCD Request for Change in Nomination District
16. Advisor Comments
 - Marlin Libbesmeier, MAT
 - John Sumption, MACDE
 - Gary Nordstrom, SCS
 - Pat Wulff, MLA
 - Howard Peterson, MAWD
 - Allan Oehlke, MASWCD
17. Board Issues - discussion, comments, action needed
18. Upcoming Meetings
 - February 24, 1993, BWSR Meeting, St. Paul

3:00 p.m.

Adjourn

CORE

STATE OF MINNESOTA
COMMISSION ON REFORM AND EFFICIENCY

203 Administration Building, 50 Sherburne Ave., St. Paul MN 55155
(612) 297-1090 Fax (612) 297-1117

RECEIVED
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BOARD OF
& SOIL REFORMERS

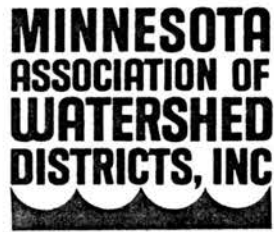
DATE: December 28, 1992
TO: Commission On Reform and Efficiency Members
FROM: Arend J. (Sandy) Sandbulte *KAM for A. Sandbulte*
SUBJECT: NOTICE OF ADDITIONAL COMMISSION MEETING

The commission's preliminary direction regarding executive reorganization is already stimulating discussion within state government. Glen Taylor and I believe we should expedite this part of our work to insure legislative consideration and a full debate. Consequently, I am scheduling an additional full commission meeting on **February 3, 1993, from 8:30 a.m. to 11:30 a.m.** We will contact you with more information when we determine the location of this meeting.

I realize that it may not be possible for all members to attend without more advance notice. If you are unable to attend on February 3, please consider participating in Glen's working committee meeting scheduled for January 19, 1993, from 8:30 a.m. to 11:30 a.m. It will be held in Conference Room 116B of the Administration Building. The CORE staff will be presenting final recommendations to the working committee for approval on January 19. If you are unable to attend either meeting and want additional information or discussion, please contact Bev Schuft of the CORE staff to work out another arrangement. Bev can be reached at (612) 296-6798.

Please contact Julie Gruber (612) 297-8006 and let her know whether you will be able to attend the full commission meeting on February 3.

Thanks for your continuing participation and support.



MEMORANDUM

TO: Nancy Feldman, CORE Program Analysis Team Leader

FROM: Howard L. Peterson, Chairman
Minnesota Association of Watershed Districts

SUBJECT: Environmental Services Recommendation
Memo Dated December 11, 1992

DATE: December 29, 1992

At a recent meeting of the executive committees of Minnesota Association of Watershed Districts, Minnesota Association of Soil & Water Conservation Districts, and the Minnesota Association of Minnesota Counties, it was concluded we recommend Option D on page 11. This basically says to defer legislative action until a more thorough analysis of Board and Agency interactions can be accomplished. It was felt that there are many efficiencies and improvements that could be accomplished through existing entities.

Needless to say, the Association of Minnesota Watershed Districts is deeply concerned that watershed-based management of surface water and soils has been rejected in favor of political boundaries. We are also disturbed that we were not consulted in this analysis in the manner MASWCD and other groups were. If you were to analyze the historical aspects of the watershed movement, you would find that the vast majority were formed because political units of government did not respond to watershed problems. Lakes, streams, and drainage basins do not follow county lines.

A further contradiction in the process being proposed (to reorganize all resource management along county lines) is that developments in the last few years seem to be expanding the use of watershed-based resource management. For example, the EPA (federal) has recommended watershed-based management. The Minnesota Department of Natural Resources was all set to test watershed-based management on several projects they had until funding was eliminated. Likewise, there seems to be more interest in watershed management from lake associations. Mainly, because political units or lake improvement districts do not address the watershed aspects of an area.

In closing, we would very much appreciate your consideration of recommending a continued one to two year study period. And if that comes to pass, we would be pleased to assist in anyway you see fit and hope that we could be a member of any task force or committee that might be organized.

23\27\496\NF.MEM\PLS



ROBERT A. GUZY
BERNARD E. STEFFEN
RICHARD A. MERRILL
ROBERT C. HYNES
RICHARD A. BEENS
RONALD B. PETERSON
DARRELL A. JENSEN
JEFFREY S. JOHNSON
RUSSELL H. CROWDER
JON P. ERICKSON
LAWRENCE R. JOHNSON
DAVID A. COSSI
THOMAS P. MALONE
MICHAEL F. HURLEY
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Barna, Guzy & Steffen, Ltd.

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BEVERLY K. DOIXE
GREGG V. HERRICK
JAMES D. HOEFF
JOAN M. QUADE
SCOTT M. LEPAK
STEVEN L. MACKEY
OF COUNSEL
PETER BARNA

December 24, 1992

DEC 28 1992

Mr. Ron Harnack
Board of Water and Soil Resources
Southbridge Office
155 South Wabasha Street
Suite 104
St. Paul, MN 55107

RE: Locke Lake Project

Dear Mr. Harnack:

Enclosed please find an Appeal for the City of Fridley regarding the Locke Lake project. If you have any questions, please contact me.

Sincerely,



Virgil C. Herrick

VCH:csb
Enclosure

For of this rec'd
12/24/92 @ 10:05
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3rd page faxed 1/8/93

recommended a Improvement Project for Locke Lake and estimated the cost to be \$500,000.00. The project proposed the removal of 84,000 cubic yards of sediment to restore the lake to a depth of 4 feet at an estimated cost of \$504,000.00. According to the 509 Plan, funds for the project were to be collected over a 3-year period and construction was to be completed in 1990.

3. On July 10, 1992, the Rice Creek Watershed District initiated an amendment to their 509 Plan for Locke Lake raising the estimated cost to \$800,000.00. After the necessary review of the amendment by the Board of Water and Soil Resources and municipal governments, the Rice Creek Watershed District adopted the amendment on December 9, 1992. See Exhibit A attached hereto.

4. On August 13, 1990, the City of Fridley passed Resolution No. 52-1990. This resolution requested the Rice Creek Watershed District to implement the 509 Plan as it related to Locke Lake. A copy of this Resolution is attached as Exhibit B. On July 11, 1990, the City of Fridley submitted the Resolution and a project petition to the Rice Creek Watershed District. This Petition consisted of three parts: the first part involved the construction of a new dam on Rice Creek at the outlet of Locke Lake; the second part requested the Watershed District to remove sediment from Locke Lake; and the third part requested the Watershed District to construct a sediment retaining basin upstream from Locke Lake. The city proposed to pay for the first part of the project that is the construction of the dam. The

city requested the Watershed District to implement its 509 Plan which included parts 2 and 3 of the petition (i.e. the sediment removal and the construction of the sediment retention basin). The City requested the Watershed District to finance their cost by a district wide ad valorem tax.

5. Upon receipt of the above-described petition, the Watershed managers rejected it and insisted that the petition conform to the requirements of a project petition under 103D.705. In order to initiate some action on the part of the Watershed District, the City agreed to amend its Petition as requested by the Watershed District. This was done by Resolution 52-1990, dated August 13, 1990. Attached to the resolution was a project petition.

6. The Watershed District managers then requested its engineer to develop and submit an engineer's report according to the requirements of Minnesota Statute 103D.711.

7. On October 21, 1992, the Watershed engineers submitted a report to the managers. This report recommended an inflake sedimentation basin at an estimated cost of \$324,000.00. On October 28, 1992 the managers determined that the engineers' report was unfavorable to the Petition. Following a public hearing on November 25, 1992, the managers determined to send the Petition back to the City for further proceedings. This action was taken pursuant to Minnesota Statute 103D.711 Subd. 4. See Exhibits C and D, attached hereto.

8. Also at the public hearing on November 25, 1992, the managers resolve to give positive consideration to a proposal to (a) remove sediment from Locke Lake and (b) construct a sediment basin to reduce further sedimentation in the lake, and (c) fund the project under the ad valorem process provided in Minnesota Statutes 103B.251, on the condition that the total cost of the project does not exceed \$588,000.00, see Exhibit E, attached hereto.

BASIS FOR APPEAL

9. The Watershed District has adopted its 509 plan. A part of that plan states that the district will remove sediment from Locke Lake and restore the lake to a depth of 4 feet. In addition, the plan states that the district will construct an upstream sedimentation retention basin.

10. Minnesota Statute 103B.231 Subd. 10 is entitled "Adoption and Implementation." This section provides "(a) the organization shall adopt and implement (emphasis added) its plan within 120 days after compliance with the provisions of subdivision 9 and approval of the plan by the Board of Water and Soil Resources. A Watershed District may implement its approved plan and approved capital improvement program by resolution of a majority of the board of managers without respect to the provisions of Chapter 103D requiring the managers to wait upon petitions for projects, . . ."

This subdivision goes on to state "(b) the board of water and soil resources shall adopt rules establishing standards and criteria for making determinations of whether watershed management organizations and counties are implementing watershed plans as required under subdivision 1."

11. Minnesota Statutes 103B.231 subdivision 13 is entitled "Appeals of Plan Failures." This section provides "Persons aggrieved by an alleged failure to comply with the provisions of an approved plan may request review by the board of water and soil resources. The board shall establish a procedure for resolving disputes and making a determination on whether the plan is being implemented."

The board of managers approved the Locke Lake project when the 509 watershed management plan was approved, July 25, 1990; as amended on December 9, 1992. The above quoted statutes require the managers to implement the 509 program within 120 days after adoption. Managers have failed in this responsibility. They insisted that the city provide them with a petition for the project even though the statute specifically says a petition is not required. Even after receipt of the petition, they have still refused to implement a project that is consistent with the 509 plan. It is the position of the appellant that this position is contrary to the express language and intent of the statute.

12. Despite the fact that the proposed Locke Lake project is a part of the districts 509 plan, the managers refused to implement the project without receipt of a petition. When the

city reluctantly agreed to petition for the project the managers insisted that the petition meet the requirements of 103D.705. In order to attempt to implement the project, the petitioners agree to submit such a petition; although they consistently took the position that the project should be constructed under Chapter 103B.

13. Upon receipt of the project petition, the managers proceeded as if the proposed project was a 103D project and followed the provisions of 103D.705, 103D.711 and 103D.715. The managers received an engineers report on this project. The engineer recommended a project that was inconsistent with the project requested in the petition and inconsistent with the District's 509 Plan. Upon receipt of the engineer's report, the managers made a finding that the report was unfavorable to the petition. They then proceeded to hold a hearing as required by Section 103D.711 Subd. 4.

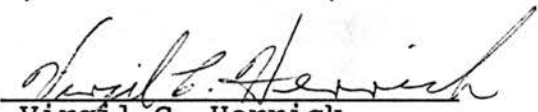
14. At the public hearing held on November 25, 1992, the managers adopted a resolution wherein they indicated that they would give positive considerations to a project to remove sediment from Locke Lake and construct a sediment basin on the condition that the total cost of the project does not exceed \$588,000.00. The managers also determined to refer the petition back to the petitioners for further proceedings as authorized by Minnesota Statute 103D.711 Subd. 4. They again advised the city that they would not proceed on the project until they had

received an amended petition and that the petition must meet the requirements of Minnesota Statute 103D.705 Subd. 1.

CONCLUSION

The City of Fridley seeks and order of the Board of Water and Soil Resources finding that the Rice Creek Watershed District has (1) failed to implement the Locke Lake project as specified in their 509 Plan; (2) that the Rice Creek Watershed managers have refused to establish a project in whole or in part and that said refusal is contrary to law and fact; and (3) ordering the Rice Creek Watershed managers to implement the Locke Lake project as described in their 509 Plan as amended to finance said project by a district wide ad valorem tax.

BARNA, GUZY & STEFFEN, LTD.

By: 

Virgil C. Herrick

Attorney for City of Fridley
200 Coon Rapids Blvd, Suite 400
Minneapolis, MN 55433
(612) 780-8500

fridley.app

**MINNESOTA BOARD OF WATER AND SOIL RESOURCES
155 SOUTH WABASHA STREET
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ST. PAUL, MINNESOTA 55107**

612-296-3767

BOARD MEMBERS

<u>Name and Address of Member</u>	<u>Appt. Designation</u>	<u>Term Expires</u>	<u>Telephone</u>
D. James Nielsen, Chair , 1815 Meadowwoods Trail, Long Lake, 55356	Citizen	01-02-95	612-343-2806
Dwain Otte, 28937 Northfield Blvd., Randolph, 55065	SWCD	01-01-96	507-645-4370
Ted Lovdahl, Jr., Route 1, Box 142, Effie, 56639	SWCD	01-14-97	218-743-3686
John Boulton, Route 1, Box 18, Porter, 56280	SWCD	01-03-94	507-296-4668
Howard L. Peterson, 7021 Duck Lake Road, Eden Prairie, 55346	Watershed	01-02-95	612-934-2050
Barbara A. Cobb, 2170 Itasca Ave. S., St. Mary's Point, 55043	Watershed	01-01-96	612-436-8953
Donald H. Ogaard, 705 W. 5th Street, Ada, 56510	Watershed	01-03-94	218-784-4156
Warren Rodning, Rt. #2, Box 158, Nicollet, 56074	Co. Commr.	01-02-95	507-246-5291
James Rossman, 7000 - 70th Street, Oronoco, 55960	Co. Commr.	01-03-94	507-282-2890
Barbara Uppgaard, HC83, Box 436, Pequot Lakes, 56472	Co. Commr.	01-14-97	218-828-3970
Sharon K. Clark, Route 3, Box 17, Madison, 56256	Citizen	01-01-96	612-598-3164
Kathleen Rohr, 2232 Tamarack Drive, Long Lake, 55356	Citizen	01-14-97	612-475-0789

In addition to the above members, five ex officio nonvoting members are provided by the Departments of Agriculture, Health, Natural Resources, the University of Minnesota, and the Pollution Control Agency.



STATE OF MINNESOTA

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
SAINT PAUL 55155

ARNE H. CARLSON
GOVERNOR

December 31, 1992

Ms. Jerri-Anne Garl, Chief
Ground Water Protection
U.S. Environmental Protection
Region 5 WG-16J
77 W. Jackson Boulevard
Chicago, Illinois 60604

Dear Ms. Garl:

RE: Minnesota Pollution
Ground Water Protection

The U.S. Environmental
state's development of
(CSGWPP), that Minnesota
state. The Minnesota Pollution
the Minnesota-EPA contact
will be the Ground Water

As discussed at the Seg
Quality Board's Water Resource
planning activities with
its member agencies, and
action.

If you have any questions
the MPCA's Ground Water
Water Unit at 612-296-

Warmest regards,

ARNE H. CARLSON
Governor

AHC/PCA/sjk

cc: EQB Water Resource Committee and Tech Committee Members

MT & Board

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STATE OF MINNESOTA

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
SAINT PAUL 55155

ARNE H. CARLSON
GOVERNOR

December 31, 1992

Ms. Jerri-Anne Garl, Chief
Ground Water Protection Branch
U.S. Environmental Protection Agency
Region 5 WG-16J
77 W. Jackson Boulevard
Chicago, Illinois 60604

Dear Ms. Garl:

RE: Minnesota Pollution Control Agency as Minnesota Contact for Comprehensive
Ground Water Protection Program Development

The U.S. Environmental Protection Agency (EPA) has requested, as part of the state's development of a Comprehensive State Ground Water Protection Program (CSGWPP), that Minnesota designate a contact point between the EPA and the state. The Minnesota Pollution Control Agency (MPCA) will serve that role as the Minnesota-EPA contact for CSGWPP planning activities. The specific contact will be the Ground Water Unit in the Ground Water and Solid Waste Division.

As discussed at the September 3, 1992, meeting of the Minnesota Environmental Quality Board's Water Resources Committee, the MPCA will coordinate the CSGWPP planning activities with extensive input from the Water Resources Committee and its member agencies, and at critical milestones, their formal consideration and action.

If you have any questions, please feel free to contact Don Jakes, Supervisor of the MPCA's Ground Water Unit, at 612-296-7786 or Rita O'Connell of the Ground Water Unit at 612-296-8856.

Warmest regards,

ARNE H. CARLSON
Governor

AHC/PCA/sjk

cc: EQB Water Resource Committee and Tech Committee Members





December 28, 1992

Jack W. Eugster, Chair
CORE, Program Analysis Committee
CEO, The Musicland Group
7500 Excelsior Blvd.
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Dear Mr. Eugster:

Member:

(BWSR)

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Harry Fischer @
Sam Solow's office CAP

- CORE letter

- 1/12/93 CORE info.

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December 28, 1992

Jack W. Eugster, Chair
CORE, Program Analysis Committee
CEO, The Musicland Group
7500 Excelsior Blvd.
Minneapolis

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Dear Mr.

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Harry Fischer @
Sam Solow's office CAP

- CORE letter

- 1/12/93 CORE info.

MF.

In addition to
the 10 cc's of CORE
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• one of all of attached
to Harry

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to Bud Mowbray for
Jan Board Mgt.

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December 28, 1992

Jack W. Eugster, Chair
CORE, Program Analysis Committee
CEO, The Musicland Group
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Dear Mr. Eugster:

Members of the Board of Water & Soil Resources (BWSR) recently met with members of the Association of Minnesota Counties (AMC), the Association of Soil & Water Conservation Districts (MASWCD), and the Minnesota Association of Watershed Districts (MAWD) to review the recommendations of CORE staff dated December 8, 1992 and your committees recommendations dated December 11, 1992. The following comments reflect the discussion from our December 23, 1992 all day meeting. Although the options represented by the December 8, 1992, reflect a reasonable assessment of the various alternatives that could be considered the group believes the December 11 decisions of the Environmental Services Committee do not come close to addressing the findings of the CORE (November 1992, Environmental Services Project - Findings); do not result in greater customer service; do not result in greater efficiency in state or local government; do not acknowledge the need and value of checks and balances and advocacy in state government; and do not acknowledge that a command and control approach is not the way to operate government.

The following comments are divided consistent with the December 8, 1992 CORE staff recommendations report; Organizational Complexity, Policy Complexity, and Intergovernmental Complexity.

ORGANIZATIONAL COMPLEXITY

1. State Agency Organizational Structure:

In general the December 11 decisions focused entirely too much time on the state agency organizational structure. The expectation that changing the structure will result in a more responsive, accessible and accountable government is not a valid conclusion. In fact it is believed that the structure being recommended by CORE will be less responsive to citizens, less motivated to change, will not be challenged to change, and results in bigger not better government. The two agency approach consolidates all of environmental services headed by a secretary. The addition of the secretary makes commissioner

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accountability more removed from the Governor. The consolidation of agencies reduces opportunity for challenging processes, policies, and actions of individual agencies by stifling the challenges within the agency structure.

The eco-region approach to the state structure is over emphasized in the recommendations. In fact if you consider the main issues relating to state responsiveness oriented around permits, primarily water permits, it is clear that an eco-region approach will only further the confusion. Water quality, water allocation, soil conservation, lake management, fisheries, flood control, etc. are issues that can only be addressed on a watershed basis and river basin framework. If a eco-region approach were established you would have two or three eco-regions attempting to coordinate the water resources issues of one watershed or basin. This does not make much sense. It would be easier to incorporate the eco-region elements into a watershed approach than watershed into eco-region. It also acknowledges the way in which most the water resources of the state are managed currently.

Our group recommends that the existing government structure be retained without the secretary and focus on the other elements of the report that will make government better. The watershed approach to management is a more efficient and understandable approach to state delivery of services and fine tuning government by selective transfer of specific programs between agencies will significantly improve service and efficiency.

2. Regional\Central Offices:

This begins to get into the real guts of state operations. The decisions of CORE on December 11, 1992, appeared to ignore this element to a great degree. Our group believes that it is essential to have agency staff decentralized to field locations. With this decentralization must come responsibility, authority and accountability for decision-making. In many respects DNR and BWSR have already decentralized, however PCA lags far behind in this respect. For decentralization to be effective all agencies need to empower the field offices to make decisions and not second guess them on a decision by decision basis. This is risky for agencies however it results in considerable improvements in customer service and significant efficiency in the delivery of services. Decentralization without empowerment is ineffective, inefficient and is bad government.

Co-location of regional and field offices is important to the success of state delivery of services. At a minimum the regional offices of all environmental agencies should be co-located to facilitate better coordination, communication and sharing of support services. Not only can this action significantly improve the publics perspective of government and it can potentially save \$'s through the sharing and coordination of support services.

The concept of sharing of support services and offices could apply beyond the environmental services agencies to the Department of Transportation as well.

The empowerment and co-location of field and regional staff are key to the implementation of many of the elements relating to policy complexity.

3. Role of Boards:

The group, consistent with the discussion of state agency organizational structure, did not support elimination of all decision-making boards. In particular the group believes that the BWSR should be retained and serious consideration be given to making the agency members of BWSR voting members to strengthen the ties between state and local government. It was believed that CORE had little understanding or appreciation for the authority, responsibility and accountability of local government. The action to eliminate the only agency that regularly brings state and local government together for meaningful policy dialogue says that you don't want local government and don't need local government in the state government loop or do not understand the role of local government in natural resources management. This again leaves our group with the perspective that CORE is lost in the restructuring of government rather than getting to the root of addressing the issues reflected in CORE's Findings. There was little discussion of the PCA Board except for concern relating to the dual permitting responsibilities of the agency, the commissioner and the board, that leads to confusion, delay and unnecessary litigation.

Establishment of a appeals board appeared confusing. It is almost impossible to have a appeals board that can effectively deal with policy conflicts as well as permit appeals. An advisory board to the Governors environmental cluster group seems most appropriate to address the policy issues. The issues of interagency policy conflicts relating to water resources is currently the authority of BWSR and can continue with greater effectiveness with agencies as voting members. The permit appeals should continue to be addressed by the Office of Administrative Appeals. It provides all sides with an impartial hearing approach that is not burdensome in time or cost.

POLICY COMPLEXITY:

Our group was rather disappointed in the recommendations of the CORE relating to this section. It appears again that the focus was on the secretary\government restructuring and not on the specific elements of the staff options report. In fact this section had numerous recommendations that appear overlooked or relegated to the secretary. The resolution of many of the problems addressed in the findings report are or can be achieved through the options of this section, however your cursory attention to detail in this area leaves us with the perspective that you are not interested in addressing the findings, only in reorganizing government.

1. Conflict Management:

The recommendation that the secretary or even a commissioner to be the one to convene stakeholders and develop conflict management approaches on all issues of conflict reflects a lack of understanding of state decision-making processes. Agencies continued and enhanced use of conflict management approaches and convening of stakeholders as part of their decision-making at the field level reduces the frequency with which issues of conflict would reach the agency heads. The development of a citizen's environmental appeals board that had expertise in all the environmental areas would be virtually impossible and at best very expensive. Currently agencies share expertise on issues, use university staff and at last resort hire consultants with specialties. This type of board would only be a forum for pitting state and university expertise against private expertise and would not resolve conflict. In many cases there are as many answers to a problem as there are experts to address them. Surely this is not an efficient approach. On the other hand the citizens advisory board for policy debate is a well founded one. All agencies should use advisory committees to assess progress, goals, objectives, policies and procedures. When done right the committees are part of the TEAM that is successful.

2. Improving the Command and Control Regulatory Approach:

Our group strongly supported delegation to the lowest level of government. However, if local government is the lowest level then it is important that funding come with the mandates. Local governments have the commitment to shared management of resources. The state's partnership is financial, technical, and education & training. At the state level the responsibility, authority, accountability for decision-making should to be at the field office but at a minimum at the regional office. The agencies must have sufficient policy guidelines and procedures for regional decision-making for effective and efficient delivery of services. Quarterly\annual reviews of decisions can help refine the process and develop greater consistency, however permit by permit oversight by the central offices should not be tolerated. Too much oversight limits creativity and limits accountability.

3. Rules:

Our group supported rule development that was performance based with specific measurable objectives that are to be achieved. Performance based rules allow individuals to meet these objectives in the most efficient and effective manner. This approach promotes creativity and innovative approaches rather than prescriptive rules that narrow options. Coupled with performance based rules is the need for information, education and training so that the public or local units of government understand the objectives and as appropriate are trained in the implementation options that can achieve the objective. Key again, where local governments are required to carry out the rule, is financial assistance for administration.

4. Uniform codes:

Our group believed that in some instances uniform codes may be appropriate, however uniform codes defeat the purpose of performance rules or codes that allow and promote to creative and innovative approaches to address unique areas of the state. There was also concern that uniform codes would limit the ability of local units of government to be more restrictive when the situation warranted.

5. Permit Coordination & Deregulation:

Our group spent quite a bit of time discussing this issue as they believed that much efficiency and effectiveness can be achieved in this area. The CORE committee lost it's focus here by presuming that reorganization of the agencies is the answer to our problems. The public outcry has been significant in the area of permit coordination, timeliness of permitting, and lack of guidance regarding permitting. Yet the CORE committee relegates this item to further staff evaluation. Our group believes that consolidation of the permitting processes is necessary to improved responsiveness. Utilization of a state TEAM consisting of the agencies that have permitting authority regarding the project can coordinate between local, state and federal governments to ensure that optimum degree of consolidation of permitting is achieved and coordination at a minimum is achieved.

Defining a lead agency in a multi permitting situation would help the applicant with the process and make the state more accountable in it's responsiveness to the applicant. The lead agency would involve local and federal agencies with authority in addition to the state agencies so that each knew who was doing what, when and where: a "state permit" concept.

The agencies in their permitting need to be an advocate for the landowner as well as the resource, providing the applicant with clear guidance on what can be permitted and what cannot be permitted and providing the applicant with alternatives that would address their needs and objectives while protecting the resource. Our group acknowledged that this would require more agency staff time prior to the application, however it was also acknowledged that this would reduce the number of applications, result in more complete applications, and reduce agency review time.

Our group strongly recommended a timeframe within which agencies are required to make decisions on permits. Frequently delays are a means to put off saying no or requiring more information instead of saying no. Sometimes field offices delay because they do not have the authority to make the decisions. In all these instances informing the applicant and making timely decisions is a necessary part of service delivery, whether the answer is yes or no. Reasonable timeframes for actions by agencies is appropriate.

Our group also supported more deregulation of activities that involve minimal environmental risk. The DNR has some excellent examples of general permits that meet specific performance standards and pose little risk. There is opportunity to

significantly expand on this approach. In addition our group believes that some state activities could be delegated to local governments and carried out through existing local programs with a regional or geographical approach that limits resource risks. This may require additional financial consideration, but not in all instances, and at minimum a commitment to training of local officials.

INTERGOVERNMENTAL COMPLEXITY

We recognize that your committee did not spend much time on this section and that your next meeting will focus more on this area than the others. Our group spent considerable time discussing this area of interest as it significantly impacts those represented. The staff options outlined in the December 8, 1992 report leaves out one significant option and that is to leave the status quo alone. The presumption in the report is that local governments duplicate each others efforts, are not well coordinated, lack a framework for coordination and cooperation, and that special districts in particular are not needed. We offer some other thoughts and considerations for your deliberations in January.

First, regional government is not looked on as being responsive government. Regional is perceived as another layer of government on a large scale that takes authority away from local government and the citizen. So the context of regional government is not well received in greater Minnesota or in the metro area. The experiences of local government with regional government has left and still leaves much to be desired. It is typically command and control oriented, unfriendly, sanctioning, coercing rather than coordinating and cooperating. In contrast the group does believe that a watershed approach to resource management is important and is within the authority of existing institutional options to achieve. Counties through joint powers, swcd's through joint powers, counties and swcds through joint powers, and watershed districts can manage on a watershed framework.

Second, the report does not address townships, or small and large cities, that are a significant element in the implementation of environmental programs at the local level. Unless these two institutions are addressed at the same time as the others much of what is desired cannot be achieved.

Third, the report does not acknowledge the recent efforts that the legislature put in place to deal with water resources management in a coordinated and cooperative manner. The comprehensive local water management laws for greater Minnesota and the metro area provide a framework for coordination and cooperation in planning and implementation of programs and projects that will preserve and enhance the surface and ground waters of the area. A major milestone has been reached this year with all counties and the almost all the metro area having state approved first generation comprehensive water plans. These plans have been developed from the grass roots up utilizing citizen and local government leadership

with state and federal support to define and assess local issues and set forth strategies for addressing these issues. They have set in motion a process for the coordination of all local governments activities relating to water management. County water plans provide the umbrella for the other units of government's efforts and initiatives. The plans begin to define the roles and responsibilities of local governments in the implementation of specific strategies in the plan. It is acknowledged that cooperation and coordination still needs much improvement and at the same time acknowledges that the framework is in place for it to happen.

These plans are dynamic as are our water resources. Therefore each plan will be revised or updated every 5 years. These second generation plans will bring greater continuity to local efforts, by eliminating duplication, building on the strengths of existing delivery systems, and providing a watershed framework to the plans. They will define and redefine roles among local governments. This local water management process has been heralded nationally as the model to follow. CORE's basic proposals would essentially throw this all out and start all over.

Joint powers are a very capable institution when constructed in a manner that facilitates sound policy and decision-making even in the heat of constructive disagreement. However, it must be acknowledged that most of the watershed districts that have been established have been the result of county resolutions for establishment. They have acknowledged that in many instances there is a need for another institution to address some issues. Soil & Water Conservation Districts have evolved into a multi resource management agency with a focus on working with landowners to put soil and water conservation practices on the ground using a voluntary approach. Counties provide the primary financial support for the swcd's and could through that funding mechanism provide for the informal dissolution of swcd's. However each of these governments are forging new partnerships through the framework of the water plan and implementation process. This coordinated approach using the water planning model on a watershed basis should be promoted not shelved.

The same issues are relevant for the metro area. Legislation and rules require that all water management organizations in the metro area develop second generation plans that eliminate fragmentation of services, eliminate planning & coordination barriers, consolidate permitting or provide for the orderly coordination of permitting without duplication, provide for citizen involvement, and provide for timely conflict management. The oversight of these activities is the BWSR whose membership of local governments, citizens and state agencies makes it an appropriate organization for such a task.

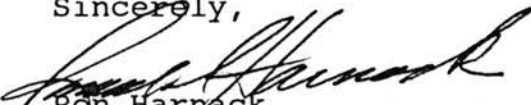
There are issues of special purpose districts and other local units of government that deserve further discussion with those entities

individually and collectively. Therefore further examination of the state-local and local-local relations with respect to environmental services is warranted.

In addition to the comments and discussion of the local governments and the BWSR group we have attached specific ideas on the transfer of some programs for your consideration.

In closing we extend our appreciation to the CORE staff for thier willingness to meet with the BWSR and local government representatives on several occasions.

Sincerely,


Ron Harnack
Executive Director


D. James Nielsen
Chair, BWSR 

Attachment

cc: Ed Stringer
Cindy Jepsen
Melva Wier
CORE, Program Analysis Committee
AMC
MASWCD
MAWD
BWSR

December 1, 1992

CORE REORGANIZATION OPTIONS FOR DISCUSSION

1 - Make agencies voting member of the BWSR. BWSR's responsibility to coordinate local water management initiatives and facilitate agency cooperation in these efforts can be enhanced by having the agencies as voting members of the board. The policy debates, conflict resolution discussions, soil and water resources and related land use management opportunities between local and state government can be improved with all members having equal status at the table. Giving voting authority to the agencies will also elevate the participation to the commissioner's office rather than non policy staff. This change will serve to improve the relationships and help build new partnerships between local governments and state agencies. No cost initiative. Requires legislation.

2 - Transfer the responsibilities and authorities relating to the establishment of lake improvement districts from DNR to BWSR to consolidate the oversight of natural resources special purpose districts under one agency. BWSR currently has the authority for soil & water conservation districts and watershed districts. During the past two years the lack of consolidated oversight has resulted in excess of \$200,000 spent on unnecessary state and local expenditures, legislative claims hearings, confused citizens and local governments. The benefits are significant and there are no negatives. No cost initiative. Requires legislation.

3 - Transfer the LMIC, Land Management Information Center, from the Dept. of Administration to the BWSR or DNR. The LMIC was recently transferred to the Dept. of Administration from Minnesota Planning. It needs a permanent home so that it can focus on providing a service to local governments in the management of natural resources. The LMIC has not been as responsive to the data management needs of local governments and therefore much of the data stored is not accessible to local government or state government resource managers for day to day use. No cost initiative. Legislation desirable, but may be possible by executive order of the Governor. Transfer all staff, activities and related \$'s.

4 - Natural resources grants consolidation. Currently DNR, PCA and BWSR make grants to local units of governments for either studies, building local capability to implement state mandates or for cost-share to landowners to put practices on the ground. The grants are program oriented therefore each agency and program has its unique application, review, allocation, monitoring, and reporting mechanism. This results in 100's of grants being applied for and processed through the state and local administrative hoops. By consolidating the grants into a local capability to implement state mandates element and a conservation practices element with one application, review, allocation, agreement, monitoring and

reporting process significant efficiencies can be achieved. Local governments will spend much less time grant writing and more time managing the resource; state agencies will spend less time reviewing, monitoring and administering grants and more time providing support to local governments; and the fiscal and legal agents of the state will have 100's less grants to run through the process. Since BWSR has the majority of grants \$'s going to the activities and has the local government process in place it makes sense to use it as the point of consolidation. The MFIP, Minnesota Forest Improvement Programs, grants are currently consolidated through BWSR in cooperation with DNR. BWSR has all the natural resources agencies represented on the Board so coordination should be readily accomplished. No cost initiative. May require fiscal and legislative changes.

5 - Transfer the nonregulatory aspects of the state's nonpoint programs to BWSR from PCA. Most of the activities of the nonpoint program focus on local governments and their interaction with the landowners to put conservation practices on the ground. BWSR's programs of comprehensive water planning and implementation, conservation cost-share programs, RIM reserve, and BWSR's connection with counties, soil & water conservation districts, and watershed districts would make delivery of the nonpoint programs more efficient and cost effective. The transfer would also facilitate the integration of appropriate nonpoint elements into local government water management and implementation programs on a day to day basis with BWSR oversight in these programs. The agencies as members of the BWSR would be maintained as an active partner in the programs. Transfer of staff and related \$'s. No cost initiative. May require legislation.

6 - Consolidate the state's wetland regulatory authority under the Wetland Conservation Act. The current authority for regulation of the type 3, 4, and 5 wetlands, 10 acres or greater in nonurban areas and 2 1/2 acres or greater in cities is with the DNR under the public waters inventory. The remaining wetlands of all types are managed by local governments under the Wetland Conservation Act of 1991. The state's leadership towards one stop shopping for wetlands permits can be greatly enhanced by this initiative. No cost initiative. No people or \$'s transferred. Requires legislation.

7 - Designate the BWSR as the lake management coordination agency for the state. Lakes are a reflection of its geological and hydrological history as well as a reflection of the landuses around the lake and within the watershed. Local governments, as the primary landuse authority, are in the best position to address lake management issues within the context of their local water planning and implementation programs with state technical support. In addition BWSR brings to the table local governments and the state natural resources agencies that can formulate policies and procedures in a coordinated manner for the management of lakes. No cost initiative. Requires legislation.

8 - Consolidate and transfer the current water management policy and coordination responsibilities of the EQB to BWSR. BWSR currently has the responsibility and authority for the implementation of the local water planning and management programs as well as having responsibility for the coordination of water resources activities between state and local governments and has responsibility for conflict management with respect to water policy. This initiative would consolidate the state's water policy and coordination activities in one agency. No cost initiative. Transfer people and related \$'s. Requires legislation.

9 - Consolidate all soil and water resources management programs, that focus on local government for effective implementation, under the comprehensive local water management programs. This is an initiative that would facilitate greater agency participation in local government comprehensive water management plan development and implementation. It would provide a focal point for the various local water and related land use programs of agencies to be integrated into a comprehensive water resources management strategy of local government. In the past the agencies have not been as proactive in the local water planning process as is desired or needed, in part, due to the philosophy that locals have to do our programs anyway and the belief that local governments have not shown the ability to do the job therefore why spend the time. These types of attitudes are prevalent enough to suggest that this consolidation initiative could be the catalyst for greater coordination and cooperation between state and local governments. No cost initiative. Transfer people, programs and related \$'s. Legislation required.

10 - Consolidate the regulatory authorities of PCA relating to water quality with the regulatory authorities of DNR relating lakes and watercourses to provide one stop shopping for state permits. The initiative would result in enhanced customer service, faster permitting and greater efficiency. Vest the authority in the DNR as they have the best regional structure in place to handle the initiative. One time relocation costs associated with regionalization of current PCA staff to DNR field offices. Transfer people, programs and related \$'s. Requires legislation.

See Chuck Niska
on this.

JAN B. D. M. G.

The Free Press
City/Regional

Thursday, Dec. 24, 1992/Page 9

Crackdown aims at stray sewage

Livestock operations, old septic systems are chief targets

By ROSS GERSTEN
Free Press Staff Writer

MANKATO — Imagine a half-mile stretch of manure two to three feet deep in the ditch of a county road.

That scene exists in Blue Earth County, and it's just one example of why law-enforcement officers in the county have decided to crack down on the illegal removal of manure and household sewage.

"I should think that anyone would know that allowing manure from 1,200 cows into the Cobb River isn't healthy," said Jim

Steffen, area enforcement officer for the Department of Natural Resources. "It doesn't take a rocket scientist."

Hearings have been scheduled in two cases involving such allegations of mis-handling manure.

In the next month, five cases involving allegations of the illegal removal of household sewage are to be heard in Blue Earth County District Court, said Assistant County Attorney Paige Snover.

Robert Nienow of rural Mapleton has been charged with one felony, two gross misdemeanors and two misdemeanors for

allegedly allowing manure from a large hog-and-cattle operation to flow into a county ditch leading to the Big Cobb River. A hearing has been set for Feb. 1.

George Denn of rural Kasota has been charged with one gross misdemeanor and four misdemeanors for allegedly allowing free-standing manure on a slope adjacent to Wita Lake in the northeastern part of the county, Snover said. A hearing has been set for Monday.

Plea bargains are being negotiated in both cases, Snover said.

Denn's lawyer, Mike Riley of St. Peter,

declined comment.

"The matters at hand are complex, and we're working through them now. Beyond that, we have no comment," said Nienow's lawyer, Gary Koch of New Ulm.

The actions represent a new, aggressive policy toward the mishandling of manure, Snover said.

"Hopefully, when they see people enforcing this, they'll think about the cost of going to court, paying fines and attorneys'

See SEWAGE
(Please turn to page 11)

Regional/State

SEWAGE: Investigations intensify

(Continued from page 9)

fees, [and] getting their name in the paper," Snover said.

"If I come knocking at the door," said Steffen, who filed the complaints, "there's going to be some embarrassment."

Steffen began investigating alleged illegalities in livestock operations and household septic systems at the urging of the National Wildlife Federation, which contacts him when the organization discovers sewage contamination of rivers and lakes.

All the charges are related to the Minnesota Pollution Control Act.

Besides allowing untreated sewage into waterways and ditches, hooking up septic systems to tile lines also is illegal.

Any sewage put into a ditch or ravine sooner or later will end up in a river or lake, Steffen said.

"I want people to become aware that eventually I'm going to get to them."

In some cases, the sewage systems are decades old and probably were legal before existing environmental standards evolved, Steffen said.

In others, the alleged violators knew they were contaminating the water, he said.

One homeowner allegedly was directly piping household sewage

into the Le Sueur River until the outlet was discovered by a passing canoeist.

"Two or three have said to me, 'I'm surprised you weren't out here earlier,'" Steffen said.

The felony charge Nienow faces is filing a false statement when he applied to the Minnesota Pollution Control Agency for a renewed livestock-operation permit in 1991. The maximum penalty is two years in prison and a \$10,000 fine.

According to court records, Steffen found manure and feedlot sewage two to three feet deep in a county ditch stretching a half-mile from Nienow's farm.

The ditch leads to a wetland, which has a ditch connecting it to the Big Cobb River, according to the complaint.

Nienow had been aware of the problem since the early 1960s, according to Steffen's complaint, but blamed the depth of the county ditch and thought it wasn't hazardous.

Nienow's manure pit even included a gate leading into the ditch, according to Steffen's complaint.

Steffen said that the Soil Conservation Service provided Nienow with the design for a legal manure pit in 1974 but that Nienow put the project off, citing the cost.

After Nienow signed up for fed-

eral cost-sharing in 1983, he appeared to begin work on it but in 1985 dropped it, again citing the cost, Steffen said.

Nienow also faces pending civil charges from the state Attorney General's Office, Snover said.

A standard catch-all charge that all the alleged violators face is failure to notify or avoid water pollution, which can be charged as either a gross misdemeanor or misdemeanor, depending upon the magnitude of the alleged crime, Snover said.

The maximum penalty for a gross misdemeanor charge of failure to notify or avoid water pollution is a \$25,000 fine and one year in jail. The penalty also carries a minimum fine of \$2,500. These are assessed for each day of the violation.

The maximum penalty for a misdemeanor is 90 days in jail and a \$700 fine.

Feedlot operators also face a loss of matching state funds earmarked to help them bring their operations up to code if they are convicted.

According to the National Wild-

life Federation, 20 percent to 30 percent of household sewage systems in the Mankato area are not up to code, Steffen said.

Unless property owners come forward, they risk being cited, he said.

But Steffen and Snover admit the scope of the problem far exceeds their capacity to clamp down on it.

That, however, could soon change. The DNR is considering creating an environmental crimes division, Steffen said.

He said those with a possibly illegal septic system or feedlot operation should call their local Soil Conservation Service or county environmental services office.

Livestock operators are issued a temporary license and given 10 months to upgrade their operation, Steffen said.

Convicted violators also may plan on getting a taste of their own medicine. In at least one case, in addition to a fine, a violator was ordered to spend 90 hours as part of a river cleanup crew, Steffen said.



FEEDLOTS IN MINNESOTA

A Status Report for the Board of Water and Soil Resources

January 1993

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1. Leadership -- The BWSR is involved in feedlot pollution abatement first and foremost through its mission to provide leadership enabling LGUs to properly manage soil and water resources.

2. Planning -- The BWSR's involvement in feedlot waste utilization and pollution abatement planning is primarily through its role in the development and support of comprehensive local water planning. Many CLWPs have identified feedlots as a high priority water quality problem.

3. Implementation -- The BWSR is involved through its efforts to enable LGUs to efficiently put pollution abatement systems in place. These efforts include training and technical assistance that supports effective utilization of local, state and federal resources.

4. Staffing -- The current BWSR staff who are directly involved in feedlot pollution abatement include:

a) Brad Matlack, Feedlot Specialist

-- located in Marshall, MN
-- provides training and technical assistance to SWCD staff, as well as program development implementation leadership
-- position is unclassified, funded by an EPA Section 319 grant and dedicated to the feedlot program

b) Al Kean, Chief Engineer

-- provides program development leadership and supervision concurrent with other BWSR engineering programs

c) Ron Harnack, Executive Director

-- provides overall program leadership and direction

CURRENT ISSUES:

1. Basic Problem Definition -- The MPCA has indicated that there are 40,000 - 50,000 feedlots in MN with an estimated nitrogen output equivalent to the waste of 77,000,000 people. However, only 16,000 feedlots have received permits during the past 22 years of the state feedlot regulatory program. Therefore, the basic problem is the very slow progress of feedlot pollution abatement in MN.

2. Shortage of Planning Data -- The MPCA and others, including BWSR staff, have often expressed the need for better feedlot inventory data. Although the many state and federal government units involved with feedlots collect data, there is a shortage of comprehensive planning data upon which to build effective feedlot pollution abatement strategies. Many local water plans include some inventory data, while others only identify the need to collect this data. In 1991, the BWSR developed a Feedlot Inventory Guidebook, in cooperation with other state and federal agencies, to provide a common form and framework for counties to conduct inventories that would be compatible with state systems and standards. However, the extent to which this guidebook has been used is unclear. BWSR staff have a student worker compiling available feedlot inventory data from CLWPs, at this time.

3. Need for a Comprehensive Strategy -- Currently there is no specific plan of action to address the feedlot issues of the state. The main approach appears to be a reactionary effort rather than a comprehensive assessment of the problem and directing available resources at the federal, state and local level toward targeted areas or priority types of feedlots. Feedlot permitting currently is triggered by new investment and complaints, which has left the vast majority of feedlots unaddressed. A 10-year strategy that sets forth specific objectives relating to new feedlot operations, large polluting feedlots, smaller polluting feedlots, funding and technical assistance would help focus and define specific roles for federal, state and local governments in achieving those objectives. Because MPCA's mandate and focus are on regulation, other state and local leadership is needed to develop this comprehensive strategy.

4. Clarity of Options Available -- The options available to feedlot operators and pollution control system designers are not clear, particularly with regard to low-cost options. The acceptability of low-cost partial solutions at numerous feedlots that could achieve broader watershed goals is also unclear. Low-cost partial solutions could be an integral, or at least interim, part of a comprehensive long-range plan. BWSR staff expect that a substantial percentage of the feedlot pollution problem is associated with small operations, for which only low-cost options are implementable. Many more filter strips and other low-cost options have apparently been constructed in Wisconsin than in Minnesota, since the early 1970's. The BWSR staff are investigating the Wisconsin experience and its applicability, as well as acceptability, in Minnesota.

5. Timeliness of Permit Processing -- Although the MPCA has indicated that the average response time for permits is about 2 weeks, a recent permit application, which did not require any design changes, required approximately 7 months to finalize. Motivated feedlot operators become very frustrated by long delays and spread the word about their difficulties dealing with state government. BWSR staff are working with the MPCA and others to identify ways to improve the permitting process. Processing permits at the regional offices of the MPCA is an idea that has potential, we believe. This arrangement would promote a closer working relationship between feedlot operators, pollution abatement system designers and regulators, while also avoiding some of the local implementation difficulties of the existing MPCA program to delegate permitting authority to counties. (Only 24 counties participate in this delegation program, reportedly with very inconsistent results.)

6. Support of Local Government Units -- Because the federal feedlot pollution abatement capability through the SCS has been reduced by changing federal priorities and financial constraints, SWCDs and counties (and consultants?) must pick up more of the feedlot pollution control workload. However, these organizations currently lack the necessary financial and technical capability to focus on feedlot pollution abatement promotion, design and construction monitoring. SWCDs depend on the SCS for much of their technical support and essentially all of their engineering signoff for feedlot pollution control systems. The financial support provided to SWCDs has not kept pace with the steadily increasing expectations placed on them. Increased assistance to SWCDs, both financial and technical, could build on and leverage existing federal support, within the priorities established by comprehensive local water plans and a needed statewide strategic plan. This increased capability could also support the MPCA's delegation of regulatory responsibilities to county feedlot officers. Some believe that the SCS capability will rebound in the future. However, even with the past higher levels of SCS involvement in feedlot pollution abatement, the progress in Minnesota has been slow. Therefore, greater local capability appears to be a critical element for timely resolution of the feedlot pollution problem.

CURRENT EFFORTS OF THE BWSR STAFF:

1. Provide technical training to SWCDs for feedlot pollution potential analysis and abatement design. Currently working with the Minnesota Extension Service (MES) and Soil Conservation Service to provide waste utilization training using the Manure Application Planner software recently developed by MES.
2. Design a limited number of pollution abatement systems in cooperation with SWCDs, including alternatives evaluation documentation for easier permit review.
3. Participate as a member of the MPCA's Feedlot Advisory Group.

4. Working with the MPCA and SCS to clarify acceptable low-cost options and standards for feedlot pollution abatement and how to provide better permit application packages.

5. Working with other involved agencies and organizations, as well as active LGUs, to identify implementation problems and to develop potential strategies for solution, including joint involvement in grant applications and pilot programs.

6. Currently preparing a summary feedlot status report as a follow-up to the feedlot discussions recently presented to the Legislative Water Commission.



FEEDLOTS IN MINNESOTA

Concerns of the Board of Water and Soil Resources

A report to the Legislative Water Commission
January 6, 1993

BACKGROUND:

The Board of Water and Soil Resources (BWSR) is an implementation agency for feedlot pollution abatement through its role as the administrative agency for state funding provided to soil and water conservation districts (SWCDs). The BWSR also provides technical assistance and training to districts through a pollution control specialist, currently funded by an EPA Section 319 grant.

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CONCERNS:

1. Clarity of Options Available -- The options available to feedlot operators and pollution control system designers are not clear, particularly with regard to low-cost options. The acceptability of low-cost partial solutions at numerous feedlots that could achieve broader watershed goals is also unclear. Low-cost partial solutions could be an integral, or at least interim, part of a comprehensive long-range plan.

2. Need for Consolidated Strategies -- Currently there are two federal agencies (SCS and ASCS), four state organizations (MPCA, BWSR, MDA and U of M) and two local government units (SWCDs and counties) involved directly in feedlot pollution abatement. The roles of these organizations must be clear and well-coordinated to achieve efficient and effective pollution abatement. The state regulatory program alone has not provided a framework for consolidation of strategies, coordination of efforts and timely solution of the feedlot pollution problem. Because MPCA's focus is on regulation, other leadership is needed to effectively coordinate technical assistance and implementation strategies.

3. Timeliness of Permit Processing -- A recent permit application that did not require any design changes required approximately 7 months to finalize. Motivated feedlot operators become very frustrated by long delays and spread the word about their difficulties dealing with state government.

4. **Support of Local Government Units** -- Because the federal implementation capability through the SCS has been reduced by changing federal priorities and financial constraints, SWCDs and counties (and consultants?) must pick up more of the feedlot pollution control workload. However, these organizations currently lack the necessary financial and technical capability to focus on feedlot pollution abatement promotion, design and construction monitoring. The financial support provided to SWCDs has not kept pace with the steadily increasing expectations placed on them. Increased assistance to SWCDs, both financial and educational, could build on and leverage existing federal support, within the priorities established by comprehensive local water plans and a needed statewide strategic plan. This increased capability would also support the MPCA's delegation of regulatory responsibilities to county feedlot officers.

CURRENT EFFORTS OF THE BWSR:

1. Provide technical training to SWCDs for feedlot pollution potential analysis and abatement design. Currently working with the Minnesota Extension Service (MES) and Soil Conservation Service to provide waste utilization training using the Manure Application Planner software recently developed by MES.
2. Design pollution abatement systems in cooperation with SWCDs, including alternatives evaluation documentation for easier permit review.
3. Participate as a member of the MPCA's Feedlot Advisory Group.
4. Work with the MPCA to clarify acceptable low-cost options for feedlot pollution abatement and how to provide better permit application packages.
5. Work with other involved agencies and organizations to identify implementation problems and develop potential strategies for solution.

ROOT RIVER: HISTORICAL EASEMENT ACTIVITY

The following information reflects Root River SWCD's historical activity in the RIM Reserve and PWP program. The 18 easements taken in 1986 and 1987 are not reflected because they were limited to ten years.

<u>YEAR</u>	<u>EASEMENT TYPE</u>	<u># OF EASEMENTS</u>	<u>PAYMENT</u>
1989	Pastured Hillsides	02	21,621.19
1990		00	
1991	Marg. Ag. Land	01	2,438.48
	Riparian Cropland	01	4,124.88
	Pastured Hillsides	14	223,334.37
1992	PWP	02	44,702.08
	Pastured Hillsides	02	36,450.40
TOTALS:		22	332,671.40
FOUR YEAR AVERAGE:		5.5	83,168.00

Feb. 1993



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DATE: February 18, 1993

TO: Board of Water and Soil Resources Members, Advisors,
and Staff

FROM: Ronald D. Harnack, Executive Director

SUBJECT: February 24th Meeting

The Board of Water and Soil Resources will meet on Wednesday, February 24, 1993, beginning at 9:00 a.m. The meeting will be held in the McKnight II Room at the Holiday Inn East, I-94 and McKnight Road, St. Paul (see attached map). The agenda and informational materials are enclosed for your review.

The entire meeting will focus on review of the hearing examiner's recommendations and BWSR taking final action on the Wetland Conservation Act rules.

If you have any questions or need additional information please feel free to call. Travel safely, I look forward to seeing you on the 24th!

RDH:mja
Enc.

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**BOARD OF WATER AND SOIL RESOURCES
HOLIDAY INN EAST
MCKNIGHT II MEETING ROOM
I-94 AT MCKNIGHT ROAD
ST. PAUL, MINNESOTA 55119
FEBRUARY 24, 1993**

PRELIMINARY AGENDA

- | | |
|-----------|--|
| 9:00 a.m. | 1. Call to Order |
| | 2. Adopt Agenda |
| | 3. Approve Minutes of January 27, 1993 |
| | 4. Reports <ul style="list-style-type: none">● Chairman's Report - Jim Nielsen● Executive Director's Report - Ron Harnack |
| | 5. Wetlands <ul style="list-style-type: none">● Recommendations of Wetland Heritage Advisory Committee |
| Noon | Lunch |
| 1:00 p.m. | Wetlands continued |
| | 6. Advisor Comments <ul style="list-style-type: none">● John Sumption, MACDE● Marlin Libbesmeier, MAT● Gary Nordstrom, SCS● Howard Peterson, MAWD● Allan Oehlke, MASWCD● Pat Wulff, MLA |
| | 7. Board Issues - discussion, comments, action needed |
| | 8. Upcoming Meetings <ul style="list-style-type: none">● March 24, 1993, BWSR Meeting, St. Paul |
| 3:00 p.m. | Adjourn |

**BOARD OF WATER AND SOIL RESOURCES
RAMADA HOTEL - RAMSEY ROOM
1870 OLD HUDSON ROAD
ST. PAUL, MINNESOTA 55119
JANUARY 27, 1993**

APPOINTED MEMBERS PRESENT

Jim Nielsen, Don Ogaard, Dwain Otte, Sharon Clark, Ted Lovdahl, Jr., Barbara Uppgaard, Barbara Cobb, Kathleen Roer, Warren Rodning, Howard Peterson, Jim Rossman, John Brooks, Jr., and Don Warner.

APPOINTED MEMBER ABSENT

John Boulton

AGENCY MEMBERS PRESENT

Wayne Edgerton, Department of Natural Resources (DNR)
Kim Benson-Johnson, Department of Health (MDH)
Wayne Anderson, Pollution Control Agency (PCA)
Paul Burns, Department of Agriculture (MDA)
Fred Bergsrud, U of M/Extension Service (MES)

OTHERS PRESENT

Pat Wulff, Minnesota Lake Association (MLA)
John Sumption, Minnesota Association of Conservation District Employees (MACDE)
C. Merle Anderson, Minnesota Association of Soil and Water Conservation Districts (MASWCD)
Gary Nordstrom, Soil Conservation Service (SCS)
Greg Gross, Howard Markus, Dave Nelson, MPCA
Keith Hanson, Minnesota Power
Adolph Heimerdinger, Ralph Tuck, Ron Meiners, Root River SWCD

STAFF PRESENT

Ron Harnack
Greg Larson
Bruce Sandstrom
Chuck Niska
Mary Jo Anderson

Meeting Called to Order - Chairman Nielsen called the meeting to order at 9:00 a.m.

- ** 93-01 Adopt Agenda** - Moved by Rodning, seconded by Clark, to adopt the agenda as presented. Affirmative: Uppgaard, Clark, Cobb, Roer, Nielsen, Ogaard, Otte, Peterson, Rodning, Rossman, and Lovdahl. Opposed: None. Carried.
- ** 93-02 Approval of Minutes of December 16, 1992** - Moved by Ogaard, seconded by Otte, to approve the minutes of December 16, 1992, as circulated. Affirmative: Uppgaard, Clark, Cobb, Roer, Nielsen, Ogaard, Otte, Peterson, Rodning, Rossman, and Lovdahl. Opposed: None. Carried.

Chairman Nielsen welcomed the newly appointed members: Kathleen Roer, citizen member; Barbara Uppgaard, county commissioner member; and Ted Lovdahl, SWCD member.

Chairman Nielsen said goodbye to Don Warner and John Brooks and presented them with a plaque from the BWSR and a certificate of commendation from Governor Carlson. Chairman Nielsen thanked them for their efforts as members and said he appreciated their service to the board. Jack Graba was not present; his plaque and certificate will be sent to him.

Chairman's Report - Chairman Nielsen commented on a meeting held last week with agency heads and deputies of DNR and MDA, regarding soil conservation in the Minnesota River Basin. Chairman Nielsen stated that BWSR has taken the Minnesota River issue as a priority item. It was decided at this meeting to focus on two items: 1) stop studying and start educating; 2) implement projects to alleviate the problem. A memo of understanding providing for coordination of assistance; both financial and technical and coordination of marketing efforts to promote soil conservation and soil conservation ordinances.

Chairman Nielsen commented on the speculation of the future of BWSR. The governor is likely to support the two agency concept for environmental services. He stated that the findings of CORE are an accurate reflection of issues and concerns voiced by the public and local government. Chairman Nielsen said that in his estimation there will be some change because there's a concern in the administration to better serve the needs of the state. The future of BWSR will depend on local governments perspective of the benefit that BWSR has to them.

Executive Director's Report - Ron reported that the administration's budget with relation to BWSR will be available this afternoon - this is the governor's recommendation. The governor proposed a freeze on public employees' salaries; salary adjustments will be taken from the agency. Ron reported that 50 percent of his time now is being spent on legislative issues; the House Environment Committee overview was held January 26. Ron also attended the MASWCD legislative breakfast January 26; he commends the MASWCD for a successful initiative. He said he also attended a meeting in Chicago, January 5-7, regarding the future of the local (SWCDs), state (BWSR), and federal (SCS) partnership

and the future of SCS restructuring their new administration. There is considerable variation in how this partnership is structured across the United States. There was considerable discussion related to greater federal flexibility; emphasizing state and local partners and providing federal funding for local programs; both staffing and cost-share.

Ron stated that the "BWSR Update" is in board members' packet for their information - if members have any questions please call.

BWSR Committee Reports -

Dispute Resolution Committee - Howard Peterson reported that he attended the Richfield/Bloomington WMO hearing held January 26. It was decided to continue the hearing for 60 days (on March 23) to provide additional time for the parties to attempt to resolve their differences.

Education Committee - Don Ogaard reported that the Education Committee met, with Barbara Liukkenon making a report to the committee on her position. There are 42 counties in her territory. The activity level indicates there is a definite need and demand for the position. Ron stated that BWSR's agency members have not assigned staff to the BWSR education committee and encouraged their participation. Wayne Anderson responded that PCA would enjoy working with the committee. Kim Benson asked Ron to contact Ron Shelito to contact the Department of Health to work with county water planning. Don Ogaard reported on Office of Environmental Education - Susan Tsakakis attended the January meeting in Don's place, since icy road conditions prevented Don from traveling. Discussion at the meeting included school requirements on environmental education; establishing \$4 million grant; and establishing a clearinghouse for resource material.

Sharon Clark commented on Barbara Liukkonen's six-month evaluation. She stated that Barbara is concerned regarding her evaluation as she has been bogged down due to the requests for her to serve as a resource person. Board members believe the MES/BWSR is successful to date and encourage continuance.

Local Water Management Strategic Plan Committee - Barbara Cobb said that the committee had its first meeting and expects the process to take longer than anticipated. Many topics will need to be addressed.

Agency Coordination Committee - Howard Peterson reported that they have been meeting with Wayne Edgerton, DNR. DNR generated a draft handbook that would be distributed to BWSR members; at this point the handbook is still at the unapproved stage. Edgerton stated that the handbook is presently being printed. It's a major step forward and Wayne said he looks forward to working on this. Howard stated that this is a stepping stone; a first effort. Nielsen asked Edgerton if there was a way to proceed on improving the timeliness of the permitting process. Edgerton stated that much of the process is statutory. John Sumption suggested that DNR should periodically contact people to let them know where

things are at during the permitting process - it's important to have open communication with people. Cass County's experience has resulted in reduced complaints and a more informed and educated clientele.

Wetlands Update - Ron Harnack stated that the hearing examiners report is expected the week of February 8. Staff has scheduled meetings with board members and Bill Clapp. The meetings will review findings, conclusions, and recommendations so that members are better prepared to make decisions on February 25. The meetings are: Feb. 15, Brainerd Golf Club; Feb. 18, Mankato Blue Earth County Government Center; and Feb. 19, St. Paul, Ramada Inn. The meetings will be held from 10:00 - 3:00 p.m. Greg Larson asked members if there were any questions about the letter staff sent to Judge Kline regarding staff recommendations. Ron stated that the BWSR should consider whether it should take public testimony during the board meeting - he suggested not. Ron suggested a two-day meeting in February to conclude the rules, with recommendations to the Revisor's Office by April 1, at the latest. Scheduling a two-day meeting appeared to be a problem. Copies of the administrative law judge's recommendations are available to anyone interested in receiving them.

Water Quality Standards and Rule Amendments - Howard Markus, PCA, explained that as the state designated water quality agency, MPCA also has a responsibility in wetland protection. That responsibility is implemented primarily through the nationwide permit program of the U.S. Army Corps of Engineers (COE). Through section 401 of the U.S. Clean Water Act, state water quality agencies certify that state water quality standards are met when the COE issues a nationwide permit. MPCA is currently reviewing and updating their standards to conform to new federal guidelines. Although related to the Wetland Conservation Act, this activity does not expand wetland regulation into heretofore unregulated areas. Greg Larson concurred and offered that the WCA rulemaking effort and MPCA's wetland water quality standards are consistent pending EPA approval of the MPCA standards.

Chairman Nielsen called for a break in the meeting at 10:40. The meeting reconvened at 10:50 a.m.

Feedlots - Jim Rossman will be distributing information on the flexibility of what Wisconsin is doing on feedlots. The next Feedlot Advisory Group (FLAG) meeting is scheduled for March 11, 1993. Dave Nelson, PCA, briefly updated the BWSR on the feedlot program. He stated that there is a tremendous workload with producers, and FLAG has provided an excellent opportunity to interact. A video display is being developed that will transfer information and apprise people of the feedlot program. A joint effort of the Ag Roundtable Program is taking place with DNR, U of M/Extension Service, MDA, and PCA on feedlots. Dave identified existing problems in the nonpoint management plan and how those are being addressed. PCA's goal is to provide better training for staff so they will be better feedlot specialists. Not enough counties are participating in the program, Dave said. Dave then addressed issues in the BWSR status report on feedlots. He was concerned with

the BWSR statement regarding the need for a comprehensive strategy but no specific plan. He disagreed with this statement. Chairman Nielsen said he was concerned with the needs of small feedlots; Dave stated that they just don't have the resources to take care of all of this. Dave stated that their training efforts and the Clean Water Partnership Act are occupying all their resources. Wayne Anderson stated that it's impossible to solve everything relating to this issue in the short term. Chairman Nielsen asked if the BWSR prioritizes, feedlots for funding is the board wasting its time? Dave said no, the board's technical and financial assistance will help. Chairman Nielsen said PCA standards imply 100 percent compliance and nothing less. Nelson said that's a misunderstanding statewide. Otte suggested more implementation rather than more planning. Ron Harnack stated that Al Kean and Brad Matlack, BWSR staff, and John Brach, SCS, and Dave Nelson, PCA, are meeting regularly to work through the problems. Nelson stated that he's interested in the concerns of the BWSR, and it's encouraging to see the attention that the BWSR has given to feedlots. Rossman stated that priorities need to be set as to what needs attention; then these should be balanced as far as what's doable and what's not. Harnack stated that the second generation of water plans are a key to this. Chairman Nielsen thanked Dave for coming in.

Root River SWCD RIM Proposal - Ron Harnack updated and gave a brief overview of the Root River SWCD RIM proposal. Ralph Tuck, Adolph Heimerdinger, and Ron Miners, representatives of Root River SWCD, were introduced. They said that Root River SWCD appreciates the opportunity to revitalize the RIM program. Barbara Cobb favors the proposal and stated that this is a great demonstration project for local unit of government. Edgerton commended Root River SWCD for developing this proposal. Wayne asked if the SWCD would have the flexibility of payment rates? Harnack stated that payment rates are fixed by rule and statute. Chairman Nielsen supports this proposal 100 percent. Moved by Rossman, seconded by Otte, that staff be directed and given authority to proceed on details with amounts included. Affirmative: Uppgaard, Clark, Cobb, Roer, Nielsen, Ogaard, Otte, Peterson, Rodning, Rossman, and Lovdahl. Opposed: None. Carried.

93-03

Chairman Nielsen adjourned the meeting for lunch at 12:10 p.m. The meeting reconvened at 1:05 p.m.

Committee Assignments - Chairman Nielsen appointed Jim Rossman as vice-chairman of the BWSR. The following committee assignments were made:

Dispute Resolution Committee - Kathleen Roer (CIT), chair; Jim Rossman (CC), Ted Lovdahl (SWCD), Howard Peterson (WD), and Jim Nielsen (CIT).

Environmental Education Board - Sharon Clark (CIT), chair; Don Ogaard (WD), Kathleen Roer (CIT), Barbara Uppgaard (CC), and Warren Rodning (CC).

Advisory Council on Wells & Borings - John Boulton (SWCD).

Feedlot Advisory Committee - Jim Rossman (CC), Ted Lovdahl (SWCD), and Warren Rodning (CC).

Pesticide Advisory Committee - John Boulton (SWCD), and Ted Lovdahl (SWCD), alternate.

RIM Strategic Plan Committee - Barbara Cobb (WMO), chair; Barbara Uppgaard (CC), and John Boulton (SWCD).

Soil Loss Committee - Don Ogaard (WD), chair; Howard Peterson (WD), Dwain Otte (SWCD)

Agency Coordination Committee - Howard Peterson (WD), chair; Sharon Clark (CIT), Don Ogaard (WD), Dwain Otte (SWCD), and Barbara Uppgaard (CC).

LGU Comprehensive Plan Committee - Barbara Cobb (WMO), chair; Howard Peterson (WD), Barbara Uppgaard (CC), Jim Nielsen (CIT), and Dwain Otte (SWCD).

Chairman Nielsen asked members to contact him if they have concerns with the committee appointments.

It was decided that the February BWSR meeting should be a two-day meeting. Staff to contact members to set dates.

City of Fridley Appeal - Bruce Sandstrom stated that staff is proceeding under Chapter 103B and is in the first phase of investigation of facts. Bruce has sent both parties involved his investigation of facts. This will be brought before the BWSR again in March for action. Chairman Nielsen stated that staff should use maximum aggressiveness to ensure that the Dispute Resolution Committee does not need to be utilized. He feels that BWSR is being used as a political pawn in this process. Peterson said that it seemed like a no win situation.

Nine Mile Creek Watershed District - Jim Reynolds, Audubon Society, was before the BWSR to report that the Nine Mile Creek Watershed District does not have a plan that is in compliance, nor are they currently willing to rework the plan to bring it into compliance. Their plan is before the board for action. They have no approved revised plan, yet they are levying taxes, which is a violation of the statutes. Reynolds said he was asking that the BWSR ensure that this watershed district complies with the statute. Chairman Nielsen stated that this is a big order; this agency does not enjoy a regulatory role. Harnack asked the BWSR what they want to do regarding these issues - is it the board's position to advise permitting agencies that the plan is not up to date? Harnack stated that the direct/indirect leverage has not been available. Peterson stated that watershed districts are accused of not following the process. We need to step back and look at the whole process and make it acceptable to everyone involved, Peterson said. Discussion followed. Bruce commented on the issue of oversight. The potential BWSR options to pursue: 1) training to WDs to keep plans updated; 2) seek tougher sanctions; 3) issue reminder to WMOs. Chairman Nielsen stated that the Comprehensive Plans Committee needs to meet regarding this - Bruce to work with Cobb and Peterson on this.

Cost-Share Funding - Chuck Niska distributed a synopsis of rollover applications for 1992-93. Staff needs to meet with other agencies on cost-share projects before BWSR will take action on the rollover funding allocations. Niska will layout considerations and recommendations for board action at the March board meeting. The Clay SWCD proposal is the most critical as they are ready for implementation as soon as the BWSR action is taken. Board members were asked to review the rollover applications and criteria for the

allocations. Chairman Nielsen asked Chuck to let members know how much federal money will be put toward each project.

93-04 **McLeod SWCD Change in Nomination District** - Moved by Otte, seconded by Clark, to approve change in the McLeod SWCD nomination district. Affirmative: Uppgaard, Clark, Cobb, Roer, Nielsen, Ogaard, Otte, Peterson, Rodning, Rossman, and Lovdahl. Opposed: None. Carried.

Advisor Comments

-MASWCD: C. Merle Anderson reported that a legislative breakfast was held yesterday at the Kelly Inn, St. Paul. He thanked staff and board members who attended that.

-MAWD: Howard Peterson stated that the Board of Directors meeting minutes are identified in the Minnesota Association of Watershed Districts newsletter.

-MLA: Pat Wulff briefed the new members on the Minnesota Lake Association. Main thrust each year is the lake conference held in the fall. 21 counties have coalitions of lake organizations to work more effectively with local units of government. They would like to work more closely with the BWSR education committee and Barbara Liukkonen. She asked Harnack to appoint someone to attend their meetings as a representative of the BWSR.

-SCS: Gary Nordstrom welcomed the new board members. He briefly reported on USDA's field office restructuring plan. They were given a charge nationwide of potential field offices for closing. Minnesota was given a list of six and Gary met with the six proposed affected offices - Ramsey, Sherburne, Cass, Lake of the Woods, Koochiching, and Itasca. He recommended closing four and leaving open Itasca and Sherburne. The lists will be evaluated in Washington, D.C., by the Secretary of Agriculture. He announced that Minnesota has four offices closing. This is a dramatic restructuring of the USDA; it is reducing from 42 to 26 operating offices. Get down to 13 on basis of program function, plan was to be published in the Federal Register - this was issued by the outgoing Secretary of Agriculture. There is now a new secretary who believes that there's a need to look at that, but also need to look at administration first.

Secondly, Gary said he was extremely disappointed in the outcome of the wetland reserve program, after working with individual producers, Minnesota submitted 14,000 acres to Washington, but only ended up with funding for 705 acres.

Thirdly, he attended a partnership meeting in Chicago to further partnership with agencies. A follow-up will be held in Orlando at the National Association of Conservation Districts meeting, February 7-11. Extremely satisfied with representation from Minnesota.

-MACDE: John Sumption welcomed new members. John asked when MACDE employees should lobby for CORE - whatever is most positive to support BWSR position. Chairman Nielsen stated that it is up the MACDE. He will submit list of MACDE to all board

members. Sumption said that Cass and Crow Wing counties are involved in lake advocacy program, which empowers volunteers on permits and general items of interest. The program received a PCA grant, and DNR will assist in printing manuals that will provide assistance to people. Sumption suggested that the Army Corps of Engineers is the weak link in the Wetland Conservation Act process and that we should encourage additional assistance for the Corps. Fred Bergsrud stated that MES would like to assist in lake advocates group.

Don Ogaard presented the BWSR a plaque from The International Coalition (TIC). The BWSR pays a \$10,000 membership fee yearly, as it is legislatively directed to do. TIC is composed of citizens, SWCDs, WDs, and counties. It is a non-biased organization with staff and expertise. On behalf of the TIC, BWSR received the plaque as a sign of appreciation of membership.

Chairman Nielsen stated that members should do what their consciences tell them to do regarding the CORE report. Rodning stated that he's in agreement 100 percent with BWSR's letter that was sent to CORE.

Chairman Nielsen adjourned the meeting at 2:55 p.m.

Respectfully submitted,

D. James Nielsen
Chairman

OVERVIEW OF DAKOTA COUNTY GROUND WATER PLAN

February 1993

Background

In August of 1989, the Dakota County Board of Commissioners directed the County Physical Development and Planning Department to begin development of the "Dakota County Ground Water Protection Plan". In July of 1990, the county, through the Minnesota Geological Survey, published the "Geologic Atlas of Dakota County, Minnesota". The county applied for and received a \$15,600 plan development grant from BWSR. In May of 1991, a citizen based "Ground Water Planning Task Force" was established by the County Board.

County Description

Dakota County is the southeasternmost of the 7 metro counties. The county is recognized as one of the fastest growing counties in the state, and has had steady growth since 1960. The county's economy is based on agriculture, manufacturing, and export of workers to other parts of the metro area. 60% of the land use in the county is agricultural.

Plan Purpose, Scope and Content

The plan focuses on the protection and management of ground water and related resources throughout the entire county. The purpose of the plan is as follows:

- To identify existing and potential opportunities for the management and protection of ground water in Dakota County;
- To develop and implement a plan of action to promote sound management of Dakota County's ground water; and
- To work toward effective ground water quality protection.

Included within the plan are:

- Descriptions of existing and expected changes in the physical environment, land use, and development in the county;
- A summary of relevant, available information on ground water and related resources in the county, including existing and potential distribution, availability, quality and use;
- Goals, objectives, scope, and priorities of ground water protection in the county;
- Standards, criteria, and guidelines for the protection of ground water from pollution and for various types of land use in environmentally sensitive areas, critical areas, and previously contaminated sites;
- A description of the relationships and possible conflicts between the ground water plan and other counties, local units of government, and Water Management Organizations (WMOs) in the affected ground water system; and
- Standards and guidelines for implementation of plan by WMOs and local units of government.

Implementation

The plan recommends 119 specific objectives addressing the issues, concerns, and programs identified by the Ground Water Planning Task Force as needed for the long term and immediate protection of the county's ground water.

Plan Review

A draft plan was submitted for public review in April, 1992. Public comment was taken through June 19, 1992. Two public information meetings were held, one on May 21, 1992 and the second on June 5, 1992. Based on preliminary comments, the county revised the plan and submitted a draft for review by state agencies on October 26, 1992. The agencies agreed to submit final comments to the county by February. The county is addressing the agency comments, and hopes to receive BWSR approval of the Ground Water Protection Plan in March, 1993.

A "draft" of the final report in a summary
form re: Environmental Services

CORE

STATE OF MINNESOTA
COMMISSION ON REFORM AND EFFICIENCY

203 Administration Building, 50 Sherburne Ave., St. Paul MN 55155
(612) 297-1090 Fax (612) 297-1117

CONTACT: Dana Badgerow
(612) 296-3862 office
(612) 377-3385 home

FACT SHEET
February 9, 1993

For a copy of the full CORE report, "Environmental
Services," please contact Julie Gruber at the address
above.

ENVIRONMENTAL SERVICES

Why is reform needed?

- The current system is fragmented
 - At the state level, more than 30 agencies and boards have environmental responsibilities
 - At the local level, 87 counties, 856 municipalities, 1,801 townships, 41 watershed districts and 91 soil and water conservation districts all have environmental responsibilities
- The processes are unresponsive to citizen needs
- The system is overly prescriptive
- Existing conflict resolution processes are time consuming and costly

Consolidate environmental responsibilities

- Establish a cabinet-level Secretary of the Environment
- Establish two state agencies
 - Resource Management (closely resembling Department of Natural Resources)
 - Environmental Protection (expansion of Minnesota Pollution Control Agency)
 - Commissioner of each department to report to Secretary

Department of Resource Management

- Fisheries and wildlife
- Minerals on public land
- Forestry
 - wildlife habitat
 - recreation
 - wood products
 - conservation
- Recreation
 - state parks
 - waysides
 - trails
 - water access and routes
- Enforcement
- Support services

STREAMLINING ENVIRONMENTAL SERVICES/2

Department of Environmental Protection

- Protect and improve quality of the state's air, land and water
- Emphasize assistance in compliance matters
- Seven divisions focus on:
 - Waste
 - Air quality
 - Surface water
 - Ground water
 - Environmental clean up
 - Environmental review
 - Support services

Organize state environmental services according to eight eco-regions

- Make services accessible to citizens
- Based on climate, soil, geology, topography, vegetation and wildlife
- Establish joint regional offices for two departments
- Align all state and local environmental services within eco-regions

Create citizen advisory boards

- Citizen Environmental Appeals Board
- Local Government Advisory Board on Environmental Services
- Minnesota Environmental Council
- Eliminate Pollution Control Agency Board, Office of Waste Management, Environmental Quality Board, Harmful Substances Compensation Board and Petroleum Tank Release Compensation Board

formerly
BWSR

Establish a process for simplifying inter-governmental relationships to deliver environmental services

#

RON HARNACK
BWSR
SUITE 104
155 S WABASHA
ST PAUL MN 55107

DECEMBER 1992 - JANUARY 1993, NARRATIVE

Barbara Liukkonen

Water Resources Education Coordinator

Educational Programs/Projects

A seminar entitled **Exploring Ethical Leadership** was offered for leaders in the Red River Valley on January 11. The seminar was held in conjunction with a Joint Powers Board meeting and was attended by about 25 county commissioners, watershed district managers, SWCD supervisors, and CLWP coordinators. Participants examined how they would respond to ethical dilemmas as individuals and as members of small working groups. Catherine Huebner, MES, and Susan Tsakakis, BWSR, presented information about leadership qualities and ethical decision making and I facilitated discussion about case studies focused on water resources. The workshop was very well received and participants' evaluations indicated that they learned a lot, having examined the ethics of their personal leadership style and practice.

The outer folder and first eight Shoreland BMP fact sheets have been completed and printed. The folder includes a message about stewardship and the Minnesota lake charter described by the Lake Management Forum. It also identifies participating local, state, and federal agencies and lists the individual fact sheets. The folder includes a section for residents to fill in information about the septic system and well on their shoreland property. The first eight facts sheets cover understanding BMPs, maintaining septic systems, ensuring a safe water supply, minimizing runoff, stabilizing shorelines, and landscaping. The remaining eight sheets are out for external review and will be sent to the printer by the end of January. The entire packet should be complete and ready for distribution by late February.

The initial print run will be 5000 copies and distribution in the six contributing counties in northeast Minnesota will be comprehensive. Carlton, Cook, Koochiching, and Lake counties will distribute 500 copies and Itasca and St. Louis will receive 1000 each. Many of the remainder will be distributed through my office, DNR, and other sponsors. All county MES and SWCD offices will receive a copy, as will lake associations, and other interested organizations.

Camera-ready copy of the informational brochure and flyers for the public awareness project on nonpoint source pollution are complete. The project involves painting roads near storm drains with a "DON'T DUMP" message to deter people from disposing of unwanted motor oil, chemicals, or yard waste down the storm drain. The project will be piloted this spring in Todd and South St. Louis counties. Summaries of the pilots and templates for the brochures and flyers will then be sent to all 42 counties to promote adoption of similar projects in other areas of northern Minnesota. The educational materials were designed by Del Wright in Media Services at UMC in his extension NW-EDS role.

Program Management

I attended the MES NW District conference, the MN Association of SWCDs, the BWSR board, and MES WQLT meetings in December. The educational steering committee met in January, reviewed progress during the first six months and revisited my proposed plan of work for the next six months. Only three of the ten projects we had originally identified are well underway at this time, because of the magnitude of the Shoreland fact sheets and because so much of my time has been spent introducing the partnership/position and serving as a resource. The steering committee agreed that completing quality projects would be far more important than simply accomplishing ten and that responding to questions and requests for assistance is also important. I proposed trying to divide my time this spring/summer among educational projects (50%), serving as a resource (30%), and program management/administrative (20%). This anticipates that the need to attend meetings will lessen this spring, and acknowledges a probable reduction in the number of projects from ten to six or eight.

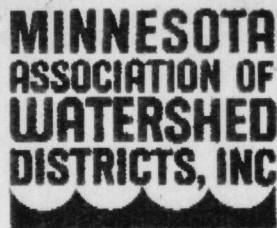
My performance evaluation for 1992 will be directed by Ron Jones, MES NE District Director, in conjunction with Steve Laursen, MES NR Program Leader, who was my supervisor while I was interim Sea Grant Program Leader during the first six months of 1992. Ron will coordinate with Susan Tsakakis and Fred Bergsrud to complete review of my first six months as the water resources education coordinator in the joint BWSR-MES position. I worked on performance documentation during January.

Reimbursement from the McKnight Foundation (\$1,175) for the proposal review I completed last fall was deposited into the MES WQ budget. The funds will be available for publications or projects.

Professional Development and Contributions

The Citizens Advisory Committee (CAC) for the St. Louis Remedial Action Plan (RAP) met in December and January to redefine our mission and goals and explore how to keep current members actively involved and attract new, motivated members. We also spent time examining the separation (and whether there should be any) between peoples' professional careers as resource managers and personal roles as citizens on the CAC. I have served on the CAC since it was formed in 1989, along with many others, and we discussed whether we need to implement some formal process to circulate participants on/off the committee.

The board of directors for the Sugarloaf Interpretive Center Association (SICA) and active subcommittees met during December and January. An article on harbors of refuge/marinas in the recent **Volunteer** magazine focused some attention back on the North Shore. Membership in the SICA is growing rapidly, with nearly 50 members in our first two months. I serve on the Educational Program and Displays committee and chair the Library and Archives committee.



**Minnesota Association of
Watershed Districts**

P.O. Box 127
Shafer, MN 55074

Fax & Phone
612-257-1906

To: Ron Harnack / Mary Jo Anderson

From: Judy Erickson

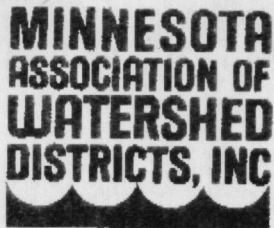
Notes:

Please put copies of this into
Board member's packets for tomorrow's
meetings.

Thanks!

A handwritten signature, likely of Judy Erickson, consisting of a stylized 'J' and 'E'.





February 23, 1993

D. James Nielson
Chair
Board of Water and Soil Resources
155 South Wabasha
St. Paul, MN 55107

Dear Jim:

The Legislative Committee of the Minnesota Association of Watershed Districts reviewed the Report of the Administrative Law Judge regarding the Proposed Rules to Implement the Wetland Conservation Act of 1991. The following reflects our comments on a number of issues identified by the ALJ, they are keyed to the number system used in the report and do not reflect a priority.

Item 19, definition of agricultural land. We recognize a lot of time, effort and debate went into the definition of agricultural land. Therefore we do not propose to disagree with it, yet, we will keep an eye on the discussions that will no doubt continue on this issue to ensure that the definition is a fair one to the landowner.

Item 26 relating to the definitions of "introduced pasture" and "introduced hayland." We recognize the need for consistency, but feel that the RIM definitions could be improved upon to provide the opportunity for exemptions, based upon a visual inspection, to the planting and harvesting requirements. Sometimes there is no need to plant new or to harvest and requiring it to be done makes no sense.

Item 35 relating to recording exemptions. We believe the change to require exemptions to be recorded statewide as opposed to just in cities is a good one.

Item 42, drainage system repair. We believe the 20 year limitation on repair and maintenance of public or private drainage systems is one which needs to be revisited by the Legislature.

Item 55, de minimis provisions. The 100 square foot de minimis provision is simply too small. We would encourage efforts to have the Legislature address this issue. One suggestion would be to use the existing Corps' Nationwide Permit No. 26, which exempts isolated wetlands less than one acre in size.

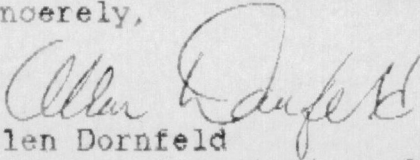
Item 60, relating to notice requirements for replacement plans. We agree with the desire to make these requirements more flexible and based on wetland size.



We appreciate the time and effort that went into developing the rules for the Wetland Conservation Act. It was a monumental undertaking for the BWSR and our comments are designed to let you know generally where we believe the rule was improved and where there is room for improvement.

On behalf of the Minnesota Association of Watershed Districts we look forward to working with you during the next phase of this process.

Sincerely,



Allen Dornfeld
Minnesota Association of Watershed Districts
P.O. Box 127
Shafer, MN 55074

CORE

STATE OF MINNESOTA
COMMISSION ON REFORM AND EFFICIENCY

203 Administration Building, 50 Sherburne Ave., St. Paul MN 55155
(612) 297-1090 Fax (612) 297-1117

COMMISSION ON REFORM AND EFFICIENCY 1993 MEETING SCHEDULE

(Dates and location subject to change/cancellation.)
Call (612) 297-1090 to verify meeting schedule.

DATE	TIME	PLACE
FRIDAY, FEBRUARY 26	8:30 a.m. - 1:30 p.m.	CANCELLED
THURSDAY, MARCH 25	8:30 a.m. - 1:30 p.m.	Best Western Kelly Inn
THURSDAY, APRIL 22	8:30 a.m. - 1:30 p.m.	Best Western Kelly Inn
THURSDAY, MAY 27	8:30 a.m. - 1:30 p.m.	Best Western Kelly Inn

The Best Western Kelly Inn is located at 161 St. Anthony, St. Paul, Minnesota. All meetings are scheduled in the Buffington and Prentiss Rooms located on the First Floor of the Kelly Inn.

SCHEDULE CURRENT AS OF FEBRUARY 8, 1993

CORE

STATE OF MINNESOTA
COMMISSION ON REFORM AND EFFICIENCY

203 Administration Building, 50 Sherburne Ave., St. Paul MN 55155
(612) 297-1090 Fax (612) 297-1117

1993

EXECUTIVE REORGANIZATION & COMPREHENSIVE ASSESSMENT WORKING COMMITTEE 1993 MEETING SCHEDULE

(All meetings are on Tuesdays. Dates and location are subject to change.)
Call Lin Carlson with questions or to verify meeting schedule at (612) 297-7701.

DATE	TIME	PLACE
FEBRUARY 16	8:30 a.m. to 11:30 a.m.	CANCELLED
MARCH 16	8:30 a.m. to 11:30 a.m.	Room 116B, State Admin. Bldg.
APRIL 20	8:30 a.m. to 11:30 a.m.	Room 116B, State Admin. Bldg.
MAY 18	8:30 a.m. to 11:30 a.m.	Room 116B, State Admin. Bldg.

The State Administration Building is located at 50 Sherburne Avenue St. Paul. Conference Room 116B is located on the first floor of the Administration Building, adjacent to the cafeteria.

THIS SCHEDULE IS CURRENT AS OF FEBRUARY 8, 1993

CORE

STATE OF MINNESOTA
COMMISSION ON REFORM AND EFFICIENCY

203 Administration Building, 50 Sherburne Ave., St. Paul MN 55155
(612) 297-1090 Fax (612) 297-1117

MANAGEMENT SYSTEMS WORKING COMMITTEE COMMISSION ON REFORM AND EFFICIENCY MEETING SCHEDULE OCTOBER 1992 - MAY 1993

(Dates and location subject to change/cancellation.)
Call (612) 296-9167 or (612) 297-1090 to verify meeting schedule.

DATE	TIME	PLACE
FRIDAY, FEBRUARY 26	1:30 p.m. - 4:30 p.m.	Best Western Kelly Inn
THURSDAY, MARCH 25	1:30 p.m. - 4:30 p.m.	Best Western Kelly Inn
THURSDAY, APRIL 22	1:30 p.m. - 4:30 p.m.	Best Western Kelly Inn
THURSDAY, MAY 27	1:30 p.m. - 4:30 p.m.	Best Western Kelly Inn

The Best Western Kelly Inn is located at 161 St. Anthony, St. Paul, Minnesota. The working committee will convene following adjournment of the full Commission meeting scheduled in the Buffington and Prentiss Rooms located on the First Floor of the Kelly Inn.

SCHEDULE CURRENT AS OF FEBRUARY 8, 1992

CORE

STATE OF MINNESOTA
COMMISSION ON REFORM AND EFFICIENCY

203 Administration Building, 50 Sherburne Ave., St. Paul MN 55155
(612) 297-1090 Fax (612) 297-1117

1993

PROGRAM ANALYSIS WORKING COMMITTEE MEETING SCHEDULE

DATE	TIME	PLACE
FEB. 9	9:00 A.M. TO 2:00 P.M.	116B, Admin. Bldg., St. Paul, 50 Sherburne Ave.
MARCH 10 *	CANCELLED	
APRIL 15	9:00 A.M. TO 2:00 P.M.	Musicland, 7500 Excelsior Blvd., Mpls.
MAY 10	9:00 A.M. TO 2:00 P.M.	Veterans Service Bldg., St. Paul 20 West 12th St., 5th Floor

NOTE: Contact Jane Delage at (612) 297-1146 for location of meetings or to verify meeting schedule.

*** Please note March 10th HAS BEEN CANCELLED**

SCHEDULE CURRENT AS OF JANUARY 27, 1993

CORE

STATE OF MINNESOTA
COMMISSION ON REFORM AND EFFICIENCY

203 Administration Building, 50 Sherburne Ave., St. Paul MN 55155
(612) 297-1090 Fax (612) 297-1117

COMMISSION APPOINTEES* February 8, 1993

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FAX: (612) 625-6351

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(612) 853-5592 (Ceridian)
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(507) 288-1978* (phone
becomes FAX)

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* CORE working committee appointments and projects listed on page 4

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Page 2

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CORE Appointees

Page 3

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**Bev Schuft, Executive Reorganiza-
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FAX: (612) 297-1117

WORKING COMMITTEES & MEMBERS

PROJECTS

Executive Reorganization & Comprehensive
Assessment Committee

Glen Taylor, Chair
Jane Belau
Dr. Jean Harris
H. William Lurton
Dorraine (Dorrie) Mund
Robin PanLener
Arend Sandbulte, Ex-officio

- Executive reorganization\boards
and commissions

Management Systems Committee

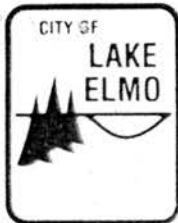
Connie Weinman, Chair
Marcia Appel
Gary Denault
Geraldine Evans
Beck Horton
Ernest Lindstrom
Arend Sandbulte, Ex-officio

- Human resources manage-
ment/civil service
- Budgeting and fiscal services
- Electronic business transactions
- Administrative rules/procedures

Program Analysis Committee

Jack Eugster, Chair
John Brandl
Arlene Lesewski
Lee Luebbe
Katherine (Kati) Sasseville
Erma Vizenor
Stephen Watson
Arend Sandbulte, Ex-officio

- State/county human services
delivery system
- Local services funding
- Environmental services



City of Lake Elmo

777-5510

3800 Laverne Avenue North / Lake Elmo, Minnesota 55042

February 12, 1993

FEB 16 1993

Mr. Bruce Sandstrom
Regional Supervisor
Minnesota Board of Water & Soil Resources
Southbridge Office Bldg.
155 South Wabasha St, Suite 104
St. Paul, MN 55107

BOARD OF WATER
& SOIL RESOURCES

Dear Bruce:

At our discussion in the Woodbury City offices on January 28, you indicated that there were advantages in creating large watershed districts rather than proliferating a number of small agencies covering individual watersheds.

You mentioned the Valley Branch Watershed District as an example of a successful agency. It covered a large area, was able to hire part time administrators, and could hold effective meetings. You felt that the establishment of watershed districts enabled decisions to be taken at the local level, with related cities working together knowing what each other's aims are.

I feel that at this time it is probably appropriate to review the roles of the various watershed districts, their mandates and delegated powers. This is being written after attending the February 11 meeting of the Valley Branch Watershed District. At the public inquiry portion of the meeting I asked that the agendas be published some days in advance, to enable concerned cities to be present when developments which could affect water flow to or through, their cities were being discussed. I also asked that minutes be published after each meeting rather than being circulated after three sets had been approved. This latter request was granted, but the Chair found difficulty in agreeing to advance publication of the agenda.

Later in the meeting, a developer's proposal was given a preliminary permit to proceed. This was in spite of the fact that discharges from the developed property would flow to a holding pond which was inadequately constructed and subject to emergency action by the VBWD. This action would entail discharge of contaminated effluent into Olson Lake. The fact that the development was located in Oakdale, but

that alleviation of the problem would be felt by Lake Elmo and other downstream communities, added controversy to what the VBWD felt to be a standard procedure. This debate was quickly terminated by a VBWD member calling the question, and the permit was granted.

These incidents, and others like it, lead me to ask that the powers and responsibilities of the Watershed Districts be reviewed. They are necessary bodies to ensure that water flows are regulated and controlled.

I do not think that they are effective in ensuring that all concerned communities are appraised of developments that may affect them. Neither do I think that they deal with each application before them with the same diligence. The remark was made that the preliminary permit had to proceed to avoid holding up the development. Yet, it is just the pace of that development upstream which is of such concern to us in Lake Elmo. We are NOT convinced that our interests are being properly looked after by the VBWD, who are being pressured by developers to provide the approvals needed so that work can proceed.

This letter is to let you know that I do not consider that all is well in watershed legislation. Sources of funding, related authority, responsibilities to communities they serve, and the charters under which each is to operate are all items which should be reviewed.

I would welcome your comments.

Sincerely,

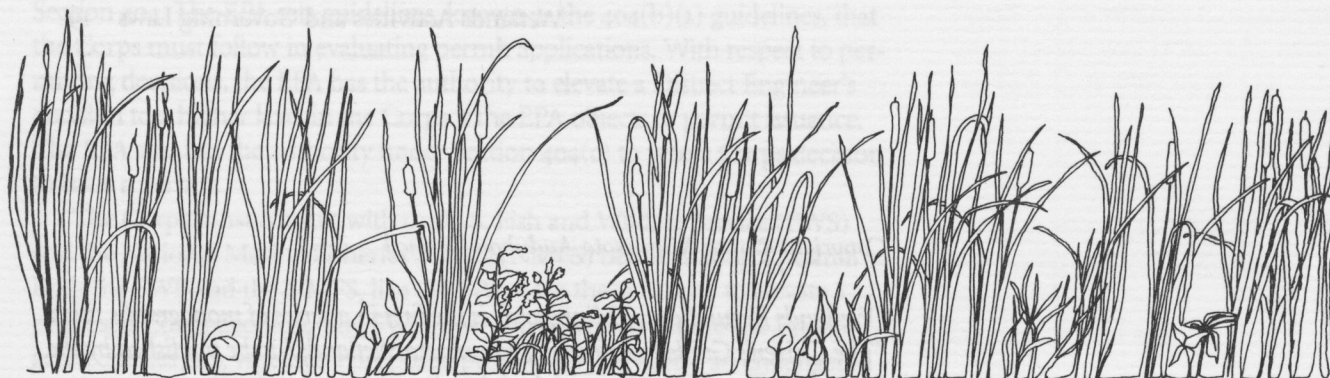
Wyn John, Mayor
City of Lake Elmo

Copy: VBWD
Lake Elmo City Council
Pam Neary
City of Oakdale

Wetlands Regulations in Minnesota

In the late twentieth century, Minnesotans are wrestling with the fate of the state's remaining wetlands. After a century of determined effort to convert marshes, swamps, and bogs to more economically productive purposes, our society is reconsidering the prudence of continuing such actions. Today, a variety of protective programs is being established to prevent further wetland losses and restore wetlands in areas where they have all but disappeared from the landscape. ¶ The reconsideration of pro-conversion policies has been neither smooth nor without controversy. The controversy arises from an old paradigm which pits economic expansion against environmental protection; the confusion arises from the way that paradigm is embodied in various laws. Rather than a single agency administering a comprehensive law capable of addressing the full complexity of wetlands issues, there is a maze of agencies at all levels of government administering a patchwork of laws, each covering only certain activities in certain wetlands. This complexity presents a daunting obstacle to anyone interested in protecting or altering wetlands. ¶ The purpose of this monograph is to help make sense of that maze. The author, Sherri Knuth, describes the laws currently on the books that regulate draining, filling, and other human-generated impacts on wetlands. She introduces the regulatory agencies, explains the decisionmaking process, and most important, highlights the role of the public in decisions affecting wetlands. It is our belief that promoting the informed participation of Minnesota citizens in those decisions will contribute to a thoughtful dialogue on sustainable community development and the fate of our commonweal.

CHERYL MILLER AND NANCY GOETZINGER, *EDITORS*



MINNESOTA AUDUBON COUNCIL
& NATIONAL AUDUBON SOCIETY

C O N T E N T S

Federal Laws

Clean Water Act, Section 404	3
Clean Water Act, Section 401	4
Rivers and Harbors Act, Section 10	5
Swampbuster	5
Endangered Species Act, Section 7	6
National Environmental Policy Act	7
Executive Orders 11990 and 11988	7

State of Minnesota Laws

Public Water Law	8
Wetlands Conservation Act	9
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"Wetlands Regulation in Minnesota" is the first in a series of monographs titled "The Citizen's Guide to Protecting Minnesota Wetlands," to be published by the Minnesota Council of National Audubon Society. Support for this series was provided by the U.S. Environmental Protection Agency, the Bush Foundation, and the Minnesota River Valley Audubon Chapter. Inquiries about the series should be made to National Audubon Society, 26 East Exchange Street, Suite 207, Saint Paul, Minnesota 55101 (612)-225-1830.

Federal Laws

PURPOSE: The Clean Water Act (CWA) was enacted with the goal of restoring and maintaining "the chemical, physical and biological integrity of the nation's waters." Section 404 regulates the discharge of dredge or fill material into waters of the United States, making it unlawful to discharge dredged or fill materials into wetlands without first obtaining a permit.

WATERBODIES COVERED: Section 404 applies to "navigable waters" which are defined as waters of the United States, including territorial seas. This means any waters, including wetlands, that are or could be important to interstate commerce. Even isolated wetlands can contribute to or affect interstate commerce (for example, where they are used for recreation, commercial fishing, or by migratory birds).

ACTIVITIES REGULATED: The Section 404 program regulates only the "discharge of dredged or fill material" (meaning the physical placement of soil, sand, gravel, and other dredged and fill materials) into wetlands. Current regulations do not cover dredging, removal of vegetation, and excavation unless earth-moving equipment is used or a discharge occurs. Some activities that are part of normal farming, ranching, and forestry operations are exempted from further regulation. (The scope of regulated activities may change as a result of proposed changes in the governing rules.)

There are effectively two categories of Section 404 permits. Regional and nationwide general permits are blanket authorizations for projects such as placement of navigation markers, utility line structures, bank stabilization projects, minor road crossings and bridges, and minor dredge and fill projects which will have only minimal environmental effects. Individual permits are for regulated activities that exceed this minimal-effects criteria and require a more detailed review before a permit application can be granted.

RESPONSIBLE AGENCIES: The Environmental Protection Agency (EPA) has overall responsibility for implementation of all provisions of the Clean Water Act. However, the Corps of Engineers, which is part of the United States Department of the Army, has primary responsibility for reviewing permit applications, issuing permits, and bringing enforcement actions under Section 404. The EPA sets guidelines, known as the 404(b)(1) guidelines, that the Corps must follow in evaluating permit applications. With respect to permitting decisions, the EPA has the authority to elevate a District Engineer's decision to a higher level in the Corps if the EPA objects to permit issuance. The EPA also has the authority under Section 404(c) to veto a Corps decision to issue a permit.

The Corps must consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) before issuing a permit. Both the FWS and the NMFS, like the EPA, have the authority to elevate a proposed Corps decision. The FWS must consider, pursuant to the Endangered Species Act, whether a proposed permit will jeopardize an endangered or threatened species.

Clean Water Act, Section 404 (33 U.S.C. § 1344)

Federal and state statutes and regulations may be found at law libraries. Ask a librarian for assistance. "U.S.C." is the United States Code and "C.F.R." is the Code of Federal Regulations.

DECISIONMAKING CRITERIA: The 404(b)(1) guidelines that must be followed by the Corps in considering a permit application are found at 40 C.F.R. § 230. Significantly, no discharge into wetlands is allowed if there is a practicable alternative which would have a less adverse impact on the aquatic ecosystem. 40 C.F.R. § 230.10(a). This condition includes the "water dependency test:" if a project does not require filling of a wetland or proximity to a special aquatic site (which is a specifically defined term) to fulfill its basic purpose, it is presumed that practicable alternatives are available, unless proven otherwise. Even if a project is water dependent, alternatives must still be assessed. A Memorandum of Agreement between the Corps and the EPA specifies a set of guidelines to ensure alternatives are considered that avoid, minimize, and compensate any losses to the wetlands resources (see "Wetlands Mitigation," page 10). Besides following the 404(b)(1) guidelines, the Corps must also conduct a public interest review and consider such factors as conservation, aesthetics, fish and wildlife values, and recreation. Corps regulations require that a permit cannot be granted unless "the benefits of the proposed alteration outweigh the damage to the wetlands resource." 33 C.F.R. § 320.4(b)(4).



PUBLIC ROLE: The public has the opportunity to review and comment on individual permit applications. The Corps issues a public notice for every proposed individual permit, and citizens may ask to be put on the mailing list for such notices. After issuing a public notice, a comment period is usually open for 15 to 30 days. The public may also request a public hearing, although the decision to hold a hearing is within the Corps' discretion.

If you choose to comment on a public notice, you should address the criteria set forth in the 404(b)(1) guidelines: practicable alternatives, the water dependency test, and the public interest factors. You should also advise the EPA and FWS (with whom the Corps must consult) of your concerns. Your best opportunity to affect issuance of a permit is before the Corps makes a decision; once a permit has been granted, reversing it through appeal is difficult.

ENFORCEMENT: The Corps and the EPA can bring enforcement actions against those who discharge dredged or fill material without a permit or who violate permit conditions. The public can notify the Corps or the EPA of suspected unauthorized activity. The Corps and EPA can review a permit for compliance or investigate potential violations of the CWA. Enforcement can include revocation of a permit, restoration of an illegally altered area at the expense of the responsible party, and monetary fines and penalties, as well as criminal prosecution and incarceration.

**Clean Water Act, Section 401 –
Water Quality Certification
Program
(33 U.S.C. § 1341)**

Section 401 of the Clean Water Act emphasizes water quality and sets up a water quality certification program. Under the guidance of the Environmental Protection Agency, each state is empowered to review federally licensed or permitted activities that may result in the discharge of materials into waters of that state. The Minnesota Pollution Control Agency administers the Minnesota program. See the discussion on page 12.

PURPOSE: The Rivers and Harbors Act of 1899 protects the navigable capacity of the nation's waters. Section 10 regulates alteration or obstruction of such waterways.

WATERBODIES COVERED: The Rivers and Harbors Act applies to "navigable waters of the United States." Navigable waters are those waters that have supported in the past, that currently support, or could support in the future, interstate or foreign commerce. These include the Great Lakes and their connecting water bodies, navigable rivers and mouths of their major tributaries, and connected wetlands. The Rivers and Harbors Act does not cover as many waterbodies as does Section 404 of the Clean Water Act, but it covers more activities than Section 404. It also may apply to some situations exempted by Section 404.

ACTIVITIES REGULATED: The Act regulates all work in, on, or above navigable waters. It regulates activities that will affect the course, location, or condition of the water so as to impact its physical capacity for navigation. This includes: beach nourishment; boat ramps; breakwaters; bulkheads; dredging, filling or discharging material; placement of groins, jetties, mooring buoys, piers, riprap, and pilings; and construction of marina facilities.

RESPONSIBLE AGENCY: The U. S. Army Corps of Engineers is responsible for permitting and enforcement.

DECISIONMAKING CRITERIA: The Corps evaluates the effects on navigation and the environment. Its governing regulations are found at 33 C.F.R. §§ 320 and 322.

PUBLIC ROLE: The administrative procedures and opportunity for public involvement are virtually identical to the Section 404 permit program.

ENFORCEMENT: The Corps can take civil or criminal enforcement action.

The Rivers and Harbors Act of 1899, Section 10 (33 U.S.C. § 403)



PURPOSE: Swampbuster is a program of FSA and FACTA which discourages the alteration of wetlands for agricultural use.

WATERBODIES COVERED: The U.S. Department of Agriculture - Soil Conservation Service has delineated the majority of wetlands on cropland in Minnesota. The U.S. Department of Agriculture-Agricultural Stabilization and Conservation Service (USDA-ASCS) maintains a set of maps identifying the wetlands. These are available at county USDA-ASCS offices.

ACTIVITIES REGULATED: Swampbuster prohibits farmers or producers who receive federal subsidies from draining wetlands on their land. If the farmers or producers do alter a wetland, they become ineligible for all government price and income support programs.

RESPONSIBLE AGENCY: The USDA-ASCS is responsible for the program.

Swampbuster – Food Security Act (FSA) of 1985; Food, Agriculture, Conservation and Trade Act (FACTA) of 1990 (16 U.S.C. § 3821 to 3824)

DECISIONMAKING CRITERIA: An onsite inspection of a converted wetland by the USDA-ASCS is required before government benefits are withheld. It is possible that a farmer will be exempted from Swampbuster penalties where, for example, a farmer's action has a minimal effect on the functional hydrological and biological value of a wetland.



PUBLIC ROLE: If you suspect a violation of Swampbuster, call the USDA-ASCS. The ASCS has an office in each county or call the state office at (612) 290-3651.

ENFORCEMENT: A farmer or producer who converts a wetland is ineligible for government price and income support programs. A farmer who inadvertently drains a wetland may pay a fine, rather than having federal subsidies completely denied, if the farmer restores the wetland.

Endangered Species Act, Section 7 (16 U.S.C. § 1536)

PURPOSE: The purposes of the Endangered Species Act (ESA) are to provide a means to conserve the ecosystems upon which endangered species and threatened species depend and to provide a conservation program for such endangered and threatened species. The Act requires the federal government to cooperate with state and local agencies to resolve water resource issues in concert with conserving endangered species. As the nation's wetlands have been reduced, many remaining wetlands have become critical habitat for species whose existence depends on wetlands.

WATERBODIES COVERED: See Activities Regulated.

ACTIVITIES REGULATED: The ESA requires all federal agencies to use their authority to further the purposes of the Act. Section 7 requires and formalizes a process of interagency consultation to insure that any action authorized, funded, or carried out by federal agencies does not jeopardize the continued existence of any endangered species or threatened species or adversely modify its critical habitat. This requires the Corps of Engineers to consult with the U.S. Fish and Wildlife Service (FWS) when it considers a Section 404 permit. Section 7 also allows the FWS to define critical habitat areas for endangered species and adopt measures to address threats to these areas.

RESPONSIBLE AGENCIES: The FWS is primarily responsible. Other federal agencies are required to consult with it.

DECISIONMAKING CRITERIA: If an endangered or threatened species is likely to be affected by a proposed activity, the FWS determines if the activity will jeopardize the continued existence of the species or adversely modify its critical habitat. Depending upon the level of jeopardy or adverse modification found, the FWS will either specify reasonable alternatives to the proposed action or will set forth the terms and conditions (including but not limited to reporting requirements) with which the agency or applicant must comply.



PUBLIC ROLE: With respect to Section 404 dredge and fill permit applications, public notice will be through the Corps of Engineers' notice of the

Section 404 permit application. Call or write the FWS if you have a concern about plant or animal species in a threatened wetland. Citizens may bring injunctive actions in court against the FWS, Corps, or permittees if they are in violation of the ESA.

ENFORCEMENT: Violations may be civilly or criminally enforced.

The National Environmental Policy Act (NEPA) requires the preparation of environmental impact statements (EIS) assessing the impact of federal projects (before construction) for all federally funded, authorized, or permitted activities that would have significant environmental effects. Although protection of wetlands is not a specific purpose of NEPA, wetlands are listed among the environmental parameters to be evaluated in an EIS. The Army Corps of Engineers estimates that fewer than half of one percent of Section 404 permit applications cover projects which, because of their likely impact on the environment, will require an EIS. NEPA allows the public to review and comment on environmental assessments (which determine if an EIS is needed), the proposed scope of an EIS draft, and final documents. The Minnesota Environmental Policy Act, described on page 12, is modeled after NEPA.

National Environmental Policy Act (42 U.S.C. § 4321 et seq.)

HISTORY: Executive Orders (EO) 11990 and 11988 were issued by President Carter in 1977 and provide guidance to federal agencies.

Executive Orders 11990 and 11988

EXECUTIVE ORDER 11990: PROTECTION OF WETLANDS EO 11990 is an overall wetland policy for all federal agencies managing federal land, sponsoring federal projects, or providing funding assistance to state and local projects. It does not apply to the issuance of licenses and permits for activities involving wetlands on nonfederal property.

EO 11990 requires agencies to consider mitigation and public involvement before proposing new construction in wetlands. How effectively these procedures are followed varies among federal agencies.

Under Section 4 of EO 11990, when federally owned wetlands are proposed for lease or sale to nonfederal parties, restrictions must be placed in the lease or conveyance to protect and enhance wetlands on the property. The alternative is to withhold such properties from sale. For example, this applies to wetlands held by the Resolution Trust Corporation as part of the federal bailout of the savings and loan industry, and to wetlands on military installations that are targeted for closure and disposal.

EXECUTIVE ORDER 11988: FLOODPLAIN MANAGEMENT Because of the crucial role that wetlands play in flood control, EO 11988 provides floodplain wetlands with a degree of protection. EO 11988 requires each federal agency to take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains. Each agency is required to (1) consider alternatives to proposed actions to avoid adverse impacts in floodplains, and (2) modify the proposed action to minimize potential harm if the agency finds the only practical alternative is to locate in a flood plain.

EFFECT: Although Executive Orders 11990 and 11988 are credited with raising the awareness of federal agencies of the value of wetlands, observers believe they have had little impact on wetland preservation.

Minnesota Laws

Public Water Law (Minn. Stat. § 103G and Minn. R. 6115)

Minn. Stat. is the codification of Minnesota Statutes. Minnesota regulations that guide agency decisionmaking are found in the Minnesota Rules, abbreviated as Minn. R. These laws and regulations are available in law libraries.

PURPOSE: To control and supervise activities that may alter the course, current, or cross-section of waters of the state.

WATERBODIES COVERED: This statute protects certain waterbodies which are defined in the statute. Included in the definition are certain wetlands, specifically type 3, 4, and 5 wetlands, which are 10 or more acres in size in unincorporated areas, or 2½ or more acres in size in incorporated areas. Other types of wetlands are not within the jurisdiction of this statute. The Department of Natural Resources (DNR) has inventoried and mapped all of these so-called "public waters wetlands" in the state, and maps are available for inspection at DNR regional and central offices, county soil and water conservation district offices, county auditor offices, and county zoning offices.

ACTIVITIES REGULATED: Any work done below the ordinary high water mark of protected waters is subject to regulation. A permit is required for projects such as draining; filling; dredging; channelizing; construction of dams, harbors, or permanent offshore structures; placement of bridges and culverts; and marinas. Some projects do not require permits under certain conditions, such as placement of beach sand, rock riprap for shore protection, and some docks and boat ramps; removal of debris (trees, logs, stumps, trash); repair of public drainage systems; and certain maintenance and installation of agricultural drain tile outlets.

RESPONSIBLE AGENCIES: The DNR has authority to issue permits and enforce the statute.

DECISIONMAKING CRITERIA: The DNR follows decisionmaking criteria specific to the type of activity contemplated. For example, standards specific to filling guide the DNR's analysis of any proposed filling. The specific rules are found in Minn. R. 6115.0150 to 6115.0520. In general, the DNR attempts to balance reasonable use with resource protection and minimize impacts on wetlands.



PUBLIC ROLE: Typically, there is no public notice of permit applications and no formal public comment period. If you become aware of a project that may impact wetlands, you may wish to contact the DNR to find out if a permit is under consideration. The DNR will informally consider comments submitted in writing or by telephone. The DNR solicits recommendations from soil and water conservation districts, watershed districts, counties, or cities, as well as the DNR's Division of Fish and Wildlife, and the Army Corps

of Engineers. The DNR may hold a hearing at its discretion, but typically does not. After issuance or denial of a permit, a demand may be made for a hearing by the applicant, watershed district, soil and water conservation district, or mayor of a city with jurisdiction over the project application.

ENFORCEMENT: If you suspect work in public waters wetlands is being done without a permit or in violation of the terms of a permit, contact the DNR area hydrologist listed in your local telephone directory. You may also call the local DNR conservation officer or the DNR state Violations Coordinator at (612) 296-4800. The DNR can investigate and issue orders calling for restoration, stabilization, or stoppage of any work. Violations are misdemeanors punishable by fines or imprisonment.

Wetland Types:

- Type 1 – Seasonally flooded basin or flat
- Type 2 – Inland fresh meadows
- Type 3 – Inland shallow fresh marshes
- Type 4 – Inland deep fresh marshes
- Type 5 – Inland open fresh water
- Type 6 – Shrub swamps
- Type 7 – Forested swamps
- Type 8 – Bogs

PURPOSE: The Wetland Conservation Act (WCA), passed in 1991, is the most comprehensive wetland protection ever attempted by the Minnesota legislature. It extends protection to wetlands not covered under former state law. The WCA follows a “no net loss” policy – the draining or filling of wetlands is prohibited unless wetland areas of equal public value are restored or created. The Act also institutes procedures for establishing wetland preservation areas in high priority areas (allowing landowners to gain a tax exemption), allows wetland owners to convey permanent easements to the state in return for compensation, and provides a mechanism to assist landowners in establishing or restoring wetlands.

WATERBODIES COVERED: The WCA defines wetlands, in accord with the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands* (1989), as wetlands that have a predominance of hydric soils, are generally inundated or saturated above or below the surface, and support a prevalence of hydrophytic vegetation. This includes wetlands that are outside of the jurisdiction of the DNR under the Public Waters Law. However, there are numerous exemptions, including agricultural lands that have been cropped or set aside during six of ten years prior to January 1, 1991, type 1 wetlands on agricultural land (except for bottomland hardwoods), and type 2 wetlands of two acres or less on agricultural land. Notably, the WCA does not preempt more restrictive local ordinances.

ACTIVITIES REGULATED: An interim program will be in effect until July 1, 1993 when the state will complete permanent rules implementing the Act. During the interim program, draining, burning, and filling activities are prohibited unless a local government unit certifies that replacement will occur after the permanent rules are written. During the permanent program, draining and filling a wetland, whether wholly or partially, will be prohibited unless the wetland is replaced.

RESPONSIBLE AGENCIES: Under the permanent program, local units of government and soil and water conservation districts (SWCD) will consider applications for replacement plan approval. In the metropolitan area, this responsibility must be assumed by a city council, town board, or watershed management organization; in Greater Minnesota, by a city council or county

Wetlands Conservation Act of 1991

The Act amends and supplements several Minnesota statutes. The principal provisions are found at Minn. Stat. § 103A.201, 103B.3355, 103F.516, 103F.612-.616, 103F.901-.905, 103G.221-.2242, 103G.2364-.2372, 103G.2369 [interim program].

board. Contact your local SWCD office or the state Board of Water and Soil Resources (BWSR) at (612) 296-3767 to obtain the name of the appropriate contact in your area. After July 1, 1993, appeal of decisions made by the local units of government may be made to BWSR, which will provide administrative and technical guidance to local governments as well. The DNR has enforcement authority.

DECISIONMAKING CRITERIA: "Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value" under a replacement plan approved by the local government unit. The WCA requires that the following principles be followed: first, seek to avoid any impact on the wetland; second, minimize the impact by limiting the activity; and third, restore or replace the damaged wetland. Replacement generally should be in the same watershed or county as the impacted wetland.

In making its decision to approve or deny a proposed replacement plan, the local government relies on a technical panel to answer questions concerning the location, type, size, or public value of the impacted wetland. The technical panel is composed of a technical professional employee of BWSR, a technical professional employee of the local soil and water conservation district, and an engineer for the local government unit. The panel reports to the governing body of the city, town, county, or watershed management organization, which has the authority to approve or deny the proposal. Effective July 1, 1993, if a landowner's replacement plan that meets the requirements of the WCA is not approved, the landowner must be compensated.



PUBLIC ROLE: After July 1, 1993, the public can comment on proposed replacement plans and appeal approvals of replacement plans. Contact

WETLANDS MITIGATION

When permits are issued for activities affecting wetlands, they often include specific conditions called "mitigation" that must be conducted by the applicant to avoid or compensate for adverse impacts on a wetland. Mitigation may take many forms, and its effectiveness as a means of wetland protection has been a source of much debate.

The following definitions of mitigation are from the federal Council on Environmental Quality and are generally applied to the Section 404 dredge and fill permits issued by the Army Corps of Engineers. Under these definitions, mitigation includes the following, in sequential order:

1. Avoid the impact altogether by not taking a certain action or parts of an action;
2. Minimize impacts by limiting the degree or magnitude of the action or its implementation;
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
5. Compensate for the impact by replacing or providing substitute resources or environments.

your local government unit (implementing the WCA) to be placed on the mailing list for notices of applications for replacement plan approval.

ENFORCEMENT: DNR conservation officers are primarily responsible for enforcement of the WCA. They can be reached through the sheriff's office or are listed in your local telephone directory. Conservation officers can issue cease and desist orders to halt illegal activities on wetlands or order restoration or replacement of a wetland. Violation of an order is a misdemeanor, to be prosecuted by city and county attorneys. The court can order restoration or replacement.

PURPOSE: State water quality standards are used to protect the chemical, physical, and biological integrity of waters within the state, under the authority and direction of Section 401 of the federal Clean Water Act. Section 401 water quality certification requirements apply only to activities requiring a federal permit, and the standards regulate discharges into state waters.

**State Water Quality Standards—
Section 401 Certification**
(33 U.S.C. § 1341 and § 1313)
(Minn. R. 7050 and
7001.1400 to 7001.1470)

WATERBODIES COVERED: See description of activities regulated.

ACTIVITIES REGULATED: With respect to wetlands, the application of water quality standards is triggered by an application for a federal permit. If an applicant seeks a permit under Section 404 of the Clean Water Act that will result in the discharge of materials into waters or wetlands, Minnesota must certify that the proposed activity conforms to state water quality standards. If it does not, Minnesota can refuse certification and a permit cannot be issued under Section 404.

The Wetlands Conservation Act of 1991 follows these same principles. The goal of the Act is to achieve a "no net loss" policy – the draining or filling of wetlands is prohibited unless wetland areas of equal public value are restored or created. Regulations under the Act establish guidelines on the types and location of mitigation, replacement ratios (area of impact vs. area of replacement), and completion and monitoring of mitigation projects. Other regulating entities may have their own mitigation definitions and guidelines as well.

Ordinarily, compensatory mitigation involves the creation of an artificial wetland or restoration of a natural wetland that has been drained or filled. However, current scientific and technical knowledge is widely regarded as inadequate to artificially create wetlands that contain the complexity and diversity required by the plant and animal species dependent on them. Created wetlands often do not achieve the hydrological patterns found in natural wetlands. Restoration of natural wetlands by breaking tile lines or removing fill has met with greater success and is generally favored by conservationists.

Local environmental groups and citizens can provide substantial assistance to both permit applicants and regulatory agencies regarding mitigations being contemplated. Mitigation plans can be evaluated and projects with good potential for success encouraged. Nearby areas can be recommended for preservation or enhancement. With the cooperation of the permittee, it may be possible to make observations at the site itself.

RESPONSIBLE AGENCIES: The U.S. Environmental Protection Agency (EPA) has overall responsibility. The Minnesota Pollution Control Agency (MPCA) administers the program in Minnesota pursuant to EPA guidance.

DECISIONMAKING CRITERIA: The MPCA reviews but often waives water quality certification for discharges into wetlands (pursuant to Section 404 permit applications under the Clean Water Act) because currently there are no applicable standards. The EPA is now requiring the MPCA to revise Minnesota's water quality standards to specifically include wetlands. The revised standards are expected to be issued in 1993 as part of Minnesota Rules Chapter 7050. The revised standards will include narrative biological and aesthetic criteria, under the authority of Section 303 of the Clean Water Act.



PUBLIC ROLE: Public notice of an application for Section 401 certification is required, although the MPCA can rely on the Army Corps of Engineers' notice of a dredge and fill permit application to fulfill this requirement. A public comment period is open for at least 10 days.

ENFORCEMENT: Because the MPCA's water quality certification becomes a part of a Section 404 permit, the MPCA relies on the Corps and the EPA for primary enforcement. The MPCA, however, also has the authority to take civil or criminal enforcement action.

Minnesota Environmental Policy Act (Minn. Stat. § 116D and Minn. R. Chapter 4410)

PURPOSE: The Minnesota Environmental Policy Act (MEPA) establishes a formal process for reviewing the environmental impacts of major development projects that require some type of government action, such as permits or grants. The purpose is to provide information on environmental impacts before necessary approvals and permits are issued.

WATERBODIES COVERED: MEPA applies to many proposed development projects, whether they affect waterbodies or not. With respect to wetlands, MEPA generally requires review, under certain conditions, of project impacts on one acre or more of a public waters wetland (as defined by the Department of Natural Resources, see discussion on page 8) and some other wetlands of types 3 through 8 that are within a shoreland area, floodplain, wild and scenic rivers district, Minnesota River Project Riverbend area, or the Mississippi headwaters area.

ACTIVITIES REGULATED: Environmental review under MEPA is mandatory for certain projects (listed by project type and size in the Minnesota Rules) whose nature, size, or location makes it inevitable that there is a potential for significant environmental effects. Review may be obtainable for other projects, not listed in the rules, where a government unit determines in its discretion that there is the potential for significant environmental effects. Two types of review exist: the Environmental Assessment Worksheet (EAW) is a condensed worksheet that screens a project for significant environmental effects; the Environmental Impact Statement (EIS), which is less frequently done, is a thorough study of the environmental impacts of a project; comparative environmental, economic, and sociological impacts; reasonable alternatives; and mitigation measures.

RESPONSIBLE AGENCIES: The state Environmental Quality Board (EQB) has prepared rules governing the environmental review process. In most cases, the rules identify a particular governmental unit (either a local or state agency) that has the responsibility to conduct the environmental review. This is called the Responsible Governmental Unit (RGU). The EQB provides assistance to the RGU in interpreting the required procedures.

DECISIONMAKING CRITERIA: MEPA establishes a standardized public process designed to disclose information about the environmental effects of a proposed project and ways to avoid or minimize them. Information gathered in an environmental review should be integrated into the permitting and approval processes of local, state, and federal agencies in order to protect the environment. No state actions can be taken or permits issued where they are likely to cause impairment of natural resources if a feasible and prudent alternative exists.

PUBLIC ROLE: Citizens can review and comment on EAWs and EISs. They can petition for preparation of an EAW when one is not mandatory. (A petition requires signatures by 25 citizens; there is no residency requirement.) Citizens can also make suggestions for issues to be studied in an EIS during the EIS "scoping" process. Contact the Environmental Quality Board at (612) 296-8253 or (800) 657-3794 for more information.

ENFORCEMENT: If an EAW or EIS is required for a project or if a petition for an EAW is filed, the project may not be started and no final governmental decision may be made to grant a permit until the petition for an EAW is dismissed, a negative declaration on the need for an EIS is made, the EIS is deemed adequate, or a variance is granted.



The Minnesota Environmental Rights Act (MERA) allows citizens to bring actions in court or to intervene in agency proceedings to challenge any conduct that may result in "pollution, impairment, or destruction" of the environment. The court or agency must prevent the proposed conduct if a "feasible and prudent alternative exists." MERA can be used to challenge government actions or the conduct of private citizens and corporations. One limitation in using MERA is the potential cost of the legal proceedings and required bonds.

In one of the early cases under MERA, a wetlands owner successfully protected a wetland from being destroyed for a proposed highway route because a feasible alternate route around the wetland existed.

Minnesota Environmental Rights Act (Minn. Stat. § 116B)

Local & Regional Laws

Note: Numerous state laws affecting wetlands are administered by local governments. The overall framework for water management (including wetlands) at the local level can be found in two acts passed by the Minnesota

Legislature in the 1980s, the Metropolitan Surface Water Management Act and the Comprehensive Local Water Management Act. Regional water planning, based upon watersheds, is mandated in a separate statute. In addition to state mandates, local governments may establish their own regulations to further protect land and water resources.

**Metropolitan Surface Water
Management Act (Minn. Stat.
§ 103B.201 to 103B.251 and
Minn. R. 8410)**

The Metropolitan Surface Water Management Act was enacted in 1982 to require planning for surface water management throughout the metropolitan area and set up a governmental framework to achieve it.

The Act caused the formation of 46 watershed management organizations (WMOs), of which ten were existing watershed districts and 36 were created by joint power agreements between cities and townships. The WMOs must formulate and adopt comprehensive plans to manage water resources. After adopting a watershed plan, cities and towns within the watershed must prepare local water management plans consistent with the WMO plan and implement the plans through land use controls.

Recent amendments to the Act require that the water management plans contain strict wetland protections, consistent with the Wetlands Conservation Act and conforming to rules adopted by the Board of Water and Soil Resources (BWSR). BWSR adopted Minn. R. 8410 (effective August 1, 1992) which will guide development of revised water management plans containing wetland protections.

Citizens can use a water management plan as a basis to challenge planned development and wetland alterations that do not conform to the plan. Contact your city hall or town manager to find out which watershed management organization has jurisdiction in your area. Citizens are also encouraged to seek appointments to advisory committees which most water management organizations use to help establish policies carried out in their watershed plans.

**Comprehensive Local Water
Management Act
(Minn. Stat. § 110B,
recodified as 103B.301-103B.355)**

The Comprehensive Local Water Management Act is similar to the Metropolitan Watershed Management Act (see discussion above) but operates in Greater Minnesota. The Act is implemented by counties which must formulate comprehensive water management plans. A water management plan can be used as a basis for challenging planned developments or wetland alterations that are not in conformance with the plan.

**Watershed plans
and regulations
(Minn. Stat. § 103D and local
watershed legislation)**

Watershed plans and regulations are implemented by watershed districts. Watershed districts are special purpose local units of government whose boundaries follow those of a natural watershed. A watershed is an area of land in which all water drains into one outlet. There are 41 watershed districts in Minnesota.

Watershed districts are established under the authority of the Minnesota Watershed Act, Minn. Stat. § 103D. The Act empowers districts to regulate activities affecting water resources, develop long-range plans, acquire property rights, construct and finance improvement projects, and adopt water management rules. They may develop and maintain detailed surveys and

hydrological data that can be helpful in opposing alterations of wetlands.

The focus of each watershed district, including its interest in wetlands, varies depending on the specific water issues in the district. A few watershed districts, such as the Valley Branch Watershed District, have adopted regulations for wetland protection.

Each watershed district is governed by a board of managers appointed by the board of county commissioners. Watershed district meetings are open to the public. Violations of district regulations can be enforced through the civil or criminal process.

Contact the state Board of Water and Soil Resources to determine the jurisdiction of a particular watershed district. Then contact the applicable watershed district directly for more information about its rules and regulations and scheduled meetings. The Board of Water and Soil Resources can be reached at (612) 296-37867.

PURPOSE: Shoreland and floodplain ordinances set standards to guide development in shoreland and floodplain areas for the purpose of preserving and enhancing water and land resources, and reducing flood damage. The Minnesota shoreland and floodplain management statutes and rules set minimum standards that local governments must incorporate in their ordinances.

WATERBODIES COVERED: Local ordinances define shorelands and floodplains, though with some differences. In general, shorelands apply to the shores of public waters, which do not clearly include wetlands. Floodplains are those lands adjoining a watercourse that are prone to flood. Local ordinances may adopt official maps that specify floodplain and shoreland boundaries, but citizens (including developers) often have the right to contest the designated boundaries.

ACTIVITIES REGULATED: Shoreland management ordinances cover a wide variety of activities, including grading, filling, removal of natural vegetation, placement of structures, lot sizes, and setbacks. Floodplain management ordinances limit development to structures of a type that will suffer little from flood damage.

RESPONSIBLE AGENCIES: Counties and cities are required to adopt and enforce shoreland and floodplain management ordinances. The Department of Natural Resources may have some review and approval authority. Contact local planning commissions, building codes officials, or city engineers for more information.

DECISIONMAKING CRITERIA: Shoreland and floodplain ordinances contain a variety of decision-making criteria, some mandatory and others discretionary. According to the state's minimum guidelines for shoreland regulation, grading and filling in any type 2 through 8 wetlands must be evaluated by local officials in terms of the impact on storage of surface runoff, fish and wildlife habitat, sediment and pollutant trapping and retention, and other factors. Lots that are created through subdivision in shoreland areas should be

Shoreland and floodplain ordinances

(Minn. Stat. § 103F.201 to 103F.221 and Minn. Stat. § 103F.101 to 103F.165; and local ordinances

Stormwater and wastewater ordinances

Wetlands ordinances



suitable for their proposed use with minimal alteration, and local governments should consider the existence of wetlands in their suitability analysis.

PUBLIC ROLE: Citizens should contact directly the local officials responsible for issuing permits for alterations or construction in shoreland and floodplain areas. Often, appeal of a local official's decision to a planning commission or city council is possible. Public hearings may be required, prior to issuance of a permit, for variances from the generally permitted land uses.

ENFORCEMENT: Alteration of a floodplain or shoreland in violation of a local ordinance or permit may be halted by the local government through legal action, and restoration may be required. The responsible party may be prosecuted criminally for a misdemeanor. Usually, a city or county zoning officer or building codes officer will bring a suspected violation to the attention of the city or county attorney who is responsible for prosecution. However, any citizen can bring a suspected violation to the attention of a building codes officer or city or county attorney as well.

Drainage Code (Minn. Stat. § 103E)

PURPOSE: Drainage laws were first written in Minnesota in the early 1900's. Their purpose was to establish drainage systems (often known as drainage ditches) in order to convert wet areas to other uses, primarily agricultural. The current drainage code provides a process for the construction, improvement, and repair of drainage systems. Although often referred to as "public" drainage systems, the systems are actually implemented and paid for by private landowners with public oversight.

WATERBODIES COVERED: The drainage code provides a procedure to construct and maintain drainage systems. It does not designate specific bodies of water or wetlands as protected waterbodies. However, drainage proponents still must adhere to federal, state, and local laws that protect wetlands.

ACTIVITIES REGULATED: The drainage code applies when a group of landowners decide that they want to establish a new drainage ditch, or repair or improve an existing one. The landowners must petition the drainage authority and conduct an engineering study. All landowners impacted by the drainage ditch are assessed a portion of the cost for construction, improvement, or repair.

RESPONSIBLE AGENCIES: Authority for public drainage is in the hands of each county, unless a drainage system is located in and under the authority of a watershed district. (See discussion of watershed districts on page 14.) There is little uniformity in the procedures followed or decisions made by counties and watershed districts. The state Department of Natural Resources published the *Minnesota Public Drainage Manual* in September 1991 for the purpose of increasing uniformity and promoting consideration of state and federal laws protecting wetlands. The DNR advises counties on local implementation of the drainage code.

DECISIONMAKING CRITERIA: The drainage authority must consider feasibility of the drainage system, cost, public benefit and utility, and environ-

mental and land use criteria. *The Minnesota Public Drainage Manual* recommends early consideration of environmental issues, before the preliminary hearing. The drainage authority specifically must consider alternative measures to conserve, allocate, and use the water; the effect on water quality; and fish and wildlife resources affected by the proposed drainage project.

PUBLIC ROLE: Watch for public notices of proposed drainage projects in your local newspaper and posted notices at county or watershed district offices. Citizens may also contact the drainage authority and ask to receive notices by mail. A preliminary public hearing will be held after an engineer makes a preliminary report. After the engineer's final report, a final hearing will be held, the primary purpose of which is to allocate costs. Appeals may be taken to state court.



ENFORCEMENT: It is a misdemeanor to use a public drainage system without authorization, obstruct a drainage system, or alter an engineer's markings and stakes. The county attorney is responsible for prosecution.

Zoning ordinances regulate land use. Typically, zoning districts include blocks of land designated for residential, commercial, industrial, agricultural, and open-space uses. Zoning ordinances are locally adopted and vary widely, but can be used effectively to prevent certain types of development in regulated areas. Variances from regulated land uses typically require a public hearing. Contact your local planning commission, zoning official, or town manager for more information.

Municipal zoning ordinances

Local stormwater ordinances may provide some protection to wetlands by limiting stormwater runoff from new developments. Wastewater ordinances may prohibit the discharge of wastewater into watercourses, including wetlands. Runoff and wastewater can adversely affect the ecological and hydrological characteristics of wetlands. Contact your local building codes official, planning commission, or town manager for information on local ordinances.

Stormwater and wastewater ordinances

Sometimes wetlands ordinances (see below) and water management plans (see page 14) specifically regulate stormwater runoff and design controls as well.

Some municipalities have adopted ordinances that specifically protect wetlands and limit development in wetlands. These ordinances sometimes contain more restrictive limitations than the statutes and ordinances discussed above.

Wetlands ordinances

Typically, a wetlands ordinance will designate protected wetlands, usually by a map, although these designations can be contested. The ordinance may establish minimum lot sizes within wetland areas and required setbacks for buildings and septic systems. Some activities may be wholly prohibited in the wetlands (for example, disposal of waste materials), while others are generally allowed (for example, residential lawns). Generally, permits can be applied for

to conduct a variety of activities that alter wetlands (for example, dredging or filling) under conditions set forth in the ordinance. Public notice and hearing may be required for the issuance of such permits.

Some ordinances require replacement of destroyed wetlands.

To determine whether your locality has a wetland ordinance, contact the local planning commission, building codes official, zoning official, or town manager. If your locality does not have such an ordinance, consider trying to get one passed. Municipalities that have implemented strong ordinances are Chanhassen, Mounds View, Minnetonka, and Mahtomedi.

Acknowledgements

Grateful acknowledgement is given to the many individuals who reviewed this publication: Ted Rockwell, U.S. Environmental Protection Agency; Steve Eggers, U.S. Army Corps of Engineers; Tom Landwehr and Doug Norris, Minnesota Department of Natural Resources; Greg Larson and Bruce Sandstrom, Minnesota Board of Water and Soil Resources; Marilyn Lundberg, Minnesota Environmental Quality Board; John Thomas, Judy Bosorum, and Howard Markus, Minnesota Pollution Control Agency; Allen Dornfeld, Valley Branch Watershed District; John Olinger, Mahtomedi City Administrator; Gary Oberts, Metropolitan Council; Sarah Anderson and D'Wayne DeZeil, Minnesota Association of Soil and Water Districts; Dick Osgood, Freshwater Institute; Ann Robinson, Isaak Walton League; Kathy McGill and Carol Weissner, Project Environment Foundation; and National Audubon Society staff members and volunteers Liz Raisbeck, Steve Sedam, Don Arnosti, Alice Winsor, and David Stamps. ¶ This publication is a project of Minnesota Audubon Council's Wetlands Program, directed by Cheryl Miller, with the assistance of Keri Schwab. Thanks are given to Will Powers for designing and managing production of this publication; to Susan Conrad for the artwork; to Theresa Hudoba for copyediting; and to Rebecca Sterner for publication advice. Special thanks are also given to the many Audubon members whose ideas and efforts have shaped the Wetlands Program, especially Ginny Black, Nancy Goetzinger, Jeanne Henderson, Jill Jacoby, Alan Kuentz, Dick Reynolds, Dorothy Waltz, and Fred Waltz.

WETLAND ACTIVITIES AND GOVERNING LAWS

Some laws protect wetlands by controlling how and for what purpose a wetland may be altered. Others divide authority for specific wetland issues among regulatory agencies that specialize in those issues.

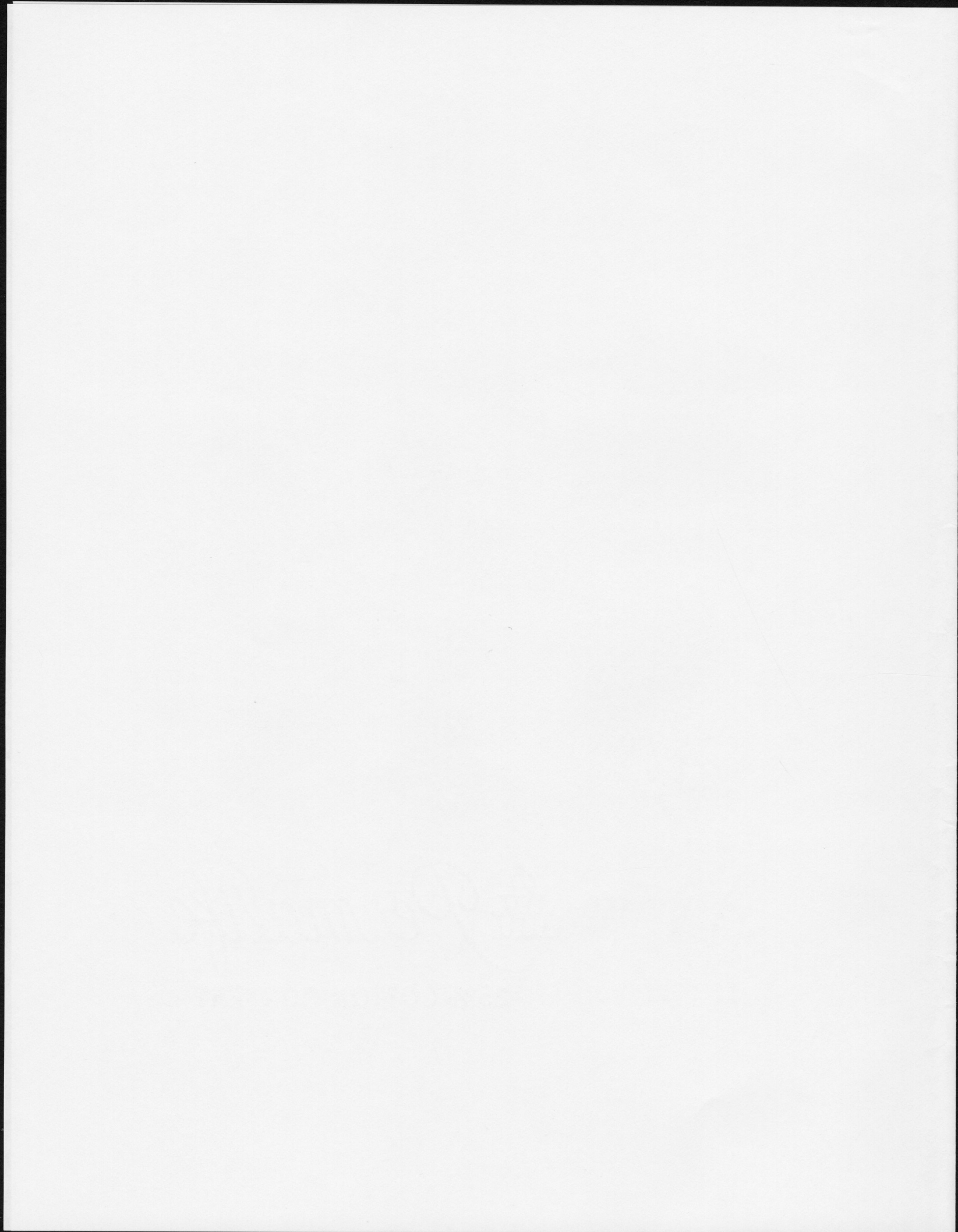
The accompanying chart sets out activities that may adversely affect a wetland and the laws and regulations that may limit and regulate those activities. The primary and potential reach of each statute is set out. The primary reach indicates the focus of the statute, while the potential reach indicates activities that may be regulated depending on the scope and mode of a proposed project. With respect to both primary and potential reach, however, the jurisdictional coverage of the statute, exemptions for certain activities and the particular type of project contemplated by a landowner or developer may make the statute inapplicable.

✕ PRIMARY reach of law

✕ POTENTIAL reach of law

ACTIVITY	Filling Wetland	Draining Wetland	Excavating/ Manipulation	Diverting Water	Clearing Vegetation*	Flooding Wetland	Adding Nutrient-laden Water	Introducing Toxins	Altering for Agricultural Use	Design / Repair Drainage System	Impact on Endangered Species
LAW											
FEDERAL											
Clean Water Act Section 404	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Rivers and Harbors Act	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
Swampbuster	✕	✕	✕	✕	✕	✕			✕	✕	
Endangered Species Act	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
STATE											
Public Water Law	✕	✕	✕	✕	✕	✕					
Wetlands Conservation Act	✕	✕	✕	✕		✕			✕	✕	
Water Quality Standards	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕	✕
LOCAL											
Metro Surface / Comprehensive Local Water Management	<i>These Acts potentially impact a variety of these activities, depending on local implementation.</i>										
Watershed Plans and Regulations											
Shoreland/Flood-plain Ordinances	✕	✕	✕	✕	✕	✕					
Drainage Code		✕							✕	✕	
Municipal zoning ordinances	✕	✕	✕	✕	✕	✕					
Stormwater and wastewater ordinances							✕	✕			
Wetlands ordinances	✕	✕	✕	✕	✕	✕	✕	✕	✕		

* If soil is redistributed.





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DATE: March 17, 1993

TO: Board of Water and Soil Resources Members, Advisors,
and Staff

FROM:  Ronald D. Hannack, Executive Director

SUBJECT: March 24th Meeting

The Board of Water and Soil Resources will meet on Wednesday, March 24, 1993, beginning at 9:00 a.m. The meeting will be held in the Ramsey Room at the Ramada Hotel, 1870 Old Hudson Road, St. Paul (I-94 and White Bear Avenue). Parking is available on the west end of the building. The agenda and informational materials are enclosed for your review.

SUMMARY OF AGENDA ITEMS

A: LEGISLATIVE UPDATE

- Reorganization: There are three bills that deal with reorganization of environmental agencies including BWSR. Each of them eliminate the BWSR and place the programs and staff in either the Department of Natural Resources (DNR) or the Department of Agriculture (MDA). The three bills provide for an advisory committee representing local government to advise the Commissioner of Natural Resources or the Commissioner of Agriculture on issues relating to local government. All rulemaking of the BWSR are transferred to the new agency including; wetland rules, water planning rules, cost-share rules and conflict resolution rules. All policy making authority of the BWSR is transferred to the Commissioner's of the DNR or MDA. There have not been any hearings on the bills to date. However, it is appropriate for the Board to discuss these issues and direct a strategy for responding to these bills.

DISCUSSION & ACTION.

- Wetland Conservation Act (WCA): Several bills have been introduced that would amend the WCA. Specifically, the current bills would: a) extend the interim program for six months: This extension is appropriate to allow BWSR to complete training for wetland delineation and administrative training for the new rules and to eliminate the confusion with projects during the middle of the construction season; b) to eliminate the requirement for 2:1 mitigation in any area of the state: Staff has opposed this state-wide change. An alternative that has been discussed is applying this change only to the counties with 80% of the presettlement wetlands existing except for cities of the first and second class in this area

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(see map in rules); c) modifying the aquaculture exemption to be the same as the other water dependant exemption for wildrice: Staff has not objected to this change as it seems to have minimal policy or wetland impact; d) make some technical amendments to the public road exemption: The change would add repair as part of the exemption and make it consistent with other exemptions that reference maintenance and repair. **DISCUSSION & ACTION.**

B: SNAKE RIVER JOINT POWERS AGREEMENT (JPA) (WATERSHED DISTRICT PETITION)

The counties, soil and water conservation districts, petitioners, and BWSR staff have been meeting frequently in an attempt to craft a JPA that would facilitate the resolution of the petition. It appears that the JPA may not be acceptable to some of the counties or BWSR staff and continuation of the petition process may be appropriate. The counties have a couple more meetings prior to the BWSR meeting to formalize their respective positions. The Board gave the counties till the March meeting to finalize an effective JPA. If all the counties do not endorse the JPA or the JPA does not meet the requirements of the Board it would be appropriate to direct staff to continue the petition process. If the counties endorse and acceptable JPA the Board may direct staff to work with the petitioners to have the petition withdrawn. **DISCUSSION & ACTION.**

C: EDUCATION UPDATE:
See attached information.

D: DAKOTA GROUNDWATER PLAN

Dakota County has completed their groundwater plan and submitted it for review and approval by the Board. **ACTION.**

E: MINNESOTA ASSOCIATION OF WATERSHED DISTRICTS: Al Dornfeld, Manager with the Valley Branch Watershed District has asked for some time to respond to correspondence to the Board regarding the activities of the District. **INFORMATION AND DISCUSSION.**

F: COST-SHARE ALLOCATIONS

The Board has previously received detailed information regarding the extent of the requests and the availability of funds. Staff have worked with applicants to clarify project proposals and related costs. These efforts have resulted in staff recommendations for funding (see attached). **DISCUSSION & ACTION.**

G: COST-SHARING ON FEEDLOTS

Recent enforcement initiatives by the DNR and PCA regarding feedlots has raised the question of the policy of the BWSR on cost-sharing projects where the landowner is being

BWSR Members, Advisors, and Staff
March 17, 1993
Page Three

criminally prosecuted or under administrative penalty of an agency. The Attorney General's Office has asked BWSR for a position on these types of issues. Staff has suggested three alternatives for consideration by the Board (see attached). **DISCUSSION & ACTION.**

H: FEEDLOT ENFORCEMENT INITIATIVE

DNR and PCA will review recent initiatives regarding feedlot enforcement. In your packet is some background regarding processes and procedures of these agencies with respect to enforcement. BWSR staff has been participating on joint committee with other state agencies relating to these initiatives. The focus has been the Minnesota River basin and coordinating state efforts in addressing polluting feedlots specifically and pollution in general. **INFORMATION & DISCUSSION.**

If you have any questions regarding items or need additional clarification, please feel free to call. Travel safely, I look forward to seeing you on the 24th!

RDH:mja

Enclosures:

Snake River Joint Powers Agreement
Dakota County Groundwater Plan
Cost-Share Feedlots
Cost-Share Roll-Over Applications

**BOARD OF WATER AND SOIL RESOURCES
RAMADA HOTEL - RAMSEY ROOM
1870 OLD HUDSON ROAD
ST. PAUL, MINNESOTA 55119
MARCH 24, 1993**

PRELIMINARY AGENDA

- | | |
|------------|--|
| 9:00 a.m. | 1. Call to Order |
| | 2. Adopt Agenda |
| | 3. Approve Minutes of February 24, 1993 |
| | 4. Reports <ul style="list-style-type: none">● Chairman's Report - Jim Nielsen● Executive Director's Report - Ron Harnack |
| 9:30 a.m. | 5. Legislative Update - Ron Harnack <ul style="list-style-type: none">● Reorganization● Wetlands |
| 10:00 a.m. | 6. Snake River Joint Powers Agreement - Ron Harnack |
| 10:30 a.m. | 7. Education Report - Barbara Liukkonen |
| | 8. Dakota County Groundwater Plan - Barbara Ohman |
| | 9. MAWD Comments to Correspondence to BWSR Regarding Watershed District Activities - Al Dornfeld |
| Noon | Lunch |
| 1:00 p.m. | 10. Cost-Sharing Feedlots - Chuck Niska |
| | 11. Cost-Share Roll-Over Applications - Chuck Niska |
| 1:30 p.m. | 12. Feedlot Enforcement <ul style="list-style-type: none">● Pollution Control Agency● Department of Natural Resources |
| | 13. G.I.S. Initiatives - Doug Thomas, BWSR; Tim Loesch, LMIC; and Rick Gelbman, DNR |

14. Advisor Comments

- Marlin Libbesmeier, MAT
- John Sumption, MACDE
- Gary Nordstrom, SCS
- Pat Wulff, MLA
- Howard Peterson, MAWD
- Allan Oehlke, MASWCD

15. Board Issues - discussion, comments, action needed

3:00 p.m.

Adjourn



March 12, 1993

TO: BWSR Board Members

FROM: Chuck Niska, Grants Coordinator

RE: Cost Share Program Roll Over Recommendation

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Enclosed is the information regarding the staff recommendation for the funding of Cost Share Program Roll Over applications. As you can see, we have decided to fund a number of animal waste systems around the state, as well as a number of projects that are a priority to the BWSR as well and other state agencies, including the Office of the Governor.

While there is simply not enough funding available to fulfill all of the applications received, we will consider some of them later, when Fiscal Year 1994 funding is available, and will provide partial funding to other projects (see the accompanying handout).

Of note is the fact that we are still awaiting word from potential funding sources for some of the projects we recommend to fund at this time. If this funding arrives, we will be providing additional money to those projects with only partial funding. By the 24th, we will know the status of all funding, so that a recommendation can be delivered to you for its approval.

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COST SHARE ROLL OVER FUNDING RECOMMENDATION

PROJECTS TO FUND IMMEDIATELY

District	Project Description	Request Total
Brown	Mound Creek animal waste control system	\$18,750
Carlton	Bevis group critical area stabilization	\$ 3,928
Clay	Buffalo River stabilization Project	\$21,350
Cottonwood	Gullickson Animal waste control system	\$23,756
Cottonwood	J. Gode Animal waste control system	\$15,000
Cottonwood	S. Gode Animal waste control system	\$15,500
Dakota	Sediment control systems	\$27,750*
Kanabec	Animal waste control system	\$ 3,000
Lac Qui Parle	Terrace reconstruction	\$ 5,666
Lake	Lake Superior erosion control	\$27,237
Mahnomen	Animal waste control system	\$ 6,384
Morrison	Three animal waste control systems	\$ 8,500
Mower	Terrace installations	\$ 4,500
Mower	Side inlet installations	\$ 9,375
Mower	Grass waterway installation	\$ 2,925
Mower	Grass waterway installation	\$ 2,700
Nobles	Terrace installations	\$ 7,000
Olmsted	Terrace installations	\$10,830
Pennington	SLR Project installation	\$ 450
Pennington	Side inlet installations	\$ 6,753
Rice	Erosion control structure installation	\$18,016*
Rice	Sediment basin installation	\$ 5,025*
Rice	Terrace installation	\$ 4,125*
Rice	Sediment basin installation	\$ 5,325*
Rice	Ag waste system installation	\$13,338
So. St. Louis	Baker Lake Superior erosion control	\$20,000
Scott	Ag waste sytem installation-Feldman	\$10,000
Scott	Ag waste system installation-Schoenbauer	\$10,000
Scott	Hutchinson grade stabilization	\$10,000
Traverse	Field windbreak installation	\$17,130*
Wabasha	Erosion control structure installations	\$ 4,450
Wadena	Old Wadena Park bank stabilization	\$ 2,000
Watonwan	Water and sediment control basin	\$ 1,800

TOTALS

\$342,653

Amount of funding available:

\$287,748

*Provide partial funding to these projects, the amount of which will be negotiated with the SWCD.

ROLL OVER APPLICATIONS TO BE CONSIDERED FOR FUNDING FROM OTHER PROGRAMS

District	Project Description	Request Total
Anoka	Sand Creek shoreline stabilization	\$10,040
Carver	Site stabilization on Bevens Creek	\$22,500
Cook	City of Grand Marais diversion	\$ 2,013
Lac Qui Parle	Bookkeeping error	\$ 2,000
Lyon	Yellow Medicine River stabilization	\$33,333
Pennington	SLR Project installation	\$10,000
Pennington	SLR Project installation	\$ 8,075
Ramsey	Work Farm gully stabilization	\$10,000
No. St. Louis	Sand Lake shore stabilization	\$11,667
Scott	Menke SLR project installation	\$ 7,500
Wright	Stormwater control system installation	\$12,000

APPLICATIONS NOT RECOMMENDED FOR FUNDING

Blue Earth	Nienow animal waste control system	\$45,070
Koochiching	Stacking slab installation	\$13,656

FEEDLOT INFORMATION

A. Cost per System: Ranges from \$35

Comments: While \$35,000 is an average, this figure can go up to \$100,000 (due to special needs or on-site construction factors necessary).

B. Time spent per system: 160 man-hours

Comments: This includes the total time to go from the on-site needs assessment to the check of construction, including design plan and design work for the site.

C. i. Numbers of Feedlots: 40,000 to 50,000

Comments: According to Brad Matlack, there aren't good numbers available to pin this down further for a particular region or area of the state.

ii. Numbers of High Priority Feedlots in Area 5: Over 1000

Comments: The numbers provided are very rough at best, are relatively incomplete (not all county's numbers are included), and the information is years old (some circa 1980) in some cases, where it is provided.

Review of the Manure Management System applications for funding through the Cost Share Program Roll Over process indicates that all systems have been ranked as a high priority for funding by the sponsoring soil and water conservation district. This is based on either the proximity of the existing feedlot to a surface water, wetland or DNR-designated Protected Water or Wetland, or through the projection of the existing feedlot's contribution of pollution to either surface or groundwater sources through the feedlot evaluation model FLEVAL.

RONI I WON'T BE IN UNTIL 11:30 OR SO - THIS IS ON MY DIRECTOR'S AS FEEDER-RDH. IF YOU NEED CHANGES MADE, I'LL BE HERE FOR THE REST OF THE DAY, THEN BE GONE TO THE NPS CONFERENCE AFTER...

ea,
3/16/93

FEEDLOT INFORMATION

A. Cost per System: Ranges from \$35,000 to \$70,000

Comments: While \$35,000 is an average for the SW Minnesota area, this figure can go up to the higher end if there are special needs or on-site problems (e.g., a high water table) encountered. Obviously, where designs and construction factors necessitate, costs rise.

B. Time spent per system: 160 man hours per system

Comments: This includes the total, for an experienced person, to go from the on-site needs assessment to the final check of construction, including doing the survey, plan and design work for the site.

C. i. Numbers of Feedlots: 40,000 to 50,000 statewide.

Comments: According to Brad Matlack, there aren't good numbers available to pin this down further for a particular region or area of the state.

ii. Numbers of High Priority Feedlots in Area 5: Over 1000

Comments: The numbers provided are very rough at best, are relatively incomplete (not all county's numbers are included), and the information is years old (some circa 1980) in some cases, where it is provided.

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MPCA Process for Dealing with Feedlot Violations

- Step 1. MPCA meets with, or otherwise corresponds with the landowner. Usually this includes a site visit and investigation. Information about the violation is and options available to the landowner/operator are transmitted in this step, and in step 2.
- Step 2. A letter of enforcement is sent to the landowner. This is a follow-up with the landowner.
- Step 3. A notice of violation is sent to the landowner. This triggers the ASCS policy to discontinue cost sharing with the landowner/occupier.
- Step 4. An Interim Permit is issued to the landowner, allowing him/her to continue operating, along with an order to construct a properly functioning manure management system within said interim, normally a 10 month period of time, but potentially for a longer period.

Usually at this point, if sufficient compliance activity has occurred, a Certificate of Compliance is issued to the landowner, and they're able to operate as usual. Otherwise, the list of activities continues.

- Step 5. If an insufficient amount of activity to rectify the problem has occurred in the time after the Interim Permit is issued, the MPCA issues an Administrative Penalty Order. This can be for 2 different types of offenses, Forgivable and Unforgivable penalties. This can take the form of a monetary fine.
- Step 6. A Stipulation Agreement may be negotiated between the state and the landowner, in which the points of violation for which the landowner has been cited have been resolved.
- Step 7. An Administrative Order, issue by the MPCA Board, has been provided to the landowner.
- Step 8. Civil Litigation actions are taken against the landowner.
- Step 9. Criminal Litigation actions are subsequently taken against the landowner.

Ultimately, through this process, the landowner is issued a Certificate of Compliance only when a Manure Management System is properly installed.

DNR Process for Dealing with Feedlot Violations

A Conservation Officer (CO) makes a field visit to a site where a violation has occurred. The past history, knowledge and intent of the landowner is taken into account by the CO during this visit.

- Step 1. Either a Verbal or Written Warning is issued to the landowner during this visit. Usually this is verbal.
- Step 2. If the landowner is uncooperative during this visit, a Long Form Complaint (Ticket, or Citation) is issued to the landowner. The aftermath of this issuance includes a trip to court, with the result being either a jury trial, a judge's ruling on the matter, or a plea determination being made by the landowner in question. In those cases where the landowner is found guilty of being outside of compliance with the State Statute, a monetary fine, and/or a jail sentence is imposed as a part of the penalty to be paid.
- Step 3. If Step 2 is not done immediately, or if no subsequent actions are taken on the part of the landowner, the CO has the ability to bring the Long Form Complaint to the County Attorney, who will then issue a formal Complaint against the landowner. This will then be issued to the landowner, who must respond through the court system.

In either Step 2 or Step 3, the landowner will be expected to work with the appropriate entities necessary to correct the problem of having a non-complying Manure Management System, along with paying whatever civil and criminal penalties necessary.

Both the DNR and MPCA have the statutory authority to issue either a citation or notification of enforcement to a landowner. The two agencies recently renewed an interim Memorandum of Understanding between the parties, so as to establish consistency in issuing such notices to the landowner found to be in violation of State statute.

BWSR Policy Options in Funding Manure Management Systems

Option 1

WHEREAS, the State of Minnesota has made available, through the Board of Water and Soil Resources' administered Cost Share Program, funding for the purpose of sharing in the cost of installation of manure management systems which will prevent or minimize the degradation of soil and water resources, as well as protecting the health and safety of the public; and

WHEREAS, landowners participating in the Cost Share Program are expected to act in good faith, complying with all state and local resource protection and conservation agencies' statutes and ordinances.

NOW, THEREFORE, BE IT RESOLVED, that the BWSR will work with state and local agencies, on a case-by-case basis, to ensure that only those landowners working in compliance with state and local agencies to install properly functioning manure management systems will be eligible to receive BWSR administered Cost Share Program funding.

Option 2

WHEREAS, the State of Minnesota has made available, through the Board of Water and Soil Resources' administered Cost Share Program, funding for the purpose of sharing in the cost of installation of manure management systems which will prevent or minimize the degradation of soil and water resources, as well as protecting the health and safety of the public; and

WHEREAS, the Minnesota Department of Natural Resources and Pollution Control Agency are required to enforce state statutes regarding improper disposal of animal manure; and

WHEREAS, landowners found to be in violation of manure management statutes are required to voluntarily comply with state and local ordinances regarding manure management, or be subject to civil and criminal penalties.

NOW, THEREFORE, BE IT RESOLVED, that the BWSR will consider landowners facing either civil or criminal action being taken by either the DNR or MPCA to be ineligible to receive Cost Share Program funding for the purpose of installing a manure management system.

Option 3 (BWSR Staff Preferred Option)

WHEREAS, the State of Minnesota has made available, through the Board of Water and Soil Resources' administered Cost Share Program, funding for the purpose of sharing in the cost of installation of manure management systems which will prevent or minimize the degradation of soil and water resources, as well as protecting the health and safety of the public; and

WHEREAS, the Minnesota Department of Natural Resources and Pollution Control Agency are required to enforce state statutes regarding improper disposal of animal manure; and

WHEREAS, landowners found to be in violation of manure management statutes are required to voluntarily comply with state and local ordinances regarding manure management, or be subject to civil and criminal penalties.

NOW, THEREFORE, BE IT RESOLVED, that the BWSR will work with the appropriate state agencies and the local soil and water conservation district to determine the eligibility of a landowner to receive State Cost Share Program funding to install a manure management system. This work will take into account the knowledge and intent of the landowner, as well as the severity of the violation of state and local statutes and ordinances related to manure management.

DRAFT

Minnesota Board of Water and Soil Resources
Southbridge Office Building
155 South Wabasha, Suite 104
St. Paul, Minnesota 55107

In the Matter of Reviewing the Ground Water Protection
Plan for Dakota County
(Minnesota Statutes Section 103B.255)

ORDER APPROVING
GROUND-WATER
PLAN

Whereas, the Dakota County Board of Commissioners submitted a Ground Water Protection Plan (Plan) to the Minnesota Board of Water and Soil Resources (Board) on October 26, 1992 pursuant to Minn. Stat. 1990, 103B.255, and

Whereas, the Board has completed its review of the Plan,

Now Therefore, the Board hereby makes the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. On June 5, 1990, Dakota County passed a resolution accepting a grant to develop a Ground Water Plan.
2. Chapter 103B.255 authorizes and encourages counties in the 7-county metropolitan area to develop and implement ground-water plans.
3. Dakota County completed a draft Plan in April of 1992, and submitted it to affected local units of government for review and comment pursuant to Section 103B.255 Subd. 8.
4. On May 21 and June 5, 1992, Dakota County held public meetings on the Plan for the purpose of obtaining public input into the Plan.
5. On October 26, 1992, Dakota County submitted its Plan to the Board, the Departments of Health, Natural Resources and Agriculture, the Pollution Control Agency, the Minnesota Geological Survey, and the Metropolitan Council for review and comment.

6. **Minnesota Pollution Control Agency Review:** On December 22, 1992 the Minnesota Pollution Control Agency (MPCA) provided written comments on the Plan. In its final comments the MPCA recommended approval of the Plan.

In (February, 1993), Dakota County responded in writing to the MPCA on its Plan review comments.

7. **Minnesota Department of Natural Resources Review:** On December 17, 1992 the DNR Waters Division provided written comments on the Plan.

In (February, 1993), Dakota County provided written comments to DNR on its Plan review comments.

8. **Minnesota Department of Health Review:** On March 2, 1993, the Minnesota Department of Health (MDH) provided written comments on the Plan.

On (March 3, 1993), Dakota County provided written comments to MDH on its Plan review comments. The County stated that all changes recommended or required by MDH would be incorporated into the final plan.

9. **Minnesota Department of Agriculture Review:** On June 25, 1992 and January 4, 1993, the Minnesota Department of Agriculture (MDA) provided written comments on the Plan. In its final review dated January 4, 1993, MDA provided comments related to inconsistencies with Minnesota statutes, recommended minor changes, and recommended future amendments or programs the County may wish to consider in future Plan amendments. In its final comments MDA found no inconsistencies with current law and rule.

In February, 1993, Dakota County responded in writing to the MDA on its Plan review comments. The County stated that all changes recommended or required by MDA would be incorporated into the final plan.

10. **Minnesota Geological Survey Review:** On December 21, 1992, the Minnesota Geological Survey (MGS) provided written comments on the Plan. MGS reviewed the Plan for accuracy of the text on geology and ground water described in the Plan. MGS identified a number of suggested additions, changes, and corrections. MGS provided specific guidance in making better use of ground water and geologic data.

In February, 1993, Dakota County provided written comments to MGS on its Plan review comments.

11. **Metropolitan Council Review:** On January 12, 1993, the Metropolitan Council provided written comments on the Plan. In its comments, the Council expressed concern that the Plan needed to provide more specific guidelines and implementation

schedules to local government, as well as inconsistencies with the Council's sewer system plan, and recommended some changes. The Council's comments stated that the Plan should not be approved by the Board until necessary changes were made.

In February, 1993, Dakota County provided written comments to the Metropolitan Council on its Plan review comments. The County stated it would include the recommended changes.

Contingent upon the County's making the necessary changes, on February __, 1993, the Metropolitan Council, at its regular meeting, voted to recommend to BWSR that the revised plan be approved.

12. **Minnesota Board of Water & Soil Resources Review:** On January 11, 1993, the Minnesota Board of Water & Soil Resources (BWSR) provided written comments to the County on its preliminary Plan. The comments suggested changes or additions to the Plan on a variety of issues, including the Plan implementation program and technical and editorial comments.

In February, 1993, Dakota County responded in writing to the Board on its Plan review comments.

13. **County Response to Agency Comments:** Dakota County, in its final Plan submitted to the Board on March 22, 1993, made all the changes deemed necessary by the Board staff review of January 11, 1993. Dakota County also made numerous changes to the Plan as a result of Agency and local comments.

14. The Board reviewed the Plan for conformance with the requirements of the Metropolitan Water Management Act at its March 24, 1993 regular meeting.

CONCLUSIONS

1. All relevant requirements of law have been fulfilled. The Board has proper jurisdiction in the matter of approving a Ground Water Protection Plan of Dakota County, Minnesota, pursuant to Minn. Stat. 103B.255.
2. The Dakota County Ground Water Protection Plan attached to this Order:
 - (a) covers the entire county area;
 - (b) describes existing and expected changes to the physical environment, land use, and development in the county;
 - (c) summarizes available information about ground water and related resources in the county;
 - (d) states the goals, objectives, scope, and priorities of groundwater protection in the county;

- (e) contains standards, criteria, and guidelines for the protection of ground water from pollution and for various types of land uses in environmentally sensitive areas, critical areas, and previously contaminated areas;
- (f) describes relationships and possible conflicts between the ground water plan and the plans of other counties, local units of government, and WMO's in the affected ground water system;
- (g) sets forth standards and guidelines for the implementation of the plan by WMO's and local units of government;
- (h) includes a procedure for amending the plan,

as provided in Minnesota Statutes Chapter 103B.255.

ORDER

The Board hereby approves the attached Plan as the Ground Water Protection Plan of Dakota County. Dated at St. Paul, Minnesota, this 24th day of March, 1993.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: D. James Nielsen
Chairman

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