Minnesota Board of Water and Soil Resources. Minutes.

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Minnesota Board of Water & Soil Resources

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DATE: April 18, 1994

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

FROM: Ronald D. Harnack, Executive Director

SUBJECT: April 27th BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, April 27, 1994, beginning at 9:00 a.m. The meeting will be held at the Country Inn in Woodbury, I-94 and Century Avenue exit, (see attached map). The agenda and informational materials are enclosed for your review.

AGENDA SUMMARY FOR APRIL BOARD MEETING

* **COST-SHARE FUNDING FOR SUCKER BAY EROSION PROJECT:** BWSR has been working with several landowners in the investigation, survey and design alternatives for controlling severe erosion on these properties. We have cost-shared in some of the engineering investigations and reports. The final designs are complete and bidding has been done. The costs will exceed our initial projections and additional cost-share $'s are requested. Al Kean's report provides the background for the project. This request is outside the normal grant period, however, every now and then unique circumstances suggest special consideration. The Board has the authority to act on these special requests as it deems appropriate. This project is a high priority erosion area; has leveraging of federal funds; requires a full construction season to complete; and landowners and contractor are ready to start. Therefore, the staff recommends approval of the additional funds for this project. **DECISION ITEM.**

* **AUTHORIZATION FOR BWSR CHALLENGE GRANTS:** The BWSR in the past few years has authorized challenge grants annually or biannually depending on the amount of $'s available. $'s for challenge grants come from the local water management implementation grants funds that are left over after the base grants have been allocated. The grants are intended to expand or accelerate priorities or address unique water issues identified as priorities in the local water plans. Doug Thomas's attachment provides background and criteria for the program and $'s available for the challenge grants. **DECISION ITEM.**

* **JESSEN APPEAL, ORDER TO REMAND & DISMISS APPEAL:** The negotiation on this appeal was not successful, however the Watershed District has agreed to rehear the matter and to establish a formal record of decision. The Board has options to:
1) conduct a formal hearing on the appeal and establish a record of decision; or
2) remand the matter back to the watershed district to rehear the permit application and establish a record of hearing. Since no formal record was established by the watershed district the Board would have to hear the matter as if no decision had been made. The guidelines suggest that if no record is available on permit decisions that the Board remand. An order to remand and dismiss the appeal is attached for review. If after rehearing and record of decision, the landowners are not satisfied they could still appeal and the Board would have a record on which to make a decision. Staff recommends adoption of the order as drafted. **DECISION ITEM.**

* **RIM RESERVE/PWP ADMINISTRATIVE RULE ENDORSEMENT:** Last month staff provided an overview of the status of the RIM Reserve retooling and the RIM Reserve rule amendments. This month we will provide more detail of the rule amendments and ask that the Board endorse the rules for the rule making process. It is our desire to achieve a non-controversial rule making. However, if a formal hearing is requested it is our intent to have the rule amendments process completed by the fall 1994 RIM Reserve sign-up. The attached draft reflects input from meetings with SWCD supervisors and employees and conservation groups. Additional review with these organizations will be realized during the public review process for rule-making. Staff recommends adoption of the draft rules for public notice. **DECISION ITEM.**

* **BIG FISH LAKE, STEARNS COUNTY, WETLAND EXPERIENCE, MR. & MRS. JOE PETERS, LANDOWNERS, AND BOB MOLSTAD, WATERSHED DISTRICT:** The Peters' have been involved in a situation relating to an access lane to the lake adjacent to their property that involves a natural drainage for a tributary watershed area and some wetlands. The matter has been reviewed by the county, the watershed district, the DNR, the BWSR and the Peters' feel that all the reviewing agencies have ignored the lake concerns that they have raised. They have requested some time before the Board to review with you some of their frustrations with the bureaucracy. Attached is some of the information that was available for the mailing. **INFORMATION & DISCUSSION.**

* **MINNESOTA RIVER WRAP-UP:** The last two months the Board has heard from Greg Payne, USGS, and Tim Koehler, SCS regarding their findings and conclusions relating to the Minnesota River Assessment Project (MNRAP). This month we would like to complete the series of presentations with the MPCA, who has the lead responsibility for the assessment, summarize their findings, conclusions and recommendations. Greg, Tim and Jeff Nielsen will also be available to participate in the discussion with MPCA. An executive summary of MNRAP is attached for your review. **INFORMATION & DISCUSSION ITEM.**

*** LEGISLATIVE UPDATE:**

BUDGET ISSUES: The following is a summary of the status of funding initiatives relating to BWSR:

PROGRAM	HOUSE	SENATE
Bonding		
RIM	$ 10,000,000	$ 10,000,000
PWP	$ 2,000,000	$ 1,000,000
AREA II	$ 325,000	$ 1,625,000
Supplemental		
SRF	$ 1,280,000	$ 730,000
Ground Water	-0-	$ 160,000

Since all the appropriations vary between the House and the Senate, conference committees will be appointed to work out the differences. By the Board meeting we will have a pretty good idea of what will and will not be funded.

POLICY LEGISLATION: The following is a summary of the status of policy legislation relating to BWSR interests.

Wetlands: The wetland amendments have passed all House committees and is waiting House floor action. The bill is authored by Representative Willard Munger. No new appropriations have been authorized in the House. The wetlands bill by Senator LeRoy Stumpf is in Senate Finance Committee for consideration. Funding amendments are anticipated in the Senate. Attached is a summary of the two bills and the funding that was originally proposed, but deleted from both bills. The activities authorized by the bill could be done under the PWP authorization of bonding.

Metro Appointment of SWCD Supervisors By County Boards: Passed the Senate with only three nay votes. Attached is a copy of the vote from the Senate Journal. The bill has not progressed in the House and therefore is dead unless some House rules are suspended that would allow for the House to take some action. Representative Jean Wagenius, the author, has no plans to push the bill in the House.

OTHER TRACKING: Attached is additional information on bills that we have been tracking and their status.

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

RDH:mja
Enc.

WOODBURY (St. Paul)

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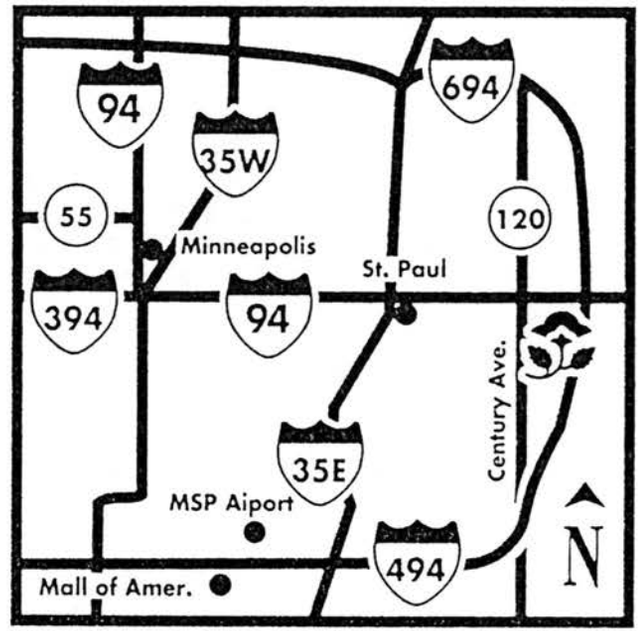
Points of Interest: Mall of America 18 mi.; Downtown St. Paul 4 mi.; Downtown Minneapolis 14 mi.; Mpls/St. Paul Int'l. Airport 20 mi.; Treasure Island Casino 45 mi.; outlet shopping center 3 mi.; 3M World Headquarters .5 mi.



DATE: April 13, 1994
Revised April 15, 1994

TO: BWSR Board Members

FROM: Al Kean, Chief Engineer AmK

SUBJECT: Cost-Share Funding for Sucker Bay Shoreline Stabilization Project

BACKGROUND

The subject project is located along the North Shore of Lake Superior in St. Louis County, approximately 15 miles north of Duluth. This project involves four property owners with a total of 1,120 feet of shoreline. The 60 to 70-ft. high clay and silt banks along the shoreline are sloughing massively and contributing large quantities of sediment to Lake Superior each year. This project was initiated by the landowners in 1992 in cooperation with the So. St. Louis SWCD and BWSR.

The So. St. Louis SWCD submitted an SLR application for this project in 1993. The application was not recommended for funding by the Grants Team at that time because the proposed design was substantially incomplete at the time, and landowners' capability to fund 50% was in question. It was recognized that once a design was approved the project would be funded by matching $'s from EPA/GLC, the landowner and BWSR.

The design for this project has since been substantially completed and the landowners have expressed their capability to fund 50%. Technical and administrative assistance for project design has been provided by BWSR staff, So. St. Louis SWCD staff and local engineering consultants. American Engineering and Testing, Inc. was hired by the landowners to conduct soil boring and testing and to design a rock toe buttress. I designed the armor stone for the buttress, and LHB Engineers prepared the plans and specifications.

The total cost of borings, testing and engineering services hired by the landowners to date is $19,678. The BWSR has provided 50% cost-share for these professional services using EPA and Great Lakes Commission (GLC) grant funds.

Construction bids for the rock toe buttress were sought in March 1994. The low bid for this primary phase of the project was approximately $160,000. A secondary phase of the project design will be a surface and upper groundwater diversion system estimated to cost approximately $15,000. A surety bond will also be required of the construction contractor, at an estimated cost of $3,000. Therefore, the total project construction cost estimate is $178,000 (50% = $89,000). We intend for construction inspection to be performed by the BWSR's recently hired lakeshore engineer. At this time, we have $60,000 of a $65,000 GLC grant reserved for this project. The effective period for this grant is through September 1994.

REQUEST TO THE BWSR BOARD

Additional cost-share funding in the amount of $89,000 - $60,000 = $29,000 is requested for the So. St. Louis SWCD to enable the landowners to hire a contractor early in this construction season and, thereby, ensure construction completion by the end of the associated GLC grant period. This request would fulfill the state's commitment to the construction of the project. The proposed source for this additional funding is Roll Over / Special Project funds. Special Project cost-share funds available for FY 95 = $146,100. The current balance of Roll Over funds is $111,737.

CRITICAL CONSIDERATIONS

- The project site is located within a high priority reach of eroding shoreline, as defined by a North Shore Management Board study.
- One of the landowners cannot install a required septic system replacement until the shoreline is stabilized, and another is required to stabilize the shoreline soon to fulfill prior permit conditions.
- Substantial landowner, SWCD, BWSR and federal resources have been invested in this project to date.
- The remaining $60,000 of a $65,000 GLC grant to the BWSR have been reserved for this large project. Alternative projects for use of these funds will not be ready for construction for some time.
- This project is considered to be very high priority by the SWCD and BWSR staff.
- It is BWSR policy that a landowner cannot proceed with construction of a cost-shared project until the Board approves the requested grant allocation.
- No other cost-share grant sources are available at this time.
- The project is consistent with the rules and policies of the BWSR for lakeshore erosion control.
- The limited construction season and timeframe for expenditure of the federal $'s does not permit waiting for the June special project allocation, and still expect construction completion this season.
- We may loose the federal $'s if the project does not proceed in a timely manner. (We've had these funds for about a year and a half while our lakeshore engineering program and this project were developing.)

BOARD ACTION OPTIONS

1. Deny this cost-share allocation request at this time and direct the Grants Team to process this request along with other recent SLR and special project requests.
    - Would risk loosing low-bid contractor and federal $'s.
    - Project may get completed this construction season.
    - Would make project competitive with others during regular allocation.

2. Approve an immediate $29,000 SLR project grant allocation and dispersement from currently available Roll Over / Special Project funds to the So. St. Louis SWCD for construction of the Sucker Bay project.

- Complete state's commitment for match for federal $'s.
- Construction can be completed during this construction season.
- Request is "outside" the normal allocation process.
- Request is unique.

STAFF RECOMMENDATION

Action option 2; because the BWSR is effectively committed to finalizing this high priority project; because the requested $29,000 of state funds will leverage a total of approximately $70,000 of federal funding for Lake Superior sedimentation reduction, which could otherwise be lost; and to most effectively respond to the other critical considerations listed above.

In the future, it may be appropriate for the Board to consider allocating sufficient $'s to leverage available federal $'s so that the Board engineers and district staff can optimize the bidding and letting timeframes for timely construction of these types of projects. We will develop some specific recommendations for future consideration.

LOCAL WATER PLANNING CHALLENGE GRANTS

Background

Authorization for the Board to award local water planning challenge grants dates back to 1989 when the legislature created the program as part of the Groundwater Protection Act. In 1990 BWSR promulgated and adopted rules that govern this grant program.

The purpose of this program is to provide grant moneys to counties and watershed management organizations to assist them in accelerating the implementation of high priority actions in their water plans. Grants are awarded for a two year period.

Currently 86 counties are eligible to apply for and receive challenge grant funds. The one exception is Koochiching County which has yet to complete a county water plan.

Issue

The past biennial budget provided approximately $600,000 for challenge grants. In order to proceed with the grant program the Board needs to authorize staff to announce the program, accept applications, and develop a list of recommended projects for funding based on an inter-agency review committee.

Conclusion & Recommendation

Staff is recommending that this round of challenge grants be administered in conformance with BWSR rules. This would set forth a grant program that would:

1) Be strictly competitive.

2) Allow counties to submit multiple applications.

3) Rank applications using an interagency review committee with scoring being done consistent with established rules.

4) Would require a 1:1 match with the match able to be either cash or in-kind.

5) Would be announced in early May with a 60 day application period.

6) Result in a recommendation of projects to be funded based on ranking for the July Board meeting.

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MEMORANDUM

April 13, 1994

TO: Soil & Water Conservation Districts
Conservation Easement Advisory Group

FROM: David H. Beam, Programs & Policy Analyst

RE: **April 1994 DRAFT revisions to RIM Reserve/PWP Administrative Rule**

The attached "April 1994 DRAFT", the second version that has been mailed to all of you, is being distributed to you for your further review and comment. Following distribution of the February 1994 DRAFT, several substantive additional revisions were offered for consideration. I have incorporated those additional revisions into this April 1994 DRAFT and have identified them on an attachment to this memo. Refer to Minnesota Code of Administrative Rules, parts 8400.3000 - 8400.3930 (1990) for the existing rule language. Underlined text reflects proposed additions to the existing rule; strike-through text reflects proposed deletions to the existing rule.

I have also attached a list to this memo of several issues which will not be addressed in this rule revision; changes to any of these items would necessitate revisions to the statutes *first*.

The April 1994 DRAFT will be presented to the BWSR Board at its April 27 meeting for their endorsement so as to initiate the formal rule revisions process. Based on the absence of concerns raised by SWCDs or the Conservation Easement Advisory Group, I believe it is appropriate to proceed with the formal rule revision process. I intend to suggest to the Board at its April meeting that the rules be adopted without hearing since it appears they are non-controversial. If endorsed by the Board at its April meeting, the rules would likely be noticed in the State Register in May, with formal adoption of the revised rules in August 1994. **However, please note that the proposed effective date for the revised rules would be October 1, 1994. This later date has been selected to ensure that SWCDs have received training on the revised handbook PRIOR to a fall signup and PRIOR to using some of the other new administrative procedures.**

Please direct all comments, written or oral, on the April 1994 DRAFT directly to me. I also encourage you to contact me with any questions you have as you review this document. Feel free to contact your Board Conservationist as well.

Thank you for your consideration and review of the proposed revisions to the administrative rule for the RIM Reserve and PWP easement programs.

cc: BWSR Board Conservationists & Regional Supervisors
BWSR Board members
Ron Harnack
Jim Birkholz
Greg Larson
BWSR Easement Programs staff
Jennifer Park, Assistant Attorney General

Ron Harnack

Substantive Revisions made to FEBRUARY 1994 DRAFT and Incorporated into APRIL 1994 DRAFT

PART (page #, line # of April DRAFT)	ISSUE:
8400.3000, page 1, line 8	Clarify authority of RIM Reserve to enroll "non-cropped" agricultural land (i.e., pastured areas)
8400.3030, page 4, lines 11-13	Add "farmed wetland" definition to clarify the specific type of wetland eligible for 90% easement payment under PWP (refer also to 8400.3530, line 30 on page 21, lines 1 & 7-8 on page 22)
8400.3030, page 6, lines 10-13	Clarify definition of "marginal agricultural land" to incorporate "significant potential environmental impact" (refer also to 8400.3030, lines 6-14 on page 9)
8400.3030, page 8, lines 4-7	Add "restorable drained wetland" definition to clarify that term and its use throughout the rule
8400.3060, page 10, lines 1-3	Add/clarify "applications accepted for enrollment" along with "conservation easements conveyed to the state board" as criteria to determine allocation of funds to SWCDs
8400.3060, page 10, lines 10-11	Add "within a specified geographical area" to clarify that the "need for" soil erosion control, etc., will be determined in a broad scope
8400.3060, page 10, lines 14 & 16	Add "cumulative degree of" and "likely to be accomplished by the enrollment of selected easement areas" to emphasize and clarify: (a) role and significance of conservation easement area assessment forms in selecting easement areas for funding, and (b) to clarify that the soil erosion control, etc., "likely to be accomplished" will be determined on a very localized basis
8400.3060, page 10, lines 20-22	Add statement which mimics the statutory obligation of the state board to emphasize enrollment of perpetual easements as a consideration of allocation of funds to SWCDs
8400.3160, page 12, lines 23-27	February 1994 DRAFT erroneously stated replacement wetlands on non-agricultural lands may be enrolled into RIM Reserve and also erroneously established minimum acreages not authorized by statutes; this language corrects those errors
8400.3160, line 30 on page 12 & lines 1-7 on page 13	Add authority for SWCD to waive the minimum acreage requirements for RIM Reserve in limited and specific situations regarding ONLY restorable drained wetlands OR replacement wetlands
8400.3160, lines 11-12, page 13	February 1994 DRAFT erroneously stated replacement wetlands were "excepted" from the crop history requirement; this language corrects that error
8400.3160, line 30 on page 13 & lines 1-4 on page 14	Add stipulation that the ONLY landowner eligible to enroll a replacement wetland in RIM Reserve is the same landowner who replaced the wetland following a replacement plan approved by the responsible local unit of government
8400.3160, line 9 on page 14	Add/clarify eligibility requirement that an otherwise eligible type 1, 2, or 3 wetland "is NOT a site used to mitigate a wetland loss"
8400.3160, page 14, lines 27-30	Add authority for SWCD to waive the minimum acreage requirements for PWP in limited and specific situations when a single landowner's enrollment of a portion of an eligible wetland is dependent upon the collective enrollment of additional adjacent owners of the remainder of the eligible wetland
8400.3210, page 15, lines 8-13	Add authority for SWCD to delegate administration of either (or both) easement programs to another SWCD willing to accept the responsibility
8400.3230, page 15, lines 25-26	Clarify that the district board may direct any of its staff to make an initial eligibility determination, or the district board may so direct its technical representative (see 8400.3030, subpart 16; page 3, lines 19-22, for the distinction between these individuals) [see similar reference in part 8400.3260, page 16, line 13]

PART (page #, line # of April DRAFT)	ISSUE:
8400.3260, page 16, lines 4-9	Add authority for one of two (or more) participating SWCDs to assume the delegated responsibility to review and prioritize applications on behalf of another SWCD; if the application is accepted for enrollment, the SWCD is further authorized to continue with the delegated responsibility of completing all necessary tasks for conveyance of the conservation easement to the state
8400.3400, page 18, line 8	Clarify that the district board may direct any of its staff to prepare a conservation agreement, or the district board may so direct its technical representative (see 8400.3030,subpart 16; page 3, lines 19-22, for the distinction between these individuals) [see similar references in parts 8400.3230 and 8400.3260]
8400.3400, page 19, lines 21-30	Add/clarify authority to require landowner to remove various things or to seal abandoned wells PRIOR to conveying the conservation easement AND to do so at the landowner's expense
8400.3530, page 21, lines 12-24	Add RIM Reserve easement payment rates to establish/clarify the maximum allowable rates; items C and D refer to limited duration easements and the "75%" and "45%" rates established are intended for long-term (i.e., >75 years) limited duration easements, with lessor differential rates for shorter durations to be annually established by the state board
8400.3530, page 21, lines 25-30 & lines 1-13, page 22	Add PWP easement payment rates to establish/clarify the specific rates as authorized by statutes
8400.3530, page 23, line 3	Add "public surface drainage system" (i.e., public ditches) to clarify the specific situations where the state board may compensate a landowner for the land area occupied by the public ditch IF the situation meets any ONE of the four situations listed on lines 5-12
8400.3560, page 23, lines 29-30	Easement payment schedules for BOTH RIM Reserve AND PWP shall be either: (a) a one-time lump sum, OR (b) split payment of ten equal annual installments (NOTE: Number of installment payments will be 10; no more, no less)
8400.3610, page 24, line 21	Delete "consultation with commissioners" of DNR and MDA since unnecessary
8400.3700, page 26, lines 3 & 5	Clarify that a district technical representative must certify "establishment or partial completion" of an approved practice (i.e., satisfactory performance)
8400.3710, page 27, lines 2 & 8	Clarify that "satisfactory performance" shall define when a landowner may request reimbursement (whether partial or full reimbursement, depending upon if the landowner has "satisfactorily performed" the partial completion or the establishment of the cost-shared practice)
8400.3930, page 31, line 13	Add "or determinations" and "that landowner's" to acknowledge and clarify: (a) that the SWCD also makes determinations regarding a landowner's application, and (b) that the landowner making application is the landowner who may appeal such decisions.
8400.3930, page 31, lines 15-16	Add item B to clarify landowner's authority to appeal such recommendations or determinations by the SWCD
8400.3930, page 31, line 17	Add "that landowner's" to clarify that the landowner requesting cost-sharing is the landowner who may appeal determinations of the SWCD regarding eligible and allowable costs
8400.3930, page 31, line 21	Add "that landowner's" to clarify that the landowner requesting a change to the enrolled easement area is the landowner who may appeal such recommendations of the SWCD
8400.3960, page 31, line 30	Add part to establish the effective date of the revised rule; October 1 selected to allow for: (a) completion and distribution of the revised handbook and providing training to SWCDs, and (b) training of the SWCDs on new administrative procedures authorized/established in this revised rule and clarified in the revised handbook regarding other administrative aspects of the conservation easement programs.

ISSUES THAT WILL NOT BE MODIFIED BY A RULE REVISION

(Revised April 1994)

[NOTES: • The following issues would require statutory revisions; therefore, they will not be addressed in the proposed rule revisions.
• Please refer to Minnesota Statutes (M.S.) sections 103F.505- 103F.531.]

Can not alter definitions defined in statute:

- **8400.3030, Definitions, subpart 17; "Drained wetland"**
- **8400.3030, Definitions, subpart 29; "Landowner"**
- **8400.3030, Definitions, subpart 32; "Marginal agricultural land"**

Can not modify that the highest priority for RIM Reserve enrollments must be perpetual easements:

- **8400.3110, Duration of Conservation Easements (and 8400.3300, Criteria for Screening Committee Review of Applications, item F)** [NOTE: Refer to M.S. section 103F.515, subdivision 2(f).]

Can not alter 20-year minimum OR mandated perpetual duration for specific eligible lands:

- **8400.3110, Duration of Conservation Easements (and 8400.3300, Criteria for Screening Committee Review of Applications, item F)** [NOTE: Refer to M.S. section 103F.515, subdivision 3 & section 103F.516, subd. 1.]

Can not add to the list of types of land eligible for RIM Reserve other than those already in statute:

- **8400.3160, Criteria for Eligible Land, subpart 1** [Refer to M.S. section 103F.515, subdivision 2.]

Can not alter acreage limits specified in statute:

- **8400.3160, Criteria for Eligible Land, subpart 1 (item D on lines 11-15 of page 12, or item 3 on lines 16-18 of page 13)** [NOTE: Refer to M.S. sections 103F.515, subdivision 2(b)(7), and 103F.515, subdivision 2(c)(2).]
- **8400.3160, Criteria for Eligible Land, subpart 2 (item B on lines 10-11 of page 14)**

[NOTE: Refer to M.S. section 103F.516, subdivision 2(b).]

- **8400.3200, Maximum Enrollment**

[NOTE: Refer to M.S. section 103F.515, subdivision 2(d).]

Can not alter easement payment rates or practice payment rates that are specified in statute:

- **8400.3530, Easement Payment Rates**

(1) RIM Reserve: Refer to M.S. section 103F.515, subdivision 6, clauses (3) through (5) of paragraph (a), and paragraph (b).

[NOTE: Statute authorizes the BWSR to determine "an alternative payment system for easements based on cash rent or a similar system" -- see clause (5) of paragraph (a).]

(2) PWP: Refer to M.S. section 103F.516, subdivision 3.

[NOTE: Statute mandates the BWSR to pay specific percentages of the "township average equalized estimated market value of agricultural property as established by" the Commissioner of the Minnesota Department of Revenue.]

Can not alter easement payment basis as specified in statute:

- **8400.3530, Easement Payment Rates**

(1) PWP: Refer to M.S. section 103F.516, subdivision 3.

[NOTE: Statute mandates the BWSR to pay on the basis of specific percentages of the "township average equalized estimated market value of agricultural property as established by" the Commissioner of the Minnesota Department of Revenue.]

- **8400.3710, Cost-Shared Practices (rates)**

(1) RIM Reserve: Refer to M.S. section 103F.515, subdivision 6, clauses (1) and (2) of paragraph (a).

Can not alter PWP easement payment schedule:

- **8400.3560, Payment Schedule**

(1) PWP: Refer to M.S. section 103F.516, subdivision 3(a).

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December 22, 1993

Ms. Darlene Peters
P.O. Box 454
Cold Spring, MN 56320

Dear Ms. Peters:

BIG FISH LAKE WETLAND - STEARNS COUNTY

After visiting with you numerous times and seeing your photos, I viewed the access alley adjacent to your property on 10/22/93. From our previous discussions, the fact about whether or not a wetland exists has been determined previously by the Stearns SWCD. The county, acting as the local government unit (LGU) for the Minnesota Wetland Conservation Act (WCA) is responsible for implementing the WCA law and rule. The WCA law contains an Exemption (#25) which allows landowners to fill up to 400 square feet without replacement. The WCA Rule further limits this amount to 400 square feet per landowner per year not to exceed 5% of the wetland area -- after the exemption is once exercised. The county environmental office has applied the law accurately in this case.

Your argument that the wetlands adjacent to a lake are of greater importance to the lake's water quality than those higher in the watershed is generally true. However, the law, as presently written, does not make such distinctions. Special regulations to give additional protection to shoreland wetlands is left to the local governments to enact through their official controls. There may be ways to replace the wetland water quality functions on the upstream (east) side of the road by creating an impoundment area. This would depend on the willingness of your neighbor to cooperate on such a project.

While supporting your desire to preserve the water quality of Big Fish Lake, the WCA law -- the implementation of which our agency oversees through LGUs -- contains an exemption which means that this law does not regulate the work done at the access alley adjacent to your property.

Sincerely,

John Jaschke
Wetland Management Specialist

c: Ron Harnack, BWSR
Greg Larson, BWSR
Keith Grow, BWSR-Brainerd
Jack Wimmer, Stearns County Environmental Office
Joe Fitzgerald, Stearns SWCD

Minnesota Board of Water & Soil Resources

217 So. 7th Street
Brainerd, MN 56401

Ron Shelito: 218/828-2604
Dan Steward: 218/828-2598
Keith Grow: 218/828-6035

FAX#: 218/828-6036

FAX TRANSMISSION COVER SHEET

TO: Mary Jo Anderson

DEPT: _____

FAX#: _____

DATE: 4-19-94

SUBJECT: Joe Peters — Big Fish Lake Access

FROM: Keith R. Grow

FAX#: _____

___ PAGES TO FOLLOW (not including this page)

COMMENTS:

If you do not receive all the pages, call 218/828-2383

December 16, 1992

Mr. Ronald Harnack, Director
MN Board of Water & Soil Resources
155 South Wabasha St., Suite 104
St. Paul, MN 55107

Dear Mr. Harnack:

BIG FISH LAKE ACCESS, STEARNS COUNTY

On December 15, 1992, I made an on-site review of an existing wetland accompanied by Jack Wimmer, Stearns County Planning and Zoning Administrator. His office is the designated Local Government Unit as it relates to the Wetland Conservation Act of 1991. The purpose of my visit regarded a wetland determination made in Collegeville Township (T.124N, R. 30, Section 28), Stearns County, relating to an access to Big Fish Lake.

Currently, a 20-foot wide area owned by Collegeville Township in Stearns County is being used as a public access. Through a petition, local residents requested this access be improved. The area contains an ice ridge and a small Type 1 bottomland hardwood wetland as determined by Joe Fitzgerald, Executive Director of the Stearns County Soil and Water Conservation District. Joe completed the Wetland Delineation Course during the summer of 1992 and made his determination based on the criteria indicated in the 1989 Federal Manual for Identifying and Delineating Wetlands as required by law.

The ice ridge was altered below the highwater mark under the direction the Department of Natural Resources. Material from the ice ridge was removed from the site. Jack indicated he was aware that depositing any of the fill in the Type 1 would be a violation of the Wetland Act. This was reviewed and brought to the attention of the individuals involved with the fill removal.

The main issue was to determine what, according to the Wetland Act, could be done in the Type 1 Wetland. Specifically, the Township is planning to remove two trees to provide for easier access to the lake. Does this impact constitute a violation?

In response, we need to reference by definition the term "impact" as it relates to the Wetland Act. Impact means a loss in the quanTity, quality, or biological diversity of a wetland caused by draining or filling. An impacted

wetland is a wetland that has been drained or filled, partially or wholly, and is subject to replacement. These definitions also address the following additional points of contention.

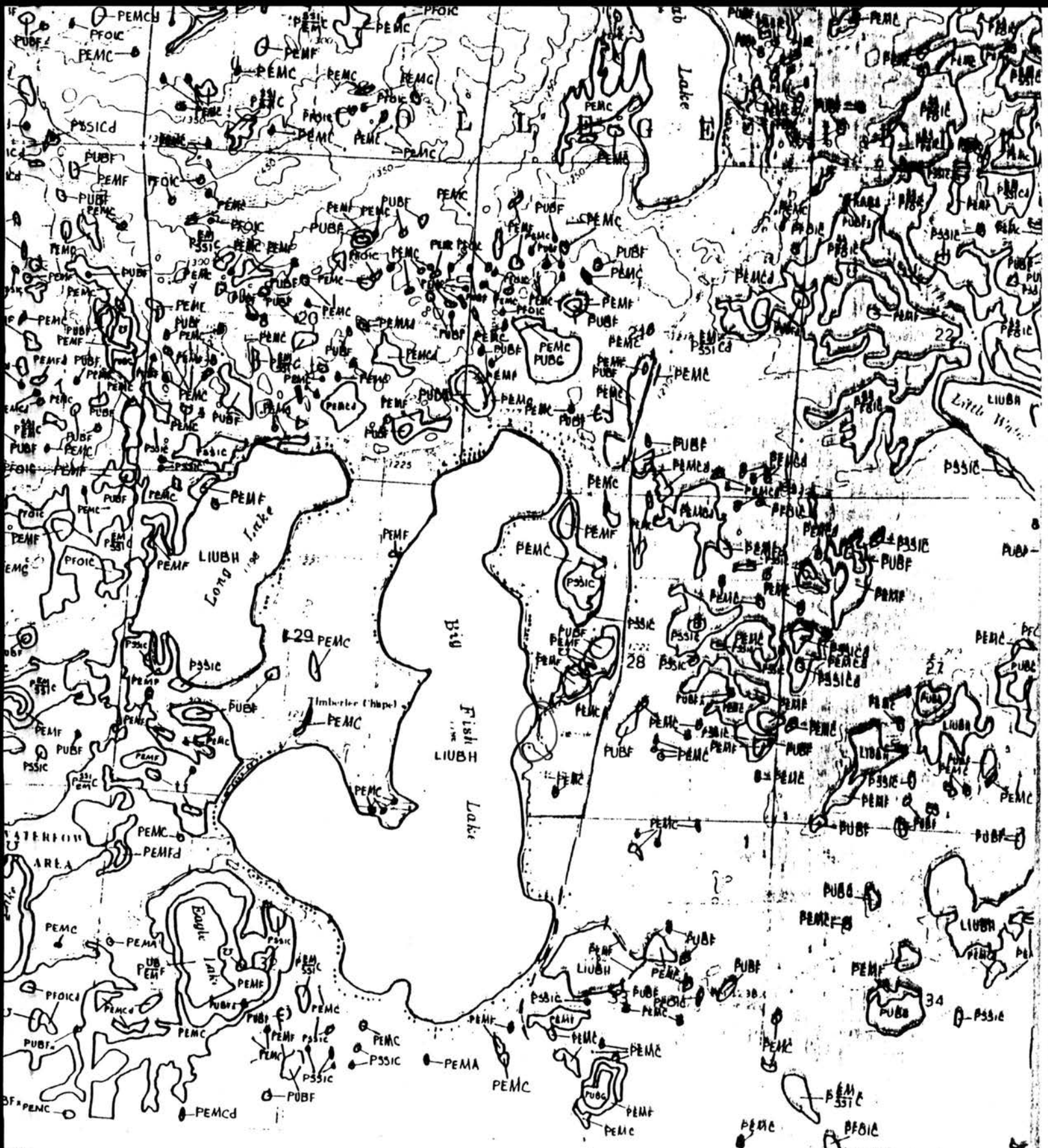
Under 8420.0100, Item 3 the Purpose states: avoid direct or indirect impacts that destroy or diminish the quantity, quality, and biological diversity of wetlands. The key word "impacts", as definition applies, will refer back to drain and fill.

8420. 0105, Scope concludes that in addition to the provision of these rules, governmental decisions on DRAINING AND FILLING of wetlands are subject to Minnesota Statutes Chapters 116B and 116D, which provide that an action which is likely to have material adverse effects on natural resources must not be allowed so long as there is a feasible and prudent alternative consistent with the requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its natural resources. Economic considerations alone do not justify such an action.

In summation, this is a law relating to draining and filling activities. I have to concur with the local unit of governments decision which determined that tree removal does not constitute draining or filling and, therefore, would be allowable in accordance with the Wetland Conservation Act of 1991.

Sincerely,

Keith R. Grow
Board Conservationist
BOARD OF WATER & SOIL RESOURCES



National Wetland Inventory

U.S.

1 MILE

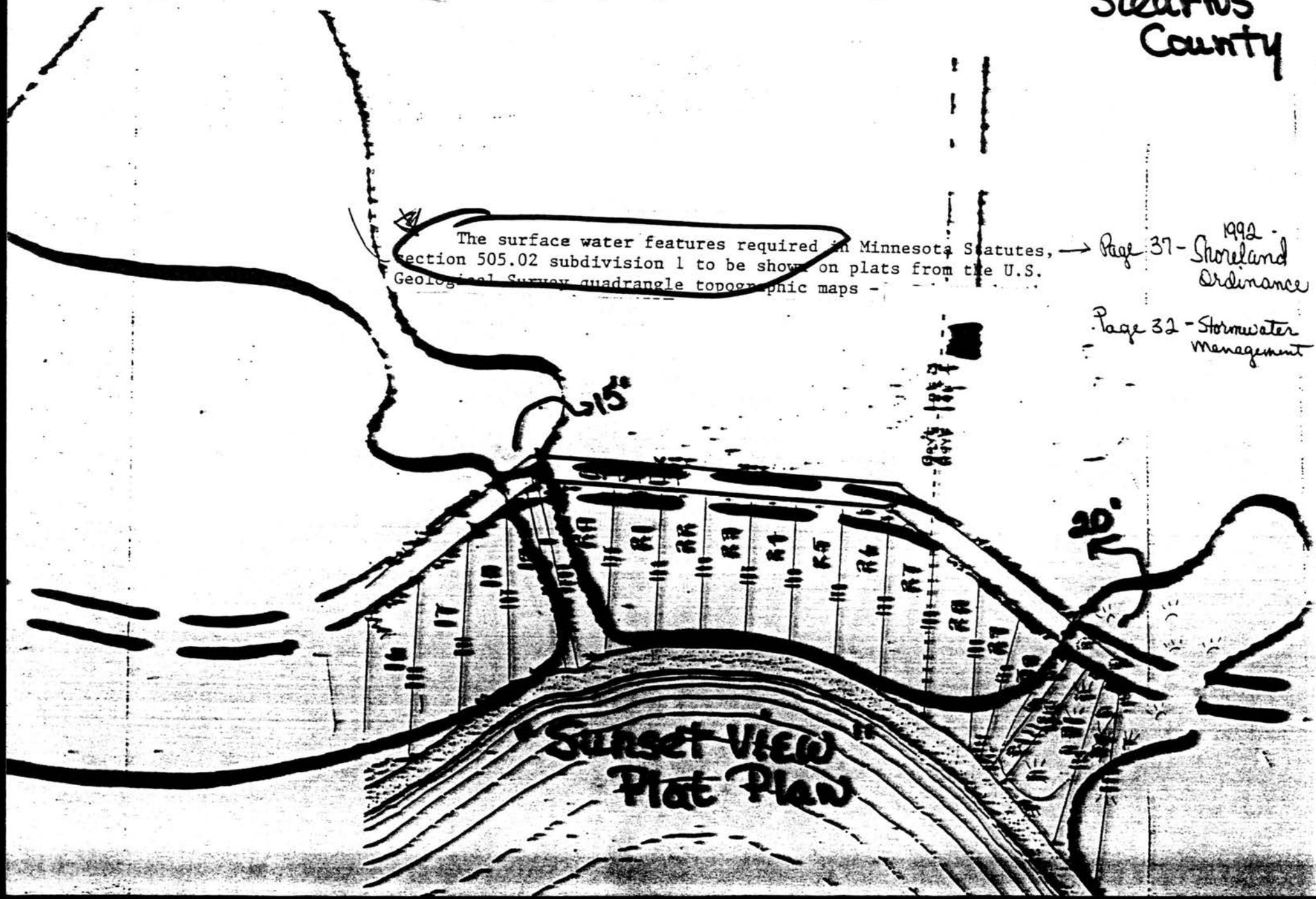
SPECIAL NOTE

This document was prepared primarily by stereoscopic analysis of high altitude aerial photographs. Wetland boundaries, hydrology and geography in accordance with classification

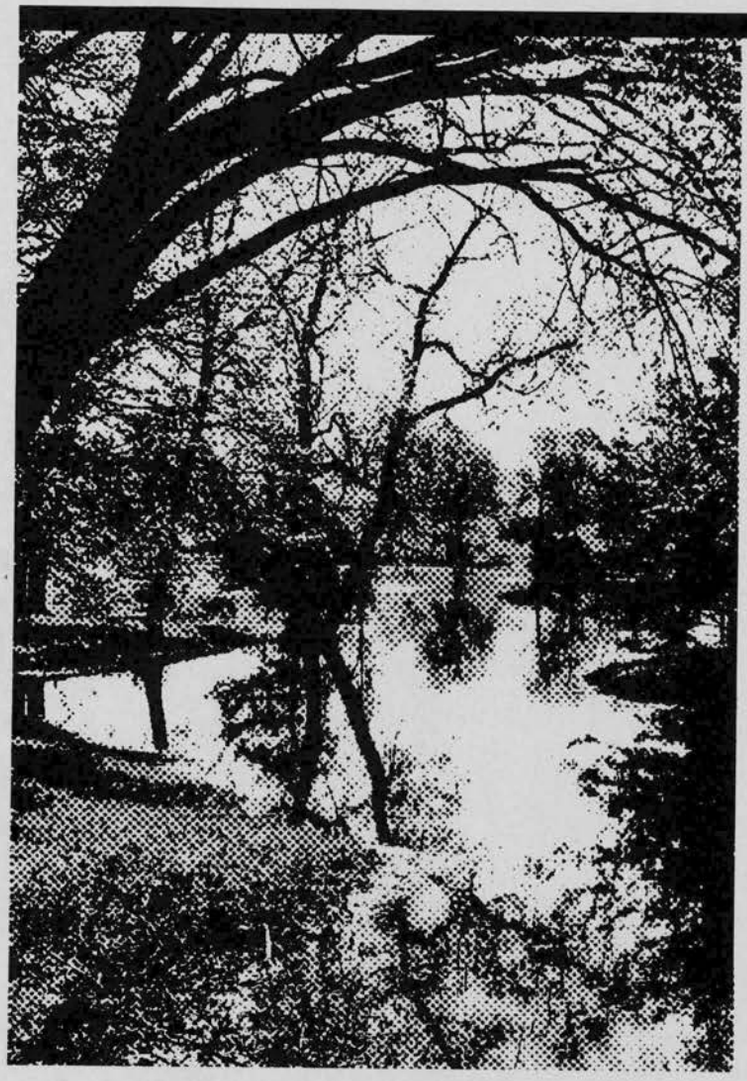
SYMBOLOGY EXAMPLE

SYSTEM

Geological Quadrangle Topographic Survey Map - For Stearns County



Minnesota River Assessment Project Report



Executive Summary

Report to the
Legislative Commission
on Minnesota Resources

January 1994

Minnesota Pollution Control Agency

For more information, please contact the Minnesota Pollution Control Agency at (612) 296-6300 or toll-free and TTY 1-800-657-3864. This material may be made available in other formats, such as Braille, large type or audio tape, upon request.

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MINNESOTA RIVER EXECUTIVE SUMMARY

BACKGROUND

In 1989 several federal, state and local agencies began a four-year comprehensive study of the Minnesota River basin. This cooperative effort, the Minnesota River Assessment Project (MRAP), was designed to evaluate how pollution is entering the Minnesota River and how the river is affected by pollution.

The purpose of the study was to examine the water chemistry, the biological communities and the land uses that characterize the Minnesota River Basin.

More than 30 federal, state and local agencies participated in the study, which was funded by the State Legislature as recommended by the Legislative Commission on Minnesota Resources as well as local, state and federal agencies. A list of the cooperators can be found at the back of this summary.

The goals of the study were to:

- Assess water quality and set water quality improvement objectives for individual tributaries and sites along the main stem of the river
- Develop assessment techniques that are transferable to other large basin studies in the state

Resource

The Minnesota River flows 335 miles through some of the state's richest agricultural land from its source at the Minnesota/South Dakota border to its confluence with the Mississippi River at Fort Snelling. The Minnesota River basin drains 16,700 miles of land, which includes all or parts of 37 counties in Minnesota. The Minnesota River is the largest tributary to the Mississippi River in Minnesota.

Problem

The Minnesota River is one of the state's most highly polluted waters, particularly from nonpoint sources of pollution. Some common nonpoint sources of pollution include storm water discharges, septic tank discharges and runoff from roads, parking lots, construction sites, lawns, agricultural fields, feedlots, mining operations and forest harvesting operations.

Minnesota's water quality rules define water quality standards for all state waters based on the goals of the federal Clean Water Act to provide fishable and swimmable waters wherever possible. Nonpoint source pollution entering the Minnesota River contributes to water-quality degradation and violation of standards throughout the basin. Water

quality standards most often violated in the Minnesota River are fecal coliform bacteria, turbidity, unionized ammonia and dissolved oxygen.

The volume of suspended sediment carried by the Minnesota River is greater than most other rivers in the state. These fine particles of silt and clay are characteristic of the soils in the Minnesota River basin. Much of the sediment carried by the Minnesota River is transported to the Mississippi River, greatly increasing the Mississippi's pollutant load.

High levels of bacteria in the river also raise health concerns for people who have contact with the river's water.

Pollutants of concern

In the Minnesota River, the pollutants of greatest concern are bacteria, sediments, nutrients, bacteria and oxygen-demanding substances.

Bacteria

High levels of fecal coliform bacteria are often present in the Minnesota River. Sources of this bacteria include wastes from animal feedlots and inadequately treated sewage. These bacteria are often associated with disease-producing organisms that can cause diarrhea, infectious hepatitis, cholera, dysentery, salmonella and typhoid fever. High bacteria levels in the Minnesota River pose health risks for people who have contact with the river's water through activities such as wading, swimming and water skiing.

Sediment

During 13 years of monitoring the Minnesota River at Mankato, the U.S. Geological Survey observed a sediment load of 2700 tons per day. This equals a 10-ton dump truck load approximately every five-and-a-half minutes.

Approximately 90 percent of the sediment carried by the Minnesota River is silt size or smaller. Sediment of this size settles slowly and once suspended is often carried long distances by moving water before settling.

Sediment causes a variety of problems in the river and its tributaries. High amounts of sediment affect biological communities by covering the bottom of the streams and destroying spawning sites and eggs. This condition is termed embeddedness and is widespread throughout the Minnesota River watershed. Sediment on the river bottom limits the oxygen and food that is available to aquatic life.

Sediment is also a problem because many other pollutants attach to sediment particles and are carried into streams along with it.

Nutrients

Phosphorus and nitrogen are the two main nutrients that cause problems in the river. Excess phosphorus and nitrogen are a problem because they increase plant and algae growth in streams.

High concentrations of nitrates, a form of nitrogen, are hazardous to some infants causing a condition known as methemoglobinemia, commonly known as "blue baby syndrome." Blue baby syndrome disrupts the oxygen-transport capabilities of the blood, resulting in asphyxiation of the baby. Infants whose formula is made with water containing high concentrations of nitrates face the greatest risk. Boiling of water for feedings may increase the risk by concentrating the nitrates. A 10 mg/liter standard for nitrates has been set to protect drinking water.

Unionized ammonia, a form of nitrogen, is toxic to many aquatic organisms, such as fish and aquatic invertebrates.

Oxygen-demanding materials

Dissolved oxygen is necessary for aquatic life . A dissolved-oxygen standard of 5 milligrams/liter has been set to protect such life. Many different pollutants can create an oxygen demand in the river. These include raw manure, feedlot runoff, domestic sewage, storm water runoff and sediment. Significant daily swings in dissolved oxygen can occur due to excessive plant growth.

How nonpoint source pollutants enter the river

During rains, large quantities of organic materials, inorganic solids and nutrients find their way into the tributaries and are eventually transported into the Minnesota River.

A small-watershed stream may change quickly from high-quality water to very low-quality water, filled with sediment and associated pollutants, during runoff. A small stream that looks very clean in dry weather may carry a significant amount of pollution into the main stem of the Minnesota River during an intense but short rainfall.

Rainstorms are more frequent in the eastern or lower portion of the Minnesota River basin where the average runoff is more than six inches a year. By comparison, the average runoff in the western extreme of the basin near South Dakota is less than two inches a year.

STUDY RESULTS AND FINDINGS

The Minnesota River Assessment Project consisted of three interrelated components: physical/chemical assessment, biological/toxicological assessment and land use assessment. To study the river, researchers set up a monitoring network in the Minnesota River Basin from the dam at Lac Qui Parle Reservoir to the confluence with the Mississippi River. The network included 14 sites on the main stem of the river, ground water from 19 separate springs sites and 17 sites throughout the watersheds of the major tributaries. These sites were used for the water quality, biological and toxicological monitoring.

A brief summary of the findings from each of these assessments follow:

Physical/chemical assessment

The objectives of the physical and chemical assessment of the basin were to identify sources and determine loadings of major nutrients, suspended sediment, biochemical oxygen demand and organic carbon in selected reaches of the Minnesota River and its tributaries. Another goal was to measure the movement of sediment and associated pollutants between river reaches. Researchers also examined areas of bank erosion and sediment deposition to determine whether in-stream loading might have a greater effect on river quality than upland sources of pollution.

Findings

- Approximately 90 percent of the sediment in transport is fine particles (silt and clay), which can be transported long distances.
- The majority of sediment transport occurs during rain storms and snow melt when sediment concentrations increase dramatically.
- Sediment delivery from uplands via drainage ditches is virtually all fine material (silt and clay).
- Periods of highest turbidity and highest sediment concentrations are associated with periods of transport of the fine particles as the river rises.
- During periods of stable flow (no runoff), turbidity is primarily caused by abundant algal growth with a lesser contribution from silt and clay.
- Sediment deliveries from single rain storms at various streams during this study have ranged from as little as 10 tons/square mile to more than 100 tons/square mile. The average annual yield for the entire basin upstream from Mankato has been about 74 tons/square mile over the last 25 years. This results in an average transport of just under one million tons of sediment through Mankato each year, ranging from about 200,000 tons to 3.5 million tons per year.

- Samples collected as high flows recede (just after the peak) on the main stem of the Minnesota River, when bank erosion is expected to be at maximum, have relatively low concentrations of sediment. This suggests that bank erosion is not the main cause of high concentrations and turbidity in the main stem. Preliminary results suggest that this is also true in the major tributaries. Bank erosion, nonetheless, was shown to add measurable quantities of sediment to the total sediment load.

- Nitrate-nitrogen levels seldom exceeded 10 milligrams/liter in the main stem of the river upstream of Mankato, but frequently exceeded this level at Mankato and downstream.

- Main stem concentrations of *chlorophyll a* indicate high levels of algae.

- Phosphorus concentrations increase two- to five-fold in streams throughout the basin when there is runoff.

- High bacteria counts occurred during both low and high flow conditions, suggesting that some bacterial inputs are constant, such as inadequate municipal treatment plants, septic systems or directly discharging feedlots.

- The instances of elevated oxygen demand during the summer months in the basin upstream of Henderson coincided with highly elevated algal productivity.

- Concentrations of sediments and phosphorus rise dramatically in the tributaries and main stem of the river during runoff. Concentrations fall rapidly as overland runoff ceases. Bacteria, oxygen demand and nitrate are important exceptions in that they can also be high during non-runoff, steady-flow conditions.

- The hydrology of the watershed has been altered in the past century due to extensive ditching and tiling. Formerly landlocked areas are now connected to surface waters, resulting in downstream delivery of pollutants.

Biological/Toxics Assessment

The primary objective for the biological/toxics studies was to help define existing conditions in the Minnesota River and its tributaries. One of the Minnesota River Assessment Project goals was to use these results to help define "attainable conditions" in the basin so that target improvement recommendations can be set for the cleanup activities that are scheduled to follow this project. When developing indices for attainable conditions, researchers took into account the agricultural nature of the Minnesota River watershed.

As part of this assessment, researchers examined habitat, toxicity of water and sediments and the health of fish and macroinvertebrate communities in the Minnesota River and its tributaries.

Fish, macroinvertebrates (stoneflies, caddisflies, freshwater mussels, etc.) and algal communities are commonly measured in watershed investigations. Their composition is directly influenced by environmental factors such as water and sediment chemistry and habitat conditions. Healthy communities are distinguished by diverse and stable populations. In streams where environmental quality is degraded, pollution-sensitive populations decline and are replaced by more pollution tolerant forms.

The Minnesota River basin provides important recreational opportunities for anglers from southern Minnesota, South Dakota, Iowa and Nebraska. Walleye, northern pike and channel catfish are found in the major rivers throughout the basin, Flathead catfish and sauger are found on the main stem of the Minnesota River downstream of Granite Falls. Smallmouth bass are fished in the main stem of the Minnesota River and in tributaries such as the Cottonwood River and Blue Earth River. There are also about 20 spring-fed trout streams within the basin.

Past Minnesota Department of Natural Resources fisheries investigations and surveys of local resource managers (MPCA, 1991) have suggested that nonpoint source pollution has impaired the fishery in many stream and river segments.

Findings

- Habitat was evaluated in the upper watershed areas of the Minnesota River basin. Habitat quality was found to be generally poor, riparian zones adjacent to the streams were absent and stream beds were covered by sediments.

- The toxicity of the water and sediments to organisms at the bottom of the food chain was measured for the Minnesota River and its tributaries. No surface water toxicity was found.

- Analysis of the sediments showed some chronic toxicity to these organisms. Elevated sediment toxicity was found at Fort Snelling, Henderson and the reservoirs at Rapidan and Lac Qui Parle. Lac Qui Parle Reservoir showed the most toxicity. In general, greater toxicity can be predicted at reservoirs because of the settling of sediments and higher nutrient concentrations.

- Toxicity in the sediments was believed to be caused by ammonia nitrogen.

- Aquatic macroinvertebrates that live in and on bottom sediments are considered to be important indicators of water quality. Macroinvertebrate communities were assessed at approximately 40 sites along the main stem of the Minnesota River, its major tributaries, and small-watershed streams. Most sites sampled had been adversely affected by pollution, and had fewer species than would be desirable.

- All macroinvertebrate communities at the sites studied on the main stem of the Minnesota River would be judged as moderately to severely affected by pollution. The main stem sites at Henderson and Lac Qui Parle were the most severely affected.

- Macroinvertebrate communities in the larger tributaries were considered moderately affected by pollution. The Chippewa River was the most affected tributary.

- For the small to intermediate streams, physical characteristics and composition of bottom-dwelling communities varied greatly. Most of these sites are moderately affected and some severely affected by pollution.

- Habitat modification and excessive amounts of organic material were factors affecting macroinvertebrate communities.

- Fish communities were evaluated at 116 sites. Information from historical records and the least impacted sites were used to develop a ranking system for Minnesota River fish communities. This ranking system is called an Index of Biotic Integrity. Six percent of the sites tested had excellent fish community health, 21 percent good fish community health, 35 percent fair, 26 percent poor, and 10 percent very poor using this ranking system.

- Poorer fish community quality was noted in the Blue Earth tributaries.

- Higher fish community quality was found in the larger streams.

- Habitat degradation due to ditching and sedimentation were the most obvious factors impairing the fish communities.

Land Use Assessment

Assessing land use is very important to understanding the types and magnitude of pollutant sources entering a system. In the Minnesota River system, there are 1208 minor watersheds which make up the surface water flow to the system. Because it was not practical to assess all 1208 watersheds, a number of minor watersheds were selected and assessed using four different methods of land use assessment. These four methods, called Levels I-IV, are described below. Findings and a comparison of the costs and usefulness of each of the methods follows the descriptions.

The Level I land use study, conducted by Mankato State University, was undertaken to determine if existing data and modeling methods could be used to predict water chemistry in the Minnesota River. Level I used a model based on ecoregions to try to predict the potential for nonpoint source pollution from each of the 1208 minor watersheds. The model used data from the Land Management Information Center, which included land use, soil texture, slope and water orientation data.

The Level II assessment's goal was to identify, analyze and recommend the most cost-effective group of best management practices that would improve the quality of the water that leaves agricultural lands. The USDA Soil Conservation Service (SCS) conducted the work on 10 minor watersheds located in the Blue Earth, Le Sueur and Watonwan watersheds. The 10 minor watersheds evaluated by this method are a subset of the 37 minor watersheds assessed in the third land-use study.

The primary pollutants studied in the Level II assessment were sediment and nutrients (nitrogen and phosphorus). Cropland fields were analyzed using Soil and Water Conservation District inventories and the use of various computer models. Watershed and field level management alternatives were established and then modeled to determine the impacts on water quality.

The third method of land use assessment was developed as a means of assessing cropland fields and nonpoint sources such as septic systems, tile inlets, wells, dumps and feedlots. The Level III approach included five steps: walking the watershed, interviewing landowner/operators, developing land use maps, developing databases and estimating costs to implement the assessment. Soil and Water Conservation District staff conducted this assessment in 37 minor watersheds.

The fourth method of land-use assessment involved the use of large-scale infrared aerial photography to obtain land cover/land use information, which can be used to assess point source and nonpoint source pollution in the minor watershed study areas. The same 10 minor watersheds assessed in Level II were selected as study sites for the Level IV assessment.

Findings

Evaluation of best management practices—SCS Level II assessment

- An estimated 200,000 tons per year of soil is eroded from cropland from the 10 sub-watersheds studied in the Level II assessment. An estimated 19 percent (38,000 tons) of the soil that eroded from cropland was washed out of the watersheds into the river system.

- The majority of the cropland in the 10 sub-watersheds is eroding at five tons per acre or less. The five-ton level is what is known as the tolerable level (T), above which crop productivity can be affected. Even though soil loss levels were below T, water quality problems were found in the system. This confirms the observation that a small amount of pollutant loss per acre multiplied by millions of acres can significantly affect water quality.

- Sediment and nutrient management strategies would lead to significant reductions in pollutant loadings. Models showed that the following reductions at the outlet of a watershed could be made: sediment by 45 percent, phosphorus by 65 percent and nitrogen by 15 percent.

- Significant reductions in sediment and nutrients could be achieved using existing technology for residue and tillage management. Practices leaving approximately 30 to 40 percent crop residue on the surface after planting were evaluated. Models predicted that by treating 16 percent of the land, a 25 percent reduction in deliverable sediment could be achieved, and by treating 79 percent of the cropland, a 45 percent reduction in sediment could be achieved.

Comparison of the four levels of assessment

- Level I is a broad-scale computer modeling approach using statewide minor watershed data. Its strength is the inclusion of the whole basin. This a theoretical approach that involves computer-trained personnel and models. Cost is minimal, about $20,000 for all 1208 watersheds. This model did not accurately predict the nonpoint source potential of the different watersheds studied, perhaps because it did not take in account land use management. The long-term goal is to refine the model so it could be used as a screening tool to prioritize each of the 1208 minor watersheds for assessment and implementation of best management practices.

- The SCS Level II system uses modeling to trace the water from where it falls to the outlet of a watershed. Use of these models requires a large amount of site-specific data usually obtained from the SCS and SWCDs. Its greatest strength is the ability to model the impacts of various practices, such as crop residue management, and to predict the water quality output. Its greatest drawback is the cost, $40,000 for the initial set-up of the model. However, the modeling processes and/or outputs could be transferred to similar watersheds, which could substantially reduce the cost. If the 1208 minor watersheds in the basin could be classified into Level II categories, this would be a useful planning tool.

- Level III is a local methodology tracing water back from where it enters a body of water. It has the advantage of involving landowners throughout the process. It has proven to be extremely successful in providing accurate and sensitive information for inventories of the 37 minor watersheds studied. The drawbacks of this method are its labor-intensive approach and the inability to check the accuracy of landowner information. The cost of this method is more than $10,000 per minor watershed. Information from these assessments was used directly in Level II, and the methodology is being used in many MPCA Clean Water Partnership projects.

- Level IV is a technical methodology using aerial photography interpretation and analysis. It does not involve participation by landowners. It can provide the most accurate data for geographical information systems. The cost of $1,000 per minor watershed is reasonable, but for enhanced analysis several flights may be needed. Of all the methods used, this one has the best potential for trend documentation because of its capability for measuring at specific points in time.

CONCLUSIONS

- Large amounts of sediment and nutrients are carried into the Minnesota River during rain fall and snow melt. A certain type of sediment—fine particles of silt and clay—is causing serious problems in the Minnesota River watershed. These fine particles of silt and clay are characteristic of the soils found in the watershed. Fine sediments, which can be transported long distances, cause an increase in turbidity or cloudiness of the water. They can also cause aesthetic problems and carry nutrients and other pollutants that can cause low levels of dissolved oxygen in the river.

- Biological communities (fish, algae and invertebrates) are adversely affected by pollution throughout the Minnesota River and its tributaries. Siltation and excessive amounts of organic pollutants (e.g. manure, septic system runoff, antifreeze) are affecting the health and stability of aquatic communities.

- Levels of *chlorophyll a* indicate the presence of large amounts of algae in the river. This condition is pronounced under summer low-flow conditions.

- Levels of phosphorus in the basin are high enough to produce nuisance growth of algae. These concentrations often increase two- to five-fold in streams throughout the watershed when there is runoff.

- Nitrate levels in the Minnesota River and its tributaries were elevated but did not exceed 10 milligrams/liter nitrate-nitrogen above Mankato. At Mankato and downstream, nitrate levels often exceed 10 milligrams/liter nitrate-nitrogen. The level of 10 milligrams/liter nitrate-nitrogen is set by the federal government to protect drinking water. None of the cities at Mankato or downstream draw their drinking water directly from the river or its tributaries. However, these high nitrate levels are of particular concern to the City of Mankato. Under certain conditions, water from the Blue Earth River moves into the shallow aquifer that is used as the source of Mankato's drinking water.

- High fecal coliform bacteria counts have been found throughout the river basin. These high levels of bacteria, which can be associated with other disease-causing bacteria, are a health concern for people who have contact with the river water. For example, people who swim, wade or water ski in the river can get sick from contact with the water.

- Although some of the tributaries have higher concentrations of specific pollutants, no single tributary is controlling the overall water quality of the river.

- The effects of pollution from municipal and industrial treatment facilities as well as pollution from septic tanks and feedlots with direct discharges are more pronounced during low flow conditions where there is less dilution.

- Traditionally, erosion limits are expressed as soil loss tolerances ("T") which are the maximum levels of erosion that can take place while maintaining high agricultural productivity. Because of a predominance of gentle slopes and fine-textured soils within much of the Minnesota River Basin, soil losses rarely exceed "T." The difficulty with this type of erosion standard is that it looks only at field-scale needs and does not address downstream water quality considerations. The water quality problems of the Minnesota River with respect to sediment may indeed be a case of a delivery of sediment from watersheds over a very large area even though erosion rates are low.

RECOMMENDATIONS

- Establish phosphorus standards for the Minnesota River basin. The state's standard-setting process is participatory involving affected parties.

- Implement soil erosion control practices on all land, including transportation, construction, agricultural and urban areas.

- Help people recognize that fine-textured soil lost from gentle slopes contributes to water quality problems.

- Control erosion of cropland currently not using soil management best management practices. Follow a three-phase approach to bring cropland to at least 30 percent residue after planting, or provide equivalent soil protection, in the following order:

    1. treat cropland currently exceeding soil loss tolerance (T) levels; then

    2. treat cropland in riparian areas and other areas where sediment delivery is highest; and then

    3. treat the remaining cropland acres.

- All communities should develop and implement plans to manage urban storm water.

- The amount of nutrients (phosphorus and nitrogen) must be reduced through urban and agricultural fertilizer best management practices, control of feedlot runoff, septic system upgrades and control of inadequately treated point sources.

- Vegetated buffers should be established alongside ditches and rivers in the basin.

- Additional stream bank assessments are needed to target areas that need protection.

- Wetland restoration is needed in carefully selected locations to settle solids, remove nutrients and reduce peak flows, thereby protecting stream banks.

- Long-term trend monitoring of the entire Minnesota River basin is needed.

- Stream channelization and river clearing and snagging should be limited. When necessary, these activities should be carefully implemented, considering downstream consequences. These actions adversely affect stream habitat.

- Land treatment goals should be established. These should be reasonable and cost effective and shown to significantly reduce nonpoint source pollution.

- Long-term trend monitoring should be refined to increase our understanding of toxics throughout the Minnesota River basin.

- Strategies and recommendations should be set to meet a 10-year goal for addressing pollution problems in the basin. Watersheds in the basin should be prioritized so that resources can be directed to address critical problems first.

MRAP PROJECT REPORTS

Volume I—LCMR Work Plan and Project Summary

Legislative Commission on Minnesota Resources Project Work Plan. Minnesota Pollution Control Agency.

MRAP Project Summary. Minnesota Pollution Control Agency.

Volume II—Physical and Chemical Assessment

Selected Basin Characteristics and Water-Quality Data for the Minnesota River Basin—U.S. Geological Survey Open-File Report 93-164. Thomas A. Winterstein et al.*

Sources and Transport of Sediment, Nutrients and Oxygen-Demanding Substances in the Minnesota River Basin, 1989-92. United States Geological Interpretive Report. Greg Payne.

The Minnesota River Basin: A Hydrollogic Overview and Assessment of Spring Resurgence. Joseph A. Magner and Scott Alexander.

Wetland Water Quality Functions: Literature Review and Considerations for Wetland Restoration/Creation in the Minnesota River Basin. Brendan J. Cain and Joseph A. Magner.

Selected Water Quality and Flow Data from Minor Watersheds in the Blue Earth River Basin. Gregory D. Johnson.

Water Quality Analysis of the Lower Minnesota River and Selected Tributaries: River (1976-1991) and Nonpoint Source (1989-1992) Monitoring. Metropolitan Waste Control Commission.

Volume III—Biological and Toxicological Assessment

Diatom Assemblage Structure as an Indicator of Stream Habitat Condition in the Minnesota River Watershed. Carl Richards and Franz J. Kutka.

Characterization of Sediments, Settleable Solids and Water Quality of Stormwater Runoff in the Minnesota River Watershed. Beth Proctor.

Ambient Toxicity Assessments in the Minnesota River Basin. John W. Arthur , Jo A. Thompson, Charles T. Walbridge and Harry W. Read.

* will be printed separately

Assessment of Organic Pollutants on Fish in the Minnesota River Watershed by HepaticAminopyrine N-Demethylase Activity. Steve D. Mercurio et al.

Analysis of Benthic Macroinvertebrate Communities in the Minnesota River Watershed. James A. Zischke, Gerald Erickson, Diane Waller and Robert Bellig.

A Fish Community Analysis of the Minnesota River Basin. Patricia A. Bailey, John W. Enblom, Steven R. Hanson, Paul A. Renard and Konrad Schmidt.

Volume IV—Land Use Assessment

Nonpoint Source Pollution Potential Model of the Minnesota River Basin Watershed MRAP Level I—Land Use. Charles V. Peterson and Henry W. Quade.

An Atlas of Nonpoint Source Pollution Potential in the Minnesota River Basin. Charles V. Peterson and Henry W. Quade.*

MRAP Level II Assessment—USDA Soil Conservation Service. Tim Koehler, Peter Cooper et al.

SWCD Methodology of Land Use Assessment—MRAP Level III. Mary Mueller and Gary Wehrenberg.

MRAP Level III Database and Database Documentation for Minnesota River Assessment Project—Land Use Assessment Questionnaire. Julie A. Doherty.*

MRAP Land Use Level IV Aerial Photography Methodology. Cis Berg.

* will be printed separately

REPORT DISTRIBUTION

The results of the Minnesota River Assessment Project are compiled into four volumes, each containing several individual reports. A limited number of the full report sets were printed because of the size of the reports and budget constraints. The full reports are available for review at the Minnesota Pollution Control Agency's central office in St. Paul and regional offices in Marshall and Rochester. Copies are also available at county soil and watershed conservation districts in the basin and at major libraries in the basin.

MRAP COOPERATORS

Minnesota Pollution Control Agency
U.S. Department of the Interior, U.S. Geological Survey
U.S. Environmental Protection Agency, Environmental Research Laboratory, Duluth
U.S. Department of Agriculture, Soil Conservation Service
Mankato State University
Metropolitan Council
Metropolitan Waste Control Commission
Minnesota Department of Agriculture
Minnesota Board of Water and Soil Resources
Minnesota Department of Natural Resources
Minnesota Land Management Information Center
Gustavus Adolphus College
St. Olaf College
South Central Minnesota Counties Water Planning Project
Natural Resources Research Institute
University of Minnesota
University of Wisconsin-Madison
U.S. Department of the Interior, U.S. Fish and Wildlife Service
Blue Earth County Soil and Water Conservation District
Brown Soil and Water Conservation District
Chippewa Soil and Water Conservation District
Cottonwood Soil and Water Conservation District
Faribault County Soil and Water Conservation District
Kandiyohi Soil and Water Conservation District
Lincoln Soil and Water Conservation District
Lyon Soil and Water Conservation District
Martin Soil and Water Conservation District
Murray Soil and Water Conservation District
Nicollet Soil and Water Conservation District
Redwood Soil and Water Conservation District
Renville County Soil and Water Conservation District
Sibley Soil and Water Conservation District
Swift County Soil and Water Conservation District
Watonwan Soil and Water Conservation District
Yellow Medicine Soil and Water Conservation District

ng of sexual assault cases. Each plan

criminal justice agencies in responding

cacy services in the process;

nctions imposed;

s for the victim and defendant; and

al justice system response to sexual

AL DISTRICT SEXUAL ASSAULT
judicial district shall submit its sexual
ference of chief judges by October 1,
e plans and make recommendations it
conference shall address the adequacy
to respond to sexual assault cases.

plan, along with the conference of chief
es in rules, criminal procedure, and
f the senate crime prevention committee
tatives judiciary committee by January

lowing final enactment, except that the
udicial districts are established Febru-

sert "2.722, subdivision 1;"

24.912, subdivision 6;"

icolon, insert "477A.012, by adding a

micolon, insert "611.26, subdivisions 4

631.021;"

611.17; 611.20, subdivision 2; 611.27,

lo pass. Amendments adopted. Report

G OF SENATE BILLS

d the second time.

O RESOLUTIONS

e of Mr. Marty be added as a co-author
d.

Messrs. Knuston and Johnson, D.E. introduced—

Senate Resolution No. 75: A Senate resolution congratulating Carol Ann Shudlick, of Apple Valley, Minnesota, on being named to the Kodak Women's All-America Division I team.

Referred to the Committee on Rules and Administration.

SUSPENSION OF RULES

Remaining on the Order of Business of Motions and Resolutions, Mr. Moe, R.D. moved that the Senate take up the Calendar and that the rules of the Senate be so far suspended as to waive the lie-over requirement. The motion prevailed.

CALENDAR

S.F. No. 2068: A bill for an act relating to health; modifying provisions relating to the nursing home moratorium exceptions; amending Minnesota Statutes 1992, sections 144A.073, subdivisions 1, 3a, 4, 8, and by adding subdivisions; and 256B.431, subdivision 17; Minnesota Statutes 1993 Supplement, section 144A.073, subdivisions 2 and 3.

Was read the third time and placed on its final passage.

The question was taken on the passage of the bill.

The roll was called, and there were yeas 60 and nays 0, as follows:

Those who voted in the affirmative were:

Adkins	Dille	Knutson	Moe, R.D.	Ranum
Anderson	Finn	Krentz	Mondale	Reichgott Junge
Belanger	Flynn	Kroening	Morse	Riveness
Benson, D.D.	Frederickson	Laidig	Murphy	Robertson
Benson, J.E.	Hanson	Langseth	Neuville	Runbeck
Berg	Hottinger	Larson	Oliver	Sams
Berglin	Janezich	Lesewski	Olson	Samuelson
Bertram	Johnson, D.E.	Lessard	Pappas	Spear
Betzold	Johnson, J.B.	Luther	Pariseau	Stumpf
Chandler	Johnston	McGowan	Piper	Terwilliger
Cohen	Kelly	Merriam	Pogemiller	Vickerman
Day	Kiscaden	Metzen	Price	Wiener

So the bill passed and its title was agreed to.

S.F. No. 2550: A bill for an act relating to metropolitan government; providing for appointment of metropolitan area soil and water conservation supervisors by metropolitan counties; amending Minnesota Statutes 1992, section 103C.305, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 103C.

Was read the third time and placed on its final passage.

The question was taken on the passage of the bill.

The roll was called, and there were yeas 59 and nays 3, as follows:

Those who voted in the affirmative were:

Adkins	Dille	Krentz	Mondale	Riveness
Anderson	Finn	Kroening	Morse	Robertson
Belanger	Flynn	Laidig	Murphy	Runbeck
Benson, D.D.	Frederickson	Langseth	Neuville	Sams
Benson, J.E.	Hanson	Larson	Oliver	Samuelson
Berg	Hottinger	Lesewski	Olson	Solon
Berglin	Janezich	Lessard	Pappas	Spear
Bertram	Johnson, D.E.	Luther	Piper	Stumpf
Betzold	Johnson, J.B.	Marty	Pogemiller	Terwilliger
Chandler	Kelly	McGowan	Price	Vickerman
Chmielewski	Kiscaden	Metzen	Ranum	Wiener
Cohen	Knutson	Moe, R.D.	Reichgott Junge	

Mr. Day, Ms. Johnston and Mrs. Pariseau voted in the negative.

So the bill passed and its title was agreed to.

S.F. No. 2709: A bill for an act relating to agriculture; amending provisions regarding the pricing of certain dairy products; amending Minnesota Statutes 1993 Supplement, section 32.72.

Was read the third time and placed on its final passage.

The question was taken on the passage of the bill.

The roll was called, and there were yeas 41 and nays 23, as follows:

Those who voted in the affirmative were:

Adkins	Cohen	Kelly	Moe, R.D.	Samuelson
Anderson	Dille	Kroening	Murphy	Solon
Belanger	Finn	Laidig	Novak	Stumpf
Benson, J.E.	Frederickson	Langseth	Pappas	Vickerman
Berg	Hanson	Larson	Pariseau	Wiener
Berglin	Janezich	Lesewski	Piper	
Bertram	Johnson, D.E.	Lessard	Price	
Betzold	Johnson, J.B.	McGowan	Reichgott Junge	
Chmielewski	Johnston	Metzen	Riveness	

Those who voted in the negative were:

Benson, D.D.	Kiscaden	Merriam	Olson	Sams
Chandler	Knutson	Mondale	Pogemiller	Spear
Day	Krentz	Morse	Ranum	Terwilliger
Flynn	Luther	Neuville	Robertson	
Hottinger	Marty	Oliver	Runbeck	

So the bill passed and its title was agreed to.

S.F. No. 1888: A bill for an act relating to human rights; prohibiting marital status discrimination by public accommodations; amending Minnesota Statutes 1993 Supplement, section 363.03, subdivision 3.

Was read the third time and placed on its final passage.

The question was taken on the passage of the bill.

The roll was called, and there were yeas 63 and nays 0, as follows:

Those who voted in the affirmative were:

Adkins	Berg	Chmielewski	Flynn	Johnson, D.E.
Anderson	Berglin	Cohen	Frederickson	Johnson, J.B.
Belanger	Bertram	Day	Hanson	Johnston
Benson, D.D.	Betzold	Dille	Hottinger	Kelly
Benson, J.E.	Chandler	Finn	Janezich	Kiscaden

April 15,1994

SUMMARY OF WETLANDS BILL - HF 3178

Section 1: Allows a local unit of government the flexibility to develop and implement a comprehensive wetland management plan as part of the local water plan as approved by the BWSR. This flexible approach has been implemented successfully with shoreland, floodplain and rivers management programs of DNR.

Requires all state agencies to comply with the provisions of the wetland conservation act.

Section 2: Clarifies that existing roadways may be upgraded to current construction and safety standards as long as wetland impacts are minimized. This is not a change from current interpretations, however the change makes it clear.

Section 3: Setsforth the criteria for the BWSR to consider approval of a local comprehensive wetland management plan. The plan must meet the no-net loss policy provisions of the statute; must be part of the local water plan; and must be implemented through a local ordinance.

Section 4: Allows local governments to establish fee schedules to meet the costs of administration. Most do have multiple fee schedules, however some local governments have argued that the law is limiting. An alternative is for the local governments to have landowners consult for the services at a higher cost to the landowner.

Section 5 thru 7: Provides for a streamlined application and decision notification process for small projects less than 10,000 square feet (approximately 1\4 acre). Currently the law requires between 90 and 120 days of review for a project. That timeframe can delay projects for a whole construction season.

Section 8: Clarifies compensation when a replacement is denied. Currently the compensation is based on agricultural land value even in areas where there is no agricultural land. This section provides for compensation based on the value as reflected on the most recent property tax statement. Provides for equity in compensation between rural and urban areas.

Section 9: Encourages the state to continue to pursue wetland regulatory simplification between local, state and federal programs.

Section 10: Provides that terminating waterbank agreements are eligible for the permanent wetland preserve. About 20 landowners have 10 year waterbank agreements that are terminating and not eligible for permenant wetlands preserves. Their waterbank agreements allowed for renewal of the agreement, however the waterbank program was repealed. This provisions would authorize these few landowners to be eligible for the permenant wetlands preserves when the current agreement terminates.

4/18/94

HF/SF	TITLE	ID*	AUTHOR	STATUS	COMMENTS
SF 1687 HF 1852	Limits Local Government Officials to Single Daily Per Diem	Doug	S - Johnston, Frederickson, Knutson, Pariseau, Belanger H - Molnau	Committee Rules and Legislative Administration. Passed policy committees to floor. On General Orders	BWSR Supports with Changes. Recommendation: That the bill set policy on per-diem and leave enforcement mechanisms alone. As an example, SWCD and WD audit requirements and BWSR oversight should be adequate to prevent from happening if the legislature establishes a clear and concise policy.
SF 1909 HF 2158	Pollution Control Agency - Local Sewage Ordinances	Doug	S - Price, Krentz, Morse, Dille, Murphy	Committee on Environment and Natural Resources H Environment - Passed H Environment Finance - Passed H Ways & Means Committee - Passed to Floor General Orders in House	BWSR Supports - With mechanism for financial support for counties and landowners (SRF).
SF 1986 HF 2476	Wetlands - Compensation if Replacement Plan Not Approved	Ron H. Greg	S - Hanson, Stumpf, Morse H - Delmont, Weaver, Jacobs, Simoneau	Committee on Environment and Natural Resources. No action in the House. Similar to SF 2724, HF 3179 General Orders in Senate.	BWSR Supports as amended. Amended language is in SF 2724 and HF 3179.
SF 2015 HF 2276	Metropolitan Reorganization Act of 1994	Doug	S - Flynn, Pariseau, Mondale, Moe, D.E. Johnson	Committee on Metropolitan and Local Government - Passed and referred to Committee on Ethics and Campaign Reform - passed as amended. Third reading passed. General Orders in Senate.	In Review.

HF/SF	TITLE	ID*	AUTHOR	STATUS	COMMENTS
SF 2143 HF 2598	Board of Government Innovation and Cooperation - Duties, Local Waiver	Greg	S - Reichgott, Junge, Hottinger, D.J. Johnson, Terwilliger, Metzen H - Evans, I. Anderson, Murphy, Kahn, VanDellen	Committee on Governmental Operations and Reform - passed as amended and referred to Committee on Taxes and Tax Laws. General Orders in Senate.	Reviewing Amendments. Adjusts some timeframes and clarifies some innovation grant authority. Nothing appears to be a problem.
SF 2220 HF 2485	Water Policies - Sustainable Agriculture, Well Permits, Reports Ground Water Bill	Eric Doug Ron H.	S - Price, Dille, Morse, Murphy, Krentz H - Munger, Kalis, Bishop, Lynch, Trimble	Committee on Environment and Natural Resources H Env. Finance - Passed H Environment - Passed H Gov. Operations - S Env. Finance - Passed S Environment - Passed H Ways & Means Committee - Passed to Floor General Orders in House	BWSR Supports environmental education elements two positions and grants for environmental education. But not at expense of SRF. BWSR Opposes well sealing grants if appropriation is less than $400,000. House deleted all $'s. Senate has reserved $460,000.
SF 2259 HF 2278	State Government - Eight Secretaries to Head Executive Offices	Ron H.	S - Metzen, Luther, Moe, Riveness H - Asch, Carruthers, Kahn	Committee on Governmental Operations and Gambling. General Orders in Senate. General Orders in House - passed.	BWSR Opposes - the environmental cluster approach to management of environmental agencies is working well.
SF 2277 HF 2638	Metro Waste Control Commission - Total Watershed Management Agreements	Doug	S - Merriam, Riveness H - Sekhon, Munger, Trimble, Pauly, Bishop	Committee on Environment and Natural Resources. Reported back to pass as amended. General Orders in the Senate.	BWSR Supports - Provides for nonpoint projects in seven-county area.
SF 2262 HF 2553	PERA Service Credit Purchase - Certain SWCD Service	Jim B.	S - Piper H - Reding	Committee on Governmental Operations and Reform. Referred to the Committee on Government Operations and Gambling. Pensions Committee - Passed. Reported back to pass as amended and placed on Consent Calendar. General Orders in Senate.	BWSR Supports. Recommendation: Should be amended to also include SWCD employees who became employed by the state and qualified for the state retirement plan during the above buy-back period. Specifically, amend page 1, line 14 insert after "member" the language, "or Minnesota state retirement system member". Both House and Senate includes recommended language.

HF/SF	TITLE	ID*	AUTHOR	STATUS	COMMENTS
SF 2362 HF 2126	Statewide Comprehensive Land Use Planning Coordination Act	Doug	S - Chandler, Luther, Marty, Morse H - Orfield, C. Brown, Neary	Committee on Metro and Local Government - to pass as amended and referred to House Committee on Environment and Natural Resources Finance. Re-referred to Committee on Governmental Operations and Gambling.	BWSR Supportive as amended. Senate bill has been amended to establish a task force of state, local, and private and legislators to bring recommendations for 1995 session. BWSR opposed to original bill language.
SF 2363 HF 2593	Administrative Rulemaking - Five Year Review	Greg	S - Hottinger, Runbeck, Betzold, Metzen, Berg H - Leppik, Simoneau, Rukavina, Winter, Greenes	Committee on Government Operations and Gambling - amended into SF 1969. House in committee.	Reviewing amendments.
SF 2523 HF 2920	Reestablishing the Office of Waste Management as the Office of Environmental Assistance	Ron	S - Merriam, Lessard, D.E. Johnson, Pariseau, Morse H - Long, Ozment, Solberg, V. Johnson, Munger	Committee on Environment and Natural Resources - referred to Committee on Taxes. Senate - no action; unofficially dead. House - in General Orders.	Tracking. Does not directly impact BWSR.
HF 2717 Rolled into HF 3205 SF 1945	Omnibus Water Bill - Drinking Water Account, Nonpoint Pollution, Bonds	Wayne Jim B. Doug Ron H.	H - Peterson, Bishop, Girard, Winter, Wenzel S - Morse, Price, Krentz	H Committee on Agriculture - Passed H Env. Finance - Passed (4/5) H Env. and Natural Resources - Passed S Env. Finance - Passed S Agriculture - Passed S Env. and Natural Resources - Passed	BWSR Supports - sets up SRF for conservation practices and nonpoint BMPs. Rolled into House Environment Finance Appropriations bill (4/5/94).

HF/SF	TITLE	ID*	AUTHOR	STATUS	COMMENTS
SF 2550 HF 2814	SWCD Supervisor Appointments by County Board	Jim B.	S - Flynn, Mondale, Murphy, Runbeck, Wiener H - Wagenius	Passed out of the Metropolitan and Local Government Committee without amendments and sent to the Senate floor over the objections of the Senate Agriculture Committee. Senate Agriculture Committee Chair will attempt rule 34 to his committee. General Orders 31 in Senate. Passed Senate 54-11. No hearing in House; should therefore be dead. Obtained final passage in Senate.	BWSR Opposes. Maintain election, democratic representation process.
SF 2724 HF 3179	Wetlands - Replacement Plans, Limit Restrictions, Modify Exemption	Ron H. Greg	S - Stumpf, Moe, Hanson H - Munger, Tunheim, V. Johnson, Peterson, I. Anderson	Senate Committee on Environment and Natural Resources Passed as amended, referred to Finance. HF 3179 passed House Environment and Natural Resources referred to Finance.	BWSR Supports as amended. Maintains integrity of WCA and fine tunes some problem areas. Will enhance local administration.
SF 2907 HF 2983	Capitol Investments - (Bonding Bill)	Ron H. Tom S.	H - Battaglia	Committees on Environment and Natural Resources Finance - House Environment Finance passed, referred to Committee on Capital Investments. S - Environment Finance passed, referred to Senate Finance.	$12,325,000 for BWSR - Minnesota River Basin Grants, RIM, PWP House: 10,000 RIM; 2,000 PWP; 325 Area II (50/50) Senate: 10,000 RIM; 1,000 PWP; 1,625 Area II (75/25)
HF 3198	Property Tax - Metropolitan Agricultural Preserves Program	Dave B.	H - Ozment	Committee on Taxes	
HF 3205 SF 2824 SF 2824 incorporated into and replaced by SF 2913	Environment and Natural Resources - Omnibus Appropriations Bill HF 2073; SF 2717	Tom S.	H - Battaglia S - Morse	House Committee on Ways and Means. Senate Finance Committee	BWSR Supports. Bill has the SRF and feedlot interagency initiations in the bill. House: $1.1 M SRF; $ .180 M SRF; .0 Gnd H20 Senate: $.6 M; $.130 M; $.160 M Also passed Agriculture and PCA portions.

HF/SF	TITLE	ID*	AUTHOR	STATUS	COMMENTS
HF 228 SF 138	Local Government; provides for annexation elections, changing conditions	Ron H.	H - Brown, V. Johnson, Sviggum, Olson, and Rukavina. S - Vickerman, Adkins, Moe, D.J. Johnson, D.E. Johnson	House Committee on Metropolitan and Local Government. Has passed both committees as amended. Bills are different and will likely be conferenced. General Orders in House.	BWSR has no objection as amended. Ensures that state mandate programs are adopted during annexation.
HF 3209	Omnibus Tax Bill	Greg	Rest	Committee on Taxes Committee on Ways and Means	
HF 3210	Omnibus Supplemental Appropriations Bill	Ron	Solberg	Committee on Ways and Means	

TO: Water and Soil Resources Board Members

PREPARED BY: Marybeth Block, Easement & Special Programs Coordinator

DATE: May 17, 1994

RE: CONSERVATION EASEMENT SERVICE GRANT ALLOCATION FORMULA

BACKGROUND:

Several SWCDs have requested that the BWSR revise the conservation easement allocation formula to stabilize, to the extent possible, program service grants from year to year. In addition, BWSR easement staff desire a simplified allocation formula that better correlates grant amounts to projected workloads.

The BWSR receives $750,000 per year from the general fund to allocate to SWCDs to cost-share the labor and expenses incurred to carry out the program at the local level. This figure has remained at that level since the inception of the RIM program.

Various methods have been employed to allocate the $750,000 to SWCDs. Prior to FY94, districts were reimbursed for the following year's workload based on a set payment of $850 per easement for processing (plus an additional technical service payment to cover costs associated with wetland restoration). In addition, $100 was provided to conduct inspections of the all completed easements on an annual basis. A base marketing payment, ranging from $500 to 3,000 depending on activity, was also provided to publicize sign-ups and process applications.

In lieu of reimbursing SWCDs based on actual easement activity, the FY 94 grant was based on projected workload and districts were told the next grant would be adjusted if the projections were not met. Needless to say this concept was not very popular. This may be attributed to the fact that this is a service grant and not a *contract for services rendered.* The grant cannot be construed as paying for all services rendered. Reimbursements and allocations were generated using the median derived from averaging a very wide range of estimated costs, not actual costs.

SUMMARY OF THE GRANT TEAM INVESTIGATION:

In December of 1993 the conservation easement staff requested the grants team develop an alternative service grant allocation formula. In the ensuing months two alternatives evolved, one using an average of past grants as the foundation for the formula the other using historical activity to project workload. Both alternatives placed districts within range assigned one grant amount. The proposed alternatives were discussed with field staff, who in turn solicited comments from SWCDs. Favorable comments regarding attempts to simplify and stabilize the grant were received. The grants team agreed that using past participation as a foundation provided a better correlation to SWCD workload than averaging previous grants. Having decided that, reaching a consensus on what parameters to use in the formula generated a somewhat more controversial discussion and required compromise on behalf of the grant team members.

GRANTS TEAM RECOMMENDATIONS TO THE BOARD:

The grants team members unanimously supported recommending the board adopt the following parameters to be used to calculate service grants: (formula is readily calculated by the conservation easement database):

- **Easement Processing Payments:**
  Base payment on the total easement activity for the past two fiscal years (covers four sign-ups dating back to October of 1994). Determine total activity for the year, assign a percent of the $750,000 to be available for processing ($550,000) and calculate individual SWCD payments based on their workload in relation to the overall activity. Considerable discussion was given as to whether or not to include PWP since no, or very limited, dollars will be available next FY. The group felt very strongly that PWP should remain in the calculation as an indication of workload. They felt SWCDs with an active PWP program will continue to be active in RIM (some lands are eligible for either program, but have went with PWP because the available program dollars were higher than RIM). In addition, it was decided equal weight would be given to all easement types.

- **Easement Site Inspections:**
  It has become apparent that yearly site inspections on all easements within a district will become less feasible more and more easements are acquired (both in terms of SWCD workload and availability of service grant dollars). In light of this. the retooling effort has revised site inspection requirements to annual inspections for the first five years after an easement is conveyed, and once every three years after that. The grants team recommends paying $60 annually for easement inspections within the first five year window and $20 annually for easement inspections thereafter.

- **Ranges:**
  The sum of processing and site inspection payments were totalled, ranges were established and grant amounts assigned as follows:

Range	Grant Amount
30,000 - 45,000 :	$35,000
15,000 - 29,999:	$22,500
9,000 - 14,999:	$12,000
5,000 - 8,999:	$ 7,000
1,000 - 4,999:	$ 3,250
500 - 999:	$ 750
20 - 499:	$ 250
0 - 20:	$ 0

- **Marketing:**
  Increase each range by $1,000 to cover the costs associated with training and county participation in the program.

The attached sheet is an example grant amounts for individual SWCDs using the above formula.

Weighted Values

Easement Type 1	1.00
Easement Type 2	1.00
Fiscal Year 1	0.50
Fiscal Year 2	0.50
Amount Used	550000.00

SWCD	FY1	FY2	SUB-TOTAL	INSPECTION	TOTAL
Renville	11899.04	23798.07	35697.11	4520.00	40217.11
Meeker	9254.81	22475.96	31730.77	1660.00	33390.77
Sibley	10576.92	15865.38	26442.30	2180.00	28622.30
Redwood	11899.04	13221.15	25120.19	1980.00	27100.19
Brown	10576.93	14543.27	25120.20	1380.00	26500.20
West Ottertail	7932.69	14543.27	22475.96	400.00	22875.96
Waseca	9254.81	10576.93	19831.74	200.00	20031.74
Rice	5288.47	11899.04	17187.51	1220.00	18407.51
Watonwan	13221.15	3966.35	17187.50	380.00	17567.50
Root River	2644.23	13221.15	15865.38	1680.00	17545.38
Kandiyohi	7932.69	7932.69	15865.38	1360.00	17225.38
Jackson	6610.58	9254.81	15865.39	1300.00	17165.39
Yellow Medicine	6610.58	9254.81	15865.39	1040.00	16905.39
McLeod	9254.81	3966.35	13221.16	1940.00	15161.16
Freeborn	6610.58	6610.58	13221.16	980.00	14201.16
Wright	9254.81	2644.23	11899.04	1680.00	13579.04
Murray	3966.35	7932.69	11899.04	820.00	12719.04
Nicollet	5288.46	6610.58	11899.04	740.00	12639.04
Chippewa	7932.69	2644.23	10576.92	560.00	11136.92
Le Sueur	3966.35	5288.47	9254.82	1040.00	10294.82
Goodhue	3966.35	3966.35	7932.70	2300.00	10232.70
Martin	5288.46	3966.35	9254.81	920.00	10174.81
Norman	0.00	9254.81	9254.81	680.00	9934.81
Lyon	5288.46	3966.35	9254.81	400.00	9654.81
Wilkin	5288.46	3966.35	9254.81	260.00	9514.81
Douglas	1322.12	6610.58	7932.70	1560.00	9492.70
Mower	5288.46	2644.23	7932.69	800.00	8732.69
Cottonwood	5288.47	1322.12	6610.59	1940.00	8550.59
Blue Earth	5288.46	2644.23	7932.69	320.00	8252.69
Hennepin	5288.46	2644.24	7932.70	160.00	8092.70
Scott	2644.23	3966.35	6610.58	1040.00	7650.58
Pope	2644.23	2644.24	5288.47	1940.00	7228.47
Steele	5288.47	1322.12	6610.59	600.00	7210.59
Swift	2644.23	2644.23	5288.46	1380.00	6668.46
Stevens	3966.35	1322.12	5288.47	1200.00	6488.47
Benton	1322.12	3966.35	5288.47	980.00	6268.47
Carver	1322.12	3966.35	5288.47	940.00	6228.47
Rock	3966.35	1322.12	5288.47	200.00	5488.47
Morrison	2644.23	1322.12	3966.35	1380.00	5346.35
Stearns	1322.12	2644.23	3966.35	860.00	4826.35
Chisago	1322.12	2644.23	3966.35	540.00	4506.35
Big Stone	2644.24	1322.12	3966.36	460.00	4426.36
Lincoln	3966.35	0.00	3966.35	340.00	4306.35
Kanabec	2644.23	1322.12	3966.35	100.00	4066.35
Nobles	2644.23	1322.12	3966.35	60.00	4026.35
Clay	2644.23	0.00	2644.23	1160.00	3804.23
Faribault	2644.23	0.00	2644.23	740.00	3384.23
Winona	2644.23	0.00	2644.23	500.00	3144.23
Lac Qui Parle	1322.12	1322.12	2644.24	320.00	2964.24
Pipestone	1322.12	1322.12	2644.24	140.00	2784.24
Washington	0.00	2644.23	2644.23	100.00	2744.23
Wabasha	0.00	1322.12	1322.12	1100.00	2422.12
Mille Lacs	0.00	1322.12	1322.12	820.00	2142.12
Olmsted	1322.12	0.00	1322.12	440.00	1762.12
Marshall	1322.12	0.00	1322.12	380.00	1702.12
Kittson	0.00	1322.12	1322.12	320.00	1642.12
Red Lake	1322.12	0.00	1322.12	280.00	1602.12
Dodge	1322.12	0.00	1322.12	120.00	1442.12
Hubbard	1322.12	0.00	1322.12	80.00	1402.12
Marshall Beltrami	1322.12	0.00	1322.12	0.00	1322.12
Marshall Beltrami	1322.12	0.00	1322.12	0.00	1322.12
Isanti	0.00	0.00	0.00	980.00	980.00

SWCD	FY1	FY2	SUB-TOTAL	INSPECTION	TOTAL
Wadena	0.00	0.00	0.00	700.00	700.00
East Ottertail	0.00	0.00	0.00	600.00	600.00
Dakota	0.00	0.00	0.00	580.00	580.00
East Polk	0.00	0.00	0.00	580.00	580.00
Beltrami	0.00	0.00	0.00	540.00	540.00
Fillmore	0.00	0.00	0.00	540.00	540.00
Becker	0.00	0.00	0.00	460.00	460.00
Sherburne	0.00	0.00	0.00	460.00	460.00
Grant	0.00	0.00	0.00	380.00	380.00
Todd	0.00	0.00	0.00	340.00	340.00
Traverse	0.00	0.00	0.00	340.00	340.00
Roseau	0.00	0.00	0.00	260.00	260.00
Aitkin	0.00	0.00	0.00	200.00	200.00
Clearwater	0.00	0.00	0.00	160.00	160.00
Pennington	0.00	0.00	0.00	140.00	140.00
West Polk	0.00	0.00	0.00	140.00	140.00
Lake of the Woods	0.00	0.00	0.00	100.00	100.00
Cass	0.00	0.00	0.00	80.00	80.00
Mahnomen	0.00	0.00	0.00	60.00	60.00
Anoka	0.00	0.00	0.00	20.00	20.00
Cook	0.00	0.00	0.00	20.00	20.00
Itasca	0.00	0.00	0.00	20.00	20.00
Pine	0.00	0.00	0.00	20.00	20.00
North St. Louis	0.00	0.00	0.00	20.00	20.00
South St. Louis	0.00	0.00	0.00	20.00	20.00
Carlton	0.00	0.00	0.00	0.00	0.00
Crow Wing	0.00	0.00	0.00	0.00	0.00
Koochiching	0.00	0.00	0.00	0.00	0.00
Lake	0.00	0.00	0.00	0.00	0.00
Ramsey	0.00	0.00	0.00	0.00	0.00
TOTALS	263101.08	288221.27	0.00	551322.35	62680.00	614002.35

RANGES

30,000-45,000	2 @	35,000 =	70,000
15,000-29,000	12 @	22,500 =	270,000
9,000-14,999	12 @	12,000 =	144,000
5,000- 8,999	7 @	7,000 =	49,000
1,000- 4,999	22 @	3,250 =	71,500
500- 999	7 @	750 =	5,250
20- 499	19 @	250 =	4,750
0- 19	5 @	0 =	0
RANGE TOTAL			614,500

Minnesota Board of Water & Soil Resources

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DATE: May 17, 1994

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

FROM: Jim Birkholz, Assistant Director

SUBJECT: May 25th BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, May 25, 1994, beginning at 9:00 a.m. The meeting will be held in Room 107 of the State Capitol. Parking is available in Lot Q (one block northeast of the State Capitol). The agenda and informational materials are enclosed for your review.

AGENDA SUMMARY OF MAY BOARD MEETING

* **1994 LEGISLATION.** With the conclusion of the legislative session, we have some new responsibilities to implement. Ron will have a full report on session results. Staff has been doing groundwork so we get off to a running start on implementing the State Revolving Fund, RIM funding and Wetland Conservation Act (WCA) amendments to name a few. Board involvement in these initiatives can be discussed at the meeting. DISCUSSION ITEM.

* **STATE WETLANDS PROGRAM UPDATE.** John Jaschke will be at the meeting to report on the current status of the WCA adoption by local governments around the state. He will also with the participation of Attorney General staff present an update on the lawsuit filed by McLeod County against the state related to WCA. Please bring any WCA related questions and comments to the meeting. DISCUSSION ITEM.

* **RIM ADMINISTRATIVE GRANTS.** Staff have thoroughly reviewed the issues related to these grants to SWCDs which amount to $750,000 annually. The report is available in the board packet and can be discussed at this meeting in advance of making allocation decisions at the June Board meeting. DISCUSSION ITEM.

* **NEXT FEDERAL FARM BILL ISSUES DISCUSSION.** Board members' expertise and experience are important for framing up where BWSR stands on issues which will be debated in the next farm bill. Staff will present some ideas for feedback and gather Board member ideas in preparation for upcoming interagency and interest group meetings. We continue on a track to work through the Environmental Cluster state agencies to prepare a position for the Governor to promote regarding the next farm bill.

Ron Harnack is taking a much deserved, post-legislative session vacation. Ron will return next week, thus this month's meeting notice comes from me. If you have questions or need additional information, please call. Look forward to seeing you on May 25th!

BOARD OF WATER AND SOIL RESOURCES
ROOM 107, STATE CAPITOL
75 CONSTITUTION AVENUE
ST. PAUL, MINNESOTA 55155
MAY 25, 1994

PRELIMINARY AGENDA

9:00 a.m.	1.	Call Meeting to Order
	2.	Adopt Agenda
	3.	Approve Minutes of April 27, 1994
	4.	Reports • Chairman's Report - Jim Nielsen • Executive Director's Report - Ron Harnack • Committee Reports
9:30 a.m.	5.	Legislative Update - Ron Harnack • Bonding Bill Provisions • Supplemental Appropriations Provisions • Wetlands Bill
10:00 a.m.	6.	State Wetlands Program Update - John Jaschke
	7.	Update on McLeod County Lawsuit - John Jaschke
10:30 a.m.	8.	RIM Administrative Grants - Marybeth Block
	9.	Federal Farm Bill Issues Discussion - Jim Birkholz
	10.	Advisor Comments • Gary Nordstrom, SCS • Pat Wulff, MLA • Dan Livdahl, MACDE • Howard Peterson, MAWD • Allan Oehlke, MASWCD • Franklin Denn, MAT
	11.	Board Issues - discussion, comments, action needed
Noon	Adjourn	

John Jaschke

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

PUBLIC/HUMAN RESOURCES SECTION
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155-4199
TELEPHONE: (612) 297-1075

May 19, 1994

Michael Junge
McLeod County Attorney
830 E. 11th Street
Suite 214
Glencoe, MN 55336

By Facsimile
(612) 864-3410

Re: McLeod County Board of Commissioners v. State of Minnesota, Department of Natural Resources
Court File No. CX-94-196

Dear Mike:

This is to follow-up on our meeting in Glencoe on May 16, 1994 in which we discussed various options for the County to proceed with maintenance of Lateral No. 3 within the requirements of the Wetland Conservation Act.

The simplest and most economical option would be for the County to install an outlet control on the wetland to prevent drainage of portions of the wetland that have been in existence for 20 years or more. Depending upon the estimates that are received, the outlet control might cost as little as a couple of thousand dollars. With the outlet control in place and the receipt of a final exemption determination from the BWSR Board, the County could conduct maintenance within Lateral No. 3 without violating the Wetland Conservation Act.

The County asked at the meeting on May 16 whether the County could, during the pendency of the Cease and Desist Order, remove downed trees between the wetland and the point at which maintenance excavation stopped in December, 1993. As promised, I have had further discussions on the County's request with both BWSR and DNR. The agencies are concerned that the removal of the trees might lead to the drainage of the wetland below the 20 year boundary. For example, it may be that the removal of trees would result in the movement of sediments within Lateral No. 3 and the drainage of the wetland below the permitted level.

In order to evaluate the County's request, the state agencies would need to receive additional facts and analysis from the County. The relevant facts would include, among other things, the locations of the trees that the County proposes to remove and the means that the County proposes to use to remove the trees. The County would also have to provide qualified professional analysis on whether the removal of the trees would result in the movement of sediments within Lateral No. 3 such that the wetland would be lowered

below its 20 year boundary. Ultimately, it would be necessary for there to be a formal no-loss or exemption determination by the BWSR Board before it could be said that the proposed removal of the trees would not violate the Cease and Desist Order. If the County would like to proceed with an application for a no-loss or exemption determination in connection with the trees, please let me know and we can discuss appropriate procedures.

The removal or leveling of the spoils piles from the clean-out which occurred prior to the issuance of the Cease and Desist Order is another matter. Provided that there are no further activities that could affect the wetland and the spoils are lawfully placed, the DNR agrees that the removal or leveling of spoils piles from the previous excavation would not be a violation of the Cease and Desist Order.

I trust that this letter will be of assistance to the County. If you have any further questions or comments, please let me know.

Very truly yours,

MATTHEW B. SELTZER
Assistant Attorney General

(612) 296-0692

cc: Mike Grupa, DNR
John Jaschke, BWSR

SELT:AI4

Minnesota
Board of
Water & Soil
Resources

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December 30, 1993

Mr. Ray Bayerl
McLeod County Commissioner
McLeod County Courthouse
830 11th St. E.
Glencoe, MN 55336

Dear Mr. Bayerl:

McLEOD COUNTY DITCH #8/LATERAL #3 PROJECT

Thank you for taking time and providing for staff to attend the meeting yesterday in Glencoe to discuss the Ditch #8/Lateral #3 maintenance project and its potential affect on the wetland (commonly referred to as "bullhead lake") located in T117N, R28W, Section 21. While you have expressed some disagreement about the constitutionality of the MN Wetland Conservation Act (WCA) regulations (described in Minnesota Statutes 103G) as they affect ditch procedures and rights (described in Minnesota Statutes 103E), we believe there is a solution which addresses the purpose of both the ditch and wetland laws.

Exemption 3 of the WCA (M.S. 103G.2241, Subd. 1, item (a), subitem (3)) states that "...a replacement plan for wetlands is not required for activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than twenty years are not drained".

Maintaining the wetland at its historical size (as defined by the wetland area estimated to exist 20 years ago) and cleaning out the ditch can both be achieved by using the McLeod County Technical Evaluation Panel's (TEP) determination for the historical wetland boundary/size to establish and construct a runout control for the wetland at its outlet into the ditch. Some of the steps to achieve this solution have already been completed and the rest can be reasonably done without significant additional costs or effort. The recommended steps to take are:

1. A few additional elevations are necessary along the outlet ditch to establish or estimate the pre-cleanout wetland runout control. The TEP and/or county highway department staff could conduct this survey work in less than one day.

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2. A review of the engineering plans for the 1952 redetermination and repair should be done to compare with the current conditions. Again, the TEP and county highway and assessor's office could complete this in less than one day.

3. Based on the earlier findings of the aerial photo research by the TEP, and using the information from (1) and (2) above, a determination of the historical wetland boundary could be confirmed and a simple ditch plug constructed at the wetland outlet at a level sufficient to sustain the wetland at its historical size. The ditch maintenance excavation downstream of the wetland could then commence without draining the wetland.

We believe that the steps outlined above are reasonable and consistent with both the ditch and wetland laws, and if completed would allow the project to proceed while avoiding legal adversities from state or possibly federal authorities.

You and your staff can contact me at (612)297-3432 if you have any questions.

Sincerely,

John Jaschke

John Jaschke
Wetland Management Specialist

c: BWSR: Ron Harnack, Greg Larson, Tom Fischer, Jeff Nielsen
DNR Enforcement: Tim Knellwolf, Todd Manley, Mike Grupa, Jerry Engelbrecht
MN Attorney General: Matt Seltzer
McLeod Co. Atty.: Michael Junge
McLeod Co. Environmental: Paul Melchior
McLeod Co. Hwy. Dept.: Rick Kjonaas
McLeod SWCD: Vern Lauer
U.S. Army Corps of Engineers: Mick Weburg

bcc: Randy Evans, DNR Reg. Enforcement S-R – New Ulm

Service accepted by Scott Strand 3/2/94

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF McLEOD

FIRST JUDICIAL DISTRICT

Case Type: Other/Declaratory Judgment

McLeod County Board of Commissioners
as the Drainage Authority for McLeod
County Ditch No. 8,

Plaintiff,

vs.

SUMMONS

The State of Minnesota Department
of Natural Resources,

Defendant.

TO: THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANT

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorney an answer to the Complaint which is herewith served upon you within twenty (20) days after the service of the Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 18th day of February, 1994.

Michael Junge
McLeod County Attorney
Attorney No. 142980
McLeod County Courthouse
830 E. 11th St., Suite 214
Glencoe, MN 55336
(612) 864-1265
Attorney for Plaintiff

MAR-03-1994 15:54 FROM A.G. 520 LAFAYETTE TO 75615 P.02

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF McLEOD

FIRST JUDICIAL DISTRICT

Case Type: Other/Declaratory Judgment

McLeod County Board of Commissioners as the Drainage Authority for McLeod County Ditch No. 8,

Plaintiff,

vs.

VERIFIED COMPLAINT

The State of Minnesota Department of Natural Resources,

Defendant.

Plaintiff, as and for its Complaint against Defendant, states and alleges as follows:

I.

That the McLeod County Board of Commissioners is the Drainage Authority for McLeod County Ditch No. 8, pursuant to Minn. Stat. 103E.005, Subd. 9. That McLeod County Ditch 8 is a drainage system as defined by 103E.005, Subd. 12.

II.

That the County Board has the duty to repair ditches to depths of original construction as required by Minn. Stat. 103E.11, Subd. 1; 103E.701; and 103E.705. That the repair of County Ditch No. 8 was commenced in December 1993, and the Defendant issued a Cease and Desist Order on the County's contractor, Structural Specialties, Inc., P.O. Box 502, Hutchinson, Minnesota 55350 on or about December 27, 1993, which prohibited the Plaintiff from cleaning out the ditch

original construction. The Defendant asserts that the repair of this ditch system is prohibited by the Wetland Conservation Act described in Minn. Stat. 103G.

III.

That if the McLeod County Board of Commissioners follows the directives of the Wetland Preservation Act and the Minnesota Department of Natural Resources the McLeod County Board of Commissioners will not be fulfilling its duty and obligation to maintain and repair the ditch system as required in Minn. Stat. 103E.705.

IV.

That pursuant to a resolution of the McLeod County Board of Commissioner Ray Bayerl, McLeod County Commissioner, acts as the ditch inspector for ditches within his commissioner district, including McLeod County Ditch No. 8. That Ray Bayerl as ditch inspector for McLeod County Ditch No. 8 commenced a repair of McLeod County Ditch No. 8, which would result in the ditch being restored to its original depth when it was originally established and constructed in approximately 1905.

V.

That the McLeod County Board of Commissioners approved the repair of County Ditch No. 8 in December 1993, and approved expending an amount in excess of $2,500 as and for the repair of McLeod County Ditch No. 8. That McLeod County Ditch No. 8, Lateral 3 was originally constructed in 1905 and subsequently cleaned out in May 1953. Since 1953 portions of Ditch No. 8 have been cleaned out 15 of the last 20 years.

VI.

That the cleanout of Lateral 3 of County Ditch No. 8 directly effects the drainage in Sections 21, 26, 27, and 28 in Hale Township in McLeod County, Minnesota, and failure to repair the ditch will result in harm to the land owners in Sections 21, 26, 27, and 28 of Hale Township in McLeod County.

VII.

That the Department of Natural Resources has not had a hearing nor offered compensation to the land owners for the taking of their property.

VIII.

That the McLeod County Board of Commissioners has standing by statute to protect the drainage rights of the land owners and asserts on behalf of the owners that the constitutional rights to drain the property have been unlawfully abridged by the State of Minnesota, Department of Natural Resources through the enactment and enforcement of the Wetland Conservation Act.

IX.

That the Wetland Conservation Act allows for drainage of all properties which have been drained within the past 20 years, however the parties here are unable to assert the status of drainage during that entire period of time and therefore the State of Minnesota, Department of Natural Resources asserts that drainage activity is not allowed.

X.

That there is between the parties a bona fide and substantial

question, issue, and dispute requiring settlement through declaratory judgment.

WHEREFORE, Plaintiff prays a declaratory judgment in determining:

1. That the Wetland Statutes, specifically Minn. Stat. 103G.2241 and 103G.2242, is unconstitutional because it deprives property owners their property rights without due process under the state and federal constitutions;

2. That the defendant has taken the property of the individuals who own property on Ditch No. 8 in Section 22 of Hale Township without just compensation as required by law; and

3. Whether the enforcement of Minn. Stat. 103E.11, 103E.701, and Minn. Stat. 103E.705 will result in a violation of the Wetland Statutes located in Minn. Stat. 103G.

4. Your Plaintiff further requests that this Court order that the McLeod County Board of Commissioners acting as the drainage authority for McLeod County Ditch No. 8 be allowed to repair McLeod County Ditch No. 8 to the depth of its original construction.

5. The Plaintiff further requests that the State of Minnesota, Department of Natural Resources be enjoined from enforcing the Minnesota Wetland Conservation Act located in Minn. Stat. 103G as it relates to the repair of public drainage systems to the depth of original construction.

6. The Plaintiff further requests such other and further relief as the Court deems just and equitable.

Dated this 18th day of February, 1994.

By _____

Michael Junge
McLeod County Attorney
Attorney No. 142980
McLeod County Courthouse
830 E. 11th St., Suite 214
Glencoe, MN 55336
(612) 864-1265
Attorney for Plaintiff

ACKNOWLEDGMENT REQUIRED BY
MINN. STAT. 549.21, SUBD. 2

The undersigned hereby acknowledges that pursuant to Minn. Stat. 549.21, Subd. 2, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass or committed a fraud upon the Court.

Michael Junge
McLeod County Attorney

VERIFICATION

STATE OF MINNESOTA)
) SS
COUNTY OF McLEOD)

Ray Bayerl, being first duly sworn, states that he is the McLeod County Commissioner who is geographic district includes the area in Hale Township where Ditch No. 8 is located. That your affiant has read the foregoing Complaint and knows the contents thereof, that the same are true of his own knowledge, except as to those matters stated on information and belief, and as to those matters, he believes them to be true.

Ray Bayerl

Ray Bayerl

Subscribed and sworn to before me this 28 day of Feb, 1994.

Shari O'Donnell

SHARI O'DONNELL
NOTARY PUBLIC—MINNESOTA
McLEOD COUNTY
MY COMMISSION EXPIRES 6-4-98

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

PUBLIC RESOURCES SECTION
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155-4199
TELEPHONE: (612) 297-1075

March 22, 1994

Joan Proehl
McLeod County Courthouse
830 11th Street East
Glencoe, Minnesota 55336

Re: McLeod County Board of Commissioners v. State of Minnesota, Department of Natural Resources
Court File No. _____

Dear Ms. Proehl:

Please find enclosed for filing the Answer regarding the above-referenced matter. By copy of this letter, Mr. Junge is served with same.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

MATTHEW B. SELTZER
Assistant Attorney General

(612) 296-0692

Enclosure

cc: Michael Junge
Mike Grupa, DNR
John Jaschke, BWSR
Greg Larson, BWSR

SELT:AIO

STATE OF MINNESOTA

COUNTY OF MCLEOD

DISTRICT COURT

FIRST JUDICIAL DISTRICT
Case Type: Other Civil

McLeod County Board of Commissioners as the Drainage Authority for McLeod County Ditch No. 8,

Plaintiff,

vs.

The State of Minnesota Department of Natural Resources,

Defendant.

ANSWER

Defendant for its Answer to Plaintiff's Complaint admits, denies, and alleges as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim against Defendant upon which relief can be granted.

SECOND DEFENSE

2. Defendant admits paragraph I of Plaintiff's Complaint.

3. Defendant denies the first sentence of paragraph II of Plaintiff's Complaint, except Defendant admits and alleges as follows: Minn. Stat. § 103E.11, subd. 1, Minn. Stat. § 103E.701, and Minn. Stat. § 103E.705 pertain to the repair of ditches by Plaintiff; to the extent that the Complaint purports to explain or describe the aforementioned statutes, Defendant refers the Court to the official text of the statutes; any repair of ditches by Plaintiff must be conducted in accordance with applicable law, including but not limited to the Wetland Conservation Act, Minn. Stat. § 103G.222, et seq, and the rules thereunder.

4. Defendant denies the second sentence of paragraph II of Plaintiff's Complaint, except Defendant admits and alleges as follows: certain excavation work was commenced on Lateral No. 3 of County Ditch No. 8 in December 1993; Defendant alleges that the work that was done was not necessarily limited to a repair of the ditch; Defendant issued a Cease and Desist Order which named the County of McLeod and/or others acting at their direction; the Cease and Desist Order was issued to Structural Specialties, Inc., P.O. Box 502, Hutchinson, MN 55350 on or about December 27, 1993; the Cease and Desist Order prohibited Plaintiff from any activity modifying the wetland identified in the Cease and Desist Order.

5. Defendant denies the third sentence in paragraph II of Plaintiff's Complaint, except Defendant admits and alleges as follows: the repair of the ditch system and any other work thereon is subject to applicable law, including but not limited to the Wetland Conservation Act, Minn. Stat. § 103G.222, et seq., and the rules thereunder; any repair of the ditch system or other work thereon which would result in a wetland being drained or filled must qualify for an exemption or no loss determination, or else the wetland must be replaced in accordance with the Wetland Conservation Act, and the rules thereunder.

6. Defendant denies paragraph III of Plaintiff's Complaint.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph IV of Plaintiff's Complaint.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph V of Plaintiff's Complaint.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph VI of Plaintiff's Complaint.

10. Defendant admits paragraph VII of Plaintiff's Complaint, except Defendant denies that there has been a taking of the property of the landowners and alleges that Defendant was not obligated to conduct a hearing or offer compensation prior to issuing the Cease and Desist Order.

11. Defendant denies paragraph VIII of Plaintiff's Complaint.

12. Defendant denies paragraph IX of Plaintiff's Complaint, except Defendant admits and alleges as follows: exemption 3 under the Wetland Conservation Act, Minn. Stat. § 103G.2241, subd. 1(3), and the rules thereunder, exempts activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained.

13. Defendant denies paragraph X of Plaintiff's Complaint.

14. Defendant denies each and every allegation of Plaintiff's Complaint not herein expressly admitted or modified.

THIRD DEFENSE

15. Defendant lacks standing to assert the constitutional and other rights of landowners.

FOURTH DEFENSE

16. Defendant has failed to exhaust administrative remedies.

Dated: 3/22/94

HUBERT H. HUMPHREY III
Attorney General
State of Minnesota

MATTHEW B. SELTZER
Assistant Attorney General
Atty. Reg. No. 130874

520 Lafayette Road, Suite 200
St. Paul, Minnesota 55155-4199
(612) 296-0692

ATTORNEYS FOR DEFENDANT

SELT:AH6

MINN. STAT. § 549.21

ACKNOWLEDGMENT

The party or parties on whose behalf the attached pleading is served acknowledge through their undersigned counsel that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.21, subd. 2.

Dated: 3/22/94

HUBERT H. HUMPHREY III
Attorney General
State of Minnesota

MATTHEW B. SELTZER
Assistant Attorney General
Atty. Reg. No. 130874

520 Lafayette Road, Suite 200
St. Paul, Minnesota 55155-4199
(612) 296-0692

ATTORNEYS FOR DEFENDANT

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

PUBLIC RESOURCES SECTION
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155-4199
TELEPHONE: (612) 297-1075

March 22, 1994

Michael Junge
McLeod County Attorney
830 E. 11th Street
Suite 214
Glencoe, MN 55336

Re: McLeod County Board of Commissioners v. State of Minnesota, Department of Natural Resources
Court File No. _____

Dear Mike:

Enclosed and served upon you by United States Mail is the DNR's Answer to the County's Complaint.

As we emphasized at the time of our meeting in December, the State believes that there are some simple and inexpensive measures that could be taken by the County which would allow it to comply with the Wetland Conservation Act. I refer you, in this regard, to John Jaschke's letter of December 30, 1993 to Ray Bayerl.

John Jaschke met with the technical evaluation panel last week for purposes of the survey and investigation work on the ditch. You will receive a report within the next few weeks which will lay out some options that would allow the ditch work to go forward in a manner which complies with the Wetland Conservation Act.

Very truly yours,

MATTHEW B. SELTZER
Assistant Attorney General

(612) 296-0692

cc: Mike Grupa, DNR
John Jaschke, BWSR
Greg Larson, BWSR

SELT:AI4

John Jaschke

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

PUBLIC RESOURCES SECTION
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155-4199
TELEPHONE: (612) 297-1075

April 15, 1994

Michael Junge
McLeod County Attorney
830 E. 11th Street
Suite 214
Glencoe, MN 55336

Re: McLeod County Board of Commissioners v. State of Minnesota, Department of Natural Resources
Court File No. CX-94-196

Dear Mike:

Enclosed is a draft of a proposed Technical Evaluation Panel report. This was prepared by John Jaschke of the Board of Water and Soil Resources (BWSR). As you know, John met with the Technical Evaluation Panel on March 14, 1994. John assisted the Technical Evaluation Panel in conducting additional survey and investigation work on the wetland and lateral ditch #3 (hereinafter "the ditch"). It must be emphasized that this is only a draft for the consideration of the Technical Evaluation Panel. The enclosed is subject to further refinement based upon discussions with the Technical Evaluation Panel and any further survey and investigation work which might be conducted. Ultimately, the report of the Technical Evaluation Panel must be endorsed by at least two of the three members of the Technical Evaluation Panel. Minn. R. 8420.0240. We propose to circulate this draft to the Technical Evaluation Panel. John would then work with the Technical Evaluation Panel on the finalization of a report that meets the approval of the Technical Evaluation Panel. Please let me know if you have any objections to proceeding in this manner.

Although the enclosed report may be subject to some adjustment, it is clear from the report that there are a number of options available to the County. These options would allow the repair of the ditch to go forward in a manner which complies with the Wetland Conservation Act. The two most prominent options would be for the County to obtain an exemption determination pursuant to Minn. R. 8420.0210 or for the County to obtain approval for a replacement plan pursuant to Minn. R. 8420.0230. I will discuss each of these options in turn.

Exemption 3 to the Wetland Conservation Act, Minn. R. 8420.0120, subp. 3, provides an exemption for "activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained." The enclosed report demonstrates that the wetland could be drained to what

the report designates as an elevation of 97.4 and still fall within Exemption 3. The elevation could be maintained at 97.4 by means of a very simple and inexpensive control structure at the outlet of the wetland. The control structure might consist of a concrete, wood, or sheet pile installation. The actual cost of the control structure would have to be determined through the ordinary process, but John estimates that it might be as little as a couple of thousand dollars. With the control structure in place, all portions of the ditch could be repaired to the same condition as originally constructed.

In order to proceed under Exemption 3, the County should apply for an exemption determination pursuant to Minn. R. 8420.0210. Because a cease and desist order has been issued, the exemption determination would be made by the BWSR board. See Minn. R. 8420.0290, subp. 2 ("[i]n cases where the cease and desist order has been issued to a local government unit, the determination of exemption or no-loss shall be made by the board"). Of course, in order to make this determination, the board will need the advice of the Technical Evaluation Panel. See Minn. R. 8420.0210. Assuming that the report of the Technical Evaluation Panel is substantially along the lines of the enclosed report and the County agrees to maintain the elevation at the 20 year level as determined by the Technical Evaluation Panel, the repair would be exempt.

You have previously questioned the applicability of Exemption 3 on grounds that documentation is not available on the status of the wetland at all times during the past 20 years. This concern seems to assume a standard of proof that is higher than required by the Wetland Conservation Act. The Wetland Conservation Act calls for the Technical Evaluation Panel to provide advice on the status of the wetland. This advice is to be based upon the available information and professional judgment. The members of the Technical Evaluation Panel may wish to refine the enclosed report, but the overriding point is that it is possible for purposes of the Wetland Conservation Act to define a 20 year level. It would certainly be John's recommendation to the BWSR board that there is sufficient information for this purpose, and there is every reason to expect that the BWSR board would accept the recommendation of its staff member on this point and find the repair to be exempt.

If the County does not desire to maintain the wetland at the 20 year level, another option would be to proceed under a replacement plan that is approved pursuant to Minn. R. 8420.0230. The County would be required to replace all wetland between the 20 year level and the level that would result upon repair of the ditch. See Minn. R. 8420.0230. The drainage laws expressly provide for the replacement of wetlands under the Wetland Conservation Act as part of the repair of a ditch. Minn. Stat. § 103E.701, subd. 6. In order to pursue this option, the County would have to apply for the approval of a replacement plan. See Minn. R. 8420.0530. The County's application would have to include, among other things, a determination of the acreage or square footage of the wetland between the 20 year level and the level that would result upon the repair of the ditch. See Minn. R. 8420.0530(C)(3). In order to provide this information, the County would need to complete a topographic survey of the wetland. John informs me that the topographic survey could be done by the County's own engineering staff and that the time involved would be on the order of one day of work for a survey crew. The County, as the local government unit, would make the decision on whether to approve the replacement plan. See Minn. R. 8420.0230. The decision of the County would be based upon the replacement

standards found in Minn. R. 8420.0500-.0630. The Technical Evaluation Panel would provide advice to the County for purposes of this decision. See Minn. R. 8420.0230, .0510.

In sum, this letter has laid out two clear options which are provided under the Wetland Conservation Act for the repair of the ditch. It is up to the County to determine how it would like to proceed. The State would be pleased to provide technical advice of the kind that John has already contributed as well as general advice on the requirements of the Wetland Conservation Act. This letter and the enclosed report have been offered for purposes of expediting the settlement of the lawsuit brought by the County against the State. State staff members would be pleased to meet with the County Board and staff to discuss the details of the options presented in this letter and the field report. After you have had a chance to review these materials with your client, please give me a call so that we can discuss your perspectives.

Very truly yours,

MATTHEW B. SELTZER
Assistant Attorney General

(612) 296-0692

Enclosure

cc: Mike Grupa, DNR
John Jaschke, BWSR

SELT:AI4

McLEOD COUNTY DITCH #8/LATERAL #3

Draft FIELD REPORT: SUMMARY AND RECOMMENDATIONS

LOCATION: "Bullhead Lake"; SE 1/4, Sec. 16. and E 1/2, Sec. 21 and W 1/2, Sec. 22, T117N, R28W (Hale Twp.), McLeod County

INVESTIGATORS & DATES:

12-03-93 and 12-09-93
Vern Lauer, McLeod SWCD
Paul Melchior, McLeod County
Tom Fischer, BWSR - New Ulm

3-14-94
Vern Lauer, McLeod SWCD
Paul Melchior, McLeod County
Tom Fischer, BWSR - New Ulm
John Jaschke, BWSR - St. Paul

SURVEY REFERENCES AND DATA:

Relevant elevations surveyed from a temporary benchmark with an assumed elevation of 100.00 on a horizontal nail on the south side of the base of a 14" diameter ash tree on Gerald Harris property. Another temporary benchmark with an elevation of 103.19 was placed at the basin outlet on the head of a 1/2" bolt on the west side of the base of a 5' diameter cottonwood.

Survey Site Code	*Site Description (see attached drawing #1)*	*Elevation*
a	water surface in basin (12-09-93)	98.2
b	water/ice surface in basin (3-14-94)	99.1
c	estimated existing wetland boundary (12-09-93)	99.0
d	vegetation break between reed canary grass & giant goldenrod (3-14-94)	99.3 (avg)
e	in reed canary grass on south side (12-09-93)	98.0
f	outer edge of cattail vegetation = estimated 20-year-ago boundary (12-09-93)	97.4 (avg)
g	15' into cattail vegetation (12-09-93)	97.3
h	25' into cattail vegetation (12-09-93)	97.1 (avg)
i	ground at base of willow at end of ditch in middle of wetland (3-14-94)	96.3
j	base of 4' dbh cottonwood on east side (3-14-94)	101.3
k	base of 5' dbh cottonwood on left bank at outlet (3-14-94)	102.6
l	toe of left ditch bank at outlet (3-14-94)	97.8
m	ditch bottom at centerline at outlet (12-09-93)	96.1
n	ditch bottom at centerline immediately downstream of outlet (12-09-93)	95.8
o	estimated historical wetland boundary/tree line in wetland (12-09-93)	96.7

ADDITIONAL NOTES AND FINDINGS FROM 3-14-94:

1) Lateral ditch #3 maintenance excavation has been completed to the intersection with the west N-S quarter section line of Sec. 22.

2) Spoil material excavated from lateral ditch #3 is mostly silted sediments with occasional 1-2 ft. thick chunks of previously undisturbed soil noticeable (possibly from sideslope reshaping).

3) The collapsed ice surface in the excavated portion of lateral ditch #3 is about 1.5 ft. above flowing water surface.

4) According to the McLeod County plat book, Bullhead Lake is a meandered basin.

5) First downstream control point: field crossing approximately 1000' upstream of the road crossing on the N-S half-section line of Sec. 22. The crossing consists of a 48" metal and concrete pipe approximately 20' long. On 3-14-94 there was 0.7 feet of water flowing above the upstream culvert invert.

6) Second downstream control point: road crossing at the N-S half-section line of Sec. 22. The crossing consists of 36 and 48 inch diameter metal pipes end-to-end approximately 24' long. On 3-14-94 there was 0.7 feet of water flowing above the upstream culvert invert.

7) Recent beaver activity was noted along the lateral ditch #3 banks downstream from the wetland basin.

8) Several tile line outlets into lateral ditch #3 located approximately 4' above the water surface were flowing freely in several locations.

9) The soil was frozen everywhere so no samples were observed other than the content of the spoil piles.

History and Analysis of Bullhead Lake Wetland

Prior to the construction of lateral ditch #3 from 1904 to 1909, Bullhead Lake was an isolated Type 4 or 5 wetland with a boundary likely at about elevation 102. Lateral ditch #3 -- constructed mostly through upland to its intersection with a natural channel (now Ditch #8) -- removed a substantial portion of the standing water (changing the wetland to a Type 3 basin) but did not substantially change the size of the wetland because of the basin's flat bottom and relatively steep sideslopes. According to McLeod County records, some maintenance excavation on lateral ditch #3 was performed in 1952.

The relevant questions to be addressed are:

1) what was the wetland boundary 20 years ago so that Wetland Conservation Act (WCA) exemption #3 can be properly applied?

2) if lateral ditch #3 is to be maintained via excavation beyond that allowed by WCA exemption #3 what will be the effect on the wetland (i.e. how much wetland would have to be replaced)?

3) has the unauthorized excavation conducted so far drained the wetland beyond that allowed by exemption #3 and, if so, what restoration or replacement is necessary?

4) is there an option to maintain the ditch to its original construction depth and maintain the wetland at its 20-year-ago boundary?

CONCLUSIONS:

1) Based on vegetative indicators (survey sites d through h) and viewing the aerial photos, the estimated elevation of the wetland 20 years ago would be 97.4. That is contrasted with the existing estimated elevation of the wetland boundary at 99.0 and an historic boundary elevation (after the ditch was originally constructed) of 96.7.

2) The outlet control for the wetland is unknown as field conditions on 12-09-93 and 3-14-94 did not allow for a profile survey of the ditch bottom. The outlet control may be a high point somewhere on the lateral ditch #3 bottom or the upstream culvert invert at the field crossing or road crossing.

3) The work to date has not lowered the wetland boundary beyond that allowed by exemption #3. If no further excavation were done and the existing conditions in the ditch were stabilized to prevent channel scour, the wetland boundary would remain at or above the 20-year-ago boundary.

The information and analysis in this report constitutes the minimal amount deemed necessary for a Local Government Unit (LGU) or Technical Evaluation Panel (TEP) to make a determination regarding the effect of the WCA regulations on this project. However, additional information could be obtained to refine the recommendations contained herein, such as:

- Ditch channel profile survey from wetland basin to downstream road crossing.
- soil sampling to refine wetland boundary(s) and amount of ditch sedimentation.
- topographic survey (and property line survey) to determine wetland (and property) affected by changes to the existing boundary.
- hydrologic study to estimate basin inflow, outflow and storage.

OPTIONS:

1) Install an outlet control with a crest elevation of 97.4 (see attached drawing #2) and complete the full maintenance of lateral ditch #3.
2) Complete full maintenance excavation after developing a replacement plan for the lost wetland area that has existed more than 20 years (i.e. the wetland area below 97.4 as determined by topographic survey of the basin).
3) Stabilize the current conditions in the ditch and do no further maintenance excavation.

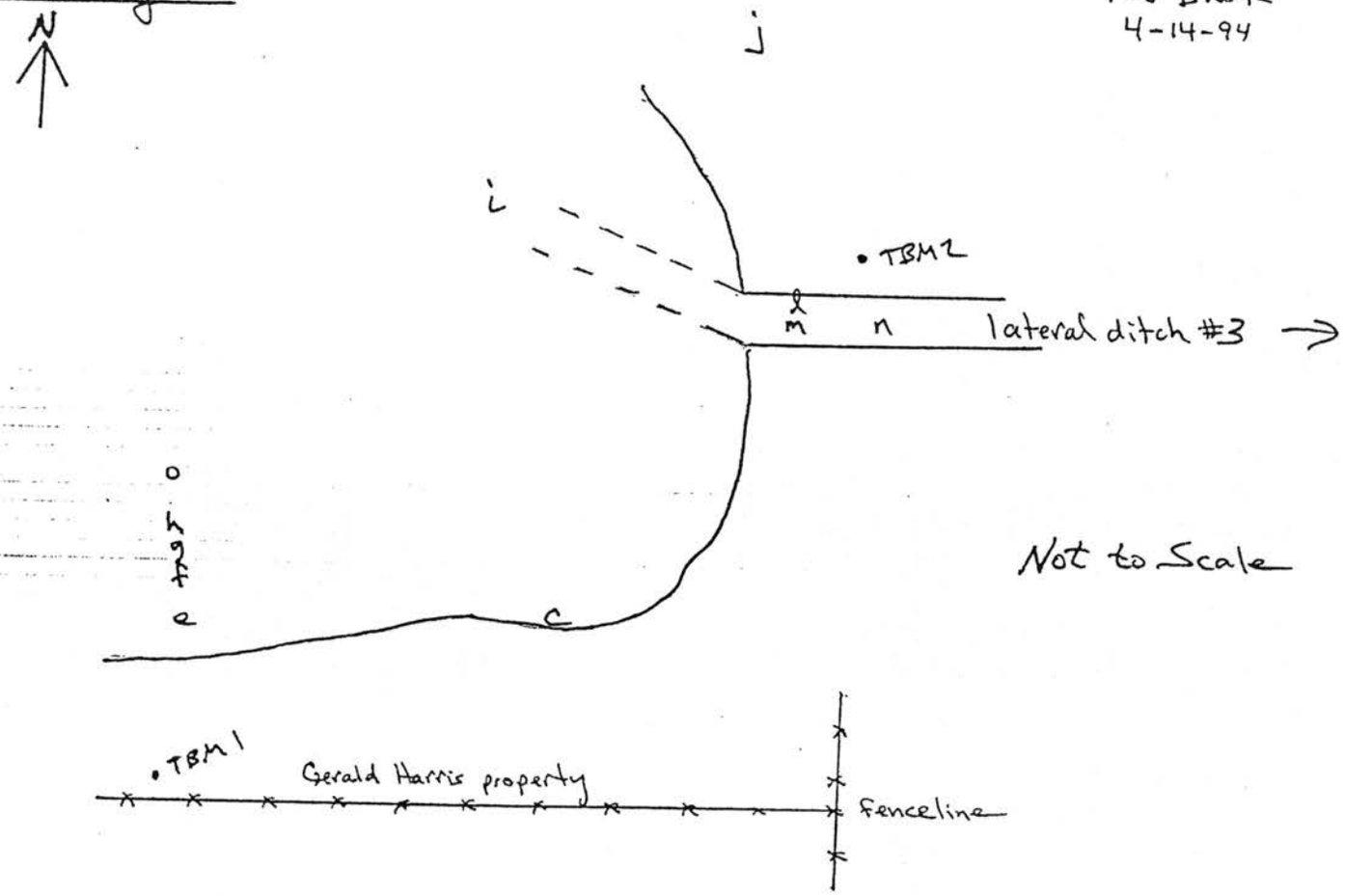
Draft report prepared by:
John Jaschke, Wetland Management Specialist
Minnesota Board of Water and Soil Resources
phone: (612)297-3432
date: April 14, 1994

McLEOD COUNTY DITCH #8/LATERAL #3

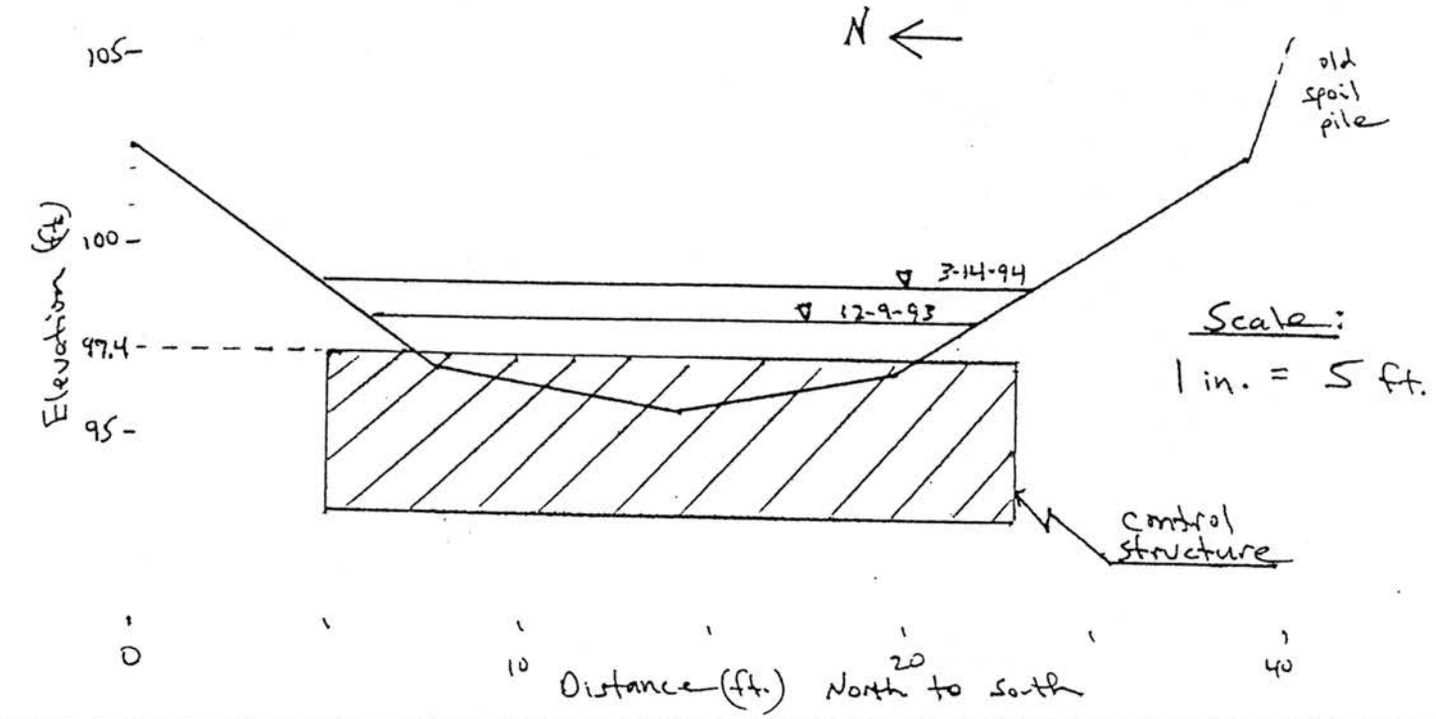
FIELD REPORT: SUMMARY AND RECOMMENDATIONS

John Jaschke
MN BWSR
4-14-94

Drawing #1



Drawing #2



Office of
McLeod County Planning & Zoning and Environmental Services
Courthouse - 830 11th Street East
Glencoe, Minnesota 55336
Phone (612) 864-5551
FAX (612) 864-3410

May 6, 1994

Mr. John Jaschke
Minnesota Board of Water and Soil Resources
155 So. Wabasha
Suite 104
St. Paul, MN 55107

Dear Mr. Jaschke:

I have received your draft field report on the Bullhead Lake wetland in McLeod County. After discussing the data with Tom Fischer, BWSR, we offer the following comments:

i. You indicate that at survey site code "f" (97.4') states that the outer edge of the cattail vegetation is the estimated boundary of the wetland twenty years ago (1973).

ii. It was our intention that survey site code "o" (96.7') represented the historical twenty year ordinary high water mark of the Bullhead Lake wetland, and not the historical wetland boundary as stated in your draft.

iii. On December 15, 1993, the Technical Evaluation Panel voted unanimously to accept the above elevation of 96.7' as the historical twenty year ordinary high water mark of the Bullhead Lake wetland.

The McLeod Wetland Technical Evaluation Panel intends recommending to the County Board of Commissioners that the relative elevation of 96.7' (survey site code "o") represents the historical twenty year ordinary high water mark of the Bullhead Lake wetland. Furthermore, we believe that the actual wetland boundary would have existed at a slightly higher elevation. Bearing these comments in mind, the outflow of any proposed control structure should be placed no higher than 96.7'.

See the attached draft letter of recommendation to McLeod County Board of Commissioners regarding the TEP recommendations.

Sincerely,

Paul Melchior
McLeod Co. Environmentalist

Thomas Fischer

Tom Fischer
BWSR Board Conservationist

RECOMMENDATIONS OF THE McLEOD TECHNICAL EVALUATION PANEL (WETLANDS CONSERVATION ACT) TO THE McLEOD COUNTY BOARD OF COMMISSIONERS

DRAFT

The McLeod County Technical Evaluation Panel for the Wetlands Conservation Act of 1991 makes the following recommendations to the McLeod County Board of Commissioners regarding the Bullhead Lake wetland area in Sections XX, XX and XX, Hale Township:

i. The relative elevation of 96.7' represents the estimated historical ordinary high water mark present twenty years ago (1973) of the Bullhead Lake wetland;

ii. This elevation of 96.7' represents the lowest elevation to which the wetland's water level can recede due directly to ditch cleanout activities. The ditch cleanout can occur provided that the original dimensions of the ditch are maintained and provisions are made that do not allow the water level to recede below 96.7'as a result of the cleanout.

DRAFT

Minnesota Board of Water & Soil Resources

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TO: Local Water Plan Coordinators
103B.301 Project Managers
Metropolitan Water Management Organizations

FROM: Doug Thomas, Water Planning Coordinator

DATE: May 10, 1994

SUBJECT: 1994 Local Water Planning Challenge Grant Program

With this memorandum the Minnesota Board of Water and Soil Resources (BWSR) is pleased to announce the 1994 Local Water Resources Protection and Management Program (LWRPMP) Challenge Grant application period. BWSR will be accepting applications from eligible counties and joint powers boards (JPB) from now until the July 18, 1994 deadline.

Grants for this challenge grant period will be ranked and funded strictly on a competitive basis. Counties and JPB's may submit multiple applications, however each application must be submitted separately. Approximately $768,000 will be available for this application period.

Please use the set of attached materials to assist you in determining your eligibility and in preparing your grant applications. Remember these are challenge grants and require a 1:1 local match of either cash or in-kind goods and services.

If you have any questions or need assistance please contact your Board Conservationist.

cc: Board Conservationists
BWSR M-Team
103B Technical Representatives
Eric Mohring

h:chall94.let

SUPPLEMENTAL
INFORMATION PACKET

** Application Checklist

** 1994 LWRPMP Challenge Grant Conditions

** Individual County (Greater MN) Application Requirements

** Multi County/Regional Application Requirements

** Metropolitan Area Counties & WMO's Application Requirements

** Model Individual County/WMO Resolution

** Model Joint powers Board Resolution & Exhibit A

** Example Challenge Grant Application

** BWSR Challenge Grant Ranking Criteria

** Guidance for Well Sealing Applications

h:chall94.sup/djt

LOCAL WATER RESOURCES PROTECTION AND MANAGEMENT PROGRAM 1994
CHALLENGE GRANT
APPLICATION CHECKLIST

Each multi-county group or individual county/WMO applicant should use this quick checklist to insure it is eligible to receive a LWRPMP Challenge Grant and is including all required grant information.

(MULTI-COUNTY/REGIONAL) APPLICATIONS

Yes___ No___ Do all counties have a state approved and locally adopted Comprehensive Local Water Plans?

Yes___ No___ Did each county levy the required local water plan levy for the water planning portion of the Natural Resources Block Grant for 1994?

Yes___ No___ Has each county agreed to provide it's local match, of either cash or in-kind services?

Yes___ No___ Has each county passed the necessary individual county resolution?

Yes___ No___ for counties applying through the Joint Powers Board (JPB), has the JPB passed the necessary resolution and Exhibit A?

Yes___ No___ Do you have a complete application including a detailed workplan and schedule for the grant period that follows the attached guidelines?

Note! - the joint powers board or sponsoring county should submit 10 copies of its challenge grant application. If multiple applications are being submitted they must be done separately.

(INDIVIDUAL COUNTY/WMO) APPLICATIONS

Yes___ No___ Does the county/WMO have a state approved and locally adopted Comprehensive Local Water Management Plan covering 50% or more of the county land area?

Note! - applicants in the seven county metropolitan area should check with BWSR regarding specific eligibility.

Yes___ No___ Did each county levy the required local water plan levy for the water planning portion of the Natural Resources Block Grant for 1994?

Yes___ No___ Has the county/WMO passed resolutions authorizing the signing of grant agreements and other related documents, and committing to matching funds?

Yes___ No___ Do you have a complete application including a detailed workplan and budget that follows the attached/guidelines?

Note! - the county must submit 10 copies of each challenge grant application. Please remember that in the metro area counties must submit applications on behalf of the WMO's.

A NO for any of the checklist items indicates a ineligible grant application. Contact your assigned BWSR Board Conservationist for assistance.
h:chall93.cri/djt

1994 LWRPMP CHALLENGE GRANT CONDITIONS

** Grant amounts will not exceed the amount requested. Grants will be awarded on a competitive basis.

** All grants must be matched locally at a 1:1 ratio with either cash or in-kind goods and services.

** Grant period will two years and may be extended an additional year with prior Board approval.

** Records must be kept regarding the receipt and expenditure of funds.

** Audits: The joint powers board, county, or WMO must agree to provide the State with audit information as requested, and agree to have an audit (meeting the standards of the Office of the State Auditor) covering the duration of the grant period done within either one year from the end of the grant period, or within the context of regularly conducted audit, whichever occurs first.

** Annual Progress Reports: Are due by January 3lst of each year of the Grant Period. The Progress Report is intended to provide the State with the following information:

* discussion of the progress of work funded
* discussion of any difficulties encountered
* program results
* report expenditures

h:chall93/djt

(INDIVIDUAL COUNTY, GREATER MINNESOTA)
1994 CHALLENGE GRANT
APPLICATION REQUIREMENTS

The following information is required in a individual county grant application. Multiple applications are acceptable, however, each application must be submitted separately.

A. A resolution by the county authorizing matching funds and the signing of the grant agreement and other related documents (use attached model resolution).

B. An executive summary of the contents of the application.

C. A detailed workplan and schedule for program implementation during the grant period.

D. A detailed budget for the grant period including the identification of the amount requested in the grant.

E. A list identifying the amount, type and source of the local share.

F. A statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan.

G. A statement describing how cooperation will be secured with adjacent counties and water management organizations if applicable.

H. A statement describing local support and interagency coordination.

I. A description of how the challenge grant complements the Base Grant.

J. A statement indicating if partial funding of the application is acceptable. If partial funding is acceptable, project components must be listed in order of funding priority with a corresponding budget.

K. A statement indicating if partial funding of the application is acceptable. If partial funding is acceptable, project components must be listed in order of funding priority with a corresponding budget.

L. An explanation of the responsibilities proposed to be contracted with other local units of governments, if applicable.

h:chall93.cri/djt

(MULTI-COUNTY/REGIONAL)
1994 CHALLENGE GRANT
APPLICATION REQUIREMENTS

The following information is required in a multi-county or regional grant application. Multiple applications are acceptable, however, each application must be submitted separately.

A. Identification of the grant recipient. Joint Powers Boards that have the ability to receive and disburse funds based on their joint powers agreement are eligible to be the grant recipient. For those joint powers or multi county groups that do not have the authority to receive and disburse funds the grant recipient must be an individual county, acting as a sponsor.

B. A resolution from the joint powers board allowing the board to accept challenge grant funds. (Use attached model JPB resolution and Exhibit A)

C. A resolution from each participating county authorizing the matching funds and agreeing to the terms and conditions of the agreement. (use attached model individual county resolutions)

D. An executive summary of the contents of the application.

E. A workplan and schedule for program implementation during the grant period.

F. A budget for the grant period including the identification of the amount requested in the grant.

G. A list identifying the amount, type, and source of the local share.

H. A statement describing the relationship of the grant request to priority implementation items in the comprehensive local water Plans in the region.

I. A description of how the challenge grant compliments the base grant implementation occurring in the region.

J. A statement indicating if partial funding of the application is acceptable. If partial funding is acceptable, project components must be listed in order of funding priority with a corresponding budget.

K. An explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

h:chall93.cri/djt

(SEVEN COUNTY METROPOLITAN AREA)
1994 CHALLENGE GRANT
APPLICATION REQUIREMENTS

In the seven county metropolitan area challenge grant applications can be submitted under two scenarios, which are:

A) Groundwater Plans

Metro counties with state approved and locally adopted groundwater plans pursuant to M.S. § 103B.255 are eligible to apply for and receive challenge grants.

B) Metropolitan Surface Water Management Plans

Metro Watershed Management Organizations (WMO) with state approved and locally adopted plans are eligible to apply for and receive challenge grant funding. However counties, by current rules, are required to coordinate and submit requests on behalf of the WMO's. Under this scenario counties would be the grant recipient with the county disbursing funds to those WMO applications selected for funding.

The following information is required in both the individual county groundwater application and individual WMO grant application.

A. A resolution by the county or WMO authorizing matching funds and the signing of the grant agreement and other related documents (use attached model resolution).

B. An executive summary of the contents of the application.

C. A detailed workplan and schedule for program implementation during the grant period.

D. A detailed budget for the grant period including the identification of the amount requested in the grant.

E. A list identifying the amount, type and source of the local share.

F. A statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan.

G. A statement describing how cooperation will be secured with adjacent counties and water management organizations if applicable.

H. A statement describing local support and interagency coordination.

I. A description of how the challenge grant complements the Base Grant.

J. A statement indicating if partial funding of the application is acceptable. If partial funding is acceptable, project components must be listed in order of funding priority with a corresponding budget.

K. An explanation of the responsibilities proposed to be contracted with other local units of governments, if applicable.

h:chall93.cri/djt

INDIVIDUAL COUNTY RESOLUTION
AUTHORIZING THE MATCHING OF LOCAL FUNDING AND
SIGNATURE OF CHALLENGE GRANT DOCUMENTS

Commissioner _____offered the following resolution, No.___, and moved its adoption.

WHEREAS, _____County has a State approved and locally adopted comprehensive local water plan (as defined by Minnesota Statutes § 103B.3361, Subd. 3) covering more than 50 percent of the county land area and has implemented a local water planning levy; and

WHEREAS, the State of Minnesota, through its Board of Water and Soil Resources, has made state grant funds available to counties for the accelerated implementation of comprehensive local water plans, if a county agrees to provide matching funds or in-kind goods and services; and

WHEREAS, _____ County wishes to apply for up to $_____in state grant funds and agrees to provide matching funds or in-kind goods and services, up to the amount of the Grant.

NOW, THEREFORE, BE IT RESOLVED;

THAT THE _____ County Board of Commissioners authorizes the appropriation of $_____in cash or in-kind goods and services as a match to state funds. In addition, the Chairperson of the Board and the County Auditor/Administrator are authorized to sign the Grant Agreement and all other related documents on behalf of the County.

Commissioner _____ seconded the adoption of the resolution, and it was adopted on the following vote:

Ayes: _____ Nays:_____

Note! A certified copy of the resolution must be attached to the Challenge Grant application.

h:chall94.res/djt

JOINT POWERS BOARD (JPB) RESOLUTION
ALLOWING A JPB TO ACCEPT CHALLENGE GRANT FUNDS

WHEREAS, the counties listed on Exhibit A have a state approved and locally adopted comprehensive local water plan as defined by Minnesota Statutes § 103B.3361, Subd. 3, and have implemented a local water planning levy; and

WHEREAS, the Commissioners listed on Exhibit A are the duly appointed representative for their respective county and are authorized to act on behalf of their county on the _____ Joint Powers Board; and

WHEREAS, the State of Minnesota, through its Board of Water and Soil Resources, has made state grant funds available for Challenge Grants to counties for accelerated implementation of comprehensive local water plans if a county agrees to provide an equal amount of matching funds or in-kind goods and services; and

WHEREAS, each of the counties listed on Exhibit A has passed a resolution authorizing the county to apply for a challenge grant and agree to match the requisite amount of grant funding; and

WHEREAS, said counties have entered into a Joint Powers Agreement pursuant to Minnesota Statutes § 471.59, and hereby grant the Joint Power board the authority to receive grant funding from the State of Minnesota.

NOW, THEREFORE, BE IT RESOLVED;

THAT THE _____ Joint powers board agrees to accept grant funding on behalf of the counties listed on Exhibit A, and to use said funds in a manner consistent with the counties' comprehensive local water plans, as well as Minnesota Statutes § 103B.3369 and Minnesota Rules Chapter 8405.

Note! A certified copy of this JPB resolution, Exhibit A, and certified copies of each counties' individual resolution must be attached to the Challenge Grant application.

h:chall94.res/djt

EXHIBIT A

COUNTIES PARTICIPATING IN THE JOINT POWERS BOARD (JPB) AUTHORIZING THEIR LWRPMP CHALLENGE GRANT TO BE ADMINISTERED BY THE JPB

Commissioner _____ offered the following resolution, No. _____, and moved its adoption.

Commissioner _____ seconded the adoption of the resolution, and it was adopted on the vote shown herein.

County: _____
Commissioner: _____
County share of grant: $_____
Date: _____
Aye: _____ Nay: _____

County: _____
Commissioner: _____
County share of grant: $_____
Date: _____
Aye: _____ Nay: _____

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Commissioner: _____
County share of grant: $_____
Date: _____
Aye: _____ Nay: _____

STORMY COUNTY
BWSR CHALLENGE GRANT APPLICATION

1. Executive Summary

The Stormy County Comprehensive Local Water Plan (CLWP) has identified on-site septic systems as a major cause of surface water and groundwater contamination. Problems associated with on-site septic systems in the County include failing systems, poor site location near lakes and streams, inadequate design, construction and installation.

The purpose of the program for which funds are being applied for is to:

1. Develop and implement a countywide education and information program to inform residents of the threats to surface and groundwater from improperly designed, installed or failing septic systems, and reasons for adoption of a countywide on-site wastewater treatment system ordinance. The Stormy County Extension will be the lead agency for this activity, SWCD and Planning and Zoning will assist.

2. Hire a consultant to (a) develop a countywide on-site wastewater treatment system ordinance, (b) investigate potential enforcement and funding mechanisms and make recommendations to the County board, and (c) assist in public information meetings and hearings. The Stormy County Planning and Zoning Department will be the lead agency for this activity.

3. Identify and map areas in the county that are sensitive to groundwater contamination. This will be used to prioritize where activities resulting from adoption of a countywide on-site wastewater treatment system ordinance will take place. The Stormy County SWCD will be the lead agency for this activity.

The end result of this project will be increased water quality protection through the adoption and enforcement of a countywide on-site wastewater treatment system ordinance.

2. Workplan and Schedule

Activity #1. Education and Information Program

Components A. Extension will develop a plan for the overall information program and outline for public official meetings. Projected time commitment 120 hours, activity timeline June 91 to December 91.

B. Mail special newsletter on "water quality and your on-site septic system". Mailing will try to cover all rural residents. Projected time commitment 24 hours, activity timeline January 1992.

C. Monthly articles for county newspapers. Projected time commitment 16 hours, activity timeline January, February, March and April 1992.

D. Hold four informational meetings for township and city officials. Projected time commitment 192 hours, 4 meetings, activity timeline February and March 1992.

Activity #2. Ordinance Development and Review

Components

A. Develop and advertise RFP for consultant services to develop model ordinance, investigate and make recommendations for enforcement and funding mechanisms and conduct public meetings. Projected time commitment 40 hours, activity timeline February, March 1992.

B. Consultant to develop model ordinance and recommendations for funding and enforcement. Activity timeline April to August 1992

C. County Board will convene 4 public meetings, consultant will present findings and run meetings. Activity timeline July to October 1992.

D. County Board to conduct public hearing and adopt ordinance. Activity timeline November, December 1992.

Activity #3. Identification and Mapping of Sensitive Areas

Components

A. Using the Stormy County Technical Advisory Work Group develop criteria for determining areas sensitive to surface water and groundwater contamination from on-site waste water treatment systems. Projected time commitment 80 hours, activity timeline June to December 1991.

B. Contract with the Minnesota land Management Information Center using EPPL7-GIS to develop a sensitivity model and maps. Activity timeline January to April 1992.

3. Budget

Work Item	Local Share	Challenge Grant	Total
Activity #1 Education & Information Component			
A. program development 120 hours @ $12.50/hr (in-kind Ext.)	1,500.00		1,500.00
B. newsletter, 24 hrs. @ $12.50/hr (in-kind Ext.) $1220 printing & mailing ($520 cash contrib. crystal lake assoc.)	820.00	700.00	1,520.00
C. monthly feature articles 16 hours @ $12.50/hr (in-kind Ext.)	200.00		200.00
D. public informational meetings 192 hrs @ 15.00/hr (in-kind Ext. 80 hrs, SWCD 80 hrs, P&Z 32 hrs) 4 mtgs. @ 250/mtg.	2,880.00	1,000.00	3,880.00
Activity #2 Ordinance Development Component			
A. RFP development 40 hrs. @ $20.00 hour (in-kind P&Z 30 hrs, Co. Attorney 10 hrs)	800.00		800.00
B. Contract to develop ordinance		5,000.00	5,000.00
C. public information meetings 4 mtgs. @ $250/mtg		1,000.00	1,000.00
D. adopt ordinance public hear., notices, publishing	1,500.00		1,500.00
Activity #3 I.D. and Mapping Sensitive Areas Component			
A. delineation & mapping criteria 80 hrs. @ $12.50/hr (in-kind SWCD) materials 400.00	1,400.00		1,400.00
B. develop sensitivity model & maps		1,400.00	1,400.00
TOTALS	9,100.00	9,100.00	18,200.00

4. Challenge Grant Request $9,100.00

5. Distribution of Local Share of Project

The local share for this project equals $9,100.00. It will be provided to the project as in-kind labor by the SWCD, Extension Office, County Planning and Zoning Department in the amounts listed in the budget. The Crystal Lake Association has donated $520.00 to the project.

6. Relationship of Grant Request to Priority Implementation Items in the Comprehensive Local Water Plan

This grant proposal is directly related to the Stormy County CLWP in that implement the following goal, objective and action in the Plan

Goal: STRATEGY FOR PREVENTING POLLUTION FROM INDIVIDUAL SEPTIC SYSTEMS (page 25 CLWP)

Objective #1. Implement a comprehensive program to prevent groundwater and surface water contamination by the effluent of individual septic systems.

Action #2. Adopt and enforce a Countywide On-Site Septic Wastewater Treatment System Ordinance that protects groundwater in the County while minimizing costs to the individual landowner.

7. Description of How Cooperation With Adjacent Counties and Water management Organizations Has Been Secured (if applicable)

Not applicable

8. Description of Local Support and Interagency Cooperation

Because this initiative has resulted from the CLWP we are confident that a good deal of public support already exists as evidenced by the cash contribution from the Crystal Lake Association. Part of the proposed project will be to develop additional citizen support.

Interagency cooperation is excellent as evidenced by the project participants. Overall coordination for the project will be by the Stormy County Water Planning Coordinator. Additional coordination and guidance will be provide by the Stormy County Water Planning Taskforce.

9. Description of How the Challenge Grant Complements the Base Grant

The initiatives identified in this challenge grant application are also listed in the Stormy County Base Grant application. Funding of this project will allow the County to begin implementation of all its 1991 priorities.

10. Is Partial Funding Acceptable

Yes, partial funding of this proposal is possible however Stormy County feels that the highest level of success and ease of implementation will occur with full funding.

Priority #1 - Activities 1 and 2

Total Cost	=	15,400.00
- local share		-7,700.00
BWSR Grant	=	7,700.00

Priority #2 - Activity 3

Total Cost	=	2,800.00
- local share		-1,400.00
BWSR Grant	=	1,400.00

11. Responsibilities Proposed to be Contracted With Other Local Units of Government

Lead agencies and their responsibilities are listed in the workplan, schedule and budget (items 2 and 3 above).

EVALUATION PROFILE
LWRPMP CHALLENGE GRANT PROGRAM
1994

CRITERIA	4. Very Good	3. Good	2. Sastisfactory	1. Unsastisfactory
1. Overall strength of the proposal. Based on the clarity of the prposal, the start up or acceleration of the implementation of the CLWP(s) activities, and the tie-in to local priorities.	Extremely clear proposal, which clearly accelerates implementation of the priority actions of the CLWP(s) or provides start-up funding for new projects or programs	A clear proposal which implements priority actions of the county CLWP(s).	A somewhat clear proposal which implements priority actions of county CLWP(s).	An unclear proposal which has no direct tie-in to priority actions of a CLWP(s).
2. Ability of the applicant(s) to successfully administer and implement the LWRPMP funded Challenge Grant.	County will have no problems administering and implementing the program.	County will have few if any problems administering and implementing the program sastisfactorily.	County should be able to administer and implement the program sastisfactorily.	Program could not be successfully implemented and administered.
3. Overall strength of the Proposal's Work Plan. Based on the review of whether or not the actions/activities, timeframes and lead agency(s) are realistic.	The proposal is extremely realistic, focused and shows well defined activities, timeframes and lead agency(s).	The proposal is strong, realistic, and gives good definition of activities, timeframes and lead agency(s).	Identifies activities, timeframes and lead agency(s).	An inadequate proposal, not realistic, does not include adequate information concerning activities, timeframes or the lead agency(s).
4. Overall strength of the Proposal's Budget. Based on the feasibility of the proposed budget cost detail.	Excellent fit between the work to be accomplished and dollars budgeted. The budget is well detailed and demonstrates extensive planning. All costs are directly related to project.	All significant expenditures are itemized and well matched to the work to be done.	The budget is reasonable. Some significant entries should have been itemized. Unforseen contingencies might arise that are not covered by the budget.	The fit between tasks and expenditures is unreasonable. Some costs are not directly related to the proposal.
5a. Paticipation of local units of government. Does the proposal clearly describe strong local support and inter-agency cooperation.	The proposal clearly identifies a high degree of both local support and inter-agency cooperation.	The proposal identifies local support and inter-agency cooperation.	The proposal identifies local support. Inter-agency cooperation is not applicable to the success of the proposal and its activities.	The proposal does not identify local support or inter-agency cooperation that is necessary to successfully ccomplete the projects or activities identified in the proposal.
5b. Multi-county cooperation and regional priorities. Based on whether the proposal demonstrates multi-county efforts, and/or addresses regional water resource priorities.	The proposal includes both multi-county efforts and addresses a regional water resources priority.	The proposal includes a multi-county effort, but does not address a regional priority.	The proposal is not for a multi-county project or activity, but addresses a regional priority.	The proposal is not multi-county and does not address a regional priority.

EVALUATION PROFILE
LWRPMP CHALLENGE GRANT PROGRAM
1994

CRITERIA	4. Very Good	3. Good	2. Sastisfactory	1. Unsastisfactory
6. Long term commitment. Does the proposal indicate a commitment to programs or activities that are long term in scope and nature or will result in future programs or activities.	The proposal clearly indicates how the program or activities will result in a high degree of long term commitment to effective water protection and management.	The proposal indicates how the program or activities will result in some degree of long term commitment to water protection and management.	The proposal indicates dome degree of long term commitment, but does not indicate how it will be achieved.	No long term commitment to water protection and management.
7. Use of local programs and methods. Does the proposal make effective use of local programs and methods to protect and manage water and related land resources.	The proposal makes full use of and builds on the capabilities of existing local programs.	The proposal makes full use of existing local programs.	The proposal makes limited use of existing local programs.	The proposal indicates no use or recognition of existing local programs or methods.
8. Federal, state, local efforts. Does the proposal identify and complement the efforts of existing federal, state or local resource management programs in the county (or region).	The proposal identifies and complements all appropriate federal state and local programs related to the proposed programs and activities.	The proposal identifies and complements some federal, state and local programs related to the proposed programs and activities.	The program or activity contained in the proposal has no federal, state or local counterpart program in existence.	Complementary federal, state or local program exists, but the proposal does not identify it.
9. Official Controls. Does the proposal result in acceleration of local efforts to adopt, administer and enforce official controls to protect and manage water and related land resources.	The proposal will result in accelerated efforts to adopt, administer and enforce official local controls.	The proposal will result in some acceleration of local efforts to adopt, administer and enforce local official controls.	Proposal may accelerate the adoption, administration or enforcement of local official controls.	The proposal does not indicate an initiative to accelerate efforts to adopt, administer and enforce official controls.

LWRPMP CHALLENGE GRANTS:
GUIDANCE FOR WELL-SEALING COST-SHARE APPLICATIONS

General Information

- There is no fixed percentage of the 1994 Challenge Grant Funds reserved for well-sealing. All types of Challenge Grant proposals will be evaluated on a competitive basis in one statewide "pool."

- If possible, the project proposal should contain a list of wells to be sealed. Known information on well locations, depths, and construction, should be included, as well as an explanation of why they were prioritized for sealing (how they fit in to the well sealing priorities.)

- The project proposal should cover:
  - •Project scope
  - •Who will do the work?
  - •How will grants be administered?
  - •How will the wells be identified?
  - •How will wells be prioritized for sealing?

- Counties will have flexibility in varying the cost-share percentages. Cost sharing should be limited to 75% of the total well-sealing cost.

Program Goals

- Target well-sealing cost-share funds to high-priority wells.
- Encourage applications with either a list of identified high-priority wells for sealing, or a well-designed method for selecting wells to be sealed.
- Select counties in different hydrogeologic settings around the state.
- Take maximum advantage of training, educational, and demonstration opportunities afforded by the well-sealing work.

Criteria for evaluating application

- Well sealing priorities.
- Special emphasis will be given to wells in the contribution zone of a public water supply well or in a designated wellhead protection area.
- Strength and feasibility of proposal.
- Capability of county to administer the program.
- Extent of inventory efforts and how the proposal is based on current and past efforts.
- Original & innovative ideas.
- Representation of different hydrogeologic areas.

Well-Sealing Priorities

The available funds will be most effective if they are used to seal the highest-priority wells. A minimum definition of a priority well is one whose construction, condition, and location poses

a problem greater than that posed by inherent geologic conditions. Information on well-sealing priorities has been distributed on several occasions, but will be forwarded upon request .

Requirements

- Justification for wells chosen for sealing should be provided to BWSR.
- Wells sealed according to the provisions of the State Well Code.
- Payment made to contractor(s) only after an Abandoned Well Report is filed with the Minnesota Department of Health.
- Copies of the Abandoned Well Reports must be sent to BWSR.
- Opportunity for on-site inspection by county or state staff.
- Grant monies spent or obligated in contract within the two-year grant period.
- Locations of wells sealed under this program provided to BWSR, in Public Land Survey coordinates (township, range, section, ¼¼¼¼ section) and plotted on copies of 7½ min. topographic maps or another mapped location at least as accurate as a PLS location down to 2.5 acres.
- Records kept of administrative costs.
- The Annual Progress Report the status of the well-sealing grant program in the county should include a list or spreadsheet showing for each well sealed: location, cost-share paid, total well-sealing cost, pertinent well-construction data, and reason the well was chosen.

Contact Eric Mohring, BWSR at (612) 297-7360 with questions.

ARTICLE 2

ENVIRONMENT AND NATURAL RESOURCES

Section 1. [APPROPRIATIONS.]

Except as otherwise provided in this article, the sums set forth in the columns designated "1994 and 1995 APPROPRIATION CHANGE" are appropriated from the general fund, or other named fund, to the agencies for the purposes specified in this article and are to be added to or reduced from appropriations for the fiscal years ending June 30, 1994 and June 30, 1995, in Laws 1993, chapter 172, or another named law. Amounts to be reduced are designated by parentheses.

SUMMARY BY FUND

	1994	1995
General	$	$ 6,666,000
Game and Fish	(1,206,000)	(3,207,000)
Environmental Trust	1,346,000	
Minnesota Future Resources	1,404,000	
TOTAL	1,544,000	3,459,000

	APPROPRIATIONS Available for the Year Ending June 30 1994	1995
	$	$
Sec. 2. BOARD OF WATER AND SOIL RESOURCES	-0-	1,135,000
$1,005,000 is appropriated for implementation of the state revolving fund. Of this amount, $865,000 is for local implementation of the state revolving fund, which provides grants to soil and water conservation districts (SWCDs). The SWCDs must use the grants to hire staff to assist landowners to implement a variety of conservation practices.		
$130,000 is appropriated for fiscal year 1995 to the board of water and soil resources to fund a cooperative effort with the Minnesota extension service to work on groundwater education efforts with local units of government and landowners and for grants under the groundwater education activities program.		
Sec. 3. POLLUTION CONTROL	-0-	2,373,000
(a) Feedlot Assistance and Compliance		

likely to be vetoed

$1,800,000 is appropriated in fiscal year 1995, for feedlot compliance and local assistance.

Of this amount, $900,000 is for grants for county administration of the feedlot permit program, to be administered by the board of water and soil resources in accordance with Minnesota Statutes, section 103B.3369, in cooperation with the pollution control agency. Grants must be matched with a combination of local cash or in-kind contributions. Counties receiving these grants shall submit an annual report to the pollution control agency regarding activities conducted under the grant, expenditure made, and local match contributions. First priority for funding shall be given to counties that have requested and received delegation from the pollution control agency for processing of animal feedlot permit applications under Minnesota Statutes, section 116.07, subdivision 7. Delegated counties shall be eligible to receive a grant of $5,000 plus either: $5 multiplied by the number of livestock or poultry farms with sales greater than $10,000, as reported in the 1992 Census of Agriculture, published by the United States Bureau of Census; or $15 multiplied by the number of feedlots with greater than ten animal units as determined by a level 2 or level 3 feedlot inventory conducted in accordance with the Feedlot Inventory Guidebook published by the board of water and soil resources, dated June 1991.

To receive the additional funding that is based on the county feedlot inventory, the county shall submit a copy of the inventory to the board of water and soil resources.

Any remaining money is transferred to the board of water and soil resources for distribution to counties on a competitive basis through the challenge grant process for the conducting of feedlot inventories, development of delegated county feedlot programs, and for information and education or technical assistance efforts to reduce feedlot-related pollution hazards.

(b) Nonpoint Source Implementation

$300,000 is appropriated in fiscal year 1995, for administrative support for nonpoint source pollution activities, including storm water assistance, individual septic tank systems, and partnerships with local entities to abate nonpoint source pollution.

(c) City of Morton Loan Forgiveness

The city of Morton need not repay money advanced to the city under the municipal litigation loan pilot project established in Laws 1988, chapter 686, article 1, section 69.

(d) External Cost Study

$200,000 is appropriated for an independent study of the external costs of electricity generation in the state. The commissioner must consult with the department of public service, utilities, environmental groups, and other interested persons in the design and scope of the study and selection of a study contractor. Unless the commissioner determines another methodology is more appropriate, the study must include a literature search and peer review of the data; and employ one or more of the following methodologies based upon the commissioner's consultation with interested persons: (1) damage cost; (2) cost of control; and (3) willingness to pay.

The study must be completed by July 1, 1995, and must be transmitted by the commissioner to the public utilities commission for use in its consideration of environmental cost values under Minnesota Statutes, section 216B.2422, subdivision 2. The commission must not make a final decision on cost value until it has considered the study prepared under this section.

This appropriation may not be spent until the commissioner of the pollution control agency has submitted a work plan to the legislative commission on Minnesota resources and the commission has approved the work plan.

(e) Citizens Lake-Monitoring Program

$73,000 is appropriated for the fiscal year ending June 30, 1995, to continue the citizens lake-monitoring program and the electronic lakes bulletin board.

Veto approved

Sec. 4. AGRICULTURE -0- 1,200,000

$750,000 is added to the appropriation in Laws 1993, chapter 172, section 7, to provide assistance to feedlot operators, and to implement best management practices for animal waste and sound nutrient management practices. $50,000 is for grants under Laws 1993, chapter 172, section 7, subdivision 4.

$175,000 is added to the appropriation in Laws 1993, chapter 172, section 7, subdivision 4, and is for the administrative costs of implementing a rural and agriculture loan program for water quality improvement practices.

$50,000 is appropriated in fiscal year 1995 for farm safety programs.

$50,000 is appropriated for fiscal year 1995 to the commissioner of agriculture for coordination and outreach activities relating to sustainable agriculture and integrated pest management programs.

$100,000 is appropriated for fiscal year 1995 to the commissioner of agriculture for demonstration grants on sustainable agriculture and integrated pest management projects. The appropriation is available until expended.

Notwithstanding Minnesota Statutes, section 41A.09, subdivision 3, and Laws 1993, chapter 172, section 7, subdivision 3, the total payments from the ethanol development account to all producers may not exceed $14,800,000 for the biennium ending June 30, 1995.

$75,000 is appropriated for fiscal year 1995 for use in the enforcement and management of the recombinant bovine growth hormone labeling program under Minnesota Statutes, section 32.75.

The department of agriculture and the department of natural resources shall jointly conduct an assessment and report recommendations on developing an integrated pest management program for urban areas. The department shall submit its report to the environment and natural resources finance division of the senate and the environment and natural resources finance committee of the house of representatives by February 15, 1995.

The department of agriculture shall involve technical colleges and other institutions of higher learning in the planning process for the manure-testing program and shall assess the feasibility of including their current or potentially updated laboratories in the future testing program and also study potential curricula for training technicians in the future.

Sec. 5. NATURAL RESOURCES

Subdivision 1. Total Appropriation Change	(1,206,000)	(1,677,000)
Summary by Fund		
General	-0-	1,530,000
Game and Fish	(1,206,000)	(3,207,000)

The unallotment by the commissioner, as presented to the legislature in the commissioner's March 14, 1994, correspondence, to the game and fish

fund appropriation for fiscal year 1994 is void.

Subd. 2. Water Resources Management -0- 145,000

$50,000 is appropriated in fiscal year 1995 to the commissioner of natural resources for a grant to the southwest regional development commission to pay for the activities described in section 65, subdivision 2, paragraph (a), clauses (1) to (4).

$35,000 is appropriated in fiscal year 1995 for reimbursement of the cost of emergency flood damage repairs to the dike on the Root river in Houston county.

$60,000 is appropriated in fiscal year 1995 under Minnesota Statutes, section 103G.701, to the commissioner of natural resources for a grant, requiring no local match, to Morrison county for improving water flow along the easterly shoreline of the Mississippi river near Highway 10 in Morrison county, notwithstanding Minnesota Statutes, section 103G.701, subdivision 4.

The remaining balance of the shoreland grant made by the commissioner of natural resources to the city of Laporte may be used by the city for administration of the city's shoreland ordinance.

The commissioner of natural resources shall conduct a study of dams on waters of the state. The study must investigate the type and number of impoundments that exist, their condition, and their probable future life span. The study also must examine dam issues and make recommendations for policies regarding Minnesota dams, including renovation versus removal, the impact on the ecology of the waterway, any need for additional construction, and the potential for hydropower or drinking water supplies. The commissioner must report back to the house and senate environment committees by February 15, 1995.

Subd. 3. Forest Management -0- 75,000

This appropriation is to the commissioner of natural resources to plan and begin restoration and enhancement of Oak Forest and Oak Savannah natural communities in St. Paul's Indian Mounds Park and Battle Creek regional park.

Subd. 4. Parks and Recreation -0- 270,000

Subd. 5. Trails and

Waterways		(25,000)	650,000
Summary by Fund			
General	-0-	675,000	
Game and Fish	(25,000)	(25,000)	

$600,000 is appropriated in fiscal year 1995 for grant-in-aid snowmobile trail maintenance and construction during the fiscal year ending June 30, 1995. This amount shall not be considered a base increase for fiscal year 1996.

$75,000 is appropriated in fiscal year 1995 for completion of the shore and pier fishing project on the Mississippi River in South St. Paul.

Subd. 6. Fish and Wildlife Management		(938,000)	(2,197,000)
Summary by Fund			
General	-0-	177,000	
Game and Fish	(938,000)	(2,374,000)	

$87,000 is appropriated in fiscal year 1995 for forest and prairie ecologists, to provide research, inventory, and analysis services necessary in the natural heritage program of the department of natural resources.

$90,000 is appropriated in fiscal year 1995 for field resource ecologists. These positions shall work with local units of government to aid in protecting rare and endangered natural areas where development pressure and resource use is high. They also shall interpret county biological survey data for local units.

Subd. 7. Enforcement		(100,000)	(308,000)

These reductions are from the game and fish fund.

Subd. 8. Operations Support		(143,000)	(312,000)
Summary by Fund			
General	-0-	188,000	
Game and Fish	(143,000)	(500,000)	

$150,000 is added to the appropriation in Laws 1993, chapter 172, section 5, subdivision 9, to the commissioner of natural resources for transfer to the environmental quality board. The money must be used for activities related to achieving the sustainable economic development and environmental protection goals of the environmental quality board's sustainable development initiative.

$38,000 is appropriated in fiscal year 1995 to the commissioner of natural resources to pay Marshall county road reimbursement costs under Laws 1993, chapter 172, section 89, and Minnesota Statutes, section 84A.32, subdivision 1, paragraph (d).

Sec. 6. MINNESOTA RESOURCES 2,750,000

Summary by Fund

Minnesota Future Resources Fund	1,404,000
Minnesota Environment and Natural Resources Trust Fund	1,346,000

The following amounts are appropriated from the Minnesota future resources fund and the Minnesota environment and natural resources trust fund. The appropriations are available immediately following enactment and are otherwise subject to the provisions of Laws 1993, chapter 172, section 14.

State Park Betterment 650,000

This amount is added to the appropriation contained in Laws 1993, chapter 172, section 14, subdivision 10, paragraph (a).

Lake Minnetonka Water Access Acquisition 850,000

This amount is added to the appropriation contained in Laws 1993, chapter 172, section 14, subdivision 10, paragraph (n).

Of this amount, $154,000 is from the Minnesota future resources fund and $696,000 is from the environmental trust fund.

Silver Bay Harbor 1,000,000

This amount is added to the appropriation contained in Laws 1993, chapter 172, section 14, subdivision 10, paragraph (o).

Local Recreation Grants 250,000

This appropriation is from the Minnesota future resources fund to the commissioner of natural resources to provide matching grants of $100,000 each to the White Earth and Leech Lake Reservations and $50,000 to the Nett Lake Reservation for community recreation facilities in communities with disproportionate incidences of juvenile delinquency.

Sec. 7. CITIZEN'S COUNCIL ON VOYAGEURS NATIONAL PARK -0- 58,000

Sec. 8. OFFICE OF STRATEGIC AND LONG RANGE PLANNING -0- 300,000

$250,000 is appropriated for the fiscal year ending June 30, 1995. This is a one-time appropriation for a grant to the Northern Counties Land Use Coordinating Board.

$50,000 is appropriated for fiscal year 1995 to the environmental quality board through the director of the office of strategic and long-range planning for the purposes of groundwater protection coordination.

Sec. 9. OFFICE OF WASTE MANAGEMENT -0- 70,000

$70,000 is appropriated in fiscal year 1995 for the purposes of conducting the annual solid waste composition studies.

Sec. 10. Minnesota Statutes 1992, section 13.99, is amended by adding a subdivision to read:

Subd. 6a. [AGRICULTURE BEST MANAGEMENT PRACTICES LOAN PROGRAM.] Data collected by the commissioner on applicants or borrowers for the agriculture best management practices loan program are governed by section 17.117.

Sec. 11. [17.117] [AGRICULTURE BEST MANAGEMENT PRACTICES LOAN PROGRAM.]

Subdivision 1. [PURPOSE.] The purpose of the agriculture best management practices loan program is to provide low or no interest financing to farmers, agriculture supply businesses, and rural landowners for the implementation of agriculture best management practices.

Subd. 2. [AUTHORITY.] The commissioner shall establish, adopt rules for, and implement a program to work with local units of government, federal authorities, lending institutions, and other appropriate organizations to provide loans to landowners and businesses for facilities, fixtures, equipment, or other sustainable practices that prevent or mitigate sources of nonpoint source water pollution. The commissioner shall establish pilot projects to develop procedures for implementing the program. The commissioner shall develop administrative guidelines to implement the pilot projects specifying criteria, standards, and procedures for making loans.

Subd. 3. [APPROPRIATIONS.] Up to $20,000,000 of the balance in the water pollution control revolving fund in section 446A.07, as determined by the public facilities authority, is appropriated to the commissioner for the establishment of this program.

Subd. 4. [DEFINITIONS.] For the purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "Applicant" means a county or a local government unit designated by a county under subdivision 8, paragraph (a).

(b) "Authority" means the Minnesota public facilities authority as established in section 446A.03.

(c) "Best management practices" has the meaning given in sections 103F.711, subdivision 3, and 103H.151, subdivision 2.

(d) "Chair" means the chair of the board of water and soil resources or the designee of the chair.

(e) "Borrower" means an individual farmer, an agriculture supply business, or rural landowner applying for a low-interest loan.

(f) "Commissioner" means the commissioner of agriculture or the designee of the commissioner.

(g) "Comprehensive water management plan" means a state approved and locally adopted plan authorized under section 103B.231, 103B.255, 103B.311, 103C.331, 103D.401, or 103D.405.

(h) "County allocation request" means a loan allocation request from an applicant to implement agriculturally related best management practices defined in paragraph (c).

(i) "Lender agreement" means an agreement entered into between the commissioner and a local lender. The agreement will contain terms and conditions of the loan that will include but need not be limited to general loan provisions, loan management requirements, application of payments, loan term limits, allowable expenses, and fee limitations.

(j) "Local government unit" means a county, soil and water conservation district, or an organization formed for the joint exercise of powers under section 471.59.

(k) "Local lender" means a local government unit as defined in paragraph (j), a state or federally chartered bank, a savings and loan association, a state or federal credit union, or Farm Credit Services.

(l) "Nonpoint source" has the meaning given in section 103F.711, subdivision 6.

Subd. 5. [USES OF FUNDS.] Use of funds under this section must be in compliance with the federal Water Pollution Control Act, section 446A.07, and eligible activities listed in the intended use plan authorized in section 446A.07, subdivision 4.

Subd. 6. [APPLICATION.] (a) The commissioner must prescribe forms and establish an application process for applicants to apply for a county allocation request. The application must include but need not be limited to (1) the geographic area served; (2) the type and estimated cost of activities or projects for which they are seeking a loan allocation; (3) a ranking of proposed activities or projects; and (4) the designation of the local lender and lending practices the applicant intends to use to issue the loans to the borrowers, if a local lender other than the applicant is to be used.

(b) In an area of the state where a county allocation request has not been requested or has been rejected, application forms must be available for a borrower to apply directly to the commissioner for a loan under this program.

(c) If a county allocation request is rejected, the applicant must be notified in writing as to the reasons for the rejection and given 30 days to submit a revised application. The revised application shall be reviewed according to the same procedure used to review the initial application.

Subd. 7. [PAYMENTS.] Payments made from the water pollution control revolving fund must be made in accordance with applicable state and federal laws and rules governing the payments.

Subd. 8. [APPLICANT; BORROWERS.] (a) A county may submit a county allocation request as defined in subdivision 4, paragraph

(h). A county or a group of counties may designate another local government unit as defined in subdivision 4, paragraph (j), to submit a county allocation request.

(b) If a county does not submit a county allocation request, and does not designate another local government unit, a soil and water conservation district may submit a county allocation request. In all instances, there may be only one request from a county. The applicant must coordinate and submit requests on behalf of other units of government within the geographic jurisdiction of the applicant.

(c) Borrowers may apply directly to the commissioner if the commissioner does not receive or approve a county allocation request from the county, designated local government unit, or soil and water conservation district in which the proposed activities would be carried out.

Subd. 9. [REVIEW AND RANKING OF ALLOCATION REQUESTS.] (a) The commissioner shall chair the subcommittee established in section 103F.761, subdivision 2, paragraph (b), for purposes of reviewing and ranking county allocation requests. The rankings must be in order of priority and shall provide financial assistance within the limits of the funds available. In carrying out the review and ranking, the subcommittee must consist of, at a minimum, the chair, representatives of the pollution control agency, United States Department of Agricultural Stabilization and Conservation Service, United States Department of Agriculture Soil Conservation Service, Association of Minnesota Counties, and other agencies or associations as the commissioner, the chair, and agency determine are appropriate. The review and ranking shall take into consideration other related state or federal programs.

(b) The subcommittee shall use the criteria listed below in carrying out the review and ranking:

(1) whether the proposed activities are identified in a comprehensive water management plan as priorities;

(2) whether the applicant intends to establish a revolving loan program under subdivision 10, paragraph (b);

(3) the potential that the proposed activities have for improving or protecting surface and groundwater quality;

(4) the extent that the proposed activities support areawide or multijurisdictional approaches to protecting water quality based on defined watershed;

(5) whether the activities are needed for compliance with existing water related laws or rules;

(6) whether the proposed activities demonstrate participation, coordination, and cooperation between local units of government and other public agencies;

(7) whether there is coordination with other public and private funding sources and programs; and

(8) whether there are off-site public benefits such as preventing downstream degradation and siltation.

Subd. 10. [AUTHORITY OF APPLICANTS.] (a) Applicants may enter into agreements with borrowers to finance projects under this section.

(b) Applicants may establish revolving loan programs to finance projects under this section.

(c) In approving county allocation requests, the commissioner shall allow applicants to provide loans under revolving loan programs established under paragraph (b), until 50 percent of the amount appropriated and available under subdivision 3 has been allocated to applicants establishing these programs. In approving any additional county allocation requests, the commissioner may allow applicants to provide loans under these programs.

Subd. 11. [BORROWER ELIGIBILITY; TERMS; REPAYMENT.] (a) Local lenders shall use the following criteria in addition to other criteria they deem necessary in determining the eligibility of borrowers for loans:

(1) whether the activity is certified by a local unit of government as meeting priority needs identified in a comprehensive water management plan and is in compliance with accepted standards, specifications, or criteria;

(2) whether the activity is certified as eligible under

Environmental Protection Agency or other applicable guidelines; and

(3) whether the repayment is assured from the borrower.

(b) Local lenders shall set the terms and conditions of loans. In all instances, local lenders must provide for sufficient collateral or protection for the loan principal. They are responsible for collecting repayments by borrowers. For direct loans, the borrower must provide sufficient collateral and repay the loan according to a mutually prearranged schedule with the commissioner.

(c) A local lender is responsible for repaying the principal of a loan to the commissioner. The terms of repayment will be identified in the lender agreement. If defaults occur, it is the responsibility of the local lender to obtain repayment from the borrower. For revolving loan programs established under subdivision 10, paragraph (b), the lender agreement must provide that:

(1) repayment of principal to the commissioner must begin ten years after the date the applicant receives the allocation; and

(2) the applicant shall report to the commissioner annually regarding the intended uses of the money in the revolving loan program.

Subd. 12. [DATA PRIVACY.] The following data on applicants or borrowers collected by the commissioner under this section, are private for data on individuals as provided in section 13.02, subdivision 12, or nonpublic for data not on individuals as provided in section 13.02, subdivision 9: financial information, including, but not limited to, credit reports, financial statements, tax returns and net worth calculations received or prepared by the commissioner.

Subd. 13. [ESTABLISHMENT OF ACCOUNT.] The authority shall establish an account called the agriculture best management practices revolving fund to provide loans and other forms of financial assistance authorized under section 446A.07. The fund must be credited with repayments.

Subd. 14. [FEES; LOAN SERVICES.] Origination fees charged directly to borrowers by local lenders upon executing a loan shall not exceed one-half of one percent of the loan amount. Servicing fees assessed to loan repayments must not exceed two percent interest on outstanding principal amounts if the local lender is a local government unit, or three percent interest on outstanding principal amounts if the local lender is a state or federally chartered bank, savings and loan association, a state or federal credit union, or an entity of Farm Credit Services.

Subd. 15. [REPORT.] (a) The commissioner and chair shall prepare and submit a report to the legislative water commission by October 15, 1994, and October 15, 1995. thereafter, the report shall be submitted by October 15 of each odd-numbered year.

(b) The report shall include, but need not be limited to, matters such as loan allocations and uses, the extent to which the financial assistance is helping implement local water planning priorities, the integration or coordination that has occurred with related programs, and other matters deemed pertinent to the implementation of the program.

Subd. 16. [ASSESSMENT AGAINST REAL PROPERTY.] A county may assess and charge against real property amounts loaned and servicing fees for projects funded under this section. The auditor of the county where the project is located shall extend the amounts assessed and charged on the tax roll of the county against the real property on which the project is located.

Sec. 12. Minnesota Statutes 1992, section 17B.15, subdivision 1, is amended to read:

Subdivision 1. [ADMINISTRATION; APPROPRIATION.] The fees for inspection and weighing shall be fixed by the commissioner and be a lien upon the grain. The commissioner shall set fees for all inspection and weighing in an amount adequate to pay the expenses of carrying out and enforcing the purposes of sections 17B.01 to 17B.23, including the portion of general support costs and statewide indirect costs of the agency attributable to that function, with a reserve sufficient for up to six months. The

commissioner shall review the fee schedule twice each year. Fee adjustments are not subject to chapter 14. Payment shall be required for services rendered. If the grain is in transit, the fees shall be paid by the carrier and treated as advance charges, and, if received for storage, the fees shall be paid by the warehouse operator, and added to the storage charges.

All fees collected and all fines and penalties for violation of any provision of this chapter shall be deposited in the grain inspection and weighing account, which is created in the state treasury for carrying out the purpose of sections 17B.01 to 17B.23. The money in the account, including interest earned on the account, is annually appropriated to the commissioner of agriculture to administer the provisions of sections 17B.01 to 17B.23.

Sec. 13. Minnesota Statutes 1992, section 32.103, is amended to read:

32.103 [INSPECTION OF DAIRIES.]

(a) At times the commissioner determines proper, the commissioner shall cause to be inspected all places where dairy products are made, stored, or served as food for pay, and all places where cows are kept by persons engaged in the sale of milk, and shall require the correction of all insanitary conditions and practices found. During routine inspections or as necessary, the commissioner shall inspect for evidence of use of rBGH in violation of section 32.75, by producers providing affidavits of nontreatment under that section.

(b) A refusal or physical threat that prevents the completion of an inspection or neglect to obey a lawful direction of the commissioner or the commissioner's agent given while carrying out this section may result in the suspension of the offender's permit or certification. The offender is required to meet with a representative of the offender's plant or marketing organization and a representative of the commissioner within 48 hours excluding holidays or weekends or the suspension will take effect. A producer may request a hearing before the commissioner or the commissioner's agent if a

(b) The commissioner may, by rule, prescribe an alternative color in cases where paragraph (a) would violate the Religious Freedom Restoration Act of 1993, Public Law Number 103-141.

Sec. 27. Minnesota Statutes 1992, section 103F.725, is amended by adding a subdivision to read:

Subd. 1a. [FINANCIAL ASSISTANCE; LOANS.] (a) Up to $10,000,000 of the balance in the water pollution control revolving fund in section 446A.07, as determined by the public facilities authority shall be appropriated to the commissioner for the establishment of a clean water partnership loan program.

(b) The agency may award loans for up to 100 percent of the costs associated with activities identified by the agency as best management practices pursuant to section 319 and section 320 of the federal Water Quality Act of 1987, as amended, including associated administrative costs.

(c) Loans may be used to finance clean water partnership grant project eligible costs not funded by grant assistance.

(d) The interest rate, at or below market rate, and the term, not to exceed 20 years, shall be determined by the agency in consultation with the public facilities authority.

(e) The repayment must be deposited in the water pollution control revolving fund under section 446A.07.

(f) The local unit of government receiving the loan is responsible for repayment of the loan.

Sec. 28. Minnesota Statutes 1992, section 103F.745, is amended to read:

103F.745 [RULES.]

(a) The agency shall adopt rules necessary to implement sections 103F.701 to 103F.761. The rules shall contain at a minimum:

(1) procedures to be followed by local units of government in applying for technical or financial assistance or both;

(2) conditions for the administration of assistance;

(3) procedures for the development, evaluation, and implementation of best management practices;

(4) requirements for a diagnostic study and implementation

plan;

(5) criteria for the evaluation and approval of a diagnostic study and implementation plan;

(6) criteria for the evaluation of best management practices;

(7) criteria for the ranking of projects in order of priority for assistance;

(8) criteria for defining and evaluating eligible costs and cost-sharing by local units of government applying for assistance; and

(9) other matters as the agency and the commissioner find necessary for the proper administration of sections 103F.701 to 103F.761, including any rules determined by the commissioner to be necessary for the implementation of federal programs to control nonpoint source water pollution.

(b) For financial assistance by loan under section 103F.725, subdivision 1a, criteria established by rule for the clean water partnership grants program shall guide requirements and administrative procedures for the loan program until January 1, 1996, or the effective date of the administrative rules for the clean water partnership loan program, whichever occurs first.

Sec. 29. Minnesota Statutes 1992, section 103F.761, subdivision 2, is amended to read:

Subd. 2. [DUTIES.] (a) The project coordination team shall advise the agency in preparation of rules, evaluate projects, and recommend to the commissioner those projects that the team believes should receive financial or technical assistance or both from the agency. After approval of assistance for a project by the agency, the team shall review project activities and assist in the coordination of the state program with other state and federal resource management programs.

(b) For state agencies or departments receiving funding under section 446A.07, subdivision 6, the project coordination team shall provide guidance for the allocation of water pollution control fund nonpoint source pollution funding with consideration to statewide environmental priorities including

priorities for types of projects and geographic or watershed priorities. A subcommittee of the project coordination team will be formed for each of the separate funding areas under section 446A.07, subdivision 6, and shall be chaired by the appropriate lead state agency or department. Each subcommittee shall evaluate and rank projects within its area with consideration given to the guidance provided by the project coordination team.

Sec. 30. Minnesota Statutes 1992, section 115A.5501, subdivision 2, is amended to read:

Subd. 2. [MEASUREMENT; PROCEDURES.] To measure the overall percentage of packaging in the statewide solid waste stream, the ~~commissioner~~ director and the chair of the metropolitan council, in consultation with the ~~director~~ commissioner, shall each conduct an annual ~~four-season~~ solid waste composition study in the nonmetropolitan and metropolitan areas respectively or shall develop an alternative method that is as statistically reliable as a waste composition study to measure the percentage of packaging in the waste stream.

~~Beginning in 1993,~~ The chair of the council shall submit the results from the metropolitan area to the ~~commissioner~~ director by ~~March~~ May 1 of each year. The ~~commissioner~~ director shall average the nonmetropolitan and metropolitan results and submit the statewide percentage, along with a statistically reliable margin of error, to the ~~director by April 1 of each year. The director shall report the information to~~ the legislative commission on waste management by July 1 of each year.

Sec. 31. Minnesota Statutes 1992, section 116.07, is amended by adding a subdivision to read:

Subd. 11. [PERMITS; LANDFARMING CONTAMINATED SOIL.] (a) If the agency receives an application for a permit to spread soil contaminated by a harmful substance as defined in section 115B.25, subdivision 7a, on land in a township other than the township of origin of the soil, the agency must notify the board of the township where the spreading would occur at least 60 days

Minnesota Board of Water & Soil Resources

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WETLAND CONSERVATION ACT (WCA)
LGU ADOPTION - STATUS REPORT

In Greater MN all but five counties have adopted (see below) the WCA either by assuming it themselves or delegating it to the SWCD. The counties, working with BWSR field staff, are leading the effort to establish "seamless coverage" (that is, assuring that some LGU is responsible for every geographic part of the state -- excluding tribal owned lands) by contacting cities to determine whether they are or are planning to administer the WCA on their own.

In the seven county metro area the LGUs are cities, WMOs and townships. Because of the large number of LGUs with varying boundaries the cities are usually left to make the decision about whether to administer the WCA or delegate it to the watershed district or WMO. In all areas, but especially in the more rural/fringe areas, the SWCDs are providing substantial technical and administrative assistance to the cities and townships. The bulk of the WCA grant money has generally been provided to the SWCDs to provide this assistance. There are three items related to LGU WCA adoption which need attention:

1. BWSR staff need to develop a list of LGUs with contact person and Technical Evaluation Panel information. A new database has been developed to accomplish this need but staff time to enter information and sustain it is lacking.

2. BWSR must ensure "seamless coverage" as noted above or take action against the LGU to achieve this. With some time and some prodding this can be accomplished for most of the LGUs.

3. **** Board Action Requested ***
   The five counties that have not adopted the WCA have received grant money from the state via a contract which states that they will adopt and implement the WCA. Also MN Rule 8420.0260 prescribes actions the BWSR is to take if the WCA is not adopted. It has been five months since the WCA became effective and about three months since they have received the grant money. The BWSR must prescribe the steps to take to accomplish WCA adoption and compliance with the grant agreement.

County	Env. Block Grant Amount	WCA Portion
Beltrami	$74,107	$36,000
Koochiching	$22,346 (no LWP)	$19,200
Marshall	$55,105	$19,200
Pennington	$55,245	$16,700
Lake (no grant agreement)	($57,471)	($16,700)

5-17-94, John Jaschke

law to the facts, including this chapter; and if the local government unit made no procedural errors prejudicial to a party. Otherwise, the board will reverse the decision, amend it, or remand it with instructions for further proceedings.
SA: MS s 14.06; 103B.101; 103B.3355
HIST: 18 SR 274

8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.

The board shall send copies of this chapter to all local government units at least 60 days before July 1, 1993. By January 1, 1994, each local government unit of the state, except tribal lands, shall acknowledge to the board that it is assuming its responsibilities under this chapter and the act. Local government units from which an affirmative response is not received will be given notice by the board that there is a 60-day moratorium in the local government unit's jurisdiction on exemption, no-loss, replacement plan, and banking determinations. The board will end the moratorium within the 60 days upon agreement by the local government unit that it will assume its duties under this chapter and the act. If at the end of the initial 60-day moratorium an agreement has not been made for the local government unit to apply the law, the board can extend the moratorium until the local government unit agrees to apply the law.

If the board has information that a local government unit is not following this chapter or the act in making exemption, no-loss, replacement plan, or banking determinations, the board shall notify the local government unit of its concerns. If not satisfied with the local government unit's response, the board shall ask the local government unit to appear at a hearing before the board to discuss the matter. If it is determined at the hearing, that corrective action is necessary, the board shall write the local government unit directing specific corrective action within 60 days. The notice shall explain the reason for the action.

If, after the 60-day period described in this part the local government unit has not corrected the problem to the satisfaction of the board, the board shall take appropriate legal action to ensure compliance.
SA: MS s 14.06; 103B.101; 103B.3355
HIST: 18 SR 274

8420.0270 COMPENSATION.

Replacement plan applicants who have completed the local government unit process and the board appeal process, and the plan has not been approved as submitted, may apply to the board for compensation under Minnesota Statutes, section 103G.237.

The application must identify the applicant, locate the wetland, and refer the board to its appeal file in the matter.

The application must include an agreement that in exchange

WR-01087-01

STATE OF MINNESOTA
MINNESOTA BOARD OF WATER AND SOIL RESOURCES
NATURAL RESOURCES BLOCK GRANT AGREEMENT

Amount $ _____ **Natural Resources Block Grant**

Local Governmental Unit: _____

Address: _____

_____

_____

Agreement Period: January 15, 1994 to January 15, 1996

THIS AGREEMENT is entered into between the State of Minnesota, acting by and through its Board of Water and Soil Resources, hereinafter referred to as the "Board", and the above named Local Governmental Unit, hereinafter referred to as the "LGU".

WHEREAS, the Minnesota Legislature, by Laws of Minnesota 1993, Chapter 172, sec. 6, established the Natural Resources Block Grant, hereinafter referred to as the "NRBG", to assist with the implementation of comprehensive local water plans, wetland conservation act, and shoreland programs; and

WHEREAS, Minnesota Statutes 103B.101 subd. 9. (1), and 103B.3369, Subd. 5., and laws of Minnesota 1993, Chapter 172, sec. 6 authorize the Board to award grants; and

WHEREAS, a LGU must meet the criteria established by statute and the Board to be eligible to receive NRBG state grant funds.

WHEREAS, the Board has determined the LGU to be eligible and has selected the LGU to participate in the NRBG; and

WHEREAS, the LGU has provided a certified copy of the LGU resolution authorizing the LGU's participation in the NRBG including the required local match, attached hereto as Exhibit A.

NOW THEREFORE, it is agreed between the parties as follows:

I. LGU DUTIES AND SPECIFIC PROGRAM REQUIREMENTS

The LGU is responsible for the specific duties for the NRBG, as follows:

1. **TAX LEVY.** The LGU's participation in the NRBG is conditioned upon LGU expenditure of cash and in-kind contributions to match the NRBG as specified in Laws of Minnesota 1993, Chapter 172, sec. 6. and the Board grant allocation and match requirements adopted by the Board.

2. **REPORTING.** The LGU shall submit an annual progress report to the Board by January 31 of each year on the status of program implementation by the LGU. Information provided must conform to the requirements set by the Board.

3. **COMPLIANCE.** The LGU shall comply with Minnesota Statutes Section 103B.3361 through 103B.3369 (1990), Minnesota Rules Chapter 8405, Laws of Minnesota 1991, Chapter 354, as amended by Laws of Minnesota 1993, Chapter 175, Minnesota Rules Chapter 8420, Minnesota Statutes Section 103F.201, and Minnesota Rules Chapter 6120, and amendments thereto for comprehensive water planning, the wetland conservation act, and the DNR shoreland management program.

II. PROGRAM APPLICATION.

The LGU shall perform the duties and responsibilities described in the NRBG application, as approved by the Board, and on file at the Board office in St. Paul, Minnesota. The approved application is incorporated into this Agreement by reference, and made a part hereof.

III. GENERAL TERMS AND CONDITIONS

A. TERMS OF PAYMENT.

1. Grant payments shall be made in one installment promptly after the effective date of this Agreement. The Board shall pay the Grant Amount stated on page 1. The total obligation of the Board shall not exceed the Grant Amount.

2. Any state funds remaining unspent, unencumbered or becoming unobligated after the expiration of the Agreement Period stated above shall be returned to the Board within two months of the expiration of the Agreement Period.

3. State funds may not be used for costs incurred before or after the end of the Agreement Period stated above, unless approved by the Board.

4. Payment to the LGU is made under the condition that all work performed pursuant to this Agreement shall be performed to the satisfaction of the Board, and in accordance with all applicable federal and state laws, including rules and regulations, and local ordinances. The LGU shall use the funds provided herein only for the purposes stated in the NRBG application, as approved by the Board, and this Agreement.

B. PERIOD OF AGREEMENT. This Agreement shall be effective upon such date as it is executed as to encumbrance by the Commissioner of Finance, and shall remain in effect until the expiration of the Agreement Period stated above, or until all of the obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

C. CANCELLATION AND REVOCATION.

1. The Board may cancel this entire Agreement for just cause. "Just cause" means that the LGU or its designee is not disbursing grant funds in accordance with established Board or state procedures, or has otherwise breached a term of this Agreement. The LGU may cancel this Agreement with or without just cause. The Board or the LGU must give written notice 14 calendar days prior to cancellation. In the event of cancellation by the Board or LGU, the LGU is entitled to payment, determined on a pro rata basis, for eligible work satisfactorily performed and the remaining grant funds must be promptly returned to the Board.

2. At the request of any state agency commissioner, the Board shall revoke and the LGU shall return to the Board that portion of the state funds used to support the NRBG not in compliance with the rules of that requesting agency.

D. ASSIGNMENT. The LGU shall neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the Board, except for contracts with other local units of governments authorized by Section 103B.3369. The LGU may contract with others, including appropriate local units of government to perform the work specified in the Agreement. In all cases the LGU shall remain responsible for the work it authorizes and/or contracts with others to perform, and shall not delegate its responsibility under this Agreement.

E. AMENDMENTS. Any amendments to this Agreement shall be in writing, and shall be executed by the Board and the LGU.

F. COST OVERRUNS. The LGU agrees that any cost overrun is the sole financial responsibility of the LGU.

G. LIABILITY. The LGU agrees to indemnify and save and hold the Board, its agents, and employees harmless from any and all claims or causes of action arising from the performance of this Agreement by the LGU, its designated local units of government, contractors, agents or employees. This clause shall not be construed to bar any legal remedies LGU may have for the Board's failure to fulfill its obligations pursuant to this Agreement. This clause shall survive the expiration of the Agreement Period or the expiration or termination of this Agreement.

H. AUDITS. The books, records, documents, and accounting procedures and practices of the LGU and its designated local units of government and contractors relevant to the NRBG may be examined at any time by the Board or Board's designee. The LGU or designated local unit of government implementing this Agreement shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period, and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board. The LGU or delegated local unit of government shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the Grant Agreement.

I. AFFIRMATIVE ACTION. The LGU certifies that it is either exempt from obtaining a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes Section 363.073, or has obtained said certificate.

J. NONDISCRIMINATION. As a condition of receiving financial support for the NRBG, GRANTEE assures that it will meet all applicable requirements of the Civil Rights Act of 1964, as amended (including nondiscrimination on the basis of disability conditions) and of any applicable state civil rights statutes.

K. WORKERS COMPENSATION. The LGU assures that it has provided, or shall provide, acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, Subdivision 2 (1992).

L. ANTITRUST. LGU hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

M. DATA PRIVACY ACT. The LGU agrees to indemnify and save hold the STATE, its agents and employees, harmless from any and all claims or causes of action arising from a violation of any provision of Minnesota Statutes, Chapter 13.

N. DATA COMPATIBILITY. The LGU shall prepare and maintain all information gathered as a result of this project in a format which is compatible with the data systems employed by the principal information users of the State of Minnesota.

M. CAPITAL EQUIPMENT. The title for equipment purchased with the funding provided in this Agreement shall be taken in the name of the State of Minnesota. The equipment will remain the property of the State for its useful life. After the Grant Period, the equipment may remain in the custody of the LGU so long as it is used for the purposes of promoting and supporting the coordination of shoreland management activities. The State may take possession of the equipment at which time it ceases to be used for the intended purpose and at such time as it becomes necessary to use it for State purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

LOCAL GOVERNMENTAL UNIT

APPROVED:

_____**LGU**
BY ITS LGU
BOARD OF COMMISSIONERS

By: _____

Title: Chairperson

Date: _____

By: _____

Title: LGU Auditor/Administrator

Date: _____

STATE OF MINNESOTA

BOARD OF WATER AND SOIL RESOURCES

By: _____

Title: _____

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM AND EXECUTION
BY THE ATTORNEY GENERAL

By: _____
Assistant Attorney General

Date: _____

COMMISSIONER OF FINANCE
Encumbered Department of Finance

By: _____

Title: _____

Date: _____

Attachments:
Exhibit A: Certified copy of LGU Resolution authorizing the LGU's participation in the NRBG

SUMMARY OF WETLAND CONSERVATION ACT 1994 AMENDMENTS

Section 2: • Allows Type 6 wetlands to be enrolled in the Permanent Wetland Preserves Program.

Section 3: • Allows a local unit of government to develop and implement a comprehensive wetland management plan as part of the local water plan as approved by the BWSR.

• Requires all state agencies to comply with the provisions of the wetland conservation act.

Section 4: • Clarifies that existing roadways may be upgraded to current construction and safety standards as long as wetland impacts are minimized and less than 0.5 acres. This is not a change from current interpretations of USCOE NWP #3 which was already exempt under Exemption #6.

Section 5: • Sets forth the criteria for the BWSR to consider approval of a local comprehensive wetland management plan.

Section 6: • Eliminates the $75 processing fee and permits local governments to establish fee schedules to meet the costs of administration. Most do have multiple fee schedules, however some local governments have argued that the law is limiting.

Section 7 thru 9: • Provides for a streamlined application and decision notification process for small projects less than 10,000 square fee (approximately 1/4 acre). Currently the law requires between 90 and 120 days of review for a project. That timeframe can delay projects for a whole construction season.

Section 10: • Clarifies the compensation when a replacement is denied. Currently the compensation is based on agricultural land value even in areas where there is no agricultural land. This section provides for compensation based on the value as reflected on the most recent property tax statement. Provides for equity in compensation between rural and urban areas.

Section 11: • Encourages the state to continue to pursue wetland regulatory simplification between local, state and federal programs.

Section 12: • Provides that terminating waterbank agreements are eligible for the permanent wetland preserve. About 20 landowners have 10 year agreements that are terminating and would have under the waterbank program been drained without offering compensation.

Bonding Bill: • Appropriates $300,000 to BWSR for the establishment of wetland mitigation banking credits.

May 17, 1994
John Jaschke, BWSR

CHAPTER No. 627
H.F. No. 3179

AN ACT

NOTE
This is the final version of the bill that will be transmitted to the governor's desk. Check House Index Department for updated status (296-6646)

relating to wetlands; authorizing grants for flood control measures along a portion of the Red river; allowing alternative wetland regulation under county plans; expanding types of wetlands that may be used in the state wetland bank; modifying exemptions; clarifying the applicability of the wetland conservation act to the state; streamlining notice requirements for smaller wetland projects; adding an alternative compensation formula; expanding eligibility for the permanent wetlands preserve; amending Minnesota Statutes 1992, sections 103F.161, subdivision 1; 103F.516, subdivision 1; 103G.2242, subdivisions 1, 5, 6, 7, and 8; and 103G.237, subdivision 4; Minnesota Statutes 1993 Supplement, sections 103G.222; and 103G.2241.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 103F.161, subdivision 1, is amended to read:

Subdivision 1. [GRANTS AUTHORIZED.] (a) The commissioner may make grants to local governments to:

(1) conduct floodplain damage reduction studies to determine the most feasible, practical, and effective methods and programs for mitigating the damages due to flooding within flood prone rural and urban areas and their watersheds; and

(2) plan and implement flood mitigation measures.

(b) The commissioner may cooperate with the North Dakota state water commission, local governmental units, and local water management organizations in this state and in North Dakota, and the United States Army Corps of Engineers to develop hydrologic models and conduct studies to evaluate the

practicality and feasibility of flood control measures along the Red river from East Grand Forks to the Canadian border. The commissioner may make grants to local governmental units for these purposes. Flood control measures that may be investigated include agricultural and urban levee systems, wetland restoration, floodwater impoundments, farmstead ring-dikes, and stream maintenance activities.

Sec. 2. Minnesota Statutes 1992, section 103F.516, subdivision 1, is amended to read:

Subdivision 1. [EASEMENTS.] Upon application by a landowner, the board may acquire permanent easements on land containing type 1, 2, ~~or~~ 3, or 6 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition).

Sec. 3. Minnesota Statutes 1993 Supplement, section 103G.222, is amended to read:

103G.222 [REPLACEMENT OF WETLANDS.]

(a) After the effective date of the rules adopted under section 103B.3355 or 103G.2242, whichever is later, 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 ~~either~~ a replacement plan approved as provided in section 103G.2242, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2242, subdivision 1, paragraph (c), or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. Mining reclamation plans shall apply the same principles and standards for replacing wetlands by restoration or creation of wetland areas that are applicable to mitigation plans approved as provided in section 103G.2242.

(b) Replacement must be guided by the following principles in descending order of priority:

(1) avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;

(2) minimizing the impact by limiting the degree or

magnitude of the wetland activity and its implementation;

(3) rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;

(4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity; and

(5) compensating for the impact by replacing or providing substitute wetland resources or environments.

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that a deed restriction is placed on the altered wetland prohibiting nonagricultural use for at least ten years.

(d) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected.

(e) Replacement shall be within the same watershed or county as the impacted wetlands, as based on the wetland evaluation in section 103G.2242, subdivision 2, except that counties or watersheds in which 80 percent or more of the presettlement wetland acreage is intact may accomplish replacement in counties or watersheds in which 50 percent or more of the presettlement wetland acreage has been filled, drained, or otherwise degraded. Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved by the commissioner under an established wetland banking system, or under the rules for wetland banking as provided for under section 103G.2242.

(f) Except as provided in paragraph (g), for a wetland located on nonagricultural land, replacement must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland.

(g) For a wetland located on agricultural land or in counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, replacement must be in the ratio of one acre of replaced wetland for each acre of drained

or filled wetland.

(h) Wetlands that are restored or created as a result of an approved replacement plan are subject to the provisions of this section for any subsequent drainage or filling.

(i) Except in counties or watersheds where 80 percent or more of the presettlement wetlands are intact, only wetlands that have been restored from previously drained or filled wetlands, wetlands created by excavation in nonwetlands, wetlands created by dikes or dams along public or private drainage ditches, or wetlands created by dikes or dams associated with the restoration of previously drained or filled wetlands may be used in a statewide banking program established in rules adopted under section 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

(j) The technical evaluation panel established under section 103G.2242, subdivision 2, shall ensure that sufficient time has occurred for the wetland to develop wetland characteristics of soils, vegetation, and hydrology before recommending that the wetland be deposited in the statewide wetland bank. If the technical evaluation panel has reason to believe that the wetland characteristics may change substantially, the panel shall postpone its recommendation until the wetland has stabilized.

(k) This section and sections 103G.223 to 103G.2242, 103G.2364, and 103G.2365 apply to the state and its departments and agencies.

Sec. 4. Minnesota Statutes 1993 Supplement, section 103G.2241, is amended to read:

103G.2241 [EXEMPTIONS.]

(a) Subject to the conditions in paragraph (b), a replacement plan for wetlands is not required for:

(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price

support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;

(2) activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States Code, title 16, section 3831, that:

(i) was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and

(ii) has not been restored with assistance from a public or private wetland restoration program;

(3) activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained;

(4) activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county agricultural stabilization and conservation service office prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985;

(5) activities exempted from federal regulation under United States Code, title 33, section 1344(f);

(6) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clause (14), limited to when a new road crosses a wetland, and all of clause (26);

(7) activities in a type 1 wetland on agricultural land, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition) except for bottomland hardwood type 1 wetlands;

(8) activities in a type 2 wetland that is two acres in size or less located on agricultural land;

(9) activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland;

(10) activities in a wetland created solely as a result of:

(i) beaver dam construction;

(ii) blockage of culverts through roadways maintained by a public or private entity;

(iii) actions by public entities that were taken for a purpose other than creating the wetland; or

(iv) any combination of (i) to (iii);

(11) placement, maintenance, repair, enhancement, or replacement of utility or utility-type service, including the transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications if:

(i) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and

(ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;

(12) activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;

(13) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline;

(14) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters;

(15) permanent access for forest roads across wetlands so

long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch or tile line; with filling avoided wherever possible; and there is no drainage of the wetland or public waters;

(16) ~~activities associated with routine maintenance or repair of existing public highways, roads, streets, and bridges, provided the activities do not result in additional intrusion into the wetland outside of the existing right-of-way~~ draining or filling up to one-half acre of wetlands for the repair, rehabilitation, or replacement of a previously authorized, currently serviceable existing public road, provided that minor deviations in the public road's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards, that are necessary to make repairs, rehabilitation, or replacement are allowed if the wetland draining or filling resulting from the repair, rehabilitation, or replacement is minimized;

(17) emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and do not result in the draining or filling, wholly or partially, of a wetland;

(18) normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland;

(19) duck blinds;

(20) aquaculture activities, including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or

expansion of buildings;

(21) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United State Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344;

(22) normal agricultural practices to control pests or weeds, defined by rule as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices;

(23) activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program;

(24) development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. In the seven-county metropolitan area and in cities of the first and second class, plat approval must be preliminary as approved by the appropriate governing body; and

(25) activities that result in the draining or filling of less than 400 square feet of wetlands.

(b) For the purpose of paragraph (a), clause (16), "currently serviceable" means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. Paragraph (a), clause (16), authorizes the repair, rehabilitation, or replacement of public roads destroyed by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under

contract to commence within two years of the occurrence of the destruction or damage.

(c) A person conducting an activity in a wetland under an exemption in paragraph (a) shall ensure that:

(1) appropriate erosion control measures are taken to prevent sedimentation of the water;

(2) the activity does not block fish passage in a watercourse; and

(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

Sec. 5. Minnesota Statutes 1992, section 103G.2242, subdivision 1, is amended to read:

Subdivision 1. [RULES.] (a) By July 1, 1993, the board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values; may address the state establishment and administration of a wetland banking program for public and private projects, which may include provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land; the methodology to be used in identifying and evaluating wetland functions; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and include the planting of trees or shrubs.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules.

(c) The board may approve as an alternative to the rules

adopted under this subdivision a comprehensive wetland protection and management plan developed by a local government unit, provided that the plan:

(1) incorporates sections 103A.201, subdivision 2, and 103G.222;

(2) is adopted as part of an approved local water plan under sections 103B.231 and 103B.311; and

(3) is adopted as part of the local government's official controls.

(d) If the local government unit fails to apply the rules, or fails to implement a local program under paragraph (c), the government unit is subject to penalty as determined by the board.

Sec. 6. Minnesota Statutes 1992, section 103G.2242, subdivision 5, is amended to read:

Subd. 5. [PROCESSING FEE.] The local government unit may charge a processing ~~fee of up to $75~~ fees in amounts not greater than are necessary to cover the reasonable costs of implementing the rules adopted under subdivision 1.

Sec. 7. Minnesota Statutes 1992, section 103G.2242, subdivision 6, is amended to read:

Subd. 6. [NOTICE OF APPLICATION.] (a) Except as provided in paragraph (b), within ten days of receiving an application for approval of a replacement plan under this section, a copy of the application must be submitted to the board for publication in the Environmental Quality Board Monitor and separate copies mailed to individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district, the board of county commissioners, the commissioner of agriculture, and the mayors of the cities within the area watershed. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.

(b) Within ten days of receiving an application for approval of a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a

summary of the application must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the members of the technical evaluation panel, individual members of the public who request a copy, and the managers of the watershed district, if applicable. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.

Sec. 8. Minnesota Statutes 1992, section 103G.2242, subdivision 7, is amended to read:

Subd. 7. [NOTICE OF DECISION.] (a) Except as provided in paragraph (b), at least 30 days prior to the effective date of the approval or denial of a replacement plan under this section, a copy of the approval or denial must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the applicant, the board, individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district, the board of county commissioners, the commissioner of agriculture, and the mayors of the cities within the area watershed.

(b) Within ten days of the decision approving or denying a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the approval or denial must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the applicant, individual members of the public who request a copy, the members of the technical evaluation panel, and the managers of the watershed district, if applicable. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.

Sec. 9. Minnesota Statutes 1992, section 103G.2242, subdivision 8, is amended to read:

Subd. 8. [PUBLIC COMMENT PERIOD.] Except for activities impacting less than 10,000 square feet of wetland, before

approval or denial of a replacement plan under this section, comments may be made by the public to the local government unit for a period of 30 days.

Sec. 10. Minnesota Statutes 1992, section 103G.237, subdivision 4, is amended to read:

Subd. 4. [COMPENSATION.] (a) The board shall award compensation in an amount equal to 50 percent of the value of the wetland, calculated by multiplying the acreage of the wetland by the greater of:

(1) the average equalized estimated market value of agricultural property in the township as established by the commissioner of revenue at the time application for compensation is made; or

(2) the assessed value per acre of the parcel containing the wetland, based on the assessed value of the parcel as stated on the most recent tax statement.

(b) A person who receives compensation under paragraph (a) shall convey to the board a permanent conservation easement as described in section 103F.515, subdivision 4. An easement conveyed under this paragraph is subject to correction and enforcement under section 103F.515, subdivisions 8 and 9.

Sec. 11. [INTERGOVERNMENTAL AGREEMENTS.]

The legislature encourages the use of intergovernmental agreements between federal, state, and local governmental entities for the purpose of further coordinating and simplifying implementation of regulatory programs relating to activities in wetlands.

Sec. 12. [PERMANENT WETLANDS PRESERVE; ELIGIBILITY OF WATER BANK PARTICIPANTS.]

Notwithstanding Minnesota Statutes, section 103F.516, subdivision 1, an owner of property that, as of July 1, 1991, was subject to an easement agreement under Minnesota Statutes, section 103F.601, is eligible for participation in the permanent wetlands preserve program under Minnesota Statutes, section 103F.516.

Sec. 13. [EFFECTIVE DATE.]

Section 10 is effective July 1, 1994, and applies to applications for compensation received by the board of water and soil resources on or after that date. Section 9 is effective the day following final enactment.

CHAPTER No. 627
H.F. No. 3179

This bill was passed in conformity to the rules of each house and the joint rules of the two houses as required by the Constitution of the State of Minnesota.

Irvin N. Anderson
Speaker of the House of Representatives.

Allan H. Spear
President of the Senate.

Passed the House of Representatives on May 5, 1994.

Edward A. Burdick
Chief Clerk, House of Representatives.

Passed the Senate on May 5, 1994.

Patrick E. Flahaven
Secretary of the Senate.

This bill is properly enrolled and was presented to the Governor on May 6, 1994.

Harry M. Walsh
Revisor of Statutes.

Approved on May 10, 1994, at 3:54 P. M.

Arne H. Carlson
Governor.

Filed on May 10, 1994.

Joan Anderson Growe
Secretary of State.

SUMMARY OF WETLAND CONSERVATION ACT (WCA) 1994 AMENDMENTS
Chapter No. 627, House File 3179

Section 2: • Allows Type 6 wetlands to be enrolled in the Permanent Wetland Preserves Program.

Section 3: • Allows a local government unit (LGU) to develop and implement a comprehensive wetland management plan as part of the local water plan. The plan must be approved by the Board of Water and Soil Resources (BWSR). This comprehensive wetland plan could substitute for parts of the WCA Rule which prescribe the requirements for wetland replacements plans. BWSR will be providing additional guidance regarding the development and implementation of these plans.

• Requires all state agencies to comply with the provisions of the WCA.

Section 4: • Clarifies that existing roadways may be upgraded to current construction and safety standards as long as wetland impacts are minimized and less than 0.5 acres. This is not a change from current interpretations of U.S. Army Corps of Engineers Nationwide Permit #3 which was already exempt under WCA Exemption #6.

Section 5: • Sets forth the criteria for the BWSR to consider approval of a local comprehensive wetland management plan.

Section 6: • Eliminates the $75 processing fee limit and permits local governments to establish fee schedules to meet the costs of administration. Most do have multiple fee schedules, however some local governments have argued that the law was limiting.

Section 7 - 9: • Provides for a streamlined application and decision notification process for small projects less than 10,000 square feet (approximately 1/4 acre). Projects impacting more than 10,000 square feet must follow the complete notification process required by the which generally entails between 70 and 120 days of review for a large project.

Section 10: • Clarifies the compensation when a replacement plan is denied. Currently the compensation is based on agricultural land value even in areas where there is no agricultural land. This section provides for compensation based on the value as reflected on the most recent property tax statement. Provides for equity in compensation between rural and urban areas.

Section 11: • Encourages the state to continue to pursue wetland regulatory simplification between local, state and federal programs.

Section 12: • Provides that terminating waterbank agreements are eligible for the permanent wetland preserves program. About 20 landowners have 10-year agreements with the state that are terminating soon and they could have drained these wetlands without an offer for compensation.

Footnotes:
Section 7 through 9 became effective May 11, 1994
Section 10 is effective on July 1, 1994
The other sections become effective on August 1, 1994

Bonding Bill (Chapter No. 643, H.F No. 218): Appropriates $300,000 to BWSR for the establishment of wetland mitigation banking credits to get some credits in the bank as soon as possible. Presently, the demand for credits is very high, especially for public road projects, and the supply is extremely limited. At this time the BWSR is pursuing options for getting the wetland credits established in cooperation with other state agencies.

prepared by: *John Jaschke, BWSR*
phone: 612/297-3432
May 24, 1994

a:wcaleg.94

CHAPTER No. 643
H.F. No. 218

signed by Gov. Carlson 5/16/94

sewer overflow.

Subd. 3. Water Quality Monitoring System 200,000

To purchase and install ten permanent water quality monitoring systems to be located throughout the state at sites selected by the commissioner.

Subd. 4. Solid Waste Capital Assistance Program 3,000,000

For state grants to cities, counties, and solid waste management districts to finance capital costs related to construction of publicly owned solid waste processing facilities, including resource recovery facilities, under Minnesota Statutes, sections 115A.49 to 115A.54.

Subd. 5. Eagle Lake Bond Defeasance

Of the amounts transferred to the public facilities authority under Minnesota Statutes, section 446A.071, subdivision 8, $154,000 shall be transferred and is appropriated to the commissioner of the pollution control agency for a grant to the city of Eagle Lake. The grant must be used to pay, redeem or defease $154,000 principal amount of outstanding indebtedness incurred by the city to pay for an interceptor connection to the wastewater treatment plant in the city of Mankato. This grant is for payment in the last quarter of fiscal year 1995. The commissioner of finance may propose further conditions on the use and investment of the proceeds as may be necessary to ensure that the interest on the state bonds issued to fund this appropriation is exempt from federal income taxation.

Sec. 25. PUBLIC FACILITIES AUTHORITY 13,400,000

To the public facilities authority for state matching money to federal grants to capitalize the state water pollution control revolving fund under Minnesota Statutes, section 446A.07.

Expenditure of this appropriation is limited to the minimum amount necessary to match the allotment of federal funds to Minnesota.

This appropriation must be used for qualified capital projects.

Sec. 26. BOARD OF WATER AND SOIL RESOURCES

Subdivision 1. To the board of water and soil resources for the purposes in this section 9,800,000

Subd. 2. Redwood 22 Reservoir Project 800,000

For land acquisition and permanent easements for the Redwood 22 reservoir project, contingent upon local matching money of $266,666. These funds are not intended to be used for construction.

Subd. 3. RIM Conservation Easement Acquisition 9,000,000

This appropriation is for the purposes specified in paragraphs (a) to (c).

(a) To acquire conservation easements from landowners on marginal lands to protect soil and water quality and to support fish and wildlife habitat as provided in Minnesota Statutes, section 103F.515.

(b) To acquire perpetual conservation easements on existing type 1, 2, and 3 wetlands, adjacent lands, and for the establishment of permanent cover on adjacent lands, in accordance with Minnesota Statutes, section 103F.516.

(c) Up to $300,000 of this appropriation may be used to establish and restore wetlands to provide credits for deposit in the state wetland bank established under Minnesota Statutes, section 103G.2242, subdivision 1. The board may enter into agreements with local government units and the commissioner of transportation for this purpose. An agreement with the commissioner of transportation may provide for borrowing or acquiring existing wetland credits from the wetland bank established by the commissioner. Proceeds from the sale of credits provided under this paragraph are appropriated to the board for the purposes of paragraph (b).

Subd. 4. Work Program

The board of water and soil resources must submit a work program and semiannual progress reports in the form determined by the legislative water commission and request its recommendation before spending any money appropriated by subdivisions 4 and 5. The commission's recommendation is advisory only. Failure to respond to a request within 60 days after receipt is a negative recommendation. Work programs involving land acquisition must include a land acquisition plan.

Sec. 27. MINNESOTA ZOOLOGICAL GARDEN

Subdivision 1. To the board of the Minnesota zoological garden for purposes specified in this section 21,500,000