



Minnesota Board of Water and Soil Resources.  
Minutes.

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1/22/97

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DATE: January 14, 1997

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

FROM: Ronald D. Harnack, Executive Director

SUBJECT: January 22, 1997 BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, January 22, 1997, beginning at 9:00 a.m. The meeting will be held in the BWSR conference room at One West Water Street, St. Paul. The following is some background information regarding the agenda items:

**Consent Agenda**

1. **County Water Plan Approvals:** The Comprehensive Local Water Plans of Yellow Medicine, Pipestone, Faribault, Brown, Steele, Clearwater, Polk and Marshall were presented and reviewed by the committee of the Board and are recommended for approval. **DECISION**
2. **Yellow Medicine Watershed District Plan Approval:** The Yellow Medicine Watershed Comprehensive Plan Revision (Plan) is being brought to the board for approval. The Plan was submitted in May of 1994. The plan review and approval process was longer than normal due to differences between the Yellow Medicine Watershed District, BWSR, and the Department of Natural Resources (DNR) regarding plan content, particularly those aspects that dealt with drainage and flood control. Compromise language has been agreed to by the parties and both the DNR and BWSR staff are recommending approval of the plan at this time. **DECISION**
3. **Six Cities Watershed Management Organization (SCWMO) Water Management Plan:** The Six Cities WMO is located in the southern part of Anoka County adjacent to the Mississippi River and covers approximately 21 square miles. The SCWMO includes the cities of Blaine, Columbia Heights, Coon Rapids, Fridley, Hilltop, and Spring Lake Park.

The SCWMO has established six subwatersheds for implementation of the Plan. Issues and opportunities for each of the subwatersheds have been assessed and a capital improvements program developed. The SCWMO has provided a table of implementation priorities including funding sources and responsible units of government for implementation. This table, along with the supporting data of detailed activities, purposes and goals of each of the identified projects provides precise information for everyone in the watershed. **DECISION**

4. **Requests for Water Plan Extensions:** The Counties of Martin, Watonwan, and Goodhue have requested extensions of their current Comprehensive Local Water Plans, pursuant to M.S. 103B.301. Each county has requested that the effective date of their plan be extended to December 31, 1997 (the two-year full extension period authorized by statute).

In Martin and Watonwan Counties lead staff for the water plan update resigned during 1996, causing an unforeseeable delay in the plan revision process. Both counties have filled their water plan coordinator position and fully expect to have plans in review by June of 1997.

In Goodhue County, the water plan revision process was delayed in 1996 due in part to the County having to commit more time than anticipated to resolving a major solid waste landfill issue. Goodhue County has committed to having their draft plan in review by July of 1997.

All three requests have been reviewed by the respective BWSR board conservationists in accordance with BWSR established guidelines and are being recommended for approval by the Board. **DECISION**

#### **New Business**

1. **Budget Status:** Ron Harnack will give an update on the BWSR's budget status as well as the Governor's budget recommendation. **INFORMATION**
2. **Statewide Landuse Bill:** A proposed bill, authored by Senator Steve Morse and Representative Dee Long, is supported by The Land Stewardship Project. The bill relates to state agencies and local units of government, providing framework and goals for local landuse planning. **INFORMATION**
3. **FY98 State Cost Share Program Allocations:** The State Cost Share Program allocations are grants to Soil and Water Conservation Districts (SWCDs) to cost share with landowners the application of soil and water conservation and water quality improvement practices. The annual legislative appropriation to BWSR for this program is \$1,620,000. This appropriation is allocated to SWCDs via the base grants and special grants programs. The Board will be requested to decide the appropriate amount to allocate for each program for FY98. **DECISION**
4. **FY97 Non-Point Engineering Assistance Challenge Grant Allocations:** The purpose of this grant is to provide additional funding to the SWCD Joint Powers Board for engineering/technical assistance to landowners for the implementation of best management practices. The FY97 base grant provided a remaining balance of \$320,490 for this competitive grant program. Thirteen applications were received requesting \$432,985. The Board is requested to approve this funding recommendation. **DECISION**



5. **University of Minnesota Study Regarding Impact of Wetland Regulations on Property Values:** The board is required by 1996 legislation to forward the study to the legislature and include recommendations for legislation to address identified weaknesses.  
DECISION
6. **Macro Invertebrate Monitoring, Hennepin Conservation District:** You have heard of the "Dog and Pony" show this is the "dragon, may and dafnia nymph" show.  
INFORMATION
7. **Lake Superior Position Statement:** The Great Lakes Conservation associations have adopted a position statement that guides prescriptive and targeting of available resources. The Lake Superior Association is commended for their efforts. INFORMATION

If you have additional agenda items or require additional information, please feel free to give me a call. If bad weather conditions exist in your area, and you are unable to attend the meeting due to travel restrictions, please notify the board office by noon on Tuesday if possible. Travel safely, I look forward to seeing you on the 22nd!

RDH:mja  
Enclosures

**BOARD OF WATER AND SOIL RESOURCES  
CONFERENCE ROOM, ONE WEST WATER STREET  
ST. PAUL, MINNESOTA 51107  
JANUARY 22, 1997**

**PRELIMINARY AGENDA**

**9:00 a.m.      Call Meeting to Order**

**Adopt Agenda**

**Approval of Minutes of December 18, 1996**

**Reports**

- Chair - Barbara Cobb
- Executive Director - Ron Harnack
- Dispute Resolution Committee - Kathleen Roer
- Education and Public Relations Committee - Tim Hvidsten
- Feedlot Advisory Committee - Jim Rossman
- Cost-Share/Soil Conservation Committee - Dwain Otte
- Wetlands Committee - Darrell Bruggman
- Administrative Advisory Committee - Barbara Cobb
- Financial Oversight Committee - Ginny Imholte

**Agency Reports**

- Jim Anderson, Minnesota Extension Service
- Wayne Anderson, Pollution Control Agency
- Kim Benson-Johnson, Department of Health
- Paul Burns, Department of Agriculture
- Wayne Edgerton, Department of Natural Resources

**Consent Agenda**

1.      County Water Plan Approvals - Recommendation of Review Committees:  
         Yellow Medicine, Pipestone, Faribault, Brown, Steele, Clearwater, Polk,  
         and Marshall - DECISION
2.      Yellow Medicine Watershed District Plan Approval - DECISION
3.      Six Cities Watershed Management Organization Water Management Plan  
         - DECISION
4.      Requests for Water Plan Extensions:  
         Goodhue, Martin, and Watonwan - DECISION

**New Business**

1. Budget Status - Ron Harnack - DISCUSSION
2. Statewide Landuse Bill - Ron Harnack - DISCUSSION
3. FY98 State Cost-Share Program Allocations - Wayne Zellmer -  
DECISION
4. FY97 Non-Point Engineering Assistance Challenge Grant Allocations -  
Wayne Zellmer - DECISION
5. University of Minnesota Study Regarding Impact of Wetland Regulations  
on Property Values - Greg Larson - DECISION
6. Macro Invertebrate Monitoring, Hennepin Conservation District - Don  
Wodek - INFORMATION
7. Lake Superior Position Statement - Ron Harnack - INFORMATION

**Advisory Comments**

- Ray Bohn, MAWD
- Franklin Denn, MAT
- Bill Hunt, NRCS
- Rick Reimer, MACDE
- Vern Wilker, MASWCD

**Board Issues**

- Next Board Meeting, February 26, 1997

Noon

Adjourn

**BOARD OF WATER AND SOIL RESOURCES  
CONFERENCE ROOM, ONE WEST WATER STREET  
ST. PAUL, MINNESOTA 51107  
JANUARY 22, 1997**

**AGENDA**

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**Board Issues**

- Next Board Meeting, February 26, 1997

Noon

Adjourn

**DRAFT**

**BOARD OF WATER AND SOIL RESOURCES  
CONFERENCE ROOM, ONE WEST WATER STREET  
ST. PAUL, MINNESOTA 55107  
DECEMBER 18, 1996**

**BOARD MEMBERS PRESENT:** Barb Cobb, LeRoy Stensgaard, Darrell Bruggman, Glenn Annexstad, Jim Rossman, Ginny Imholte, Dwain Otte, Kathy Roer.

**AGENCY MEMBERS PRESENT:**

Kim Benson-Johnson, Department of Health  
Paul Burns, Department of Agriculture  
Jim Anderson, Minnesota Extension Service  
Wayne Edgerton, Department of Natural Resources

**AGENCY MEMBERS ABSENT:** Tim Hvidsten, Ted Lovdahl, Marv Tripp, Barbara Upgaard.

**OTHERS PRESENT:**

D'Wayne DeZiel, MASWCD  
Ray Bohn, MAWD  
Vern Wilker, MASWCD  
Don Wodek, Hennepin SWCD  
Ron Gavelek, Carnelian Marine WD

**STAFF PRESENT:** Ron Harnack, Wayne Zellmer, Ron Shelito, Chris Hughes, Tim Fredbo, Doug Thomas, Matt Moore, Robyn Molina.

**BWSR Meeting Minutes**  
**December 18, 1996**  
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Chair Cobb called the meeting to order at 9:30 a.m.

- \*\***  
**96-82**     **Adopt Agenda** - Moved by Dwain Otte, seconded by Darrell Bruggman to adopt the agenda as presented. Motion passed on a voice vote.

- \*\***  
**96-83**     **Minutes of October 23, 1996** - Kimberly Benson-Johnson had an amendment on page 3 under Agency Reports, Department of Health. It reads "well head program." It should read "well management program." Moved by LeRoy Stensgaard, seconded by Darrell Bruggman to approve minutes with change. Motion passed on a voice vote.

**Reports:**

**Chair's Report:** Chair Cobb stated that she attended the EQB meeting and passed out *Principles for Sustainable Development in Minnesota*. This was adopted by consensus of the Governor's Roundtable on Sustainable Development. Chair Cobb also stated she attended an Environmental Cluster and Environmental Trust meeting. Chair Cobb attended the MASWCD Conference on December 8-10, most metro meetings and the MAWD Annual Meeting and Trade Show on December 5-7. Chair Cobb thanked all Board members for their attendance at the various clientele conventions.

Chair Cobb reported the changes for upcoming board appointments. Chair Cobb has three years left to serve on the board. She is not reapplying for the position of Chair. Kathleen Roer is applying for another four years to serve on the board and is applying for the Chair position. Ted Lovdahl, and LeRoy Stensgaard are reapplying for positions on the BWSR Board. Jim Rossman has accepted an offer from the Governor's office to serve on the Governor's work force council. He will be resigning from the board. Chair Cobb thanked everyone for serving on the Board.

**Executive Director's Report:** Ron Harnack introduced new staff changes. Phil Bilforni is the new metro Board Conservationist in the metro office. Dan Ecklund is the new wetland specialist in Brainerd to work with local governmental units on comprehensive wetland plans. Joe Wiltsey is Training Coordinator, a shared position between BWSR and NRCS. Joe used to be a district conservationist in Buffalo. He will be located in our Brainerd office. Howard Moeching will be joining the BWSR on a two-year mobility as part of the RIM and CRP program. Howard will be working out of the BWSR office.

Ron stated the MAT, MASWCD and MAWD conventions went very well. A lot of contacts were made.

**BWSR Meeting Minutes**  
**December 18, 1996**  
**Page Three**

**Dispute Resolution Committee Report** - Kathleen Roer reported there are two matters to be heard in February. One is a wetland appeal in Minnehaha Creek WD and the other regarding Drum vs. Douglas County on a WCA appeal. Kathy stated that DRC hearings will be Wednesday, February 5, 1997. Another upcoming appeal in Pine County, the first compensation to the state, was filed on December 6, 1997.

**Agency Reports:**

U of M Extension Service (MES): Jim Anderson reported that the College of Agriculture, Food and Environment Sciences, held meetings around the state to get ideas on how well they were serving people in the state and asked questions relative to accessibility to the resources of the University. The bottom line perceived as a problem was that easy access to the University was not enough. Phil Larson, Associate Dean for Research, has consequently instituted a program that will start in January 1997 in which BWSR will be asked to participate. He wants to put together many small discussion groups oriented around specific topics such as commodity groups. Jim was asked to mention this to the Board and seek their participation.

Department of Natural Resources (DNR): Wayne Edgerton reported he attended an outreach conference with about 200 managers. Over 60 stakeholders were invited to help prioritize work. Wayne reported the numbers on the deer harvest. Deer numbers are down statewide. The new modified trespass law is working. Wayne gave an update on the farm which was donated to the DNR. A couple has been selected to rent the farm from DNR. They hope to be milking cows on the premises in early January. There will be tours conducted of this farm hopefully this summer.

Ron Harnack asked about the special initiatives in the Red River Valley. Wayne had no specifics, but would check and report back.

Department of Health (MDH): Kim Benson-Johnson passed out a brochure in compliance with the Safe Drinking Water Act entitled *Drinking Water Revolving Fund*. The purpose of this program is to provide financial assistance to municipalities and other eligible public water suppliers to improve or construct water treatment, storage and distribution systems needed to comply with the Safe Drinking Water Act.

Department of Agriculture (MDA): Paul Burns reported the overall department perspective has a few changes. Assistant Commissioner Bill Oemichen left the state last summer. Sharon Clark was named Deputy Commissioner and has appointed Perry Aasness as the new Assistant Commissioner.



**BWSR Meeting Minutes**  
**December 18, 1996**  
**Page Four**

Feedlot Manure Management Advisory Committee Live Stock Owner Task Force is meeting today and working on findings and recommendations regarding livestock. Ron Harnack asked of the status of the SRF loan. Paul stated that they are getting less money through the federal appropriation's system. They have received 10 million over the last two years. This year is a little over seven million. MDA has required counties to encumber the money within a year and expect to get back 1.2 million from the first allocation which totals a little over eight million. There will probably be counties that won't get money that need it. The deadline for applications is January 3, 1997. There will not be any workshops held this year regarding application process.

**Consent Agenda:**

- County Water Plan Approvals** - Carlton, Kanabec, Stevens, Traverse, Lyon, Nicollet, and Redwood. Moved by Ginny Imholte, seconded by Darrell Bruggman to approve County Water Plan Approvals. Motion passed on a voice vote.
- \*\***  
**96-84**

- Requests for Water Plan Extensions** - LeSueur, Crow Wing, Hubbard, Freeborn, Norman, and Olmsted. The Board Conservationists recommends all be approved. Moved by Glenn Annexstad, seconded by LeRoy Stensgaard. Motion passed on a voice vote.
- \*\***  
**96-85**

**Old Business:**

- Financial Oversight Committee Report** - Ginny Imholte stated that this report was presented for review at the October meeting and was accepted then. Moved by Ginny Imholte to formally adopt the Financial Oversight Committee Report, seconded by Kathy Roer. Motion passed on a voice vote. Ron Harnack stated that the Committee will come back in February with a work plan implementation.
- \*\***  
**96-86**

**Reorganization CORE Report** - Ron Harnack discussed the predistributed report, *Crosscurrent. Managing Water Resources*. This report supports organizational structures that are now in place. The EQB endorsed this publication and adopted it at their last meeting. BWSR has distributed this publication to AMC Board of Directors, MASWCD Board of Directors and MAWD Board of Directors.

**Environmental Trust Fund** - Ron Harnack reported that because other important issues are on the legislative agenda this year, the Governor feels that the rededication of lottery proceeds to the Environmental Trust Fund should not be added to the Environmental Agency's priorities this year. Dedication on this issue does not have to be dealt with until 1998. However, a coalition working on the issue has been formed with inclusion of many BWSR clientele organizations and so the groundwork is being prepared for 1998.

**BWSR Meeting Minutes**  
**December 18, 1996**  
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**Outcome of SRF Meeting** - Ron Harnack reported that the meeting, dealing with most issues and concerns was well received and helped direct future considerations. Allocation for engineering teams was not a flat rate to all districts this year because some districts still had major reserves. A commitment was made, however, that we would fully fund each engineer team for this next year. Talked about the funding issue. The amount would fall short to fund each of the 11 engineering teams. Each JPA would have to come up with \$10,000 - \$20,000 annually to cover the costs. A committee is being organized that represents the Chair's of the Joint Powers Organizations and the district manager with fiscal responsibility, to define and clarify how to deal with these issues in the future. Recommendations will come back to the Board in June with allocations.

Chair Cobb called for a fifteen minute break at 10:45. The meeting was reconvened at 11:05 a.m.

**New Business:**

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96-87

**Carnelian-Marine WD Plan Amendment** - Kathy Roer reported the subcommittee met Monday, December 16. Ron Gavlik, Chair of the Carnelian-Marine WD was present for any questions. Moved by Kathy Roer to approve the plan amendment conditional upon the completion of four tasks: a) complete hydrologic study; b) follow study with clear funding formulas; c) accurately assess alternative and downstream effects; and, d) present all findings in a public forum, seconded by Dwain Otte. Motion passed on a voice vote.

**Dakota County Environment Education Program Recognizes BWSR** - Dwain Otte reported that on October 23, the Director of Planning awarded the BWSR a plaque in recognition for BWSR's support in the Dakota County Environment Education Program.

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96-88

**Faribault County Permanent Wetland Preserve (PWP) Application** - Tim Fredbo introduced those from Faribault County including Mr. Scott Campbell, who owns the land, Gary Whehrenberg, District Manager for Faribault County SWCD, Senator Beckman and Representative Kalis who for the Faribault County PWP project. Moved by Jim Rossman and seconded by LeRoy Stensgaard to approve the PWP application as a unique situation that resulted through miscommunication with the landowner. Discussion followed. The motion discussion clearly intended that this action does not change the priority on targeting policies of the Board relating to Rim Reserve or PWP. Motion passed on a voice vote.

**Advisory Comments:**

MASWCD - Vern Wilker introduced himself as the newly elected President of the MASWCD. Vern reported that over 970 people attended the MASWCD Convention.

**BWSR Meeting Minutes**  
**December 18, 1996**  
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MAWD - Ray Bohn reported that 275 members attend the MAWD Annual Meeting and Trade Show which would make it the largest ever. Ray reported that there was good feedback regarding the increased training. Ray thanked the BWSR staff for their help on developing the training program. MAWD is starting to think about the legislative session. They held their first legislative meeting on the Clean Water Partnership Amendment with BWSR and MPCA.

Ray reported that Woody Love, Minnehaha Creek Watershed District is the newly elected President of MAWD and discussed the MAWD Internet page. The address for the Internet page is [mnwatershed.org](http://mnwatershed.org).

Ray also gave an update on the MnDOT Agreement which is waiting for the Commissioner of MnDOT signature.

Chair Cobb adjourned the meeting at 12:10 p.m.

Respectfully submitted,

Barbara Cobb  
Chair

**Consent Agenda #1.**

Minnesota Board of Water and Soil Resources  
One West Water Street  
Suite 200  
St. Paul, Minnesota 55107

**YELLOW MEDICINE COUNTY COMPREHENSIVE LOCAL WATER PLAN UPDATE - 1996** **(FOR BOARD ACTION)**

The Yellow Medicine County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) on November 28, 1990 and adopted by Yellow Medicine County on December 27, 1990. Yellow Medicine County submitted a Plan Update (Plan Update), required in the Plan, to the BWSR on October 3, 1996, at which time the final ninety day state review process began. The final review period ends on January 2, 1997.

A written overview of the Plan Update was prepared by BWSR staff on November 18, 1996 for information and review.

On December 20, 1996 the BWSR Water Plan Review Committee met with BWSR staff and representatives of Yellow Medicine County to review and discuss the Plan Update.

In addition to the water planning requirements established under the Local Water Planning statute MS 103B, counties updating their Plan must also include objectives for wellhead protection, sensitive groundwater areas, storm water management, high priority wetland preservation areas designation and watershed assessment.

The Yellow Medicine County Local Water Plan Update includes the new requirements. It also incorporates new information in the assessments section of the Plan and organizes the implementation section into four major goals. Objectives and prioritized actions outline efforts in achieving each goal. The goals are: **Protect Ground Water Quality ; Protect and Enhance Surface Water Quality; Protect Surface and Ground Water Quantity; and Improve Surface Water Management to Decrease Flooding.** Objectives include protecting surface and ground water supplies from contamination; define recharge areas and identify problem geologic areas which may cause ground water contamination; gather and analyze well testing information; provide assistance in the development and implementation of wellhead protection plans; reduce the amount of sedimentation and pollutants entering surface waters; enhance the recreational use of surface waters; preserve existing wetlands and restore drained wetlands; expand surface and ground water monitoring; improve communication and establish regional coordination of flood control efforts; assist in construction of flood damage reduction structures; incorporate flood control benefits into future road and bridge replacements; restore small dams in the county. Major activities to accomplish these objectives include education, technical assistance, incentives and regulation.

BWSR staff has reviewed the Yellow Medicine County Comprehensive Local Water Plan Update 1996 and find that relevant requirements of law and rule have been satisfied under MS 103B and MCAR 9300.

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Minnesota Board of Water and Soil Resources  
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**PIPESTONE COUNTY COMPREHENSIVE  
LOCAL WATER PLAN UPDATE - 1996**

**(FOR BOARD ACTION)**

The Pipestone County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) on August 22, 1990 and adopted by Pipestone County on September 12, 1990. Pipestone County submitted a Plan Update (Plan Update), required in the Plan, to the BWSR on August 26, 1996, at which time the final ninety day state review process began. The final review period ends November 24, 1996.

A written overview of the Plan Update was prepared by BWSR staff on October 23, 1996 for information and review.

On December 20, 1996 the BWSR Water Plan Review Committee met with BWSR staff and representatives of Pipestone County to review and discuss the Plan Update.

In addition to the water planning requirements established under the Local Water Planning statute MS 103B, counties updating their Plan must also include objectives for wellhead protection, sensitive groundwater areas, stormwater management, high priority wetland preservation areas designation and watershed assessment.

The Pipestone County Local Water Plan Update includes the new requirements. The implementation section is organized into three major goals. Objectives and prioritized actions outline efforts in achieving each goal. The goals are: **Insure Safe and Adequate Drinking Water Supplies for County Residents, Improve Management of Surface Water, Improve Surface Water Quality.** Objectives include protection, management and increased monitoring of surface water and groundwater resources; identify geologically sensitive groundwater areas; continue to identify point and nonpoint pollution sources; and protection of highly erodible lands and critical areas from wind and water erosion. Major activities to accomplish these objectives include education, technical assistance, incentives and regulation.

BWSR staff has reviewed the Pipestone County Comprehensive Local Water Plan Update 1995 and find that relevant requirements of law and rule have been satisfied under MS 103B and MCAR 9300.



Minnesota Board of Water and Soil Resources  
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FARIBAULT COUNTY COMPREHENSIVE  
LOCAL WATER PLAN UPDATE 1997-2006

(FOR BOARD ACTION)

The Faribault County Comprehensive Water Plan 1990-1995 was adopted by Faribault County on December 11, 1990 and approved by the Minnesota Board of Water and Soil Resources (BWSR) on August 22, 1990. Faribault County submitted a Comprehensive Water Plan Update 1997-2006, required in the plan, to the BWSR on September 16, 1996, at which time the final ninety-day state review process began. The final review period ended on December 15, 1996.

A written overview of the Plan Update was prepared by BWSR staff on October 14, 1996, for information and review.

On January 6, 1997, the BWSR water plan review committee met with BWSR staff and representatives of Faribault County to review and discuss the plan update.

In addition to the water planning requirements established under the Local water Planning statute M.S. 103B, counties updating their Plan must also include objectives for wellhead protection, sensitive groundwater areas, stormwater management, high priority wetland areas, and watershed assessment.

The Faribault County Local Water Plan includes the new requirements. It also adds new information to the data and assessment sections and organizes the goals, objectives and actions into the watershed context. Selected actions are identified as "Priority Actions". All actions have been included in a new implementation section which outlines who will perform the action, when the action will be performed and how much it will cost.

BWSR staff has reviewed the Faribault County Comprehensive Water Plan Update 1997-2006 and find the relevant requirements of law and rule have been satisfied under M.S. 103B and M.R. 9300.

Minnesota Board of Water and Soil Resources  
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BROWN COUNTY COMPREHENSIVE  
LOCAL WATER PLAN UPDATE 1997-2006

(FOR BOARD ACTION)

The Brown County Comprehensive Water Plan 1990-1995 was adopted by Brown County on April 10, 1990, and approved by the Minnesota Board of Water and Soil Resources (BWSR) on February 28, 1990. Brown County submitted a Comprehensive Water Plan Update 1997-2006, required in the plan, to the BWSR on October 24, 1996, at which time the final ninety-day state review process began. The final review period ends on January 22, 1997.

A written overview of the Plan Update was prepared by BWSR staff on December 18, 1996, for information and review.

On January 6, 1997, the BWSR water plan review committee met with BWSR staff and representatives of Brown County to review and discuss the plan update.

In addition to the water planning requirements established under the Local water Planning statute M.S. 103B, counties updating their Plan must also include objectives for wellhead protection, sensitive groundwater areas, stormwater management, high priority wetland areas, and watershed assessment.

The Brown County Local Water Plan includes the new requirements. It also adds new information to the data and assessment sections and organizes the goals, objectives and actions into the watershed context. Selected actions are identified as "Priority Actions". All actions have been included in a new implementation section which outlines who will perform the action, when the action will be performed and how much it will cost.

BWSR staff has reviewed the Brown County Comprehensive Water Plan Update 1997-2006 and find the relevant requirements of law and rule have been satisfied under M.S. 103B and M.R. 9300.

**Minnesota Board of Water and Soil Resources  
One West Water Street  
Suite 200  
St. Paul, Minnesota 55107**

STEELE COUNTY COMPREHENSIVE  
LOCAL WATER PLAN UPDATE - 1997-2006

(FOR BOARD ACTION)

The Steele County Comprehensive Local Water Plan (Plan) was adopted by Steele County on August 14, 1990, and approved by the Minnesota Board of Water and Soil Resources (BWSR) on September 25, 1990. Steele County submitted a Plan Update (Plan Update), required in the Plan, to the BWSR on September 30, 1996, at which time the final ninety-day state review process began. The final review period ends January 3, 1997.

A written overview of the Plan Update was prepared by BWSR staff on October 2, 1996, for information and review.

On January 6, 1996, the BWSR water plan review committee met with BWSR staff and representatives of Steele County to review and discuss the Plan Update.

In addition to the water planning requirements established under the Local Water Planning statute MS 103B, counties updating their Plan must also include objectives for wellhead protection, sensitive groundwater areas, stormwater management, high priority wetland areas, and watershed assessment.

The Steele County Local Water Plan Update includes the new requirements. It also adds new information to a revised data and assessments section and organizes the implementation section into five goal categories which include **Groundwater Quality, Surface Water Quality, Ground & Surface Water Quantity, Special Land Uses & Conditions and Related Land Resources**. Each category contains from one to four goal statements. Each goal is assigned objectives and actions that include the activity and anticipated date of completion. Selected actions are identified as **Priority Actions** which further define activities to include coordinating agencies, funding sources and estimates, and time frames. The Plan Update identifies twenty-seven **Priority Actions** which include technical assistance, cost sharing programs, education and research, inventory, monitoring and data base development, waste collection programs, regulations and enforcement and land use development and natural resource protection.

BWSR staff has reviewed the Steele County Comprehensive Local Water Plan Update - 1996 and find that relevant requirements of law and rule have been satisfied under M.S. 103B and M.R. 9300.



Minnesota Board of Water and Soil Resources  
One West Water Street  
Suite 200  
St. Paul, Minnesota 55107

**Clearwater County Comprehensive  
Local Water Plan Update**

**(For Board Action)**

The Clearwater County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) in October, 1989, and adopted by Clearwater County in November, 1989. Clearwater County submitted a Plan Update, required in the Plan, to the BWSR on September 23, 1996, to begin the final 90 day review period. The final review period ended on December 22, 1996.

A written overview of the Plan Update was prepared by BWSR staff and included in the December 22, 1996 board packet for information and review.

On January 16, 1997, the BWSR Water Plan Review Committee met with representatives of Clearwater County and BWSR staff to review and discuss the Plan Update.

In addition to water planning requirements established under the Local Water Planning Statute 103B, counties updating their Plan must also include objectives for wellhead protection, sensitive groundwater areas, storm water management, high priority wetland preservation area designation and watershed assessment. The Clearwater County Plan Update includes the new requirements.

New information collected has been added to the data inventory section. Assessments were done by major watershed to identify areas where further staff investigation could be focused most effectively. Assessments were made of the **Activities/Occurrences/Resources** that could affect **Surface/Groundwater Quality and quantity** in three (3) major watersheds. Implementation activities were determined by the Water Planning Task Force, its Agriculture Subcommittee, and Clearwater County Board. Some **guiding principles** used in designing the **Plan of Action**: Implementation strategies to support and enhance economic opportunities; New regulations will not be imposed; Be cost effective and practical; Actions Items to utilize information sharing, educational opportunities, incentives, and voluntary measures. The **overall goals** of the Clearwater Plan Update are: #1) Better understand the nature and value, relationship between, and the actual and potential quality/quantity issues of the county's water resources; #2) Take action to prevent surface and groundwater resources from being degraded and address existing problems; #3) Improve the quality of select water resources for economic, social, and environmental benefits. **Implementation strategies** are divided into four sections - one section for the priority issues in the three major watersheds, and one for county-wide objectives.

BWSR staff has reviewed the Clearwater County Plan Update and finds that all relevant requirements of the law and rule have been satisfied under MS 103B and MCAR 9300.

Minnesota Board of Water and Soil Resources  
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**Polk County Comprehensive  
Local Water Plan Update**

**(For Board Action)**

The Polk County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) in February, 1990, and adopted by Polk County in April, 1990. Polk County submitted a Plan Update, required in the Plan, to the BWSR on October 14, 1996, to begin the final 90 day review period. The final review period ended on January 12, 1997.

A written overview of the Plan Update was prepared by BWSR staff and included in the December 22, 1996, board packet for information and review.

On January 16, 1997, the BWSR Water Plan Review Committee met with representatives of Polk County and BWSR staff to review and discuss the Plan Update.

In addition to water planning requirements established under the Local Water Planning Statute 103B, counties updating their Plan must also include objectives for wellhead protection, sensitive groundwater areas, storm water management, high priority wetland preservation area designation and watershed assessment. The Polk County Plan Update includes the new requirements.

New information collected was added to the Plan in a **Summary of Accomplishments**. The Plan includes the eighteen required assessments with an assessment by major watershed, when applicable, and a general description of the four major watersheds in Polk County. A chart indicates the criteria used by the task force to determine **High Priority Wetland Areas**: wetlands which recharge lakes; riverine riparian wetlands; beach ridge wetlands and calcareous fens; wellhead recharge areas; and others identified in the next five years. The Comprehensive Local Water Plan Task Force used information collected through federal, state, and local projects to make assessments used to develop goals and objectives. Goals and objectives were ranked high, medium and low priority by the task force. Major goals are **Water and Wind Erosion, Groundwater Quality, Surface Water Quality/Quantity, Waste Management (feedlots, recycling, landfills, HHW, and pesticides), and Natural Resources (easement programs, wildlife, and education)**.

BWSR staff has reviewed the Polk County Plan Update and finds that all relevant requirements of the law and rule have been satisfied under MS 103B and MCAR 9300.

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**Marshall County Comprehensive  
Local Water Plan Update**

**(For Board Action)**

The Marshall County Comprehensive Local Water Plan (CLWP) was approved by the Minnesota Board of Water and Soil Resources On February 28, 1990. The Marshall CLWP was locally adopted on May 1, 1990. On October 18, 1996 Marshall County submitted for final review the CLWP Plan Update (Plan Update) as required in the original CLWP. On this date the final 90 day review period began. The final review period ended on December 2, 1996.

A Written overview of the Marshall Plan Update was prepared by BWSR staff on November 25, 1996, for BWSR Board information and review.

On January 16, 1997 the BWSR Water Plan Review Committee met with representatives of Marshall County and BWSR staff to review and discuss the Plan Update.

In addition to water planning requirements established under the Local Water Planning Statute 103B, the counties updating their CLWP must also include objectives for wellhead protection, sensitive groundwater areas, storm water management, high priority wetland preservation area designation and watershed assessment.

The Marshall County Plan Update includes the new requirements. The Plan Update has also incorporated more locally gathered data and information which reflects more accurately on the issues in Marshall County rather than that of a larger scale such as the Red River Valley. Based upon these assessments Marshall Counties Plan Update identifies for major issue areas: **Protect, improve, and monitor the quality and quantity of water in the county.** This will be accomplished through such activities as wellhead protection, well sealing, and reducing sediment by conservation practice application and a soil loss ordinance. The county also has identified the need to increase the level of ground and surface water monitoring. **Flood control and ditch management in the county.** Activities include assessing different types of flood control practices and their effectiveness, complete a comprehensive ditch inventory, some level of wetland protection, and develop a diking system that equally shares flood waters. **Better land use management.** Activities include the development of a comprehensive land use plan, development of a wetland management plan, a level two feedlot inventory, implement septic system and sewer maintenance and regulations, and implementation of best management practices. **Solid waste.** Activities help support the county's solid waste plan.

BWSR staff has reviewed the Marshall County Plan Update and finds that all requirements of the law and rule have been satisfied under MS 103B and MCAR 9300.

## Consent Agenda #2.

**Yellow Medicine County Local Water Plan Summary**

The Yellow Medicine County Local Water Plan Update incorporates new information into the assessments section of the Plan. The Plan Update also includes the new requirements for wellhead protection objectives, sensitive ground water areas, storm water management, high priority wetland areas, and watershed assessment. The Plan Update organizes highest priority actions under four goals. Each action item describes the activity, accompanied by a time line, agency involvement and cost estimate.

**Goal I: Protect Ground Water Quality.** Several high priority actions include: evaluate the feedlot inventory to determine priority feedlots; administer the feedlot program, inform landowners regarding the permitting system; seek technical and financial assistance; develop a newsletter for livestock operators; implement a county solid waste ordinance; promote recycling; educate regarding household hazardous waste collection sites; continue demolition site permitting and abandonment plans; seek funding to seal abandoned wells, maintain a data base, educate the public and develop a list of high priority abandoned wells; educate regarding the hazards of underground storage tanks, promote above ground tanks, develop a program to remove underground storage tanks, have a tank removal demonstration; seek funding through SRF for nonconforming sewage treatment systems, enforce 7080 Rules, provide education, bring nonconforming systems located in shoreland areas into compliance by the year 2000, educate businesses regarding proper discharge of commercial wastes into domestic septic systems; educate the public regarding ground water sensitivity, develop a level I map of sensitive ground water areas, promote proper land use management activities in sensitive areas; educate the public on well water quality trends, water testing procedures and continue a water sampling program for rural wells; serve as an advisor and provide assistance in the development and implementation of well head protection plans.

**Goal II: Protect and Enhance Surface Water Quality.** Promote the use of best management practices; identify priority areas for CRP and RIM; educate on the established guidelines for application of fertilizer; educate on correct pesticide use, storage, handling and disposal; insure proper restoration of excavation and mining sites; adopt the revised shoreland ordinance; inspect and implement required buffer strips on all ditches built prior to 1978; implement practices to prevent streambank erosion; educate the public through the water quality / quantity newsletter; educate regarding urban BMPs; inventory and encourage proper storage of private deicing chemical storage sites; assist the Yellow Medicine River W.D. in pursuing a Clean Water Partnership Project; support Stone Hill Regional Park and county parks; work with DNR to select several priority lakes to enhance fish and wildlife values; enroll Wood Lake in MPCA's Lake Assessment Program.

**Goal III: Protect Surface and Ground Water Quantity.** Administer the MN Wetland Conservation Act; work with appropriate agencies to determine equitable compensation for establishing wetlands; subject all new ditch systems or improvements to an appraisal of downstream flooding; enhance communication between the county and Yellow Medicine River W.D. and Lac qui Parle / Yellow Bank W.D.; review and comment on W.D. Overall Plans; educate the public on the values and importance of wetlands; request DNR to establish the high water level on Wood Lake; monitor four ground water observation wells; investigate a stream flow gauging network; work with MPCA in selecting a broader network of water quality monitoring stations, continue to administer the rainfall monitoring program; maintain communication and provide technical information to rural water systems.

**Goal IV: Improve Surface Water Management to Decrease Flooding.** Maintain participation with area agencies for holistic floodplain management; coordinate structural activities with Area II and other local agencies including prioritizing and financing these structures; pursue funding; develop and rank road retention projects; when possible design road and bridge replacements to provide reductions in peak flows; develop a list of small dams in need of repair and investigate a possible cost-share program; support wetland acquisition, easement and restoration activities; mitigate wetland losses resulting from county projects.



Board mtg  
Agenda item

1 A bill for an act

2 relating to state agencies and local government;  
3 providing framework and goals for local land-use  
4 planning; imposing fees; appropriating money.

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

6 Section 1. [PURPOSE.]

7 The purpose of this act is to deal with the problems of  
8 uncoordinated and unplanned growth and with the public's  
9 interest in the conservation of natural resources, sustainable  
10 development, minimization of the need for future infrastructure  
11 investment by maximizing existing public infrastructure,  
12 preservation of agricultural land and strengthening and  
13 maintaining the state's agricultural economic base, statewide  
14 economic growth, and the quality of life in Minnesota.

15 Sec. 2. [BOWSR TO ADMINISTER, IMPLEMENT.]

16 The board of water and soil resources (BOWSR) must  
17 implement and administer the framework set out in this act.

18 Sec. 3. [RULEMAKING, RECOMMENDATIONS, PUBLIC HEARINGS.]

19 BOWSR must refine through rulemaking, hereby authorized,  
20 the goals set out in section 10. In doing so, BOWSR must  
21 consider the recommendations of the governor's sustainable  
22 development roundtable, the sustainable development initiative's  
23 settlement team, the environmental quality board's communities  
24 by design, the sustainable economic development and  
25 environmental protection task force, and other stakeholders. In

1 the process of refining the goals, BOWSR must conduct at least  
2 one public hearing in each county. A notice of the time, place,  
3 and purpose of the hearing must be published in at least one  
4 official newspaper in the county at least ten days before the  
5 hearing.

6 Sec. 4. [STATE AND LOCAL PLANS.]

7 (a) After BOWSR has adopted its rules, all state agencies  
8 and all counties must prepare comprehensive plans setting forth  
9 the strategies by which they intend to conform their actions to  
10 the goals set out in section 10. The plans for state agencies  
11 must identify laws that prevent them from conforming to the  
12 goals. Counties may join together to plan for their region.  
13 Cities and towns may prepare their own plans, but they must be  
14 consistent with the goals. The plan of a city or town may be  
15 more restrictive than its county's plan within the spirit of the  
16 statewide goals. Counties, cities, and towns shall, to the  
17 greatest extent practicable, coordinate and cooperate in their  
18 planning processes to minimize the inconsistencies in their  
19 comprehensive plans. The metropolitan council retains its  
20 planning authority but its plans must be consistent with the  
21 goals.

22 (b) As the first step in preparing a plan, a visioning  
23 process must be used to involve the public in deciding the  
24 community's long-term direction and identifying strategies for  
25 conforming to the goals. BOWSR must prepare a guide for local  
26 units of government setting forth the steps for preparing a plan  
27 to conform to the goals, including the initial step of the  
28 visioning process, and a definition of the public hearing and  
29 comment procedure necessary to ensure maximum public  
30 participation in the planning process.

31 Sec. 5. [EFFICIENT GOVERNMENT.]

32 The plans of state agencies and local units of government  
33 must identify areas in which government services can be more  
34 efficiently furnished through consolidation or by contracting  
35 with others. For local units of governments, the plans must  
36 consolidate and coordinate all planning activities mandated by

1 the state. Conflicting planning processes must be eliminated.  
2 Specific time limits must be established by rule for state  
3 agency decisions concerning planning and land-use decision  
4 activities.

5 Sec. 6. [FUNDING AND TECHNICAL ASSISTANCE.]

6 BOWSR must furnish technical assistance to local units of  
7 government to meet their planning requirements. In the  
8 seven-county metropolitan area, the metropolitan council must  
9 furnish technical assistance to local units of government.  
10 Local units of government are exempt from the requirements of  
11 sections 2 to 11 until they receive state money provided by  
12 section 12 to help them meet their planning requirements.

13 Sec. 7. [REVIEW AND ENFORCEMENT.]

14 (a) When a state agency or local unit of government  
15 completes its plan, it must be submitted to the advisory council  
16 established by section 11 for review. The advisory council  
17 shall review the plan, and forward the plan with its comments  
18 and recommendations to BOWSR within .... days of receipt of the  
19 plan. After receipt of the plan and the comments and  
20 recommendations of the advisory council, BOWSR must conduct its  
21 own review process and disapprove a plan if it is not consistent  
22 with the goals. Following an interim period of ..... months in  
23 which planning must be completed, a local unit of government  
24 must be denied certain forms of state aid, including but not  
25 limited to tax increment financing, municipal state aid,  
26 county-state highway aid, and homestead and agricultural credit  
27 aid (HACA), if it does not have an approved plan. Following an  
28 interim period of ..... months in which planning must be  
29 completed, a state agency is subject to a ..... percent budget  
30 reduction if it does not have an approved plan.

31 (b) A local unit of government that has adopted a  
32 comprehensive plan, or made significant amendments to its  
33 comprehensive plan so as to constitute a substantial revision of  
34 the plan within two years before the effective date of sections  
35 2 to 11, may apply to BOWSR for an extension from compliance  
36 with the requirements of sections 2 to 11. BOWSR may grant an



1 extension of not more than .... years to the local unit of  
2 government if BOWSR determines that the local unit of government  
3 in the adoption or amendment of its comprehensive plan has  
4 attempted to conform to the general concept of sections 2 to 11,  
5 and to require the local unit of government to reinstitute a  
6 substantial review of its comprehensive plan in close proximity  
7 to the recently completed adoption or amendment of its plan  
8 would constitute an undue burden on the local unit of government.

9       Sec. 8. [CONSISTENCY; OFFICIAL CONTROLS.]

10       For local units of government, all official controls and  
11 fiscal decisions must be consistent with their approved plans.  
12 Official controls and fiscal decisions include land-use  
13 regulations, capital improvement programs, and capital budgets.

14       Sec. 9. [LEGAL ACTION.]

15       Enforcement mechanisms must be established for members of  
16 the public and affected communities to institute legal action to  
17 uphold the goals. Except as provided below, a private cause of  
18 action by any affected party exists to enforce the provisions of  
19 sections 2 to 11 and any person aggrieved by the failure of any  
20 public body to carry out or enforce an action required by  
21 sections 2 to 11 may bring an action in the district court to  
22 seek an appropriate remedy, including a civil penalty not to  
23 exceed \$..... If successful, plaintiffs may be awarded  
24 reasonable attorneys fees and court costs. In enforcement  
25 actions, bonds must not be required for injunctions or appeals  
26 during litigation. Actions challenging land use decisions by  
27 local units of government must be handled as contested cases  
28 under Minnesota Statutes, chapter 14.

29       Sec. 10. [GOALS.]

30       Subdivision 1. [FOR FRAMEWORK.] The goals in subdivisions  
31 1a to 14 are adopted for use in putting together a framework for  
32 statewide land-use planning.

33       Subd. 1a. [GOAL 1; CITIZEN INVOLVEMENT.] The first goal is  
34 to have a process outlined in statute to ensure broad citizen  
35 participation in all stages of the planning process. The  
36 purpose of the process is to ensure that future generations have

1 the maximum number of available choices.

2       Subd. 2. [GOAL 2; CONSERVATION.] The second goal is to  
3 protect Minnesota's natural resources, including protecting  
4 agricultural land; protecting and improving the quality of water  
5 in Minnesota's lakes, streams, and rivers, and the quality and  
6 quantity of groundwater; protecting and restoring Minnesota's  
7 terrestrial ecosystems and preventing their further  
8 fragmentation; preserving Minnesota's native biodiversity; and  
9 protecting Minnesota's wetlands.

10       Subd. 3. [GOAL 3; ECONOMIC DEVELOPMENT.] The third goal is  
11 to create economic development strategies to provide economic  
12 opportunities throughout the state, including rural areas,  
13 regional centers, and urban core areas.

14       Subd. 4. [GOAL 4; TRANSPORTATION.] The fourth goal is to  
15 increase appropriate mass transit options both within urban  
16 centers and throughout the state using community design oriented  
17 to people not automobiles. The design must maximize efficient  
18 use of existing and future infrastructure and plan growth around  
19 it.

20       Subd. 5. [GOAL 5; CONCURRENCY.] The fifth goal is to  
21 provide concurrency so that infrastructure, including schools,  
22 is in place as any new development occurs.

23       Subd. 6. [GOAL 6; DESIGN.] The sixth goal is to use  
24 development patterns and design to strengthen community,  
25 accommodate all income and age groups, promote mixed uses and  
26 more compact development, include green spaces within built  
27 environments, maximize access to public transit and nonmotorized  
28 transportation, and bring attention to aesthetics and beauty in  
29 the built environment. Public facilities must be designed to  
30 serve as functional examples of these principles.

31       Subd 7. [GOAL 7; STATEWIDE GROWTH PATTERNS.] The seventh  
32 goal is to guide population growth to cities statewide to  
33 achieve a more balanced distribution of growth throughout the  
34 state, to better use existing infrastructure, and to provide for  
35 affordable housing, preserve resource land, and improve the  
36 quality of life.

1        Subd. 8. [GOAL 8; CARRYING CAPACITY.] The eighth goal is  
2        to encourage research and public awareness programs that foster  
3        an understanding of Minnesota's finite capacity to accommodate  
4        population needs, including local food and water resources, and  
5        to encourage planning and resource management to provide that  
6        population growth rates throughout the state are consistent with  
7        available and planned resource capacities, including local water  
8        resources.

9        Subd. 9. [GOAL 9; HOUSING.] The ninth goal is to provide a  
10       variety of types, styles, and sizes of housing to meet the  
11       affordability and life-cycle needs of the population.

12       Subd. 10. [GOAL 10; URBANIZATION.] The tenth goal is to  
13       clearly delineate between urban and rural areas.

14       Subd. 11. [GOAL 11; HISTORIC PRESERVATION.] The 11th goal  
15       is to identify and preserve significant historic and  
16       archaeological sites.

17       Subd. 12. [GOAL 12; RECREATION.] The 12th goal is to  
18       provide for the recreational needs of the area.

19       Subd. 13. [GOAL 13; LAND-USE PLANNING.] The 13th goal is  
20       to establish the land-use planning process and policy framework  
21       as a basis for all decisions and actions related to the use of  
22       land.

23       Subd. 14. [GOAL 14; SCENIC PRESERVATION.] The 14th goal is  
24       to identify and preserve scenic resources that contribute  
25       economic and social value to the state.

26       Sec. 11. [ADVISORY COUNCIL.]

27       An advisory council to BOWSR of ..... members is  
28       established under Minnesota Statutes, section 15.059, to advise  
29       BOWSR on statewide land-use planning. Members are appointed by  
30       the governor and must have an interest in and experience with  
31       land-use planning.

32       Sec. 12. [APPROPRIATION.]

33       \$..... in fiscal year 1998 and \$..... in fiscal year  
34       1999 are appropriated from the general fund to BOWSR for grants  
35       to local units of government for land-use planning as provided  
36       in this act. \$..... in fiscal year 1998 and \$..... in

01/10/97

[COUNSEL ] DPM

SC4857

- 1 fiscal year 1999 are appropriated from the general fund to BOWSR
- 2 for administrative expenses in carrying out the requirements of
- 3 sections 2 to 11.

## **A TEMPLATE FOR A BILL**

### **BACKGROUND**

The Land Stewardship Project's 1000 Friends of Minnesota supports the creation of a statewide land-use framework. Many of the policy elements for this framework build on previous recommendations from the Settlement Team of Governor Carlson's Sustainable Development Initiative and the legislature's Sustainable Economic Development and Environmental Protection Task Force. The policy recommendations also reflect feedback from regional meetings across the state which were held by 1000 Friends of Minnesota during the past two years. By comparing the results from each of these efforts, a list of common land-use concerns and possible solutions emerges, including:

#### **Common Concerns -**

- There is no direction from the state, no statewide goals or policies regarding land use.
- There is a lack of planning in general and specifically a lack of good plans.
- The planning that is done is not integrated with neighboring jurisdictions.
- The land-use plans are not based on sustainable principles.
- There is no mechanism to enforce plans.
- There is no consistency for planning implementation or establishing objectives.

#### **Common Solutions -**

- The state must provide direction through common statewide goals and policies.
- At a minimum there must be county level planning within a statewide framework.
- Broad citizen participation in the planning process is critical to its success.
- Any planning mandates must be funded and provide technical assistance.
- A process for arbitration must be clearly defined.
- A citizens' appeal process must be clearly defined.
- Land-use plans must be integrated and based on sustainable principles.



## **Policy Recommendations for Community-Based Land-Use Planning in a Statewide Framework**

LSP's 1000 Friends of Minnesota propose the following policy elements for local land-use planning based on statewide goals. **This is a working document.** The elements are the result of public forums held by 1000 Friends throughout Minnesota and the previous work of the Sustainable Development Initiative. 1000 Friends intends to hold a series of additional public forums to help further refine this planning framework.

### **THE FRAMEWORK**

#### **A. Statewide goals**

The framework should be based on goals set forth in statute to deal with the problems of uncoordinated and unplanned growth and the public's interest in the conservation of natural resources, sustainable economic development, and the quality of life in Minnesota. The goals should be broadly defined and should include at least the items listed on Attachment A.

#### **B. Entity**

A state agency or combination of state agencies ("entity") should be charged with the implementation and administration of the framework. The entity could consist of one or more of the following agencies: Minnesota Planning, the Environmental Quality Board, Department of Trade and Economic Development, or the Board of Water and Soil Resources.

Through rulemaking, the entity, should further refine the goals. As part of this process, the entity should take into consideration the recommendations of the Governor's Sustainable Development Roundtable, the Sustainable Development Initiative's Settlement Team, the Environmental Quality Board's Communities by Design, and the Sustainable Economic Development and Environmental Protection Task Force. In the process of refining the goals, the entity should also conduct one public hearings in every county within Minnesota.

#### **C. State & Local Plans**

When the entity has issued its rules, all state agencies and all counties should prepare comprehensive plans setting forth the strategies by which they intend to conform their actions to the goals as further defined. The plans for state agencies should identify statutory mandates that prevent them conforming to the goals as further defined. Counties may join together to plan for their region. Cities and towns may prepare their own plans but they must be consistent with their county's plan and the goals as further defined. The plan of a city or town may be more strict



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than its county's plan within the spirit of the statewide goals. The Metropolitan Council retains its current planning authority, and its plans should be consistent with the goals as further defined.

As the initial step in preparing a plan, a visioning process is required to involve the public in deciding the community's long-term direction and identifying strategies for conforming to the goals as further defined. The entity should prepare a guide for local units of government setting forth the steps for preparing a plan that will conform to the goals as further defined including the initial step of the visioning process.

### **D. Efficient Government**

The plans of state agencies and local units of government should identify areas in which government services could be more efficiently furnished through consolidation or contract with others. For local units of governments, the plans should consolidate and coordinate all planning activities mandated by the state. In the statute enacting the framework, conflicting planning processes should be streamlined. Specific time limits shall be established in statute for state agency decisions concerning planning and land-use decision activities.

### **E. Funding & Technical Assistance**

The entity should furnish technical assistance to local units of government to meet their planning requirements. In the seven-county metropolitan area, the Metropolitan Council should furnish technical assistance to local units of government. Local units of government should receive funds to help them meet their planning requirements. The funds should be gathered from a charge on real estate transactions.

### **F. Review & Enforcement**

When a state agency or local unit of government completes its plan, it should be submitted to the entity for review. The entity should disapprove a plan if it is not consistent with the goals as further defined. Following a interim period of \_\_ months in which planning should be completed, a local unit of government should be denied certain forms of state aid, including but not limited to tax increment financing, municipal state aid, county-state highway aid, and HACA, if it does not have an approved plan. Following an interim period of \_\_ months in which planning should be completed, a state agency should be subject to a \_\_% budget reduction if it does not have an approved plan.

For local units of government, all official controls and fiscal decisions shall be consistent with their approved plans. Official controls and fiscal decisions include land use regulations, capital improvement programs, and capital budgets.

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Enforcement mechanisms should be established for members of the public and affected communities to institute legal action to uphold the goals as further defined. If successful, plaintiffs should receive reasonable attorney's fees, court costs, and disbursements. In enforcement actions, bonds should not be required for injunctions or appeals during litigation. A special land use court or an administrative law judge specially trained in land-use should adjudicate enforcement actions and handle all actions challenging land use decisions by local units of government.

January 2, 1997

## DRAFT

### ATTACHMENT A - THE GOALS

**Goal 1. Citizen Involvement.** A process to ensure broad citizen participation in all stages of the planning process must be outlined in statute, to insure future generations have the maximum number of available choices.

**Goal 2. Conservation.** Protect Minnesota's natural resources with the overall goal of protecting prime agricultural land; protecting and improving the quality of water in Minnesota's lakes, streams and rivers; protecting the quality and quantity of groundwater in Minnesota; protecting and restoring Minnesota's terrestrial ecosystems and preventing their further fragmentation; preserving Minnesota's native biodiversity; and protecting Minnesota's wetlands.

**Goal 3. Economic Development.** Create economic development strategies to provide economic opportunities throughout the state, including rural areas, regional centers, and urban core areas.

**Goal 4. Transportation.** Increase appropriate mass transit options both within urban centers and throughout the state. Use community design oriented to people not automobiles. Make efficient use of existing and future infrastructure, and plan growth around it.

**Goal 5. Concurrency.** Infrastructure, including schools, must be in place before any new development can occur (pay as you grow).

**Goal 6. Design.** Use development patterns and design to strengthen community, accommodate all income and age groups, promote mixed uses, include green spaces within built environments, reduce reliance on automobile, and bring attention to aesthetics and beauty in the built environment. Public facilities should be designed to serve as functional examples of these principles.

**Goal 7. State-wide Growth Patterns.** Guide population growth to cities state-wide to achieve a more balanced distribution of growth throughout the state, and to better utilize existing infrastructure. Also, determine the feasibility of free-standing new communities, to the extent that it promotes economic development, provides for affordable housing, preserves resource land, and improves the quality of life.

**Goal 8. Carrying capacity.** Encourage research and public awareness programs that foster an understanding of Minnesota's finite capacity to accommodate population needs, including local food and water resources. Encourage planning and resource management to provide that population growth rates throughout the state are consistent with available and planned resource capacities, including local food and water resources.

**Goal 9. Housing.** Provide a variety of types, styles and sizes to meet the affordability and life cycle needs of the population.

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**Goal 10. Urbanization.** Clearly delineate between urban and rural areas.

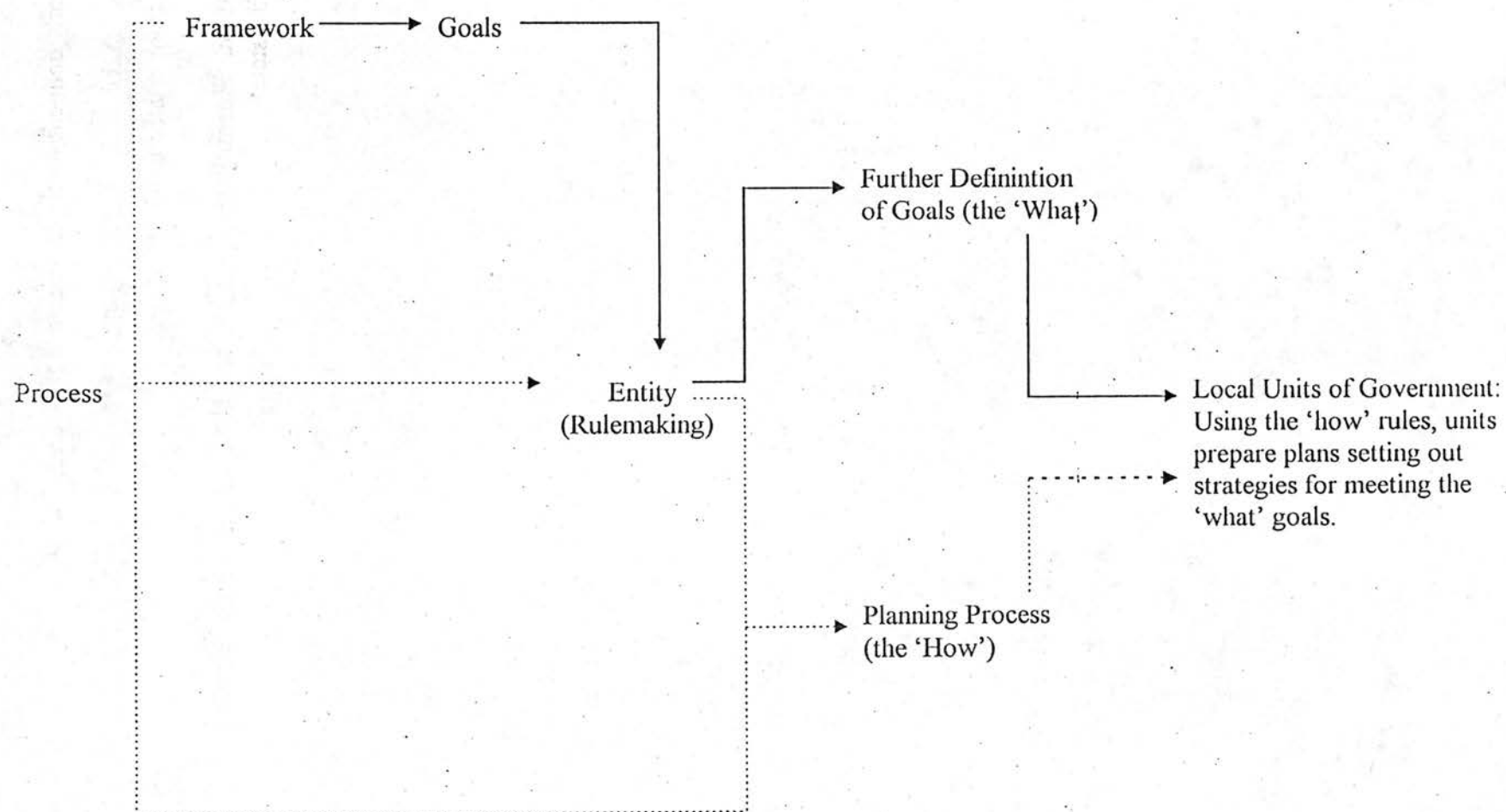
**Goal 11. Land Use Planning.** Establish the land-use planning process and policy framework as a basis for all decisions and actions related to the use of land.

**Goal 12. Scenic Preservation.** Identify and preserve scenic resources which contribute economic and social value to the state.

January 2, 1997

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## Framework for Statewide Community Land-use Planning







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January 14, 1997

TO : Wetland Heritage Advisory Committee Members

FROM : Greg Larson, Administrator-Water and Land Management  
Section *Greg Larson*

RE : Final report--Wetland Regulations and Property Values

I received the report last week and am forwarding it to you for your information. The authors incorporated many of the comments they received at your meeting on November 13th. Although the issue of whether or not the State owes compensation to landowners due to wetland regulations was not within the scope of the report, the concept of compensation to landowners was mentioned many times (see pages 6, 17 and 18). I supplemented those general comments on compensation with a short piece summarizing the compensation provisions of the Wetland Conservation Act. And as required by the enabling legislation, I included recommendations for legislation to address weaknesses identified by the study.

Comments on the draft report were few in number and mostly editorial. This suggests that the draft report was well- received. For these reasons, and the difficulty in scheduling a meeting when a quorum of members could attend, we decided to forego a meeting of the WHAC. The BWSR will discuss the report and the recommendations for legislation at their meeting on January 22nd. Following that, the report and recommendations, will be forwarded to the Legislature.

I have included a meeting notice and map should you want to attend.

C: Joe Preiner, MN Property Rights Association  
Dave Zavoral, MN Land Rights Association  
Minnesota Taxpayers Association  
Matthew Seltzer, Attorney General's Office  
BWSR members  
Ron Harnack, Executive Director  
John Jaschke, Wetland Program Manager  
Professor Steve Taff, University of Minnesota

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## **Compensation for Loss of Private Use of a Wetland: Provisions of the Wetland Conservation Act**

- ▶ This provision of law is governed by Section 103G.237 and by the WCA rule, part 8420.0270.
- ▶ These provisions provide the basis and procedure for compensating a landowner whose wetland replacement plan was not approved. The process leading to compensation is summarized as follows:
  - If a project is not exempt and drains or fills a wetland-----
  - The landowner must submit a wetland replacement plan to the local unit of government (LGU). The wetland replacement plan must describe how the wetland will be replaced with another wetland of equal public value. The landowner must also satisfy the requirement that the proposed drain or fill is a feasible and prudent project and that a good faith effort was made to avoid or minimize wetland impacts from the project.
  - To be eligible for compensation, the replacement plan must be disapproved by the LGU or the LGU must have imposed conditions on the plan that make the wetland replacement unworkable or not feasible.
  - The landowner must then appeal the local government decision to the Board of Water and Soil Resources (BWSR).
  - To remain eligible for compensation, the Board of Water and Soil Resources must find that the landowner has submitted a complete application and proved the requirements stated above.
  - Following these steps, the BWSR must compensate the landowner, if:
    - ✓ the proposed wetland project and subsequent use of the site would otherwise be allowed by federal, state, and local government;
    - ✓ the landowner has suffered or will suffer damages;
    - ✓ disallowing the proposed use will enhance the public value of the wetland;
    - ✓ the landowner applies to the BWSR for compensation in the manner prescribed by law; and
    - ✓ the landowner demonstrates the ability to convey an easement with a marketable title.

If awarded compensation, the landowner must convey a perpetual conservation easement to the state for the wetland subject to the proposed replacement plan. (This easement, similar to those used in the Reinvest in Minnesota Program, does not provide public access.)

If the landowner complies with the above conditions, the BWSR must provide compensation in an amount equal to the greater of :

- (1) 50 percent of the value of the wetland, calculated by multiplying the acreage of the wetland by the greater of:
  - (i) the average equalized estimated market value of agricultural property in the township as established by the commissioner of revenue at the time application is made; or
  - (ii) the assessed value per acre of the parcel containing the wetland, based on the assessed value of the parcel as stated on the most recent tax statement; or
- (2) \$200 per acre of wetland subject to the replacement plan, increased or decreased by the percentage change of the assessed valuation of land in the township where the wetland is located from the 1995 valuation.

If the BWSR does not compensate the landowner as required by law within 90 days after receiving a completed application and conveyed conservation easement, the landowner may drain or fill the wetland in the manner proposed, without replacement.

#### Summary of compensation claims:

To this date, the BWSR has not received a request for compensation. The reason is that replacement plans are rarely disapproved as typically a replacement plan is considered by a local government only after the landowner and the local government have agreed to terms. Staff of the BWSR are not aware of any situations where an applicant submitted a replacement plan without first discussing their project with local government staff. As suggested by the summary statistics from the 1995 Minnesota Wetland Report, over 17,000 landowner contacts resulted in 395 replacement plans replacing 381 acres. This suggests that most landowners did not have wetlands, had wetlands but were exempt, did not proceed with their project or completed their project with no or minimal wetland impacts.

## **Recommendations for Legislation Concerning the Impact of Wetland Regulations on Property Values**

Before legislation is considered dealing with the assertion that wetland regulations, specifically state wetland regulations, have reduced property values, the following points should be considered:

- ▶ The influence of a wetland regulation must be isolated from all other factors that influence a property's value.
- ▶ The effect of local land use controls such as zoning and other wetland restrictions such as the USDA farm program on property value must be disentangled.
- ▶ As a rule, American Courts have decided that a regulation is **not** a taking of private property unless:
  - the regulation does not substantially advance a legitimate public interest;
  - the regulation authorizes a physical invasion of the property;
  - the regulation denies the landowner all economically viable uses of the property;
  - or the regulation takes from the landowner the right of bequest.

**Minnesota Courts have not ruled that state wetland regulations have taken private property.**

- ▶ The process of determining the value of property with and without regulations is not straightforward.
- ▶ Land use regulations have the effect of precluding certain land uses; some uses represent income opportunities. If it can be determined that a specific regulation has inappropriately lowered property values, the issue of "how much lower" before compensation is due, must also be considered. (This assumes that a threshold of damage is necessary so that administratively every diminution of property value does not require action.)

### **Conclusion:**

Given that the Wetland Conservation has a compensation provision that has yet to be used, and that Minnesota Courts have not found that state wetland regulations has "taken" private property, it is the recommendation of the Board of Water and Soil Resources that legislation concerning compensation to landowners from regulation under state wetland laws is not necessary.

It is further recommended if the Legislature chooses to consider additional property value analyses of the impact of (wetland) regulations on property values, they should be very clear about why the analyses is being done. As an example, is the analyses being done out of concern about the fairness of the regulation or is it being done because of concern about the cost of the regulation versus the benefits of wetland protection.

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### **An Inquiry into the Relationship of Wetland Regulations and Property Values in Minnesota**

**Charles Holtman**

**Steven J. Taff**

**Aaron Meyer**

**Jay Leitch**

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**DEPARTMENT OF APPLIED ECONOMICS**  
**COLLEGE OF AGRICULTURAL, FOOD, AND ENVIRONMENTAL SCIENCES**  
**UNIVERSITY OF MINNESOTA**

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**An Inquiry into the Relationship of Wetland Regulations  
and Property Values in Minnesota**

**Charles Holtman**

**Steven J. Taff**

**Aaron Meyer**

**Jay Leitch**

Holtman was a research associate and Taff is an associate professor and extension economist with the Department of Applied Economics, University of Minnesota. Meyer is a graduate research assistant and Leitch is a professor with the Department of Agricultural Economics, North Dakota State University. Please address correspondence to: Steven J. Taff, Department of Applied Economics, 1994 Buford Ave., University of Minnesota, St. Paul MN 55108-6040, USA.

Completed under terms of a contract with the Minnesota Board of Water and Soil Resources.

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### **Abstract**

Ownership in property can be thought of as ownership of the rights to the "incomes" associated with different uses of the property. Each potential use has a separate economic value, which can be ranked if put into money terms. The property's market value is usually held to be the highest income on that ranking.

Wetland protection regulations might shift the ownership of some of these rights from private to public entities or restrict the exercise of some rights. This can result in a reduction of the property's market value, if the regulation precludes access to the income from the highest ranking use. A regulation can never increase the economic value of a property from the owner's perspective.

Whether or not a reduction in property value is considered "fair" is a question usually left to the courts. If it is determined that a regulation has resulted in a "taking" of property, compensation must be paid. The appropriate level of compensation is the difference between estimated pre- and post-regulation market values. The task of the analyst is to estimate those two values, after first determining if the two uses are feasible given other physical, financial, and legal conditions.

Because property prices are not determined until there is a transaction, all such valuations are necessarily estimates based on the professional judgments of the analyst. There are no easy ways to determine these values short of costly individual appraisals or extensive market studies.

Wetland regulations in Minnesota do result in reduced values for some property owners – as do all land use regulations. Demonstrating that values went down on regulated properties has policy import, however, only if: (1) the examples are so egregious that the Legislature decides to change the enabling legislation to adjust the distribution of the law's benefits and costs; or (2) the sum of measured property losses exceeds any estimate of total benefits, in which case the Legislature might decide to change the law as not in the broader public interest.

Should further property value analyses be conducted? Only if the Legislature is very clear about why it wants to do the study. If the concern is one of fairness, then the distribution of a regulation's costs should be examined by using parcel-by-parcel appraisals or by a careful calculation of the economic benefits and costs among different classes of people, classes of property, or regions of the state. If, on the other hand, the concern is that the aggregate costs of the regulation may exceed its total benefits, then broader economic valuation studies are called for. We are not prepared to recommend either approach at this time, because the Legislature has not yet declared what the problem really is.

## **Introduction**

Responding to concerns that the Minnesota's wetland protection programs excessively restrict development opportunities on parcels containing wetlands, the Minnesota Legislature (Chapter 407, Laws of 1996) directed the Board of Water and Soil Resources (BWSR) "to assess the economic impact of wetland regulations on property values, in connection with a study by the wetland heritage advisory committee of the issue of compensation to landowners for costs, including reduced property values, resulting from regulation under state law of draining and filling of wetlands." The Board subsequently contracted with the University of Minnesota's Department of Applied Economics for the first mentioned study. This report is the final product of the work conducted under that contract.

*We have not prepared an estimate of property value loss or gain attributed to specific Minnesota wetland regulations in specific property markets.* That would be far beyond the scope of the project's budget. We do analyze the legal and economic aspects of the interactions of wetland regulations and property values, organized around a sequence of "findings." We isolate what we think are the critical issues, and we illustrate them with several wetland regulation "cases," some from northern Minnesota and some from the Twin Cities area. These are individually detailed in the appendix.

We examine only proposed residential or commercial developments involving wetlands. Under Minnesota law, discussed below, agricultural properties are largely exempt from wetland regulations. We make no claims that these examples capture all wetland regulation issues in Minnesota, nor do we claim that this "sample is representative of all wetlands.

Throughout the report, we necessarily mingle concepts and issues pulled from both economic science and the law. It is useful to think of the law (regulations) as setting the rules under which property markets operate. Changes in regulations will alter the distribution of economic gains and losses, and anticipated changes in property markets will sometimes influence the making of laws. We were not asked specifically to address the issues of regulatory takings or appropriate compensation levels, but we could not isolate our examination of valuation impacts from this broader context. Because legal documents reflect a sizable body of thought about what property rights are and how regulations affect them, we additionally examine how American courts have come to view these issues, particularly when and how the courts make use of economic science in their deliberations.

In its briefest form, our conclusion is this: Wetland regulations do reduce some properties' market values. However, adjacent non-regulated properties might increase in value as a result of the same laws. Whether the State owes compensation in the former case (or is due reimbursement in the latter) is not within the scope of this report.

**The link between a wetland regulation and a particular property's value is not as direct as it first might seem.**

The price of a property is not known until there is an actual transaction. Up to that point, market value must be considered the expected price of property. Theory holds that people place an economic value on a property equal to the monetized services (including ultimate sale price) they expect out of it for as long as they hold it. These services come not from the property itself but from its use. There are many possible uses for a given property but not all are financially, physically, or legally feasible. As a result, it is best to speak of a property's value as contingent upon a particular use that generates services that have economic value to a particular owner. The services in turn are functions of the economic, physical, and legal characteristics of the property itself.

The influence of a wetland regulation therefore must be isolated from all the other (changing) factors that influence the property's value. A claim of lowered property value is a claim that exercise of a higher-value use has been precluded by the regulation.

Both wetland protection and other land use regulations might come into play for any given property development proposal. Disentangling the economic effects of these several regulations is a difficult task, as some of our case studies illustrate. In Minnesota, the following wetland laws have the most direct effect on development proposals. The several regulations summarized here do not constitute an exhaustive list of laws that influence property decisions. Development also may be restricted by several other types of local and state regulations such as zoning, subdivision, or water quality laws. A good illustration is our Case A (see Appendix), where the proposed development was subject to a steep slopes ordinance, a scenic easement, and a private covenant on the deed – all in addition to the state wetlands regulations.

*Wetland Conservation Act*

The 1991 Minnesota Wetland Conservation Act (WCA) permits the draining or filling of wetlands only under an approved replacement plan. There is to be no net loss to the State of the water quality, flood control, habitat, public recreation, and commercial values said to be provided by wetlands. Any actual wetland loss must be compensated by restoring or creating replacement wetland. Importantly, many agricultural and silvicultural activities (as well as projects whose impacts are classified as insignificant) are exempt from these provisions.

The authority to approve a replacement or mitigation plan resides in the designated local government unit (LGU) or its delegate. Within the seven-county metropolitan area, the LGU is to be a city council, a township board, or a water management organization. Outside the metropolitan area, it can be the county board (in unincorporated areas) or a city council. The state Board of Water and Soil Resources oversees implementation of the WCA and hears appeals from LGU decisions.

Landowners whose replacement plans are not approved are eligible for compensation under certain conditions. Generally, this payment is to be equal to the average market value of agricultural property in the township or the assessed value of the parcel containing the wetland, whichever is greater. In exchange, the State is granted a conservation easement on the wetland property. There have been no compensation



payments under the WCA to date. In practice, most wetland owners and the LGU have negotiated to modify development plans initially deemed unacceptable.

No comprehensive WCA-related mapping exists for the state, although many jurisdictions have developed local maps, using recently-released National Wetland Inventory data, USGS topographic maps, and USDA soil surveys. Landowners or prospective buyers must obtain a wetland delineation privately or through the assistance of the LGU before starting a project. (The absence of a predetermined set of wetland delineations that identify WCA jurisdiction may create uncertainty in the market as to the extent to which the regulation will constrain use of the land. We take up this point in a later section.)

#### *Protected Waters Statute*

A Department of Natural Resources (DNR) permit is required before changing the course, current, or cross-section of "protected waters." These include streams, lakes and ponds, as well as Type 3, 4, or 5 wetlands that are 10 or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas. Alteration is permitted if the owner demonstrates that it cannot reasonably be avoided and that disturbance will be minimized. Wetlands subject to the DNR permit were inventoried in the late 1970's; maps identifying these wetlands are located in county offices. These maps show the general location of protected wetlands, but they do not delineate actual wetland boundaries.

#### *Federal Statutes*

Two federal statutes also may constrain the use of wetlands in Minnesota. (1) Section 404 of the 1972 Federal Water Pollution Control Act (FWPCA) requires a permit from the Army Corps of Engineers (COE) to place dredged or fill material in "waters of the United States." These include navigable waters, their tributaries and headwaters, and adjacent wetlands. (2) Section 10 of the 1899 Rivers and Harbors Act (RHA) prohibits excavation, fill or the placement of an obstruction within navigable waters without a permit. To obtain a permit under either statute, a landowner must demonstrate that the proposed disturbance is unavoidable and will be minimized. Public wetland values are to be maintained through actions such as wetland restoration or creation.

Exceptions to these two requirements are common, in the form of "nationwide," "regional," or "general" permits. For example, some nationwide permits allow, without prior approval or wetland replacement, the discharge of dredge spoils or fill into wetlands of less than one acre. Waiver of federal jurisdiction, however, does not mean that state approval is automatic.

**Wetland regulations are presumed to serve the public good on the whole, but the resulting gains and losses may not be evenly distributed among property owners.**

For present purposes, we necessarily assume that the Legislature (or Congress) passed the regulations passed in the first place because it determined that the benefits of wetland protection exceed the costs it imposes *in the aggregate*. The present study does not examine the validity of this implicit policy finding.

This is not to say, however, that everyone benefits equally from wetland protection in general or that the benefits from protection of a particular wetland exceed its costs in



every instance. In some of our case studies, the owners said they did not think the land contained "important" or "valuable" wetlands, so they did not even consider the possibility that the properties might be subject to wetland regulations. (We discuss below whether or not "reasonable" buyers and sellers should be expected to be on "constructive notice" that wetland regulations might apply, simply because of the presence of any sort of wet area on their properties.)

In principle, those who benefit (gainers) from wetland protection laws could reimburse all those who experience economic losses (losers) – and still have something left over. Compensation by gainers is not often put into practice, except for case-by-case formal legal proceedings. Some observers refer to the gains from regulation as "givings," in obvious contrast to the losses, commonly called "takings."

Certain landowners might both gain and lose from the same regulation. While properties subject to a land use restriction are sometimes reduced in economic value, it may also happen that adjacent properties improve in value because they are protected from adverse changes in nearby (and desirable) wetlands. This property value protection function is usually considered the principal purpose of zoning regulations.

The distinction between overall public benefits and the distribution of benefits and costs is prominent in many court cases where a regulatory taking is claimed. It has also proved important in the courts' deliberations on appropriate compensation levels. Because most regulations result in a non-uniform distribution of gainers and losers, questions of distribution are central to a thorough examination of the economic implications of land use regulations.

**Wetland regulations might shift property interests from landowners to the public, or they might clarify existing constraints on development of certain properties.**

Viewing land as a collection of separable property rights, not all of them held by the "owner," helps us analyze the economic effects of land use regulations. Legal writers frequently speak of property as a "bundle of sticks," with the several sticks allocated among different parties. For example, a landowner's bundle might include the stick that allows construction of a single-family residence, but it might not include the stick allowing operation of a feedlot. Each property right, each stick in the bundle, has an economic value. The analyst's task is to first determine which right has been affected by the regulation and then to estimate the economic loss associated with restrictions on that right.

The allocation of all such property interests is never, and never could be, exhaustively enumerated in law. Both the sheer number of these interests and our inability to anticipate all possible uses of property preclude this.

Some laws have the effect of transferring control of some sticks in the bundle to someone other than the owner. For example, an easement might be thought of as a combination of a property right held by another party and an obligation borne by the landowner to refrain from interfering with the exercise of that right. Other laws withhold use of some rights from the owner without reallocating their control to anyone else. Wetland regulations are

mostly of this type. The owner is restrained not by a reallocation of use rights to some other party but by the imposition of restrictions on use of rights remaining in the bundle.

In other circumstances, wetland regulations do not shift property interests so much as they make explicit any existing constraints or potential constraints on use of the property. For example, some regulations simply restate private or public nuisance law, such as that regarding flooding or sedimentation of adjacent properties.

In order for people to make workable plans for the future, it is essential that property rights possess a certain stability over time. This stability, however, must be balanced against the need for laws and allocations of rights to change over time, to adjust to a changing society. Consequently, few property rights can be considered absolute. To say that a landowner is, before regulation, permitted to use the property in a certain way does not always mean the owner had a right to exercise that use. Wetland protection regulations can frequently be said to constrain uses that were previously permitted.

**Observed changes in property values sometimes can be used to estimate the economic effects of a specific regulation.**

Economists presume that market prices tell us something about market participants' expectations about the future. An observed change in a property's market value is said to reflect a change in expectations about the future income potential of that property. Land, in particular, can provide a flow of services, some of which can be monetized (such as annual rents) and some of which cannot be monetized (such as pride of ownership).

The sales price of a property is the result of a compromise between the buyer and the seller. It is presumably lower than the buyer might have willingly paid and higher than that for which the seller might have willingly sold. The price of a property whose use is constrained by wetland regulations might end up lower than it would be in its unrestricted condition. This could happen if the seller takes less because the property won't yield the income anticipated in the absence of regulation or if the buyer won't pay as much because potential future uses are constrained. Either way, there is no "realized loss" unless property is actually sold. Either way, the selling price depends crucially upon the relative bargaining power of the buyer and seller. The financial effects of that regulation, if any, are said to have been "capitalized" into the value of the property. Any change in market value is borne only by the owner at the time this capitalization takes place. This might be when the regulation is enacted, but it might not be until the property market becomes aware of the effects of the regulation.

Not all observed changes in property values, of course, can or should be attributed to changes in regulations. When we observe prices in property markets, we see only the net effect of all the laws, technologies, and preferences that influence price determination. Only by careful analysis can we disentangle from this net effect the contributions of particular factors such as wetland protection regulations. Even if an owner is permitted to modify a wetland so that the property itself is not reduced in value, the regulation can have a substantial financial effect if the permit is granted contingent on creation of a new wetland somewhere else or on purchase of wetland banking credits. In some parts of the

state, such credits can cost several thousand dollars an acre. This financial impact will influence an owner's wetland development decision even if its effects are not translated into the immediate property's value.

Sometimes, an observed change in property value is mostly attributable to changes in market supply and demand, irrespective of the characteristics of the property itself or of any actions by the owner. As urban areas grow or as societal preferences change, some properties' market values increase, perhaps dramatically. (Economists sometimes refer to this as the "locational component" of land value.) This phenomenon lies behind the notion of property ownership for investment purposes. For example, the owners in our Case G bought the land several decades ago "for speculation."

Value changes could be measured on the portion of the property that contains wetlands, the rest of the regulated property, adjacent properties, and other wetland properties in the vicinity. It could be the case that a given regulation reduces the value of the portion of a parcel that contains the wetlands, has no effect on the upland portion of the same property, increases the value of adjacent properties because home buyers want properties with wetland views, and increases the value of wetlands in nearby communities because a mitigation plan requires replacement of the original altered wetlands. In our Case A, for example, the developer chose to capitalize on the restricted use of the wetland by orienting portions of the development around the restricted areas and marketing the wetland as an amenity. The analyst may or may not consider it important to examine all these value effects. It depends upon how the initial question is posed.

The economics literature on regulations and regulatory takings looks mostly at residential property on urban fringes. A great many are in the "gray literature" – court depositions, agency studies and the like – and so are extremely difficult to locate. Few purely wetland takings studies exist. Most of the studies find that regulations increase existing nearby properties' values, because the regulations ensure that lesser-valued uses will not enter the neighborhood.

**A measured loss of property value does not automatically mean that a regulation has "taken" a property right.**

As a rule, American courts have decided that a regulation has resulted in a taking if it does not "substantially advance a legitimate state interest;" if it authorizes a physical invasion of the property; if it denies the landowner all economically viable use of the property; or if it takes from the landowner the right of bequest. Where the case at hand falls into none of these categories, a taking still might be declared if the economic impact of the regulation on the landowner is felt to be onerous; if the regulation interferes with the landowner's "distinct investment-backed expectations;" or if the regulation seeks to extract a general public benefit at the expense of a few landowners. (Note that to determine this last point, the court needs to know the distribution of costs among all parties, not just the change in market value for a particular property.)

Not every market value reduction signals a taking. Under both federal and state doctrine, the landowner must endure a significant loss in value before qualifying for compensation.



This may reflect the desirability of avoiding the administrative costs of compensating minor takings; alternatively, it might be read as a rough operationalization of the principle that a landowner does not have a right to the use yielding the absolutely highest return. In a recent case concerning the 500-acre calcareous fen complex in Savage, Minnesota, the federal Court of Claims ruled that the Army Corps of Engineers' denial of a fill permit, reducing the value of the claimant's property from \$991,000 (reflecting unregulated development potential) to \$112,000, was indeed a taking. In other cases, however, diminutions of similar proportions have been found insufficient to constitute a taking.

While we do not propose here to predict court decisions or even to provide more than a sketch of the characteristics of situations in which takings are commonly found, we can note that courts have often declared a taking if reasonable buyers and sellers would not have expected the change in property rights caused by the regulation. This might have been because of precipitous action by the government or because only a few property owners are affected. In either situation, the chance of being affected is essentially unpredictable by the owners, and hence uninsurable.

The courts, unfortunately, do not speak in one voice as to the role of expectations. Some have ruled that a claimant's expectations must have been reasonable, others merely that they have been sincere. Some courts have ruled that expectations, once rightly formed, will be protected for all time; others have demanded that the claimant's expectations respect the societal balance between certainty of rights and the need for laws to evolve.

The US Supreme Court, in a holding limited for other reasons to a narrow set of cases, has ruled a buyer, in forming expectations, need look only to legal prohibitions in force at the time of acquisition. The landowner is protected against the effect of constraints coming into force after that time. Some lower federal courts and the Minnesota Supreme Court, conversely, have reasoned that expectations as to how one may use one's land are formed not merely from law as it stands, but from a variety of other sources as well, including governmental plans and policy statements, patterns of governmental actions, evolving societal awareness of what may cause social or ecological harm, and one's own observations as to what seem to be appropriate land uses in a given community.

What makes buyers or sellers "reasonable" in these rulings? They are presumed to be knowledgeable about both the market and potential changes in economic and institutional conditions that might affect the property. For example, if a certain use is prohibited by a zoning ordinance that the buyer believes might be amended, the buyer might willingly pay more. Conversely, if a use presently is permitted, but proposals that would prohibit that use are being debated, a knowledgeable buyer is expected to reduce any bid for the property. Of course, buyers and sellers might not be equally knowledgeable. For example, their opinions about whether or not a particular wetland is or will be regulated may differ.

Reasonable buyers are also presumed to realize that the farther into the future one projects a property's flow of services/income, the more likely it is that present legal and economic conditions will change. Reasonable market participants will recognize that expectations formed today are likely to be either lower or higher than the income from the property will actually turn out to be. For example, the owners of the property described in Case B purchased the land several decades ago, long before commercial development came to the

area. A court might consider whether a reasonable buyer or seller at that time would have formed an expectation of substantially higher income today than from agriculture. Too, the court might determine that a reasonable buyer would not have assumed with certainty that land use rules such as wetland regulations would remain unchanged over intervening years.

Finally, it is usually presumed that reasonable buyers and sellers appropriately assess the set of other institutional factors that might influence decisions about wetland use. It might not always be the wetland laws that limit development. For example, in our Case C, the owner's proposal to use the wetland for stormwater drainage might run afoul of nuisance law, if that use led to excessive overflow onto adjacent properties.

**Only after a court first determines that a taking has occurred is the appropriate level of compensation then determined.**

American courts have traditionally acted as if they conduct a two-part test for claims of property value loss from land use regulation. First, they decide whether or not a property right has clearly been shifted from the owner to the public and whether such a shift can be said to have been "unexpected" by a reasonable buyer at the time of purchase. If a taking is determined to have occurred, the courts then turn to the question of compensation.

For this, courts rely upon the testimony of professional property appraisers, whose valuation techniques in turn rest on underlying economic principles, as discussed above. In particular, these valuations put great stock in the principle that market prices, if available, are the best estimators of economic values. The appraiser is to estimate the return to the "highest and best use" of the property under applicable zoning regulations. Highest and best use, in turn, is taken to mean that use bringing the greatest financial return to the landowner, net of construction, capital, and transaction costs.

For a long time, Minnesota courts prohibited evidence of a landowner's own development plans as the basis for value determination, on the ground that this evidence was too speculative. But in 1982, the state's Supreme Court authorized a "development cost approach" to value an undeveloped parcel that the City of New Brighton had condemned for parkland. The approach, which is basically an application of the income-capitalization method (discussed below) to a hypothetical development, is "designed to reflect, through cash flow analysis, the current price a developer-purchaser would be warranted in paying for the land, given the cost of developing it and the probable proceeds from the sale of developed sites."

The Court approved the approach for future use in cases where the landowner first can establish that the land is "ripe for development"; the owner reasonably can expect to secure zoning and other required approvals; and development will not occur at too remote a time. The Court noted that because buyers and sellers can use computers to explore many different variables that might affect the market value of undeveloped land, hypothetical plans are less speculative than they once might have been.

Four principles can be said underlie courts' decisions about appropriate compensation levels: (1) The claimant must show that the parcel is physically suitable for the asserted

use and that demand exists for the use in the reasonably near future. For example, in our Case E, there is a difference of opinion about whether the property can be cost-effectively prepared for the proposed use. (2) A use that requires cooperation with owners of other parcels (e.g., a drainage ditch that requires an outlet on adjoining land) may be the basis for pre-regulation value only if the likelihood of such cooperation is sufficiently great. (3) Potential income from a use not permitted under current zoning law can be used only if it can be shown that an enabling zoning amendment is reasonably probable. In our Case C, the owner could point to the fact that surrounding properties have already received zoning permission for the proposed use. (4) The development must have a clearly demonstrated market demand.

Courts also have recognized that a regulation may affect the value of non-regulated properties. For example, the highest income use of an upland parcel may hinge upon access through an adjacent wetland parcel. Constraining use of the wetland parcel may limit the upland parcel to a lower-income use. In compensation determination, this loss of value, called "severance" or "consequential" damage, is to be reflected in the market value determination for the property as a whole. A possible example is Case D, where the owner asserts that commercial development of the upland area is not economically viable if the wetland area cannot be altered as requested.

A final issue in compensation determination is the decision about which price differential to measure. Should the compensation be the full return that would have been received had the property been used for its intended, but now precluded, use? Or should it be only the owner's opportunity cost, the difference between that return and that from a project with a lower, but still non-zero, return? The former is more generous, compensating the landowner for a return that, with the wetland protection constraint in place, cannot be achieved. The latter approach assumes the landowner can still invest in the next-best project. A third approach would compensate only the opportunity cost of any investment actually made. These questions are germane in situations like Case E, where the owner has been offered a price only 50% above what was originally paid, even though the land would now fetch, says the owner, far more in the absence of the regulation.

**The appropriate measure of a property value loss is the difference between what the property would be expected to sell for, with and without the regulation.**

The process of estimating "with" and "without" property values is not straightforward, because ordinarily there is little direct market evidence for either of these two prices. The property usually has not changed hands prior to the challenge. A professional appraisal of the property, based on selling prices for comparable properties, is generally held to be the best way to generate damage estimates. When few comparable properties exist, appraisers usually rely on cost or income approaches, discussed below. But what prices do appraisers actually "find?"

For any parcel, there are many possible future income streams, depending upon use decisions, physical and location factors, legal environments, and economic conditions. Because no one knows for sure what these will be over the life of the investment, owners must form "expectations" about future events. The expected value of a property is the



owner's (or the appraiser's) estimate of the earning potential of the property, appropriately discounted to deal with uncertainty about the future.

There are many possible uses and associated economic values for any given property. Not all possible values are known now, and some may never be known, because forming an extensive set of expectations can be expensive, requiring market analyses, price trend forecasting, or demographic studies. In addition, some of the possible income streams are not achievable under current laws or technologies.

If we knew everything about the future (if transaction costs were zero) we could array all these use-dependent choices by their expected incomes and pick the highest, with and without the regulation in question. Because the highest prices on this list may or may not be feasible for technological or institutional reasons (such as other land use regulations), the maximum possible economic return is not necessarily the appropriate upper figure against which to assess the amount of a regulatory taking. Even if the maximum is feasible, it might not be known without costly search.

Following this line of reasoning, the owner selects some use option whose associated income stream will cover costs and return an acceptable profit. Call the value associated with that use  $V^*$ . There may be other higher-value use options for the property, but the owner chooses not to spend the time or money searching them out. The owner's expected income, then, in this context, is the highest value that is found by a reasonable search for which the use is both technologically feasible and legally permissible. Both Cases A and B can be said to illustrate this feature of the search for highest and best use. The owners appear to have settled upon a parcel and a use that met certain threshold criteria and then looked no further.

A change in the legal framework such as a wetland protection regulation does not necessarily lop off the high-value end of expected price distribution. Rather, it enables or eliminates some of the choices from throughout the distribution. A takings claim takes the form of an assertion by the owner that the present value of the future stream of income from the property use constrained by the regulation is lower than the expected income  $V^*$ , selected as above. The question that the court must first decide, then, is whether the owner had a reasonable expectation to  $V^*$ , so that any demonstrated reduction from that level might be compensated.

But which pre-regulation value should the courts use? They do not usually accept the owner's claim that  $V^*$  is the unconstrained value of the property. Instead they order a series of appraisals to determine the "real" before ( $V'$ ) and after ( $V''$ ) values. Awkwardly, it sometimes happens that these appraisals identify potential uses whose economic values are higher than those the owner originally selected:  $V' > V^*$ . Indeed, sometimes both of the appraisers valuations exceed what the owner originally asserted. What happens then? Should the court declare the "loss" as  $|V' - V''|$ , making the loss estimation independent of the stated expectations of the owner? Although courts will generally use the professional appraiser's "highest and best use" price determination as the pre-regulation market value, this might overstate the necessary compensation for a taking.

**Economists have developed several different ways to measure changes in property value.**

Because all properties are different, each are likely to be affected by regulations in different ways. The only way to measure the effect on each property is to use direct appraisal techniques. Conversely, the best way to measure market-wide or average effects is to use statistical market analysis.

Professional appraisers typically use three methods to estimate market value. The methods differ in how they approach the concept of value. The market comparison approach builds from the principle of substitution – buyers will pay no more for a property than they would for similar property in another location. Knowledge of sales prices on similar properties, then, helps the appraiser estimate a sales price for the subject property, appropriately adjusted for its particular characteristics. The cost approach is similar, but the appraiser more directly disassembles the property into its components (developable land of various levels of drainage, slope, views, or location) and estimates each component's replacement cost. The sum of these costs becomes the value estimate for the full property. The income approach views property as an element in a production process. Different uses of the property would yield different annual incomes. The present values of these various uses (using appropriate discount rates) are then compared, and the largest is selected as the expected sales price of the property.

Many value estimates from these sources combine elements of all three appraisal techniques. The income approach is closest to the concept of property value we use in this report – the discounted sum of future income expectations held by reasonable market participants. However, this approach to price estimation is not used by every property tax assessor or by every professional appraiser.

Hedonic analysis is used frequently by economists and appraisers to determine either the market value of a number of properties too large to efficiently determine on individual properties (such as in property tax assessment) or to examine the influence of a particular factor in a class of properties (such as the presence or absence of a regulated wetland). These studies are based on the economic theory that people value an asset like land not for the property itself but rather for its characteristics such as location, terrain, or soil properties. Each of these characteristics has an economic value that can be estimated separately, using appropriate statistical techniques.

We discuss below the possible usefulness of such economic value estimation techniques to the wetlands regulation debate in Minnesota. We caution, however, that statistical studies necessarily calculate the average (not a parcel specific) impact of the presence of a regulated wetland, after accounting for the different effects of the other characteristics of each property. These studies' results could be used to calculate an estimated impact on individual properties, but these estimates will almost always differ from those calculated in a detailed appraisal of these properties; individual appraisals can consider factors not included in most broad-based statistical studies.

The analyst must also be careful to distinguish the presence of a wetland on a property from the influence of a wetland protection regulation on that property's use. Poorly

drained properties are generally more costly to develop, so, all else equal, they will always have lower market values, even if there are no regulatory constraints to development.

The choice of analytic technique depends in part on which economic effect one is interested in. A wetland regulation might affect the value of many properties, ranging from the wetland itself to the entire community. Courts have traditionally relied upon appraisal studies to measure the net effect of the regulation on the individual parcels. The (possibly positive) effects on neighboring properties or on the community as a whole tend not to get examined in the courts. These values could, however, be estimated with statistical tools such as hedonic analysis or with other economic valuation tools.

**The present research did not conduct a statistical analysis of the links between specific wetland regulations and actual property values.**

Properly conducted market studies require a great deal of data compilation and analysis. Such an effort was beyond the time and budget resources provided by the Legislature for this study.

A properly conducted hedonic valuation study requires analysis of sales data for similar use classes (residential, say, or commercial) in each of several property markets. Economists prefer to use actual sales prices, rather than assessed market values, because the former are felt to better reflect the underlying economic values attached to property characteristics by buyers and sellers. Such a study would require for each of hundreds of properties the consistent compilation of characteristics such as sales price, lot size, drainage, location, utility access, structures, and whether or not the property's use was constrained by (or believed to be constrained by) a wetland regulation at the time of sale. (Critically, this final characteristic will be known to the analyst – and to the market – only if there has been a prior delineation of all lands subject to existing or proposed wetland regulations.)

Given a sufficient number of sales that were or were not so constrained, we would be able to determine whether or not the sales prices of constrained properties were lower – all other property characteristics being held constant by our statistical techniques – than the prices of unregulated properties. We would also be able to attach a certain level of confidence to our estimate of the magnitude of the difference.

A variant on this technique, preferable in many respects but hardly ever possible given its stringent data requirements, is to examine only those properties that sold both prior to the imposition of a wetland regulation and then again after the wetland regulation took effect. The problem, of course, is that few properties meet this repeated-sales criterion. As a result, few such studies are ever conducted.

An alternative approach would be to select a set of properties on which to conduct a series of property appraisals. This would differ from traditional court-associated studies in that it would systematically analyze a whole set of properties, not just the single property in dispute. Therein lies its drawbacks for policy purposes. For reasons discussed elsewhere in this report, it is very likely that the results of such appraisals will be widely disparate and provide little guidance to policy makers. We have no quarrel with direct appraisals in the



determination of compensation in takings cases; indeed, we recommend them if compensation is to be consistently measured as the difference between pre- and post-regulation property values. However, scattered direct appraisals tend to be too idiosyncratic and too expensive to be of use to policy makers for other than anecdotal evidence.

**The Legislature should examine ways to lower public administrative costs and to make the land market more efficient without jeopardizing the benefits of existing wetland protection laws.**

Certain efficiencies in the operation of property markets might be achieved by increasing the amount of wetland information available to buyers and sellers. For example, the fact that there is rarely a wetlands zoning map associated with the regulations under the WCA means that buyers usually do not know in advance whether or not the regulations will apply to a particular property. That discovery requires costly (to the public and to the owner) delineation processes. If a prior determination could be made on all properties – perhaps through a less-thorough but more cost-effective GIS-based identification process – then market participants would know in advance whether or not a parcel is subject to wetland regulations.

A prior determination system would have the government more clearly announce which lands were subject to the restrictions and which were not. This would require a balancing between two possible types of “errors” in wetland delineation. What if the agency inappropriately puts a “real” wetland outside the wetland zone? Should the owner still be subject to the wetland regulations if the error is discovered later in the development process? If so, then the prior determination procedure would not provide 100% assurance in the formation of future income expectations by a reasonable buyer. If not, if the owner is made exempt from later application of WCA regulations, then a potentially valuable wetland and its benefits could be lost. What if, on the other hand, the agency errs by putting non-wetland parcels into a wetland zoning district? That would result in an unnecessary dampening of market activity, because a reasonable buyer would assume that the wetland regulations would apply, only to find out later (if at all) that they really would not.

One must, of course, balance the efficiency gains of prior determination against its very real, and possibly substantial, administrative costs. Even if the per-parcel costs of mass determination are lower, the sheer number of parcels that must be analyzed, parcels that might never have to be determined under the existing system, could swamp these cost reductions. Prior determination would also reflect an implicit switch in the locus of responsibility for knowledge about possible development restrictions. The present system lodges this responsibility in the land owner, who is expected to be aware of the law and its conditions and to seek determination prior to investment.

The Legislature might also direct the courts (in takings cases) or public agencies (if non-court compensation schemes are put into place) to calculate compensation using a previously estimated and officially accepted hedonic model. The calibrated model could be used to calculate both the pre-regulation and post-regulation values for any property. The

value loss in dollars or as a proportion of total property value could be consistently calculated, because both values would be estimated in the same framework.

While hedonic models are by no means perfect – and never can be – such use could avoid expensive case-by-case adjudication. The costs of developing these models, of course, might exceed whatever gains in efficiency their use might bring to the market. Further, the Legislature would want to first consider the constitutional implications of replacing case-by-case determinations with more sweeping market-based compensation schemes.

Neither adopting a prior delineation procedure nor formalizing a price differential model would remove all sources of uncertainty or inefficiency from the land development process. There are ample opportunities for legislative clarification and market simplification. For example, the Legislature might want to consider making explicit just which property rights are to be affected by proposed legislation, which rights are to be always in public holding, and which rights will remain in private hands. It could also help by clearly spelling out what it considers to be an appropriate level of compensation and which techniques are appropriate for determining that compensation.

The Legislature might instead decide that the traditional case-by-case determinations that typify American takings law should be superseded by more direct compensation mechanisms. Two other procedures, one in place and one proposed, circumvent the courts and their deliberations entirely or in part.

As noted above, Minnesota's WCA contains a compensation mechanism that comes into play upon final State denial of a wetland alteration plan. No court action is necessary. The compensation amount is tied to average local property prices, not to a specific determination of the property in question. This procedure appears to result in lower administrative costs than would a full-blown appraisal of each property on which compensation is to be paid. Of course, we have no direct evidence of this, because no compensation awards have been made to date. Nor do we have any way of deciding whether or not this procedure results in any "fairer" distributions of regulation costs and benefits than would traditional court actions.

Another alternative procedure, proposed in the 1996 legislative session (SF475) would have required automatic compensation to any property owner who could demonstrate to the court that a regulation had resulted in a reduction in market value of a stated value. There appears to have been no provision for a prior determination of a regulatory taking. Demonstrated market value reduction would essentially become the definition of a taking, contrary to the more carefully wrought procedures now employed in takings cases.

## **Conclusion**

Wetland regulations have the effect of precluding certain land use options, not all of which are known (or relevant) to the property owner. Because each option is associated with an expected income, any "loss" in property value is the difference between the incomes from the uses the owner would select without and with the regulatory restriction.



The task of the analyst is to estimate those two values, after first determining if the two uses are feasible given other physical, financial, and legal conditions. Because market values are not determined until there is a property transaction, all prior valuation must remain an estimate subject to the professional judgment of the analyst. The task of the court, if a regulatory taking is claimed, is to decide if the forced change in use options is fair in a legal sense and how much of any measured value difference should be compensated. The task of the Legislature is to decide if the net effect of the regulation is positive and if the (inevitably disparate) distribution of costs and benefits among property owners and other citizens is fair in a political sense.

Wetland regulations in Minnesota do result in reduced values for some property owners – as do all land use regulations. Demonstrating that values went down on regulated properties has policy import only if: (1) the examples are so egregious that the Legislature decides to change the enabling legislation to adjust the distribution of the law's benefits and costs; or (2) the sum of measured property losses exceeds any estimate of total benefits, in which case the Legislature might decide to change the law as not in the broader public interest.

Should further property value analyses be conducted? Only if the Legislature is very clear about why it wants to do the study. If the concern is one of fairness, then the distribution of a regulation's costs should be examined by using parcel-by-parcel appraisals or by a careful calculation of the economic benefits and costs among different classes of people, classes of property, or regions of the state. If, on the other hand, the concern is that the aggregate costs of the regulation may exceed its total benefits, then broader economic valuation studies are called for, recalling that the valuation techniques discussed above capture only those economic values that are themselves reflected in the property market. We are not prepared to recommend either approach at this time, because we are not in a position to define for the Legislature what the problem really is.

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## **Appendix: Case studies**

### Methodology

These eight cases illustrate situations in which wetland regulation is said to have affected development decisions in the Twin Cities area (cases A through E) or northern Minnesota (cases F through H). In the first three, regulation does not seem to have been a major impediment, but it did lead to project modification. In the other five cases, any financial effects of regulation are not fully apparent at this time, but they are present. A building permit was denied in case H because there is a wetland within the proposed project area. The other cases have not been resolved: in case D, an application for replacement plan under the WCA has been filed but not yet ruled on; in cases E and F, the wetland has been delineated but no project approvals have been sought; and in case G, the development is still at the proposal stage.

Our cases were selected on the basis of three criteria: (1) They should illustrate wetland regulation issues that appear with some frequency both within the Twin Cities and in northern Minnesota. (2) They should be cases in which public interest was or is significant; the developer or landowner and the regulating body differed as to how the property ought to be used; or the application of wetland regulations could result in significant project modification. (3) They should illustrate the elements of "property value" discussed in the text.

We identified candidate cases by talking to people who are knowledgeable about recent and current Minnesota wetland regulation activity. These included representatives of BWSR, the DNR, local governments, and the COE; public and private sector attorneys; and property owners who were identified as active in wetland regulation issues. We prepared these case summaries through examination of project files and county property records, site visits, and personal interviews. The summaries that follow are abstracted from more detailed field notes.

The summaries necessarily omit some factual material and purposely do not identify either the exact project location or the parties involved. Seven of the eight cases are still subject to legal proceedings, and a number of parties were reluctant to enter into lengthy discussions. Further, our limited time and resources restricted our ability to conduct the rigorous fact-finding needed to draw firmer conclusions. Finally, facts that may be highly relevant, such as the subjective knowledge and expectations of a landowner at the time of acquisition, can be reliably determined only through more formal methods not appropriate to the scope of the present study.

These constraints did not keep us from what we set out to accomplish. In fact, we concluded that it would be counterproductive to gather a wealth of detail about each case. We didn't set out to identify or highlight what might be claimed to be egregious cases of injury to landowners' or developers' rights, nor did we intend to set forth our views about how specific cases ought to come out. Rather, the case studies are to serve two purposes: (1) to explore the ways in which land development and wetland protection typically intersect in Minnesota; and (2) to illustrate the concepts discussed in the text.

In the main body of this report, we define "value" as the observed or estimated price on which a buyer and seller agree. The price is based on the reasonable expectations each holds as to the flow of monetized services (income) that the property provides over time. We discuss in the text the various physical, economic, and legal circumstances that influence the formation of these expectations. We are especially interested in changes in expectations between the time the owner originally bought the land and the time the owner decides to develop it. In particular, we were interested in gauging the portion of that change that can be attributed to a specific wetland regulation.

We discuss in the text several broader premises that we take to frame landowners' expectations: that laws will change over time, but not precipitously or capriciously; that gains and losses due to changing laws will be distributed evenly across the population; and that at least some types of benefits conferred on landowners by governmental action may be weighed against losses caused by regulation. These premises are illustrated in the cases that follow.

Accompanying the summary in each case we speculate how a given element might be raised either by someone arguing that implementation of wetland protection regulations had reduced property values, or by someone arguing that it had not.

## **A: City of Chaska**

### Summary

A 42-acre flat to gently rolling site is to be developed as a residential subdivision. The site, within the city limits, was previously cultivated. It is densely wooded along one edge, and contains about five acres of hardwood stands (a portion on steep slopes), two acres of Types 1 and 2 wetlands and a three-acre marshy pond. Thirty-one acres are to be platted, and 11 acres reserved as common area.

In accordance with a comprehensive plan in place since the 1960's, the area surrounding the site has been developed over time with single-family homes. Roads and utilities exist at the project site. The site was zoned for townhomes at a density of 3.56 units/acre. An similar area to the north had been zoned for condominiums, but in 1987 that parcel was rezoned to single-family use. The initial owner of the present project initially proposed 54 conventional single-family lots at 0.59 acres/unit (1.7 units/acre); after further discussions, the City approved 68 single-family lots at 0.45 acres/unit (2.2 units/acre).

The initial proposal was to fill two acres of "jurisdictional" (Type 1 or 2) wetlands. The proposal went before the Planning Commission for preliminary plat approval with a staff recommendation to deny based on the request to disturb WCA protected wetlands without sufficient justification. The staff report also cited a failure to justify the request for rezoning, proposed use of site wetlands to receive untreated subdivision stormwater runoff, and incompatibility with a city ordinance that prohibits building on wooded slopes of more than 18 degrees. The plat, as finally approved, limits wetland alteration to 288 square feet, which is below the WCA action level. The reserved common area contains and protects the pond and the steep wooded slope.



After preliminary plat approval in early 1996 the present developer bought the site for \$1,100,000. Current plans are to offer homes priced between \$165,000 and \$225,000, the same range as in the original proposal.

Several restrictions other than those imposed by implementation of the WCA also influence use of the site. The land was originally owned by a homeowners' association, which placed restrictions on the property that continue with the new owner. Use of the land is restricted by covenants of several types, including provision of bus shelters and mail stations, maintenance of trail and footpath corridors, and submission of all house designs for approval by the association's architectural review committee. Homebuyers become association members, receiving certain services (e.g., mowing, snowplowing) in exchange for association fees.

As well, the City's subdivision approval required the developer to agree to undertake street, water main, and sewer improvements, as well as to build a walking trail and to dedicate a portion of the subdivision as public land. The developer also is obliged, under a scenic easement, to maintain an existing treeline for the benefit of an adjacent neighborhood and to obtain a Minnesota Pollution Control Agency permit for sediment control during construction, as well as county permits for road access. Finally, a proposed highway construction project will take 2.45 acres on the edge of the site, for which the developer will be compensated. In anticipation of the project, the developer has provided for deeper lots adjacent to the right-of-way and additional trees and landscaping for sound and sight insulation.

### Analysis

It is not clear that wetland regulation has had a negative effect on property value in this instance. Indeed, the various regulatory processes have resulted in an increase in the number of lots, which the developer intends to develop and offer for sale within the same price range as originally planned. But it could happen that the project's gross income has been offset by increased administrative costs of regulation or that houses on the smaller lots will not sell at as high a price as those originally planned for larger lots.

If so, the developer might argue that, having been zoned for residential development by the city, the land should not be subject to additional development constraints. The developer might also argue that the Type 1 and 2 wetlands are mere isolated wet areas that serve no public purposes and would provide greater social value if filled.

The LGU might respond that use of the property is subject to a variety of restrictions, including zoning and steep slopes ordinances, dedication requirements, a private scenic easement, and covenants to the property owners association. WCA restrictions are no different, the LGU might claim, from these types of constraints. The developer would have been aware of the possibility of these restrictions when forming expectations, before purchase, about the income flow from the property.



## **B: City of Coon Rapids**

### Summary

The landowners wish to develop 3.44 acres for a gas station, convenience store, restaurant, car wash and associated parking. The parcel is a portion of a total landholding of about 100 acres that the landowners bought in the 1950's and have farmed since. It lies about 15 feet below grade at the corner of a state highway and a primary arterial road, and is separated by a creek from the rest of the property. In the site's immediate vicinity, development is scattered and primarily residential. There is an active sod farm nearby, and a federal highway interchange with substantial associated residential and retail development lies about a third of a mile from the site. A zoning amendment would be needed for the project to go forward.

Two Type 2 jurisdictional wetlands, seasonally flooded sedge meadows, exist on the site; one essentially coincides with the outer edge of the creek's 100-year floodplain. The original proposal was to fill both wetlands, one for access from the arterial road and the other for a car wash and parking area. The LGU has indicated that it would probably permit the former alteration, with replacement, but not the latter because it would have reduced floodplain capacity. The landowners have since modified the proposal to avoid wetland disturbance in the floodplain.

As of 1996, the appraised value is \$119,000, more than half of that for an existing house that would be removed. The parcel is preferentially taxed for agriculture on a value of \$86,700. The original purchase price is not known.

### Analysis

The effect of WCA negotiations has been a modification of the site layout and, possibly, a reduction in project size. Increased project costs, including replacement under the original proposal and reduced income from a smaller or less efficient facility could be considered as property devaluation.

The owners might argue that when they bought the land in the 1950's, the WCA did not exist and indeed wetland draining was considered socially valuable. Thus they could not have anticipated wetland protection constraints, and their expectations formed at the time of purchase have been frustrated. They could argue further that the wetland disturbance would be minimal, and that greater social value would result from allowing the land to be built on.

The LGU might argue that although the owners could not fairly have anticipated the WCA, they should have been aware when they bought the property that laws do change over time; hence, they could not fairly have assumed that no land use constraints might be imposed in the intervening years. As well, the LGU might point to the fact that the market for the owners' proposed use has developed only within the past several years, and that their initial expectations surely were based on an income stream from only agricultural use.

## **C: City of Andover**

### Summary

In December 1994, the developer acquired an option to buy about 10 contiguous parcels totaling 261 acres for residential development. The site is gently rolling and partially forested, with eight jurisdictional wetlands that constitute 25 percent of the site acreage. A portion of the site previously was mined for gravel; the developer plans to reclaim it. The purchase price for the parcels is \$3,550,000; in 1996, the parcels were assessed at \$1,529,900, with \$361,200 of that for improvements that would be razed according to the developer's plans. The developer's initial plat proposed 356 single-family homes and 64 townhouses.

Residential development in the vicinity has been fairly steady over the past 15 years. A MUSA line extension to bring the site within the urban service area was approved on the City's petition in Spring 1996. Utilities exist at site boundaries. To accommodate the proposed density of development, the site must be rezoned from single-family rural to single-family urban. Subdivisions zoned to single-family urban exist to the northeast and a half-mile to the west of the subdivision. Zoning of adjacent land in a neighboring city is a mix of conservation-agriculture, planned unit development, rural residential, single-family residential and commercial development. A regional park is located just south of the project site.

Under the developer's proposal, 0.42 acres of sedge and tamarack meadows (Types 2 and 6) would be filled for a road crossing and a building lot, with two-to-one replacement. A Type 2 meadow within the floodplain of an adjacent creek would have been bermed for stormwater retention, and so converted to a Type 3 wetland (open water). Construction of a holding pond in an upland portion of the property would consume four to six building lots. The LGU is concerned that use of the wetland for stormwater management might increase flows across the adjacent privately held parcel.

In the course of LGU project review, the amount of fill in the two wet meadows has been reduced. The LGU has not approved fill for the road crossing, as the need for the crossing depends on future development that remains hypothetical. The developer has since split the project into two phases, postponing the stormwater management issue to the second phase. The LGU has approved phase one, comprising 175 single-family homes.

### Analysis

WCA regulation here may prevent construction of four to six lots and potentially greater development costs to construct stormwater retention in upland areas. These reduce the return from that on which the developer may have counted when it bought the land, if it did not consider potential WCA constraints.

To support a claim of property devaluation, the developer might argue that the area is one that has seen substantial residential development and that even if the MUSA did not encompass the site when purchased, it was likely to be extended (as indeed it was). Given the degree of development, the developer might argue, the public value of protecting small

amounts of wetlands is minimal; the developer had no reason to expect that WCA constraints would be applied either to protect marginal wetland or to simply prevent existing wetland from being used for stormwater control.

The LGU might counter that WCA was in place when the property was purchased, and that the constraints that it imposes in this case are within the realm that a developer fairly might anticipate. Besides, the developer could have conferred with the LGU before investing to determine more precisely how the WCA might be applied at the site. Claims of limited wetland value would be countered by pointing to the broad protective mandate in the statute and the administrative infeasibility of site-specific determinations of wetland value.

## **D: City of Coon Rapids**

### Summary

The proposed project is a 261,000-square-foot retail center on 32.4 acres at the intersection of a state and a federal highway. Residential and retail development is substantial across the federal highway, on its western side, but as yet is absent from the eastern side. In the city's comprehensive plan, the site is part of a large commercial node surrounding the interchange, and is zoned as Community Commercial.

The project would be within a 131.6-acre currently undeveloped site that constitutes the largest remaining open space in the city. Terrain varies measurably from high areas in the northwestern, western and eastern edges of the site down toward a large creek that flows across the center/north center. About 17 acres lie within the creek floodplain. Although wetlands have not been formally delineated as yet, the site is estimated to be 50 to 75 percent Types 1 and 2 wetland, with areas of peat.

In October 1994, the developer and a project partner jointly acquired about 100 acres of the total site area. The City owns or is trustee for 28 acres (primarily right of way for the planned extension of a primary arterial road across the land), and other record holders own the several remaining acres. In 1996, the parcels together were assessed at \$543,000. The purchase prices of the parcels are not known.

The developer proposes to fill a total of 11.8 acres of wetland for the retail complex and to facilitate the county's planned extension of an arterial road across the land. In exchange for project approval, the developer would create about 27 acres of replacement wetland on the site, would dedicate public access to 57 acres of on-site wetland as an ecological and learning resource, and would contribute some measure of resources toward the road extension. It asserts that coordinating its project with the road project would allow wetland disturbance to be minimized.

The developer suggests that some portion of the wetland is artificial and incidental. Tracing back to 1902, it reports a variety of wetland disturbances over the years from creek dredging and channeling, ditch activity, road construction, and cultivation. To these it attributes both the draining of natural wetland and reduced diversity in the remaining wetland. Further, it suggests that existing wetland in the northwest corner of the site is

maintained by highway stormwater runoff. In the southern portion of the site, a 4.38-acre area is replacement wetland for an earlier retail development, but the wetland appears not to be entirely established, and its status both as a wetland and as a site for potential mitigation in this project is uncertain.

An application for wetland replacement plan approval under the WCA has been filed. It states that existing upland would support a retail center of only 163,000 square feet which, according to the developer, is below the "critical mass" for economic viability. Corps of Engineers approval under FWPCA Section 404 would also be needed.

### Analysis

Here, the developer has suggested that use constraints under the WCA would make the site unsuitable for commercial development and so precludes uses which were intended when the property was purchased. Even if its replacement plan were to be approved, it properly could argue that 2:1 replacement, the dedication of a public easement, and its partial financing of the county road extension all severely reduce the expected income stream from the project.

The developer could argue that it reasonably believed that some portion of the wetland is artificial and that the wetland as a whole has been degraded through the years. The WCA would not apply at all. The developer could also point to the city plan to develop the highway interchange node intensively, as evidence that devoting the land to commerce would be recognized by the city, and the public generally, as of greater public benefit than preservation. The LGU might counter that WCA was in place at the time of the investment and that the land clearly has some drainage problems, so the owners should have known that their site might be subject to the regulation.

## **E: City of Blaine**

### Summary

This case concerns a 137-acre parcel containing, according to the LGU, 80 acres of primarily Type 2 wetland. A shooting range has operated on the site since 1967. The current owner bought the property in 1985 at a price of about \$3,000/acre. The property was then, and remains, zoned as light industrial.

The owner bought the land with the intent of commercial/industrial development on 75 to 95 acres not needed for shooting range operations. At that time, construction of a race track also was being considered, but this never materialized. Several years later, the Corps of Engineers identified large areas of wetland as part of its section 404 permitting process. These areas came under WCA jurisdiction as well when that law took effect in 1991. In consequence, the owner successfully petitioned for the parcel to be removed from within the MUSA line and for the zoning to be changed to Farm Residential.

The landowner believes that absent federal and state wetland regulation, the entire 137 acres would sell for \$6 to \$8 million for light industrial use. With the regulations in place, the owner was offered \$1.5 million. In 1996 the property was assessed at a combined



market value of \$601,400, of which \$405,800 is land and \$196,400 is the buildings and other improvements used by the gun club. Under the Farm Residential zoning designation, the land was revalued for property tax purposes from \$405,000 to \$235,000.

The landowner indicates that he inspected the land before purchase and was aware that it was wet, especially in the spring. However, he attributed the high groundwater to the disrepair into which a county ditch system, constructed in 1917, had fallen. Removal of several beaver dams did not measurably lower the water table. Thus, in 1989, having concluded that the poor drainage was due to a downstream culvert improperly placed during a 1959 road project, he petitioned the LGU to order Anoka County to lower the culvert by three feet. Further ditch repair would be needed on the owner's own land.

The LGU ruled that the culvert was indeed too high, but only by 0.8 feet. Its engineer contended that because the site's soils are so poorly drained, any lowering of the culvert by that amount would not substantially change the hydrology of the project area. If so, then the area would remain under WCA and COE jurisdiction. A downstream community, fearing increased sedimentation and pollutant loadings, resists even this lowering of the culvert and has appealed the LGU decision.

#### Analysis

The difference between a \$6 to \$8 million market value for industrial use and the \$1.5 million that the owner was offered would be the basis for the landowner's claim of property devaluation. He would support his claim by pointing to his diligence before buying the property in investigating the land's condition, and the reasonable development expectations he formed on the basis of that investigation. The basis for these reasonable expectations would include both the conclusion that the wetness of the land was due to beaver dams and general ditch disrepair and the fact that WCA had not yet been enacted. He might argue as well that the wetland, or some substantial portion of it, is not ecologically productive or socially valuable; therefore, even if it were reasonable to think that some sort of land use constraints might be enacted before development, it was not reasonable to expect they would apply to these particular wetlands.

The LGU might respond in several ways. First, it might press the claim that the property's condition is due not to ditch disrepair, but to the natural poor-draining characteristics of the soil, so that either the land is not buildable or the cost of site preparation is prohibitive. Second, it would argue that WCA imposes no constraint that did not already exist when the owner purchased the property. The COE section 404 program was in place in 1985. Third, the LGU might ask whether the \$1.5 million that the owner had been offered wasn't in fact significantly greater than the \$400,000 paid for the land. A landowner, the LGU could claim, is not entitled to the highest return that a property conceivably could provide, but only a reasonable return. Finally, it might examine further the degree of speculation in the 1985 purchase. To the extent the owner's decision as to the price he would pay was premised on the prospect of road or racetrack construction, the expectations reflected in that decision, it might be argued, would be considered inherently less strong.



## **F: City of Blackduck**

### Summary

The current owner's father purchased 160 acres within the city limits in 1969 for about \$12,000, intending to develop it. About 25 of the 160 acres has been sold and developed for both residential and commercial uses. The remaining 135 acres comprises one parcel subdivided into 27 residential lots and three undivided parcels.

The subject of wetland regulation is a five acre portion of a 12.27-acre undivided parcel. The five-acre site is bounded by development on three sides and by city streets on two. The fourth side abuts an intermittent stream, toward which the property gently slopes. Municipal services are available. About 70 percent (3.5 acres) of the lot is Type 2 wetland; it is believed that about four of the five acres is buildable. The stream channel has been modified and the site, as of the summer, had been cleared of all vegetation.

In August 1995, the owner entered into a contract to sell the five-acre parcel for \$19,000. The buyer planned to construct an apartment building and adjacent garage, with the garage situated on less than an acre of the designated wetland. Early in 1996 the buyer backed out of the contract, ostensibly after coming to understand the constraints imposed by wetland regulation. Although the proposed disturbance of the wetland apparently would not fall within WCA jurisdiction, the Corps of Engineers has jurisdiction and might require avoidance or mitigation. The owner indicates that several other parties have looked at the parcel, but none has made an offer because of the wetland restrictions. A problem may be not simply the fact of regulation itself, but confusion among potential purchasers regarding the different regulating agencies and sets of regulations.

The 12.27-acre parcel has an assessed market value of \$2,000, with 1996 property taxes of \$54. Commercial land with municipal services available is worth about \$10,000 to \$12,000 per acre in the area. Thirty percent of the site (1.5 acres) remains developable. The owner believes the only use of the 3.5 acres of jurisdictional wetland, as constrained, is as agricultural land, worth \$250 to \$300 per acre. At about \$0.10/square foot, purchase of Type 2 wetland from a mitigation bank would cost \$4,300/acre.

### Analysis

The landowner might claim that because wetland regulation reduces the property's potential sale price from \$48,300 (\$12,000 per acre for four acres; \$300 for the unbuildable acre) to \$19,050 (1.5 acres at \$12,000 per acre; 3.5 acres at \$300 per acre), the owner has suffered a loss of \$29,250. Alternatively, if off-site mitigation were permitted, the loss would be \$10,750 (2.5 acres purchased from a mitigation bank at \$4,300 per acre). This amount would be reduced by the amount of property taxes saved as the result of the lowered assessed value of the parcel.

The owner might also point out that his father's expectations when he acquired the land in 1969 were to develop it, and that these expectations were reasonable, given the absence of wetland regulation at that time. He would argue as well that municipal development over

time has defined development as the best social use of the parcel, particularly given what might be asserted to be the limited ecological value of the wetland.

The chief response to the landowner's claims would look to both the many years that have elapsed since purchase and the gain that the landowner (either father or son) has accrued over that period. The LGU could further argue that buyers are fairly expected to recognize that laws change over time, that no rights are certain forever. It is not reasonable to expect that land acquired now will be able to be developed in 27 years in accordance with regulations now in place. One could point to zoning law, which does not recognize a right to build under the terms of existing law until approvals have been gained and actual significant expenditures made. In addition, 25 acres were sold for development.

Presumably the remaining 130 acres have market value as well. If the owner gains a return on the property at least equal to the opportunity cost, goes this line of reasoning, no loss in value has been suffered. This argument is consistent with the principle that an owner has the right only to a reasonable return, not to the highest return that the land might have provided.

## **G: Roseau County**

### Summary

This wooded parcel of about 160 acres lies east of Warroad along the shores of Lake of the Woods. The owners bought the land for \$3,000 in the 1960's, when it came out of an expiring soil bank program. It was bought for speculation and has been used primarily for recreation. In 1992, they surveyed 40 acres for residential development, intending to create 29 lots, each slightly larger than one acre, for mobile homes. The parcel is bounded on two sides by township roads. Telephone, electric, and cable TV service are available, but water and sewer are not.

The owners put their development plan on hold pending promulgation of wetland rules under the 1996 farm bill, and now await LGU wetland delineation. A significant portion of the site appears to be Type 2 and 6 wetlands with interspersed upland. Many of the 29 lots lie within 1000 feet of the lake, so they are subject as well to Minnesota shoreland zoning regulations.

Since 1992, the owners have invested about \$7,000 in surveying, preparation of legal documents, and other development costs. One lot has been sold. The anticipated sale price is \$6,500 per lot, for a gross market value of \$188,500. Profit is expected to be \$4,800 to \$5,200 per lot, or \$140,000 to \$150,000 total. If the site cannot be developed as proposed, it would be worth about \$12,000 for recreational use, say the owners.

### Analysis

This case raises two issues present in the cases already discussed. First, what expectations did the owners have when they acquired the land 30 years ago, and have those expectations been frustrated? The owners would point to the absence of wetland protection constraints at that time, and to the apparently marginal value of the wetland –

both suggesting that the intent to develop the property would have been reasonable. Those taking the contrary view would suggest the unreasonableness of presuming that land use laws generally would stay unchanged for 30 years. They might question as well the extent to which the owners could have foreseen the availability of roads and utilities and the other features that give the land its present potential value.

Second, and related, are the landowners entitled to the full profit they believed they would gain absent wetland regulation? That is, were their expectations at the time of purchase to put the property to a use bringing a \$150,000 profit? Regardless of the view taken, the flow of recreational services the land has provided to date is a part of the return on investment the owners have enjoyed. Conversely, the owners' uncertainty about permissible use and delay in acting while awaiting regulatory action, impose opportunity costs (i.e., their investment could be producing return in some other use) that decrease return.

## **H: City of International Falls**

### Summary

This 35-acre property is in a residential area near a shopping mall and the Rainy River. The current owners purchased the property in 1967. They earlier donated about 10 acres to Concordia College and a local Lutheran church, and identified the remaining 25 acres as potentially suitable for residential development. Municipal services are available at the property boundary. Although a wetland delineation has not been done, the land appears to be a Type 2 wetland.

In 1995 the owners undertook development. The LGU determined that the property, or some portion thereof, contained wetlands and so denied a building permit. The county assessor valued the property at \$1,500 to \$2,000 an acre in 1992, but since has revalued it to \$100 an acre on the basis of these wetland regulation constraints. Similar undeveloped lots sell in the area for \$10,000 to \$15,000. Developed land with sewer and water services is selling for \$25,000 an acre.

### Analysis

This case raises issues very similar to those noted in Case G. Development at the moment is denied on the basis of regulations that did not exist when the landowner acquired the property almost 30 years ago. Is it reasonable to hold the owner to an expectation that regulations governing development might change? Also, at the time of purchase, residential use of the land might not have been foreseen. Its present high value is based on infrastructure and growth that might not have been foreseen in 1967.

Wetland regulation may stand in the way of intense residential use, but use of some portion of the remaining land, including less intensive uses of regulated wetland, may provide a reasonable financial return.

The landowner might argue that in cases of lower-quality wetland, savings realized by the public – by not incurring the administrative costs of wetland valuation – are at the

landowner's expense. One might respond by suggesting that because it is administratively costly to make fine distinctions, imprecision is a typical feature of regulation. Rather than a cost imposed unfairly on a select few, then, it is one that over time imposes itself evenly across the population, in wetland regulation as well as other instances.

RECEIVED

JAN 06 1997

## LAKE SUPERIOR POSITION STATEMENT

Lake Superior is unique among the Great Lakes. It has not experienced the same amount of development and pollution as the other four lakes have. It is a treasure worthy of the best preservation efforts of the two nations that share in its bounty. Because of its relatively pristine state, both the International Joint Commission and the Lake Superior Binational Program have recommended it be given special protective status.

In addition to the dangers of point-source pollution, Lake Superior is also subject to the more subtle environmental deterioration of non-point pollution. Shoreline and dune erosion threaten water quality, fish habitat, and homes and recreational facilities along the periphery of the lake. Urban runoff and streambank erosion carry unwanted chemicals and suspended solids into the lake and its tributaries with every rainfall. Overloaded, antiquated septic systems leach contaminants into the soil near the lake where groundwater migration and runoff carry them into the largest of the Great Lakes. We are fortunate that agricultural runoff, a very serious problem for the lakes further down the basin, is not a serious issue here.

The Soil and Water Conservation Districts and Conservation Authorities of Michigan, Minnesota, Ontario, and Wisconsin are in a unique position to deal with these threats to Lake Superior. We recommend that action plans be developed and priority in funding requests be given to efforts dealing with the following non-point pollution issues in the Lake Superior basin:

1. Shoreline erosion protection programs/projects.
2. Programs/projects to reduce streambank erosion and treat urban runoff entering Lake Superior and its tributaries.
3. Information and financial assistance programs to improve or replace inadequate septic systems that threaten the lake.

Endorsed....June, 1996:

Lake Superior Association of Conservation Districts,  
Duluth, Minnesota  
Lakehead Region Conservation Authority,  
Thunder Bay, Ontario  
Michigan Association of Conservation Districts,  
Lake City, Michigan  
Minnesota Association of Soil & Water Conservation Districts,  
St. Paul, Minnesota  
Sault Ste. Marie Region Conservation Authority,  
Sault Ste. Marie, Ontario  
Wisconsin Land Conservation Association,  
Madison, Wisconsin



LAKE SUPERIOR POSITION STATEMENT CHARTER ENDORSERS  
(Sep 1996)

Lake Superior Association of Conservation Districts

c/o South St. Louis SWCD

4850 Miller Trunk Highway, Ste 1-B

Duluth, Mn 55811-1520

Tel: 218-722-6109 FAX: 218-741-8257

Contacts: Don Warner, Chairman; Rich Harms, Manager

Advisor: Mark Nelson, Bd of Soil & Water Res., Duluth....Tel: 218-723-4923

Lakehead Region Conservation Authority

130 Conservation Road

P.O. Box 3478

Thunder Bay, Ontario P7B 5J9

Tel: 807-344-5857 FAX: 807-345-9156

Contacts: Rick Potter, Chairman; Mervi Hentonen, Manager

Michigan Association of Soil & Water Conservation Districts

P.O. Box 539

101 South Main Street

Lake City, Michigan 49651

Tel: 616-839-3360 FAX: 616-839-3361

Contacts: Marilyn Shy, Exec Director

GLC Rep: Joe Slater 616-821-2843

Minnesota Association of Soil & Water Conservation Districts

790 Cleveland Avenue South

Suite 216

St. Paul, Minnesota 55116

Tel: 612-690-9028 FAX: 612-690-9065

Contacts: Jim Schafer, Pres.; D'Wayne DeZiel, Exec Director

GLC Rep: Joe Newberg 612-948-4830

Sault Ste. Marie Region Conservation Authority

1100 Fifth Line East

Sault Ste. Marie, Ontario P6A 5K7

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Contacts: Ralph Yanni, Sec'y-Treas

Wisconsin Land Conservation Association

One Point Place, Suite 202

Madison, Wisconsin 53719

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Contacts: John Kohl, Pres & GLC Rep.; Adam Payne, Exec Director

## OVERVIEW OF THE **LINCOLN COUNTY** COMPREHENSIVE WATER PLAN FOR THE JANUARY 22, 1997 BWSR BOARD MEETING

### INTRODUCTION

Lincoln County is located in southwestern Minnesota on the western border of the state. It is in the state's prairie region with a county population of approximately 6,500. There are five incorporated cities in the county - Ivanhoe is the county seat.

Lincoln County is a member of the Southwest Water Plan Coordinators. This group meets regularly to share information and coordinate planning and implementation activities.

Lincoln County began its original planning in October 1988. The development of the plan was part of a multi-county effort under the direction of the Redwood-Cottonwood Rivers Control Area. The BWSR approved plan was adopted by the county in September 1990.

This recent planning revision process began in February of 1995 under the direction of the Lincoln County Water Plan Coordinator with assistance of the Water Plan Task Force.

### PHYSICAL DESCRIPTION OF THE COUNTY

Lincoln County has a total area of 345,600 acres or 540 square miles - of this area, water makes up about ten square miles. The county lies mainly on an undulating glacial ground moraine. The soils are generally dark colored, being nearly level to steep that developed in glacial materials. The original vegetation of the county was tall and medium prairie grasses on the uplands, with many lakes and wetlands occupying the low depressions. The county is located in the southern portion of the prairie pothole region. The majority of this native vegetation has now been converted to, or has been influenced by agricultural activities. Land use in the county is primarily confined to agricultural production. Corn, soybeans, hay crops, and dairy, cattle feeding and stock raising produce most of the income. A substantial portion of the agricultural land has been drained through an extensive system of county ditches and tile lines to enhance crop production. Such drainage has eliminated over 80 percent of the presettlement wetlands.

The **topography** of the county results from several prominent geologic features. Some of the highest land elevations in the state occur within Lincoln County along a ridge formed by the action of a continental glacier. Known as the Bemis Moraine, or the Coteau des Prairies, the ridge crosses the southwestern part of the county from northwest to southeast. Elevations along the Moraine, which forms the drainage between the Missouri and Mississippi Rivers, range between 1900 and 2000 feet.

The relief of the Bemis Moraine is predominantly hilly and slopes are rolling to steep. South and west of the Bemis Moraine, loess (wind deposited soil) filled in the irregularities of the glacial till plain and the land surface is marked predominantly by long gentle slopes. Tributaries of the Big Sioux River drain the area south and west of the Moraine.

The portion of the county lying northeast of the Bemis Moraine can be divided into two major physiographic regions. The first of these consists of a highland plain approximately fifteen miles in width. The relief in this region consists of narrow, gently undulating till plains between smaller moraines.

The second region, known as the slope, lies north and west of the highland plain, across the northeast corner of the county. The slope region runs diagonally across southwest Minnesota in a northwest to southeast direction and is approximately six miles wide in Lincoln County. This is a transitional zone between the upland plain of central Lincoln County and the lowland plain to the northeast. The land slopes down uniformly to the northeast in this region dropping approximately 350 feet in its six mile width. Many small tributaries of the Minnesota River originate in this region.

There are five major watersheds in Lincoln County including the: **Lac qui Parle River Watershed, Yellow Medicine River Watershed, Redwood River Watershed, Big Sioux River Watershed (Medary Creek), and Big Sioux River**

## **Watershed (Pipestone).**

The presence of the divide between the Missouri and Mississippi river basins results in relatively small streams and rivers within the County. The northern two-thirds of the county are drained by the Yellow Medicine and Lac qui Parle Rivers. The southeastern portion of the county drains into the Redwood River, and the southwestern portions through tributaries of the Big Sioux.

The **geology** of Lincoln County helps to define the available ground water resources. Precambrian rocks which consist mainly of granite underlie the entire county. The depth of this bedrock varies widely across the county from approximately 300 feet in the extreme northeast corner to over 1000 feet in the Lake Shaokatan area.

Cretaceous rocks consisting primarily of shales with thin sandstone layers overlie the precambrian bedrock. The upper geologic unit in the county is glacial drift which directly overlies the cretaceous rocks. The glacial drift is primarily till, an unstratified mixture of clay, silt, sand and gravel.

The upper surface of the precambrian rocks can occasionally yield small quantities of water but cost of drilling and uncertain yield generally disqualifies this geologic unit for water supply. Nearly all private and public wells within the county draw water from the glacial drift of shallow alluvium. These surficial aquifers have quantities of water in storage and are readily recharged. Because of their shallow depth they are also highly susceptible to contamination.

## **PLAN ACCOMPLISHMENTS**

Lincoln County, in cooperation with other local units of government and county residents, have implemented many activities identified in the 1990 Plan. Some accomplishments are:

1. Established a joint agency newsletter and a series of radio public service announcements for water planning.
2. Established a surface water quality monitoring program.
3. Established a well testing program.
4. Administer an abandoned well sealing program.
5. Purchased chemical spill equipment.
6. Participated in waste pesticide collection program.
7. Assisted with the Lake Shaokatan Clean Water Partnership Project implementation.
8. Allocated funding for flood retention structures.
9. Administration of the Ag BMP State Revolving Loan Program.

## **STAFF REVIEW**

The Plan Update adds new information to a revised data and assessments section and organizes implementation into three goals: **INCREASE THE ECONOMIC AND RECREATIONAL OPPORTUNITIES BY IMPROVING THE WATER QUALITY OF LINCOLN COUNTY'S LAKES AND STREAMS; INSURE ADEQUATE PROTECTION OF OUR GROUNDWATER SUPPLIES AND SAVE DRINKING WATER SUPPLIES FOR COUNTY RESIDENTS; and IMPROVE SURFACE WATER MANAGEMENT TO DECREASE FLOODING IN LINCOLN AND ADJACENT COUNTIES.** Each goal includes objectives and priority actions. The implementation plan further defines the identified actions to include the year(s) when they will be implemented, an estimated cost, and the agencies involved.

The Plan Update identifies many priority actions which include providing technical assistance; promote BMP implementation on a watershed basis; seek and provide funding assistance to landowners; continue monitoring of both surface and ground water resources; increase data base development; review and enforce current shoreland zoning, investigate adopting county wide zoning and adoption of a feedlot ordinance; inventory and prioritize abandoned wells, seal high priority wells; address wellhead protection; inform and educate landowners regarding opportunities to restore wetlands; continue flood water retention efforts.

The Lincoln County Water Plan Update was submitted to BWSR for final state agency review on November 8, 1996.



Board  
Members  
FYI

## MEMORANDUM

January 6, 1997

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St. Paul, MN 55107  
(612) 296-3767  
Fax (612) 297-5615

### Field Offices

#### Northern Region:

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217 S. 7th Street  
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#### Southern Region:

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#### Metro Region:

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St. Paul, MN 55107  
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**TO:** DRC Members: Roer, Annexstad, Lovdahl, Tripp  
Matt Seltzer, A.G.O.

**FR:** *Jim* Haertel, Water Management Specialist

**PH:** (612) 297-2906

**RE:** Transmittal of Brief, Peterson v. Minnehaha Creek WD, 96-5  
Hearing Schedule and Status of Pending Appeals

Please find enclosed a copy of the appellant's brief in the above referenced matter. Also enclosed is a copy of the verbatim transcript for this appeal. Further, a copy of the record is enclosed for Ted and Marv since Kathy, Glenn and Matt already have their copies.

Presently we have three pending appeals, as follows:

- 1) 96-5, Peterson v. Minnehaha Creek Watershed District [WCA]  
- **Hearing: Monday, Feb. 10, 1997, 10:00AM.**
- 2) 96-6, Drum v. Douglas County [WCA]  
- Appellant brief due January 27, 1997  
- **Hearing: Thursday, March 6, 1997, 10:00AM**
- 3) 96-7, Froehlich v. Pine County [WCA]  
- Petition to appeal has not been acted on

Please note, since the DRC is now short one member, it is especially important to inform me if you have a conflict with a hearing date.

Please contact me if you have any questions.

Enclosures

c: Harnack, Birkholz, Thomas, Jaschke, Sandstrom, Shelito

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## FOR EXECUTIVES ONLY

# Come the Devolution, everyone will be in charge

"We know nothing about motivation. All we can do is write books about it."

— Peter Drucker

Here's my wish/prediction for the corporate fad of 1997: Devolution.

Yes, maybe this is the year to declare the "science of management" a failure because management is, basically, a waste of time. Instead of yet more management programs, we need deprogramming.

As my friend Craig Cantoni likes to point out, companies start with no bureaucracy — just a leader, and employees who think they're important because they are, and customers who think they're important because they are. And so the company grows and that's when bureaucracy starts to evolve.

No one calls it bureaucracy, of course; they call it management. And that's when structure becomes more important than leaders, customers, employees. It is a pact with the devil of predictability.

Remember "zero-based accounting?" I'd like to suggest that companies begin 1997 with "zero-based management." The first place to start is to get rid of rules. The chief misconception of bureaucrats is that rules solve problems. Rules are a failure of leadership.

## Corporate curmudgeon

Dale Dauten

Here are couple of examples of good place to begin the Devolution process:

I recently attended the annual Services Marketing Symposium (put on by Dr. Steve Brown and Arizona State University), where I met Dave Ridley, the vice president of marketing and sales for Southwest Airlines. In describing the atmosphere at Southwest, he said a person walking down the halls of headquarters will almost always hear laughter coming from various offices, even though the airline industry is as brutally competitive as any on the planet. One of the jokes at Southwest is how competitive their industry is. (Sample: "How

to make a small fortune? Take a large fortune and go into the airline business.")

Ridley gave considerable credit for Southwest's congenial atmosphere to the lack of a dress code. "The genius behind casual wear is that it's hard to be arrogant in jeans and T-shirts," he said.

When I ran a market research company, I had one employee who appointed herself the department "snitch." She was particularly fond of reporting the arrival times of other employees. I kept telling her I wasn't interested. Exasperated, she said to me, "What if we all came in whenever we pleased?" What a good idea. People can only give you their best work during their best hours.

Sure, there are places where business hours are a promise to customers, and those promises must be kept. Even so, say you

run a customer service department that's open from 9 to 5. Plenty of employees would like to come in early and leave early, and plenty would prefer the opposite. So you expand the hours and thereby improve customer service, staying open from 7 to 7. Then you refuse to "manage" the employees' hours; you let the employees work it out.

And so the Devolution process goes, stripping away management, trying to devolve back into a point where you have nothing but leaders, important employees and important customers, with nothing in between.

Who'll check up on the employees? The customers. Leaders don't need to check up on employees — just check in with customers.

The key to all of this is to hire people who want to be important, who like being counted on, and then to make sure those people share in the success of the company.

One way to attract such people is with a better, livelier, freer place to work. You actually can pay them less and make it up with company stock and a profit-sharing plan. The company makes more, not less; in other words, there is such a thing as a free lunch.

— Distributed by King Features.



## 'How am I doing?'

Hey, why don't you call me on the Corporate Curmudgeon message line, 673-9030, and leave me your opinions, questions and suggestions? (Call

anytime. It's free.) Or you can write me in care of King Features, 235 E. 45th St., New York, NY 10017, or send e-mail to [www.dauten.com](http://www.dauten.com).

Sorry, I'm no longer doing monthly telephone essays.

Ron  
F.Y.I.  
I know I  
appreciate your  
minimalist approach  
to policies. Looks  
like others  
believe in  
that approach  
too.  
9-4



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 Copies to: urban <urban.christine@epamail.epa.gov>  
 Subject: Minnesota River weekly update  
 Date sent: Sat, 30 Nov 96 11:12:00 PST

Minnesota River Weekly Update, Dec. 2, 1996  
 Week in Review (Comments, additions, suggestions are welcome.)  
 Feel free to forward -- and to comment.

WEEK IN BRIEF: Last week was short on days but pregnant with possibility. It was a week filled with preparatory rather than final activities and decisions. The Rahr Malting Co. permit, in particular its point-nonpoint source pollutant trading provision, remained under discussion....Discussions progressed with the Minnesota River Basin Joint Powers Board regarding the funding of planners/coordinators in the 12 major watersheds, their tasks and relationship to state and local units of government.....Basin planning

continued with work on strategic options for major pollutants...News remained thumbs up-- but not final -- on major projects including a Kellogg Foundation grant for education in the Minnesota River basin and the BWSR's Conservation Reserve Enhancement Program that would fulfill the Citizens Advisory Committee's #1 recommendation: to convert a good share of the Minnesota River floodplain to its natural uses.

**CLOSE ENCOUNTERS WITH VEGETATIVE BUFFERS:** Mark your calendars. The Minnesota Board of Water and Soil Resources is scheduling a Riparian Buffer Seminar April 2, 1997, at the Mankato Garden Inn. Buffer expert Dick Shultz of the University of Iowa will be on hand to relate his experience with multi-species buffers in the great state of Iowa. Bill Hafs, of the Land Conservation District of Brown County, Wisconsin, will bring his experience to bear. A field trip to an Iowa site may be included on the second day. Those who have been there have been impressed....

**RAIN DETAINED ON THE FLOODPLAIN SHOULD BE GAIN:** American Rivers and the Minnesota River Basin Joint Powers Board are exploring alternative uses of the Minnesota River floodplain. Uses compatible with soggy soils and frequent flooding. An August survey of landowners in the floodplain turned up some interesting findings regarding alternative uses of floodplain land. More than 250 landowners replied to a survey, and more than 150 attended workshops in Granite Falls, New Ulm and Le Sueur..... The landowners placed water quality at the top of reasons why they should explore alternative land uses: 59% said the main reason was to restore the river's natural filtration system; 50% said it was to reduce crop losses associated with flooding. The top three threats to the river, according to survey respondents, included bank erosion (33%), loss of wetlands (28%) and inadequate sewage treatment along with manure lagoon failures (25%). The top three solutions were improved tillage and land use practices (49%); wetland restoration (42%) and regulation of polluting industries (36%). Alternative crops grown in the past by floodplain landowners included alfalfa (25%), wheat (23%) and oats (19%). The most appealing incentives to grow alternative crops cited by those surveyed included tax credits, long-term contracts, and assurance that alternative crops will improve the Minnesota River (each item cited by 40%). Obstacles cited to growing alternative crops were equipment costs, no markets, and no experience.

**AAAW, SHOOT:** This just in from the November issue of Farm Industry News: Manure management is becoming a pivotal issue. A farmer from Ohio is quoted as saying that in our area a pivot (center pivot irrigation system) will not pay for itself just handling water.... But it does pay if you use it to shoot manure along with the water. Some systems are designed to do just

that. For example, the Valley 6000 pivot slurry shooter. The gun system has no problems with solids, say the McChesneys from Ohio. And, its precision application features have helped to eliminate nitrate leaching problems while increasing corn yields by 15 to 20% in a good year.....

TRANSYLVAGRICULTURE: Want to know more about the future of agriculture? About site-specific farming, variable rate technology, controlled traffic, soil quality management, earthworm wonders, transgenetics, strip till, landlord-tenant relations, freedom to farm, and saving the planet with American High-Yield Farming??????? Then go to Agricultural Technology II, Jan 21-22, 1997 at America's Center, St. Louis, Mo. Call 1-800-488-1100 to register.



**PRECAUTIONS FOR ALL GOVERNMENTS:** Don't replace local associations and institutions with new systems, institutions, centers or agencies. One of the most significant causes of weakened local citizen initiatives, associational work and institutional capacity has been the introduction of new government-sponsored structures and organizations. As new organizations appear in the neighborhood with impressive buildings or offices, lots of money, and well-paid outside professionals, they unintentionally but necessarily replace some of the power, authority and legitimacy of local groups. Therefore, government representatives can ask, What do you community folks think we should do to support you? rather than We have this new program that we're bringing into your community. (From Advice from Wise Ones: A Study of Successful Education Programs, from the University of Minnesota.)

WHAT THEY SAY: A 6-person contingency from the MPCA, including the central office and two regional offices, ventured to New Ulm last week to lay the sketch of a plan on the table (alluded to in the Week in Brief notes) and hear what county water planners had to say. Here's some of what they said: More information is needed on specific parameters, such as sediment and bacteria-- in quantitative terms, what are the problems?....The Clean Water Partnership program has loads of value but needs to be more user-friendly. Are all the reporting requirements necessary? As budgets tighten, county commissioners question additional projects: they're looking for results that hit close to home....Ditto for folks back home. Downplay Lake Pepin eutrophication and hypoxia in the Gulf of Mexico. Instead make a local connection. But...on the other hand, package and deliver those downstream messages to the public. We and they need 'em....We need to keep showing progress after an effort starts.... State agencies, why can't you work together instead of each coming forward with your own plan -- be it Basin Management or Ecoregion Management or Agro-Ecoregions...Everybody needs to

be at the table when you develop an environmental plan....Give local agencies options, not single solutions....Involve science teachers and city managers to encourage the involvement of cities in water quality efforts.



2/26/97



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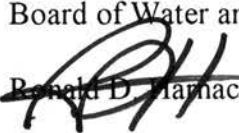
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DATE: February 18, 1997  
TO: Board of Water and Soil Resources Members, Advisors and Staff  
FROM:  Ronald D. Harnack, Executive Director  
SUBJECT: February 26, 1997 BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, February 26, 1997, beginning at 9:00 a.m. The meeting will be held in the BWSR conference room at One West Water Street. The following is some background information regarding the agenda items.

**Special Presentations:** The last couple months the Board has voiced interest in having additional information presented on these following items:

**Hypoxia Presentation:** Hypoxia impacts the Gulf of Mexico and has had a significant impact on local fisheries in the Gulf. It is alleged that the problem evolves from nitrogen concentrations in the Mississippi flowing into the Gulf. Recent litigation by the Sierra Club Defense League suggests that the source of the nitrogen is from agricultural application fertilizers. We will through this presentation provide a broad perspective of the issue and research that is being done relating to hypoxia. **DISCUSSION**

**Comprehensive Land Use Planning:** As we have discussed in the past legislation is being considered that would require every county in the state to develop a comprehensive land use plan. The panel will discuss their perspective on such legislation and its relationship with BWSR programs. **DISCUSSION**

**Pollution Credit Trading:** This is a new and creative approach to managing pollution on a watershed basis. Participants will discuss the general overall concept behind pollution credit trading and specifically, the Rahr Malting Company pollution credit trading initiative in the Minnesota River Basin. There may be opportunities in relationship with BWSR's grant programs. **DISCUSSION**

**Consent Agenda**

1. **County Water Plan Approvals:** The Comprehensive Local Water Plans of Clearwater, Marshall, Polk, and Red Lake Counties were presented and reviewed by the committee of the Board and are recommended for approval. **DECISION.**

BWSR Members, Advisors, Staff  
February 18, 1997  
Page Two

New Business

1. Policy to Allow Release of Expiring Ten-Year Reinvest In Minnesota (RIM) Easements: The enclosed proposal would allow landowners with 1986 ten-year RIM easements a release from their easement obligations if they request one, and comply with conditions outlined in the proposed policy. DECISION
2. Proposed Permanent Rules Governing Board Review of Watershed District Rules: Draft rule 8420.0255 pertaining to appeals of watershed district rules is being brought before the Board for discussion. This rule is required by Minn. Stat. § 103D.537. DISCUSSION
3. Proposed Permanent Rules Relating to Board Interventions in Judicial or Administrative Proceedings: Draft rule 8420.0010 pertaining to determinations of water law and policy is being brought before the Board for discussion. This rule is required by Minn. Stat. § 103A.325. DISCUSSION
4. Peterson vs. Minnehaha Creek Watershed District (WCA Appeal): The Dispute Resolution Committee recommends affirming the Minnehaha Creek Watershed District's September 12, 1996, decision. DECISION
5. Drainage Inventory Pilot Program: Wetland Committee and Team Recommendation is attached. DECISION

If you have additional agenda items or require additional information, please feel free to give me a call. If bad weather conditions exist in your area and you are unable to attend the meeting due to travel restrictions, please notify the board office by noon on Tuesday if possible. Travel safely, I look forward to seeing you on the 26th!

RDH:mja  
Enclosures

**BOARD OF WATER AND SOIL RESOURCES  
CONFERENCE ROOM, ONE WEST WATER STREET  
ST. PAUL, MINNESOTA 55107  
FEBRUARY 26, 1997**

**PRELIMINARY AGENDA**

**9:00 a.m.      Call Meeting to Order**

**Adopt Agenda**

**Approval of Minutes of January 22, 1997**

**Reports**

- Chair - Barbara Cobb
- Executive Director - Ron Harnack
- Dispute Resolution Committee - Kathleen Roer
- Education and Public Relations Committee - Barb Uppgaard
- Feedlot Advisory Committee - Jim Rossman
- Cost-Share/Soil Conservation Committee - Dwain Otte
- Wetlands Committee - Darrell Bruggman
- Administrative Advisory Committee - Barbara Cobb
- Financial Oversight Committee - Ginny Imholte

**Agency Reports**

- Jim Anderson, Minnesota Extension Service
- Wayne Anderson, Pollution Control Agency
- Kim Benson-Johnson, Department of Health
- Paul Burns, Department of Agriculture
- Wayne Edgerton, Department of Natural Resources

**10:00 a.m.      Hypoxia Presentation** - Ron Harnack; Dwain Otte; and Giles Randall, Professor and Soil Scientist, University of Minnesota, Southern Experiment Station - INFORMATION

**10:45 a.m.      Comprehensive Land Use Planning** - Lee Ronning, Land Stewardship Project; Joel Jamnick, League of Minnesota Cities; and Jim Mulder, Association of Minnesota Counties - INFORMATION

**11:30 a.m.      Pollution Credit Trading** - Wayne Anderson, Pollution Control Agency; and Curt Sparks, Consultant with HDR - INFORMATION

**Consent Agenda**

1. County Water Plan Approvals - Recommendation of Review Committee:  
Clearwater, Marshall, Polk, Red Lake - DECISION

**New Business**

1. Policy To Allow Release of Expiring Ten-Year Reinvest In Minnesota  
(RIM) Easements - Tim Fredbo - DECISION
2. Proposed Permanent Rules Governing Board Review of Watershed  
District Rules - Jim Haertel - DISCUSSION
3. Proposed Permanent Rules Relating to Board Interventions in Judicial or  
Administrative Proceedings - Jim Haertel - DISCUSSION
4. Peterson vs. Minnehaha Creek Watershed District (WCA Appeal) - Jim  
Haertel - DECISION
5. Drainage Inventory Pilot Program - John Jaschke - DECISION

**Advisory Comments**

- Ray Bohn, MAWD
- Franklin Denn, MAT
- Bill Hunt, NRCS
- Rick Reimer, MACDE
- Vern Wilker, MASWCD

**Board Issues**

- Next Board Meeting, March 26, 1997



**BOARD OF WATER AND SOIL RESOURCES  
CONFERENCE ROOM, ONE WEST WATER STREET  
ST. PAUL, MINNESOTA 55107  
FEBRUARY 26, 1997**

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**Board Issues**

- Next Board Meeting, March 26, 1997

# Gulf of Mexico Program Hypoxia Implementation Team Report

## Background

Over the last few years, citizens have become increasingly concerned about a large area of oxygen-depleted waters that develops seasonally each year in the nearshore Gulf of Mexico near the mouth of the Mississippi River. The area of oxygen depletion in the Gulf has been appropriately called "hypoxia" or "hypoxic waters" which refers to waters with dissolved oxygen concentrations of less than 2 parts per million (PPM). Two PPM dissolved oxygen is generally accepted as the limit for most aquatic life survival and reproduction.

The Gulf hypoxic zone is one of the largest in the world. It can exceed 6,000 square miles in size and may form as early as February and last as late as October, with the most widespread and persistent conditions occurring from mid-May to mid-September.

## Assumption

Presently available research has shown a relationship between Mississippi River flow, riverborne nutrients, plankton productivity and bottom water hypoxia. The hypoxia is believed to be due to 1) the effects of stratification of the fresh and marine waters that restricts vertical reoxygenation of bottom waters, and 2) the oxygen consuming breakdown of organic material mostly derived from the river stimulated plankton. The hypoxic conditions vary spatially and seasonally depending on the flow of the Mississippi River discharge but are also affected by physical features such as water circulation patterns, density stratification, wind mixing, tropical storms, and thermal fronts.

The nature of the hypoxia problem is complicated by the fact that some nutrient load from the Mississippi River is vital to maintaining the productivity of the Gulf fisheries. Approximately 40% of the U.S. fisheries landings, including a substantial part of the nation's most valuable fishery (shrimp), come from this productive area. In addition, the area also supports a large and valuable sport fishery. The concern is that the hypoxic area which may have always existed to some extent has been slowly enlarging since the 1960's due to human activities in the watershed which have increased the nutrient loads. The impacts of expanding Gulf hypoxia, either currently documented or potential, include:

- Altered coastal phytoplankton based food webs;
- Noxious algal blooms;
- Altered benthic ecosystems; and
- Both direct and indirect impacts on fisheries such as direct mortality and altered migration which may lead to declines in populations and landings.

## **Situation**

The Gulf of Mexico Program, a cooperative program of Federal, State, and local agencies, as well as business and citizens, has been studying the northern Gulf of Mexico oxygen problem for several years. Much of the above information has been derived from the work undertaken by the Gulf of Mexico Program.

The Gulf of Mexico Program is committed to looking into all aspects of the problem including other sources of nutrient loads such as atmospheric deposition, coastal upwelling, urban point, and non-point pollution. The program will also be evaluating what reductions in nutrient loadings will be necessary, if appropriate, to halt the increase in the size of hypoxia, as well as looking more closely at the linkage between hypoxia and Gulf fisheries.

### **In the meantime . . .**

Many states have initiated cooperative projects with local, state, and federal agencies, as well as farmers and citizens to combat nonpoint runoff problems, including nutrients. The Natural Resources Conservation Service also maintains ongoing programs in most states to address nutrient runoff and discharge problems. The agricultural community, in general, has been very supportive of water quality improvement through the National Association of Conservation Districts, Cooperative Extension and Experiment Stations, and local Soil and Water Conservation Districts. All of these agencies are working closely with industries and municipalities to reduce nutrient enrichment and have already succeeded at improving many local watersheds.

## **The Team**

The Hypoxia Public Education and Outreach Team of the Gulf of Mexico Program met October 16, 1996 to create a strategy for public education and outreach in the 5-state Gulf of Mexico Program area, as well as the 31-state Mississippi River Watershed. The initial analysis of the core team (Bob Baker, Belinda Duke, Gwen Necaise, Pat Hood-Greenberg, Larinda Tervelt, and Hiram Boone) is as follows.

## **The Process**

### **The Four Steps to Success**

|                                |                                               |
|--------------------------------|-----------------------------------------------|
| <b>Goal:</b>                   | What are you trying to achieve                |
| <b>Obstacles:</b>              | What is stopping you from achieving your goal |
| <b>Who Owns the Obstacles:</b> | Who has the most influence on the obstacles   |
| <b>Action:</b>                 | What are the owners going to do and when      |

---

***Hypoxia Implementation Team—Public Education and Outreach***

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**Goal**

To reduce by 25% nutrient loadings to the Mississippi River Watershed within 5 years

**Concerns**

Conflicting scientific reports and no benchmarked data regarding whether or not the major assumption (riverborne nutrients from the Mississippi River Watershed are the major cause of the hypoxic zone in the Gulf of Mexico) is correct.

**Obstacles**

- Not using BMPs
- Water quality standards do not include N standards (no limit from point source) and dissolved oxygen
- Insufficient data and use
- Lack of coordination between State/local agencies
- Do not have a bench mark
- Conflicting opinions on data and impacts w/reduced loading
- Fear of Federal Government...too many regulations
- Lack of political will





## Oxygen Depletion, or Hypoxia, in the Nearshore Gulf of Mexico off the Louisiana Coast

Over the last few years, citizens have become increasingly concerned about a large area of oxygen-depleted waters that develops seasonally each year in the nearshore Gulf of Mexico near the mouth of the Mississippi River. The area of oxygen depletion in the Gulf has been called the "Dead Zone" in the media, but is more appropriately called "hypoxia" or "hypoxic waters" which refers to waters with dissolved oxygen concentrations of less than 2 parts per million (PPM). Two PPM dissolved oxygen is generally accepted as the limit for most aquatic life survival and reproduction.

The size of the oxygen-depleted area varies from year to year extending from the mouth of the Mississippi River west to near the Texas border. The oxygen-depletion is typically associated with the bottom waters but can extend above the bottom. The zone of oxygen depletion in the nearshore Gulf can exceed 6,000 square miles in size and may form as early as February and last as late as October, with the most widespread and persistent conditions occurring from mid-May to mid-September.

Although hypoxic waters occur near the mouths of other large rivers around the world, the northern Gulf of Mexico hypoxia represents one of the largest zones of oxygen-deficient bottom waters in the western Atlantic Ocean. The areal extent of the hypoxic zone is greater than that of Chesapeake Bay and, in recent years, has rivaled the hypoxic regions of the Baltic and Black Seas.

Presently available research has shown a relationship between Mississippi River flow, riverborne nutrients, plankton productivity and bottom water hypoxia. The hypoxia is believed to be due to both the effects of stratification of the fresh and marine waters that restricts vertical reoxygenation of bottom waters and the oxygen consuming breakdown of organic material mostly derived from the river stimulated plankton. The hypoxic conditions vary spatially and seasonally depending on the flow of the Mississippi River discharge but are also affected by physical features such as water circulation patterns, density stratification, wind mixing, tropical storms and thermal fronts.

The nature of the hypoxia problem is complicated by the fact that some nutrient load from the Mississippi River is vital to maintaining the productivity of the Gulf fisheries. Approximately 40% of the U.S. fisheries landings, including a substantial part of the nation's most valuable fishery (shrimp), come from this productive area. In addition, the area also supports a large and valuable sport fishery. The concern is that the hypoxic area which may have always existed to some extent has been slowly enlarging since the 1960's due to human activities in the watershed which have increased the nutrient loads. The impacts of expanding Gulf hypoxia, either currently documented or potential, include:

- Altered coastal phytoplankton based food webs;
- Noxious algal blooms
- Altered benthic ecosystems; and
- Both direct and indirect impacts on fisheries such as direct mortality and altered migration which may lead to declines in populations and landings.

The Gulf of Mexico Program, a cooperative program of Federal, State, and local agencies, as well as business and citizens, has been studying the northern Gulf of Mexico oxygen problem for several years. Much of the above information has been derived from the work undertaken by the Gulf of Mexico Program. The Nutrient Enrichment Issue Committee of the Gulf of Mexico Program, in particular, has conducted studies of the nutrient concentrations in the Mississippi River and preliminary conclusions indicate that the larger load of nutrients delivered to the Gulf come from the upper Mississippi and Ohio River watersheds.

The Gulf of Mexico Program is committed to looking into all aspects of the problem including other sources of nutrient loads such as atmospheric deposition and coastal upwelling that are not related to drainage from the upper watershed. The program will also be evaluating what reductions in nutrient loadings will be required, if appropriate, to halt the increase in the size of hypoxia as well as looking more closely at the linkage between hypoxia and Gulf fisheries.

Border states of the upper Mississippi and Ohio River watersheds as well as other interested states are being asked to work with the Gulf states and the Gulf of Mexico Program to address the hypoxia problem. You can help by becoming more familiar with the problem and working more closely with the existing programs already in place in the watershed to control the runoff and discharge of nutrients. The Environmental Protection Agency (EPA) has established under Section 319 of the Clean Water Act a nonpoint source program that is functioning in all states in the watershed. Through the national nonpoint program, all of the states in the Gulf of Mexico watershed, and many other states, have initiated cooperative projects with local, state, and federal agencies as well as farmers and citizens to combat nonpoint runoff problems, including nutrients.

The Natural Resources Conservation Service, formerly the Soil Conservation Service, also maintains ongoing programs in most states to address nutrient runoff and discharge problems. The agricultural community, in general, has been very supportive of water quality improvement through the National Association of Conservation Districts, Cooperative Extension and Experiment Stations, and local Soil and Water Conservation Districts. All of these agencies are working closely with industries and municipalities to reduce nutrient enrichment and have already succeeded at improving many local watersheds.

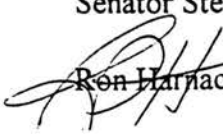
For further information on hypoxia, contact the Gulf of Mexico Program at (601) 688-3726; or you may access information through the Program's Gulf of Mexico Information Network (GIN). The GIN relies on the Internet as its communication vehicle with a WWW site on the Pelican Server (<http://pelican.gmpo.gov>).



## Comprehensive Land Use Planning

DATE: January 31, 1997

TO: Senator Steve Morse

FROM:  Ron Harnack, Executive Director

SUBJECT: Review and comment of draft bill for land use planning

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I appreciate the opportunity to provide comments and possible recommendations on the draft land use planning bill you are working on. One major observation we have is that a definable outcome is not readily apparent. If for example agricultural preservation is the key outcome then the bill should focus on it and pursue a vehicle such as the ag-preservation program administered by MDA. Conversely if the outcome is to manage growth in developing areas such as Rochester, St. Cloud, Mankato, etc., the bill should focus on providing the mechanisms needed to assure that true consolidated planning and zoning occurs in these counties.

Our basic philosophical difference with the proposed bill is its mandated nature. Our outline for a program that has the outcome of county comprehensive planning and county wide planning and zoning that is coordinated with cities might look something like the following:

- Establish statewide goals and guiding principles.
- Place the focus on the local level not the state for figuring out how to achieve the implement the guiding principles, i.e. the state should not set density standards.
- the guiding principles should embody the goals of sustainable development (social, economic, and environmental).
- The approach should be voluntary not mandatory. If we look to the success of the State in the late 70's in getting counties to do comprehensive planning it was the technical assistance and incentives that made it work not a mandate.
- Performance based focusing on achieving outcomes not prescriptive.
- Done without rulemaking. Our experience with rulemaking in today's climate is that it ultimately removes the flexibility from the administering agency that is necessary to address the great diversity we find in Minnesota.
- Provides incentives, including grants, access to technical assistance, and access to technology that the state possesses.



Based on this outline our recommendation would be to have a voluntary incentive driven program. A compromise position might be to adopt a program which sets out a schedule for compliance that guides the development or revision of comprehensive land use plans and adoption of official controls. Suggestions for a schedule would be counties, including cities within the county, which meet the definition of a growth county be given 5 years to achieve compliance. Other non metro counties make it voluntary or possibly a 10 year period for achievement. This concept is identified in Representative Joe Opatz's land use bill.

Possible definition for growth county; " "growth county" means a county outside the metropolitan area in which the population is estimated by the state demographer to have a growth rate for the most recent five-year period for which data is available that is at least on percentage point higher than the average growth rate for all counties in the state during the same period, and in which the county population density is greater than 50 people per square mile."

Eliminate rulemaking. Let the legislative goals and principles drive the content of plans. Rulemaking will only divert efforts from doing the job envisioned by this initiative.

#### Suggestions:

Identify the goals which you have stated up front in purpose of the act. These goals would then be backed up and supported by the development and inclusion of guiding principles

Principles should be amended into MS 394.21 (county planning and zoning), and MS 462.351(municipal planning). This allows the administering agency flexibility in meeting not only state goals but the goals of individual counties and regions within the state. Methods including the use of incentives should be used to encourage multi jurisdiction coordination and collaboration (i.e. regional (RDC's; city/county; joint county). Many of the reported conflicts are a result of city plans being more restrictive than the adjoining un-incorporated areas.

Listed below are a group of possible principles:

- guide future land use change through planning and develop a community vision for the future that is sustainable.
- coordinate planning to ensure compatibility of one community's development with development of neighboring communities.
- requires broad citizen participation in planning and decision making.
- use integrated information as a foundation for plans and decisions.
- assess the long-term social, economic, and environmental costs and benefits of development.
- pay the full environmental, social, and economic costs of new development, including infrastructure costs such as transportation, sewers and wastewater treatment, water supply, schools, and parks and recreation.
  - \*\* Provide authority for adoption of CIP
  - \*\* Provide for authority to use impact fees as provided in MS 462D.
- direct growth towards areas with existing infrastructure and services.

- preserve features of local, regional, and statewide significance including but not limited to;
  - \* prime farmland
  - \* forests and wetlands
  - \* unique natural, historic, cultural, scenic, and recreational areas

Section 4 of draft bill. We recommend only the development of planning guidelines by the administering agency. The development process for the guidelines should use of an advisory committee similar in nature to the wetland heritage advisory committee or the council that is envisioned in Section 11..

It is unclear what is envisioned by state agency plans. We would recommend dropping.

Section 5. Recommend dropping the current language and replace with a provision to promote and encourage the development of regional plans.

Section 6. In order to provide the level of technical assistance that we believe is envisioned here could require 6 to 7 FTE. And matching planning grants that should be in the \$30,000 to \$50,000 range. Consideration may be given to an incentive package that could evolve into a base/challenge similar to water planning grants.

Section 9. The proposed language suggests that enforcement mechanisms must be established for members of the public. How is this to be accomplished.

#### Other Considerations:

Consideration should be given to adding a section which would require coordination of adjacent cities, towns and/or counties when plans are developed. The goal of consolidated planning, like what occurs in Olmsted county with the City of Rochester, needs to be stressed. The local water planning process 103B.325 and .331 provides for a mechanism by which cities and towns are required to bring their plans and official controls into conformance with the county plan. If a city does not comply the county has the authority to regulate use and development.

The bill should also provide a mechanism to seek a contested case hearing, or some mediation process, when one local government units determines that the plan of an adjacent city, town, and/or county would have an adverse impact.

#### Administering Agency:

I believe that MN Planning or BWSR are reasonable considerations depending on the process and expectations of the State. MN Planning was the land use expert in the 70's and still has formidable experience in Steve Rekers, Roger Williams, the Demographers Office, etc.. BWSR has the local government connection and significant expertise in land use relating to natural resources.



Introduced by Opatz, Rest, Long,  
McElroy, Rhodes

H.F. No. 217

January 27, 1997

Companion S.F. No. \_\_\_\_\_

Referred to Committee on LOCAL GOVERNMENT & METROPOLITAN AFFAIRS

Reproduced by PHILLIPS LEGISLATIVE SERVICE

1 A bill for an act

2 relating to land use planning; providing for mandatory  
3 comprehensive planning; appropriating money; amending  
4 Minnesota Statutes 1996, sections 116C.04, by adding a  
5 subdivision; 394.22, by adding subdivisions; 394.23;  
6 394.24, subdivision 1; 394.32, by adding subdivisions;  
7 462.351; 462.352, by adding a subdivision; 462.355,  
8 subdivision 1a; and 462.357, subdivision 2; proposing  
9 coding for new law in Minnesota Statutes, chapters  
10 394; and 462; proposing coding for new law as  
11 Minnesota Statutes, chapter 462D.

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

13 Section 1. Minnesota Statutes 1996, section 116C.04, is  
14 amended by adding a subdivision to read:

15 Subd. 12. [PLANNING.] The board shall prepare a  
16 comprehensive plan and official controls for each county and  
17 city that does not adopt a comprehensive plan, as provided in  
18 sections 394.23 and 462.3535.

19 Sec. 2. Minnesota Statutes 1996, section 394.22, is  
20 amended by adding a subdivision to read:

21 Subd. 13. [CAPITAL IMPROVEMENT PROGRAM.] "Capital  
22 improvement program" means an itemized program setting forth the  
23 schedule and details of specific contemplated public  
24 improvements by fiscal year, including public improvements in or  
25 related to air space and subsurface areas necessary for mined  
26 underground space development pursuant to sections 469.135 to  
27 469.141, together with their estimated cost, the justification  
28 for each improvement, the impact that such improvements will

1 have on the current operating expense of the county, and such  
2 other information on capital improvements as may be pertinent.

3 Sec. 3. Minnesota Statutes 1996, section 394.22, is  
4 amended by adding a subdivision to read:

5 Subd. 14. [GROWTH COUNTY.] "Growth county" means a county  
6 outside the metropolitan area in which the population is  
7 estimated by the state demographer to have a growth rate for the  
8 most recent five-year period for which data is available that is  
9 at least one percentage point higher than the average growth  
10 rate for all counties in the state during the same period, and  
11 in which the county population density is greater than 50 people  
12 per square mile.

13 Sec. 4. Minnesota Statutes 1996, section 394.22, is  
14 amended by adding a subdivision to read:

15 Subd. 15. [METROPOLITAN AREA.] "Metropolitan area" means  
16 the area defined in section 473.121, subdivision 2.

17 Sec. 5. [394.225] [GOALS.]

18 The goals of comprehensive planning are to:

19 (1) guide change through planning and develop a community  
20 vision for future development that is sustainable;

21 (2) coordinate planning to ensure compatibility of one  
22 community's development with development of neighboring  
23 communities;

24 (3) ensure broad citizen participation in planning and  
25 decision making;

26 (4) respect and foster diversity among communities;

27 (5) use integrated information as a foundation for plans  
28 and decisions;

29 (6) consider the long-term social, economic, and  
30 environmental costs and benefits of development;

31 (7) pay the full environmental, social, and economic costs  
32 of new development, including infrastructure costs such as  
33 transportation, sewers and wastewater treatment, water, schools,  
34 recreation, and open space;

35 (8) use natural resources and public funds efficiently by  
36 directing growth towards areas with existing infrastructure and

1 services, and by encouraging development that is appropriate for  
2 the ecology and character of the community;

3 (9) preserve features of local, regional, and statewide  
4 significance, such as farmland, forests, open space, and unique  
5 natural, historic, cultural, scenic, and recreational areas;

6 (10) live within our means;

7 (11) foster livable communities with safe,  
8 pedestrian-friendly development that integrates a diverse mix of  
9 housing and jobs, public transit, businesses, public spaces, and  
10 recreational areas; and

11 (12) enhance Minnesota's economic strength and  
12 competitiveness.

13 Sec. 6. Minnesota Statutes 1996, section 394.23, is  
14 amended to read:

15 394.23 [COMPREHENSIVE PLAN.]

16 Subdivision 1. [GENERAL AUTHORITY.] The board shall have  
17 the power and authority to prepare and adopt by ordinance, a  
18 comprehensive plan. A comprehensive plan or plans when adopted  
19 by ordinance shall be the basis for official controls adopted  
20 under the provisions of sections 394.21 to 394.37.

21 Subd. 2. [PLANNING IN A GROWTH COUNTY.] The board in a  
22 growth county shall adopt a comprehensive plan and official  
23 controls to implement the plan. In addition to any other  
24 requirements of this chapter, the plan must reflect an urban  
25 growth boundary for each urbanized area in the county. The  
26 urban growth boundary shall be established in coordination with  
27 the affected municipality. The area within the boundary shall  
28 have a sufficient supply of developable land for at least a  
29 prospective 20-year period, and the municipality shall plan for  
30 the staged provision of urban services, including, but not  
31 limited to, water, wastewater collection and treatment, and  
32 transportation. Outside the urban growth boundary, the  
33 municipality shall not provide urban services and the land shall  
34 be zoned as permanent rural or agricultural land, developed at a  
35 density of no more than one dwelling unit in 40 acres. The  
36 board shall adopt and implement a comprehensive plan under this

1 subdivision within two years of determining that the county is a  
2 growth county. If the county has a previously adopted plan, the  
3 board shall review, update, and adopt a revised plan and  
4 official controls under this subdivision within two years.

5 Subd. 3. [PLANNING IN OTHER NONMETROPOLITAN AREA  
6 COUNTIES.] The board in a county outside the metropolitan area,  
7 other than a growth county, shall adopt a comprehensive plan and  
8 official controls to implement the plan.

9 Subd. 4. [EQB PLAN.] If a board in any county outside the  
10 metropolitan area does not adopt and implement a plan by August  
11 1, 2002, the environmental quality board shall prepare a plan  
12 and official controls to implement the plan, for the county, as  
13 provided in section 116C.04, subdivision 12. The environmental  
14 quality board shall meet the requirements for coordination of  
15 the plan under section 394.32, subdivision 5. For a growth  
16 county, the environmental quality board shall prepare a plan  
17 reflecting urban growth boundaries. The board shall adopt the  
18 plan and the official controls prepared by the environmental  
19 quality board upon receipt of the plan and controls.

20 Subd. 5. [PERIODIC REVIEW AND UPDATE.] The board shall  
21 review and update the comprehensive plan periodically, but at  
22 least every ten years. The environmental quality board shall  
23 review and update the plan under this section if the county  
24 board does not do so.

25 Sec. 7. Minnesota Statutes 1996, section 394.24,  
26 subdivision 1, is amended to read:

27 Subdivision 1. [ADOPTED BY ORDINANCE.] Official controls  
28 which shall further the purpose and objectives of the  
29 comprehensive plan and parts thereof shall be adopted by  
30 ordinance. The board may not adopt or implement official  
31 controls that are inconsistent with or conflict with the adopted  
32 comprehensive plan. If a comprehensive plan is in conflict with  
33 an official control, the official control shall be brought into  
34 conformance with the plan by the board. The comprehensive plan  
35 must provide guidelines for the timing and sequence of the  
36 adoption of official controls to ensure planned, orderly, and



1 staged development and redevelopment consistent with the  
2 comprehensive plan.

3 Sec. 8. [394.245] [IMPACT FEES.]

4 If a board has adopted a comprehensive plan that meets the  
5 requirements of this chapter and has adopted a capital  
6 improvement program, it may impose impact fees as provided in  
7 chapter 462D.

8 Sec. 9. Minnesota Statutes 1996, section 394.32, is  
9 amended by adding a subdivision to read:

10 Subd. 5. [COORDINATION WITH ADJACENT  
11 JURISDICTIONS.] Before adoption of a comprehensive plan, the  
12 board shall coordinate its comprehensive plan with  
13 municipalities within the county, with adjacent counties, and in  
14 the case of counties adjacent to the metropolitan area, with the  
15 metropolitan council. The board shall not implement a plan if  
16 an adjacent jurisdiction determines that implementation of the  
17 plan has the potential to have a substantial adverse impact on  
18 its own development plan.

19 Sec. 10. Minnesota Statutes 1996, section 394.32, is  
20 amended by adding a subdivision to read:

21 Subd. 6. [PLANNING FOR TOWNS.] Notwithstanding the  
22 provisions of subdivisions 1 to 3, the board shall include the  
23 area within each town in the county in its plan, including the  
24 designation of an urban growth boundary for the town if in a  
25 growth county. The county shall also prepare and adopt official  
26 controls to implement the plan that shall be binding on the  
27 town, except that a town may adopt official controls that  
28 provide for a lower density than provided in the county's plan.  
29 A county that prepares and adopts a plan and official controls  
30 for a town under this subdivision may not require reimbursement  
31 of expenses by the town. This subdivision applies to plans  
32 prepared by the environmental quality board under section 394.23.

33 Sec. 11. Minnesota Statutes 1996, section 462.351, is  
34 amended to read:

35 462.351 [MUNICIPAL PLANNING AND DEVELOPMENT; STATEMENT OF  
36 POLICY.]



1        Subdivision 1. [FINDINGS.] The legislature finds that  
2 municipalities are faced with mounting problems in providing  
3 means of guiding future development of land so as to insure a  
4 safer, more pleasant and more economical environment for  
5 residential, commercial, industrial and public activities, to  
6 preserve agricultural and other open lands, and to promote the  
7 public health, safety, and general welfare. Municipalities can  
8 prepare for anticipated changes and by such preparations bring  
9 about significant savings in both private and public  
10 expenditures. Municipal planning, by providing public guides to  
11 future municipal action, enables other public and private  
12 agencies to plan their activities in harmony with the  
13 municipality's plans. Municipal planning will assist in  
14 developing lands more wisely to serve citizens more effectively,  
15 will make the provision of public services less costly, and will  
16 achieve a more secure tax base. It is the purpose of sections  
17 462.351 to 462.364 to provide municipalities, in a single body  
18 of law, with the necessary powers and a uniform procedure for  
19 adequately conducting and implementing municipal planning.

20        Subd. 2. [GOALS.] The goals of comprehensive planning are  
21 to:

22        (1) guide change through planning and develop a community  
23 vision for future development that is sustainable;

24        (2) coordinate planning to ensure compatibility of one  
25 community's development with development of neighboring  
26 communities;

27        (3) ensure broad citizen participation in planning and  
28 decision making;

29        (4) respect and foster diversity among communities;

30        (5) use integrated information as a foundation for plans  
31 and decisions;

32        (6) consider the long-term social, economic, and  
33 environmental costs and benefits of development;

34        (7) pay the full environmental, social, and economic costs  
35 of new development, including infrastructure costs such as  
36 transportation, sewers and wastewater treatment, water, schools,

1 recreation, and open space;

2 (8) use natural resources and public funds efficiently by  
3 directing growth towards areas with existing infrastructure and  
4 services, and by encouraging development that is appropriate for  
5 the ecology and character of the community;

6 (9) preserve features of local, regional, and statewide  
7 significance, such as farmland, forests, open space, and unique  
8 natural, historic, cultural, scenic, and recreational areas;

9 (10) live within our means;

10 (11) foster livable communities with safe,  
11 pedestrian-friendly development that integrates a diverse mix of  
12 housing and jobs, public transit, businesses, public spaces, and  
13 recreational areas; and

14 (12) enhance Minnesota's economic strength and  
15 competitiveness.

16 Sec. 12. Minnesota Statutes 1996, section 462.352, is  
17 amended by adding a subdivision to read:

18 Subd. 18. [GROWTH COUNTY.] "Growth county" means a county  
19 outside the metropolitan area, as defined in section 473.121,  
20 subdivision 2, in which the population is estimated by the state  
21 demographer to have a growth rate for the most recent five-year  
22 period for which data is available that is at least one  
23 percentage point higher than the average growth rate for all  
24 counties in the state during the same period, and in which the  
25 county population density is greater than 50 people per square  
26 mile.

27 Sec. 13. [462.3535] [PLANNING REQUIRED.]

28 Subdivision 1. [CITIES IN GROWTH COUNTIES; URBAN GROWTH  
29 BOUNDARIES.] A statutory or home rule charter city in a growth  
30 county shall prepare and adopt a comprehensive municipal plan,  
31 official controls to implement the plan, and a capital  
32 improvement program. The plan must establish an urban growth  
33 boundary for the urbanized area, within which there is a  
34 sufficient supply of developable land for at least a prospective  
35 20-year period. Within the urban growth boundary, the city  
36 shall plan for the staged provision of urban services,

1 including, but not limited to, water, wastewater collection and  
2 treatment, and transportation. Outside the urban growth  
3 boundary, the city shall not provide urban services and the land  
4 shall be maintained as permanent rural or agricultural land,  
5 developed at a density of not more than one dwelling unit in 40  
6 acres. The city shall establish the urban growth boundary in  
7 coordination with the county.

8 Subd. 2. [OTHER CITIES.] Outside the metropolitan area and  
9 any growth county, a statutory or home rule charter city shall  
10 adopt a comprehensive plan and official controls to implement  
11 the plan that meets the requirements of this chapter.

12 Subd. 3. [EQB PLAN.] If a city does not adopt and  
13 implement a plan by August 1, 2002, the environmental quality  
14 board shall prepare a plan and official controls to implement  
15 the plan for the city, as provided in section 116C.04,  
16 subdivision 12. The environmental quality board shall meet the  
17 requirements for coordination of the plan under subdivision 4  
18 and for review and updating of plans as required under section  
19 462.355, subdivision 1a. For a city in a growth county, the  
20 environmental quality board shall establish an urban growth  
21 boundary. The city shall adopt the plan and the official  
22 controls prepared by the environmental quality board upon  
23 receipt of the plan and controls.

24 Subd. 4. [COORDINATION WITH ADJACENT  
25 JURISDICTIONS.] Before adoption of a comprehensive municipal  
26 plan, the city shall coordinate its comprehensive municipal plan  
27 with other municipalities within the county, with the county,  
28 with other adjacent municipalities or counties, and in the case  
29 of cities adjacent to the metropolitan area, with the  
30 metropolitan council. The city shall not implement the plan if  
31 an adjacent jurisdiction determines that implementation of the  
32 plan has the potential to have an adverse impact on its own  
33 development plan. If a city plans for growth beyond its current  
34 boundaries, the city shall submit its proposed comprehensive  
35 municipal plan and proposed urban growth boundary to the county  
36 for review and approval before adopting the plan.

1        Subd. 5. [DEADLINE FOR INITIAL PLANS.] A statutory or home  
2 rule charter city required to adopt a comprehensive municipal  
3 plan under this section shall do so within two years of  
4 determining that this section applies to the city. A city  
5 required to adopt a comprehensive municipal plan under this  
6 section that has a previously adopted plan shall review, update,  
7 coordinate the plan with adjacent jurisdictions, and adopt the  
8 plan within two years of determining that this section applies  
9 to the city.

10        Sec. 14. Minnesota Statutes 1996, section 462.355,  
11 subdivision 1a, is amended to read:

12        Subd. 1a. [PLAN UPDATE BY-METROPOLITAN-MUNICIPALITIES.]  
13 Each municipality in the metropolitan area, as defined in  
14 section 473.121, subdivision 2, shall review and update its  
15 comprehensive plan and fiscal devices and official controls as  
16 provided in section 473.864, subdivision 2. Each statutory or  
17 home rule charter city outside the metropolitan area shall  
18 review and update its comprehensive plan and official controls  
19 periodically, but at least every ten years.

20        Sec. 15. Minnesota Statutes 1996, section 462.357,  
21 subdivision 2, is amended to read:

22        Subd. 2. [GENERAL REQUIREMENTS.] At any time after the  
23 adoption of a land use plan for the municipality, the planning  
24 agency, for the purpose of carrying out the policies and goals  
25 of the land use plan, may prepare a proposed zoning ordinance  
26 and submit it to the governing body with its recommendations for  
27 adoption. Subject to the requirements of subdivisions 3, 4, and  
28 5, the governing body may adopt and amend a zoning ordinance by  
29 a two-thirds vote of all its members. ~~If the comprehensive~~  
30 ~~municipal plan is in conflict with the zoning ordinance, the~~  
31 ~~zoning ordinance supersedes the plan.~~ The governing body may  
32 not adopt or implement official controls that are inconsistent  
33 with or conflict with the adopted comprehensive municipal plan.  
34 If a comprehensive municipal plan is in conflict with an  
35 official control, the official control shall be brought into  
36 conformance with the plan by the governing body. The plan must



1 provide guidelines for the timing and sequence of the adoption  
2 of official controls to ensure planned, orderly, and staged  
3 development and redevelopment consistent with the plan.

4 Sec. 16. [462.3593] [IMPACT FEES.]

5 A statutory or home rule charter city that has adopted a  
6 comprehensive municipal plan and capital improvement program, as  
7 provided in this chapter, may impose impact fees as provided in  
8 chapter 462D.

9 Sec. 17. [462D.01] [IMPACT FEES; DEFINITIONS.]

10 Subdivision 1. [APPLICATION.] The terms defined in this  
11 section have the meanings given them for the purposes of this  
12 chapter.

13 Subd. 2. [APPLICABLE PLANNING LAW.] "Applicable planning  
14 law" means chapter 394 for counties, and section 462.351 to  
15 462.364 for statutory and home rule charter cities and towns.

16 Subd. 3. [IMPACT FEE.] "Impact fee" means a fee imposed on  
17 new development by a local government, pursuant to an ordinance,  
18 to pay for capital improvements necessitated by the new  
19 development that will primarily benefit the new development.

20 Subd. 4. [LOCAL GOVERNMENT.] "Local government" means a  
21 statutory or home rule charter city, town, or a county.

22 Subd. 5. [METROPOLITAN AREA.] "Metropolitan area" is as  
23 defined in section 473.121, subdivision 2.

24 Sec. 18. [462D.02] [AUTHORITY.]

25 A local government may impose impact fees by ordinance as  
26 provided for by other law.

27 Sec. 19. [462D.03] [PERMITTED FEES.]

28 A local ordinance shall specify the purposes for which  
29 impact fees may be imposed on new development. A local  
30 ordinance may provide for fees to be imposed for any of the  
31 following purposes:

32 (1) transportation infrastructure, including public  
33 transit;

34 (2) water supply production and distribution;

35 (3) wastewater collection and treatment facilities;

36 (4) school facilities;



- 1       (5) parks, open space, and recreation facilities;
- 2       (6) public safety facilities, including, but not limited
- 3 to, police, fire, and emergency medical and rescue facilities;
- 4       (7) stormwater control and treatment;
- 5       (8) solid waste collection and disposal; and
- 6       (9) lighting.

7       Sec. 20. [462D.04] [FORMULA; CONTRIBUTIONS.]

8       A local impact fee ordinance shall specify the formula by  
9 which fees will be imposed. The formula may include in the  
10 costs to be recovered the local government's administrative,  
11 legal, and other expenses related to the impact fees. The  
12 formula for determining impact fees for a particular development  
13 must provide for credits off-setting part or all of the fees  
14 that reflect what the new development may have contributed in  
15 the form of taxes, other fees, dedications, or other  
16 contributions, towards the improvement for which the impact fees  
17 are imposed.

18       Sec. 21. [462D.05] [ADVISORY COMMITTEE.]

19       A local government that determines to use impact fees shall  
20 establish an impact fee advisory committee made up of  
21 representatives of affected interests to assist in the  
22 development of the ordinance.

23       Sec. 22. [462D.06] [EXEMPTIONS.]

24       An impact fee ordinance may provide exemptions from the  
25 impact fees for projects providing low- and moderate-income  
26 housing if the need for such housing is identified in the  
27 comprehensive plan.

28       Sec. 23. [462D.07] [REFUND OF UNUSED FEES.]

29       A local government may accumulate impact fees for up to six  
30 years. The ordinance may provide for a one-time extension for  
31 five years more. Fees not used in the time required must be  
32 refunded to the current owners of the property on which the fees  
33 were imposed in proportion to the amount paid.

34       Sec. 24. [462D.08] [NOTICE; RECORDING.]

35       All impact fees paid or due shall be recorded and a  
36 purchaser of real property shall be notified of any impact fees

1 paid or due.

2       Sec. 25. [MODEL IMPACT FEE ORDINANCE.]

3       The environmental quality board shall develop a model  
4 impact fee ordinance for local governments by August 1, 1998.

5       Sec. 26. [APPROPRIATION.]

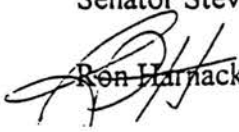
6       \$..... is appropriated from the general fund to the  
7 environmental quality board for the purposes of making grants to  
8 local governmental units outside the metropolitan area for  
9 planning required by this act.



## Comprehensive Land Use Planning

DATE: January 31, 1997

TO: Senator Steve Morse

FROM:  Ron Harnack, Executive Director

SUBJECT: Review and comment of draft bill for land use planning

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I appreciate the opportunity to provide comments and possible recommendations on the draft land use planning bill you are working on. One major observation we have is that a definable outcome is not readily apparent. If for example agricultural preservation is the key outcome then the bill should focus on it and pursue a vehicle such as the ag-preservation program administered by MDA. Conversely if the outcome is to manage growth in developing areas such as Rochester, St. Cloud, Mankato, etc.. the bill should focus on providing the mechanisms needed to assure that true consolidated planning and zoning occurs in these counties.

Our basic philosophical difference with the proposed bill is its mandated nature. Our outline for a program that has the outcome of county comprehensive planning and county wide planning and zoning that is coordinated with cities might look something like the following:

- Establish statewide goals and guiding principles.
- Place the focus on the local level not the state for figuring out how to achieve the implement the guiding principles, i.e. the state should not set density standards.
- the guiding principles should embody the goals of sustainable development (social, economic, and environmental).
- The approach should be voluntary not mandatory. If we look to the success of the State in the late 70's in getting counties to do comprehensive planning it was the technical assistance and incentives that made it work not a mandate.
- Performance based focusing on achieving outcomes not prescriptive.
- Done without rulemaking. Our experience with rulemaking in today's climate is that it ultimately removes the flexibility from the administering agency that is necessary to address the great diversity we find in Minnesota.
- Provides incentives, including grants, access to technical assistance, and access to technology that the state possesses.

Based on this outline our recommendation would be to have a voluntary incentive driven program. A compromise position might be to adopt a program which sets out a schedule for compliance that guides the development or revision of comprehensive land use plans and adoption of official controls. Suggestions for a schedule would be counties, including cities within the county, which meet the definition of a growth county be given 5 years to achieve compliance. Other non metro counties make it voluntary or possibly a 10 year period for achievement. This concept is identified in Representative Joe Opatz's land use bill.

Possible definition for growth county; " "growth county" means a county outside the metropolitan area in which the population is estimated by the state demographer to have a growth rate for the most recent five-year period for which data is available that is at least on percentage point higher than the average growth rate for all counties in the state during the same period, and in which the county population density is greater than 50 people per square mile."

Eliminate rulemaking. Let the legislative goals and principles drive the content of plans. Rulemaking will only divert efforts from doing the job envisioned by this initiative.

Suggestions:

Identify the goals which you have stated up front in purpose of the act. These goals would then be backed up and supported by the development and inclusion of guiding principles

Principles should be amended into MS 394.21 (county planning and zoning), and MS 462.351 (municipal planning). This allows the administering agency flexibility in meeting not only state goals but the goals of individual counties and regions within the state. Methods including the use of incentives should be used to encourage multi jurisdiction coordination and collaboration (i.e. regional (RDC's; city/county; joint county). Many of the reported conflicts are a result of city plans being more restrictive than the adjoining un-incorporated areas.

Listed below are a group of possible principles:

- guide future land use change through planning and develop a community vision for the future that is sustainable.
- coordinate planning to ensure compatibility of one community's development with development of neighboring communities.
- requires broad citizen participation in planning and decision making.
- use integrated information as a foundation for plans and decisions.
- assess the long-term social, economic, and environmental costs and benefits of development.
- pay the full environmental, social, and economic costs of new development, including infrastructure costs such as transportation, sewers and wastewater treatment, water supply, schools, and parks and recreation.
  - \*\* Provide authority for adoption of CIP
  - \*\* Provide for authority to use impact fees as provided in MS 462D.
- direct growth towards areas with existing infrastructure and services.

- preserve features of local, regional, and statewide significance including but not limited to;
  - \* prime farmland
  - \* forests and wetlands
  - \* unique natural, historic, cultural, scenic, and recreational areas

Section 4 of draft bill. We recommend only the development of planning guidelines by the administering agency. The development process for the guidelines should use of an advisory committee similar in nature to the wetland heritage advisory committee or the council that is envisioned in Section 11..

It is unclear what is envisioned by state agency plans. We would recommend dropping.

Section 5. Recommend dropping the current language and replace with a provision to promote and encourage the development of regional plans.

Section 6. In order to provide the level of technical assistance that we believe is envisioned here could require 6 to 7 FTE. And matching planning grants that should be in the \$30,000 to \$50,000 range. Consideration may be given to an incentive package that could evolve into a base/challenge similar to water planning grants.

Section 9. The proposed language suggests that enforcement mechanisms must be established for members of the public. How is this to be accomplished.

#### Other Considerations:

Consideration should be given to adding a section which would require coordination of adjacent cities, towns and/or counties when plans are developed. The goal of consolidated planning, like what occurs in Olmsted county with the City of Rochester, needs to be stressed. The local water planning process 103B.325 and .331 provides for a mechanism by which cities and towns are required to bring their plans and official controls into conformance with the county plan. If a city does not comply the county has the authority to regulate use and development.

The bill should also provide a mechanism to seek a contested case hearing, or some mediation process, when one local government units determines that the plan of an adjacent city, town, and/or county would have an adverse impact.

#### Administering Agency:

I believe that MN Planning or BWSR are reasonable considerations depending on the process and expectations of the State. MN Planning was the land use expert in the 70's and still has formidable experience in Steve Rekers, Roger Williams, the Demographers Office, etc.. BWSR has the local government connection and significant expertise in land use relating to natural resources.



Introduced by Opatz, Rest, Long,  
McElroy, Rhodes

H.F. No. 217

January 27, 1997

Companion S.F. No. \_\_\_\_\_

Referred to Committee on LOCAL GOVERNMENT & METROPOLITAN AFFAIRS

Reproduced by PHILLIPS LEGISLATIVE SERVICE

1 A bill for an act

2 relating to land use planning; providing for mandatory  
3 comprehensive planning; appropriating money; amending  
4 Minnesota Statutes 1996, sections 116C.04, by adding a  
5 subdivision; 394.22, by adding subdivisions; 394.23;  
6 394.24, subdivision 1; 394.32, by adding subdivisions;  
7 462.351; 462.352, by adding a subdivision; 462.355,  
8 subdivision 1a; and 462.357, subdivision 2; proposing  
9 coding for new law in Minnesota Statutes, chapters  
10 394; and 462; proposing coding for new law as  
11 Minnesota Statutes, chapter 462D.

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

13 Section 1. Minnesota Statutes 1996, section 116C.04, is  
14 amended by adding a subdivision to read:

15 Subd. 12. [PLANNING.] The board shall prepare a  
16 comprehensive plan and official controls for each county and  
17 city that does not adopt a comprehensive plan, as provided in  
18 sections 394.23 and 462.3535.

19 Sec. 2. Minnesota Statutes 1996, section 394.22, is  
20 amended by adding a subdivision to read:

21 Subd. 13. [CAPITAL IMPROVEMENT PROGRAM.] "Capital  
22 improvement program" means an itemized program setting forth the  
23 schedule and details of specific contemplated public  
24 improvements by fiscal year, including public improvements in or  
25 related to air space and subsurface areas necessary for mined  
26 underground space development pursuant to sections 469.135 to  
27 469.141, together with their estimated cost, the justification  
28 for each improvement, the impact that such improvements will

1 have on the current operating expense of the county, and such  
2 other information on capital improvements as may be pertinent.

3 Sec. 3. Minnesota Statutes 1996, section 394.22, is  
4 amended by adding a subdivision to read:

5 Subd. 14. [GROWTH COUNTY.] "Growth county" means a county  
6 outside the metropolitan area in which the population is  
7 estimated by the state demographer to have a growth rate for the  
8 most recent five-year period for which data is available that is  
9 at least one percentage point higher than the average growth  
10 rate for all counties in the state during the same period, and  
11 in which the county population density is greater than 50 people  
12 per square mile.

13 Sec. 4. Minnesota Statutes 1996, section 394.22, is  
14 amended by adding a subdivision to read:

15 Subd. 15. [METROPOLITAN AREA.] "Metropolitan area" means  
16 the area defined in section 473.121, subdivision 2.

17 Sec. 5. [394.225] [GOALS.]

18 The goals of comprehensive planning are to:

19 (1) guide change through planning and develop a community  
20 vision for future development that is sustainable;

21 (2) coordinate planning to ensure compatibility of one  
22 community's development with development of neighboring  
23 communities;

24 (3) ensure broad citizen participation in planning and  
25 decision making;

26 (4) respect and foster diversity among communities;

27 (5) use integrated information as a foundation for plans  
28 and decisions;

29 (6) consider the long-term social, economic, and  
30 environmental costs and benefits of development;

31 (7) pay the full environmental, social, and economic costs  
32 of new development, including infrastructure costs such as  
33 transportation, sewers and wastewater treatment, water, schools,  
34 recreation, and open space;

35 (8) use natural resources and public funds efficiently by  
36 directing growth towards areas with existing infrastructure and

1 services, and by encouraging development that is appropriate for  
2 the ecology and character of the community;

3 (9) preserve features of local, regional, and statewide  
4 significance, such as farmland, forests, open space, and unique  
5 natural, historic, cultural, scenic, and recreational areas;

6 (10) live within our means;

7 (11) foster livable communities with safe,  
8 pedestrian-friendly development that integrates a diverse mix of  
9 housing and jobs, public transit, businesses, public spaces, and  
10 recreational areas; and

11 (12) enhance Minnesota's economic strength and  
12 competitiveness.

13 Sec. 6. Minnesota Statutes 1996, section 394.23, is  
14 amended to read:

15 394.23 [COMPREHENSIVE PLAN.]

16 Subdivision 1. [GENERAL AUTHORITY.] The board shall have  
17 the power and authority to prepare and adopt by ordinance, a  
18 comprehensive plan. A comprehensive plan or plans when adopted  
19 by ordinance shall be the basis for official controls adopted  
20 under the provisions of sections 394.21 to 394.37.

21 Subd. 2. [PLANNING IN A GROWTH COUNTY.] The board in a  
22 growth county shall adopt a comprehensive plan and official  
23 controls to implement the plan. In addition to any other  
24 requirements of this chapter, the plan must reflect an urban  
25 growth boundary for each urbanized area in the county. The  
26 urban growth boundary shall be established in coordination with  
27 the affected municipality. The area within the boundary shall  
28 have a sufficient supply of developable land for at least a  
29 prospective 20-year period, and the municipality shall plan for  
30 the staged provision of urban services, including, but not  
31 limited to, water, wastewater collection and treatment, and  
32 transportation. Outside the urban growth boundary, the  
33 municipality shall not provide urban services and the land shall  
34 be zoned as permanent rural or agricultural land, developed at a  
35 density of no more than one dwelling unit in 40 acres. The  
36 board shall adopt and implement a comprehensive plan under this

1 subdivision within two years of determining that the county is a  
2 growth county. If the county has a previously adopted plan, the  
3 board shall review, update, and adopt a revised plan and  
4 official controls under this subdivision within two years.

5 Subd. 3. [PLANNING IN OTHER NONMETROPOLITAN AREA  
6 COUNTIES.] The board in a county outside the metropolitan area,  
7 other than a growth county, shall adopt a comprehensive plan and  
8 official controls to implement the plan.

9 Subd. 4. [EQB PLAN.] If a board in any county outside the  
10 metropolitan area does not adopt and implement a plan by August  
11 1, 2002, the environmental quality board shall prepare a plan  
12 and official controls to implement the plan, for the county, as  
13 provided in section 116C.04, subdivision 12. The environmental  
14 quality board shall meet the requirements for coordination of  
15 the plan under section 394.32, subdivision 5. For a growth  
16 county, the environmental quality board shall prepare a plan  
17 reflecting urban growth boundaries. The board shall adopt the  
18 plan and the official controls prepared by the environmental  
19 quality board upon receipt of the plan and controls.

20 Subd. 5. [PERIODIC REVIEW AND UPDATE.] The board shall  
21 review and update the comprehensive plan periodically, but at  
22 least every ten years. The environmental quality board shall  
23 review and update the plan under this section if the county  
24 board does not do so.

25 Sec. 7. Minnesota Statutes 1996, section 394.24,  
26 subdivision 1, is amended to read:

27 Subdivision 1. [ADOPTED BY ORDINANCE.] Official controls  
28 which shall further the purpose and objectives of the  
29 comprehensive plan and parts thereof shall be adopted by  
30 ordinance. The board may not adopt or implement official  
31 controls that are inconsistent with or conflict with the adopted  
32 comprehensive plan. If a comprehensive plan is in conflict with  
33 an official control, the official control shall be brought into  
34 conformance with the plan by the board. The comprehensive plan  
35 must provide guidelines for the timing and sequence of the  
36 adoption of official controls to ensure planned, orderly, and

1 staged development and redevelopment consistent with the  
2 comprehensive plan.

3 Sec. 8. [394.245] [IMPACT FEES.]

4 If a board has adopted a comprehensive plan that meets the  
5 requirements of this chapter and has adopted a capital  
6 improvement program, it may impose impact fees as provided in  
7 chapter 462D.

8 Sec. 9. Minnesota Statutes 1996, section 394.32, is  
9 amended by adding a subdivision to read:

10 Subd. 5. [COORDINATION WITH ADJACENT  
11 JURISDICTIONS.] Before adoption of a comprehensive plan, the  
12 board shall coordinate its comprehensive plan with  
13 municipalities within the county, with adjacent counties, and in  
14 the case of counties adjacent to the metropolitan area, with the  
15 metropolitan council. The board shall not implement a plan if  
16 an adjacent jurisdiction determines that implementation of the  
17 plan has the potential to have a substantial adverse impact on  
18 its own development plan.

19 Sec. 10. Minnesota Statutes 1996, section 394.32, is  
20 amended by adding a subdivision to read:

21 Subd. 6. [PLANNING FOR TOWNS.] Notwithstanding the  
22 provisions of subdivisions 1 to 3, the board shall include the  
23 area within each town in the county in its plan, including the  
24 designation of an urban growth boundary for the town if in a  
25 growth county. The county shall also prepare and adopt official  
26 controls to implement the plan that shall be binding on the  
27 town, except that a town may adopt official controls that  
28 provide for a lower density than provided in the county's plan.  
29 A county that prepares and adopts a plan and official controls  
30 for a town under this subdivision may not require reimbursement  
31 of expenses by the town. This subdivision applies to plans  
32 prepared by the environmental quality board under section 394.23.

33 Sec. 11. Minnesota Statutes 1996, section 462.351, is  
34 amended to read:

35 462.351 [MUNICIPAL PLANNING AND DEVELOPMENT; STATEMENT OF  
36 POLICY.]



1        Subdivision 1. [FINDINGS.] The legislature finds that  
2 municipalities are faced with mounting problems in providing  
3 means of guiding future development of land so as to insure a  
4 safer, more pleasant and more economical environment for  
5 residential, commercial, industrial and public activities, to  
6 preserve agricultural and other open lands, and to promote the  
7 public health, safety, and general welfare. Municipalities can  
8 prepare for anticipated changes and by such preparations bring  
9 about significant savings in both private and public  
10 expenditures. Municipal planning, by providing public guides to  
11 future municipal action, enables other public and private  
12 agencies to plan their activities in harmony with the  
13 municipality's plans. Municipal planning will assist in  
14 developing lands more wisely to serve citizens more effectively,  
15 will make the provision of public services less costly, and will  
16 achieve a more secure tax base. It is the purpose of sections  
17 462.351 to 462.364 to provide municipalities, in a single body  
18 of law, with the necessary powers and a uniform procedure for  
19 adequately conducting and implementing municipal planning.

20        Subd. 2. [GOALS.] The goals of comprehensive planning are  
21 to:

22        (1) guide change through planning and develop a community  
23 vision for future development that is sustainable;

24        (2) coordinate planning to ensure compatibility of one  
25 community's development with development of neighboring  
26 communities;

27        (3) ensure broad citizen participation in planning and  
28 decision making;

29        (4) respect and foster diversity among communities;

30        (5) use integrated information as a foundation for plans  
31 and decisions;

32        (6) consider the long-term social, economic, and  
33 environmental costs and benefits of development;

34        (7) pay the full environmental, social, and economic costs  
35 of new development, including infrastructure costs such as  
36 transportation, sewers and wastewater treatment, water, schools,

- 1 recreation, and open space;  
2 (8) use natural resources and public funds efficiently by  
3 directing growth towards areas with existing infrastructure and  
4 services, and by encouraging development that is appropriate for  
5 the ecology and character of the community;  
6 (9) preserve features of local, regional, and statewide  
7 significance, such as farmland, forests, open space, and unique  
8 natural, historic, cultural, scenic, and recreational areas;  
9 (10) live within our means;  
10 (11) foster livable communities with safe,  
11 pedestrian-friendly development that integrates a diverse mix of  
12 housing and jobs, public transit, businesses, public spaces, and  
13 recreational areas; and  
14 (12) enhance Minnesota's economic strength and  
15 competitiveness.

16 Sec. 12. Minnesota Statutes 1996, section 462.352, is  
17 amended by adding a subdivision to read:

18 Subd. 18. [GROWTH COUNTY.] "Growth county" means a county  
19 outside the metropolitan area, as defined in section 473.121,  
20 subdivision 2, in which the population is estimated by the state  
21 demographer to have a growth rate for the most recent five-year  
22 period for which data is available that is at least one  
23 percentage point higher than the average growth rate for all  
24 counties in the state during the same period, and in which the  
25 county population density is greater than 50 people per square  
26 mile.

27 Sec. 13. [462.3535] [PLANNING REQUIRED.]

28 Subdivision 1. [CITIES IN GROWTH COUNTIES; URBAN GROWTH  
29 BOUNDARIES.] A statutory or home rule charter city in a growth  
30 county shall prepare and adopt a comprehensive municipal plan,  
31 official controls to implement the plan, and a capital  
32 improvement program. The plan must establish an urban growth  
33 boundary for the urbanized area, within which there is a  
34 sufficient supply of developable land for at least a prospective  
35 20-year period. Within the urban growth boundary, the city  
36 shall plan for the staged provision of urban services,

1 including, but not limited to, water, wastewater collection and  
2 treatment, and transportation. Outside the urban growth  
3 boundary, the city shall not provide urban services and the land  
4 shall be maintained as permanent rural or agricultural land,  
5 developed at a density of not more than one dwelling unit in 40  
6 acres. The city shall establish the urban growth boundary in  
7 coordination with the county.

8 Subd. 2. [OTHER CITIES.] Outside the metropolitan area and  
9 any growth county, a statutory or home rule charter city shall  
10 adopt a comprehensive plan and official controls to implement  
11 the plan that meets the requirements of this chapter.

12 Subd. 3. [EQB PLAN.] If a city does not adopt and  
13 implement a plan by August 1, 2002, the environmental quality  
14 board shall prepare a plan and official controls to implement  
15 the plan for the city, as provided in section 116C.04,  
16 subdivision 12. The environmental quality board shall meet the  
17 requirements for coordination of the plan under subdivision 4  
18 and for review and updating of plans as required under section  
19 462.355, subdivision 1a. For a city in a growth county, the  
20 environmental quality board shall establish an urban growth  
21 boundary. The city shall adopt the plan and the official  
22 controls prepared by the environmental quality board upon  
23 receipt of the plan and controls.

24 Subd. 4. [COORDINATION WITH ADJACENT  
25 JURISDICTIONS.] Before adoption of a comprehensive municipal  
26 plan, the city shall coordinate its comprehensive municipal plan  
27 with other municipalities within the county, with the county,  
28 with other adjacent municipalities or counties, and in the case  
29 of cities adjacent to the metropolitan area, with the  
30 metropolitan council. The city shall not implement the plan if  
31 an adjacent jurisdiction determines that implementation of the  
32 plan has the potential to have an adverse impact on its own  
33 development plan. If a city plans for growth beyond its current  
34 boundaries, the city shall submit its proposed comprehensive  
35 municipal plan and proposed urban growth boundary to the county  
36 for review and approval before adopting the plan.

1        Subd. 5. [DEADLINE FOR INITIAL PLANS.] A statutory or home  
2        rule charter city required to adopt a comprehensive municipal  
3        plan under this section shall do so within two years of  
4        determining that this section applies to the city. A city  
5        required to adopt a comprehensive municipal plan under this  
6        section that has a previously adopted plan shall review, update,  
7        coordinate the plan with adjacent jurisdictions, and adopt the  
8        plan within two years of determining that this section applies  
9        to the city.

10       Sec. 14. Minnesota Statutes 1996, section 462.355,  
11       subdivision 1a, is amended to read:

12       Subd. 1a. [PLAN UPDATE BY-METROPOLITAN-MUNICIPALITIES.]  
13       Each municipality in the metropolitan area, as defined in  
14       section 473.121, subdivision 2, shall review and update its  
15       comprehensive plan and fiscal devices and official controls as  
16       provided in section 473.864, subdivision 2. Each statutory or  
17       home rule charter city outside the metropolitan area shall  
18       review and update its comprehensive plan and official controls  
19       periodically, but at least every ten years.

20       Sec. 15. Minnesota Statutes 1996, section 462.357,  
21       subdivision 2, is amended to read:

22       Subd. 2. [GENERAL REQUIREMENTS.] At any time after the  
23       adoption of a land use plan for the municipality, the planning  
24       agency, for the purpose of carrying out the policies and goals  
25       of the land use plan, may prepare a proposed zoning ordinance  
26       and submit it to the governing body with its recommendations for  
27       adoption. Subject to the requirements of subdivisions 3, 4, and  
28       5, the governing body may adopt and amend a zoning ordinance by  
29       a two-thirds vote of all its members. ~~If the comprehensive~~  
30       ~~municipal plan is in conflict with the zoning ordinance, the~~  
31       ~~zoning ordinance supersedes the plan.~~ The governing body may  
32       not adopt or implement official controls that are inconsistent  
33       with or conflict with the adopted comprehensive municipal plan.  
34       If a comprehensive municipal plan is in conflict with an  
35       official control, the official control shall be brought into  
36       conformance with the plan by the governing body. The plan must

1 provide guidelines for the timing and sequence of the adoption  
2 of official controls to ensure planned, orderly, and staged  
3 development and redevelopment consistent with the plan.

4 Sec. 16. [462.3593] [IMPACT FEES.]

5 A statutory or home rule charter city that has adopted a  
6 comprehensive municipal plan and capital improvement program, as  
7 provided in this chapter, may impose impact fees as provided in  
8 chapter 462D.

9 Sec. 17. [462D.01] [IMPACT FEES; DEFINITIONS.]

10 Subdivision 1. [APPLICATION.] The terms defined in this  
11 section have the meanings given them for the purposes of this  
12 chapter.

13 Subd. 2. [APPLICABLE PLANNING LAW.] "Applicable planning  
14 law" means chapter 394 for counties, and section 462.351 to  
15 462.364 for statutory and home rule charter cities and towns.

16 Subd. 3. [IMPACT FEE.] "Impact fee" means a fee imposed on  
17 new development by a local government, pursuant to an ordinance,  
18 to pay for capital improvements necessitated by the new  
19 development that will primarily benefit the new development.

20 Subd. 4. [LOCAL GOVERNMENT.] "Local government" means a  
21 statutory or home rule charter city, town, or a county.

22 Subd. 5. [METROPOLITAN AREA.] "Metropolitan area" is as  
23 defined in section 473.121, subdivision 2.

24 Sec. 18. [462D.02] [AUTHORITY.]

25 A local government may impose impact fees by ordinance as  
26 provided for by other law.

27 Sec. 19. [462D.03] [PERMITTED FEES.]

28 A local ordinance shall specify the purposes for which  
29 impact fees may be imposed on new development. A local  
30 ordinance may provide for fees to be imposed for any of the  
31 following purposes:

32 (1) transportation infrastructure, including public  
33 transit;

34 (2) water supply production and distribution;

35 (3) wastewater collection and treatment facilities;

36 (4) school facilities;



- 1 (5) parks, open space, and recreation facilities;
- 2 (6) public safety facilities, including, but not limited
- 3 to, police, fire, and emergency medical and rescue facilities;
- 4 (7) stormwater control and treatment;
- 5 (8) solid waste collection and disposal; and
- 6 (9) lighting.

7 Sec. 20. [462D.04] [FORMULA; CONTRIBUTIONS.]

8 A local impact fee ordinance shall specify the formula by  
9 which fees will be imposed. The formula may include in the  
10 costs to be recovered the local government's administrative,  
11 legal, and other expenses related to the impact fees. The  
12 formula for determining impact fees for a particular development  
13 must provide for credits off-setting part or all of the fees  
14 that reflect what the new development may have contributed in  
15 the form of taxes, other fees, dedications, or other  
16 contributions, towards the improvement for which the impact fees  
17 are imposed.

18 Sec. 21. [462D.05] [ADVISORY COMMITTEE.]

19 A local government that determines to use impact fees shall  
20 establish an impact fee advisory committee made up of  
21 representatives of affected interests to assist in the  
22 development of the ordinance.

23 Sec. 22. [462D.06] [EXEMPTIONS.]

24 An impact fee ordinance may provide exemptions from the  
25 impact fees for projects providing low- and moderate-income  
26 housing if the need for such housing is identified in the  
27 comprehensive plan.

28 Sec. 23. [462D.07] [REFUND OF UNUSED FEES.]

29 A local government may accumulate impact fees for up to six  
30 years. The ordinance may provide for a one-time extension for  
31 five years more. Fees not used in the time required must be  
32 refunded to the current owners of the property on which the fees  
33 were imposed in proportion to the amount paid.

34 Sec. 24. [462D.08] [NOTICE; RECORDING.]

35 All impact fees paid or due shall be recorded and a  
36 purchaser of real property shall be notified of any impact fees

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1 paid or due.

2       Sec. 25. [MODEL IMPACT FEE ORDINANCE.]

3       The environmental quality board shall develop a model  
4 impact fee ordinance for local governments by August 1, 1998.

5       Sec. 26. [APPROPRIATION.]

6       \$..... is appropriated from the general fund to the  
7 environmental quality board for the purposes of making grants to  
8 local governmental units outside the metropolitan area for  
9 planning required by this act.

INCREASING REGULATORS' CONFIDENCE IN  
POINT-NONPOINT POLLUTANT TRADING SCHEMES<sup>1</sup>

RECEIVED

JAN 31 1997

Steven J. Taff and Norman Senjem<sup>2</sup>

**ABSTRACT:** One of the principal stumbling blocks to regulatory agencies' adopting pollutant trading schemes is the complex of uncertainties surrounding any change in institutions. This is especially true if nonpoint pollution sources are to be involved along with point sources. Regulators are understandably reluctant to switch from tried-and-true point source permit systems, even if trading schemes can be shown (on paper, at least) to result in lower public expenditures. We propose a set of practical criteria for point-nonpoint pollutant trading systems that promise to increase regulators' confidence that the new system will be equally effective in controlling pollution and at the same time more likely to capture efficiencies in pollution reduction practices.

**(KEY TERMS:** pollutant trading; nonpoint pollution control; point-nonpoint pollution; watershed management.)

## THE PROBLEM

Even though economists have long championed so-called "market approaches" to pollution control and even though the Environmental Protection Agency recently announced that it will "actively support and promote effluent trading with watersheds to achieve water quality objectives" (USEPA, 1995), few such approaches have actually been implemented, and only a handful of these (largely for air pollutants such as lead or sulfur dioxide) can be termed even modestly successful. In particular, water pollutant trading schemes, which date back several decades in concept (Dales, 1968), have enjoyed a singular lack of enthusiasm among non-economists. A few point-point water pollutant programs have been initiated, notably among paper mills in Wisconsin, but very few trades have resulted (David and Joeres, 1983).

This is all the more true for schemes that call for trading among both point and nonpoint sources. Several point-nonpoint projects have been proposed, and some "contributions" to a central management authority have been made, but as far as we can tell there has been only one real transaction so far – a mere 11 pounds of stormwater phosphorus reduction credited against the requirements of point sources in Colorado's Dillon Reservoir (Apogee Research, 1992; U.S. General Accounting Office, 1992; Letson, 1992).

Why has there been such a thin market among point and nonpoint pollutant sources? After all, several decades of federal and state water pollution control activity should have pretty much wrung out any cost efficiencies in controlling regulated pollutants from point sources. Meanwhile, most nonpoint sources, particularly farmland, have remained essentially unregulated. It stands to reason that the marginal cost of improving water quality might be lower among nonpoint sources than they are among point sources – particularly for newly targeted pollutants such as phosphorus (see, for example, Malik *et al.*, 1994). Why, then, haven't regulatory agencies been encouraging trading to take advantage of potential cost savings?

We think that substantial institutional uncertainties associated with certain features of pollutant trading tend to obscure trading's benefits from regulatory agencies' view. To counter these, we offer here a set of trading scheme characteristics that reduces what we call "regulator uncertainty" while still preserving certain efficiency-seeking features of point-nonpoint pollutant trading. We make no claim here that our arguments are path-breaking in theory or that the

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existence of regulatory uncertainty is unknown to practitioners. We do hope, however, that the recommendations we make, tied as they are to a careful examination of transaction costs, provide useful guidance to water resource professionals.

## THE SETTING

The literature is replete with studies demonstrating that both urban and agricultural land management activities are to blame for observed water quality problems. Researchers have also shown that management practices such as conservation tillage and riparian vegetation buffers can result in reduced pollutant loadings from agricultural lands. Finally, experience shows us that technology changes can bring about lower pollutant concentrations in effluent from wastewater treatment plants. Can we capitalize on tradeoffs between these latter two reduction practice categories?

Because current pollution control regulations apply mainly to point sources, we begin our consideration of possible trade-offs there. Consider a watershed with both urban and agricultural land uses in which point sources face anticipated pollutant control standards. Under current enforcement agency practice, these standards will have to be met by expensive in-plant modifications. The prospect of substantial financial outlays to meet these standards provides a substantial incentive for the point source to try something else — almost anything else — first. For example, it could lobby the enforcement agency to:

- Lower the standard, arguing that the known cost of compliance exceeds any (usually unmeasured) societal benefits of cleanup.

- Fund an information/education program that seeks to convince farmers to reduce polluted runoff through management changes. The cost of necessary practice changes would be borne voluntarily by the farmers.

- Shift some pollution liability (and compliance costs) to farmers, perhaps through the imposition of mandatory farm practices or farm-level water quality standards.

- Shift some pollution liability to upstream governments such as counties or watershed districts. Those units would be free to subsidize, regulate, or exhort practice changes by farmers — whatever it takes to reduce pollution loads to required levels.

- Impose taxes on farm inputs or farm technologies that pollute, or on excessive field losses of sediment, which transports pollutants to surface waters.

- Pay farmers to implement appropriate practices.
- Allow the point source to pay landowners to implement practices or install structures that reduce pollutant loads within the watershed by an amount that is equivalent to the in-plant load reduction requirement.

Clearly, the point source would prefer any of the first six options over the last because in each of the others, someone else would have to bear the cost of meeting the water quality standard. But what if the first six are either ineffective or are foreclosed by law? What if the point source has to bear the total cost of cleanup?

In that case, the point source is faced with the following choice: either accomplish the required load reduction "on site," with plant modifications, or bring about an equivalent reduction "off site," on farms within the watershed. The second is what we mean here by "point-nonpoint pollutant trading," taking place in a "pollutant market."

The usual notion of a market, of course, is a set of rules that govern transactions of commodities or other enforceable property rights. What would be "traded" in a pollutant market? In our scheme, developed below, we would authorize transfer of the locus of pollution control. The point source pays the farmer to install a practice. The regulatory agency agrees that this will satisfy a stated proportion of the point source's pollution reduction obligation. There is no transfer of "pollution rights;" rather, the point source has simply purchased some remotely provided pollution reduction services. The market is one of services, not of rights as sometimes discussed in the trading literature (but infrequently adopted in practice). Throughout, all expenditures are to be thought of as annualized, even though, of course, there will be separate one-time installation and annual maintenance costs.

There are known, effective, quantifiable abatement measures for both point and nonpoint sources of many pollutants. Trading opportunities arise where a significant difference exists in the cost of pollution abatement among sources. Thus, a critical precursor of trading is a comparison of pollutant loading reduction costs for a range of point and nonpoint source measures. For present purposes, we assume that such a comparison has been made and that the necessary cost-saving opportunities — absent transaction costs — exist. The potential for such efficiency-seeking trades is nonzero but not limitless. Ongoing research by the Minnesota Pollution Control Agency, for example, suggests that there may exist phosphorus trading opportunities between smaller wastewater treatment plants (less than 1 mgd flow) and farmers with relatively high sediment delivery (three tons/acre/year or

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more) on their riparian fields (Senjem, 1995). The relative cost advantage of the nonpoint practice strips improves for wastewater treatment plants smaller than this. For larger plants, the search costs for cheaper nonpoint reduction sites may be prohibitive.

## REGULATORY UNCERTAINTY

Suppose that reliable evidence shows that farmers could effect pollutant load reductions at a cost below that of in-plant modifications required of the point source. Wouldn't the point source immediately opt for trading of this sort? Not necessarily. Pollutant trading schemes are beset by uncertainties that impose substantial transaction costs – very often to the point where no trades ever take place. We concentrate here on four major classes of uncertainty, each of which influence the decisions of point sources and regulatory agencies alike:

1. Water Quality Uncertainty. Substituting seemingly unpredictable nonpoint source reductions for highly predictable point source load reductions may result in reduced overall water quality.

2. Practice Uncertainty. Agricultural land management practices might not be installed as specified, or they might not bring about the intended amount of pollutant load reduction.

3. Enforcement Uncertainty. A point source might worry that failure of its trading partner to install or maintain agreed-upon practices could trigger a violation of its National Pollutant Discharge Elimination System (NPDES) permit. It might also worry about its own ability to detect and enforce against those kind of agreement violations.

4. Price Uncertainty. The point source might end up paying more than it needed to for load reductions, or the farmer might end up settling for less than the point source really would have paid.

These uncertainties go to the heart of the regulator's problem: nonpoint source pollution really looks like it would be a lot more difficult to regulate than are point sources. Unless we deal with this perception, trading of the sort discussed here is likely never to be widely considered, let alone authorized.

Here's our scheme – a four-fold path:

1. To reduce water quality uncertainty, limit targeted pollutants to those whose impact is largely

"conservative" and limit targeted water quality problems to those that are "chronic" rather than sporadic.

2. To reduce practice uncertainty, restrict eligibility to remedial practices that are at once visible and whose effectiveness can be predicted within acceptable degrees of certainty.

3. To reduce enforcement uncertainty, associate trading with already existing regulatory mechanisms.

4. To reduce price uncertainty, help the market identify low-cost providers of pollution-reduction services.

Below, we flesh out each of these measures.

### Water Quality Uncertainty

In principle, any pollutant could be traded. Whenever both point and nonpoint source loadings can be measured and compared within a well-defined mixing zone such as a lake or watershed, then trading is a plausible management option. In practice, however, problems of measurement within an acceptable trading area pose severe difficulties. How can pollution miles upstream be compared with a discharge at the mouth of a river? Where should the impact of the loadings be measured? Which form of the pollutant should be measured? When? In the spring or summer, at low-flow, or somewhere in between?

Only if the pollutant is strongly "conservative" – not subject to significant change over distance – can we treat loadings as geographically invariant. Total phosphorus, generally delivered to surface waters by attachment to soil particles, is one such pollutant (see Senjem, 1995, for details) that can serve as a basis of our illustrations. Even though total phosphorus varies in degrees of solubility and biological availability over time and distance, eventually all phosphorus that enters a water system becomes available to algae. Control of phosphorus loadings will be necessary to reduce phosphorus pollution in any watershed or stream segment where the residence time is sufficient to allow conversion into bio-available form.

For simplicity we here assume that a unit of nonpoint phosphorus loading (commonly measured in pounds per year) is equivalent to a unit of point source loading – at any location within the trading area. Our basic approach would still be the same, however, if we were to use a designated trading ratio (as in Malik *et al.*, 1993) to meet a margin of safety for nonpoint source loading reduction estimates or to deal with in-stream attenuation.



When point source limits are set, they are presumably based in part upon ambient water quality conditions, which are in turn functions of the pollutant contributions of all sources, point and nonpoint alike. Could one point source benefit from a system in which only other point sources trade? Only if the pollutant reduction requirement for the former is reduced because trading actions by the latter improved water quality so that less additional reduction was necessary. Such "free-riding" is possible, of course, under any pollution management system that fails to take its possibility into account.

We see nothing about point-nonpoint trading that makes it any more or less susceptible than are traditional point source direct regulation systems. The new wrinkle is the possibility that a trading system might take the heat off farmers who pollute but choose not to participate in a trading contract. In either instance, the regulatory agency will guard against free-riding by imposing the same standards on similar polluters at the same time. If mandated reduction requirements are subsequently relaxed – because of improved water quality – the relaxation will apply to all sources, not just those not currently participating.

#### *Practice Uncertainty*

A major task of the regulatory agency, once it decides to use a market-oriented phosphorus reduction program such as that outlined here, is to maintain confidence that the program will actually reduce pollution by desired amounts. Two elements of our proposal are specifically designed to enhance this confidence. As with many of our proposals, this approach sacrifices practice-investment efficiency for reduced agency transaction costs and their resulting uncertainties.

1. Prior Practice Agreement. In many situations, it would be extremely time consuming and expensive for the regulatory agency to have to evaluate and approve each and every nonpoint practice installation and to estimate its pollution reductions impacts, even though several appropriate runoff models are available. Instead, the agency could simply publish in advance an approved list of practices, each with minimum siting and design criteria to ensure a minimum level of abatement. The installation of an approved practice at any location in the trading area would automatically constitute a certified reduction of a stated amount of the target pollutant. For example, any installation of a 33-foot riparian buffer on cropland along any stream of more than 50 cfs capacity might be deemed an approved practice and automatically credited with, say, phosphorus reduction of 200

lbs./mi./yr. All that the point source would have to demonstrate is that the riparian buffer is in place. The regulatory agency would then reduce ("offset") required phosphorus treatment at the treatment plant by the pre-specified amount.

2. Easily Monitored Practices. To reduce ongoing monitoring and enforcement costs, the approved practice list should consist only of practices that can be readily confirmed by visual inspection. Riparian buffers, for example, or feedlot diversions would probably make the list, but low-input fertilizer practices such as "smart farming" probably would not – even though they might in reality accomplish just as much or more pollutant reduction for equal or lower expenditures.

#### *Enforcement Uncertainty*

Phosphorus pollution is regulated through state administration of National Pollutant Discharge Elimination System (NPDES) permits. Only point sources such as WWTPs or very large feedlots are so regulated at present. While we might prefer a more market-oriented phosphorus reduction program that completely forgoes the permit approach, we don't think that such a radical departure from current practice is necessary to get some trading going. All that would be needed to implement the trading scheme we propose would be authorization within the framework of the permit for the point source to "contract out" for its phosphorus-reducing activities – for instance, a side agreement to the formal NPDES permit, spelling out the terms of a trading arrangement acceptable to the regulatory agency but still providing the flexibility to cope with weather problems and other uncertainties inherent in nonpoint pollution control. Side agreements such as memoranda of understanding or stipulation agreements would allow pollutant trading to be considered as an option whenever the permit is renewed, without complicating enforcement of the permit itself. Such agreements are not common, but neither are they unknown in recent American regulatory experience.

Regulated point sources would then have three options to meet new pollutant reduction obligations. The first, of course, would be to install modifications at the existing plant. The second would be to contract with nonpoint sources within the specified trading area to install prior-approved practices to achieve equivalent loading reductions. The third would be to pay a specified amount of money for each unit of required pollutant reduction into a common pool, the management of which would be the responsibility of the enforcement agency or some third party such as

watershed management district. (This option, used in North Carolina's Tar-Pamlico Basin project (Apogee Research, 1992) and in New York City's new Catskills project (NYCDEP, 1993), shifts some of the transaction costs away from the point source. The enforcement agency or third party would probably seek to recover some of these expenses from the point source.) The point source would presumably select the option or combination of options that are most cost-effective. By agreement, the regulatory agency would be indifferent about which action or actions the point source takes.

Under our system, liability for pollution damages would remain with the point source. The farmer would be responsible by contract only to the point source. The enforcement agency would have no recourse against the farmer in the event of failure.

A critical feature of such an agreement is the extent to which trading results in nonpoint source reductions that would not have been achieved without trading. Unless the reductions specified in a trade are wholly "additional," trading will be seen as weakening the in-place pollution control regulatory structure. Consequently, every trading system should be directed at the same goal: 100 percent additionality.

Some agencies might choose to declare trading-ineligible any practice required under state or federal law. (This would take the form of an amendment to the approved practice list, discussed above.) Soil conservation practices on highly erodible fields, for example, are already a condition for eligibility in federal commodity subsidy programs (including the new transition payment program), and feedlots with more than 1,000 animal units are already controlled under the NPDES. Others might simply guarantee that funding for nonpoint source pollutant-reducing management practices will be maintained at pre-trading levels, so any trades are completely additional. Still others may wish to specify "stewardship standards" – requiring farmers to satisfy minimal requirements before becoming eligible for point-nonpoint trading contracts. Minimum stewardship standards might also prevent farmers from adopting poor management practices just prior to trading in an attempt to qualify for larger pollutant reduction credits. Adopting our suggestion in the Practice Uncertainty section that a given practice be associated with a stated pollutant reduction credit *regardless of prior management* would also reduce this variety of strategic behavior by farmers.

The manner in which the additionality requirement is met could profoundly affect the marginal cost of nonpoint source phosphorus reductions and thereby any potential gains from trading. If the least costly nonpoint source options are all declared ineligible for trading, the cost of trading will obviously be greater.

Less obviously, interactions between eligibility criteria and regulatory policy could also influence the distribution of potential gains from trade. Suppose that some mandatory nonpoint management practices remained eligible for trading and that no public funding was provided to help farmers defray their new costs. Then all farmers required to install the practices would want to trade. Competitive bidding among farmers would tend to drive the supply price of phosphorus reduction services to near zero, and the point source would be able to meet its own mandated pollution reduction at little or no cost. Trading policy, in such a case, would not prevent a shift in the cost of pollution reduction almost entirely to the nonpoint sources.

### Price Uncertainty

Even if the point source knows which and how much of the approved nonpoint control practices will achieve its phosphorus reduction requirements, it doesn't necessarily know what it will have to pay, because it doesn't know which farms will be the lowest cost providers. Three approaches suggest themselves.

The first is a fixed-offer, first-taker process, somewhat like the earlier "bidding rounds" of the federal Conservation Reserve Program. The point source decides what it is willing to pay, announces it, and signs with the first farmers who come in the door. If the fixed offer is below all farms' costs, then no farmer will install the practice. If the offer is above all costs, then all farmers will come in the door. If between, the procedure has succeeded in identifying and contracting with the lower cost farmers but not at the lowest possible cost (except, of course, by chance). One strategy for the point source is to first announce a price that is sure to be lower than either farm's opportunity cost, then gradually raise the announced price until the necessary number of practices are contracted. (In this latter avatar, the fixed-offer process is similar to a reverse auction.)

A second approach is for the point source to engage in a planning exercise that calculates/estimates the opportunity cost for each eligible farmer and then approaches the lowest cost (the "targeted") farmer with an offer just slightly higher than this estimate. (This is not the sort of targeting that is usually proposed for nonpoint problems. There, the task is to identify where the problem comes from. Here, it is to find the lowest cost solution. Targeting might still be useful even when, as is the case here, there is full information about the physical nature of the system.) The approach here would ensure that the payment is lowest cost, but the price estimation process could

prove to be quite expensive because of its need for substantial information about all farms, not just those eventually participating. Indeed, unless there is some reason to believe that the savings resulting from these calculations would be substantial, we see little point in carrying it out in the first place. Far better to invest limited administrative resources in a bidding process, discussed next, or save them entirely by using a fixed-offer process.

The third way to minimize farm practice expenditures is to have farmers bid to sign contracts. The point source would simply take the lowest bid. Given appropriate attention to the structure of the bidding process (notably, ensure that each farmer is convinced that there is a nonzero chance of not signing the contract), this system would result in a least-cost "winning bid" somewhat greater than the lowest opportunity cost. Such bids could be over environmental benefits expected to result from a practice, rather than over the practice itself. This is the approach taken by USDA in administration of the more recent rounds of CRP entry. But this, too, is expensive, requiring as it does the determination of various soil and landscape attributes of each parcel. And we are still left with the price uncertainty problem: the agency doesn't know in advance how much the program will cost. If this is deemed a significant concern, the simple fixed-offer system remains the preferred alternative.

In all three approaches, the identification of the lowest-cost contract will have no impact on the water quality goals (by construction), as long as some contract is signed and enforced. Consequently, the enforcement agency need concern itself only with broad oversight of the enforcement (but not the identification) process.

### EVALUATION OF THE SYSTEM

Once a more market-oriented pollution reduction scheme such as what we outline is implemented, how do we know it's working? It is not enough to demonstrate that pollution levels in a waterbody are going down. We must also demonstrate that the market scheme is in some sense superior to the regulatory system it supplements.

Economists could, of course, be hired to measure all costs and benefits of both approaches. But hiring economists can be expensive. A more parsimonious evaluation effort might focus instead on the individual transactions. If one accepts — as would the regulatory agency in our scheme — that approved practices will indeed achieve their stated pollution reduction

targets, then it will be sufficient to examine the relative costs of unit reductions. If the land management practice is demonstrably cheaper, then the market-oriented scheme is more cost effective.

How do we determine such relative costs? By observing the market. If trades occur, then the market scheme has lower costs (including transaction costs borne by the trading parties). If trades don't occur, then practice costs and/or transaction costs are too high. Either way, the mere existence of trades tells us something about underlying cost structures.

The simplicity of this evaluation framework should be quite appealing from the agency's perspective. Its usefulness rests, as we noted, on the initial action by the agency to authorize and calibrate the list of trading-eligible practices. The costs associated with creating and maintaining this practice list, as well as those associated with the monitoring of actual practice maintenance, should be enfolded into the costs faced by the trading parties themselves. That way, all costs of the marketing scheme are seen by market participants. Observation of trading behavior then tells us all we need to know about the relative efficiencies of the pollution control strategies.

### SUMMARY

A well-crafted point-nonpoint trading policy could make scarce public funds generate more water quality improvement than might otherwise occur. There may be substantial efficiency gains from introducing an incentive-based policy to complement — not replace — current regulatory programs. Just as important, a point-nonpoint trading policy could aid in the development of a process to determine which pollutant sources are to be held responsible for how much pollutant load reduction.

American point and nonpoint water pollution source policies have evolved thus far along radically divergent paths. The integration of these widely divergent policies is fraught with difficulties, but point-nonpoint source trading is explicitly designed to bridge these two worlds. A modest trading system such as what we outline here could be politically palatable, cost-effective, and water-quality improving. More complicated schemes, while perhaps sounder in principle, run the risk of never being taken seriously in practice.



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**Clearwater County Comprehensive  
Local Water Plan Update**

**(For Board Action)**

The Clearwater County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) in October, 1989, and adopted by Clearwater County in November, 1989. Clearwater County submitted a Plan Update, required in the Plan, to the BWSR on September 23, 1996, to begin the final 90 day review period. The final review period ended on December 22, 1996.

A written overview of the Plan Update was prepared by BWSR staff and included in the December 18, 1996 board packet for information and review.

On February 12, 1997, the BWSR Water Plan Review Committee met with representatives of Clearwater County and BWSR staff to review and discuss the Plan Update.

In addition to water planning requirements established under the Local Water Planning Statute 103B, counties updating their Plan must also include objectives for wellhead protection, sensitive groundwater areas, storm water management, high priority wetland preservation area designation and watershed assessment. The Clearwater County Plan Update includes the new requirements.

New information collected has been added to the data inventory section. Assessments were done by major watershed to identify areas where further staff investigation could be focused most effectively. Assessments were made of the **Activities/Occurrences/Resources** that could affect **Surface/Groundwater Quality and quantity** in three (3) major watersheds. Implementation activities were determined by the Water Planning Task Force, its Agriculture Subcommittee, and Clearwater County Board. Some **guiding principles** used in designing the **Plan of Action**: Implementation strategies to support and enhance economic opportunities; New regulations will not be imposed; Be cost effective and practical; Actions Items to utilize information sharing, educational opportunities, incentives, and voluntary measures. The **overall goals** of the Clearwater Plan Update are: **#1)** Better understand the nature and value, relationship between, and the actual and potential quality/quantity issues of the county's water resources; **#2)** Take action to prevent surface and groundwater resources from being degraded and address existing problems; **#3)** Improve the quality of select water resources for economic, social, and environmental benefits. **Implementation strategies** are divided into four sections - one section for the priority issues in the three major watersheds, and one for county-wide objectives.

BWSR staff has reviewed the Clearwater County Plan Update and finds that all relevant requirements of the law and rule have been satisfied under MS 103B and MCAR 9300.



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**Marshall County Comprehensive  
Local Water Plan Update**

**(For Board Action)**

The Marshall County Comprehensive Local Water Plan (CLWP) was approved by the Minnesota Board of Water and Soil Resources On February 28, 1990. The Marshall CLWP was locally adopted on May 1, 1990. On October 18, 1996 Marshall County submitted for final review the CLWP Plan Update (Plan Update) as required in the original CLWP. On this date the final 90 day review period began. The final review period ended on December 2, 1996.

A Written overview of the Marshall Plan Update was prepared by BWSR staff on November 25, 1996, for BWSR Board information and review.

On February 12, 1997 the BWSR Water Plan Review Committee met with representatives of Marshall County and BWSR staff to review and discuss the Plan Update.

In addition to water planning requirements established under the Local Water Planning Statute 103B, the counties updating their CLWP must also include objectives for wellhead protection, sensitive groundwater areas, storm water management, high priority wetland preservation area designation and watershed assessment.

The Marshall County Plan Update includes the new requirements. The Plan Update has also incorporated more locally gathered data and information which reflects more accurately on the issues in Marshall County rather than that of a larger scale such as the Red River Valley. Based upon these assessments Marshall Counties Plan Update identifies four major issue areas: **Protect, improve, and monitor the quality and quantity of water in the county.** This will be accomplished through such activities as wellhead protection, well sealing, and reducing sediment by conservation practice application and a soil loss ordinance. The county also has identified the need to increase the level of ground and surface water monitoring. **Flood control and ditch management in the county.** Activities include assessing different types of flood control practices and their effectiveness, complete a comprehensive ditch inventory, some level of wetland protection, and develop a diking system that equally shares flood waters. **Better land use management.** Activities include the development of a comprehensive land use plan, development of a wetland management plan, a level two feedlot inventory, implement septic system and sewer maintenance and regulations, and implementation of best management practices. **Solid waste.** Activities help support the county's solid waste plan.

BWSR staff has reviewed the Marshall County Plan Update and finds that all requirements of the law and rule have been satisfied under MS 103B and MCAR 9300.

Minnesota Board of Water and Soil Resources  
One West Water Street  
Suite 200  
St. Paul, Minnesota 55107

**Polk County Comprehensive  
Local Water Plan Update**

**(For Board Action)**

The Polk County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) in February, 1990, and adopted by Polk County in April, 1990. Polk County submitted a Plan Update, required in the Plan, to the BWSR on October 14, 1996, to begin the final 90 day review period. The final review period ended on January 12, 1997.

A written overview of the Plan Update was prepared by BWSR staff and included in the December 18, 1996, board packet for information and review.

On February 12, 1997, the BWSR Water Plan Review Committee met with representatives of Polk County and BWSR staff to review and discuss the Plan Update.

In addition to water planning requirements established under the Local Water Planning Statute 103B, counties updating their Plan must also include objectives for wellhead protection, sensitive groundwater areas, storm water management, high priority wetland preservation area designation and watershed assessment. The Polk County Plan Update includes the new requirements.

New information collected was added to the Plan in a **Summary of Accomplishments**. The Plan includes the eighteen required assessments with an assessment by major watershed, when applicable, and a general description of the four major watersheds in Polk County. A chart indicates the criteria used by the task force to determine **High Priority Wetland Areas**: wetlands which recharge lakes; riverine riparian wetlands; beach ridge wetlands and calcareous fens; wellhead recharge areas; and others identified in the next five years. The Comprehensive Local Water Plan Task Force used information collected through federal, state, and local projects to make assessments used to develop goals and objectives. Goals and objectives were ranked high, medium and low priority by the task force. Major goals are **Water and Wind Erosion, Groundwater Quality, Surface Water Quality/Quantity, Waste Management (feedlots, recycling, landfills, HHW, and pesticides), and Natural Resources (easement programs, wildlife, and education)**.

BWSR staff has reviewed the Polk County Plan Update and finds that all relevant requirements of the law and rule have been satisfied under MS 103B and MCAR 9300.

RECEIVED  
FEB 10 1997

Minnesota Board of Water and Soil Resources  
One West Water Street  
Suite 200  
St. Paul, Minnesota 55107

**Red Lake County Comprehensive  
Local Water Plan Update**

**(For Board Action)**

The Red Lake County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) on February 28, 1990, and adopted by the Red Lake County on May 14, 1990. Red Lake County submitted a Plan Update, required in the Plan, to the BWSR on July 22, 1996, to begin the final 90 day review period. The final review period ended on October 20, 1996.

A written overview of the Plan Update was prepared by BWSR staff and included in the December 18, 1996, board packet for information and review.

On February 12, 1997, the BWSR Water Plan Review Committee met with representatives of Red Lake County and BWSR staff to review and discuss the Plan Update.

In addition to water planning requirements established under the Local Water Planning Statute 103B, counties updating their Plan must also include objectives for wellhead protection, sensitive groundwater areas, storm water management, high priority wetland preservation area designation and watershed assessment. The Red Lake County Plan Update includes the new requirements.

New information collected was added to the Plan in a **Summary of Accomplishments**. The Plan includes the eighteen required assessments with an assessment by major watershed, when applicable, and a general description of the two major watersheds in Red Lake County. Narrative is included that describes the criteria used by the task force to determine **High Priority Wetland Areas**. The county identified both the **Clearwater River and Red Lake River major watersheds** as high priority for the preservation, enhancement, restoration, and establishment of wetlands. The Comprehensive Local Water Plan Task Force used information collected through federal, state, and local projects to make assessments used to develop goals and objectives. Goals and objectives were ranked high, medium and low priority by the task force. The Plan has three (3) broad goals to **Protect, Maintain, and Improve Land Resources Related to Water, Groundwater Resources, and Surface Water Resources**.

BWSR staff has reviewed the Red Lake County Plan Update and finds that all relevant requirements of the law and rule have been satisfied under MS 103B and MCAR 9300.

February 13, 1997

TO: Board Members

FR: Tim Fredbo, Easement Program Manager



RE: **DECISION** - Policy to allow release of expiring 10 yr RIM easements

Enclosed please find a proposal that would allow landowners with 1986 10 year RIM easements a release from their easement obligations if they request one, and comply with conditions outlined in the proposed policy.

Many SWCDs and landowners with easements that expire after June 1, 1997 have expressed concern that they will not be able to crop their land in 1997. Many landowners consider 1997 as their 11th year of setting aside land in a 10 year RIM Reserve easement.

Landowners have a valid claim. Expiration dates in easements correspond to when a landowner was allowed to sign his easement, not to when his/her commitment to RIM actually began. RIM applications were approved in the fall of 1986, and from that point on RIM procedure in place at the time did not allow landowners to crop, hay or graze their land while easements were being processed.

To date, BWSR staff has been standing firm on current policy which allows no activity on easements until after the expiration date. John Weis, Sherburne County, is the first landowner to challenge the policy by writing to the Board and requesting a release as allowed by RIM Reserve statute and rule. As planting season gets closer we could see more requests. Easement staff does not want to bring every request from a 10 year easement holder to the Board since meetings are only held once a month and decisions may not be timely, especially if numerous requests are received.

Representative Tim Finseth is aware of this issue and will introduce legislation to allow a release if we do not adopt a policy that effectively deals with it. It would be to our advantage to resolve this within our agency rather than having this play out in the legislature.

The policy that staff is proposing necessitates that landowners work with SWCD's to minimize erosion and sedimentation impacts associated with bringing easement lands back into production, and that BWSR staff would ultimately approve the release.

February 12, 1997

TO: Board Members

FR: Tim Fredbo, Easement Program Manager



RE: Expiration of 1986 10 yr. RIM Easements

**ISSUE:**

Landowners and SWCD's have repeatedly expressed concerns with easement expiration dates that will prohibit easement lands from being cropped this year. They view 1997 as their 11th crop year in a RIM easement that was only intended to be a 10 year commitment.

**BACKGROUND:**

A landowner in Sherburne County with a 10 yr. easement that expires on June 15, 1997 has requested the Board to grant him a release from his 151 acre easement to allow him to get a crop in this year. A copy of his letter is included as *Attachment 1*. He wants to begin to work up his land by April 15th. No other landowners have formally requested a release, but informal inquiries by SWCD's have occurred. They have raised concerns that landowners are frustrated with current Board policy that prohibits cropping on easement lands until after the expiration date. A total of 718 easements, encompassing 16,204 acres, are expiring in 1997. About 126 expire after June 1, and encompass 3,317 acres and we anticipate many of these easement holders may request an early release to allow ample time to get a crop planted.

Representative Tim Finseth, District 1B, intends to introduce legislation to allow 10 yr. Easement holders with late expiration dates to get out of their easement commitments early. We have made Representative Finseth aware of this case and he is willing to wait and see how our Board deals with this issue.

**FINDINGS:**

The very first RIM Reserve sign-up was held in the early fall of 1986. Applicants were accepted into the program in November 1986. RIM was a new program and at that time everyone expected that easements would be in place by the spring of '87. In some cases, difficulties were encountered that delayed conveyance of the easements to the state. Many of these processing delays were beyond the landowner's control. For example, mortgage companies were hesitant to grant their consent on lands that they had interest in. This was the case in Mr. Weis's situation. The RIM program requires all liens and encumbrances on the land titles be cleared. SWCD and BWSR staff may have also caused unintentional delays in easement application processing. It was a new program and all the glitches needed to be worked out.

The 1986 approved RIM applicants were not given the option of utilizing (cropping, haying, or grazing) their land in 1987 while the easement was being processed, as current applicants are now. All parties, including the BWSR, expected that easements would be conveyed by spring of



'87. In April of 1987, when it became apparent that some easement expiration dates would not coincide with planting dates in 1997, a memo was sent by BWSR to SWCD's. This memo instructed SWCD's to discuss with landowners the implication of a late signing date, that it could cause problems for 1997 cropping, and landowners should be fully aware of what he/she is signing. It would be optimistic to assume that this message was effectively conveyed by SWCD staff to all their easement applicants. In light of the inquiries and pending legislative action, it would appear that the implications of late expiration dates were not clear to all landowners. Many applicants were instructed to plant a temporary cover crop in the spring of 1987.

The early out provision that has been provided for Conservation Reserve Program (CRP) participants has also created an expectation among RIM 10 yr. easement holders that the state should also provide this opportunity.

The legal staff from the Attorney General's (AG) office believe if BWSR decides to stand firm on expiration dates stipulated in easements, landowners would not have a strong legal case to oppose since they signed a document with an expiration date clearly stipulated. However, for those landowners whose easements may have been delayed, through no fault of their own, standing firm on existing expiration dates creates animosity and mistrust of government programs. If a landowner did not plant a crop, hay or graze the land in 1987, 1997 marks their 11th year of commitment to the RIM program. The legislative intent of the 1986 RIM program was clearly for 10 crop years. This Sherburne County landowner, and others with late expiration dates, have satisfied the legislative intent of the RIM Reserve program regardless of the expiration date stipulated in their easements.

As a potential solution to this issue, BWSR staff have discussed the possibility of paying landowners to extend their 10 year RIM easement contracts to this fall or the spring of 1998. I have consulted with the AG's office on this idea and we do not have the authority to make such payments. Legislation would be needed to enable us to do this.

In Mr. Weis's case, we have received letters from both the Sherburne SWCD Board and the DNR Area Wildlife Manager that do not oppose the early release of his easement lands. Copies are enclosed as *Attachments 2 & 3*.

#### **OPTIONS AND RECOMMENDATION:**

The BWSR could choose to stick with current policy which allows no activity on easements until after expiration dates. Staff feels that this course of action would complicate relations with SWCD's and RIM landowners and trigger legislative action, and therefore should not be considered.

The BWSR needs to allow landowners with late expiring 10 year easements to bring their land back into agricultural crop production this spring. By not doing so, BWSR risks losing the trust of landowners, and less than desirable political consequences. The BWSR needs to find a workable solution for all parties.

BWSR staff has considered two policy options to deal with this issue. *Option 1* would require a payment from landowners for an early release of RIM lands. *Option 2* would not require landowners to pay the state for a release.

**Option 1** Release with pay-back. **NOT RECOMMENDED**

Some feel that landowners need to be held accountable for unfulfilled easement time that the state has legally paid for as stipulated by expiration dates in easements they willingly signed. Using this option, BWSR would allow landowners to crop their land prior to their expiration dates, and in return they pay the state back for time remaining until the expiration date.

The following policy with respect to 10 yr. limited duration easements is proposed:

The BWSR hereby allows landowners with 1986 10 yr. limited duration easements that expire in 1997 the ability to crop, hay, or graze their easement land if the following criteria are met:

1. Land has been out of agricultural production (not hayed, grazed or cropped) for a period of 10 crop years as a result of enrollment in the RIM program. This will need to be verified by the local SWCD.
2. Landowners who want to bring their RIM parcels into agricultural production prior to their expiration date will have to pay the state for unfulfilled easement time as determined by their original easement payment amount and expiration date stipulated in their easement.

John Weis Example:

$\$38,228.40(\text{easmt. payment}) \div 120 \text{ months} = \$318.57/\text{month}$   
 $\$318.57 \times 2 \text{ months (early out)} = \$637.14 \text{ (payback amt.)}$

3. Landowners must work with the local SWCD to implement a plan on the released acres that will minimize erosion and sedimentation from the site in transition.
4. Release is approved by BWSR staff.

**Option 2** Release with no pay-back requirement. **RECOMMENDED**

Same policy as proposed in Option 1, but with no payment from landowners required as stipulated in criteria 2, above.

A meeting of some of our RIM Reserve Advisory Committee members (MASWCD, Pheasants Forever, MN Waterfowl Assn., Audubon Society, Nature Conservancy, DNR, Ag., SWCD's) was held to consider these early out options on February 11, 1997. For those who were unable to attend I have discussed this issue with them. A significant majority of the group can support either option 1 or 2. The MASWCD, and SWCD's I have contacted, feel strongly that option 2 is the best course of action.

RECEIVED  
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JAN 15 1997

ATTACHMENT 1  
January 11, 1997  
3847-75<sup>th</sup> Ave. S.E.  
St. Cloud, MN 56304  
320-231-2094

One West Water Street  
Suite 200  
St. Paul, Minnesota 55107

Board Members of the Minnesota Board of Water and Soil Resources  
To Whom it may Concern:

We are asking that our Reinvest In Minnesota Conservation Reserve program contract be shortened so that we can start farming this land in early spring of 1997, not when we signed our contract on June 15<sup>th</sup>, 1987?

We knew we were going to request to enter the R D M program before we received a letter from Carol Milligan on July 23, 1986, we had already planted this land into rye and Brome grass in the fall of 1985. We did talk to Greg Larson on August 15, 1986 and also Wayne Edgerton on August 27, 1986 to discuss any questions we had in regard to the Rim Reserve Program.

On November 3, 1986 we received a letter from Dr. Wayne De Ziel, (Enclosure A) stating our application for the R D M program had been accepted.

We have always mortgaged our land farthest from home to be able to pay in full for land that joins our homestead or is close to our buildings, and will continue to do so if the opportunity arises. These parcels we asked to be put in the R D M program, were all paid for previously and my wife and I were holders and have always held all the Warranty deeds for these properties. This banker and the bank's attorney (Senior Vice President) were not in favor of my wife and I signing this contract, we insisted and finally we were given the opportunity to sign the R D M Contract on June 15<sup>th</sup>, 1987, the same day they signed the mortgage's  
-continued on 2-



Consent to Conservation Easement Corporation (Enclosure B). That was the first, only and last time any person having a mortgage on our property, tried to control our use of our land.

The same day the bank called to let us know we could pick up our abstracts, June 15, 1986 we immediately drove to the bank, picked up our abstracts and delivered them to the Sherburne County S.W.C.D. and signed our contract, (Enclosure C) proves our point.

We have faithfully honored our contract for over 10 years. It is not our fault that the bank became very uncooperative and opposed to signing the mortgage consent to the Conservation easement Corporation (Enclosure B).

We've had a good relationship with the Sherburne County S.W.C.D. over the past ten years and see no reason why this cannot continue. It was definitely the First American National Bank's failure to cooperate why this contract was not signed sooner than June 15, 1987. From November 18, 1986 to June 15, 1987, a period of seven months was ample time for them to sign the consent form. These two men are no longer working for the First American National Bank, the mortgages have all been paid and we are no longer associated with that bank.

Under these circumstances, conditions and our ages, we are asking for our R.D.M. Contract to be discontinued or terminated on April 15, 1997. Please follow Minn. Statute § 103.535, Subd. 5, concerning the release of conservation easements. We know the public interest and general welfare will be better served by terminating the contract two months earlier. If you have any questions, please do not hesitate to contact us. Thank you.

Enclosures: A + B + C

Sincerely,

Terese A. Weis

John N. Weis

P.S. Remember we have honored this contract since Aug., 1986, well over 10 years.



**MINNESOTA  
SOIL AND WATER CONSERVATION DISTRICTS**

RECEIVED  
FEB 05 1997

*ATTACH. 2*  
**SHERBURNE SOIL AND WATER  
CONSERVATION DISTRICT**

14855 Hwy. 10  
Elk River, MN 55330  
Tel. (612) 241-1170  
Fax (612) 241-1161

February 4, 1997

Tim Fredbo, RIM Reserve Coordinator  
Board of Soil and Water Resources  
One West Water Street  
Suite 200  
St. Paul, MN 55107

Mr. Fredbo;

Regarding John Weis's RIM easement, no. 71-18-86-1, the Sherburne SWCD has no objections to changing the release date from 6/15/97 to 4/15/97.

The easement in question has not been cropped for ten years and it appears that the delay in signing it originally was due to obtaining mortgage releases.

If you have any questions, please contact our office.

Sincerely,

Debbie Seeley, Vice-Chair  
Sherburne SWCD Board of Supervisors



ATTACH. 3



STATE OF

MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

RECEIVED

FEB 10 1997

PHONE NO.

Section of Wildlife, 4140 Thielman Lane, Suite 203, St. Cloud, MN 56301  
320/255-4276

FILE NO.

February 4, 1997

Tim Fredbo  
RIM Reserve Coordinator, BWSWR  
One West Water St., Suite 200  
St. Paul, MN 55107

Dear Mr. Fredbo:

Bill Bronder, Sherburne SWCD, asked me to give you our recommendations on a request made by Mr. John Weis (Sherburne County, 71-18-86-1) to option out of his RIM reserve agreement on April 15, 1997 instead of June 15, 1997. From a wildlife habitat viewpoint the two month difference will have a minimal negative impact. Therefore, we have little concern over this proposed variance.

Sincerely,

Fred Bengtson  
Assistant Area Wildlife Manager

hh

c: Bill Bronder



## MEMORANDUM

February 14, 1997

One West Water Street  
Suite 200  
St. Paul, MN 55107  
(612) 296-3767  
Fax (612) 297-5615

### Field Offices

#### Northern Region:

394 S. Lake Avenue  
Room 403  
Duluth, MN 55802  
(218) 723-4752  
Fax (218) 723-4794

3217 Bemidji Avenue N.  
Bemidji, MN 56601  
(218) 755-4235  
Fax (218) 755-4201

217 S. 7th Street  
Suite 202  
Brainerd, MN 56401-3660  
(218) 828-2383  
Fax (218) 828-6036

#### Southern Region:

261 Highway 15 S.  
New Ulm, MN 56073-8915  
(507) 359-6074  
Fax (507) 359-6018

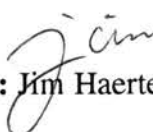
40--16th Street SE  
Suite A  
Rochester, MN 55904  
(507) 285-7458  
Fax (507) 280-2875

Box 267  
1400 E. Lyon Street  
Marshall, MN 56258  
(507) 537-6060  
Fax (507) 537-6368

#### Metro Region:

One West Water Street  
Suite 250  
St. Paul, MN 55107  
(612) 282-9969  
Fax (612) 297-5615

**TO:** Board Members

**FR:**  Jim Haertel, Water Management Specialist

**PH:** (612) 297-2906

**RE: DRAFT RULES**

---

Two sets of draft rules are being proposed and are enclosed for your review and comment.

One draft rule, MR 8420.0255, pertains to appeals of watershed district rules that are brought before the Board. This rule is required by Minn. Stat. § 103D.537.

The other draft rule, MR 8420.0010, pertains to determinations of water law and policy that are brought before the Board. This rule is required by Minn. Stat. § 103A.325.

Both of these draft rules are in the preliminary review process. Neither of these draft rules have been published in the state register for comment.

If you have any questions or wish to discuss, please contact me.

Enclosures

c: Ron Harnack, Jim Birkholz, Greg Larson, Doug Thomas, Metro Region  
Matt Seltzer

**Board of Water and Soil Resources****New Business #2****Proposed Permanent Rules Governing Board Review of Watershed District Rules****8420.0255 BOARD REVIEW OF DISTRICT RULES.**

Subpart 1. How obtained. Review by the board of the validity of a watershed district rule under Minnesota Statutes, section 103D.537, is obtained by:

A. filing a petition for review with the board within 30 calendar days of final adoption of the rule;

B. serving the petition upon the watershed district; and

C. filing proof of service with the board.

Subp. 2. Contents of petition. The petition must describe briefly the rule to be reviewed, the errors claimed by the petitioner, and the manner in which the rule to be reviewed interferes with or impairs the rights or privileges of the petitioner. A copy of the rule to be reviewed must be attached to the petition.

Subp. 3. Decision to grant petition. Within 30 days after receiving the petition, the board or its dispute resolution committee or executive director shall decide whether to grant the petition and hear the appeal. The board or its dispute resolution committee or executive director shall grant the petition unless the board considers the appeal meritless, trivial, or brought solely for the purposes of delay.

Subp. 4. Record. Review of the validity of a watershed district rule is on the record made in the proceeding before the managers of the watershed district. Upon appeal, the watershed district shall forward to the board the record on which it based its decision. If an audio or video recording of the proceedings before the managers is available but has not yet been transcribed, the watershed district need not provide a verbatim transcript unless the petitioner requests it and makes arrangements to pay the reasonable costs of preparing a transcript. A watershed district may prepare and submit a verbatim transcript at its own cost and expense.

1        Subp. 5. **Briefing.** A briefing schedule must be established by the staff of the board  
2        and communicated to the participants.

3        Subp. 6. **Participants.** Only an interested party may file a petition for review. The  
4        participants in the appeal are the petitioner, the watershed district, and other interested  
5        parties who apply for and are granted permission to participate by the board or its  
6        dispute resolution committee or executive director.

7        Subp. 7. **Hearing and decision.** Oral arguments on the appeal must be held before the  
8        dispute resolution committee of the board, which shall make a recommendation to the  
9        board. The board shall make the final decision.

10       Subp. 8. **Standard of review.** A watershed district rule is presumed to be valid. The  
11       board shall declare the rule invalid only if it exceeds the statutory authority of the  
12       watershed district, was adopted without compliance with applicable procedural  
13       requirements, is inconsistent with the watershed management plan approved by the  
14       watershed district, or is arbitrary and capricious. The board shall not rule on  
15       constitutional issues.

16       Subp. 9. **Appeal of board decision.** A final decision of the board may be appealed to  
17       the court of appeals in accordance with Minnesota Statutes, sections 14.63 to 14.69.

**Board of Water and Soil Resources****New Business #2****Proposed Permanent Rules Governing Board Review of Watershed District Rules****8420.0255 BOARD REVIEW OF DISTRICT RULES.**

**Subpart 1. How obtained.** Review by the board of the validity of a watershed district rule under Minnesota Statutes, section 103D.537, is obtained by:

A. filing a petition for review with the board within 30 calendar days of final adoption of the rule;

B. serving the petition upon the watershed district; and

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**Subp. 4. Record.** Review of the validity of a watershed district rule is on the record made in the proceeding before the managers of the watershed district. Upon appeal, the watershed district shall forward to the board the record on which it based its decision. If an audio or video recording of the proceedings before the managers is available but has not yet been transcribed, the watershed district need not provide a verbatim transcript unless the petitioner requests it and makes arrangements to pay the reasonable costs of preparing a transcript. A watershed district may prepare and submit a verbatim transcript at its own cost and expense.



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2/14/97

**Board of Water and Soil Resources**

**Proposed Permanent Rules Relating to Board Interventions in Judicial or  
Administrative Proceedings**

**8415.0010 DETERMINATION OF WATER LAW AND POLICY.**

Subpart 1. Intervention Criteria. (a) Upon proper petition to intervene, the board of water and soil resources shall intervene if the proceeding in which intervention is sought is a contested case or court referral and the administrative law judge or district judge certifies that there is an important question of water law or policy involved, the resolution of which is doubtful either because of previously unresolved conflicts of water law between statutes or because of lack of precedent on an issue on which the law is vague. The board shall intervene if the board concurs with the judge's certification, has special expertise in the matter, and has the resources to complete the intervention proceedings.

(b) Upon proper petition to intervene, the board of water and soil resources may intervene if the proceeding in which intervention is sought is brought by an agency, or others as deemed appropriate by the board. The board shall intervene if the board determines that there is an important question of water law or policy involved, the resolution of which is doubtful either because of previously unresolved conflicts of water law between statutes or because of the lack of precedent of an issue on which the law is vague, that the board has special expertise in the matter, and has the resources to complete the intervention proceedings.

Subpart 2. Procedure. If the board intervenes, the dispute resolution committee of the board shall take written statements of fact and legal argument from the parties. Thirty minutes of oral arguments must be allowed if a party requests it. The resulting report to the parties, agency, and judge must

2/14/97

- 22 recommend how the important and doubtful question of water law or policy should be resolved and the  
23 basis and reason for the recommendation. The board shall not recommend resolutions of issues of  
24 disputed fact.

2/14/97

**Board of Water and Soil Resources**

**Proposed Permanent Rules Relating to Board Interventions in Judicial or Administrative Proceedings**

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2/14/97

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Minnesota Board Of Water And Soil Resources  
One West Water Street, Suite 200  
St. Paul, Minnesota 55107

In re: Dale Peterson,

BWSR File No. 96-5

Appellant,

vs.

**ORDER**

Minnehaha Creek Watershed District,

Respondent.

This is an appeal by Dale Peterson (Peterson) from an exemption determination made by the Minnehaha Creek Watershed District (MCWD). Peterson applied for renewal of a permit to place 3,800 cubic yards of fill in a wetland located in Shorewood, Minnesota. MCWD is the local government unit for the Wetland Conservation Act of 1991 (WCA). By Order dated September 12, 1996, MCWD found that the activities proposed in Peterson's permit application were not exempt from the replacement requirements of WCA.

On February 10, 1997, the Dispute Resolution Committee (DRC) of the Minnesota Board of Water and Soil Resources (BWSR) heard oral arguments. Mark V. Steffenson of Henningson & Snoxell, LTD., 6160 Summit Drive, # 640, Brooklyn Center, Minnesota 55430, appeared on behalf of Peterson. Waverley Eby Booth and Louis N. Smith of Smith Parker, P.L.L.P., 808 Colwell Building, 123 North Third Street, Minneapolis, Minnesota 55401, appeared on behalf of MCWD.

The attorneys for the parties agreed that the record for purposes of this appeal consists of the following: a bound volume labeled "Record for the Minnehaha Creek Watershed District," consisting of 60 separately tabbed documents; transcripts of meetings dated May 9, 1996, August 22, 1996, and September 12, 1996; and, the engineer's report of Wenck Associates dated April 6, 1995, consisting of two pages.

Following oral arguments on the merits, the DRC adopted a resolution recommending that the exemption determination of MCWD be affirmed.

At a meeting of BWSR on February 26, 1997, BWSR adopted a resolution to accept the recommendation of the DRC and authorize the chair of BWSR to issue this Order.

Based on the entire record of this proceeding, BWSR makes the following

**ORDER**

1. The September 12, 1996, Order of the Minnehaha Creek Watershed District with regard to a wetland on the property of Dale Peterson in Shorewood, Minnesota is affirmed.
2. The attached Memorandum is incorporated by reference and made a part of this Order.

Dated: \_\_\_\_\_, 1997

Minnesota Board of Water and Soil Resources

By: \_\_\_\_\_  
Its Chair

## MEMORANDUM

Pursuant to Minn. R. 8420.0250, subp. 3 (June 10, 1996), our standard of review is as follows:

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.

Peterson does not dispute any of the findings of fact stated in MCWD Order, and there is no allegation that MCWD made procedural errors prejudicial to Peterson. The sole issue is whether MCWD correctly applied the law to the facts. We find that this standard is satisfied and therefore affirm MCWD's decision.

The exemption for approved development in Minn. R. 8420.0122, subp. 8 (June 10, 1996) (emphasis added) provides as follows:

**Subp. 8. Approved development.** A replacement plan for wetlands is not required for development projects and ditch improvement projects in the state that have received preliminary or final plat approval or have infrastructure that has been installed or has 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. . . .

Subdividers who have 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 expired and the project remains active, may drain and fill wetlands, to the extent documented by the approval, without replacement.

As indicated by the underlined language in the above passage, the project must remain active to qualify for the exemption. Here, MCWD correctly applied the law to the undisputed facts in finding that the exemption did not apply. Among other things, it should be noted that Peterson's

attempts to sell the property are not sufficient for the wetland fill project to be considered "active."

We are unpersuaded by Peterson's arguments regarding invalid rulemaking and estoppel. Although MCWD made a mistake in the application of the exemption in 1995, this would not justify or require perpetuation of the mistake in the 1996 Order. The role of MCWD as the local government unit is to apply the BWSR rules for the WCA program, and MCWD properly performed its role in denying Peterson's 1996 request for an exemption.

**Drainage Inventory Pilot Program: Wetland Committee and Team recommendation.**

The group again reviewed the eleven proposals for the Pilot Drainage Inventory Program at a joint meeting held February 10th in St. Cloud. The new information (as requested by the group based on a preliminary review in December) provided by the project sponsors and Board Conservationists to refine these proposals was very helpful. After a separate discussion of each of the proposals the group individually ranked their top seven proposals which were subsequently tabulated together. Seven of the eleven proposals were deemed to most clearly meet the intent of the pilot program -- which is to learn what it will take to do a drainage inventory in various parts of the state. The four unfunded project proposals from Red Lake Watershed/Clearwater Co., Bois de Sioux Watershed District, Stearns County, and Faribault County were very sound proposals to expand drainage inventory work already underway and would be excellent candidates for future funding intended to build capacity (potentially leading to a statewide inventory). The group unanimously endorsed putting the unused 1996 WCA NRBG funds (\$76,099) towards the drainage inventory pilot funds which allows for a total of \$176,099 to be allocated under the Drainage Inventory Pilot Program. The group unanimously recommended funding the following projects at the following levels:

|                                                        |                  |
|--------------------------------------------------------|------------------|
| Douglas County                                         | \$27,099         |
| Lake of the Woods County                               | \$35,000         |
| Martin County                                          | \$25,000         |
| Buffalo Creek Watershed District                       | \$55,000         |
| (McLeod County = \$40,000; Renville County = \$15,000) |                  |
| Mower                                                  | \$14,000         |
| Pope County                                            | <u>\$20,000</u>  |
| <b>Total:</b>                                          | <b>\$176,099</b> |

This recommendation was reported to M-Team members and will be submitted to the BWSR Board at the February 1997 meeting for decision.



**Applicants for BWSR Drainage Inventory Pilot Grants  
listed with BWSR Board Conservationist (BC)**

| <u>Applicant/BC</u>                                | <u>Grant Request</u> |
|----------------------------------------------------|----------------------|
| Bois De Sioux Watershed District/Pete Waller ..... | \$26,500             |
| Douglas County/Pete Waller .....                   | \$27,360             |
| Faribault County/Chris Hughes .....                | \$25,000             |
| Lake of the Woods County/Brian Dwight .....        | \$35,000             |
| Martin County/Chris Hughes .....                   | \$25,000             |
| McLeod County/Tom Fischer .....                    | \$45,000             |
| Mower County/ Dave Peterson .....                  | \$14,000             |
| Pope County/Pete Waller .....                      | \$20,000             |
| Red Lake Watershed District/Brian Dwight .....     | \$26,300             |
| Renville County/Tom Fischer .....                  | \$15,000             |
| Stearns County/Pete Waller .....                   | <u>\$27,600</u>      |
| TOTAL GRANT REQUEST .....                          | \$286,760            |