

Minnesota Board of Water and Soil Resources. Minutes.

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Version 3
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BOARD OF WATER AND SOIL RESOURCES
RAMADA HOTEL - RAMSEY ROOM
1870 OLD HUDSON ROAD
ST. PAUL, MINNESOTA 55119
JANUARY 27, 1993

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

APPOINTED MEMBER ABSENT
John Boulton

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

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

STAFF PRESENT
Ron Harnack
Greg Larson
Bruce Sandstrom
Chuck Niska
Mary Jo Anderson

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

** 93-01 **Adopt Agenda** - Moved by Rodning, seconded by Clark, to adopt the agenda as presented. Affirmative: Uppgaard, Clark, Cobb, Roer, Nielsen, Ogaard, Otte, Peterson, Rodning, Rossman, and Lovdahl. Opposed: None. Carried.

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

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

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

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

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

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

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

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

BWSR Committee Reports -

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

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

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

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

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

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

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

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

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

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

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

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

** 93-03

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

Committee Assignments - Chairman Nielsen appointed Jim Rossman as vice-chairman of the BWSR. The following committee assignments were made:
Dispute Resolution Committee - Kathleen Roer (CIT), chair; Jim Rossman (CC), Ted Lovdahl (SWCD), Howard Peterson (WD), and Jim Nielsen (CIT).
Environmental Education Board - Sharon Clark (CIT), chair; Don Ogaard (WD), Kathleen Roer (CIT), Barbara Uppgaard (CC), and Warren Rodning (CC).
Advisory Council on Wells & Borings - John Boulton (SWCD).
Feedlot Advisory Committee - Jim Rossman (CC), Ted Lovdahl (SWCD), and Warren Rodning (CC).
Pesticide Advisory Committee - John Boulton (SWCD), and Ted Lovdahl (SWCD), alternate.

RIM Strategic Plan Committee - Barbara Cobb (WMO), chair; Barbara Uppgaard (CC), and John Boulton (SWCD).
Soil Loss Committee - Don Ogaard (WD), chair; Howard Peterson (WD), Dwain Otte (SWCD)
Agency Coordination Committee - Howard Peterson (WD), chair; Sharon Clark (CIT), Don Ogaard (WD), Dwain Otte (SWCD), and Barbara Uppgaard (CC).
LGU Comprehensive Plan Committee - Barbara Cobb (WMO), chair; Howard Peterson (WD), Barbara Uppgaard (CC), Jim Nielsen (CIT), and Dwain Otte (SWCD).
Chairman Nielsen asked members to contact him if they have concerns with the committee appointments.

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

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

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

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

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

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

Advisor Comments

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

D. James Nielsen
Chairman

BOARD OF WATER AND SOIL RESOURCES
ATTENDANCE ROSTER

	NAME	AFFILIATION	PHONE #
1.	Greg S Ross	MPCA	296-7213
2.	Pat Wulff	MRA	479-2972
3.	Howard Markus	MPCA	296-7295
4.	Kelly Hanson	Mn Power	218-722-2641
5.	Dave Nelson	MPCA	296-9274
6.	Adolph Hennenberg Jr	Root River SWCD	724 2295.
7.	Adolph Tuch	Root River SCD	507-724-5261
8.	Tom Meiners	" "	" "
9.	John Sumption	MACDE	(218)547-3300
10.	GARY NORDSTROM	SCS	290-3675
11.	WAYNE EDGERTON	DNR	297-8341
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SYNOPSIS OF ROLL OVER APPLICATIONS 1992-1993

District	Project Desrcription	Request Total
Anoka	Sand Creek shoreline stabilization	$10,040
Blue Earth	Nienow animal waste control system	$45,070
Brown	Mound Creek animal waste control system	$18,750
Carlton	Bevis group critical area stabilization	$ 3,928
Carver	Site stabilization on Bevens Creek	$22,500
Clay	Buffalo River stabilzation Project	$21,350
Cook	City of Grand Marais diversion	$ 2,013
Cottonwood	Gullickson Animal waste control system	$23,756
Cottonwood	J. Gode Animal waste control system	$15,000
Cottonwood	S. Gode Animal waste control system	$15,500
Dakota	Sediment control systems	$27,750
Kanabec	Animal waste control system	$ 3,000
Koochiching	Stacking slab installation	$13,656
Lac Qui Parle	Terrace reconstruction	$ 5,666
Lac Qui Parle	Bookkeeping error	$ 2,000
Lake	Lake Superior erosion control	$27,237
Lyon	Yellow Medicine River stabilization	$33,333
Mahnomen	Animal waste control system	$ 6,384
Morrison	Three animal waste control systems	$ 8,500
Mower	Terrace installations	$ 4,500
Mower	Side inlet installations	$ 9,375
Mower	Grass waterway installation	$ 2,925
Mower	Grass waterway installation	$ 2,700
Nobles	Terrace installations	$ 7,000
Olmsted	Terrace installations	$10,830
Pennington	SLR Project installation	$10,000
Pennington	SLR Project installation	$ 450
Pennington	SLR Project installation	$ 8,075
Pennington	Side inlet installations	$ 6,753
Ramsey	Work Farm gully stabilization	$10,000
Rice	Erosion control structure installation	$18,016
Rice	Sediment basin installation	$ 5,025
Rice	Terrace installation	$ 4,125
Rice	Sediment basin installation	$ 5,325
Rice	Ag waste system installation	$13,338
No. St. Louis	Sand Lake shore stabilization	$11,667
So. St. Louis	Baker Lake Superior erosion control	$20,000
Scott	Ag waste sytem installation-Feldman	$10,000
Scott	Ag waste system installation-Schoenbauer	$10,000
Scott	Menke SLR project installation	$ 7,500
Scott	Hutchinson grade stabilization	$10,000
Traverse	Field windbreak installation	$17,130
Wabasha	Erosion control structure installations	$ 4,450
Wadena	Old Wadena Park bank stabilization	$ 2,000
Watonwan	Water and sediment control basin	$ 1,800
Wright	Stormwater control system installation	$12,000
TOTALS		$530,417

BWSR STAFF PRIORITIES FOR COST SHARE PROGRAM ROLL OVER FUNDING

* Providing match for USEPA grant funding for:

  -Feedlot Specialist Position ($52,510)
  -North Shore Engineer Position ($36,666)
  -Great Lakes Commission Project funds ($43,333);

* Promoting the proper design and installation of ag waste systems (using the EPA funded position above to assist and train SWCD staff);

* Reducing nutrient loading into the Minnesota River through SWCDs addressing nonpoint source pollution problems within the basin;

* Placing a high priority on projects that show a high degree of interagency cooperation;

* Financially assisting those counties which are in the process of adopting and implementing soil loss ordinances.

COST SHARE PROGRAM ROLL OVER FUNDING REQUESTS BY RIVER BASIN

Rainy River	$ 25,323
Red River of the North	$ 70,142
Upper Mississippi	$ 42,540
Lake Superior	$ 49,250
St. Croix	$ 6,928
Des Moines & Lower Mississippi	$115,359
Minnesota River	$219,075
TOTAL	$530,417
FUNDS AVAILABLE:	$252,990 (Plus >$34,000 in additional Funding)

SYNOPSIS OF ROLL OVER APPLICATIONS 1992-1993

District	Project Desrcription	Request Total
Anoka	**Sand Creek shoreline stabilization**	**$10,040**

Erosion and scouring of steep sand banks adjacent to this creek threaten private property. Corrective measures include bank reshaping, as well as installation of filter fabric and rip rap on 2 different reaches of the river totaling 225 feet.

River Basin: Upper Mississippi
Match Proportion: 50% State, 50% Local
Match Source(s): BWSR, Coon Creek WD and the City of Coon Rapids
Alternate Funding Source: BWSR Special Project Funding

Blue Earth	**Nienow animal waste control system**	**$45,070**

Manure in an open ditch flowing away from the site of the existing feedlot flows into a wetland adjacent to the Big Cobb River. The owner/operator of this installation has recently been given a notice of violation by the MPCA. This person has had the SWCD and SCS prepare various plans and designs for installation since the 1970's, and into the 1980's, without installing any conservation measures to date.

River Basin: Minnesota River
Match Proportion: 75% State, 25% Private
Match Source(s): BWSR, Landowner

Brown	**Mound Creek animal waste control system**	**$18,750**

A 750 head capacity feedlot above Mound Creek loads manure into the creek following precipitation events. A pit with a 12 month storage capacity will be installed to alleviate this problem. Manure stored in the pit will be applied on crop fields in accordance with a nutrient management plan.

River Basin: Minnesota River
Match Proportion: 75% State, 25% Private
Match Source(s): BWSR, Landowner

Carlton	**Bevis group critical area stabilization**	**$ 3,928**

A group of landowners owning sites on Hanging Horn Lake near Barnum, MN have cabins threatened by the massive slope movement of the red till (having high silt and clay components). These soils have numerous slip planes in the 80 foot bluff formation upon which 6 cabins are situated. This project will investigate the soil formations in the slip area, so as to be able to recommend to the landowners how to

stabilize their properties in the future. Subsequent application for further cost sharing will occur in the future, following the completion of this analysis.

River Basin: St. Croix River
Match Proportion: 40% State, 60% Private
Match Source(s): BWSR, Landowners

Carver **Site stabilization on Bevens Creek** **$22,500**

A recently constructed home at the top of an 80 foot bluff is being threatened by the erosion and slumping of soils down the slope. Corrective measures to be employed include creation of a diversion to carry stormwater away from the home site, as well as installation of a stormwater control system, and the stabilization of the land adjacent to the creek.

River Basin: Minnesota River
Match Proportion: 75% State, 25% Private
Match Source(s): BWSR, Landowner

Clay **Buffalo River stabilzation Project** **$21,350**

The second phase of a project which was originally funded by the BWSR in 1992 using Special Project funds. The SWCD has been working with the Army Corps of Engineers, as well as the Buffalo-Red River Watershed District and the county to prepare plans for installation of a number of low cost erosion control techniques along 300 feet of the river.

River Basin: Red River of the North
Match Proportion: 43% State, 57% Other
Match Source(s): Buffalo River WD, U.S. Army Corps of Engineers, SCS

Cook **City of Grand Marais diversion** **$ 2,013**

A diversion constructed in the 1950's on the east side of the city has proven to be incapable of handling the water volume routed into it. The excess stormwater flow causes local flooding for a number of properties. This has caused local residents to bring litigation against the city. This project will include reconstructing the channel, as well as installling rip rap on the new channel, so as to stabilize it. This will allow for a greater volume of storm water to flow into Lake Superior without causing damage on the land.

River Basin: Lake Superior
Project Area/BWSR Region: North Shore
Match Proportion: 36% State, 64% LGU
Match Source(s): City of Grand Marais, Cook County
Alternate Funding Source: DNR Flood Damage Reduction Program

Cottonwood **Gullickson Animal waste control system** **$23,756**

Runoff control for a 900 animal unit feeder cattle operation is required, due to the setting of this feedlot on steep slopes. The landowner has received at least preliminary notification of violation from the MPCA regarding this feedlot. System components include a diversion, cleanwater sediment basin, underground drainage, waste storage pond, fencing and an implemented waste utilization plan.

River Basin: Minnesota
Match Proportion: 60% State, 40% Private
Match Source(s): BWSR, Landowner

Cottonwood **J. Gode Animal waste control system** **$15,000**

Feedlot runoff from the steep slopes on this 117 animal operation allow over land flow of nutrients into an adjacent creek, eventually reaching the Minnesota River. System components include a diversion, waste storage pond, underground drainage system and a waste nutrient utilization plan.

River Basin: Minnesota
Match Proportion: 75% State, 25% Landowner
Match Source(s): BWSR, Landowner

Cottonwood **S. Gode Animal waste control system** **$15,500**

Animal waste from this 254 animal cattle and hog operation is entering into the headwaters of Mound Creek, which is within the watershed of the Wellner-Hageman Reservoir. System components to be installed include a waste storage pond with underground tile drainage, along with implementation of a waste utilization plan.

River Basin: Minnesota
Match Proportion: 52% State, 48% Landowner
Match Source(s): BWSR, Landowner

Dakota **Erosion and sediment control systems** **$27,750**

Eight different combinations of stormwater control system structures, including sediment basins, grassed waterways and diversions are applied for. An unspecified number of these projects are to be carried out adjacent to feedlot operations. If installed, these structures would reduce sediment and nutrient loading into downslope water bodies.

River Basin: Lower Mississippi and Minnesota
Match Proportion: Variable (14% to 75% State funds)
Match Source(s): BWSR, Landowners

Lake **Lake Superior erosion control** **$27,237**

Funding to be used to reshape and rip rap 1100 feet of Lake Superior shoreline. In addition, all exposed areas above the project will be adequately vegetated. If funded, this project will match federal monies from the Great Lakes Commission.

River Basin: Lake Superior
Project Area/BWSR Region: North Shore
Match Proportion: 25% State, 75% Private
Match Source(s): BWSR, Landowner

Lyon **Yellow Medicine River stabilization** **$33,333**

This project will be implemented to remove log snags and deadfalls from the river, which impair recreation, as well as preventing proper conveyance of river flow downstream. In addition, the logs promote bank scour and erosion, further increasing the sediment load into the river.

River Basin: Minnesota
Match Proportion: 50% State, 50% LGU
Match Source(s): BWSR, Yellow Medicine River WD, Yellow Medicine County, various LGUs

Mahnomen **Animal waste control system** **$ 6,384**

The SWCD used the majority of their Cost Share Program allocation for FY92 to fund the installation of one animal waste control system, and is requesting additional funding to provide full cost sharing for another system.

River Basin: Red River of the North
Match Proportion: 47% State, 28% Federal (ASCS), 25% Private
Match Source(s): BWSR, ASCS, Landowners

Morrison **Three animal waste control systems** **$ 8,500**

State funding will be used to piggy back federal Agricultural Conservation Program funding. Each project will alleviate the deposition of overland flow into either protected waters or a wetland.

River Basin: Upper Mississippi
Match Proportion: Variable; from 6% up to 28% per project
Match Source(s): BWSR, ASCS

Mower **Terrace installations** **$ 4,500**

Severe erosion on this site will cause Mower County to cite the landowner and problem. These funds are to repair the area experiencing damage.

River Basin: Des Moines or Lower Mississippi River
Match Proportion: 75% State, 25% Private

Match Source(s): BWSR, Landowner

Mower **Side inlet installations** **$ 9,375**

A twenty year old ditch requires side inlets to be installed to intercept water discharged from above gradient waterways.

River Basin: Des Moines or Lower Mississippi River
Match Proportion: 75% State, 25% Local
Match Source(s): BWSR, and Unknown (Public or Private?)

Mower **Grass waterway installation** **$ 2,925**

Project to control severe gully erosion.

River Basin: Des Moines or Lower Mississippi River
Match Proportion: 75% State, 25% Local
Match Source(s): BWSR, and Unknown (Public or Private)

Mower **Grass waterway installation** **$ 2,700**

Project to control severe gully erosion.

River Basin: Des Moines or Lower Mississippi River
Match Proportion: 75% State, 25% Local
Match Source(s): BWSR, and Unknown (Public or Private)

Nobles **Terrace installations** **$ 7,000**

Two terrace installations to be installed, each at a $3,500 cost.

River Basin: Des Moines or Missouri
Match Proportion: 50% State, 50% Private
Match Source(s): BWSR, Landowners
Alternate Funding Source: FY94 Cost Share Program allocation

Olmsted **Terrace installations** **$10,830**

Terrace installation to allow the landowner to maintain a cash crop on an erodible soil, while at the same time controlling ephemeral erosion.

River Basin: Lower Mississippi
Match Proportion: 75% State, 25% Private
Match Source(s): BWSR, Landowner

Pennington **SLR Project installation** **$10,000**

Rip rap installation on 1,050 feet of the Thief River. A similar project was completed upstream of this site in 1992. This project will be

receive technical assistance from the Red Lake Watershed District.

River Basin: Red River of the North
Match Proportion: 50% State, 50% Local
Match Source(s): BWSR, Unknown (Public or Private)

Pennington **SLR Project installation** **$ 450**

Funding requested to repair an area undermined by rodents, and overtopped by wave action, hence promoting the erosion of the site.

River Basin: Red River of the North
Match Proportion: 50% State, 50% Local
Match Source(s): BWSR, Unknown (Public or Private)

Pennington **SLR Project installation** **$ 8,075**

Road slumping is occurring along various portions of a county road.

River Basin: Red River of the North
Match Proportion: 50% State, 50% Local
Match Source(s): BWSR, Pennington County

Pennington **Side inlet installations** **$ 6,753**

Side inlets to facilitate the flow of water without erosion and sedimentation is needed in a number of locations around the county.

River Basin: Red River of the North
Match Proportion: 75% State, 25% Private
Match Source(s): BWSR, Landowners

Ramsey **Work Farm gully stabilization** **$10,000**

Ramsey SWCD is requesting additional funds for the purpose of repairing gully erosion at the county work farm. This project was originally funded by the BWSR in FY92.

River Basin: Upper Mississippi
Match Proportion: 18% State, 82% Local Government
Match Source(s): BWSR, Ramsey County

Rice **Erosion control structure installation** **$18,016**

This structure will control the runoff from a 360 acre watershed.

River Basin: Lower Mississippi or Minnesota
Match Proportion: 63% State, 37% Local
Match Source(s): BWSR, Unknown (Public or Private)

Traverse **Field windbreak installation** **$17,130**

Application is for extra funds to be used for establishment of field windbreaks.

River Basin: Red River of the North
Match Proportion: 75% State, 25% Private
Match Source(s): BWSR, Landowners

Wabasha **Erosion control structure installations** **$ 4,450**

Applications for projects to control erosion on cropland areas.

River Basin: Lower Mississippi
Match Proportion: 12.7% State, plus an uncombination of federal and private funds.
Match Source(s): BWSR, ASCS, and Landowners

Wadena **Old Wadena Park bank stabilization** **$ 2,000**

Overlooking the Crow Wing River, Old Wadena County Park is experiencing erosion problems due to the recreational foot traffic frequenting the park and the river below it.

River Basin: Upper Mississippi
Match Proportion: 50% State, 50% County
Match Source(s): BWSR, Wadena County

Watonwan **Water and sediment control basin** **$ 1,800**

This project will reduce gully erosion, as well as intercepting other types of erosion occurring upstream and up gradient from St. James Creek.

River Basin: Minnesota
Match Proportion: 75% State, 25% Local
Match Source(s): BWSR, Unknown (Public or Private)
Alternate Funding Source: FY94 Cost Share Program allocation

Wright **Stormwater control system installation** **$12,000**

The stormwater control system will control a severe gully erosion problem at the inlet into Maple Lake.

River Basin: Upper Mississippi
Match Proportion: 75% State, 25% Private
Match Source(s): BWSR, Landowners
Alternative Funding Source: FY94 Cost Share Program

Minnesota House of Representatives 1993-94

District	Member/Party	Room*	Phone (612) 296-
45A	Abrams, Ron-IR	209	9934
10A	Anderson, Bob-DFL	437	4946
3A	Anderson, Irv-DFL	585	4936
53B	Asch, Marc-DFL	507	7153
6A	Battaglia, David-DFL	377	2190
17B	Bauerly, Gerald J. "Jerry"-DFL	409	5377
57B	Beard, Pat-DFL	565	3135
48A	Bergson, Brian-DFL	449	5513
14B	Bertram, Jeff-DFL	571	4373
10B	Bettermann, Hilda-IR	243	4317
30B	Bishop, Dave-IR	309	0573
40B	Blatz, Kathleen A.-IR	281	4218
13A	Brown, Chuck-DFL	597	4929
25A	Brown, Kay-DFL	551	4229
46B	Carlson, Lyndon R.-DFL	379	4255
47B	Carruthers, Phil-DFL	575	3709
61A	Clark, Karen-DFL	503	0294
38A	Commers, Tim-IR	215	3533
15B	Cooper, Roger-DFL	545	4346
9B	Dauner, Marvin-DFL	581	6829
31B	Davids, Gregory M.-IR	331	9278
65A	Dawkins, Andy-DFL	371	5158
14A	Dehler, Steve-IR	223	7808
51A	Delmont, Mike-DFL	307	4226
29A	Dempsey, Jerry-IR	241	8635
24A	Dorn, John-DFL	533	3248
42A	Erhardt, Ron-IR	239	4363
52B	Evans, Geri-DFL	557	0141
67A	Farrell, Jim-DFL	353	4277
31A	Frerichs, Don L.-IR	247	4378
63B	Garcia, Edwina-DFL	411	5375
21A	Girard, Jim-IR	213	5374
9A	Goodno, Kevin-IR	327	5515
62A	Greenfield, Lee-DFL	375	0173
54B	Greiling, Mindy-DFL	393	5387
16B	Gruenes, Dave-IR	203	6316
30A	Gutknecht, Gil-IR	261	9249
12A	Hasskamp, Kris-DFL	451	4333
27A	Haukoos, Bob-IR	291	8216
66B	Hausman, Alice-DFL	403	3824
56A	Holsten, Mark-IR	253	3018
26A	Hugoson, Gene-IR	217	3240
6B	Huntley, Thomas-DFL	387	2228
49B	Jacobs, Joel-DFL	485	4231
7B	Jaros, Mike-DFL	559	4246
58B	Jefferson, Richard H.-DFL	577	8659
18B	Jennings, Loren-DFL	349	0518
48B	Johnson, Alice M.-DFL	539	5510
4A	Johnson, Bob-DFL	345	5516
32B	Johnson, Virgil J.-IR	207	1069
59B	Kahn, Phyllis-DFL	367	4257
26B	Kalis, Henry J.-DFL	543	4240
44A	Kelley, Steve-DFL	417	3964
35B	Kelso, Becky-DFL	415	1072
4B	Kinkel, Anthony G. "Tony"-DFL	453	2451
19B	Klinzing, Stephanie-DFL	549	5063
43B	Knickerbocker, Jerry-IR	283	4315
17A	Koppendrayer, Leroy-IR	233	6746
53A	Krinkie, Phil-IR	323	2907
11B	Krueger, Richard "Rick"-DFL	357	3201
18A	Lasley, Harold-DFL	433	5364
45B	Leppik, Peggy-IR	225	7026
2A	Lieder, Bernie-DFL	515	5091
33B	Limmer, Warren-IR	301	5502
33A	Lindner, Arlon-IR	227	7806
60A	Long, Dee-DFL	463	0171
8B	Lourey, Becky-DFL	421	4308
47A	Luther, Darlene-DFL	525	3751
50B	Lynch, Teresa-IR	295	5369
37B	Macklin, Bill-IR	317	6926
40A	Mahon, Mark P.-DFL	401	7158
65B	Mariani, Carlos-DFL	303	9714
55B	McCollum, Betty-DFL	501	1188
54A	McGuire, Mary Jo-DFL	567	4342
39B	Milbert, Bob-DFL	579	4192
35A	Molnau, Carol-IR	201	8872
36B	Morrison, Connie-IR	251	4212
23B	Mosel, Darrel-DFL	521	8634
7A	Munger, Willard-DFL	479	4282
8A	Murphy, Mary-DFL	389	2676
56B	Neary, Pamela-DFL	429	4244
11A	Nelson, Sydney G.-DFL	527	4293
20A	Ness, Robert-IR	221	4344
2B	Olson, Edgar-DFL	517	4265
22B	Olson, Katy-DFL	553	5373
19A	Olson, Mark-IR	315	4237
20B	Onnen, Tony-IR	277	1534
16A	Opatz, Joe-DFL	423	6612
64B	Orenstein, Howard-DFL	529	4199
60B	Orfield, Myron-DFL	413	9281
66A	Osthoff, Tom-DFL	591	4224
24B	Ostrom, Don-DFL	369	7065
37A	Ozment, Dennis-IR	287	4306
42B	Pauly, Sidney-IR	273	7449
38B	Pawlenty, Tim-IR	231	4128
32A	Pelowski, Gene, Jr.-DFL	531	8637
57A	Perlt, Walter E.-DFL	359	7807
13B	Peterson, Doug-DFL	523	4228
39A	Pugh, Thomas-DFL	583	6828
27B	Reding, Leo J.-DFL	537	4193
46A	Rest, Ann H.-DFL	443	4176
44B	Rhodes, Jim-IR	313	9889
58A	Rice, James I.-DFL	381	4262
25B	Rodosovich, Peter-DFL	445	8237
5A	Rukavina, Tom-DFL	473	0170
59A	Sarna, John J.-DFL	563	4219
41A	Seagren, Alice-IR	321	7803
50A	Sekhon, Kathleen-DFL	593	2439
52A	Simoneau, Wayne-DFL	365	4331
62B	Skoglund, Wesley J. "Wes"-DFL	477	4330
34A	Smith, Steven-IR	311	9188
3B	Solberg, Loren-DFL	343	2365
1B	Sparby, Wally-DFL	351	9918
55A	Stanius, Brad-IR	259	5363
21B	Steensma, Andy-DFL	471	4336
28B	Sviggum, Steven A.-IR	267	2273
51B	Swenson, Doug-IR	255	4124
5B	Tomassoni, David-DFL	569	0172
36A	Tompkins, Eileen-IR	245	5506
67B	Trimble, Steve-DFL	491	4201
1A	Tunheim, Jim-DFL	335	9635
34B	Van Dellen, H. Todd-IR	279	5511
64A	Vellenga, Kathleen-DFL	509	8799
23A	Vickerman, Barb-IR	211	9303
63A	Wagenius, Jean-DFL	439	4200
29B	Waltman, Bob-IR	289	9236
49A	Weaver, Charlie-IR	237	1729
61B	Wejcman, Linda-DFL	431	7152
15A	Welle, Alan W.-DFL	459	6206
12B	Wenzel, Stephen G.-DFL	487	4247
22A	Winter, Ted-DFL	407	5505
41B	Wolf, Ken-IR	329	5185
28A	Worke, Gary D.-IR	229	5368
43A	Workman, Tom-IR	337	5066

*All rooms are in the State Office Building, St. Paul, MN 55155

Minnesota Senate 1993-94

District	Member/Party	Room*	Phone (612) 296-
19	Adkins, Betty A.-DFL	309 Cap.	5981
66	Anderson, Ellen R.-DFL	G-27 Cap.	5537
26	Beckman, Tracy L.-DFL	301 Cap.	5713
41	Belanger, William V., Jr.-IR	113 SOB	5975
31	Benson, Duane D.-IR	119 SOB	3903
16	Benson, Joanne E.-IR	153 SOB	6455
13	Berg, Charles A.-DFL	328 Cap.	5094
61	Berglin, Linda-DFL	G-9 Cap.	4261
14	Bertram, Joe, Sr.-DFL	323 Cap.	2084
48	Betzold, Don-DFL	G-24 Cap.	2556
55	Chandler, Kevin M.-DFL	111 Cap.	9307
8	Chmielewski, Florian W.-DFL	325 Cap.	4182
64	Cohen, Richard J.-DFL	317 Cap.	5931
28	Day, Dick-IR	105 SOB	9457
20	Dille, Steve-IR	103 SOB	4131
4	Finn, Harold R. "Skip"-DFL	306 Cap.	6128
62	Flynn, Carol-DFL	G-29 Cap.	4274
23	Frederickson, Dennis R.-IR	139 SOB	8138
50	Hanson, Paula E.-DFL	328 Cap.	3219
24	Hottinger, John C.-DFL	G-29 Cap.	6153
5	Janezich, Jerry R.-DFL	328 Cap.	8017
15	Johnson, Dean E.-IR	147 SOB	3826
6	Johnson, Douglas J.-DFL	205 Cap.	8881
18	Johnson, Janet B.-DFL	322 Cap.	5419
35	Johnston, Terry D.-IR	117 SOB	4123
67	Kelly, Randy C.-DFL	122 Cap.	5285
30	Kiscaden, Sheila M.-IR	143 SOB	4848
36	Knutson, David L.-IR	133 SOB	4120
51	Krentz, Jane-DFL	235 Cap.	7061
58	Kroening, Carl W.-DFL	124 Cap.	4302
56	Laidig, Gary W.-IR	141 SOB	4351
9	Langseth, Keith-DFL	G-24 Cap.	3205
10	Larson, Cal-IR	145 SOB	5655
21	Lesewski, Arlene J.-IR	135 SOB	4125
3	Lessard, Bob-DFL	111 Cap.	4136
47	Luther, William P.-DFL	205 Cap.	8869
54	Marty, John-DFL	G-9 Cap.	5645
33	McGowan, Patrick D.-IR	129 SOB	2159
49	Merriam, Gene-DFL	122 Cap.	4154
39	Metzen, James P.-DFL	303 Cap.	4370
2	Moe, Roger D.-DFL	208 Cap.	2577
44	Mondale, Ted A.-DFL	309 Cap.	7-8065
32	Morse, Steven-DFL	G-24 Cap.	5649
29	Murphy, Steve L.-DFL	226 Cap.	4264
25	Neuville, Thomas M.-IR	123 SOB	1279
52	Novak, Steven G.-DFL	322 Cap.	4334
43	Oliver, Edward C.-IR	121 SOB	4837
34	Olson, Gen-IR	131 SOB	1282
65	Pappas, Sandra L.-DFL	G-27 Cap.	1802
37	Pariseau, Pat-IR	109 SOB	5252
27	Piper, Pat-DFL	G-9 Cap.	9248
59	Pogemiller, Lawrence J.-DFL	235 Cap.	7809
57	Price, Leonard R.-DFL	235 Cap.	7-8060
63	Ranum, Jane B.-DFL	325 Cap.	7-8061
46	Reichgott, Ember D.-DFL	306 Cap.	2889
40	Riveness, Phil J.-DFL	317 Cap.	7-8062
45	Robertson, Martha R.-IR	125 SOB	4314
53	Runbeck, Linda-IR	107 SOB	1253
11	Sams, Dallas C.-DFL	G-9 Cap.	7-8063
12	Samuelson, Don-DFL	124 Cap.	4875
7	Solon, Sam G.-DFL	303 Cap.	4188
60	Spear, Allan H.-DFL	G-27 Cap.	4191
17	Stevens, Dan-IR	127 SOB	8075
1	Stumpf, LeRoy A.-DFL	G-24 Cap.	8660
42	Terwilliger, Roy W.-IR	115 SOB	6238
22	Vickerman, Jim-DFL	226 Cap.	5650
38	Wiener, Deanna-DFL	303 Cap.	7-8073

*Capitol or State Office Building, St. Paul, MN 55155

Minnesota House and Senate Membership

1 A • Jim Tunheim-DFL B • Wally Sparby-DFL Sen. LeRoy A. Stumpf-DFL	15 A • Alan W. Welle-DFL B • Roger Cooper-DFL Sen. Dean E. Johnson-IR	29 A • Jerry Dempsey-IR B • Bob Waltman-IR Sen. Steve L. Murphy-DFL	43 A • Tom Workman-IR B • Jerry Knickerbocker-IR Sen. Edward C. Oliver-IR	57 A • Walter E. Perlt-DFL B • Pat Beard-DFL Sen. Leonard R. Price-DFL
2 A • Bernie Lieder-DFL B • Edgar Olson-DFL Sen. Roger D. Moe-DFL	16 A • Joe Opatz-DFL B • Dave Gruenes-IR Sen. Joanne E. Benson-IR	30 A • Gil Gutknecht-IR B • Dave Bishop-IR Sen. Sheila M. Kiscaden-IR	44 A • Steve Kelley-DFL B • Jim Rhodes-IR Sen. Ted A. Mondale-DFL	58 A • James I. Rice-DFL B • Richard H. Jefferson-DFL Sen. Carl W. Kroening-DFL
3 A • Irv Anderson-DFL B • Loren Solberg-DFL Sen. Bob Lessard-DFL	17 A • Leroy Koppendrayer-IR B • Gerald J. "Jerry" Bauerly-DFL Sen. Dan Stevens-IR	31 A • Don L. Frerichs-IR B • Gregory M. Davids-IR Sen. Duane D. Benson-IR	45 A • Ron Abrams-IR B • Peggy Leppik-IR Sen. Martha R. Robertson-IR	59 A • John J. Sarna-DFL B • Phyllis Kahn-DFL Sen. Lawrence J. Pogemiller-DFL
4 A • Bob Johnson-DFL B • Anthony G. "Tony" Kinkel-DFL Sen. Harold R. "Skip" Finn-DFL	18 A • Harold Lasley-DFL B • Loren Jennings-DFL Sen. Janet B. Johnson-DFL	32 A • Gene, Jr. Pelowski-DFL B • Virgil J. Johnson-IR Sen. Steven Morse-DFL	46 A • Ann H. Rest-DFL B • Lyndon R. Carlson-DFL Sen. Ember D. Reichgott-DFL	60 A • Dee Long-DFL B • Myron Orfield-DFL Sen. Allan H. Spear-DFL
5 A • Tom Rukavina-DFL B • David Tomassoni-DFL Sen. Jerry R. Janezich-DFL	19 A • Mark Olson-IR B • Stephanie Klinzing-DFL Sen. Betty A. Adkins-DFL	33 A • Arlon Lindner-IR B • Warren Limmer-IR Sen. Patrick D. McGowan-IR	47 A • Darlene Luther-DFL B • Phil Carruthers-DFL Sen. William P. Luther-DFL	61 A • Karen Clark-DFL B • Linda Wejcman-DFL Sen. Linda Berglin-DFL
6 A • David Battaglia-DFL B • Thomas Huntley-DFL Sen. Douglas J. Johnson-DFL	20 A • Robert Ness-IR B • Tony Onnen-IR Sen. Steve Dille-IR	34 A • Steven Smith-IR B • H. Todd Van Dellen-IR Sen. Gen Olson-IR	48 A • Brian Bergson-DFL B • Alice M. Johnson-DFL Sen. Don Betzold-DFL	62 A • Lee Greenfield-DFL B • Wesley J. "Wes" Skoglund-DFL Sen. Carol Flynn-DFL
7 A • Willard Munger-DFL B • Mike Jaros-DFL Sen. Sam G. Solon-DFL	21 A • Jim Girard-IR B • Andy Steensma-DFL Sen. Arlene J. Lesewski-IR	35 A • Carol McInau-IR B • Becky Kelso-DFL Sen. Terry D. Johnston-IR	49 A • Charlie Weaver-IR B • Joel Jacobs-DFL Sen. Gene Merriam-DFL	63 A • Jean Wagenius-DFL B • Edwina Garcia-DFL Sen. Jane B. Ranum-DFL
8 A • Mary Murphy-DFL B • Becky Lourey-DFL Sen. Florian W. Chmielewski-DFL	22 A • Ted Winter-DFL B • Katy Olson-DFL Sen. Jim Vickerman-DFL	36 A • Eileen Tompkins-IR B • Connie Morrison-IR Sen. David L. Knutson-IR	50 A • Kathleen Sekhon-DFL B • Teresa Lynch-IR Sen. Paula E. Hanson-DFL	64 A • Kathleen Vellenga-DFL B • Howard Orenstein-DFL Sen. Richard J. Cohen-DFL
9 A • Kevin Goodno-IR B • Marvin Dauner-DFL Sen. Keith Langseth-DFL	23 A • Barb Vickerman-IR B • Darrel Mosel-DFL Sen. Dennis R. Frederickson-IR	37 A • Dennis Ozment-IR B • Bill Macklin-IR Sen. Pat Pariseau-IR	51 A • Mike Delmont-DFL B • Doug Swenson-IR Sen. Jane Krentz-DFL	65 A • Andy Dawkins-DFL B • Carlos Mariani-DFL Sen. Sandra L. Pappas-DFL
10 A • Bob Anderson-DFL B • Hilda Bettermann-IR Sen. Cal Larson-IR	24 A • John Dorn-DFL B • Don Ostrom-DFL Sen. John C. Hottinger-DFL	38 A • Tim Commers-IR B • Tim Pawlenty-IR Sen. Deanna Wiener-DFL	52 A • Wayne Simoneau-DFL B • Geri Evans-DFL Sen. Steven G. Novak-DFL	66 A • Tom Osthoff-DFL B • Alice Hausman-DFL Sen. Ellen R. Anderson-DFL
11 A • Sydney G. Nelson-DFL B • Richard "Rick" Krueger-DFL Sen. Dallas C. Sams-DFL	25 A • Kay Brown-DFL B • Peter Rodosovich-DFL Sen. Thomas M. Neuville-IR	39 A • Thomas Pugh-DFL B • Bob Milbert-DFL Sen. James P. Metzen-DFL	53 A • Phil Krinkie-IR B • Marc Asch-DFL Sen. Linda Runbeck-IR	67 A • Jim Farrell-DFL B • Steve Trimble-DFL Sen. Randy C. Kelly-DFL
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13 A • Chuck Brown-DFL B • Doug Peterson-DFL Sen. Charles A. Berg-DFL	27 A • Bob Haukoos-IR B • Leo J. Reding-DFL Sen. Pat Piper-DFL	41 A • Alice Seagren-IR B • Ken Wolf-IR Sen. William V. Belanger Jr.-IR	55 A • Brad R. Stanius-IR B • Betty McCollum-DFL Sen. Kevin M. Chandler-DFL	
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Unofficial list as of Jan. 14, 1993

Gene

Dept. of Natural Resources
OFFICE OF THE COMMISSIONER

STATE OF MINNESOTA
Office Memorandum

DATE: December 28, 1992

TO: Nancy Feldman, CORE
Program Analysis Team Leader
Environmental Services Project
203 Administration Bldg.

FROM: Rodney W. Sando
Commissioner

PHONE: 296-2549

SUBJECT: COMMENTS ON ENVIRONMENTAL SERVICES SYSTEM RECOMMENDATIONS

As you know, this agency has been involved in CORE's study of the state's environmental system from the beginning, and our staff have had opportunities to provide input throughout. As we near the end of this process, we want to again emphasize four broad points of special significance to our Department and one specific concern related to environmental enforcement.

First, we support the concept of aligning the state's environmental programs in *two main agencies*. We believe this will allow for greater integration and efficiency of program operations.

Second, if the state's entire environmental services system is to be decentralized, more like DNR is currently, we believe that *"regions" or "sections" of the delivery system should be organized around ecosystems, landscapes, watersheds, or some other logical aspect of Minnesota's natural environment* rather than parcelled out solely along political boundaries. → Sando → ecosystem basis

Third, there is a need to somehow *better orchestrate the functions of local units of government in the environmental arena*. Several special purpose districts currently have implementation or taxing authorities, or both, and the result is serious fragmentation at the local service delivery point.

Fourth, we believe that there should be *some limits to citizen boards*. The argument can and is made that they provide citizen access. We suggest that sometimes the access gained is not gained by the general public. We believe that decision-making citizen boards dilute the authority of the executive branch and reduce the accountability of the commissioners of the agencies with the boards.

The following is a specific point that we suggest be integrated into the POLICY COMPLEXITY section of the recommendations (Ref. December 8, 1992 draft -- p. 34, in B. *"Standardize enforcement tools in all environmental media and agencies."*)

> The use of criminal sanctions to gain environmental compliance must be evaluated in cases of serious or willful violations. The criminal process has not been utilized to its fullest advantage in *environmental enforcement* probably due to the lack of any specific agency having clear authority/direction to perform this function.

Thanks for this opportunity to comment. If we can be of further assistance, please call me, Gene Gere (296-0533) or Julie Smendzuik-O'Brien (296-7847).

c: Commissioner's Management Team
Senior Managers

a:core1292

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DEC 28 1992

Assistant Commissioner
for Administration

Board member Update

Minnesota Board of Water & Soil Resources

Jan. 1993

The mission of the Board of Water and Soil Resources is to provide leadership enabling local governments to properly manage water and soil resources and to help all citizens be stewards of our irreplaceable natural resources.

Metro Region

Watershed Management Issues:

- The metro staff is planning a March follow-up meeting to the November meeting about the possibility of forming an association of metro watershed management organizations (WMOs). This meeting will showcase success stories of WMOs and watershed districts (WDs) in the metro area. Interest in an association seems low, so this meeting may be the last!

- On January 26, the BWSR held a public hearing on a controversial boundary change proposal between Nine Mile Creek and Minnehaha Creek Watershed Districts.

- Staff has been helping to facilitate negotiations in Cottage Grove Ravine and East Mississippi watersheds to bring them into compliance with the Metro Watershed Management Act. Cottage Grove Ravine WMO dissolved in December 1992, and East Mississippi WMO has not implemented their plan.

- Metro staff members have also been assisting in negotiations with Rice Creek Watershed District and the city of Fridley regarding a capital improvement project issue on Locke Lake. Fridley has appealed to the BWSR under the recently-adopted Metro Water Management Rules to compel the watershed district to perform a dredging project cited in the district's plan.

- Staff reviewed and commented on Dakota, Hennepin and Washington county groundwater plans. Staff is also currently assisting Hennepin Conservation District in highly controversial local comment issues.

Wetland Conservation Act Activities:

- Staff completed a survey of local government units (LGUs) on the interim program of the Wetland Conservation Act (WCA).

- Metro staff has been working on a grant proposal to the U.S. EPA for development of a Comprehensive Wetland Management Plan in the Coon Creek Watershed District.

Misc. Activities:

- The metro office recently hired a U of M grad student in land use studies to complete a CURA funded project to evaluate two existing forms of revenue-raising for watershed districts and one new method based on runoff.

The metro staff is also pleased to welcome a new metro-area board member, Kathleen Roer from Long Lake.

Southern Field Staff

- Chris Hughes, BWSR board conservationist in New Ulm, has been working with Bob Cooling and Chuck Peterson, new SWCD managers in the respective Martin and Blue Earth SWCDs. These new managers have a great deal to learn with regard to the RIM and Cost-Share Programs, as well as SWCD operations and other programs. Regional and statewide orientation for these staffers, as well as other staff and supervisors, will definitely be beneficial.

- The South Central Minnesota Counties Comprehensive Water Planning Project coordinators had a very good meeting on December 15 at which they discussed not only the need to expand the streamgage monitoring system of the 13 counties but also to begin to find a way to maintain monitoring systems after grants run out. It is hoped that a permanent rain, stream and water quality monitoring system can

be established. The group also provided several ideas for upcoming 205j3 training sessions. These ideas included EPPL 7 training at the new Technical Training Center at Mankato State University, lake and stream limnology and wetlands. (EPPL 7 is a Geographic Information Systems (GIS) program designed to put geographic information into a more usable form.)

- EPPL 7 has been a topic of interest in other areas. Chris will be attending the Redwood Cottonwood Rivers Control Area and Zumbro Root Rivers water plan coordinators meetings in January and early February to seek out interest in establishing a GIS user group similar to the one being developed in the Red River Valley. The south central water plan coordinators have been sent a questionnaire regarding the needs and problems which a GIS could help solve. Chris will also call Mildred Thymian, Big Stone water plan coordinator, to see if that area would be interested in joining the southwest in establishing a GIS user group.

- On December 14 and 15, public hearings for the WCA were held in Marshall and Mankato respectively. Approximate attendance for the afternoon and evening totaled 150 people. Greg Larson and John Jaschke, BWSR staff members, did an excellent job presenting an overview and responding to questions concerning WCA.

- A recent work priority of board conservationists has been to review and comment on county annual work plans, budgets and annual reports for the Local Water Resources Protection and Management Program.

- Jeff Nielsen, southern regional supervisor, and Thomas Fischer, BWSR board conservationist in New Ulm, participated on the BWSR Wetlands Team to review the comments received during the WCA public hearings. The committee's purpose was to provide input to Greg Larson and John Jaschke to aid them in developing written comments on behalf of the BWSR to be submitted to the administrative law judge.

- During December, Sara Johnson, BWSR accounting specialist in New Ulm, spent more time than usual in the office, mostly preparing for the year-end closeout sessions. She has seven of these workshops planned throughout the state in January. Sara also began tabulating the results of a survey she mailed out in November regarding district sick leave and vacation policies. This summary will be very useful as many SWCDs often inquire about these policies.

- A memorandum of understanding (MOU) was signed by Area II Minnesota River Basin Projects, Inc., the Department of Natural Resources' Region IV, and the Pollution Control Agency on November 20. This agreement streamlines the communication process by giving us all the same map to follow from the time a project is first conceptualized, through the planning and permitting stages and finally to the funding and implementation stage. Jim Schneider, DNR regional administrator, noted that "The DNR, PCA and Area II share the common goal of better land and natural resource management and reduction of flood damage in the Area II portion of the Minnesota River watershed." The signing of this MOU culminated a series of meetings moderated by Jeff Nielsen.

- Yellow Medicine SWCD Supervisor Karen Halverson is one of six women to be recognized by Minnesota Rural Futures, Inc., for making outstanding contributions to community organizations, agricultural and rural issues.

Northern Field Staff

- With the holiday season also came the convention season; and that always makes staff work schedules a little erratic. In December all northern field staff attended either the MASWCD convention, the MAWD convention, or the AMC convention. Staff made the most of there presence by networking with clientele staff and board members as well as picking up some new information at some of the mini-sessions. In addition, all staff helped facilitate at least one of the WCA public hearings held around the state.

- Jack Salmela, north shore engineer in the Duluth office, reports that arrangements have been completed with the Minnesota Department of Transportation to have blast rock from the silver cliff tunnel delivered to the silver cliff erosion site. Use of this blast rock in place of other rock sources will provide significant savings for the project. Jack is also working with the city of Two Harbors to get blast rock delivered to their campground sites.

- Mark Nelson, Duluth board conservationist, met formally with the newly formed Lake Superior Association of SWCDs in December. Mark says that bylaws were adopted and future strategies discussed. Septic systems will be one of the first items addressed.

- Feedlots was the hot issue at the northern Minnesota Futures Committee meeting in Walker that Mark also attended. SWCD personnel from nine districts were present. District personnel remain frustrated with not being able to fix more polluting feedlots. Costs, permitting requirements, and availability of cost-share dollars seem to be the main culprits.

- Barbara Liukkonen, water resources education coordinator in Duluth, has been making steady progress on her education projects. Nine shoreland best management practices (BMP) fact sheets and the stewardship folders were finalized and have gone to the printer. The remaining seven fact sheets should be sent out for review in January with the entire packet going to staff in February.

- Dale Krystosek, Bemidji board conservationist, has been busy assisting several LGUs with some potential WCA violations and replacement plans. WCA implementation is still a major work item with BWSR field staff.

- Keith Grow, Brainerd board conservationist, found himself in the middle of two contested WCA projects in December. Keith managed to help the LGUs make the right call in each case but not without several field visits and several visits with the LGU, landowners, other state agency staff, and intense scrutiny by interested politicians. The sites were located in Stearns County and along Mille Lacs Lake.

- Brainerd Board Conservationist Dan Steward successfully put three more water plans to bed, including the controversial Snake River county plans. This make eight for the year and a grand total of 42 plans that Dan has delivered to the board for approval in his four year career with this agency.

The northern field staff is also proud and honored to welcome two new members to the BWSR: Ted Lovdahl, Itasca SWCD supervisor, and Barb Upgaard, Crow Wing County commissioner. They will both do an outstanding job providing leadership for BWSR.

Land & Water Management Section

- Staff continues work with the Snake River counties of Aitkin, Kanabec, Mille Lacs, and Pine on the development of a Joint Powers Agreement as well as first year implementation plans under the Comprehensive Local Water Planning Act.

- January 15 was the deadline for counties to submit applications for funding under the Local Water Resources Protection and Management Program. This year, 76 counties applied for funding for the purpose of implementing high priority actions identified in state approved water plans. From the metro area, Carver and Scott counties both applied. Staff will be summarizing the workplans and reports in the near future and preparing a report to the Legislative Water Commission.

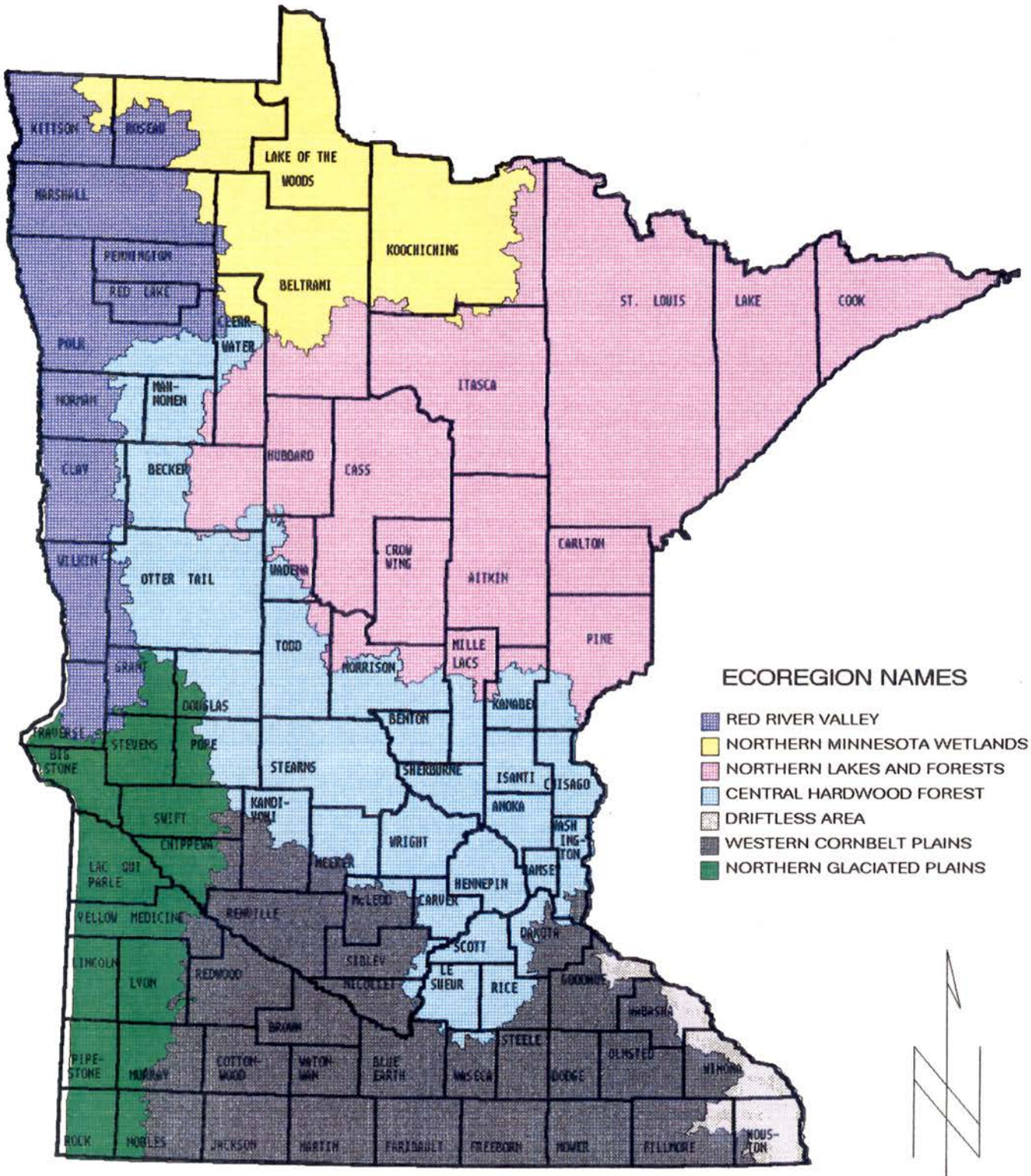
- On January 25 the BWSR published a notice in the State Register to announce the 60 day application period for local water planning challenge grants.

- Staff continues to provide assistance to counties and SWCDs in S.E. Minnesota through the pilot sinkhole treatment program and assisting in the planning of a upcoming midwest non-point pollution conference to be held in La Crosse, Wisc., in March.

- The Land & Water Section has recently employed John Bilotta as a student worker. John is a senior at the U of M in the soil and water resource management program. John has already assisted in bringing the cost-share data base up to speed and assisted in an abandoned well report.

- On January 20 staff completed a district evaluation for West Polk SWCD. This evaluation was done to assist the SWCD in identifying program strengths and weaknesses, and to recommend changes. Staff will prepare and present recommendations to the West Polk SWCD Board in February.

MINNESOTA'S SEVEN AQUATIC ECOREGIONS AND COUNTY BOUNDARIES



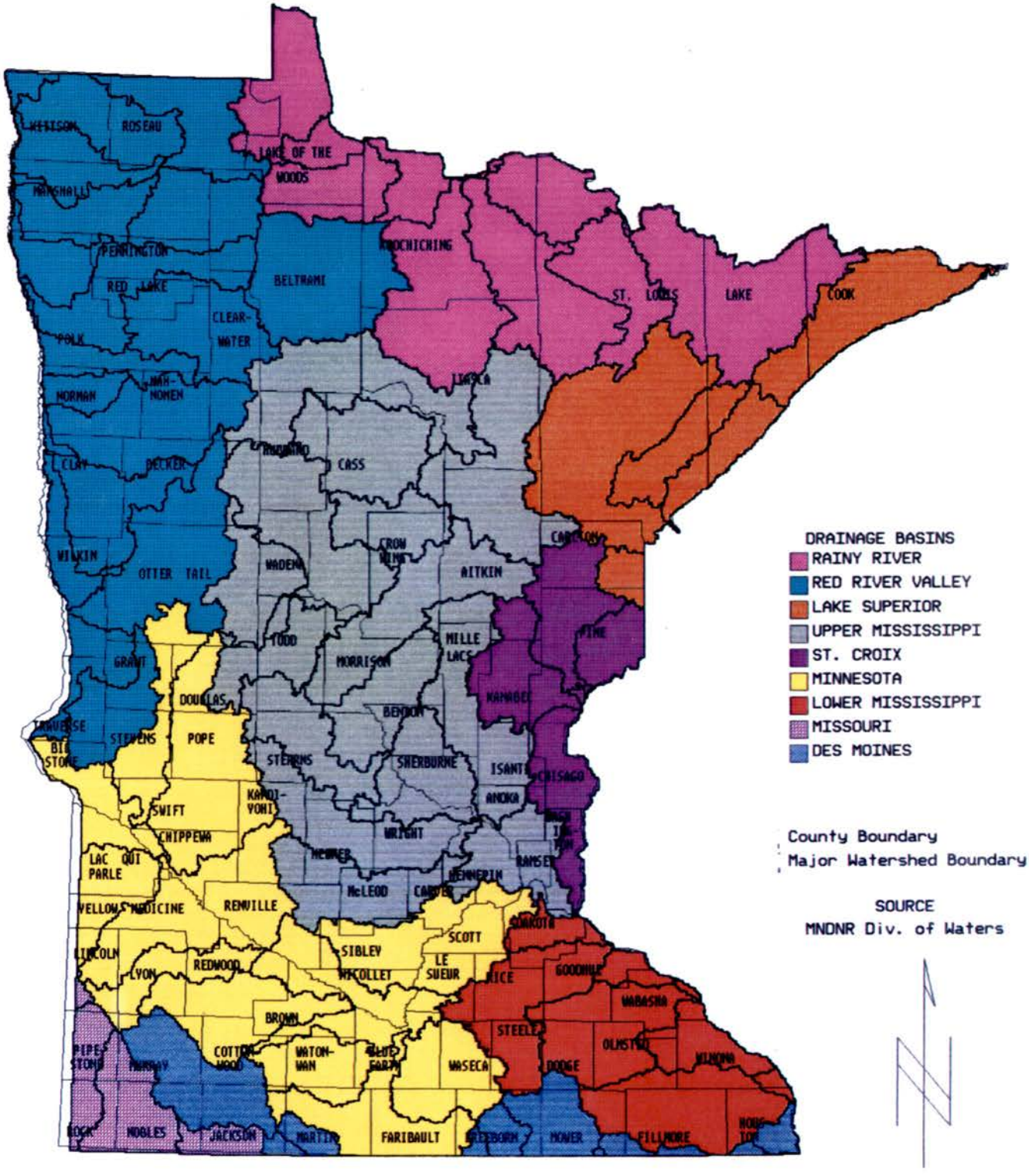
ECOREGION NAMES

- RED RIVER VALLEY
- NORTHERN MINNESOTA WETLANDS
- NORTHERN LAKES AND FORESTS
- CENTRAL HARDWOOD FOREST
- DRIFTLESS AREA
- WESTERN CORNBELT PLAINS
- NORTHERN GLACIATED PLAINS

MINNESOATA BWSR
SOURCE: MPCA

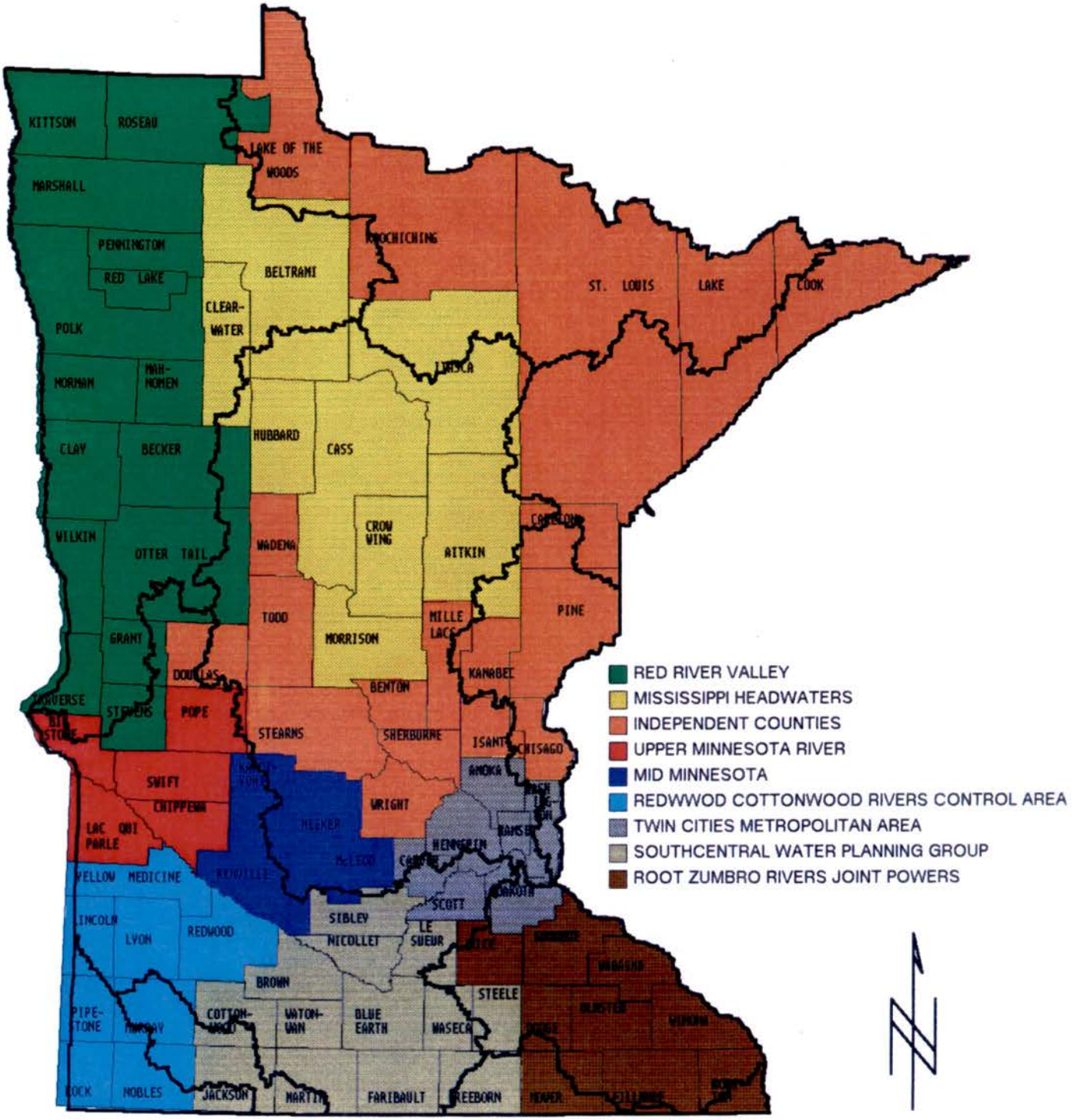
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MINNESOTA'S 81 MAJOR WATERSHEDS AND DRAINAGE BASINS



Minnesota BWSR 10/22/92

ORGANIZED WATER PLANNING GROUPS



Minnesota Board of Water & Soil Resources 11/25/92

25 copies

CORE

STATE OF MINNESOTA
COMMISSION ON REFORM AND EFFICIENCY

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

RECEIVED
JAN 25 1993
& SOIL RESOURCES

January 22, 1993

MEMORANDUM

TO: Environmental Services Project Stakeholders

FROM: Nancy Feldman Nancy Feldman

SUBJECT: Project Final Recommendations

Attached for your information is a copy of the final environmental services project recommendations of the CORE Program Analysis Working Committee. These recommendations will be presented to the full CORE Commission for final action at the commission meeting on January 28, 1993. The meeting will be held at the Kelly Inn from 8:30 a.m. to 3:30 p.m. The environmental project is scheduled to be on the agenda from 10:15 - 12:15.

COMMISSION
ON REFORM
AND EFFICIENCY

CORE

Environmental Services Project

Final Recommendations

January 28, 1993

CORE ENVIRONMENTAL SERVICES PROJECT

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INTRODUCTION

During the last 11 months, CORE's Program Analysis Working Committee and its staff conducted a comprehensive examination of the state's environmental services delivery system.

The study evaluated how effectively and efficiently environmental policies and programs are administered in Minnesota from the perspective of the customers or users of state environmental agency services.

The behavior of all citizens affects the quality of Minnesota's environment; therefore, all citizens are customers of the environmental system. The water we drink, the emissions from the cars we drive, the fish we catch, the parks we visit, and the garbage we produce all are governed by Minnesota's environmental laws.

In the course of its research, the Working Committee heard presentations from state agency heads and legislators. Staff met with about 700 people from around the state, including those who deliver and use environmental services. Users interviewed included environmentalists, business owners, local government officials and other citizens.

Based on that research, CORE produced a series of nine findings (Appendix A), which detail the current status of the environmental system. The major themes expressed in the findings are:

The system is fragmented. At the state level, there are more than 30 agencies and boards with environmental responsibilities. At the local level, there are 87 counties, 856 municipalities, 1801 townships, 41 watershed districts, and 91 soil and water conservation districts, all with some responsibility for environmental programs.

The processes are unresponsive to citizen needs. As the number of agencies with regulatory authority has multiplied, decision-making has slowed and citizen access to the system has become more complicated.

The system is overly prescriptive. Inflexible, detailed rules make it difficult to achieve compliance with environmental goals in a timely, cost-effective manner.

Existing conflict resolution processes are time consuming and costly. Environmental programs, more than most areas of public policy, provide services and relate to customers who often have competing and seemingly irreconcilable interests. Government officials often must decide what resolution will balance the competing interests, the private rights with the public interest. Too often, the outcome is lengthy court cases or political battles before the Legislature.

SUMMARY OF CORE RECOMMENDATIONS

After analyzing these problems and weighing the pros and cons of various solutions, the Program Analysis Working Committee is recommending a number of reforms to address the structural and policy complexity in the system. Overall, the Working Committee is attempting to construct a system that brings the expertise and perspectives of the different state agencies into an integrated system. It is a system that should work better for the citizens of Minnesota, and should safeguard the quality of Minnesota's environment and natural resources.

The Working Committee's five major recommendations and objectives are:

1. **Consolidate most state environmental functions into two agencies, the Department of Resource Management (DRM) and the Department of Environmental Protection (DEP).** This recommendation would strengthen systemwide accountability by consolidating authority for decision-making into two departments.

2. **Establish a Secretary of the Environment, who would report to the Governor and oversee the two departments' programs, budgets and administration of environmental policy.** The Secretary's broad authorities would allow the individual to streamline and coordinate processes to produce better customer service. In addition, this top administrator would be charged with channeling resources in a systemwide manner to ensure that the state is moving in the direction of attaining the goals outlined in the Minnesota Environmental Policy Act.

3. **Deliver state environmental services on the basis of eco-regions, which recognize the different ecological needs of the state's natural regions.** This goal would be achieved by redrawing the regional service boundaries according to natural eco-regions, decentralizing large numbers of state employees to manage the resources and serve customers, and co-locating DRM and DEP employees in eco-region offices. This reform is designed to improve the state's environmental stewardship and increase customer satisfaction by locating employees close to the citizens seeking service and resources being managed.

4. **Create citizen input mechanisms, including major advisory bodies that would provide citizens with the opportunity to offer their viewpoints to top administrators at the state and regional levels.** CORE's recommendations formally connect environmental administrators with citizens, who must be consulted in an advisory capacity. The advisory bodies ensure that diverse opinions are heard and weighed by administrators, who are accountable to the Governor, Legislature and citizens of Minnesota.

5. **Establish a process for clarifying and simplifying intergovernmental relations in the delivery of <u>all</u> environmental services.** The long term goal of this process would be to reduce local governmental proliferation, service overlap and duplication, and facilitate development of multi-jurisdictional agencies of local government that are geographically congruent with natural eco-regions. Initially, this process will be implemented through a refinement of the existing county-based local water planning process.

ORGANIZATIONAL AND POLICY COMPLEXITY COMMITTEE RECOMMENDATIONS

1. State Agency Consolidation

RECOMMENDATION: Consolidate most state environmental functions into two agencies, the Department of Resource Management (DRM) and the Department of Environmental Protection (DEP).

Working Committee members articulated a two-agency vision in which the new Department of Resource Management emphasizes use of the natural resources in the environment, while the new Department of Environmental Protection stresses protection of the environment. To promote these distinct roles, staff designed the following two-agency structure that was approved by the Working Committee on January 12.

Department of Environmental Protection

This new department would expand the responsibilities of the current Minnesota Pollution Control Agency (MPCA). It would contain personnel to perform the service and regulatory functions necessary to protect and improve the quality of the state's air, land and water. These responsibilities are designed to promote both human health and a healthy environment.

The new Department of Environmental Protection would be organized along the following lines:

Division of Waste
Division of Air Quality
Division of Surface Water
Division of Ground Water
Division of Environmental Clean-up
Division of Environmental Review
Division of Support Services

These divisions would emphasize compliance assistance services to work cooperatively with individuals, businesses and local government units in attaining state environmental goals and meeting current environmental standards. In addition, regulatory personnel would place greater emphasis on carrying out their responsibilities in a manner that is more flexible and understandable. This can be achieved, in part, through streamlined rules emphasizing ambient/outcome standards and well-defined and consistent enforcement protocols.

The Working Committee emphasized the need for both service and regulatory sections within divisions to be equipped with adequate resources. In constructing the divisions, the Committee discussed the importance of separating compliance assistance in the form of grants, technical assistance, and training from regulatory functions, such as inspections, permitting and

enforcement. These functions would be in separate sections within each of the divisions.

Division of Waste: This division would consist of education, technical assistance, and regulatory personnel who would administer solid waste and hazardous waste programs. It also would include a program development section responsible for rule and program development and special projects.

Employees working in MPCA's Hazardous Waste and Solid Waste Divisions would be assigned to this new DEP division.

In addition, employees from the Office of Waste Management (OWM) would be transferred to this location. This includes OWM staff involved with planning, source reduction and capital grants in the solid waste area. The SCORE recycling program also would be assumed by the new division. Hazardous waste functions now housed in OWM would be transferred.

Currently, OWM plays a technical assistance role in the waste area, and MPCA has permit and enforcement authority. This change would bring the service and regulatory functions into one division within one state agency. However, it should be emphasized that this transfer of OWM functions is designed to keep OWM's service functions independent from the regulatory functions in the Division of Waste.

Functions would be shifted to the Waste Division from other state agencies. The Emergency Response Commission, which deals with hazardous chemical storage reports, would move to DEP from the Department of Public Safety. The medical waste program in the Minnesota Department of Health (MDH) would be transferred. The Environmental Quality Board's (EQB) high-level radioactive waste program, which involves monitoring a federal siting process, would now be housed in DEP.

Division of Air Quality: MPCA currently has an Air Quality Division, and the DEP's Air Quality Division would be very similar. State and federal laws relating to air pollution would be administered by this division. Sections within this division include program development and air analysis, permits, enforcement and compliance assistance.

Division of Surface Water: This new division would handle all program analysis, planning, regulatory operations, and compliance assistance functions relating to surface water. It would be a hybrid of functions now scattered across several state agencies.

Protected waters permits, now issued by the DNR, would be shifted to this new DEP division. So would several of the functions now performed by the Board of Water and Soil Resources (BWSR), including wetland management, watershed district oversight and flood damage reduction. Surface water discharge permits, required of businesses and municipalities, are now handled by the MPCA and would be assigned to this DEP division. Nonpoint source control activities affecting lakes and rivers also would be housed here.

Division of Ground Water: An amalgam of four state agencies' programs would be integrated into this new DEP division.

The division would build on MPCA's current water quality responsibilities. The Department of Health's public water supply, wellhead protection and well management programs would be assumed by DEP. In addition, DNR would no longer issue water appropriation permits, because that environmental protection function would be transferred to this new division.

Finally, BWSR's responsibilities in the ground water area, including local water plan review, would be merged into DEP. Also housed in this division would be PCA's feedlot program and other service and regulatory programs dealing with nonpoint source pollution ground water.

Division of Environmental Clean-up: This new division would focus on cleaning up sites that have environmental problems, and administering two compensation boards that are now free-standing.

This division would contain sections dealing with tanks and spills, the state and federal Superfund programs, property transfer and closed landfill clean-up.

Functions to be transferred into the division now reside in the Harmful Substance Compensation Board and the Petroleum Tank Release Compensation Board.

Division of Environmental Review: This new division would assume a number of functions now performed by the Environmental Quality Board (EQB).

EQB has an important environmental review function, and under the two-agency consolidated model, this function is most appropriately assigned to the DEP. The Environmental Impact Statement (EIS) program provides information to the public and local government units on the environmental impacts of proposed projects before government permits and approvals are given.

Under statute, EQB is directed to adopt rules requiring a permit and environmental review for any release of genetically engineered organisms into the environment and to establish an advisory committee. That responsibility also would be assumed by this new DEP division. So would the critical areas program, which provides a process for the planning and management of geographic areas of regional and statewide significance.

To fully implement the Working Committee's decision to separate environmental use and protection functions, it would be necessary to transfer some of the authority of DNR's forestry and minerals divisions to the DEP. Personnel regulating the impacts of timber harvests and mineral extraction would be shifted from the current DNR to the new DEP.

Also, this new division would accept EQB's current role relating to utilities review. The EQB is now charged with power plant siting and pipeline routing responsibilities. According to the EQB, the power plant siting program is responsible for locating large electric power facilities

in an orderly manner compatible with environmental preservation and the efficient use of resources, and providing for the evaluation of the effects of such power facilities on land, water and air resources and on public health and welfare. Further, DEP would assume EQB's responsibility for selecting pipeline routes in a manner that reduces the environmental and human impacts of pipeline construction and operation.

The Health Risk Assessment Section, now located in the Department of Health, would be relocated here. It provides expert consultation on the health impact of environmental exposure to physical or chemical agents.

Division of Support Services: This division would provide an array of services for DEP, including the office of enforcement support, public information office, financial management services, personnel management, information services, data management, clientele training and library services.

The Executive Reorganization Working Committee is currently considering whether some support services should be consolidated into a single unit in the Secretary's office. The Program Analysis Working Committee expressed concern over the possibility of the Secretary becoming involved in detailed administrative issues. The ER Committee believes this concern is adequately addressed by having a chief administrator who handles these issues and who reports directly to the Secretary along with a policy coordinator.

Department of Resource Management

The proposed Department of Resource Management (DRM) would contain many programs now housed in the Department of Natural Resources (DNR). The most dramatic change would involve transferring DNR's Division of Waters to the DEP to consolidate water regulatory functions into one agency. The rationale for this major change is two-fold: 1) It clearly defines DRM as an agency focusing on "use" of the resources, while the DEP performs a "protection" role; 2) Consolidating water permits into one agency should provide better service to citizens by enabling permits to be combined or coordinated.

A second major change, outlined in the DEP description above, would require transferring timber and minerals regulatory functions out of the current DNR to the DEP.

The new Department of Resource Management would be organized along the following division lines:

Division of Fisheries and Wildlife
Division of Minerals
Division of Forestry
Division of Recreation
Division of Enforcement
Division of Support Services

Division of Fisheries and Wildlife: This division would be virtually identical to the current DNR composition, which means it would manage state programs concerning fish and wildlife. Also, it acquires land to be developed as Wildlife Management Areas.

This division would receive BWSR's Reinvest In Minnesota (RIM) program, which compensates private landowners for taking marginal agricultural land out of production. The RIM land serves as wildlife habitat.

The Ecological Services Section would provide information for use by the new DEP, DRM and the public. The section serves as a planning, fact-finding, monitoring and environmental review unit. It evaluates fish, wildlife, and related resources in all areas proposed for major development such as dams, hydro facilities, reservoirs, channels, mines, tailings basins and power plants so that recommendations and decisions can be made for the protection, mitigation and enhancement of these resources in project plans.

The Fisheries Section manages the state's 3.8 million acres of fishing waters, and the Wildlife Section implements research and management programs that affect all state wildlife species.

Division of Minerals: DNR currently has a Division of Minerals, which is responsible for the leasing of mineral rights and for industrial minerals and peat associated with the state-owned lands which DNR manages.

Management includes the mineral rights of lands held in trust for public schools and the university, lands acquired by DNR, lands forfeited for delinquent taxes, and other miscellaneous state-owned lands. The division manages rights associated with: 10 million acres of state-owned trust-fund and tax-forfeited lands, the state's 18 percent ownership of the Mesabi Range, copper/nickel, titanium and manganese resources and the potential for gold, platinum and other precious metals. The division manages 3 million acres of state and county peatlands and sand, gravel and stone on 2.6 million acres of state land. All of these functions would be housed in the new DRM.

Management and protection functions are now integrated within this one DNR division. Under CORE's two-agency plan, sufficient numbers of environmental "protection" employees would need to be shifted to the DEP to separate those dual roles.

Division of Forestry: DNR's current division has management and protection responsibilities for Minnesota's forest resources. The forests are managed for multiple uses, including improved wildlife habitat, quality forest recreation opportunities, increased yields of wood and wood products and conservation of land and water resources.

The forest management program includes forest fire protection, insect and disease protection of forest land, management of state forests and other state-owned lands, management assistance to non-industrial private forest landowners, counties, schools and municipalities, and assistance to wood users to improve harvesting, utilization and marketing of the timber resource.

The division directs the sale of timber from state-owned lands, builds and maintains state forest roads, and supervises state forest campgrounds and other recreational sites on state forest land.

Under the structure proposed by CORE, most functions would remain in the division of forestry assigned to the DRM. However, personnel would be transferred to DEP who are in charge of regulating the environmental impacts of timber harvests.

Division of Recreation: This new division would consolidate two existing DNR divisions: Parks and Recreation and Trails and Waterways. Included in this division is management of the state's 66 state parks and their associated recreational programs. In addition, the state's 16 waysides are managed by the division.

State park and forest trails, water access sites and canoe and boating routes would be handled by this division.

The Outdoor Recreation Grant Program, now administered by the Department of Trade and Economic Development (DTED), would be shifted to this DRM division. The program makes grants to local units of government for parks and recreational facilities.

Division of Enforcement: This division would be responsible for the same functions it now has in the DNR.

It enforces all natural resource laws in the state and regulates commercial and sport fishing, trapping, fur buying and hunting. It also serves as a guardian for small and big game, fish and migratory birds. Conservation officers manage and enforce the harvesting of Minnesota's wild rice crop, assist in the development and maintenance of public access to public waters, enforce boat and water laws, manage licensing and operation of snowmobiles and all-terrain vehicles, and enforce laws dealing with alterations of beds of lakes and streams. The division supervises safety and training programs on the use of firearms, snowmobiles and all-terrain vehicles.

The division does aerial pollution surveillance of lakes and rivers, surveys and census work regarding moose, beaver, and deer, and pheasant counts. The division enforces all rules and statutes within state parks, campgrounds and recreational areas under DNR's jurisdiction.

Division of Support Services: A number of functions that are used by the entire department would be assigned to this division. They include: engineering bureau, field services, financial management, human resources, information and education, library, license bureau, management systems, Minnesota Conservation Corps, office of planning, office services, real estate management and the volunteer program.

As noted in the DEP section, the issue of placement of support staff is still being discussed by the Executive Reorganization Working Committee.

State Agencies Affected by the Two-Agency Model

The preceding narrative identifies the divisions that would be housed within the two consolidated departments, the Department of Environmental Protection and the Department of Resource Management. It outlines major division responsibilities and describes programs that would be shifted from current state agencies into the two departments. The descriptions are not intended to be comprehensive, so all programs that would be transferred are not specified in this summary.

To implement the Committee's January 12 decisions, these agencies would be affected in the following ways:

Department of Natural Resources offices would be used as a base for housing the divisions and top management of the new Department of Resource Management (DRM). DNR employees would be absorbed into the new DRM, and the name DNR would no longer exist.

Pollution Control Agency offices would be used as a base for housing some of the divisions of the new Department of Environmental Protection (DEP). PCA employees would be absorbed into the new DEP, and the name PCA would no longer exist.

Pollution Control Agency Board would be eliminated; its powers would be transferred to the Department of Environmental Protection.

Office of Waste Management would be abolished; its programs and responsibilities would be transferred to the DEP.

Board of Water and Soil Resources (BWSR) would be converted to an advisory board to the Secretary of the Environment. The board's name would be changed to Local Government Advisory Board on Environmental Services. BWSR's programs and statutory responsibilities would be transferred to the DEP and DRM.

Harmful Substances Compensation Board would be eliminated; its program and responsibilities would be transferred to the DEP.

Petroleum Tank Release Compensation Board would be eliminated; its program and responsibilities would be transferred to the DEP.

Department of Public Safety's Emergency Response Commission would be transferred to the DEP.

Most functions in the Department of Health's Division of Environmental Health would be transferred to the DEP.

Department of Trade and Economic Development's outdoor recreation grant program would be transferred to the DRM.

Environmental Quality Board would be abolished. Its functions would be assigned to the DEP.

2. Secretary of the Environment

RECOMMENDATION: Establish a Secretary of the Environment, who would report to the Governor and oversee the two departments' programs, budgets and administration of environmental policy.

A. Comprehensive Budget Responsibility

The Secretary of the Environment, in conjunction with the Governor, would be accountable for establishing policy priorities through the budgeting process. While the Secretary would consult with the commissioners of the Departments of Resource Management and Environmental Protection as to budgetary needs of programs, the Secretary would make final decisions on balancing the competing interests of environmental use and protection. The Secretary could reassign programs and program budgets between the agencies as needed to address priorities and coordination. Commissioners would have control of their line item budgets; the Secretary would focus budget overview at the program level and above. The Secretary of the Environment would work with other cabinet secretaries when broader needs must be reconciled or when environmental priorities compete or conflict with priorities in other areas.

B. Service Integration

The Secretary would be responsible for seeing that coordination occurs among the two departments where such coordination results in efficiency savings and improvement of customer service. Areas where oversight is essential are: the decentralization of decision-making to regional offices; the co-location and sharing of administrative services in both central and regional offices; the development of integrated data management between the departments; data accessibility to users other than the two departments; permit reduction and coordination; public education coordination; and development of a standardized approach to delegation of environmental programs, both at the national and local levels.

C. Conflict Management

The Secretary would resolve administrative, jurisdictional, operational, program and policy conflicts between the two agencies. On conflicts over policy, the Secretary could request the

assistance of the Citizen Environmental Appeals Board. The Secretary must seriously consider all recommendations of the board relating to policy conflicts and prepare a written justification for any deviation or rejection of the recommendations of the board. Additionally, the Secretary could develop conflict management approaches and services, such as convening stakeholders early in the process and providing mediators.

D. Mission Development/Strategic Planning

The Secretary has the high visibility role of policy spokesperson for the Governor on environmental issues. Broadly, this includes speeches, legislative and congressional coordination and testimony, and contacts with other states. The Secretary would work with the two commissioners on creating a vision for the environmental area through strategic planning and mission development for the two agencies. The commissioners would be accountable to the Secretary for their administrative, fiscal and program actions in the conduct of the respective powers and duties of the agencies. Each commissioner would have the role of chief operating officer, accountable for the day-to-day operations of the department, as well as the continual effort to reach departmental goals. Each commissioner would advocate for the mission of his/her department (natural resource use and management, and environmental protection), but would work with the Secretary to achieve the mission statement and implement the strategic plan for the environmental area. The Secretary would be accountable to the Governor and Legislature for achieving the outcomes expressed in the mission statement and implementation of the policies and programs set by the Legislature.

E. Legislation/Rule Development and Implementation

In addition to budgetary control of policy, the Secretary would have substantial control over policy through coordination of legislation and oversight of rule development and implementation. While the commissioners would propose legislative initiatives, the Secretary could initiate others, would review and approve all legislative proposals with the Governor, and would coordinate efforts to secure passage of the proposals.

To see that rules effectively implement legislative directives, the Secretary would review all rules proposed to exceed federal standards and the commissioners would be required to justify exceeding the standards. The Secretary would develop a standardized process and establish the criteria for requesting waivers/variances from environmental rules of both agencies and periodically review the process for consistency in the application of these criteria by regional office directors, the ease of use by applicants, and the numbers and kinds of waivers granted for possible changes to rules.

To reduce the regulatory burden of rules, the Secretary would hold the commissioners responsible for: 1) preparing for each legislative session a listing of rules that should be repealed because they are obsolete, unnecessary or superseded so that they may be included in the revisor's bill; 2) working towards developing a uniform environmental code that comprehensively addresses obligations of regulated parties in the environmental area and

emphasizes compliance requirements based on outcome measures/ambient standards; and 3) monitoring the overall progress of rulemaking responsibilities and reporting on delays. Additionally, the agency commissioners would report to the Secretary options other than rulemaking to achieve the policy objectives proposed in a bill before requesting rulemaking authority as part of legislation.

3. Employee Decentralization and Regional Offices

RECOMMENDATION: Deliver state services on the basis of eco-regions and decentralize the state's environmental employees to the extent possible. Co-located eco-region offices would be established and headed by regional DRM and DEP directors, who would report to agency commissioners. More operational decisions would be shifted to the regional offices, including most permitting decisions. Major policy-making decisions and those decisions with statewide implications would be made at the Commissioner and Secretary levels.

This recommendation is designed to provide better service to citizens and to locate state employees closer to the resources they are managing and entities they are regulating.

The Working Committee embraced the concept of eco-regions at the December 8 meeting. Eco-regions have similarities in climate, soils, geology, topography, vegetation types and wildlife. Minnesota has tremendous natural diversity, which has led scientists to identify seven distinct regions that differ in environmental characteristics. Because of these distinctions, Minnesota's regions have different industries and resources that people use and the eco-regions identify unique environmental problems. (See Appendix B for a Minnesota Eco-Region Map.)

The seven natural eco-regions in the state are: Northern Lakes and Forests (NE MN), Northern Minnesota Wetlands (North-Central MN), Red River Valley (NW MN), North Central Hardwood Forest (Diagonal Mass Cuts from NW to SE MN), Northern Glaciated Plains (SW Strip), Western Cornbelt Plains (South-Central MN) and Driftless Area (SE MN). In addition, the Twin Cities metropolitan area would be designated as an eighth service delivery unit called the Urban Eco-region.

Based on the dramatic change proposed, it is unclear precisely how many more employees would be shifted outside of the Twin Cities. DNR and BWSR already have a majority of their employees decentralized. In contrast, the EQB has a small number of employees assigned to specialized responsibilities with statewide impact, and they would likely remain in St. Paul even though they would be shifted to the new DEP.

The MPCA has roughly 700 employees and less than 10 percent are decentralized. This is the biggest employee pool for decentralization; however, the Office of Waste Management and Department of Health also have employees who could be placed in regions.

RECOMMENDATION: Assign regional office location decisions to a two-agency task force

of DRM and DEP, which would be required to make recommendations that provide for regional offices within all eco-regions. A deadline for completion of this work should be set by the Legislature, and the task force should include employee representation from the agency programs being merged into DRM and DEP. Regional directors should be authorized to rent vacant storefronts and buy or lease used office equipment and furniture in the cities selected to house the eco-region offices.

Four state agencies currently have staff with environmental responsibilities based out of regional offices in 11 cities. The Working Committee believes those locations should be examined as part of the task force's study. However, the Working Committee recommended that each eco-region have an office, and noted that three eco-regions currently are not served by regional offices. Those eco-regions are the Red River Valley, Northern Minnesota Wetlands and Driftless Area.

In discussing the eco-region offices, the Working Committee expressed a desire to support local communities and save state tax dollars. Therefore, the Committee favors leasing space in existing buildings rather than paying for new construction. Further, the Committee stated that regional directors should be able to buy or lease used equipment and furniture, instead of being required to purchase new goods off of an approved state vendor list.

RECOMMENDATION: Increase the authority of the regional directors by assigning them primary responsibility for the performance of the employees under their supervision.

Currently, state employees based in regional and field offices have two supervisors. An employee reports to a regional director for administrative and personnel matters, but reports to a division director or designee in St. Paul for program accountability. Under the current system, the regional director has limited ability to oversee effective program implementation, because he or she has no authority to do so. Consequently, regional directors cannot be held accountable for substantive performance in their regions, and regional employees have two bosses. To increase the effectiveness of regional offices, this change is important.

RECOMMENDATION: The Secretary, two agency commissioners and central managers should interpret state law and make decisions with major statewide implications. Execution of the policy and programs should be carried out as close to the customer or citizen as possible.

The Working Committee supports an increase in the number of permitting decisions that are made in regional offices. However, it acknowledges that some permitting decisions also have the effect of policymaking. As a general rule, most permits to individuals and small businesses should be issued by regional offices. Permit requests from local units of government and large businesses should receive final action in the central offices.

The Committee approved this role delineation. It is believed that this policy would provide good customer service, efficiently use specialized expertise on complex permits, insulate regional

offices from political pressures and consistently and effectively administer state law.

4. Citizen Input

RECOMMENDATION: Create a citizen environmental appeals board composed of nine members with recognized environmental expertise and independent, objective judgment. The Governor should appoint members to serve staggered terms. No Governor should appoint more than half the members during the Governor's term. In making these appointments, the Governor should consider expertise needed to carry out the Environmental Policy Act, Minnesota Statutes Chapter 116D. The board should focus its considerations on policy conflicts between environmental use and environmental protection, as requested by the Secretary or a citizen. The board should decide whether to address or reject a request so as to limit its workload. A request can be considered independently of any administrative process. The Secretary should make staff available as requested by the board to assist its deliberations. Recommendations of the board should be sent to both the Secretary and the Legislature.

The Working Committee recommends the creation of a citizen board to provide a forum for consideration of controversial policy decisions involving conflicts between the advocates of natural resource use and management and environmental protection and conservation. The board's recommendations to the Secretary would be advisory, which would mean the final decision-making would rest with the Secretary. However, the board's recommendations should be sent to both the Secretary and the Legislature to ensure their careful consideration and the accountability of the Secretary for any decision that deviated from or rejected the board recommendations. The Secretary would be required to explain, in writing, the rationale for departing from the board's recommendations.

The nature of the issues that could fall within the board's purview is potentially broad. Yet, this is a citizen board with limited time to devote to consideration of issues, so the board's scope should be focused on policy conflicts that develop concerning the use and protection of environmental resources.

Although the issuance of a permit can establish a policy or involve interpretation and application of policy, to allow appeal of individual permit decisions to the board would delay the process and extend, rather than shorten, what can already be a lengthy process. A permit applicant already has an appeal route available through the Office of Administrative Hearings. However, policy issues which the board may wish to consider could arise during a permit issuance, a rule or environmental review or other administrative decision. If the board is requested to consider these policy issues, the board would consider them at its discretion. This could be before, after or during the administrative decision. The board would <u>not</u> be involved in the specifics of the individual administrative process, but neither would it be constrained or limited by the specifics of individual cases. It could choose to discuss an individual case as representative of broader policy conflicts, common to many individual cases.

The request to involve the board in a policy conflict should come from the Secretary or a citizen. A majority of board members or a committee of the board could be empowered to accept or reject the request. The requestor would have to state in writing the nature of the policy conflict. The Secretary should assist the board in its deliberations by making staff from the agencies or the Secretary's office available to perform needed functions.

The Committee recognized the need for recommendations to be made based on an appreciation and understanding of the scientific and technical concerns underlying the conflicts. However, the conflicts that result between the use of environmental resources and protection and conservation of the environment are less about science and more often about achieving a balance between economic and environmental values. Because the purpose of the citizen board is to apply diverse perspectives to consideration of the balance between economics and environmental protection, the key qualifications for service on the board should be a demonstrated ability for thoughtful consideration and analysis of public interest issues. Critical skills are independent judgment and the ability to understand, appreciate, and reconcile the diverse demands objectively in the public interest and consistent with the policies set forth in the Environmental Policy Act.

RECOMMENDATION: Convert the Board of Water and Soil Resources to a permanent advisory board to the Secretary of the Environment. Change BWSR's name to the Local Government Advisory Board on Environmental Services.

The rationale for this recommendation is the acknowledgement that local government units have major responsibility for administering many environmental laws and programs. To promote an effective partnership with local governments, it is useful for the Secretary to hear from local government representatives on a regular basis. They are both customers of state agencies as well as service providers on the local level. The current BWSR membership includes county commissioners, soil and water conservation district supervisors, watershed district representatives, and unaffiliated public members.

RECOMMENDATION: Direct the Secretary to establish a Minnesota Environmental Council, which would allow the Secretary to gain citizen input on policy and program initiatives and to gauge service delivery performance within the DEP and DRM. Direct the Secretary to establish Regional Environmental Councils, which would be convened by the regional directors of DEP and DRM to allow the agency administrators to stay in touch with the concerns of citizens and constituency groups in each region of the state.

This recommendation builds on the Working Committee's belief that citizens must have good access to the state's environmental service system, and should have broad input on issue identification, customer service and new state policy initiatives.

INTERGOVERNMENTAL COMPLEXITY COMMITTEE RECOMMENDATIONS

The principal finding in CORE's analysis of intergovernmental relations was that services were carried out by a complex and fragmented maze of federal, state, and local agencies resulting in:

- **unclear, overlapping, and redundant lines of authority, responsibility and accountability,**
- **increased cost to the customer and taxpayer,**
- **customer dissatisfaction.**

The hundreds of persons with whom staff consulted voiced concerns that there were too many agencies and too many governments involved in environmental programs, too many laws and rules, too much state control. This was often expressed as "overlap and duplication," "multiple permitting," "multiple fees" and "layering." As one observer expressed it: **"We have too much government and too little governance."** A related problem cited was the propensity of state government to establish policies and rules on a statewide basis without adequately taking local and regional differences into consideration. Third, whether in the form of laws, rules, planning requirements, or grants, state environmental services programs were seen by local officials as having the effect of increasing state control at the expense of local flexibility and discretion.

Central to understanding the complexity of intergovernmental relations as they relate to the delivery of environmental services programs in Minnesota is the extent to which the state has relied upon local governments to implement state policies and programs. In addition to 87 counties and thousands of cities and towns, the state has created (or provided for the creation of) soil and water conservation districts, watershed districts, water management organizations, lake improvement districts, and numerous regional special districts. Generally speaking, all of these governmental entities function as "political subdivisions of the state."

The Working Committee reviewed the responsibilities of various local governments involved in environmental services and concluded that the most significant reform needed was to **simplify** the **complexity** that exists in intergovernmental relations. Central to this simplification would be a re-evaluation of the role of special district governments and their relationship to general purpose local governments and the state. It also concluded that natural eco-regions were the most appropriate basis for organizing the delivery of services by both local and state governments and that the boundaries of multi-jurisdictional local government agencies should be congruent with those utilized by state government for delivering services at the regional level.

RECOMMENDATION: Eco-regions should be the basis for organizing the regional

delivery of all environmental services in Minnesota by both state and local governments. Actual regional boundaries would be adjusted to follow county lines, but in a manner that corresponds as closely as practicable to natural eco-regions lines.[1] Determining these eco-region boundary adjustments would be the responsibility of the two-agency task force recommended by the committee to determine the location of state eco-region offices. (See page 13.) For purposes of making boundary adjustments, this task force would be expanded to include representatives of local government. Regional planning by local governments for the delivery of environmental services should be carried out in a manner consistent with and geographically congruent with eco-regions.

The Working Committee also concluded that it was not practicable to resolve this complexity in intergovernmental relations by simply abolishing special purpose units of local government. The services carried out by these governments and their relationships to counties, cities, and townships vary across the state. A standardized "one size fits all" reform would run counter to this diversity and decrease the flexibility of local governments to respond to the specific needs of their area.

The committee decided to recommend the establishment of a role clarification process which when completed would provide the basis for simplifying intergovernmental relations in the environmental services area. The goal of the committee is to apply this process to environmental services, beginning with a refinement of the existing local water planning process and eventually applying to **all** environmental services. **Comprehensive** water planning considers issues involved not only in surface water management, but also land use control, point and non-point water pollution, groundwater, and wetlands management. Clarification and simplification of the water planning process can provide a basis and model for simplifying other environmental areas, such as solid waste, hazardous waste, air pollution control and integrated resources management.

This reform should be based upon statewide guidelines and principles and reinforced with state sanctions, but the process itself should evolve from "bottom-up" rather than "top down" decisions. Minnesota state and local governments have accomplished a great deal in the last several years in their efforts to "rationalize" the water planning process. The process has been recently buttressed by additional legislative requirements and a comprehensive implementation rule for the metropolitan area.[2] Staff believe that the refinement of this process is the key to addressing many of the issues identified in project Findings.

Local governments (counties in some cases, in others SWCDs, in others watershed districts and WMOs) are now beginning the development of what are known as "second generation" water plans, ones which ultimately must be approved by the state. Sorting out and clarifying the various roles of these governments and organizations will be one of the greatest challenges

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[1]See Appendix B for a map of Minnesota eco-regions and Appendix C for one possible configuration of eco-regions adjusted for county boundaries.

[2]Minnesota Rules, Chapter 8410, adopted May 27, 1992, effective August 1, 1992.

facing the water planning process as it begins the development of "second generation" plans.

Recent rules relating to the metropolitan area specify the required content of joint powers agreements including requirements relating to organizational structure and governing procedures. This should result, upon the completion of second generation plans, in more stable and viable (and most likely, fewer) water planning and management organizations. Plans must describe conflicts between watershed plans and existing plans of local government units. They must also identify the relationship of the planning organization to state agencies, local soil and water conservation districts, and affected counties, cities, and towns with respect to authority, administration, and coordination. Failure to complete such plans can lead to state sanctions that include withholding state funding from local water projects and suspension of local government regulatory and permitting authority.[3]

Counties throughout the state are involved in the early stages of developing second generation plans. State agencies intend to develop a legislative and regulatory framework similar to that developed for the metropolitan area which will be applicable on a statewide basis. Current law "encourages" county governments to assume responsibility for the preparation of local water plans. The committee believes that this responsibility should be mandatory.

RECOMMENDATION: Local water planning should be a mandated responsibility of county government. Whether actually carried out by county governments or delegated, second generation water plans should clearly address the issues of governmental proliferation, overlap, duplication, redundancy and provisions for regional watershed-based planning.

RECOMMENDATION: Legislation and rules should be amended and revised to the extent necessary to assure that water plans:

1) **clearly and specifically identify the relative roles of both general and special purpose governments within each local government planning area, including determining whether or not the continuation of existing special purpose governments and organizations remains justified,**

2) **document the manner in which a locally controlled regional organizational infra-structure will be established to guarantee that planning will be based on eco-regions and that regional hydrologic and watershed factors will be effectively addressed by local water planning and program implementation,**

3) **identify ways in which the water planning, management and regulatory process can be simplified and the number of**

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[3]Minn. Stat. §103B.231, Subd. 3(g), Minn. Rule 8410.0180.

governments and organizations reduced.

Within the metropolitan area, there is currently no clear requirement and certainty that a "metropolitan" or "regional" perspective will be taken into consideration in the development of individual local water plans.

RECOMMENDATION: The metropolitan surface water management law should be amended to authorize the Metropolitan Council to require modification of local water plans to the extent necessary to assure compatibility and consistency with region-wide comprehensive water planning issues.

The long term goal of the above recommendations is to achieve simplification through a clarification process resulting from the completion of second generation water plans. To assure that this occurs, it is essential that regional water planning organizations and state government have the necessary authority to carry out the responsibilities identified in these recommendations.

RECOMMENDATION: General local water planning legislation should be amended to provide locally controlled eco-region based multi-county watershed management organizations with authority to require changes in local plans to the extent necessary to assure compatibility and consistency with regional watershed considerations.

RECOMMENDATION: State government should be responsible for reviewing local and regional water plans, have authority to impose sanctions for non-compliance, and make recommendations to the legislature on specific mechanisms for simplifying intergovernmental relations in the environmental services, including the abolishment of special purpose governments.[4]

In summary, staff recommends that, in addition to all other objectives, the second generation of local water planning in Minnesota should be utilized and viewed as an opportunity to clarify intergovernmental roles, to simplify, and to examine and question the continued justification of governmental multiplicity. The goal should be to enhance the authority and accountability of general purpose governments and to increase linkages of special purpose governments and joint powers organizations to general governments. Through the review and approval of county plans, the state can exercise its appropriate responsibility to provide guidance and where appropriate, uniformity. Through development at the local level, flexibility and responsiveness to local needs can be enhanced. In the final analysis, it should be the mission of all participants, governments and organizations to both manage and protect the state's natural resources in a sustainable manner and to be responsive to government's ultimate customers, the citizens of Minnesota.

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[4]Under the reorganization proposed under the governmental complexity component of this project, this responsibility would be vested in the Secretary of the Environment.

APPENDIX A

SUMMARY OF FINDINGS

PREFACE: Environmental programs more than most areas of public policy, provide services and relate to customers that often have competing and seemingly irreconcilable interests. Any system established to resolve conflict among these interests should be efficient and effective. Of equal importance, it should be fair and equitable. Striking a balance between these two objectives may be the greatest challenge to policy makers and advocates of change and reform.

CORE FINDING #1: Environmental services programs in Minnesota are carried out by a complex and fragmented maze of federal, state and local agencies. This governmental complexity results in: 1) unclear, overlapping and redundant lines of authority, responsibility and accountability; 2) increased cost to the customer and taxpayer; and, 3) customer dissatisfaction.

CORE FINDING #2: Minnesota's environmental system could be categorized as a collection of advocacy agencies, whereby each agency presents one or more differing perspectives, such as the environmentalist, conservationist, public health guardian and business proponent. At times, these separate and clashing perspectives lead to administrative gridlock, which means customers of the system cannot get decisions from the state.

CORE FINDING #3: The environmental system relies too heavily upon centralized decision-making, which has produced significant alienation in non-metropolitan counties. Many rural citizens are dissatisfied with their interactions with the centralized bureaucracy, and perplexed as to why state agencies do not assign more authority to regional agency offices.

CORE FINDING #4: The environmental system relies heavily on "command and control" regulatory processes to implement environmental goals rather than using a balanced mix of diverse approaches to achieving compliance with the goals.

CORE FINDING #5: The current environmental system relies upon the customer to coordinate among the agencies, instead of the agencies presenting a coordinated response to the customer.

APPENDIX A

CORE FINDING #6: Minnesota's governmental structure in environmental services over the past several decades has grown by a process of addition, fragmentation and specialization rather than by subtraction, combination, consolidation and services integration. No consistent organizational or administrative pattern exists with regard to the responsibilities of departments, offices, boards, commissions and other agencies.

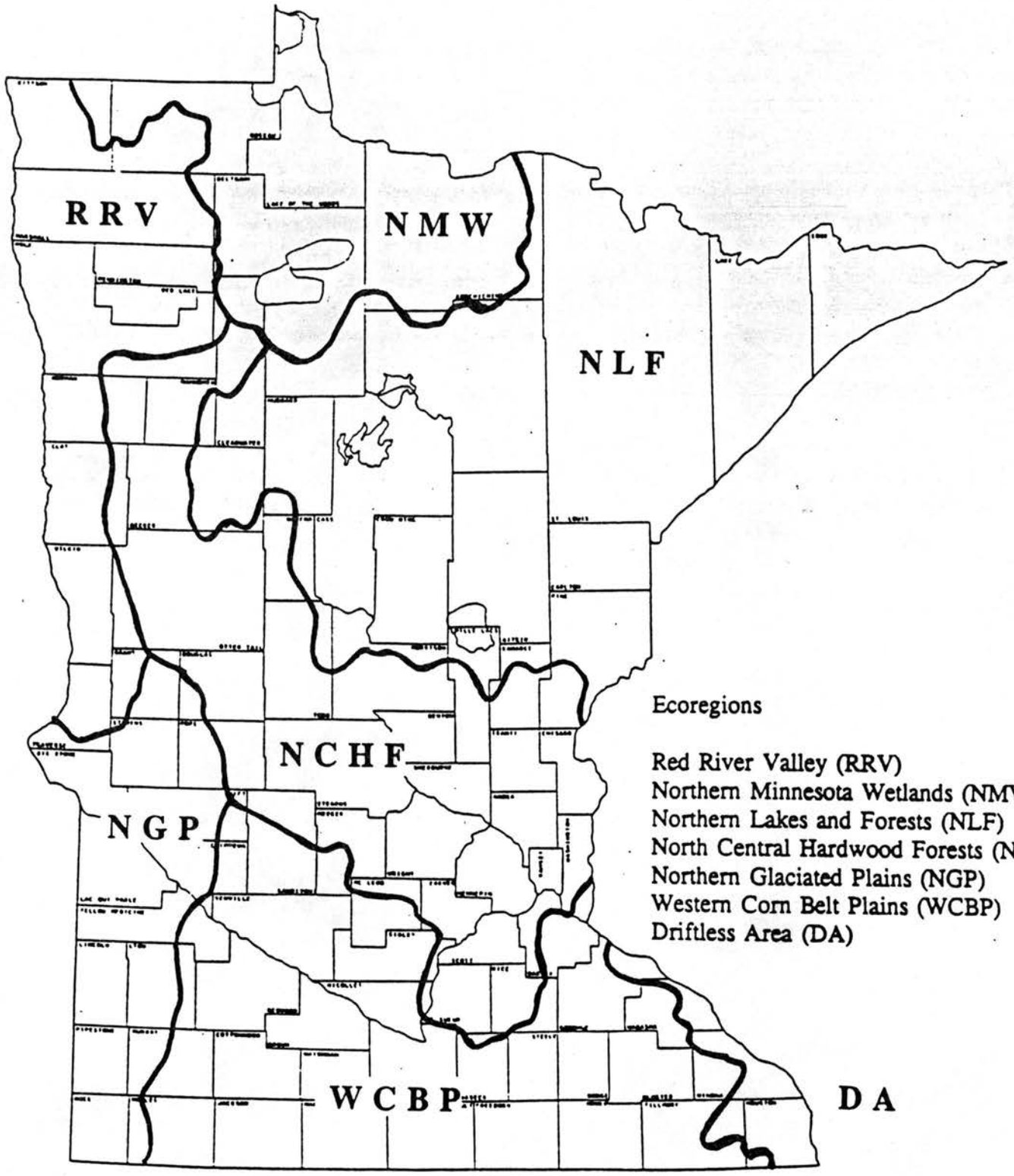
CORE FINDING #7: A variety of barriers have prevented the Environmental Quality Board (EQB) from exercising strong leadership as a planning, coordinating and oversight body in the environmental service system.

CORE FINDING #8: The linkage between the fees paid for environmental programs and the achievement of environmental policy goals is confused and unclear to payers of fees and to the general public.

CORE FINDING #9: The existing multi-layered, fragmented, environmental advocacy system makes it difficult to resolve conflicts among competing interests in a timely fashion.

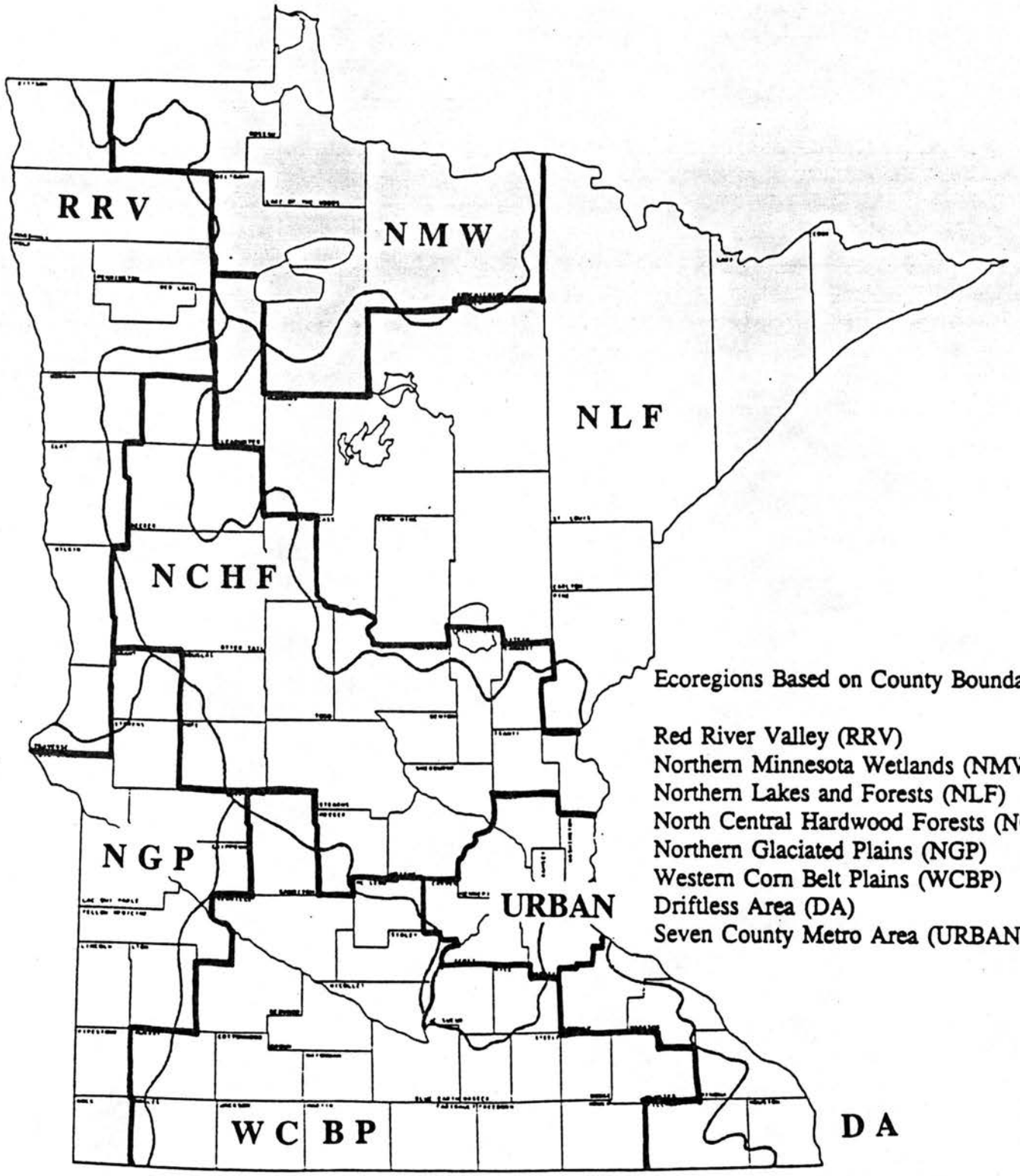
APPENDIX B

MINNESOTA ECO-REGIONS



APPENDIX C

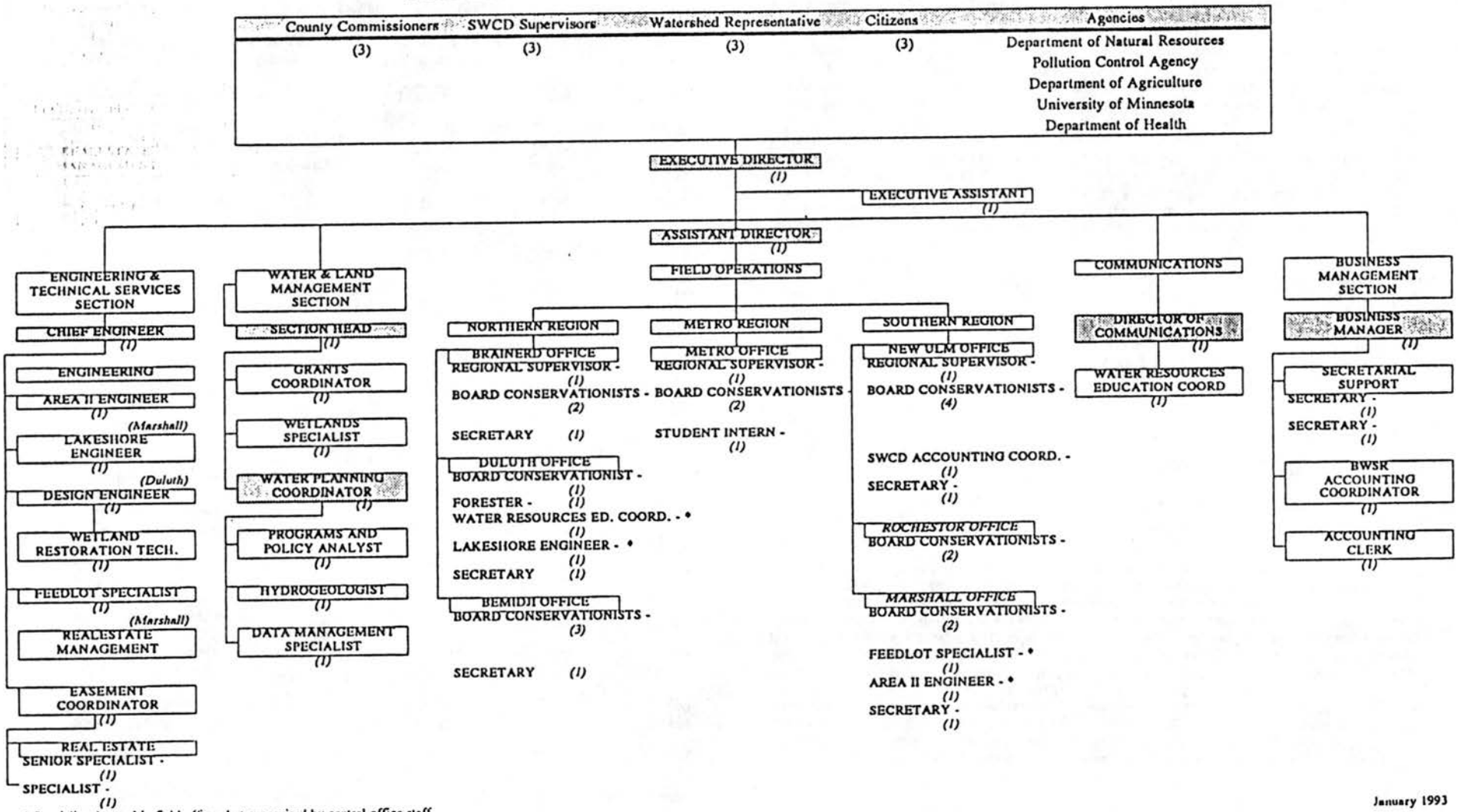
MINNESOTA ECO-REGIONS ADJUSTED FOR COUNTY BOUNDARIES
(One Possible Configuration)



Ecoregions Based on County Boundaries

Red River Valley (RRV)
Northern Minnesota Wetlands (NMW)
Northern Lakes and Forests (NLF)
North Central Hardwood Forests (NCHF)
Northern Glaciated Plains (NGP)
Western Corn Belt Plains (WCBP)
Driftless Area (DA)
Seven County Metro Area (URBAN)

MINNESOTA BOARD OF WATER AND SOIL RESOURCES



• Specialists located in field offices but supervised by central office staff.

January 1993

1994-95 Biennial Budget
Agency Budget Brief
($ in thousands)

Agency: Water and Soil Resources, Board of (BWSR) **Fund:** General

1. Summary of Agency Actions:	F.Y. 1994	F.Y. 1995	F.Y. 94-95
CURRENT SPENDING	$8,742	$8,742	$17,484
Forecast Adjustment	370	370	740
AGENCY BASE	$9,112	$9,112	$18,224
Inflation Cost Increases	101	206	307
Agency Management Decisions			
Agency Operations:			
Hold Positions Vacant	(94)	(130)	(224)
Restructuring:	(7)	(14)	(21)
Increase Productivity by doing more combined multi purpose meetings, telephone conferences, possibly including travel moratoriums, thus, less travel expense.			
Across the Board:			
Printing	-0-	(10)	(10)
Professional/Technical Services	-0-	(20)	(20)
Equipment	-0-	(15)	(15)
Outstate Travel	-0-	(17)	(17)
Grants:			
Reduction of General Fund RIM Services Grant	$(456)	$(456)	$ (912)
Subtotal	$(557)	$(662)	$(1,219)
TOTAL AGENCY PLAN	$8,656	$8,656	$17,312
Governor's Initiatives			
Restore RIM Reductions	$456	$456	$912
Lakeshore Engineering Staff	68	70	138
Minnesota River Erosion Control Grants	600	600	1,200
Natural Resources Block Grant	2,518	2,518	5,036
Salary Planning Estimates	(74)	(74)	(148)
GOVERNOR'S RECOMMENDATION:	$12,224	$12,226	$24,450

Brief Explanation of Agency's Overall Actions: The agency's targeted reduction will be met by reducing the $750,000 General Fund grant to SWCDs for RIM services by $456,000. Historically the RIM Reserve easement program has not received consistent funding. It has varied from $16,000,000 per biennium to $1,000,000 per biennium. Funding sources have varied from bonding to LCMR to general fund to combinations of these. Rather than funding the grant (professional services) portion of the easement acquisition and wetland restoration programs strictly from general funds, efficiency and savings would be achieved by tying the services to a percentage of the appropriation for RIM Reserve. It appears that the future of RIM Reserve funding will be bonding and/or LCMR; therefore, it is our intention to meet the general fund base level reduction by transferring the grant (professional services) expenditure to those appropriations. The inflationary cost projection ($307,888) will be managed in F.Y. 1994 by maintaining a vacant section administrator position and a vacant clerical position coupled with reductions to travel. The F.Y. 1995 inflationary projection will be managed by continuing the F.Y. 1994 actions and by management of future vacancies; further limits on out-of-state travel, equipment purchases, printing, consultant service contracts, and a reduction of board meetings and related travel, and continued integration of grants administration. If inflationary projections exceed those estimated, we would need to seriously consider elimination of specific programs as staff reductions would leave us unable to provide a reasonable level of service for all our program responsibilities.

2. Impact on Staffing:	F.Y. 1994	F.Y. 1995
Positions left Vacant or Eliminated	2.25 FTE	3.25 FTE

3. Impact on Revenue Generation:	F.Y. 1994	F.Y. 1995	F.Y. 94-95
None.	$-0-	$-0-	$-0-

4. Affected Statutes: None.

5. Governor's Recommendation: The Governor concurs with the agency plan, but recommends a biennial increase of $912,000 to restore the reduction proposed for the RIM services grant. The recommendation also incorporates initiatives of $5,036,000 to consolidate Shoreland Management, Wetlands Conservation Act, implementation grants and local water planning funds into a single water resources block grant to counties. This amount includes sufficient new funding to assist local government in implementing the Wetlands Act. This block grant is part of the administration's environmental initiative.

An additional component of the environmental initiative is a major effort to attack non-point pollution sources in the state, with emphasis on the Minnesota River watershed. Two related investment initiatives are recommend for BWSR: $1.2 million for the biennium for erosion control cost-shore grants in the Minnesota River watershed, and $138 thousand for the biennium for a Lakeshore engineer position to provide technical assistance on projects in the Lake Superior Watershed and to leverage federal cost-share funds.

A final component of the Governor's environmental initiative is to provide additional funding of $5 million for the biennium from the Environmental Trust Fund for the Reinvest in Minnesota (RIM) Reserve program. RIM purchases conservation easements from landowners to retire marginal land from production and subsidize conservation practices on that land to preserve wetlands, prevent erosion, create wildlife habitat, etc.

The Governor recommends agency salary savings of $148,000 for the biennium, due to revised salary planning estimates.

1994-1995 B I E N N I A L B U D G E T
INVESTMENT INITIATIVES
(DOLLARS IN THOUSANDS)

AGENCY: WATER & SOIL RESRCS BD

ITEM DESCRIPTION:	FUND	EXPENDITURES FY 1994	EXPENDITURES FY 1995	EXPENDITURES BIENNIUM	REVENUES FY 1994	REVENUES FY 1995	REVENUES BIENNIUM
(A) CONSERVATION EASEMENT ACQUISITIONS	MET	5,000		5,000			
(A) GOVERNORS LCMR ALTERNATIVE FUNDING	MET	<500>		<500>			
(A) LAKESHORE ENGINNEERING STAFF	GEN	68	70	138			
(A) MN RIVER WATER/SOIL MGMT GRANTS TO SWCDS	GEN	600	600	1,200			
(A) NATURAL RESOURCES BLOCK GRANT	GEN	2,518	2,518	5,036			
(A) RESTORE AGENCY PLAN RIM REDUCTIONS	GEN	456	456	912			
(A) SALARY PLANNING ESTIMATES	GEN	<74>	<74>	<148>			
TOTAL BY FUND	GEN	3,568	3,570	7,138			
	MET	4,500		4,500			
TOTAL INVESTMENT INITIATIVES		8,068	3,570	11,638			

AGENCY: Water and Soil Resources, Board of

MISSION STATEMENT:

The mission of the Board of Water and Soil Resources is to provide leadership enabling local governments to properly manage water and soil resources and to help all citizens be stewards of our irreplaceable natural resources.

Although other agencies are involved in resource management, the BWSR is unique in that it is the only agency that accomplishes its goals through increasing the capabilities of local government units. This approach makes sense for a number of reasons.

First, local ownership of resource management activities is an important component of the success of efforts. Rather than resentment at a state mandate that local personnel perceive they are being forced to carry out, a state-local partnership fosters feelings of pride and local responsibility.

Second, since resource management is primarily a land use issue, and local government is the land use authority in Minnesota, it makes sense to focus resource management assistance at the local level. Local governments, through their widespread planning and zoning authorities, make the vast majority of land use decisions. Sound land use management at the local level will protect soil, lakes, rivers, and streams, and sustain agriculture, forestry and development.

Finally, as we enter a time of increased environmental awareness--but dwindling resources to address these concerns--partnerships and strong working relationships are an effective way of leveraging our talents, resources, and finances to achieve the greatest results.

Recognizing the advantages of local resource management, the Legislature in 1987 created the BWSR to facilitate local government effort and to ensure coordination of state, local, federal and private resource management initiatives. To accomplish this, the membership of the BWSR includes representatives from local government, citizens, 4 state agencies and the University of Minnesota Extension Service. This composition provides a unique opportunity for communication of issues and concerns, policy discussions on resource management, and generally enhancing state/local/private partnerships.

To reach these objectives, the BWSR:

- promotes communication and partnerships among state, local, and federal governments, as well as private organizations;
- administers a number of grant programs providing funding to local governments for resource management;
- conducts training sessions and provides technical assistance to local units of government;
- and coordinates state government activities as they affect local governments.

MINNESOTA MILESTONES:

Protecting and improving our natural resources relates directly to the Milestone theme "our surroundings." BWSR's work to improve the capabilities of local governments to manage their environment addresses 4 Milestone goals: "Minnesotans will act to protect and enhance their environment"; "we will improve the quality of the air, water, and earth"; "Minnesotans environment will support a rich diversity of plant and animal life"; "Minnesotans will have the opportunity to enjoy the state's natural resources."

MILESTONE GOAL: We will improve the quality of the air, water and earth.

Indicators: BWSR programs assist local governments in decreasing the "percentage of assessed river miles and lake acres that do not support fishable and swimmable goals;" and decreasing the "tons of soil loss." BWSR's strategic plan promotes "T" by 2000, an objective that will sustain soil productivity and enhance water quality.

MILESTONE GOAL: Minnesota's environment will support a rich diversity of plant and animal life.

Indicators: BWSR programs assist local governments in increasing the "amount of wetlands;" decreasing the "number of threatened, endangered or extinct native wildlife and plant species;" and increasing the "amount of forestland."

MILESTONE GOAL: Minnesotans will have the opportunity to enjoy the state's natural resources.

Indicators: BWSR programs assist local governments in increasing the "land area in natural resource related public ownership." These programs focus on landowner stewardship of our natural resources.

In addition, the BWSR's unique approach to resource management (i.e. through local governments) moves the state toward the Milestone goal "people will participate in government and politics."

MILESTONE GOAL: Government in Minnesota will be cost-effective and services will be designed to meet the needs of the public who use them.

Indicators: The decrease in duplicative services resulting from BWSR coordination between state and local agencies results in more efficient government. Local government as clearinghouse for wetlands information.

Government decisions made at the local, rather than state or federal level, clearly help promote decentralization and community participation. BWSR has 7 field offices with field staff trained and empowered to make decisions. BWSR facilitation of state/local communication has led to formal cooperative agreements.

CLIMATE:

The following trends are shaping the development of policies and programs at the BWSR:

1. *Reduced state and federal government funding for local governments, and increased expectations of local responsibilities.* Both the federal and state governments have cut local government aid. As more of the financial and administrative burdens of resource management fall on local governments, they need to increase their capability to handle the myriad demands of those responsibilities.

2. *Increased awareness among the general public, including landowners, of resource problems, and increased willingness to make reasonable sacrifices to accomplish resource conservation.* More Minnesotans are becoming concerned about our environment, particularly water quality--many people have noticed deteriorating conditions in their favorite lakes or fishing streams. As these concerns surface, more people are willing to make reasonable sacrifices to protect and improve their environment.

3. *Increased local government capabilities.* Because of increased expectations and BWSR assistance, some local government capabilities in resource management have grown over the past few years. Local governments now need a wider variety of training and assistance, from the

most basic level to advanced areas such as technical skills, leadership, and management. The BWSR must adjust its assistance to ensure that each local government meets a base level of capability, while those who need a higher level of training receive it.

4. *Movement from planning to implementation phase of non-point source strategy.* As Minnesota moves from the planning to the implementation stage of its non-point source strategy, BWSR's local government network increases in importance as a means of disseminating financial and technical aid to local governments. The BWSR has the structure and the relationships needed to address non-point concerns at the local level.

5. *Federal actions.* Federal actions continue to affect BWSR and local government programs and planning in a wide variety of ways. In order for the BWSR to meet the "no net loss" goal laid out in the Wetland Conservation Act, the federal agencies involved in wetland protection (EPA, Army Corps of Engineers, and the Soil Conservation Service) must be willing to work toward the "one stop shopping" concept. In addition, the recent funding cuts for the Conservation Reserve Program and the Wetland Reserve Program will mean an increased demand for state set-aside dollars; the BWSR must take this into consideration as it anticipates funding, programmatic and staffing needs over the next bienniums. Finally, the upcoming reauthorization of the Clean Water Act and the 1995 Farm Bill will determine conservation standards and how they are implemented; it is imperative that the BWSR ensure that local and state government in Minnesota have input into this process.

PROSPECTS:

1. Local Water Resource Protection and Management

   - Because many different and interrelated factors (rainfall, lake levels, wetlands, septic systems, soil erosion, etc.) affect water quality and quantity, an overall, holistic approach is the only way to effectively manage water resources. One of major stumbling blocks to a holistic water management approach has been the parochialism and "turf protection" behavior exhibited by local governments and state agencies when dealing with water; every entity wants to manage its own little part of the resource, rather than taking an overall watershed approach.

   - The primary purpose of Local Water Resource Protection and Management is to break this gridlock and encourage all public and private entities involved in resource management to work together to develop and implement comprehensive and coordinated plans to manage surface and groundwater. It also aims to foster state-local-federal-private partnerships to increase the efficiency in the delivery and implementation of all levels of natural resource programs.

   - This program provides technical and financial assistance to eligible counties and their partners throughout Minnesota to implement their water plans. This local approach allows a local government partnership to take advantage of the strengths of each government member, and to focus activities toward the highest priorities. Grant money may be used for a variety of activities, including mapping of drained wetlands, hiring necessary technical expertise, and lake and river restoration.

2. Water Quality Cost-share Program

   - This program is designed to combat the single greatest threat to Minnesota's water quality--soil erosion. Often, installing conservation practices is prohibitively expensive, meaning that financial constraints prevent some landowners from installing such practices. The cost-share program is a "buffer" for landowners and provides the needed incentive for them to move forward with these practices. The program provides funding to soil and water conservation districts (SWCDs) to cost-share with landowners on projects directly putting conservation on the land.

   - Eligible projects include practices designed to reduce soil erosion to a level that sustains agricultural and productivity and protects water quality (called the tolerable level, or "T"); forestry practices that improve the quality of Minnesota's private non-industrial forestland; feedlot management; and special projects, such as the LCMR-funded sinkhole project, which provides funds to landowners in southeastern Minnesota to divert water from sinkhole sites.

   - The 1984 Soil Loss Act has not been very successful to date. BWSR began meetings with interested groups from local government, agriculture, state and federal government, conservation groups to frame new state policy and program for achieving soil conservation "T" by 2000. As wetlands was the issue of the 80's, soil conservation NEEDS to be the issue of the 90's.

3. Abandoned Well Sealing and Inventory Cost-Share Program

   - Abandoned wells provide 1 of the most direct and potentially damaging conduits for contaminants to enter directly into groundwater. This program provides funding to counties to allow them to conduct an inventory of abandoned wells--thereby enabling them to identify the highest priority wells--and to cost-share with landowners to seal high priority wells.

   - The cost of sealing wells is often prohibitive and leads to unsealed and unreported abandoned wells.

   - Although it is impossible to accurately identify the number of abandoned wells in Minnesota, estimates range from 800,000--1,500,000.

4. Wetland Conservation Act

   - Since the mid-1800s, Minnesota has lost about 11.1 million acres of wetlands, representing a 60% loss.

   - Wetlands provide a number of important public benefits, including improving water quality by serving as nature's biological filter, holding sediment and absorbing nutrients before they enter lakes, rivers, or groundwater. Other benefits are groundwater recharge, fish and wildlife habitat, and recreation.

   - Recognizing these important functions, the Legislature passed the Wetland Conservation Act (WCA) in 1991. The goal of the act is to achieve "no net loss" of wetlands.

   - The law prohibits draining or filling of non-exempt wetlands without replacement and creates 3 new wetland restoration and protection programs. The BWSR is charged with the responsibility of writing rules to carry out the regulatory provisions of the WCA. These rules are scheduled to be completed by 1-1-93.

- Realizing the importance of local involvement in wetlands protection and restoration, the Legislature gave responsibility for administering the WCA to a variety of local governments. Many of these local governments have limited staffs and technical knowledge of wetlands. The BWSR began a series of training programs for local government personnel during 1992; continued and enhanced technical and financial assistance is critical to the success of the program.

- One of the new programs created in the law, the Permanent Wetland Preserves Program, has been operational since 7-24-92, with SWCDs authorized to conduct sign-ups in conjunction with RIM Reserve sign-ups. The Program allows owners of types 1, 2, or 3 undrained wetlands to enroll them under permanent conservation easements.

5. Reinvest in Minnesota (RIM) Reserve

- The RIM Reserve Program aims to improve water quality and enhance fish and wildlife habitat through encouraging farmers to retire certain marginal lands from agricultural production. The program provides the incentive that many farmers need to stop farming marginal or sensitive land and place it in a permanent conservation easement.

- The program is administered locally by soil and water conservation districts. Eligible types of land include drained wetlands for restoration, riparian land, highly erodible lands, and sensitive groundwater areas. Landowners are compensated at a percentage of the value of their land.

- The program has had more demand than funding could meet every year since it began in 1987.

- The program has leveraged significant dollars in partnership with local conservation groups (Pheasants Forever, Minnesota Waterfowl Association, and Ducks Unlimited) and federal agencies.

OUTCOMES:

1. Local Water Resource Protection and Management

The overall goal of this program is to ensure water quality and quantity by fostering a holistic approach to water management. The program does this by providing a financial incentive and a structure to get all involved local units of government and state and federal agencies to the table. Because the ground and surface water plans produced through this program are developed by local task forces, with all concerned parties involved, the program allows local governments to work together to identify priorities and build on their strengths.

Of Minnesota's 87 counties, 85 are in some phase of development or implementation of a water plan. By the end of 1993, all counties in Greater Minnesota will have approved and locally adopted plans. In the Metro Area, 5 of the 7 counties will have completed groundwater plans by the end of 1994.

The success of this program is judged by how effectively these local and state units work together to protect water resources, as measured through the numbers of formal working relationships established, amount of communication between involved parties, the number of shared goals contained in the plans, and the improvement of local capabilities to carry out the water management objectives outlined in the plans.

- 78 of 87 Minnesota Counties have developed and locally adopted water management plans

- In 77 counties, the local water planning task forces convened to develop the plans continue to meet despite the fact that the plans are already developed. All involved local, state and federal entities serve on these task forces.

- Seven joint powers boards have been formed for water planning purposes, composed of clusters of counties in different ecosystems in Minnesota. The joint powers are the Red River Valley, the Mississippi Headwaters Board, the West Central Water Planning Project, the Central Minnesota Water Planning Project, the Redwood-Cottonwood Rivers Control Area, the Southcentral Minnesota Water Planning Project, and the Root-Zumbro Rivers Joint Powers Board.

- Nine counties have established newsletters for those involved in water resource management to enhance both inter- and intra-county communication.

- In 1991, 52 base grants totaling $1.638 million generated local revenue of $2.238 million.

- 330 individual county initiatives/activities have been named under the program, with primary emphasis on groundwater, lakes, rivers, soils, and wetlands.

2. Water Quality Cost-Share Program

The overall goal of this program is to reduce soil erosion to improve water quality. To that end, the program in the 1992-1993 biennium provided $1.461 million each year to soil and water conservation districts (SWCDs) to cost-share with landowners on priority erosion projects. These allocations are based on a formula that considers the number of feedlots, types of soil and soil erosion potential, miles of shoreland, and estimated conservation practice installation costs. SWCDs then determine the highest priority erosion control projects and focus the money on those projects.

Although the BWSR does not have specific numbers available on SWCD cost-share projects funded and completed, the agency is currently developing a data base and altering its reporting requirements to allow for the collection and manipulation of these numbers. Future effectiveness indicators will include:

- number of acres treated
- water quality improvement
- feet of shoreline treated

The goals for these indicators are outlined under the "objectives" section of this document.

In addition to cost-share funding going directly to SWCDs, 2 technical positions, a feedlot specialist and a north shore engineer, are funded through cost-share dollars.

- The north shore engineer anticipates working on 3 projects during the 1992-3 biennium, affecting about 3,400 feet of priority erosion shoreline with erosion rates of ½ foot-5 feet. After completion of the projects, the erosion control rate is expected to be 100%.

- The feedlot specialist, located in Marshall, expects to work on 6 feedlot designs during the F.Y. 1992-93 biennium. Each of these feedlots has phosphorous and chemical oxygen demand (COD) measures of 1,500-2,000 parts per million before pollution prevention measures are installed; following the installation, the phosphorous and COD are below 112 parts per million.

3. Abandoned Well Sealing and Inventory Cost-Share Program

- Funding from the last 2 biennia will ultimately result in the sealing of about 2,000 wells.
- Approximately 30 counties participate in the program.
- About 18 counties have started to take an inventory of their abandoned wells
- Promotion of the program has led to approximately 15 counties pursuing inventories without funding

4. Wetland Conservation Act

In recognition of the general public benefits of wetlands, the 1991 Legislature approved the Wetland Conservation Act, the ultimate goal of which is to achieve a no net loss of wetlands. To ensure a local voice in the program, the legislation allowed, but did not mandate, any local unit with taxing authority to take control of the program within its own boundaries.

During the 1992-93 biennium:

- Approximately 200 local units of government, representing 95% of Minnesota's area, have approved resolutions accepting responsibility for administering the WCA.
- Statewide, about 200 projects involving draining or filling wetlands have been approved ONLY after an acceptable replacement plan was agreed upon, resulting in no net loss.
- The best result of the program has been local government units' extraordinary successes in persuading landowners to avoid draining or filling wetlands. An estimated 4,000 activities that would have resulted in draining or filling a wetland have been revised to avoid wetland damage.
- In conjunction with the Minnesota Association of Soil and Water Conservation Districts, the BWSR conducted 25 training sessions for local governments on the WCA in spring 1992. These sessions were attended by about 1000 local government personnel and officials, as well as 300 DNR peace officers.
- In summer 1992, the BWSR conducted 4 technical wetland delineation training sessions. About 200 local government and state agency staff attended.
- The BWSR also worked to educate local government personnel and the public through various public relations activities, resulting in at least 40 newspaper, newsletter and broadcast news stories on the act. The BWSR also developed and printed a brochure on the WCA for local governments to give to landowners and other interested parties.
- Throughout winter, spring and summer 1992, the BWSR worked with 2 committees, the Wetland Heritage Advisory Committee (WHAC) and the Rules Advisory Committee (RAC) to arrive at consensus on the rules governing the WCA. The WHAC met 11 times; the RAC met 10 times, resulting in an estimated 3,440 person-hours devoted to developing rules for the act.
- The BWSR approved the rules at its October 1 meeting. A series of public information meetings will be held throughout November and December. Official public information meetings will be held in December. The rules will be submitted to the Legislature by 3-1-93.
- The incentive program in the act that does not require rule development, the Permanent Wetland Preserves Program, is up and running. The first sign-up for landowners interested in protecting wetlands under the program began in late August. Although no numbers are official, it's been reported that interest is very high. The BWSR also developed and distributed to local governments a brochure for landowners on the program.

5. Reinvest in Minnesota (RIM) Reserve

The RIM Reserve Program is a land set-aside program designed to improve water quality and fish and wildlife habitat through removing marginal land from production and enrolling it under permanent easements.

So far, figures are only available for F.Y. 1992 (1991 sign-up); figures for F.Y. 1993 (1992 sign-up) will be available next year. During 1992:

- the program has enrolled 6,411 acres under perpetual conservation easements
  - 2,060 acres of restored wetland areas
  - 2,562 acres of riparian cropland areas
  - 1,789 acres of marginal agricultural lands
- demand exceeded funding by $1 million.
- the program leveraged approximately $365,000 in federal and private dollars.

OBJECTIVES:

1. Local Water Resource Protection and Management
(1992 and 1994-5 numbers represent totals since the program began in 1986.)

- Continued improvement in the coordination of water management efforts between local, state and federal units of government with the increased emphasis on joint planning by the BWSR in the annual local water planning grant program requirements.
- Local inventories and data collection programs will continue to accelerate as counties move from planning to plan implementation in the next biennium.
- All Greater Minnesota counties will have completed water plans by the end of the biennium.

1992	1994-5
77 counties	80 counties

- All Metro Area counties will have completed groundwater plans by the end of the biennium.

1992	1994-5
1 county	7 counties

- Number of counties approving or revising local ordinances as a result of water planning.

1992	1994-5
12 counties	24 counties

- Counties conducting inventory and mapping activities as a result of water planning.

1992	1994-5
45 counties	65 counties

- Counties conducting monitoring and data collection activities as a result of local water planning.

1992	1994-5
43 counties	70 counties

- Increased numbers of local task forces continuing to meet.

1992	1994-5
77	80

- Increased commitment of local dollars. (1991)

1992	1994-5
$2,300,000	$2,400,000

2. Water Quality Cost-Share Program
(1994-5 numbers represent objectives for that biennium only, NOT total numbers since the program began.)

- Increased integration of resource management by greater consolidation of the grants funding provided under the cost-share program. This will allow local units of government greater freedom in pursuing their priority projects. Further integration will take place by providing a linkage between the goals of the local water plan and the projects submitted for cost-share funds, ensuring that local units are working toward their stated priority objectives.

- Completed cost-share projects in local water plans

1992	1994-5
not available	87 projects

- Acres treated for soil loss

1992	1994-5
not available	770,000 acres

- Percentage of farm acres in Minn. with tolerable soil loss

1992	1994-5
44%	50%

- Number of landowners helped by North Shore engineer

1992	1994-5
3 landowners	2 landowners

- Shoreline feet protected by North Shore engineer projects

1992	1994-5
3,400 feet	3,400 feet

- Number of landowners assisted with design or revision of feedlot by feedlot specialist

1992	1994-5
10 landowners	20 landowners

3. Abandoned Well Sealing and Inventory Cost-Share Program
(1994-5 numbers are grand totals including all years of the program.)

- Number of counties participating

1992	1994-5
30 counties	40 counties

- Number of counties conducting inventories (funded)

1992	1994-5
18 counties	30 counties

- Number of counties conducting inventories (unfunded)

1992	1994-5
15 counties	22 counties

- Number of wells sealed

1992	1994-5
2,000 wells	3,000 wells

- Continued promotion of the program to increase rate of well sealing among those not receiving funds.

4. Wetland Conservation Act
(1994-5 numbers represent totals including 1992-3 biennium numbers.)

- To have every area of Minnesota covered by a local government accepting responsibility for the WCA by August 1993.

1992	1994-5
95%	100%

- To enable local governments to reach a level of capability where they are proficient in administering the act.

- To increase the number of wetland activities avoided

1992	1994-5
4,000 avoided	8,000 avoided

- Enroll additional acres under the wetland protection programs provided for in the legislation

1992	1994-5
not applicable	2,000 acres

5. Reinvest in Minnesota (RIM) Reserve
(1992 numbers represent 1991 sign-ups, which are currently being processed; numbers for 1992 sign-ups will be available in F.Y. 1993. F.Y. 1994-5 numbers represent only the target enrollment amounts for the biennium, NOT the total amount since the program began.)

- Amount of funding

1992	1994-5
$9,000,000	$7,500,000

- Total acres placed under conservation easements

1992	1994-5
6,411 acres	16,000 acres

- Acres of restored wetlands

1992	1994-5
2,060 acres	4,000 acres

- Acres of riparian areas (hillside and cropland)

1992	1994-5
2,562 acres	6,000 acres

- Acres of marginal ag land

1992	1994-5
1,789 acres	4,500 acres

- Acres of sensitive groundwater land

1992	1994-5
0 acres	1,500 acres

- Percentage of enrolled acres located within priority areas designated by the BWSR

1992	1994-5
not applicable	50%

- Amount by which demand exceeds funding

1992	1994-5
$1,000,000	$5,000,000

- Federal and private dollars leveraged

1992	1994-5
$365,000	$1,000,000

GRANTS:

- Local Water Management (Counties)

State	$5,070,000
Local	$13,000,000
Private	In-Kind
Federal	Not Available

- Cost-Share (SWCDs MFIP; SLR; special projects; soil and water conservation practices)

State	$3,870,000
Local and Private	$2,630,000
Federal	$9,960,000 (a percentage of this is used for match; these funds are not passed through BWSR)
(ACP, EPA, GLC, USGS, USFS)	

- General and RIM Services (SWCDs)

State	$3,200,000
Local	$10,000,000
Private	$50,000 + significant in-kind services
Federal	$160,000 + in-kind services

These services grants are the technical staff that drive the cost-share program funds and the RIM Reserve funds.

- Well Sealing (Counties)

State	$950,000
Local	$200,000 + significant in-kind services

AGENCY: Water and Soil Resources, Board of
(Continuation)

Private	$250,000
Federal	Not Available

- Totals

State	$8,020,000
Local	$10,200,000
Private	$2,930,000
Federal	$10,120,000

Not all the relationships reflect a matched leveraging of funds. In some instances there is a dependence on funds or technical services from another that forms a partnership between state/local/private/federal to make the effort a reality. These funds DO NOT reflect the grants of MPCA or DNR that go to local governments for similar activities (DNR, shoreland, rivers, Northshore Management Board, Mississippi Headwaters Board; PCA, Clean Water Partnership).

AGENCY BUDGET PLAN:

BWSR budget cuts will be partially met through maintaining position vacancies, including 2-half-time clerical positions and 1 hydrologist 4 position. The BWSR has reorganized its structure (as reflected in the organization chart) to try to prevent major cuts in service due to these position vacancies.

In addition, the BWSR intends to reduce RIM Reserve general administration grants to soil and water conservation districts by $459,000 per year, from $750,000 to $291,000. The BWSR intends to offset this loss by changing the administrative funding for the program from a flat rate to a percentage of the total RIM Reserve bonding or LCMR appropriation. This percentage-based approach will allow administrative funding to be based on the amount of actual dollars available for the program and the amount of work those dollars will generate. In the past, the volatility of RIM Reserve funding has meant that the flat rate did not reflect the amount of easements funded through the program.

Each BWSR program area will be expected to absorb inflationary cost increases. This will be done through decreased board and staff travel (to be offset by increased phone meetings, more multi-purpose board and staff meetings, fewer on-site training sessions, using satellite link-up for communication, limited out-of-state travel) and decreased printing and equipment costs, and consolidating administrative grants processes. Although these cutbacks have the potential to adversely affect the BWSR's service to clientele, the agency hopes that increased communications and more specific targeting of our resources will result in more efficient and cost-effective delivery, thus resulting in maintaining our current level of service to our local government clientele.

Grants administration to local governments by BWSR and the other natural resource agencies, specifically DNR and PCA, provide opportunity to enhance efficiency and delivery. Historically our grants program have been administered independent of one another resulting in numerous grant applications, reviews and grant agreements. We have attempted to consolidate grants to SWCDs into 1 agreement and application process and county grants into 1 application and agreement. We have been partially successful to date. To fully optimize this approach there is a need to consolidate the appropriations relating to these local governments so that we have the flexibility to administer in a more efficient manner and still meet legislative objectives. In addition consideration may be given to administering other agency grants that focus on local government for natural resources programs similar to the MFIP program. The agency retains the program oversight, however the grant is administered through BWSR as part of the other grants. This allows locals to integrate programs into 1 grant application, reflecting a comprehensive approach to management of their resources, and the agencies can coordinate review and allocation to ensure work program elements are incorporated, and then process 1 grant on behalf of the state. Since these other agencies are members of BWSR coordination should be readily achieved. Benefits are reduced time for writing grants;reduced state review; reduced state grants administration (staff of program agencies, Finance, Administration) and greater assurances that the local grants are coordinated and duplicating each other.

Maintaining position vacancies and absorbing inflationary increases are short-term solutions to the budget shortfall. If the need to continue these measures extends beyond the 1994-95 biennium, program eliminations and staff reductions will be necessary. BWSR's mission is to enable local government to be effective leaders in, and managers of, our natural resources. Local government commitment and capability can diminish quickly if the locals see the state withdraw from the partnership.

LCMR RECOMMENDATION

RIM Reserve Conservation Easements
This project will acquire perpetual conservation easements on certain marginal lands to protect and improve water quality, control erosion and sedimentation, and enhance fish and wildlife habitat. ($500,000 Environmental and Natural Resources Trust Fund)

GOVERNOR'S RECOMMENDATION:

The Governor recommends an alternative funding level of $24,450,000 in the General Fund, which restores the reduction contemplated in the agency plan for the RIM services grant. The recommendation also incorporates initiatives of $5,036,000 to consolidate Shoreland Management, Wetlands Conservation Act, implementation grants and local water planning funds into a single water resources block grant to counties. The initiatives include sufficient new funding to assist local government in implementing the Wetlands Act. This block grant is part of the administration's environmental initiative.

An additional component of the environmental initiative is a major effort to attack non-point pollution sources in the state, with emphasis on the Minnesota River watershed. Two related investment initiatives are recommend for BWSR: $1.2 million for the biennium for erosion control cost-shore grants in the Minnesota River watershed, and $138,000 for the biennium for a Lakeshore engineer position to provide technical assistance on projects in the Lake Superior Watershed and to leverage federal cost-share funds.

A final component of the Governor's environmental initiative is to provide additional funding of $5 million for the biennium from the Environmental Trust Fund for the Reinvest in Minnesota (RIM) Reserve program. RIM purchases conservation easements from landowners to retire marginal land from production and subsidize conservation practices on that land to preserve wetlands, prevent erosion, create wildlife habitat, etc. This recommendation builds upon the LCMR's allocations in an area that is an environmental priority for the Governor. See the LCMR section in the Environment and Natural Resources budget volume for overall comparison of the Commission's recommendations with the Governor's proposals.

The Governor recommends agency salary savings of $148,000 for the biennium, due to revised salary planning estimates.

1994-1995 B I E N N I A L B U D G E T
(DOLLARS IN THOUSANDS)

AGENCY: WATER & SOIL RESRCS BD
PROGRAM: WATER & SOIL RESRCS BD
ACTIVITY: WATER & SOIL RESRCS BD

ACTIVITY SUMMARY	FY 1991	FY 1992	Est. FY 1993	FY 1994 Current Spending	FY 1994 Agency Plan	FY 1994 Governor Recomm.	FY 1995 Current Spending	FY 1995 Agency Plan	FY 1995 Governor Recomm.
EXPENDITURES:									
DETAIL BY CATEGORY:									
STATE OPERATIONS:									
PERSONAL SERVICES	1,408	1,595	2,222	1,845	2,282	2,276	1,845	2,282	2,278
EXPENSES/CONTRACTUAL SRVCS	574	416	343	303	308	308	303	308	308
MISC OPERATING EXPENSES	209	250	355	284	330	330	284	330	330
SUPPLIES/MATERIALS/PARTS	52	59	74	57	82	82	57	82	82
CAPITAL EQUIPMENT	22	79	10	10	15	15	10	15	15
OTHER		77	770		500	5,000			
SUBTOTAL STATE OPERATIONS	2,265	2,476	3,774	2,499	3,517	8,011	2,499	3,017	3,013
LOCAL ASSISTANCE	6,733	6,866	7,239	6,360	5,835	9,409	6,360	5,835	9,409
TOTAL EXPENDITURES	8,998	9,342	11,013	8,859	9,352	17,420	8,859	8,852	12,422
GOV'S INITIATIVES:		FUND							
(A) NATURAL RESOURCES BLOCK GRANT		GEN				2,518			2,518
(A) MN RIVER WATER/SOIL MGMT GRANTS TO SWCDS		GEN				600			600
(A) LAKESHORE ENGINNEERING STAFF		GEN				68			70
(A) CONSERVATION EASEMENT ACQUISITIONS		MET				5,000			
(A) GOVERNORS LCMR ALTERNATIVE FUNDING		MET				<500>			
(A) RESTORE AGENCY PLAN RIM REDUCTIONS		GEN				456			456
(A) SALARY PLANNING ESTIMATES		GEN				<74>			<74>
TOTAL GOV'S INITIATIVES						8,068			3,570
SOURCES OF FINANCING:									
DIRECT APPROPRIATIONS:									
ENVIRONMENT TRUST		880	1,180		500	5,000			
GENERAL	8,531	8,009	9,392	8,742	8,656	12,224	8,742	8,656	12,226
STATUTORY APPROPRIATIONS:									
ENVIRONMENT TRUST		11	22						

1994-1995 B I E N N I A L B U D G E T
(DOLLARS IN THOUSANDS)

AGENCY: WATER & SOIL RESRCS BD
PROGRAM: WATER & SOIL RESRCS BD
ACTIVITY: WATER & SOIL RESRCS BD

ACTIVITY SUMMARY	FY 1991	FY 1992	Est. FY 1993	FY 1994 Current Spending	FY 1994 Agency Plan	FY 1994 Governor Recomm.	FY 1995 Current Spending	FY 1995 Agency Plan	FY 1995 Governor Recomm.
GENERAL	421	321	237	117			117		
FEDERAL	46	121	182		196	196		196	196
TOTAL FINANCING	8,998	9,342	11,013	8,859	9,352	17,420	8,859	8,852	12,422
POSITIONS BY FUND:									
ENVIRONMENT TRUST	.0	.0	.0	.0	.0	1.0	.0	.0	1.0
GENERAL	28.0	46.0	46.0	46.0	46.0	47.0	46.0	46.0	47.0
FEDERAL	1.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
TOTAL POSITIONS	29.0	49.0	49.0	49.0	49.0	51.0	49.0	49.0	51.0

STATE OF MINNESOTA - DEPARTMENT OF FINANCE
BIENNIAL BUDGET SYSTEM - BASE RECONCILIATION REPORT
BY SEC SEQ

AGENCY: WATER & SOIL RESRCS BD

	ALL FUNDS		GENERAL FUND		OTHER STATE FUNDS		FEDERAL FUNDS	
	F.Y.94	F.Y.95	F.Y.94	F.Y.95	F.Y.94	F.Y.95	F.Y.94	F.Y.95
F.Y.93 FUNDING LEVEL	11,013	11,013	9,629	9,629	1,202	1,202	182	182
TECHNICAL ADJUSTMENTS								
APPROPRIATIONS CARRIED FWD	<960>	<960>	<778>	<778>			<182>	<182>
LCMR-FUNDED PROJECTS	<1,202>	<1,202>			<1,202>	<1,202>		
INSURANCE PREMIUM HOLIDAY	8	8	8	8				
SUBTOTAL TECH. ADJ.	<2,154>	<2,154>	<770>	<770>	<1,202>	<1,202>	<182>	<182>
CURRENT SPENDING	8,859	8,859	8,859	8,859				
FORECAST ADJUSTMENTS								
ANNUALIZING NEW PROG COSTS	370	370	370	370				
FEDERAL RECEIPTS	196	196					196	196
DED STAT APPROP SPENDING	<117>	<117>	<117>	<117>				
SUBTOTAL FORECAST ADJ.	449	449	253	253			196	196
AGENCY BASE	9,308	9,308	9,112	9,112			196	196

F.Y. 1994-95 INVESTMENT INITIATIVE

AGENCY: Water and Soil Resources, Board of
PROGRAM:
ACTIVITY:

ITEM TITLE: Establish Permanent Lakeshore Engineering Staff Position

	1994-95 Biennium		1996-97 Biennium	
	F.Y. 1994	F.Y. 1995	F.Y. 1996	F.Y. 1997
Expenditures: ($000s)				
General Fund				
- State Operations	$68	$70	$73	$76

Statutory Change? Yes _____ No __X__
If yes, statute affected:

GOVERNOR'S RECOMMENDATION:

The Governor recommends funding for a permanent lakeshore engineering position to provide technical assistance on projects in the Lake Superior watershed and to leverage additional federal cost-share funds. This position is part of the non-point source pollution control component of the Governor's environmental initiative.

The need exists to provide continued technical support to Local Government Units (LGUs) (North Shore Management Board; SWCD; counties; cities, townships) and private landowners for the design and construction of innovative cost-effective lakeshore stabilization measures which reduce shoreline erosion, protect public and private property, and improve lake water quality. The existing BWSR pilot program for the Lake Superior watershed captured approximately $165,000 of federal (EPA and GLC) funding for engineering design and construction cost-sharing in F.Y. 1993. It is anticipated that up to $300,000 in federal cost-share funding can be obtained annually for lakeshore stabilization. Approximately $100,000 of funding is available annually from the state cost-share program.

The agency has been advised by EPA that federal funding of engineering staff for Great Lakes lakeshore stabilization is not allowable after the existing pilot program. Because the necessary lakeshore engineering expertise is not readily available in this region of the country, it is important to maintain the BWSR capability to use state funds and leverage available federal, local government, and private funds. The effort helps address a priority resource issue identified in the North Shore Management Board's plan. The pilot program has enabled BWSR to utilize and consolidate expertise available from the U of M, U of W, Corps of Engineers, and affected LGUs. A permanent lakeshore engineering staff position would maintain the necessary specialized engineering expertise and associated program management capability to achieve these objectives.

PROGRAM OUTCOMES:

Continued implementation of lakeshore stabilization measures which reduce shoreline erosion, protect public and private property and improve lake water quality. Effective use of state technical expertise and funding to annually leverage approximately $300,000 of federal and $350,000 of local government and private funds. Expansion of the state's capability to serve Minnesota clientele with large lake erosion problems including Lake Superior.

LONG-TERM IMPACT:

The BWSR would continue to be an effective source and conduit of lakeshore engineering expertise and project cost-sharing, enabling LGUs to address a serious resource management problem. More innovative and cost-effective methods for lakeshore stabilization would be developed. *The state's eligibility for federal funds will be greatly diminished without this effort.*

F.Y. 1994-95 INVESTMENT INITIATIVE

AGENCY: Water and Soil Resources, Board of
PROGRAM:
ACTIVITY:

ITEM TITLE: Minnesota River Watershed Erosion Control Cost-Share Grants

	1994-95 Biennium		1996-97 Biennium	
	F.Y. 1994	F.Y. 1995	F.Y. 1996	F.Y. 1997
Expenditures: ($000s)				
General Fund				
- Grants	$600	$600	$600	$600

Statutory Change? Yes _____ No __X__
If yes, statute affected:

GOVERNOR'S RECOMMENDATION:

The Governor recommends $600,000 per year in cost-share grants for erosion control projects in the Minnesota River watershed. This funding is part of the non-point source pollution control component of the Governor's environmental initiative.

The Erosion, Sedimentation and Water Quality Protection and Management Program was first funded with $1.5 million per year in 1978. Since that time, there has been little change in the level of funding. During that time, inflation, higher land treatment costs, and reduced federal funding have significantly reduced the effectiveness of this program. Moreover, recent studies such as the Minnesota River Assessment has increased local awareness and commitment to solving pollution problems and has increased demands on this program. Local water management priorities are focusing on water quality enhancement by addressing feedlots; riparian lands; soil conservation; etc.

It is the intent of the Board of Water and Soil Resources (BWSR) to focus on identified problem areas, such as the Minnesota River watershed, which has been identified as a severely impacted water of state importance. This will further the commitment of local governments and landowners. The BWSR will also pursue the cooperation of the Metropolitan Wastewater Control Commission and the Met Council to provide additional funding for projects in the Minnesota River watershed.

PROGRAM OUTCOMES:

Through the participation of government entities such as Soil and Water Conservation Districts (SWCDs) and the Metropolitan Wastewater Control Commission, an increase in program funding will accelerate the installation of conservation measures such as conservation tillage, field windbreaks, grassed buffer strips, terraces, and feedlot management systems. These practices will contribute to improved water quality of the Minnesota River.

Local government in the Minnesota River Basin have established watershed management objectives and priorities for a 10 year period.

1. Priority feedlots;
2. Eliminating direct discharge of resident sewage to drainage tile which discharges to streams/lakes;
3. Achieving conversion of current tillage practices to those that achieve soil loss to levels that sustain the long term productivity of the land. Goal is 80% over a 10 year period; and
4. A partnership between the Metro area (i.e., Met Council and Metro Waste Control Commission) and local government watershed coalitions; state agencies; private organizations (i.e., Pheasant's Forever, Ducks Unlimited); private industry (i.e., implement companies, chemical companies) will be developed to contribute to the accomplishments of 1, 2, and 3.

LONG-TERM IMPACT:

Acceleration of conservation practices will contribute to preserving the long-term productivity of agricultural land, and reducing non-point source pollutants. The state will be able to achieve its 10 year objective for the Minnesota River. Creation of a long-term rural/urban and state/local/private partnership.

F.Y. 1994-95 INVESTMENT INITIATIVE

AGENCY: Water and Soil Resources, Board of
PROGRAM:
ACTIVITY:

ITEM TITLE: Natural Resources Block Grants to Counties

	1994-95 Biennium		1996-97 Biennium	
	F.Y. 1994	F.Y. 1995	F.Y. 1996	F.Y. 1997
Expenditures: ($000s)				
General Fund				
- Grants	$2,518	$2,518	$2,518	$2,518

Statutory Change? Yes _____ No __X__
If yes, statute affected:

GOVERNOR'S RECOMMENDATION:

The Governor recommends the creation of a consolidated natural resources block grant to counties as part of his environmental initiative. This block grant would merge the current Local Water Resources protection grants, the DNR Shoreland Management grants, and the BWSR current Wetland Conservation Act grants. The Governor recognizes the increased burden on local government to implement the Wetlands Act, and therefore recommends an additional $2 million per year to help support that local capability.

Currently the state provides environmental grants to local governments to build a local staffing capability to administer state mandated programs and to develop and implement a comprehensive land use management program that maintains, preserves and enhances the natural resources with in their jurisdiction. These grants are administered by the Department of Natural Resources (DNR) and BWSR. Due in large part to demands placed on counties to implement the Wetland Conservation Act, the Groundwater Protection Act, and the Minnesota River initiative, local staff capability is inadequate to meet the challenge. This proposal helps build that local capability by consolidating existing grants and adding significant new funding, while fostering administrative efficiency and cost savings in the grants process itself.

Proposed Natural Resources Block Grant to Counties	Annual Amounts
Shoreland Management BASE (from DNR)	$518
Local Water Resource Protection BASE	$2,535
Wetlands Conservation Act BASE	$300
New Wetlands Funding	$2,000
Total	$5,353

The applications processes and timeframes for these grants are all currently different. The agencies conduct independent reviews and in most cases have individual grant agreements with the local governments. This process is extremely cumbersome for local governments and agencies alike. There is duplication of funding for the same activities. There is a enormous amount of time spent by local governments in writing several grants per year, time spent by agencies in review, and 100's of grants agreements written. This initiative will reduce the effort on the part of the several agencies, the grantor, Finance, Administration, Attorney General, Auditor, and the local government fiscal and administrative offices.

This proposal would consolidate the grants application, review, agreement and reporting process for a $5.3 million block grant within BWSR. Agencies having program responsibility would be part of the review and decision-making for the grants. This approach takes advantage of the structure of BWSR, which includes local governments and the environmental agencies (DNR, PCA, MDA, MDH) in the board membership, a structure unique in state government. Local units of government receiving the grants would have significant flexibility to apply the state funding to local needs, while continuing to be fully responsible for carrying out the existing state mandates in shoreland management, local water planning, and the Wetlands Conservation Act.

PROGRAM OUTCOMES:

Establishment of a local base capability for soil and water resource management. Reduced staff time, at the local and state level in writing, reviewing and administering grants, monitoring and reporting of grants. Creation of a financial partnership between local government and the state reflecting not only state mandates, but other necessary elements of comprehensive soil and water resource management. Grant agreements alone would be reduced by half. BWSR processes 87 county grants and 50 other local government grants each year. DNR through shoreland management processes about 100+ grants. An integrated and coordinated approach would reduce this from 300 to less than 125 grants processed. This will require the support of Finance, Administration and the Legislature. Any rule changes that may be required to achieve this effort will be identified once the Legislature has approved this concept.

LONG-TERM IMPACT:

Reduced duplication of state funding. Coordination between state agencies on grants review and administration, saving significant time and effort that can be expended on more customer service and responsiveness. Substantial time and effort saved by local governments on grant writing, administration and reporting. Coordination of local government efforts so that more resource management is achieved. Accomplish several of the main Carlson Administration objectives in this biennial budget process: consolidation of programs; avoid future costs; significantly improve program management, accountability and productivity at the state and local government; and provide better service to the public.

F.Y. 1994-95 INVESTMENT INITIATIVE

AGENCY: Water and Soil Resources, Board of
PROGRAM:
ACTIVITY:

ITEM TITLE: Conservation Easement Acquisitions

	1994-95 Biennium		1996-97 Biennium	
	F.Y. 1994	F.Y. 1995	F.Y. 1996	F.Y. 1997
Expenditures: ($000s)				
MN Environment & Natural Resources Trust Fund - Grants	$5,000	$-0-	$-0-	$-0-

Statutory Change? Yes _____ No __X__
If yes, statute affected:

GOVERNOR'S RECOMMENDATION:

The Governor recommends an additional $5 million from the Environmental Trust Fund for the Reinvest in Minnesota (RIM) Reserve program as part of his environmental initiative.

The RIM Reserve Program was established by the Reinvest in Minnesota Resources Act of 1986. The initial program funding of $9 million for F.Y. 1987-88 biennium was exclusively through bonding. To date, there has been no permanent dedicated funding source, or funding level identified for this program. SWCDs locally administer the RIM Reserve Program. The funding needs have been determined from the cumulative requests of landowners seeking participation in the program, and BWSRs strategic objectives for the program.

Requests far exceed recent appropriations. Private and public organizations like Pheasant's Forever, Minnesota Waterfowl Association, Izaak Walton League, Ducks Unlimited, local sportsmen groups, and the USFWS have provided significant funding for conservation practices applied on these easement areas. BWSR believes these funding sources will remain viable and committed to assisting the broader objectives of complementing and supplementing the RIM Reserve Program.

PROGRAM OUTCOMES:

The funds will be used to acquire easements, restore drained wetlands, and establish permanent vegetative cover on acres enrolled in the following categories: (a) sensitive groundwater areas, (b) riparian lands, (c) drained restorable wetlands, and (d) marginal agricultural lands. Half of the land acquisition funds will be for acquiring perpetual conservation easements and construction on restored wetlands.

BWSR has made a commitment to direct ½ of F.Y. 1993 RIM Reserve funds to further the objectives on the Minnesota River, that commitment will continue to further the Governor's 10 year management focus on the Minnesota River.

LONG-TERM IMPACT:

The principal public benefits resulting from the acquisition of the easements include: (a) prevention of groundwater contamination to surficial and bedrock aquifers through the retirement of cropland overlying thin, fragile soils or in the immediate proximity of sinkholes; (b) improvement in the quality of percolation water into groundwater aquifers due to the establishment of permanent vegetative cover on retired cropland lying within groundwater recharge areas; (c) prevention of further surface water quality degradation resulting from sedimentation due to excessive erosion through the retirement of riparian crop/pasturelands and selected marginal agricultural lands; (d) enhanced fish habitat and spawning areas, including trout streams, due to reductions in sediment loadings through the retirement of riparian crop/pasturelands; (e) enhanced upland wildlife habitat, including those for non-game species, due to increased acreage of permanent vegetative cover through the retirement of marginal agricultural lands, including those in riparian areas; and (f) infusion of public funds to stimulate construction activities by private contractors in conjunction with the restoration of wetlands and establishment of necessary soil conservation measures to protect the restored wetland basins.

A sustainable and consistent approach to achieving program objectives and ability to leverage federal and private funds for wetland restoration and wildlife habitat enhancement.

Leveraging of funds and services in *partnership* with:

- Ducks Unlimited — $75,000
- Pheasants Forever — $30,000 and in-kind services
- USFWS — $1,300,000 for wetlands
- North American Wetland Conservation Council — Request Pending
- Trout Unlimited — In-kind services
- Izaak Walton League — $500 and in-kind services

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Jim said, "I think the most significant thing to me as far as this board is concerned that occurred since our last meeting on a positive side is about a week ago BWSR, ag, pca, dnr heads and their deputies had a meeting concerning the MN River and how we were going to carry through, at least the governor's intent to be active in the clean-up of the river. It was one of those meetings were people kind of looked around and said well now what do we do now that we've made this commitment. Early on last year even before the other agencies got out ahead on this issue we had as a board taken the position, more or less a priority item, by encouraging our customers to do something. Well the solution became rather simple and that is you go back to the old GE ad of sporting shoes and you say let's just do it - and the question becomes do what? It was decided that two areas needed direct attention now. 1) Stop studying the problem, take the information that we have go out and start educating people as to what practices are hurting that resource. The second was that we need some demonstration projects, we need to demonstrate to the folks down in that part of the state that there are some things that can be done to alleviate the problem. The result of all of that conversation is that there is in the process of being prepared a memorandum of understanding between all four of the agencies that are directly concerned, which we will hopefully have available and ready for you to act upon at our February meeting. I don't think this is controversial and so it's my understanding that all of the wetlands matters, we're going to bring that memorandum before you. Are there any questions on that?"

Jim said, "I think the most significant thing to me as far as this board is concerned that occurred since our last meeting on a positive side is about a week ago BWSR, ag, pca, dnr heads and their deputies had a meeting concerning the MN River and how we were going to carry through, at least the governor's intent to be active in the clean-up of the river. It was one of those meetings were people kind of looked around and said well now what do we do now that we've made this commitment. Early on last year even before the other agencies got out ahead on this issue we had as a board taken the position, more or less a priority item, by encouraging our customers to do something. Well the solution became rather simple and that is you go back to the old GE ad of sporting shoes and you say let's just do it - and the question becomes do what? It was decided that two areas needed direct attention now. 1) Stop studying the problem, take the information that we have go out and start educating people as to what practices are hurting that resource. The second was that we need some demonstration projects, we need to demonstrate to the folks down in that part of the state that there are some things that can be done to alleviate the problem. The result of all of that conversation is that there is in the process of being prepared a memorandum of understanding between all four of the agencies that are directly concerned, which we will hopefully have available and ready for you to act upon at our February meeting. I don't think this is controversial and so it's my understanding that all of the wetlands matters, we're going to bring that memorandum before you. Are there any questions on that?"

Kathleen Roer
Dispute Resolution Committee
Environmental Education Committee

Jim Rossman
Dispute Resolution Committee
Feedlot Advisory Committee

Ted Lovdahl
Dispute Resolution Committee
Feedlot Advisory Committee
Pesticide Advisory Committee
LGU Comp. Plan and Water Plan Review Committee

Sharon Clark
Environmental Education Board
Agency Coordination Committee

John Boulton
Advisory Council on Wells & Borings
Pesticide Advisory Committee
RIM Strategic Plan Committee

Howard Peterson
Dispute Resolution Committee
Soil Loss Committee
Agency Coordination Committee
LGU Comp. Plan and Water Plan Review Committee

Don Ogaard
Environmental Education Board
Soil Loss Committee
Agency Coordination Committee
LGU Comp. Plan and Water Plan Review Committee

Barbara Uppgaard
RIM Strategic Plan Committee
Agency Coordination Committee
LGU Comp. Plan and Water Plan Review Committee

Warren Rodning
Environmental Education Board
LGU Comp. Plan and Water Plan Review Committee

Barbara Cobb
RIM Strategic Plan Committee
LGU Comp. Plan and Water Plan Review Committee

Dwain Otte
Soil Loss Committee
Agency Coordination Committee
LGU Comp. Plan and Water Plan Review Committee

Jim Nielsen
Dispute Resolution Committee
LGU Comp. Plan and Water Plan Review Committee

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

APPOINTED MEMBERS PRESENT
Jim Nielsen, Don Ogaard, Warren Rodning, Dwain Otte, John Boulton, Barbara Uppgaard, Ted Lovdahl, Barbara Cobb, Kathleen Roer, Sharon Clark, and Howard Peterson.

APPOINTED MEMBER ABSENT
Jim Rossman

AGENCY MEMBERS PRESENT
Kim Benson-Johnson, Department of Health
Fred Bergsrud, U of M/Extension Service
Paul Burns, Department of Agriculture
Ron Nargang and Wayne Edgerton, Department of Natural Resources
Larry Zdon, Pollution Control Agency

OTHERS PRESENT
Keith Hanson, Minnesota Power
Tim Kelly, Coon Creek Watershed District
Frank Pafko, Department of Transportation
Dave Weirens, Association of Minnesota Counties
Harry Fisher, St. Louis County
Judy Erickson, Minnesota Association of Watershed Districts
Doug Norris, Department of Natural Resources
Cheryl Miller, Audubon Society
Dave Benner, Soil Conservation Service
Char Brooker, Wetland Working Rules Group
Jerry Nordick, Wetland Heritage Advisory Committee
Joan Archer, Builders Association
Bill Clapp, Attorney General's Office
Bill Oemichen, Wetland Working Rules Group Alternate

STAFF PRESENT
Ron Harnack
Greg Larson
Jim Birkholz
Ron Shelito
Pete Waller
Mary Jo Anderson

Meeting Called to Order - Chairman Nielsen called the meeting to order at 9:10 a.m.

Approval of Minutes of January 27, 1993 - Howard Peterson stated that a change needs to be made on page three regarding the Richfield/Bloomington WMO hearing, he chaired the Dispute Resolution Committee meeting, and the continuation of the hearing for 60 days was at the request of the Richfield/Bloomington WMO. Kim Benson-Johnson stated that a correction is also needed on page three regarding her request for Ron Shelito to contact the Department of Health to work on the education plan, not the county water plan. Moved by Lovdahl, seconded by Rodning, to approve the minutes of January 27, 1993, as corrected. Affirmative: Boulton, Clark, Cobb, Lovdahl, Peterson, Ogaard, Otte, Rodning, Roer, Uppgaard, and Nielsen. Opposed: None. Carried.

** 93-05

Chairman Nielsen stated that the agenda today would focus on the proposed wetland rules. He asked board members to raise their hands if they had comments to make.

Greg Larson explained that the proposed final rule is a large document that he and Bill Clapp will be walking through today with members. Greg stated that the administrative law judge, Judge Allan Klein, approved all changes suggested by staff except for five negative findings: 1) Finding #30 - Definitions of Introduced Hayland and Introduced Pasture; 2) Findings #61 and #73 - Streamlined Review for Small Impact Projects; 3) Finding #74 - Exemption and No-Loss Appeals to the Board; and 5) Finding #77 - Landowner Request for LGU Decision < 3 weeks. Greg stated that the Wetland Heritage Advisory Committee met on February 17, to discuss and address Judge Klein's comments. Greg distributed suggested changes to the proposed rule for the BWSR's review. On page 3 - Ron Nargang suggested including contiguous lands under the same ownership, discussion followed. Don Ogaard and Ron Nargang disagreed on the impoundment wetland banking issue on page 74. Nargang stated that a local unit of government could not afford the impoundment maintenance; Ogaard disagreed, and stated that the Red River Valley could take care of this. Greg and Bill Clapp will rewrite and suggest changes to page 74 regarding the impoundment issue during lunch today.

Chairman Nielsen called for a break in the meeting at 10:05 a.m. The meeting reconvened at 10:15 a.m.

Greg continued with the review of the rule.

Warren Rodning lauded the Wetland Heritage Advisory Committee, the rules working group, staff, and the administrative law judge for their efforts in the proposed rules. He needs to leave the meeting early today but goes on record as supporting the document. He made a motion, seconded by Lovdahl, to approve the proposed final rules. Action will be taken after lunch.

Ron Nargang stated that he appreciated and commended how successful this process has been, it's remarkable the small amount of controversy that existed; a tribute to those who

drafted the rules.

Bill Clapp distributed and explained a motion regarding the BWSR's adoption of the proposed final rules. Discussion followed.

Ron Harnack introduced Pete Waller, newly hired board conservationist in the Rochester office.

Chairman Nielsen adjourned the meeting for lunch at 12:00 p.m. The meeting reconvened at 1:05 p.m.

Chairman Nielsen asked the audience if they had any comments to make to the BWSR before final action is taken.

Bill Oemichen, wetland working rules group alternate, stated that he's skeptical of creating wetlands to replace natural wetlands.

Cheryl Miller, Audubon Society and Wetlands Coalition, stated that she generally likes the proposed rules but is concerned with creating wetlands, and advised the BWSR to be careful with the inclusion of creating wetlands in banking.

Greg Larson distributed the modified banking language/wording regarding the concerns on page 74. Discussion followed.

** 93-06 Chairman Nielsen called for the motion (since the original maker, Rodning, of the motion was out). Moved by Otte, seconded by Lovdahl, "That the Board provisionally adopts the rule proposed at the public hearings, with the changes recommended by the Administrative Law Judge except as modified by the Board today. The adoption is provisional because the rule may be further adjusted by the legislature before it becomes final, as explained below.

The Board directs staff to submit the rule adopted by today's action to the Office of Administrative Hearings for review as required by Minn. Stat. section 14.15 and Minn. Rule part 1400.1200. If the Office of Administrative Hearings finds any of the changes unreasonable, staff shall submit the rule to the LCRAR for its review and comment, as required by Minn. Stat. section 14.15.

Staff shall prepare draft findings of fact supporting the rule we have provisionally adopted today. After adjustments to the rule required by the Office of Administrative Hearings and by the Revisor, and after the 60 day legislative review period required by the Act, staff shall prepare a final Findings of Fact and Order adopting the final rule. The Board shall act on the final rule at its May 26, 1993 meeting.

Staff shall submit to the Agriculture and Natural Resources committees of the state House and Senate, the rule we have provisionally adopted today as soon as the Revisor can prepare

a clean copy. Staff shall also make available to the committees the report of Judge Klein, the transcript, and the draft findings of fact". Affirmative: Boulton, Clark, Cobb, Lovdahl, Peterson, Ogaard, Otte, Roer, Uppgaard, and Nielsen. Opposed: None. Carried. reserved privilege to submit statement of fact regarding his affirmative vote.
Chairman Nielsen thanked members for their action today.

Sharon Clark commented on a letter received from Sauk River Watershed District regarding a cost for a copy of the administrative law judge's rulings. Ron Harnack stated that anyone who asked for a copy has received it (without being charged). Bill Clapp will contact the administrative law judge's office regarding this issue.

Dwain Otte asked about the status of rollover funds. Ron Harnack stated that the recommended allocations will be brought before the Board at the March meeting for action.

Ron Harnack reported that the Richfield/Bloomington WMO indicated a desire for an additional 60 days continuance, in addition to the 60 days granted to them already.

Ron Harnack updated the board on the Snake River proposed watershed district. It is anticipated they will have a signed joint powers agreement by the March BWSR meeting. Although a motion was not taken the Board would not likely entertain an extension.

Chairman Nielsen commented on the 2:1 wetland issue which is a concern for some members, as stated in the statute. He stated that the Governor's office assured him that there wouldn't be any tampering with the Wetland Conservation Act bill.

Ron Harnack stated that hearings are beginning next week in the House Agriculture Committee, about two hearings a week on the Wetland Conservation Act rules.

Don Ogaard asked what is happening with CORE? Chairman Nielsen stated that the Governor is supporting the two agency concept. The Environmental Quality Board (EQB) has been renamed to Environmental Quality and Sustainable Development Board, with the composition similar to EQB plus five citizen appointees. The BWSR is stuck in the Department of Natural Resources, minus the policy board. Office of Waste Management (OWM) is placed in Pollution Control Agency (PCA) and PCA Board is eliminated. Chairman Nielsen asked how much of this is political, and how much substance - the answer - most of it is political.

Chairman Nielsen adjourned the meeting at 1:45 p.m.

Respectfully submitted,

D. James Nielsen
Chairman

BOARD OF WATER AND SOIL RESOURCES
ATTENDANCE ROSTER

	NAME	AFFILIATION	PHONE #
1.	KEITH HANSON	MN POWER	218-722-1972 EXT 3658
2.	Lawrence S. Eldon	Mn. PCA	612-297-8219
3.	TIM Kelly	Coon Creek W.D.	755-0975
4.	Frank Patko	Mn/DOT	296-1642
5.	Dave Weirens	Assoc of MN Cos	224-3344
6.	HARRY FISHER	ST LOUIS CTY	218 726-2715
7.	Judy Erickson	MAWD	612-257-1906
8.	PETE WALLER	BWSR	
9.	Doug Norris	DNR	612-296-0779
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MOTION

The Board provisionally adopts the rule proposed at the public hearings, with the changes recommended by the Administrative Law Judge except as modified by the Board today, and with the further changes approved by the Board today. The adoption is provisional because the rule may be further adjusted before it becomes final, as explained below.

The Board directs staff to submit the rule adopted by today's action to the Office of Administrative Hearings for review as required by Minn. Stat. section 14.15 and Minn. Rule part 1400.1200. If the Office of Administrative Hearings finds any of the changes unreasonable, staff shall submit the rule to the LCRAR for its review and comment, as required by Minn. Stat. section 14.15.

Staff shall prepare draft findings of fact supporting the rule we have provisionally adopted today. After adjustments to the rule required by the Office of Administrative Hearings and by the Revisor, and after the 60 day legislative review period required by the Act, staff shall prepare a final Findings of Fact and Order adopting the final rule.* The Chairman is authorized to sign the Findings and Order for the Board; provided, however, that the Chairman shall submit to the Board for its consideration any substantial changes required by the Office of Administrative Hearings or by the Revisor or by legislation, or recommended by the LCRAR or by legislative committees, that leave room for the exercise of judgement by the Board. * The BWSR shall act on the rule at its May 26, 1993 mtg.

Staff shall submit to the Agriculture and Natural Resources committees of the state House and Senate, the rule we have provisionally adopted today as soon as the Revisor can prepare a clean copy. Staff shall also make available to the committees the report of Judge Klein, the transcript, and the draft findings of fact.

The Minnesota Wetlands Conservation Coalition

Clean Water Action Alliance / Ducks Unlimited / Fish and Wildlife Legislative Alliance
Izaak Walton League / Minnesota Audubon Council / Minnesota Conservation Federation
Minnesota Deerhunters Association / Minnesota Waterfowl Association
Minnesota Wildlife Society / Pheasants Forever
Project Environment Foundation / Sierra Club - North Star Chapter
The Nature Conservancy, Minnesota Chapter

Mr. Chairman and members of the Board, my name is Cheryl Miller. I am the Wetlands Coordinator of the Minnesota Audubon Council. I am here on behalf of the Minnesota Wetlands Conservation Coalition to comment on the Proposed Rules to Implement the Wetlands Conservation Act of 1991.

The Minnesota Wetlands Conservation Coalition is comprised of conservation and sporting groups representing over 200,000 Minnesotans. The Coalition participated in both the Heritage Advisory Committee and in the Wetlands Rules Committee so that the perspectives of our members could be represented in the rules that will be used to administer the Wetlands Act. As those committees worked through the hundreds of details of implementing this law, our Coalition came to respect the Board of Water and Soil Resources staff and the thoughtful and orderly process that it oversaw to foster discussion and ultimately compromise between many constituency groups affected by this law.

To say that we are respectful of the process and the efforts expended, however, is <u>not</u> to say that we are happy with all the decisions. As a case in point, we have argued vigorously against the inclusion of artificially created wetlands in the wetlands bank. Our objections are based on three points. First, we are concerned about artificial wetlands in and of themselves. Research evidence supports restoration of natural systems over creation of artificial ones if your goal is high-quality, low-maintenance wetlands over the long-term. Second, we are concerned about the overuse of banks in these rules. Wetlands banking tends to result in the "clumping" of many small, diverse wetlands into relatively few large ponds. We think that allowing artificial wetlands in these banks only compounds this problem. Third, we think that artificial wetlands banks will not serve the purpose of the Act which is to maintain and increase the quantity, quality, and biodiversity of the State's wetlands. Let us be reminded that one of the specific goals of the Wetlands Conservation Act is to restore and enhance diminished or drained wetlands. Restricting banks to restorations would promote this goal. We are disappointed, therefore, that the proposed rule allows some artificial wetlands in the banks.

Despite our objections on this and several other important provisions, the Wetlands Conservation Coalition supports adoption of the proposed rule and Judge Klein's recommendations for one simple reason: Until this Act is fully implemented, we and everyone else will only be indulging in speculation about the real effect of this law in the field. We will not know whether banking promotes biodiversity or reduces it, whether sequencing procedures are too arduous or not arduous enough, whether or not the appeal process is adequate, whether or not interseeding requirements are enforceable. Only direct, on-the-ground experience with this Act will show us all - conservationists, administrators, developers, farmers - which of our fears are real and which are imaginary. Once gained, that experience should guide whatever revisions to the Act and the rules are deemed necessary.

On behalf of the Minnesota Wetlands Conservation Coalition. I urge the Board to adopt the proposed rule as recommended by Judge Klein and proceed with the implementation of the permanent program on schedule.

SUGGESTED CHANGES TO THE PROPOSED RULE FOR THE WETLAND CONSERVATION ACT **2/23/93**

Page 3, line 9; after *and* add ; shall include contiguous land and buildings associated with the production of the above - for example, farmyards. Delete *associated buildings*.

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Page 5, lines 22 and 30; change *once* to twice, and *20-year* to 10-year

Page 5, lines 25 and 32; change *1981* to 1986

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> [With this change, language is deleted on the following pages: Page 11; lines 20-23 and left margin; Page 12, lines 4-7 and left margin; Page 13, lines 25-28 and left margin; Page 15, lines 8-11 and left margin; Page 16, lines 5-8 and left margin; Page 21, lines 16-19 and left margin.]

Page 14, line 3; delete *when the activity is part of* and replace with to

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A landowner who does not request a determination may be subject to the enforcement provisions in part 8420.0290 and Minnesota Statutes, section 103G.2372. The local government unit must keep on file all documentation and findings of fact concerning no-loss determinations for a period of 10 years.

The landowner applying for a no-loss determination is responsible for submitting the proof necessary to show qualification for the claim.

The local government unit may place the decision authority for no-loss applications with the zoning administrator, or establish other procedures it considers appropriate.

Page 24, line 14; after *certificate* insert if the landowner requests and

Page 25, line 23; after *monitor* insert when required

Page 25, line 27; after *publication* insert when required

Page 25, line 31; after *appealed.* insert a new paragraph as follows:

Publication in the Environmental Quality Board Monitor of replacement plan applications and decisions is required, except for the fill activities described below, when the local government unit publishes a general notice in the Monitor that it will not be publishing notice of such individual activities, but will instead provide mailed notice of each project to anyone asking to be put on the local government units's mailing list for such projects. This notice must be published not less often than once every year. The notice must advise how persons may submit their names and addresses to be put on the mailing list.

Projects eligible for this form of Environmental Quality Board Monitor notice are all those which will fill less than one-tenth acre of wetland; and all those which will fill less than one-quarter acre of wetland, and result from a private road fill or the construction or expansion of a single family dwelling unit or a farm building when the project cannot be modified so as to avoid the fill.

Page 25, line 34; change *scientific* to technical, and after *technical* insert evaluation

Page 26, line 1; after *technical* insert evaluation

Page 26, lines 26 and 27; after *technical* insert evaluation

Page 26, line 31; change *or their designee* to ,or a designee of the engineer,

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Page 27, right margin, third line; change *scientific* to technical

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8420.0240 **APPEAL OF LOCAL GOVERNMENT UNIT DECISIONS**

Subp. 1. **Appeal of replacement plan decisions.**

The decision of a local government unit to approve, approve with conditions or reject a replacement plan, becomes final if not appealed to the board within 30 days after the date on which the decision is mailed to those required to receive notice of the decision.

Appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

Appeal is effective upon mailing of the notice of appeal to the board with an affidavit that a copy of the notice of appeal has been mailed to the local government unit. The local government unit shall then mail a copy of the notice of the appeal to all those to whom it was required by part 8420.0230 to mail a copy of the notice of decision.

Subp. 2. **Appeal of exemption and no-loss determinations.**

A. An exemption or no-loss determination may be appealed to the board by the landowner after first exhausting all local administrative appeal options.

B. Those required to receive notice of replacement plan decisions as provided for in part 8420.0230 may petition the board to hear an appeal from an exemption or no-loss determination. The board shall grant the petition unless it finds that the appeal is meritless, trivial, or brought solely for the purposes of delay. In determining whether to grant the appeal, the board shall also give consideration to the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or landowner or petitioner, and the consequences of the delay.

C. The determination of the local government unit on the exemption or no-loss application is final unless an appeal or petition is mailed to the board within 30 days after the decision is mailed to the landowner. The appeal or petition must be accompanied by an affidavit that a copy has been sent to the local government unit, and to the landowner if it is a petition.

Subp. 3. **Board appeal procedures.**

The appeal will be decided by the board within 60 days after receiving the notice of appeal and affidavit or granting the petition. Parties to the appeal are the appellant, the landowner, the local government unit, and in the case of replacement plan appeals, all those required to receive notice of the local government unit decision.

Upon appeal, the local government unit shall forward to the board the record on which it based its decision. The board will make its decision on the appeal after hearing. Thirty days' notice of the hearing shall be given by the board to the parties. The parties may present written and oral argument. When the local government unit has made formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings and the proceedings were fairly conducted,

the board will base its review on the record. Otherwise it may take additional evidence, or remand the matter.

The board will affirm the local government unit's decision if the local government unit's findings of fact are not clearly erroneous; if the local government unit correctly applied the 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.

Page 29, line 29; change *asking* to directing

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Page 42, line 11; after *technical* insert evaluation

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Page 57a, line 3; after *Table 2* insert 8420.0540, Item D, subitem (1); after *Table 4* insert 8420.0550, subp. 3

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Page 61, line 1; change *1* to 2

Page 62, line 17; change *2* to 3

Page 70, line 1; change *3* to 4

Page 70, line 2; last line of new language change *subp.* to item; change *item* to subitem

Page 73, line 33; change *or tenths* to or parts

Page 74, left margin, line 3; after *size.* add the following: The 10 acre limit does not apply to an impoundment the maintenance of which is the responsibility of a governmental entity. Once 10 acres of a deposited impoundment has been used for replacement credits, a subsequent withdrawal cannot be less than 10 acres or the remaining balance, whichever is less.

Page 75, line 30; change *such as* to <u>including</u>.

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Page 78, lines 14, 23, 26, 30 and 34; after *technical* insert <u>evaluation</u>.

Page 79, line 21; change *UTM* to <u>public land survey</u>.

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Page 83, line 10; change *UTM* to <u>public land survey</u>.

Page 83, line 11; delete *section, township and range*.

2/24/93

* Suggested change to last comment page 3, handout

- - - - - - - - - - Once 10 acres of a deposited impoundment has been used for replacement credits, a subsequent withdrawal for an individual wetland impact cannot be less than 10 acres or the remaining balance, whichever is less. The ten acre withdrawal limit does not apply to impoundments deposited into the wetland bank under procedures established in 8420.0740 Subp. 1.B.

A

B

A = This addition clarifies that "clumping" is minimized

B = This addition corrects the MnDOT concern. [8420.0740 subp 1.B. is located on page 76, lines 23-27]

Minnesota Board of Water & Soil Resources

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MEMORANDUM

TO: Board Members

FR: Greg Larson Greg Larson

*RE: **RULE REVIEW DOCUMENT***

The attached document is a merger of the proposed (pre-hearing) rule with the additions suggested in my January 8th letter to Judge Klein and those changes suggested and required by Judge Klein. As noted in Judge Klein's report, the ALJ approved all changes suggested b staff except our proposal to "streamline" the notice and appeal part of the rule. That part of the rule, as I have noted, will require some work. And, of course, the issue of introduced pasture and hayland needs clarification concerning an enforceable standard. The memo from John Jaschke dated February 11th summarizes the few items from the ALJ that need attention.

MEMORANDUM

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February 11, 1993

TO: Bill Clapp, Attorney General's Office
Ron Harnack, BWSR Executive Director
Greg Larson, Administrator Water & Land Mgmt. Section

FR: John Jaschke, Wetland Management Specialist JJ

RE: WCA ADMINISTRATIVE LAW JUDGE'S (ALJ's) REPORT

Rule Page ↓

When I picked up the ALJ's report today, Judge Allan Klein summarized the **five negative findings** and offered a little verbal explanation. This information was completely consistent with his written report and only added clarification for the Board's upcoming deliberations.

Finding #30 - Definitions of Introduced Hayland and Introduced Pasture
His conclusion was that the proposed definitions are problematic in terms of enforcement. This poses problems for both the landowner and the enforcement person. He stated the RIM definitions may be an alternative to consider. He also told me that the use of an affidavit may be considered an acceptable verification provision as it is used in a similar fashion for exemptions #1 and #3. 5

Findings #61 and #73 - Streamlined review for small impact projects
The ALJ found that the Board staff proposal to lessen the notification (and appeals) requirements, while supported by many, is contrary to the statute. The only options are: 1.) use the language in the Proposed Rule, 2.) propose alternative language that does not conflict with the statute, or 3.) seek a specific change to the statute. 25

Finding #74 - Exemption and No-Loss Appeals to the Board
The statute requires the Board to hear appeals regarding replacement plans. It does not require the Board to hear appeals of exemption and no-loss determinations. The proposed rule included a process for appeal of exemption and no-loss determinations to the Board. Board staff proposed to limit exemption and no-loss appeals to ensure local accountability. Limiting appeals is acceptable but must follow some standards so that the petition to appeal can be fairly and consistently evaluated. The ALJ offers some suggested language. 27-29

Finding # 77 - Landowner Request for LGU Decision < 3 weeks
Allowing a landowner to request an exemption or no-loss determination, which has been triggered by a cease & desist order, "within 3 weeks ... or sooner if the landowner requests" was found to be discretionary and unenforceable. He recommends deleting "or sooner if the landowner requests" and reconsidering the 3 week timeline given the variety of circumstances which could arise. 32

Revised 2/14/93

Office of the Revisor of Statutes

BWSR staff & ALJ comments have been included

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Wetland Conservation

AGENCY: Board of Water and Soil Resources

MINNESOTA RULES: Chapter 8420

INCORPORATIONS BY REFERENCE:

United States Fish and Wildlife Service Circular No. 39 (1971 edition); Federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989); Cowardin, et al. 1979, Classification of Wetlands and Deepwater Habitats of the United States; Criteria and Guidelines for Assessing Geologic Sensitivity of Groundwater Resources in Minnesota (Minnesota Department of Natural Resources, 1991); United States Geological Survey Hydrologic Unit Map for Minnesota; Minnesota Wetland Evaluation Methodology; State of Minnesota Watershed Boundaries - 1979 (a map); National Wetland Inventory maps (United States Fish and Wildlife Service); Anderson and Craig, 1984, Distribution of Remaining Acreage of Presettlement Wetlands in Minnesota. These documents are available through the Minitex interlibrary loan system, except the National Wetland Inventory maps, which are available at Minnesota soil and water conservation district offices.

The attached rules are approved for publication in the State Register

Paul E. Rohde
Senior Assistant Revisor

WETLAND CONSERVATION ACT
PROPOSED RULE
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Board of Water and Soil Resources

Proposed Permanent Rules Relating to Wetland Conservation

Rules as Proposed (all new material)

8420.0100 PURPOSE.

This chapter implements the Wetland Conservation Act of 1991, Laws of Minnesota 1991, chapter 354. This chapter shall be interpreted to implement the purpose of the act, which is to:

A. achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;

B. increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;

C. avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and

D. replace wetland values where avoidance of activity is not feasible and prudent.

8420.0105 SCOPE.

X

After July 1, 1993, the effective date of this chapter, wetlands must not be drained or filled wholly or partially unless replaced by restoring or creating wetland areas of at least equal public value.

This chapter does not prevent the use of the bed of wetlands for pasture or cropland during dry periods if dikes, ditches, tile lines, or buildings are not constructed and the agricultural use does not result in the drainage of the wetlands. This chapter does not prevent filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage. This chapter does not prevent control of noxious weeds if the control does not drain or fill the wetland. This chapter does not prevent excavation in wetlands if done such that wetlands are not wholly or partially drained or filled.

X

This chapter does not apply to the public waters and public waters wetlands as defined in Minnesota Statutes, section

Approved by Revisor PER

103G.005, subdivisions 15 and 18, which have been inventoried by the commissioner according to Minnesota Statutes, section 103G.201. This chapter is in addition to other regulations including those of the United States Army Corps of Engineers, United States Department of Agriculture, Minnesota state agencies, watershed districts, and local governments.

This chapter does not apply to peat mining as defined in Minnesota Statutes, section 93.461, which is subject to the permit to mine and reclamation requirements of Minnesota Statutes, sections 93.44 to 93.51, and the rules of the commissioner adopted under those sections.

This chapter does not require state agencies to obtain local government unit approvals. However, state agencies shall coordinate with local government units when conducting activities in wetlands within the jurisdiction of the local government unit. The state agencies shall follow the same sequencing and replacement requirements as prescribed by this chapter.

In addition to the provisions of this chapter, 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 if 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 adversely effective actions.

8420.0110 DEFINITIONS.

Subpart 1. Scope. The terms used in this chapter have the meanings given them in this part.

Subp. 2. Act. "Act," when not used in reference to a specific state or federal act, means the Wetland Conservation Act of 1991, Laws 1991, chapter 354.

Subp. 3. Activity. "Activity" means draining or filling a wetland wholly or partially.

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Subp. 4. Agricultural land. "Agricultural land," for use in part 8420.0120, subparts 7 and 8, means land devoted to the production of horticultural, row, close grown, introduced pasture, introduced hayland crops, and growing nursery stock.

For use in ~~determining replacement ratios~~ all other places in the rule, agricultural land means land devoted to the production of horticultural, row, close grown, introduced pasture, and introduced hayland crops, and to the pasturing of livestock and dairy animals, growing nursery stock, and animal feedlots and associated buildings. ~~Agricultural land does not include cultivated wild rice lands.~~

Subp. 5. Agricultural Stabilization and Conservation Service. "Agricultural Stabilization and Conservation Service" means an agency of the United States Department of Agriculture.

Subp. 6. Aquaculture. "Aquaculture" means to cultivate plants and animals in water for harvest, including hydroponics and raising fish in fish farms.

Subp. 7. Best management practices. "Best management practices" means state-approved ~~construction~~ and published practices associated with draining, filling, or replacing wetlands that are capable of preventing and minimizing degradation of surface water and groundwater.

Subp. 8. Board. "Board" means the board of water and soil resources under Minnesota Statutes, section 103B.101.

Subp. 9. City. "City" means a home rule charter or statutory city.

Subp. 10. Commissioner. "Commissioner" means the commissioner of the Department of Natural Resources.

Subp. 11. Creation. "Creation" means construction of wetlands in an area that was not wetlands in the past.

Subp. 12. Day. "Day" means working days when used in a time period of 15 days or less and calendar days when used in a time period greater than 15 days. The day of the event shall not be used in counting any period of time.

Subp. 13. Department. "Department" means the Department of Natural Resources.

Subp. 14. Ditch. "Ditch" means an open channel to conduct the flow of water, as defined in Minnesota Statutes, section

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103E.005, subdivision 8.

Subp. 15. Drain or drainage. "Drain" or "drainage" means any method for removing or diverting waters from wetlands. The methods shall include, but are not limited to, excavation of an open ditch, installation of subsurface drainage tile, filling, diking, or pumping.

Subp. 16. Drainage system. "Drainage system" means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets.

Subp. 17. Excavation. "Excavation" means the displacement or removal of the sediment or other materials by any method.

Subp. 18. Fill. "Fill" means any solid material added to or redeposited a wetland that would alter its cross-section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a nonwetland. It does not include posts and pilings for linear projects such as bridges, elevated walkways, or powerline structures, or structures traditionally built on pilings such as docks and boathouses. It does include posts and pilings that result in bringing the wetland into a nonaquatic use or significantly altering the wetland's functions and values, such as the construction of office and industrial developments, parking structures, restaurants, stores, hotels, multifamily housing projects, and similar structures. It does not include slash or woody vegetation, if the slash or woody vegetation originated from vegetation growing in the wetland and does not impair the flow or circulation of water or the reach of the wetland.

Subp. 19. Floodplain wetland. "Floodplain wetland" means a wetland located in the floodplain of a watercourse, with no well defined inlets or outlets, including tile systems, ditches, or natural watercourses. This may include the floodplain itself when it exhibits wetland characteristics.

Subp. 20. Flow-through wetland. "Flow-through wetland" means a wetland with both a well defined outlet and one or more well defined inlets, including tile systems, ditches, or natural watercourses.

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Subp. 21. Hydric soils. "Hydric soils" means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

Subp. 22. Hydrophytic vegetation. "Hydrophytic vegetation" means macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

Subp. 23. Impact. "Impact" means a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling.

Subp. 24. Impacted wetland. "Impacted wetland" means a wetland that has been drained or filled, partially or wholly, and is subject to replacement.

Subp. 25. Infrastructure. "Infrastructure" means storm water and sanitary sewer piping, outfalls, inlets, street subbase, roads, and ditches, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement.

Subp. 26. Introduced hayland. "Introduced hayland" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least once during the 20-year period before January 1, 1991. These areas must be harvested by mechanical methods at least two years during the period January 1, 1981 to January 1, 1991. These areas are considered to be in agricultural crop production.

Subp. 27. Introduced pasture. "Introduced pasture" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced species at least once during the 20-year period before January 1, 1991. These areas must be harvested by grazing at least two years during the period January 1, 1981 to January 1, 1991. These areas are considered to be in agricultural crop production.

Subp. 28. Isolated wetland. "Isolated wetland" means a wetland without well defined inlets or outlets, including tile

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Subp. 21. **Farm operation.** "Farm operation" means property owned or leased in Minnesota by the landowner that is associated with farming.

Subp. 22. **Farming.** "Farming" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 23. **Food plot.** "Food plot" means an area established annually for the purpose of providing food for wildlife.

Subp. 24. **Highway windbreak.** "Highway windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway. Grass barriers must be used in conjunction with trees and shrubs.

Subp. 25. **Hydric soil.** "Hydric soil" means a soil in its natural undrained condition that is saturated at or near the surface or flooded frequently during much of the growing season, and that can support hydrophytic vegetation. The current list of hydric soils is available at the state law library and the district office, is subject to frequent change, and is incorporated by reference.

Subp. 26. **Hydrophytic vegetation.** "Hydrophytic vegetation" means herbaceous or woody plants that grow in water, in wet or saturated soils, or in soils that are at least periodically deficient in oxygen as a result of excess water.

Subp. 27. **Individual.** "Individual" means a person or legal entity, whether or not a resident of Minnesota.

Subp. 28. **Inherently unproductive.** "Inherently unproductive" means that the soil properties of available water capacity, bulk density, and pH in the uppermost 100 centimeters (39 inches) of a soil, are present so that an unfavorable rooting environment exists for agronomic crops.

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Subp. 29. **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the period 1976 to 1985. These areas must be harvested by mechanical methods at least two years during the period 1981 to 1985. These areas are considered to be in agricultural crop production.

Subp. 30. **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the period 1976 to 1985. These areas must be harvested by grazing at least two years during the period 1981 to 1985. These areas are considered to be in agricultural crop production.

Subp. 31. **Landowner.** "Landowner" means an individual, family farm, family farm partnership, authorized farm partnership, family farm corporation, authorized farm corporation, estate, or testamentary trust, who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 32. **Local emergency.** "Local emergency" means an emergency declared under Minnesota Statutes, section 12.29.

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" for the RIM reserve program means land with cropland soils that are inherently unproductive for agricultural crop production or subject to significant potential soil productivity loss from erosion. The state board shall provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts may change the list as necessary to reflect local soil characteristics. Changes must be approved by the board. This list, with changes, is available at the state law library and at district offices, is subject to frequent change, and is incorporated by reference. In addition, land immediately surrounding a sinkhole is marginal agricultural land.

Subp. 33a. **Pasture.** "Pasture" means land used for grazing by domestic livestock on and before June 2, 1989, which has not been cultivated or interseeded at least twice during the period of 1976 to 1985, and therefore is not considered to be in agricultural crop production.

systems, ditches, or natural watercourses.

Subp. 29. Landowner. "Landowner" means a person or entity having the rights necessary to drain or fill a wetland, or to establish and maintain a replacement or banked wetland. Typically, the landowner is a fee title owner or a holder of an easement, license, lease, or rental agreement providing the necessary rights. The right must not be limited by a lien or other encumbrance that could override the obligations assumed with the replacement or banking of a wetland.

Subp. 30. Local government unit. "Local government unit" means:

A. outside of the seven-county metropolitan area, a city council or county board of commissioners or their delegate;

B. in the seven-county metropolitan area, a city council, town board, or watershed management organization under Minnesota Statutes, section 103B.205, subdivision 13; ~~and~~ or their delegate; and

C. in those cases where an activity or replacement will occur on state land, the agency with administrative responsibility for that land.

Subp. 31. Mining. "Mining" means the removal of peat and metallic minerals as provided in Minnesota Statutes, sections 93.461 and 93.481.

Subp. 32. Nondegraded wetland. "Nondegraded wetland" means a wetland that has not been partially drained or filled by human activities.

Subp. 33. Pasture. "Pasture" means land used for grazing by domestic livestock.

Subp. 34. Peace officer. "Peace officer" has the meaning given it in Minnesota Statutes, section 626.84.

Subp. 35. Project. "Project" means an action or series of actions necessary to accomplish an ultimate purpose and that will cause a physical manipulation of the environment, directly or indirectly. Draining or filling of wetlands may be a component of a project.

Subp. 36. Project-specific. "Project-specific" means the applicant for the replacement plan approval will construct the

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replacement as part of the project, rather than obtain the replacement from a wetland bank.

Subp. 37. **Public transportation project.** "Public transportation project" means a project conducted by a public agency involving transportation facilities open to the public.

Subp. 38. **Public waters wetlands.** "Public waters wetlands" means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), that were inventoried by the department as public waters under Minnesota Statutes, section 103G.201.

Subp. 39. **Replacement wetland.** "Replacement wetland" means a wetland restored or created to replace public values lost at an impacted wetland.

Subp. 40. **Restoration.** "Restoration" means reestablishment of an area that was historically wetlands but currently provides no or minimal wetland functions due to manmade alteration such as filling or drainage.

Subp. 41. **Right-of-way acreage.** "Right-of-way acreage" has the meaning given it in Minnesota Statutes, section 103E.285, subdivision 6.

Subp. 42. **Riverine wetland.** "Riverine wetland" means a wetland contained within the banks of a channel that may contain moving water or that forms a connecting link between two bodies of standing water.

Subp. 43. **Set aside.** "Set aside" means the cropland acreage annually retired as a condition to landowner participation in United States Department of Agriculture commodity programs.

Subp. 44. **Silviculture.** "Silviculture" means the scientific management of forest trees.

Subp. 45. **Soil and water conservation district.** "Soil and water conservation district" means a legal subdivision of state government under Minnesota Statutes, chapter 103C.

Subp. 46. **Soil Conservation Service.** "Soil Conservation Service" means an agency of the United States Department of Agriculture.

Insert new subp. "Public value of wetlands" means the public benefit and use of wetlands for water quality, for floodwater retention, for public recreation, for commercial uses, and for other public uses.

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Subp. 47. Tributary wetland. "Tributary wetland" means a wetland with a well defined outlet, including tile systems, ditches, or natural watercourses, but without a well defined inlet.

Subp. 48. Utility. "Utility" means a sanitary sewer, storm sewer, potable water distribution, and transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications.

Subp. 49. Watershed. "Watershed" means the 81 major watershed units delineated by the map "State of Minnesota Watershed Boundaries - 1979" as produced by the Minnesota Department of Natural Resources, Office of Planning and Research, Water Policy Planning Program, with funding from the Legislative Commission on Minnesota Resources.

Subp. 50. Watershed management organization. "Watershed management organization" means a watershed district wholly within the metropolitan area or a joint powers entity established wholly or partly within the metropolitan area by special law or by agreement that performs some or all of the functions of a watershed district for a watershed and that has the characteristics and the authority specified under Minnesota Statutes, section 103B.211. Lake improvement or conservation districts are not watershed management organizations.

Subp. 51. Wetlands, a wetland, the wetland, or wetland area.

A. "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

For purposes of this subpart, wetlands must:

(1) have a predominance of hydric soils;

(2) be inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances, support a

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prevalence of hydrophytic vegetation.

B. "A wetland" or "the wetland" means a distinct hyrdologic feature with characteristics of item A, surrounded by nonwetland and including all contiguous wetland types, except those connected solely by riverine wetlands. "Wetland area" means a portion of "a wetland" or "the wetland."

C. Wetlands does not include public waters wetlands and public waters that are designated on the public waters inventory maps prepared under Minnesota Statutes, section 103G.201.

Subp. 52. Wetlands in a cultivated field. "Wetlands in a cultivated field" means a wetland where greater than 50 percent of its boundary abuts land that was in agricultural crop production in six of the ten years before January 1, 1991.

(abuts cultivated land)

Subp. 53. Wetlands located on agricultural land. "Wetlands located on agricultural land" means a wetland where greater than 50 percent of its boundary abuts land that was in agricultural crop production in six of the ten years before January 1, 1991.

8420.0112 INCORPORATION BY REFERENCE.

This rule incorporates by reference the following documents:

United States Fish and Wildlife Service Circular No. 39 (1971 edition).

Federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989).

Cowardin, et al. 1979, Classification of Wetlands and Deepwater Habitats of the United States.

Criteria and Guidelines for Assessing Geologic Sensitivity of Groundwater Resources in Minnesota (Minnesota Department of Natural Resources, 1991).

United States Geological Survey Hydrologic Unit Map for Minnesota.

Minnesota Wetland Evaluation Methodology.

State of Minnesota Watershed Boundaries - 1979 (a map).

National Wetland Inventory maps (United States Fish and

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Wildlife Service).

Anderson and Craig, 1984, ~~Distribution of Remaining Acreage of Presettlement Wetlands in Minnesota~~ showing Energy Crops on Minnesota Wetlands: The Land use Perspective.

These documents are available through the Minitex interlibrary loan system, except the National Wetland Inventory maps, which are available at Minnesota soil and water conservation district offices. None of the documents are subject to frequent change.

8420.0115 SCOPE OF EXEMPTION STANDARDS.

When considering if a drain or fill activity qualifies for an exemption listed in a specified clause of Minnesota Statutes, section 103G.2241, subdivision 1, the exemption standards in part 8420.0120 apply.

An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

These exemptions do not apply to calcareous fens as identified by the commissioner.

No exemptions apply to wetlands that have been previously restored or created as a result of an approved replacement plan. All such wetlands are subject to replacement on subsequent drainage or filling.

~~In cases where drain or fill activities convert only a portion of a nonexempt wetland to nonwetland,~~ Non exempt wetlands cannot be partially drained or filled in order to claim an exemption or no-loss determination on the remainde. Therefore, no exemptions or no-loss determinations can be applied to the remaining wetland that would not have been applicable before the impact.

A person conducting an activity in a wetland under an exemption in part 8420.0120 shall ensure that:

A. appropriate erosion control measures are taken to prevent sedimentation of the water;

B. the activity does not block fish activity in a watercourse; and

C. the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource

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protection requirements established under Minnesota Statutes, chapter 103H.

8420.0120 EXEMPTION STANDARDS.

Subpart 1. Exemption (1). 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.

Documentation, such as Agricultural Stabilization and Conservation Service aerial photographs, Agricultural Stabilization and Conservation Service form 578 or equivalent, United States Department of Agriculture records, or affidavit of landowner must be required by the local government unit to show and use as evidence for this exemption.

Set aside land used for this exemption must be wetland types 1 and 2.

Present and future owners can make no use of the wetland area after it is altered, other than as agricultural land for ten years, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222, paragraph (g). ~~If the local government unit approves an exemption, the landowner must execute and the local government unit must record a notice of this restriction if the wetland is in a city.~~

Subp. 2. Exemption (2). A replacement plan for wetlands is not required for:

(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

New Language:

Also, for ten years the wetland may not be restored for replacement credit. The landowner shall execute and record a notice of these restrictions in the office of the county recorder for the county in which the property is located.

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being enrolled in the program; and

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

Present and future owners can make no use of the wetland area after it is altered, other than as agricultural land for ten years, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222, paragraph (g). ~~If the local government unit approves an exemption, the landowner must execute and the local government unit must record a notice of this restriction if the wetland is in a city.~~

Federal documentation that the wetland is or has been enrolled in the federal conservation reserve program may be used as evidence for the exemption. The landowner must also meet the same requirements of subpart 2 for the exemption stated in Minnesota Statutes, section 103G.2241, subdivision 1, clause (1), except that the years required are at least six of the ten years preceding the year of enrollment in the conservation reserve program. The landowner must also state in writing that the wetland was not restored with assistance from a public or private wetland restoration fund, or that the restoration was done under a contract or easement providing the landowner with the right to drain the restored wetland.

Subp. 3. Exemption (3). A replacement plan for wetlands is not required for:

(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.

This exemption allows maintenance which fills wetlands that have been in existence for more than 20 years when the wetlands are located within the right-of-way acreage of the ditch and the filling is limited to the side casting of spoil materials resulting from the maintenance.

The owner must provide documentation that the wetlands which will be partially or completely drained by the maintenance have not existed for more than 20 years.

Aerial photographs from two years of normal or wetter than

Also, for ten years the wetland may not be restored for replacement credit. The landowner shall execute and record a notice of these restrictions in the office of the county recorder for the county in which the property is located.

Page 12, line 30 after "ditch" insert or within a 1 rod width on either side of the top of the ditch, whichever is greater, and add at the end of line 32 and the spoil deposition area is permanently seeded into grass after maintenance activities are completed.

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normal water level conditions showing no wetland are one form of acceptable documentation. If aerial photographs are unavailable, a sworn affidavit may be submitted. Otherwise, the landowner must show that the maintenance will not reduce the wetland from what it was 20 years ago or more.

This exemption includes lowering the elevation of previously placed tile when made necessary by land subsidence provided the lowering does not drain wetlands.

Subp. 4. **Exemption (4).** A replacement plan for wetlands is not required for:

(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.

The landowner must provide Agricultural Stabilization and Conservation Service documents confirming that the county agricultural stabilization and conservation service office determined before September 19, 1988, that drainage had begun before December 23, 1985, and that the determination has not been overturned by subsequent appeal or review and is not currently under administrative review.

Present and future owners can make no use of the wetland area after it is altered, other than as agricultural land for ten years, unless it is first replaced under Minnesota Statutes, section 103G.222, paragraph (g). ~~If the local government unit approves an exemption, the landowner must execute and the local government unit must record a notice of this restriction if the wetland is in a city~~.

Also, for ten years the wetland may not be restored for replacement credit. The landowner shall execute and record a notice of these restrictions in the office of the county recorder for the county in which the property is located.

Subp. 5. **Exemption (5).** A replacement plan for wetlands is not required for:

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

The local government unit may certify the exemption only if

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the landowner furnishes proof of qualification for one of the exemptions from the United States Army Corps of Engineers.

This exemption does not apply when the activity is part of a project ~~an activity~~ with the purpose of converting a wetland to a nonwetland, either immediately or gradually, or converting the wetland to another use, or when the fill will result in significant discernible change to the flow or circulation of water in the wetland, or partly draining it, or reducing the wetland area.

Subp. 6. **Exemption (6).** A replacement plan for wetlands is not required for:

(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).

This exemption is for nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 25 issued under Code of Federal Regulations, title 33, section 330.5. The local government unit may certify such an exemption only if the applicant furnishes proof of qualification for one of these nationwide permits from the United States Army Corps of Engineers. Nationwide permit 14 for a new road does not qualify for this exemption, nor do nationwide permits under numbers not listed in this exemption.

To qualify for a nationwide permit, the applicant for a United States Army Corps of Engineers permit must meet any regional conditions imposed by the United States Army Corps of Engineers, and must obtain from the Minnesota Pollution Control Agency an individual section 401 certification when required.

Subp. 7. **Exemption (7).** A replacement plan for wetlands is not required for:

(7) activities in a type 1 wetland on agricultural land, as

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defined in United States Fish and Wildlife Circular No. 39 (1971 edition) except for bottomland hardwood type 1 wetlands.

The landowner must provide the same proofs required by the first paragraph of subpart 1, for lands abutting at least 50 percent of the wetland's boundary. The local government unit may seek the advice of the technical panel as to whether the wetland is a type 1 wetland not of the bottomland hardwood type.

Present and future owners can make no use of the wetland area after it is altered, other than as agricultural land for ten years, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222, paragraph (g). ~~If the local government unit approves an exemption, the landowner must execute and the local government unit must record a notice of this restriction if the wetland is in a city.~~

The type of the wetland must be determined according to United States Fish and Wildlife Service Circular No. 39 (1971 edition). Alternatively, the type of the wetland can be determined from the Cowardin (et al. 1979) classification system: ~~shown on the National Wetland Inventory map.~~ PEM1A and PEM1J may be considered to be a type 1 wetland. PEMA, PEMJ

This exemption applies if the wetland is all type 1 wetland, or is a combination of types 1 and 2 wetlands, on agricultural land, and the type 2 wetland area is less than two acres.

Subp. 8. **Exemption (8).** A replacement plan for wetlands is not required for:

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

The landowner must provide the same material as required from the landowner by subpart 7. The local government unit may seek the advice of the technical panel as to whether the wetland is a type 2 wetland, two acres or less in size.

The wetland size is the area within its boundary. The boundary must be determined according to the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989). The type of the wetland must be determined according to

Also, for ten years the wetland may not be restored for replacement credit. The landowner shall execute and record a notice of these restrictions in the office of the county recorder for the county in which the property is located.

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United State Fish and Wildlife Service Circular No. 39 (1971 edition). Alternatively, type can be determined from the Cowardin (et al. 1979) classification ~~shown on the National Wetland Inventory map.~~ system: PEM1B and PEMB may be considered to be a type 2 wetland.

Present and future owners can make no use of the wetland area after it is altered, other than as agricultural land for ten years, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222, paragraph (g). ~~If the local government unit approves an exemption, the landowner must execute and the local government unit must record a notice of this restriction if the wetland is in a city.~~

This exemption applies if the wetland is a type 2 wetland, or is a combination of types 1 and 2 wetlands, on agricultural land, and the type 2 wetland area is less than two acres.

Subp. 9. **Exemption (9).** A replacement plan for wetlands is not required for:

(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.

The landowner must provide a contract or easement conveyance or affidavit demonstrating that the landowner or a predecessor restored the wetland for conservation purposes but retained the right to subsequently drain the restored wetland.

Subp. 10. **Exemption (10).** A replacement plan for wetlands is not required for:

(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).

Wetland areas created by beaver activities may be drained by removing those materials placed by beaver. Drainage is permitted by removing or moving materials blocking installed roadway culverts and drainage structures. Additional excavation

Also, for ten years the wetland may not be restored for replacement credit. The landowner shall execute and record a notice of these restrictions in the office of the county recorder for the county in which the property is located.

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or removal of other materials is not permitted unless it can be shown by aerial photographs that the proposed activity will not drain or fill wetland that was there before the beaver dam was built or the culvert became plugged.

Wetlands may be drained or filled if the landowner can show that the wetland was created solely by actions the purpose of which was not to create the wetland and were approved, permitted, funded, or overseen by a public entity.

Impoundments or excavations constructed in nonwetlands solely for the purpose of effluent treatment, storm water retention, soil and water conservation practices, and water quality improvements, and not as part of a compensatory wetland mitigation process that may, over time, take on wetland characteristics, are also exempted.

Subp. 11. Exemption (11). A replacement plan for wetlands is not required for:

(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.

For new ~~re~~placement and enhancement of existing facilities, the utility must demonstrate that the character and extent of the impacts of the proposed project on the wetlands have been minimized and that the entire project will, cumulatively, drain or fill less than one-half acre of wetland.

For maintenance, repair, and replacement, the local government unit may issue a seasonal or annual exemption certification or the utility may proceed without local government unit certification if it is carrying out the work according to best management practices. Work of an emergency

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nature may proceed as necessary and any drain or fill activities shall be addressed with the local government unit after the emergency work has been completed.

Subp. 12. **Exemption (12).** A replacement plan for wetlands is not required for:

(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.

This exemption is for maintenance, but not expansion, of the rights-of-way in which utilities are located. Spill remediation is not routine maintenance.

The local government unit may issue a seasonal or annual exemption certification or the utility may proceed if it is carrying out the work according to best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the local government unit after the emergency work has been completed.

Subp. 13. **Exemption (13).** A replacement plan for wetlands is not required for:

(13) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing or acquired interstate pipeline rights of way;

This exemption includes construction activities.

Subp. 14. **Exemption (14).** A replacement plan for wetlands is not required for:

(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.

This exemption is for temporary-use roads constructed for the primary purpose of providing access for the conduct of silvicultural activities.

Subp. 15. **Exemption (15).** A replacement plan for wetlands

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is not required for:

(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.

This exemption is the same as the exemption in subpart 14, except that it is for permanent forest roads which are ~~This exemption is for~~ roads constructed for the primary purpose of providing access for the conduct of silvicultural activities.

Subp. 16. **Exemption (16).** A replacement plan for wetlands is not required for:

(16) activities associated with routine maintenance of existing public highways, roads, streets, and bridges, provided the activities do not result in additional intrusion into the wetland and do not result in the draining or filling, wholly or partially, of a wetland.

This exemption does not prevent repairing washouts or adding material to the driving surface provided the road's occupancy of the wetland does not increase.

Subp. 17. **Exemption (17).** A replacement plan for wetlands is not required for:

(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.

This exemption applies to public works other than roads, such as buildings and bridges.

Subp. 18. **Exemption (18).** A replacement plan for wetlands is not required for:

(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

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that do not result in the draining or filling, wholly or partially, of a wetland.

This exemption applies to private structures, such as buildings and road crossings.

Subp. 19. Exemption (19). A replacement plan for wetlands is not required for:

(19) duck blinds.

This exemption allows floating duck blinds and blinds on poles or pilings. This exemption does not allow fill other than poles or pilings.

Subp. 20. Exemption (20). A replacement plan for wetlands is not required for:

(20) aquaculture activities, except building or altering of docks and activities involving the draining or filling, wholly or partially, of a wetland.

Subp. 21. Exemption (21). A replacement plan for wetlands is not required for:

(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.

Documentation demonstrating that the exemption applies may include showing possession of a United States Army Corps of Engineers permit for the project.

Subp. 22. Exemption (22). A replacement plan for wetlands is not required for:

(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.

This exemption does not allow diking, ditching, tiling, or filling, or other control practices that would result in the conversion of wetlands.

Subp. 23. Exemption (23). A replacement plan for wetlands is not required for:

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(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.

Documentation such as a written statement from the local Agricultural Stabilization and Conservation Service office that the proposed activity would not result in loss of eligibility for benefits under the farm program may be used as evidence for this exemption. If the activity would result in loss of eligibility, the landowner cannot qualify for the exemption by withdrawing from the program.

Present and future owners can make no use of the wetland area after it is altered, other than as agricultural land for ten years, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222, paragraph (g). ~~If the local government unit approves an exemption, the landowner must execute and the local government unit must record a notice of this restriction if the wetland is in a city~~.

Also, for ten years the wetland may not be restored for replacement credit. The landowner shall execute and record a notice of these restrictions in the office of the county recorder for the county in which the property is located.

Subp. 24. **Exemption (24).** A replacement plan for wetlands is not required for:

(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.

Subdividers who obtained preliminary plat approval in the specified time period, and other project developers with one of the listed approvals timely obtained, provided approval has not

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expired and the project remains active, may drain and fill wetlands, to the extent documented by the approval, without replacement. Those elements of the project that can be carried out without changing the approved plan and without draining or filling must be done in that manner. If wetlands can be avoided within the terms of the approved plan, they must be avoided.

For county, joint county, and watershed district ditch projects, this exemption applies to projects that received final approval in the specified time period.

PROCEDURES

8420.0200 DETERMINING LOCAL GOVERNMENT UNIT.

The local government unit responsible for making exemption and no-loss determinations and approving replacement plans shall be determined according to items A to C.

A. Outside the seven-county metropolitan area, the local government unit is the county or city in which the drain or fill activity is located, or its delegate.

B. In the seven-county metropolitan area, the local government unit is the city, town, or water management organization regulating surface-water-related matters in the area in which the drain or fill activity is located, or its delegate. The watershed management plan adopted under Minnesota Statutes, section 103B.231, and related board rules will normally indicate the appropriate local government unit. Lacking an indication, the local government unit must be the city, town, or its delegate.

C. If the activity in a wetland is located in two jurisdictions, the local government unit shall be the one exercising zoning authority over the project or if both have zoning authority, the one in which most of the wetland loss will occur. If no zoning permits are required, the local government unit shall be the one in which most of the wetland loss will occur. If an activity will affect wetlands in more than one local government unit, the board will coordinate the project review to ensure consistency and consensus among the local

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government units involved.

The board will resolve all questions as to which government entity is the responsible authority, applying the guidelines in items A to C.

Notwithstanding items A to C, the department shall be the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481.

8420.0210 EXEMPTION DETERMINATIONS.

A landowner intending to drain or fill a wetland without replacement, claiming exemption under part 8420.0120, may contact the local government unit before beginning draining or filling activities for determination whether or not the activity is exempt. A landowner who does not request a determination may be subject to the enforcement provisions in part 8420.0290 and Minnesota Statutes, section 103G.2372. The local government unit must keep on file all documentation and findings of fact concerning exemption determinations for a period of ten years.

Local government units may offer exemption certificates as part of the wetland program within their jurisdiction. An exemption applies whether or not the local government unit chooses to issue certificates of exemption. If the wetland qualifies for an exemption, and the landowner requests a certificate of exemption, then the local government unit must issue one.

The landowner applying for exemption is responsible for submitting the proof necessary to show qualification for the particular exemption claimed.

The local government unit may place the decision authority for exemption applications with the zoning administrator, or establish other procedures it considers appropriate.

The local government unit decision shall be based on the exemptions standards in part 8420.0120. If the decision requires a finding of wetland size or type, the local government unit should seek the advice of the technical panel as described

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in part 8420.0240.

A landowner draining or filling a wetland under an exemption shall ensure that appropriate erosion control measures are taken to prevent sedimentation of the water, the drain or fill does not block fish passage, and the drain or fill is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under Minnesota Statutes, chapter 103H.

8420.0220 NO-LOSS DETERMINATIONS.

A landowner unsure if proposed work will result in a loss of wetland may apply to the local government unit for a determination. The local government unit shall issue a no-loss certificate if either:

A. the work will not drain or fill a wetland;

B. water level management activities will not result in the conversion of a wetland to another land use;

C. the activities are in a surface impoundment for containment of fossil fuel combustion waste or water retention, and are not part of a compensatory wetland mitigation program;

D. the activity is being conducted as part of an approved replacement plan or is conducted or authorized by public agencies for the purpose of wetland restoration and the activity is restricted to placing fill in a previously excavated drainage system to restore a wetland to its original condition; or

E. the draining or filling will be minimal and not warrant replacement. This item is applicable if the total wetland loss will be less than 100 square feet per year per landowner, and the cumulative impact on a wetland over time without replacement after January 1, 1992, of draining and filling by all persons does not exceed five percent of the wetland's area.

8420.0230 REPLACEMENT PLAN DETERMINATIONS.

A landowner intending to drain or fill a wetland who does

See #59

insert (a)

if the landowner requests and

The landowner applying for ~~exemption~~ no-loss is responsible for submitting the proof necessary to show qualification for the ~~particular exemption~~ claimed.

The local government unit may place the decision authority for ~~exemption~~ no-loss applications with the zoning administrator, or establish other procedures it considers appropriate.

A landowner who does not request a determination may be subject to the enforcement provisions in part 8420.0290 and Minnesota Statutes, section 103G.2372. The local government unit must keep on file all documentation and findings of fact concerning ~~exemption~~ no-loss determinations.

(a)

insert

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not qualify for an exemption or no-loss determination shall obtain approval of a replacement plan from the local government unit before beginning draining or filling. A person who does not do so is subject to the enforcement provisions in this chapter and Minnesota Statutes, section 103G.2372.

The local government unit may use its usual notice and comment procedures on the application for approval of a replacement plan if, within ten days of receipt of the application, the local government unit mails a copy of the application and an invitation to submit comments to the board, which will publish it in the Environmental Quality Board Monitor; members of the public who have requested a copy; the soil and water conservation district; the watershed district or water management organization, if there is one; the county board; mayors of cities within the watershed; and the commissioners of agriculture and natural resources. At the same time, the local government unit shall publish notice of the application with an invitation for comment in a general circulation newspaper in the area affected.

The local government unit shall not make its decision before 30 days and not more than 60 days have elapsed from the mailing of notice, publication in the Environmental Quality Board Monitor, or publication in the newspaper, whichever is later. The local government unit decision shall not be effective until 30 days after a copy of the decision has been mailed to the Environmental Quality Board Monitor for publication, and mailed to the same list specified above for notice of the application, and to the applicant. The mailing to the applicant shall be by registered mail and must advise that the decision is not effective for 30 days, and is stayed if it is appealed.

The local government unit decision shall be based on the replacement standards in parts 8420.0500 to 8420.0630, and on the scientific determination of the technical panel concerning the public values, location, size, and type of the wetland being altered. The local government unit shall consider the recommendation of

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the technical panel to approve, modify, or reject the proposed replacement plan.

For wetland replacement plans involving more than one local government unit, approval of all local government units involved or as specified in part 8420.0200 shall constitute final approval of the replacement plan and is required before the project may proceed. The local government unit with jurisdiction for the impact site must approve all components of the replacement plan, following the procedures in parts 8420.0500 to 8420.0630. The local government unit with jurisdiction for the replacement site shall limit the review to evaluation of the replacement site as in parts 8420.0540 to 8420.0630 and make a decision accordingly.

As part of the approval of the replacement plan, the local government unit with jurisdiction for the replacement site assumes responsibility for ensuring compliance with monitoring provisions according to parts 8420.0600 to 8420.0630. The local government unit with jurisdiction for the replacement site may enter into joint powers agreements with a local government unit with jurisdiction for the impact site, assess fees, or develop other procedures considered necessary to facilitate the process.

8420.0235 WETLAND BANKING PROCEDURES.

For wetland banking procedures, refer to parts 8420.0700 to 8420.0760. Appeals of the local government unit banking decisions are taken according to part 8420.0250.

8420.0240 TECHNICAL PANEL PROCEDURES.

For each local government unit, there is a technical panel of three persons: a technical professional employee of the board, a technical professional employee of the soil and water conservation district of the county in which the ~~local government unit is located~~ activity is occurring, or their designee, and an engineer for the local government unit. ~~The soil and water conservation district~~ One selected by the local government unit member shall act as the contact person and coordinator for the panel. Two members of the panel must be knowledgeable and trained in applying methodologies of the "Federal Manual for

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Identifying and Delineating Jurisdictional Wetlands" (January 1989), and evaluation of public values. The technical panel may invite additional wetland experts to help the panel in its work.

~~The panel shall make determinations of public values, location, size, and type for all wetlands for which an application for replacement plan approval has been submitted to the local government unit.~~ The panel ~~shall~~ may review replacement plans and recommend to the local government unit either approval, approval with changes or conditions, or rejection. The panel shall make no determinations or recommendations without at least one member having made an on-site inspection. Panel determinations and recommendations must be endorsed by at least two of the three members.

If the local government unit has a comprehensive wetland management plan that delineates location, size, and type for all wetlands, approved by the technical panel, and subsequently incorporated into local ordinance, then the local government unit can make determinations in place of the technical panel.

The panel, or one of its members when so authorized by all of the members, may assist the local government unit in making wetland size and type determinations when asked to do so by the local government unit as part of making an exemption or no-loss determination.

~~The panel shall monitor replacement wetlands as provided in parts 8420.0600 to 8420.0630, and shall review and monitor banked wetlands as provided for in parts 8420.0700 to 8420.0760.~~

8420.0245 OTHER LOCAL GOVERNMENT UNIT WETLAND RULES AND ORDINANCES.

This chapter and the act provide minimum standards. Local government units may require more procedures and more wetland protection, but not less.

8420.0250 APPEAL OF LOCAL GOVERNMENT UNIT DECISIONS.

The decision of a local government unit to ~~approve or deny a certificate of exemption or no loss, or to~~ approve, approve with conditions or reject a replacement plan, becomes final if not

The panel shall make scientific determinations on questions of public values, location, size, and type for replacement plans if requested to do so by the local government unit, the landowner, or a member of the technical evaluation panel.

If requested by the local government unit, the landowner, or a member of the technical evaluation panel, the panel shall answer scientific questions or participate in the monitoring of replacement wetlands according to parts 8420.0600 - 8420.0630, and shall similarly participate in the monitoring of banked wetlands according to parts 8420.0700 - 8420.0760.

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appealed to the board within 30 days after the date on which the decision is mailed to those required to receive notice of the decision.

~~Appeals of decisions arising from provisions of a local ordinance that are more restrictive than these standards, shall be taken to the district court in the same manner as an appeal of a zoning decision.~~

~~Before an exemption or no-loss determination may be appealed to the board, it must first be appealed to the local government unit's board of adjustment and appeals, if there is one, or otherwise to the governing body. If the governing body made the initial decision, the landowner must ask the governing body to reconsider before appealing to the board.~~

see Page 28a

Appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

~~Replacement plan decisions~~

Appeal is effective upon mailing of the notice of appeal to the board with an affidavit that a copy of the notice of appeal has been mailed to the local government unit. The local government unit shall then mail a copy of the notice of the appeal to all those to whom it was required by part 8420.0230 to mail a copy of the notice of decision.

The appeal will be decided by the board within 60 days after receiving the notice of appeal and affidavit. Parties to the appeal are the appellant, the local government unit, and all those required to receive notice of the local government unit decision.

Upon appeal, the local government unit shall forward to the board the record on which it based its decision. The board will make its decision on the appeal after hearing. Thirty days' notice of the hearing shall be given by the board to the parties. The parties may present written and oral argument. When the local government unit has made formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings and the proceedings were fairly conducted, the board will base its review on the record.

Note: New language is needed concerning appeals of exemption and no-loss which are similar but not exactly the same as WCA wetland replacement plans eg. petition before appeal

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This replaces lines 8-13, Page 28

An exemption or no-loss determination may be appealed to the board by the landowner after first exhausting all local administration appeal options. Those required to receive notice of replacement plan decisions as provided for in part 8420.0230 may petition the board to hear an appeal from an exemption or no-loss determination; the board may grant or deny the petition.

The Board shall grant the petition unless it finds that the appeal is meritless, trivial, or brought solely for the purposes of delay. In determining whether to grant the appeal, the Board shall also give consideration to the size of the wetland, other factors in controversy, any pattern of similar acts by the LGU, the landowner or the petitioner, and the consequences of the delay.

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Otherwise it may take additional evidence, or remand the matter.

The board will affirm the local government unit's decision if the local government unit's findings of fact are not clearly erroneous; if the local government unit correctly applied the 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.

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 July 1, 1993, 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 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. ~~After~~ If it is determined at the hearing, ~~the~~ that the board shall write the local government unit asking for 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.

corrective action is necessary

Page 29, at the end of line 21, add 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.

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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 for compensation the applicant will convey to the state a perpetual conservation easement in the form required by Minnesota Statutes, section 103F.516. The applicant must provide an abstract of title demonstrating the ability to convey the easement free of any prior title, lien, or encumbrance. Failure to provide marketable title negates the state's obligation to compensate.

The applicant must submit official documentation from the United States Army Corps of Engineers, the Minnesota Pollution Control Agency, the watershed district or water management organization if any, the county, and the town or city, as applicable, that the proposed drain or fill activity and the proposed subsequent use of the wetland are lawful under their respective legal requirements.

The landowner must demonstrate that the proposed drain or fill is a feasible and prudent project and that the replacement plan as proposed is a reasonable good faith effort to fulfill the replacement requirements of parts 8420.0500 to 8420.0630 and the act.

If the plan was approved, but with conditions or modifications, the applicant must show that the conditions or modifications make the replacement unworkable or not feasible. A plan is unworkable or not feasible if the replacement must be on land that the applicant does not own, the applicant has made good faith efforts to acquire a replacement site and not succeeded, and there is not a qualifying replacement available in a wetland bank. A plan is also unworkable or not feasible if

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it is not possible to carry out for engineering reasons. The applicant must show that not going ahead with the proposed project will cause the applicant damages and that disallowing the proposed use will enhance the public values of the wetland.

The applicant must submit the requirements in this part in writing, by certified mail, to the board. If the applicant wants to make oral argument to the board, it must be indicated as part of the application. The board may require that the applicant appear before the board.

If the board finds that the applicant has submitted a complete application and proved the requirements in this part, the board shall compensate the applicant as required by law within 90 days after the board received a completed application, provided that within the same time period the applicant must convey to the board a conservation easement in the form required by Minnesota Statutes, section 103F.516. If the board does not provide the required compensation in exchange for the conservation easement, the applicant may drain or fill the wetland in the manner proposed, without replacement.

8420.0280 APPEAL FROM BOARD DECISIONS.

An appeal of a board decision is taken to the state court of appeals and must be considered an appeal from a contested case decision for purposes of judicial review under Minnesota Statutes, sections 14.63 to 14.69.

8420.0290 ENFORCEMENT PROCEDURES.

Subpart 1. Enforcing authorities. The commissioner, conservation officers, and other peace officers ~~issuing authorities~~ may issue cease and desist orders and restoration and replacement orders.

Subp. 2. Cease and desist orders. Site-specific cease and desist orders may be issued when the enforcement authority has probable cause that a drain or fill activity is being or has been conducted in a wetland and does not qualify for an exemption or a no-loss determination under parts 8420.0210 and 8420.0220 and is being or has been conducted without prior

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approval of a replacement plan by a local government unit under part 8420.0230.

A cease and desist order must not be issued if the landowner has a valid certificate of exemption or no-loss from the local government unit, or has evidence to support an exemption. Otherwise:

A. the enforcement authority may issue a cease and desist order upon discovery of the drain or fill activity;

B. the order may be withheld to give the landowner time to produce the evidence required by part 8420.0120 to the enforcement authority of qualification for an exemption or no-loss determination; or

C. a cease and desist order may be issued with an effective date three weeks from the date of issuance. The enforcement authority shall exercise this option when the enforcement authority cannot readily make a determination on the facts and circumstances to deny a landowner's claim of exemption or no-loss, and continued drain or fill activity would not cause irreparable harm to the wetland.

The enforcement authority shall advise the landowner that the landowner's application, if any, for an exemption or no-loss determination, should be made immediately to the local government unit and that whatever drain and fill work the landowner has done may require restoration according to a restoration plan designed by the soil and water conservation district, if the application for exemption or no-loss determination is denied.

The enforcement authority issuing a cease and desist order shall promptly submit copies to the soil and water conservation district, local government unit, and department.

If an application for an exemption or no-loss determination is triggered by a cease and desist order, the local government unit or the technical panel shall make a decision within three weeks from the date of the application ~~or sooner if the landowner requests.~~ The local government unit or technical panel shall review evidence of exemption or no-loss produced by

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the landowner, inspect the site if necessary, and determine:

(1) if the area in question is a wetland; and

(2) if the activity qualifies for an exemption or no-loss determination under parts 8420.0210 and 8420.0220.

In 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.

If the decision is that the activity is exempt or results in a no-loss determination, the decision maker shall issue a certificate of exemption or no-loss, request that the enforcement authority rescind the cease and desist order, and notify the soil and water conservation district, the department, and the landowner.

If the application is denied, the decision-maker shall immediately notify the soil and water conservation district, the department, the enforcement authority, and the landowner.

Subp. 3. **Restoration and replacement orders.** The enforcement authority shall issue a restoration order or replacement order when the drain or fill has already been completed when discovered, or after a cease and desist order has been issued and the landowner does not seek an exemption or no-loss determination within three weeks, or the local government unit denies the application.

Promptly upon being informed by the enforcement authority of the need, the soil and water conservation district staff person shall inspect the site and prepare a plan in consultation with the local government unit for restoring the site to its prealtered condition, unless the soil and water conservation district person concludes that restoration is impossible. The soil and water conservation district shall incorporate its plan into a restoration or replacement order and send it to the enforcement authority for service in person or by certified mail to the landowner.

The restoration order must specify a date by which the landowner must either:

A. restore the wetland according to the soil and

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water conservation district plan and obtain a certificate of satisfactory restoration from the soil and water conservation district; or

B. submit a replacement plan to the local government unit.

The order shall state that it will be canceled when the landowner obtains a certificate of exemption or no-loss from the local government unit, or a certificate that restoration has been completed according to an approved restoration plan. Otherwise, the landowner must restore the wetland in the manner required by the restoration order.

If the soil and water conservation district determines that restoration will not restore all the loss caused by the drain or fill activity, the enforcement authority may order a combination of restoration and replacement, or may order replacement rather than restoration, as determined by the soil and water conservation district. The order must direct the landowner to obtain replacement plan approval from the local government unit. The order must specify that if replacement plan approval is not obtained, the landowner must restore the wetland in a manner determined by the soil and water conservation district.

Each cease and desist, restoration, and replacement order shall tell the landowner that violation of the order is a misdemeanor.

If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the soil and water conservation district shall determine which is appropriate, and if it is restoration, the method of restoration. If the court orders replacement, the landowner must follow the replacement plan process in parts 8420.0500 to 8420.0630 unless the court orders otherwise.

MINING

8420.0300 MINING.

Wetlands may not be drained or filled as part of a project for which a permit to mine is required by Minnesota Statutes,

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section 93.481, except as approved by the commissioner. Draining or filling of wetlands created by pits, stockpiles, or tailing basins by actions whose purpose was not to create the wetland are exempt under part 8420.0120, subpart 10.

A. For new mining operations that are permitted and initiated after July 1, 1993:

(1) mining shall not be conducted without first receiving a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals; and

(2) the mining and reclamation operating plans or annual reports submitted by the applicant as required in the permit to mine shall include an approved wetland replacement plan that meets the same principles and standards for replacing wetlands under parts 8420.0500 to 8420.0630.

B. For mining operations in existence before July 1, 1993, and operated on or after that date under a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals:

(1) no draining or filling activities shall be conducted within wetlands for which these activities were approved but not initiated before July 1, 1993, until the operating plan or annual report as required in the permit to mine includes an approved wetland replacement plan for the undisturbed wetlands. The wetland replacement plan shall meet the same principles and standards for replacing wetlands under parts 8420.0500 to 8420.0630;

(2) for filling activities that were approved and initiated before July 1, 1993, the placement of fill atop a stockpile, roadway, or other mining-related facility that occupies a wetland filled before July 1, 1993, shall be allowed to continue within the areal extent, as it existed on July 1, 1993, of the stockpile, roadway, or other mining-related facility without the requirement of a replacement plan or amendment of the permit to mine. An expansion of the areal extent of the fill in the wetland requires an approved

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replacement plan in the operating plan or annual report as required in the permit to mine, according to subitem (1);

(3) for draining activities that were approved and initiated before July 1, 1993, the draining of a wetland to facilitate mining, using ditches and other drainage facilities that existed on July 1, 1993, shall be allowed to continue without the requirement of a replacement plan or amendment of the permit to mine. Maintenance of the ditches and structures shall be allowed without the requirement of a replacement plan or amendment of the permit to mine, provided that as a result of the maintenance, wetlands are not drained beyond the extent that existed as of July 1, 1993. Otherwise, the permit to mine must be amended to provide for replacement according to subitem (1).

C. Applicable procedures are those required for permits to mine.

D. This part shall not apply to peat mining as defined under Minnesota Statutes, section 93.461, that is subject to the mine permit and reclamation requirements under Minnesota Statutes, sections 93.44 to 93.51 and the rules of the commissioner adopted under those sections.

E. Mining that is not subject to the permit and reclamation requirements under Minnesota Statutes, sections 93.44 to 93.51, must replace drained and filled wetlands according to parts 8420.0500 to 8420.0630.

HIGH PRIORITY REGIONS AND AREAS

8420.0350 HIGH PRIORITY REGIONS AND AREAS.

Subpart 1. High priority regions. Parts of the state that are high priority regions for preservation, enhancement, restoration, and establishment of wetlands include all of the counties that have lost 50 percent or more of their presettlement wetland base, which are those listed in part 8420.0540, subpart 5, item B.

In all other counties of the state, high priority regions are high priority areas approved as such by the board according to subpart 2.

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Subp. 2. High priority areas.

A. Water management plans prepared by water management organizations in the metropolitan area under Minnesota Statutes, section 103B.231, by counties outside the metropolitan area under Minnesota Statutes, section 103B.311, and by watershed districts outside the metropolitan area under Minnesota Statutes, sections 103D.401 and 103D.405, must identify those areas that qualify as high priority areas for wetland preservation, enhancement, restoration, and establishment. These priority areas shall be included in the next scheduled water management plan update.

B. Plans should give strong consideration to identifying as high priority areas minor watersheds having less than 50 percent of their original wetland acreages, and intact wetlands, diminished wetlands, and the areas once occupied by wetlands that have been diminished or eliminated and could feasibly be restored taking into account the present hydrology and use of the area. Plans should give strong consideration to identifying as high priority areas all type 1 or 2 wetlands, and other wetlands at risk of being lost by permanent conversion to other uses. When individual wetlands are identified as high priority for preservation and restoration, the high priority area shall include the wetland and an adjacent buffer strip not less than 16.5 feet wide around the perimeter of the wetland and may include up to four acres of upland for each wetland acre.

C. In all counties, plans may identify additional high priority areas where preservation, enhancement, restoration, and establishment of wetlands would have high public value by providing benefits for water quality, flood water retention, public recreation, commercial use, and other public uses. High priority areas should be delineated by minor or major watershed. For the purposes of this part, "watershed" means major or minor watershed or subwatershed. To identify high priority areas, the local government unit shall consider at least the landscape characteristics in subitems (1) to (11).

(1) Land use and cover types. Wetlands located

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in watersheds having a high proportion of cultivated land, developed areas, or other intensive land use are likely to have high value for water quality, flood water retention, and public recreation. Watersheds with high proportions of intensive land use should be considered as priority preservation and restoration areas.

(2) Wetland and watershed ratio. Wetlands located in watersheds having a low proportion of wetlands relative to the size of the watershed are likely to have high value for water quality, flood water retention, and public recreation. Watersheds with a low wetland and watershed ratio should be considered as priority preservation and restoration areas.

(3) Soil erosion rates. Wetlands located in watersheds where erosion rates are high are likely to have high value for water quality. Watersheds with high erosion rates should be considered as priority preservation and restoration areas.

(4) Watershed gradient. Wetlands in watersheds where the difference between the highest and lowest points of the watershed is great are likely to have high value for flood water retention and water quality. Watersheds with a high gradient should be considered as priority preservation and restoration areas.

(5) Surface water retention. Wetlands in watersheds where direct runoff is high are likely to have high value for flood water retention and water quality. Watersheds with high levels of direct runoff should be considered as high priority preservation and restoration areas.

(6) Soil fertility. Wetlands in watersheds where soil fertility is high are likely to have high value for wildlife habitat and commercial uses. Watersheds with high soil fertility should be considered as high priority preservation and restoration areas.

(7) Geology. Wetlands in watersheds with high subsurface permeability are likely to have high value for

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groundwater recharge and water quality. Watersheds with high subsurface permeability should be considered as high priority preservation and restoration areas.

(8) Wetland complexes. Wetlands in watersheds where a diversity of wetland types and sizes are or were historically present are likely to have high value for public recreation. Watersheds with an existing or historical high diversity of wetland types should be considered as priority preservation and restoration areas.

(9) Proximity to population centers. Wetlands in watersheds that are close to population centers are likely to have high value for water quality, flood water retention, public recreation, and commercial uses. Watersheds near population centers should be considered as high priority preservation and restoration areas.

(10) Public ownership. Wetlands in watersheds with a high proportion of land in public ownership are likely to have high value for public recreation. These watersheds should be considered as high priority preservation and restoration areas.

(11) Significant wildlife use. Wetlands in watersheds with current or historical records of use by significant numbers or species of wildlife or fish are likely to have high value for public recreation and commercial uses. Watersheds with records of significant fish or wildlife use should be considered as high priority preservation and restoration areas.

D. The board will review the inclusion of high priority areas in plans as part of the standard process for plan review established in statute. High priority areas approved by the board that are not in a high priority region listed in item C become high priority regions with board approval.

WETLAND PRESERVATION AREAS

8420.0400 WETLAND PRESERVATION AREAS.

Subpart 1. Purpose. Wetlands located in areas that are

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both high priority regions and high priority areas as identified in part 8420.0350 are eligible for enrollment as wetland preservation areas. A wetland so enrolled is exempt from property tax.

Subp. 2. Landowner application for wetland preservation area. A landowner may apply to the county for designation of a wetland as a wetland preservation area on forms provided by the board. The applicant must include a strip of upland 16.5 feet wide around the perimeter of the wetland. The applicant may include up to four acres of upland for each acre of wetland.

The application must be accompanied by a restrictive covenant on a form provided by the board. The covenant will contain the same limitations on use that are provided in Minnesota Statutes, section 103F.515, subdivision 4, including a covenant that the enrolled upland area will be vegetated by the landowner to permanent vegetation other than noxious weeds. The covenant must be signed, acknowledged, and ready for recording.

Subp. 3. County review of application. The county shall accept the application if the wetland is in a high priority region and high priority area, if it includes the 16.5 foot strip, and is accompanied by the proper covenant.

The county may limit or reject additional upland proposed to be included according to standards the county establishes.

The county may reject the application if the application does not qualify, or send it back for modification and resubmittal if that is appropriate. If the application qualifies, the county shall approve it and mark the date of approval on the application.

Within five days of approval of the application, the county shall forward it to the county recorder for recording of the restrictive covenant or memorialization of the application on the certificate of title. The county shall also send a copy of the approved application to the county assessor for entry in the assessor's records as a wetland preservation area. The county shall also send copies of the approved application to the soil and water conservation district, the regional development

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commission, the local government unit, and the board.

Subp. 4. Applicable statutes. In addition to this chapter, wetland preservation areas are subject to Minnesota Statutes, sections 103F.6112 to 103F.6116, and the property tax provisions of Minnesota Statutes, section 272.02, subdivision 1, clause (10).

STANDARDS AND PROCEDURES FOR EVALUATING WETLAND REPLACEMENT PLANS

8420.0500 PURPOSE.

Parts 8420.0500 to 8420.0630 specify the procedures and criteria for avoiding and minimizing wetland impacts and for ensuring adequate replacement of lost public values for unavoidable wetland impacts.

8420.0505 INTERIM REPLACEMENT PLANS.

Replacement plans approved under the interim guidelines in Minnesota Statutes, section 103G.2369, must be completed in entirety by June 30, 1995. If the replacement plan is not completed by June 30, 1995, replacement of the impacted wetland becomes subject to the process and provisions in parts 8420.0500 to 8420.0630. This does not apply to phased projects approved during the interim period. Phased projects may be completed under the conditions and guidelines for which they were approved.

8420.0510 PROCEDURES.

Subpart 1. Generally. No person shall drain or fill a wetland, wholly or partially, without first having a wetland value replacement plan approved by the governing body of the local government unit, or the lead local government unit if so designated by the board, consistent with parts 8420.0120 to 8420.0290, and provided that the activity is not prohibited under the special considerations provisions in part 8420.0540, subpart 9.

Subp. 2. Preapplication conference and site visit. Before preparation of a wetland value replacement plan, it is recommended that the landowner meet with the local government

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unit for a preapplication conference and site visit. The local government unit is encouraged to inform the landowner of all sequencing requirements and the criteria used to evaluate replacement plans. A landowner may submit the information required in part 8420.0520 and request a determination of compliance with the sequencing requirements from the local government unit before preparing a replacement plan.

Subp. 3. Evaluation. ~~Questions concerning the public value, location, size, or type of wetland shall be submitted to the technical evaluation panel.~~ The local government unit may use a technical panel to predetermine public value, location, size, or type of wetlands under its jurisdiction and use this determination in administering the act. Wetland boundaries must be determined using the methodologies in the federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989). Wetland type must be identified according to Cowardin, et al., 1979, Classification of Wetlands and Deepwater Habitats of the United States and according to United States Fish and Wildlife Service Circular No. 39 (1971 edition) "Wetlands of the United States." The technical panel shall provide its determinations to the local government unit for consideration.

8420.0520 SEQUENCING.

Subpart 1. Requirement. Except for wetlands located in cultivated fields that are subject to subpart 8, and calcareous fens that are subject to subpart 9, the local government unit may not consider or approve a wetland replacement plan unless the local government unit finds that the applicant has demonstrated that the activity impacting a wetland has complied with all of the following principles in descending order or priority:

A. avoids direct or indirect impacts to the wetland that may destroy or diminish the wetland under the criteria in subpart 3;

B. minimizes the impact to the wetland by limiting the degree or magnitude of the wetland activity and its

As provided for in part 8420.0240, scientific questions concerning the public value, location, size, and type of wetland shall be submitted to the technical evaluation panel.

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implementation under the criteria in subpart 4;

C. rectifies the impact by repairing, rehabilitating, or restoring the affected wetland under the criteria in subpart 5;

D. reduces or eliminates the impact to the wetland over time by preservation and maintenance operations under the criteria in subpart 6; and

E. ~~compensates for~~ unavoidable impacts to the wetland by ~~replacing or providing~~ substitute wetland areas having equal or greater public value as provided for in parts 8420.0530 to 8420.0630.

Subp. 2. Application options. An applicant may either submit the information required for sequencing analysis as part of the application for replacement plan approval or apply for a sequencing determination before preparing a replacement plan. ~~Each half of a split application will receive the same notice and comment procedures as a unitary application.~~

Subp. 3. Determination of impact avoidance.

A. Avoidance must be required when indicated by part 8420.0540, subpart 9.

B. Wetland dependence determination:

(1) Based on information provided by the applicant, the local government unit shall determine if the proposed project is wetland dependent. A project is wetland dependent if wetland features, functions, or values are essential to fulfill the basic purpose of the project. A wetland present at the site of a proposed project does not make that project wetland dependent.

(2) A project that has been determined by the local government unit to be wetland dependent is exempt from the analysis of avoidance alternatives in item C.

C. Alternatives analysis:

(1) The applicant shall provide the local government unit with documentation describing at least two alternatives in addition to the proposed project, one of which may be the no-build alternative, that would avoid impacts to

For projects impacting wetland areas less than 0.1 acres the local government unit may provide an on-site sequencing determination without written documentation from the applicant; except for projects which are located in wetlands adjacent to and within 1000 feet of Outstanding Resource Value Waters as defined in Minnesota rules, chapter 7050; trout streams as designated in Minnesota DNR's Commissioner's Order 2294; and trout lakes as designated in Minnesota DNR's Commissioner's Order 2230.

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wetlands. The alternatives may include consideration of alternate sites or alternative project configurations on the proposed site. The alternatives must be judged by the local government unit as good faith efforts, or the local government unit may require the applicant to redraft them for reconsideration.

(2) The local government unit shall determine whether any feasible and prudent alternatives are available that would avoid impacts to wetlands. An alternative shall be considered feasible and prudent if it is capable of being done from an engineering point of view, is in accordance with accepted engineering standards and practices, is consistent with reasonable requirements of the public health, safety, and welfare, is an environmentally preferable alternative based on a review of social, economic, and environmental impacts, and would create no truly unusual problems. The local government unit shall consider the following in evaluating alternatives as applicable:

(a) whether the basic project purpose can be reasonably accomplished using one or more other sites in the same general area that would avoid wetland impacts. An only alternate site may not be excluded from consideration because it includes or requires an area not owned by the applicant that could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project;

(b) the general suitability of alternate sites considered by the applicant;

(c) whether reasonable modification of the size, scope configuration, or density of the project would avoid impacts to wetlands;

(d) efforts by the applicant to accommodate or remove constraints on alternatives imposed by zoning standards or infrastructure, including requests for conditional use permits, variances, or planned unit developments; and

(e) the physical, economic, and demographic requirements of the project. Economic considerations alone do

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not make an alternative not feasible and prudent.

(3) If the local government unit determines that a feasible and prudent alternative exists that would avoid impacts to wetlands, it shall deny the replacement plan. If no feasible and prudent alternative is available that would avoid impacts to wetlands, the local government unit shall evaluate the replacement plan for compliance with subparts 4 to 6.

Subp. 4. **Determination of impact minimization.**

A. The applicant shall demonstrate to the local government unit's satisfaction that the activity will minimize impacts to wetlands. In reviewing the sufficiency of the applicant's efforts to minimize wetland impacts, the local government unit must consider:

(1) the spatial requirements of the project;

(2) the location of existing structural or natural features that may dictate the placement or configuration of the project;

(3) the purpose of the project and how the purpose relates to placement, configuration, or density;

(4) the sensitivity of the site design to the natural features of the site, including topography, hydrology, and existing vegetation;

(5) the value, function, and spatial distribution of the wetlands on the site;

(6) individual and cumulative impacts; and

(7) an applicant's efforts to:

(a) modify the size, scope, configuration, or density of the project;

(b) remove or accommodate site constraints including zoning, infrastructure, access, or natural features; and

(c) otherwise minimize impacts.

B. If the local government unit finds that an applicant has not complied with the requirements to minimize wetland impacts, the local government unit shall list, in writing, its objections to the project. If, within 30 days, the

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applicant does not withdraw the project proposal or indicate intent to submit an amended project proposal satisfying the local government unit's objections, the statement of objections shall constitute a denial.

Subp. 5. Determination of impact rectification. Temporary impacts to a wetland must be rectified by repairing, rehabilitating, or restoring the affected wetland.

A. Activities may qualify for a no-loss determination in part 8420.0220 by meeting all of the following conditions:

(1) the physical characteristics of the affected wetland, including ground elevations, contours, inlet dimensions, outlet dimensions, substrate, and hydrologic regime, are restored to preproject conditions sufficient to ensure that all preproject functions and values are restored;

(2) the activity is completed and the physical characteristics of the wetland are restored within six months of the start of the activity; and

(3) the party responsible for the activity provides a performance bond to the local government unit for an amount sufficient to cover the estimated cost to restore the wetland to preproject conditions. The local government unit shall return the performance bond to the responsible party upon a determination by the local government unit that the conditions in this item and item B have been met.

B. An applicant shall be granted a no-loss determination under the criteria in item A once in a ten-year period for a particular site within a wetland, except that repairs to the original project shall be allowed under the no-loss determination, if the local government unit determines the request to be necessary and reasonable.

C. Wetland impacts that do not qualify for a no-loss determination according to the criteria in item A are subject to replacement under the criteria in parts 8420.0530 to 8420.0630.

Subp. 6. Determination of reduction or elimination of impacts over time. After an activity is completed, further wetland impacts from the draining or filling must be reduced or

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eliminated by maintaining, operating, and managing the project in a manner that preserves and maintains remaining wetland functions and values. The local government unit must require applicants to implement best management practices to protect wetland functions and values.

Subp. 7. **Unavoidable impacts.** Unavoidable wetland impacts that remain after efforts to minimize, rectify, or reduce or eliminate them must be ~~compensated~~ replaced for according to parts 8420.0530 to 8420.0630.

Subp. 8. **Wetlands on cultivated fields.** If the wetland is located on a cultivated field, replacement must be accomplished through restoration without regard to the priority order in subpart 1, ~~provided that a deed restriction in favor of the local government unit is made part of the approved wetland replacement plan and is placed on the altered wetland prohibiting nonagricultural use for at least ten years.~~

Subp. 9. **Calcareous fens.** Calcareous fens, as identified by the commissioner, may not be filled, drained, or otherwise degraded, wholly or partially, by any ~~activity~~ action unless the commissioner, under an approved management plan, decides some alteration is necessary, as provided in part 8420.1010.

8420.0530 REPLACEMENT PLAN COMPONENTS.

On an application form provided by the local government unit, and with needed attachments supplied by the applicant, the following documentation must be provided:

A. organizational information, including the following:

(1) the post office address of the applicant;

(2) for corporations, the principal officers of the corporation, any parent companies, owners, partners, and joint venturers, and a designated contact person;

(3) managing agents, subsidiaries, or consultants that are or may be involved with the wetland draining or filling project;

B. either an affidavit confirming that the wetland

On page 47, line 13, put a period after "subpart 1", and replace the rest of the paragraph with A wetland drained or filled under this provision must not be converted to non-agricultural land for 10 years. The landowner must execute and record a notice of this requirement in the office of the county recorder for the county in which the property is located.

Page 47, line 25, before the semicolon add except that for replacement plans utilizing the wetland bank in part 8420.0700 through 8420.0760 items B and D do not apply; instead the applicant shall submit the credit transfer form prescribed in Part 8420.0740, subp. 2, item E.

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values will be replaced before or concurrent with the actual draining or filling of a wetland or an irrevocable bank letter of credit or other security acceptable to the local government unit to guarantee the successful completion of the wetland value replacement;

C. for the impacted wetland:

(1) a recent aerial photograph or accurate map of the impacted wetland area;

(2) the location of the wetland, including the county, ~~department~~ watershed name or number, ~~legal description~~, and ~~Universal Transverse Mercator~~ public land survey coordinate of approximate wetland center;

(3) the size of the wetland, in acres or square feet; ~~as measured from aerial photography or legal survey;~~

(4) the type of wetland using United States Fish and Wildlife Service Circular No. 39 (1971 edition) and National Wetland Inventory mapping conventions (Cowardin et al., 1979);

(5) a list of the dominant vegetation in the impacted wetland area, including ~~genera~~ common names of the vegetation exceeding 20 percent coverage and an estimate of coverage, for example, 50 percent willow ~~Salix,~~ 20 percent cattails ~~Typha~~, and 30 percent sedge ~~Carex~~;

(6) a soils map of the site showing soil type and substrate, where available;

(7) the size of the watershed that drains surface water into the wetland as determined from a United States Government Survey topographical map or other suitable topographical survey;

(8) the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetlands, and if the wetland is within the floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;

(9) a map or photograph or list of the land use of the immediate watershed within one mile of the impacted wetland. ~~Land use categories to be used include: residential, industrial; commercial; tillable cropland; permanent pasture;~~

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~~livestock facilities, for example, feedlots; idle grassland, timber, wetlands, and public natural resource lands.~~ The surrounding land use information shall also indicate the presence and location, if any, of wetland preservation regions and areas, wetland development avoidance regions and areas, and wetland deficient regions and areas as identified in the comprehensive water plan;

(10) the nature of the proposed project, its areal extent, and the impact on the wetland must be shown in sufficient detail to allow the local government unit to determine the amount and types of wetland to be impacted and to demonstrate compliance with the replacement sequencing criteria in part 8420.0520, if applicable;

(11) evidence of ownership or rights to the affected areas, including a legal description. When two or more landowners are involved, including both the impact site and the proposed replacement site, a contract or other evidence of agreement signed by all landowners and notarized must be included with the replacement plan. The contract or agreement must contain an acknowledgment of the covenant provisions in item D, subitem (7), by landowners on which a replacement wetland is proposed and the location and acreage of replacement wetlands. The contract becomes binding upon final approval of the replacement plan;

(12) a list of all other local, state, and federal permits and approvals required for the activity; and

(13) other information considered necessary by the local government unit for evaluation of the activity;

D. for the replacement wetland, item C, subitems (1) to (9) and (11) to (13), and:

(1) an explanation of the size and type of wetland that will result from successful completion of the replacement plan;

(2) scale drawings showing plan and profile views of the replacement wetland and fixed photo-reference points for monitoring purposes. Photo-reference points should include views of any control structures and enough additional points to

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adequately depict the entire project;

(3) how the replacement wetland shall be constructed, for example, excavation or restoration by blocking an existing tile; the type, size, and specifications of outlet structures; elevations, relative to Mean Sea Level or established bench mark, of key features, for example, sill, emergency overflow, and structure height; and best management practices that will be implemented to prevent erosion or site degradation;

(4) for created wetlands only, additional soils information~~, such as borings of the site,~~ sufficient to determine the capability of the site to produce and maintain wetland characteristics;

(5) a timetable that clearly states how and when implementation of the replacement plan shall proceed, and when construction of the replacement wetland shall be finalized;

~~(6) the approximate distance and direction of the replacement wetland location in relation to the impacted wetland;~~

(7) a notice in a form provided by the board attached to and recorded with the deed for lands containing a replacement wetland, specifying the following:

(a) the location of the replacement wetland;

(b) that the wetland is subject to the act;

(c) that the fee title owner is responsible for the costs of repairs or reconstruction, if necessary, or for replacement costs;

(d) that reasonable access to the replacement wetland shall be granted to the proper authorities for inspection, monitoring, and enforcement purposes;

(e) that costs of title review and document recording is the responsibility of the fee title owner; and

(f) that the local government unit or board can require necessary repairs or reconstruction work to return the wetland to the specifications of the approved replacement plan and require reimbursement of reasonable costs from the

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wetland owner, or can require replacement of the wetland according to the act;

(8) a statement that the replacement wetland was not previously restored or created under a prior approved replacement plan;

(9) a statement that the replacement wetland was not drained or filled under an exemption during the previous ten years;

(10) a statement that the replacement wetland was not restored with financial assistance from public conservation programs;

(11) a statement that the replacement wetland was not restored using private funds other than those of the landowner unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement;

(12) a plan for monitoring the success of the replacement plan in meeting the project goal in subitem (1), and as specified in parts 8420.0610 and 8420.0620; and

(13) other information considered necessary for evaluation of the project by the local government unit.

E. The applicant must provide information known to the applicant or readily available concerning the special considerations criteria in part 8420.0540, subpart 9.

8420.0540 REPLACEMENT PLAN EVALUATION CRITERIA.

Subpart 1. Sequencing. Before consideration or approval of a replacement plan, the local government unit must ensure that the applicant has exhausted all possibilities to avoid and minimize adverse wetland impacts according to sequencing in part 8420.0520.

The applicant must demonstrate to the local government unit that the replacement plan complies with this part and part 8420.0550.

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Subp. 2. Type of replacement. The order of preference for the method of replacement, from most preferred to least preferred, is project-specific restoration, project-specific creation, then wetland banking. Modification or conversion of nondegraded wetlands from one wetland type to another, for example by impoundment of additional water, does not constitute adequate replacement. Wetlands drained or filled under an exemption may not be restored for replacement credit for ten years after draining or filling.

~~A wetland area converted to another type by impoundment of additional water on nondegraded wetlands does not constitute replacement.~~

Subp. 3. Timing of replacement. Replacement of wetland values must be completed before or concurrent with the actual draining or filling of a wetland, unless an irrevocable bank letter of credit or other security acceptable to the responsible government unit is submitted to the responsible government unit to guarantee ~~must be given~~ ~~until~~ successful completion of the replacement. All wetlands to be restored or created for replacement must be designated for replacement before restoration or creation. Submission to the local government unit of the information required in part 8420.0530 and subsequent approval shall be considered evidence of designation for replacement, provided the information is submitted before the actual restoration or creation.

Subp. 4. Location of replacement wetlands. Replacement wetlands shall be located within the same watershed or county as the impacted wetlands, except that counties or watersheds in which 80 percent or more of the presettlement 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. Replacement wetlands should be located as close to the impacted wetland as possible, preferably in the same watershed.

Subp. 5. Statewide replacement for public transportation projects. Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved by the commissioner under an established wetland banking system, or

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under the rules in parts 8420.0700 to 8420.0760.

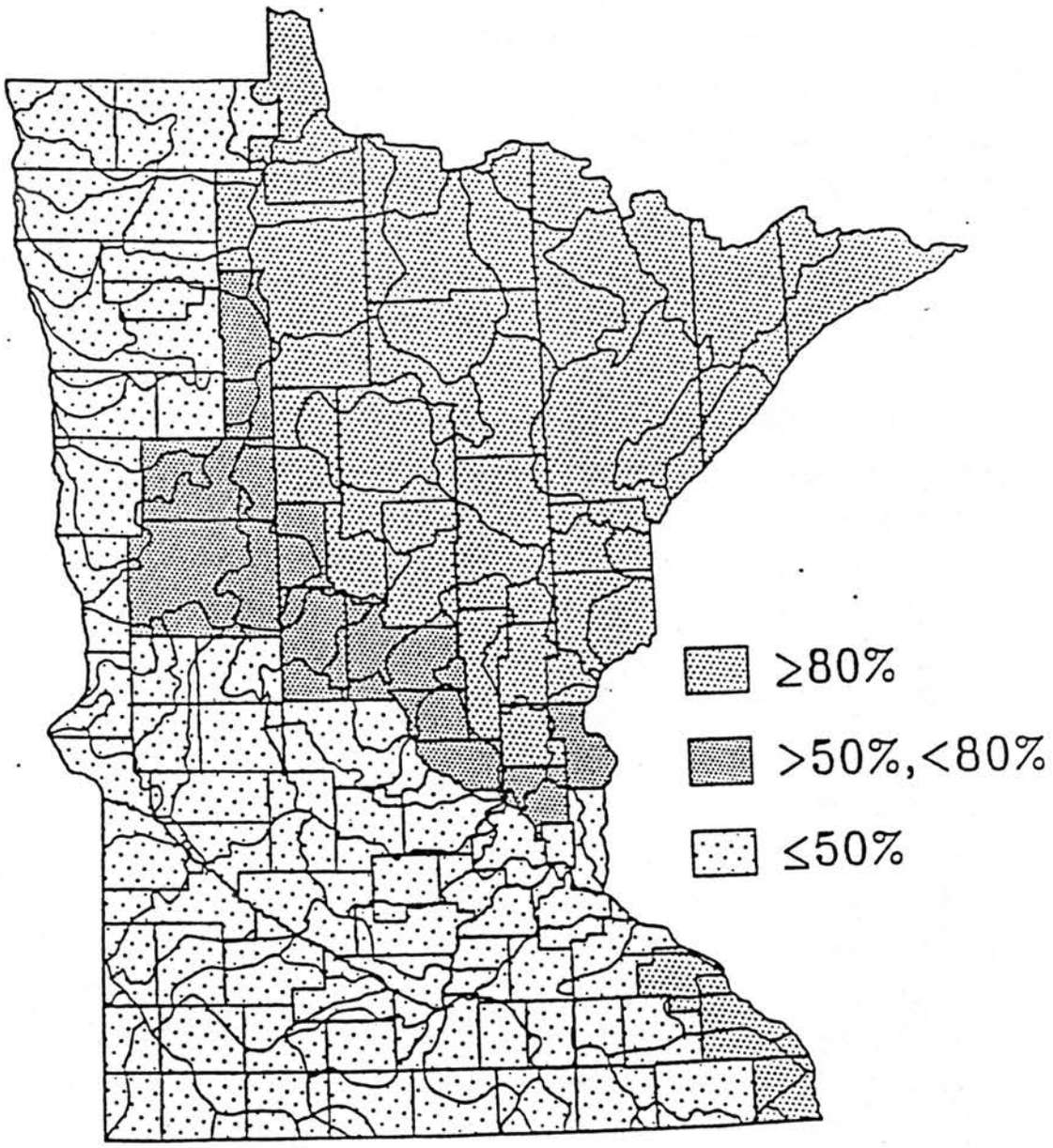
A. For purposes of this part, the following counties have 80 percent or more of their presettlement wetland acreage intact: Aitkin; Beltrami; Carlton; Cass; Cook; Crow Wing; Houston; Hubbard; Isanti; Itasca; Kanabec; Koochiching; Lake; Lake of the Woods; Mille Lacs; Pine; St. Louis; Wabasha; and Winona.

B. For purposes of this part, the following counties have 50 percent or less of their presettlement acreage intact: Big Stone; Blue Earth; Brown; Carver; Chippewa; Clay; Cottonwood; Dakota; Dodge; Douglas; Faribault; Fillmore; Freeborn; Goodhue; Grant; Hennepin; Jackson; Kandiyohi; Kittson; Lac Qui Parle; Le Sueur; Lincoln; Lyon; Mahnomen; Marshall; Martin; McLeod; Meeker; Mower; Murray; Nicollet; Nobles; Norman; Olmsted; Pennington; Pipestone; Polk; Pope; Ramsey; Red Lake; Redwood; Renville; Rice; Rock; Roseau; Scott; Sibley; Stearns; Steele; Stevens; Swift; Traverse; Waseca; Washington; Watonwan; Wilkin; Wright; and Yellow Medicine.

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REMAINING ACREAGE OF PRESETTLEMENT WETLANDS

Figure 1. Distribution of remaining acreage of presettlement wetlands by county with watersheds super-imposed. Adapted from: Anderson and Craig, 1984.



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Subp. 6. Size of replacement wetlands. Replacement wetlands must be of a size sufficient to ensure that they provide equal or greater public value than the wetland that was drained or filled. For a wetland located on nonagricultural land, the minimum size of the replacement wetland must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland. For a wetland located on agricultural land, the minimum size of the replacement wetland must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland. The actual replacement ratios required for a replacement wetland may be more than the minimum, subject to the evaluation of wetland functions and values in subpart 10.

Subp. 7. Carbon balance. When it is necessary to replace a drained or filled peatland, the replacement wetland must be revegetated with planted or naturally invading vegetation established within three growing seasons.

Subp. 8. Ecological consistency. Restoration and replacement of wetlands must be accomplished according to the ecology of the landscape area affected. A replacement plan that would result in wetlands or wetland characteristics that do not naturally occur in the landscape area in which the replacement will occur will not be approved.

Subp. 9. Special considerations. The factors in items A to I, when identified as being applicable to an impact site or a replacement site, must be considered by the local government unit in the review of replacement plans.

A. Federal or state-listed endangered species. A replacement plan for activities that involve sites where species listed in parts 6134.0200 to 6134.0400 are known to be present will not be approved if ~~the local government unit~~ it is determined that the proposed activities will constitute a taking of those listed species under Minnesota Statutes, section 84.0895. Limited information on the presence of listed species at a particular site is available from the department's natural heritage program. Activities that involve taking listed species are subject to Minnesota Statutes, section 84.0895.

Present and future owners may make no use of the wetland after it is altered, other than as agricultural land for a period of ten years unless future replacement to achieve a 2:1 ratio occurs. The landowner must execute and record ~~with the county recorder~~ a notice of this restriction. the LGU must

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B. Rare natural communities. A replacement plan for activities that involve the modification of a rare natural community as determined by the department's natural heritage program will not be approved if the local government unit determines that the proposed activities will permanently adversely affect the natural community.

C. Special fish and wildlife resources. A replacement plan for activities that would have a significant adverse impact that cannot be mitigated on a special or locally significant fish and wildlife resource will not be approved. These activities include, but are not limited to:

(1) fish passage and spawning areas;

(2) colonial waterbird nesting colonies;

(3) migratory waterfowl concentration areas;

(4) deer wintering areas; and/or

(5) wildlife travel corridors.

Activities involving streams must not block fish passage unless approved by the department.

D. Archaeological or historic sites. A replacement plan for activities that involve the modification of known archaeological or historical sites on or eligible for the National Register of Historic Places, as designated by the state historic preservation officer, will not be approved if the local government unit determines that the proposed activities will have a significant adverse impact on the archaeological or historical value of the site.

E. Groundwater sensitivity. A replacement plan for activities will not be approved if the local government unit determines the activities would have a significant adverse impact on groundwater quality. The publication "Criteria and Guidelines for Assessing Geologic Sensitivity of Ground Water Resources in Minnesota" (MDNR, 1991) may be used as a guide in determining potential impacts.

F. Sensitive surface waters. A replacement plan will not be approved if the local government unit determines the activities will have a significant adverse impact on the water

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quality of outstanding resource value waters listed in part 7050.0180 or on trout waters designated by the commissioner.

G. Education or research use. Wetlands known to be used for educational or research purposes must be maintained or adequately replaced.

H. Waste disposal sites. The local government unit must evaluate the type and amount of waste material found at the site. Activities involving known or potential hazardous wastes or contaminants must be conducted according to applicable federal and state standards.

I. Consistency with other plans. The local government unit must consider the extent to which proposed activities are consistent with other plans, such as watershed management plans, land use plans, zoning, and master plans.

Subp. 10. Evaluation of wetland functions and values.

A. Evaluation options. Replacement wetlands must replace the functions and values that are lost from a wetland that is drained or filled. A replacement wetland should replace the same combination of functions and values provided by the impacted wetland. The wetland type index system in items B to D uses relative values of wetland functions compared across wetland types to evaluate the adequacy of wetland replacement. The local government unit may allow the evaluation of wetlands by measuring and comparing public values specified in Minnesota Statutes, section 103B.3355, with the current version of the Minnesota wetland evaluation methodology in item E.

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~~B. Wetland types; abbreviated Cowardin classification. For purposes of this part, an abbreviated version of the wetland classification system developed by the United States Fish and Wildlife Service (Cowardin et al. 1979) and used to indicate wetland types on the National Wetland Inventory maps is described in subitems (1) to (18). The United States Fish and Wildlife Service Circular No. 39 (1971 edition) classification is indicated in parentheses.~~

~~(1) "PFA" includes all PFO wetlands in the A and~~ J water regimes (type 1).

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B. Wetland types: wetlands classification equivalency chart. For purposes of this part, the following table serves as a key for using Table 2 and Table 4 and as a wetland classification equivalency chart for the wetland classification developed by the United States Fish and Wildlife Service (Cowardin et al. 1979), and the approximate wetland type from the United States Fish and Wildlife Service Circular No. 39 (1971 edition).

Table 1. Wetland Classification Equivalency Chart.

Cowardin System Class or Subsystem and Water Regime	Table 2 and 4 Row and Column Headings	Approximate Circular 39 Type
PEMA	PEA	1
PEMB	PEB	2
PEMC	PEC	3
PEMD	PEC	3
PEME	PEC	3
PEMF	PEF	4
PEMG	PEF	4
PEMH	PEF	4
PEMJ	PEA	1
PEMK	PEF	4
PEMW	PEA	1
PEMY	PEB	2
PEMZ	PEF	4
PEMU	PEF	4
PSSA	PSA	6
PSSB (except PSS3B)	PSB	6
PSS3B	PSX	8
PSSC	PSC	6
PSSD	PSC	6
PSSE	PSC	6
PSSF	PSC	6
PSSG	PSC	6
PSSH	PSC	6

PSSJ	PSA	6
PSSK	PSC	6
PSSW	PSA	6
PSSY	PSB	6
PSSZ	PSC	6
PSSU	PSC	6
PFOA	PFA	1
PFOB	PFB	7
PFOC	PFC	7
PFOD	PFC	7
PFOE	PFC	7
PFOF	PFC	7
PFOG	PFC	7
PFOH	PFC	7
PFOJ	PFA	1
PFOK	PFC	7
PFOW	PFA	1
PFOY	PFB	7
PFOZ	PFC	7
PFOU	PFC	7
	PSX	8
PML (all)	PA	5
PAB (all)	PU	5
PUB (all)	PU	5
PRB (all)	PU	5
POW (all)	PU	5
PUS (all)	L1	5*
L1 (all)	L2	5
L2 (all)		
	R2	**
R2 (all)	R3	**
R3 (all)	R4	**
R4 (all)		

* Circular No. 39 does not classify deep water as a wetland type, but for purposes of this table, these areas can be approximated as a type 5.

** No equivalent. Circular No. 39 does not address riverine wetlands.

NOTE: In the case of wetlands identified using the Cowardin system with both numerator and denominator wetland types, the numerator type is considered the dominant wetland type, with the exception that the denominator wetland type is to be used when the numerator wetland type vegetation is dead.

~~(2) "PFB" includes all PFO wetlands in the B water regime (type 7).~~

~~(3) "PFC" includes all PFO wetlands in the C and wetter water regimes (type 7).~~

~~(4) "PSA" includes all PSS wetlands in the A and J water regimes (type 6).~~

~~(5) "PSB" includes all PSS wetlands in the B water regime, except type PSS3B wetlands (type 6).~~

~~(6) "PSC" includes all PSS wetlands in the C and wetter water regimes (type 6).~~

~~(7) "PSX" includes all PSS3b and PML wetlands (type 8).~~

~~(8) "PEA" includes all PEM wetlands in the A and J water regimes (type 1).~~

~~(9) "PEB" includes all PEM wetlands in the B water regime (type 2).~~

~~(10) "PEC" includes all PEM wetlands in the C water regime (type 3).~~

~~(11) "PEF" includes all PEM wetlands in the F and wetter water regimes (type 4).~~

~~(12) "PA" includes all PAB wetlands (type 5).~~

~~(13) "PU" includes all PUB wetlands (type 5).~~

~~(14) "L1" includes all L1 wetlands (Lacustrine Limnetic) (type 5).~~

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~~(15) "L2" includes all L2 wetlands (Lacustrine Littoral) (type 5).~~

~~(16) "R2" includes all R2 wetlands (Riverine - Lower Perennial) (no equivalent).~~

~~(17) "R3" includes all R3 wetlands (Riverine - Upper Perennial) (no equivalent).~~

~~(18) "R4" includes all R4 wetlands (Riverine - Intermittent) (no equivalent).~~

Table 2, in item D, subitem (1), provides technical specifications for constructing wetland types. In evaluating a wetland replacement plan, the local government unit must determine whether the wetland type stated as the replacement

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plan goal will result from the replacement plan specifications. If a wetland type other than the replacement plan goal is likely to result, the local government unit must evaluate the plan based on this determination.

The local government unit may consider allowing constructed storm water detention basins for replacement credit if the basin conforms to the following specifications:

(a) the basin design uses a two-cell system in which the upstream cell has a 24-hour retention time for a two-year storm event;

(b) the downstream cell is designed for a maximum 12-inch ~~bounce~~ rise in water level for a ten-year storm event;

(c) the standards in part 8420.0550 are followed; and

(d) the design goal is a ~~PEM~~ Palustrine Emergent wetland that meets all statutory definitions of a wetland, for example, soils, hydrology, and vegetation.

Only the downstream cell can be counted for wetland credit, and the replacement plan must include a plan and schedule for maintenance of the storm water basin system. Storm water basins which allowed for replacement are not eligible for the exemption in part 8420.0120, subpart 10, and are subject to parts 8420.0500 to 8420.0630.

Stormwater management basins constructed for the primary purpose of controlling or treating stormwater runoff from impervious surfaces or developed areas, not conforming to the specifications in units (a) to (d), are not considered wetlands. These are therefore exempt from replacement plan requirements when constructed in nonwetlands, and also cannot be considered for credit as part of a replacement plan, regardless of their location.

C. Replacement ratios for in-kind replacement. When wetland functions lost as a result of drainage or filling are replaced by restoring a wetland of the same type and in the same watershed and with the same inlet and outlet characteristics as described in item D, subitem (3), and related definitions, the

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replacement shall be considered to be in-kind and the minimal replacement ratio shall be used to determine the necessary size of the replacement wetland. For impacted wetlands on agricultural land, the minimal replacement ratio is 1:1, requiring an equal area be replaced for the area impacted. For impacted wetlands on nonagricultural land, the minimal replacement ratio is 2:1, requiring two times the impacted area be replaced.

D. Out-of-kind replacement ratios. If the wetland functions lost as a result of drainage or filling are to be replaced by creating a wetland or restoring a wetland of a different type than the impacted wetland, or if the replacement wetland is in a watershed other than the impacted wetland or had different inlet and outlet characteristics than the impacted wetland, the replacement shall be considered to be out-of-kind and the local government unit shall use the replacement ratios in this subpart to determine the amount of replacement wetland needed to replace the lost wetland values.

(1) Wetland type ratio. Differences in wetland functions and values among wetland types are to be evaluated and replaced using the wetland type ratio table in this part, to be applied as specified in subitem (5). The wetland type ratio table incorporates an evaluation of public values as specified in Minnesota Statutes, section 103B.3355, for the purposes of comparison among wetland types.

If a wetland to be drained or filled exhibits more than one wetland type as determined by the technical panel, and more than one wetland type is proposed to be drained or filled, the local government unit shall use the following procedure to determine needed replacement. The acreage of each wetland type to be converted to nonwetland shall be determined. The wetland type ratio table shall then be used to determine the amount of replacement wetland for each wetland type. The sum of the replacement for each wetland type shall be the resultant acreage requirement for the wetland type ratio.

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Table ~~X~~ 1. Wetland type ratio values for use in determining wetland replacement ratios for ~~the act.~~ out-of-kind replacement.

IMPACTED WETLAND ~~TYPE~~	REPLACEMENT WETLAND ~~TYPE~~																		
	PFA	PFB	PFC	PSA	PSB	PSC	PSX	PEA	PEB	PEC	PEF	PA	PU	L1	L2	R2	R3	R4	
PFA	1.0	1.5	1.5	2.0	1.5	2.0	3.0	3.0	1.5	1.0	1.0	1.5	1.5	1.5	1.5	2.0	1.5	2.0	
PFB	1.5	1.0	1.0	2.0	1.0	2.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PFC	1.5	1.5	1.0	2.0	1.0	2.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PSA	1.5	1.5	1.0	1.0	1.0	1.5	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PSB	1.5	1.5	1.0	1.0	1.0	1.5	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PSC	1.5	1.5	1.0	1.0	1.0	1.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	2.0	1.5	2.0	
PSX	1.0	1.5	1.0	2.0	1.0	2.0	1.0	1.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	2.0	1.5	2.0	
PEA	1.5	1.5	1.0	2.0	1.0	2.0	1.5	1.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PEB	1.5	1.5	1.0	2.0	1.0	2.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PEC	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PEF	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0	
PA	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0	
PU	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0	
L1	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0	
L2	1.0	1.5	1.5	2.0	1.5	2.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.0	2.0	1.0	2.0	
R2	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	1.0	1.0	1.5	
R3	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0	
R4	1.5	1.5	1.5	3.0	3.0	3.0	2.0	2.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	1.0	1.0	1.0	

~~*Abbreviated Cowardin et al. wetland classification~~ (see text of subpart 10~~)~~; item B. for wetland classification equivalency

NOTE: Wetland types L1, L2, and R2 are generally not subject to this chapter and cannot be used for wetland replacement ~~but are included for illustrative~~ purposes.

possible future coordination

(2) Hydrologic unit ratio.

(a) Except as noted in unit (b), when a replacement wetland is located in a different hydrologic unit than the impacted wetland, as indicated by the United States Geological Survey Hydrologic Unit Map for Minnesota (Figure 2), the following ratios must be applied, as specified in subitem (5):

Location of sites	Replacement ratio
Within same watershed	0.0
Different watershed	0.1
Different accounting unit	0.3
Different subregion	0.5
Different region	1.0

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(b) The hydrologic unit ratio does not apply when replacement for impacts within counties or watersheds having 80 percent or more of their presettlement wetland acreage intact is accomplished in counties or watersheds in which 50 percent or more of the presettlement acreage has been drained or filled.

(3) Inlet and outlet characteristics ratio. If the inlet and outlet characteristics of a replacement wetland differ from those of the impacted wetland, the following ratios shall be applied, as specified in subitem (5).

The inlet and outlet characteristics ratio does not apply when replacement for impacts within counties or watersheds having 80 percent or more of their presettlement wetland acreage intact is accomplished in counties or watersheds in which 50 percent or more of the presettlement acreage has been drained or filled.

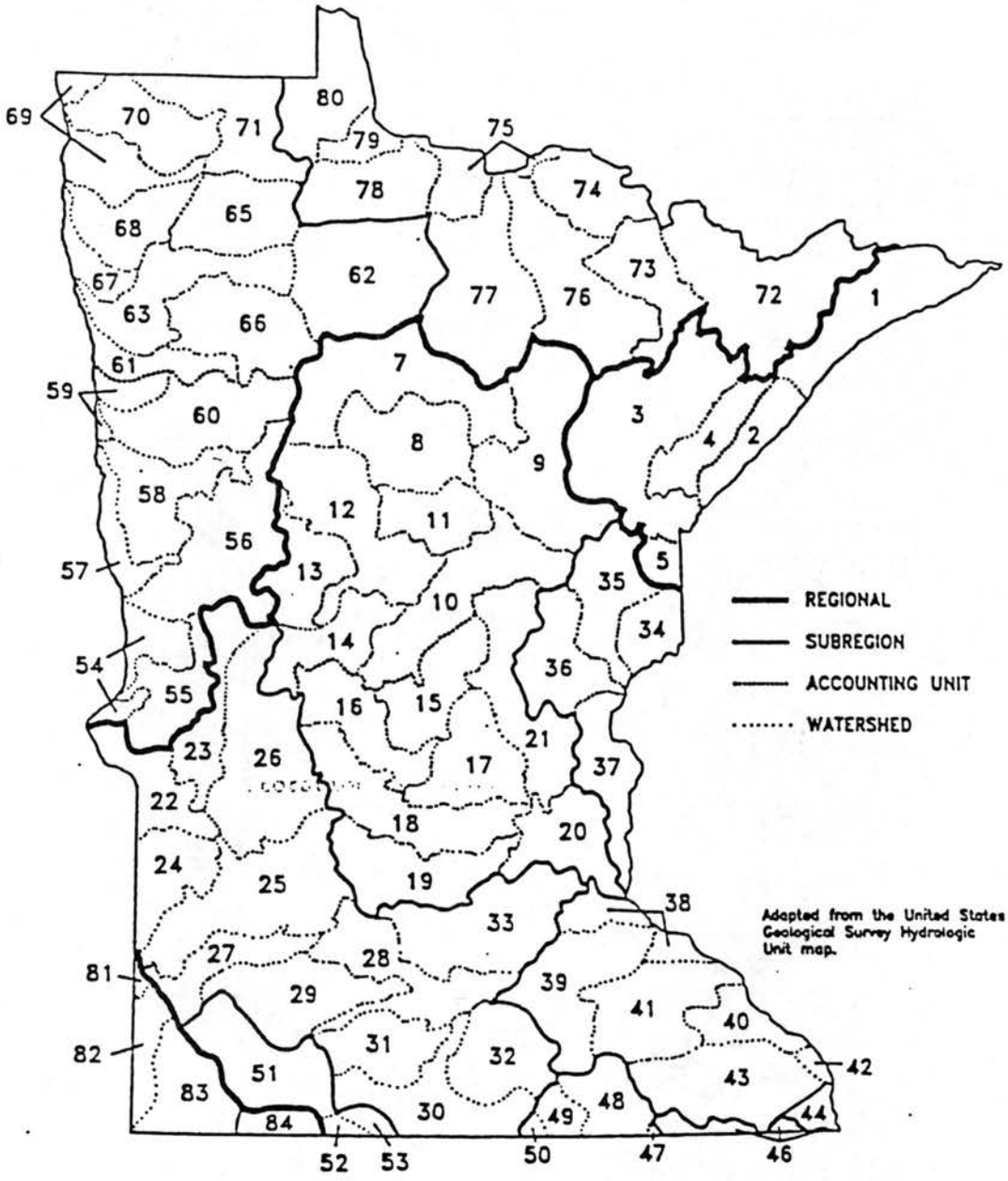
Table 7. Inlet and Outlet Characteristics.

Impact Wetland	Replacement Wetland Riverine	Flow-Through	Tributary	Floodplain	Isolated
Riverine	0.0	0.2	0.4	0.6	1.0
Flow-Through	0.2	0.0	0.4	0.6	0.8
Tributary	0.4	0.2	0.0	0.2	0.4
Floodplain	0.6	0.6	0.2	0.0	0.2
Isolated	1.0	0.8	0.4	0.2	0.0

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HYDROLOGIC UNITS

Figure 2.

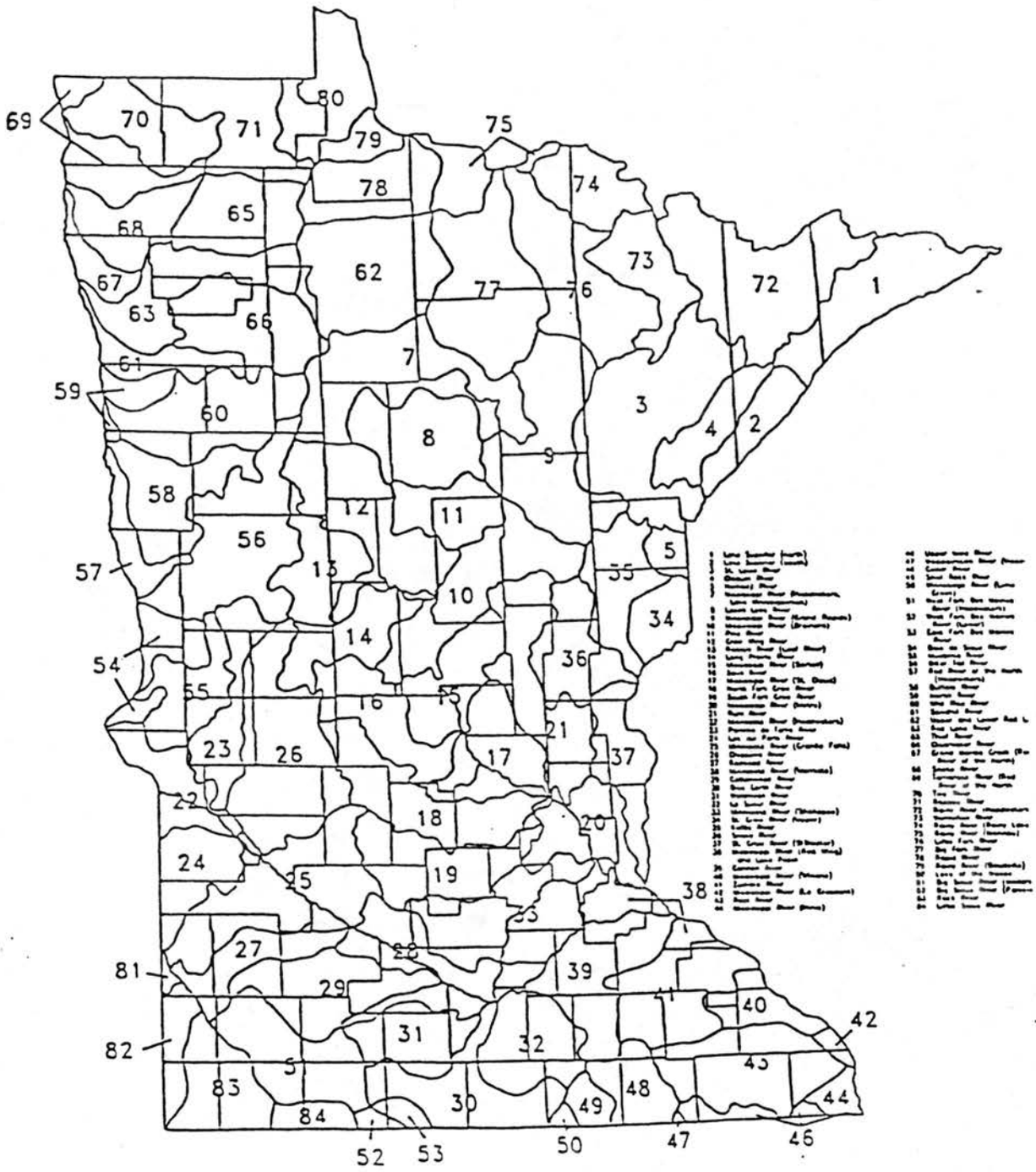


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STATE OF MINNESOTA WATERSHED BOUNDARIES - 1979

(81 MAJOR WATERSHED UNITS)

Figure 3.



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(4) Local public value ratio. A local government unit may by ordinance establish additional local public value ratios to address wetland conservation or preservation issues of local concern. These ratios must have a minimum value of zero and should be based on wetland management objectives of a local water management plan adopted under Minnesota Statutes, chapter 103B or 103D. The local preservation ratios must be applied as specified in subitem (5).

(5) Application of replacement ratios. The required replacement ratio for out-of-kind replacement shall be the sum of the wetland type ratio plus the hydrologic unit ratio plus the inlet and outlet characteristics ratio plus the local public value ratio. When this ratio is less than the minimum in-kind ratio of 1:1 for wetlands on agricultural land or 2:1 for wetlands on nonagricultural lands, the minimum in-kind ratio shall be the required replacement ratio.

E. Determining impacts of partial drainage. In cases where wetlands will be partially or incompletely drained, the amount of wetland to be replaced must be determined according to the following formula:

Where: $NI = OA - \frac{1}{RR}(RA)$

NI = Net impact (acres of original wetland type to be replaced)
OA = Original acreage of original wetland type
RR = Replacement ratio, determined from table 1, using the original wetland type as the impacted wetland type and the wetland type resulting from the partial drainage as the replacement wetland type
RA = Remaining acres of the original wetland

Calculation of partial drainage credit is explained by the following example:

A ten acre type 3 ~~(PEC)~~ (PEMC) wetland is partially drained resulting in a five acre type 1 ~~(PEA)~~ (PEMA) wetland. (NI = 10 - 1/3(5) = 8 1/3) Eight and one-third acres of type 3 wetland is ~~needed as replacement.~~ the net impact subject to replacement

F. Determining credit for restoration of partially drained wetlands. In cases where partially drained wetlands are restored to their former state, the acres credited for restoring

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a partially drained wetland is in two parts. The first is the new wetland credit (NWC) caused by the restoration (for example, if the prerestoration wetland is one acre and postrestoration will be three acres, the new wetland credit is two acres). The second credit is for the change in value of the prerestoration wetland acres. This is the public value credit (PVC) and must be computed as follows:

$$PVC = \left(\frac{RR - 1}{RR}\right)OA$$

Where: PVC = Public value credit
RR = Replacement ratio, determined from table 1, using the prerestoration wetland type as the replacement wetland type, and the postrestoration type as the impacted wetland type
OA = Wetland acreage before restoration

The credit for increase in new acres can be used in its entirety. The public value credit can only be used for that portion of wetland replacement requiring greater than a 1:1 ratio.

Calculation of partial restoration credits is explained by the following example:

A partially drained five acre type 1 ~~(PEA)~~ (PEMA) wetland is to be restored to a ten acre type 3 ~~(PEC)~~ (PEMC) wetland.

$$\left(\frac{3 - 1}{3}\right)5 = 3\ 1/3\ PVC$$

This restoration is proposed as replacement for a ten acre type 6 (PSSA) wetland. The wetland is located on nonagricultural land so the minimum replacement ratio is 2:1. This means 20 acres of replaced wetland is needed.

From the wetland type value in table 1, the replacement ratio is 1. The replacement is located in the same watershed, so the hydrologic unit ratio is 0.0. The inlet and outlet characteristics are isolated for the impacted wetland and tributary for the replacement wetland, so the inlet and outlet characteristics ratio is 0.4. The out-of-kind replacement ratio is the sum of 1.0 + 0.0 + 0.4 = 1.4. This is less than the minimum of 2:1, so additional acreage is needed.

To ensure no-net loss of wetlands, at least ten acres of new wetland credit must be used to offset the ten acres of

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wetland lost. The remaining ten acres of required replacement can use either new wetland credit or public value credit.

The proposed restoration is insufficient to replace the proposed impact, therefore an identical site is also selected for restoration. From site one, new wetland credit equals five; from site two, new wetland credit equals five; (5 + 5 = 10 acres of NWC). The no-net loss wetland acreage requirement is satisfied. Ten acres must still be found to satisfy the 2:1 requirement. Site one still has three and one-third acres of public value credit, as does site two; (3 1/3 + 3 1/3 = 6 2/3). An additional three and one-third acres of either new wetland credit or public value credit must be found to meet the additional acreage requirements.

G. Special cases or appeals. For projects of unusual complexity, or replacement plans that have been denied and are being appealed, and for which the local government unit believes an alternative evaluation process may produce a substantially different replacement requirement, the local government unit may evaluate the replacement plan using the current version of the Minnesota wetland evaluation methodology or another ~~method~~ methodology approved by the Board (in consultation with the Commissioner) that evaluates all wetland functions and values for both the impacted and replacement wetlands.

When using the Minnesota wetland evaluation methodology or another board (in consultation with the commissioner) approved methodology to evaluate replacement plans, the ratio of impact wetland to replacement wetland must not be less than the minimum acreage requirements as listed in Part 8420.0540, subp. 6. Further, the hydrologic unit ratio in item D, subitem (2), the inlet and outlet characteristics ratio in item D, subitem (3), and the local public value ratio, if any, in item D, subitem (4), must also be ~~added to~~ considered when using the Minnesota wetland evaluation methodology ~~ratio as in item D, subitem (5), of~~ another board (in consultation with commissioner) approved methodology.

H. Adequacy decision. A replacement plan that fails to meet the requirements in items A to G must be considered inadequate in replacing lost functions and values and shall not be approved by the local government unit. A replacement plan that has been considered by the local government unit and not

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approved may be revised and resubmitted for consideration by the local government unit. As required by part 8420.0250, the decision of a local government unit to approve, approve with conditions, or not approve a replacement plan becomes final if not appealed to the board within 30 days after the date on which the decision is mailed to those required to receive notice of the decision. Before construction of the replacement wetland may proceed, the notice specified in part 8420.0530, item D, subitem (7), must be recorded and proof of recording provided to the local government unit.

I. Replacement wetlands eligible for RIM. A landowner who drains or fills a wetland and replaces it by restoring an impacted wetland on the landowner's property under an approved replacement plan may apply to the board for enrollment of the replacement wetland into the Reinvest in Minnesota program no sooner than one year after completion of the replacement project.

8420.0550 WETLAND REPLACEMENT STANDARDS.

Subpart 1. General requirements. The standards and guidelines in this part shall be used in wetland creation and restoration efforts to ensure adequate replacement of wetland functions and values.

The table in subpart 3 provides general guidelines for the physical characteristics that each type of replacement wetland should have.

Subp. 2. Specific requirements. The standards in items A to D shall be followed in all wetland replacements unless the technical panel determines that a standard is clearly not appropriate.

A. Water control structures must be constructed using specifications provided in the RIM Reserve Wetland Restoration Manual or their equivalent. Control structures may be subject to the department dam safety regulations.

B. ~~A minimum one-rod strip, 16.5 feet wide, of vegetation sufficient to control erosion~~ Best management practices must be established and

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maintained adjacent to the entire perimeter of all replacement wetlands.

C. For replacement wetlands where the dominant vegetation of the wetland type identified as the replacement goal in part 8420.0540, subpart 10, is not likely to recover naturally in a five-year period, wooded and shrub wetlands especially, the replacement wetland must be seeded or planted with appropriate species, as determined by the soil and water conservation district, in coordination with the department. If the replacement wetland is seeded or planted, the seed or planting stock should be of local wetland origin to preserve local genotypes. During the monitoring period, the applicant must take reasonable steps to prevent invasion by any species, for example, purple loosestrife and Eurasian water milfoil, that would defeat the revegetation goal of the replacement plan.

D. Erosion control measures as determined by the soil and water conservation district must be employed during construction and until permanent ground cover is established to prevent siltation of the replacement wetland or nearby water bodies.

E. For all restored wetlands where the original organic substrate has been stripped away and for all created wetlands, provisions must be made for providing an organic substrate. ~~the basin must be excavated one foot below final grade elevation and backfilled with one foot of organic soil~~. When feasible, the organic soil used for backfill should be taken from the drained or filled wetland.

F. The bottom contours of created types 3, 4, and 5 wetlands ~~must~~ should be undulating, rather than flat, to provide a variety of water depths to be consistent with part 8420.0540, subp

G. Sideslopes of created wetlands and buffer strip must not be steeper than 5:1, five feet horizontally for every one foot vertically as averaged around the wetland. Sideslopes of 10:1 to 15:1 are preferred.

H. Created wetlands ~~must~~ should have an irregular edge to create points and bays. To be consistent with 8420.0540, subp. 8.

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Subp. 3. Table 4. Physical characteristics of wetlands ~~using an abbreviated Cowardin classification~~ referencing the wetland classification equivalency chart found in 8420.0540, Subp. 10, item B.

WETLAND TYPE	MEAN DEPTH*	WATERSHED RATIO	DOMINANT VEGETATION**	DEPRESSIONAL?
FORESTED				
PFA (T1)	INTMTNT	--	TREES	SOMETIMES
PFB (T7)	SATUR'D	>= 3:1	TREES	YES
PFC (T7)	6" - 3'	>= 5:1	TREES	YES
SCRUB-SHRUB				
PSA (T6)	INTMTNT	--	SHRUBS	YES
PSB (T6)	SATUR'D	>= 3:1	SHRUBS	YES
PSX (T8)	SATUR'D	>= 3:1	SHRUBS	SOMETIMES
PSC (T6)	SAT. - INT.	--	SHRUBS	YES
EMERGENT				
PEA (T1)	INTMTNT	--	HERB/EMERG	YES
PEB (T2)	SATUR'D	>= 3:1	HERB/EMERG	YES
PEC (T3)	6" - 2'	>= 5:1	HERB/EMERG	YES
PEF (T4)	2' - 4'	>= 10:1	HERB/EMERG	YES
DEEP MARSH				
PA (T5)	4' - 6'	>= 15:1	AQUATIC BED	YES
PU (T5)	4' - 6'	>= 15:1	ALGAE/FLOATG	YES
LAKES				
L1 (T5)	>= 6'	>= 25:1	ALGAE/FLOATG	YES
L2 (T5)	<= 6'	>= 25:1	HERBACEOUS	YES
RIVERINE				
R2 (NA)	>= 2'	--	ALGAE, SUB	FLOWAGE
R3 (NA)	6" - 2'	--	ALGAE, SUB	FLOWAGE
R4 (NA)	INTMTNT	--	RIPARIAN	FLOWAGE

* INTMTNT = INTERMITTENT OR TEMPORARILY FLOODED, SATUR'D = SATURATED IN THE ROOTING ZONE.

** HERB = HERBACEOUS, EMERG = EMERGENT, SUB = SUBMERGENT, FLOATG = FLOATING-LEAVED

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8420.0600 MONITORING.

The purpose of wetland value replacement monitoring is to ensure that the replacement wetland achieves the goal of replacing lost functions and values.

8420.0610 DURATION OF MONITORING.

Monitoring shall be by means of an annual report as specified in part 8420.0620 and shall continue for five years following completion of the wetland replacement project. Through written notification to the applicant, the local government unit may extend the required monitoring period for not more than an additional five-year period if, at the end of the initial five-year period, the goal of the replacement plan has not been achieved, but may be achieved with more time.

8420.0620 MONITORING ANNUAL REPORT.

Subpart 1. Purpose. The purpose of the annual report is to describe actual wetland restoration or creation activities completed during the past year, activities planned for the upcoming year, and the information in subpart 2. The applicant shall submit the annual report to the local government unit on a date determined by the local government unit until the applicant has fulfilled all of the requirements of the local government unit. The local government unit, at its discretion, may prepare the annual report for the applicant.

Subp. 2. Report content. The annual report shall include the following information and other site-specific information identified by the local government unit:

A. a description of the project location, size, current wetland type (Cowardin classification), and desired wetland type (goal);

B. a comparison of the as-built specifications versus the design specifications (first annual plan only) and a rationale for significant changes;

C. hydrology measurements: ~~monthly~~ seasonal water level elevations during the period April through October (msl OR

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referenced to a known bench mark);

D. a list of the dominant vegetation in the wetland, including ~~genera~~ common names of the vegetation exceeding 20 percent coverage and an estimate of coverage, for example, 50 percent ~~Salix~~ willow, 20 percent ~~Typha~~ cattail, and 30 percent ~~Carex~~ sedge; and

E. color photographs of the project area taken anytime during the period June through August, referenced to the fixed photo-reference points identified on the wetland replacement plan and labeled accordingly.

8420.0630 MONITORING DETERMINATIONS BY THE LOCAL GOVERNMENT UNIT.

The local government unit responsible for monitoring as determined under part 8420.0230:

A. must inspect the project when construction is complete and certify compliance with construction specifications, and may inspect the project at any time during the construction and monitoring period, and any time after that to assess the long-term viability of the replaced wetland. When the local government unit certifies that the construction specifications have been met, the local government unit shall so advise the applicant and return any bond or other security that the applicant had provided;

B. may order corrective action at any time during the required monitoring period if it determines that the goal of the approved replacement plan will not be met, and may require the applicant to prepare an amended wetland value replacement plan for review and approval by the local government unit, which describes in detail the corrective measures to be taken to achieve the goal of replacing lost wetland functions and values;

C. shall make a finding based on a site visit at the end of the monitoring period as to whether the goal of the replacement plan has been met. If the goal of the replacement plan has not been met, the local government unit shall order corrective action and extend the monitoring period; and

D. shall require one or more of the following actions if during the monitoring period the local government unit finds

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that the goal of the replacement plan will not be met:

(1) order the applicant to prepare and implement a new replacement plan;

(2) issue a cease and desist order on the draining and filling activity if it has not been completed;

(3) order restoration of the impacted wetland;

(4) obtain forfeiture of a bond or other security and use the proceeds to replace the lost wetland values;

(5) ask the district court to order the applicant to fulfill the replacement plan; or

(6) other actions that the local government unit determines necessary to achieve the goal of the replacement plan.

STANDARDS AND CRITERIA FOR STATE WETLAND BANKING

8420.0700 PURPOSE.

The purpose of parts 8420.0700 to 8420.0760 is to provide standards for the establishment and administration of a state wetland banking system as authorized by Minnesota Statutes, section 103G.2242.

8420.0710 DEFINITIONS.

Subpart 1. Scope. For purposes of parts 8420.0700 to 8420.0760, the terms in this part have the meanings given them.

Subp. 2. Account or wetland bank account. "Account" or "wetland bank account" means a record of wetland debits and credits established by an account holder within the state wetland banking system.

Subp. 3. Account holder. "Account holder," in the state wetland banking system, is a person, corporation, government agency, or organization that is the owner of credits.

Subp. 4. Applicant. "Applicant" is a person, corporation, government agency, or organization that makes an application to withdraw wetland credits from the wetland bank.

Subp. 5. Credits or wetland credits. "Credits" or "wetland credits" means acres ~~or tenths of acres~~ of restored wetland, catalogued by abbreviated Cowardin, et al. wetland type from part 8420.0540, subpart 10, and inlet and outlet

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characteristics deposited in the wetland bank.

Subp. 6. State wetland banking system, wetland bank, or bank. "State wetland banking system," "wetland bank," or "bank" means a system of identifying wetlands restored for replacement credit, providing for, and facilitating and tracking the exchange of wetland credits for projects that require replacement plans.

8420.0720 PRINCIPLES OF WETLAND BANKING.

Subpart 1. Goal. Implementation of a wetland banking system must comply with the purposes and goals of the act by achieving a no-net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands.

Subp. 2. Sequencing prerequisite. The state wetland banking system may only be used for replacement of drained or filled wetlands when the local government unit determines that the applicant has complied with all of the sequencing requirements of part 8420.0520; that the project would otherwise be allowed if adequate replacement could be secured by the applicant; that project-specific replacement is not reasonable or desirable; and that the owner of the account agrees to the withdrawal of credits from the account.

Subp. 3. Geographic limitations. In counties having greater than 80 percent of their presettlement wetlands intact, wetland banking is allowed for any impact. Wetland banking in counties with less than 80 percent of their presettlement wetlands intact can be considered only in situations involving impacts of less than five acres, except in certain circumstances as noted in part 8420.0740, subpart 2, item B, subitem (2).

Subp. 4. ~~Restoration only.~~ Only restored wetlands are eligible for deposit into the wetland bank. Created wetlands are ~~not~~ eligible for deposit.

Subp. 5. ~~Exempt~~ wetlands. Wetlands that are drained or filled under an exemption in part 8420.0120 and subsequently restored are not eligible for deposit in the wetland bank.

Subp. 6. Account balance. Accounts must maintain a

A. They are constructed by excavation; or

B. They are constructed by impoundment and are less than 10 acres in total size.

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positive balance. A wetland bank account shall specify acreage by wetland type deposited by the account holder minus subsequent withdrawals.

Subp. 7. **Credit transfers.** Wetland credits may be transferred to another account holder providing the fee title or easement or license is transferred also, and providing all the remaining credit for a wetland remains in one account. Wetland credits may be withdrawn by an applicant and partial withdrawals are allowed. The account holder is responsible for the success of the wetland until completion of monitoring. After completion of monitoring, the fee title owner or easement or license holder and anyone who has contracted with the owner is responsible for maintaining the wetland and replacing it according to this chapter if the wetland is subsequently drained or filled, by structural failure, or otherwise.

Subp. 8. **Deed recording.** For wetlands proposed for deposit, a deed covenant must be recorded stating that the subject wetland was or will be restored for mitigation banking purposes.

Subp. 9. **Qualification.** A wetland cannot be deposited for credit that cannot, under parts 8420.0500 to 8420.0630, be used for replacement.

8420.0730 ADMINISTRATION AND MANAGEMENT AUTHORITY.

Subpart 1. **Establishment.** The board shall establish a state wetland bank. The board or the board's assignee is responsible for management of the bank including recording all bank transactions, maintaining bank records, and ensuring that the operation of the bank complies with parts 8420.0700 to 8420.0760. The board shall notify all local government units upon establishment of the bank. Any banking system, such as those established by local government, must comply with parts 8420.0700 to 8420.0760 and must be approved by the board and the commissioner.

Subp. 2. **Deposit prerequisites.** To be deposited into the wetland bank, a restored wetland must be certified as eligible for deposit by the local government unit in which it is located,

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according to part 8420.0740, subpart 1. The method of certification by local government units is optional, but wetland credits may not be deposited into the bank within that local government units jurisdiction without certification. If a local government unit elects to certify restored wetlands for the wetland bank, the local government unit is also responsible for ensuring that the monitoring provisions in part 8420.0750 are fulfilled. A local government unit may decline to certify all restored wetlands within its jurisdiction or, based on a comprehensive local water plan, a local government unit may elect to certify restored wetlands for deposit into the wetland bank only in selected areas, for example, high priority regions and areas. If the local government unit elects to reject or limit banking, it must do so by rule or ordinance, as applicable.

Subp. 3. **Annual report.** Each local government unit participating in the wetland bank shall submit an annual report to the board on a form prescribed by the board.

8420.0740 PROCEDURES.

Subpart 1. **Deposits and credits.**

~~A. Only restored wetlands are eligible for deposit into the wetland bank. Created wetlands are not eligible for deposit.~~ (see 8420.0740, subp. 4 → [page 74 line 29])

B. Wetland replacement approved before the date that a statewide wetland banking system is established is eligible for deposit into the wetland bank if the wetland replacement has been authorized by a public agency specifically for an existing wetland bank that has been approved by the commissioner.

C. After the date that a statewide wetland banking system is established, wetlands restored without prior local government unit approval as specified in this part are not eligible for deposit into the wetland bank.

D. The minimum wetland acreage eligible to establish an account in the wetland bank is ~~0.5~~ 0.1 acres.

E. There is no maximum wetland acreage eligible for deposit in the wetland bank. The local government unit, upon

Also, wetland replacement that has been completed and deposited in a local government unit bank prior to the effective date of these rules and after Jan. 1, 1992 is eligible for deposit into the statewide banking system if the project meets all the criteria in subpart 8420.0700 to 8420.0760 based on a site inspection and review by the board and the commissioner.

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recommendation of the technical panel, must identify the acreage that will receive credit. As an incentive to encourage the restoration of small wetlands, the local government unit shall assign credit to restored wetland acreage as follows:

Restored Wetland	Credit
0 to 10 acres	100 percent
over 10 acres	90 percent

The local government unit may modify the credit given, up to a maximum of 100 percent, if ~~unanimously~~ agreed to by the technical panel.

F. The initial deposit of wetland credits from a wetland restoration in the wetland bank must be done by the fee title owner or easement or license holder of the restored wetland.

G. Except as provided for in item B, in order to deposit wetland acres into the wetland bank, the depositor must notify the local government unit in writing, before restoration, that the wetland proposed for restoration is specifically designated for deposit into the wetland bank. This notification may be part of the documentation requested in item H. In cases where excess wetland acreage is expected to result from a specific replacement plan according to parts 8420.0530 to 8420.0550, the owner must indicate on the replacement plan that the excess acreage is to be considered available for wetland banking.

H. In cases where a wetland is proposed to be restored solely for wetland banking purposes, that is, the wetland is not part of a project-specific wetland replacement plan, the depositor must submit to the local government unit a bank plan containing the information required in part 8420.0530, items A and D.

~~The bank plan is subject to the notice and comment provisions in part 8420.0230.~~ Based on input from the technical evaluation panel and other comments received, the local government unit must determine the likelihood that the restoration will be successful and, if affirmative, approve the plan and advise the depositor of the wetland acreage likely to

A copy of the bank plan shall be mailed to members of the technical evaluation panel, members of the public who have requested a copy and members of the watershed district or watershed management organization if there is one.

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be accepted into the wetland bank. Approval of the plan shall be considered official acknowledgment that the restored wetland is designated for replacement.

I. In cases where a wetland is to be restored by an agency, department, or subdivision of the local government unit for deposit into the wetland bank, the local government unit must prepare the information required in part 8420.0530, items A and D, and notice this information ~~according to the notice and comment provisions in part 8420.0230.~~ as in part 8420.0740, subp. 1, item H.

J. The proposed wetland must be restored within two years of approval or the bank plan must be resubmitted for consideration. Upon approval, the depositor shall restore the wetland and notify the local government unit when construction has been completed. The technical panel shall inspect the site when construction is completed to ensure that construction specifications have been followed. Failure to follow approved construction specifications is sufficient grounds for the local government unit to deny consideration of the wetland for banking.

K. No sooner than six months after construction has been completed and approved for restored wetlands, and no sooner than one year after construction has been completed and approved for created wetlands, the depositor shall contact the local government unit to request a final determination of wetland bank acceptability and approved quantities of wetland credits for deposit. The technical panel shall ensure that sufficient time has been allowed for the restored wetland to become established, especially vegetation and hydrology, before making this determination. If the technical panel has reason to believe that the wetland characteristics may change substantially, the panel must postpone its recommendation to the local government unit until the wetland has stabilized.

Based on a site visit, the technical panel will determine the size and type of wetland, using the abbreviated Cowardin et al. classification in part 8420.0540, subpart 10, as well as inlet and outlet characteristics resulting from the restored wetland. The technical panel will provide the information to the local government unit.

L. The local government unit shall notify the

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depositor of its findings as to the suitability of the wetland and approved wetland credits. If the depositor chooses to proceed with a deposit into the bank, the depositor must record the notice specified in part 8420.0530, item D, subitem (7), and submit proof of the recording to the local government unit for the wetlands to be deposited. If the depositor chooses not to proceed with the deposit, the depositor may return the wetland to its preconstruction condition without replacement within five years. At any time within the five-year period, the depositor may request certification for deposit into the bank or may amend the bank plan and submit the plan to the local government unit for approval and subsequent certification. After five years, any activity in the wetland is subject to this chapter.

M. To be deposited into the bank, the following information concerning the restored wetland must be submitted to the board by the local government unit in which the wetland is located:

(1) name, address, and telephone number of the depositor;

(2) location of the restored wetland, including legal description, UTM coordinates, county, and watershed;

(3) a copy of the deed for the property containing the restored wetland with the required covenant recorded;

(4) size of the wetland acreage to be deposited, to the 0.1 acre, by wetland type, using the abbreviated Cowardin, et al. classification in part 8420.0540, subpart 10, and inlet and outlet characteristics; and

(5) certification that the wetland is approved for deposit into the bank.

N. The board shall acknowledge the deposit to the depositor and local government unit and officially enter the information in item M into the wetland bank. Information on deposited wetlands shall be available from the board on request according to subpart 2, item C.

O. Wetlands deposited into the wetland bank, on which

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withdrawals have occurred, are subject to replacement for any subsequent drainage or filling.

P. Wetlands deposited into the wetland bank are subject to the monitoring provisions in part 8420.0750.

Subp. 2. Withdrawals.

A. Before consideration of use of the wetland bank, applicants must satisfy the requirements of part 8420.0520. It must be clearly demonstrated that the applicant has made a good faith effort to avoid, minimize, rectify, or reduce or eliminate over time the impact on the wetland, and that no feasible and prudent alternative to the impact exists. The local government unit must certify that the project would otherwise be allowed if adequate replacement could be secured by the applicant and that the applicant has made a good faith effort to do so and has not succeeded in locating a site.

B. The use of the wetland bank is limited to:

(1) projects occurring in counties having greater than 80 percent of their presettlement wetlands;

(2) counties with less than 80 percent of their presettlement wetlands remaining, with the use of the wetland bank limited to:

(a) linear-type transportation or utility projects with impacts less than five acres per basin, minus any project-specific replacement acreage;

(b) other projects with a cumulative impact of less than five acres, minus any project-specific replacement acreage; or

(c) whenever the local government unit determines that the use of the wetland bank is reasonable and desirable.

C. When using the wetland bank to replace drained or filled wetlands, the replacement must comply with part 8420.0540.

D. The board, on request, will provide the following information to persons making inquiries concerning available wetland bank deposits with a local government unit jurisdiction, county, or watershed:

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(1) account holder: name, address, and telephone number;

(2) available wetlands: wetland acres by abbreviated Cowardin et al. classification type and inlet and outlet characteristics;

(3) location: section, township, range, county, and watershed.

E. The applicant may then contact, negotiate, and purchase the required wetland acreage from the account holder. When the account holder and applicant come to agreement, the applicant will provide requested information on a notarized credit transfer form developed by the board, and include the credit transfer form as part of the wetland replacement plan transmitted to the local government unit. The credit transfer form will include information indicating the wetland type by acres for transferal, location of restored wetlands, and the inlet and outlet characteristics of the banked wetland.

F. The local government unit must circulate the applicant's wetland replacement plan and the credit transfer form to identify specific wetland bank credits as the applicable replacement wetland, using the public comment and review process in part 8420.0230 and to the local government unit whose jurisdiction covers the location of the wetland bank acreage. The local government unit must contact the board to verify that replacement credits indicated on the credit transfer form are available before final approval of wetland bank withdrawals. ~~The comment and review process initiated in this item may be limited to the bank transaction only, if public comment and review has already taken place for all other aspects of the proposed development and its impact.~~

G. Wetlands impacted by public transportation projects may be replaced statewide, provided the replacements are approved by the commissioner under an established wetland banking system or under the rules for wetland banking as provided for in parts 8420.0700 to 8420.0760.

The commissioner shall notify the local government unit and

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the board of the decision within 30 days of the date that the replacement plan is received by the commissioner. ~~notice of the replacement plan is published in the EQB Monitor.~~ If the commissioner does not approve the replacement plan, the local government unit shall not approve the replacement plan.

H. On approval of the applicant's wetland replacement plan using wetland bank acreage as wetland replacement, the local government unit shall notify the board to debit the appropriate banked wetland by type and acreage. The board will complete the accounting transactions and send a notice of credit transfer to the account holder.

I. The applicant shall not be allowed to begin proposed drain or fill activities until the local government unit formally approves the wetland replacement plan using the acknowledged wetland bank credits as replacement.

J. An individual, corporation, local government unit, or other organization may buy and hold credits from account holders in the bank for later use or resale. Transfer of credits must be accomplished through use of a board credit transfer form, and must be maintained in an account in the state wetland banking system. An account will be established for the individual or organization on presentation to the board of a credit transfer form, and required organization information. The board will notify both account holders on transfer of the wetland credits. An account transfer must be accompanied by transfer of the fee title or easement or license. A credit for a wetland may not be split between accounts. Wetland credits may also be transferred between banks approved by the board.

8420.0750 AUDITING AND MONITORING.

Subpart 1. Annual report and audit.

A. The board will develop wetland bank deposit, withdrawal, and credit transfer forms and distribute them to local government units indicating a desire to certify restored wetland acreage for deposit in the wetland bank.

B. The wetland bank data file maintained by the board will contain at least the following information:

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(1) wetland acres by abbreviated Cowardin et al. classification type, inlet and outlet characteristics, restoration date, and bank acceptance date, fee owner, location by (UTM coordinates, section, township, range, local government unit, county, and watershed of the banked wetland); and

(2) previous withdrawals against each banked wetland by impact wetland (wetland acres by abbreviated Cowardin, et al. classification type, inlet and outlet characteristics, date of wetland impact), ownership (fee owner, address, telephone number) and location (UTM coordinates, ~~section, township, range~~, local government unit, county, and watershed of the impacted wetland).

C. The board may periodically inspect wetland bank records and correspondence maintained by a local government unit to determine compliance with this part.

D. An annual wetland bank report shall be prepared and distributed by the board to applicable local government units, soil and water conservation districts, watershed districts, watershed management organizations, the department, and on request.

Subp. 2. Monitoring.

A. After the wetland is entered into the bank, the local government unit responsible for monitoring under part 8420.0230 and the account holder shall continue monitoring according to parts 8420.0600 to 8420.0630. The account holder is responsible for the success of the wetland until completion of monitoring, even after all the credit has been withdrawn.

B. The board shall inspect restored wetlands deposited into the wetland bank at least once each five years to ensure that the wetlands conform to conditions specified in the approved restoration plan, and to make a determination of needed corrective action.

8420.0760 ENFORCEMENT AND CORRECTIVE ACTIONS.

A. Enforcement of parts 8420.0700 to 8420.0750 is governed by part 8420.0290 and Minnesota Statutes, section

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103G.2372.

B. If, on inspection, the board determines that wetlands deposited in the wetland bank are not in compliance with this chapter, the board must prescribe corrective measures to the local government unit to bring the wetland into compliance.

C. If satisfactory remediation does not result, the board may refuse future wetland bank certifications by the local government unit and require all wetland replacements to be on a project-specific basis.

D. If a local government unit determines that a banked wetland does not substantially meet the specifications in the approved bank plan, the local government unit must notify the board, and the board shall restrict further withdrawals from the account until the local government unit notifies the board that the wetland has been brought into compliance. The board may also restrict withdrawals when a local government unit is the account holder and the board determines that a banked wetland does not substantially meet the specifications in the approved bank plan.

E. The local government unit or the board can undertake reconstruction work and require reimbursement of reasonable costs from the fee title owner or easement or license holder.

STANDARDS AND CRITERIA FOR IDENTIFICATION, PROTECTION, AND MANAGEMENT OF CALCAREOUS FENS

8420.1010 PURPOSE.

The purpose of parts 8420.1010 to 8420.1060 is to provide minimum standards and criteria for the identification, protection, and management of calcareous fens as authorized by Minnesota Statutes, section 103G.223. Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the commissioner.

Part 8420.0120 does not apply to calcareous fens.

8420.1020 IDENTIFYING CALCAREOUS FENS.

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A calcareous fen is a peat-accumulating wetland dominated by distinct groundwater inflows having specific chemical characteristics. The water is characterized as alkaline, with high concentrations of calcium and low dissolved oxygen content. The chemistry provides an environment for specific and often rare hydrophytic plants.

8420.1030 PROCEDURES TO LIST CALCAREOUS FENS.

A. The commissioner shall investigate wetlands to determine if the wetland is properly identified as a calcareous fen.

B. The commissioner shall maintain a current list of known calcareous fens in the state and their location.

C. The commissioner shall provide an updated list of calcareous fens to the board for further distribution.

8420.1040 MANAGEMENT PLANS.

Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the commissioner.

8420.1050 RESTORATION.

The commissioner may approve management plans to restore or upgrade a previously damaged calcareous fen.

8420.1060 APPEALS.

A. A landowner or project proposer may challenge the commissioner's determination that a wetland is a calcareous fen or the commissioner's calcareous fen management plan by demanding a hearing. The hearing will be carried out in the same manner as water permit hearings under Minnesota Statutes, chapter 103G.

B. The hearing must be demanded within 30 days after mailed notice of the commissioner's decision to the project proposer, otherwise the decision becomes final and may not be challenged by the project proposer.

C. Appeal of the commissioner's decision after the hearing must be done in the manner provided for appeals from

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contested case decisions in Minnesota Statutes, chapter 14.

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