



Minnesota Board of Water and Soil Resources.  
Minutes.

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**BOARD OF WATER AND SOIL RESOURCES  
CONFERENCE ROOM  
ONE WEST WATER STREET, SUITE 200  
ST. PAUL, MINNESOTA 55107  
JANUARY 25, 1995**

**BOARD MEMBERS PRESENT:**

Jim Nielsen, Barb Cobb, Howard Peterson, Warren Rodning, Dwain Otte, Marv Tripp, Barb Uppgaard, Glenn Annexstad, Tim Hvidsten, Ted Lovdahl, Kathleen Roer, and Jim Rossman.

**AGENCY MEMBERS PRESENT:**

Wayne Anderson, Pollution Control Agency (PCA)  
Fred Bergsrud, U of M/Extension Service (MES)  
Wayne Edgerton, Department of Natural Resources (DNR)  
Mark Dietrich, Department of Agriculture (MDA)

**AGENCY MEMBER ABSENT:**

Kim Benson-Johnson, Department of Health

**OTHERS PRESENT:**

Jim Schafer, D'Wayne DeZiel, Bob Pigeon, Minnesota Association of Soil and Water Conservation Districts (MASWCD)  
Joan Miska, Wetland Heritage Advisory Committee (WHAC)  
Jim Miska  
Larry Zdon, PCA  
Pat Wulff, Minnesota Lakes Association (MLA)  
Dave Weirens, Association of Minnesota Counties (AMC)  
Tim Kelly, Coon Creek Watershed District  
Rich Reimer, Minnesota Association of Conservation District Employees (MACDE)  
Mike Robertson  
Franklin Denn, Minnesota Association of Townships (MAT)  
Steven Chick, Natural Resources Conservation Service (NRCS)  
El Tinklenberg  
Dean Rebuffoni, Star Tribune  
Erv Berglund, DNR/Waters  
Dave Moran, WHAC  
Judy Bellairs, Sierra Club  
Doug Fischer, Anoka County Highway Department  
Joe Preiner, Minnesota Land Rights Association (MLRA)  
Vernon Johnson, Minnesota Association of Watershed Districts (MAWD)  
Doug Norris, DNR/Fish & Wildlife  
Keith Hanson, Minnesota Power

**STAFF PRESENT:**

Jim Birkholz, Ron Harnack, Barbara Ohman, Wayne Zellmer, Eric Mohring, Mary Jo Anderson, Greg Larson, John Jaschke, Bruce Sandstrom, Doug Thomas, Susan Tsakakis.

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Chairman Nielsen called the meeting to order at 9:05 a.m.

- \*\***  
95-01     **Adopt Agenda** - Moved by Howard Peterson, seconded by Marv Tripp, to adopt the agenda as presented. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

- \*\***  
95-02     **Approve Minutes of December 7, 1994** - Howard Peterson stated that a change is needed on page four; the last line on the page should be deleted, as it is carried over on the top of page five. Moved by Howard Peterson, seconded by Marv Tripp, to approve the corrected minutes of December 7, 1995, as circulated. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Jim Rossman entered the meeting at 9:10 a.m.

**Reports**

**Chairman's Report** - Jim Nielsen welcomed the members to the new location. Chairman Nielsen attended the Environmental Quality Board meeting. Ron Harnack is at Capitol this morning.

**Education Committee Report** - Tim Hvidsten reported that the Education Committee will be meeting in February.

**Feedlot Committee** - Jim Rossman reported that the Feedlot Advisory Committee met for first time yesterday; this was an organizational meeting with Commissioners Elton Redalen and Chuck Williams in attendance.

**Dispute Resolution Committee (DRC)** - Kathy Roer reported that the DRC did not hear any appeals this month; there are appeals pending. The DRC meets the second Thursday in February.

**Consent Agenda Items:**

- Federal Well Sealing Cost-Share - Eric Mohring
- Forest Lake WMO Boundary Change - Barbara Ohman
- Cottage Grove Ravine Watershed District Name Change - Barbara Ohman
- Cottage Grove Ravine Watershed District Petition to Amend Manager Terms - Barbara Ohman

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- Resolution to Receive Federal Flood Disaster Reimbursement - Wayne Zellmer
- Goodhue SWCD Request for Change in Headquarters - Jim Birkholz

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95-03 Moved by Jim Rossman, seconded by Barb Cobb, to approve the above listed consent agenda items. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard and Nielsen. Opposed: None. Carried.

Jim Rossman suggested adding page numbers to the information in the board member's packet.

**Minnesota River Citizen's Advisory Committee's Report to MPCA** - Jeff Nielsen introduced representatives of the Minnesota River Citizen's Advisory Committee: Garfield Ekberg, Marcie McLaughlin, George Boody, Brett Smith, Ken Albrech, and Larry Granger. The Citizen's Advisory Committee (CAC) reported on their activities and summarized recommendations. Jeff Nielsen reported on the BWSR's involvement and recommended initiatives. Barb Uppgaard commended the Citizen's Advisory Committee on their efforts. Chairman Nielsen thanked the committee for their work and for coming before the BWSR; he stated that BWSR needs help from CAC as much as CAC needs BWSR's help.

Chairman Nielsen called for a break in the meeting at 10:20 a.m. The meeting reconvened at 10:40 a.m.

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95-04 **Forestry/Wetland Best Management Practices (BMPs)** - Mike Phillips, DNR/Forestry, introduced representatives of the Forestry BMP Wetland Task Force: Keith Hanson, Minnesota Power; and Don Arnosti, Audubon Society. Mike distributed a list of task force members and also a draft proposal on standards for the Board's information. Discussion followed. Moved by Dwain Otte, seconded by Barb Cobb, that the BWSR endorse the concept of BMPs for wetlands and the implementation there of. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

**Wetland Heritage Advisory Committee Report** - Chairman Nielsen thanked Joan Miska for her work and efforts as Chair of the WHAC. Joan is not seeking reappointment to WHAC. Joan Miska commended BWSR staff John Jaschke and Greg Larson for their excellent work with the committee; and also thanked Bill Clapp from the Attorney General's Office, for his efforts. Joan introduced WHAC member Dave Moran. Joan reported that many



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hours have been spent by WHAC; the debate and the consequent recommendations reflect the diversity of Minnesota; as implementers and the public gain experience, more changes will probably be needed in the future; the committee voted unanimously to support full funding for WCA implementation and urges the BWSR to pursue full funding for its implementation. WHAC will continue to meet twice a year to consider changes.

**\*\***  
**95-05** Moved by Ted Lovdahl, seconded by Jim Rossman, to receive the WHAC report. Greg Larson reported on the recommended changes. Barb Uppgaard commended the WHAC for the work they have done to bring this before the BWSR. Barb Cobb supports and accepts the recommendations of WHAC with changes reflecting staff comments of January 19, 1995. She is concerned with the use of the word "guidelines" and concerned about lack of rulemaking.

Wayne Edgerton commented on DNR's concerns on WHAC recommendations regarding: 1) Comprehensive Wetland Protection and Management; 2) Cash Banking; 3) Replacement Credit. Lawrence Zdon commented on PCA concerns.

Discussion followed. Discussion focused on the need for rules. Board member's voted on Lovdahl's motion to receive the WHAC report. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Chairman called for a recess in the meeting until 1:15 p.m.

Discussion continued on the WHAC recommendations regarding the Wetland Conservation Act (WCA).

**\*\***  
**95-06** Moved by Barb Uppgaard, seconded by Kathy Roer, that BWSR request emergency rulemaking authority on WCA. Discussion followed. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Roer, Tripp, Uppgaard, and Nielsen. Opposed: Peterson, Rodning, Rossman. Carried.

Consensus of BWSR is that they share staff concerns as stated in document dated January 19, 1995. The BWSR also recognizes the policy options presented as a reflection of the key wetland issues and acknowledged the written concerns of the advisor agencies and Association of Minnesota Counties. The staff is to be guided by these in the legislative process.

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**Status Report of Appeals** - Ron Harnack gave a brief status report on appeals. Moved by Marv Tripp, seconded by Kathleen Roer, to hold pending the Bracchi & Finn vs. Rice Creek Watershed District (RCWD) appeal until judicial proceedings relating to the RCWD plan is completed. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

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95-07

Moved by Jim Rossman, seconded by Barb Cobb, for the Dispute Resolution Committee (DRC) to hear the Spartz vs. Minnehaha Creek Watershed District appeal. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

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95-08

Chairman Nielsen asked if BWSR wants to take a position at this time regarding the BWSR's role on appeals. Discussion reflected that BWSR should not continue appeals if we're not given resources to carry it out. Roer suggested informal mediation of watershed district appeals as an alternative.

**Crow Wing SWCD Request for Nomination District Boundary Change -**

Jim Birkholz presented the request of the Crow Wing SWCD nomination district boundary change. Staff recommends approval of the change. Moved by Barb Uppgaard, seconded by Ted Lovdahl, to approve the Crow Wing SWCD request for nomination district boundary change. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

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95-09

**Grants Allocation:**

●Engineering Grants - Wayne Zellmer reported on the Non-Point Engineering Assistance Grant Management Plan and proposed two-year funding based on current appropriations and EPA grant. Ten of eleven grant applications have been received. Staff recommends approval of the grant. Moved by Barb Cobb, seconded by Dwain Otte, to accept staff recommendation for approval of the engineering grants. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

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95-10

●FY95 Cost-Share Rollover - Wayne Zellmer presented the FY95 Cost-Share Program Rollover Requests. Staff recommends approval of the allocation. Moved by Marv Tripp, seconded by Ted Lovdahl, to accept staff recommendation to approve the FY95 Cost-Share Rollover Allocation.

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95-11

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Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

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95-12

●General Services Carry-Over - Wayne Zellmer presented the FY94-95 General Services Grant remaining balance. Staff recommends approval of the general services carry-over money. Wayne said that the money will not be carried over in the future. Moved by Warren Rodning, seconded by Barb Uppgaard, to accept the staff recommendation to approve the FY94-95 General Services Grants. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

**Policy Legislative Proposals:**

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95-13

●Proposed Watershed District Act Amendments - Doug Thomas presented the proposed changes. Moved by Barb Uppgaard, seconded by Warren Rodning, to endorse the proposed amendments to the Watershed District Act, with the change that the per diem in the amendments be set at \$55 a day. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

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95-14

●Proposed Metropolitan Surface Water Management Act and Metropolitan Groundwater Planning Changes - Doug Thomas recommends approval of the proposed changes. Moved by Barb Cobb, seconded by Dwain Otte, to approve the proposed changes to Local Water Planning. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

**Budget Status FY96-97** - Ron Harnack distributed the Governor's Environment and Natural Resources Budget Summary and BWSR's Budget Brief for information.

**Advisory Comments**

●Natural Resources Conservation Service (NRCS): Steve Chick is the acting state conservationist; he will be in the position for 90 days until the position is filled.

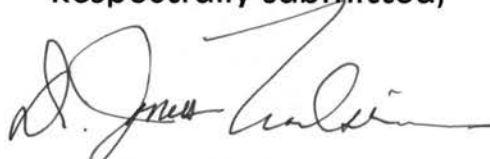
●Minnesota Lakes Association (MLA): Pat Wulff reported that MLA now has a Governor's Affairs Committee. The committee will be attending future BWSR meetings.

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- Minnesota Association of Watershed Districts (MAWD): Vern Johnson reported that MAWD will hold a training session and a legislative breakfast on March 2-3.
- Minnesota Association of Townships (MAT): Franklin Denn reported that MAT will be holding a legal seminar the next two days.
- Minnesota Association of Conservation District Employees (MACDE): Rick Reimer is the new Area 6 Director and will be the MACDE representative to attend the BWSR meetings.

Chairman Nielsen adjourned the meeting at 3:05 p.m.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "D. James Nielsen", with a long horizontal flourish extending to the right.

D. James Nielsen  
Chairman

**BOARD OF WATER AND SOIL RESOURCES  
ATTENDANCE ROSTER**

|     | NAME              | AFFILIATION                | PHONE #                         |
|-----|-------------------|----------------------------|---------------------------------|
| 1.  | Don Miska         | Heritage Comm              | 507/637-3801                    |
| 2.  | Jim Miska         |                            | "                               |
| 3.  | El Tinklenberg    |                            |                                 |
| 4.  | Dean Rebuffoni    | Star Tribune               | 673-4432                        |
| 5.  | Jim M. John Janka | BWR                        | 297-3432                        |
| 6.  | Pat Wulff         | Mn Lakes Assoc             | 449-2912                        |
| 7.  | Rick Reimer       | MACDE, REP. Kandiyohi SWCD | 612-235-3906                    |
| 8.  | Bob Pigeon        | Attn MASWCD                | 612-629-2665                    |
| 9.  | Err Berglund      | DNR-Waters                 | 297-4601                        |
| 10. | DAVE MORAN        | WMAA                       | 447-8134                        |
| 11. | Dave Weirens      | AMC                        | 224-3344                        |
| 12. | Judy Bellairs     | Lueria Club                | 379-3853                        |
| 13. | Paul Fischer      | Anoka County Hwy Dept      | 754-3520                        |
| 14. | Joe Preiser       | MN. C.R.D.                 | 464-0005                        |
| 15. | Vernon Johnson    | MASWCD                     | 218-776-3530                    |
| 16. | Tim Kelly         | Coon Creek WCD             | 755-0975                        |
| 17. | Steve Chick       | NRCS - State Office        |                                 |
| 18. | James Schafer     | MASWCD                     |                                 |
| 19. | DWAYNE DEZIEL     | MASWCD                     | 690-9028                        |
| 20. | FRANKLIN DENN     | MATD                       | 612 295 2027                    |
| 21. | Reg Lanson        | BWSR Staff                 | 296-0892                        |
| 22. | Lawrence S. Zdon  | Pollution Control Agency   | 297-8219                        |
| 23. | Doug Norris       | DNR-Fish + Wildlife        | 296-0779                        |
| 24. | Keith Hanson      | Mn Power                   | 218-722-5642 <sup>Ext 368</sup> |
| 25. |                   |                            |                                 |



RESOLUTION FOR CHANGE OF HEADQUARTERS

Be it resolved by the Goodhue County Soil and Water  
Conservation District supervisors that the headquarters of the  
district be changed from Zumbrota, MN  
to Goodhue, Minnesota.

State of Minnesota )  
County of Goodhue )SS

I, Ed McNamara, secretary of the Goodhue County  
Soil and Water Conservation District, do hereby certify that the  
above resolution relating to the change of the location of the  
principal office of the supervisors of the Goodhue County  
Soil and Water Conservation District was adopted by the said  
district supervisors at a regular meeting thereof held  
on January 24, 19 95 that I have compared it with the  
original resolution as set forth in the minutes of the said meeting,  
and that said copy is a true and correct copy of and transcript from  
said original and the whole thereof. I further certify that said  
meeting of the Board was duly called and held, that a quorum of the  
members of said Board was present thereat, and that said resolution  
was duly adopted thereat by a majority vote of the members present.

Signed: Ed McNamara Secretary,

Goodhue County Soil and Water Conservation District

Dated: January 24, 19 95

**1996-97 Biennial Budget  
Agency Budget Brief  
(\$ in thousands)**

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

Fund: General

**Summary of Agency Actions:**

|                                      | <u>F.Y. 1996</u> | <u>F.Y. 1997</u> | <u>F.Y. 1996-97</u> |
|--------------------------------------|------------------|------------------|---------------------|
| <b><u>BASE YEAR (F.Y. 1995)</u></b>  | \$13,976         | \$13,976         | \$27,952            |
| <b><u>BASE ADJUSTMENT:</u></b>       |                  |                  |                     |
| Appropriations Carried Forward       | (834)            | (834)            | (1,668)             |
| Documented Rent Increase             | <u>5</u>         | <u>5</u>         | <u>10</u>           |
| <b><u>CURRENT SPENDING</u></b>       | \$13,147         | \$13,147         | \$26,294            |
| <b><u>AGENCY DECISION ITEMS:</u></b> |                  |                  |                     |
| Annualized New Programs              | <u>220</u>       | <u>220</u>       | <u>440</u>          |
| <b><u>AGENCY PLAN</u></b>            | \$13,367         | \$13,367         | \$26,734            |
| <b>GOVERNOR'S RECOMMENDATIONS</b>    | \$13,367         | \$13,367         | \$26,734            |

**Brief Explanation of Agency Plan:**

The agency plan includes \$220,000 in each year of the biennium to annualize the State Revolving Fund (SRF) package passed by the 1994 legislature.

**Revenue Summary:**

This program does not generate dedicated or non-dedicated revenues.

**Affected Statutes:**

None.

**GOVERNOR'S RECOMMENDATION:**

The Governor concurs with the agency's plan.

**AGENCY:** Water and Soil Resources, Board of (BWSR)

**AGENCY DESCRIPTION:**

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

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

First, local ownership is essential to the success of local resource management efforts. State-local partnerships foster feelings of pride and local responsibility instead of resentment that local government is being forced to carry out a state mandate.

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

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

The legislature in 1987 created the BWSR to facilitate local government efforts and to ensure coordination of state, local, federal and private resource management initiatives. The membership of the BWSR includes county commissioners, soil and water conservation district supervisors, watershed management organization managers, citizens, 4 state agencies and the University of Minnesota Extension Service (MES). This composition provides a unique opportunity for communication on issues and concerns, policy discussions on resource management and enhanced state/local/private partnerships.

To reach these objectives, the BWSR:

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

**AGENCY CHALLENGES:**

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

1. **Increased reliance on partnerships for resource management.** Partnerships—particularly between state, local and federal government—are an effective way to accomplish resource protection goals. As government spending at all levels decreases, it is becoming clear that cooperative resource management is one way to maintain or increase results with the same level of funding. State and federal government provide what local governments need: technical and financial assistance, leadership, structure and a “big picture” view of resource management. Local governments provide local perspective, local resource information, local funding and efficient implementation.

Nowhere is this increasing dependence on partnerships more evident than in the State Revolving Fund (SRF) legislation passed by the 1994 legislature. Under the agricultural best management practices portion of the SRF, landowners can apply for low-interest loans for water quality projects including animal waste control systems, grass waterways, erosion and sediment control basin, on-site sewer updates, and abandoned well sealing. The state sets the program structure and provides funding; local governments provide administration and application review teams to ensure programs meet local priorities.

BWSR was given funding under SRF to provide a broad engineering capability to soil and water conservation districts (SWCDs), provide highly skilled and equipped engineering teams to support SWCD activities and to provide statewide training, oversight and coordination of the engineering teams. Because the 1994 legislature did not fund the full technical package, the engineering support may not be adequate to meet the demands of the SRF and other programs.

This problem is indicative of a trend in SWCD funding. Even though SWCDs were established by the state to help landowners with conservation and responsibility of SWCDs to carry out state programs has greatly expanded, they have not been given the resources necessary to achieve their objectives. SWCDs rely on state (\$9,300 per year) and county funding as their resource base. The current state commitment is a token level of support. Options are to increase funding with or without co-payments by counties or to grant SWCDs taxing authority with or without county consent.

2. **Increased awareness among the general public, including landowners, of resource problems and an increased willingness to make reasonable sacrifices to accomplish resource conservation.** More Minnesotans have noticed deteriorating conditions in their favorite lakes and streams, concerned enough to educate themselves about some of the causes. This awareness of the problems and their causes has made people more willing to make reasonable sacrifices to rectify those problems. Again, passage of the SRF is indicative of this trend; people are willing to take on a manageable debt to ensure resource protection.

The BWSR/Minnesota Extension Service (MES) joint education position serves to both give local government the tools it needs to promote conservation awareness to the public and ensure local government officials understand the impact their land use decisions have on the environment. The success of this pilot BWSR/MES position in northern Minnesota can be used as a model for southern and metro positions, with priority on a southern position focusing on the Minnesota River basin.

3. **Increased local government capabilities.** The capabilities of local governments to manage

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(Continuation)

resources have increased in response to landowner needs and expectations. Local governments need a wide variety of training and assistance, from the most basic to advanced areas such as technical skills, leadership, and management. The BWSR must adjust its assistance to ensure that each local government meets a base level of service capability, and those who need a higher level of training receive it.

4. **Movement from planning to implementation phase of non-point source strategy.** As Minnesota moves from the planning to the implementation stage of its non-point source strategy, BWSR's local government network increases in importance as a means of disseminating financial and technical aid to local governments. The BWSR has the structure and the relationships needed, through local water planning, to address non-point concerns at the local level. Again, SRF will play a significant role as implementation proceeds.
5. **Increased public willingness to use non-judicial methods of appeal.** Both the Wetland Conservation Act (approved in 1991) and amendments passed to the Watershed District Act (M.S. 103D) assign BWSR the responsibility for hearing appeals. Over the past year the number of appeals coming before the board has increased both in numbers and complexity. BWSR has thus far met this demand, although at the expense of other tasks. There is a concern that re-directing staff efforts from more traditional BWSR activities will ultimately lead to more appeals.
6. **Federal actions.** Federal actions continue to affect BWSR and local government programs and planning in a variety of ways. Cuts of about \$3 million annually in the Agricultural Conservation Program (the federal cost share program) will mean increased demand for the state's cost share programs. Reorganization of the USDA and reduced staffing for the Natural Resources Conservation Service (formerly the Soil Conservation Service) also increase pressure on local and state governments to provide the technical assistance necessary to design and implement conservation practices. This reduced funding and staffing is also expected to increase demand for SRF dollars and the technical assistance provided through BWSR-funded local government staffing.
7. **Agency administration.** Since BWSR's establishment in 1987 the legislature has vested significant new authority and responsibility to BWSR. This has increased the fiscal and personnel management demands on BWSR. Although the 1987 statute establishing BWSR requires the Department of Agriculture (Ag) to provide office space and fiscal and personnel management for BWSR, no assistance is currently provided by Ag. A recent audit reflects agency shortcomings in these areas that can only be addressed with additional resources.

#### **AGENCY STRATEGIES:**

The BWSR uses a number of different strategies to assist local governments in resource protection. These strategies are tailored to the BWSR's individual programs to capitalize on each program's unique advantages.

**Local Water Resources Protection and Management Program.** The overall goal of this program is to ensure a thoughtful, coordinated approach to water management through the development and implementation of locally developed water management plans.

The program began as a response to concerns about a lack of coordination between the many governments with jurisdiction over water. Through the creation of local task forces charged with developing countywide water plans, all levels of government, as well as citizens and other interested parties, were brought into the process. The result has been a comprehensive and coordinated approach to water management.

Funding for the program (a "net capacity" equalization of \$37,500 annually per county) is provided by both state and local governments. The state grant to each county varies depending upon the county's net tax capacity. Funding can be used for a variety of purposes including education and information; monitoring and data collection; water quality improvement projects and programs; and administration of local regulatory and technical assistance programs. Additional available funding is allocated through challenge grants, which are awarded competitively to counties to accelerate their water plan activities.

This grant program has provided the framework for a natural resources block grant that integrates grants for water planning, shoreland management, the Wetland Conservation Act, and feedlots for purposes of application, grant agreements and reporting. About 350 grants have been consolidated into about 100, resulting in less paperwork and greater efficiency.

1995 is a key year for this program because about two-thirds of Minnesota counties will update their water plans for the first time. County water plan coordinators view this update process as a chance to examine the program and rework the plans in light of the program's past challenges and successes. Public participation will again be the key factor in identifying and prioritizing the community's resource needs, concerns and implementation strategies.

The program's success in greater Minnesota (80 of Minnesota's counties have state-approved and locally adopted water plans) is largely based on the state-local partnership strategy it employs. The state has allocated adequate resources to the program and provides leadership, technical assistance, partial funding and a program structure. Local governments and the citizens use their knowledge of the community's particular resource issues to develop and implement the plans. Local governments provide a share of the funding as well. These partnerships have proven to be an effective means of providing practical, successful local resource management.

The metro area water program is moving more slowly than the greater Minnesota program for several reasons:

- There are 46 separate watershed management organizations (WMOs) and limited resources to guide their efforts.
- Stormwater and wetlands issues in the metro area are highly complex.
- Agencies' inability to use the completed plans to streamline the permitting process.

Options to re-work the program include making the program voluntary; allocating greater resources to the program and giving BWSR discretion to prioritize watersheds and schedule development of water management plans; transferring the program to another agency (i.e., the Met Council) and



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

integrating it with metro land planning processes; or rescinding the program altogether.

**Cost Share Program.** This program aims to improve and protect water quality and sustain soil quality and productivity by reducing soil erosion, the single greatest threat to Minnesota's water quality. The program's annual allocation of about \$1.4 million goes to SWCDs that use it for landowner grants for priority erosion control projects. The program will pay up to 75% of eligible project costs. Eligible projects include animal waste control systems, waterways and other soil erosion control structures, streambank stabilization and windbreaks. The SRF will complement and leverage the dollars available through this program.

A few additional factors should be noted:

- The program has had no increase in annual allocation since its inception in 1977; thus, its purchasing power has declined significantly.
- Beginning in the current federal fiscal year (October 1994 - October 1995), the federal cost-share program has been cut by about \$3 million annually. This cut is expected to be ongoing. This increases the need for state cost share dollars since federal money may not be available for grants to landowners whose projects previously qualified for federal reimbursement.
- Both of these factors are expected to increase pressure on the SRF program and increase the demand for loans.

The following elements of the cost share program have a unique focus:

- The Minnesota River Basin Program is used to accelerate cost-share practices in the Minnesota River basin.
- Special Projects funding allows SWCDs to accelerate practices or try new and innovative approaches to erosion control.
- Streambank, lakeshore and roadside projects focus on addressing costly erosion problems on public land, streambanks, lakeshores and roadsides.

**Abandoned Well-Sealing Cost Share Program.** Abandoned wells provide one of the most direct and potentially damaging conduits for contaminants to enter directly into the groundwater. Because of cost constraints, many of Minnesota's estimated 800,000 to 1.5 million unused wells are left unreported and unsealed. This program provides funding to counties to share the cost with landowners of sealing high priority wells.

The program was created as part of the Groundwater Protection Act of 1989. The legislature allocated funds to the program for the 1990-91 and 1992-93 biennia. Approximately 3,300 wells have been sealed as a result of that funding. The state did not provide funding in the 1994-95 biennium. The program will receive \$500,000 in federal flood relief funds for well sealing in F.Y. 1995.

The BWSR expects that the reduced funding for this program will also put additional pressure on the SRF dollars.

**Wetland Conservation Act.** In recent years, the public and the scientific community have grown increasingly aware of the benefits wetlands provide. These benefits include filtering sediments and other pollutants out of water; providing habitat for fish and wildlife; acting as storage areas for runoff and floodwaters; and providing potential for commercial uses. Despite these benefits Minnesota has lost almost 60% of its wetlands -- about 11.1 million acres -- since the mid-1800s.

In 1991 the legislature passed the Wetland Conservation Act (WCA), designed to result in no net loss of wetlands. The act requires any landowner wishing to disturb non-exempt wetlands to follow this sequence: first, try to avoid disturbing the wetland entirely; second, minimize the impact of the proposed land use on the wetland; and finally, replace any lost wetland with newly constructed or restored wetlands.

The act also creates 2 new compensation programs for landowners. The Permanent Wetlands Preserve Program (PWP) pays landowners a percentage of the assessed value of their land to place wetlands in a permanent conservation easement. The program is administered similarly to the Reinvest in Minnesota (RIM) Reserve Program and is funded through bonding dollars. About 10,500 acres of wetland and adjacent upland have been enrolled in PWP.

The Wetland Preservation Areas Program allows landowners to enroll wetlands in a tax exempt conservation easement. This program is expected to be available by the end of 1996 as counties complete their second generation water plans.

WCA is administered by local units of government including counties, cities, townships or water management organizations. In many cases, counties have delegated authority for the program to the county SWCD. The BWSR has provided local government with extensive training on both wetlands delineation and administration of the WCA. Currently 5 counties have chosen not to adopt the WCA.

The WCA's local administration has also brought to light several problems that hinder sound implementation. Local governments have made a number of suggestions meant to improve the program. The legislatively-created Wetland Heritage Advisory Committee (WHAC) will be making specific recommendations for statute and rule changes in January 1995. Changes will potentially streamline administration, recognize regional variations and provide a framework for local comprehensive wetland plans as an element of local water management programs.

WCA's major success has been in encouraging landowners to avoid disturbing wetlands or minimizing any impact on the wetland. Of the estimated 1,700 projects brought before local governments annually, about 75% of those involving non-exempt wetlands will be resolved through avoiding the wetland or minimizing the wetland impact. This avoidance or minimization can often be done with little or no added cost to the applicant or adverse affect on the project.

To allow greater flexibility for those projects that result in wetland replacement, a number of counties have instituted wetland banking programs. These programs allow for the deposit of wetland credits from restored or created wetlands. Credits can later be purchased as a means of wetland replacement.

The regulatory components of the WCA are enforced by the Department of Natural Resources. The law also provides a process by which landowners can appeal local government decisions to BWSR. Numerous landowners have taken advantage of this opportunity, which has significantly increased BWSR's workload.



## 1996-97 Biennial Budget

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

**Reinvest in Minnesota (RIM) Reserve Program.** The RIM Reserve Program aims to improve water quality and enhance fish and wildlife habitat through encouraging farmers to retire marginal lands from agricultural production. Under the program, landowners are paid a percentage of the assessed market value of their land in exchange for placing the land under a permanent conservation easement. Specific types of lands eligible for the program include drained wetlands (under consideration for wetland restoration), riparian cropland, pastured hillsides, and sensitive groundwater areas.

Since it began in 1986, the program's funding from capital bonding has been erratic, ranging from \$10 million annually to \$0. Because the RIM Reserve Program and the Permanent Wetlands Preserve Program have been included in the 6 year bonding plan, it is anticipated that future funding will be more stable. The 2 programs will receive a total of \$9 million for easements in the 1995-96 biennium.

The program is administered locally by SWCDs. The SWCDs coordinate local steering committees to help prioritize applications to ensure that local needs are met. To date the program has secured about 1,850 easements, covering about 48,300 acres.

### REVENUE SUMMARY:

This program does not generate dedicated or non-dedicated revenues.

### SUMMARY OF BUDGET REQUEST:

#### Program Plan

The agency's first priority will be to deliver the services just described to enable local government to effectively protect and manage the state's water and soil resources. Given BWSR's constant level of funding, the impact of absorbing inflation means that administration, services to local governments, grants and cost share programs have all been cut. With similar cuts occurring on the federal level, landowners and local government will be impacted. Ultimately, the rate at which local government can address water and soil resource issues and problems will be curtailed.

The State Revolving Fund (SRF) will be annualized at \$1,225,000 in F.Y. 1996 and \$1,225,000 in F.Y. 1997, its first biennium of operation. Annualized funding is less than the agency's request to implement the full technical support package. BWSR expects that the engineering support it can provide at this funding level will not meet the demands of SRF and other program needs.

Project proposals recommended for funding by the LCMR are included in the agency plan. LCMR project recommendations funded from the Environmental Trust Fund total \$390,000 and those funded from the Future Resources Fund total \$535,000.

### LCMR Recommendations

BWSR will administer 5 projects recommended by the LCMR for the 1996-97 biennium.

- **Cannon River Watershed Strategic Plan: Integrated Management.** Funding is for an agreement with the Cannon River watershed partnership to implement activities in the Cannon River watershed through matching grants and technical assistance. The appropriation must be matched by at least \$81,000 of nonstate money. This project must be completed and final products delivered by 12/31/95, and the appropriation is available until that date. (\$325,000 Future Resources Fund)
- **Assessing Wetland Quality With Ecological Indicators.** Project funding is for an agreement with the University of Minnesota to develop plant and animal indicators of wetland quality, establish a network of reference natural wetlands for comparative monitoring, and develop guidelines for wetland assessment and monitoring to guide replacement wetland monitoring. (\$275,000 Environment Trust Fund)
- **Fillmore County Soil Survey Update.** This appropriation will provide half of the nonfederal share for a project that continues through 2001 to update the Fillmore County soil survey to a digitized and manuscript format. (\$65,000 Future Resources Fund)
- **Phalen Wetland Restoration.** This appropriation is for an agreement with the city of St. Paul to restore a wetland at the south end of Lake Phalen. This appropriation must be matched by at least \$50,000 in nonstate money. (\$115,000 Environment Trust Fund)
- **Shoreland Septic Inventory and Education.** Funding is available to BWSR, in cooperation with PCA, for an agreement with Hubbard County to inventory the Mantrap watershed for failing septic systems, for education, and for enforcement efforts to upgrade septic systems. (\$145,000 Future Resources Fund)

### GOVERNOR'S RECOMMENDATION:

The Governor concurs with the agency's plan. In addition, the Governor has identified a number of projects that were included in the Legislative Commission on Minnesota Resources funding allocations that should instead be addressed in the capital budget. The Governor recommends that a portion of the funds allocated for those projects be used to finance selected environmental, high-priority initiatives including:

- The Governor recommends a biennial appropriation of \$390,000 from the Environmental Trust Fund for Metro Water Planning Management.
- The Governor recommends funding for soil and water conservation district (SWCD) operations to enable SWCDs to meet the objectives for which they were established by the state. Funding will be a biennial appropriation of \$1,500,000 from the Environmental Trust Fund.
- The Governor recommends funding for the Wetland Conservation Act initiative, which will provide the necessary level of staff support for implementation of legislative requirements relating to the state's wetlands. Funding will be a biennial appropriation of \$187,000 from the Future Resources Fund.

1996-97 Biennial Budget

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

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- The Governor recommends a biennial appropriation of \$1,000,000 from the Future Resources Fund to increase the available funding through the state's Cost Share Program, which has not received an increase since 1977.
- The Governor recommends a biennial appropriation of \$150,000 from the Environmental Trust Fund for data management to ensure that local governments and BWSR have the technical and program information they need for successful resource management.
- The Governor recommends a biennial appropriation of \$40,000 from the Environmental Trust Fund for a shared MES/BWSR educational position serving southern Minnesota with an emphasis on the Minnesota River basin.



## Environment and Natural Resources

The Governor's Environment and Natural Resources Budget Bill recommends appropriation of \$784 million from all funds, net of estimated receipts from the federal government. This represents a growth of 7% over the 1994-95 biennium. The 1996-97 budget continues the evolution towards an ever larger proportion of the environmental programs financed outside of the General Fund. The current budget includes two major program initiatives: agricultural revitalization and alternative LCMR allocations.

### Environment and Natural Resources Funding All Funds (\$ in millions)

| Agency or Program          | 1994-95 Biennium |                | 1996-97 Biennium |                | Percent Change |           |
|----------------------------|------------------|----------------|------------------|----------------|----------------|-----------|
|                            | General Fund     | All Funds      | General Fund     | All Funds      | General Fund   | All Funds |
| Pollution Control Agency   | 19,271           | 126,525        | 20,723           | 159,060        | 8%             | 26%       |
| Office of Envir Assistance | 38,365           | 42,600         | 38,292           | 44,662         | 0%             | 5%        |
| Dept. of Natural Resources | 190,209          | 382,969        | 198,116          | 374,644        | 5%             | (2%)      |
| Dept. of Agriculture       | 31,142           | 84,702         | 29,732           | 96,857         | (5%)           | 14%       |
| Ethanol Production Subsidy | 12,159           | 12,159         | 28,000           | 28,000         | 130%           | 130%      |
| Bd. of Soil & Water        | 25,419           | 26,312         | 26,734           | 30,926         | 5%             | 18%       |
| Minn Zoological Garden     | 10,383           | 30,235         | 10,348           | 33,565         | 0%             | 11%       |
| Other Agencies, Items      | 14,858           | 15,577         | 15,167           | 16,749         | 2%             | 8%        |
| <b>Total</b>               | <b>341,806</b>   | <b>721,079</b> | <b>367,112</b>   | <b>784,406</b> | <b>7%</b>      | <b>9%</b> |

### Environmental Reorganization

Several objective assessments of environmental programs have cited duplication, fragmentation, overlap, and inconsistencies that add up to a labyrinth that is confusing to the public. The Governor intends to engage federal, state, and local levels of government and the Legislature in an effort to solve these problems. Any reorganization plan must focus on clear goals and objectives for improved outcomes. It needs to improve management of state government, recognize potential federal changes and consider the long term impact.

### Agricultural Revitalization

The Governor recommends an agricultural General Fund package of \$15.1 million which builds upon agriculture and agribusiness successes over the past four years.

The emphasis is on improving the agricultural economy through value-added development and making Minnesota's farmers and agribusiness competitive with their national counterparts. These initiatives will continue to move towards stabilizing our rural economy and adding value to agriculturally dependent communities.

- \$8.0 million for Ethanol Producer Payments bringing the total payments for the 1996-97 biennium to \$28 million. This incentive program will continue to provide payments to five existing plants and an additional four that are in the development phase.
- \$250,000 to increase funds for the ethanol Production Facility Loan Program to provide capital for additional ethanol production facilities.
- \$250,000 to increase funds for the value-added Production Loan Program. The funds are for loan participation that will assist young farmers purchase stock in cooperatives engaged in value-added processing.
- \$200,000 to conduct policy analysis on the impact of the federal milk marketing orders on Minnesota and to support legal challenges to the current milk marketing order.
- \$192,000 for the Livestock Expansion Loan Program debt service. This initiative will allow the State to increase the amount of loan participation from \$100,000 per loan to \$250,000.
- \$2,000,000 will provide an environmental tax credit for equipment to upgrade feedlots and conservation tillage implements equal to 5% of the cost.
- \$3,200,000 to permanently exclude used farm machinery from Minnesota sales tax.
- \$1,000,000 in the University's budget for wheat and barley scab research to continue the research for the development of varieties of wheat and barley that are resistant to scab.

#### **Alternative LCMR Allocations**

The Governor's alternative recommendations total \$14.3 million. The LCMR allocated \$12.4 million of its estimated revenues for projects that have been and can continue to be addressed in the capital budget. For example, the 1994 bonding bill appropriated over \$30 million for the same capital programs as those recommended for funds from the Future Resources or Environmental Trust Funds. It is the Governor's recommendation that the LCMR projects compete in the capital budget process. The consequence is better targeting of operating funds on high statewide priority environmental projects.

The table displays the Governor's recommendations. They have been synchronized with agency operating budgets and past and projected capital budgets.

| Category   | Agency | Amount   | Project                              |
|------------|--------|----------|--------------------------------------|
| Aquatic    | PCA    | \$2,225  | Clean Water Partnership Grants       |
| Ecosystems | PCA    | 1,120    | Minnesota River Project              |
|            | OEA    | 90       | Minnesota River MNTAP                |
|            | BWSR   | 1,500    | SWCD Funding for Tech Assistance     |
|            | BWSR   | 390      | Metro Water Planning                 |
|            | BWSR   | 187      | Wetland Conservation Act             |
|            | DNR    | 2,030    | Sustainable Ecosystems               |
|            | Agric  | 640      | Non-point Source Pollution           |
| Subtotal   |        | \$8,182  |                                      |
| Forestry   | DNR    | \$1,875  | Forestry GEIS                        |
|            |        |          |                                      |
| Prairie    | Agric  | 300      | CRP Assessment                       |
| Ecosystems | Agric  | 880      | Biological Control Program           |
|            | BWSR   | 1,000    | Soil Conservation Cost Share Program |
|            | BWSR   | 40       | Extension Cooperative Education      |
| Subtotal   |        | \$2,470  |                                      |
| Monitoring | PCA    | 200      | Water Quality Statistical Project    |
| and        | PCA    | 120      | Mercury Coordination                 |
| Assessment | DNR    | 1,200    | Statewide GIS                        |
|            | BWSR   | 150      | Data Management                      |
|            | EQB    | 120      | Sustainable Development Roundtable   |
| Subtotal   |        | \$1,790  |                                      |
| TOTAL      |        | \$14,317 |                                      |

### Pollution Control Agency

In addition to the alternative LCMR recommendations above, the budget's focus is primarily on landfill cleanup legislation. Initiatives of \$1.4 million for improved assessment and monitoring are earmarked for funding from the Landfill Cleanup Fund. Another \$1.8 million is recommended to establish a Petroleum Tank Lead Prevention Program. These initiatives have a common purpose, to improve water quality for the citizens.



PCA will complete its cleanup of known waste tire dumps by the end of this biennium. This activity will end on June 30, 1995, resulting in a savings of over \$4 million to the Motor Vehicle Transfer Account. The Governor supports the sunset of the fee on December 31, 1996 as stipulated in current law.

#### **Department of Natural Resources**

The Governor recommends spending \$2.4 million over the next two years from the General Fund to act on the recommendations of the Generic Environmental Impact Statement (GEIS) on timber harvesting and forest management. The recommendations were endorsed by a cross section of government and private sector interests who play key roles in the sustainable use and long term management of the state's forests.

The Governor recommends spending \$1.6 million over the next two years from the General Fund for the upkeep of our state parks. The increase in spending is matched by park gate receipts which are deposited in the General Fund. The number of park visitors is up by over 13%. The additional money will be spent on the higher costs of operating our state parks as a result of more visitors.

The Governor's budget does not include any fee increases for hunting and fishing licenses or for watercraft registration. The Game and Fish Fund and the Natural Resources Fund will remain solvent through June 30, 1999 without raising fees.

#### **Minnesota Zoological Garden.**

The Governor supports the Zoo's budget plan which continues the evolution towards a higher proportion of operating expenses covered by operating receipts. The Governor's budget does include an initiative of \$200,000 as a challenge grant to the Zoo to upgrade its technology capabilities and computing resources.

## **BWSR ACTIVITIES ON CAC RECOMMENDATIONS**

### **RESTORING FLOODPLAINS AND RIPARIAN AREAS**

**RIM Reserve Program**      4:1 applications to funded easements  
50% of funds are targeted to the Minnesota River Basin  
Many easements are within the 100-year floodplain or riparian areas.

**Problem:** Limited funds leave many good applications unfunded.

### **RESTORING WETLANDS**

**RIM Reserve Program**      Same issues as above because the top two types of applications are riparian easements and wetland restoration easements.

**Wetland Conservation Act**      The use of wetland banking may restore wetlands that can have significant impact on water quality and quantity.

**Problem:** Many restorations are not being done because of insufficient funds. We lack the data and human resources to specifically identify which restored wetlands will give the best return for our investment.

### **IMPROVE LAND MANAGEMENT PRACTICES**

**Cost-Share Programs**      In addition to the regular Cost-Share funding, an additional \$500,000 per year is appropriated to accelerated implementation of conservation practices in the Minnesota River basin.

**Problems:** Insufficient funds to work in all 37 counties or all 12 major watersheds. ACP funds are being cut throughout Minnesota.

**Model Soil Loss Ordinance**      Completed and distributed throughout Minnesota

**Problem:** The land use ordinances are not very popular in rural Minnesota, with citizens or the local units of government.

## ESTABLISH LOCAL JOINT POWERS AGREEMENTS

Various joint powers agreements have already started throughout the Minnesota River basin. Examples of two that work very closely with our programs are the Redwood-Cottonwood River Control Area and the Blue Earth River Basin Initiative. Others have formed to collaborate on comprehensive local water planning efforts.

## IMPROVE TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS

The BWSR has limited capacity to assist local government units with direct technical assistance with a small engineering staff. BWSR's most significant role, and where we have the most impact, is through our grants to local units of government. Cost-Share services, RIM services, and SRF technical services all support local government in building technical capacity. CLWP Base Grants and Challenge Grants also have an impact on local government technical services but in a slightly different way. They are used more for monitoring networks, GIS, planning and setting goals.

## NOTES FROM STEVE TAFT, UNIVERSITY OF MINNESOTA

1. Admit we have a problem.
2. Determine if we can do something about it.
3. Decide if we should do something about it.
4. Figure out how we should do it.

### Costs of Pollution Control:

1. Direct - government (subsidies and grants)
2. Imposed - individual
3. Opportunity cost
4. Transactions cost (networking and meetings) } all parties

### Transactions Costs (ICE)

Information  
Contracting  
Enforcement

#### Policy

No action  
Change minds  
Change rules  
Change prices  
Tax  
Subsidies

#### Payer

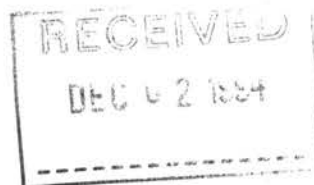
Downstream  
Upstream  
Upstream  
Upstream  
Downstream

### Basic Analysis Issue:

Is it really a state problem?  
Is clean-up worth the cost?  
Are we prepared for big expenditures?  
How do we know if we are doing GOOD?



# Minnesota Pollution Control Agency



December 1, 1994

Mr. Ron Harnack  
Executive Director  
Board of Water and Soil Resources  
One West Water Street  
Suite 200  
St. Paul, Minnesota 55107

Dear Mr. <sup>Ron</sup>Harnack:

With the work of the Minnesota River Citizens' Advisory Committee now complete, the Minnesota Pollution Control Agency would like to assist members of the committee in distributing and sharing their final report with key organizations and agencies. We feel that the Board of Water and Soil Resources (BWSR) is an important agency with which to share this information.

I recently spoke with Jeff Nielsen of your staff and he suggested that I write to you to request some time on the agenda of the BWSR Board Meeting that is scheduled for January 25, 1995. I estimate that the members of the committee would spend 20-25 minutes presenting a summary of their recommendations and then be available to answer questions for another 20 minutes or more.

Please let me know if you will be able to accommodate them on the January agenda and if you can, I would appreciate knowing what time they should plan to be there for their presentation. You can reach me at 297-3825.

I look forward to hearing from you.

Sincerely,

Lynne Kolze, PCS Senior  
Assessment and Planning Section  
Water Quality Division

LK:jmg

45 minutes  
M REAC -  
Jeff -



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**DRAFT**

# **FORESTRY BEST MANAGEMENT PRACTICES FOR WETLANDS IN MINNESOTA**

**DRAFT**

## **DESCRIPTION AND PURPOSE**

Best management practices are necessary to avoid direct and indirect impacts from activities that destroy or diminish the quantity, quality and biological diversity of all wetlands. They provide forest managers, loggers and landowners with the tools to avoid or minimize potential adverse impacts to wetland functions and values. The principal outcome from applying these BMPs will be to protect normal water movement within a wetland. These BMPs are also proposed as a means of maintaining water quality. With BMPs as an integral part of forest management, continuous commercial timber production on or near Minnesota's wetlands is feasible without compromising environmental quality.

Three criteria are required to define a wetland: 1) hydrology or the degree of flooding or soil saturation, 2) presence of vegetation adapted to wet conditions, and 3) hydric soils. Many wetlands develop in defined depressions or basins. Others develop in very shallow depressions on old glacial lake bottoms covering large areas or in floodplains along rivers and streams. Wetlands are inundated by surface or ground water at a frequency and duration sufficient to support vegetation adapted to aquatic conditions. Water is also a dominant factor influencing soil development in these areas. The dominant wetland types in Minnesota are peatlands and mineral soil wetlands. BMPs should be applied to all types and sizes of wetlands.

Peatland occurs mainly in shallow glacial lake basins, glacial lake filled depressions, on flat uplands, and along sluggish streams. Soil is usually waterlogged with the water table at or near the soil surface. Most of the water movement occurs near the surface in the upper 12 inches. The elevation of the water table, relative to the wetland surface (soil surface), largely determines whether trees or herbaceous vegetation will dominate the wetland. Peatlands will remain open or become treeless when the water table is too shallow (less than 4 inches) for trees to persist.

Mineral wetlands contain fine-textured (clay, silt), slowly permeable soils to sandy soils overlaying impervious subsoils or hardpans. Seasonally flooded basins or flats are a form of mineral wetland common to upland depressions and bottomland hardwoods. Soils may be well-drained during much of the growing season but are covered with water or waterlogged during other periods.

## **PLANNING CONSIDERATIONS**

All management operations in or adjacent to wetlands should be planned and conducted in a manner that protects site productivity, maintains or enhances ecologic functions and protects water quality. Planning approaches that anticipate problems and incorporate protective measures will be less costly than remedial activities to mitigate impacts.

# DRAFT

In planning, the first priority should be to avoid operations in the wetland. Where avoidance is not practical, the landowner, manager or logger should minimize impacts by limiting the extent of wetland activities and using BMPs.

When operating on mineral wetlands, susceptibility to compaction and rutting is dependent on: 1) level of equipment trafficking, 2) soil texture, 3) soil water content at the time the silvicultural activity is conducted, and 4) season of activity. In general for mineral soil wetlands, compaction and rutting increases as soil texture becomes finer and soil water content increases. In unfrozen peatland, deep rutting can bring muck to the surface and block normal water flow. Soil information to assist the landowner, resource manager or logger in planning activities in wetlands ~~can be obtained from county soil surveys~~ may be available from local Soil and Water Conservation Districts or Soil Conservation Service offices. It is important to be aware that specific requirements may apply to operations in special management areas such as Scientific and Natural Areas. Use of a site map or onsite review indicating the location of wetlands on the proposed site can be an effective tool for communicating planning considerations.

On all wetland types, silvicultural operations will cause the least damage when the ground is frozen. In addition, seasonally flooded basins and flats may be operated if soil conditions are firm enough to support equipment.

## GUIDES FOR OPERATING CONDITIONS

Disturbances such as ruts, soil compaction and fill can interrupt or redirect the flow of water through a wetland. They can also impact the depth of the water table or the extent of flooding or draining that occurs in all or a portion of a wetland. This can significantly alter the plant and animal community in that wetland. To avoid these disturbances, the following guidelines should be followed:

- ☐ Conduct silvicultural activities in wetlands during frozen or dry conditions. Evaluate the site based on weather conditions to ensure that there is adequate support for equipment to prevent or minimize rutting (see page \_\_\_\_). Examples of weather conditions that could be cause for concern include: 1) heavy rain, 2) flooding, 3) significant snow before frost, and 4) three consecutive nights above freezing. A return to freezing conditions may allow operations to resume.
- ☐ Mark seeps and springs and maintain a filter strip ~~by keeping equipment at least 25 feet away.~~
- ☐ Plan for removal of equipment and cut material from the wetland area at the end of the winter season prior to thawing or leave it until next winter.

## FOREST ROADS

### General Requirements

# DRAFT

The quality and character of forest roads will vary depending on the design standard of the road; however, the impacts of placing fill materials and structures in wetlands are still present regardless of the road type. All wetland roads need to be built to minimize water quality impacts and alterations to normal water flow patterns.

The recommendations contained in this section, if incorporated in the overall road project design, should reduce potential wetland and water quality impacts. The landowner/operator is strongly advised to utilize the services of a forester and professional engineer to develop complete design and construction specifications. This is particularly important when constructing permanent all-season roads. Help in locating such assistance is available from the DNR/Division of Forestry, Soil and Water Conservation Districts, industrial foresters and consultants.

The following recommendations apply when planning the design of all roads across wetlands:

- ☐ Avoid crossing wetlands. If wetlands must be crossed, then minimize the total wetland road mileage required to meet the landowner's objectives.
- ☐ Determine the type and depth of wetland subsoils to ensure proper design and construction.
- ☐ Contact a county Soil and Water Conservation District office or DNR regional or area hydrologist to determine if the proposed road will cross a water or wetland designated on the Protected Waters Inventory maps. If so, a permit to work in public waters will be required from the Division of Waters (Minnesota Statutes 103G.245).
- ☐ Contact the local Soil and Water Conservation District office to ~~see~~ determine if the Local Government Unit requires a certificate of exemption for forest roads and silvicultural practices which are exempt activities under the Wetland Conservation Act of 1991.
- ☐ Minimize width of roads consistent with maintaining safety and road design considerations. Provide turnouts, as appropriate, placed at intervals to accommodate two-way traffic.
- ☐ Construct all road embankment fills with clean fill or other suitable native materials. The road base is built wider and deeper than for upland roads to spread out the road loading and minimize failure.
- ☐ Provide adequate cross drainage ~~through the roadbed~~ for subsurface as well as surface water flow in order to minimize disruption of normal flow patterns. This may be accomplished by: 1) using construction methods that allow free water flow throughout the entire roadbed, or 2) providing crossdrain structures such as culverts. Culverts will be placed at each end of each wetland crossing and at intermediate low points. Space culverts at maximum 300-foot intervals to ensure adequate cross-drainage through the roadbed (Figure 1).



# DRAFT

- Construct ditches in wetland crossings, where necessary, to intercept and carry surface and subsurface (top 12 inches) waters to, through, and away from the culverts. Situations where ditches are necessary include providing cross-drainage for defined surface channels or other low spots where surface water is moving or concentrating. Ditches can be oriented approximately perpendicular to the roadway to facilitate flow into and out of culverts, or parallel to the roadway to intercept dispersed flow and channel it to the culverts. For ditches constructed parallel to the road:
  - \* separation distance between the toe of the fill slope and the ditch is an important consideration. Recommended separation distances vary depending on type of construction as discussed later in this section.
  - \* ditches should not create additional outlets that will result in drainage of the wetland.
  - \* unditched breaks should be left midway between culverts.
- Design upland road approaches to wetlands so that surface runoff carrying potential sediment is diverted before entering the wetland. Refer to the roads section of the forestry BMPs (pages 28-39) for recommended sediment and erosion control structures.
- Employ sediment control techniques (e.g. silt curtains) when placing fill during construction to prevent movement to open water.

FIGURE 1

## Constructing Roads in Wetlands

1. *Types of Roads*
  - a. *Permanent*

All-season roads are designed for use all year long though there may be some restriction on vehicle weight at times during spring breakup or wet periods. There is a great range in design standards and road surfacing in this type of road, depending on the traffic load anticipated.

# DRAFT

Seasonal roads are designed for long term periodic use such as during dry and frozen periods. These roads are built to lower engineering standards and have minimal material surfacing.

## b. *Temporary*

Temporary roads are generally minimum standard roads designed for short-term use during a specific project such as a timber harvest. These roads on mineral wetlands, including seasonally flooded basins or flats, should only be used when dry or frozen to prevent or minimize rutting and compaction. These roads on peatlands should be used under frozen conditions. Appropriate temporary structures should be installed.

- ☐ Anchor temporary structures to prevent movement during high water flows.
- ☐ Remove temporary fills and structures to the extent practical when use is complete.

## 2. *Types of Construction*

Knowledge of water table position, zone of water flow, type of wetland soils, and the strength of wetland soils provides the basis for road construction techniques that maintain the flow of water through the road corridor and ensures the structural integrity of the road embankment. The concept is to provide a simple road structure of adequate strength to support heavy vehicle traffic while preventing subsurface soil displacement, and to provide either free-flowing pore space or drainage structures to pass water at its normal level through the road corridor. Culverts and/or ditches may be necessary with any road construction technique.

Conventional road construction methods are typically used to cross shallow peat (less than 4 feet deep) and mineral soil wetlands. Shallow peat or weak mineral soils can be excavated and backfilled with clean granular soils, or they can be filled over with clean granular fill and allowed to compress and displace down and to the side. Additional fill is added to keep the road bed at the desired grade. Culverts and ditches are installed to intercept surface and subsurface water flow in the top 12 inches of soil and transport it through and away from the roadbed.

Other road construction techniques can be utilized to cross wetlands having peat soils greater than 4 feet deep. In all cases the construction objective is to provide a stable travel surface while providing free flow of water through the road bed. In recent years geotextile fabrics have been used. They prevent road fill materials from mixing with the peat. Peat and other fines will clog large pore spaces provided by porous road materials specially placed in the lower portion of the road. The road bed can then be placed across the peat soils without the need for expensive material excavation or excessive amounts of backfill. ~~This technique is typically used in peat beds greater than 4 to 5 feet in depth.~~ Road beds that incorporate porous materials, including rock and log corduroy, allow a more natural flow of water throughout the wetland.

Road beds ~~utilizing which~~ utilize geotextile fabrics should be prepared to protect the woody root mat by flush cutting trees and brush and leaving non-merchantable material in place. The first geotextile fabric should be laid loosely over the cut material and then proceed with one of the

following wetland road construction techniques:

*Corduroy:* Place trees parallel to each other, side by side and perpendicular to the roadbed direction. Cover, if needed, with at least 12 inches of road fill. If covered, provide for cross drainage by use of geotextiles or by installation of culverts at recommended intervals (see page \_\_\_\_).

*French Drains:* Twelve inches of rock four inches or less in diameter is then placed over the geotextile, followed by another layer of geotextile. Clean road fill or gravel is finally placed on top (18" typically). The rock layer will settle into the top 12 inches of the wetland and provide the pore space for water passage through the roadbed (Figure 2).



FIGURE 2

*Lightweight Road Fills:* Lighter weight materials are incorporated into the core of the road embankment fill to lessen the total weight of the road embankment on the wetland surface. Lighter weight materials include chunkwood, wood chips, and sawmill residues among other materials. Materials with known potential to leach toxic substances (e.g. construction debris, treated wood, tires, asphalt or other petroleum laden materials) are not suitable for use. Place the lighter weight materials over the fabric to form the core of the road embankment fill followed by another layer of geotextile fabric over the lightweight materials. Finally cover the core with at least 18 inches of granular sand or gravel road fill. Culverts and ditches, if necessary, are used to pass surface and subsurface waters through the road embankment as described previously (Figure 3).

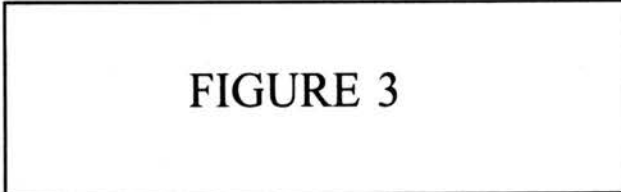


FIGURE 3

Wetland crossings with organic soils less than 4 feet deep may be constructed using conventional road construction methods. Some wetlands with deeper peat that is too weak to support a roadbed require using this construction method also. One method of construction consists of placing fill material directly onto the peat or organic subgrade and allowing the weight of the material to displace, or push aside, the weaker peat/organic soils. This displacement will continue until an equilibrium is reached between the strength of the subsoils to resist loads and the combined loads of the road fill and traffic. Another traditionally used method is the conventional excavation of the peat subsoils and replacement with granular backfill material.

- ☐ Install culverts that are a minimum of 24 inches in diameter buried halfway below the soil surface. Their upper half will handle surface storm flows and the lower half will handle everyday subsurface flows. Failure to bury the lower half of the culvert will cause subsurface water to backup and kill trees on the "upstream" side of the road.
- ☐ Place culverts at the low points of the wetland to pass surface water flows through the road embankments. If ditches parallel to the roadway are needed, they should be constructed immediately adjacent to the toe of the fill slope.

#### **Guides for crossing wetlands utilizing the inherent strength of peat layers**

Caution is needed when constructing permanent roads across wetlands with peat subsoils because of the great variability of strengths of the underlying peat layers. Roads constructed across the top of the peat surface, rely on the inherent shear strengths of the peat to resist slip failure and resultant road failure. The landowner or land manager is strongly advised to consult the services of a registered civil engineer to accurately determine shear strengths. The determination of these shear strengths is critical in designing a sound, safe and economical road crossing. It is essential that special construction techniques be employed when building roads across deep peat wetlands to avoid road failure.

Failure can include gradual sinking of the road into the wetland or the sudden loss of the road into the wetland. When this occurs the peat is displaced excessively and the water flow through the swamp wetland is greatly disturbed, and can resulting in large areas of flooding. ~~Failure can also result in loss of the road investment, loss of vehicles and create a safety hazard for people using the road.~~ Techniques to prevent or minimize impacts to deep peat wetlands include:

- ☐ Construct road embankments across wetlands with deep peat subsoils when the peat is frozen to avoid rutting and other damage of the topmost root mat layer which normally contains considerable shear strength. Such damage would greatly reduce the strength of the upper peat layers and reduce the ability of the wetland subsoils to hold up the weight of the roadbed and vehicle loads.
- ☐ Install culverts that are a minimum of 24 inches in diameter buried halfway below the soil surface. Their upper half will handle surface storm flows and the lower half will handle everyday subsurface flows. Failure to bury the lower half of the culvert will cause

subsurface water to backup and kill trees on the "upstream" side of the road.

- ☐ Maintain a separation between the toe of the embankment fill slope and the ditch, when constructing ditches parallel to the roadway. The separation distance should be at least three times the depth of the peat. Maintaining this separation will prevent disturbance of the inherent strength of the top layer of peat containing root mat. These ditches should be constructed using flotation devices (e.g. timber mats) or during frozen conditions to prevent damage to the wetland surface or construction equipment.

## **Guides for crossing mineral soil wetlands**

Wetlands with mineral soils include those wetlands having fine-textured (clay, silt), slowly permeable soils to sandy soils overlaying impervious subsoils or hardpans. Road building across these wetland types employs conventional road construction techniques for road fill and drainage structures. Ditches and culverts provide for drainage of surface water flows. Fill areas in flood plains should be designed to allow high flows to pass unimpeded. Refer to the BMP road section (pages 24-35) for recommended drainage structure and ditching construction techniques.

- ☐ Install culverts of sufficient size to handle hydrologic flows for the site and long term maintenance needs. Contact a local Soil and Water Conservation District Office, Minnesota DNR engineer, or local Department of Transportation office or local road authority for assistance. Consult an SCS roads engineer or other appropriate professional for sizing recommendations.

## **Creating and Utilizing Frozen Roads**

Roads across wetlands are often designed to take advantage of frozen ground conditions. Follow permanent road BMPs if permanent structures or minimal fill are necessary. The recommendations below should be followed when designing these roads across all wetland types.

- ☐ Plan the layout to maximize operating efficiency and minimize site disturbance. Select the shortest routes practical that minimize potential problems with drifting snow and the crossing of open water.
- ☐ Tramp and pack the wetland area wider than needed for the driving and working area: if sufficient frost is not present. This will provide space for turnouts, snow removal and parking.
- ☐ Avoid crossing open water or active springs that will not freeze. If unavoidable, temporary crossings are preferred. These can be ice bridges, temporarily installed bridges or culverts, or timber mats. Soil fill should not be used to install these, and all structures that block water flow should be installed so they can be easily removed prior to breakup. Keep in mind that removal may be necessary at the end of each winter of operation, not just at the end of the timber contract, if the streams are navigable or require a DNR permit to cross.



- ☐ Use planking, timber mats or other support alternatives to improve the ability to support heavy traffic where conditions are inadequate to stay within the guidelines above. These areas could be left as permanent sections on frozen roads if removal will cause more damage than leaving them in place.
- ☐ Anchor temporary structures to prevent movement during high water flows.
- ☐ Remove temporary fills and structures to the extent practical when use is complete.
- ☐ Avoid clearing practices that result in berms of soil or organic debris being built up on either side of the road clearing. Such berms can disrupt normal water flow.
- ☐ Provide adequate filter strips near open water- (see page ).
- ☐ Cease equipment operations on any portion of the road where rutting exceeds 6 inches in depth for continuous distances greater than 300 feet. Operations can resume when conditions are adequate to support equipment. This will minimize blockage of cross drainage and prevent down road channelization.

## Maintenance

- ☐ Follow appropriate requirements in the water quality BMP guidebook, pages 36 to 39.

## Closure

- ☐ Follow appropriate requirements in the water quality BMP guidebook, page 36.

## ~~RIPARIAN ZONE MANAGEMENT~~

~~Riparian zone management guidelines are appropriate to protect wetland functions and values. However, they have not been developed as of the printing of this document. They will be forthcoming in future revisions to this document.~~ As the GEIS Roundtable and other stakeholder discussions occur, riparian management and other related issues are likely to be addressed. As they are addressed and resolved, future revisions of the document will incorporate changes that impact water quality and wetland conservation. [This statement will be incorporated into the introduction of the revised BMP guidebook].

## TIMBER HARVESTING

The following timber harvesting practices ~~should~~ are intended to provide long-term protection to water quality and wetland functions:

- ☐ Establish filter strips when harvesting in wetlands adjacent to open water wetlands and intermittent and perennial streams.

- ☐ ~~Utilize a minimum number of centrally located high use skid trails. (This recommendation is being debated)~~
- ☐ Minimize rutting by conducting harvest activities in wetlands on firm or frozen ground that can support the equipment used. This may require packing a large portion of the harvest area with lightweight equipment to permit off trail operation of equipment, or adequate skid trails to allow skidder cables to reach all material from the skid trails.
- ☐ Move equipment to a stable portion or alter operating techniques to prevent repeated rutting deeper than 6 inches. Alternative operating techniques include:
  - \*Employ low ground pressure equipment.
  - \*Utilize slash on skid trails as a driving surface.
  - \*Minimize the amount of off trail equipment operation to reduce the area disturbed by heavy equipment.
- ☐ Cease operations if no part of the site or no alternative techniques are available to prevent repeated rutting deeper than 6 inches.
- ☐ Remove slash or woody vegetation that originates from outside the wetland or from upland areas contained in the wetland. Slash or woody vegetation that originates from outside the wetland is considered fill and must be removed.
- ☐ Keep logging residue out of all streams and open water wetlands except in cases where residue placement is specifically prescribed for fish or wildlife habitat.
- ☐ Avoid crossing small wetland inclusions, where practical.

## *Landings*

Size landings to the minimum required for the acres to be harvested, the equipment to be used and the products to be cut. Where necessary to protect water quality and wetlands, the harvesting agreement should specify the number and location of landings.

- ☐ Locate landings on upland areas, whenever practical, when harvesting upland sites. When harvesting wetlands, an upland site may also be a preferred location for a landing.
- ☐ Avoid locating landings and yarding areas on open water wetlands.

## *Skid Trails*

Locate, design, construct and maintain skid trails to minimize damage to the residual stand, minimize rutting, maintain surface and subsurface water flows in the wetland, and reduce erosion and sedimentation. Refer to the BMP recommendations contained in the Forest Roads section

for specifications that are also applicable to skid trails.

- ☐ Plan the layout of skid trails to maximize operating efficiency and minimize site disturbance.
- ☐ Minimize the crossing of intermittent or perennial streams, sloughs or channels. Install bridges, culverts, snow or ice bridges, fords or other means, if necessary, to prevent repeated soil and streambank disturbance where no practical alternative exists to crossing a stream. This may require a permit from the DNR.
- ☐ Approach water crossing at or near a right angle to the stream direction and use measures to protect any stream bank structures.
- ☐ Prepare skid trails for the anticipated traffic needs to avoid unnecessary maintenance or relocation of trail. Techniques can include proper packing to ensure freezing or proper construction to provide a stable trail surface.
- ☐ ~~Utilize a minimum number of centrally located high use skid trails. (This recommendation is being debated)~~

## **PRESCRIBED BURNING ON OR ADJACENT TO WETLANDS**

- ☐ Obtain a DNR permit prior to burning as required under Minnesota Statutes, Chapter 88.17.
- ☐ Use fireline construction methods in wetlands that do not expose bare soil whenever practical. These may include wet lines, existing constructed or natural barriers, foam or retardants. Techniques that expose bare soil may only be used for silvicultural practices, and must be restored if wetland hydrologic functions are impacted.
- ☐ Provide adequate filter strips when constructing firelines that expose bare soil near wetlands.
- ☐ Employ suitable water diversion structures on firelines.
- ☐ Seed firelines when natural revegetation will not be adequate.
- ☐ Use Follow manufacturer recommendations when using foam or retardants in wetland areas ~~in accordance with manufacturer recommendations.~~

## **PESTICIDE USE**

- ☐ Select pesticide(s), application method(s), equipment and formulation(s) which:  
  
\*Minimize the potential for pesticide drift.

\*Minimize pesticide residue movement to surface water and groundwater.

- ☐ Apply pesticides in accordance ~~to~~ with the product label.
- ☐ Select only pesticides labeled for aquatic use if surface water is present at the time of application.
- ☐ Mix pesticides in upland areas, where practical.
- ☐ Rinse spray equipment and discharge rinse water only in wetland areas that are part of the wetland application site.
- ☐ Consult state and federal lists for endangered, threatened, or species of special concern which may exist in sites proposed for pesticide applications. Select appropriate pesticide(s), application method(s), equipment and formulation(s) when applying pesticides to those areas to protect above listed species. Refer to Appendix \_\_\_\_ for assistance.
- ☐ Provide wetland BMP training to individuals making forest management recommendations or applying pesticides.
- ☐ Store pesticides with adequate safeguards to prevent accidental release.
- ☐ Avoid applying pesticides on small wetland inclusions in upland areas unless that application is part of the management objective. If unable to avoid pesticide use in these areas, select only pesticides labeled for aquatic use if surface water is present at the time of application.

9/13/94

January 19, 1995

To: Ron Harnack  
From: Bruce Sandstrom   
Re: January, 1995 Status Report on Appeals

The following is a brief status report on the appeals that I have been involved with over the last month.

#### COMPLETED APPEALS

1. **Trout Unlimited v. City of Shakopee (WCA appeal)** Board dismissed without prejudice at Dec., 1994 meeting. Order drafted and mailed. No appeal filed to date.
2. **Wallace v. Riley Purgatory Creek WD (WCA appeal)** Board remanded back to the WD at the Dec., 1994 meeting. Order drafted and mailed. No appeal filed to date.
3. **League of Women Voters v. City of Coon Rapids (WCA Appeal)** Board affirmed city's approval of replacement plan at the Dec., 1994 meeting. Order drafted and mailed. No appeal filed to date.

#### PENDING APPEALS

4. **Fridley v. Rice Creek Watershed District (8410.0180 appeal)** Board placed this appeal in a pending status at the Dec. 1994 meeting based on staff recommendations. Appeal is related to plan amendments adopted by the WD in Sept., 1994. The administrative process followed by the WD for the plan amendments is currently under judicial review by the Court of Appeals.
5. **Audubon v. Nine Mile Creek Watershed District (8410.0180 appeal)** Agreement reached between the parties and drafted by Jim Birkholz. The agreement set forth a schedule for review of the plan submitted by the WD. It is my opinion that we will likely not be able to meet the schedule as originally planned. Preliminary review of the Nine Mile plan by BWSR staff concludes that plan is very similar in content to the draft Riley-Purg-Bluff Creek Plan. BWSR's 509 plan review committee met on Jan. 10 to review the Riley-Purgatory plan and concluded that some significant changes in that plan are needed before the board could approve the plan. A letter will be sent to the WD explaining this development. On the bright side, since the two plans are very similar, agency comments should not take as long to develop.
6. **Pearce v. Minnehaha Creek Watershed District (103D Appeal)** Mr. Pearce's appeal



relates to a project proposed in the WD's watershed management plan. Both parties have been negotiating towards a settlement since Oct. 27, 1994. Staff recently advised both parties that we would take no action to hold a pre-hearing conference on the matter until one or the other party advises us to their wishes.

**7. Levine & Ramey v. Minnehaha Creek Watershed District (103D appeal)** On Oct. 17, 1994, private citizens Lynn Levine and Kim Ramey filed an appeal with BWSR relating to the District's approval of a development in Mpls. adjacent to a wetland known as the "Ewing Wetland." Staff recently sent a letter to the appellants to verify whether they want us to proceed to hold a pre-hearing conference since construction work on the project is well under way.

**8. Bracchi & Finn v. Rice Creek Watershed District (103D appeal)** In December, 1994 Mr. Frank Bracchi and Charles Finn appealed a permit decision of the WD. The appeal is based on the alleged failure of the WD to enforce more design storm water design criteria adopted in the WD's Sept., 1994 plan amendments. Since the validity of the subject plan amendments are of question, staff recommends that the appeal be not acted on until the case before the Court of Appeals is ruled upon. This action would be consistent with the action the Board took on item 4, above. **ACTION ITEM**

Background on plan amendment issues:

- Rice Creek adopted plan amendments in 1993 following the amendment process in their approved 509 plan. The plan extended to 1990.
- Ramsey County filed sued in District Court.
- In May, 1994 the District considered additional plan amendments, following the plan amendment process in their original plan.
- In June 1994 the District Court ruled the 1993 amendments invalid because the plan had expired. The court basically said that the District had to follow the process in the law, not the process laid out in their expired plan.
- Fridley appeal the lower court decision to the Court of Appeals. The Court of Appeals heard oral argument on Dec. 6, 1994. Decision is pending.

**9. Spartz v. Minnehaha Creek Watershed District (103D appeal)** Mr. Stephen Spartz is appealing conditions placed on his 1994 contractors license which expired on Dec. 31, 1994. Staff have asked the WD attorney to provide guidance and feedback from their perspective. For example, has Spartz applied for his 1995 license and if so will they place the same conditions on it? The WD was also asked to submit some documents Mr. Spartz has not been able to acquire as part of his exhibits. Shortly after the WD responds, staff intend to hold a pre-hearing conference. The Board should consider assigning the DRC or other members as the hearing panel on this matter. The basis of the case appears to center around the claim that other contractors have violated permits but have not had special conditions placed on them.

On items 6, 7, and 9 it is recommended that the Board assign either the DRC or specific members to be the hearing panel for these cases so that at prehearing conferences staff can provide direction as to scheduling a hearing in the event that settlement can't be reached. **ACTION ITEM. ACTION SOUGHT: ASSIGN HEARING PANEL.**

#### **OTHER HEARING MATTERS**

As you know, hearings have been requested on the Riley-Purgatory-Bluff Creek and Valley Branch Watershed District 509 plans. Staff won't schedule these hearings until after the WDs have had an opportunity to amend their plans based on the comments received during the review process. In at least one case, the requester of the hearing is willing to withdraw the request if their concerns are met as a result of changes brought about by the plan review process. It is my understanding that Barbara Cobb and Dwain Otte have been assigned to be the hearing panels, with Barbara serving as the chair. Please confirm my understanding with the Board at the next meeting. In the past, the BWSR has always assigned at least three hearing panel members.

cc Matt Seltzer  
Doug Thomas  
M-Team  
Metro Staff

a:appeal.sta

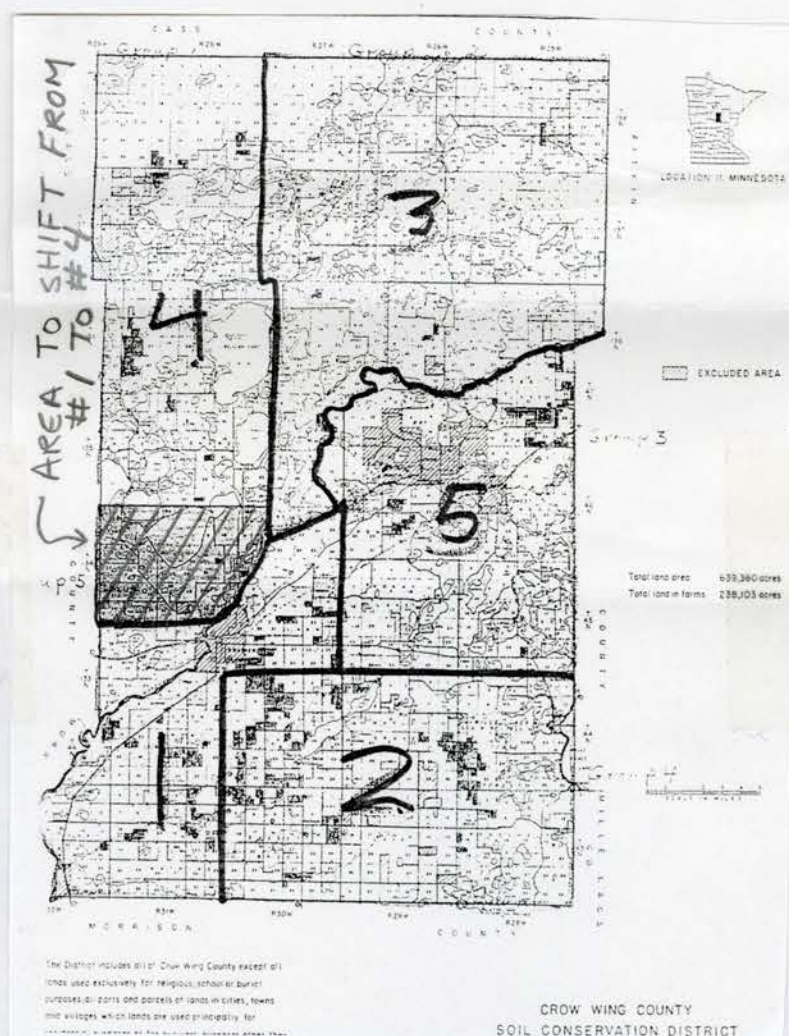
## CROW WING SWCD REQUEST FOR NOMINATION DISTRICT BOUNDARY CHANGE

### FINDINGS

1. 9/14/94 SWCD passed required resolution requesting nomination district boundary change at an officially noticed public meeting of the district board of supervisors.
2. The resolution proposes to reduce the size of Nomination District 1 by shifting a portion into Nomination District 4.
3. 9/16/94 SWCD forwarded "Nomination Districts Resolution" form to BWSR with letter explaining the reasons for the changes in boundaries. The reasons given are (paraphrased):
  - a) consolidate similar landforms, making Nomination District 1 predominately "agricultural" and shifting a lakes area into Nomination District 4 which is predominately a lakes area;
  - b) allow more efficient work with the Thirty Lakes Watershed District by aligning the nomination district boundary more closely with the watershed district boundary;
  - c) more evenly spread population throughout the nomination districts; and,
  - d) align Nomination District 4 more closely with the county commissioner district to avoid citizen confusion.
4. BWSR staff advised the SWCD that the nomination district change should wait until after the general election to avoid confusing the election process.
5. 11/28/94 SWCD renews their request for the nomination district boundary change.
6. The SWCD has followed the correct process to change its nomination district boundaries.
7. The reasons for requesting the change do not conflict with state law or any established BWSR rules or guidelines.
8. Staff investigation found no evidence of gerrymandering.
9. There is currently a supervisor serving from each nomination district. The proposed boundary change would not place any existing supervisor in a different nomination district.

### STAFF RECOMMENDATION

5. Staff recommends that the Board approve the "Change in Nomination Districts Resolution" from the Crow Wing Soil and Water Conservation District dated September 14, 1994, and authorize the Executive Director to sign the same.





## **NON POINT ENGINEERING ASSISTANCE GRANT MANAGEMENT PLAN**

EACH JOINT POWERS BOARD WAS REQUESTED TO PROVIDE BWSR WITH AN ANNUAL BUDGET FOR AN ENGINEER AND TECHNICIAN. THEY WERE ALSO REQUESTED TO DESIGNATE A FISCAL AGENT AND HOST SWCDs FOR THE ENGINEER AND TECHNICIAN.

### **ANNUAL NON POINT ENGINEERING ASSISTANCE GRANT BUDGET**

ESTIMATES OF THE FOLLOWING BUDGET ITEM COSTS WERE REQUESTED FROM EACH JOINT POWERS FOR THE ENGINEER AND TECHNICIAN:

|          |                  |           |                |           |                 |
|----------|------------------|-----------|----------------|-----------|-----------------|
| WAGES    | BENEFITS         | INSURANCE | OFFICE SPACE   | TELEPHONE | OFFICE SUPPLIES |
| TRAINING | POSTAGE/PRINTING |           | TRANSPORTATION |           |                 |

THE TOTAL ANNUAL NON POINT ENGINEERING ASSISTANCE BUDGETS RECEIVED FROM JOINT POWERS TO DATE HAVE RANGED FROM \$100,000 TO \$110,000. THIS COMPARES WELL WITH BWSR STAFF'S BUDGET ESTIMATE OF THESE ITEMS:

#### **BWSR BUDGET ESTIMATE**

|                            | <u>ENGINEER</u> | <u>TECHNICIAN</u> |   |                  |
|----------------------------|-----------------|-------------------|---|------------------|
| WAGES (AVE.)               | \$43,000        | \$27,500          |   |                  |
| BENEFITS (25% OF WAGES)    | \$10,750        | \$6,900           |   |                  |
| INSURANCE, OFFICE SUPPLIES |                 |                   |   |                  |
| POSTAGE/PRINTING, TRAINING |                 |                   |   |                  |
| OFFICE SPACE, TELEPHONE    |                 |                   |   |                  |
| TRANSPORTATION - TOTAL     |                 |                   |   |                  |
| (FIGURED AT 25% OF WAGES)  | <u>\$10,750</u> | <u>\$6,900</u>    |   |                  |
| TOTALS                     | \$64,500        | \$41,300          | = | <b>\$105,800</b> |

### **LOCAL ADMINISTRATION OF THE NON POINT ENGINEERING ASSISTANCE GRANT**

FOR THE INTEGRITY OF THIS PROGRAM AND THE AGENCIES INVOLVED, AND EFFECTIVE AND STABLE DELIVERY OF ENGINEERING ASSISTANCE, PROPER LOCAL MANAGEMENT OF THIS GRANT IS IMPERATIVE.

AS BWSR IS THE ADMINISTRATOR OF THIS GRANT, IT IS OUR ROLE TO ALLOCATE TO FISCALLY RESPONSIBLE GRANTEEES. THEREFORE, BWSR STAFF HAVE DEVELOPED THE FOLLOWING CRITERIA WHICH WILL BE USED TO CONSIDER THE SUITABILITY OF POTENTIAL FISCAL AGENTS FOR THIS GRANT.

1. SWCD MUST BE PROPERLY BONDED TO SECURE FUNDS
2. THE PAST THREE YEARS OF SWCD YEAR-END FINANCIAL REPORTS MUST ACCURATELY AND PROPERLY REFLECT THE FINANCIAL POSITION OF THE SWCD.
3. AUDIT REPORTS ARE ACCEPTABLE AND ALL RECOMMENDATIONS HAVE BEEN IMPLEMENTED.
4. THE SWCD MAINTAINED A POSITIVE FUND BALANCE OVER THE PAST THREE YEARS.
5. THERE HAS BEEN NO NOTABLE IMPROPER USE OF ANY STATE GRANTS WITHIN THE LAST FIVE YEARS; ALL CRITERIA OF STATE GRANTS HAVE BEEN IMPLEMENTED ACCORDING TO BWSR POLICY.
6. ARE THERE ANY ONGOING ALLEGATIONS OF FINANCIAL IMPROPRIETY AT THE SWCD?
7. HAS THE SWCD MAINTAINED A STABLE STAFF OR HAS THE SWCD HAD A DIFFICULT TIME HOLDING ON TO EMPLOYEES; PARTICULARLY, ACCOUNTING STAFF?

UNTIL A POTENTIAL FISCAL AGENT SATISFACTORILY MEETS THESE CRITERIA, THE BWSR WILL NOT ISSUE THE JOINT POWERS BOARD THIS GRANT. THE BCs AND SARA JOHNSON, BWSR's SWCD ACCOUNTING COORDINATOR, WILL TAKE THE BWSR LEAD IN REVIEWING THE JOINT POWERS BOARD'S POTENTIAL FISCAL AGENTS SELECTION. ALSO, NO GRANT WILL BE ISSUED UNTIL ALL PARTICIPATING SWCDs HAVE SIGNED THEIR JOINT POWERS AGREEMENT.

## PROPOSED TWO YEAR FUNDING BASED ON CURRENT APPROPRIATIONS AND \*EPA GRANT

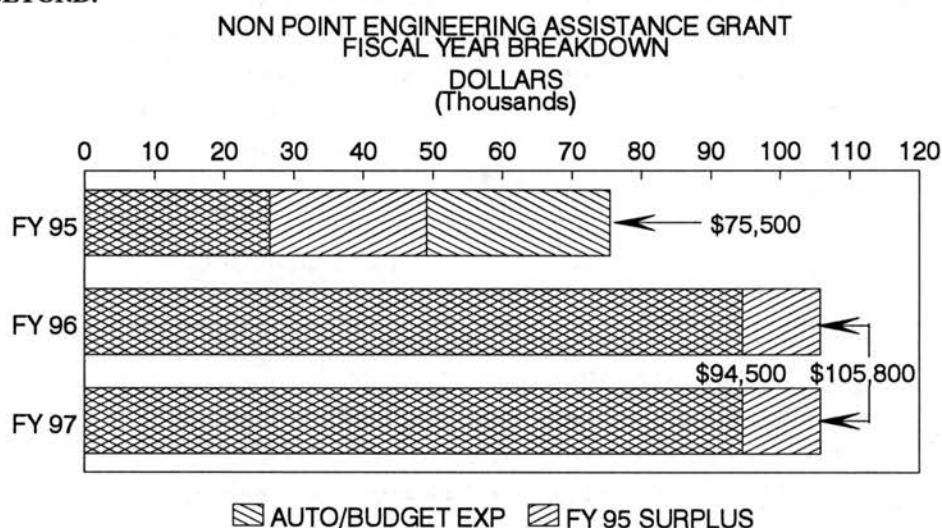
TOTAL ANNUAL ENGINEER AND TECHNICIAN BUDGET FOR EACH JOINT POWERS (BWSR ESTIMATE FROM PAGE 1) = \$105,800

### AVAILABLE NON POINT ENGINEERING ASSISTANCE GRANT FUNDS:

- \* FY 95 - \$865,000 APPROPRIATION + \$240,000 EPA GRANT = \$1,105,000  
\$1,105,000/11 JOINT POWERS = \$100,500 PER JOINT POWERS.
- \* FY 96 - \$1,040,000/11 JOINT POWERS = \$94,500 PER JOINT POWERS
- \* FY 97 - \$1,040,000/11 JOINT POWERS = \$94,500 PER JOINT POWERS

### FISCAL YEAR FUNDING BREAKDOWN

- \* FY 95 - \$25,000 WILL BE WITHHELD FROM EACH JOINT POWERS GRANT FOR COMPUTER AIDED DRAFTING AND SURVEYING EQUIPMENT. THIS IS A ONE TIME PURCHASE.  $\$100,500 - \$25,000 = \$75,500$
- \* \$75,500 GRANT WILL BE ALLOCATED TO EACH JOINT POWERS IN FEBRUARY OF 1995 FOR A 2.5 YEAR GRANT PERIOD. DURING THE REMAINDER OF FY 95, THE JOINT POWERS WILL SPEND APPROXIMATELY \$26,500 LEAVING A BALANCE OF \$49,000.  
THE REMAINING BALANCE OF \$49,000 WILL BE USED AS:
  - \$11,300 - TO BE RESERVED FOR FY 96 BUDGET EXPENSES ( $\$11,300 + \$94,500 = \$105,800$ )
  - \$11,300 - TO BE RESERVED FOR FY 97 BUDGET EXPENSES ( $\$11,300 + \$94,500 = \$105,800$ )
  - \$26,400 - TO BE RESERVED FOR AUTOMOBILE AND ELIGIBLE BUDGET EXPENSES
- \* FY 96 - \$94,500 GRANT WILL BE MADE TO EACH JOINT POWERS. (2 YEAR GRANT PERIOD) THE \$11,300 RESERVED IN THE FY 95 GRANT WILL SUPPLEMENT THIS FY 96 GRANT TO MAKE AVAILABLE THE NEEDED \$105,800.
- \* FY 97 - \$94,500 GRANT WILL BE MADE TO EACH JOINT POWERS. (2 YEAR GRANT PERIOD) THE \$11,300 RESERVED IN THE FY 95 GRANT WILL SUPPLEMENT THIS FY 97 GRANT TO MAKE AVAILABLE THE NEEDED \$105,800
- \* FY 98 AND AFTER - WITH PRESENT FUNDING LEVELS, THE \$94,500 WILL NEED TO BE AUGMENTED BY THE JOINT POWERS BOARDS FUNDS TO BRING FUNDING LEVELS TO THE \$105,800 LEVEL OR BEYOND.



BECAUSE IT IS IMPOSSIBLE FOR THE JOINT POWERS BOARDS TO ESTIMATE THEIR BUDGETS EXACTLY, THESE GRANT PERIODS WILL OVERLAP AND THE ALLOCATION OF THE FY 95 SURPLUS WILL PERMIT FLEXIBILITY AND CUSHION IN MANAGING BUDGET EXPENSES.

\* A GRANT TO SUPPLEMENT STATE APPROPRIATIONS WAS APPROVED BY EPA. THIS GRANT IS EXPECTED TO BE \$240,000.



**STATE OF MINNESOTA  
NON POINT ENGINEERING ASSISTANCE  
GRANT AGREEMENT**

Grant Amount \$ \_\_\_\_\_

Grantee: Joint Powers Board \_\_\_\_\_

Minnesota Tax I.D. No. \_\_\_\_\_

Grant Period: February 1, 1995 through June 30, 1997

THIS AGREEMENT is between the State of Minnesota, acting by and through its Board of Water and Soil Resources, hereinafter referred to as the "Board" and the Joint Powers Board stated above, hereinafter referred to as the "Grantee";

WHEREAS, the Board has made available grants to soil and water conservation districts to provide local non point engineering assistance;

WHEREAS, the \_\_\_\_\_

\_\_\_\_\_ soil and water conservation districts have entered into a Joint Powers Board Agreement, which is attached hereto as Exhibit A and incorporated by reference and requested Non Point Engineering Assistance Grant funds from the Board; and

WHEREAS, the Board is authorized to issue grants to soil and water conservation districts pursuant to Minn. Stat. § 103C.401, subd. 1 & 2;

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

**I. GRANTOR'S DUTIES.**

- a. To provide the grant amount listed above which is the maximum amount obligated by the Board under this grant agreement, so that the Grantee can hire a full-time registered professional engineer and a lead technician to provide non point engineering assistance.

**II. GRANTEE'S DUTIES.**

- a. Designate the \_\_\_\_\_ Soil and Water Conservation District as its fiscal agent; and
- b. Use this grant to employ a full-time registered professional engineer licensed to practice in the state of Minnesota officed in the \_\_\_\_\_ soil and water conservation district and a full-time lead technician officed in the \_\_\_\_\_ soil and water conservation district, in accordance with position descriptions set forth as Exhibit B attached hereto and incorporated by reference.
- c. Provide supervision of the registered professional engineer and lead technician; employee benefits including but not limited to annual and sick leave, health insurance; related administration; insurance, office supplies, postage and printing, transportation, office space, telephone, and training; and
- d. Provide a summary of the total work accomplished by or in cooperation with the engineer and technician in a format compatible with the data systems employed by the Board. The Board shall have no obligation to inspect or determine the adequacy of any work done pursuant to this agreement; and
- e. Provide to the Board an annual financial report which reflects the use of this grant provided under this agreement; and
- f. The Grantee has the sole responsibility to determine the adequacy of the work performed by the engineer and lead technician, and
- g. The engineer and lead technician will be employees solely of the Grantee and are not employees, contractors or agents of the Board.

**III. TERMS OF PAYMENT.**

- a. Payment of the Grant Amount stated above shall be made in one installment by the Board promptly after the effective date of this Agreement.
- b. Any funds of this grant remaining unspent or becoming unobligated after the end of the Grant Period shall be returned to the Board within one month of that date.

- IV. **CONDITIONS OF PAYMENT.** All services provided by GRANTEE pursuant to this grant shall be performed in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. This grant can only be used for purposes stated in this agreement and this grant does not imply future grant funds from the Board or legislative appropriations are forthcoming.
- V. **TERM OF GRANT.** This Agreement shall be effective upon such date as it is executed as to encumbrance by the Commissioner of Finance, and shall remain in effect until the end of the Grant Period, or until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.
- VI. **CANCELLATION.** This Agreement may be canceled by the BOARD or GRANTEE at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, GRANTEE shall be entitled to payment, determined on a pro rata basis, for work satisfactorily performed and the remaining Grant funds shall be promptly returned to the Board.
- VII. **ASSIGNMENT.** GRANTEE shall neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the BOARD.
- VIII. **AMENDMENTS.** Any amendments to this Agreement shall be in writing, and shall be executed by the same parties who executed the original Agreement or their successors in office.
- IX. **LIABILITY.** GRANTEE agrees to indemnify and save and hold the BOARD, its agents, and employees harmless from any and all claims or causes of action arising from the performance of this Agreement by GRANTEE or GRANTEE's contractors, agents or employees. This clause shall not be construed to bar any legal remedies GRANTEE may have for the BOARD's failure to fulfill its obligations pursuant to this Agreement. The GRANTEE shall reimburse the Board for reasonable attorney's fees if the BOARD is the prevailing party in litigation to enforce any of the terms of this Agreement.
- X. **AUDITS.** The books, records, documents, accounting procedures, and practices of the GRANTEE relevant to this Agreement shall be subject to examination by the BOARD and the State Auditor. Records shall be sufficient to reflect all costs incurred in performance of this Agreement.
- XI. **AFFIRMATIVE ACTION.** (When applicable) GRANTEE certifies that it has received a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes, Section 363.073 (1982). This section shall not apply if the Grant is for less than \$50,000 where the GRANTEE has not employed more than twenty full-time employees at any time during the previous 12 months.
- XII. **WORKERS' COMPENSATION.** In accordance with the provisions of Minnesota Statutes, Section 176.182 (1988) the GRANTEE has provided acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, Subdivision 2.
- XIII. **ANTI-TRUST.** GRANTEE hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under the antitrust laws of the United States and the anti-trust laws of the State of Minnesota.
- XIV. **CAPITAL EQUIPMENT.** The title for equipment purchased with the funding provided in this Agreement shall be taken in the name of the State of Minnesota. The equipment will remain the property of the State for its useful life. After the Grant Period, the equipment may remain in the custody of the JPB so long as it is used for the purposes of promoting and supporting the implementation of non point conservation practices. The State may take possession of the equipment at which time it ceases to be used for the intended purpose and at such time as it becomes necessary to use it for State purposes.
- XV. **LIABILITY INSURANCE.** The GRANTEE will procure liability insurance covering errors and omissions, general liability coverage, automobile insurance on personal cars while used on official business, insurance on office contents, and computer aided drafting and surveying equipment, or may require the counties in which the Grantee is located to include the GRANTEE in the counties' insurance coverage for these purposes.

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

**APPROVED:**

**JOINT POWERS BOARD**

By \_\_\_\_\_  
Title \_\_\_\_\_  
Dated \_\_\_\_\_

**COMMISSIONER OF FINANCE**

By \_\_\_\_\_  
Title \_\_\_\_\_  
Dated \_\_\_\_\_

**BOARD OF WATER AND SOIL RESOURCES**

By \_\_\_\_\_  
Title \_\_\_\_\_  
Dated \_\_\_\_\_

**APPROVED AS TO FORM AND EXECUTION BY THE ATTORNEY GENERAL**

By \_\_\_\_\_  
Assistant Attorney General  
Dated \_\_\_\_\_

Attachments: Exhibit A, Exhibit B

**IMPACT 6 JOINT POWERS BOARD**

**STATE REVOLVING LOAN FUND**

**JOINT POWERS AGREEMENT**

**THIS AGREEMENT**, made and entered into this 7th day of December, 1994 by and among the Boards of Supervisors of the following Soil and Water Conservation Districts (SWCD's) of the State of Minnesota: Kanabec, Pine, Isanti, Mille Lacs, Chisago and Aitkin, pursuant to Minnesota Statute 471.59, as follows:

**WHEREAS**, the participating SWCD districts desire to protect and improve water quality within their respective boundaries; and

**WHEREAS**, the participating SWCD districts have a desire to improve the delivery of technical assistance to further these goals; and

**WHEREAS**, the State of Minnesota has made available funding for technical assistance through the SWCD's for projects designed to correct non-point source pollution problems,

**NOW THEREFORE**, be it resolved that in consideration of the covenants and mutual agreements contained herein, and pursuant to the foregoing, the participating SWCD districts (hereinafter referred to as District) do hereby establish an IMPACT 6 Joint Powers Board (hereinafter referred to as the Board) to oversee the administration and disbursement of a technical assistance program as outlined by the State of Minnesota. The Board shall have the composition, powers and duties provided in this agreement as follows:

**I. IMPACT 6 JOINT POWERS BOARD**

**A. COMPOSITION**

The Board shall have the following composition:

1. One voting representative appointed by each participating District. The voting representative shall be a District supervisor. In the absence of the voting representative from a District, the SWCD may delegate voting responsibility to an alternate supervisor from that District.

## B. POWERS

The Board shall possess all the powers and duties assigned by law to:

1. Receive and expend funds for the purpose of providing technical and other related administrative assistance to address non-point source pollution problems. These funds may be received from the United States Government, State of Minnesota or from any other lawful source including any governmental or non-profit source.
2. Designate a host District which shall house such staff as is necessary to carry out the purpose of this agreement, subject to the availability of funds and other financial limitation imposed by law and this agreement.
3. Enter into an agreement with the agreed upon host District. The purpose of said agreement will pertain to services provided by the host District related to housing, administration, daily supervision and other activities as determined by the Board for employees hired under the terms of said agreement.
4. The Board shall meet as necessary to review applications, interview candidates and hire the employees under the provisions of this agreement.
5. Review and approve annual workplan that includes prioritizing project activities from and for individual Districts.
6. Pursue other funding sources as they become available, if they pertain to the powers and purposes of this Board.
7. Share technical assistance services with other similar Boards upon approval of each participating Board.
8. Have and exercise all powers which may be necessary to enable it to perform and carry out its duties and responsibilities to implement best management practices to improve water quality within its jurisdictional boundaries.

### **C. OPERATING PROCEDURES**

1. The Board shall elect from its membership a Chairperson and Treasurer. The secretary elected may be District staff or supervisor.
2. Each district shall have one vote in the determination of all issues. On any issue, majority vote rules.
3. The Board may adopt operating procedures, including a budget, as it deems necessary from time to time, consistent with Minnesota Statutes 471.59.
4. Times and places of regular meetings shall be fixed by the Board. Times and places of special meetings shall be fixed by the Chair of the Board. The Board shall meet at least semi-annually to review project progress.
5. All meetings of the Board shall be conducted in a manner consistent with the Minnesota Open Meeting Law, Minnesota Statutes Section 471.705.
6. The Board will establish fiscal policies on accountability and payment procedures.

### **II. PER DIEM TO MEMBERS OF THE BOARD**

Each member of the Board may be reimbursed expenses in the performance of official duties in the amount and within the limitations of each District by each individual district, or from other funding sources if they are available.

### **III. AMENDMENT**

This agreement may be amended only by the agreement of all participating district by resolution of their SWCD boards of supervisors. Notice of any proposed amendment must be provided to all participating District board of supervisors at least 45 days prior to the effective date of the proposed amendment.

### **IV. TERMINATION**

A participating District may terminate and withdraw from this Agreement only when notice to terminate is delivered to the other participating Districts not less than 45 days before the effective date of the termination and withdrawal. Any funds and property put into the Agreement will remain property of the Agreement.



Withdrawal from the Board or the Joint Powers Agreement shall not operate as a termination of the Board or Agreement by non-terminating members. The Board and this Agreement shall remain in existence until all remaining Districts mutually agree to terminate the agreement by joint resolution passed by the member Districts' respective board of supervisors.

If funding for this program terminates prematurely, this Agreement shall be null and void 45 days after the effective date of such action.

**V. DISPOSAL OF SURPLUS FUNDS OR PROPERTY UPON TERMINATION**

Upon termination of this Agreement, unexpended funds and surplus property shall be disposed of in accordance with Minnesota Statute 471.59.

**VI. EFFECTIVE DATE**

This agreement shall be in full force and effect when signed by the individual representatives of the six Districts.

**VII. FINANCIAL OBLIGATION OF PARTICIPATING SWCD DISTRICTS**

The Board shall agree on a base budget each year for the expenditure of available technical assistance funds and stay within the agreed-to-budget. All costs pertaining to this program shall be included within the base budget.

IN WITNESS WHEREOF, the six participating Districts, by resolution, have caused this Agreement to be executed by their respective representatives.

Robert D. Zueger  
Aitkin SWCD

12-7-94  
Date

Paul H. Lund  
Chisago SWCD

12-7-94  
Date

Charles Wright  
Isanti SWCD

12-7-94  
Date

Ralph Wahlstrom  
Kanabec SWCD

12-7-94  
Date

Robert H. Hargrett  
Mille Lacs SWCD

12-7-94  
Date

R. Pigeon  
Pine SWCD

12-7-94  
Date

## POSITION DESCRIPTION

### POSITION TITLE

Joint Powers Area \_\_ Engineer

### POSITION PURPOSE

The purpose of this position is to provide engineering assistance to and through the Soil and Water Conservation Districts (SWCDs) who are members of the applicable joint powers area (JPA). This technical assistance is for eligible best management practices (BMPs) that protect and conserve water and soil resources, with a priority on projects funded in whole or in part through the state revolving loan fund (SRF). The position holder serves as a project engineer providing a wide range of technical assistance and leadership for evaluation, design and construction of eligible BMPs, and for effective program management.

### REPORTABILITY

**Reports to:** The assigned supervisory staff person of the host SWCD.

**Supervises:** Up to two joint powers area engineering technicians on a regular basis and up to several SWCD technicians on a periodic basis as project engineer.

### POSITION DIMENSIONS

**Budget:** The budget for BMP implementation within the joint powers area can range up to hundreds of thousands of dollars annually and involve tens of projects. Although the position holder does not have direct responsibility for management of funds, he/she provides technical assistance for effective and efficient utilization of available funds.

**Clientele:** Primary clientele include SWCD staff, participating landowners within the applicable joint powers area, and any associated project team members. Secondary clientele include staff members of the Minnesota Board of Water and Soil Resources (BWSR), USDA Natural Resources Conservation Service (NRCS), and other local, state and federal units of government involved in the applicable programs and projects.

## **PRINCIPAL RESPONSIBILITIES, TASKS AND PERFORMANCE INDICATORS**

**1. Investigate potential project sites, evaluate project feasibility and assist with project prioritization and scheduling.**

Priority: A  
% of Time: 25  
Discretion: A

### **Tasks:**

- a) Conduct site investigations, in cooperation with appropriate project participants, to identify critical site conditions, constraints and related opportunities.
- b) Supervise or conduct data research efforts to identify pertinent available information.
- c) Supervise or conduct topographic surveys, soils investigations or other data collection necessary for feasibility studies.
- d) Conduct or supervise feasibility studies, in cooperation with other project team members, to evaluate alternative solutions, including preliminary designs and estimated costs. Document and disseminate the results of these studies appropriately.
- e) Based on feasibility study results, assist SWCD staff and landowners with the identification of an appropriate course of action, including project prioritization and scheduling.

### **Performance Indicators:**

- 1) Site investigations, data research, data collection and feasibility studies are conducted in an effective and efficient manner, in cooperation with project team members and information providers.
- 2) Feasibility studies reflect appropriate base data, design standards, technical analyses and cost estimates that are well documented and effectively conveyed to landowners, lead SWCD staff and other interested parties.
- 3) Effective technical assistance is provided for project prioritization and scheduling.

**2. Prepare or supervise the preparation of final designs and construction documents for eligible BMPs.**

Priority: A  
% of Time: 50  
Discretion: A

**Tasks:**

- a) Supervise the acquisition of supplemental base data required for final design.
- b) Utilize sound engineering principles, design standards and methods to prepare or supervise the preparation of final project designs and associated construction plans, specifications and cost estimates, in cooperation with project team members. Both manual and computer-aided drafting methods are utilized, as available and appropriate.
- c) Certify engineering reports, plans and specifications as a registered professional engineer, in accordance with applicable rules and regulations.
- d) Provide appropriate technical assistance to landowners and project leaders for acquisition of permits or other authorizations required for project implementation.
- e) Provide technical assistance to project leaders and landowners for preparation of construction contract agreements and selection of construction contractors, if necessary.

**Performance Indicators:**

- 1) Construction plans and specifications reflect appropriate base data, design standards and methods, are efficiently developed in cooperation with project team members, and are compatible with funding eligibility and availability.
- 2) Appropriate job approval authority is utilized for certification of technical reports and construction plans and specifications.
- 3) Sound and timely technical assistance is provided for the acquisition of necessary permits or other authorizations.
- 4) Construction cost estimates utilize an appropriate bid schedule and reasonably reflect actual construction costs.
- 5) Sound technical assistance is provided for construction contract agreement preparation and contractor selection, as necessary and appropriate.



**3. Provide technical assistance to landowners, SWCD technicians and SWCD managers for construction management and inspection.**

Priority: A  
% of Time: 15  
Discretion: A

**Tasks:**

- a) Provide or supervise technical assistance for any necessary modifications of designs or specifications during construction, including change orders and contract modifications, if necessary.
- b) In cooperation with project technicians, ensure that plans and specifications are revised, as appropriate, when design changes are made during construction.
- c) In cooperation with project technicians, perform or supervise construction inspection in a timely and cost effective manner to ensure that the final product meets or exceeds the requirements of the construction plans and specifications.

**Performance Indicators:**

- 1) Any necessary change orders or contract modifications are cost effective and compatible with applicable design standards, funding eligibility and funding availability.
- 2) Construction inspection is performed in a timely, technically sound and cost effective manner, commensurate with project complexity.
- 3) As-built construction drawings reflect all changes made during construction.

4. Provide technical assistance to the conservation partners (SWCDs, NRCS and BWSR) and other clientele for effective program management (planning, prioritizing, integration and delivery).

Priority: B  
% of Time: 10  
Discretion: B

**Tasks:**

- a) Help coordinate technical assistance provided by the conservation partners and private consultants.
- b) Provide effective technical leadership and supervision to help build highly capable project teams.
- c) Help build strong working relationships between the conservation partners, participating landowners, contractors and other clientele.
- d) Assist the conservation partners with the identification of training and program delivery improvement needs and solutions.
- e) Assist with the development and delivery of training programs and improved procedures to build, integrate and deliver the technical capacity of the conservation partners and private consultants.
- f) Provide information and assistance to BWSR and MDA staff responsible for administration of applicable state funding.

**Performance Indicators:**

- 1) Strong working relationships are developed and maintained with the conservation partners, participating landowners, contractors and other clientele.
- 2) Effective technical leadership and supervision is provided to help build highly capable project teams and to effectively integrate and manage technical assistance programs.
- 3) Effective assistance is provided to help identify, develop and deliver technical training and improved technical assistance procedures.
- 4) Appropriate information and assistance is provided to BWSR and MDA staff responsible for applicable program administration.

## **RELATIONSHIPS**

This position serves in a technical leadership role for the applicable JPA and has substantial responsibilities to coordinate technical assistance efforts with the member SWCDs, working within the policies and procedures of the JPA and the host SWCD. Substantial coordination is also necessary with the other conservation partners (NRCS and BWSR) to ensure effective integration and management of technical assistance delivery. Strong working relationships with program and project team members, participating landowners, contractors, regulators and other clientele are necessary for effective and efficient delivery of technical assistance. When serving as project engineer or technical consultant, the position holder may provide differing levels of technical leadership and supervision for JPA and SWCD technicians or other project team members to foster effective teamwork. The position holder supports SWCD staff with project management/leadership functions, but generally is not the primary contact person with participating landowners.

## **KNOWLEDGE, SKILLS AND ABILITIES**

The position holder must be a registered professional agricultural or civil engineer licensed to practice in the state of Minnesota. Sound knowledge of the current principles and practice of engineering are required. Desired areas of expertise include hydrology, hydraulics, surveying, agronomy, geology, soil science, soil mechanics, structures and related sciences. Knowledge and experience in the areas of erosion control, feedlot pollution abatement and other agronomic conservation practices is highly desirable. A working knowledge of contract administration for construction is also highly desirable, as is a working knowledge of the use of computer-aided design and drafting equipment and total station surveying equipment.

The position holder must be able to effectively communicate orally and in writing with landowners, design team members, construction contractors and other clientele. Written and oral reports need to have an appropriate level of detail and quality to be easily understood and trustworthy. Negotiation skills are also necessary to help resolve conflicts that may arise with regard to project designs, potential project impacts (known or perceived) and construction.

Sound leadership, supervision and coordination skills are necessary for effective team building, technical assistance and project implementation. The position holder must be capable of working with people having variable interests and expertise.

This position requires a valid driver's license, physical capability to carry equipment over rough terrain and the ability to perform outdoor work in all seasons of the year.

## **PROBLEM SOLVING**

The position holder is expected to be able to analyze technical problems and formulate effective solutions in cooperation with others involved and in accordance with appropriate design standards. The employee should know when and how to find any additional expertise needed to solve technical problems.

## **FREEDOM TO ACT**

The position holder has considerable freedom and responsibility to utilize appropriate engineering principles and methods for BMP design and project implementation. However, design methods and standards should be compatible with NRCS standards, as well as the applicable policies and procedures of the project funding source.

## **POSITION DESCRIPTION**

### **POSITION TITLE**

Joint Powers Area \_\_ Technician

### **POSITION PURPOSE**

The purpose of this position is to provide engineering technician assistance to and through the Soil and Water Conservation Districts (SWCDs) who are members of the applicable joint powers area (JPA). This technical assistance is for eligible best management practices (BMPs) that protect and conserve water and soil resources, with a priority on projects funded in whole or in part through the state revolving loan fund (SRF). The position holder serves as a lead technician providing a wide range of technical assistance for BMP implementation from initial site investigations through construction.

### **REPORTABILITY**

**Reports to:** The joint powers area engineer.

**Supervises:** Periodically supervises SWCD technicians within the joint powers area on specific projects, as assigned by the joint powers area engineer and district manager.

### **POSITION DIMENSIONS**

**Budget:** The budget for BMP implementation within the joint powers area can range up to hundreds of thousands of dollars annually and involve tens of projects. Although the position holder does not have direct responsibility for management of program funds, he/she helps provide for effective and efficient utilization of available funds.

**Clientele:** Primary clientele include SWCD staff and participating landowners within the applicable joint powers area, and any associated project team members. Secondary clientele include staff members of the Minnesota Board of Water and Soil Resources (BWSR), USDA Natural Resources Conservation Service (NRCS), and other local, state and federal units of government involved in the applicable programs and projects.

## **PRINCIPAL RESPONSIBILITIES, TASKS AND PERFORMANCE INDICATORS**

### **1. Help investigate potential project sites and evaluate project feasibility.**

Priority: A  
% of Time: 25  
Discretion: A

#### **Tasks:**

- a) Conduct site investigations and discussions with landowners, in cooperation with appropriate project participants, to identify critical site conditions, constraints and related opportunities.
- b) Conduct or coordinate data research efforts to identify pertinent available information.
- c) Lead or assist with topographic surveys, soils investigations and other data collection necessary for feasibility studies.
- d) Accurately reduce survey data and prepare topographic maps or other base data using computer-aided or manual methods.
- e) Help conduct feasibility studies for engineering practices, or lead such studies for non-engineering practices, using appropriate design standards. These studies should include preliminary designs, estimated costs and appropriate documentation.
- f) Based on feasibility study results, assist the JPA engineer, lead SWCD staff and landowners with the identification of an appropriate course of action.

#### **Performance Indicators:**

- 1) Site investigations, data research, surveys and other data collection efforts are conducted in an effective and efficient manner, in cooperation with project team members and information providers.
- 2) High quality base maps and other drafting products are produced.
- 3) Feasibility studies reflect appropriate base data, design standards, alternatives analysis and cost estimates that are well documented and effectively conveyed to landowners, lead SWCD staff and other interested parties.



**2. Assist with the preparation of final designs and construction documents for feasible BMPs.**

Priority: A  
% of Time: 50  
Discretion: B

**Tasks:**

- a) Assist with or lead the acquisition of supplemental base data required for final design.
- b) Utilize appropriate design standards and methods to prepare or assist in the preparation of final project designs and associated construction plans, specifications and cost estimates, in cooperation with project team members. Both manual and computer-aided drafting methods are utilized, as available and appropriate.
- c) Obtain and utilize job approval authority through the Natural Resources Conservation Service (NRCS), state and local technical assistance systems for non-engineering practices.
- d) Provide appropriate technical assistance to landowners, SWCD staff and JPA engineer for acquisition of permits or other authorizations required for project implementation.
- e) Provide technical assistance to SWCD staff, landowners and JPA engineer for preparation of construction contract agreements and selection of construction contractors, if necessary.

**Performance Indicators:**

- 1) Construction plans and specifications reflect appropriate base data, design standards and methods, are efficiently developed in cooperation with project team members, and are compatible with funding eligibility and availability.
- 2) Appropriate job approval authority is sought and utilized for certification of construction plans and specifications.
- 3) Sound and timely technical assistance is provided for the acquisition of necessary permits or other authorizations.
- 4) Construction cost estimates reasonably reflect actual construction costs.
- 5) Sound technical assistance is provided for construction contract agreement preparation and contractor selection, as appropriate.

3. Provide technical assistance to SWCD staff, landowners and JPA engineer for construction management and inspection.

Priority: A  
% of Time: 15  
Discretion: B

**Tasks:**

- a) Provide technical assistance for any necessary modifications of designs or specifications during construction, including change orders and contract modifications, if necessary.
- b) Revise plans and specifications, as appropriate, when design changes are made during construction.
- c) Perform or assist with construction inspection in a timely and cost effective manner to ensure that the final product meets or exceeds the requirements of the construction plans and specifications.

**Performance Indicators:**

- 1) Any necessary change orders or contract modifications are effectively implemented and compatible with applicable design standards, funding eligibility and funding availability.
- 2) Construction inspection is performed in a timely, technically sound and cost effective manner, commensurate with project complexity.
- 3) SWCD staff and the JPA engineer are involved appropriately.
- 4) As-built construction drawings reflect all changes made during construction.

**4. Assist the conservation partners (SWCDs, NRCS and BWSR) with program management (planning, prioritizing, integration and delivery).**

Priority: B  
% of Time: 10  
Discretion: B

**Tasks:**

- a) Help coordinate technical assistance provided by the conservation partners and private consultants.
- b) Help build strong working relationships between the conservation partners, participating landowners, contractors and other clientele.
- c) Assist the conservation partners with the identification of training and program delivery improvement needs and solutions.
- d) Assist with the development and delivery of training programs and improved procedures to build, integrate and deliver the technical capacity of the conservation partners and private consultants.
- e) Provide information and assistance to BWSR and MDA staff responsible for administration of applicable state funding.

**Performance Indicators:**

- 1) Strong working relationships are developed and maintained with the JPA engineer, the conservation partners, participating landowners, contractors and other clientele.
- 2) Effective assistance is provided to help build highly capable project teams and to effectively integrate and manage technical assistance programs.
- 3) Effective assistance is provided to help identify, develop and deliver technical training and improved technical assistance procedures.
- 4) Appropriate information and assistance is provided to BWSR and MDA staff responsible for applicable program administration.

## **RELATIONSHIPS**

This position serves as a lead technician for the applicable JPA and, together with the JPA engineer, has substantial responsibilities to coordinate technical assistance delivery with the member SWCDs, working within the policies and procedures of the JPA and the host SWCD. Strong working relationships with program and project team members, participating landowners, contractors, regulators, the NRCS and BWSR are necessary for effective and efficient delivery of technical assistance. As the lead technician for the JPA, the position holder may provide differing levels of technical assistance to SWCD staff, landowners or other clientele depending on the need. The position holder supports SWCD staff and the JPA engineer with project management/leadership functions, but generally is not the primary contact person with participating landowners.

## **KNOWLEDGE, SKILLS AND ABILITIES**

The position holder must be able to effectively operate levels, transits, theodolites and other surveying equipment; to reduce survey notes; and to prepare topographic maps, cross sections and profiles from survey data. The ability to effectively operate total station surveying equipment is highly desirable. The position holder must also be able to effectively conduct para-professional engineering computations and design work for soil and water conservation practices; to prepare or assist in the preparation of construction plans, specifications and cost estimates; and to provide construction inspection. The ability to effectively utilize computer-aided design and drafting equipment is highly desirable, as is a working knowledge of contract administration for construction.

The position holder must be able to effectively communicate orally and in writing with landowners, design team members, construction contractors and other clientele. Written and oral reports need to have an appropriate level of detail and quality to be easily understood and trustworthy. Negotiation skills are also necessary to help resolve conflicts that may arise with regard to project designs, potential project impacts (known or perceived) and construction. The position holder must be capable of working in a support role, or as a team leader, with people having variable interests and expertise.

This position requires a valid driver's license, physical capability to carry equipment over rough terrain and the ability to perform outdoor work in all seasons of the year.

## **PROBLEM SOLVING**

The position holder is expected to be able to analyze technical problems and formulate effective solutions at a para-professional level, in cooperation with others involved and in accordance with applicable policies and procedures. The employee should know when and how to find any additional expertise needed to solve technical problems.

## **FREEDOM TO ACT**

The position holder's freedom to act is limited to that delegated by his/her supervisor, and by the applicable policies and procedures of the employer and the local, state or federal programs involved.

**FY 95 STATE COST SHARE PROGRAM ROLL-OVER REQUESTS**  
**AVAILABLE FUNDS = \$204,900**

THE GRANTS TEAM HAS REVIEWED THE FOLLOWING COST SHARE ROLL-OVER REQUESTS. THE SHADED PROJECTS ARE RECOMMENDED FOR FUNDING. CRITERIA AND FUNDING STRATEGY EMPLOYED IN THIS RECOMMENDATION ARE:

- \* AMOUNT OF REGULAR FY 95 ALLOCATION CURRENTLY UNENCUMBERED
- \* ALLOCATE TO AS MANY SWCDs AS POSSIBLE
- \* QUALITY OF THE PROPOSED PROJECT APPLICATION
- \* ATTEMPT TO FUND EACH SWCDs #1 PRIORITY REQUEST

| SWCD          |                                                                                                                        | AMOUNT<br>REQUESTED | FUNDING<br>RECOMMENDATION |
|---------------|------------------------------------------------------------------------------------------------------------------------|---------------------|---------------------------|
| CLEARWATER    | 1. Install 54 side inlet structures and 50 rip-rap structures at eroding sites along drainage ditch sideslopes.        | \$38,500            |                           |
| LAC QUI PARLE | 1. Construct 2 Water & Sediment Control Basins near the Minnesota River for Luther Erickson.                           | \$3,300             | \$3,300                   |
|               | 2. Construct a Water & Sediment Control Basin to control a gully on the Dwight Mork farm.                              | \$1,875             | \$1,875                   |
|               | 3. Construct 3 Water & Sediment Control Basins near the N. Fork of the Yellow Bank River for David Radermacher.        | \$5,000             |                           |
|               | 4. Construct 2 Water & Sediment Control Basins, a terrace, and a Grassed Waterway on the Steve Stamp farm.             | \$6,075             |                           |
|               | 5. Construct a Water & Sediment Control Basin and a Diversion on the Lee Ulstad farm.                                  | \$5,400             |                           |
| ROOT RIVER    | 1. Construct a Grade Stabilization Control Structure on the Janice Stalsberg farm; partial funding previously secured. | \$349               | \$349                     |
|               | 2. Construct a Water & Sediment Control Basin to control two gullies on the Lavaine Diersen farm.                      | \$1,700             | \$1,700                   |
|               | 3. Construct a Grassed Waterway for the City of Caledonia to control a long and shallow gully.                         | \$1,500             | \$1,500                   |
|               | 4. Construct a Water & Sediment Control Basin on the Howard Schultz farm to control a rapid forming gully.             | \$1,650             | \$1,650                   |
|               | 5. Construct a Grade Stabilization Control Structure on the Gary Wiemerslage farm to control 3 short and deep gullies. | \$3,000             |                           |
|               | 6. Construct a Grade Stabilization Control Structure to stop a large slowly advancing gully.                           | \$3,000             |                           |
|               | 7. Construct a Grade Stabilization Control Structure on the Ruth Klug farm to stop gullying and protect township road. | \$3,000             |                           |
|               | 8. Construct Grade Stabilization Control Structure on the Gerald Skifton farm to stop gullying.                        | \$3,225             |                           |
| WATONWAN      | 1. Install riprap and woody vegetation to control bank erosion on the Watonwan River in the City of Madelia.           | \$2,000             | \$2,000                   |
| NOBLES        | 1. Construct 5,300 foot Grassed Waterway on the Rick Knips farm.                                                       | \$9,517             | \$9,517                   |
|               | 2. Repair 2,900 foot Grassed Waterway on the M. Reisdorfer farm.                                                       | \$4,350             |                           |
|               | 3. Construct 1,500 foot Grassed Waterway on the Bob Lebrun farm.                                                       | \$2,250             |                           |
|               | 4. Repair 2,200 foot Grassed Waterway on the Gene DeBeer farm.                                                         | \$2,250             |                           |



|         |                                                                                                                       |          |          |
|---------|-----------------------------------------------------------------------------------------------------------------------|----------|----------|
| RICE    | 5. Repair 1,800 foot Grassed Waterway on the Don DeKam farm.                                                          | \$2,250  |          |
|         | 6. Repair 1,900 foot Grassed Waterway on the Dale Weineke farm.                                                       | \$2,250  |          |
|         | 7. Construct 1,450 foot Terrace on the Larry Hyink farm.                                                              | \$2,347  |          |
|         | 8. Construct Water & Sediment Control Basin on the Tom Wolf farm.                                                     | \$1,090  |          |
|         | 9. Construct 1,800 foot Terrace on the Dave Schutte farm.                                                             | \$4,875  |          |
|         | 10. Construct 3,000 foot Terrace on the Jim Langseth farm.                                                            | \$6,750  |          |
|         | 1. Construct 9 Water & Sediment Control Basins to stop gully erosion on the                                           | \$10,500 |          |
|         | 2. Construct 3 Water & Sediment Control Basins to stop gully erosion on the                                           | \$3,975  |          |
|         | 3. Construct 5 Water & Sediment Control Basins to stop gully erosion on the                                           | \$9,000  |          |
|         | 4. Construct 11 Water & Sediment Control Basins to stop gully erosion on the                                          | \$15,000 |          |
| WILKIN  | 5. Construct 10 Water & Sediment Control Basins to stop gully erosion on the                                          | \$15,000 |          |
|         | 6. Construct 3 Water & Sediment Control Basins to stop gully erosion on the                                           | \$3,225  |          |
|         | 7. Construct 4 Water & Sediment control Basins to stop gully erosion on the                                           | \$6,750  |          |
|         | 8. Construct Grassed Waterway to control gully erosion on the                                                         | \$3,375  |          |
|         | 9. Construct 2,900 foot Grassed Waterway to control gully erosion on the                                              | \$5,250  |          |
|         | 10. Construct 2,100 foot Grassed Waterway to control gully erosion on the                                             | \$3,000  |          |
|         | 1. Rip-rap 110 feet of riverbank of Mark Devine's residence threatened by undercutting from Red River of the North.   | \$15,640 |          |
|         | 2. Rip-rap eroding bank of Otter Tail River, threatening Tim Christopher farmstead and causing river sedimentation.   | \$17,600 |          |
|         | 3. Rip-rap 1,000 feet of Otter Tail River bank to control erosion and slumping on the Kerm Anderson farm.             | \$11,000 | \$11,000 |
| DAKOTA  | 1. Construct Grassed Waterways, 2 Water & Sediment Control Basins, and 2 Diversions on the Jim Benson farm.           | \$10,068 | \$10,068 |
| MARTIN  | 1. Install Sylvania Park shoreline stabilization project for the City of Fairmont.                                    | \$10,000 | \$10,000 |
|         | 2. Construct Grade Stabilization Control structure on the Clair Schmidt, Jr. farm.                                    | \$5,500  |          |
| KANABEC | 1. Construct an Animal Waste system for Gary Narveson, who has a 60 cow dairy herd.                                   | \$10,000 | \$10,000 |
|         | 2. Construct an Animal Waste system for Jim Schumacher who has a dairy feedlot on the banks of the Groundhouse River. | \$10,000 |          |
|         | 3. Construct an Animal Waste System for Robyn Perrson who has a swine operation.                                      | \$10,000 |          |

|            |                                                                                                                  |          |          |
|------------|------------------------------------------------------------------------------------------------------------------|----------|----------|
| COTTONWOOD | 1. Construct an Animal Waste Control System for Kelly Graff who has a hog operation on the banks of Mound Creek. | \$15,041 | \$15,041 |
|            | 2. Construct an Animal Waste Control System for Steven Gode who operates a small cattle and hog facility.        | \$13,965 |          |
|            | 3. Construct a 5,700 foot Grassed Waterway on the David Nickel farm.                                             | \$12,150 |          |
|            | 4. Construct a Terrace system on the Steven Gode farm to control gully erosion near Mound Creek.                 | \$8,062  |          |
|            | 5. Reconstruct a Grassed Waterway on the Wilfred Nickel farm near Mound Creek.                                   | \$5,250  |          |
|            | 6. Reconstruct Grassed Waterway on the Hoehne Heirs farm near Mound Creek.                                       | \$4,275  |          |
|            | 7. Reconstruct Grassed Waterway on the Hoehne Heirs farm near Mound Creek.                                       | \$1,875  |          |
|            | 8. Construct a 4,700 foot Grassed Waterway on the David Nickel farm.                                             | \$11,126 |          |
| ROCK       | 1. Construct a Diversion and a stacking slab for an animal waste control system on the Harvey Rozenboom farm.    | \$754    | \$754    |
|            | 2. Construct a Grassed Waterway to control erosion on the Greg Gabrielson farm.                                  | \$3,700  | \$3,700  |
|            | 3. Construct a Grassed Waterway on the Floyd Kraetch farm to control erosion.                                    | \$1,899  | \$1,899  |
|            | 4. Reconstruct a Grassed Waterway on the Russel Wenzel farm to control gully.                                    | \$4,600  |          |
|            | 5. Reconstruct a Grassed Waterway on the Dave DeBoer farm to stop gully.                                         | \$4,600  |          |
|            | 6. Reconstruct a Grassed Waterway on the John Ceonberg farm to stop cropland erosion.                            | \$7,350  |          |
|            | 7. Reconstruct a Grassed Waterway on the Conrad Hulstein farm to stop cropland erosion.                          | \$5,900  |          |
|            | 8. Construct a Grassed Waterway on the Ciff Schilling farm to stop gully erosion.                                | \$2,905  |          |
|            | 9. Construct Terrace system on eroding cropland for the Hamman Brothers farm.                                    | \$3,500  |          |
|            | 10. Construct 6 Grassed Waterways on the Jeff Thorson farm to stop gully erosion.                                | \$5,500  |          |
| PIPESTONE  | 1. Construct a Water & Sediment Control Basin to control gully erosion near Poplar Creek.                        | \$3,380  | \$3,380  |
| CLAY       | 1. Reconstruct County Road #71 sideslope to halt sloughing into nearby County Ditch #58.                         | \$18,225 |          |
|            | 2. Repair road ditch along CSAH #26 to prevent future road damage during runoff events.                          | \$6,050  |          |
| RENVILLE   | 1. Construct Terrace system to stop severe gully threatening county ditch.                                       | \$2,500  | \$2,500  |
|            | 2. Construct Terrace system to stop severe gully threatening county ditch.                                       | \$2,300  | \$2,300  |
|            | 3. Construct Water & Sediment Control Basins to stop severe gully near Sacred Heart Creek.                       | \$1,500  |          |
| TRAVERSE   | 1. Install Field Windbreaks to control severe wind erosion on cropland.                                          | \$25,125 | \$6,299  |

|                 |                                                                                                                       |          |          |
|-----------------|-----------------------------------------------------------------------------------------------------------------------|----------|----------|
| HENNEPIN        | 1. Install rip-rap to protect eroding banks of Crow River and CSAH 116.                                               | \$20,000 |          |
| YELLOW MEDICINE | 1. Construct Water & Sediment Control Basins to stop gully erosion and protect downstream wetlands.                   | \$9,428  | \$9,428  |
|                 | 2. Construct an Animal Waste Control System on the Dwayne Erickson farm near the Yellow Medicine River.               | \$15,000 |          |
|                 | 3. Construct a Terrace system on the Wesley Knutson farm to stop severe gully erosion.                                | \$10,029 |          |
| CARLTON         | 1. Install lakeshore stabilization control measures on 800 foot slough on Hanging Horn Lake.                          | \$78,400 |          |
| GOODHUE         | 1. Construct Grade Stabilization Control Structure to stop active gully near Pine Island Creek.                       | \$8,250  | \$8,250  |
|                 | 2. Construct a Grassed Waterway to stop gully on cropland.                                                            | \$900    |          |
|                 | 3. Construct a Water & Sediment Control Basin to stabilize a gully.                                                   | \$2,100  |          |
| PENNINGTON      | 1. Construct stormwater control systems to reduce erosion and contributing sedimentation in road ditches.             | \$12,000 | \$6,000  |
|                 | 2. Correct erosion surrounding bridge crossing Thief River on County Road 77.                                         | \$11,250 |          |
|                 | 3. Repair failed road which contributes to local flooding and sedimentation to Red Lake River.                        | \$6,100  |          |
| STEVENS         | 1. Construct a Water & Sediment Control Basin to repair a large gully on the Spencer Howey property.                  | \$6,000  | \$6,000  |
| KITTSO          | 1. Install Field Windbreaks on farms highly susceptible to wind erosion.                                              | \$10,000 | \$6,000  |
| MORRISON        | 1. Construct an Animal Waste Control System on the Richard Trutwin farm to control pollution entering the Swan River. | \$36,914 |          |
| LAKE            | 1. Repair and Rip-rap 250 feet of eroding bank of the Beaver River for the City of Silver Bay.                        | \$4,300  | \$4,300  |
| COOK            | 1. Construct a Rip-rap revetment to stabilize eroding Lake Superior shoreline and Mary LaMois residence.              | \$13,705 | \$13,705 |
|                 | 2. Construct a 130 foot retaining wall to stabilize eroding Lake Superior shoreline on Louise Hancock residence.      | \$14,354 |          |
|                 | 3. Construct a Rip-rap revetment to stabilize eroding Lake Superior shoreline on Brad fuller residence.               | \$10,004 |          |
| FILLMORE        | 1. Construct Terraces and Diversions on farms cited for non-compliance with ordinance.                                | \$20,000 |          |
|                 | 2. Construct Grassed Waterways on farms cited for non-compliance with ordinance.                                      | \$20,000 |          |
| MOWER           | 1. Install 2 side inlets on Judicial Ditch #6 to control sideslope erosion.                                           | \$8,000  |          |
| AITKIN          | 1. Install shoreland protection projects to stabilize banks in McGregor and Clark Townships.                          | \$2,500  | \$2,500  |
|                 | 2. Install shoreland protection project to stabilize banks on John Solien property.                                   | \$2,000  |          |
|                 | 3. Install shoreland protection project to stabilize banks on Vern Schroeder property.                                | \$1,600  |          |
|                 | 4. Install shoreland protection project to stabilize banks on George VonDrashek property.                             | \$1,000  |          |

|               |                                                                                                         |                    |                  |
|---------------|---------------------------------------------------------------------------------------------------------|--------------------|------------------|
|               | 5. Install shoreland protection project to stabilize banks on Richard Sherry property.                  | \$1,600            |                  |
|               | 6. Install shoreland protection project to stabilize banks on Victor Anderson property.                 | \$1,600            |                  |
|               | 7. Install rip-rap to stabilize Lake Mille Lacs shoreline for the Mille Lacs Experimental Project.      | \$2,500            |                  |
| SIBLEY        | 1. Construct Terrace to improve water quality and control erosion.                                      | \$3,750            | \$3,750          |
|               | 2. Construct Terrace to improve water quality and control erosion.                                      | \$2,625            |                  |
| SCOTT         | 1. Construct Terraces on cropland to control sheet and rill erosion and protect DNR water.              | \$14,135           | \$14,135         |
|               | 2. Construct Terraces on cropland to control sheet and rill erosion and protect Roberts Creek.          | \$15,000           |                  |
|               | 3. Repair Water & Sediment control Basins which reduce sedimentation into Sand Creek.                   | \$7,000            |                  |
|               | 4. Construct Grade Stabilization Control Structure to stop gully and sediment entering Minnesota River. | \$15,000           |                  |
|               | 5. Construct Grassed Waterway on cropland to stop gully erosion and sediment entering Minnesota River.  | \$1,500            |                  |
|               | 6. Install 5 Animal Waste Control Systems to reduce pollution.                                          | \$50,000           |                  |
| MURRAY        | 1. Install Rip-rap to stabilize bank of Beaver Creek to protect adjacent Slayton city cemetery.         | \$20,000           | \$20,000         |
| CASS          | 1. Install Rip-rap to stabilize Leech Lake lakeshore on 6 adjacent properties.                          | \$12,000           | \$12,000         |
| KOOCHICHING   | 1. Construct Grade Stabilization Control Structure to stop gully and sedimentation of Big Fork River.   | \$22,500           |                  |
| BROWN         | 1. Install Animal Waste Control System to improve water quality of Little Cottonwood River.             | \$30,000           |                  |
|               | 2. Construct a Grade Stabilization Control Structure to stop gully in ravines at Flandrau State Park.   | \$37,500           |                  |
| ANOKA         | 1. Stabilize bank of Rice Creek on 4 adjacent properties to stop erosion and sedimentation.             | \$30,000           |                  |
|               | 2. Install Rip-rap on 2,800 foot of Rice Creek bank to stabilize and reduce sedimentation.              | \$30,000           |                  |
| late<br>LYON  |                                                                                                         | \$110,000          |                  |
| <b>TOTALS</b> |                                                                                                         | <b>\$1,194,462</b> | <b>\$204,900</b> |

**G-TEAM SPENDING PLAN RECOMMENDATION FOR  
FY 94-95 GENERAL SERVICES GRANT REMAINING BALANCE**

|          |                                                                                                                                                                                                                                                 |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| \$1,000  | Disbursement for purchase of "Conservation Trees" brochure for distribution to all SWCDs                                                                                                                                                        |
| \$10,000 | To Wright and Benton SWCDs for cost-sharing on nontraditional pilot conservation demonstration practices, such as,<br>manure application methods<br>drainage ditch buffer strips<br>fencing for livestock exclusion<br>low-cost feedlot options |
| \$7,000  | To Goodhue, Big Stone, Faribault, Norman, Pope, and Pine SWCDs for environmental education fairs and Envirothon                                                                                                                                 |
| \$5,000  | To a Hennepin SWCD to conduct a bio-engineering workshop                                                                                                                                                                                        |
| \$1,000  | To Hennepin SWCD for printing statewide ground water management techniques poster.                                                                                                                                                              |
| \$4,000  | To Dakota SWCD for Envirothon and environmental education efforts                                                                                                                                                                               |
| \$28,000 | TOTAL                                                                                                                                                                                                                                           |



**WATERSHED DISTRICT**

**ACT**

**AMENDMENTS**

**PER-DIEM  
(PAGE 22)**

**ALLOWS DISTRICTS TO COMPENSATE  
MANAGERS UP TO \$100 PER DAY, WHEN  
MANAGER SERVICE EXCEEDS 5 HOURS.**

**ADVISORY COMMITTEE  
(PAGE 24)**

**1) ESTABLISHES SPECIFIC DUTIES FOR THE  
ADVISORY COMMITTEE**

**\*\* ELECT A CHAIRPERSON**

**\*\* ELECT A RECORDER**

**\*\* ESTABLISH A MEETING SCHEDULE (AT  
LEAST ANNUALLY)**

**\*\* REVIEW AND COMMENT ON ACTIVITIES  
OF THE DISTRICT INCLUDING REPORTS,  
MINUTES, AND PROPOSED PROJECTS**

**\*\* REPORT TO THE MANAGERS**

**2) MEMBERS - PROVIDES GREATER  
FLEXIBILITY IN THE APPOINTMENT OF  
MEMBERS.**

**\*\* SWCD'S, COUNTIES, SPORTING AND  
FARM ORGANIZATIONS**

**RULES  
(PAGE 28)**

**PRIOR TO ADOPTION THE PROPOSED RULE OR AMENDMENT MUST BE SUBMITTED TO BWSR FOR REVIEW AND COMMENT. BWSR HAS 45 DAYS TO RESPOND.**

**APPEALS  
(PAGES 36 & 39)**

**PROJECTS INITIATED AND FUNDED UNDER 103B IN THE METRO AREA ARE NOT REVIEWABLE UNDER THIS SECTION**

**ELIMINATES THE APPEAL OF PERMITS AND ORDERS TO BWSR**

**ALLOWS REQUESTS TO BWSR TO INFORMALLY RESOLVE DISPUTES PRIOR TO INITIATING AN APPEAL**

**FINANCING  
(PAGES 43, 56, AND 66)**

**DRAINAGE PROJECTS ARE NOT AFFECTED**

**PROJECTS NOT INVOLVING DRAINAGE**

**103D.601 PROJECT INITIATED BY RESOLUTION  
OF MANAGERS**

**103D.605 PROJECTS IN A PLAN**

**103D.705 PROJECTS INITIATED BY PETITION**



## **AMENDMENTS ADD**

- \*\* AD-VALOREM TAX AUTHORITY TO FINANCE PROJECTS IDENTIFIED IN A PLAN AND DETERMINED TO BE OF COMMON BENEFIT TO THE DISTRICT**
- \*\* CREATION OF A COMMON BENEFIT FUND TO PAY FOR PROJECTS INITIATED UNDER 103D.605**
- \*\* ASSESSMENT BY CONTRIBUTION, ALLOWS THE COSTS OF PROJECTS TO BE ASSESSES BY MEANS OTHER THAN BENEFIT INITIATED UNDER 103D.601, .605 SUBD 1. (2), AND .705**
- \*\* ALLOWS FOR THE ESTABLISHMENT OF SPECIAL TAXING DISTRICTS WITHIN THE DISTRICT FOR THE PURPOSE OF PAYING FOR COSTS ASSESSED OR TAXED UNDER 103D.601, .605 SUBD.1. (2), AND .705**

**BOARD OF WATER & SOIL RESOURCES  
SUMMARY OF PROPOSED CHANGES  
TO  
METROPOLITAN SURFACE WATER MANAGEMENT ACT  
&  
METROPOLITAN GROUNDWATER PLANNING**

**January 11, 1995**

**METROPOLITAN SURFACE WATER MANAGEMENT ACT (M.S. 103B.201)**

**103B.231 Watershed Plans**

Effective Date of Plans - Removes dates by which organizations had to prepare plans. This has the net effect of having plans effective through 1995 or 2000. Currently 39 watershed management organizations are scheduled to revise plans in 1995.

Priority Review Schedule - Adds a new provision to the law which allows BWSR in consultation with state agencies and the metropolitan council to establish a priority review schedule. Plan revisions and plan review will be guided by the priority schedule. Existing plans would remain in full force and effect until the BWSR notifies the watershed management organization of its review date schedule.

Local and Agency Review of Plans - Modifies the existing review procedure by adding preliminary agency review at the same time as local review, and adds a requirement for a public hearing on the plan and proposed changes before the plan is submitted for the final state agency review.

Agency Sanctions - Authorizes state agencies to withhold state funding for water programs and projects and delegation of state water resource regulatory authority within the watershed from local government units. Allows BWSR to request agencies to withhold portions of state aid funding used for the installation of curb and gutter and other drainage facilities of public transportation projects within the watershed.

### **103B.241 Levies/Financing**

Watershed Plans and Projects - Eliminate confusion over metro watershed districts ability to utilize the levy authority provided by this section for plan implementation as well as plan development. The current wording of "Notwithstanding any provision to the contrary in chapter 103D, a watershed district may levy a tax sufficient to pay the increased costs to the district of implementing sections 103B.231 and 103B.235" continues to be debated on whether it means plan development costs only or to implement the plan, including projects and programs identified in the plan.

Emergency Projects - Creates a procedure in statute to order emergency projects similar to that found in chapter 103D, and provides levy authority to pay the costs associated with the emergency work performed.

### **103B.245 &.247 Taxing Districts**

Special Tax Districts - Changes are designed to differentiate between creation of watershed management tax districts between local units of government and watershed management organizations. Although the current language includes watershed management organizations the procedure and authorities are applicable only to local units of government, such as adoption of the tax district by ordinance, and issuance of obligations (bonds) to pay the cost incurred in making the improvement. The proposed language establishes a separate section on creation of watershed management tax districts by watershed management organizations.

Assessment Based on Contribution - Adds the authority for both watershed management organizations and local government units to apportion costs of projects based on the principal of contribution. The current language only allows for costs of projects and capital improvements to be apportioned based on the amount of benefit a property receives from the project or improvement. Apportionment of costs based on contribution is a fairer method than benefit in that it recognizes the amounts or proportions of water, nutrients or pollutants that are generated from a particular parcel, and recognizes the differences between the types of land uses and how they proportionally contribute both runoff and associated pollutants. This concept is extremely important to the success of water quality improvement projects in the region.

## METROPOLITAN GROUNDWATER MANAGEMENT (M.S. 103B.255)

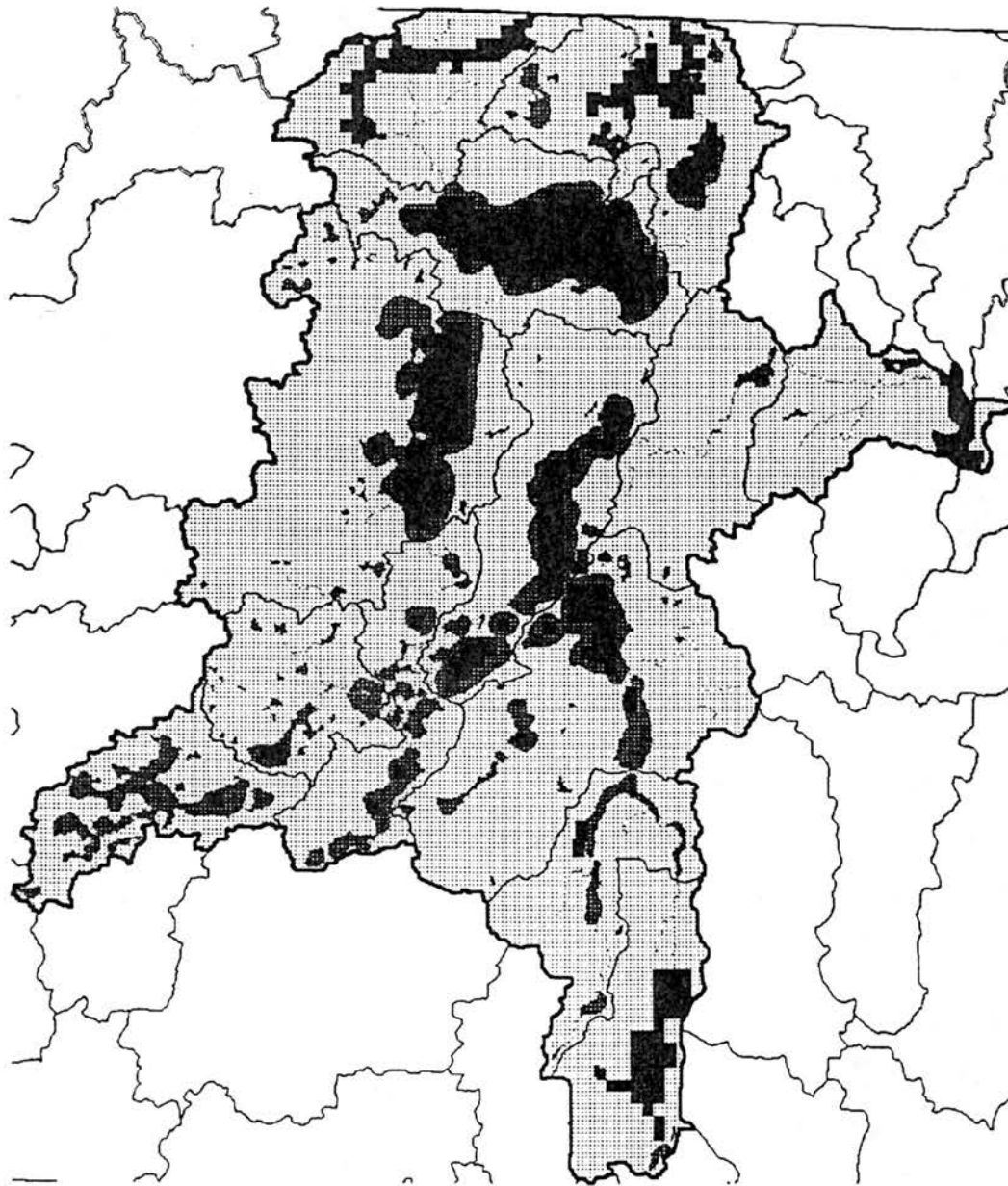
### 103B.255 Groundwater Plans

Local and Agency Review of Plans - Adopts a review process consistent with the proposed change to metropolitan surface water management Act.

County Review - Provides authority to countties to review and comment on local municipal plans.

H:SUMLWC.103

ASSESSMENT AREA  
BASED ON BENEFIT



- BENEFITTED PROPERTY
- PROPERTY NOT BENEFITTED
- WATER

5.00 mi 10 mi

WATER & SOIL RESOURCES  
Water Street, Suite 200  
55107

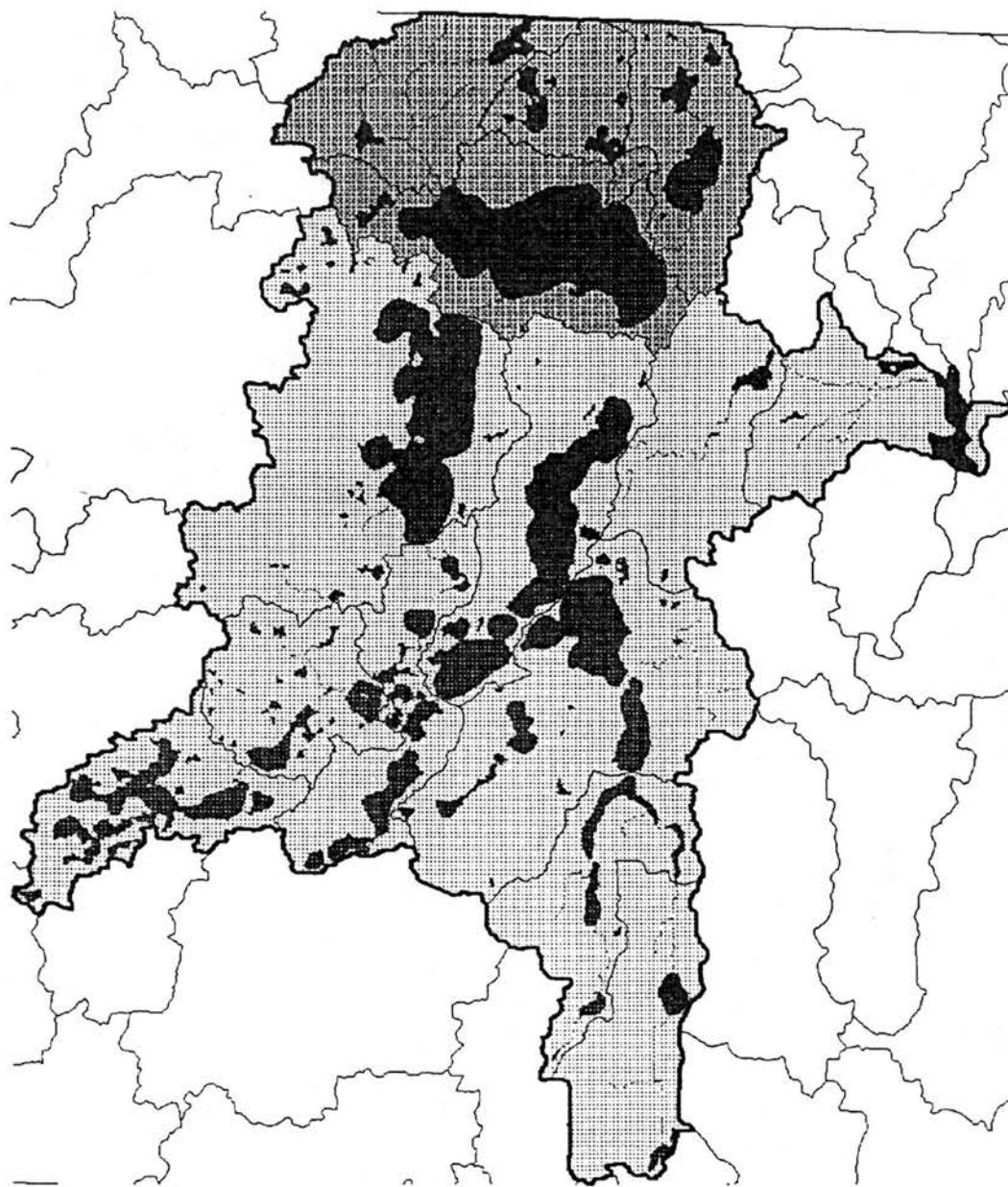


DESCRIPTION: USGS MINOR WATERSHEDS





# ASSESSMENT BY CONTRIBUTION



 NOT CONTRIBUTING  
 CONTRIBUTING

5.00 mi

10 mi

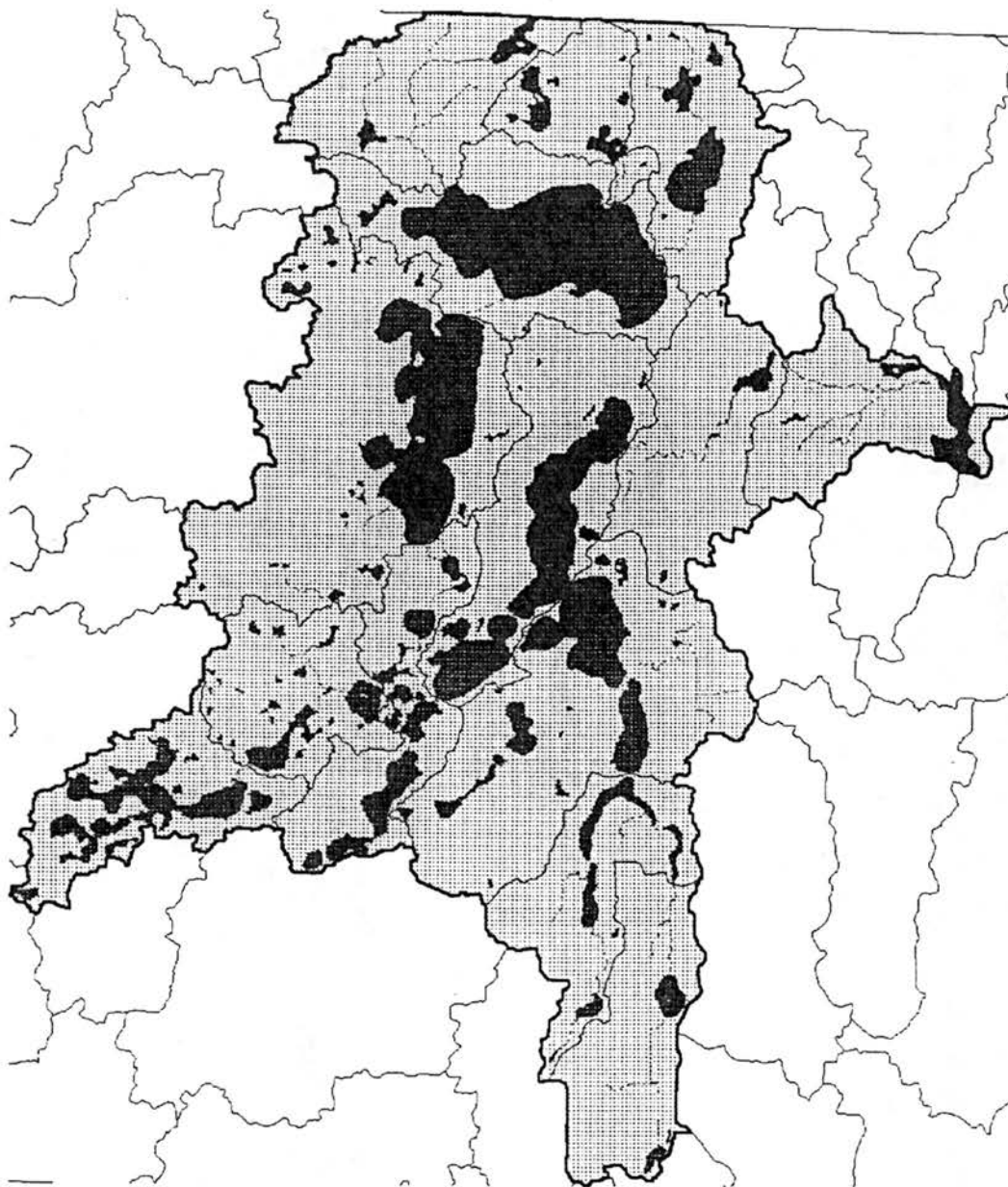
MINNESOTA BOARD OF WATER & SOIL RESOURCES  
 100 Water Street, Suite 200  
 St. Paul, MN 55107



DESCRIPTION: USGS MINOR WATERSHEDS



AD VALOREM



ASSESSMENT AD VALOREM

0 5.00 mi 10 mi

OF WATER & SOIL RESOURCES  
st Water Street, Suite 200  
MN 55107

DESCRIPTION-USGS MINOR WATERSHEDS



### INFORMATIONAL ITEMS IN YOUR PACKET

- 1) Wetland Heritage Advisory Committee WCA Recommendations
- 2) Staff Considerations for WCA Changes
- 3) Status Report on Appeals
- 4) Crow Wing SWCD Request for Nomination District Boundary Change
- 5) BWSR Biennial Budget 1996-97
- 6) BWSR Biennial Report to the Minnesota Legislature
- 7) Legislative Water Commission - Possible 1995 Amendments to the Groundwater Protection Act
- 8) Memo from Ron Harnack to Governor Carlson regarding the Quarterly Report on Audits 94-48; 94-56
- 9) "Official Communication" - Governor Carlson Releases Report Showing Distant Budget Gaps
- 10) Copy of a letter from Jesse Preiner, Minnesota Landowners Rights Association, regarding impact of Wetland Conservation Act
- 11) Map of Restaurants

# *Wetland Heritage Advisory Committee*

January 17, 1995

## **Recommended WCA Statute Changes - 1995**

PLAIN TEXT = EXISTING STATUTE

UNDERLINED TEXT = PROPOSED ADDITIONS TO STATUTE

STRIKEOUT TEXT = PROPOSED DELETIONS TO STATUTE

ITALICIZED TEXT = EXPLANATORY NOTES

### **I. Comprehensive Wetland Protection and Management Plan**

103G.2242 Subd.1 (c)

A. The board may adopt ~~approve as an alternative to the rules guidelines adopted~~ under this subdivision pertaining to a comprehensive wetland protection and management plans developed by a local government units. The ~~rules guidelines~~ for such plans shall require ~~provided~~ that the plans:

- (1) incorporate sections 103A.201, subdivision 2, and 103G.222;
- (2) are ~~is~~ adopted as part of an approved local water plan under sections 103B.231 and 103B.311; ~~and~~
- (3) are ~~is~~ adopted as part of the local government's official controls ~~; and,~~
- (4) classify wetlands according to their public values.

B. A comprehensive wetland protection and management plan may:

- (1) vary application of the sequencing standards of M.S. 103G.222(b) based on the classification; and
- (2) vary the replacement standards of M.S. 103G.222(f) and (g) for specific wetland impacts so long as there is no net loss of public values and biological diversity within the area subject to the plan, and so long as in counties having less than 80 percent of their presettlement wetland acreage, the acreage requirements of M.S. 103G.222(f) and (g) are met within the area subject to the plan.
- (3) Notwithstanding any requirements of M.S. 103G.222 to the contrary, allow partial replacement credit for wetland rehabilitation, enhancement and buffer protection for required replacement acreage in counties with more than 80 percent of their presettlement wetlands; and, may allow replacement credit for the amount required above a 1:1 ratio for the same actions in all other counties.

C. Upon approval of a comprehensive wetland protection and management plan by the Board of Water and Soil Resources, the local government unit shall make replacement plan decisions based on the approved plan.

## **II. Appeal of Replacement Plans to the Board**

103G.2242 Subd.9. **APPEAL.** A. Appeal of a replacement plan, exemption, or no-loss of the decision may be obtained by mailing a petition to notice of appeal to the board within 30 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 30 days, the decision becomes final. Appeal may be made by the wetland owner, by any of those to whom notice is required to be mailed under subdivision 7, or by 100 residents of the county in which a majority of the wetland is located. The board shall grant the petition for appeal unless it finds that the appeal is meritless, trivial, or brought solely for the purposes of delay. In determining whether to grant the appeal, the board shall also give consideration to the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or landowner or landowner or petitioner, and the consequences of the delay.

B. A local unit of government may require appellants to post a bond.

## **III. Exemptions**

103G.2241 Subd. 1

### **Exemption 10**

- (10) Activities in a wetland created solely as a result of:
- (i) beaver dam construction;
  - (ii) blockage of culverts through roadways maintained by a public or private entity;
  - (iii) actions ~~by public entities~~ that were taken for a purpose other than creating the wetland; or
  - (iv) any combination of (i) or (iii).

### **Exemption 17**

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



### Exemption 18

(18) Normal maintenance and minor repair of structures, including private crossings, causing provided the activity does not result in additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland.

### Exemption 23

(23) Agricultural activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program;

### Exemption 25

(25) Projects Activities that result in the draining or filling of less than:

- a. 400 square feet of wetlands in counties with less than 50 percent of their presettlement wetlands remaining, and in the building setback of shoreland areas in all counties; or,
- b. 1000 square feet of wetlands elsewhere in counties with 50 to 80 percent of their presettlement wetlands remaining; or,
- c. 7500 square feet of wetlands elsewhere in counties with more than 80 percent of their presettlement wetlands remaining.

### Exemption 26 - NEW

(26) Deposition of spoil resulting from excavation within a wetland for the purposes of wildlife habitat management, provided that; the wetland is located in a county with more than 80 percent of its presettlement wetlands remaining or is located in a county with 50 to 80 percent of its presettlement wetlands remaining and is a Type 6 or Type 7 wetland, and the wetland is larger than 10 acres, and the spoil is spread to a thickness of 6 inches or less, and the area of deposition does not exceed more than 5 percent of the wetland area, and the area proposed for the project does not contain any federally or state listed threatened or endangered species, and the excavation does not result in the drainage of adjacent wetland areas.

## IV. Notice

103G.2242. Subd. 6. [NOTICE OF APPLICATION.] (a) Except as provided in paragraphs (b) and (c), within ten days of receiving an application for approval of a replacement plan under this section, a summary copy of the application must be submitted ~~to the board~~ for publication in the Environmental Quality Board Monitor and separate copies of the complete application mailed to members of the Technical

~~Evaluation Panel, individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district if there is one, the board of county commissioners, and the commissioner of agriculture natural resources, and the mayors of the cities within the area watershed. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.~~

(b) Within ten days of receiving an application for approval of a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the application must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the members of the technical evaluation panel, individual members of the public who request a copy, and the ~~mangers of the watershed district, if applicable.~~ At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected commissioner of natural resources.

(c) Revisions to replacement plan applications or approved replacement plans must be re-noticed in their entirety per paragraphs (a) and (b) when:

(1) the revised replacement plan proposes wetland impacts that are a ten percent or more increase from the original replacement plan; or,

(2) the revised replacement plan proposes that the location of the impact to the wetland is changed by more than 500 feet.

Subd. 7. [NOTICE OF DECISION.] ~~(a) Except as provided in paragraph (b), At least 30 10 days prior to the effective date of the approval or denial of a replacement plan under this section, a summary copy of the approval or denial must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to members of the Technical Evaluation Panel, the applicant, members of the Technical Evaluation Panel board, individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district if there is one, the board of county commissioners, and the commissioner of agriculture natural resources, and the mayors of the cities within the area watershed. Notice in the Environmental Quality Board Monitor is not required for projects impacting less than 10,000 square feet of wetlands.~~

~~(b) Within ten days of the decision approving or denying a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the approval or denial must be submitted for publication in the Environmental Quality Board Monitor and separate copies mailed to the applicant, individual members of the public who request a copy, the members of the technical evaluation panel, and the managers of the watershed district if applicable. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected.~~

## V. On-Site Sequencing

103G.222

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

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

(2) minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;

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

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

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

For projects in wetlands outside the building setback of shoreland areas that impact less than 10,000 square feet in counties with more than 80 percent of their presettlement wetlands and 4356 square feet in all other counties, the local government unit may make a sequencing determination without written alternatives analysis from the applicant.

## VI. Replacement Credit

103G.2242 Subd. 12. **Replacement credits.** (a) No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, and is completed prior to any draining or filling of the wetland. Paragraph (a) does not apply to a wetland whose owner has paid back with interest the individual or organization restoring, enhancing, or construction the wetland.

(b) Pursuant to guidelines adopted by the Board, the following actions may be eligible for partial replacement credit in counties with more than 80 percent of their presettlement wetlands and may be used for replacement above a 1:1 replacement ratio in counties with less than 80 percent of their presettlement wetlands:

- (1) vegetative restoration of a wetland;
- (2) buffer areas established on upland adjacent to replacement wetlands;
- (3) conversion of wetlands to another type to increase biodiversity; and
- (4) other wetland improvements consistent with M.S. Section 103B.3355.

(c) Wetlands restored for conservation purposes under a terminated contract or easement are eligible for replacement credit statewide.

## VII. Replacement wetlands not eligible for RIM

~~103G.2242. Subd. 13. Replacement wetland eligible for RIM. A wetland replaced under this section, in which the replacement is located on the wetland owner's land, is eligible for enrollment under section 103F.515 one year after the completion of replacement.~~

## VIII. Violation - Replacement Ratio Doubled

103G.222

- (l) For wetland replacement ordered as part of or after issuance of an order pursuant to M.S. Section 103G.2372, the replacement must be in a ratio double that which would otherwise have been required by M.S. Section 103G.222.

## IX. 90 Day Maximum for Restoration Order Development

103G.2372. Subd. 1. **Commissioner of Natural Resources.** The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting wetlands. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting a wetland. In the order, or by separate order, the commissioner, conservation officer or peace officer may require restoration or replacement of the wetland, as determined by the local soil and water conservation district. The soil and water conservation district shall endeavor to make their determination within 90 days from the date a cease and desist order is issued.

## X. Liability claims against LGU

103G.237, Subd. 4

(c) When an inverse condemnation action brought against a local government unit solely for its application of the wetlands conservation act results in a final adjudication awarding a claim against the local governmental unit, the amount awarded, which may include expenses incurred by the local government unit in defense of the action, shall be paid by the state, so long as:

(1) the local government notifies the state at the inception of the litigation and the LGU is defending the litigation in good faith; and,

(2) the court award arises from the reasonable application of the state wetland conservation act law and rules by the local government unit, rather than from local government decisions based on local standards more restrictive than the state law and rules.

If subpart 1 is met, the state may offer legal and technical assistance to the local government in defense of the action.

## **XI. Sec. 401 Regional Conditions**

*MPCA staff indicated that specific comments would be sought from local governments during development of regional conditions for nationwide permits.*

## **XII. Wetland Replacement: Cash mitigation banking**

A new subpart would be added to 103G.222

Landowners shall have the option of satisfying the replacement requirements of the Wetland Conservation Act for wetlands outside the building setback of shoreland areas by paying to the state wetland bank an amount equal to the end use appraised market value of the upland created by the draining or filling activity. The state wetland bank shall use such deposits for wetland restoration projects so as to ensure that there will be no net loss of wetland acreage or public values or biological diversity from drain or fill projects so mitigated.

The committee supports full funding for implementation of the Wetland Conservation Act.



January 19, 1995

**BWSR STAFF COMMENTS CONCERNING THE RECOMMENDATIONS  
OF THE WETLAND HERITAGE ADVISORY COMMITTEE**

These comments were prepared in anticipation of questions concerning BWSR staff views of the recommendations of the Wetland Heritage Advisory Committee.

- **BWSR staff recommend adoption of the recommendations submitted by the Wetland Heritage Advisory Committee (WHAC).**
- BWSR staff offer the following additional recommendations:

> If guidelines are to replace rules as the procedure for developing a comprehensive wetland protection and management plan, it is essential that the statute language be very specific. In addition to the changes offered by the WHAC in part I. of their recommendations, the following items must be clarified in statute:

-Function, value, buffer protection, wetland rehabilitation and wetland enhancement must be defined.

-A wetland classification system must include a scientific assessment of functions before value judgements are made on the "worth" of a particular wetland(s).

-The word "partial" in item B.(3) must be clarified.

-The time period for allowing wetland replacement within the plan area (item B.2.) must be clarified.

-The BWSR should require planning entities to provide an annual report on the progress of achieving their goals.

> In part II, the BWSR should require a bond for appeals similar to that required by the Commissioner of Natural Resources in MS 103G.311, subd.6.

> Exemption 25, as proposed in part III., should be amended to include the language from the WCA rule as follows: .....and the cumulative impact by all persons on a wetland over time without replacement after January 1, 1992, does not exceed five percent of the wetland's area.

> Exemption 26, as proposed, is too restrictive. We believe that adverse impacts to the wetland can be minimized by allowing the project sponsor to seek approval of their plan from the local DNR wildlife manager. As general guidance, proposals must have a primary purpose of wildlife habitat, be located in a >50% county, spoil must be limited to a small (say 5%) area of the wetland and the wetland must not contain threatened or endangered species.

> Notice of Decision (part IV) should be revised to eliminate any waiting period by the project sponsor. The LGU should send the notice of decision to the indicated parties within ten days of their action.

> Several changes should be made to part VI., replacement credit.

-We believe this section should identify replacement options that are available without the need

for a comprehensive wetland plan. We suggest that items b.1., b.3 and b.4. be stricken and allowed only as part of a comprehensive wetland plan (part I.)

-Item b.2., buffer areas, must have a percentage credit associated with it; a higher percentage could be allowed with a comprehensive plan (part I.B.3.).

-We believe that farmed wetlands (as yet undefined) should be allowed for partial credit statewide. The amount of credit must be specified. A higher percentage could be allowed with a comprehensive plan.

> Part XII., cash banking. BWSR staff have three concerns. (1) It may be difficult to determine the "end use appraised market value" in a reasonable time frame. We don't want this provision to be restrained by ones inability to determine a fair price. (2) We believe that this replacement option should be available only after other means to replace such as on-site restoration or creation and the existing wetland bank have shown to be infeasible as determined by the local unit of government. (3) The cost of administering this option by BWSR must be considered.

*We have listed other issues below that will likely be debated this legislative session. Although we are not seeking your position at this time, the items may need attention at future BWSR meetings.*

- *Should the minimum replacement ratio for non-agricultural projects in less than 80% counties be changed from the current 2:1 to 1:1?*
- *Should mitigation banking be allowed on state land?*
- *Should the Wetland Conservation Act be repealed, made voluntary, left as is, be amended, be integrated with the DNR or MPCA water wetland programs or be incorporated into state assumption of the Corps of Engineers 404 program?*

January 25, 1995

#### POLICY CONSIDERATIONS

The legislative process requires that staff take positions on behalf of the agency. With that in mind, the following items are presented for your consideration.

##### **Rules (Options)**

- Formal rulemaking will take at least 9 months to complete.
- Emergency rulemaking authority takes about 8 weeks. Emergency rulemaking must be followed by formal rulemaking.
- No further rulemaking leaving statutory interpretation to the BWSR.
- No further rulemaking needed assuming that the legislature passes very specific amendments that do not require interpretation.

##### **Appeals (Options)**

- Eliminate appeals to BWSR; let appellants seek relief through the courts.
- Require the BWSR to offer mediation rather than appeal services.
- Require an administrative law judge to hear appeals rather than BWSR.
- Provide an opportunity for BWSR to require a bond from appellants to defray the cost of the appeal.

##### **Deminimus (Options)**

- Should the 400 square feet apply to the entire shoreland area or only to the building setback area?
- Should deminimus amounts be different than those suggested by the WHAC?
- Should a cumulative limit of (say 5%) be placed on the exemption to prevent entire wetland basins from being eliminated in piecemeal fashion over time?

### **Replacement Credit (Options)**

- Should farmed wetlands, currently exempt under WCA, be eligible for replacement credit and deposit in the wetland bank if vegetatively restored? If so, what percent credit should they receive?
- Should upland buffer around replacement wetlands be eligible for replacement credit and deposit in the wetland bank? If so, what percent credit should they receive?
- Should wetlands restored under a now terminated USFWS easement be eligible for replacement credit and deposit in the wetland bank? If so, what percent credit should they receive?

### **Cash Banking (Options)**

- Should the state subsidize wetland mitigation where there is an inequity between land values of the impact county and replacement county? If so, how should the price of mitigation be determined (appraisals, tax statements or predetermined values)?
- Should the above scenario be limited to just those counties with >80 presettlement wetlands?
- Should cash banking be limited to public transportation projects?
- Should BWSR manage this arrangement or should MnDot (if cash banking is limited to public transportation projects) administer the program?

### **Replacement Ratio (Options)**

- Maintain current requirements
- Require 2:1 for wetland creation and 1:1 for wetland restoration
- Other ratios?

### **Notice Requirements (Options)**

- Project sponsors should wait 10 to 30 days after the LGU decision before commencing their project.
- The waiting period should be eliminated.

January 12, 1995

#### SUMMARY OF WHAC RECOMMENDED CHANGES TO THE WCA

Summary prepared on the basis of presettlement wetland acreage and a comprehensive wetland plan (plan). The roman numeral in parentheses refers to the section of the WHAC recommendations. Additional comments are in italics.

#### **Changes regardless of a plan or presettlement wetland percentage:**

- improved appeal procedure (II)
- revised exemptions 10, 17, 18, and 23 (III)
- streamlined notice procedure (IV)
- wetlands restored for conservation purposes under terminated contracts or easements (such as FWS) are eligible for replacement--which includes banking (VI.(c))
- replacement wetlands are not eligible for RIM (VII)
- doubled replacement ratio if enforcement action (VIII)
- time limit on SWCD preparation of restoration orders (IX)
- state assistance in liability claims (X)
- improved communication from MPCA concerning section 401 regional conditions (XI)
- cash banking (XII)

#### **Additional changes regardless of a plan or wetland percentage:**

- exemption 25 is limited to projects rather than individual impacts (III.(25))
- deminimus is limited to 400 square feet in the building setback of shoreland areas (III.(25))
- on-site sequencing is prohibited in the building setback in shoreland areas (V)

#### **Benefits to any LGU that develops a plan:**

- the application of sequencing can be varied based on a classification system that classifies wetlands according to their public values (I.B.(1)) [this means for example that a severely impacted type 1 wetland that is so classified could be drained or filled without much attention to sequencing with mitigation of that wetland provided in another part of the plan area]

#### **Benefits to >80% counties that develop a plan:**

- wetland replacement for specific impacts do not need to meet acreage requirements; no net loss of public values and biological diversity must be met within the plan area [this means that public values = acreage] (I.B.(2))
- wetland rehabilitation, enhancement and buffer protection may be used in part to reach the no net loss of public values and biological diversity (I.B.(3)) [this is the same as VI.(b)]



**Benefits to <80% counties that develop a plan:**

- wetland replacement for specific impacts do not need to meet acreage requirements; no net loss of acreage, public values and biological diversity must be met within the planning area (I.B.(2)) [this means that an individual impact need not achieve 1:1 acreage replacement provided that the acreage requirement is met somewhere in the plan area]
- wetland rehabilitation, enhancement and buffer protection may be used in part to meet required replacement above the 1:1 acreage ratio (I.B.(3)) [this is the same as VI.(b)]

**Benefits to >80% counties with or without a plan:**

- the de minimus is increased to 7,500 square feet (III.(25)c.)
- exemption 26 is available (III.(26))
- on-site sequencing is available for projects <10,000 sq.ft. outside the building setback in shoreland areas (V)
- "enhancement" options are available for replacement (VI.(b))

**Benefits to <80% counties with or without a plan:**

- "enhancement" options are available for replacement above a 1:1 acreage ratio (VI.(b))

**Benefits to >50 <80% counties with or without a plan:**

- the de minimus is increased to 1,000 square feet (III.(25)b.)
- exemption 26 is available with restrictions

Issues that must be resolved---preferably by the legislature--otherwise the guidelines referred to in I and VI will be very difficult to develop:

++time frame for an impact to be mitigated within the plan area++

++how much credit to be given for various enhancement activities; for example, x % credit for a buffer around a mitigated wetland, x % for retirement of a farmed wetland, x % credit for conversion of an impacted type 2 to a type 4 and so on and so on.....++

A word about guidelines: this originated from the realization that the changes in parts I. and VI. will not be available until after the rules are revised, meaning not until the 1996 construction season.

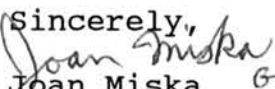
January 17, 1995

James Nielsen  
Chairman, Board of Water and Soil Resources  
1 West Water Street  
Suite 200  
St. Paul, MN 55107

Dear Chairman Nielsen:

I have enclosed the recommendations of the Wetland Heritage Advisory Committee concerning statutory changes to the Wetland Conservation Act. The committee spent many hours during and outside of five meetings developing these recommendations. The meetings included considerable testimony from many persons. As a former county commissioner, I know from experience that wetlands and their regulations are much debated topics throughout Minnesota. The local debate is not unlike that which occurred during our meetings. These recommendations represent many compromises. Certainly, not everyone will agree with our recommendations, but it does represent a sincere effort on our part to contribute to the on-going discussion of wetland policy in Minnesota.

On behalf of the members, I thank you for the opportunity to prepare this report.

Sincerely,  
  
Joan Miska GL  
Chairwoman



## Minnesota Department of Natural Resources

OFFICE OF THE COMMISSIONER

500 Lafayette Road

St. Paul, Minnesota 55155-4037

January 23, 1995

Mr. D. James Nielsen, Chair  
Minnesota Board of Water and Soil Resources  
One West Water St., Suite 200  
St. Paul, MN 55107

JAN 25 1995

Dear Chairman Nielsen:

It's my understanding that at your January 25 meeting, the Board of Water and Soil Resources (Board) will be considering the Wetland Conservation Act amendments that the Wetland Heritage Advisory Committee (WHAC) has recommended. As a member of the WHAC, I participated in developing the proposed amendments and support many of them. However, the Department of Natural Resources has serious concerns over three of the final WHAC recommendations. The following items are of particular concern:

### Comprehensive Wetland Protection and Management Plan

At the final WHAC meeting, language was adopted on a 5-4 vote that would no longer require the Board to adopt rules to clarify how this section of the statute would be implemented. Instead, these details would be promulgated as guidelines. This was a last minute proposal after having been led to believe all along that BWSR fully intended to go through rulemaking. I voted against this change at the WHAC meeting and the Department continues to believe that avoiding rulemaking would be a mistake. Many of the issues associated with local comprehensive wetland plans are complicated and should be resolved via rulemaking, with input from the various stakeholders and technical experts. We recognize that such a rule process will be difficult; however, we believe that without criteria that carry the force and effect of rules, it will be virtually impossible to obtain consistency in basic plan components. As I'm sure you are aware, guidelines would be much more difficult to enforce and defend than rules. The Department strongly recommends that the Board commit to rulemaking.

### Cash Banking

The current WCA wetland banking system provides a convenient mechanism for landowners needing replacement wetland acreage to find and obtain those credits. Under the current program, restored or created wetlands must be fully functional before they can be banked and



used as replacement. The bank maintains a direct link between the wetlands that are drained or filled and their replacement wetlands. The Department supports this system and believes that it should be retained statewide.

One of the amendments proposed by the WHAC would allow cash banking, whereby landowners that drain or fill wetlands would simply pay into a state bank an amount based on the end use value of the land. This cash banking provision was originally proposed to address the concerns of those counties that have more than 80% of their original wetlands. Because wetland replacement opportunities are limited in those counties, current WCA regulations allow impacts in those counties to be replaced in counties having less than 50% of their original wetlands (the 80/50 rule). However, there is a significant disparity in land values between the >80% counties and the <50% counties, making it economically impractical for landowners in the >80% counties to take advantage of the 80/50 rule. The original proposal to allow cash banking was intended to address this economic difficulty and limited cash banking to the >80% counties. The WHAC subsequently extended this option statewide. Again, I voted against this provision.

Under the WHAC proposed language, the state wetland bank would be required to achieve no net loss of wetland acreage, public values and biological diversity. A net loss of acreage is likely to occur without substantial additional funding, which is unlikely to be available unless it's taken from other existing programs -- RIM Reserve, for example. We are also concerned that the statewide option of cash banking will seriously diminish the incentive to avoid and minimize wetland impacts, which should be first priority. In light of these concerns, the Department recommends that the option for cash banking be limited to counties having >80% of their original wetlands and that the requirement that the state bank achieve no net loss of acreage for projects so mitigated be dropped.

#### Replacement Credit

Under the statute language proposed by the WHAC, conversion of wetlands from one type to another to increase biodiversity could be used for replacement credit. Unfortunately, I took ill and was not present at the WHAC meeting when this provision was adopted, but Doug Norris, who was representing me informed the WHAC that the Department has significant reservations concerning this concept. I would like to reiterate our concern and recommend that this provision be deleted.

Conversion of wetlands, particularly undisturbed wetlands, is not appropriate in a regulatory context where the goal is to compensate for lost wetland benefits. Wetland conversion simply alters the habitat value of a wetland, it does not increase it. Wetland conversion may

Nielsen  
January 23, 1995  
Page 3

increase biological diversity on a local scale but may actually reduce it regionally. From an ecosystem management standpoint, increased biological diversity at a given site is not necessarily a desirable goal. Furthermore, the Board should be aware that wetland conversion is not likely to be acceptable as mitigation under the federal Section 404 program and the practice may even require mitigation itself.

I am scheduled for a budget hearing on the 25th, so Wayne Edgerton will be attending the Board meeting and can further discuss our concerns. It's the Department's hope that the Board will propose a package of WCA amendments that addresses the legitimate problems with the present program without retreating too far from the original intent of the act, which was to retain our existing wetlands and ultimately increase the state's wetland base. Also, the Governor's Executive Order on No-Net-Loss of Wetlands (91-3) clearly directs state agencies to take a firm stand for wetland protection. We look forward to working with the Board to achieve those goals.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ron Nargang".

Ron Nargang  
Deputy Commissioner

c: Ron Harnack





# Minnesota Pollution Control Agency

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January 25, 1995

Mr. James Nielsen  
Chairman, Board of Water and Soil Resources  
1 West Water Street  
Suite 200  
St. Paul, Minnesota 55107

RE: Recommendations for Wetland Conservation Act Changes

Dear Chairman Nielsen:

We thank the Board of Water and Soil Resources (BWSR) for the opportunity to review the recommended Wetland Conservation Act (WCA) Statute Changes - 1995 that your Board is planning to act upon at your January 25, 1995, Board Meeting. We have previously sent two letters of comment to BWSR and were given the opportunity to testify at two of the Wetland Heritage Advisory meetings. As part of those comment letters and testimony we had expressed some concern with the proposals for amendment to WCA and would like to take this opportunity to share these remaining concerns with your Board.

We share an acknowledgment of the importance of wetland resources in Minnesota and the Minnesota Pollution Control Agency (MPCA) wants to be supportive of our sister state agency's efforts to protect wetlands through WCA while we position that support based upon our interpretation of those action's compliance with our water quality standards. A number of the proposed changes appear to provide BWSR with more effective and efficient program elements for administering the WCA. We defer to BWSR in their judgments as to how most effectively and most efficiently manage this program. However, we are concerned with a number of items that appear to be backsliding wetland protections, such as the expansion of exemptions 10, 17, 25, and 26 and some other items which may specifically conflict with water quality standards as contained in Minn. Rules ch. 7050.

The proposal to allow a local comprehensive wetland protection and management plans to vary the sequencing standards and the replacement standards has the potential to conflict with the Clean Water Act requirements for Army Corps of Engineers Section 404 permits and MPCA Section 401 certifications. This proposed allowance may have the effect of causing conflict in the requirements for approval from local governments and for the requirements for approval from the federal and state levels. This would certainly confuse the public and exacerbate the problems we are all trying to overcome in all of our attempts to streamline the wetland permitting process and achieve a more "one stop shopping" for wetland permits in Minnesota. The more WCA differs and conflicts in substance and procedure from the Clean Water Act requirements, the more difficult, if not impossible it will be to establish federal general permits and other concepts to reduce the layers of government actions needed for wetland activities.

520 Lafayette Rd. N.; St. Paul, MN 55155-4194; (612) 296-6300 (voice); (612) 282-5332 (TTY)

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Mr. James Nielsen  
Page 2  
January 25, 1995

The proposed replacement plan provisions that would allow enhancement, upland buffer zones, and conversions of wetland to another type, are in conflict with our water quality standards in Minn. Rules ch. 7050. This may result in applicants obtaining approval under WCA but being denied 401 certification and 404 permits from the federal government under these proposed provisions.

The opportunity for cash mitigation banking that would satisfy a wetland replacement requirement by a cash payment to the bank equal to the end use appraised market value of the upland created by the draining or filling may also cause conflict with the Clean Water Act requirements. As you recall the federal and state Memorandum of Understanding that was signed last year included agreements to allow the BWSR bank system as established to satisfy Clean water Act required mitigation. This agreement may not be sustained if the BWSR Bank allows replacement approval with only a cash donation without a direct debit of an established wetland credit. This provision may also set a precedent of state subsidizing wetland filling and draining if the actual cost of mitigation should exceed the amount accepted by the applicant.

I hope this discussion of the proposed WCA changes as they may impact our water quality standards helps in the evaluation of the interrelationships of the wetland protection rules and laws that also exist at the federal and state level.

Sincerely,



Patricia M. Burke  
Division Manager  
Water Quality Division

PMB:jmg

cc: Kent Lokkesmoe, Director Waters Division, Department of Natural Resources

# National Audubon Society



January 25, 1995

James Nielsen and Members of the BWSR Board  
1 West Water Street  
Suite 200  
St. Paul, MN 55107

## Minnesota Audubon Council

26 East Exchange Street, Suite 207  
St. Paul, MN 55101  
(612) 225-1830  
FAX: (612) 225-4686

Dear Chairman Nielson and Members of the Board,

The 13,000 Minnesota members of the National Audubon Society along with the tens of thousands of members of the other organizations of the Wetlands Conservation Coalition are strongly supportive of wetland protection under the 1991 Wetland Conservation Act. While we are supportive of effective means to avoid, minimize and mitigate impacts to wetlands, we recognize that the wetland resource in different regions of the state is in a vastly different condition. Accordingly, we support changes to the Act that more effectively focus resource protection and restoration efforts in areas of critical need.

In general, we are supportive of the recommendations of the Wetland Heritage Advisory Committee (WHAC) with the following reservations:

- 1) The Board of Water and Soil Resources must use the rulemaking process to adopt procedures and standards to assist the development of alternative comprehensive wetland protection and management plans adopted by local units of government. Current WHAC recommendations for non-binding "guidelines" are likely to result in a massive increase in regulatory complexity and effectiveness around the state as some local units of government follow the guidelines and others do not - the opposite of the "regulatory simplification" that we all seek.
- 2) We can support a partial credit for vegetative restoration of cropped wetlands only.
- 3) As recommended by the WHAC, we strongly support maintaining current protection for wetlands in riparian areas throughout the state, as these are critical to maintaining water quality and associated property values. However, we strongly urge that all wetlands in the current shoreland management zone be afforded current levels of protection, not just those in the building setback zone as described in the WHAC report.
- 4) Cash banking is a bad idea state-wide. It may be acceptable only if access to this option is limited to the 80% counties. We support a cash contribution to a state program from projects in 80% counties based on local costs even if this means the state must subsidize the program to complete the total mitigation necessary to assure no net loss of wetlands statewide.

Thank you for considering our concerns. We look forward to working with you, the staff of the Board of Water and Soil Resources and many other interests in the coming months as we mutually seek to assure appropriate protection for our wetlands statewide, while improving the effectiveness and efficiency of the Wetlands Conservation Act.

Sincerely,

Don Arnosti  
Minnesota Director

## Minnesota Chapters of National Audubon Society:

Agassiz • Albert Lea • Austin • Central Minnesota • Duluth • Fargo-Moorhead • Minneapolis •  
Minnesota River Valley • Mississippi Headwaters • St. Paul • White Pine • Wild River • Zumbro Valley





STATE OF  
**MINNESOTA**  
**DEPARTMENT OF NATURAL RESOURCES**

500 LAFAYETTE ROAD • ST. PAUL, MINNESOTA • 55155-40<sup>44</sup>

DNR INFORMATION  
(612) 296-6157

September 9, 1994

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

Dear Mr. Harnack:

The Forestry BMP Wetland Task Force is recommending that the BWSR consider that a baseline standard be used to develop BMPs for use in the WCA process which identifies the criteria necessary to provide wetland protection. The established baseline would serve as a standard for the LGU's and applicants to evaluate and develop technology based and site specific BMPs.

During the development of the Forestry wetland BMP document, the Committee felt it was necessary to establish a baseline standard for BMP development prior to the development of technology based or site specific BMPs. It's the Committee opinion that a baseline standard is also of value for industry, LGU's, and others involved with the Wetland Conservation Act. A baseline standard would:

- Establish a frame work for the development of technology based BMPs for the type of activity associated with the land use being undertaken (e.g. Agriculture, forestry, roads, utilities, etc.) and
- Allow those activities which go through a public review process (e.g. construction storm water permits; conditional use permits; WCA, COE, and MPCA requirements) to just develop site specific BMPs for their projects.

The baseline the Forestry Committee utilized as its standard was taken from 33 CFR, Section 323.4 and 7 CFR, Part 12. These sections of the federal regulations were modified to: remove the command and control nature, where appropriate; and were broadened to cover the activities listed in the WCA. Adopting this criteria will enable applicants to meet federal standards, if applicable, and provide for the voluntary protection identified in the WCA. A copy of the criteria used to develop the Forestry BMP's are attached.

It is the Committee's hope that the BWSR could adopt this baseline standard and expand if necessary and offer it to the LGU's as a tool to evaluate technology based and site specific BMPs as they are developed. The BWSR's Jim Lemmerman, as a Task Force member, is aware and supportive of this concept.

Within the next two weeks I will contact you to discuss this matter further. Three or four of the Task Force members are interested in meeting with you to discuss possible implementation of this concept. Within the next two weeks I will contact you to discuss how we should proceed with this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike".

Michael J. Phillips  
Environmental Protection Programs Manager

Attachment



BASELINE STANDARDS FOR DEVELOPMENT OF BEST MANAGEMENT PRACTICES TO PROVIDE WETLANDS PROTECTION

Land use activities in wetlands, which are operating under an exemption in the Wetland Conservation Act of 1991, should be guided by the following principles to ensure that the activities do not contribute to the loss or diminishment of wetland values and functions. Impacts to wetlands should be avoided if practical alternatives exist. When impacts cannot be avoided, landowners, managers and operators should implement all practical measures to minimize impacts. Best Management Practices designed to meet these baseline standards will provide the necessary protection while operating in or adjacent to wetland areas and reduce the risk of being in violation of the Wetland Conservation Act of 1991. BMPs developed through this process do not supercede federal regulations (33 CFR, Section 323.4 and 7 CFR, Part 12).

- (1) The activities should minimize impacts to the hydrologic regime of wetlands.
- (2) The activities should not take, or jeopardize the continued existence of state (MS, Chapter 84.0895; MN Rules, Chapter 6134) and federal (16 USC, Sections 1531-1544; 50 CFR, Section 17) threatened or endangered species, or adversely modify or destroy the critical habitat of such species;
- (3) Activities in breeding and nesting areas for migratory waterfowl and spawning areas in wetlands should be avoided if practical alternatives exist;
- (4) The activities should minimize impacts to species of special concern under MS, Chapter 84.0895; MN Rules, Chapter 6134 where their existence is known within the activity area;
- (5) In designing, constructing, and maintaining roads, vegetative disturbance in wetlands should be kept to a minimum;
- (6) Permanent roads, temporary access roads and trails in wetlands should be held to the minimum feasible number, width, and total length consistent with the management objectives, and local topographic and climatic conditions;
- (7) All roads, temporary or permanent, should be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) and designed to minimize impacts to wetland functions and values;
- (8) Discharges of dredged or fill material into wetlands to construct a road fill should be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within wetlands that lie outside the lateral boundaries of the fill itself;

- (9) The design, construction, and maintenance of the road crossing should allow the migration or other movement of those species utilizing the wetland;
- (10) Road fill should be bridged, culverted, or otherwise designed to prevent the restriction of everyday surface and subsurface water flows and expected flood water flows;
- (11) Fill should be properly stabilized and maintained during and following construction to prevent erosion;
- (12) Borrow material should be taken from upland sources whenever feasible;
- (13) All temporary fills should be removed in their entirety and the area restored to its original elevation unless removal will have a greater impact on water quality than leaving in place; and
- (14) Material placed or discharged in wetlands should consist of suitable material free from toxic pollutants in toxic amounts.

9/9/94

## BACK GROUND

- \* Efforts leading to 1991 passage
- \* interim program
- \* formal rules

### STATUS AND EXPERIENCES OF THE WETLAND CONSERVATION ACT

#### \* MOST UNITS OF GOVERNMENT HAVE ADOPTED

- 400+ units of government have adopted
- many contracts & agreements delegating implementation
- 5 counties have not adopted
- 50% of counties have delegated to swcd's implementation
- watershed districts & WMO's are administering for cities
- most larger cities have adopted & implementing

#### \* TRAINING

- several wetland delineation training session conducted
- local government staff trained and certified
- interagency, state & federal, training team and certification courses have been formalized
- several administrative training session held for local elected officials and staff
- 100's of meetings with elected officials & staff to educate and assist in program (50% of BWSR field staff effort is WCA in north, central & metro)

#### \* LOCAL GOVERNMENT IMPLEMENTATION

- charts  
&  
graphs
- estimated 3500 projects reviewed in 1994
  - 42.9% exemptions or no-loss determinations
  - 42.9% avoided
  - 7.1% minimized & replacement
  - 7.1% replacement
  - 7 appeals to BWSR
  - 240+ enforcement actions
  - several court actions on violations
  - 2 district court actions pending
  - swcd clearinghouse success

#### \* PERMENANT WETLANDS PRESERVE

- demand for program far exceeds \$'s
- PWP are lower priority than RIM reserve
- 258 easements\10,384 acres
- no requests for compensation for denial to date

#### \* WETLAND PRESERVATION AREAS

- will be incorporated in second generation water plans in next 5 years, no participation to date

#### \* STREAMLINING & ONE-STOP SHOPPING

- joint notice & application (WCA, DNR, COE)
- federal\state interagency agreement
- federal agency interagency agreement
- Pres. Clinton executive order

- federal general permit 16 & 17
- swcd's success as clearinghouse

**\* MITIGATION BANKING**

- 50.8 acres deposited & reserved for holders
- 14.9 acres recently approved for deposit & reserved by holders
- 990 acres of projects in some phase of restoration
- banking credits \$300 to \$10,000 per acre

**\* Program has been a significant factor in protecting wetlands, minimizing losses from drainage and filling, increased awareness of wetlands functions & values, increased coordination of federal & state agencies & local governments. Considering the scope and complexity and interest in the program I feel it has been a significant success. However, the success can only be enhanced if we recognize the program weaknesses and move to refine the program as we gain additional experiences.**

**KEY ISSUES RAISED DURING THE FIRST YEAR OF ADMINISTRATION**

**\* ELIMINATION OF LAYERS OF GOVERNMENT:** Too many agencies are involved in the wetland regulation process. At the federal level: Corps of Engineers, Natural Resources Conservation Service (formerly the Soil Conservation Service), Environmental Protection Agency; and at the state level: DNR, PCA, & BWSR; and at the local level: County, Watershed District, Township, City, & Soil & Water Conservation District.

**- SOLUTION OPTIONS**

- # changes federal clean water act
- # changes to the federal farm bill
- # eliminate inconsistencies between state programs
- # clearly define roles at state & local government
- # assumption of federal 404 program

**\* CREATE FLEXIBILITY TO ACKNOWLEDGE REGIONAL DIFFERENCES:** The state wetland resources are not the same north, south, east, west and central; rural and urban; or agriculture, forestry, and lakes. Therefore there is a need to have the program flexible enough to tailor the management to the uniqueness of the resource regionally. Last years changes were too limiting to be of significant flexibility to address regional differences.

**- SOLUTION OPTIONS**

- # provide greater flexibility through statute changes
- # provide flexibility through local water planning process
- # provide flexibility through the rule process

**\* STREAMLINE PROCEDURE:** The efforts last year helped reduce

process delays and frustration. However, additional streamlining is to reduce the notification process, prevent unnecessary delays, promote timely replacement plan approval or denial; and to create a more responsive and appropriate appeal process.

**- SOLUTION OPTIONS**

- # eliminate the waiting period after decision
- # clarify who receives notice of decision
- # make notification similar to current program of local government, ie shoreland and floodplain
- # clarify the appeal timeframe
- # clarify appeal process
- # use ALJ for appeals
- # use the courts for appeals

**\* INEQUITY OF LAND VALUES IS BARRIER TO MITIGATION:** In northern counties with the majority of the wetland base existing there is little opportunity for wetland restoration to achieve replacement. Current land values vary widely statewide and cost of doing replacement in another part of the state is "comparably" very expensive.

**- SOLUTION OPTIONS**

- # modify banking program to address land value variation
- # allow for modified replacement in 80% counties
- # provide function & value replacement rather than acre
- # allow for 1% of RIM Reserve wetland restoration acre to be banked as credits and purchased, at cost, with reimbursement to the RIM Reserve account

**\* DEMINIMUS IS TOO SMALL & NOT REFLECTIVE OF SIGNIFICANCE OF IMPACT:**

**- SOLUTION OPTIONS**

- # modify according to % of wetlands in county
- # recognize importance of shoreland areas
- # consider type of activity public vs private

**\* LOCAL GOVERNMENT LIABILITY & PROPERTY RIGHTS**

**- SOLUTION OPTIONS**

- # state assume all liability for court awards
- # state legal & technical support
- # state assume all legal contests
- # compensation to landowners should be increased
- # taxes should be reduced to reflect use

**\* STATE FUNDING FOR PROGRAM INSUFFICIENT**

**- SOLUTION OPTIONS**

- # increase grant \$'s for program from 50% to 100%



\* **WHAC REPORT & RECOMMENDATIONS**

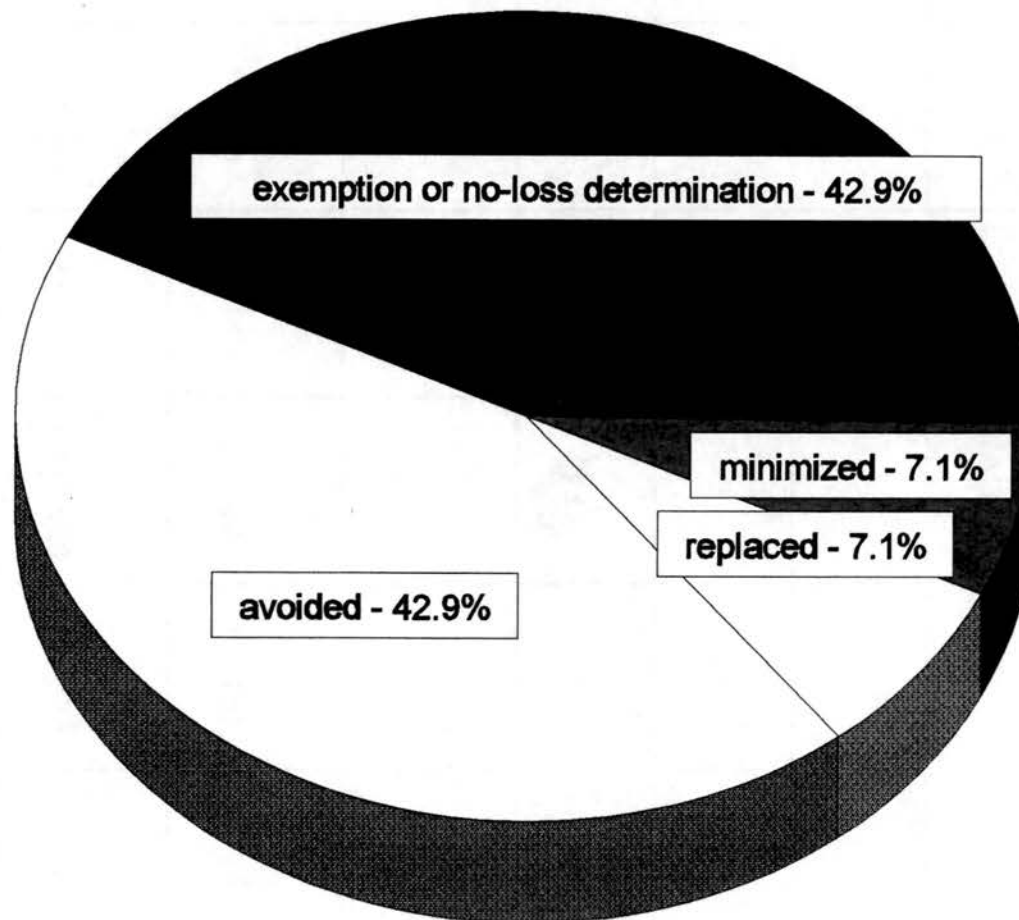
- # comprehensive plan
  - classify wetlands based on function & value
  - vary sequencing
  - replacement based on function\value vs acreage
  - part of local water plan
  - adoption as official controls
- # appeals
  - petition process
  - bonding for local government & BWSR
- # deminimus
  - 400 sq ft in shoreland setback & in less than 80%
  - 1000 sq ft in 50% to 80%
  - 7500 sq ft in greater than 80%
- # notice
  - reduce waiting period
  - streamline notification for small projects
  - modify who gets notice
- # sequencing
  - on-site sequencing for small projects
- # replacement credits
  - make restored wetlands on shortterm agreement eligible
  - under comp plan credit for:
    - \* increasing biodiversity
    - \* buffer areas adjacent to replacement wetlands
    - \* vegetative restoration of wetlands
- # violations
  - double replacement requirements for violations
- # liability
  - state shall pay court awards
  - state shall support with legal & technical assnt.
- # wetland replacement
  - satisfy by paying to a statewide bank
  - state does replacement
  - cost based on market value of created upland

### WCA IMPLEMENTATION SUMMARY (1992-94)

| COUNTY                                 | BECKER  | CASS      | OTTER<br>TAIL | WADENA  | WILKIN  |
|----------------------------------------|---------|-----------|---------------|---------|---------|
| TOTAL ACRES IN<br>COUNTY               | 924,000 | 1,515,320 | 1,428,480     | 343,550 | 481,000 |
| WETLAND ACRES -<br>COUNTY              | 86,000  | 372,000   | 84,000        | 68,000  | 1,500   |
| # LANDOWNER<br>CONTACTS - WCA          | 65      | 590       | 118           | 102     | 3       |
| # PROJECTS -<br>AVOIDANCE              | 34      | 430       | 84            | 66      | 0       |
| # PROJECTS -<br>MINIMIZATION           | 10      | 41        | 5             | 14      | 0       |
| # PROJECTS -<br>REPLACEMENT            | 10      | 17        | 5             | 6       | 2       |
| # ACRES<br>REPLACED                    | 8.2 ac  | 3.4       | 7.34          | 2.6     | 0.5     |
| AVE. PROJECT<br>SIZE (EX.ROAD)         | 0.18 ac | 0.05 ac   | <1.0 ac       | <0.5 ac | 0.3     |
| % OF PROJECTS<br>AVOIDED/<br>MINIMIZED | 67.6%   | 79.8%     | 75.4%         | 78.4%   | N/A     |

# Wetland Conservation Act

## 1994 Wetland Activities



Estimated number of WCA Projects reviewed in 1994 by local governments: 3500



# Biennial Report to the Minnesota Legislature

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FY 1994-95



The Minnesota Board of  
Water and Soil Resources

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January 1995

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The information contained in this report is available in alternative formats upon request.

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### Summary of Report Costs

Costs of preparing this report are as follows:

Staff time: \$725

Printing: \$1,775

Total: \$2,500

This report and summary of report costs statement are required by Minnesota law.



## Letter from the Chair

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As I near the end of my fourth year as chair of the Board of Water and Soil Resources (BWSR), I look back over the ways my thoughts and opinions on resource management have changed. When I first joined the BWSR in July 1991, I had a strong belief in the importance of using our resources wisely, but only vague ideas on how that might be accomplished. My experience as chair has helped those vague ideas focus distinctly on one resource management avenue: a state/local partnership.

With each program the BWSR carries out, it becomes more and more clear to me that successful resource management requires the involvement and cooperation of both of these levels of government. Local governments understand the needs of their constituents in a way that state government never can; and state government can provide the funding, technical assistance and leadership that local governments need.

The success of this strategy is evident by the accomplishments of these past two years. The Local Water Resources Protection and Management Program (also called the Local Water Planning Program)--now with 86 of Minnesota's 87 counties participating--is gearing up for the first plan updates since the program began in 1985. Counties are looking at the updates as a chance to reaffirm the program as a basis for community involvement and input into surface water and groundwater use. The Reinvest in Minnesota (RIM) Reserve Program continues to be a national model for land set-aside programs, with landowner demand consistently exceeding available dollars. And the Wetland Conservation Act approved by the 1991 Legislature has helped move Minnesota toward its goal of no net loss of wetlands.

When I look at these successes--and at how far we have all come in working together--I feel confident and excited about Minnesota's future. As efforts and expertise in resource management increase at both the state and local level, we all benefit. These benefits are most clearly seen through the eyes of the citizens of Minnesota, who can continue to enjoy the abundance of Minnesota's natural resources.



Jim Nielsen  
chair, Board of Water and Soil Resources

## About the board

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

This mission sets the Board of Water and Soil Resources (BWSR) apart from any other state agency or organization: it is unique in its purpose of working with local units of government--particularly soil and water conservation districts (SWCDs), watershed districts and water management organizations, and counties--to assist in effective resource management at the local level.

The Legislature clearly understood the benefits of this local approach when it created the BWSR in 1987 through a merger of the Water Resources Board, the Southern Minnesota River Basins Council and the Soil and Water Conservation Board. The BWSR was intended to serve as a conduit between local governments and the state, ensuring that local governments were kept informed of state activities, and that state agencies and the administration understood local issues and concerns. This purpose is reflected in the BWSR's membership: of the 12 voting members, nine represent local units of government. The remaining three voting members are citizen members. The five nonvoting board members represent the University of Minnesota, the Minnesota Pollution Control Agency, and the Minnesota Departments of Natural Resources, Health, and Agriculture.

These members use their knowledge of resource management and local governments to accomplish the BWSR's mission in a number of ways:

- Policy development: The BWSR seeks, through legislative initiative, policies supportive of soil and water resource management, and encourages implementation of these policies through local units of government.

- Service to local units of government: The BWSR provides local governments with guidelines, training, and technical assistance in developing and administering resource management plans and programs.

- Coordination: The BWSR uses its members, local planning guidelines, rules and staff to foster communication among local units of government, state and federal government, citizens, and private interests.

- Education: The BWSR develops information and education materials designed to help local units of government reach their desired audiences.

- Funding: The BWSR provides state funding for water and soil management carried out by local government. Some examples of BWSR programs include the Reinvest in Minnesota (RIM)

Reserve Program, the Local Water Resources Protection and Management Program (the Local Water Planning Program), and the Erosion Control and Water Quality Cost-Share Program.

While the board sets policy and provides overall guidance in terms of how these activities take place, BWSR staff works in close contact with local governments on a day-to-day basis. The majority of the approximately 50 staff people are housed in the board's seven field offices, located in Bemidji, Brainerd, Duluth, Marshall, New Ulm, Rochester, and St. Paul. The central office is also in St. Paul.

The backbone of the BWSR field staff is the board conservationist position. Each field office has at least two board conservationists who work with all local units of government within a specific area. Because of their field location and their frequent interaction with local governments, these board conservationists serve as an effective means to provide assistance to local governments and to provide input at the state level on local needs and concerns.

The talent and dedication of BWSR staff, combined with strong leadership from the board members, are responsible for BWSR's successes in assisting local units of government with good resource management. As local capabilities grow--and resource needs increase--the BWSR looks forward to continuing to work, in its own unique niche, to ensure that Minnesotans can continue to enjoy their irreplaceable natural resources.

## The Reinvest in Minnesota Reserve Program

The Reinvest in Minnesota (RIM) Reserve Program's three primary goals are to protect water quality, reduce soil erosion, and enhance fish and wildlife habitat. The program accomplishes these goals through retiring marginal lands from agricultural production and restoring previously drained wetlands. These lands tend to be environmentally sensitive and contribute to the degradation of Minnesota's surface water and groundwater.

To retire these lands from production, the program pays landowners a percentage of the assessed value of their land to enroll it in a permanent state easement. The landowner retains possession of the land, but agrees that it will not be farmed and that certain conservation practices will be established.

Types of land eligible for the program include drained wetlands (for restoration); marginal agricultural areas such as riparian cropland and pastured hillsides; and sensitive groundwater areas.

Since its approval in 1986, the program has been an unquestioned success both nationally--it has attracted attention from around the country and has served as a model for other states--and locally, where landowner demand has far outpaced available funds each year.

Part of the program's popularity is attributable to local involvement. Although the Board of Water and Soil Resources administers the program statewide, the local acquisition process is handled by soil and water conservation districts (SWCDs). In addition, the SWCDs and other local governments help review and approve applications, ensuring that local needs and priorities are met.

Since 1986, the program has secured about 1,850 easements, covering about 48,300 acres. That acreage includes approximately 4,670 acres of wetland basins for restoration, along with 7,460 acres of adjacent uplands. About 481 wetlands have been restored under the program.\* The remaining 36,170 acres are enrolled as marginal agricultural lands.

**Program goals:**  
to improve and protect water quality; to reduce soil erosion; and to enhance fish and wildlife habitat

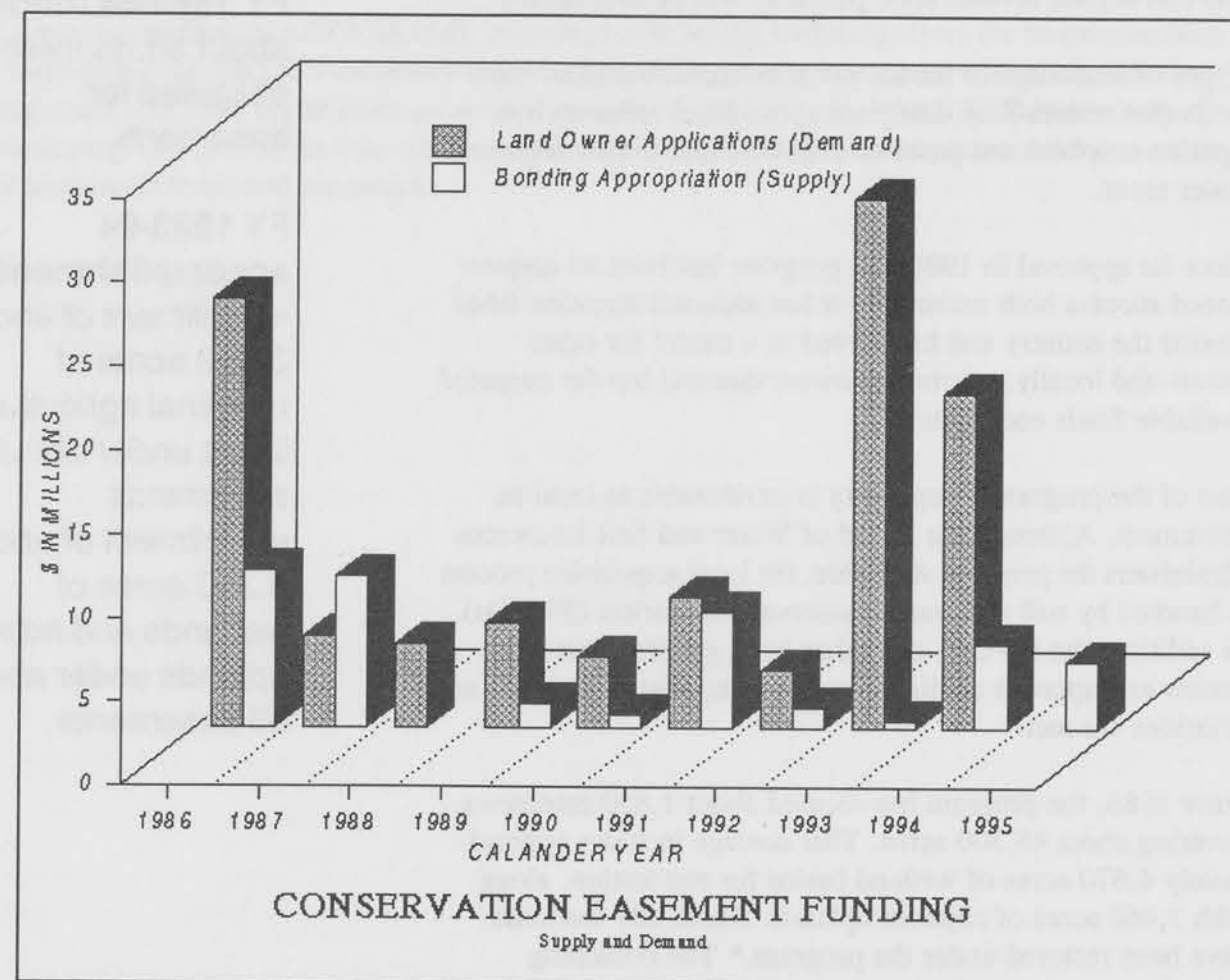
**FY 1993-94 funding:**  
about \$6.86 million obligated for easements

**FY 1993-94 accomplishments:**  
•enrollment of about 3,550 acres of marginal agricultural lands under about 81 easements  
•enrollment of about 3,250 acres of wetlands and adjacent uplands under about 86 easements



Of those totals, the program in fiscal year (FY) 1993 retired about 1,950 acres of marginal agricultural lands at a cost of \$1.73 million; and about 1,300 acres of wetlands and adjacent uplands at a cost of \$1.3 million. The total FY 1993 acreage was 3,250 at a cost of \$3.03 million.

The heavy rains and subsequent flooding of calendar year 1993 (fiscal year 1994) provided an opportunity for the program to use its inherent flexibility to help some of those hit hardest. Program dollars were targeted at the lands most severely affected--cropped riparian lands in the 100-year floodplain and cropped drained wetlands for restoration. Fiscal year 1994 enrollment retired about 1,600 acres of riparian lands at a cost of \$1.53 million, and about 1,950 acres of wetlands and adjacent uplands at a cost of \$2.3 million. The total RIM Reserve enrollment for FY 1994



was about 3,550 acres, at a total cost of about \$3.83 million.

A majority of program easements over the past biennium have been in the Minnesota River basin, which was designated as a priority area for the program in fiscal year 1993. This emphasis reflects the public's growing concern with the Minnesota River and awareness of the need to improve its water quality.

Funding for the program, which is provided through bonding, has not always reflected its success. From a fiscal year 1986-87 high of \$10 million annually, funding has in some years dipped to \$0. Because public support for the program has remained strong, the administration and Legislature in 1994 included the program in the ten-year bonding plan and allocated about \$9 million for easements through the RIM Reserve Program and the Permanent Wetlands Preserve Program (see page 10) for the fiscal year 1995-96 biennium.

The program has also leveraged about \$700,000 in federal funding through the North American Wetland Conservation Act (NAWCA). The money became available July 1, 1994, and is being used to acquire easements on drained, restorable wetlands in the Minnesota River Valley, as is required by NAWCA.

\*Totals are for enrollments through and including fiscal year 1994.

# The Permanent Wetland Preserves Program

**Program goal:**  
to maintain the benefits of wetlands (pollution and sediment filtration, fish and wildlife habitat, flood storage, and commercial uses) through encouraging landowners to enroll existing wetlands under permanent conservation easements

**FY 1993-94 funding:**  
about \$6 million obligated to landowners to obtain easements

**Accomplishments to date:**

- enrollment of about 260 easements, protecting about 10,500 acres of existing wetlands and adjacent uplands

The Permanent Wetland Preserves Program (PWP) is designed to encourage landowners to maintain existing wetlands, thus also retaining the benefits wetlands provide: pollution and sediment filtration, fish and wildlife habitat, flood storage, and commercial uses.

The program was created as part of the Wetland Conservation Act of 1991, with wetland types one, two and three--those most commonly drained--eligible for enrollment. In 1994, the Legislature expanded the eligibility to include type six wetlands.

The program functions similarly to the Reinvest in Minnesota (RIM) Reserve Program in that landowners are paid a percentage of the assessed value of their land to enroll it in a permanent easement. As with the RIM Program, soil and water conservation districts (SWCDs) administer the program locally and help evaluate applications to ensure that they meet local priorities.

In fiscal year 1992, the program received about \$7 million in bonding. Enrollments in fiscal years 1993 and 1994 spent or obligated about \$6 million of that funding to protect about 10,500 acres of wetland and adjacent upland area.

Of the total enrollment, about 4,400 acres were enrolled in fiscal year 1993, for a cost of about \$2.6 million. The program had two sign-up periods in fiscal year 1994: the first targeted cropped type one and two wetlands, which were the lands most likely to have been adversely affected by that year's severe flooding. That sign-up enrolled about 1,275 acres at a cost of about \$900,000. A subsequent general sign-up enrolled about 4,750 acres of non-cropped type one, two, three and six wetlands at a cost of about \$2.8 million.

Program funding in 1995-96 biennium will come from \$9 million in bonding money designated for BWSR easement programs.

# The Erosion Control and Water Quality Cost-Share Program

The Erosion Control and Water Quality Cost-Share Program (the Cost-Share Program) is aimed at protecting and improving water quality and sustaining soil productivity by controlling soil erosion, the single greatest contributor to water pollution.

The program pays up to 75 percent of a landowner's cost of a variety of structural practices, including animal waste control systems, field windbreaks, terraces, waterways, streambank stabilization, and others. Applications are funded based upon recommendations from the local soil and water conservation districts (SWCDs) and BWSR field staff, who review the applications and help determine if they meet local needs and priorities.

Since the program's \$1.4 million in annual funding has not increased since it began in 1977, inflation has significantly reduced the program's ability to have a meaningful impact on water quality and erosion control. SWCDs, who administer the program locally, receive varying amounts of money based upon an allocation formula that considers a variety of factors, including the amount of soil loss in the county and the number of shoreland miles.



Cost-Share funding can be used for improved animal waste control systems, such as this holding pond and related structures.

**Program goals:**  
sustaining soil productivity and improving water quality through reducing soil erosion; reducing flooding potential

**FY 1994-95 funding:**  
\$2.7 million

**FY 1994-95 accomplishments:**

- 82 animal waste control systems
- 98,000 feet of terraces
- 1.3 million feet of field windbreaks
- 110 stormwater control systems
- 54 streambank, lakeshore and roadside erosion control projects
- 48,000 feet of grassed waterways
- 15,000 feet of diversions
- 28 erosion control structures\*

\*figures are based on projected averages from past years



# Minnesota River Basin Fund Program

**Program goal:**  
to improve water  
quality in the  
Minnesota River basin  
by accelerating  
conservation practices

**FY 1994-95  
funding:**\$1.1 million

**FY 1994  
accomplishments:\***  
Funding encumbered  
for the following  
projects in the  
Minnesota River  
Basin:

- 14 animal waste  
control systems
- six critical area  
stabilization projects
- 16 erosion control  
structures
- 14 stormwater  
treatment projects
- eight terrace projects
- three streambank  
stabilization projects

\*FY 1995 dollars have not yet been  
encumbered.

The primary purpose of the Minnesota River Basin Fund Program is to improve water quality in the Minnesota River basin by accelerating conservation practices.

This new program is a response to growing public concern about the Minnesota River. Studies have shown that the river is one of the most polluted in the state, with high bacteria levels, large amounts of sediment and related nutrients, and excessive quantities of nitrates and phosphorous. In many reaches, the river is unusable for fishing and swimming.

The BWSR grants the funds on a competitive basis to soil and water conservation districts (SWCDs), which then use the money to cost-share with landowners on a variety of projects. The funding can also be used to provide technical assistance.

The program received \$1.1 million in funding for the FY 1994-95 biennium. SWCDs receiving funding under the program were:

- the Blue Earth River Basin Initiative (BERBI), a joint powers board with representatives from the five counties in the Blue Earth River Basin;
- the Redwood-Cottonwood Rivers Control Area, a joint powers board with representatives from the six counties within the Redwood River and Cottonwood River basins;
- Cottonwood SWCD;
- Brown SWCD; and
- Blue Earth SWCD.

These joint powers SWCD boards and individual SWCDs used the funding for projects such as animal waste control systems, dams, stormwater control systems, erosion control structures, and terraces. Funding was also used to provide technical assistance on project design.

The program is administered similarly to the Cost-Share Program.

# Special Projects Program

The Special Projects Program provides a unique opportunity for soil and water conservation districts to take the Cost-Share Program a step further by funding accelerated or innovative approaches to water quality or erosion control projects. Projects eligible for funding under the Special Projects Program include most of those eligible for Cost-Share Program funding--such as field windbreaks, terraces, animal waste control systems, etc.--as well as a variety of non-structural projects, such as resource monitoring, inventories, demonstration projects, and technical assistance.

As with the Cost-Share Program, a local match of at least 25 percent is required. SWCDs administer the program locally.

The program received \$381,000 in funding for the FY 1994-95 biennium. Funding went to 17 SWCDs for a number of projects, including identification of low-cost feedlot alternatives; lakeshore erosion control; and animal waste control systems.

**Program goal:**  
to give SWCDs the  
opportunity to try  
accelerated or  
innovative approaches  
to water quality or  
erosion control projects

**FY 1994-95 funding:**  
\$381,000

**1994-95  
accomplishments:**

- four streambank  
stabilization projects
- two erosion control  
structures
- six animal waste  
control systems
- seven lakeshore  
erosion projects
- one stormwater  
treatment project
- one critical area  
planting
- one waterway
- one low-cost feedlot

# The Streambank, Lakeshore and Roadside Program

**Program goal:**  
to protect water quality through reducing streambank, lakeshore and roadside erosion, particularly in areas with a high public impact

**FY 1994-95 funding:**  
\$318,000

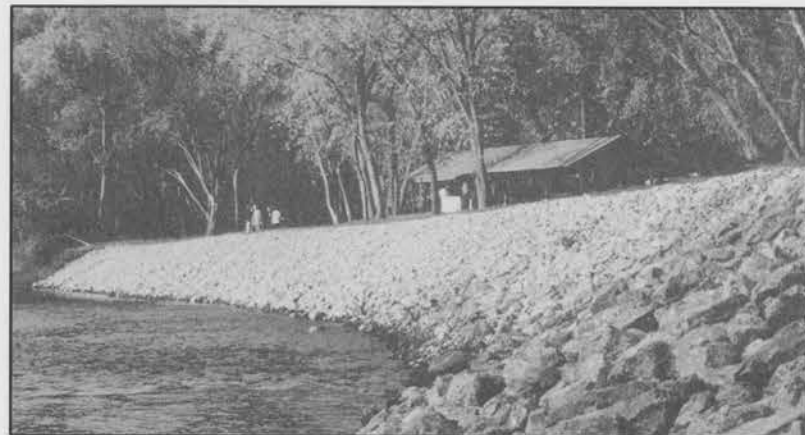
**FY 1994-95 accomplishments:**  
•11 streambank stabilization projects  
•five roadside stabilization projects  
•six lakeshore stabilization projects

The Streambank, Lakeshore and Roadside (SLR) Program focuses on protecting and improving water quality by correcting erosion problems on streambanks, lakeshores and roadsides. These areas are particularly vulnerable to erosion.

The program addresses costly erosion problems--often on public land--with a high public impact. Funding is targeted at local units of government, such as cities, townships, counties and soil and water conservation districts (SWCDs), rather than at individual landowners. Money from the program can be used to pay up to 50 percent of the total cost of a project or 50 percent of the local government's share of the project, if federal funds are involved. Projects with federal funding are given priority.

SWCDs administer the program locally.

In the fiscal year 1994-95 biennium, the program's \$318,000 in funding went to about 19 SWCDs. The SWCDs funded stabilization projects on 11 streambanks, five roadsides and six lakeshores.



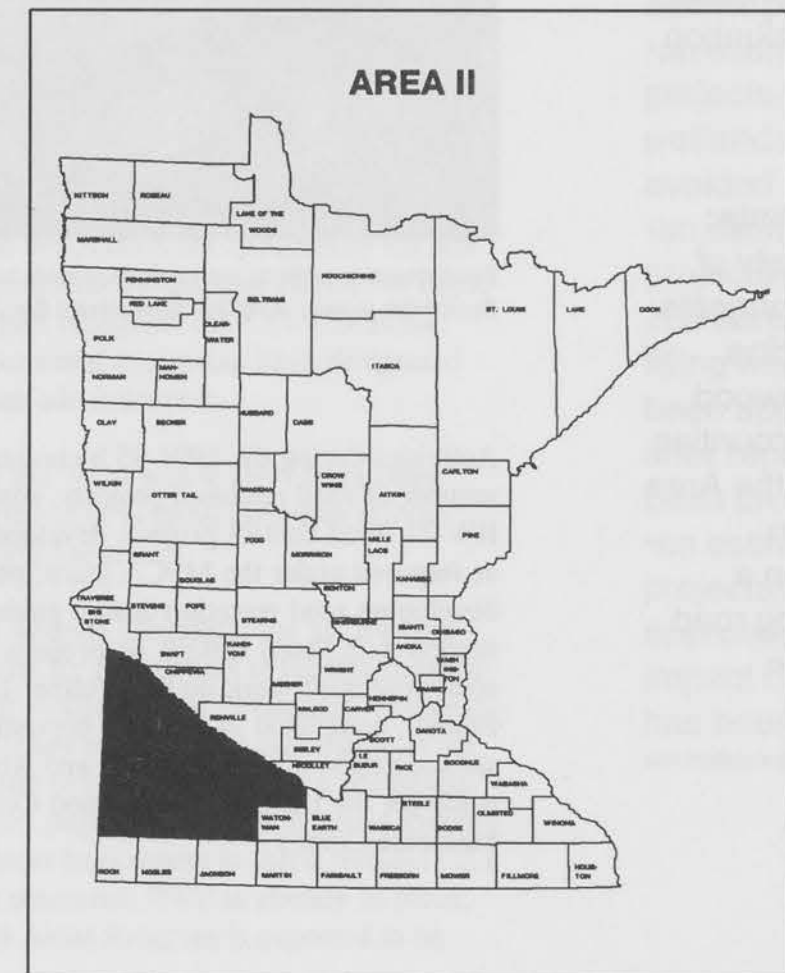
Streambank stabilization, often in public areas, can be funded through the SLR Program.

# The Area II Program

The primary purpose of the Area II Program is to reduce recurrent flooding problems in the Minnesota River basin in southwestern Minnesota, while also providing water quality, wildlife and recreational benefits. The program is administered by a nine-member joint powers board consisting of Brown, Cottonwood, Lac qui Parle, Lincoln, Lyon, Murray, Pipestone, Redwood, and Yellow Medicine counties.

State involvement in the program consists of two parts: technical engineering assistance provided through a BWSR engineer housed in the Marshall office; and 75 percent of the program's basic budget, which is matched by 25 percent locally. The program budget is then used for general administration and to provide up to 75 percent cost-share for flood control projects submitted by counties, watershed districts and soil and water conservation districts within the joint powers area.

State funding for the fiscal year 1994-95 biennium for the program remained steady at \$378,000; this funding was then matched at 25 percent by the member counties, for a total biennial budget of about \$500,000. In addition, the Legislature allocated \$800,000 in bonding funds to the program specifically earmarked for land acquisition for a flood





**Program goal:**  
reduce flooding  
problems in the  
Minnesota River basin

**FY 1994-95 funding:**  
\$378,000 in general  
fund money; \$800,000  
in bonding for the RW-  
22 project; \$8,190 for  
specific research; and  
\$13,400 for evaluation  
and planning

**FY 1994-95  
accomplishments:**  
•work on a variety of  
road retention projects  
in Yellow Medicine,  
Lincoln, Cottonwood  
and Redwood counties  
•completion of the Area  
II Strategic Plan  
•participation on a  
team developing road  
retention design  
guidelines

control project in Lyon County (the RW-22 project). Construction on this project is scheduled to begin in summer 1996. The Area II Program also received \$13,400 from the Minnesota Pollution Control Agency (MPCA) to evaluate the current program and develop a long-range plan; and an \$8,190 grant from BWSR to research the downstream effects of delaying peak flows through road retention technology.



Road retention projects use roads to provide temporary upstream floodwater storage to reduce downstream flooding.

Activities during the 1994-95 biennium include work on a number of road retention projects; continued progress on the RW-22 flood control project; development of a strategic plan as required under the MPCA grant; participation on a team developing road retention design guidelines; continued cooperation with South Dakota on projects beneficial to Minnesota; continued work on the Wellner-Hageman Flood Control Project, completed in 1992, to prevent crossover flooding and sedimentation of the reservoir; and work on a feasibility study for the Lazarus Creek Flood Control Project in Yellow Medicine County.

## The Wetland Conservation Act

The Wetland Conservation Act (WCA) aims for no net loss of wetlands in Minnesota. The act does this by requiring anyone wishing to drain or fill a wetland to first try to avoid the wetland; second, try to minimize any impact on the wetland; and finally, to replace any lost wetland area.

The 1991 Legislature approved the act as a response to a growing public awareness of the benefits wetlands provide. These benefits include protecting water quality by filtering out sediments and other pollutants; providing fish and wildlife habitat; serving as flood storage areas; and providing commercial uses. Despite these benefits, Minnesota has lost almost 60 percent of its wetlands--approximately 11.1 million acres--since the mid-1800s.

Like many BWSR programs, the act is administered by local governments, including cities, counties, towns, or water management organizations. Many cities and towns--particularly smaller ones with limited staff--have turned over administrative responsibility for the act to the counties in which they are located. Although the WCA does not specifically list soil and water conservation districts (SWCDs) as eligible to implement the act, many counties recognize their SWCD as the local "expert" on environmental topics and have designated the SWCD as the program administrator.

The regulatory aspect of the WCA sets it apart from other BWSR programs. Department of Natural Resource (DNR) conservation officers enforce the act.

In addition to regulating wetland alteration, the act also provides two new opportunities for landowners to receive compensation for protecting their wetlands. The Permanent Wetlands Preserve Program (PWP) pays landowners a percentage of the assessed value of their land to place wetlands in a permanent conservation easement (see page 10); and the Wetland Preservation Areas Program allows landowners to enroll wetlands in a tax exempt conservation easement. PWP is already in place; the Wetland Preservation Areas Program is expected to be

**Program goal:**  
no net loss of  
Minnesota wetlands

**FY 1994-95 funding:**  
\$3.6 million for grants  
to local governments to  
administer the act

**FY 1994-95  
accomplishments:**  
•an estimated 3,000  
projects disrupting  
wetlands have been  
avoided  
•an estimated 500  
projects (totaling about  
200 acres) draining or  
filling wetlands have  
been approved only  
after replacement has  
been provided for  
•an estimated 500  
projects have been  
approved after the  
impact on wetlands  
has been minimized

*accomplishments can't next page*

### accomplishments con't...

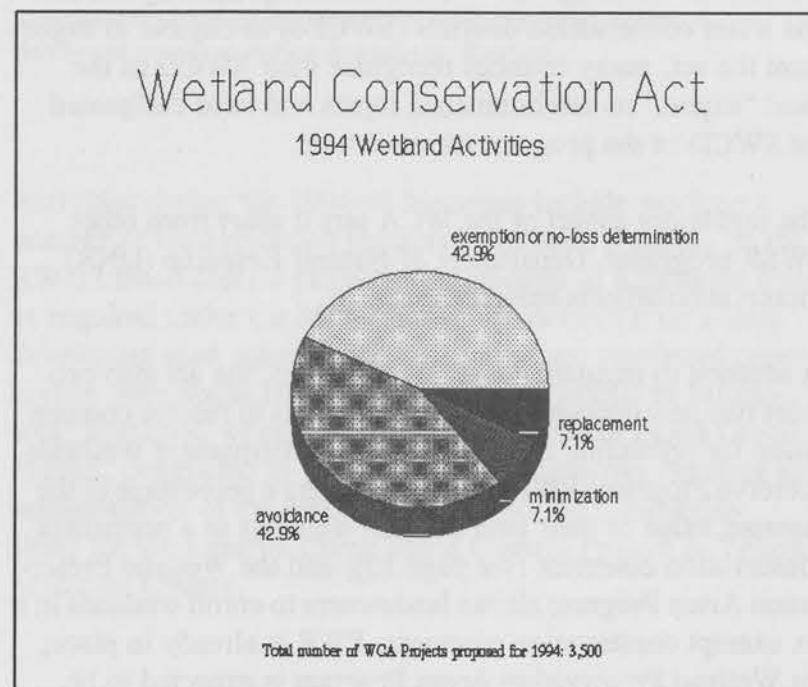
- approximately 440 local governments, covering about 95 percent of the state, have accepted responsibility for the act and are administering it locally
- about 350 local and state government staff members have participated in a four-day basic wetland delineation course
- about 140 local and state government staff members have participated in advanced wetland delineation training
- a state wetland banking program has been developed and is in place, allowing greater flexibility for wetland replacement

available by the end of 1995.

For the first two years after its effective date of January 1, 1992, the WCA functioned under an "interim program" designed to give local units of government an opportunity to get the training necessary to implement the act. The "permanent program" went into effect January 1, 1994. About 440 local governments, covering 95 percent of Minnesota, have officially adopted the permanent program. In the remaining five percent, a moratorium on non-exempt wetland activities exists.

To offset the administrative burden on local governments, the Legislature allocated \$3.6 million for the FY 1994-95 biennium for grants to local governments and SWCDs administering the act. Grant amounts are determined by the number of wetlands and potential development in a given area.

The act has significantly reduced wetland losses in Minnesota. The act's requirement that landowners avoid wetlands if



possible has led to many people re-working their projects slightly to completely avoid wetland impacts. These revised projects generally involve little additional expense or diminished project value, but do result in important wetland savings. An estimated 3,000 projects disrupting wetlands were avoided during the FY 1994-95 biennium. In addition, about 500 replacement plans (totaling about 200 acres) were approved for cases in which avoidance was not possible.

Because the intent of the act is not to prohibit draining and filling of wetlands, but merely to ensure that any such activities are carefully thought out and any lost wetland area replaced, the WCA establishes a wetland banking program. Under the program, restored or created wetland acres can be put in a "bank" for purchase as replacement acres. A number of counties started wetland banks during the FY 1994-95 biennium.

In conjunction with the Wetland Conservation Act, the Legislature created the Wetland Heritage Advisory Committee (WHAC) to advise the BWSR on act implementation. Based on WHAC recommendations, the Legislature in 1994 approved amendments giving local governments options for greater flexibility in carrying out the act and relaxing certain requirements for road projects affecting less than 10,000 square feet of wetland. As implementation of the act proceeds, the WHAC continues to provide interested organizations and citizens with a chance to provide input on possible changes.



## The Abandoned Well-Sealing Program

**Program goal:**  
to protect groundwater quality by sharing the cost of sealing high priority abandoned wells

**FY 1994-95 funding:**  
no state funding;  
\$500,000 federal funding for FY 1995

**1994-95 accomplishments:**  
•obtaining \$500,000 in federal funding  
•continuation of well-sealing work contracted for in 1992-93  
•several counties continuing work with local funds

The Abandoned Well-Sealing Program aims to protect groundwater--Minnesota's primary source of drinking water--by providing funds to help share the cost of sealing high priority abandoned wells. Minnesota's estimated one million unsealed abandoned wells provide a direct conduit for contaminants to enter groundwater.

Counties administer the program locally. Funds from the program are used to share up to 75 percent of a landowner's cost of sealing an abandoned well, up to \$2,000 per well. Well-sealing costs range from a few hundred dollars to tens of thousands.

The 1989 Groundwater Act created the program. During FY 1990-91, the Legislature allocated about \$357,000 under the program for grants to counties. Funds were awarded to 18 counties and over 1,000 wells were sealed. Several counties augmented the state funding with local dollars.

During the FY 1992-93 biennium, \$750,000 from the Environmental Trust Fund was awarded to about 39 counties for the program. The number of counties augmenting the state funding with local resources increased. More than 2,300 wells will be sealed with those funds.

The Legislature did not allocate funds for the program for the FY 1994-95 biennium. Counties proceeded with well-sealing work that had been contracted for in previous years. Several counties continued well-sealing cost share programs using local funds.

In FY 1995, the BWSR will receive \$500,000 in federal funding for well-sealing as part of flood relief dollars. The funds will be used to share the cost of sealing high priority abandoned wells affected in the 57 counties declared disaster areas as a result of 1993 flooding.

## The Local Water Resources Protection and Management Program

The primary purpose of the Local Water Resources Protection and Management Program (LWRPMP)--also called the Local Water Planning Program--is to protect water resources through the adoption and implementation of local water management plans based on local priorities. The plans address a wide variety of issues, including groundwater protection, wetland protection and restoration, water supply, exotic species, specific lake or water quality concerns, and related land use activities.

The program is a state-local partnership based on the premise that each level of government has a strong interest in well-managed resources, and each level has distinct areas of strength in carrying out resource management. This partnership is reflected in program funding, which is a combination of state grant and local levy totaling \$37,500 per county annually. The state portion is based on a sliding scale depending



The Local Water Resources Protection and Management Program focuses on protecting surface water and groundwater.

upon each county's tax base and how much can be raised locally. Any additional state funds are used for competitive challenge grants to help local governments accelerate their activities.

Counties use the funding for projects designed to reach the goals and objectives identified in the plans. Specific activities

**Program goal:**  
to encourage local comprehensive water management

**FY 1994-95 funding:**  
\$5.67 million

**FY 1994-95 accomplishments:**  
•more than 80 percent of counties receiving grants participated in groundwater monitoring  
•more than 75 percent of counties receiving grants added various forms of land protection, such as no-till farming, feedlot inventories, hazardous waste collection, etc.  
•approximately 25 percent of counties receiving grants performed surface water monitoring  
•more than half of counties receiving grants participated in education and information activities



include data collection and assessment; public education; resource inventories; feedlot permitting; well testing; hazardous waste collection; and others.

The program is administered somewhat differently in the Twin Cities metropolitan area than in greater Minnesota. While water plans in greater Minnesota cover both surface water and groundwater--and are done on a voluntary basis--surface water planning and groundwater planning are dealt with separately in the Twin Cities. Metropolitan surface water planning is required, while groundwater planning is voluntary.

The success of the program is clear: of Minnesota's 87 counties, 86 participate in the program. In many counties, local task forces created initially to develop water plans continue to meet, providing increased coordination between local governments and state agencies and an avenue for citizen input. These task forces serve to monitor the program to ensure that the plans continue to reflect local needs and priorities. Housing the program with the counties has also led to an increased awareness of the connection between the county boards' land use decisions and water quality.

1995 will provide counties with a unique opportunity to build on the program's successes as they participate in the plan update and revision process. These plan updates--the first since most of the plans were approved in 1989 or 1990--are a chance for counties to again open a public discourse about both the community's general approach to land and water management and also the specifics of how that approach gets carried out.

Legislative support for the program has been consistently strong since its passage. FY 1994-95 funding was about \$5.67 million, with \$5.07 for the basic grants and about \$600,000 for competitive challenge grants.

## The Minnesota Forestry Improvement Program

The Minnesota Forestry Improvement Program (MFIP) provides cost-share assistance to non-industrial private woodland owners as an incentive to install needed forestry practices. These practices help improve forestry production while also providing increased environmental protection.

Funding for the program is provided to the BWSR through the Department of Natural Resources forestry budget. The BWSR then administers the money in grants to soil and water conservation districts, which work with landowners to get conservation practices on the ground. The funding can pay up to 75 percent of a landowner's cost of a project. Projects frequently funded through the program include forest access roads, fencing, and gopher control.

The program did not receive funding in FY 1994. For FY 1995, program funds totaling \$50,000 went to counties bordering the Mississippi and Minnesota rivers, which were selected as high priority for funding. Projects to be funded with the money include establishment of original tree species, construction of logging or access roads, installation of forest plantation firebreaks and fire suppression lanes, and implementing gopher control practices.

The program has not been funded for FY 1996.

**Program goal:**  
to increase forest productivity and protect the environment by encouraging forest management

**FY 1994-95 funding:**  
\$50,000 in FY 95

**FY 1994-95 accomplishments:**  
•19,900 feet of logging or access road construction  
•280 rods of forest plantation firebreaks and fire suppression lanes  
•84 acres of pocket gopher control  
•1,084 acres established to original tree species

## Outside funding

The Board of Water and Soil Resources received significant outside funding from three sources during the FY 1994-95 biennium: the Great Lakes Commission, the Environmental Protection Agency, and the North American Wetland Conservation Act (NAWCA). These funds went to accomplish specific goals shared by the sponsoring organizations and the BWSR.

### Lake Superior Shoreline Stabilization

The BWSR received about \$190,000 from 1991 to 1994 from the U.S. Environmental Protection Agency (EPA) and the Great Lakes Commission (GLC) for shoreline stabilization on Lake Superior. Shoreline erosion is a particular problem on Lake Superior because much of the lake's shoreline development is in erodible areas, where the soils are predominately clay and gravel. The most severe problems occur in St. Louis and Lake counties, where wave action continually erodes the clay slopes.

The funding helped leverage more than \$200,000 in other local and state funding, for a total of about \$400,000 for projects and staffing. Specifically, the money has funded the following projects:

- 1,300 feet of shoreline stabilization over two properties, saving approximately 385 tons of soil per year
- A two-phase project over a quarter-mile stretch of Sucker Bay between the cities of Duluth and Two Harbors. Phase one, completed in 1994, included the construction of a rock buttress along 1,050 feet of highly erodible shoreline, which will save an estimated 4,820 tons of soil per year. The second phase of the project, scheduled to begin in spring 1995, will involve construction of a surface water and shallow groundwater collection system, to reduce water seepage and runoff to the face of the slope.
- At the Silver Cliff lakeshore site, located just north of Two Harbors, rock blasted from a nearby tunnel construction site was used to stabilize 1,700 feet of shoreline, saving an estimated 1,280 tons of soil per year. Because of the unconventional construction techniques and rock size, the project

### Sources of outside funding:

- EPA
- the Great Lakes Commission
- the North American Wetland Conservation Act



was considered a demonstration project and is being monitored by the BWSR lakeshore engineer.

- Soil investigations and site surveys over one additional property were completed; construction is scheduled for spring 1995. The project is expected to save about 50 tons of sediment per year.

- During 1994, the planning and design work for a stabilization project at a campground site in the city of Two Harbors was completed. Rock and stone have been stockpiled at the site. The project, which will protect about 1,425 feet of eroding shoreline and save about 1,515 tons of soil per year, is scheduled for completion during winter 1995.

#### **Feedlot technical assistance**

Through an EPA grant, the BWSR in 1990 hired a feedlot technician, housed from 1990-1993 in the BWSR office in Marshall, and during 1994 in the Duluth office. The staff person provided training and technical assistance to SWCD staff and others for the analysis, design and installation of feedlots.

Training activities included one-on-one training to individual SWCD staff, as well as larger workshops and seminars. Technical and design assistance included specific feedlot design projects for construction.

The position is currently empty, although the EPA has approved continued funding. BWSR plans to fill the position in the Marshall office.

#### **The North American Wetland Conservation Act (NAWCA)**

Funding through the BWSR's Reinvest in Minnesota (RIM) Reserve Program has leveraged about \$700,000 from the North American Wetland Conservation Act. The money became available July 1, 1994, and is being used to acquire easements on drained, restorable wetlands in the Minnesota River Valley.

## **Future trends**

During the past decade, public expectations of government regarding the environment have changed tremendously. After years of taking our clean, abundant resources for granted, growing numbers of lakes and rivers too polluted for normal use served as a wake-up call for many citizens. The realization suddenly dawned that business, agriculture and residents were not doing an adequate job of self-regulation, and the citizens of Minnesota turned collectively to their government to protect and manage these natural resources.

Over the past few years, a powerful trend within this increasing governmental role has been a heavier reliance by state and federal governments on local governments. This shift has been motivated in part by a recognition that local government holds the key to local land use, which to a large extent drives resource management. However, there is also general agreement that local governments have the additional advantage of a greater understanding of their constituents and local resource concerns.

This greater level of responsibility at the local level has helped foster a second notable trend: a greater willingness to pursue resource management on a watershed basis. Local and state governments now understand that resource management doesn't begin at the county or city line and end at the other side. The activities of everyone within an entire watershed have a direct impact on resource quantity and quality for everyone else in that watershed. The recent proliferation of partnerships and joint powers agreements indicates that local governments believe that only by working together can they achieve their resource management goals and provide the resource protection the public wants.

Nothing exemplifies these trends as well as the 1994 passage of the State Revolving Fund (SRF) legislation. Under that legislation, local governments work with the state to provide low-interest loans to landowners for water quality related projects. Although the state provides the framework and the funding, the local governments provide local administration and screening to determine what projects fit in with local priorities. To carry out the anticipated workload resulting

#### **Future trends:**

- a heavier reliance on local governments
- a greater willingness to pursue resource management on a watershed basis

from the program, local governments within each watershed are banding together to hire appropriate technical staff.

Clearly, these trends toward local reliance and watershed-based management can lead to more comprehensive, effective environmental management. However, it should be recognized that as state reliance on local government increases, the state's responsibility toward local government also increases. The state has an obligation to see that local government has the tools it needs to meet these rising demands, including training; funding; and technical assistance. Without these tools, it is unrealistic to expect local governments to be able to meet the new demands placed upon them by the state and the public.

The ultimate success, then, of how well we capitalize on these trends toward local, watershed-based resource management depends not solely on either local or state government, but on a successful working partnership. By working together, we can achieve the ultimate goal we all share: a clean, enjoyable environment.

• Board  
Bucket  
leg & Budget

**LEGISLATIVE WATER COMMISSION**  
**Possible 1995 Amendments to the Groundwater Protection Act**

**DRAFT FOR DISCUSSION ONLY**

Prepared by Susan Schmidt with input from John Helland, Hans Bjornson, Greg Knopff  
January 10, 1995

**I. POSSIBLE AMENDMENTS**

1. Fund **ambient groundwater monitoring** program at PCA so that progress on groundwater protection can be monitored and evaluated. **\$1,400,000 / biennium. Approximately \$500,000 / biennium is currently in the PCA base; approximately \$900,000 is new money.** PCA is exploring a source of funding for this monitoring activity. (PAGE 3)
2. Fund DNR/MGS to **complete sensitivity mapping** -- county atlases and regional hydrogeologic assessments -- over the next 10 years. **\$2,500,000 / biennium. Approximately \$665,000 biennium is currently in the DNR base; approximately \$1,900,000 would be new money.** No specific source of funding has been identified. Recall that LCMR funded sensitivity mapping in the last two biennium. (PAGE 4)
3. Fund **two joint BWSR / MES groundwater education field positions.** Approximately **\$240,000 / biennium.** There is no money in the current BWSR base. Note that this item was vetoed in 1994. (PAGE 5)
4. Fund **1 EQB staff dedicated to groundwater program coordination** and related policy analysis. **Approximately \$102,000 biennium.** There is no money in the current EQB base. Note that this item was vetoed in 1994. (PAGE 6)
5. **Well Sealing (PAGE 7-8)**
  - 5A. Fund BWSR's **well sealing cost share grants** to counties at a level of **\$500,000 / biennium.** Make this money available in the second year of this biennium only since federal money is very likely available in 1996. There is no money in the current BWSR base for this well sealing activity.
  - 5A. **Remove the \$2,000 cap on well sealing projects** that are critical yet expensive. Give BWSR / MDH authority to review and approve requests above \$2,000.
6. Direct **MDH to conduct a pilot project on pesticides in drinking water** during the next two years. **\$250,000 one time cost.** The "\$5.21 fund" which is part of the special revenue account can be used for this activity. (PAGE 9)
7. Fund the Minnesota Institute for Sustainable Agriculture (MISA) at the University of



Minnesota to work with the MDA to **develop, package and disseminate information on sustainable agriculture**. Ex: Direct marketing. **\$300,000 / biennium**. There is no money in UM base for this activity. (PAGE 10)

8. Build more **accountability / reporting** into all programs so that progress is adequately monitored. (NO DRAFT LANGUAGE AT THIS TIME)

8A. **PCA's biennial Water Quality Trends Report** should include analysis of ongoing monitoring data. The report should be a joint report between PCA and MDA. The EQB / WRC should be responsible for peer review of this document. Chapter 103A.43? Funding?

8B. **DNR's biennial report on water quantity trends** should be based on strong analysis rather than just data reporting. The EQB / WRC should be responsible for peer review of this document. Chapter 103A.43? Funding?

8C. PCA and MDA should **monitor the effectiveness of best management practices** through the use of a field auditing process similar to that used by DNR on forestry BMPs. The EQB / WRC should be responsible for peer review of this auditing activity. Chapter 103H.151 or 103A.43? Funding?

## II. FUNDING (millions)

| ITEM                  | TOTAL | BASE | NEW  |
|-----------------------|-------|------|------|
| 1. Monitoring(A)      | 1.4   | .5   | .9   |
| 2. Sensitivity Map(B) | 2.5   | .6   | 1.9  |
| 3. Joint Educ(C)      | .24   | -    | .24  |
| 4. EQB Position(D)    | .12   | -    | .12  |
| 5. Well Sealing(E)    | .5    | -    | .5   |
| 6. MDH Pilot(F)       | .25   | -    | .25  |
| 7. MISA Education(G)  | .3    | -    | .30  |
| 8. Accountability     | -     | -    | -    |
|                       | 5.31  | 1.1  | 4.21 |

Notes:

- (A) ?
- (B) ?
- (C) ?
- (D) ?
- (E) ?
- (F) \$5.21 Fund / Special Revenue Account
- (G) ?

PRELIMINARY DRAFT

1. AMBIENT GROUNDWATER MONITORING

Sec. ... [GROUNDWATER MONITORING AND ASSESSMENT PROGRAM;  
APPROPRIATION.]

\$1,400,000 is appropriated from the [funding source] to the commissioner of the pollution control agency for the groundwater monitoring and assessment program, to be available until June 30, 1997.

PRELIMINARY DRAFT

2. GROUNDWATER SENSITIVITY MAPPING

Sec. ... [COUNTY GEOLOGIC ATLASES AND REGIONAL HYDROGEOLOGIC ASSESSMENTS; APPROPRIATION.]

\$2,500,000 is appropriated from the [funding source] to the commissioner of natural resources for production of county geologic atlases and regional hydrogeologic assessments. This appropriation is available until June 30, 1997.

PRELIMINARY DRAFT

3. BWSR/MES JOINT EDUCATION FIELD POSITIONS

Sec. ... [GROUNDWATER EDUCATION POSITIONS; APPROPRIATION.]

\$240,000 is appropriated from the [funding source] for fiscal years 1996 and 1997 to the board of water and soil resources for two groundwater education field positions in a cooperative effort with the Minnesota extension service to work on groundwater education efforts with local units of government and landowners.

PRELIMINARY DRAFT

4. EQB COORDINATION STAFF

Sec. ... [COORDINATING GROUNDWATER PROTECTION ACTIVITIES;  
APPROPRIATION]

\$102,000 is appropriated from the [funding source] for fiscal years 1996 and 1997 to the environmental quality board through the director of the office of strategic and long-range planning for the purposes of coordinating groundwater protection activities.



PRELIMINARY DRAFT

5A. WELL SEALING COST SHARE FUNDS

Sec. ... [WELL SEALING COST SHARE GRANTS; APPROPRIATION]

\$500,000 is appropriated from the [funding source] for fiscal year 1997 to the board of water and soil resources for well sealing cost share grants under section 103I.331.

PRELIMINARY DRAFT

5B. WELL SEALING COST SHARE "CAP"

Section 1. Minnesota Statutes 1994, section 103I.331, subdivision 4, is amended to read:

Subd. 4. [LANDOWNER WELL SEALING CONTRACTS.] (a) A county, or contracted local unit of government, may contract with landowners to share the cost of sealing priority wells in accordance with criteria established by the board of water and soil resources.

(b) The county must use the funds allocated from the board of water and soil resources to pay up to 75 percent, but not more than \$2,000 of the cost of sealing priority wells. The board, with the assistance of the department of health, may review and approve a request above \$2,000 for sealing a priority well.

(c) A well sealing contract must provide that:

(1) sealing is done in accordance with this chapter and rules of the commissioner of health relating to sealing of unused wells;

(2) payment is made to the landowner, after the well is sealed by a contractor licensed under this chapter; and

(3) the contractor must file a sealed well report and a copy of the well record with the commissioner of health.

Sec. 2. Minnesota Statutes 1994, section 103I.331, subdivision 6, is amended to read:

Subd. 6. [REPEALER.] This section is repealed effective June 30, 1996 1998.

PRELIMINARY DRAFT

6. MDH PILOT PROJECT

Sec. ... [APPROPRIATION; PESTICIDES IN DRINKING WATER PILOT PROJECT.]

\$250,000 is appropriated from the special revenue fund to the commissioner of health for a pilot project to expand the number of pesticides and pesticide metabolites tested at selected public water supply systems that use surface water. The public water supply systems selected for the pilot project must represent regions of the state with the greatest potential for pesticide contamination. By January 15, 1996, the commissioner must provide a report to the legislative water commission on the findings of the pilot project. The report must include recommendations from the commissioner on whether they should expand the public water supply testing program to include the testing of additional pesticides and pesticide metabolites.

PRELIMINARY DRAFT

7. MISA SUSTAINABLE AGRICULTURE OUTREACH

Sec. ... [APPROPRIATION; MINNESOTA INSTITUTE FOR SUSTAINABLE AGRICULTURE.]

\$120,000 in fiscal year 1996 and \$180,000 in fiscal year 1997 is appropriated from the [funding source] to the University of Minnesota for the Minnesota Institute for Sustainable Agriculture to gather, evaluate, publish, and disseminate information available to a broad audience through both printed and electronic means. By January 15, 1997, the executive director of the Minnesota Institute for Sustainable Agriculture must provide a progress report to the legislative water commission on its activities funded under this section.





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40-16th Street SE  
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Fax (507) 280-2875

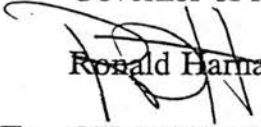
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Marshall, MN 56258  
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Fax (507) 537-6368

**Metro Region:**

One West Water Street  
Suite 250  
St. Paul, MN 55107  
(612) 282-9969  
Fax (612) 297-5615

**DATE:** January 11, 1994

**TO:** The Honorable Arne Carlson  
Governor of Minnesota

**FROM:**  Ronald Harnack, Executive Director

**SUBJECT:** QUARTERLY REPORT ON AUDITS 94-48; 94-56

**AUDIT NO. 94-48**

**Recommendation #1:** BWSR has implemented the recommendations of the audit. BWSR has received full payment from Dakota County for the unexpended portion of the project funds granted for well sealing. The returned amount was \$9,400. Dakota County apparently had misplaced the paper work for the repayment, which resulted in the delay. BWSR has reviewed remaining grant agreements and found that all grants are in compliance with the provisions of the agreements.

**Recommendation #2:** BWSR has implemented the recommendations of the audit. During the past 18 months the RIM Reserve program has been "retooled" to improve the timeliness of processing of easements. The easements were processed consistent with the procedures of the Dept. of Finance and the Dept of Administration. BWSR has discussed this matter with LCMR staff and the audit issues have been satisfied.

**Recommendation #3:** BWSR has met with LCMR staff and reviewed the audit recommendations. The processing of the easements were consistent with the procedures of the Departments of Finance and Administration. Future appropriations from LCMR will more fully define the expectations of the parties involved. This recommendation has been satisfied.

Some issues raised by the legislative audit suggest a need for greater communication between audit personnel and finance personnel to better understand normal operating policies and procedures of the state.

All the issues raised in audit 94-48 have been discussed with the LCMR and the Department of Finance. I believe that all agree that the recommendations have been satisfied.

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**AUDIT 94-56**

**Recommendation # 1: Does not adequately control employees' overtime.** The audit suggests that our overtime policy is inconsistent with the labor contracts. In 1993, BWSR reviewed and revised its overtime policy, and based on the audit, we are again reviewing the policy and procedures.

**Recommendation # 2: Does not properly control time sheets for employees working in the field offices.** The submission of time sheets from field offices through the mail has resulted in some problems identified by the audit. This has been addressed by the installation of fax machines in each of the offices. This recommendation has been fully addressed.

**Recommendation # 3: Payroll & personnel duties are not adequately segregated.** The agency has implemented changes internally to ensure that there is greater segregation of duties. During the past several months BWSR has been delegated authority from the Department of Finance and the Department of Administration and we continue to operate within the quality control standards established. The additional changes in agency procedures increase the degree of checks and balances within the system. This recommendation has been fully satisfied.

**Recommendation # 4: Does not exercise adequate fiscal oversight of grants to local governments:** BWSR has a reporting and monitoring process that does provide substantial oversight for the grants of the agency. In addition, there are local government audit processes that are an additional review of grants activities. BWSR has initiated some changes to the reporting that will require more information relating to the fiscal accounting by the local government. This recommendation has been fully satisfied.

**Recommendation # 5: Did not resolve a potential conflict of interest by a board member.** No conflict of interest actually existed. We have initiated development of by-laws for the agency that will further address the conflict of interest issue. We have modified our program procedures so that this particular type of potential conflict of interest cannot occur. This recommendation has been fully satisfied.

**Recommendation # 6: Needs to develop a plan to properly retain records.** The agency does have a records retention plan that was updated two years ago. We have initiated a review of the plan and are communicating with the Department of Administration to update our plan to address the issues identified.

We have discussed these issues with our liaisons in the appropriate agencies. I believe that the actions of the agency fully address the issues raised in the audit #94-48 and #94-56. If you have any questions or want to discuss any of these matters in greater detail, please advise.

cc: D. James Nielsen, Chair  
Commissioner of Finance  
Legislative Auditor  
Lyle Mueller, EBO  
LCMR

# OFFICIAL COMMUNICATION

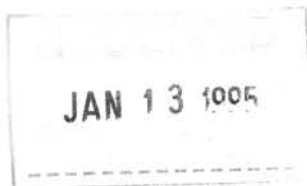
FROM THE OFFICE OF THE GOVERNOR OF THE STATE OF MINNESOTA

ARNE H. CARLSON  
GOVERNOR



JOANNE E. BENSON  
LT. GOVERNOR

FOR IMMEDIATE RELEASE  
January 10, 1995



CONTACT: Barb Shlafer  
296-0001 (O)

Linda Kohl  
Minnesota Planning  
297-2325 (O)

## GOVERNOR CARLSON RELEASES REPORT SHOWING DISTANT BUDGET GAPS

*Says state must act responsibly now to offset devastating impact*

Governor Arne H. Carlson today said Minnesota will enter the 21st century with a pattern of government deficits, if current demographic and spending trends continue unchecked.

While current trends indicate short-term stability, state and local governments will face a cumulative deficit of \$2.5 billion for the eight-year period between the two-year budget cycles ending June 1999 through June 2005, with deficits each two-year budget period averaging \$625 million. These are the findings of *Within Our Means* a major study on future government spending, released today by Minnesota Planning in collaboration with the Minnesota Department of Finance.

"For years we have known that there was a looming structural gap in the more distant future," Governor Carlson said. "But until I asked Minnesota Planning to conduct this study, we had very little information about the magnitude of the gap or the primary forces driving it."

The report asserts that the structural gap will recur because of demographic trends that will dampen income growth and increase the number of youth, elderly and others using government services. The gap could be greater if the state incurs major cuts in federal funding from the new congress, enters a major recession, or decides to construct a new airport or light rail system.

As of 1990, Minnesota governments spent \$4,701 for each resident, ranking sixth among all states. Minnesota ranked fourth in per capita spending for health and social services — the largest spending category — eighth in public school spending, 11th in roads and highways, 18th in higher education and 38th in corrections.

The report identifies five forces that will drive gaps between spending and revenues:

- **A changing population, including more youth in school and prone to crime, and more elderly needing long-term nursing home care.** Combined state-federal Medical Assistance spending for the elderly is projected to grow by about \$340 million per year from 1993 to 1999, while spending to meet school enrollment growth will grow by \$320 million a year from 1993 to 2001.

-more-

Cyndy Brucato  
Deputy Chief of Staff  
Director of Communications  
(612) 296-0017

130 State Capitol, St. Paul, Minnesota 55155

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- **Continual expansion of eligibility and levels of service for major programs, such as health care, schools and colleges.** For example, if recent growth rates continue, special education spending would grow from \$602 million in 1993 to over \$1 billion by 2001.
- **High standards and extensive regulations.** For example, Minnesota's high standards for roads increase costs by up to 5 percent, and 1989 laws doubling prison sentences for serious crimes are accelerating prison costs.
- **Rising costs of public salaries and employee benefits, and of medical services purchased for dependent citizens.** Adjusted for inflation and population growth, state and public payrolls grew by 16 percent from 1980 to 1991, and school employee health benefit costs jumped 42 percent per student from 1987 to 1993.
- **Infrastructure costs, to maintain aging schools and highways and expand them to meet growing suburban populations.** Costs to correct all deficiencies in Minnesota school buildings are estimated at \$1.5 billion, while the cost of fully upgrading Minnesota highways is projected at \$28 billion over the next 20 years — over \$1 billion per year. While short-term funding for prisons is secure, a new prison scheduled to open in 1999 will cost \$100 million, and additional prisons may be needed.

Minnesota Planning's report urges action now to avoid the need for more drastic actions in the future. The report outlines options for action and suggests four directions to close the gap:

- Re-evaluate the state role and fund only the essential activities of local schools, cities and counties, leaving other services to local discretion;
- Increase flexibility by aggressively seeking waivers relaxing federal rules, and reduce state mandates to schools and local governments;
- Focus on cost-effective alternatives to institutionalization of the elderly and of non-violent criminals;
- Contain government operating costs by holding down payrolls, negotiating health insurance rates, refraining from expanding eligibility for programs, and using competitive bidding between public employees and private vendors.

The report concludes, "If there is a time to solve the state's fiscal problems, it is now. The economy has been strong. The percentage of Minnesotans of working age is still growing and will reach an all-time high in 2010, before beginning a long-term decline." After 2010, only 15 years from now, tax revenues produced by working-age Minnesotans will soften and the number of dependent elderly to be supported will grow sharply.

"To ignore this fiscal omen would be irresponsible," Governor Carlson said. "Our administration will take a hard look at all the recommendations and incorporate them into our budget proposals now and in the future."

# # #

Jesse Preiner  
14536 West Freeway Drive  
Forest Lake, MN 55025  
464-2964

Dec 26, 1994

Mr. Lloyd Knudson  
5463 W Broadway  
Forest Lake MN 55025

Dear Mr. Lloyd Knudson,

On January 3, 1995 I will be hosting a informational meeting for The Minnesota Landowners Rights Association. Since the 1991 Wetlands Bill was passed landowners have been realizing the impact on this bill on their rights to use their property and the devaluation of it. I believe all landowners are affected and should be concerned about this issue. I have enclosed several articles for you to read that will be dicussed at this meeting. Please feel free to call with any questions and invite any person that would be interested in this issue. Below will be the expected agenda

Agenda

The Minnesota Landowners Rights Association

Date: January 3 1995

Time: 7 pm

Place: Lower Level Trout-Haus, 14536 West Freeway Drive  
Forest Lake

Phone: 464-2964

Speakers

- 7:00 Mr. Loren Hentges  
Chairman of the MN Landowners Rights Association
- 7:15 Commissioner Dan Erhart  
Chairman of Anoka County Board
- 7:30 Retiring Commissioner Bob Burman
- 7:45 Mr. Erick Kaardal  
Attorney Representing John & Josephine Bronczyk

Questions & Answers

Adjourn

Sincerely  




## ***OUR RESOLVE IS TO:***

**Protect Our Natural Resources Against the Threat of Environmental Extremists**---Minnesota Landowners help feed the world, manage wildlife, and safeguard the land. Current land use restrictions prevent landowners from expanding their farms, improving wildlife habitat, and utilizing their property for the health, safety, and welfare of humanity because of infringement on landowners rights.

**Repeal the 1991 Wetlands Conservation Act**--- The Wetlands Conservation Act is the biggest government land grab since Native Americans were forced onto reservations. County, City and Township governmental bodies are now shackled with uncomprehendable rules and penalty's that prevent them from providing necessary housing, roads, and public services for a growing population. Certain Landowners are seeing their equity disappear as their land is gobbled up by wetland restrictions, conservation easements and set- backs. Deemed for the public good.

**Protect and Enforce Local Watershed Management Organizations Authority**-- The original purpose of watershed districts was to provide proper drainage to certain parcels of land and maintenance to those drainage systems. Since landowners are taxed for that benefit the responsibility and authority should stay with the Local Watershed Management Organization and Drainage Authority.

**Expose and Oppose Unfair Comprehensive Land Use Plans That Demonstrate an Abuse of Private Property Rights**--- Once useful, comprehensive land use plans are now being abused by planners where they can manipulate land values. Land use planners also known as social engineers will provide and implement a comprehensive plan to a municipality for an exorbitant fee. Once the property is down-zoned and over taxed to the point where the owner will sell it at a discounted rate or forfeit it to the municipality a favored developer will move in to alter or develop the property.



**Obtain Proportionally Equitable Just Compensation for Landowners**

**Subjected to Loss of Use of Their land or a Loss of Equity in Their Land---**

For the benefit of humanity, for the masses, for public good, community welfare, in public interest,; what ever catch phrase is used to describe this phenomenon it is still the theft of the equity of an individual landowners investment in real estate. If it's in everyone's' best interest to restrict or down-zone an individuals' property than everyone should pay that landowner for his loss on a basis equal to hi s loss. A landowner has an inherent right to use his land as it was zoned when he obtained it and a reasonable expectation of a profit when he sells it. Restricting the use of land through down-zoning with comprehensive plans or crippling wetland or wood lot legislation and green belts is a taking. The remedy's are simple and simple to administer. A direct tax on the benefiting public and a direct payment to the landowner

**Support Fellow Americans Protecting Their Property Rights---**

Access to public lakes, streams, campgrounds, state and national forests, and all public resources is a property right being taken away from handicapped citizens and senior citizens. Wilderness areas are being reserved for the physically elite and some sportsmen through the use of endangered species legislation and bans on motorized transportation.

Farmers and ranchers are not getting adequately paid for their loss of crops and livestock due to poorly managed wildlife herds and flocks designed to be excessively large in order to entice sportsman to buy licenses and sporting goods. It is not in the publics best interest for land management or regulatory agencies to legislate, mandate, and enforce the use of our natural resources. They are bias, discriminating, and may have conflicting interests within their own agencies.

**"THE FINANCIAL BURDEN FALLS ON  
CERTAIN LANDOWNERS,  
EVERY INDIVIDUAL SHOULD  
PARTICIPATE IN THE COST NOT JUST  
CURRENT LANDOWNERS"**

MINNESOTA LANDOWNER'S RIGHTS ASSOCIATION  
RT 2 BOX 75  
GATZKE MN 56724

Yes, I support protecting the constitutional rights of private property owners:

Date \_\_\_\_\_

Individual and family membership (\$20.00) \_\_\_\_\_ Donation \_\_\_\_\_

Name \_\_\_\_\_ Spouse's Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Please make checks payable to the Minnesota Landowner's Rights Association

MINNESOTA LANDOWNER'S RIGHTS ASSOCIATION  
RT 2 BOX 75  
GATZKE MN 56724

Yes, I support protecting the constitutional rights of private property owners:

Date \_\_\_\_\_

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Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Please make checks payable to the Minnesota Landowner's Rights Association

POLICY STATEMENT OF

The Minnesota Landowners Rights  
Association

*Our purpose is to aid others to restore property owners rights as outlined by the United States Constitution and it's Bill of Rights.*

" The FINANCIAL BURDEN of Minnesota's 1991 Wetland Conservation Act and the down-zoning effect of many Comprehensive Land Use Plans FALLS on CERTAIN LANDOWNERS and on those who strive to provide necessary housing, roads, and safety for a growing population.

Since it is in EVERY INDIVIDUAL person's best interest to protect our Natural Resources, every individual person SHOULD PARTICIPATE IN THE COST, NOT JUST CURRENT LANDOWNERS."

# More governors seek states' rights meeting

Washington Post

Washington, D.C.

9/4/94

Following the lead of James Madison and the Virginia Legislature two centuries ago, a small but growing number of governors is trying to organize a "Conference of States" next year to correct what they see as an imbalance in the federal-state relationship.

Madison called a conference of states in 1786 [which led to the Constitutional Convention in Philadelphia the following year] because he and his followers believed the national government was too weak and the states were too strong.

The state leaders who are advocating a new conference believe the opposite is true.

The conference would adopt an "action plan," including drafting constitutional amendments aimed at restoring states' rights. If not voted upon by Congress, the plan could be submitted to a full-scale constitutional convention that the state leaders say they would demand only as a last resort.

While the proposed conference is still incipient, the National Governors' Association and the National Conference of State Legislatures have taken steps toward holding a summit on federalism that could lead to a larger gathering aimed at constitutional reform. Both groups endorsed the summit proposal in national conventions in July.

"In order to challenge [Congress] and compete for their rightful role, states require a rallying event, a means of consolidating their power," said Utah Gov. Mike Leavitt, a Republican.

Although there has been no poll of governors to gauge support for the conference proposal, La Varr Webb, Leavitt's deputy for policy, said he has been receiving

calls and letters every day from state officials expressing interest.

A governors' association official, who said he favors a more cautious, incremental approach to redressing the states' grievances than threatening to draft constitutional amendments, acknowledged that "clearly there is a group within this organization — mostly Western and mostly Republican — who think that is the way to go. We'll have to see how it plays out."

The official, who asked that he not be identified out of concern for appearing to take sides on the issue, added, "Politically, there's a broader base of support for this kind of thing than I've ever seen. It could grow into something."

Although Leavitt and other principals in the movement were reluctant to discuss a timetable for such a conference, the Utah governor said it would be "logical" to schedule it before the 1996 presidential election so that reforming the federal-state relationship would become a campaign issue. He and other backers of the proposal said the time was right to capitalize on growing anti-Washington sentiment.

One factor driving the effort to organize such a meeting is the growing opposition of many state leaders to "unfunded federal mandates." The term refers to the costs of enforcing federal regulations attached to new environmental and social welfare laws that Congress passes onto state and local governments without regard to how they will pay for them.

In addition, governors and state legislators are voicing concerns over what they view as a steady erosion of the 10th Amendment, which reserves all powers to the states that have not been specifically delegated to the federal government by the Constitution.

## Wetlands protection program cut from budget

Associated Press

9/22/94

WASHINGTON — Farmers who have been getting paid not to plow up wetlands and other wildlife habitat on their property may be seeing the last of their government checks.

House and Senate budget writers have agreed to abolish the 24-year-old Water Bank program, which has protected 750,000 acres of land, mostly in the South and upper Midwest, at a cost of \$8 million a year.

It was the largest program eliminated in the Agriculture Department's fiscal 1995 budget, which a House-Senate conference

committee finished work on Tuesday night. The payments will end as the farmers' 10-year contracts expire, beginning next year.

However, lawmakers from western Minnesota, North Dakota and South Dakota are trying to rush through a bill to keep the checks going.

Their bill, introduced this week, would allow acreage in the Water Bank program to be moved to USDA's Wetlands Reserve Program. The Wetlands Reserve Program pays farmers to restore wetlands that have already been farmed, while the Water Bank program covers virgin wetlands and adjacent wildlife habitat.

The 1985 swampbuster law, which prevents farmers who get federal crop subsidies from draining wetlands, would keep much of the Water Bank land out of production. The rest could be cultivated, which could eliminate some important waterfowl nesting areas, said Rep. Earl Pomeroy, D-N.D.

It isn't fair for the government to cut off the payments, he said.

A House Agriculture subcommittee chaired by Rep. Tim Johnson, D-S.D., approved the bill on Wednesday. Johnson is a cosponsor of the bill along with Rep. David Minge and Collin Peterson, both Minnesota Democrats.

The full committee is to consider it next week. Johnson said the bill could pass the House and Senate before Congress adjourns next month.

The Agriculture Department, however, has not given its opinion on the measure, and environmentalists were caught by surprise and may raise concerns about it.

Maureen Hinkle, director of agricultural policy for the National Audubon Society, questioned why farmers should get paid for not draining wetlands.

"If that were the case then everyone who has anything that is valuable for planet Earth ought to get money, a check from Uncle Sam," she said.



## OUR PERSPECTIVE

**'Takings'**

## Land use idea is a burdensome loser

In the last days of a Congress hamstrung by mean-spirited filibusters, the public can take some comfort in the fact that a very bad attempt at lawmaking is destined to die a natural death. A number of bills before Congress would have established expensive and bureaucratic new rules requiring governments to pay for the effects of regulations affecting private property. Such so-called "takings" laws have cropped up recently in states and now in Congress. Taxpayers should keep a wary eye out for this slick but costly and radical notion.

The idea can sound good if you own certain property. Imagine the government passing a law requiring that your wetland be protected. According to one prominent bill, the government would have to reimburse you if the market value of even a portion of your property was reduced by 50 percent or more — no matter what the beneficial effects on the remainder of your land, or the public good served by the government action, or the rules and restrictions on the land in effect when you purchased it.

And if paying for "takings" is such a good idea, where is the comparable enthusiasm for the government getting paid for "givings"? Why shouldn't private landowners pay for property improvements that accrue from regulations ensuring cleaner water, wildlife protection, flood control and groundwater protection?

If takings legislation were to pass, few units of government could afford the

costs that would result from regulations in the public interest. Under the theory of protecting private property holders from wetlands or endangered species legislation, takings law holds the rest of the public hostage.

The Fifth Amendment of the U.S. Constitution protects private property from expropriation by the government "without just compensation." More than 200 years of case law has developed a carefully balanced calculation weighing reasonable benefits versus costs before any payment is required. That system should be maintained. That's why more than half the state attorneys general oppose takings legislation, including Hubert Humphrey III in Minnesota.

Private property cannot be allowed god-like status. The interests of the public, including preservation of species without property rights, deserve a voice in how land is used and protected.

Rep. Billy Tauzin of Louisiana is the boy genius behind the movement for national takings legislation, although he has powerful allies such as Senate Minority Leader Bob Dole. Tauzin's speech is as spicy as the Cajun food he loves, and hearing him sing the praises of abused landowners can set feet to stomping like zydeco music. But if his song is about protecting the little guy, his dance is a deceptive shuffle aimed at picking the little guys' hip pocket. Congress shouldn't let him get away with it in this or any other year.



# Small print in Republicans' Contract could have big environmental impact

HEATHER DEWAR WASHINGTON BUREAU

**H**ouse Republicans are considering a sweeping measure that would permit private landowners to demand cash from Washington if a government regulation reduces the value of their land by 10 percent or more.

The little-noticed plan responds to the growing rage among landowners, particularly in the West, who feel environmental laws like the Endangered Species Act have unfairly restricted their chances to make money from their land.

But the measure, contained in the fine print of the Contract With America signed by House Republicans, could have enormous impact.

A spokesman for the Interior Department calls the proposal "the real nightmare on Main Street," forcing the government to pay landowners who balk at obeying existing laws that limit development on their property.

An aide to a key Senate backer says its ripples would be felt far beyond the environmental realm. And a Republican bud-

RIGHTS CONTINUED ON 9A ▶

## RIGHTS

▼ CONTINUED FROM 1A

get analyst says experts who tried to figure out its effect on the federal deficit simply threw down their pencils and moved on.

"Nobody could figure out how much it would cost," said Arthur Sauer, a Republican staffer on the House Budget Committee. "Most people figure that just having it in law would discourage the government from doing anything that would cost anything."

Just one and a half pages long, the draft bill is so obscure that only a few policy wonks say they've actually read it. It is tucked near the end of the text of the Republicans' Job Creation and Wage Enhancement Act, under the banner of "private property rights protection and compensation."

The proposal makes it easy for any private landowner to make a claim. If the federal government imposes land restrictions that could lead to lost profits of 10 percent or more, the landowner simply writes a letter to the agency involved. Within six months the agency must respond with an offer of money, and it must hold off on enforcing the regulation that caused the problem.

The idea harks back to the Constitution's Fifth Amendment, which forbids government from taking private land without compensation.

Members of the burgeoning property rights movement say that right is virtually absolute — that landowners should be able to fill wetlands on their property, or clear land that shelters endangered species, or exercise mining or grazing rights to the fullest.

They say federal environmental laws have left them the land but taken away its value, and they are demanding compensation for lost profits.

A wild idea with no chance of becoming law? Maybe, but the proposal has powerful friends. It's the brainchild of Rep. Dick Armey, R-Texas, the incoming House majority leader.

Armey also is a founding member of the Congressional Property Rights Coalition, a year-old House caucus that already boasts 166 members. Its Senate counterpart has signed up 14 backers so far.

The Republican co-chairman of

the Senate's property rights caucus said the provision, or some similar one, is part of the mandate won by Republicans in last month's election.

"This new 104th Congress is reflective of a national mandate that has a strong environmental ethic," said Idaho Sen. Larry Craig at an informal hearing this week. "We're not out to pillage the environment, but what we're seeing now is environmental extremism. What we'll be talking about is moving the pendulum back to the center."

But environmentalists say this kind of law would sow chaos in the nation's daily life, gutting important environmental, health and safety regulations that the American people strongly support.

For example, said attorney Johanna Wald of the Natural Resources Defense Council, the proposal could force the Federal Aviation Administration to abandon its height restrictions on buildings near airports — or pay a fortune to anyone who wants to build a highrise along a busy flight path.

"I don't believe people who signed on to the contract knew that this is what it contained," Wald said. "The contract in the form that it has been presented to the people contains a lot of ideas that we can all relate to. But when you read the fine print, the only job this title creates is lifetime job security for lawyers."

Many of the property rights groups that have sprung up across the country over the past decade have the financial backing of timber interests, mining companies, agribusinesses and other traditional opponents of environmental regulation. Environmentalists now say they made a big mistake by failing to realize the populist appeal of the property rights arguments.

"Frankly, we were asleep at the switch," said Michael Francis, a Washington-based activist at the Wilderness Society.

Property rights advocates have collected stories of people hurt financially by environmental laws and spread these sagas nationwide, on videotapes sent to chambers of commerce and small-town social clubs. Most environmental groups responded by trying to debunk the stories, saying there were no genuine victims of environmental regulation.

# Property-rights advocates focus on Minnesota

## Public access to wetland on farm prompts lawsuit

By Greg Gordon  
Washington Bureau  
Correspondent

Washington, D.C. Property-rights crusaders are focusing on Minnesota for their next challenge to government restrictions that are aimed at protecting natural resources but limit uses of privately owned land.

A conservative legal center said it would file a lawsuit today on behalf of John and Josephine Bronczyk, semiretired siblings who learned in 1990 that the state had given the public legal access to three-quarters of their 160-acre farm in Anoka County.

The declaration by the Minnesota Department of Natural Resources that their property is part of a

"public water wetland" means hunters legally could walk within 200 yards of their home, the Institute for Justice said in a memo on its case.

The Bronczyks, who have owned the property since 1926, consider themselves conservationists and are not contesting the decision to designate it as part of a wetland, said Dana Berliner, a lawyer for the institute. Rather, they object to their property being declared public water, particularly when abutting Columbus Lake covers only 9 acres of their land, she said.

"The supposed purpose is to protect the environment, and allowing the public to roam around on the Bronczyks' land in no way

Property continued on page 2B

## Property Movement is gaining ground

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further that purpose," Berliner said.

The property-rights movement has been gaining momentum since 1992, when the U.S. Supreme Court ruled a South Carolina developer was entitled to compensation because a coastal zoning agency denied him the right to build homes on two beachfront lots. The lower courts awarded the developer more than \$1 million in compensation and interest.

The court issued a similar ruling in

an Oregon case last June. And with an estimated 500 property-rights groups forming nationwide, the campaign got another huge boost when Republicans captured control of Congress in the November elections. Environmentalists expect Republican lawmakers to adopt property-rights laws that will make it more difficult to restrict use of land to protect wetlands or endangered species.

Berliner said that the Bronczyks' case "is a microcosm for what happens in property regulation all around the country. The government starts off

by regulating a little bit, then a little bit more and then a little bit more until there's almost nothing left in the way of property rights."

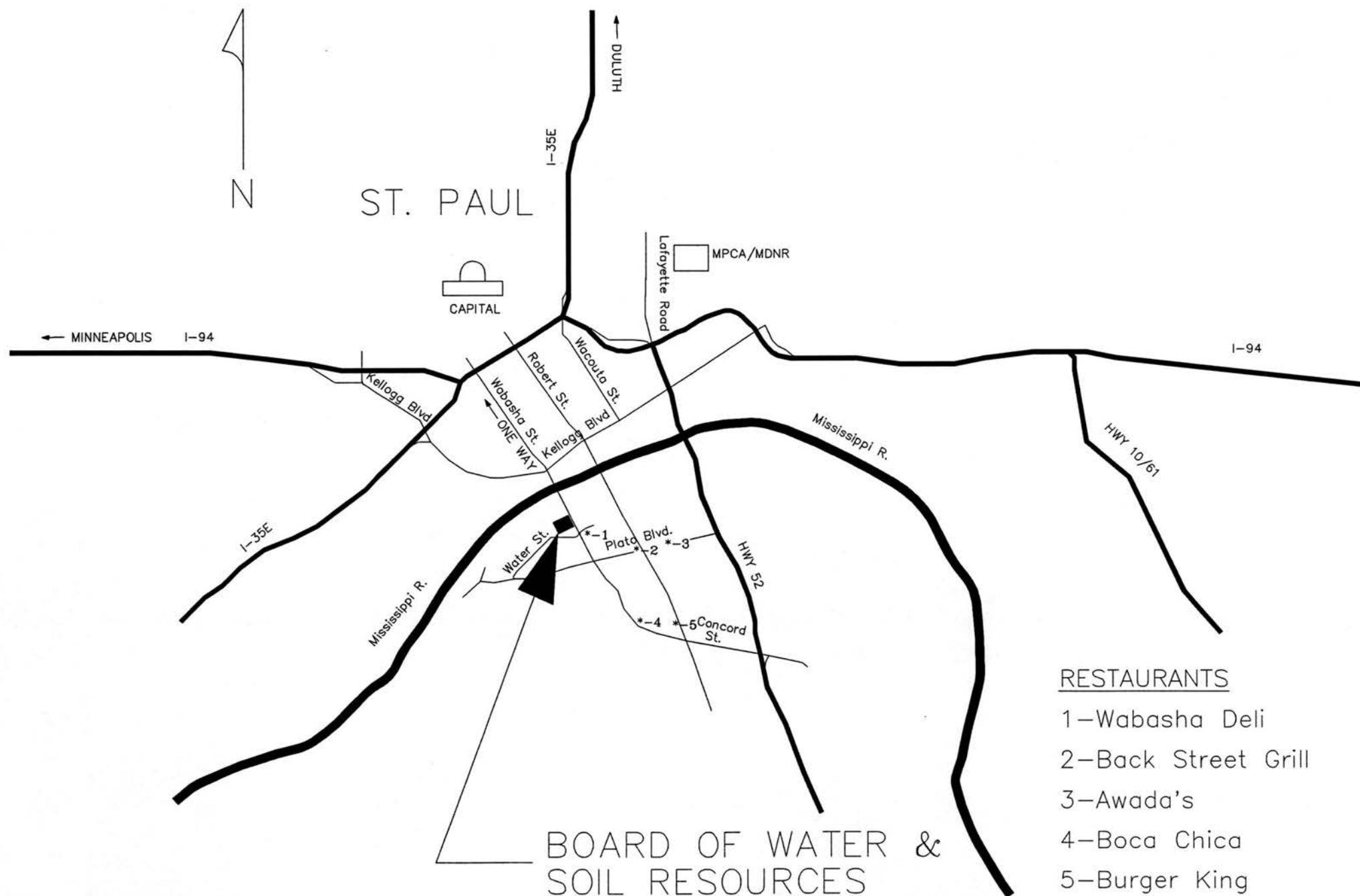
She said that the suit would ask an Anoka County district judge to rule either that the Bronczyks' property is not a public wetland or that they have the right to exclude people from their land.

In the event the court denies those requests, the Bronczyks would request compensation, she said.

Berliner called the case "the tip of the regulatory iceberg" with respect to Minnesota agencies' restrictions on property owners. The institute also protested the latest regulations under the Minnesota Wetland Conservation Act.

The regulations define wetland as an area as small as 400 square feet that may be wet for as few as 14 nonconsecutive days per year. The regulations require property owners who drain wetlands to create new wetlands, the institute said.

# RESTAURANTS NEAR BWSR





# Board Member Update

January 1995

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

## Northern region

- December is convention season and December 1994 was no exception. Northern regional staff divided duties and attended the Minnesota Association of Watershed District (MAWD), Association of Minnesota Counties (AMC), and Minnesota Association of Soil and Water Conservation District (MASWCD) conventions. The traffic at the BWSR booth during the AMC convention was particularly good. Commissioners wanted to chat about (what else?) the Wetland Conservation Act (WCA), as well as water plan updates and the State Revolving Fund (SRF).
- Duluth Forester Jim Lemmerman has been spending time recently working with SWCDs on their Forest Stewardship Program proposals. Two SWCDs that haven't submitted applications in the past are applying this year. Jim's also been working with the Forest Wetland Best Management Practices (BMPs) Work Group to finish the BMPs for forested wetlands. The forest water quality BMPs and the forest wetland BMPs will be combined into one document and printed by early summer.
- Mark Nelson, Duluth board conservationist (BC), reports that the city of Duluth has appointed a task force to study their inflow and infiltration

problems. During large rainfall events, the sanitary sewer load triples due to stormwater. BWSR and South St. Louis SWCD were members of the Remedial Action Plan Nonpoint Committee for the St. Louis River, which originally proposed studying this problem. Mark also reports significant WCA activity in his area, including some regarding a multi-million dollar resort in Beaver Bay.

- From our Brainerd office, BC Dan Steward says that the 1994 WCA numbers in Crow Wing County look good. The county--one of the fastest growing in the four-state area--issued about 1,600 planning and zoning permits in 1994. Along with that activity, the SWCD also fielded 615 WCA-related landowners contacts, many of which involved proposed projects along sensitive lakeshore areas. Because of successful avoidance efforts, only three of the 615 proceeded all the way to replacement. Local units have been working hard on WCA the last three years and we are now starting to generate some numbers that reflect the success of the program.
- When Brian Dwight wasn't working with his non-adopter counties last month, he spent time planning out some winter training. He's putting together a partnership workshop for local officials and staff in northwest Minnesota planned



for March. He's also doing a session on planning for water plan task force members originally scheduled for February but now pushed back to June. Brian is working with former BWSR Chair Don Oggard in planning a session for watershed managers at the March meeting.

- Brainerd BC Pete Waller has been assisting the Boix de Sioux Watershed District with their Clean Water Partnership project. Pete has been working with the watershed district and some of the SWCDs to pull together a land use assessment. Pete also reports that the first (of hopefully many) banking plan in Grant County was reviewed, approved, and an agreement signed for the sale of credits.
- Barbara Liukkonen, water resources education coordinator, reports that the evaluations of the Shoreland BMP packet indicate that 200 respondents from the arrowhead region adopted nearly 3,500 stewardship practices on their shoreland properties. The results are summarized in an article Barbara wrote for Focus 10,000 magazine and a Minnesota Extension Service Impact Statement.

## Engineering and Technical Services Section

### Conservation easements

- SWCDs submitted 523 Reinvest in Minnesota (RIM) Reserve and Permanent Wetland Preserves (PWP) easement applications to BWSR board conservationists during the November 1994 sign-up. The requests totaled \$20 million for easements on about 25,000 acres. The annual work plan for our conservation easement programs made approximately \$5 million of the FY 95-96 appropriation available for easement

funding during the November 1994 sign-up. The work plan also gave target allocations to each BC and, thereby, helped SWCDs and easement screening committees know approximately how much funding would be available in their BC's area. We expect that the application demand would have been even higher if the target allocation procedure had not been in place.

- Board conservationists recommended funding for 141 easements, based on eligibility criteria in the updated program rules, priority recommendations of the SWCDs, the statewide easement priority criteria laid out in the annual work plan and available funding. After a little additional follow-up on some of these applications, almost all of them have been accepted for funding. We also intend to fund about 20 more easements from the BCs' pending lists, at a total cost of about \$1 million, for the following reasons:

- We have received about \$500,000 from a North American Wetland Conservation Act (NAWCA) grant (the MN River 1 grant) during the past 9 months.
- About \$1 million from previous appropriations has been de-obligated by cancellations and unused practice funds since the previous sign-up.
- We would not meet the BWSR goal of 50 percent of program funds being targeted to the MN River basin without funding additional applications in the basin.
- The pending lists include many quality applications in the MN River basin.

To date, about 49 percent of the state easement funding is going to the Minnesota River basin, plus an additional \$500,000 from the NAWCA grant for acceleration of activities in the basin.



- The November 1994 sign-up was the first full-blown test of the retooled program rules, application procedures, annual work plan and handbook. We are very pleased with the resulting improvements in the application process. We have begun to evaluate the sign-up to identify procedures that need fine tuning and ways to improve the annual work plan for FY 96.

Other staff are continuing to work on improving other aspects of the program. Matt Moore, our new engineering aide for the easement programs, is working on automating more of the easement agreement process. Bryan Alpaugh, data management specialist, is working on automating the agreement and easement forms so that they can be generated quickly from the program database.

- The Grass Lake project continues to gain momentum, and is expected to be a topic of discussion at the February BWSR meeting. Marybeth Block, easement coordinator, and Tom Wenzel, design engineer, have been working with Kandiyohi SWCD and other project partners on this very large wetland restoration project.
- As you may know, Marybeth Block will be leaving the easement programs coordinator position at the end of January. She'll be moving to the position vacated by Dave Behm. We are very grateful for the customer service focus, tenacity and other good things that Marybeth brought to the conservation easement program over the past two and a half years, especially in regard to the retooling process. We wish her continued growth and success in a new position within our ranks.

## **Lakeshore engineering**

- Winter construction of shoreline stabilization at the Two Harbors campground has been progressing pretty well. Gene Clark, Duluth lakeshore engineer, has been inspecting construction several times a week and estimates that the project is about half complete. Armor stone stockpiled by the city from the Silver Cliff tunnel construction ran out a little ahead of schedule, which necessitated a contract modification and some additional funding by the city. Working conditions have been somewhat trying and the contractor has had some problems, but progress has been reasonably steady. The contractor has indicated that he may shut down for a while if the temperature gets bitterly cold.
- Gene recently assisted Lake, Cook, Carlton and Cass SWCDs with a total of six cost share rollover funding applications for shoreline stabilization. The applications that are approved for funding will be some of the projects that Gene works on this coming spring and summer. Gene has also been involved in nine other feasibility investigations for Lake Superior shoreline sites, which will likely result in a number of special project cost-share applications from SWCDs in March.
- Although SRF loans could be a viable source of funding for Lake Superior shoreline stabilization, we are not aware of any Lake Superior counties that sought funding through the Minnesota Pollution Control Agency (MPCA) portion of the SRF loan program. This may have been due to a lack of understanding of the program during the application period. Gene and Al Kean, chief engineer, are looking into this issue.
- Gene has been involved in a number of

other projects since the December 1994 board meeting, including:

- assisting the city of Duluth with their lake walk and Park Point shoreline erosion problems;
- assisting Natural Resources Conservation Service (NRCS) staff with identification of erosion control options on Lake Winnibigoshish;
- assisting DNR staff with permit review and technical assistance for a shoreline project at the Bluefin Bay Resort; and
- providing So. St. Louis SWCD with design and project management assistance for the Sewall shoreline stabilization project.

## Area II

- HDR Engineering, Lyon County's consultant for the RW-22 reservoir project, completed the final draft Environmental Assessment Worksheet (EAW) for the project in December and provided a copy to the DNR for review. Darrell Apelgrain, BWSR Area II Engineer, Al Kean, Lyon County representatives and Area II, Inc., representatives met with DNR staff last week to discuss DNR's initial comments on the EAW. The general reaction of DNR staff seemed to be neutral, although concern was expressed about the quality of the existing wetland complex in the project area, including the Shelburne Wildlife Management Area within the reservoir boundaries. DNR staff indicated a need for more time to review the EAW and agreed to provide written comments by the end of January.
- Al Kean, with assistance from Area II staff, prepared a progress report to the Legislative Water Commission for the RW-22 project in late December. Call Al if you're interested in further information about the report and the

project.

- Area II staff continue to work on a number of "road retention" projects within the member counties. These projects are funded in part through BWSR grants.
- Darrell is working on a draft outline for a road retention design guidebook, as well as a feasibility study for the Lazarus Creek reservoir project. We are trying to use the Lazarus Creek project as a model for early coordination with the DNR and MPCA, who are signatories of a Memorandum of Understanding with the Area II joint powers board.

## Southern region

- Review and prioritization of RIM Reserve and PWP applications was a significant task in early December. The retooled easement application process and staff support were excellent in accomplishing this job. The difficult part was in prioritizing the many applications with the limited funding. Over 400 RIM applications were submitted to the southern region BCs with only 95 being approved for funding. Some SWCDs had additional applications that they did not send in for review knowing that funding was limited, and landowner interest continues to increase.
- BCs responded to questions and provided other assistance to local government staff this past month as they work to prepare their 1995 Natural Resource Block Grant application, plan, and report.
- Through several meetings and a lot of individual and small group work, Joint Powers Agreements (JPAs) between SWCDs to address SRF technical assistance are being established. BC David Sill reports that cluster area 7 signed its JPA on January 5, selected a

host district (Chippewa), and developed their first year's budget. Other JPAs are close to being signed and submitted to BWSR.

- BC Thomas Fischer and Regional Supervisor Jeff Nielsen attended the Minnesota Association of Watershed Districts' (MAWD) annual meeting in Willmar, Minnesota. The major issue of concern at this meeting was the action proposed by metro counties to acquire the duties and responsibilities of watershed districts (WDs). Metro counties believe there is too much duplication and that watershed district duties and responsibilities should be turned over to the metro counties, thereby providing one-stop-shopping to residents of the metro area. The MAWD developed a resolution/position statement indicating their concern on this issue.
- The Area VI MASWCD Chairmen met in New Ulm in December. Meeting dates and topics for 1995 were discussed and scheduled; LeAnn Buck from MASWCD attended and led a discussion on convention planning. Area VI (south central Minnesota) will be the host and is responsible for planning the 1995 MASWCD Convention in St. Cloud.
- Sara Johnson spent several days in November and December working with districts that were having problems -- mostly Olmsted. The big "in-office" project at this time of year is mailing out the instructions for year-end to the SWCDs. January will be filled with closeout training sessions for the SWCD bookkeepers and answering year-end questions on the phone.
- BC Dave Peterson facilitated a staff meeting of the Southeastern Minnesota Water Resources Board (regional water planning group). The meeting looked at regional suggested activities and priorities

for the next five years.

- With regard to WCA, Dave Peterson helped complete work on a Technical Evaluation Panel (TEP) report on a WCA violation that was set to go to jury trial. A settlement has been proposed by the defense attorney. Dave also participated in a WCA-TEP working with the Minnesota Department of Transportation exploring potential wetland banking sites.
- BC David Sill and other BWSR staff spent time following up on an appeal of a permit decision made by Lac qui Parle/Yellow Bank Watershed District. The various parties have been formally contacted in regard to the briefing schedule and hearing process.
- BC Tabor Hoek continues to work closely with the Southwestern Technical College in obtaining state approval to implement a conservation technician training program at the college. This would be a two-year program preparing technicians to fill vacancies within resource management agencies and private firms. A final determination will be made by the college governing board in January. The BWSR, MASWCD, the Minnesota Association of Conservation District Employees (MACDE), and NRCS have also provided much needed direction in this process.

## Metro region

- The WCA workload has slowed down for metro staff to the point that it is taking about only 25 percent of BC staff time. Some LGUs report that they are already gearing up for the 1995 construction season and are working with developers on preliminary plans relating to WCA.
- With WCA taking less time, BCs have been able to apply more effort to watershed plan review. Currently, four

water management organization (WMO) plans are in some stage of the review process (Riley-Purgatory-Bluff Creek WD, Nine Mile Creek WD, Upper Rum River WMO and Valley Branch WD.) Hearings have been requested on the Riley-Purgatory and Valley Branch plans and will be scheduled if still deemed necessary by the aggrieved parties after requested plan revisions are submitted. Barbara Cobb and Dwain Otte have been assigned to the hearing panel on these two matters.

- There are five appeals pending relating to watershed district permit, order and plan matters. Metro Supervisor Bruce Sandstrom and Matt Seltzer (from the Attorney General's office) will be holding a pre-hearing conference on Thursday, January 26, with the parties in the matter of Levine v. Minnehaha Creek Watershed District. This is related to a development adjacent to a wetland in the City of Minneapolis known as the "Ewing Wetland." Last summer there were several articles in the Star and Tribune about this matter. There are very strong feelings on both sides of this matter.
- In late November 1994 Debbie Singer was hired as Metro Region's secretary, a half-time appointment. Debbie transferred from the Department of Public Safety. When Debbie is not working at BWSR, she's taking college course work in pursuit of a college degree, possibly in the biological science field. Please stop by and introduce yourself to Debbie if you have the opportunity.
- Doug Snyder (a.k.a. "Doc"), Metro's grad student, has been making steady progress towards a comprehensive wetland management plan for Coon Creek Watershed District. The U of M, Center for Urban and Regional Affairs, is paying

60 percent of Doc's salary. Most of Doc's efforts thus far have been towards working out some of the bugs in EPPL 7 and the compatibility of the various data bases.