



Minnesota Board of Water and Soil Resources.
Minutes.

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2/28/96

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, SUITE 200
ST. PAUL, MINNESOTA 55107
FEBRUARY 28, 1996**

BOARD MEMBERS PRESENT:

Barbara Cobb, Darrell Bruggman, Barbara Uppgaard, Dwain Otte, Ted Lovdahl, Ginny Imholte, Jim Rossman, Glenn Annexstad, LeRoy Stensgaard, and Kathy Roer.

BOARD MEMBERS ABSENT:

Tim Hvidsten
Marvell Tripp

AGENCY MEMBERS PRESENT:

Jim Anderson, Minnesota Extension Service (MES)
Kim Benson-Johnson, Department of Health (MDH)
Wayne Edgerton, Department of Natural Resources (DNR)
Paul Burns, Department of Agriculture (MDA)

AGENCY MEMBER ABSENT:

Wayne Anderson, Pollution Control Agency (PCA)

OTHERS PRESENT:

Vern Johnson, Minnesota Association of Watershed Districts (MAWD)
Jim Schafer, Minnesota Association of Soil and Water Conservation Districts (MASWCD)
Ferdinand, Joe, and Darlene Peters
Carl Annalora, East Otter Tail SWCD
Mark Baseletti, Sherburne SWCD

STAFF PRESENT:

Ron Harnack, Greg Larson, Jim Haertel, Al Kean, Doug Thomas, Marybeth Block, Ron Shelito, Keith Grow, Sara Johnson, Scott Nichols, Mary Kells, Mary Jo Anderson.

Chair Cobb called the meeting to order at 9:00 a.m.

**** 96-11 Adopt Agenda** - Moved by Ted Lovdahl, seconded by Dwain Otte, to approve the agenda as presented. Motion passed on a voice vote.

**** 96-12 Minutes of January 24, 1996** - Moved by Kathy Roer, seconded by Bruggman, to adopt the minutes of January 24, 1996, as circulated. Motion passed on a voice vote.

Executive Director's Report - Ron Harnack gave a brief legislative update; thus far, it's been a successful session with BWSR issues. The watershed district utility fee passed both the House and Senate policy committees and is expected to pass without much debate. This may be incorporated into the omnibus tax bill in both houses for final passage. Reinvest In Minnesota (RIM) Reserve amendments passed both House and Senate. BWSR Gifts and Donations Authority is progressing very well and expect passage. Ron stated that Greg Larson and John Jaschke have been very instrumental in the WCA negotiations that were finalized on Thursday. This is the best compromise among the WCA working group. The conference committee feels fairly comfortable with what is in the document, and expects a bill to pass this session on WCA. On a financial standpoint, bonding is the big dollar push - the House will put numbers together today. In a supplemental budget, the Minnesota River Joint Powers Agreement has \$100,000 - \$150,000 that would come through BWSR to support the organization; also \$20,000 for a WCA compensation study through BWSR; both of these have a good chance of being funded. Ron said that the legislature will attempt to finish session by March 15. He encouraged members to communicate with legislators and committee conferees, regarding WCA. Ron doesn't expect this bill to be signed by the Governor until mid-April. The process for Emergency Rulemaking would then begin.

Chair Cobb asked staff to be introduced: Ron Shelito, Scott Nichols, Marybeth Block, Al Kean, Doug Thomas, Keith Grow, and Sara Johnson.

Chair's Report - Chair Cobb stated that an article about the Hennepin SWCD's Geographic Information System (GIS) is featured in the St. Paul Pioneer Press. Kathy Roer stated that Don Wodek invited members to stop by the Hennepin SWCD to see the GIS reporting. Chair Cobb plans to attend the Minnesota Roundtable of Sustainable Development, March 4-5, as an EQB member invitee. Governor Carlson appointed 32 participants of the round table to issue a series of reports to the Governor, Legislature, and Environmental Quality Board on identifying practical ways of achieving economic and community vitality while sustaining the quality of Minnesota's environment. Chair Cobb stated that BWSR can be helpful in accomplishing the round table's goal. She will distribute copies of the reports to members. Chair Cobb announced that the BWSR will have a retreat in April to discuss issues related to BWSR's future and the expectations of all the agencies within the sustainable development initiative. Other agencies will be invited to attend the retreat to discuss sustainable development and ecosystem issues. Barb Uppgaard asked members

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to be pro-active and read the material. Chair Cobb reported that there will not be a March BWSR meeting, but have an April retreat. The arrival date will be on Tuesday, April 23, discussions on April 24, and the BWSR meeting on April 25. Plans and location have not yet been finalized, however, those dates have been set.

96-13 Moved by Darrell Bruggman, seconded by Barbara Uppgaard, that the BWSR will not hold a March meeting and waives the 60 day announcement period. Motion passed on a voice vote.

Dispute Resolution Committee (DRC) Report - Kathy Roer stated that the DRC has not been very busy; however, Jim Haertel has been very busy. Negotiations taking place on Big Birch Lake in Sauk River Watershed District. A metro matter, City of Maple Grove, pre-hearing set for March 5. The March DRC meeting has been cancelled; the DRC will meet later in April. Administrative procedures drafted and distributed to DRC members.

Feedlot Committee Report - Jim Rossman reported that the Feedlot Committee has a meeting scheduled for March 12.

Wetlands Committee Report - Darrell Bruggman stated that the Wetlands Committee meets today at 1:00 p.m.

Agency Reports

Department of Natural Resources (DNR): Wayne Edgerton explained the deer feeding process, \$750,000 allocated for this. DNR is apprehensive about the flood potential in the state this spring, could possibly be as bad as 1965. DNR anticipates passage of the proposed trespass law that would be a civil citation as ^{gold} opposed to the current criminal process.

Minnesota Extension Service (MES): Jim Anderson reported that a significant item for MES is the Minnesota River Basin; MES educators of 25 counties met to look at how to better react to local water planning efforts and increase education efforts, and also clean water partnerships in the area. MES has an LCMR proposal for digitization of soil maps.

Minnesota Department of Health (MDH): Kim Benson-Johnson reported on the well program delegation workgroup who is looking at the delegation of the well code to local governments. The workgroup includes representatives from local governments and MDH staff. The issue is maintaining both a strong state well program as well as public and local government support as more local governments are delegated this authority from MDH. The MDH well program is totally supported by the fees it collects from well contractors and public for notifications, permits, variances, and licenses. As more counties and cities are delegated the well program, state program funding is reduced. The workgroup has met several times in February and March and hopes to resolve the issue by this summer.

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Minnesota Department of Agriculture (MDA): Paul Burns stated that letters have just been sent out on agricultural best management practices (BMP) loan agreements. Commissioner Hugoson agreed to give every county that applied a minimum of \$50,000; with a maximum of \$350,000 per county. MDA is optimistic about getting additional funds. Senator Dille and Representative Bishop introduced a bill to give counties that issue loans for septic system upgrades to be repaid on taxes. Paul stated that MDA is interested in Jim Birkholz's recommendation of a committee to study and define agency oversight and accountability to LGUs. Paul referred to the Farm Bill, commodities should be part of that, members encouraged to contact legislators regarding CRP.

Consent Agenda

Local Water Plan Approvals - Darrell Bruggman, chair of the ad hoc committee, stated that the committee (Ted Lovdahl, Ginny Imholte, and Barb Uppgaard) reviewed the Sherburne County Water Plan. The committee recommends approval of the Sherburne County Water Plan, with a five-year update rather than a ten-year update. Moved by Darrell Bruggman, seconded by Barb Uppgaard, to approve the Sherburne County Water Plan. Motion passed on a voice vote.

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96-14

Darrell reported that the committee recommends approval of the Morrison County Water Plan. Moved by Darrell Bruggman, seconded by Ted Lovdahl, to approve the Morrison County Water Plan. Motion passed on a voice vote.

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96-15

Chair Cobb called for a break in the meeting at 10:10 a.m. The meeting reconvened at 10:25 a.m.

Cost-Share Policies - Marybeth Block explained that the BWSR Cost-Share Committee recommend a policy allowing SWCDs to submit to BWSR a resolution adopting their county's comprehensive local water plan as the conservation district's comprehensive plan. The resolution must state that the comprehensive local water plan meets the requirements of M.S. 103C.331 and 8400.1600. The conservation district must submit this resolution with the same frequency required for comprehensive plan amendments. Discussion followed. Moved by Dwain Otte, seconded by LeRoy Stensgaard, to approve the policy regarding cost-share comprehensive plans. Motion passed on a voice vote.

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96-16

Cost-Share Eligible Costs for State Cost-Share Funds. The cost-share committee recommends a policy stating that SWCD charges for technical and administrative services provided to a land occupier are not considered eligible costs to establish a practice that is funded solely, or in part, with state cost-share funds. Ineligible costs include, but are not limited to, technical services to perform field investigations, design the conservation practice, monitor the establishment of the conservation practices and all program administration costs. Moved by Dwain Otte, seconded by Ted Lovdahl, to approve the policy regarding cost-share eligible costs for state cost-share funds. Motion passed on a voice vote.

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96-17

Pollution Problem on Big Fish Lake - Joe, Darlene, and Ferdinand Peters were introduced; they explained the situation and problems that exist in Big Fish Lake in Stearns County and also presented a video showing the situation. Ferdinand asked for BWSR's help with needed intervention between township and county. The Peter's have met with Rod Sando, although no state permitting was done, county is not enforcing the shoreland ordinance. The Peter's asked that BWSR support their attempts to encourage county and township officials to assist in this situation. Staff stated that many agencies have been involved over several years, a task force has been meeting to deal with pollution problems on the lake and they are making active progress on this. Ron Shelito stated that he and Pete Waller will assist in writing a letter to county commissioners, but again, all of the people at local level are involved and are aware of the situation, and plans have been drawn up to alleviate this problem. Barb Uppgaard said that our agency is working appropriately and actively on this, and she trusts staff to carry through on this. The BWSR agreed that Ron Shelito will write a letter of support, under Chair Cobb's signature.

East Otter Tail SWCD Update - Ron Shelito gave an updated status report on the East Otter Tail SWCD embezzlement situation. A total of \$150,000 was embezzled, with over \$73,000 in state cost-share funds that had not been returned in accordance with state law. The trial was held and the district employee was found guilty, restitution of funds was ordered. A committee of Ted Lovdahl, Darrell Bruggman, Ginny Imholte, and Ron Shelito will meet with the Attorney General staff and East Otter Tail SWCD on March 6 regarding a schedule to payback funds. Ted Lovdahl requested that \$4,000 in cost-share monies be made available to East Otter Tail SWCD now while negotiations for the remaining 1996 cost-share allocation takes place. This would assure that the district can have a tree program this spring while awaiting the April decision. The legalities of the final decision will be worked out with the Attorney General. Moved by Kathy Roer, seconded by Barb Uppgaard, to turn the task of the detailed repayment schedule over to the committee; and ask that the committee gather information and present this to the full BWSR at April meeting; and to release \$4,000 of cost-share funds to the East Otter Tail SWCD for their tree program. Motion passed on a voice vote.

(Dwain Otte opposed.)

Whitewater Project, Shelly Eckblad, project coordinator, introduced Jeff Broberg, Teddy Dupapalo, Eugene Kalmes, and Mary Kells. They explained the history, critical issues, goal statement, and action components of the Whitewater Watershed Project. A water management plan is a goal of the Whitewater Project. Ms. Eckblad thanked Doug Thomas for his assistance on the taxing element. They appreciated the special services grant from BWSR. An application was submitted for 1997 LCMR proposal through BWSR. Chair Cobb thanked them for coming in.

Swift SWCD Grant Recommendation - Wayne Zellmer explained that the Swift SWCD 1994 annual report contained errors, thus the 1996 allocations were put on hold. The errors have been corrected and an acceptable annual report was received from Swift SWCD this month. Staff recommends these grants be allocated with a 15% reduction; this also was presented to Swift SWCD,

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which met their approval. Ginny Imholte stated that BWSR needs to be flexible, using forms that are easy to complete, staff assisting. Sara Johnson explained that we have a statewide accounting system, she is available for assistance to SWCDs, annual training is held. Staff recommended a 15% reduction in the 1996 grant allocation, consistent with BWSR policy.

Jim Birkholz briefing explained the BWSR's local government oversight and accountability. Staff recommendation:

1. Rather than implement changes to oversight procedures for LGUs in a piecemeal fashion, take the time to look at the entire system of accountability and develop strategies which prevent problems, more quickly identify problems when they occur and reward good performance.
2. Several Board members have been involved in following up on the East Ottertail SWCD financial problems. We should utilize their expertise and experience gained along with other appropriate board members to form a short term committee to work with staff to develop a set of recommendations regarding updates to the fiscal accountability system used by BWSR and local governments it serves.
3. Such a committee should look at the full range of laws, rules, guidelines, audit procedures and staff assignments currently dealing with fiscal oversight. Case histories should be examined as part of this process. The committee should recommend performance-oriented improvements to the existing system which do not place bureaucratic requirements on all LGUs but which deter problems or find them quickly when they occur.
4. The committee should report back to the Board with a list of recommendations within three months.

Jim Rossman said that Swift SWCD should be notified that staff will assist, and if things are not fixed, the remedy is certain: funds will not be allocated. Rossman asked staff for correspondence copies. It's critical that Jim Birkholz's recommendations be considered. Moved by Dwain Otte, seconded by Ted Lovdahl, to follow the staff recommendation, correct the process, with a 15% reduction in the 1996 grant allocation to the Swift SWCD. Motion passed on a voice vote.

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96-19

Chair Cobb appointed an LGU Oversight Committee: Ted Lovdahl, Ginny Imholte, Jim Rossman, and also representatives of the associations and state agency members that desire to provide input.

Planning Grants to Metropolitan Watershed Management Organizations for Development of Second Generation Watershed Management Plans - Jim Haertel presented resolution. Moved by

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96-20

Kathy Roer, seconded by Ginny Imholte, to adopt resolution presented by Haertel, awarding the

planning grants pursuant to MS 103B.3369, Subd. 5 in the amount of \$15,600 for up to six grants per fiscal year for development of second generation metropolitan watershed management plans. Motion passed on a voice vote.

High Island Watershed District Boundary Enlargement - Doug Thomas and Glenn Annexstad presented the Order in the matter of the petition to enlarge the boundary of the High Island Watershed District. Moved by Glenn Annexstad, seconded by Dwain Otte, to approve the enlargement of the High Island Watershed District. Motion passed on a voice vote.

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96-21

Disposition of Federal Surplus Property - Jim Birkholz overviewed the situation for the Board. The Chisago SWCD has been purchasing discount federal surplus property from the state surplus warehouse in Arden Hills. Much of the property was not for use by the SWCD and was not disposed of properly which is a violation of the surplus property program. BWSR staff in coordination with the Department of Administration and State Auditor will research this issue and present findings for further follow-up.

Advisory Comments

Minnesota Association of Soil and Water Conservation Districts (MASWCD): Jim Schafer reported that MASWCD representatives will be meeting with the Minnesota Congressional Delegation in Washington, D.C. in March to discuss conservation issues. Jim said that the National Association of Conservation Districts (NACD) held their annual convention in Las Vegas; Ron Shelito, signed in honor of Governor Carlson, an agreement with the Secretary of Agriculture.

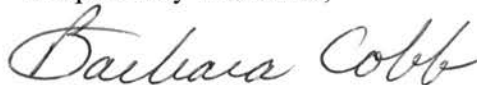
Minnesota Association of Townships (MAT): Franklin Denn reported that MAT has been involved in legislation that gives direction to townships and communities.

Minnesota Association of Watershed Districts (MAWD): Vern Johnson reported that MAWD legislation is moving along well in the legislative session. The MAWD bill that deals with permitting in cooperation with MNDOT seems to be going well. If the bill is passed, a Memorandum of Agreement will be signed with MNDOT, BWSR and MAWD. MAWD is moving out of the ditching era and into the future of watershed districts.

Board members will be advised of the location of the April retreat.

Chair Cobb adjourned the meeting at 12:35 p.m.

Respectfully submitted,


Barbara Cobb, Chair

ADDENDUM TO THE FY 97 STATE COST-SHARE PROGRAM POLICIES AREA ALLOCATION PROCESS

The BWSR enacted the following policies authorizing the allocation of cost-share funds according to a plan prepared by the districts within a MASWCD area. (The policies were enacted on August 24, 1994 and clarified on August 23, 1995.)

Step One

- *All of the conservation districts in an area must agree to the base cost-share grant for each district (the amount each will receive or how it will be calculated) and how rollover funds² will be redistributed. If one or more of the districts in the area elect not to abide by these provisions, then all of the conservation districts in the area will receive their cost-share grant according to BWSR's allocation formula.*
- Participating areas must establish an area committee composed of:
 - a) A voting chair or delegated supervisor from each conservation district in the area;
 - b) A non-voting MASWCD area director who will serve as committee chair;
 - c) A non-voting state board conservationist who will serve as advisor to the committee; and
 - d) A non-voting state employee's association director who will serve as advisor.
- The area committee shall prepare a Memorandum of Agreement that discloses how the base cost-share grant and rollover funds will be distributed in the area and that the undersigned agree to prepare and abide by an area allocation plan that reflects this distribution. This agreement must be signed by representatives of all of the districts in the area.

Step Two

- Each area choosing to participate in the area allocation process must develop an area allocation plan and submit it to the state board by May 1 of each year. The plan must include a copy of the Memorandum of Agreement AND:
 - a) Area priorities for the use of the cost-share funds. The basis of these priorities must be the districts' annual and comprehensive plans and must meet the high priority problem (erosion or water quality) definition described in program rules and guidelines.
 - b) The amount of dollars to be allocated to each district, identifying the portion designated for technical and administrative services or the treatment of problems not meeting the high priority problem(s) definition.
 - c) A statement indicating how the area committee wants BWSR to distribute funds not encumbered at the end of the grant period, or funds that become available after the end of the grant period. The statement may request that the BWSR redistribute returned funds within the area according to a distribution plan prepared by the area and submitted to the BWSR *or* that BWSR reallocate the funds through the statewide special project grants *or* a combination of the two. The distribution plan for reallocation of funds returned to the state board must indicate the area committee's decision regarding these funds, including:
 - ✓ the amount to be granted to a district within the area;
 - ✓ verification that the monies will be used to treat a high priority problem;
 - ✓ assurance that the grants will not be used for technical or administrative purposes; and
 - ✓ which districts, if any, want the funds they return reallocated through the statewide special projects fund.
 - d) The sum of the individual district requests must not exceed the area's total allocation:

Area 1 = \$141,233
Area 2 = \$266,448
Area 3 = \$ 91,311

Area 4 = \$197,663
Area 5 = \$238,643

Area 6 = \$209,040
Area 7 = \$229,231

² Rollover refers to funds not encumbered by conservation districts at the end of the grant period or funds that become available *after* the grant period.

FY 97 STATE COST-SHARE PROGRAM POLICIES

The Cost-Share Committee members: Dwaine Otte, chair; Glenn Annexstad; Darrell Bruggman; Barbara Cobb; Ginny Imholte and LeRoy Stensgaard recommend the following policies pertaining to the State Cost-Share Program be adopted by the Board of Water and Soil Resources (board).

Pertaining to the distribution of program funds to districts:

- One hundred percent of the monies appropriated by the state legislature will be granted to conservation districts.
- Of this appropriation, 85 percent will be granted directly to districts. Of this amount, a minimum of 80 percent must be used for the treatment of high priority erosion or water quality problems and not more than 20 percent can be used for technical and administrative services or the treatment of erosion or water quality problems that do not meet the high priority problems definition.
- The amount of funds granted to an individual district will be based on the existing allocation formula for the cost-share program and on the Permanent Rules of the State Cost-Share Program, 8400.0600, subpart 3.
- The board will grant 15 percent of the legislative appropriation (plus unencumbered funds returned to the state - see next arrow) to districts for special projects that meet the high priority erosion or water quality problem definition (s). *Special project grants may not be used for technical and administrative expenses.* The board will notify districts regarding when applications for special projects will be accepted, and of any specific application requirements. Districts must submit an application to the state board to compete for these funds.
- Conservation districts may adopt their county's comprehensive local water plan as the district's comprehensive plan by passing a resolution stating that the comprehensive local water plan meets the requirements of M.S. 103C.331 and 8400.1600. The conservation district must submit this resolution to the state board with the same frequency required for comprehensive plan amendments.
- Funds that were not encumbered by the conservation district at the end of the grant period will be returned to the state within 30 days of the end of the grant period. The board will reallocate these funds to districts through the special projects grants¹. This will eliminate the competitive rollover grants previously distributed around mid-(fiscal) year.
- The grant contract between the state and the conservation district will be for a period of two fiscal years, beginning on July 1, 1996 and ending on June 30, 1998.
- Districts pooling cost-share allocations to address joint projects must enter into a memorandum of understanding or joint powers agreement that specifies the responsibilities of each district.

¹ This does not apply to conservation districts participating in the area allocation process. As per board policy adopted on August 24, 1995, dollars returned to the state will be reallocated to the districts within an area according to a redistribution plan prepared by the area committee.

FY 97 STATE COST-SHARE PROGRAM POLICIES

Pertaining to the cost-sharing of approved or other recognized conservation practices:

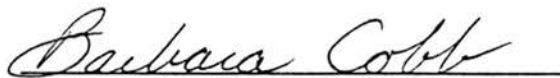
→ The approved practices are:

- | | |
|--------------------------------|---|
| 1. Critical Area Stabilization | 6. Riparian Buffer Strips |
| 2. Diversions | 7. Sediment Retention, Erosion or Water Control |
| 3. Field Windbreaks | 8. Streambank, Shoreland and Roadside |
| 4. Grass Waterway | 9. Stripcropping (contour) |
| 5. Waste Management | 10. Terraces |

Each practice may have specific policies regarding cost-share eligibility identified in the Administrative Guidelines for the State Cost-Share Program.

- The maximum cost-share rate is 75 percent of the eligible costs.
- The district is authorized to amend the maximum cost-share rate to be less than, but not in excess of, the program's 75 percent limit for eligible costs of individual practices.
- The services of a consulting engineer can be considered a cost-sharable component of a practice where the district determines that their services are needed to solve the erosion or water quality problem.
- Conservation district charges for technical and administrative services provided to a land occupier are not considered a cost-sharable component of a practice that is funded solely, or in part, with state cost-share funds. This does not include district charges for services for tree planting or weed control which are considered a cost-shareable component.
- It is the policy of the state board not to approve requests for conservation tillage, rotational grazing or septic systems (not on the approved list).

I, Barbara Cobb, do hereby certify that the above policies were adopted by the Board of Water and Soil Resources on December 20, 1995 and revised on February 28, 1996.


Barbara Cobb, Chair

2/28/96
Date

Background: Section L of the SWCD Operational Handbook requires that SWCD's submit complete annual reports to the BWSR by March 15th of each year. The annual report is comprised of two sections: the first section - a summary of activities and accomplishments, and the second section - the financial report.

The current BWSR policy establishing reporting requirements for state grant allocations was adopted by the BWSR on February 27, 1991, as follows:

Any Soil and Water Conservation District (SWCD) requesting grants from the Board of Water and Soil Resources (BWSR) must submit an Annual Plan of Work and an Annual Report containing a statistical and financial report in the manner prescribed by the BWSR. These reports are due in the State BWSR Office no later than March 15th. In addition, a SWCD must have an approved comprehensive plan on file and must submit amendments to this plan no later than August 15th of every even-numbered year. All grants for which funding is requested will be reduced by five percent if these reports are not received by the established due date with an additional five percent reduction for each month delay. If errors are found in the financial reports, they will be returned for correction. Districts will be given 30 days from the date of notification by BWSR to make the necessary changes and to resubmit the reports. After that date, grants will be delayed and/or penalties deducted. In no case will a SWCD receive funding if the required reports are not received by the BWSR by June 15.

Issue: The Swift SWCD annual financial report initially received by BWSR contained errors (i.e. negative state revenue and sales tax) and was returned to Swift SWCD on August 18, 1995, for corrections. Normally, reports are checked and letters are sent to all 91 districts by early May, but due to a family medical emergency of the BWSR's SWCD accounting coordinator, in 1995, these notifications were sent almost three months later. Correspondence between the SWCD and BWSR staff then occurred on at least 5 occasions between August 18, 1995 and January 25, 1996, in addition to phone calls and a one-to-one five hour work session. An acceptable Swift SWCD 1994 financial report was not submitted to BWSR until February 16, 1996.

BWSR records indicate that Swift SWCD has been submitting inadequate reports since at least 1988.

Summary: Due to extenuating circumstances and miscommunication regarding expectations of the Swift SWCD, BWSR acknowledges partial responsibility for the delay of an acceptable Swift SWCD financial report. BWSR staff acknowledges that significant changes and improvements are proposed in grant administration at the Swift SWCD. However, the FY 1996 General Services, Cost-Share, and RIM Services grants are subject to penalties.

<over>

Recommendation: Due to proposed improvements in grant administration at the Swift SWCD and partial BWSR responsibility for the delayed corrected report, staff recommends a 15% reduction in FY 1996 grants.

				<u>Recommended</u>
General Services	\$11,101	-	15%	= \$ 9,434
Cost Share	\$10,897	-	15%	= \$ 9,262
RIM Services	<u>\$ 7,548</u>	-	15%	= <u>\$ 6,416</u>
Totals	\$29,546			\$25,112

MINNESOTA BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, SUITE 200
ST. PAUL, MN 55107

In the Matter of the Petition to Enlarge the
Boundary of the High Island Watershed District
Filed August 14, 1995
[Minn. Stat. 1990. Sec. 103D.261]

ORDER
APPROVING ENLARGEMENT
OF THE HIGH ISLAND
WATERSHED DISTRICT

A sufficient petition having been filed with the Minnesota Board of Water and Soil Resources (BWSR) seeking to correct and add lands to the High Island Watershed District (District); and proper legal notice of filing of the petition having been given; the BWSR makes the following:

FINDINGS OF FACT

1. On August 14, 1995 the Board of Water and Soil Resources (BWSR) received a petition from Sibley County requesting that certain lands be added to the District.
2. On February 13, 1996 the BWSR issued a Notice of Filing of Petition acknowledging receipt of the petition , inviting all interested parties to comment on the proposed enlargement and stated that a public hearing will be held on the enlargement petition at 2:00 p.m. on February 26, 1996, at the Arlington State Bank Annex.
3. The Notice of Filing of Petition was published in the Arlington Enterprises, Glenco Enterprises, Browntown Bulletin, and the Gaylord Hub
4. No written comments were received by BWSR in response to the Notice of Filing of Petition.

5. The land proposed to be added to the District consists of about 320 acres and is described as follows:

- A. Sibley County - Township 114 North, Range 26 West E 1/2 of the North 150 acres of the SW 1/4 of Section 27
- B. Sibley County - Township 114 North, Range 26 West E 1/2 of the South 10 acres of the SW 1/4 of Section 27
- C. Sibley County - Township 114 North, Range 26 West NW 1/4 SE 1/4 and W 1/2 SW 1/4 SE 1/4 of Section 27
- D. Sibley County - Township 114 North, Range 26 West E 1/2 NE 1/4 and NE 1/4 SE 1/4 and S 1/2 NW 1/4 SE 1/4 Section 32
- E. Sibley County - Township 114 North, Range 26 West E 1/2 S 1/2 NE 1/4 NW 1/4 except the East 220 feet of Section 34
- F. Sibley County - Township 114 North, Range 26 West N 1/2 NE 1/4 NW 1/4 of Section 34
- G. Sibley County - Township 114 North, Range 26 West W 1/2 S 1/2 NE 1/4 NW 1/4 of Section 34
- H. Sibley County - Township 114 North, Range 26 West W 1/2 SE 1/4 NW 1/4 of Section 34 as described in the County Recorder's Office, Book 78, pg 35
- I. Sibley County - Township 114 North, Range 26 West NE 1/4 NW 1/4 Section 34 as described in the Recorder's office Book 121, pg 637 and the part of W 1/2 SE 1/4 NW 1/4 of Section 34 described in the Recorder's book 121 pages 571-572

6. The lands proposed to be included in the District's legal boundary comprise a contiguous area of land abutting the District.
7. The lands proposed to be included in the District do in fact drain into the High Island Creek watershed.

CONCLUSION OF LAW

1. The BWSR has proper jurisdiction in this matter.
2. All relevant, substantive, and procedural requirements of law have been fulfilled.
3. The District can effectively administer the lands proposed to be included in the District's legal boundary.
4. It would be in the public welfare and public interest, and further the purposes of the Minnesota Watershed Act, to enlarge the legal boundary of the District as requested in the petition.

IT IS THEREFORE ORDERED

1. That the lands described in Paragraph 5 of the above Findings of Fact are hereby included in the District.
2. That the new boundary of the High Island Watershed District is hereby declared to be determined by the Board's Order of March 31, 1966, which established the District; all subsequent boundary changes; and as modified by this Order.

Dated at Saint Paul, Minnesota 55107, this 28th day of February, 1996.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

A handwritten signature in cursive script, reading "Barbara Cobb", is written over a horizontal line.

Barbara Cobb, Chair

RESOLUTION TO AWARD PLANNING GRANTS TO METROPOLITAN WATERSHED
MANAGEMENT ORGANIZATIONS FOR DEVELOPMENT OF SECOND GENERATION
WATERSHED MANAGEMENT PLANS.

WHEREAS, Minn. Stat. § 103B.3369, Subd. 5 was amended in 1995 to grant authority to the Board of Water and Soil Resources to award grants to watershed management organizations in the seven-county metropolitan area to develop second generation watershed management plans, and

WHEREAS, the amount of \$15,600 has previously been given outstate for comprehensive local water plan development, and

WHEREAS, the Board of Water and Soil Resources has adopted a priority review schedule of due dates for development of second generation metropolitan watershed management plans which averages six per year.

NOW, THEREFORE BE IT RESOLVED BY THE MINNESOTA BOARD OF WATER
AND SOIL RESOURCES:

The Board of Water and Soil Resources authorizes the awarding of planning grants pursuant to Minn Stat. § 103B.3369, Subd. 5 in the amount of \$15,600 for up to six grants per fiscal year for development of second generation metropolitan watershed management plans.

Adopted by the Board of the Minnesota Board of Water and Soil Resources on this 28th day of February, 1996.


Barbara Cobb, Chair

RESOLUTION

RESOLUTION DELEGATING THE AUTHORITY OF THE MINNESOTA BOARD OF WATER AND SOIL RESOURCES TO THE BOARD'S EXECUTIVE DIRECTOR TO ADJUST THE PRIORITY SCHEDULE FOR THE REVIEW OF METROPOLITAN WATERSHED MANAGEMENT PLANS FOR EARLY PLAN SUBMITTALS.

WHEREAS, the Board of Water and Soil Resources has adopted a priority review schedule of due dates for revisions of metropolitan watershed management plans, and

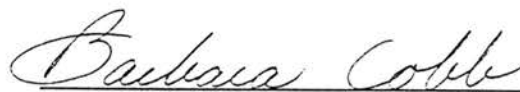
WHEREAS, from time to time watershed management organizations may submit plan revisions prior to the priority review schedule due date, and

WHEREAS, Minn. Stat. 103B.231, Subd. 3(g) (1995) allows organizations to adopt and implement plan revisions without formal Board approval if the Board fails to adjust its priority schedule for plan review within 45 days of submittal of the plan revisions.

NOW, THEREFORE BE IT RESOLVED BY THE MINNESOTA BOARD OF WATER AND SOIL RESOURCES:

The Board of Water and Soil Resources delegates to the Board's Executive Director the authority to adjust the priority review schedule for the review of metropolitan watershed management plans in order to accomodate early plan submittals.

Adopted by the Board of the Minnesota Board of Water and Soil Resources on this 24th day of January, 1996.



Barbara Cobb, Chair



NEWS RELEASE

Contact: John Wells
(612) 297-2377

January 17, 1996

GOVERNOR APPOINTS MINNESOTA ROUND TABLE ON SUSTAINABLE DEVELOPMENT

Governor Arne H. Carlson today announced the appointment of 30 business, environmental and community leaders to the Minnesota Round Table on Sustainable Development. Over the next two years, the round table will issue a series of reports to the Governor, Legislature and Environmental Quality Board identifying practical ways of achieving economic and community vitality while sustaining the quality of Minnesota's environment.

"We need to recognize the basic relationship between the long-term health of the economy and the environment. It makes no more sense to have an economy that undermines the environment than it does to have environmental policies that ignore the economy's health. We have an obligation to provide our children with the same opportunities we have had for living in safe, caring communities, developing challenging careers and enjoying a clean, diverse environment," said Governor Carlson.

Governor Carlson also announced the appointment of Dr. Robert Bringer as his special advisor to the round table. Bringer recently retired as 3M vice president for environmental technology and has served on numerous boards related to sustainable development, including the World Business Council on Sustainable Development and the Natural Resources Committee of the President's Council on Sustainable Development.

EQB Chair Charles Williams said, "The round table offers a refreshing alternative to government or business as usual. It provides a forum where diverse perspectives are respected and out of which can come policies, institutions and behaviors that are economically viable, environmentally sustainable and publicly supported."

The round table signals a more collaborative approach to economic development and environmental protection. It will seek policy innovations and partnerships for an environmentally sound economy.

The Environmental Quality Board is directing the activities of the round table as part of the Minnesota Sustainable Development Initiative established by Governor Carlson in 1993. The Initiative seeks to redefine how Minnesotans protect the environment and encourage economic development. It is based on the belief that Minnesotans do not have to choose between good jobs and a healthy environment — with cooperation between environmental and economic interests, both are possible.

Meetings of the round table will be open to the public.

-end-

Upon request, this information will be made available in an alternate format, such as Braille, large print or audio tape.

Note to the editor: A 2-page list of appointees is attached.



MEMBERS

Minnesota Round Table on Sustainable Development

January 1996

Name	Qualifications
Patricia Baker:	Member, Legislative Commission on Minnesota Resources Citizens Advisory Committee; Settlement Team, Minnesota Sustainable Development Initiative
Melanie Benjamin:	Mille Lacs Band Administrator
Eric Bloomquist:	Chief Executive Officer, Colonial Craft; Forestry Team, Minnesota Sustainable Development Initiative
John Bowers:	Retired Administrator, Federal Highway Administration
Ed Buchwald:	Professor of Geology and Environmental Studies, Carleton College
Kim Carlson:	President and Owner, Cities Management, Inc.; Charter Officer, Business for Social Responsibility
Tom Cochrane:	Director, AgriGrowth Council; Agriculture Team, Minnesota Sustainable Development Initiative
D'Wayne DeZiel:	Executive Director, Minnesota Association of Soil and Water Conservation Districts; Co-chair, Agriculture Team, Minnesota Sustainable Development Initiative
Rhondi Erickson:	President, American Science Corporation; Trustee, The Nature Conservancy; Minerals Team, Minnesota Sustainable Development Initiative
Nelson T. French:	Executive Director, The Nature Conservancy; Co-chair, Minerals Team, Minnesota Sustainable Development Initiative
Cindy Hayden:	Publisher, Lake Superior Magazine; Co-chair, Recreation Team, Minnesota Sustainable Development Initiative
George Honadle:	Consultant on Sustainable Development to the United Nations, World Bank, Agency for International Development, World Wildlife Fund and Minnesota Sustainable Development Initiative; Adjunct Professor, College of Natural Resources, University of Minnesota
Randy Jorgenson:	Executive Director, Southwest Regional Development Council
James V. Kubiak:	Chief Executive Officer, Membran Corporation
Ralph W. Lentz:	Retiring Chairman, Minnesota Sustainable Farming Association; Agriculture Team, Minnesota Sustainable Development Initiative
Barbara Lukermann:	President, Citizens League; Professor of Land Planning, Hubert H. Humphrey Institute of Public Affairs and Center for Urban and Regional Affairs; Co-chair, Settlement Team, Minnesota Sustainable Development Initiative
Alfred Marcus:	Professor, University of Minnesota, Carlson School of Management; Cofounder, Collaborative for a Better Environment and Economy; Manufacturing Team, Minnesota Sustainable Development Initiative

Name**Qualifications**

Jean Michaels:	Member, Sustainable Economic Development and Environmental Protection Task Force; Member, National Association of Counties and Association of Minnesota Counties Sustainable Development Task Forces; Olmsted County Commissioner
Chris Radatz:	Legislative Policy Analyst, Minnesota Farm Bureau
Allison Rajala:	Communications Consultant
Anita Ryan:	Owner, St. Paul Brass and Aluminum; Chair, Office of Environmental Assistance Toxic Pollution Prevention Task Force; Board Chair, Global Action Plan; Manufacturing Team, Minnesota Sustainable Development Initiative
Pat Schmid:	Isaak Walton League; National Audubon Society
Scott Schuler:	Environmental Director, Printing Industries of Minnesota
Brett Smith:	Member, Sierra Club; Pollution Prevention Consultant
James Stanton:	Past President, Builders' Association of Minnesota; Past President, Minnesota Association of Realtors
Mike Touhy:	Chief Executive Officer, Touhy Furniture Company; Manufacturing Team, Minnesota Sustainable Development Initiative
Gary E. Weisbrod:	Environmental Manager, Deluxe Check
Jonathan J. Wilmshurst:	Vice President and Regional Manager, CAMAS America, Inc. (sand and gravel business); Minerals Team, Minnesota Sustainable Development Initiative
Molly Woehrlin:	Co-chair, Settlement Team, Minnesota Sustainable Development Initiative; Co-chair, Sustainable Economic Development and Environmental Protection Task Force
Annie Young:	Vice President, The Green Institute, Minneapolis; Community organizer, Phillips Neighborhood, Minneapolis

***Special Advisor
to the Round Table***

Robert Bringer:	3M Emeritus Executive; World Business Council on Sustainable Development (liaison for 3M chairman); Minnesota Global Action Plan Director; Member, Natural Resources Task Force, President's Council on Sustainable Development; Chairman, Corporate Conservation Council, National Wildlife Federation (1989-1992); Co-chair, Manufacturing Team, Minnesota Sustainable Development Initiative
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Date : February 12, 1996
To: BWSR Cost-Share Committee
From: Marybeth Block MB
RE: Cost-Share Policies (a couple we missed the first time around!)



Through the review and final drafting of the guidelines for the cost-share program a couple of policies needing board endorsement have come to light. The cost-share retooling committee has discussed the issues listed below and the team's recommendations are reflected in the *Action Requested* segment.

- ✓ **Regarding SWCD comprehensive planning.** Minnesota Statutes 103C.331 say that districts may develop and revise a comprehensive plan. The statute also prescribes the contents of comprehensive plans. While 103C.331 says that planning is optional, the cost-share statutes (103C.501) require that districts submit a comprehensive and annual plan to the state board to be eligible for cost-share funds. Since many SWCDs have been active participants in the county comprehensive water plan and because those plans address natural and related land resources - including erosion and sedimentation - districts have requested that the BWSR allow them to adopt their county's local water plan as the district's comprehensive plan. Doug Thomas reviewed the relevant statutes and rules and came up with this conclusion:

"It appears that it would be permissible for a SWCD to acknowledge the county water plan as their comprehensive plan as long as the water plan is compliant with the criteria in 103C.331, subd. 11 and Minnesota Administrative Rules 8400.0600." The criteria require that the plan:

- specify practices to implement state policy regarding soil and water conservation;
- include a classification of soil types within the district; and
- identify areas within the district where erosion, sedimentation and related water quality problems appear most in need of control measures.

Action Requested:

That the cost-share committee recommend that the full board adopt a policy **allowing SWCDs to submit to BWSR a resolution adopting**

their county's comprehensive local water plan as the conservation district's comprehensive plan. The resolution must state that the comprehensive local water plan meets the requirements of M.S. 103C.331 and 8400.1600. The conservation district must submit this resolution with the same frequency required for comprehensive plan amendments (currently statute requires biannual amendments).

A copy of an example of a resolution that will be in the administrative guidelines and is attached to this memo.

- ✓ **Regarding eligible costs for state cost-share funds.** The issue has been raised whether charges for technical and administrative services are considered an eligible cost to establish the conservation practice. The cost-share retooling committee agreed that the SWCD technical and administrative services provided to the land occupier should not be eligible for reimbursement - as district's receive 20 percent of their cost-share funds off the top to provide these services.

However, it will be important to clarify in the administrative guidelines that costs charged for district service programs, such as tree planting and weed control, are considered an eligible cost under the cost-share program.

Action Requested:

That the cost-share committee recommend that the full board adopt a policy stating that **SWCD charges for technical and administrative services provided to a land occupier are not considered eligible costs to establish a practice that is funded solely, or in part, with state cost-share funds.**

Ineligible costs include, but are not limited to, technical services to perform field investigations, design the conservation practice, monitor the establishment of the conservation practices and all program administration costs.

I have discussed these policies with Dwain Otte, Chair of the Cost-Share Committee. We will plan on bringing the policies before the board for adoption at the February meeting. Please feel free to call me at (612) 297-7965 if you have any questions or concerns you would like to the committee to discuss prior to the board meeting. I will relay them to Dwain and hopefully we will be able to resolve them before the board meeting on the 28. Thank you for your attention to this matter.

RESOLUTION _____
ADOPTING THE _____ COUNTY COMPREHENSIVE LOCAL WATER PLAN
AS THE
COMPREHENSIVE PLAN OF THE _____ SWCD

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

WHEREAS, the _____ SWCD has been an active participant in the development and all updates of the _____ County Comprehensive Local Water Management Plan (CLWMP); and

WHEREAS, the _____ County CLWMP includes a map and description of the soil classifications within the conservation district; and

WHEREAS, the _____ County CLWP identifies the areas within the conservation district where erosion, sedimentation and related water quality problems are the most severe; and

WHEREAS, the _____ County CLWP has been approved by the BWSR and has been determined to be in compliance with all laws and rules governing water in the State of Minnesota, and

WHEREAS, the _____ County CLWP identifies high priority erosion, sedimentation and water quality problems in accordance with BWSR rules and guidelines.

NOW THEREFORE BE IT RESOLVED:

THAT THE _____ SWCD adopts the _____ County CLWP as its Comprehensive Plan for the calendar years of _____, and _____.

Supervisor _____ seconded the adoption of the resolution, and it was declared adopted upon the following vote:

Ayes: _____

Nays: _____



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(218) 828-2383
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Southern Region:

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New Ulm, MN 56073
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Fax (507) 359-6018

40-16th Street SE
Suite A
Rochester, MN 55904
(507) 285-7458
Fax (507) 280-2875

Box 267
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Marshall, MN 56258
(507) 537-6060
Fax (507) 537-6368

Metro Region:

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

DATE: February 28, 1996

TO: Members, Board of Water and Soil Resources

FROM: Jim Birkholz, Assistant Director

A handwritten signature in black ink, appearing to read "JBirkholz", written over the "FROM:" line.

SUBJECT: Local Government Oversight and Accountability

As you know, BWSR has various statutory responsibilities to provide oversight and accountability for local governments. Often these responsibilities relate to BWSR providing state grants to fund part of the cost of local implementation of various programs. Our approach as an agency has been to rely on good up front program guidelines, clear communication of expectations and a service oriented followup process by our staff to help all local governments achieve natural resource goals within the boundaries of statutory and fiscal requirements. As a safety net and quality assurance tool we also use audits and program closeouts to help keep things on track.

Recently in the case of SWCDs we have seen instances where the existing accountability structure has broken down. A few SWCDs (at least 10 in the past 6 years) have experienced fiscal problems ranging from mismanagement of state grant funds to outright embezzlement. In each of these cases, the existing oversight process did not catch problems in a timely fashion. Today's meeting agenda includes followup or information on three recent incidents of fiscal problems--East Ottertail, Chisago and Swift SWCDs. SWCDs receive about \$4,000,000 in state grants per year directly from BWSR; their total budgets statewide approach \$17,000,000 per year.

In the case of counties which receive about \$5,000,000 in grants from BWSR each year, we have the challenge of providing oversight which dovetails well with existing audits conducted by the State Auditor's Office.

Watershed Districts require the least amount of fiscal oversight from BWSR by statute but have requested occasional assistance and guidance in this area.

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Recommendation

1. Rather than implement changes to oversight procedures for LUGS in a piecemeal fashion, take the time to look at the entire system of accountability and develop strategies which prevent problems, more quickly identify problems when they occur and reward good performance.
2. Several Board members have been involved in following up on the East Ottertail SWCD financial problems. We should utilize their expertise and experience gained along with other appropriate (volunteer?) board members to form a short term committee to work with staff to develop a set of recommendations regarding updates to the fiscal accountability system used by BWSR and local governments it serves.
3. Such a committee should look at the full range of laws, rules, guidelines, audit procedures and staff assignments currently dealing with fiscal oversight. Case histories should be examined as part of this process. The committee should recommend performance-oriented improvements to the existing system which do not place bureaucratic requirements on all LUGS but which deter problems or find them quickly when they occur.
4. The committee should report back to the Board with a list of recommendations within three months.

cc: M Team

:bwsrbrf.lgu



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DATE: February 28, 1996

TO: Members, Board of Water and Soil Resources

FROM: Jim Birkholz, Assistant Director

SUBJECT: Investigation Regarding Chisago SWCD Purchase and
Disposition of Federal Surplus Property

In early February it came to BWSR staff's attention that over the past several years the Chisago SWCD has purchased a large amount of surplus federal property from the Surplus Warehouse in Arden Hills operated by the Materials Management Division of the State Department of Administration. This warehouse is operated by the state to obtain all types of equipment which has been surplus by the federal government and to provide it to state and local governments and certain other eligible organizations at very low cost. Federal regulations require that the equipment be purchased only by eligible agencies and organizations, not individuals; that it be placed in service by the agency, and that equipment which is no longer needed be disposed of by working through the warehouse.

The value of the property purchased by the Chisago SWCD since 1988 exceeds \$30,000 (face value, not discounted price), with most of those purchases made since 1991. Items purchased included a large number of sleeping bags, backpacks, boots, wheel pullers, wool pants, parkas, etc.... Knowing no good reason why the SWCD should need this type of equipment in large quantities, several discussions ensued between BWSR staff, Materials Management Division staff, and staff and Board members of the Chisago SWCD. Materials Management Division staff conducted an on-site visit of the SWCD office and found very little surplus equipment there in use by the SWCD. This visit and subsequent investigation revealed that Mr. Roland Cleveland, Supervisor and Chairman, had made regular visits to the Surplus Property Warehouse since 1991, purchased surplus property with Chisago SWCD warrants, then reimbursed the SWCD with a personal check for property not placed into service by the SWCD. Mr. Cleveland admitted that he sold much of the property to others (friends and others who had heard that the SWCD was a source of some cheap equipment) but stated that he sold it at his cost. At various times staff in the SWCD office purchased surplus property directly from Mr. Cleveland and at other times, reimbursed the SWCD directly.

BWSR Members
February 28, 1996
Page Two

Mr. Cleveland is cooperating with the Materials Management Division to return a portion of the equipment not placed into use by the SWCD. The SWCD is liable for the cost of equipment not returned. BWSR is assisting this process as needed.

Based on current knowledge, and acting under authorities in Soil and Water Conservation District Law, BWSR staff are proceeding to examine at least the following three issues related to the purchase and disposition of surplus federal property by the Chisago SWCD.

1. Did the SWCD exceed its authorities by purchasing and disposing of federal surplus property in an improper fashion, particularly with regard to use of state grant funds? (M.S. 103C.401 BWSR Powers and Duties)
2. Does the evidence indicate that Mr. Roland Cleveland may have been neglectful of duty or malfeasant in carrying out his responsibilities as a Supervisor of the Chisago SWCD? (M.S. 103C.315, Subd. 5. Removal of Supervisor)
3. Where did the existing oversight and accountability system break down and what can be done to avoid this in the future?

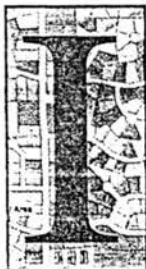
Staff can do the initial investigation on the above points. Ron Shelito, Northern Region Supervisor, will lead this investigation, with assistance from Sara Johnson, SWCD Accounting Coordinator, and other staff as needed. This will involve coordination with the Materials Management Division staff and staff from the Office of the State Auditor. The results of investigations to date will be shared with the Chisago County Attorney as suggested by Attorney General staff. I am requesting Board member involvement (two or three members?) with staff at the appropriate time to bring facts forward for resolution by the Board as may be necessary.

cc: Ron Harnack
Ron Shelito
Sara Johnson
Keith Grow
Jon Schaefer, Administration

:bwsrbrf.chi

Want to know if your dream home
sits atop an old dump or
Superfund site? Extensive
geographic databases put together
by local government units can give
you the scoop on all sorts of
intriguing property questions.

Digging Deep



■ James Piegat and Leigh Harrod of the Hennepin Conservation District can be reached at 544-8572.

■ In Ramsey County, call Pat Twiss of the Ramsey Soil & Water Conservation District at 488-1476.

BY
DENNIS
LIEN

STAFF WRITER

If you pick any spot in Hennepin County, with a few clicks of a computer mouse, James Piegat can tell you virtually everything you want to know about it.

Concerned about your property's soil composition? He'll tell you what it is down to 5 feet.

Worried about an old dump that might have been there? He can put your mind at ease.

How about the likelihood of an abandoned well or the distance to the nearest hazardous waste generator? He can give you that, too.

As they sit in the Minnetonka office of the Hennepin Conservation District, Piegat and his colleague, Leigh Harrod, can traverse the county via their computer terminals, addressing questions that can take others weeks and thousands of dollars to answer. And they do it in seconds.

For eight years, Piegat and Harrod have quietly collected geographic data about the county from every conceivable state or local agency and entered it into a computer package called a Geographic Information System. They update it annually.

Among the types of data on the GIS are:

- Potential contamination sources, such as hazardous waste generators, old dumps, above- and below-ground storage tanks registered with the Minnesota Pollution Control Agency, Superfund sites, and pre-1900 farm site locations with abandoned wells.

- Typical geographic formations, such as land cover, soil composition and bedrock geology, precipitation, natural flood plain lines, wetlands, wellhead protection areas, water runoff directions and aquifer levels.

- Other often-sought information, such as property owners, property values and property lines.

DIGGING CONTINUED ON 2D ►



JOE ROSSI/PIONEER PRESS

Leigh Harrod, left, geologist, and James Piegat, hydrogeologist for the Hennepin Conservation District, have collected a wealth of geographic data.

St. Paul struggles to stay on Net's cutting edge

First, the good news: St. Paul is one of the most Web-hip cities in the United States.

In fact, the city's World Wide Web page (<http://www.stpaul.gov/>) ranks third in a recent analysis of 567 city sites — edged out only by Los Angeles and San Diego.

Mankato places seventh in the study, conducted by the University of Illinois' National Center for Supercomputing Applications, birthplace of the pioneering Mosaic browser.

With something as fast-moving as the Internet, however, fame can be fleeting — and St. Paul appears dangerously close to forfeiting its online dominance despite the martyr-like efforts of its Web gurus.

BY JULIO
OJEDA-
ZAPATA

STAFF WRITER

The city has yet to assign full-time staff to such major Internet projects as the City of St. Paul and St. Paul Public Library Web sites. It still lacks much of the sophisticated equipment that will be needed to keep the city on the Net's cutting edge.

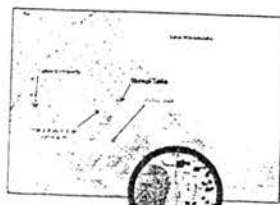
At a time when other local and federal agencies are rushing to embrace cyberspace — the U.S. government has decreed that most Federal Depository Library publications must be distributed electronically by 1998, for instance — St. Paul has considerable planning and soul-searching ahead.

City leaders have, in fact, begun to think about their role in the online age, though their

NET CONTINUED ON 2D ►

INSIDE TECH

SENIOR EDITOR/TECHNOLOGY David A. Frye
BUSINESS TEAM LEADER Judith Wills
NEWS EDITOR Judy Brunswick



Hennepin County's Geographic Information System can help people such as prospective homebuyers get detailed information about a neighborhood.



Digging Deep

CONTINUED FROM 1D

Such data as lead contamination in soils, tax-forfeited lands and census information could be added to the inventory.

All of the information is combined into one software package and overlaid on a base map, allowing Piegat and Harrod to call up the data on the computer screen in a format as broad as a countywide map or as specific as a lot parcel.

As a result, there's no more traipsing off to a set of files for one kind of data and to another set for another type, then sitting down and trying to make sense of it. Now, just click on the computer, tell it what you want and retrieve the information.

"At this point, it's kind of a well-kept secret," Harrod says.

The implications for public officials, planners, developers and citizens are enormous, according to Hennepin County Commissioner Randy Johnson, a strong proponent of geographic information systems.

"It will provide a much better information base for making policy and operational decisions," he says. "It will provide graphic information instead of just text or tables of numbers. It will allow us to look at various options and analyze them very easily."

"If there is a hazardous waste spill, for example, we can determine very quickly the best and most cost-effective method of cleaning it up," Johnson says. "By knowing the contours of the land, knowing where wells might be located, the nature of soils in the area, we can determine if there's an immediate threat."

So far, applications for most people are fairly limited, Johnson says.

"But as more and more information goes into the database, more and more groups of people will find good uses for it," he says. "When we get more infor-

mation, we will be able to see graphically the trends in housing prices and land prices, more quickly what is buildable and what's not."

Within two years, Johnson hopes the information will be readily available to the public at a local library. As it is, Piegat and Harrod routinely field calls from public officials and agencies and many property owners.

"If somebody calls, we will get to them as soon as we can," Piegat says. "Obviously, when the calls get more frequent, the people who want to know something this afternoon, we aren't going to get it this afternoon."

Because the information is valuable, the county will face a policy question: Should it charge for access to the information?

"We've spent a lot of money compiling this information," Johnson says. "In paper form, all of the raw data is available for the cost of copying, but the law in Minnesota allows local governments to sell this enhanced information to help recover these costs."

"I'm on the side that local governments should be allowed to recover costs, certainly when used by for-profit enterprises."

On the other side are proponents who argue that taxpayers already have paid for the information and should be able to get it for a minimal cost.

Other counties and public agencies in the state have put together or are compiling geographic information systems, but no one has tabulated such varied data.

"I'm not aware of anybody anywhere in the country who has a system this far along," Johnson says.

Ramsey County began a similar process last year, but its system isn't nearly as high-powered, according to Pat Twiss, groundwater specialist for the Ramsey Soil & Water Conservation District.

Nonetheless, he says, "it has been an important tool in identifying abandoned wells and helping public officials coordinate developments that avoid pollution problems."

"The only way we would be able to delineate this is through GIS," Twiss says. "It's an environmental management tool that certainly saves a lot of time and best disposes of public dollars in threatened areas."

"This is an era of do more with less," says Don Wodek, district manager of the Hennepin Conservation District. "And this is a great information tool exchanged between state and local units of government."

Developers also should find it attractive, he says.

NET

CONTINUED FROM 1X

actions to date can only be described as tentative.

An Internet committee composed of representatives from several city agencies plans to issue a report in March. A separate technology study commissioned by the mayor has recommended the hiring of an information services director (the governmental equivalent of a corporate chief information officer).

The St. Paul Public Library, meanwhile, is pondering the findings of an independent consulting firm that recently said "SPPL has not had a technology vision" and that the library lacks an "overarching plan for acquiring and implementing information technology."

The firm — Joseph Ford and Associates of Olympia, Wash. — argues that "very soon, all current library technology delivery will rely on World Wide Web and Internet access, using a graphical user interface. SPPL's current technology environment cannot support such access."

Consider the library's Web page (<http://www.stpaul.lib.mn.us/>), which has won kudos for giving PC users access to the agency's electronic catalog. Online visitors might reasonably conclude that the site is the work of a crack staff with a mandate to fully exploit the Web's potential.

The reality: Larry Hlavsa, the library's information technologies coordinator, has worked on the page in his spare time (often at home on weekends). Lately, he concedes that his energy has begun to flag.

"I'm loath to do much more," he says. "I fear that the bigwigs will conclude that this job can be done well with the current amount of staff and will therefore not (increase funding)."

Acting library director Carole Williams says that money is urgently needed for Internet-compatible equipment, including a public-access terminal for every neighborhood branch and a new computer system to replace the library system's obsolete network. She says the library also needs funding for additional Web-savvy staff.

"We don't want to burn out our stars," she says.

A larger staff is assigned to work on the City of St. Paul's Web page. But even that "is still pretty much an inspiration-driven project with great people doing great work" along with other pressing duties, says Dennis Gritter, the public works department's computer services manager.

Meanwhile, local Web users "are getting more refined in their criticisms... and expecting more sophisticated types of services," Gritter adds. "It's getting harder to live up to everyone's expectations with our limited resources."

The St. Paul site's high rating on the NCSA survey (http://www.ncsa.uiuc.edu/People/alaina/com_online/) is primarily due to Gritter and his staff, a group of unconventional "techies" who love to experiment with new Web-publishing methods and eye-catching features.

Alaina Kanier, a social scientist who headed up the University of Illinois study, says, "The St. Paul page provides timely information and ways for people to interact with government officials. It is rare for cities to have e-mail links to council members. The site obviously seeks to support the local community and build electronic democracy. I admire (the staff) for continually improving the page and trying to be different."

Not everyone has unconditional praise for the page, however. Some city leaders are uneasy about the site's informality and "attitude" — including its intentionally ungrammatical language ("Wot's Snuff?"), teddy-bear images and links to area breweries — even though such features have helped the page garner several Web awards.

"Some have questioned whether we should present that sort of image to the rest of the world," says Bob Kessler, a city department head who chairs the Internet committee. "Shouldn't we be more professional?"

Such objections suggest that the inevitable hashing-out of city Internet policies will be about more than funding and staffing. The outcome of a struggle over style and tone may delight bureaucrats but dismay netizens.

"Many city sites are as dry as toast, and others have a heavy economic-development flavor that says, 'Come here, develop here, put your money here,'" says Dana Noonan, a Minneapolis-based Internet consultant. "St. Paul's page has taken a different approach. It provides space for things that might otherwise fall through the cracks, such as Saints baseball and the St. Paul Art Crawl. This gives the page a personality. That's one thing people who run government sites are nervous about — having a personality."

"Lots of landowners are looking to subdivide lands and for general information on soil," Wodek says. "Are there any dump sites or hazardous waste sites? It's crucial to know this ahead of time."

Another important use of the data, they say, is in identifying properties that are about to become tax-delinquent or tax-forfeited.

"We took a look at all the properties scheduled to go tax-forfeit in '96, and went out to the conservation district and located the properties on a base map," says Pat O'Connor, Hennepin

County's auditor-treasurer. "We were able to look at the factors that might be affecting an owner's decision to forfeit: tank sites, proximity to known contamination problems, sites near or on landfills."

"That map allowed us to prioritize about 100 commercial and industrial properties that were scheduled to forfeit," O'Connor says.

The county, which has an interest in keeping the property on the tax rolls, then sent out letters offering owners such assistance as spreading tax payments out over time.



Board Member Update

February 1996

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

Southern Region

- * Comprehensive Local Water Program (CLWP) plans and Natural Resources Block Grant (NRBG) reviews required a lot of board conservationists' (BC) time during January. CLWP update review and assistance continues for all BCs throughout 1996. Counties submitted their annual NRBG applications to BWSR by January 16 for BC review and approval recommendation. BCs also began reviewing 1995 NRBG annual reports.
 - * BCs were also very busy reviewing conservation easement applications (Reinvest in Minnesota/Permanent Wetland Preserves) from SWCDs and making funding recommendations to BWSR Easement Program Manager Tim Fredbo. Once again, landowner application requests far exceed available program funding.
 - * BC Chris Hughes attended a Natural Resources Conservation Service (NRCS) Area VI technical training committee meeting that will hopefully lead to some partnership training for BWSR clientele. Training projects the committee plans to develop for 1996 include plant identification and wetland soils for south central Minnesota. Another subject discussed was SWCD project management.
- An audit of completed Blue Earth River

Basin Initiative (BERBI) projects was started. BERBI has completed 43 prioritized projects (three ag. waste, one rock chute, nine terraces, four sediment basins, 19 waterways, two critical area stabilization, one diversion, four side-inlet structures) and is working on 103 projects. Completed project costs so far are \$158,753.22.

Engineering and Technical Services Section

Technical Coordination and Training

- * A joint "area engineers" meeting was held at the BWSR St. Paul office in early February. Engineers and some technicians from the NRCS area and state offices, 10 of 11 State Revolving Fund (SRF) Joint Powers Area (JPA) offices and BWSR attended the meeting, at the invitation of John Brach, NRCS state conservation engineer, and Al Kean, BWSR chief engineer. Topics of discussion included a wide variety of design and coordination issues. Minnesota Pollution Control Agency (PCA) feedlot program staff were invited to discuss the latest issues and PCA initiatives in that arena. The joint day and a half meeting was very productive and well received, and was followed by half day separate meetings of NRCS and JPA/BWSR staff. We hope to make this an annual, or possibly semiannual,

meeting.

- * A draft proposal by the Technical Advisory Committee [composed of engineers and technical staff from BWSR, NRCS, the Minnesota Association of Conservation District Employees (MACDE), and the Minnesota Association of Soil and Water Conservation Districts (MASWCD)] for an updated partnership technical approval authority (TAA) system has been a topic of substantial discussion of late. A proposal to involve JPA engineers on teams that would assess and make TAA recommendations for non-engineer staff is not supported by some of the JPA engineers, who are not comfortable with the proposed role for them. Because the practice of engineering cannot be delegated outside the federal exemption that the NRCS operates under, the question of how to define what is and isn't the practice of engineering is a sensitive issue for the JPA engineers. Most of the JPA engineers are also not very familiar with the current NRCS job approval authority system. Because the idea, or the time, do not appear to be right, John Brach and Al Kean are preparing a revised proposal for Technical Advisory Committee consideration, in which JPA engineers would be potential consultants to NRCS Area Engineers and Area Resource Conservationists, who would (and currently do) make recommendations for technical approval authority.
- * Second training sessions for use of the Geodimeter total station surveying systems, which were provided to all of the SRF JPA offices, have been scheduled for March 19 in Brainerd and March 21 in Mankato. Final arrangements are being made. Fred Meyers, the regional sales rep, will be

the trainer. This training is part of the purchase package. Fred says he is impressed with how much the JPA staff have been using the instruments, based on the number of calls for assistance and types of questions that he has received since the instruments were delivered late last fall.

- * Bryan Alpaugh, data management specialist, has been working with Justin to make the feedlot evaluation model (FLEVAL) much more user friendly. This is a very important computer program for most all feedlot projects for which SWCD, SRF JPA and NRCS staff provide technical assistance. The improved version will be much easier and faster to use. It will be pilot tested by a JPA and NRCS office before multiple copies are made and distributed.

Conservation Easements

- * In accordance with the annual program plan and retooled procedures, conservation easement program staff reviewed and accepted 118 new applications from the first 1995 sign-up that were recommended by the BCs. These applications involve a total of about 4,400 acres. Approximately \$2.85 million of state bonding funds and \$750,000 of federal North American Wetland Conservation Act (NAWCA) grant funds were obligated. Approximately 64 percent of the available state bonding funds went to easement applications in the Minnesota River basin. The number of easements by type are as follows (some minor changes may still occur as field office and central database numbers are reconciled.)

Sensitive Groundwater 1

Riparian - Perpetual	54
Wetland Restoration	44
Marginal Cropland	10
PWP	4
Other - Perpetual	2
Flowage	3
Total	118

Recorded demand during this sign-up was approximately twice the available funds. Note that we made the amount of funds available, and BC allocations, known well in advance of the sign-up, which may have limited the recorded demand. The sign-up generally went very well, based on BC and SWCD feedback.

- * An agreement recently finalized with the U.S. Fish and Wildlife Service (USFWS) will give the RIM Reserve Program \$45,000 for establishment of conservation practices on easement lands. Thanks to Tim Fredbo, easement program manager, and Tom Wenzel, design engineer, who led the messy paperwork efforts.
- * A joint powers agreement between the BWSR and Scott SWCD has also been finalized recently. This agreement will enable Scott SWCD to channel \$100,000 from a Metropolitan Council Water Quality Improvement Grant to the BWSR for acquisition of RIM easements in Scott County. Scott SWCD intends to identify critical easements and prioritize them using the same guidelines used for the first 1995 sign-up. Scott SWCD anticipates that riparian easements adjacent to the Minnesota River will be the primary type funded. Craig Engwall, assistant attorney general, helped get this agreement in place.
- * Tim has prepared two LCMR requests targeted at accelerating RIM easement

acquisition on environmentally sensitive lands with expiring Conservation Reserve Program (CRP) contracts. One request is for \$2.5 million for perpetual easements, and one is for \$500,000 for 20 year easements.

- * A bill to make several minor revisions to the RIM statute (S.F. 2114 and H.F. 2282) has moved through both the Senate and House committees to the floor. We anticipate passage of the bill, hopefully without many amendments!
- * RIM Reserve bonding is currently being considered by the House Capital Investment Committee and the Senate Finance, State Gov. Division. The BWSR requested \$22.6 million and the Governor's recommendation was for \$7.5 million. MASWCD, Pheasants Forever, Ducks Unlimited, the Minnesota Waterfowl Association (MWA), The Nature Conservancy and the Farm Bureau have been doing some lobbying for increases in the RIM Reserve appropriation.

Lakeshore Engineering

- * BWSR staff in our Duluth office recently submitted a \$14,500 grant application to the Great Lakes Commission (GLC) for production of a shoreline best management practices (BMP) video that would be the fourth of a five-part series. The project would be a collaborative effort involving the BWSR, Lake Superior Association of SWCDs, Minnesota Arrowhead Water Quality Team, and Minnesota Sea Grant Extension. The five-part series is intended to include the following videos:
 - Introduction to Shoreline BMPs
 - Water Conservation
 - Septic System Operation and Maintenance

- Shoreline Stabilization
- Shoreline Vegetative Filter Strips

The first video is complete, the second and third are to be completed in 1996, the fourth is the subject of this grant application and the fifth is envisioned. Gene Clark, lakeshore engineer, spearheaded the application and would serve as the project manager.

- * Gene and Barb Liukkonen, water resources education coordinator, continue to work on the shoreline BMP workshop project that was funded in part by a GLC grant this year, in cooperation with the Lake Superior SWCDs. They are preparing a manual that will serve as a workshop handout and future reference. Six workshops are planned for late spring and summer. The primary audience includes property owners and local units of government.
- * Gene continues to assist the Arrowhead Regional Development Commission and North Shore Management Board with efforts to seek SRF Loan funds. The board and staff of SRF Joint Powers Area 3 have apparently expressed interest in seeking and administering SRF loan funds also. The Ag BMP Loan Program includes rural individual sewage treatment systems as an eligible practice, but not shoreline stabilization. Therefore, the PCA Clean Water Partnership SRF Loan Program is a primary focus for a loan program.
- * A few other technical assistance efforts that Gene completed recently include:
 - Preliminary design and specifications for a shoreline stabilization project on Leech Lake for Itasca SWCD.
 - Preliminary designs and cost estimates for 11 new projects along the North Shore to be submitted by

Lake and Cook SWCDs for SLR special project funding this spring.

- Coordination with a structural engineering consultant for a seawall for the Fuller project to be constructed this year.

Area II

- * Area II Minnesota River Basin Projects, Inc., recently hired Billy Thomas to serve as a project design engineer. Al Kean and Darrell Apelgrain, BWSR water resources engineer, plan to meet with Billy and Kerry Netzke, Area II coordinator, in the near future to clarify how to best cooperate to achieve the program mission of providing technical and financial assistance for floodwater retarding and retention in the area.
- * DNR staff of the Division of Waters and Division of Fish and Wildlife recently met with USFWS and Corps of Engineers regulatory staff to discuss the status of permit application review for the RW-22 reservoir project. What we've heard of the discussions seems to indicate that a compromise principal spillway design is still possible and that a protected waters permit decision by the DNR is to be made soon. The Corps of Engineers apparently had some irregularities in the noticing for the Section 404 permit application, which might affect their decision about holding a public hearing. A number of letters of support for the project (including three from local legislators) have been sent to the Corps, DNR and key legislators, but so have several letters of opposition, including one from Rep. Richard Mulder, District 21B. The USFWS position regarding the effects of the project on the federally funded Shelburne Wildlife Management Area in the temporary reservoir area, and the proposed

mitigation plans, are key to the permitting decisions.

- * The final draft feasibility report for the proposed Lazarus Creek reservoir project in Yellow Medicine County was the subject of a meeting held in Marshall on January 24. Representatives of numerous state and local government entities that have an interest in the project were involved. Some of the critical concerns and issues were discussed, flavored by a number of old and more recent cooperation and permitting process issues. The Lac Qui Parle - Yellow Bank Watershed District is the local sponsor of this proposed project, which will be a topic at an upcoming Memo of Understanding meeting between Area II, DNR and PCA staff scheduled for March 7 at Marshall.
- * The BWSR capital bonding request for the Area II program in FY 97-98 was for \$1.65 million, which included funding for road retention projects, the RW-22 reservoir project and the Lazarus Creek reservoir project. Road retention was the highest priority. The Governor's recommendation was for \$750,000. Members of the Area II joint powers group plan to do some lobbying for the program at the capitol this week.

Land and Water Section

- * Greg Larson, section administrator; John Jaschke, wetland management specialist; and Doug Thomas, water planning coordinator, have been busy in the legislative process. Greg and John (with Ron) have spent nearly full-time since the first of the year attempting to craft amendments for the Wetland Conservation Act (WCA). The recent release of the negotiated "package" of

amendments to the Senate and House conferees (see board member packets) hopefully means the end to the process is near. If it is, we have about sixty days to have an amended WCA rule in effect. Doug has successfully helped shepherd the watershed district amendments through the major policy debates.

- * Marybeth Block, special projects coordinator, is wrapping up a successful effort as a major player retooling the state Cost-Share Program. She was involved in training the board conservationists on the new provisions of the program. Marybeth has also been involved in discussions with Senator Morse on his proposed CRP land transfer program.
- * Grants Coordinator Wayne Zellmer has been involved in the retooling of the Cost-Share Program and processing of the Natural Resources Block Grant applications. Wayne notes that 28 counties have not complied with the reporting requirements for the grant. Hence, we cannot publish our annual wetlands report. Block grants will be withheld from the 28 until we receive the required information on how prior year grants were spent.
- * Jim Haertel, water management specialist, is handling issues of water policy and appeals. The appeal workload with regard to the WCA should lighten given the proposed changes before the conference committee.
- * Dionne King, student worker, continues to help us all by crunching numbers, preparing reports, organizing our map files and performing many other tasks that otherwise probably would not get done.

February 21, 1996

Via Hand Delivery

Representative Williard Munger
Co-chairman
Wetlands Conference Committee
479 State Office Building
St. Paul, MN 55155

Senator Leroy Stumpf
Co-chairman
Wetlands Conference Committee
G-24 State Capitol
St. Paul, MN 55155

Re: Proposed Amendments to the Wetlands Conservation Act

Gentlemen:

By this letter we are transmitting a package of proposed amendments to the Wetlands Conservation Act for consideration by the legislative conference committee. We support this package as a workable resolution to the issues that it addresses. We focused our efforts on negotiating the necessary details to the four issues on which significant progress was made at the recent Stakeholders' Roundtable. There are other issues that remain unresolved, and are so noted in the document.

The package is the result of many hours of discussion, negotiation, and reflection. In other words, it represents real compromise. We encourage you to convene the conference committee soon. We would welcome the opportunity to testify before the conference committee to summarize the package and answer your questions.

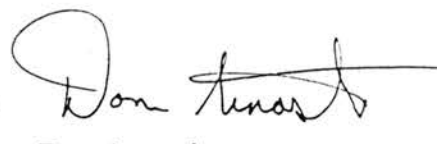
Sincerely,



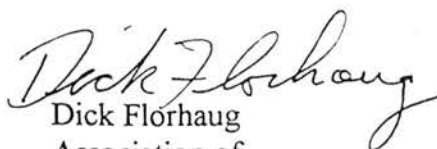
Tanja L. Kozicky
Legal Counsel to
the Governor



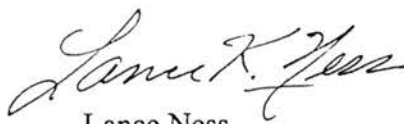
Bob Peterson
Association of
Minnesota Counties



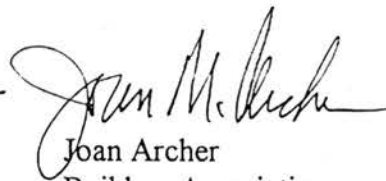
Don Arnosti
Audubon Society



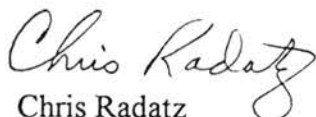
Dick Florhaug
Association of
Minnesota Counties



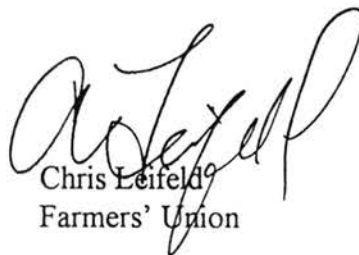
Lance Ness
Fish & Wildlife
Legislative Alliance



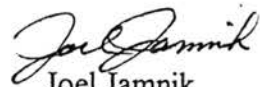
Joan Archer
Builders Association



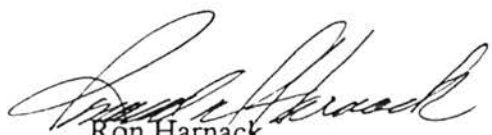
Chris Radatz
Farm Bureau



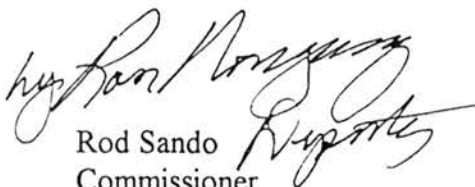
Chris Leifeld
Farmers' Union



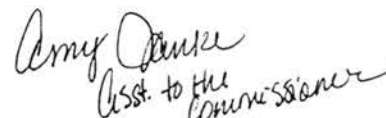
Joel Jamnik
League of Minnesota
Cities



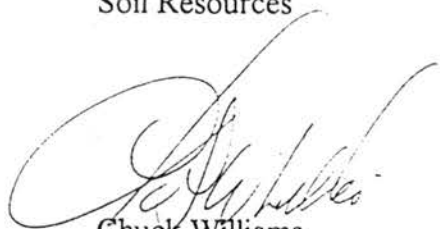
Ron Harnack
Executive Director
Board of Water and
Soil Resources



Rod Sando
Commissioner
Department of
Natural Resources



Gene Hugoson
Commissioner
Department of
Agriculture



Chuck Williams
Commissioner
Pollution Control Agency

c: Senator Roger Moe
Senator Dean Johnson
Senator Gene Merriam
Senator Ted Mondale
Senator Steve Dille
Senator Dan Stevens

Representative Irv Anderson
Representative Steve Sviggum
Representative Betty McCollum
Representative Jim Tunheim
Representative Jim Girard

A bill for an act

Relating to natural resources; water; modifying wetland protection and management; appropriating money; amending Minnesota Statutes 1994, sections 84.035, subdivisions 5 and 6; 103B.3355; 103F.612, subdivisions 2, 3, 5, 6, and 7; 103G.005, subdivision 10a, and by adding subdivisions; 103G.127; 103G.222; 103G.2241; 103G.2242, subdivisions 1, 2, 4, 6, 7, 9, and 12; 103G.237, subdivision 4, and by adding a subdivision; 103G.2373; and 115.03, by adding a subdivision; Laws 1994, chapter 643, section 26, subdivision 3; repealing Minnesota Statutes 1994, section 103G.2242, subdivision 13.

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

Section 1. Minnesota Statutes 1994, section 84.035, subdivision 5, is amended to read:

Subd. 5. **ACTIVITIES IN PEATLAND SCIENTIFIC AND NATURAL AREAS.** Areas designated in subdivision 4 as peatland scientific and natural areas are subject to the following conditions:

(a) Except as provided in paragraph (b), all restrictions otherwise applicable to scientific and natural areas designated under section 86A.05, subdivision 5, apply to the surface use and to any use of the mineral estate which would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas, including, but not limited to, the following prohibitions:

(1) construction of any new public drainage systems after the effective date of Laws 1991, chapter 354, or improvement or repair to a public drainage system in existence on the effective date of Laws 1991, chapter 354, under authority of chapter 103E, or any other alteration of surface water or ground water levels or flows unless specifically permitted under paragraph (b), clause (5) or (6);

(2) removal of peat, sand, gravel, or other industrial minerals;

(3) exploratory boring or other exploration or removal of oil, natural gas, radioactive materials or metallic minerals which would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or natural features of the peatland scientific and natural areas, except in the event of a national emergency declared by Congress;

(4) commercial timber harvesting;

(5) construction of new corridors of disturbance, of the kind defined in subdivision 3, after

Wetland Conservation Act amendments: Working Group draft 2/21/96 (BWSR typing)

June 5, 1991; and

(6) ditching, draining, filling, or any other activities which modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas.

(b) The following activities are allowed:

(1) recreational activities, including hunting, fishing, trapping, cross-country skiing, snowshoeing, nature observation, or other recreational activities permitted in the management plan approved by the commissioner;

(2) scientific and educational work and research;

(3) maintenance of corridors of disturbance, including survey lines and preparation of winter roads, consistent with protection of the peatland ecosystem;

(4) use of corridors of disturbance unless limited by a management plan adopted by the commissioner under subdivision 6;

(5) improvements to a public drainage system in existence on the effective date of Laws 1991, chapter 354, only when it is for the protection and maintenance of the ecological integrity of the peatland scientific and natural area and when included in a management plan adopted by the commissioner under subdivision 6;

(6) repairs to a public drainage system in existence on the effective date of Laws 1991, chapter 354, which crosses a peatland scientific and natural area and is used for the purposes of providing a drainage outlet for lands outside of the peatland scientific and natural area, provided that there are no other feasible and prudent alternative means of providing the drainage outlet. The commissioner shall cooperate with the ditch authority in the determination of any feasible and prudent alternatives. No repairs which would significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or other natural features of the peatland scientific and natural areas shall be made unless approved by the commissioner;

*** **DISAGREE** *** [(7) motorized uses that are engaged, on corridors of disturbance, on or before the effective date of Laws 1991, chapter 354.]

(8) control of forest insects, disease, and wildfires, as described in a management plan adopted by the commissioner under subdivision 6; and

(9) geological and geophysical surveys which would not significantly modify or alter the peatland water levels or flows, peatland water chemistry, plant or animal species or communities, or

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other natural features of the peatland scientific and natural areas.

Subd. 6. Management Plans. The commissioner shall develop in cooperation with the affected local government unit a management plan for each peatland scientific and natural area designated under section 84.036 in a manner prescribed by section 86A.09.

Sec. 2. Minnesota Statutes 1994, section 103B.3355, is amended to read:

PUBLIC VALUE CRITERIA FOR WETLANDS: Functions for Determining Public Values.

(a) ~~The board of water and soil resources, in consultation with the commissioner of natural resources shall adopt rules establishing criteria to determine t~~The public values of wetlands shall be determined based upon the functions of wetlands for. ~~The rules must consider the public benefit and use of wetlands and include:~~

(1) water quality, including filtering of pollutants to surface and groundwater, utilization of nutrients that would otherwise pollute public waters, trapping of sediments, shoreline protection, and utilization of the wetland as a recharge area for groundwater;

(2) floodwater and stormwater retention, including the potential for flooding in the watershed, the value of property subject to flooding, and the reduction in potential flooding by the wetland, and low flow augmentation ;

(3) public recreation and education, including ~~wildlife habitat~~, hunting and fishing areas, ~~wildlife breeding areas~~, wildlife viewing areas, ~~aesthetically enhanced areas~~, and nature areas;

(4) commercial uses, including wild rice and cranberry growing and harvesting and aquaculture; and

(5) fish, wildlife, and native plant habitats; and

(6) other public uses.

(b) The board of water and soil resources, in consultation with the commissioner of natural resources and local government units, shall adopt rules establishing:

(i) scientific methodologies for determining the functions; and,

(ii) criteria for determining the resulting public values of wetlands.

(b)(c) The methodologies and criteria established under this subdivision, or other methodologies and criteria that include the functions in paragraph (a) and are approved by the board, in consultation with the commissioner of natural resources and local government units, must be used to determine the functions and resulting public values of wetlands in the state. The functions listed

in paragraph (a) are not listed in order of priority.

(d) The board of water and soil resources, in consultation with the commissioner of natural resources, and local government units ~~shall also use the criteria~~ may identifying regions of the state where preservation, enhancement, restoration, and establishment of wetlands would have high public value. ~~Before the criteria are adopted,~~ The board, in consultation with the commissioner, may identify high priority wetland regions using available information relating to the factors listed in paragraph (a). The board shall notify local units of government with water planning authority of these high priority regions.

Sec. 3. Minnesota Statutes 1994, section 103F.612, subdivision 2, is amended to read:

Subd. 2. **APPLICATION.** (a) A wetland owner may apply to the county where a wetland is located for designation of a wetland preservation area in a high priority wetland area identified in a comprehensive local water plan, as defined in section 103B.3363, subdivision 3, and located within a high priority wetland region designated by the board of water and soil resources if the county chooses to accept wetland preservation area applications. The application must be made on forms provided by the board. If a wetland is located in more than one county, the application must be submitted to the county where the majority of the wetland is located.

(b) The application must contain at least the following information and other information the board of soil and water resources requires:

(1) legal description of the area to be approved, which must include an upland strip at least 16-1/2 feet in width around the perimeter of wetlands within the area and may include total upland area of up to four acres for each acre of wetland;

(2) parcel identification numbers where designated by the county auditor;

(3) name and address of the owner;

(4) a witnessed signature of the owner covenanting that the land will be preserved as a wetland and will only be used in accordance with conditions prescribed by the board of water and soil resources; and

(5) a statement that the restrictive covenant will be binding on the owner and the owner's successors or assigns, and will run with the land.

(c) The upland strip required in paragraph (b), clause (1), must be planted with permanent vegetation other than a noxious weed.

(d) For registered property, the owner shall submit the owner's duplicate certificate of title

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with the application.

Sec. 4. Minnesota Statutes 1994, section 103F.612, subdivision 3, is amended to read:

Subd. 3. **REVIEW AND NOTICE.** Upon receipt of an application, the county shall determine if all material required by subdivision 2 has been submitted and, if so, shall determine that the application is complete. The term "date of application" means the date the application is determined to be complete by the county. The county shall send a copy of the application to the county assessor, ~~the regional development commission, where applicable,~~ the board of water and soil resources, and the soil and water conservation district where the land is located. The soil and water conservation district shall prepare an advisory statement of existing and potential preservation problems or conflicts and send the statement to the owner of record and to the county. The county shall notify the landowner of the acceptance or denial of the application within 60 days from the date of the application.

Sec. 5. Minnesota Statutes 1994, section 103F.612, subdivision 5, is amended to read:

Subd. 5. **COMMENCEMENT OF WETLAND PRESERVATION AREA.** The wetland is a wetland preservation area commencing 30 days from the date the county ~~determines~~ notifies the landowner of acceptance of the application is complete under subdivision 3.

Sec. 6. Minnesota Statutes 1994, section 103F.612, subdivision 6, is amended to read:

Subd. 6. **FEE.** The county may require an application fee; ~~not to exceed \$50 to defray~~ administrative costs of the program.

Sec. 7. Minnesota Statutes 1994, section 103F.612, subdivision 7, is amended to read:

Subd. 7. **MAPS.** ~~The board of water and soil resources~~ county shall maintain wetland preservation area maps illustrating land covenanted as wetland preservation areas.

Sec. 8. Minnesota Statutes 1994, section 103G.005, is amended by adding or changing the following definitions:

[AGRICULTURAL LAND.] "Agricultural land" means: land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; and farm yards, including associated buildings.

[INFRASTRUCTURE.] "Infrastructure" means storm water and sanitary sewer piping, outfalls, inlets, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement to a parcel within the context of an approved development plan, but does not include roads or drainage systems.

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[LOCAL GOVERNMENT UNIT.] "Local government unit" means:

(1) outside of the seven-county metropolitan area, a city council or county board of commissioners or their delegate; and

(2) in the seven-county metropolitan area, a city council, a town board under section 368.01, or a watershed management organization under section 103B.211, or their delegate; and,

***DISAGREE *** [((3) on state land, the state agency with administrative responsibility for that land.)]]

[SHORELAND WETLAND PROTECTION ZONE.] "Shoreland wetland protection zone" means:

(1) For local government units that have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone shall be:

(i) 1000 feet from the ordinary high water level of a public waters identified in the shoreland management ordinance; or

(ii) 300 feet from the ordinary high water level of a watercourse identified in the shoreland management ordinance.

(2) For local government units that do not have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone shall be

(i) 1000 feet from the ordinary high water level of a public waters that are at least 10 acres in size within municipalities and at least 25 acres in size in unincorporated areas; or

(ii) 300 feet from the ordinary high water level of a watercourse identified by the public waters inventory under section 103G.201.

[PROJECT.] "Project" means a specific plan, contiguous activity, proposal or design necessary to accomplish a goal as defined by the local government unit. As used in this chapter, a project may not be split into components or phases for the sole purpose of gaining additional exemptions.

[PRESETTLEMENT WETLAND.] "Presettlement wetland" means a wetland or public waters wetland that existed in this state at the time of statehood in 1858.

[GREATER THAN 80 PERCENT AREA.] "Greater than 80 percent area" means a county or watershed where 80 percent or more of the presettlement wetland acreage is intact , but does not include Houston, Wabasha and Winona Counties.

[FIFTY TO EIGHTY-PERCENT AREA.] "Fifty to eighty percent area" means a county

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or watershed with at least 50 but less than 80 percent of the presettlement wetland acreage intact.

[**LESS THAN 50 PERCENT AREA.**] "Less than 50 percent area" means a county or watershed with less than 50 percent of the presettlement wetland acreage intact or any county or watershed not defined as a "greater than 80 percent area" or "50 to 80 percent area".

[**SILVICULTURE.**] "Silviculture" means the management of forest trees.

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

[WETLAND TYPES OF MINNESOTA.]

(Adapted from Wetlands of the United States, U.S. Fish and Wildlife Service Circular 39, 1971 edition)

Type 1 - Seasonally flooded basins or flats. Soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing season. Located in depressions and in overflow bottom lands along watercourses. Vegetation varies greatly according to season and duration of flooding: from bottom-land hardwoods as well as herbaceous growths.

Type 2 - Inland fresh meadows. Soil is usually without standing water during most of the growing season but is waterlogged within at least a few inches of surface. Vegetation includes grasses, sedges, rushes and various broad-leaved plants. Meadows may fill shallow basins, sloughs or farmland sags, or these meadows may border shallow marshes on the landward side.

Type 3 - Inland shallow fresh marshes. Soil is usually waterlogged early during a growing season; often covered with as much as 6 inches or more of water. Vegetation includes grasses, bulrushes, spikerushes and various other marsh plants such as cattails, arrowheads, pickerelweed and smartweeds. These marshes may nearly fill shallow lake basins or sloughs, or may border deep marshes on landward side. Also common as seep areas on irrigated lands.

Type 4 - Inland deep fresh marshes. Soil is usually covered with 6" to 3" or more of water during growing season. Vegetation includes cattails, reeds, bulrushes, spikerushes and wildrice. In open areas, pondweeds, naiads, coontail, watermilfoils, waterweeds, duckweeds, waterlilies or spatterdocks may occur. These deep marshes may completely fill shallow lake basins, potholes, limestone sinks and sloughs, or they may border open water in such depressions.

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Type 5 - Inland open fresh water. Shallow ponds and reservoirs are included in this type. Water is usually less than 10' deep and fringed by a border of emergent vegetation similar to open areas of Type 4.

Type 6 - Shrub swamps. Soil is usually waterlogged during growing season and is often covered with as much as 6" of water. Vegetation includes alders, willows, buttonbush, dogwoods, and swamp-privet. Occur mostly along sluggish streams and occasionally on flood plains.

Type 7 - Wooded swamps. Soil is waterlogged at least to within a few inches of surface during growing season and is often covered with as much as 1' of water. Occur mostly along sluggish streams, on flood plains, on flat uplands and in shallow basins. Trees include tamarack, arborvitae, black spruce, balsam, red maple and black ash. Northern evergreen swamps usually have a thick ground cover of mosses. Deciduous swamps frequently support beds of duckweeds, smartweeds.

Type 8 - Bogs. Soil is usually waterlogged and supports a spongy covering of mosses. Occur mostly in shallow basins, on flat uplands and along sluggish streams. Vegetation is woody or herbaceous or both. Typical plants are heath shrubs, sphagnum moss and sedges. In the North, leatherleaf, Labrador-tea, cranberries, carex and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

Proper use of the Circular 39 classification system limits it to descriptions of entire basins based on the predominant water regime and vegetation. The "Classification of Wetlands and Deepwater Habitats of the United States" (1979 edition) system used in the National Wetland Inventory recognizes that most wetland basins consist of different types of wetlands and describes the wetland based on the various water regimes and vegetation.

Sec. 9. Minnesota Statutes 1994, section 103G.127, is amended to read:

103G.127 PERMIT PROGRAM UNDER SECTION 404 OF THE FEDERAL CLEAN WATER ACT.

Notwithstanding any other law to the contrary, the commissioner, with the concurrence of the board of water and soil resources, may adopt rules establishing a permit program for regulating the discharge of dredged and fill material into the waters of the state as necessary to obtain approval from the United States Environmental Protection Agency to administer the permit program under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344. The rules may not be more restrictive than the program under section 404, or state law, if it is more restrictive than the federal program.

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Sec. 10. Minnesota Statutes 1994, section 103G.222, is amended to read:

103G.222 REPLACEMENT OF WETLANDS.

(a) After the effective date of the rules adopted under section 103B.3355 or 103G.2242, whichever is later, wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under a replacement plan approved as provided in section 103G.2242, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2242, subdivision 1, paragraphs ~~(c)~~ (d) to (p), or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. Mining reclamation plans shall apply the same principles and standards for replacing wetlands by restoration or creation of wetland areas that are applicable to mitigation plans approved as provided in section 103G.2242. Public value must be determined pursuant to section 103B.3355 or via a comprehensive wetland protection and management plan as developed in section 103G.2242, Subd. 1.

(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 restoring a wetland; and

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

(7) for a project involving the draining or filling of wetlands in an amount not exceeding 10,000 square feet more than the applicable amount in section 103G.2241, Subd. 9, paragraph (a), the local government unit may make an on-site sequencing determination without a written alternatives analysis from the applicant.

(c) If a wetland is located in a cultivated field, then replacement must be accomplished

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through restoration only without regard to the priority order in paragraph (b), provided that a deed restriction is placed on the altered wetland prohibiting nonagricultural use for at least ten years.

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

(e) Replacement shall be within the same watershed or county as the impacted wetlands, as based on the wetland evaluation in section 103G.2242, subdivision 2, except that ~~counties or watersheds in a~~ which greater than 80 percent or more of the presettlement wetland acreage is intact area may accomplish replacement in ~~counties or watersheds in which less than 50 percent or more of the presettlement wetland acreage has been filled, drained, or otherwise degraded areas~~. Wetlands impacted by public transportation projects may be replaced statewide, except that: (i) wetlands impacted in a less than 50 percent area must be replaced in a less than 50 percent area; and, [(ii) ***DISAGREE*** language requiring metro area wetland impacts to be replaced in metro unless local government allows]]]] Replacement of wetlands may be accomplished under the rules for wetland banking as provided for under section 103G.2242.

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

(g) For a wetland located on agricultural land or in ~~counties or watersheds where~~ greater than 80 percent or more of the presettlement wetlands are intact area, replacement must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland. ***** DISAGREE ***** [[[[replacement ratio for new roads which is presently 2:1]]]]

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

(i) Except in ~~counties or watersheds where~~ greater than 80 percent or more of the

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

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

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

(l) For projects involving draining or filling of wetlands associated with a new public transportation project in a greater than 80 percent area, public transportation authorities, other than the state department of transportation, may purchase credits from the state wetland bank established with proceeds from Laws of 1994, chapter 643, section 26, subdivision 3, paragraph (c). Wetland banking credits may be purchased at the least of the following, but in no case shall the purchase price be less than four-hundred dollars per acre: (i) the cost to the state to establish the credits; (ii) the Minnesota Department of Revenue determined average estimated market value of ag-land in the township where the road project is located; or, (iii) the average value of the land in the immediate

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vicinity of the road project as determined by the county assessor. Public transportation authorities in a less than 80 percent area may purchase credits from the state at the cost to the state to establish the credits.

(m) A replacement plan for wetlands is not required for individual projects that fill or drain wetlands for the repair, rehabilitation, reconstruction or replacement of a currently serviceable existing state, city, county or town public road to meet state or federal design or safety standards or requirements, excluding new roads or roads expanded solely for additional traffic capacity lanes. This section only applies to authorities for public transportation projects which meet the following requirements:

(1) minimize the amount of wetland filling or draining associated with the project and consider mitigating important site-specific wetland functions on-site. The technical evaluation panel shall review minimization and delineation decisions made by the public transportation authority and provide recommendations regarding on-site mitigation if requested to do so by the local government unit, a contiguous landowner, or a member of the technical evaluation panel; and

(2) submit annual reports by January 15 to the board and members of the public requesting a copy that indicates the location, amount and type of wetland that has been filled or drained during the previous year and a projection of the location, amount and type of wetlands to be filled or drained during the upcoming year.

Except for state public transportation projects, for which the state department of transportation is responsible, the board must replace the wetlands drained or filled by public transportation projects in critical rural and urban watersheds.

Public transportation authorities are allowed to deviate from federal and state design standards when practical and reasonable to avoid wetland filling or draining. The local road authority and their

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officers and employees are exempt from liability for any tort claim for injury to persons or property arising from travel on the highway and related to its design standards for construction or reconstruction under this paragraph. This paragraph does not preclude an action for damages arising from negligence in construction, or maintenance on a highway.

(n) If a landowner seeks a replacement plan after the proposed project has already impacted the wetland, the local government unit may require the landowner to replace the impacted wetland at a ratio not to exceed twice the replacement ratio otherwise required.

(o) A local government unit may request the board to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. After receipt of satisfactory documentation from the local government, the board shall change the classification of a county or watershed. If requested by the local government unit, the board must assist in developing the documentation. Within 30 days of their action to approve a change of wetland classification, the board shall publish a notice of such change in the Environmental Quality Board Monitor.

(p) One-hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens shall provide satisfactory documentation to the local government unit. The local government unit shall consider the petition and forward the request to the board per paragraph (o) or provide a resason why the petition is denied.

Sec. 11. Minnesota Statutes 1994, section 103G.2241, is amended to read:

103G.2241 EXEMPTIONS.

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

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~~(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;~~

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

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

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

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

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

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

~~(6) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of~~

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Federal Regulations, title 33, section 330.5, paragraph (a), clause (14), limited to when a new road crosses a wetland, and all of clause (26);

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

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

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

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

(i) beaver dam construction;

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

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

or

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

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

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

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

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

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

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

~~(15) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch or tile line; with filling avoided wherever possible; and there is no drainage of the wetland or public waters;~~

~~(16) draining or filling up to one-half acre of wetlands for the repair, rehabilitation, or replacement of a previously authorized, currently serviceable existing public road, provided that minor deviations in the public road's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards, that are necessary to make repairs, rehabilitation, or replacement are allowed if the wetland draining or filling resulting from the repair, rehabilitation, or replacement is minimized;~~

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

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

~~(19) duck blinds;~~

~~(20) aquaculture activities, including pond excavation and construction and maintenance of~~

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~~associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings;~~

~~(21) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344;~~

~~(22) normal agricultural practices to control pests or weeds, defined by rule as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices;~~

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

~~(24) development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. In the seven-county metropolitan area and in cities of the first and second class, plat approval must be preliminary as approved by the appropriate governing body, and~~

~~(25) activities that result in the draining or filling of less than 400 square feet of wetlands:~~

~~(b) For the purpose of paragraph (a), clause (16), "currently serviceable" means usable as is~~

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~~or with some maintenance, but not so degraded as to essentially require reconstruction. Paragraph (a), clause (16), authorizes the repair, rehabilitation, or replacement of public roads destroyed by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under contract to commence within two years of the occurrence of the destruction or damage.~~

~~(c) A person conducting an activity in a wetland under an exemption in paragraph (a) shall ensure that:~~

~~(1) appropriate erosion control measures are taken to prevent sedimentation of the water;~~

~~(2) the activity does not block fish passage in a watercourse; and~~

~~(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.~~

Subdivision 1. [AGRICULTURAL ACTIVITIES.] A replacement plan for wetlands is not required for:

(a) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;

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

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

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

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

(d) activities in type 1 wetland on agricultural land, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition) except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural land.

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

(f) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United State Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344;

(g) normal agricultural practices to control pests of weeds, defined by rule of the commissioner of agriculture, as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices; and

(h) agricultural activities in a wetland that is on agricultural land annually enrolled in the

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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.

*** ***DISAGREE*** *** [Subd. 2. **[DRAINAGE.]**

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

Subd. 3. **[FEDERAL APPROVALS.]** A replacement plan for wetlands is not required for:

(a) activities exempted from federal regulation under United States Code, title 33, section 1344(f) as in effect on January 1, 1991;

(b) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clauses (14), limited to when a new road crosses a wetland, and all of (26), as in effect on January 1, 1991;

Subd. 4. **[WETLAND RESTORATIONS.]** A replacement plan for wetlands is not required for activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland.

Subd. 5. **[INCIDENTAL WETLANDS.]** A replacement plan for wetlands is not required for 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 or private entities that were taken for a purpose other than creating the

wetland; or

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

Subd. 6. [UTILITIES; PUBLIC WORKS; INFRASTRUCTURE.] A replacement plan for wetlands is not required for:

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

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

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

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

(c) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing of acquired interstate pipeline rights-of-way.

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

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

(f) repair and updating of existing individual sewage treatment systems as necessary to comply with local, state and federal regulations.

Subd. 7. [FORESTRY.] A replacement plan for wetlands is not required for:

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

(b) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch or tile line; with filling avoided wherever possible; and there is no drainage of the wetland or public waters.

Subd. 8. [APPROVED DEVELOPMENT.] A replacement plan for wetlands is not required for development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approved by a governing body or government agency, within five years before July 1, 1991. In the seven-county metropolitan area and in cities of the first and second class, plat approval must be preliminary as approved by the appropriate governing body.

Subd. 9. [DE MINIMUS.] (a) A replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project, regardless of the total amount of wetlands filled as part of a project:

(1) 10,000 square feet of wetland type 1; type 2; type 6; or type 7, excluding white cedar and tamarack wetlands; outside of the shoreland wetland protection zone in a greater than 80 percent area:

(2) 5,000 square feet of wetland type 1; type 2; type 6; or type 7, excluding white cedar and tamarack wetlands; outside of the shoreland wetland protection zone in a 50 to 80 percent area;

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(3) 2,000 square feet of wetland type 1; type 2; type 6; *outside of shoreland wetland protection zones; in less than 50% areas*

(4) 400 square feet of wetland types not listed in clauses (1) through (3) outside of shoreland wetland protection zones in all counties; or

(5) 400 square feet of wetland type 1, type 2, type 3, type 4, type 5, type 6, type 7, or type 8, in the shoreland wetland protection zone, except that in a greater than 80 percent area, the local government unit may increase the de minimus up to 1,000 square feet in the shoreland protection zone in areas beyond the building setback if the wetland is isolated and is determined to have no direct surficial connection to the public water. To the extent that a local shoreland management ordinance is more restrictive than this provision, the local shoreland ordinance shall apply.

(b) The amounts listed in paragraph (a), clauses (1) to (5), may not be combined on a project.

(c) This exemption no longer applies to a wetland when the cumulative area drained or filled since January 1, 1992 is greater than five percent of the total area of the wetland.

(d) Where bed ownership is partitioned among two or more owners, each has a right to a share of the de minimus proportionate to their share of bed ownership, not to exceed 5 percent of their portion of the bed or 400 square feet, whichever is greater.

(e) Persons proposing to conduct an activity under this subdivision shall contact the board at a toll-free number to be provided for information on minimizing wetland impacts. Failure to call by the person shall not constitute a violation of this subdivision.

Subd. 10. **WILDLIFE HABITAT.** A replacement plan for wetlands is not required for:

(a) deposition of spoil resulting from excavation within a wetland for a wildlife habitat improvement project, if:

(1) the area of deposition does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion;

(2) the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and

(3) the project will provide wildlife habitat improvement as certified by the Soil and Water Conservation District; or

(b) duck blinds.

Subd. 11. EXEMPTION CONDITIONS.

(a) A person conducting an activity in a wetland under an exemption in subdivisions 1 to 10 shall ensure that:

(1) appropriate erosion control measures are taken to prevent sedimentation of the water;

(2) the activity does not block fish passage in a watercourse; and

(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

(b) An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption. A landowner may not use more than one exemption for the same purpose at a project.

(c) Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government units designee for advice on minimizing wetland impacts.

Sec. 12. Minnesota Statutes 1994, section 103G.2242, subdivision 1, is amended to read:

Subdivision 1. **RULES.** (a) By July 1, 1993, the board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values; may address the state establishment and administration of a wetland

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banking program for public and private projects, which may include provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land; the methodology to be used in identifying and evaluating wetland functions; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and include the planting of trees or shrubs.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules or a comprehensive wetland protection and management plan approved under paragraphs (d) to (p).

(c) ~~The board may approve a~~As an alternative to the rules adopted under this subdivision a comprehensive wetland protection and management plan may be developed by a local government unit, provided that the plan:

(1) a notice is made at the beginning of the planning process to the board, the department of natural resources, the pollution control agency, local government units, and local citizens to actively participate in the development of the plan; is adopted as part of an approved local water plan under sections 103B.231 and 103B.311; and

(2) the plan is implemented by ordinance as part of the local government's official controls under Chapter 394 for counties, chapter 462 for cities, chapter 366 for towns, and by rules under Chapter 103D for watershed districts and chapter 103B for watershed management organizations.

(d) An agency that is invited to participate in the development of the local plan, but declines to do so and fails to participate or to provide written comments during the local review process, waives the right during board review to submit comments, except comments concerning consistency

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of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board must consider the involvement of the agency in the development of the local plan.

(d) (e) If the local government unit fails to apply the rules, or fails to implement a local comprehensive wetland protection and management plan program under paragraph (c), the government unit is subject to penalty as determined by the board.

(f) A comprehensive wetland protection and management plan may:

(1) classify wetlands based on a wetland inventory and a functional assessment chosen by the technical evaluation panel from one of the scientific methodologies approved by the board in chapter 103B.3355 paragraph (b)(i). The classification must address the wetland functions and resulting public values as listed in chapter 103B.3355, paragraph (a);

(2) vary application of the sequencing standards of section 103G.222, paragraph (b) for projects based on the classification and criteria set forth in the plan;

(3) vary the replacement standards of section 103G.222, paragraphs (f) and (g), based on the classification and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan, and so long as:

(i.) in a 50 to 80 percent area, a minimum acreage requirement of one acre of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan; and

(ii.) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan, except that replacement for the amount above a 1:1 ratio can be accomplished as described in section 103G.2242, Subd. 12;

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(4) in a greater than 80 percent area allow replacement credit, based on the classification and criteria set forth in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres;

(5) in a greater than 80 percent area, based on the classification and criteria set forth in the plan, expand the application of the exemptions in section 103G.2241, Subd. 1, paragraph (d) to also include nonagricultural land, provided there is no net loss of wetland values.

(g) The plan is deemed approved 60 days after the local government submits the final plan to the board, unless the board disagrees with the plan as provided in section (j).

(h) The board shall not disapprove the plan if the board determines the plan meets the requirements of this subdivision.

(i) In their review of a plan, the board shall advise the local government unit of those elements of the plan that are more restrictive than state law and rules for purposes of section 103G.237, subdivision 5.

(j) If the board disagrees with the plan or any elements of the plan, the board shall, in writing, notify the local government of the plan deficiencies and suggested changes. The board shall include in the response to the local government the scientific justification, if applicable, for the board's concern with the plan. Upon receipt of the board's concerns with the plan, the local government shall have 60 days to revise the plan and resubmit the plan to the board for reconsideration, or the local government may request a hearing before the board. The board shall hold a hearing within the boundaries of the jurisdiction of the local government within 60 days of the request for hearing. After the hearing, the board shall, within 60 days, prepare a report of their decision and inform the local government.

(k) If, after the hearing, the board and local government disagree on the plan, the board shall,

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within 60 days, initiate mediation through a neutral party. If the board and local government unit agree in writing not to use mediation or the mediation does not result in a resolution of the differences between the parties, then the board may commence a declaratory judgment action in the district court of the county where the local government unit is located. If the board does not commence a declaratory judgement action within the applicable 60 day period, then the plan shall be deemed approved.

(l) The declaratory judgment action must be commenced within 60 days after the date of the written agreement not to use mediation or 60 days after conclusion of the mediation. If the board commences a declaratory judgment action, then the district court shall review the board's record of decision and the record of the local government unit. The district court shall affirm the plan if it meets the requirements of this subdivision.

(m) The plan becomes effective as provided in paragraphs (j) through (l) and after adoption of the plan into the official controls of the local government.

(n) After the effective date of a plan, a local government unit shall make replacement decisions consistent with the plan.

(o) Amendments to the plan become effective upon completion of the same process for the original plan.

(p) Except as otherwise provided for in this subdivision, all other requirements relating to development of the plan shall be consistent with the water plan processes under sections 103B.231 and 103B.311.

Sec. 13. Minnesota Statutes 1994, section 103G.2242, subdivision 2, is amended to read:

Subd. 2. **EVALUATION.** Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a technical evaluation panel after an on-site

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inspection. The technical evaluation panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, and a technical professional with expertise in water resources management appointed by the local government unit. The panel shall use the ~~"Federal Manual for Identifying and Delineating Jurisdictional Wetlands"~~ (January 1989) "U.S. Army Corps of Engineers Wetland Delineation Manual" (January 1987). The panel shall provide the wetland determination to the local government unit that must approve a replacement plan under this section, and may recommend approval or denial of the plan. The authority must consider and include the decision of the technical evaluation panel in their approval or denial of a plan.

Sec. 14. Minnesota Statutes 1994, section 103G.2242, subdivision 4, is amended to read:

Subd. 4. **DECISION.** Upon receiving and considering all required data, the local government unit approving reviewing a replacement plan applications, banking plan applications, and exemption or no-loss determination requests must act on all replacement plan applications, banking plan applications, and exemption or no-loss determination requests ~~for plan approval within 60 days in~~ compliance with the requirements of 1995 Minn. Laws, Ch. 248, Art. 18.

Sec. 15. Minnesota Statutes 1994, section 103G.2242, subdivision 6, is amended to read:

Subd. 6. **NOTICE OF APPLICATION.** (a) Except as provided in paragraph (b), within ten days of receiving an application for approval of a replacement plan under this section, ~~a copy of the application must be submitted to the board for publication in the Environmental Quality Board Monitor and separate copies of the complete application must be mailed to the~~ 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 one exists,~~ the board of county commissioners, and the commissioner of

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~~agriculture, and the mayors of the cities within the area watershed. At the same time, the local government unit must give general notice to the public in a general circulation newspaper within the area affected~~ natural resources. Individual members of the public who request a copy shall be provided information to identify the applicant, and the location and scope of the project.

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

(c) For the purpose of this subdivision, "application" includes a revised application for replacement plan approval and an application for a revision to an approved replacement plan if:

(1) the wetland area to be drained or filled under the revised replacement plan is at least ten percent larger than the area to be drained or filled under the original replacement plan; or

(2) the wetland area to be drained or filled under the revised replacement is located more than 500 feet from the area to be drained or filled under the original replacement plan.

Minnesota Statutes 1994, section 103G.2242, subdivision 7, is amended to read:

Subd. 7. **NOTICE OF DECISION.** (a) ~~Except as provided in paragraph (b), at least 30~~ Within ten days prior to the effective date of the approval or denial of a replacement plan under this section, a copy summary 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

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~~evaluation panel, the applicant, the board, individual members of the public who request a copy, the board of supervisors of the soil and water conservation district, the managers of the watershed district, the board of county commissioners, if one exists, and the commissioner of agriculture, and the mayors of the cities within the area watershed natural resources.~~

(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.~~

Minnesota Statutes 1994, section 103G.2242, subdivision 9, is amended to read:

Subd. 9. **APPEAL.** Appeal of the a replacement plan, exemption, or no-loss decision may be obtained by mailing a notice of appeal petition and payment of a filing fee of \$200, which shall be retained by the board to defray administrative costs, to the board within 30 15 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 30 15 days, the decision becomes final. The local government unit may require the petitioner to post a letter of credit, cashier's check or cash in an amount not to exceed \$500. If the petition for hearing is accepted, the amount posted must be returned to the petitioner. 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. Within 30 days after receiving a petition, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that the appeal is meritless, trivial, or brought solely for the

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purposes of delay; that the petitioner has not exhausted all local administrative remedies; or that the petitioner has not posted a letter of credit, cashier's check or cash if required by the local government unit. In determining whether to grant the appeal, the board shall also consider the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or petitioner, and the consequences of the delay resulting from the appeal. All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of chapter 14. The A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

Sec. 16. Minnesota Statutes 1994, section 103G.2242, subdivision 12, is amended to read:

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.

This subdivision Paragraph (a) does not apply to a wetland whose owner has paid back with interest the individual or organization restoring, enhancing, or constructing the wetland.

(b) Notwithstanding section 103G.222, paragraph (i), the following actions are eligible for replacement credit as determined by the local government unit, including enrollment in a statewide wetlands bank:

(1) Reestablishment of permanent vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price supports or other payments under United States Code, title 7, sections

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1421 to 1469, in six of the last ten years prior to January 1, 1991. Replacement credit may not exceed 50 percent of the total wetland area vegetatively restored.

(2) Buffer areas of permanent vegetative cover established on upland adjacent to replacement wetlands. The upland buffer must be established at the time of wetland mitigation and replacement credit for such buffers cannot exceed 75 percent of the replacement wetland area and can only be used for replacement above a 1:1 ratio.

(3) Wetlands restored for conservation purposes under terminated easements or contracts. Up to 75 percent of the restored wetland area is eligible for replacement credit. Adjacent upland buffer areas reestablished to permanent vegetative cover are eligible for replacement credit above a 1:1 ratio in an amount not to exceed 25 percent of the restored wetland area.

(4) Water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies. The water quality treatment ponds must be associated with an ongoing or proposed project that will impact a wetland. Replacement credit for the treatment ponds may not exceed 75 percent of the treatment pond area and may only be used for replacement above a 1:1 ratio.

Sec. 17. Minnesota Statutes 1994, section 103G.237, subdivision 4, is amended to read:

Subd. 4. **COMPENSATION.** (a) The board shall award compensation in an amount equal to the greater of:

(1) 50 percent of the value of the wetland, calculated by multiplying the acreage of the wetland by the greater of:

(1) (i) the average equalized estimated market value of agricultural property in the township as established by the commissioner of revenue at the time application for compensation is made; or

(2) (ii) the assessed value per acre of the parcel containing the wetland, based on the assessed

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value of the parcel as stated on the most recent tax statement; or

(2) \$200 per acre of wetland subject to the replacement plan, increased or decreased by the percentage change of the assessed valuation of land in the township where the wetland is located from the 1995 valuation.

(b) A person who receives compensation under paragraph (a) shall convey to the board a permanent conservation easement as described in section 103F.515, subdivision 4. An easement conveyed under this paragraph is subject to correction and enforcement under section 103F.515, subdivisions 8 and 9.

Sec. 18. Minnesota Statutes 1994, section 103G.237, is amended by adding a subdivision to read:

Subd. 5. COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT UNITS.

(a) At the request of a local government unit against which a compensation action is brought based at least in part on the local government unit's application of section 103G.222, 103G.2241, 103G.2242, 103G.237, or 103G.2372, or rules adopted by the board to implement these sections, the state, through the attorney general, shall intervene in the action on behalf of the local government unit and shall thereafter be considered a defendant in the action. A local government unit making a request under this paragraph shall provide the attorney general with a copy of the complaint as soon as possible after being served. If requested by the attorney general, the court shall grant additional time to file an answer equal to the time between service of the complaint on the local government unit and receipt of the complaint by the attorney general.

(b) The state is liable for costs, damages, fees, and compensation awarded in the action based on the local government's adoption or implementation of standards that are required by state law, as determined by the court. The local government unit is liable for costs, damages, fees, and

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compensation awarded in the action based on local standards that are more restrictive than state law and rules.

(c) For the purposes of this subdivision, "compensation action" means an action in which the plaintiff seeks compensation for a taking of private property under the state or federal constitution.

Sec. 19. Minnesota Statutes 1994, section 103G.2373, is amended to read:

103G.2373 ANNUAL WETLANDS REPORT.

By January March 1 of each year, the commissioner of natural resources and the board of water and soil resources shall jointly report to the committees of the legislature with jurisdiction over matters relating to agriculture, the environment, and natural resources on:

- (1) the status of implementation of state laws and programs relating to wetlands;
- (2) the quantity, quality, acreage, types, and public value of wetlands in the state; and
- (3) changes in the items in clause (2).

Sec. 20. Minnesota Statutes 1994, section 115.03, is amended by adding a subdivision to read:

Subd. 4a. **SECTION 401 CERTIFICATIONS.** (a) The following definitions apply to this subdivision:

(1) "section 401 certification" means a water quality certification required under section 401 of the federal Clean Water Act, United States Code, title 33, section 1341; and

(2) "nationwide permit" means a nationwide general permit issued by the United States Army Corps of Engineers and listed in Code of Federal Regulations, title 40, part 330, appendix A.

(b) The agency is responsible for providing section 401 certifications for nationwide permits.

(c) Before making a final decision on a section 401 certification for regional conditions on a nationwide permit, the agency shall hold at least one public meeting outside the seven-county

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metropolitan area.

(d) In addition to other notice required by law, the agency shall provide written notice of a meeting at which the agency will be considering a section 401 certification for regional conditions on a nationwide permit at least 21 days before the date of the meeting to the members of the senate and house of representatives environment and natural resources committees, the senate agriculture and rural development committee, and the house of representatives agriculture committee.

Sec. 21. [RULES]

The board, in consultation with the commissioner of natural resources, shall adopt rules, within 60 days after the final enactment of this act, that amend the rules previously adopted under Minnesota Statutes, sections 103G.2242, subdivision 1, and 103B.3355. Provided that such amended rules are published in the State Register on or before _____, 19____, the board may, notwithstanding anything in Minnesota Statutes section 14.388 or any other law to the contrary, adopt the amended rules under the good cause exemption in Minnesota Statutes, section 14.388. For purposes of such amended rules, the board shall not be limited by clauses (1) to (4) of Minnesota Statutes, section 14.388, and the office of administrative hearings shall not determine whether the board has provided adequate justification for its use of Minnesota Statutes, section 14.388. Such amended rules shall be effective upon publication in the State Register and shall remain in effect until two years after the date of enactment unless superceded by permanent rules.

Sec. 22. [WETLAND BANKING STUDY; REPORT.]

The commissioner of natural resources, in consultation with the board of water and soil resources, shall ensure that the wetlands conservation planning process currently under way includes a study of alternative procedures and policies for improving the current wetland banking system in the state. The study and any resulting recommendations must be reported to the appropriate policy

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committees of the legislature by June 30, 1997, or upon completion of the wetlands conservation planning final report, whichever is later.

Sec. 23. [REPEALER.]

Minnesota Statutes 1994, section 103G.2242, subdivision 13 (*Replacement wetland eligible for RIM*), is repealed

Sec. 24. [APPROPRIATIONS.]

(a) \$----- is appropriated from the general fund to the board of water and soil resources for providing assistance to local governmental units in developing and implementing comprehensive wetland protection and management plans under Minnesota Statutes, section 103G.2242, subdivision 1, paragraphs (c) to (f).

(b) \$----- is appropriated from the general fund to the board of water and soil resources for grants to local governmental units for developing and implementing comprehensive wetland protection and management plans under Minnesota Statutes, section 103G.2242, subdivision 1, paragraphs (c) to (f).

*** DISAGREE *** [] (c) \$1,000,000 is appropriated from the general fund to the board of water and soil resources for completing an inventory of public drainage by January 1, 1998, and for training of drainage authority personnel. []

Sec. 25 [BONDS AUTHORIZED; APPROPRIATION.]

Subdivision 1. [APPROPRIATION.] \$4,000,000 is appropriated from the bond proceeds fund to the board of water and soil resources for wetland replacement credits to be used to replace wetlands drained or filled as a result of the repair, maintenance, or rehabilitation of existing public roads, as provided in section 103G.222, paragraph (m).

Subd. 2. [BOND SALE AUTHORIZATION.] To provide the money appropriated in

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subdivision 1 from the bond proceeds fund, the commissioner of finance, on request of the governor, shall sell and issue bonds of the state in an amount up to \$4,000,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution, article XI, sections 4 to 7.

Sec. 26. [EFFECTIVE DATE.]

This act is effective the day following final enactment, except that section 23, paragraph (b), is effective July 1, 1996.

s:feb21wca.bil BWSR/JJ

BWSR staff & Board members - a few slots are available for you! See Jim Birkholz if interested

It's not too late to invest in yourself! SWCD personnel plan to apply for the *Leadership for the Next Century: Education Program for SWCD Supervisors and Staff*.

The Minnesota Association of Soil and Water Conservation Districts in cooperation with the Minnesota Extension Service Leadership Citizenship Education Committee have prepared a leadership program for Soil and Water Conservation District Personnel.

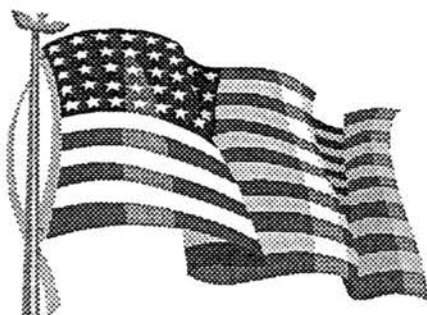
Leadership for the Next Century: Education Program for SWCD Supervisors and Staff

As a participant in the 1996-1997 leadership program you will take part in eight two-day institutes, where you will spend time in intense study working with small groups and developing strong resource relationships.

1996-1997 Calendar — MASWCD Leadership Program

Session One - EMBARKING ON THE LEADERSHIP ADVENTURE

March 25 - 26, 1996 St. Cloud



Session Two - VISIONARY LEADERSHIP

June 20 - 21, 1996 Grand Rapids

Session Three - PERSONAL AND POLITICAL SAVVY

September 5 - 6, 1996 Rochester

Session Four - BALANCING ETHICS, ECONOMICS & THE ENVIRONMENT

November 21-22, 1996 Marshall

Session Five - COMMUNICATION AND CONFLICT

February 20 - 21, 1997 Minneapolis/St. Paul

Session Six - SITUATIONAL LEADERSHIP

April 10 - 11, 1997 Bemidji

Session Seven - ORGANIZATIONAL MANAGEMENT

June 19 - 20, 1997 New Ulm

Session Eight - MOVING TO HIGHER GROUND

September 11 - 12, 1997 Alexandria

For more information contact the MASWCD office at (612) 690-9028 ASAP!!! The registration fee for the two year program is \$1,600 payable over the two year period. Costs include speakers, materials, lodging and meals.

The moment you
stop learning,
you stop leading.

Whitewater Watershed Project



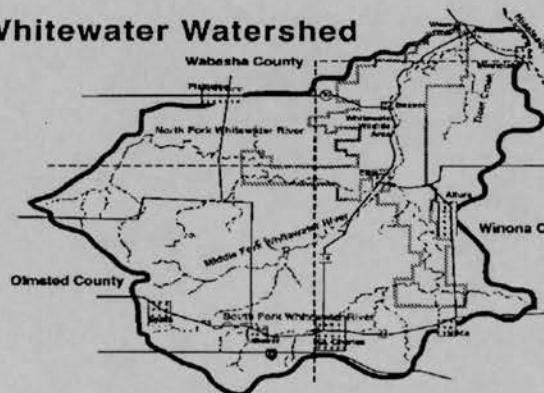
What is a Watershed?

- A watershed is a geographic area that drains into a river system or a body of water.
- Since all the land within a watershed drains to a common outlet, every activity on the land has the potential to affect the entire watershed.
- Water, soils, vegetation, fish, wildlife, livestock and people are not independent and isolated resources in the watershed. Instead, resources are intertwined in an elaborate web of relationships, an ecosystem.
- These connections make watersheds ideal units for managing natural resources.

Mission Statement

- Nurture a land stewardship ethic among those that live, work, and recreate in the watershed.
- Focus on improving water quality, reducing sedimentation and flooding, and improving habitat for all plants and animals.
- Develop a partnership among watershed citizens, governmental agencies, environmental groups, and businesses.

Whitewater Watershed



205,400 Acres

Whitewater River's Branches:

- Middle Branch
- North Branch
- South Branch
- Main Branch

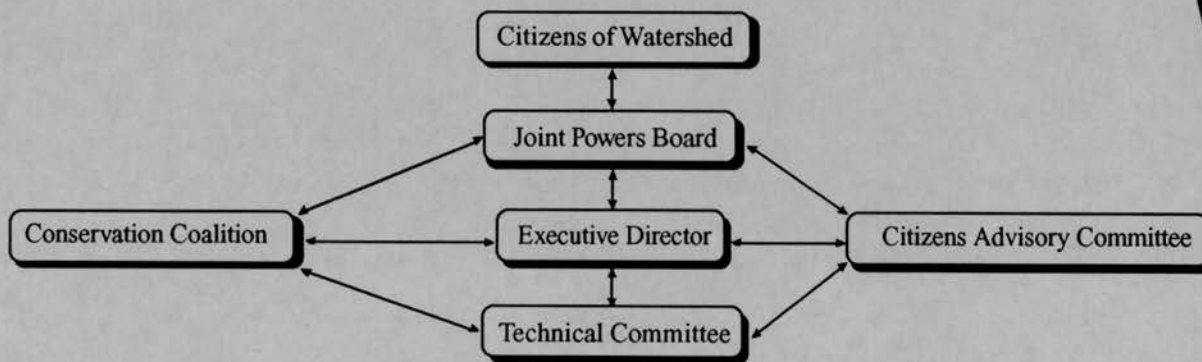
Short Term Objectives

1. Devise a Comprehensive Management Plan.
2. Form a Citizens Advisory Committee.
3. Have a public participation plan consisting of a quarterly newsletter, news articles, and slide programs.

Project Status

The Whitewater Watershed Project is completing a comprehensive management plan for water and natural resources of the watershed. Citizens, local governments, the Joint Powers Board, and technical staff will work together to develop and implement one project.

How It All Fits Together



For information about the Citizens Advisory Committee and/or newsletter:

SHELLY ECKBLAD

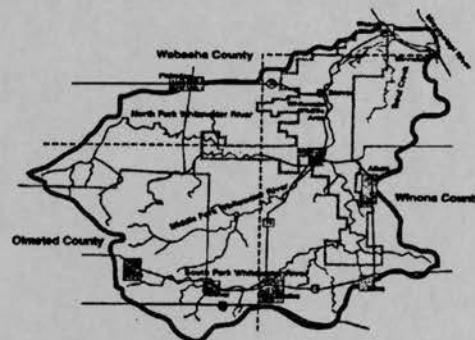
Whitewater Watershed Project
1485 Industrial Dr. N.W., #102

Rochester, MN 55901

Ph: (507) 280-2850

Fax: (507) 280-2858

Today, the Whitewater Watershed Project (WWP) is making an effort to maintain the land and its beauty in the Whitewater Watershed. The watershed is all the land that drains water into the Whitewater River. This newsletter is distributed by the WWP and introduces the project to the watershed landowners. Any questions, call Shelly Eckblad, Watershed Coordinator, at 507-289-6239.



The Citizens Advisory Committee has spent some time trying to develop a shared vision of what the watershed should look like twenty years from now. Whether this vision becomes the reality depends to a large extent on actions taken by citizens of the watershed.

The committee has been considering a number of different topics to increase their knowledge of the watershed. Recently presentations have been on a Conservation Credit Program, Feedlots and Nutrient Management, and Groundwater.

On the Conservation Credit Program: On October 9th the CAC invited Rodney Webb of Pepin County Wisconsin Land Conservation District to discuss details of the Pepin County Conservation Credit Pilot Program which has been successful in providing property tax relief to 85% of the county's cropland. This program provides financial incentives in the form of property tax credits to farmers who partici-

Topics the Citizens Advisory Committee has been discussing

pate and adopt or continue good farm management. Pepin County landowners can receive credit on their property taxes up to \$6 per acre per year under the plan that is funded by local, state, and federal programs.

On Feedlots and Nutrient

Management: On November 20th the CAC hosted a session with feedlot and nutrient management experts to discuss the analysis of watershed feedlot data. A computerized analysis evaluated "feedlot pollution potential" on each farm. It was estimated that 1,500 tons of animal manure is produced daily in the watershed. Feedlot and nutrient management is an important element of our local economy and the appropriate collection, storage, transportation, and use of manure are important factors in protecting the quality of our surface water and groundwater. If nutrient rich manure washes into our streams or leaches into our waters the organic load causes nitrate contamination and can deplete the oxygen necessary to sustain aquatic life. Under spring conditions, it was estimated that the actual organic load to the Whitewater River from local feedlots is only 3% of the total organic load. Natural sources such as leaf litter, grass, and wildlife contributes 16%. The

remaining 81% is from field runoff which is why nutrient management is so important. While the total pollution from feedlots is small it was recognized by the citizen group that inappropriate manure management can have immediate and long range consequences, degrading water quality.

On Groundwater: Local and state groundwater experts relayed groundwater information to the CAC. Water chemistry and hydrology are complicated subjects, but one important fact came through the discussion—it is much easier to protect groundwater than it is to clean it up. Those in attendance saw that most of our groundwater provides a clean, safe, and plentiful supply, but some localized aquifers at certain depths can rapidly be contaminated by spills, leaks, and tainted surface water leaching through the soil. The biggest potential threat seen so far is nitrogen loss through the soil, loading nitrates into our local groundwater recharge areas. Bacteria, pesticides, and petroleum products are other water quality problems that have been documented in some local wells. To insure a continued clean, safe, and plentiful water supply we all must rely on responsible chemical use.

Whole Farm Planning in the Whitewater River Watershed

Work has been progressing on the Whole Farm Planning Project in the Whitewater River Watershed. This project is intended to experiment with ways local resource specialists provide you services on your land. Our intention is to develop a planning process that is coordinated and comprehensive and is tailored to what local landusers want and need. We have developed a farm self-evaluation that can be done by a landowner alone or with assistance if they choose.

This process is voluntary, landusers decide what their plan will contain, and is intended to provide assistance when and where a landuser chooses. We have a review team that is made up of local resource specialists that is working on this program. We are presently holding small neighborhood meetings with watershed landowners to receive feedback on what they want this process to do for them. We take these meetings very seriously and need input to insure our program is a success.

If you would like more information on this program, would like to host a neighborhood meeting, or would like to work with us on a whole farm plan on your farm please contact Mark Kunz at the Lewiston Ag. Service Center at 507-523-2171.

Important Dates

Citizen Advisory Committee Meetings

Whitewater State Park Interpretive Center — 7:30 – 9:30 pm

January 22	Selecting Priority Watershed Goals
February 5	Working on a Watershed Plan
February 19	
March 4	
March 18	

Whitewater Joint Powers Board Meetings

Whitewater State Park Interpretive Center — 1:00 – 3:00 pm

January 18
March 21

WQIP Update

The Water Quality Incentive Program in the Middle Fork of the Whitewater Watershed is in its second year.

For those unfamiliar with the Program, it seeks to reduce non-point source agricultural pollutants by providing an incentive payment to landusers. The incentive is to apply water quality best management practices in the watershed that are presently not being utilized and aren't available under existing cost share programs.

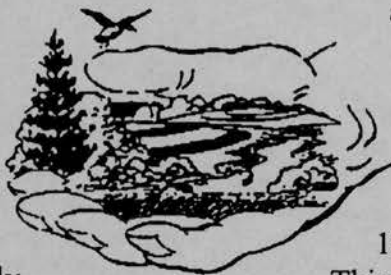
Long term contracts were written with a total of 19 participants, including 30% of the cropland in the watershed. Practices include nutrient and pesticide management, agricultural waste utilization, conser-

vation tillage, and contour farming.

In the program's first year application of nitrogen was reduced by 29,000 pounds, phosphorus by 15,000 pounds, potassium by 6,000 pounds, and soil loss was decreased by 1,226 tons.

We are now planning for the 1996 crop year.

This year landowners participated directly in the nutrient planning process and were given the materials necessary to continue on their own when the program is over. Everyone seems to be satisfied with the program. The goal is that the 19 participants will continue these practices after their contracts are done and serve as models for other landusers in the watershed.





Minnesota Department of Natural Resources

DIVISION OF WATERS

500 Lafayette Road

St. Paul, Minnesota 55155-4032

(612) 296-4810

December 22, 1995

Mr. Bob Mostad, Administrator
Sauk River Watershed District
524 4th Street South
Sauk Centre, Minnesota 56378

Dear Mr. Mostad:

POLLUTION PROBLEMS, BIG FISH LAKE, STEARNS COUNTY

Thank you for your letter of November 30, 1995.

The situation you described in your letter illustrates why any shoreland development must be evaluated for all of its impacts. The Department of Natural Resources Shoreland Management Program addresses these types of situations in a number of ways, specifically through the shoreland rules related to grading and filling in shoreland areas.

Specifically, Minnesota Rule 6120.3300, subpart 4, entitled Shoreland Alterations states in part, "... Alterations of vegetation and topography must be controlled by local governments to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat. Public road and parking areas, as regulated by subpart 5, are exempt from the provisions of this part." However, subpart 5, entitled Placement and design of roads, driveways, and parking areas states that "... They must be designed and constructed to minimize and control erosion to public water consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials. A. Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist." (emphasis added). Based on your description of the situation, and the above-cited rules, I agree that this particular land use alteration in the shoreland of Big Fish Lake should be corrected.

However, the legislatively mandated shoreland management program states specifically in statute, and, in Minnesota Rules 6120.2800 in the section entitled Responsibilities and Authorities, that "These minimum standards and criteria apply to those shorelands of public waters of the state which are subject to local

Post-It® brand fax transmittal memo 7671		# of pages > 2	
To	GREG LARSON	From	WAYNE EDWARDS
Co.	BWGR	Co.	DNR
Dept.	F.Y.I.	Phone #	7-8341
Fax #		Fax #	



Bob Mostad
Pollution Problems, Big Fish Lake, Stearns County
Page 2

government land use controls. They are intended to be incorporated into local government shoreland management controls. Each local government is responsible for administration and enforcement of its shoreland management controls adopted in compliance with the standards and criteria." As shown, the Department does not have any direct regulatory authority over the situation. Stearns County is the administrative and enforcement entity for the shoreland management rules. However, be assured that the Department supports any actions which will correct this situation.

You also requested that we make a definitive statement regarding closing this area to all motorized traffic. Based on the situation you describe with existing public accesses in the area this would seem to make sense but that needs to be a local decision.

I trust this clarifies my position. If there are any questions concerning this matter, do not hesitate to contact me.

Sincerely,



Kent Lokkesmoe
Director

c: Senator Joe Bertram
Commissioner's Office
Dave Hills, Regional Hydrologist
Dan Lais, Area Hydrologist
Jack Wimmer, Stearns County Planning & Zoning
Peter Fandel
Joe Peters

4/25/96

DRAFT

**BOARD OF WATER AND SOIL RESOURCES
MINNESOTA VALLEY NATIONAL WILDLIFE REFUGE
3815 EAST 80TH STREET
BLOOMINGTON, MINNESOTA
APRIL 25, 1996**

BOARD MEMBERS PRESENT:

Barbara Cobb, Jim Rossman, Kathleen Roer, Ginny Imholte, Tim Hvidsten, Glenn Annexstad, Marvell Tripp, LeRoy Stensgaard, Dwain Otte, Ted Lovdahl, Darrell Bruggman.

AGENCY MEMBERS PRESENT:

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

OTHERS PRESENT:

Jim Schafer, Minnesota Association of Soil & Water Conservation Districts (MASWCD)
Rick Reimer, Minnesota Association of Conservation District Employees (MACDE)
Dave Weirens, Association of Minnesota Counties (AMC)
Don Wodek, Hennepin County Soil & Water Conservation District
Roger Mussetter, Natural Resources Conservation Service (NRCS)
Doug Norris, Tom Landwehr, Bruce Gerbig, Department of Natural Resources (DNR)
Ray Bohn, Minnesota Association of Watershed Districts (MAWD)
David Dobbert, citizen
Matt Seltzer, Attorney General's Office

STAFF PRESENT:

Ron Harnack, Jim Birkholz, Greg Larson, John Jaschke, Doug Thomas, Jeff Nielsen, Ron Shelito, Jim Haertel, Tom Wenzel, Tim Fredbo, Wayne Zellmer, Al Kean, and Mary Jo Anderson.

BWSR Meeting Minutes

April 25, 1996

Page Two

Chair Cobb called the meeting to order at 9:00 a.m.

Chair Cobb proposed an agenda change -- address the Yellow Medicine Watershed District Boundary Change Petition be first on the agenda. Approved.

96-22 **Adopt Agenda** - Moved by Darrell Bruggman, seconded by Tim Hvidsten, to approve the agenda as presented. Motion passed on a voice vote.

Minutes of February 28, 1996 - Wayne Edgerton had a change in the minutes of February 28, 1996. On page three, under DNR Agency Reports, the last sentence should read, "DNR anticipates passage of the proposed trespass law that would add a civil citation to the current criminal process". Moved by Ted Lovdahl, seconded by Dwain Otte, to approve the minutes of February 28, 1996, as corrected. Motion passed on a voice vote.

96-23

Yellow Medicine Watershed District Boundary Change Petition - Chair Cobb called on Doug Thomas. Doug deferred comments to LeRoy Stensgaard. LeRoy thanked the residents for coming in. He mentioned the hearing on April 10. Rosie Nomeland was introduced, she introduced others. The object is to change the boundary, the 639 study is documentation, it doesn't make much sense, concerned about additional drainage. The Yellow Medicine water plan was mentioned. Discussion on artificial drainage occurring and downstream information. Gaston Vlaminch gave written comments on engineering to Doug Thomas. Mrs. Nomeland presented pictures of drainage activities that they were concerned about. Has evidence of permits and minutes. Permits were denied and work proceeded anyway - what's happening. Kathy Roer asked if the ditch was dug in Yellow Medicine County. Mrs. Nomeland said it was not in. Roer asked if they were concerned about questionable policies of Yellow Medicine Watershed District if transfers occur. "Yes." Ron Harnack stated that there are two issues here -- the boundary change and policies and procedures. Both of the watershed district plans will be up for review and approval. This presents an opportunity to look at administration. Briggs & Imil Properties dug ditch with permit to clean waterway, problems already occurring said Nomeland. Work done in creek in recent years without permits. Glenn Annexstad asked what do you mean by artificial pumping plan, Nomeland said anything man-made. Dwain Otte asked what are the downsizing projects. Nomeland said road retention.

Chair Cobb introduced Gaston Vlaminch. He explained basic hydrology of the area. This is causing man-made floods and is aggravated by up-stream drainage. LeRoy Stensgaard moved to table this issue for two months to further investigate issues. Chair Cobb asked what will be done by Doug Thomas. Doug explained two steps: 1) boundary change; 2) programs and policies.

Prairie Pothole Joint Venture Award presented to BWSR by Bill Hartwig, Regional Director of USF&WS. Commended BWSR for their efforts and partnerships in wetland restoration. Chair Cobb thanked Director Hartwig on behalf of the BWSR team and partnerships whose diligent efforts

BWSR Meeting Minutes

April 25, 1996

Page Three

have made such a difference in the restoration and enhancement of wildlife habitat in the prairie pothole area. In particular she recognized the work of Tim Fredbo, Marybeth Block, Mary Miller, Tom Wenzel, Steve Miller, Polly Remick, area board conservationists, and Soil and Water Conservation District Employees.

Reports

Chair's Reports - Chair Cobb thanked Ron Harnack, John Jaschke, and Greg Larson for their diligence and conviction to achieving a negotiated Wetland Conservation Act amendments bill. She reported on the sustainable development initiative meetings and the new legislation. BWSR can play a helpful role. Will be asking Ron Harnack and/or Doug Thomas to assist, we can support Minnesota Planning's efforts. Chair Cobb reported that the Executive Director's performance review has been completed. Chair Cobb reported on the excellent and inspiring MASWCD/MES leadership program.

Executive Director's Report - Ron Harnack reported on the WCA. He explained the emergency rule process; and LGU training. The permanent rule put off for one year and see how emergency rule is working and allow for completion of State Wetland Plan. Ron reported that RIM and Wetland Restoration and Road Mitigation was allocated \$14.5 million out of bonding. Area II was allocated \$250,000 for road retention.

Dispute Resolution Committee (DRC) Kathy Roer reported that the May meeting has been cancelled. June will be a busy month; two project appeals received from Sauk River Watershed District; WCA appeal in the City of Maple Grove; a no-net loss appeal in Douglas County and an appeal from Chisago County. The DRC met this morning regarding Sauk River. Moved by Kathy Roer, seconded by Jim Rossman, to affirm the DRC's recommendation and allow the appeal of ~~Schriber~~ vs. Sauk River Watershed District to go forward. Motion passed on a voice vote.

★★
96-24

Feedlot Advisory Committee - Jim Rossman reported that the Feedlot Advisory Committee met on March 4. A task force will be looking at a difficult odor problem; BMP approach; concern for waste and manure management. Jim Anderson stated that the U of M just recently started a research task force to deal with the odor problem. LeRoy Stensgaard stated that nine counties in southwestern Minnesota have completed a model ordinance dealing with hog confinements, this will be presented at a meeting in June; he invited Jim Rossman to attend.

Wetlands Committee - Darrell Bruggman commended Ron Harnack, Greg Larson, and John Jaschke for their hard work and efforts on WCA. The committee met this morning to be briefed on emergency rule procedures.

BWSR Meeting Minutes

April 25, 1996

Page Four

Agency Reports

Department of Agriculture, Paul Burns gave an update on the Ag BMP Program. Workshops being held regarding ag research as it relates to the Minnesota River Basin. Workshops will be held statewide in July regarding feedlot issues and finalization of the feedlot handbook.

Pollution Control Agency, Marge Kelly will be substituting for Wayne Anderson while he's working on their agencies strategic plan. Clean Water Partnership Grant Program received an additional \$12 million from the State Revolving Fund loans. Individual Sewer Systems Treatment Systems (ISSTS) is another avenue to address the failing sewer system problem.

Minnesota Extension Service, Jim Anderson stated that MES is a co-sponsor of the Minnesota Water '96, May 20-21.

Minnesota Department of Health, Kim Benson-Johnson reported that a survey is being done of cost-share funding available for well sealing.

Department of Natural Resources, Wayne Edgerton reported that a draft plan is being developed for integrated pest management. DNR is committed to improving their image - let Wayne know of ag-related issues/complaints that can be improved. DNR is working on good neighbor program. Wayne congratulated BWSR, on behalf of DNR, for receiving the pintail award.

Consent Agenda

96-25 Ginny Imholte reported that the BWSR area review committee recommended approval of the Lake of the Woods County Water Plan. Moved by Ginny Imholte, seconded by Ted Lovdahl, to approve the Lake of the Woods County Water Plan. Motion passed on a voice vote.

96-26 LeRoy Stensgaard reported that the BWSR area review committee recommended approval and moved, seconded by Glenn Annexstad, to approve the Big Stone, Lac Qui Parle, Swift, and Chippewa County Water Plans. Motion passed on a voice vote.

Old Business

96-27 By Laws - Moved by Barbara Uppgaard, seconded by Marvell Tripp, to approve the BWSR's By-Laws, subject to review by the Attorney General's Office. Motion passed on a voice vote.

96-28 East Ottertail SWCD 1995 Cost-Share Allocation - Ted Lovdahl reported the committee believes cost-share dollars and retribution monies should be separate and moved, seconded by Ginny Imholte, to approve releasing the 1995 cost-share funds to East Ottertail SWCD. Motion passed on a voice vote.

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April 25, 1996

Page Five

New Business

- ****
96-29 Middle Des Moines Watershed District Name Change - Doug Thomas presented the Middle Des Moines Watershed District name change; staff recommends approval of name change. Moved by Marvell Tripp, seconded by Tim Hvidsten, to approve the Middle Des Moines Watershed District name change to Heron Lake Watershed District. Motion passed on a voice vote.

- ****
96-30 FY97 Challenge Grant - Wayne Zellmer presented the proposed timeline for the FY 97 Challenge Grants. Barb Uppgaard addressed the LGU issue in item A. Moved by Kathy Roer, seconded by Ted Lovdahl, to approve the FY97 challenge grants. Motion passed on a voice vote. Barbara Uppgaard opposed.

- ****
96-31 FY 97 General Services Grants - Wayne Zellmer explained the general services grants. MASWCD formed an adhoc committee to review the FY97 general services grants for possible dollar targeting but wishes the 1997 grants to be distributed equally. Don Wodek, Hennepin County Conservation District, spoke and outlined reasoning behind use of this option. Moved by Ted Lovdahl, seconded by Dwain Otte, to accept staff recommendation of Option A, divide \$228,000 evenly between the 91 SWCDs (\$2,505 each). Motion passed on a voice vote.

- ****
96-32 Release from RIM Easement - Tim Fredbo presented the request to release .2 acres of land on a RIM easement in Pope County. Staff recommends approval. Moved by Barbara Uppgaard, seconded by Marvell Tripp, to release the RIM easement acreage as presented. Motion carried on a voice vote.

Chair Cobb called for a break in the meeting at 11:40 a.m. The meeting reconvened at 11:45 a.m.

Draft WCA Emergency Rule - Greg stated that a fair effort was made by all parties involved; WHAC met on April 22 and recommended approval of the proposed emergency rule. WHAC did not recommend any additional language. John explained the process of the emergency rule, effective June 10. Over 1,000 people will receive a mailing this week explaining the changes in the rule. The BWSR wetland committee and WHAC has reviewed the draft emergency rule. Matt Seltzer commended Greg and John on their efforts. The Revisor's Office and the Office of Administrative Hearing has two weeks to review this. The BWSR wetland committee recommends approval of the proposed emergency rule. Greg and John explained sequencing flexibility and agricultural exemption changes. These changes also concur with the BWSR wetlands committee. Doug Norris, DNR, has an additional proposed change on A.4.

- ****
96-33 Moved by Darrell Bruggman, seconded by Tim Hvidsten, to approve the two proposed changes regarding sequencing flexibility and agricultural exemption. Motion passed on a voice vote.

John stated that the third change by DNR needs to be looked at in depth, part of permanent rule development. Greg stated that an additional item came in this morning as a proposed change, could

BWSR Meeting Minutes

April 25, 1996

Page Six

be an appeal rather than part of the rule. The additional proposed changes will be reviewed as part of the permanent rule process.

- **
96-34** Moved by Darrell Bruggman, seconded by Glenn Annexstad, to approve the draft emergency rule as presented. Motion passed on a voice vote.

Resolution Adopting Rules - Matt Seltzer explained that the resolution changes and proposed changes amending the emergency rule must be reviewed by the Revisor's Office and the Office of Administrative Hearing, with the final format ratified by BWSR. Moved by Darrell Bruggman, seconded by Ted Lovdahl, to approve the resolution. Motion passed on a voice vote.

- **
96-35**

Next Board Meeting - The BWSR will tour southwestern Minnesota on May 21, and the BWSR will meet on May 22, in Fairmont. Details will be sent to board members soon.

Advisors' Comments

Natural Resource Conservation Service (NRCS): Roger Musetter distributed "1996 Farm Bill Conservation Provisions Summary".

Don Wodek, Hennepin County SWCD, reported that the Hennepin County Surface Water Management Task Force met for last time on Wednesday. This was an overall good process, next issue is groundwater, final recommendations will be distributed to the board.

Minnesota Association of Watershed Districts (MAWD): Ray Bohn reported on legislative action, watershed district act amendments give more flexibility for watershed districts. The MNDOT permitting issue was resolved; MNDOT will adhere to watershed district permits. Process of finalizing plans for summer tour, Minnehaha Creek, boat tour on Lake Minnetonka, June 28-29.

Minnesota Association of Soil and Water Conservation Districts (MASWCD): Jim Schafer reported that MASWCD representatives went to Washington, D.C. Doug Thomas and Bill Hunt were commended; Doug on his representation of BWSR. Jim thanked BWSR for lobbying WCA.

Minnesota Association of Conservation District Employees (MACDE): Rick Reimer reported that MACDE will hold training in Alexandria. Area 5-6 are working on a booth at Farmfest. MACDE is also involved in the area Envirothons.

Association of Minnesota Counties (AMC): Dave Weirens stated that WCA rules should be okay with counties. Nick Riley left AMC in February, they are in the process of filling that position. LCMR grant project on land use is moving forward. On May 7 a satellite conference with all counties will be held regarding policies.

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April 25, 1996
Page Seven

Ron Harnack stated that BWSR will be working with AMC on a drainage manual; statewide training to be held in cooperation with AMC.

Dan Larson, represents five northern counties, advocates maintaining conservative language of rules, proceed cautiously with changes.

Chair Cobb adjourned the meeting at 12:40 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barbara Cobb". The signature is written in dark ink and is positioned above the printed name.

Barbara Cobb, Chair

TO : Board Members

FROM : Wayne Zellmer, Grants Coordinator

SUBJECT : **FY 97 CHALLENGE GRANT PROGRAM**

BACKGROUND

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

The purpose of the Challenge Grant Program is to provide grants to counties, watershed management organizations, and watershed districts, to assist in accelerating the implementation of high priority actions in their comprehensive local water management plans.

ISSUE

The current biennial budget is providing approximately \$1 million for the Challenge Grant Program. Also, recent legislative amendments to the Wetland Conservation Act provided an additional \$120,000 earmarked to fund local wetland plans. In order to proceed with this grant program, the Board needs to authorize staff to announce the program, accept applications, and, based on an inter-agency review committee recommendation, develop a list of projects for funding.

Staff is also requesting that the Board adopt the following policies for the FY 97 Challenge Grant Program:

A) Applications for funding diagnostic-type surface and ground water quality studies and for individual septic system upgrades are ineligible.

Reasoning

The MPCA funds diagnostic studies of this nature through the Clean Water Partnership Program. BWSR cannot provide the same level of staff support that MPCA does, which is necessary to insure quality projects upon their completion. Funding sources are available to finance individual septic system upgrades such as the state revolving fund.

B) Grant maximums will be \$40,000 for individual LGUs and \$100,000 for multi-LGU applicants.

Reasoning

It is necessary to set grant maximums to provide for a reasonable distribution of funds to LGUs.

C) Funding priority will be determined by score only. An evaluation category will be added to the existing challenge grant scoring criteria adopted by the BWSR in 1990 for watershed based projects.

Reasoning

Local water plans should determine local funding priorities.

D) The BWSR will withhold payment of grant if applicant has any overdue or unsatisfactory previous Challenge Grant reports.

Reasoning

Grant agreements specifically requires annual reports. This policy will leverage completion of this reporting requirement.

E) The \$120,000 appropriation earmarked to fund local wetland plans will have a \$15,000 limit per applicant.

Reasoning

Allows funding of a reasonable number of grants and the amount is consistent with previously awarded planning grants.

RECOMMENDATION

The Board authorize staff to implement the FY 97 Challenge Grant Program with the above (A-E) policies.

The proposed timeline for FY 97 Challenge Grant implementation is on the reverse.

H:97CHALLE

April 1, 1996

**PROPOSED TIMELINE
FY 97 CHALLENGE GRANT**

- March 8 G - Team Meeting - Team to meet and recommend policies/criteria on the following:
- * Review application materials, scoring and ranking criteria; recommend changes, modifications, etc.
 - * Develop policy on eligibility regarding counties which have not submitted reports on previous grants and counties which do not have state approved locally adopted plans.
 - * Priority funding categories?
- April 1 M - Team review, approve/modify G - Team recommendations.
- April 25 BWSR Meeting - Update Board on Challenge Grant Program; move on any policies/criteria approved by M - Team; request authorization of FY 97 Challenge Grant Program.
- May 1 Applications sent to all local water planners, watershed districts, and WMOs.
- May 9 Publish Notice in State Register. (min. 60 day application period).
- June 13 Water plan technical representative meeting - update tech. reps. on Challenge Grant and current activities.
- June 18 Invitation to agency heads, groups, and associations inviting participation on the Challenge Grant review committee, and announcement of first meeting date.
- July 12 Application deadline.
- July 16 Kickoff Meeting for reviewers.
- Sept. 5 Reviewer Wrap-up Meeting - will result in a committee funding recommendation.
- Sept. 16 Info submitted for Board Meeting packet mailing.
- Sept. 25 BWSR Meeting - request approval of Challenge Grant and authorization of staff to execute grant agreements.
- Oct. Challenge Grant agreements sent.

April 25, 1996

TO : Board Members

FROM : Wayne Zellmer

SUBJECT : FY 97 GENERAL SERVICES GRANTS

BACKGROUND

The General Services Grant is an annual base grant allocated to SWCDs. The purpose of this grant is to supplement other SWCD revenues necessary for operations of the SWCD. According to BWSR policy, SWCDs are eligible to receive this grant if they have satisfactorily completed their annual and comprehensive plans, and annual reporting requirements. Legislative appropriation levels for this grant have historically remained nearly constant. Prior to FY 96 these grants ranged from approximately \$9,000 to \$10,200, with the average grant at about \$9,300. The range can be attributed to the allocation formula which reflected the potential amount of DNR shoreland permitting activity performed by the SWCD.

ISSUE

SWCD funding levels collectively, are generally regarded as being insufficient to perform needed functions. Consequently, a 1995 effort involving MASWCD, AMC, and BWSR, sought to increase this legislative appropriation \$30,000 per SWCD (\$2,730,000). A \$227,000 FY 96 increase was achieved with an additional \$228,000 increase for FY 97. The FY 96 appropriation increase was divided and allocated equally between the 91 SWCDs (\$2,495 each).

DISCUSSION

The FY 97 General Services Grant is scheduled to be allocated in July, 1996. Several allocation options have been presented for the Board's consideration. Among these are:

A) Divide the \$228,000 evenly between the 91 SWCDs - \$2,505 each.

Many SWCDs have relatively large budgets. Concern has been expressed if another \$2,505 will have an impact in these districts. On the other hand, is \$2,505 enough to help out SWCDs which are struggling to make ends meet? During the 1995 legislative effort many SWCDs and counties were given the impression that this increase would be equally divided.

B) Run a competitive statewide/targeted application program for the \$228,000.

A competitive grant would allocate the funds to where they are requested (and presumed needed). BWSR would set parameters of grant and could target needs such as administrative or technical assistance.

C) Allocate evenly (\$20,727) or competitively between the 11 SRF technical assistance joint powers boards.

Although this option may pose to conflict with the legislative intent of this grant, SWCDs comprise the joint powers boards (jpb). The jpb could set their own priorities for the use of this grant.

D) Allocate 1/2 (\$114,000) evenly between the 91 SWCDs - \$1,250 each; and run a competitive grant with the other half (\$114,000).

This is a combination of options A and B.

Obviously there are many combinations/variations of the above options. Please see the accompanying correspondence from Joe Fitzgerald and D'Wayne DeZiel. The Board will be requested to approve the allocation procedure at their May, 1996 Meeting.

FACSIMILE TRANSMITTAL COVER SHEET

DATE SENT:

~~4/26/96~~ 5/2/96

NUMBER OF PAGES:

87

(Including This One)



FROM:

MINNESOTA BOARD OF WATER AND SOIL RESOURCES
One West Water Street
SUITE 200
ST. PAUL, MN 55107

FAX NO.

(612) 297-5615

TO:

~~Barb Cobb~~ Mary Jo Anderson

FROM:

~~Mary Jo Anderson~~

Barb Cobb

Fax 436-2190

REMARKS/COMMENTS:

FYI - "draft" minutes for
your review. Thanks, Mary Jo.
Perhaps these can go out with the
letter Ron H. is writing to Bd. members
about the re org. changes.

TRANSMISSION PROBLEMS: CALL LORRIE (612)296-3767

P.S. What about the WCA resolution?
I signed the enclosed copy, but
does it need more official whatever?

Barb

S: April 11, 1996

Bd. of Water/Soil Res. Fax:612-297-5615

Apr 26 '96 11:15 P.03/09

Chair Cobb called the meeting to order at 9:00 a.m.

Chair Cobb proposed an agenda change -- address the Yellow Medicine Watershed District Boundary Change Petition ^{it was} moved up on the agenda. Approved.

Adopt Agenda -

Minutes of February 28, 1996 - Wayne Edgerton had a change in the minutes of February 28, 1996. On page three, under DNR Agency Reports, the last sentence should read, "DNR anticipates passage of the proposed trespass law that would add a civil citation to the current criminal process".

Yellow Medicine Watershed District Boundary Change Petition - Chair Cobb called on Doug Thomas. Doug deferred comments to LeRoy Stensgaard. LeRoy thanked the residents for coming in. He mentioned the hearing on April 10. Rosie Nomelant was introduced, she introduced others. Object to change, the 639 study is documentation, it doesn't make much sense, concerned about additional drainage. The Yellow Medicine water plan was mentioned. Discussion on artificial drainage occurring and downstream information. Gaston Vlaminch gave written comments on engineering to Doug Thomas. Presented pictures of drainage activities that they were concerned about. Has evidence of permits and minutes. Permits were denied and work proceeded anyway - what's happening. Kathy Roer asked if the ditch was dug in Yellow Medicine County. Rosie said it was not in. Kathy asked if they were concerned about questionable policies of Yellow Medicine Watershed District if transfers occur. Rosie said "Yes". Ron Harnack stated that there are two issues here - the boundary change and policies and procedures. Both of the watershed district plans will be up for review and approval. This presents an opportunity to look at administration. Briggs & Imil Properties dug ditch with permit to clean waterway, problems already occurring said Rosie. Work done in creek in recent years without permits. Glenn Annexstad asked what do you mean by artificial pumping plan, Rosie said anything man-made. Dwain Otte asked what are the downsizing projects. Rosie said road retention.

Chair Cobb introduced Gaston Vlaminch. He explained basic hydrology of the area. This is causing man-made floods and is aggravated by any up-stream drainage. LeRoy Stensgaard moved to table this issue for two months. Chair Cobb asked what will be done by Doug Thomas. Doug explained two steps: 1) boundary change; 2) programs and policies. He reminded how managers are approved by county boards.

Prairie Pothole Joint Venture Award presented to BWSR by Bill Hartwig, Regional Director of USF&WS.

Reports

Chair's Reports - Chair Cobb reported on wetlands and the sustainable development initiative report to the legislature. BWSR can play a larger role. Will be asking Ron Harnack and/or Doug Thomas to assist, we can support Minnesota Planning's efforts. Chair Cobb reported that the Executive Director's performance review has been completed. Chair Cobb reported on the MASWCD/MES leadership program.

Chair Cobb thanked Director Hartwig on behalf of the BWSR team and partnerships whose diligent efforts have made such a difference in the restoration & enhancement of wildlife habitat in the prairie pothole area. In particular she recognized the work of Tim Fredbo, Mary Beth Block, Mary Miller, Tom Wenzel, Steve Miller, Polly Remick, area Board conservationist.

Barb, these are
Doug's notes as
I was out 1st page

Both
adopted
Pict
Some
Names

Rosie
Nomelant

To further
investigate
issues.

and the new
legislation

thanked Ron Harnack, John Tasske, & Greg Larson for their
diligence & conviction to achieving a negotiated
wetland conservation act amendment bill.

she reported on
meetings
excellent & inspiring

Bd. of Water/Soil Res. Fax:612-297-5615

Apr 26 '96 11:16

P.04/09

(2)

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Bd. of Water/Soil Res. Fax:612-297-5615

Apr 26 '96 11:17

P.05/09

(3)

M.T.
upgrade
this
paragraph
a bit.
Wayne
likes his
specifics
clearer

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Chair Cobb called for a break in the meeting at 11:40 a.m. The meeting reconvened at 11:45 a.m.

Draft WCA Emergency Rule - Greg stated that a fair effort was made by all parties involved;

of 2 acres
whatever
it is - show that little
amount

any possible dollar
targeting but
wishes the
97 grants to
be distributed
equally.
Don Woduc,
Heron City
Soni. Dist
Spoke &
outlined
reasoning
behind use
of this option

(4)

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Next Board Meeting - The BWSR will tour southwestern Minnesota on May 21, and the BWSR will meet on May-22, in Fairmont. Details will be sent to board members soon.

Advisors' Comments:

Natural Resource Conservation Service (NRCS): Roger Musetter distributed "1996 Farm Bill Conservation Provisions Summary".

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Minnesota Association of Soil and Water Conservation Districts (MASWCD): Jim Schafer reported

Bd. of Water/Soil Res. Fax:612-297-5615

Apr 26 '96 11:18 P.07/09

(5)

that MASWCD representatives went to Washington, D.C. Doug Thomas and Bill Hunt were commended; Doug on his representation of BWSR. Jim thanked BWSR for lobbying WCA.

Minnesota Association of Conservation District Employees (MACDE): Rick Reimer reported that MACDE will hold training in Alexandria. Area 5-6 are working on a booth at Farmfest. MACDE is also involved in the area Envirothons.

Association of Minnesota Counties (AMC): Dave Weirens stated that WCA rules should be okay with counties. Nick Riley left AMC in February, they are in the process of filling that position. LCMR grant project on land use is moving forward. On May 7 a satellite conference with all counties will be held regarding policies.

Ron Harnack stated that BWSR will be working with AMC on a drainage manual; statewide training to be held in cooperation with AMC.

Dan Larson, represents five northern counties, advocates maintaining conservative language of rules, proceed cautiously with changes.

Chair Cobb adjourned the meeting at 12:40 p.m.

Respectfully submitted,

Barbara Cobb, Chair

CERTIFICATE OF THE BOARD OF WATER AND SOIL RESOURCES**RESOLUTION ADOPTING RULES**

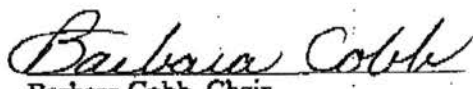
I, Barbara Cobb, do hereby certify that I am a member of the Chair of the Board of Water and Soil Resources, a board duly authorized under the laws of the State of Minnesota, and that the following is true, complete, and correct copy of a resolution adopted at a meeting of the Board of Water and Soil Resources, duly and properly called and held on the 25th day of April, 1996, that a quorum was present, and that a majority of those present voted for the resolution which had not been rescinded or modified.

"RESOLVED, that the amended rules relating to the Wetland Conservation Act of 1991, substantially in the form set out in Revisor of Statutes draft, file number CMR/DP RD2704, dated April 14, 1996, identified as Minnesota Rules, parts 8420.0100 et. seq. are approved and adopted, pursuant to authority vested in the Board of Water and Soil Resources by 1996 Minn. Laws, ch. 462, sec. 39 with the modifications as approved by the board today.

"BE IT FURTHER RESOLVED, that Ronald D. Harnack, Executive Director of the Board of Water and Soil Resources, is authorized to sign the Findings of Fact, Conclusions, and Order Adopting Rules and further is authorized to modify the amended rules if necessary for technical accuracy or to obtain the approval of the revisor of statutes and the office of administrative hearings, and to perform the necessary acts to provide that the amended rules shall have the force and effect of law.

"BE IT FURTHER RESOLVED, that the amended rules, as the same may be modified by the Executive Director, shall be brought before the board for approval and ratification at its May meeting."

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____, 1996.


Barbara Cobb, Chair
Board of Water and Soil Resources

Attest by one other Board Member

Signature of Attesting Board Member

Printed Name of Attesting Board Member

**BOARD OF WATER AND SOIL RESOURCES
MINNESOTA VALLEY NATIONAL WILDLIFE REFUGE
3815 EAST 80TH STREET
BLOOMINGTON, MINNESOTA
APRIL 25, 1996**

BOARD MEMBERS PRESENT:

Barbara Cobb, Jim Rossman, Kathleen Roer, Ginny Imholte, Tim Hvidsten, Glenn Annexstad, Marvell Tripp, LeRoy Stensgaard, Dwain Otte, Ted Lovdahl, Darrell Bruggman.

AGENCY MEMBERS PRESENT:

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

OTHERS PRESENT:

Jim Schafer, MASWCD
Rick Reimer, MACDE
Dave Weirens, AMC
Don Wodek, Hennepin County
Roger Mussetter, NRCS
Bruce Gerbig, DNR
Ray Bohn, MAWD

STAFF PRESENT:

Ron Harnack, Jim Birkholz, Greg Larson, John Jaschke, Doug Thomas, Jeff Nielsen, Ron Shelito, Jim Haertel, Tom Wenzel, Tim Fredbo, Wayne Zellmer, Al Kean, and Mary Jo Anderson.

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

	NAME	AFFILIATION	PHONE #
1.	Margaret Doorn - landowner	Yell Med	507-872-6775
2.	Emeline Lysenski - land owner	Yell Med	507-2235338
3.	Ed Lefman	Yell Med	507-872-6559
4.	Aston & Vlamnick	Yell med	507 872 6704
5.	Don Wadek	Hennepin SWCD	544-4572
6.	Roger Musselwhite	NRCS	290-3677
7.	Al Kean	BWSR	297-2907
8.	Ron Shelile	BWSR	218 8282604
9.	Jim Birkholz	"	
10.	Matt Getz	Atty Gen. Off.	296-0692
11.	Jim Schafer	MASWCD	833-2083
12.	Jim Haertel	BWSR	297-2906
13.	Scott Nichols	BWSR	297-1893
14.	Tom Schumke	BWSR	7-5616
15.	Jeff Nielsen	BWSR	507-359-6075
16.	Tom Fretbo	BWSR	
17.	Ben Larson	BWSR Staff	
18.	John Janske	BWSR	297-3432
19.	Tom Wenzel	BWSR	6-0887
20.	Rick Reimer	MACDE / Kandl. SWCD	320-235-3906
21.	Bruce Gerbig	DNR - Waters	296-0515
22.	Tom Landwehr	DNR - Wildlife	296-0701
23.	Doug Norris	DNR - Ecol. Services	296-0779
24.	Bill Hartwig	USFWS	725-3563
25.	Jim Jack	"	725-3313
	Barbara Pardo	USFWS	725-3313
	Nick Rowse	USFWS (over)	725-3548

Ray Boh
Dane W erens
Daniel Dobbert
WAYNE ZELLMER

MAWA
AMC
Citizen
BWSR

452-8506
224-3344
699-0773
297-7361

*Barb, these are
Doug's notes as
I was out 1st page*

Chair Cobb called the meeting to order at 9:00 a.m.

Chair Cobb proposed an agenda change -- address the Yellow Medicine Watershed District Boundary Change Petition be moved up on the agenda. Approved.

Adopt Agenda -

Minutes of February 28, 1996 - Wayne Edgerton had a change in the minutes of February 28, 1996. On page three, under DNR Agency Reports, the last sentence should read, "DNR anticipates passage of the proposed trespass law that would add a civil citation to the current criminal process".

Yellow Medicine Watershed District Boundary Change Petition - Chair Cobb called on Doug Thomas. Doug deferred comments to LeRoy Stensgaard. LeRoy thanked the residents for coming in. He mentioned the hearing on April 10. Rosie Nomelant was introduced, she introduced others. Object to change, the 639 study is documentation, it doesn't make much sense, concerned about additional drainage. The Yellow Medicine water plan was mentioned. Discussion on artificial drainage occurring and downstream information. Gaston Vlaminch gave written comments on engineering to Doug Thomas. Presented pictures of drainage activities that they were concerned about. Has evidence of permits and minutes. Permits were denied and work proceeded anyway - what's happening. Kathy Roer asked if the ditch was dug in Yellow Medicine County. Rosie said it was not in. Kathy asked if they were concerned about questionable policies of Yellow Medicine Watershed District if transfers occur. Rose said yes. Ron Harnack stated that there are two issues here -- the boundary change and policies and procedures. Both of the watershed district plans will be up for review and approval. This presents an opportunity to look at administration. Briggs & Imil Properties dug ditch with permit to clean waterway, problems already occurring said Rosie. Work done in creek in recent years without permits. Glenn Annexstad asked what do you mean by artificial pumping plan, Rosie said anything man-made. Dwain Otte asked what are the downsizing projects. Rosie said road retention.

Chair Cobb introduced Gaston Vlaminch. He explained basic hydrology of the area. This is causing man-made floods and is aggravated by ~~any~~ up-stream drainage. LeRoy Stensgaard moved to table this issue for two months. Chair Cobb asked what will be done by Doug Thomas. Doug explained two steps: 1) boundary change; 2) programs and policies. ~~He reminded how managers are approved by county boards.~~

Prairie Pothole Joint Venture Award presented to BWSR by Bill Hartwig, Regional Director of USF&WS. *Commended BWSR for their efforts & partnerships in wetland restoration.*

Reports

Chair's Reports - Chair Cobb reported on wetlands and the sustainable development initiative report to the legislature. BWSR can play a larger role. Will be asking Ron Harnack and/or Doug Thomas to assist, we can support Minnesota Planning's efforts. Chair Cobb reported that the Executive Director's performance review has been completed. Chair Cobb reported on the MASWCD leadership program.

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Dan Larson, represents five northern counties, advocates maintaining conservative language of rules, proceed cautiously with changes.

Chair Cobb adjourned the meeting at 12:40 p.m.

Respectfully submitted,

Barbara Cobb, Chair

CERTIFICATE OF THE BOARD OF WATER AND SOIL RESOURCES

RESOLUTION ADOPTING RULES

I, Barbara Cobb, do hereby certify that I am a member of the Chair of the Board of Water and Soil Resources, a board duly authorized under the laws of the State of Minnesota, and that the following is true, complete, and correct copy of a resolution adopted at a meeting of the Board of Water and Soil Resources, duly and properly called and held on the 25th day of April, 1996, that a quorum was present, and that a majority of those present voted for the resolution which had not been rescinded or modified.

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IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____, 1996.

Barbara Cobb, Chair
Board of Water and Soil Resources

Attest by one other Board Member

Signature of Attesting Board Member

Printed Name of Attesting Board Member

Cobb proposed agenda change -
Yellow Medicine WD Boundary
to ahead & report to
approved.

Wage Bulgester minor change in minutes
??

Bob - called on Doug

Doug deferred to LeRoy
LeRoy thanked Residents for
coming, ~~turned~~ mentioned
hearing on April 10th 7 testified
32 attendees, turned over to
Rose - Introduced others.
referred object to change, 639
study is documentation, doesn't make
much sense, concerned about
additional drainage, mentioned
Y.M. water plan, ~~not~~ discussion
on artificial drainage occurring
and downstream impact, Gustaf
Gravink gave written comments to
Doug Thomas on engineering, Bob
Cobb Presented pictures of
drainage activities that they are
concerned about. Local Has
evidence & permits 1/2 minutes.
Permits were denied and work
proceeded anyway - What's happening.

Kathy Reer - was ditch dig in
Yellow Medicine, Rose not in

(2)

Kathy - are you concerned about questionable policies of Yellow Med District if transfers occur Rose. Yes.

Ron - Two issues boundary change, - and policies and procedures.

Both wd plans will be up for review and approval. Presents an opportunity to look at administration

Rose Briggs & Fair properties
Fair dig ditch w/ permit to clean waterway, problems already occurring.

Work done in creek in recent years w/o permits.

- Baker Annexland - what do you mean by artificial (pumping plant)
- Rose anything man-made

- Dwayne Otte - what are the downsizing projects. Rose road retention.

Barb - introduced Gastin Gaurule.
Explained basic hydrology of area. Co. Rd 3. changed. 6 1/2 feet of dirt. cap. change from 11,000 to 2800 cfs. This is causing man-made floods and is aggravated by any up-stream drainage.

Only 1 foot of fall in a
mile 1,000 " of acres being
affected.

being moved to table.
2 months.

Bob Cobb asked what will be
done. by Day

Day explained two steps

- 1) boundary
- 2) programs & policies.

reminded how mgs are approved
by Cobonles.

Moved to change agenda - Pintail Xanth

USFWS - Recognition

Resumed 10:05 Am

Reports - Bob Chair

- Wetlands -

- Sustainable Development Initiative

Report to legislature

BWSF can play a large role

will be asking Harnack and/or Thomas
to assist. We can support
MPL Planning efforts

- Exec. Dir. Personnel Review

Has been completed

- MANSWD leadership program

(4)

Executive Dir - Report

- WCA - ~~true~~ reflected on outcome
- Emergency Rule Process
- LGU training
- Permanent Rule - Pot ~~to~~ for @ 1 year
see how emergency rule is working and
allow for completion of State Wetland Plan.
- 14.5 million Bonding
Rim & Wetland Restorations & Road Mitigation.
- Area II 250,000 Road Retention

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

**BIG STONE COUNTY COMPREHENSIVE
LOCAL WATER PLAN UPDATE - 1996**

(FOR BOARD ACTION)

The Big Stone County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) on December 18, 1991 and adopted by Big Stone County on January 21, 1992. Big Stone County submitted a Plan Update (Plan Update), required in the Plan, to the BWSR on November 3, 1995, at which time the final ninety day state review process began. The final review period ends February 1, 1996.

A written overview of the Plan Update was prepared by BWSR staff on December 18, 1995 for information and review.

On February 8, 1996 the BWSR Water Plan Review Committee met with BWSR staff and representatives of Big Stone County to review and discuss the Plan Update.

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

The Big Stone County Local Water Plan Update includes the new requirements. It also incorporates new information in the assessments section of the Plan and organizes the implementation section into three initiative areas concentrating on goals, objectives and prioritized actions identified during the public input process. The initiative areas are **Surface Water, Groundwater and Land Resources**. Objectives include protection, management and increased monitoring of surface water and groundwater resources; maximize use of surface water; identify geologically sensitive groundwater areas; continue to identify point and nonpoint pollution sources; improve the solid waste stream; and protection of highly erodible lands and critical areas from wind and water erosion. Major activities to accomplish these objectives include education, technical assistance, incentives and regulation.

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

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

**CHIPPEWA COUNTY COMPREHENSIVE
LOCAL WATER PLAN UPDATE - 1996**

(FOR BOARD ACTION)

The Chippewa County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) on December 18, 1991 and adopted by Chippewa County on December 18, 1991. Chippewa County submitted a Plan Update (Plan Update), required in the Plan, to the BWSR on November 3, 1995, at which time the final ninety day state review process began. The final review period ends February 1, 1996.

A written overview of the Plan Update was prepared by BWSR staff on December 18, 1995 for information and review.

On February 8, 1996 the BWSR Water Plan Review Committee met with BWSR staff and representatives of Chippewa County to review and discuss the Plan Update.

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

The Chippewa County Local Water Plan Update includes the new requirements. It also incorporates new information in the assessments section of the Plan and organizes the implementation section into three initiative areas concentrating on goals, objectives and prioritized actions identified during the public input process. The initiative areas are **Surface Water, Groundwater and Land Resources**. Objectives include protection, management and increased monitoring of surface water and groundwater resources; identify geologically sensitive groundwater areas; continue to identify point and nonpoint pollution sources; maintain a GIS data base; and protection of highly erodible lands and critical areas from wind and water erosion. Major activities to accomplish these objectives include education, technical assistance, incentives and regulation.

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

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

**LAC QUI PARLE COUNTY COMPREHENSIVE
LOCAL WATER PLAN UPDATE - 1996**

(FOR BOARD ACTION)

The Lac qui Parle County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) on December 18, 1991 and adopted by Lac qui Parle County in January 1992. Lac qui Parle County submitted a Plan Update (Plan Update), required in the Plan, to the BWSR on November 3, 1995, at which time the final ninety day state review process began. The final review period ends February 1, 1996.

A written overview of the Plan Update was prepared by BWSR staff on December 18, 1995 for information and review.

On February 8, 1996 the BWSR Water Plan Review Committee met with BWSR staff and representatives of Lac qui Parle County to review and discuss the Plan Update.

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

The Lac qui Parle County Local Water Plan Update includes the new requirements. It also incorporates new information in the assessments section of the Plan and organizes the implementation section into three initiative areas concentrating on goals, objectives and prioritized actions identified during the public input process. The initiative areas are **Surface Water, Groundwater and Land Resources**. Objectives include protection, management and increased monitoring of surface water and groundwater resources; identify geologically sensitive groundwater areas; continue to identify point and nonpoint pollution sources; encourage land use practices that enhance high quality recharge; reduce wind and water erosion; control disposal of solid and hazardous waste; and develop a multi-agency data base. Major activities to accomplish these objectives include education, technical assistance, incentives and regulation.

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

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

**SWIFT COUNTY COMPREHENSIVE
LOCAL WATER PLAN UPDATE - 1996**

(FOR BOARD ACTION)

The Swift County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) on October 23, 1991 and adopted by Swift County on December 3, 1991. Swift County submitted a Plan Update (Plan Update), required in the Plan, to the BWSR on November 21, 1995, at which time the final ninety day state review process began. The final review period ends February 18, 1996.

A written overview of the Plan Update was prepared by BWSR staff on December 18, 1995 for information and review.

On February 8, 1996 the BWSR Water Plan Review Committee met with BWSR staff and representatives of Swift County to review and discuss the Plan Update.

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

The Swift County Local Water Plan Update includes the new requirements. It also incorporates new information in the assessments section of the Plan and organizes the implementation section into three initiative areas concentrating on goals, objectives and prioritized actions identified during the public input process. The initiative areas are **Surface Water, Groundwater and Land Resources**. Objectives include protection, management and increased monitoring of surface water and groundwater resources; identify geologically sensitive groundwater areas; continue to identify point and nonpoint pollution sources; protect groundwater resources from contamination and over pumping; control disposal of solid and hazardous waste; and protect highly erodible land and critical areas from wind and water erosion. Major activities to accomplish these objectives include education, technical assistance, incentives and regulation.

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

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

LAKE OF THE WOODS COUNTY

COMPREHENSIVE LOCAL WATER PLAN

(FOR BOARD ACTION)

The Lake of the Woods County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) on December 16, 1992 and adopted by the Lake of the Woods County on December 31, 1992. Lake of the Woods County submitted a Plan update (Plan Update), required in the Plan, to the BWSR on December 11, 1996, at which time the final ninety-day state review process began. The final review period ended March 9, 1996.

A written overview of the Plan Update was prepared by BWSR staff on February 28, 1996 for information and review.

On March 15, 1996, the BWSR Water Plan Review Committee met with representatives of Lake of the Woods County and BWSR staff to review and discuss the Plan Update.

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

The Lake of the Woods County Water Plan Update includes the new requirements and does a particularly good job of making individual watershed assessments. Due to the varying degree of activities in the individual watersheds, the county developed individual watershed goals. With the use of an issues\watershed prioritization matrix, the county identified the highest priority issues within a watershed as well as identifying the highest priority watershed. The initiatives that surfaced through this process were ones that addressed **Enhancement of Surface water, Groundwater Monitoring, and Data management**. Major objectives include doing inventories of feedlots, on-site sewage treatment systems, abandoned wells and erosion prone areas; a geological

investigation; develop strong GIS capabilities within the county; prepare a wetland management plan; surface and groundwater monitoring activities; and educational activities on water quality issues. The Extension Service, Soil and Water Conservation District, and the Planning and Zoning office will be the major implementors of the plan.

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

Middle Des Moines Watershed District Name Change (FOR DECISION)

On November 15, 1995 the Middle Des Moines Watershed District filed a resolution with the Board requesting to change the legal name of the District to "Heron lake Watershed District". The name change is being requested to help in establishing and identity of the District that is more in keeping with the primary receiving body of water from the district which is Heron Lake. In fact the Des Moines River is not even located within the District. The BWSR filed a legal notice of the proposed change in the legal papers of the District on January 22, 1996. The notice stated that any person objecting to the change could submit a request for hearing. As of March 1, 1996 no requests for hearing were received. Staff recommend approval of the requested name change and will be presenting a Findings of Fact , Conclusion, and Order to Board for its consideration.

Yellow medicine Watershed District Boundary Change Petition (FOR DISCUSSION & ACTION)

On May 3, 1995 the Yellow Medicine Watershed served the BWSR with a boundary change petition received from Orville and Helen Schultz, Norman Township, Yellow Medicine County. The purpose of the boundary change was to remove 120 acres from the Lac Qui Parle - Yellow Bank Watershed District to the Yellow Medicine Watershed District. After review of the proposed boundary change and the 1987 watershed delineations done as part of the SCS/COE 639 Study, BWSR staff noted that there were additional lands in the same area of the Schultz property, that were not located in the correct watershed district. Based on the review of the boundary BWSR staff on May 3, 1995 requested the yellow Medicine Watershed District to undertake a comprehensive approach to the correcting the discrepancy between the legal and hydrologic boundary in Norman and Wergland Townships in Yellow Medicine County.

On February 20, 1996 the Yellow Medicine Watershed District submitted a new boundary change petition to BWSR. This petition requests that 1,560 acres of land be transferred from the Lac Qui Parle-Yellow Bank Watershed District to the yellow Medicine Watershed District and that 240 acres be transferred from the Yellow Medicine Watershed District to the Lac Qui Parle-Yellow Bank Watershed District which. On March 20, 1996 BWSR published notice of a public hearing on this matter to be held on April 10, 1996 in Canby, Minnesota.

The hearing was presided over by LeRoy Stensgaard, and Marv Tripp, BWSR board members, Dave Sill, Darrel Applegrain, and Doug Thomas, BWSR staff, were present to assist with the hearing. 33 individuals signed in at the hearing. 7 individuals signed in to give verbal comments. There were no formal requests to modify the boundary as proposed. Instead landowners expressed concerns over how the Yellow Medicine Watershed District has operated its permit program in the area and that they felt this would be an open license for upstream landowners to push the water down onto them faster than it does now. Based on staff technical report, updated contour mapping from the SCS/COE 639 Study, and testimony at the hearing BWSR staff are recommending board approval of the petitioned boundary change. Staff and the Board members who presided over the hearing will present a Findings of Fact, Conclusion, and Order for discussion and action.

DRAFT

DRAFT 4/96

BOARD OF WATER AND SOIL RESOURCES BYLAWS

ARTICLE I. Introduction

1. Purpose
The Board of Water and soil Resources (BWSR) desires to conduct its business and perform all of its responsibilities and duties in an orderly, efficient, fair and lawful manner. These Bylaws are established for that purpose.
2. Application of Bylaws
Unless otherwise specifically indicated, these Bylaws shall apply to the transaction of all BWSR business and the conduct of all BWSR meetings and hearings.
3. Compliance with Applicable Law
It is the specific intent of the BWSR to perform all of its responsibilities and conduct all of its hearings and meetings in accordance with all applicable federal law and state statutes and regulations.

ARTICLE II Membership, Officers and Duties

1. Membership
The Board of Water and Soil Resources shall be composed of 12 voting members appointed by the Governor according to MN Statute 103B.101 and 4 ~~ex-officio~~ nonvoting members.

(5) ?

Individual members shall not act to represent the Board on any given subject unless specific Board action/position has been determined/ruled and the individual "action" thus represents the Board as a whole.

Members missing three consecutive meetings will be subject to ~~an~~ ~~explanatory~~ review by the Executive Committee.

2. Offices Designated
The officers of the BWSR shall be the Chair and the Vice-Chair. The Chair is appointed by the Governor. The Vice-Chair shall be elected to a two-year term from the regular membership of the BWSR. The Vice-Chair shall be elected by majority vote at the first regularly scheduled meeting of every EVEN calendar year.

The Board shall employ an Executive Director, a salaried officer, who is the administrative and general manager of the BWSR. All additional staff shall report to the Executive Director.

3. Duties of Officers

a) Chair

*** The Chair shall have the following responsibilities:

1. Supervise the affairs of the Board and communicate such affairs to all board members.
2. Preside at all Board meetings.
3. Appoint subcommittees as may be necessary and shall be ex-officio member of all committees.
4. May vote on all issues.
5. May schedule special meetings.

b) Vice Chair

The Vice-Chair shall have the following responsibilities:

1. Perform those duties delegated by the Chair.
2. Act as Chair in the event of the Chair's illness, disability, absence from meeting or not being readily able to function as Chair.

c) Executive Director

The Executive Director shall be responsible to the Board and communicate/report regularly to the Chair. The Executive Director or designee shall attend all Board meetings but shall not vote. The Executive Director shall have the following responsibilities:

1. To see that all resolutions, rules, regulations and orders of the Board are carried out.
2. To present to the Board program plans, studies and reports prepared for Board purposes and action and recommend to the Board for adoption those measures deemed necessary to carry out the programs and duties of the Board or for the efficient administration of the affairs of the Board.
3. To communicate and interact with the Governor's office, state *legislature* agencies and local government special districts and to participate in relevant meetings as well as provide such meeting knowledge to Board.
4. To keep the Board fully advised as to its financial condition and to prepare and submit an annual Board budget.
5. To represent the Board's determined/ruled policy positions only.
6. To record and maintain a record and minutes of the meetings and process and maintain all information relating to Board business.
7. To set the original agenda for the Board, arrange for publication of meeting notices and handle all other administrative affairs.
8. To sign documents as designated by the Board
9. To participate in an annual Personnel Review as directed by the Chair.

- *** d) Executive Committee
The Chair, Vice-Chair and up to three chair-appointed members shall constitute the Executive Committee (Administrative Advisory Comm.) They will act as advisors to the chair only and all actions of the committee shall be subject to ratification by the full Board.
4. Vacancies of Officers
- a) Chair: In the absence of the Chair, the Vice Chair shall preside.
- b) Vice-Chair: If a vacancy occurs in the office of Vice-Chair, the regular members shall elect an individual to fill the remaining term time.
- *** c) Chair, Vice-Chair: If at a Board meeting, neither the Chair nor Vice-Chair are present but a quorum exists, the members shall elect from within the membership an acting Chair to run the meeting.

ARTICLE III Meetings and Hearings

1. Notice
Notices of all meetings and hearings of the BWSR shall be made in a manner in accordance with all statutory notification requirements. Notice shall be posted at the BWSR main office and reasonable effort shall be made to inform BWSR clientele by mail or message. Board meetings will be scheduled according to the current Board policy.
2. Exclusions
Workshops and other meetings whose sole purpose is for general information and/or educational purposes and definitely not for transaction of any public business shall be excluded from these bylaws.

3. Open Meetings and Records
All meetings of the BWSR shall be open to the public. The votes of the members shall be recorded by voice vote or by roll call vote if so called. The minutes shall be available to the public during all normal business hours at the BWSR central office. Minutes of the BWSR Board meetings shall be permanently preserved.

4. Hearing Records
All information submitted to BWSR for hearing purposes becomes the property of the BWSR.

The BWSR shall be required to maintain all records gathered during public hearings. The Executive Director shall not be required to maintain the records for more than three years after the close of a hearing.

5. Quorum *voting*
A majority of the Board is a quorum.

6. Voting
Each voting member shall have one(1) vote in the transaction of business of the Board. In order to vote, the member must be in attendance at the meeting or, in consideration of predetermined vote knowledge, has submitted a vote to the Board chair and recorded in writing the specific issue for which the vote is offered. A vote will be recorded by voice vote unless a roll call vote is requested. A roll call vote may be requested by any member and will always be so recorded when written votes are submitted.

7. Meeting Arrangements
The BWSR shall normally meet the fourth Wednesday of the months so designated by Board policy at 9:00AM until agenda business is complete

A majority of BWSR members shall select a meeting location which shall be convenient and suitable for the members, staff and general public.

8. Order of Business
The following shall be the order of business of BWSR Board meetings:
- a) Approval of agenda
 - b) Approval of minutes of previous meeting
 - c) Chair's, Executive Director's and Committee Reports
 - d) Advisory Member Comments
 - e) Old Business
 - f) New Business
 - g) Board issues and information
 - h) Guest Comments (at the discretion of the Chair)
 - i) Adjournment

9. Parliamentary Procedure
Robert's Rules of Order, Revised, shall govern the conduct of the meeting except when state statute, policies and these bylaws state otherwise.

The Chair shall make all parliamentary rulings. The Executive Director or meeting designee shall serve as the parliamentarian advisor to BWSR

10. Agenda Application

All matters for agenda consideration with pertinent information included shall be submitted to the Executive Director. Placement of agenda items ~~agenda~~ *ON THE* agenda will be at the discretion of the Chair and the Executive Director.

The proposed agenda must have the approval of the Chair.

11. Adoption, Amendments

Adoption

These Bylaws shall become effective immediately after approved by a majority vote of the Board.

Amendments

These Bylaws may be amended by a ^{2/3} majority vote of the members. All proposed amendments shall be presented in writing. The board shall review the proposed changes at least one meeting prior to adoption.

WZ

Ron

STEARNS COUNTY SOIL AND WATER
CONSERVATION DISTRICT

Marketplace of Waite Park
110 2nd Street South, Suite 125
Waite Park, MN 56387
Telephone (612) 251-6718
Fax (612) 251-9171



MINNESOTA
SOIL AND WATER CONSERVATION DISTRICTS

March 20, 1996

James Schafer
President, MASWCD
Route 2, Box 126
Hector, MN 55342

RECEIVED
MAR 22 1996

Dear Mr. Schafer:

I am writing about a statement made at the MASWCD Board of Directors meeting held on February 27, 1996. The statement referred to the increase in general services (refer to page 4 of the minutes):

"Also, some SWCDs budgets are so large that the \$2,505 does not really impact the largest SWCDs on conservation issues. This money could supplement SWCDs with a greater need."

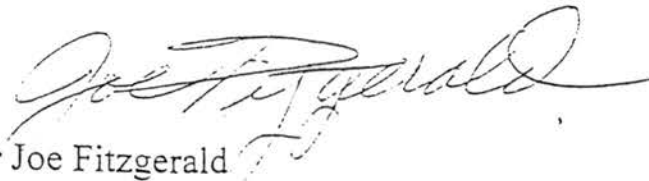
When I read this message, I thought this was a welfare statement. You can sit on your rear pockets and do nothing about your financial circumstance and have the "larger" Districts take care of you. Stearns may be considered one of the "large" SWCDs, but this doesn't mean the State of Minnesota has any less obligation to support us financially as we strive to address soil and water resource needs in our individual District. So-called "large" Districts can also face budget constraints. It took a lot of hard work, energy, and creative planning with our County Commissioners to develop and maintain our budget. We don't have a budget surplus. Our funding needs are as high as any SWCD because of the program we've worked so hard to build.

I really take exception to this way of thinking and the extremely negative connotations associated with it.

In my opinion, state grants should be made in proportion to county allocations, similar to what is being done with the NACD and MASWCD dues structure.

Stearns County SWCD is strongly opposed to any attempt to allocate more state grants to supplement districts with small county participation.

Sincerely,

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

Joe Fitzgerald
Executive Director

cc: D'Wayne DeZiel, MASWCD Executive Director

Ron Harnack, BWSR Executive Director

Barbara Cobb, BWSR, Chair

Vern Wilker, MASWCD Director

Carl Annalora, MASWCD Director

Robert Pigeon, MASWCD Director

Richard Zupp, MASWCD Director

Ray Phelps, MASWCD Director

Owen Knutson, MASWCD Director

Brita Sailer, MASWCD Director

Dorothy Waltz, MASWCD Director



MASWCD

Minnesota Association of Soil and Water Conservation Districts
790 Cleveland Avenue South, Suite 216, St. Paul, MN 55116 612-690-9028

OFFICERS

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Route 2, Box 126
Hector, MN 55342
1-612-833-2083

Vice President
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Secretary-Treasurer
RICHARD ZUFF
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Executive Director
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1-612-690-9028

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IMMEDIATE
PAST PRESIDENT
ALLAN OEHLEKE
Route 2, Box 118
Grand Meadow, MN 55936
1-507-728-2429

AUXILIARY PRESIDENT
MARILYN SCHAFER
Route 2, Box 126
Hector, MN 55342
1-612-833-2083

March 28, 1996

Barbara Cobb, Chair
BWSR
One West Water St.
St. Paul, MN 55107

Dear Barbara,

The MASWCD Board of Directors at their regular meeting on March 18, 1996 reviewed BWSRs proposal to distribute fiscal 1997 General Service Grants. They voted for equal distribution as the only fair distribution of 1997 general service grants. Many districts responded with comments that general service grants should be equally distributed regardless of district budget.

The Board of Directors wishes to thank the Board of Water and Soil Resources for the opportunity to provide their opinion regarding distribution of General Service Grants to Districts.

Sincerely,

James Schaffer
James Schaffer
President

cc: Board of Directors
Greg Larson

March 26, 1996

TO: Water and Soil Resources Board Members

FR: Tim Fredbo, Easement Program Manager 

RE: Acreage Release, Easement 61-41-86-1, Victoria Hegg

Background:

On September 22, 1995 I received a letter from Victoria Hegg requesting release of .2 acres of land from the above referenced easement in Pope County. A copy of her letter is enclosed as Attachment 1. The purpose of the request is to provide an access lane or driveway to the new home she plans on building on the property. Our conservation easement on the site is a 10 year marginal land easement which expires on March 30, 1997. After receiving Ms. Hegg's letter I contacted her and told her how she should proceed with her request as required by RIM statute and rule. I have recently received the information required for your consideration to alter this easement as stipulated in Sec. 8400.3610 of the RIM Rules. The rules require the local SWCD Board and DNR Area Wildlife Manager to consider the landowner's request to alter an easement.

Summary of Information Provided To Support Request:

Ms. Hegg supplied an aerial photo, soils map, and current plat map of the property. The plat map (included as Attachment 2) shows the proposed driveway and house location. Even though Ms. Hegg owns parcel "A", she may want to sell this parcel in the future so she does not want to come across it with a driveway. The proposed driveway comes off the dedicated access lane. All of the cropland in parcel A and B is currently under the RIM easement. The topography on this site is very steep with slopes ranging from 18 to 35 percent according to the soil survey map.

The Pope SWCD considered Ms. Hegg's request at their October 17, 1995 meeting. Her request to release .2 acres from her easement was approved by the SWCD Board. A copy of their meeting minutes is included as Attachment 3.

Kevin Kotts, DNR Area Wildlife Manager, has also provided a letter in support of the proposed .2 acre release. His letter is included as Attachment 4.

Findings:

Pete Waller, Board Conservationist from the Brainerd BWSR office, has inspected this site as a result of Ms. Hegg's request. Pete has assured me that the proposed driveway location, given the current building site and plat layout, is the only viable option due to the steep slopes in the general area where access is possible.

The land surrounding the RIM parcels has not been cropped for quite some time just because it is so steep and not readily farmable. A driveway on these steep slopes would not be practical either.

The Hegg's were paid \$305 per acre for the 10 year easement. If the .2 acres were released it would represent a \$61 loss to the state on an easement which expires in 1997.

Staff Recommendation:

Accept the landowners proposal to release .2 acres from the easement area. Replacing these .2 acres elsewhere on parcel A or B is not an option since no cropland remains.

Attachment 1

RECEIVED
SEP 22 1995

Victoria Hegg
P.O. Box 122
Starbuck, Minnesota 56381
(612) 239-4736 Home
(612) 634-3655 Office

September 20, 1995

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

Re: Request for Alteration, Release, or Termination of R.I.M. Easement
61-41-86-1 Due to Expire May, 1997

Dear Mr. Fredbo:

As soon as the frost is out of the ground in this coming year, 1996, I would like to build a home. The home itself is not going to be built on property set aside in the R.I.M. program, but I will need a driveway, which cuts through a portion of the land in R.I.M.

Therefore, I'm requesting an alternation, release or termination for that portion which will give me access to my future home. I believe the area will be approximately 2/10 of an acre and shown on the enclosed survey.

One of the requirements to alter, release or terminate a portion of the R.I.M. easement, is a letter from the landowner justifying the change for the public good.

Taxes come to mind. Since a homestead is taxed at a higher rate, I will be adding revenue to Pope County by way of property taxes.

On a more personal note, I realize most, if not all of you reading this letter have done all you can to insure there is sufficient land to provide a home to wildlife and protect land from over-use.

I have chosen this homesite for the same reasons. I have no intention of grazing animals or developing any other area other than the immediate homesite.

I have enclosed 2 aerial photos; a soil survey map; the cropping history is noted on the enlarged aerial photo; and a copy of the survey indicating the area needed for the driveway with a rough idea where the R.I.M. easements are located.

Should you need any further information, I can be reached at (612) 634-3655 during the day.

Thank you for your consideration.

Sincerely,
Victoria Hegg

39°59'E
6.30'

Attorney was 2

1315.50'

S 89°52'32"W
1315.50'

3/4" PIPE

1319.90'

N 89°3
1319.5

N 1/4 COR.

NE COR.
SEC. 26

RIM

VICTORIA
Hegg

PARCEL
"A"
22.88 Ac±

PARCEL
"B"
32.16 Ac±

NW 1/4 NW 1/4

NE 1/4 N

NW 1/4

W 1/2 NE 1/4

POINT "A"

DRIVEWAY
NEEDED

HOUSE

Bob Hegg

PARCEL
"C"
28.25 Ac± RIM
6.1

Barry Hegg

PARCEL
"D"
35.42 Ac±

RIM
4.0

S. LINE SW 1/4 NW 1/4
970.70'

S. LINE E 1/2 NE 1/4

E 1/4 COR.

S 89°38'00"W

1321.02'

S 89°07'28"W

1315.39'

1" = 400'

400 800

IRON MONUMENT

IN PIPE WITH CAP STAMPED
"RLS 13145"

S 00°04'58"E

266

25'

MINUTES
POPE SOIL & WATER CONSERVATION DISTRICT
24 FIRST AV SE
GLENWOOD MN 56334
SUPERVISORS' MONTHLY BOARD MEETING
TUESDAY, OCTOBER 17, 1995
7:30 PM

PRESENT

SUPERVISORS

D GARY REENTS, CHAIR
RICK DAVIDSON, TREAS
MARK FREDERICKSON, PR
AUDREY AMUNDSON, SEC
IVER AAL, POPE CO COMM

EMPLOYEES

PETE GILBERTSON, TREE MGN
MIKI SANVIG, DIST COOR
KIM KRUEGER, DIST TECH

ABSENT: Craig Bower, Dist Cons, and Carl Carlson, Vice-Chair

Meeting was called to order by, Amundson, at 7:38 pm.

Motion by, Davidson, seconded by, Frederickson, to approve the agenda, and add items: including the Convention.

Affirmative: Davidson, Amundson, Frederickson

Opposed: none

Motion carried

Motion by, Frederickson, seconded by, Davidson, to approve the minutes as typed and presented.

Affirmative: Davidson, Amundson, Frederickson

Opposed: none

Motion carried

Gary Reents, and Iver Aal came into the meeting at 8:20 pm.

Aaron Buesing, newly hired State Revolving Fund (SRF) engineer, spoke as our guest. Aaron gave his education and employment history. Aaron's most recent employment was with the Army Corp of Engineers. He has been with SRF about 5 1/2 weeks to date. He and the technician are getting settled in and learning the computer program(s). They have been involved in a project with Chippewa County -this is the first project in this program. He spoke on prioritizing projects. Aaron brought to this meeting some additional information, which was photocopied for our files. Aaron said to call him with any additional questions.

Motion by, Davidson, seconded by, Amundson, to approve the bills as presented to the Supervisors.

Affirmative: Reents, Davidson, Amundson, Frederickson

Opposed: none

Motion carried

RC&D report written by Carl Carlson, read by Miki Sanvig.

District Technician report prepared and read by Kim Krueger. Kim also reminded the District Board that we will need a replacement for Wayne Knutson, as Wayne served on the SRF committee; Rick Davidson will think about this position.

NRCS report attached.

R.D. 2012 AA CMC MF

District Coordinator, Miki Sanvig, went over the financial picture, and explained in further detail the unencumbered fund balance, and how important it is that we keep a monthly eye on it. Other reports, cost-share and monthly activities were also reviewed.

Tree program manager, Pete Gilbertson, went over his programs.

~~CRIM Easement #61-41-86-1~~, Vicki Hegg, request to release .2 acres discussion. Ms Hegg wishes to build by this easement, and will need a drive-way. This is a 10 year agreement, and so, it will be over in 1997. Motion by Frederickson, second by Amundson, to approve the initial request of this to the State.

Affirmative: Reents, Davidson, Amundson, Frederickson

Opposed: none

Motion carried

Motion by Amundson, second by Davidson, to approve the following cost-share agreements.

4-96 Greg Stoen, Storm Water Control 638 - 3 units.

\$3791 @ 75% CS = \$2843.25

5-96 Mark Herickhoff, Storm Water Control 638, 1 unit.

\$3376.00 @ 75% CS = \$2532.00

Affirmative: Reents, Davidson, Amundson, Frederickson

Opposed: none

Motion carried

Motion by Davidson, seconded by Amundson, to approve a DNR water permit for the Lake Emily Improvement Association, permit no. 96-1076, Protected water is Lake Emily, in Pope County, hydrologist is Julie Aadland. Kim Krueger's comments were: providing the water level is not increased such that it will cause shoreline erosion, he sees no problem with this application.

Affirmative: Reents, Davidson, Amundson, Frederickson

Opposed: none

Motion carried

Handouts: MASWCD Resolutions, needed back to Miki by Nov 5; letter in support of leaving NRCS as it stands, not having it join with CFSA, and Block grant information.

Miki Sanvig explained to the board their request for information on Pete's position to salary.

With no other business, this meeting was adjourned at 10:30 pm, by Gary Reents, Chair.



STATE OF
MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

PHONE NO.

FILE NO.

1110 N. Lakeshore Drive
Glenwood, MN 56334
February 26, 1996

Mr. Kim Kruger
Pope County SWCF
24 1st Ave. SE
Glenwood, MN 56334

Dear Mr. Kruger;

I am writing to approve the removal of approximately 0.2 acres of land from an existing RIM easement in Pope county. This land is needed for an access road to a building site. This request has been made by Vicki Hegg through your office.

Sincerely,

Kevin Kotts, DNR Area Wildlife Manager

8420.0520, Sub. 8 SEQUENCING FLEXIBILITY; page 57, line 12-15

ⓑ A.2. preservation of a wetland would result in severe degradation of the wetland's ability to function and provide public values (e.g. because of surrounding land uses) and the wetland's ability to function and provide public values cannot reasonably be maintained through other land use controls or mechanisms; or

8420.0120, Subp. 1 (4) AGRICULTURAL EXEMPTION; page 19, line 2-13

(4) a. activities in a type 1 wetland on agricultural land, except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agriculture land;

b. This exemption may be expanded to additional acreage, including types 1, 2, and 6 wetlands that are part of a larger wetland system, when the additional acreage is part of a conservation plan approved by the local soil and water conservation district, the additional draining or filling is necessary for efficient operation of the farm, the hydrology of the larger wetland system is not adversely affected, and wetland other than types 1, 2, and 6 are not drained or filled.

Paragraph (b) of this exemption is subject to the size limits included in paragraph (a).

CERTIFICATE OF THE BOARD OF WATER AND SOIL RESOURCES

RESOLUTION ADOPTING RULES

I, Barbara Cobb, do hereby certify that I am a member and the Chair of the Board of Water and Soil Resources, a board duly authorized under the laws of the State of Minnesota, and that the following is true, complete, and correct copy of a resolution adopted at a meeting of the Board of Water and Soil Resources, duly and properly called and held on the 25th day of April, 1996, that a quorum was present, and that a majority of those present voted for the resolution which had not been rescinded or modified.

“RESOLVED, that the amended rules relating to the Wetland Conservation Act of 1991, in the form set out in Revisor of Statutes draft, file number _____, dated _____, identified as Minnesota Rules, parts 8420.0100 to 8420.1050, are approved and adopted, pursuant to authority vested in the Board of Water and Soil Resources by 1996 Minn. Laws, ch. 462, sec. 39.

“BE IT FURTHER RESOLVED, that Ronald D. Harnack, Executive Director of the Board of Water and Soil Resources, is authorized to sign the Findings of Fact, Conclusions, and Order Adopting Rules and further is authorized to modify the amended rules if necessary to obtain the approval of the amended rules by the revisor of statutes and the office of administrative hearings, and to perform the necessary acts to provide that the amended rules shall have the force and effect of law.”

IN WITNESS WHEREOF, I have hereunto subscribed my name this ____ day of _____, 1996.

Attest by one other Board Member

Barbara Cobb, Chair
Board of Water and Soil Resources

Signature of Attesting Board Member

Printed Name of Attesting Board Member



Minnesota Department of Natural Resources

OFFICE OF THE COMMISSIONER

500 Lafayette Road

St. Paul, Minnesota 55155-4037

April 24, 1996

Ms. Barbara Cobb, Chair
Minnesota Board of Water and Soil Resources
1 W. Water St.
Suite 200
St. Paul, MN 55107

Dear Ms. Cobb:

The Department of Natural Resources would like to recommend the following modifications to the draft emergency rule for implementing the 1996 amendments to the Wetlands Conservation Act.

The first proposed change applies to the rule language for the exemption standards. The statutory language concerning the exemption for Types 1, 2 and 6 wetlands on agricultural land is confusing. If left unclarified, it will certainly result in inconsistent application between local government units. We believe the following language clarifies the intent of the statute.

8420.0120 Exemption Standards

Subd. a.1.(4) activities in a type 1 wetland on agricultural land, except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural land;

This exemption may be expanded to additional acreage, including types 1, 2 or 6 wetlands that are part of a larger wetland system, when the additional acreage is part of a conservation plan approved by the local soil and water conservation district, the additional draining or filling is necessary for efficient operation of the farm, the hydrology of the larger wetland system is not adversely affected and wetlands other than types 1, 2 and 6 are not drained or filled. When applied in this manner, the amount of Type 2 or 6 wetlands drained or filled is limited to 2 acres, consistent with the application of this exemption to isolated basins as indicated above.

DNR Information: 612-296-6157, 1-800-766-6000 • TTY: 612-296-5484, 1-800-657-3929 • FAX: 612-296-4799

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Ms. Barbara Cobb, Chair
Page 2
April 24, 1996

The next changes we would like to propose concern the rule language on "Sequencing Flexibility".

Subp. 8. Sequencing Flexibility

A.2. preservation of a wetland would result in severe degradation of the wetland's ability to function and provide public values (e.g. because of surrounding land uses) and the wetland's ability to function and provide public values cannot reasonably be maintained through other land use controls.

We believe the underlined language above is needed to provide an incentive for local governments to manage the lands surrounding wetlands so as to maintain the integrity of the wetlands. Without this added condition, it would be easy to make the case that nearly every wetland in a developing area will eventually be degraded and that it's justified to eliminate them.

We also recommend that the following language be added to this section:

A.4. The proposed wetland impacts are minor and alternatives are demonstrably cost prohibitive such that the only available alternatives would make the projected cost substantially greater than the costs normally associated with similar projects.

Federal guidance on sequencing flexibility, upon which this rule language is based, states that the level of analysis of alternatives should be "...commensurate with the severity of the environmental impact (as determined by the functions of the aquatic resource and the nature of the proposed activity) and the scope/cost of the project." The modification we propose above would maintain the consistency between state and federal guidance, thereby facilitating the eventual achievement of "one-stop shopping".

We appreciate the Board's consideration of these revisions.

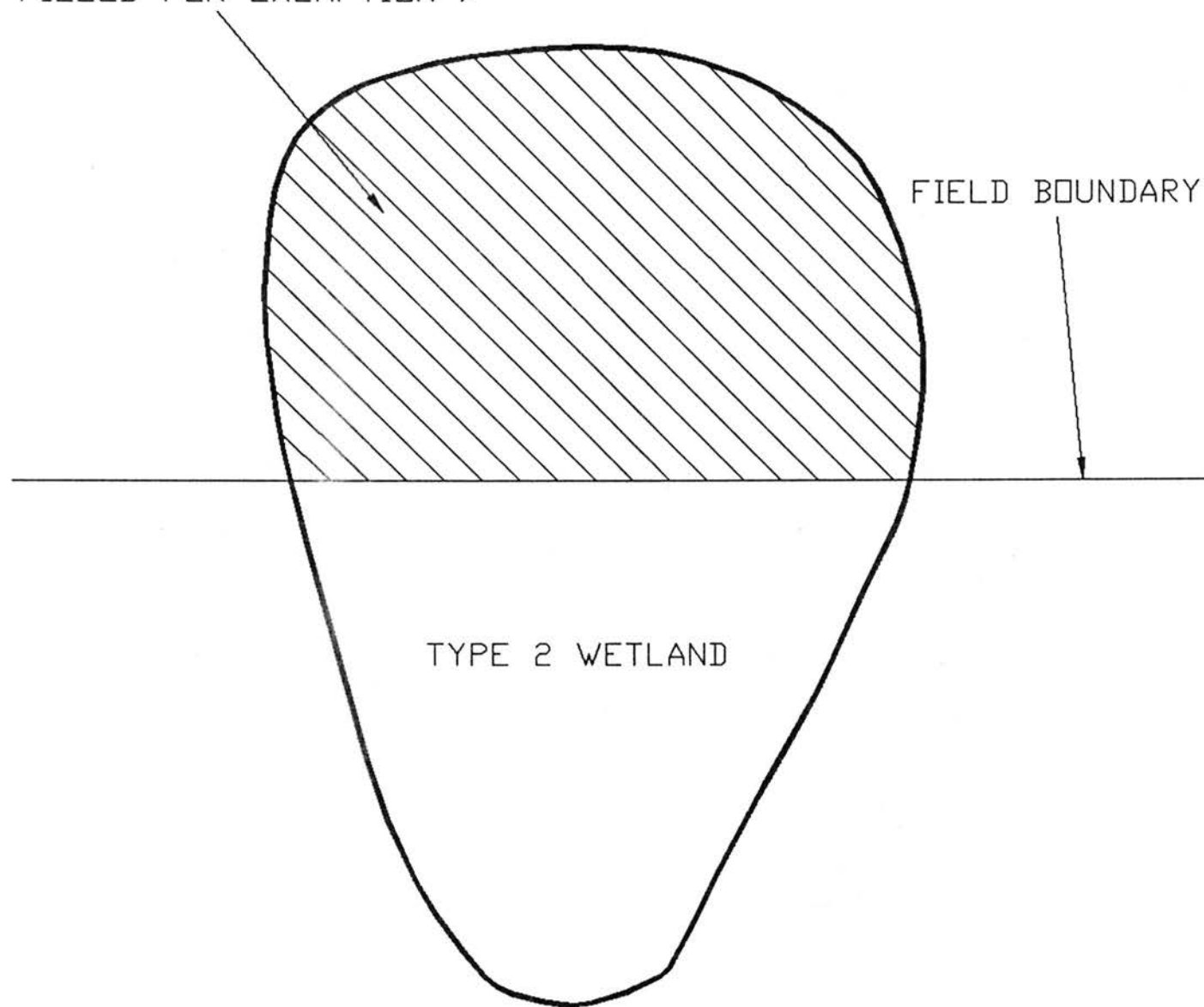
Sincerely,


Rodney W. Sando
Commissioner

c: Ron Harnack

AGRICULTURAL LAND

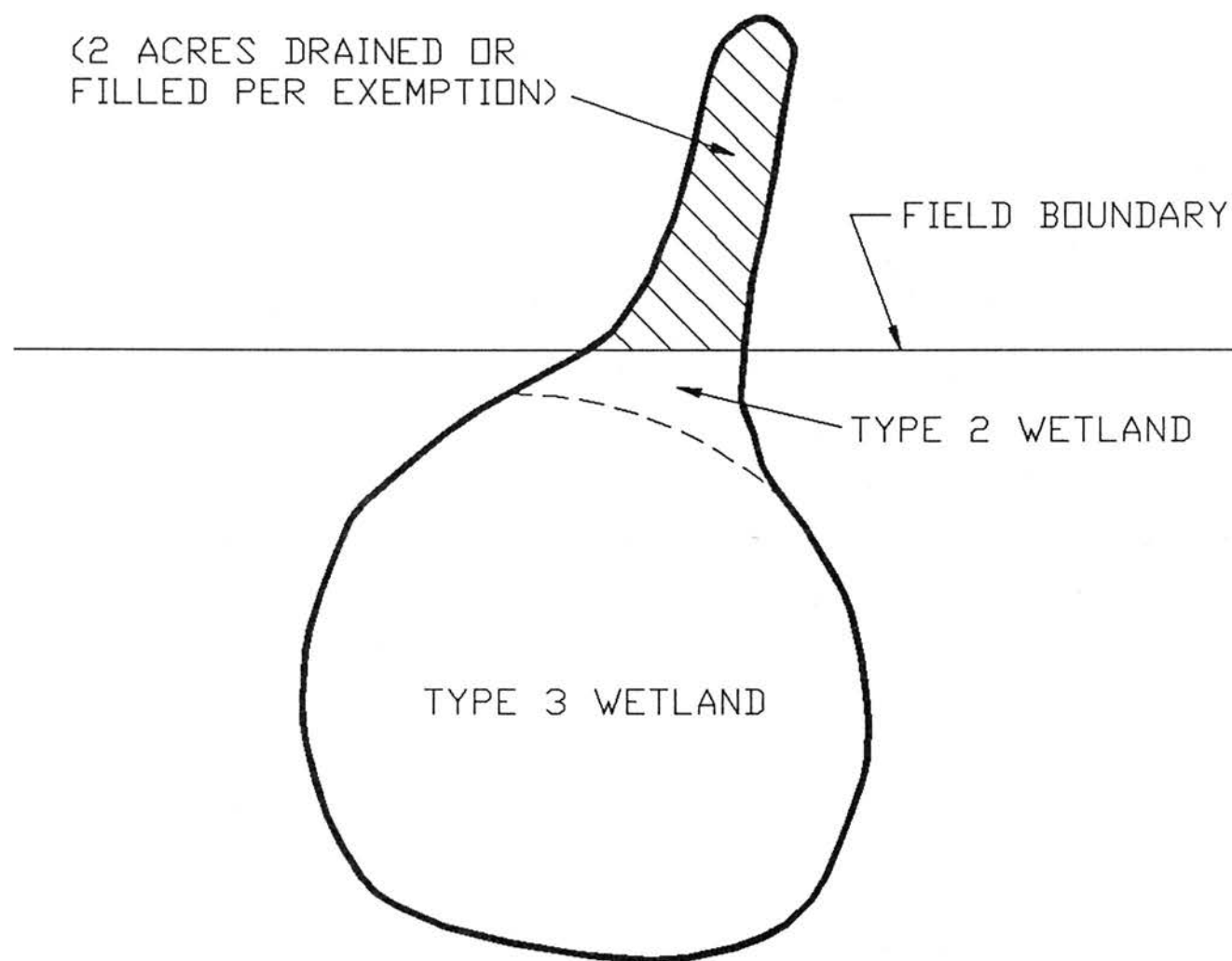
(> 2 ACRES DRAINED OR
FILLED PER EXEMPTION)



INTERPRETATION B

RATIONALE: THERE IS NO LIMIT ON ACREAGE PROVIDED
WETLANDS OTHER THAN TYPES 1,2 OR 6 ARE ^{NOT} IMPACTED
AND THE HYDROLOGY OF THE LARGER BASIN IS NOT
ADVERSELY AFFECTED.

AGRICULTURAL LAND



INTERPRETATION A

RATIONALE: THE 2 ACRE LIMIT APPLIES. THE BENEFIT OF THE EXEMPTION IS THAT LARGER BASINS CAN BE IMPACTED.

1 Board of Water and Soil Resources

2

3 Proposed ^{Emergency}~~Permanent~~ Rules Relating to Wetlands

4

5 Rules as Proposed

6 8420.0100 PURPOSE.

7 This chapter implements the Wetland Conservation Act of
8 1991, Laws of Minnesota 1991, chapter 354, as amended by Laws
9 1993, chapter 175; Laws 1994, chapter 627; and Laws 1996,
10 chapter 462. This chapter shall be interpreted to implement the
11 purpose of the act, which is to:

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

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

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

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

22 8420.0102 INTRODUCTION.

23 The Wetland Conservation Act achieves the purpose in part
24 8420.0100 by requiring persons proposing to impact a wetland by
25 draining or filling to first, attempt to avoid the impact;
26 second, attempt to minimize the impact; and finally, replace any
27 impacted area with another wetland of equal function and value.
28 As specified in greater detail in this part, certain projects
29 with minimal impact to wetlands, prior approved projects, or
30 prior established land uses are exempt from regulation under the
31 Wetland Conservation Act.

32 The Wetland Conservation Act is administered by local
33 government units with oversight provided by the Board of Water
34 and Soil Resources. Enforcement of the act is provided by
35 Department of Natural Resources conservation officers and other

1 peace officers. The Wetland Conservation Act became effective
2 on an interim basis on January 1, 1992, and was fully effective
3 on January 1, 1994. Parts 8420.0100 to 8420.1010 and Minnesota
4 Statutes, sections, govern implementation of the Wetland
5 Conservation Act. The public is encouraged to contact their
6 local government unit or soil and water conservation district
7 for general information on wetlands and the interpretation of
8 parts 8420.0100 to 8420.1010. This part is for general
9 introductory information only. Parts 8420..... to 8420.....
10 and Minnesota Statutes, sections, shall supersede this
11 part.

12 8420.0103 WETLAND FUNCTIONS FOR DETERMINING PUBLIC VALUES.

13 The public values of wetlands must be determined based upon
14 the functions of wetlands for:

15 A. water quality, including filtering of pollutants
16 to surface and groundwater, utilization of nutrients that would
17 otherwise pollute public waters, trapping of sediments,
18 shoreline protection, and utilization of the wetland as a
19 recharge area for groundwater;

20 B. flood water and storm water retention, including
21 the potential for flooding in the watershed, the value of
22 property subject to flooding, and the reduction in potential
23 flooding by the wetland;

24 C. public recreation and education, including hunting
25 and fishing areas, wildlife viewing areas, and nature areas;

26 D. commercial uses, including wild rice and cranberry
27 growing and harvesting and aquaculture;

28 E. fish, wildlife, and native plant habitats;

29 F. low-flow augmentation; and

30 G. other public uses.

31 8420.0105 SCOPE.

32 After July 26, 1993, wetlands must not be drained or filled
33 wholly or partially unless replaced by restoring or creating
34 wetland areas of at least equal public value; ~~except that a~~
35 ~~local government unit may elect to operate under Article 7 of~~

1 ~~the act, Minnesota Statutes, section 103G.2369, after July 1,~~
2 ~~1993, but not beyond December 31, 1993.~~

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

14 This chapter does not apply to the public waters and public
15 waters wetlands as defined in Minnesota Statutes, section
16 103G.005, subdivisions 15 and 18, which have been inventoried by
17 the commissioner of natural resources according to Minnesota
18 Statutes, section 103G.201. This chapter is in addition to
19 other regulations including those of the United States Army
20 Corps of Engineers, United States Department of Agriculture,
21 Minnesota state agencies, watershed districts, and local
22 governments.

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

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

35 In addition to the provisions of this chapter, governmental
36 decisions on draining and filling of wetlands are subject to

1 Minnesota Statutes, chapters 116B and 116D, which provide that
2 an action which is likely to have material adverse effects on
3 natural resources must not be allowed if there is a feasible and
4 prudent alternative consistent with the requirements of the
5 public health, safety, and welfare and the state's paramount
6 concern for the protection of its natural resources. Economic
7 considerations alone do not justify adversely effective actions.

8 8420.0110 DEFINITIONS.

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

11 Subp. 2. Act. "Act," when not used in reference to a
12 specific state or federal act, means the Wetland Conservation
13 Act of 1991, Laws 1991, chapter 354, as amended by Laws 1993,
14 chapter 175; Laws 1994, chapter 627; and Laws 1996, chapter 462.

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

17 Subp. 4. Agricultural land. "Agricultural land," ~~for-use~~
18 ~~in-part-8420-01207-subparts-7-and-87~~ means land devoted-to-the
19 ~~production-of~~ used for horticultural, row, close grown,
20 introduced pasture, introduced and hayland crops~~7-and~~; growing
21 nursery stock~~7~~

22 ~~For-use-in-all-other-places-in-this-chapter7-agricultural~~
23 ~~land-means-land-devoted-to-the-production-of-horticultural7-row7~~
24 ~~close-grown7-introduced-pasture7-and-introduced-hayland-crops7~~
25 ~~and-to-the-pasturing-of-livestock-and-dairy-animals7-growing~~
26 ~~nursery-stock7-and~~ stocks; animal feedlots~~7-and-shall-include~~
27 ~~contiguous-land-and-buildings-under-the-same-ownership~~
28 ~~associated-with-the-production-of-the-above7-for-example7;~~
29 farmyards; associated building sites; and public and private
30 drainage systems and field roads located on any of these lands.

31 Subp. 5. [See repealer.]

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

35 Subp. 7. Best management practices. "Best management

1 practices" means state-approved and published practices
2 associated with draining, filling, or replacing wetlands that
3 are capable of preventing and minimizing degradation of surface
4 water and groundwater.

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

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

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

11 Subp. 10a. Consolidated farm service agency or
12 CFSA. "Consolidated farm service agency" or "CFSA" means an
13 agency of the United States Department of Agriculture.

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

16 Subp. 11a. Credits or wetland credits or wetland banking
17 credits. "Credits" or "wetland credits" or "wetland banking
18 credits" means acres or parts of acres of restored or created
19 wetland by type and topographic setting, or areas as described
20 in part 8420.0540, subpart 2, that have been approved for
21 deposit in the wetland bank.

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

26 Subp. 13. [See repealer.]

27 Subp. 14. Ditch. "Ditch" means an open channel to conduct
28 the flow of water, as defined in Minnesota Statutes, section
29 103E.005, subdivision 8.

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

35 Subp. 16. Drainage system. "Drainage system" means a
36 system of ditch or tile, or both, to drain property, including

1 laterals, improvements, and improvements of outlets.

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

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

20 Subp. 18a. 50 to 80 percent area. "50 to 80 percent area"
21 means a county or watershed with at least 50 percent but less
22 than 80 percent of the presettlement wetland acreage intact.

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

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

32 Subp. 20a. Greater than 80 percent area. "Greater than 80
33 percent area" means a county or watershed where 80 percent or
34 more of the presettlement wetland acreage is intact and:

35 A. ten percent or more of the current total land area
36 is wetland; or

1 B. 50 percent or more of the current total land area
2 is state or federal land.

3 Subp. 20b. Hayland. "Hayland" means an area that was
4 mechanically harvested or that was planted with annually seeded
5 crops in a crop rotation seeded to grasses or legumes in six of
6 the last ten years prior to January 1, 1991.

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

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

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

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

20 Subp. 25. Infrastructure. "Infrastructure" means public
21 water facilities, storm water and sanitary sewer piping,
22 outfalls, inlets, street subbase, roads, and ditches, culverts,
23 bridges, and any other work defined specifically by a local
24 government unit as constituting a capital improvement within the
25 context of an approved development plan.

26 Subp. 26. [See repealer.]

27 Subp. 27. [See repealer.]

28 Subp. 28. Isolated wetland. "Isolated wetland" means a
29 wetland without well defined inlets or outlets, including tile
30 systems, ditches, or natural watercourses.

31 Subp. 29. Landowner. "Landowner" means a person or entity
32 having the rights necessary to drain or fill a wetland, or to
33 establish and maintain a replacement or banked wetland.
34 Typically, the landowner is a fee title owner or a holder of an
35 easement, license, lease, or rental agreement providing the
36 necessary rights. The right must not be limited by a lien or

1 other encumbrance that could override the obligations assumed
2 with the replacement or banking of a wetland.

3 Subp. 29a. Less than 50 percent area. "Less than 50
4 percent area" means a county or watershed with less than 50
5 percent of the presettlement wetland acreage intact or any
6 county or watershed not defined as a greater than 80 percent
7 area or 50 to 80 percent area.

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

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

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

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

19 Subp. 31. Mining. "Mining" means the removal of peat and
20 metallic minerals as provided in Minnesota Statutes, sections
21 93.461 and 93.481.

22 Subp. 31a. Natural resources conservation service.
23 "Natural resources conservation service" means an agency of the
24 United States Department of Agriculture.

25 Subp. 31b. New wetland credit. "New wetland credit" means
26 wetland replacement credit that can be used for any portion of
27 wetland replacement.

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

31 Subp. 33. Pasture. "Pasture" means ~~land-used-for-grazing~~
32 by-domestic-livestock an area that was grazed by domesticated
33 livestock or that was planted with annually seeded crops in a
34 crop rotation seeded to grasses or legumes in six of the last
35 ten years prior to January 1, 1991.

36 Subp. 34. Peace officer. "Peace officer" has the meaning

1 given it in Minnesota Statutes, section 626.84.

2 Subp. 34a. Presettlement wetland. "Presettlement wetland"
3 means a wetland or public waters wetland that existed in this
4 state at the time of statehood in 1858.

5 Subp. 35. Project. "Project" means an-action-or-series-of
6 actions-necessary-to-accomplish-an-ultimate-purpose-and-that
7 will-cause-a-physical-manipulation-of-the-environment,-directly
8 or-indirectly,--Braining-or-filling-of-wetlands-may-be-a
9 component-of-a-project a specific plan, contiguous activity,
10 proposal, or design necessary to accomplish a goal as defined by
11 the local government unit. As used in this chapter, a project
12 may not be split into components or phases for the sole purpose
13 of gaining additional exemptions.

14 Subp. 36. Project-specific. "Project-specific" means the
15 applicant for the replacement plan approval will construct the
16 replacement as part of the project, rather than obtain the
17 replacement from a wetland bank.

18 Subp. 36a. Public drainage system. "Public drainage
19 system" means a drainage system as defined in Minnesota
20 Statutes, section 103E.005, subdivision 12, and any ditch or
21 tile lawfully connected to the drainage system.

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

25 Subp. 37a. Public value credit. "Public value credit"
26 means wetland replacement credit that can only be used for the
27 portion of wetland replacement requiring greater than a 1:1
28 ratio.

29 Subp. 38. Public value of wetlands. "Public value of
30 wetlands" means the public benefit and use of wetlands for-water
31 quality,-floodwater-retention,-public-recreation,-commercial
32 uses,-and-other-public-uses as determined based upon an
33 assessment of the wetland functions listed in part 8420.0102.

34 Subp. 39. Public waters wetlands. "Public waters
35 wetlands" means all types 3, 4, and 5 wetlands, as defined in
36 United States Fish and Wildlife Service Circular No. 39 (1971

1 edition), that were inventoried by the Department of Natural
2 Resources as public waters under Minnesota Statutes, section
3 103G.201.

4 Subp. 40. Replacement wetland. "Replacement wetland"
5 means a wetland restored or created to replace area or public
6 values lost at an impacted wetland.

7 Subp. 41. Restoration. "Restoration" means
8 reestablishment of an area that was historically wetlands but
9 currently provides no or minimal wetland functions due to
10 manmade alteration such as filling or drainage.

11 Subp. 42. Right-of-way acreage. "Right-of-way acreage"
12 has the meaning given it in Minnesota Statutes, section
13 103E.285, subdivision 6.

14 Subp. 43. Riverine wetland. "Riverine wetland" means a
15 wetland contained within the banks of a channel that may contain
16 moving water or that forms a connecting link between two bodies
17 of standing water.

18 Subp. 44. Set aside. "Set aside" means the cropland
19 acreage annually retired as a condition to landowner
20 participation in United States Department of Agriculture
21 commodity programs.

22 Subp. 44a. Shoreland wetland. "Shoreland wetland" means a
23 wetland located in the shoreland wetland protection zone.

24 Subp. 44b. Shoreland wetland protection zone. "Shoreland
25 wetland protection zone" means:

26 A. for local government units that have a shoreland
27 management ordinance approved under Minnesota Statutes, sections
28 103F.201 to 103F.221, the shoreland wetland protection zone is:

29 (1) 1,000 feet from the ordinary high water level
30 of a water basin that is a public water identified in the
31 shoreland management ordinance or the shoreland area approved by
32 the commissioner as provided in the shoreland management rules
33 adopted under Minnesota Statutes, section 103F.211, whichever is
34 less; or

35 (2) 300 feet from the ordinary high water level
36 of a watercourse identified in the shoreland management

1 ordinance or the shoreland area approved by the commissioner as
2 provided in the shoreland management rules adopted under
3 Minnesota Statutes, section 103F.211, whichever is less; and

4 B. for local government units that do not have a
5 shoreland management ordinance approved under Minnesota
6 Statutes, sections 103F.201 to 103F.221, the shoreland wetland
7 protection zone is:

8 (1) 1,000 feet from the ordinary high water level
9 of a water basin that is a public water that is at least ten
10 acres in size within municipalities and at least 25 acres in
11 size in unincorporated areas; or

12 (2) 300 feet from the ordinary high water level
13 of a watercourse identified by the public waters inventory under
14 Minnesota Statutes, section 103G.201.

15 Subp. 45. Silviculture. "Silviculture" means the
16 ~~scientific~~ management of forest trees.

17 Subp. 46. Soil and water conservation district. "Soil and
18 water conservation district" means a legal subdivision of state
19 government under Minnesota Statutes, chapter 103C.

20 Subp. 47. [See repealer.]

21 Subp. 48. Tributary wetland. "Tributary wetland" means a
22 wetland with a well defined outlet, including tile systems,
23 ditches, or natural watercourses, but without a well defined
24 inlet.

25 Subp. 49. Utility. "Utility" means a sanitary sewer,
26 storm sewer, potable water distribution, and transmission,
27 distribution, or furnishing, at wholesale or retail, of natural
28 or manufactured gas, electricity, telephone, or radio service or
29 communications.

30 Subp. 50. Watershed. "Watershed" means the 81 major
31 watershed units delineated by the map "State of Minnesota
32 Watershed Boundaries - 1979" as produced by the Minnesota
33 Department of Natural Resources, Office of Planning and
34 Research, Water Policy Planning Program, with funding from the
35 Legislative Commission on Minnesota Resources.

36 Subp. 51. Watershed management organization. "Watershed

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

9 Subp. 52. Wetlands, a wetland, the wetland, or wetland
10 area.

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

14 For purposes of this subpart, wetlands must:

15 (1) have a predominance of hydric soils;

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

20 (3) under normal circumstances, support a
21 prevalence of hydrophytic vegetation.

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

27 C. Wetlands does not include public waters wetlands
28 and public waters that are designated on the public waters
29 inventory maps prepared under Minnesota Statutes, section
30 103G.201.

31 D. The wetland size is the area within its boundary.
32 The boundary must be determined according to the United States
33 Army Corps of Engineers Wetland Delineation Manual (January
34 1987). The type of the wetland must be determined according to
35 United States Fish and Wildlife Service Circular No. 39 (1971
36 edition). The local government unit may seek the advice of the

1 technical evaluation panel as to the wetland size and type.

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

6 Subp. 54. Wetlands located on agricultural land.
7 "Wetlands located on agricultural land" means a wetland where
8 greater than 50 percent of its boundary abuts agricultural land.

9 Subp. 54a. Wetland type. "Wetland type" means a wetland
10 type classified according to Wetlands of the United States,
11 United States Fish and Wildlife Service Circular 39 (1971
12 edition), as summarized in this subpart.

13 A. "Type 1 wetlands" are seasonally flooded basins or
14 flats in which soil is covered with water or is waterlogged
15 during variable seasonal periods but usually is well-drained
16 during much of the growing season. Type 1 wetlands are located
17 in depressions and in overflow bottomlands along watercourses,
18 and in which vegetation varies greatly according to season and
19 duration of flooding and includes bottomland hardwoods as well
20 as herbaceous growths.

21 B. "Type 2 wetlands" are inland fresh meadows in
22 which soil is usually without standing water during most of the
23 growing season but is waterlogged within at least a few inches
24 of the surface. Vegetation includes grasses, sedges, rushes,
25 and various broad-leaved plants. Meadows may fill shallow
26 basins, sloughs, or farmland sags, or may border shallow marshes
27 on the landward side.

28 C. "Type 3 wetlands" are inland shallow fresh marshes
29 in which soil is usually waterlogged early during a growing
30 season and often covered with as much as six inches or more of
31 water. Vegetation includes grasses, bulrushes, spikerushes, and
32 various other marsh plants such as cattails, arrowheads,
33 pickerelweed, and smartweeds. These marshes may nearly fill
34 shallow lake basins or sloughs, or may border deep marshes on
35 the landward side and are also common as seep areas on irrigated
36 lands.

1 D. "Type 4 wetlands" are inland deep fresh marshes in
2 which soil is usually covered with six inches to three feet or
3 more of water during the growing season. Vegetation includes
4 cattails, reeds, bulrushes, spikerushes, and wild rice. In open
5 areas, pondweeds, naiads, coontail, water milfoils, waterweeds,
6 duckweeds, water lilies, or spatterdocks may occur. These deep
7 marshes may completely fill shallow lake basins, potholes,
8 limestone sinks, and sloughs, or may border open water in such
9 depressions.

10 E. "Type 5 wetlands" are inland open fresh water,
11 shallow ponds, and reservoirs in which water is usually less
12 than ten feet deep and is fringed by a border of emergent
13 vegetation similar to open areas of type 4 wetland.

14 F. "Type 6 wetlands" are shrub swamps in which soil
15 is usually waterlogged during growing season and is often
16 covered with as much as six inches of water. Vegetation
17 includes alders, willows, buttonbush, dogwoods, and swamp
18 privet. This type occurs mostly along sluggish streams and
19 occasionally on floodplains.

20 G. "Type 7 wetlands" are wooded swamps in which soil
21 is waterlogged at least to within a few inches of the surface
22 during growing season and is often covered with as much as one
23 foot of water. This type occurs mostly along sluggish streams,
24 on floodplains, on flat uplands, and in shallow basins. Trees
25 include tamarack, arborvitae, black spruce, balsam, red maple,
26 and black ash. Northern evergreen swamps usually have a thick
27 ground cover of mosses. Deciduous swamps frequently support
28 beds of duckweeds and smartweeds.

29 H. "Type 8 wetlands" are bogs in which soil is
30 usually waterlogged and supports a spongy covering of mosses.
31 This type occurs mostly in shallow basins, on flat uplands, and
32 along sluggish streams. Vegetation is woody or herbaceous or
33 both. Typical plants are heath shrubs, sphagnum moss, and
34 sedges. In the north, leatherleaf, Labrador-tea, cranberries,
35 carex, and cottongrass are often present. Scattered, often
36 stunted, black spruce and tamarack may occur.

1 8420.0112 INCORPORATION BY REFERENCE.

2 This ~~rule~~ part incorporates by reference the following
3 documents:

4 A. Wetlands of the United States (United States Fish
5 and Wildlife Service Circular No. 39, (1971 edition).

6 B. ~~Federal Manual for Identifying and Delineating~~
7 ~~Jurisdictional Wetlands (January 1989)~~ United States Army Corps
8 of Engineers Wetland Delineation Manual (January 1987).

9 C. ~~Cowardin, et al., 1979~~ Classification of Wetlands
10 and Deepwater Habitats of the United States (Cowardin, et al.,
11 1979 edition).

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

15 E. United States Geological Survey Hydrologic Unit
16 Map for Minnesota.

17 F. Minnesota Routine Assessment Methodology for
18 Evaluating Wetland Functions (Draft version - September 1995,
19 Version 1 - May 1996).

20 G. Minnesota Wetland Evaluation Methodology (for the
21 North Central United States) (USACOE, September 1988).

22 H. Wetland Evaluation Technique (USCOE, Version 2.0,
23 1987).

24 I. The Hydrogeomorphic Functional Assessment
25 Methodology (as developed by the USACOE based on Wetlands
26 Research Program Technical Report WRP-DE-3, August 1993).

27 J. Oregon Freshwater Wetland Assessment Methodology
28 (Oregon Division of State Lands, December 1993).

29 K. Method for the Comparative Evaluation of NonTidal
30 Wetlands in New Hampshire (New Hampshire Department of
31 Environmental Services, March 1991).

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

34 M. National Wetland Inventory maps (United States
35 Fish and Wildlife Service).

1 N. Anderson and Craig, 1984, Growing Energy Crops on
2 Minnesota Wetlands: The Land Use Perspective.

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

8 8420.0115 SCOPE OF EXEMPTION STANDARDS.

9 When considering if a drain or fill activity qualifies for
10 an exemption listed in a specified clause of Minnesota Statutes,
11 section 103G.2241, subdivision 1, the exemption standards in
12 part ~~8420.0120~~ 8420.0122 apply.

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

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

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

22 Nonexempt wetlands cannot be partially drained or filled in
23 order to claim an exemption or no-loss determination on the
24 remainder. Therefore, no exemptions or no-loss determinations
25 can be applied to the remaining wetland that would not have been
26 applicable before the impact.

27 Present and future owners of wetlands drained or filled
28 without replacement under an exemption in part ~~8420.0120~~
29 8420.0122, subparts 1, and 2, item B, ~~47-77-07-and-237~~ can
30 make no use of the wetland area after it is drained or filled,
31 other than as agricultural land, for ten years after the
32 draining or filling, unless it is first replaced under the
33 requirements of Minnesota Statutes, section 103G.222, paragraph
34 (g). Also, for ten years the wetland may not be restored for
35 replacement credit. At the time of draining or filling, the

1 landowner shall record a notice of these restrictions in the
2 office of the county recorder for the county in which the
3 project is located. At a minimum, the recorded document must
4 contain the name or names of the landowners, a legal description
5 of the property to which the restrictions apply, a statement of
6 the restrictions, the date on which the ten-year period expires,
7 the name of the local government which certified the exemption,
8 if such occurred, the signatures of all owners, and an
9 acknowledgment.

10 A person conducting an activity in a wetland under an
11 exemption in part ~~8420.0120~~ 8420.0122 shall ensure that:

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

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

16 C. the activity is conducted in compliance with all
17 other applicable federal, state, and local requirements,
18 including best management practices and water resource
19 protection requirements established under Minnesota Statutes,
20 chapter 103H.

21 Persons proposing to conduct an exempt activity are
22 encouraged to contact the local government unit or the local
23 government unit's designee for advice on minimizing wetland
24 impacts.

25 8420.0122 EXEMPTION STANDARDS.

26 Subpart 1. Agricultural activities.

27 A. A replacement plan for wetlands is not required
28 for:

29 (1) activities in a wetland that was planted with
30 annually seeded crops, was in a crop rotation seeding of pasture
31 grass or legumes, or was required to be set aside to receive
32 price support or other payments under United States Code, title
33 7, sections 1421 to 1469, in six of the last ten years prior to
34 January 1, 1991.

35 Documentation, such as aerial photographs, United States

1 Department of Agriculture records, or affidavit of landowner
2 must be required by the local government unit to show and use as
3 evidence for this exemption. Set aside land used for this
4 exemption must be wetland types 1 and 2;

5 (2) activities in a wetland that is or has been
6 enrolled in the federal Conservation Reserve Program under
7 United States Code, title 16, section 3831, that:

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

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

15 Federal documentation that the wetland is or has been
16 enrolled in the federal Conservation Reserve Program may be used
17 as evidence for this exemption. The landowner must also meet
18 the same requirements of subitem (1), except that the years
19 required are at least six of the ten years preceding the year of
20 enrollment in the federal Conservation Reserve Program. The
21 landowner must also state in writing that the wetland was not
22 restored with assistance from a public or private wetland
23 restoration fund, or that the restoration was done under a
24 contract or easement providing the landowner with the right to
25 drain the restored wetland;

26 (3) activities in a wetland that has received a
27 commenced drainage determination provided for by the federal
28 Food Security Act of 1985, that was made to the county CFSA
29 office prior to September 19, 1988, and a ruling and any
30 subsequent appeals or reviews have determined that drainage of
31 the wetland had been commenced prior to December 23, 1985.

32 The landowner must provide United States Department of
33 Agriculture documents confirming that the county CFSA office
34 determined before September 19, 1988, that drainage had begun
35 before December 23, 1985, and that the determination has not
36 been overturned by subsequent appeal or review and is not

1 currently under administrative review;

2 (4) activities in a type 1 wetland on
3 agricultural land, except for bottomland hardwood type 1
4 wetlands, and activities in a type 2 or type 6 wetland that is
5 less than two acres in size and located on agricultural land.

6 This exemption may be expanded to additional acreage,
7 including types 1, 2, and 6 wetlands that are part of a larger
8 wetland system, when the additional acreage is part of a
9 conservation plan approved by the local soil and water
10 conservation district, the additional draining or filling is
11 necessary for efficient operation of the farm, the hydrology of
12 the larger wetland system is not adversely affected, and
13 wetlands other than types 1, 2, and 6 are not drained or filled;

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

21 (6) wild rice production activities, including
22 necessary diking and other activities authorized under a permit
23 issued by the United States Army Corps of Engineers under
24 section 404 of the federal Clean Water Act, United States Code,
25 title 33, section 1344;

26 (7) normal agricultural practices to control
27 noxious or secondary weeds as defined by rule of the
28 commissioner of agriculture, in accordance with applicable
29 requirements under state and federal law, including established
30 best management practices; and

31 (8) agricultural activities in a wetland that is
32 on agricultural land annually enrolled in the federal Food,
33 Agricultural, Conservation, and Trade Act of 1990, United States
34 Code, title 16, section 3821, subsection (a), clauses (1) to
35 (3), as amended, and is subject to sections 1421 to 1424 of the
36 federal act in effect on January 1, 1991, except that land

1 enrolled in a federal farm program is eligible for easement
2 participation for those acres not already compensated under a
3 federal program.

4 The federal Food, Agricultural, Conservation, and Trade Act
5 of 1990 has been replaced with the 1996 federal Agricultural
6 Improvement and Reform Act. This exemption may be applied to
7 agricultural land annually enrolled in the 1996 federal
8 Agricultural Improvement and Reform Act as long as wetlands are
9 not drained or filled beyond what was allowed under the federal
10 Food, Agricultural, Conservation, and Trade Act of 1990, United
11 States Code, title 16, section 3281, subsection (a), clauses (1)
12 to (3), as amended, subject to sections 1421 to 1424 of the act
13 in effect on January 1, 1991.

14 Documentation such as a written statement from the United
15 State Department of Agriculture office that the proposed
16 activity would not result in loss of eligibility for benefits
17 under the 1996 federal Agricultural Improvement and Reform Act
18 program may be used as evidence for this exemption. If the
19 activity would result in loss of eligibility, the landowner
20 cannot qualify for the exemption by withdrawing from the program.

21 Subp. 2. Drainage.

22 A. For the purposes of this subpart, "public drainage
23 system" means a drainage system as defined in Minnesota
24 Statutes, section 103E.005, subdivision 12, and any ditch or
25 tile lawfully connected to the drainage system.

26 B. A replacement plan is not required for draining of
27 type 1 wetlands, or up to five acres of type 2 or type 6
28 wetlands, in an unincorporated area on land that has been
29 assessed drainage benefits for a public drainage system,
30 provided that:

31 (1) during the 20-year period that ended January
32 1, 1992:

33 (a) there was an expenditure made from the
34 drainage system account for the public drainage system;

35 (b) the public drainage system was repaired
36 or maintained as approved by the drainage authority; or

1 (c) no repair or maintenance of the public
2 drainage system was required under Minnesota Statutes, section
3 103E.705, subdivision 1, as determined by the public drainage
4 authority; and

5 (2) the wetlands are not drained for conversion
6 to:

7 (a) platted lots;

8 (b) planned unit, commercial, or industrial
9 developments; or

10 (c) any development with more than one
11 residential unit per 40 acres.

12 If wetlands drained under this item are converted to uses
13 prohibited under this subitem during the ten-year period
14 following drainage, the wetlands must be replaced under
15 Minnesota Statutes, section 103G.222.

16 C. A replacement plan is not required for draining or
17 filling of wetlands, except for draining types 3, 4, and 5
18 wetlands that have been in existence for more than 25 years,
19 resulting from maintenance and repair of existing public
20 drainage systems.

21 D. A replacement plan is not required for draining or
22 filling of wetlands, except for draining wetlands that have been
23 in existence for more than 25 years, resulting from maintenance
24 and repair of existing drainage systems other than public
25 drainage systems.

26 For items C and D, the landowner must provide documentation
27 that the wetlands which will be partially or completely drained
28 by the maintenance have not existed for more than 25 years.
29 Acceptable documentation may include, but is not limited to:
30 aerial photographs, climatological records, soil borings,
31 vegetative analysis, elevation surveys, or sworn affidavits.
32 Otherwise, the landowner must show that the maintenance will not
33 reduce the wetland from what it was 25 years ago or more.

34 E. A replacement plan is not required for draining or
35 filling of wetlands resulting from activities conducted as part
36 of a public drainage system improvement project that received

1 final approval from the drainage authority before July 1, 1991,
2 and after July 1, 1986, if:

- 3 (1) the approval remains valid;
4 (2) the project remains active; and
5 (3) no additional drainage will occur beyond that
6 originally approved.

7 F. The public drainage authority may, as part of the
8 repair, install control structures, realign the ditch, construct
9 dikes along the ditch, or make other modifications as necessary
10 to prevent drainage of the wetland.

11 G. Wetlands of all types that would be drained as a
12 part of a public drainage repair project are eligible for the
13 permanent wetlands preserve under Minnesota Statutes, section
14 103F.516. The board shall give priority to acquisition of
15 easements on types 3, 4, and 5 wetlands that have been in
16 existence for more than 25 years on public drainage systems and
17 other wetlands that have the greatest risk of drainage from a
18 public drainage repair project.

19 Subp. 3. Federal approvals. A replacement plan for
20 wetlands is not required for:

21 A. activities exempted from federal regulation under
22 United States Code, title 33, section 1344(f), as in effect on
23 January 1, 1991.

24 The local government unit may certify the exemption only if
25 the landowner furnishes proof of qualification for one of the
26 exemptions from the United States Army Corps of Engineers.

27 This exemption does not apply to a project with the purpose
28 of converting a wetland to a nonwetland, either immediately or
29 gradually, or converting the wetland to another use, or when the
30 fill will result in significant discernible change to the flow
31 or circulation of water in the wetland, or partly draining it,
32 or reducing the wetland area;

33 B. activities authorized under, and conducted in
34 accordance with, an applicable general permit issued by the
35 United States Army Corps of Engineers under section 404 of the
36 federal Clean Water Act, United States Code, title 33, section

1 1344, except the nationwide permit in Code of Federal
2 Regulations, title 33, section 330.5, paragraph (a), clauses
3 (14), limited to when a new road crosses a wetland, and (26), as
4 in effect on January 1, 1991.

5 This exemption is for the following nationwide permits as
6 they existed on January 1, 1991: 3, 4, 5, 6, 7, 12, 13, 14, 15,
7 16, 17, 20, 21, 22, 23, and 25, issued under Code of Federal
8 Regulations, title 33, section 330.5. The local government unit
9 may certify such an exemption only if the applicant furnishes
10 proof of qualification for one of these nationwide permits from
11 the United States Army Corps of Engineers. Nationwide permit 14
12 for a new road does not qualify for this exemption, nor do
13 nationwide permits under numbers not listed in this exemption.

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

19 Subp. 4. Wetland restoration. A replacement plan for
20 wetlands is not required for activities in a wetland restored
21 for conservation purposes under a contract or easement providing
22 the landowner with the right to drain the restored wetland.

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

27 Subp. 5. Incidental wetlands. A replacement plan for
28 wetlands is not required for activities in a wetland created
29 solely as a result of:

30 A. beaver dam construction;

31 B. blockage of culverts through roadways maintained
32 by a public or private entity;

33 C. actions by public or private entities that were
34 taken for a purpose other than creating the wetland; or

35 D. any combination of items A to C.

36 Wetland areas created by beaver activities may be drained

1 by removing those materials placed by beaver. Drainage is
2 permitted by removing or moving materials blocking installed
3 roadway culverts and drainage structures. Additional excavation
4 or removal of other materials is not permitted unless it can be
5 shown by aerial photographs that the proposed activity will not
6 drain or fill wetland that was there before the beaver dam was
7 built or before the culvert became plugged.

8 Wetlands may be drained or filled if the landowner can show
9 that the wetland was created solely by actions, the purpose of
10 which was not to create the wetland.

11 Impoundments or excavations constructed in nonwetlands
12 solely for the purpose of effluent treatment, storm water
13 retention, soil and water conservation practices, and water
14 quality improvements, and not as part of a compensatory wetland
15 mitigation process that may, over time, take on wetland
16 characteristics, are also exempt.

17 Subp. 6. Utilities; public works. A replacement plan for
18 wetlands is not required for:

19 A. placement, maintenance, repair, enhancement, or
20 replacement of utility or utility-type service if:

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

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

26 B. activities associated with routine maintenance of
27 utility and pipeline rights-of-way, provided the activities do
28 not result in additional intrusion into the wetland;

29 C. alteration of a wetland associated with the
30 operation, maintenance, or repair of an interstate pipeline
31 within all existing or acquired interstate pipeline
32 rights-of-way;

33 D. emergency repair and normal maintenance and repair
34 of existing public works, provided the activity does not result
35 in additional intrusion of the public works into the wetland and
36 does not result in the draining or filling, wholly or partially,

1 of a wetland;

2 E. normal maintenance and minor repair of structures
3 causing no additional intrusion of an existing structure into
4 the wetland, and maintenance and repair of private crossings
5 that do not result in the draining or filling, wholly or
6 partially, of a wetland; or

7 F. repair and updating of existing individual sewage
8 treatment systems as necessary to comply with local, state, and
9 federal regulations.

10 For new placement and enhancement of existing facilities,
11 the utility must demonstrate that the character and extent of
12 the impacts of the proposed project on the wetlands have been
13 minimized.

14 For maintenance, repair, and replacement, the local
15 government unit may issue a seasonal or annual exemption
16 certification or the utility may proceed without local
17 government unit certification if it is carrying out the work
18 according to best management practices. Work of an emergency
19 nature may proceed as necessary and any drain or fill activities
20 shall be addressed with the local government unit after the
21 emergency work has been completed.

22 Subp. 7. Forestry. A replacement plan for wetlands is not
23 required for:

24 A. temporarily crossing or entering a wetland to
25 perform silvicultural activities, including timber harvest as
26 part of a forest management activity, so long as the activity
27 limits the impact on the hydrologic and biologic characteristics
28 of the wetland; the activity does not result in the construction
29 of dikes, drainage ditches, tile lines, or buildings; and the
30 timber harvesting and other silvicultural practices do not
31 result in the drainage of the wetland or public waters; or

32 B. permanent access for forest roads across wetlands
33 so long as the activity limits the impact on the hydrologic and
34 biologic characteristics of the wetland; the construction
35 activities do not result in the access becoming a dike, drainage
36 ditch, or tile line; filling is avoided wherever possible; and

1 there is no drainage of the wetland or public waters.

2 This exemption is for roads constructed for the primary
3 purpose of providing access for the conduct of silvicultural
4 activities.

5 Subp. 8. Approved development. A replacement plan for
6 wetlands is not required for development projects and ditch
7 improvement projects in the state that have received preliminary
8 or final plat approval or have infrastructure that has been
9 installed or has local site plan approval, conditional use
10 permits, or similar official approval by a governing body or
11 government agency, within five years before July 1, 1991. As
12 used in this subpart, "infrastructure" means public water
13 facilities, storm water and sanitary sewer piping, outfalls,
14 inlets, culverts, bridges, and any other work defined
15 specifically by a local government unit as constituting a
16 capital improvement to a parcel within the context of an
17 approved development plan.

18 Subdividers who obtained preliminary plat approval in the
19 specified time period, and other project developers with one of
20 the listed approvals timely obtained, provided approval has not
21 expired and the project remains active, may drain and fill
22 wetlands, to the extent documented by the approval, without
23 replacement. Those elements of the project that can be carried
24 out without changing the approved plan and without draining or
25 filling must be done in that manner. If wetlands can be avoided
26 within the terms of the approved plan, they must be avoided.

27 For county, joint county, and watershed district ditch
28 projects, this exemption applies to projects that received final
29 approval in the specified time period.

30 Subp. 9. De minimis.

31 A. Except as provided in items B to D, a replacement
32 plan for wetlands is not required for draining or filling the
33 following amounts of wetlands as part of a project, regardless
34 of the total amount of wetlands filled as part of a project:

35 (1) 10,000 square feet of type 1, 2, 6, or 7
36 wetland, excluding white cedar and tamarack wetlands, outside of

1 the shoreland wetland protection zone in a greater than 80
2 percent area;

3 (2) 5,000 square feet of type 1, 2, 6, or 7
4 wetland, excluding white cedar and tamarack wetlands, outside of
5 the shoreland wetland protection zone in a 50 to 80 percent
6 area;

7 (3) 2,000 square feet of type 1, 2, or 6 wetland,
8 outside of the shoreland wetland protection zone in a less than
9 50 percent area;

10 (4) 400 square feet of wetland types not listed
11 in subitems (1) to (3) outside of shoreland wetland protection
12 zones in all counties; or

13 (5) 400 square feet of type 1, 2, 3, 4, 5, 6, 7,
14 or 8 wetland, in the shoreland wetland protection zone, except
15 that in a greater than 80 percent area, the local government
16 unit may increase the de minimis amount up to 1,000 square feet
17 in the shoreland protection zone in areas beyond the building
18 setback if the wetland is isolated and is determined to have no
19 direct surficial connection to the public water. To the extent
20 that a local shoreland management ordinance is more restrictive
21 than this subpart, the local shoreland ordinance applies.

22 B. The mounts listed in item A may not be combined on
23 a project.

24 C. This exemption no longer applies to a landowner's
25 portion of a wetland when the cumulative area of the landowner's
26 portion drained or filled since January 1, 1992, is the greater
27 of:

28 (1) the applicable area listed in item A, if the
29 landowner owns the entire wetland;

30 (2) five percent of the landowner's portion of
31 the wetland; or

32 (3) 400 square feet.

33 D. Persons proposing to conduct an activity under
34 this subpart shall contact the board at a toll-free telephone
35 number to be provided for information on minimizing wetland
36 impacts. Failure of the person to call does not constitute a

1 violation of this subpart.

2 E. This exemption may not be combined with another
3 exemption on a project in this part.

4 See Figure ... for examples of the de minimis amount
5 determination.

6 Subp. 10. Wildlife habitat. A replacement plan for
7 wetlands is not required for:

8 A. deposition of spoil resulting from excavation
9 within a wetland for a wildlife habitat improvement project, if:
10 (1) the area of deposition does not exceed five
11 percent of the wetland area or one-half acre, whichever is less,
12 and the spoil is stabilized and permanently seeded to prevent
13 erosion;

14 (2) the project does not have an adverse impact
15 on any species designated as endangered or threatened under
16 state or federal law; and

17 (3) the project will provide wildlife habitat
18 improvement as certified by the soil and water conservation
19 district; or

20 B. duck blinds.

21 PROCEDURES

22 8420.0200 DETERMINING LOCAL GOVERNMENT UNIT.

23 The local government unit responsible for making exemption
24 and no-loss determinations and approving replacement plans shall
25 be determined according to items A to C.

26 A. Outside the seven-county metropolitan area, the
27 local government unit is the county or city in which the drain
28 or fill activity is located, or its delegate.

29 B. In the seven-county metropolitan area, the local
30 government unit is the city, town, or water management
31 organization regulating surface-water-related matters in the
32 area in which the drain or fill activity is located, or its
33 delegate. The watershed management plan adopted under Minnesota
34 Statutes, section 103B.231, and related board rules will
35 normally indicate the appropriate local government unit.

1 Lacking an indication, the local government unit must be the
2 city, town, or its delegate.

3 C. If the activity in a wetland is located in two
4 jurisdictions, the local government unit shall be the one
5 exercising zoning authority over the project or if both have
6 zoning authority, the one in which most of the wetland loss will
7 occur. If no zoning permits are required, the local government
8 unit shall be the one in which most of the wetland loss will
9 occur. If an activity will affect wetlands in more than one
10 local government unit, the board will coordinate the project
11 review to ensure consistency and consensus among the local
12 government units involved.

13 The board will resolve all questions as to which government
14 entity is the responsible authority, applying the guidelines in
15 items A to C.

16 Notwithstanding items A to C, the Department of Natural
17 Resources shall be the approving authority for activities
18 associated with projects requiring permits to mine under
19 Minnesota Statutes, section 93.481.

20 8420.0210 EXEMPTION DETERMINATIONS.

21 A landowner intending to drain or fill a wetland without
22 replacement, claiming exemption under part ~~8420.0120~~ 8420.0122,
23 may contact the local government unit before beginning draining
24 or filling activities for determination whether or not the
25 activity is exempt. A landowner who does not request a
26 determination may be subject to the enforcement provisions in
27 part 8420.0290 and Minnesota Statutes, section 103G.2372. The
28 local government unit must keep on file all documentation and
29 findings of fact concerning exemption determinations for a
30 period of ten years.

31 Local government units may offer exemption certificates as
32 part of the wetland program within their jurisdiction. An
33 exemption applies whether or not the local government unit
34 chooses to issue certificates of exemption. If the wetland
35 qualifies for an exemption, and the landowner requests a

1 certificate of exemption, then the local government unit must
2 issue one.

3 The landowner applying for exemption is responsible for
4 submitting the proof necessary to show qualification for the
5 particular exemption claimed.

6 The local government unit may place the decision authority
7 for exemption applications with the zoning administrator, or
8 establish other procedures it considers appropriate.

9 The local government unit decision shall be based on the
10 exemptions standards in part ~~8420.0120~~ 8420.0122. If the
11 decision requires a finding of wetland size or type, the local
12 government unit should seek the advice of the technical panel as
13 described in part 8420.0240. The local government unit decision
14 must be made in compliance with Minnesota Statutes, section
15 15.99, (see Appendix A), which generally requires a decision to
16 be made within 60 days of receipt of a complete application.
17 The local government unit decision must be mailed to the
18 landowner within ten days of the decision.

19 ~~A-landowner-draining-or-filling-a-wetland-under-an~~
20 ~~exemption-shall-ensure-that-appropriate-erosion-control-measures~~
21 ~~are-taken-to-prevent-sedimentation-of-the-water-the-drain-or~~
22 ~~fill-does-not-block-fish-passage-and-the-drain-or-fill-is~~
23 ~~conducted-in-compliance-with-all-other-applicable-federal~~
24 ~~state-and-local-requirements-including-best-management~~
25 ~~practices-and-water-resource-protection-requirements-established~~
26 ~~under-Minnesota-Statutes-chapter-103H-~~

27 8420.0220 NO-LOSS DETERMINATIONS.

28 A landowner unsure if proposed work will result in a loss
29 of wetland may apply to the local government unit for a
30 determination. A landowner who does not request a determination
31 may be subject to the enforcement provisions in part 8420.0290
32 and Minnesota Statutes, section 103G.2372. The local government
33 unit must keep on file all documentation and findings of fact
34 concerning no-loss determinations for a period of ten years.

35 The landowner applying for a no-loss determination is

1 responsible for submitting the proof necessary to show
2 qualification for the claim.

3 The local government unit may place the decision authority
4 for no-loss applications with the zoning administrator, or
5 establish other procedures it considers appropriate. The local
6 government unit decision must be made in compliance with
7 Minnesota Statutes, section 15.99, (see Appendix A), which
8 generally requires a decision to be made within 60 days of
9 receipt of a complete application. The local government unit
10 decision must be mailed to the landowner within ten days of the
11 decision.

12 The local government unit shall issue a no-loss certificate
13 if the landowner requests and if either:

14 A. the work will not drain or fill a wetland;

15 B. water level management activities will not result
16 in the conversion of a wetland to another land use;

17 C. the activities are in a surface impoundment for
18 containment of fossil fuel combustion waste or water retention,
19 and are not part of a compensatory wetland mitigation program;
20 or

21 D. the activity is being conducted as part of an
22 approved replacement or banking plan or is conducted or
23 authorized by public agencies for the purpose of wetland
24 restoration and the activity is restricted to placing fill in a
25 previously excavated drainage system to restore a wetland to its
26 original condition.

27 8420.0230 REPLACEMENT PLAN DETERMINATIONS.

28 Subpart 1. Notice of application. A landowner intending
29 to drain or fill a wetland who does not qualify for an exemption
30 or no-loss determination shall obtain approval of a replacement
31 plan from the local government unit before beginning draining or
32 filling. A person who does not do so is subject to the
33 enforcement provisions in this chapter and Minnesota Statutes,
34 section 103G.2372.

35 ~~The local government unit may use its usual notice and~~

1 ~~comment-procedures-on-the-application-for-approval-of-a~~
2 ~~replacement-plan-if;~~ Within ten days of receipt of an
3 application for an activity affecting less than 10,000 square
4 feet of wetland, the local government unit must mail a summary
5 of the application, which includes information to identify the
6 applicant and the location and scope of the project, to members
7 of the technical evaluation panel, the commissioner of natural
8 resources, and individual members of the public who have
9 requested a copy. The project notification must state when the
10 comment period ends.

11 Within ten days of receipt of the an application for
12 approval of a replacement plan for an activity affecting 10,000
13 square feet or more of wetland, the local government unit mails
14 must mail a copy of the application and an invitation to submit
15 comments to the-board;-which-will-publish-it-in-the
16 Environmental-Quality-Board-Monitor; members of the technical
17 evaluation panel; members of the public who have requested a
18 copy; the-soil-and-water-conservation-district; the watershed
19 district or water management organization, if there is one; the
20 county-board;-mayors-of-cities-within-the-watershed;-and the
21 commissioners commissioner of agriculture-and natural
22 resources and, for individual members of the public who request
23 a copy, a summary of the application which includes information
24 to identify the applicant and the location and scope of the
25 project. The project notification must state when the comment
26 period ends. At-the-same-time;-the-local-government-unit-shall
27 publish-notice-of-the-application-with-an-invitation-for-comment
28 in-a-general-circulation-newspaper-in-the-area-affected;

29 The-local-government-unit-shall-not-make-its-decision
30 before-30-days-and-not-more-than-60-days-have-elapsed-from-the
31 mailing-of-notice;-publication-in-the-Environmental-Quality
32 Board-Monitor;-when-required;-or-publication-in-the-newspaper;
33 whichever-is-later;-The-local-government-unit-decision-shall
34 not-be-effective-until-30-days-after-a-copy-of-the-decision-has
35 been-mailed-to-the-Environmental-Quality-Board-Monitor-for
36 publication;-when-required;-and-mailed-to-the-same-list

1 specified-above-for-notice-of-the-application-and-to-the
2 applicant---The-mailing-to-the-applicant-shall-be-by-registered
3 mail-and-must-advise-that-the-decision-is-not-effective-for-30
4 days-and-is-stayed-if-it-is-appealed-

5 Publication-in-the-Environmental-Quality-Board-Monitor-of
6 replacement-plan-applications-and-decisions-is-required-except
7 for-the-fill-activities-described-in-the-next-paragraph-when
8 the-local-government-unit-publishes-a-general-notice-in-the
9 Environmental-Quality-Board-Monitor-that-it-will-not-be
10 publishing-notice-of-such-individual-activities-but-will
11 instead-provide-mailed-notice-of-each-project-to-anyone-asking
12 to-be-put-on-the-local-government-unit's-mailing-list-for-such
13 projects---This-notice-must-be-published-not-less-often-than
14 once-every-year---The-notice-must-advise-how-persons-may-submit
15 their-names-and-addresses-to-be-put-on-the-mailing-list-

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

23 An application for approval of a replacement plan includes
24 a revised application for replacement plan approval and an
25 application for a revision to an approved replacement plan if:

26 (1) the wetland area to be drained or filled
27 under the revised replacement plan is at least ten percent
28 larger than the area to be drained or filled under the original
29 replacement plan; or

30 (2) the wetland area to be drained or filled
31 under the revised replacement plan is located more than 500 feet
32 from the area to be drained or filled under the original
33 replacement plan.

34 Subp. 2. Notice of decision. The local government unit
35 decision shall be based on the replacement standards in parts
36 8420.0500 to 8420.0630, and on the technical-determination-of

1 the technical evaluation panel's determination, if there
2 is one, concerning the wetland function and resulting public
3 values, location, size, and type of the wetland being altered.
4 The local government unit ~~shall consider the recommendation of~~
5 ~~the technical evaluation panel to approve, modify, or reject the~~
6 ~~proposed replacement plan~~ decision must be made in compliance
7 with Minnesota Statutes, section 15.99, (see Appendix A), which
8 generally requires a decision to be made within 60 days of
9 receipt of a complete application. The local government unit
10 shall consider and include the technical evaluation panel's
11 recommendation, if there is one, to approve, modify, or reject
12 the proposed replacement plan. The local government unit
13 decision must be mailed to the landowner within ten days of the
14 decision. A summary of the government unit decision must be
15 mailed within ten days of the decision to those required to
16 receive notice of the application.

17 For wetland replacement plans involving more than one local
18 government unit, approval of all local government units involved
19 or as specified in part 8420.0200 shall constitute final
20 approval of the replacement plan and is required before the
21 project may proceed. The local government unit with
22 jurisdiction for the impact site must approve all components of
23 the replacement plan, following the procedures in parts
24 8420.0500 to 8420.0630. The local government unit with
25 jurisdiction for the replacement site shall limit the review to
26 evaluation of the replacement site as in parts 8420.0540 to
27 8420.0630 and make a decision accordingly.

28 As part of the approval of the replacement plan, the local
29 government unit with jurisdiction for the replacement site
30 assumes responsibility for ensuring compliance with monitoring
31 provisions according to parts 8420.0600 to 8420.0630. The local
32 government unit with jurisdiction for the replacement site may
33 enter into joint powers agreements with a local government unit
34 with jurisdiction for the impact site, assess fees, or develop
35 other procedures considered necessary to facilitate the process.

1 8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.

2 For each local government unit, there is a technical
3 evaluation panel of three persons: a technical professional
4 employee of the board, a technical professional employee of the
5 soil and water conservation district of the county in which the
6 activity is occurring, and a technical professional with
7 expertise in water resources management appointed by the local
8 government unit. One member selected by the local government
9 unit shall act as the contact person and coordinator for the
10 panel. Two members of the panel must be knowledgeable and
11 trained in applying methodologies of the ~~"Federal Manual for~~
12 ~~Identifying and Delineating Jurisdictional Wetlands"~~ (January
13 1989) "United States Army Corps of Engineers Wetland Delineation
14 Manual" (January 1987), "Wetlands of the United States" (United
15 States Fish and Wildlife Service Circular 39, 1971 edition), and
16 "Classification of Wetlands and Deepwater Habitats of the United
17 States" (Cowardin, et al., 1979 edition), and evaluation
18 of wetland functions and the resulting public values. The
19 technical evaluation panel may invite additional wetland experts
20 to help the panel in its work.

21 The panel shall make technical determinations on questions
22 of wetland functions and the resulting public values, location,
23 size, and type for replacement plans, and exemption/no-loss
24 requests, avoidance/minimization requests, and for comprehensive
25 wetland protection and management plans if requested to do so by
26 the local government unit, the landowner, or a member of the
27 technical evaluation panel. The panel may review replacement
28 plans and recommend to the local government unit either
29 approval, approval with changes or conditions, or rejection.
30 The panel shall make no determinations or recommendations
31 without at least one member having made an on-site inspection.
32 Panel determinations and recommendations must be endorsed by at
33 least two of the three members.

34 If the local government unit has a comprehensive wetland
35 protection and management plan that delineates location, size,
36 and type for all wetlands, approved by the technical evaluation

1 panel, and subsequently incorporated into local ordinance, then
2 the local government unit can make determinations in place of
3 the technical evaluation panel.

4 The panel, or one of its members when so authorized by all
5 of the members, may assist the local government unit in making
6 wetland size and type determinations when asked to do so by the
7 local government unit as part of making an exemption or no-loss
8 determination.

9 If requested by the local government unit, the landowner,
10 or a member of the technical evaluation panel, the panel shall
11 answer technical questions or participate in the monitoring of
12 replacement wetlands according to parts 8420.0600 to 8420.0630,
13 and shall similarly participate in the monitoring of banked
14 wetlands according to parts 8420.0700 to 8420.0760.

15 8420.0250 APPEAL OR PETITION OF LOCAL GOVERNMENT UNIT DECISIONS.

16 Subpart 1. Appeal of replacement plan, banking plan,
17 exemption, and no-loss decisions. The decision of a local
18 government unit to approve, approve with conditions, or reject a
19 replacement plan, exemption, or no-loss request becomes final if
20 not appealed to the board within ~~30~~ 15 days after the date on
21 which the decision is mailed to those required to receive notice
22 of the decision.

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

26 Appeal is effective upon mailing of the ~~notice-of-appeal~~
27 petition and payment of a nonrefundable filing fee of \$200 to
28 the board with an-affidavit evidence that a copy of the ~~notice~~
29 ~~of-appeal~~ petition has been mailed to the local government
30 unit. Subsequent to receipt of a petition, the local government
31 unit may require the petitioner to post a letter of credit,
32 cashier's check, or cash in an amount not to exceed \$500 per
33 appeal. The amount posted must be returned to the petitioner
34 unless there is a finding under subpart 3 that the appeal is
35 meritless, trivial, or brought solely for the purposes of

1 delay. The local government unit shall then mail a copy of
2 ~~the notice-of-the-appeal~~ petition to all those to whom it was
3 required by part 8420.0230 to mail a copy of the notice of
4 decision.

5 Subp. 2. [See repealer.]

6 Subp. 3. Board appeal procedures. Within 30 days after
7 receiving the petition, the board or its dispute resolution
8 committee or executive director shall decide whether to grant
9 the petition and hear the appeal. The board or its dispute
10 resolution committee or executive director shall grant the
11 petition unless the appeal is deemed meritless, trivial, or
12 brought solely for the purposes of delay; that the petitioner
13 has not exhausted all local administrative remedies; or that the
14 petitioner has not posted a letter of credit, cashier's check,
15 or cash if required by the local government unit.

16 The appeal will be heard by the dispute resolution
17 committee and decided by the board within 60 days
18 ~~after receiving-the-notice-of-appeal-and-affidavit-or~~ granting
19 the petition. Parties to the appeal are the appellant, the
20 local government unit, and in the case of replacement plan
21 appeals, all those required to receive notice of the local
22 government unit decision.

23 Upon appeal, the local government unit shall forward to the
24 board the record on which it based its decision. The board will
25 make its decision on the appeal after hearing. Thirty days'
26 notice of the hearing shall be given by the board to the
27 parties. The parties may present written and oral argument.
28 When the local government unit has made formal findings
29 contemporaneously with its decision and there is an accurate
30 verbatim transcript of the proceedings and the proceedings were
31 fairly conducted, the board will base its review on the record.
32 Otherwise it may take additional evidence, or remand the matter.

33 The board will affirm the local government unit's decision
34 if the local government unit's findings of fact are not clearly
35 erroneous; if the local government unit correctly applied the
36 law to the facts, including this chapter; and if the local

1 government unit made no procedural errors prejudicial to a
2 party. Otherwise, the board will reverse the decision, amend
3 it, or remand it with instructions for further proceedings.

4 Subp. 4. County or watershed reclassification.

5 A. A local government unit may request the board to
6 reclassify a county or watershed on the basis of its percentage
7 of presettlement wetlands remaining. After receipt of
8 satisfactory documentation from the local government, the board
9 shall change the classification of a county or watershed. If
10 requested by the local government unit, the board must assist in
11 developing the documentation. Within 30 days of its action to
12 approve a change of wetland classifications, the board shall
13 publish a notice of the change in the Environmental Quality
14 Board Monitor.

15 B. One hundred citizens who reside within the
16 jurisdiction of the local government unit may request the local
17 government unit to reclassify a county or watershed on the basis
18 of its percentage of presettlement wetlands remaining. In
19 support of their petition, the citizens shall provide
20 satisfactory documentation to the local government unit. The
21 local government unit shall consider the petition and forward
22 the request to the board under Minnesota Statutes, section
23 103G.222,, or provide a reason why the petition is
24 denied.

25 Subp. 5. Metropolitan area public transportation project
26 replacement. Disputes about restoration opportunities for
27 wetland replacement sites for public transportation projects in
28 the seven-county metropolitan area (1) in a county as required
29 in part 8420.0540, subpart 5, (2) using created wetlands, or (3)
30 using wetland banking credits may be appealed to the board's
31 committee for dispute resolution according to the process
32 outlined in subparts 1 and 3.

33 8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.

34 ~~The board shall send copies of this chapter to all local~~
35 ~~government units at least 60 days before July 17, 1993.~~ By

1 January 1, 1994, each local government unit of the state, except
2 tribal lands, shall acknowledge to the board that it is assuming
3 its responsibilities under this chapter and the act. Local
4 government units from which an affirmative response is not
5 received will be given notice by the board that there is a
6 60-day moratorium in the local government unit's jurisdiction on
7 exemption, no-loss, replacement plan, and banking
8 determinations. The board will end the moratorium within the 60
9 days upon agreement by the local government unit that it will
10 assume its duties under this chapter and the act. If at the end
11 of the initial 60-day moratorium an agreement has not been made
12 for the local government unit to apply the law, the board can
13 extend the moratorium until the local government unit agrees to
14 apply the law.

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

26 If, after the 60-day period described in this part the
27 local government unit has not corrected the problem to the
28 satisfaction of the board, the board shall take appropriate
29 legal action to ensure compliance.

30 8420.0268 COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT UNITS.

31 Subpart 1. Intervention. At the request of a local
32 government unit against which a compensation action is brought
33 based at least in part on the local government unit's
34 application of Minnesota Statutes, section 103G.222, 103G.2241,
35 103G.2242, 103G.237, or 103G.2372, or rules adopted by the board

1 to implement these sections, the state, through the attorney
2 general, shall intervene in the action on behalf of the local
3 government unit and shall thereafter be considered a defendant
4 in the action. A local government unit making a request under
5 this subpart shall provide the attorney general with a copy of
6 the complaint as soon as possible after being served. If
7 requested by the attorney general, the court shall grant
8 additional time to file an answer equal to the time between
9 service of the complaint on the local government unit and
10 receipt of the complaint by the attorney general.

11 Subp. 2. Liability of state for certain costs. The state
12 is liable for costs, damages, fees, and compensation awarded in
13 the action based on the local government unit's adoption or
14 implementation of standards that are required by state law, as
15 determined by the court. The local government unit is liable
16 for costs, damages, fees, and compensation awarded in the action
17 based on local standards that are more restrictive than state
18 law and rules.

19 Subp. 3. Definition. For purposes of this part,
20 "compensation action" means an action in which the plaintiff
21 seeks compensation for taking private property under the state
22 or federal constitution.

23 8420.0290 ENFORCEMENT PROCEDURES.

24 Subpart 1. Enforcing authorities. The commissioner,
25 conservation officers, and other peace officers may issue cease
26 and desist orders and restoration and replacement orders.

27 Subp. 2. Cease and desist orders. Site-specific cease and
28 desist orders may be issued when the enforcement authority has
29 probable cause that a drain or fill activity is being or has
30 been conducted in a wetland and does not qualify for an
31 exemption or a no-loss determination under parts 8420.0210 and
32 8420.0220 and is being or has been conducted without prior
33 approval of a replacement plan by a local government unit under
34 part 8420.0230.

35 A cease and desist order must not be issued if the

1 landowner has a valid certificate of exemption or no-loss from
2 the local government unit, or has evidence to support an
3 exemption. Otherwise:

4 A. the enforcement authority may issue a cease and
5 desist order upon discovery of the drain or fill activity;

6 B. the order may be withheld to give the landowner
7 time to produce the evidence required by part ~~8420.0120~~
8 8420.0122 to the enforcement authority of qualification for an
9 exemption or no-loss determination; or

10 C. a cease and desist order may be issued with an
11 effective date three weeks from the date of issuance. The
12 enforcement authority shall exercise this option when the
13 enforcement authority cannot readily make a determination on the
14 facts and circumstances to deny a landowner's claim of exemption
15 or no-loss, and continued drain or fill activity would not cause
16 irreparable harm to the wetland.

17 The enforcement authority shall advise the landowner that
18 the landowner's application, if any, for an exemption or no-loss
19 determination, should be made immediately to the local
20 government unit and that whatever drain and fill work the
21 landowner has done may require restoration according to a
22 restoration plan designed by the soil and water conservation
23 district, if the application for exemption or no-loss
24 determination is denied.

25 The enforcement authority issuing a cease and desist order
26 shall promptly submit copies to the soil and water conservation
27 district, local government unit, and Department of Natural
28 Resources.

29 If an application for an exemption or no-loss determination
30 is triggered by a cease and desist order, the local government
31 unit or the technical evaluation panel shall make a decision
32 within three weeks from the date of the application. The local
33 government unit or technical evaluation panel shall review
34 evidence of exemption or no-loss produced by the landowner,
35 inspect the site if necessary, and determine:

36 (1) if the area in question is a wetland; and

1 (2) if the activity qualifies for an exemption or
2 no-loss determination under parts 8420.0210 and 8420.0220.

3 In cases where the cease and desist order has been issued
4 to a local government unit, the determination of exemption or
5 no-loss shall be made by the board.

6 If the decision is that the activity is exempt or results
7 in a no-loss determination, the decision maker shall issue a
8 certificate of exemption or no-loss, request that the
9 enforcement authority rescind the cease and desist order, and
10 notify the soil and water conservation district, the
11 Department of Natural Resources, and the landowner.

12 If the application is denied, the decision-maker shall
13 immediately notify the soil and water conservation district, ~~the~~
14 ~~department,~~ the enforcement authority, and the landowner.

15 Subp. 3. Restoration and replacement orders. The
16 enforcement authority shall issue a restoration order or
17 replacement order when the drain or fill has already been
18 completed when discovered, or after a cease and desist order has
19 been issued and the landowner does not seek an exemption or
20 no-loss determination within three weeks, or the local
21 government unit denies the application.

22 Promptly upon being informed by the enforcement authority
23 of the need, the soil and water conservation district staff
24 person shall inspect the site and prepare a plan in consultation
25 with the local government unit for restoring the site to its
26 prealtered condition, unless the soil and water conservation
27 district person, with the concurrence of the technical
28 evaluation panel and the enforcement authority, concludes that
29 restoration is impossible. The soil and water conservation
30 district shall incorporate its plan into a restoration or
31 replacement order and send it to the enforcement authority for
32 service in person or by certified mail to the landowner.

33 The restoration order must specify a date by which the
34 landowner must either:

35 A. restore the wetland according to the soil and
36 water conservation district plan and obtain a certificate of

1 satisfactory restoration from the soil and water conservation
2 district; or

3 B. submit a replacement plan to the local government
4 unit.

5 The order shall state that it will be canceled when the
6 landowner obtains a certificate of exemption or no-loss from the
7 local government unit, or a certificate that ~~restoration~~
8 replacement has been completed according to an
9 approved ~~restoration~~ replacement plan. Otherwise, the landowner
10 must restore the wetland in the manner required by the
11 restoration order.

12 If the soil and water conservation district determines that
13 restoration will not restore all the loss caused by the drain or
14 fill activity, the enforcement authority may order a combination
15 of restoration and replacement, or may order replacement rather
16 than restoration, as determined by the soil and water
17 conservation district. The order must direct the landowner to
18 obtain replacement plan approval from the local government
19 unit. The order must specify that if replacement plan approval
20 is not obtained, the landowner must restore the wetland in a
21 manner determined by the soil and water conservation district.

22 Each cease and desist, restoration, and replacement order
23 shall tell the landowner that violation of the order is a
24 misdemeanor.

25 If, as part of a misdemeanor proceeding, the court orders
26 restoration or replacement, the soil and water conservation
27 district shall determine which is appropriate, and if it is
28 restoration, the method of restoration. If the court orders
29 replacement, the landowner must follow the replacement plan
30 process in parts 8420.0500 to 8420.0630 unless the court orders
31 otherwise.

32 Subp. 4. After-the-fact replacement. If a landowner seeks
33 approval of a replacement plan after the proposed project has
34 already impacted the wetland, the local government unit may
35 require the landowner to replace the impacted wetland at a ratio
36 not to exceed twice the replacement ratio otherwise required,

1 unless provided for in the local government unit's official
2 controls.

3 8420.0300 MINING.

4 Wetlands may not be drained or filled as part of a project
5 for which a permit to mine is required by Minnesota Statutes,
6 section 93.481, except as approved by the commissioner.
7 Draining or filling of wetlands created by pits, stockpiles, or
8 tailing basins by actions whose purpose was not to create the
9 wetland are exempt under part ~~8420.0120~~ 8420.0122, subpart 10.

10 A. For new mining operations that are permitted and
11 initiated after July 1, 1993:

12 (1) mining shall not be conducted without first
13 receiving a permit to mine issued under chapter 6130 for iron
14 ore and taconite or chapter 6132 for nonferrous metallic
15 minerals; and

16 (2) the mining and reclamation operating plans or
17 annual reports submitted by the applicant as required in the
18 permit to mine shall include an approved wetland replacement
19 plan that meets the same principles and standards for replacing
20 wetlands under parts 8420.0500 to 8420.0630.

21 B. For mining operations in existence before July 1,
22 1993, and operated on or after that date under a permit to mine
23 issued under chapter 6130 for iron ore and taconite or chapter
24 6132 for nonferrous metallic minerals:

25 (1) no draining or filling activities shall be
26 conducted within wetlands for which these activities were
27 approved but not initiated before July 1, 1993, until the
28 operating plan or annual report as required in the permit to
29 mine includes an approved wetland replacement plan for the
30 undisturbed wetlands. The wetland replacement plan shall meet
31 the same principles and standards for replacing wetlands under
32 parts 8420.0500 to 8420.0630;

33 (2) for filling activities that were approved and
34 initiated before July 1, 1993, the placement of fill atop a
35 stockpile, roadway, or other mining-related facility that

1 occupies a wetland filled before July 1, 1993, shall be allowed
2 to continue within the areal extent, as it existed on July 1,
3 1993, of the stockpile, roadway, or other mining-related
4 facility without the requirement of a replacement plan or
5 amendment of the permit to mine. An expansion of the areal
6 extent of the fill in the wetland requires an approved
7 replacement plan in the operating plan or annual report as
8 required in the permit to mine, according to subitem (1);

9 (3) for draining activities that were approved
10 and initiated before July 1, 1993, the draining of a wetland to
11 facilitate mining, using ditches and other drainage facilities
12 that existed on July 1, 1993, shall be allowed to continue
13 without the requirement of a replacement plan or amendment of
14 the permit to mine. Maintenance of the ditches and structures
15 shall be allowed without the requirement of a replacement plan
16 or amendment of the permit to mine, provided that as a result of
17 the maintenance, wetlands are not drained beyond the extent that
18 existed as of July 1, 1993. Otherwise, the permit to mine must
19 be amended to provide for replacement according to subitem (1).

20 C. Applicable procedures are those required for
21 permits to mine.

22 D. This part shall not apply to peat mining as
23 defined under Minnesota Statutes, section 93.461, that is
24 subject to the mine permit and reclamation requirements under
25 Minnesota Statutes, sections 93.44 to 93.51 and the rules of the
26 commissioner adopted under those sections.

27 E. Mining that is not subject to the permit and
28 reclamation requirements under Minnesota Statutes, sections
29 93.44 to 93.51, must replace drained and filled wetlands
30 according to parts 8420.0500 to 8420.0630.

31 8420.0350 HIGH PRIORITY REGIONS AND AREAS.

32 Subpart 1. High priority regions. Parts of the state that
33 are high priority regions for preservation, enhancement,
34 restoration, and establishment of wetlands include all of the
35 counties that have lost 50 percent or more of their

1 presettlement wetland base, which are those listed in part
2 8420.0540, subpart 5, item B.

3 In all other counties of the state, high priority regions
4 are high priority areas approved as such by the board according
5 to subpart 2.

6 Subp. 2. High priority areas.

7 A. Water management plans prepared by water
8 management organizations in the metropolitan area under
9 Minnesota Statutes, section 103B.231, by counties outside the
10 metropolitan area under Minnesota Statutes, section 103B.311,
11 and by watershed districts outside the metropolitan area under
12 Minnesota Statutes, sections 103D.401 and 103D.405, must
13 identify those areas that qualify as high priority areas for
14 wetland preservation, enhancement, restoration, and
15 establishment. These priority areas shall be included in the
16 next scheduled water management plan update.

17 B. Plans should give strong consideration to
18 identifying as high priority areas minor watersheds having less
19 than 50 percent of their original wetland acreages, and intact
20 wetlands, diminished wetlands, and the areas once occupied by
21 wetlands that have been diminished or eliminated and could
22 feasibly be restored taking into account the present hydrology
23 and use of the area. Plans should give strong consideration to
24 identifying as high priority areas all type 1 or 2 wetlands, and
25 other wetlands at risk of being lost by permanent conversion to
26 other uses. When individual wetlands are identified as high
27 priority for preservation and restoration, the high priority
28 area shall include the wetland and an adjacent buffer strip not
29 less than 16.5 feet wide around the perimeter of the wetland and
30 may include up to four acres of upland for each wetland acre.

31 C. In all counties, plans may identify additional
32 high priority areas where preservation, enhancement,
33 restoration, and establishment of wetlands would have high
34 public value by providing benefits for water quality, flood
35 water retention, public recreation, commercial use, and other
36 public uses. High priority areas should be delineated by minor

1 or major watershed. For the purposes of this part, "watershed"
2 means major or minor watershed or subwatershed. To identify
3 high priority areas, the local government unit shall consider at
4 least the landscape characteristics in subitems (1) to (11).

5 (1) Land use and cover types. Wetlands located
6 in watersheds having a high proportion of cultivated land,
7 developed areas, or other intensive land use are likely to have
8 high value for water quality, flood water retention, and public
9 recreation. Watersheds with high proportions of intensive land
10 use should be considered as priority preservation and
11 restoration areas.

12 (2) Wetland and watershed ratio. Wetlands
13 located in watersheds having a low proportion of wetlands
14 relative to the size of the watershed are likely to have high
15 value for water quality, flood water retention, and public
16 recreation. Watersheds with a low wetland and watershed ratio
17 should be considered as priority preservation and restoration
18 areas.

19 (3) Soil erosion rates. Wetlands located in
20 watersheds where erosion rates are high are likely to have high
21 value for water quality. Watersheds with high erosion rates
22 should be considered as priority preservation and restoration
23 areas.

24 (4) Watershed gradient. Wetlands in watersheds
25 where the difference between the highest and lowest points of
26 the watershed is great are likely to have high value for flood
27 water retention and water quality. Watersheds with a high
28 gradient should be considered as priority preservation and
29 restoration areas.

30 (5) Surface water retention. Wetlands in
31 watersheds where direct runoff is high are likely to have high
32 value for flood water retention and water quality. Watersheds
33 with high levels of direct runoff should be considered as high
34 priority preservation and restoration areas.

35 (6) Soil fertility. Wetlands in watersheds where
36 soil fertility is high are likely to have high value for

1 wildlife habitat and commercial uses. Watersheds with high soil
2 fertility should be considered as high priority preservation and
3 restoration areas.

4 (7) Geology. Wetlands in watersheds with high
5 subsurface permeability are likely to have high value for
6 groundwater recharge and water quality. Watersheds with high
7 subsurface permeability should be considered as high priority
8 preservation and restoration areas.

9 (8) Wetland complexes. Wetlands in watersheds
10 where a diversity of wetland types and sizes are or were
11 historically present are likely to have high value for public
12 recreation. Watersheds with an existing or historical high
13 diversity of wetland types should be considered as priority
14 preservation and restoration areas.

15 (9) Proximity to population centers. Wetlands in
16 watersheds that are close to population centers are likely to
17 have high value for water quality, flood water retention, public
18 recreation, and commercial uses. Watersheds near population
19 centers should be considered as high priority preservation and
20 restoration areas.

21 (10) Public ownership. Wetlands in watersheds
22 with a high proportion of land in public ownership are likely to
23 have high value for public recreation. These watersheds ~~should~~
24 may be considered as high priority preservation and restoration
25 areas.

26 (11) Significant wildlife use. Wetlands in
27 watersheds with current or historical records of use by
28 significant numbers or species of wildlife or fish are likely to
29 have high value for public recreation and commercial uses.
30 Watersheds with records of significant fish or wildlife use
31 should be considered as high priority preservation and
32 restoration areas.

33 D. The board will review the inclusion of high
34 priority areas in plans as part of the standard process for plan
35 review established in statute. High priority areas approved by
36 the board that are not in a high priority region listed in item

1 C become high priority regions with board approval.

2 8420.0400 WETLAND PRESERVATION AREAS.

3 Subpart 1. Purpose. Wetlands located in areas that are
4 both high priority regions and high priority areas as identified
5 in part 8420.0350 are eligible for enrollment as wetland
6 preservation areas. A wetland so enrolled is exempt from
7 property tax.

8 Subp. 2. Landowner application for wetland preservation
9 area. A landowner may apply to the county, if the county
10 chooses to accept wetland preservation areas, for designation of
11 a wetland as a wetland preservation area on forms provided by
12 the board. The applicant must include a strip of upland 16.5
13 feet wide around the perimeter of the wetland. The applicant
14 may include up to four acres of upland for each acre of wetland.

15 The application must be accompanied by a restrictive
16 covenant on a form provided by the board. The covenant will
17 contain the same limitations on use that are provided in
18 Minnesota Statutes, section 103F.515, subdivision 4, including a
19 covenant that the enrolled upland area will be vegetated by the
20 landowner to permanent vegetation other than noxious weeds. The
21 covenant must be signed, acknowledged, and ready for recording.

22 Subp. 3. County review of application. The county ~~shall~~
23 may accept the application if the wetland is in a high priority
24 region and high priority area, if it includes the 16.5 foot
25 strip, and is accompanied by the proper covenant.

26 The county may limit or reject additional upland proposed
27 to be included according to standards the county establishes.

28 The county may reject the application if the application
29 does not qualify, or send it back for modification and
30 resubmittal if that is appropriate. If the application
31 qualifies, the county ~~shall~~ may approve it and mark the date of
32 approval on the application. The county shall notify the
33 landowner of the acceptance or denial of the application within
34 60 days from the date of the application.

35 Within five days of approval of the application, the county

1 shall forward it to the county recorder for recording of the
2 restrictive covenant or memorialization of the application on
3 the certificate of title. The county shall also send a copy of
4 the approved application to the county assessor for entry in the
5 assessor's records as a wetland preservation area. The county
6 shall also send copies of the approved application to the soil
7 and water conservation district, ~~the-regional-development~~
8 ~~commission~~, the local government unit, and the board.

9 Subp. 4. Applicable statutes. In addition to this
10 chapter, wetland preservation areas are subject to Minnesota
11 Statutes, sections 103F.612 to 103F.616, and the property tax
12 provisions of Minnesota Statutes, section 272.02, subdivision 1,
13 clause (10).

14 Subp. 5. Commencement of wetland preservation area. The
15 wetland is a wetland preservation area commencing 30 days from
16 the date the county notifies the landowner of acceptance of the
17 application under subpart 3.

18 Subp. 6. Fee. The county may require an application fee
19 to defray administrative costs of the program.

20 Subp. 7. Maps. The county shall maintain wetland
21 preservation area maps illustrating land covenanted as wetland
22 preservation areas.

23 8420.0505 INTERIM PREVIOUSLY APPROVED REPLACEMENT PLANS.

24 Replacement plans ~~approved-under-the-interim-guidelines-in~~
25 ~~Minnesota-Statutes,section-103G-2369,--must-be-completed-in~~
26 ~~entirety-by-June-30,1995,--If-the-replacement-plan-is-not~~
27 ~~completed-by-June-30,1995,--replacement-of-the-impacted-wetland~~
28 ~~becomes-subject-to-the-process-and-provisions-in-parts-8420-0500~~
29 ~~to-8420-0630,--This-does-not-apply-to-phased-projects-approved~~
30 ~~during-the-interim-period,--Phased-projects may be completed~~
31 under the laws, rules, conditions, and guidelines for which in
32 effect when they were approved.

33 8420.0510 PROCEDURES.

34 ~~Subpart 1. Generally.~~ No person shall drain or fill a
35 wetland, wholly or partially, without first having a wetland

1 value replacement plan approved by the governing body of the
2 local government unit, or the lead local government unit if so
3 designated by the board, consistent with parts 8420.0120
4 8420.0122 to 8420.0290, and provided that the activity is not
5 prohibited under the special considerations provisions in part
6 8420.0540, subpart 9.

7 Subp. 2. Preapplication conference and site visit. Before
8 preparation of a wetland value replacement plan, it is
9 recommended that the landowner meet with the local government
10 unit for a preapplication conference and site visit. The local
11 government unit is encouraged to inform the landowner of all
12 sequencing requirements and the criteria used to evaluate
13 replacement plans. A landowner may submit the information
14 required in part 8420.0520 and request a determination of
15 compliance with the sequencing requirements from the local
16 government unit before preparing a replacement plan.

17 Subp. 3. Evaluation. As provided for in part 8420.0240,
18 technical questions concerning the public value, location, size,
19 and type of wetland shall be submitted to the technical
20 evaluation panel. The local government unit may use a technical
21 evaluation panel to predetermine public value, location, size,
22 or type of wetlands under its jurisdiction and use this
23 determination in administering the act. Wetland boundaries must
24 be determined using the methodologies in the ~~federal-Manual-for~~
25 ~~Identifying-and-Delineating-Jurisdictional-Wetlands-(January~~
26 ~~1989)~~ United States Army Corps of Engineers Wetland Delineation
27 Manual (January 1987). Wetland type must be identified
28 according to ~~Cowardin-et-al-1979~~ Classification of Wetlands
29 and Deepwater Habitats of the United States (Cowardin, et al.,
30 1979) and according to United States Fish and Wildlife Service
31 Circular No. 39 (1971 edition) "Wetlands of the United States."
32 The technical evaluation panel shall provide its determinations
33 to the local government unit for consideration.

34 8420.0520 SEQUENCING.

35 Subpart 1. Requirement. Except for wetlands located in

1 cultivated fields that are subject to subpart 8, and calcareous
2 fens that are subject to subpart 9, the local government unit
3 may not consider or approve a wetland replacement plan unless
4 the local government unit finds that the applicant has
5 demonstrated that the activity impacting a wetland has complied
6 with all of the following principles in descending order or
7 priority:

8 A. avoids direct or indirect impacts to the wetland
9 that may destroy or diminish the wetland under the criteria in
10 subpart 3;

11 B. minimizes the impact to the wetland by limiting
12 the degree or magnitude of the wetland activity and its
13 implementation under the criteria in subpart 4;

14 C. rectifies the impact by repairing, rehabilitating,
15 or restoring the affected wetland under the criteria in subpart
16 5;

17 D. reduces or eliminates the impact to the wetland
18 over time by preservation and maintenance operations under the
19 criteria in subpart 6; and

20 E. replaces unavoidable impacts to the wetland by
21 restoring or creating substitute wetland areas having equal or
22 greater public value as provided for in parts 8420.0530 to
23 8420.0630.

24 Subp. 2. Application options. An applicant may either
25 submit the information required for sequencing analysis as part
26 of the application for replacement plan approval or apply for a
27 preliminary sequencing determination from the local government
28 unit before preparing a replacement plan. The local government
29 unit may request additional information needed to make a
30 determination. For projects impacting wetland areas less than
31 0.1-acres 10,000 square feet more than the de minimis amount
32 listed in part 8420.0122, subpart 9, item A, the local
33 government unit may provide an on-site sequencing determination
34 without written documentation from the applicant; except for
35 projects which are located in wetlands adjacent to and within
36 1,000 feet of outstanding resource value waters as defined in

1 chapter 7050; trout streams as designated in ~~Commissioner's~~
2 ~~Order-Number-2294~~ chapter; and trout lakes as designated
3 in ~~Commissioner's-Order-Number-2230~~ chapter

4 Subp. 3. Determination of impact avoidance.

5 A. Avoidance must be required when indicated by part
6 8420.0540, subpart 9.

7 B. Wetland dependence determination:

8 (1) Based on information provided by the
9 applicant, the local government unit shall determine if the
10 proposed project is wetland dependent. A project is wetland
11 dependent if wetland features, functions, or values are
12 essential to fulfill the basic purpose of the project. A
13 wetland present at the site of a proposed project does not make
14 that project wetland dependent.

15 (2) A project that has been determined by the
16 local government unit to be wetland dependent is exempt from the
17 analysis of avoidance alternatives in item C.

18 C. Alternatives analysis:

19 (1) The applicant shall provide the local
20 government unit with documentation describing at least two
21 alternatives in addition to the proposed project, one of which
22 may be the no-build alternative, that would avoid impacts to
23 wetlands, except that for repair or rehabilitation projects on
24 existing infrastructure only one alternative is required. The
25 alternatives may include consideration of alternate sites or
26 alternative project configurations on the proposed site. The
27 alternatives must be judged by the local government unit as good
28 faith efforts, or the local government unit may require the
29 applicant to redraft them for reconsideration.

30 (2) The local government unit shall determine
31 whether any feasible and prudent alternatives are available that
32 would avoid impacts to wetlands. An alternative shall be
33 considered feasible and prudent if it is capable of being done
34 from an engineering point of view, is in accordance with
35 accepted engineering standards and practices, is consistent with
36 reasonable requirements of the public health, safety, and

1 welfare, is an environmentally preferable alternative based on a
2 review of social, economic, and environmental impacts, and would
3 create no truly unusual problems. The local government unit
4 shall consider the following in evaluating alternatives as
5 applicable:

6 (a) whether the basic project purpose can be
7 reasonably accomplished using one or more other sites in the
8 same general area that would avoid wetland impacts. An
9 alternate site may not be excluded from consideration only
10 because it includes or requires an area not owned by the
11 applicant that could reasonably be obtained, used, expanded, or
12 managed to fulfill the basic purpose of the proposed project;

13 (b) the general suitability of alternate
14 sites considered by the applicant;

15 (c) whether reasonable modification of the
16 size, scope configuration, or density of the project would avoid
17 impacts to wetlands;

18 (d) efforts by the applicant to accommodate
19 or remove constraints on alternatives imposed by zoning
20 standards or infrastructure, including requests for conditional
21 use permits, variances, or planned unit developments; and

22 (e) the physical, economic, and demographic
23 requirements of the project. Economic considerations alone do
24 not make an alternative not feasible and prudent.

25 (3) If the local government unit determines that
26 a feasible and prudent alternative exists that would avoid
27 impacts to wetlands, it shall deny the replacement plan. If no
28 feasible and prudent alternative is available that would avoid
29 impacts to wetlands, the local government unit shall evaluate
30 the replacement plan for compliance with subparts 4 to 6.

31 Subp. 4. Determination of impact minimization.

32 A. The applicant shall demonstrate to the local
33 government unit's satisfaction that the activity will minimize
34 impacts to wetlands. In reviewing the sufficiency of the
35 applicant's efforts to minimize wetland impacts, the local
36 government unit must consider:

1 (1) the spatial requirements of the project;
2 (2) the location of existing structural or
3 natural features that may dictate the placement or configuration
4 of the project;

5 (3) the purpose of the project and how the
6 purpose relates to placement, configuration, or density;

7 (4) the sensitivity of the site design to the
8 natural features of the site, including topography, hydrology,
9 and existing vegetation;

10 (5) the value, function, and spatial distribution
11 of the wetlands on the site;

12 (6) individual and cumulative impacts; and

13 (7) an applicant's efforts to:

14 (a) modify the size, scope, configuration,
15 or density of the project;

16 (b) remove or accommodate site constraints
17 including zoning, infrastructure, access, or natural features;
18 and

19 (c) otherwise minimize impacts.

20 B. If the local government unit finds that an
21 applicant has not complied with the requirements to minimize
22 wetland impacts, the local government unit shall list, in
23 writing, its objections to the project. If, within 30 days, the
24 applicant does not withdraw the project proposal or indicate
25 intent to submit an amended project proposal satisfying the
26 local government unit's objections, the statement of objections
27 shall constitute a denial.

28 Subp. 5. Determination of impact rectification. Temporary
29 impacts to a wetland must be rectified by repairing,
30 rehabilitating, or restoring the affected wetland.

31 A. Activities may qualify for a no-loss determination
32 in part 8420.0220 by meeting all of the following conditions:

33 (1) the physical characteristics of the affected
34 wetland, including ground elevations, contours, inlet
35 dimensions, outlet dimensions, substrate, and hydrologic regime,
36 are restored to preproject conditions sufficient to ensure that

1 all preproject functions and values are restored;

2 (2) the activity is completed and the physical
3 characteristics of the wetland are restored within six months of
4 the start of the activity; and

5 (3) the party responsible for the activity
6 provides a performance bond to the local government unit for an
7 amount sufficient to cover the estimated cost to restore the
8 wetland to preproject conditions. The local government unit
9 shall return the performance bond to the responsible party upon
10 a determination by the local government unit that the conditions
11 in this item and item B have been met.

12 B. An applicant shall be granted a no-loss
13 determination under the criteria in item A once in a ten-year
14 period for a particular site within a wetland, except that
15 repairs to the original project shall be allowed under the
16 no-loss determination, if the local government unit determines
17 the request to be necessary and reasonable.

18 C. Wetland impacts that do not qualify for a no-loss
19 determination according to the criteria in item A are subject to
20 replacement under the criteria in parts 8420.0530 to 8420.0630.

21 Subp. 6. Determination of reduction or elimination of
22 impacts over time. After an activity is completed, further
23 wetland impacts from the draining or filling must be reduced or
24 eliminated by maintaining, operating, and managing the project
25 in a manner that preserves and maintains remaining wetland
26 functions and values. The local government unit must require
27 applicants to implement best management practices to protect
28 wetland functions and values.

29 Subp. 7. Unavoidable impacts. Unavoidable wetland impacts
30 that remain after efforts to minimize, rectify, or reduce or
31 eliminate them must be replaced according to parts 8420.0530 to
32 8420.0630.

33 Subp. 7a. Sequencing flexibility.

34 A. Sequencing flexibility cannot be implemented
35 unless alternatives have been considered and unless the proposed
36 replacement wetland is certain to provide equal or greater

1 functions and public values as determined based on a functional
2 assessment reviewed by the technical evaluation panel using a
3 methodology approved by the board. The project sponsor must
4 provide the necessary information and the local government unit
5 must document the application of sequencing flexibility in the
6 replacement plan approval.

7 B. Flexibility in application of the sequencing steps
8 may be applied as determined by the local government unit if:

9 (1) the wetland to be impacted has been degraded
10 to the point where replacement of it would result in a certain
11 gain in function and public value;

12 (2) preservation of a wetland would result in
13 severe degradation of the wetland's ability to function and
14 provide public values, for example, because of surrounding land
15 uses;

16 (3) the only feasible and prudent upland site
17 available for wetland replacement or development has greater
18 ecosystem function and public value than the wetland. Although
19 this is a rare circumstance since there will usually be several
20 options for sighting the replacement wetland or development, it
21 may be appropriate if the project sponsor:

22 (a) demonstrates impact minimization to the
23 wetland;

24 (b) agrees to perpetually preserve the
25 designated upland site; and

26 (c) completely replaces the impacted
27 wetland's functions and public values;

28 (4) alternatives are demonstrably cost
29 prohibitive such that the only available alternatives would make
30 the projected cost substantially greater than the costs normally
31 associated with similar projects; or

32 (5) the wetland is a site where human health and
33 safety is a factor.

34 Subp. 8. Wetlands on cultivated fields. If the wetland is
35 located on a cultivated field, replacement must be accomplished
36 through restoration without regard to the priority order in

1 subpart 1. A wetland drained or filled under this provision
2 must not be converted to nonagricultural land for ten years.
3 The landowner must execute and record a notice of this
4 requirement in the office of the county recorder for the county
5 in which the property is located.

6 Subp. 9. Calcareous fens. Calcareous fens, as identified
7 by the commissioner, may not be filled, drained, or otherwise
8 degraded, wholly or partially, by any action, unless the
9 commissioner, under an approved management plan, decides some
10 alteration is necessary, as provided in part 8420.1010.

11 8420.0530 REPLACEMENT PLAN COMPONENTS.

12 On an application form provided by the local government
13 unit, and with needed attachments supplied by the applicant, the
14 following documentation must be provided, except that for
15 replacement plans utilizing the wetland bank in parts 8420.0700
16 to 8420.0760, items B and D do not apply; instead the applicant
17 shall submit the credit transfer form prescribed in part
18 8420.0740, subpart 2, item E:

19 A. organizational information, including the
20 following:

- 21 (1) the post office address of the applicant;
22 (2) for corporations, the principal officers of
23 the corporation, any parent companies, owners, partners, and
24 joint venturers, and a designated contact person;
25 (3) managing agents, subsidiaries, or consultants
26 that are or may be involved with the wetland draining or filling
27 project;

28 B. either ~~an affidavit~~ a signed statement confirming
29 that the wetland acres and values will be replaced before or
30 concurrent with the actual draining or filling of a wetland or
31 an irrevocable bank letter of credit or other security
32 acceptable to the local government unit to guarantee the
33 successful completion of the wetland value replacement;

34 C. for the impacted wetland:

- 35 (1) a recent aerial photograph or accurate map of

1 the impacted wetland area;

2 (2) the location of the wetland, including the
3 county, watershed name or number, and the quarter section public
4 land survey coordinate of approximate the wetland center;

5 (3) the size of the wetland, in acres or square
6 feet;

7 (4) the type of wetland using United States Fish
8 and Wildlife Service Circular No. 39 (1971 edition) and National
9 Wetland Inventory mapping conventions (Cowardin et al., 1979);

10 (5) a list of the dominant vegetation in the
11 impacted wetland area, ~~including common names of the vegetation~~
12 ~~exceeding 20 percent coverage and an estimate of coverage, for~~
13 ~~example, 50 percent willow, 20 percent cattails, and 30 percent~~
14 ~~sedge;~~

15 (6) a soils map of the site showing soil type and
16 substrate, where available;

17 (7) the estimated size of the watershed that
18 drains surface water into the wetland as determined from a
19 United States Government Survey topographical map or other
20 suitable topographical survey;

21 (8) the locations of any surface inlets or
22 outlets, natural or otherwise, draining into or out of the
23 wetlands, and if the wetland is within the shoreland area or
24 floodplain of a stream, river, or other watercourse, the
25 distance and direction to the watercourse;

26 (9) a map, photograph, or written description of
27 the land use of the immediate watershed ~~within one mile of the~~
28 ~~impacted wetland. The surrounding land use information shall~~
29 ~~also indicate the presence and location, if any, of wetland~~
30 ~~preservation regions and areas, wetland development avoidance~~
31 ~~regions and areas, and wetland deficient regions and areas as~~
32 ~~identified in the comprehensive water plan;~~

33 (10) the nature of the proposed project, its
34 areal extent, and the impact on the wetland must be ~~shown~~
35 described in sufficient detail to allow the local government
36 unit to determine the amount and types of wetland to be impacted

1 and to demonstrate compliance with the replacement sequencing
2 criteria in part 8420.0520, if applicable;

3 (11) evidence of ownership or rights to the
4 affected areas, including a legal description. When two or more
5 landowners are involved, including both the impact site and the
6 proposed replacement site, a contract or other evidence of
7 agreement signed by all landowners and notarized must be
8 included with the replacement plan. The contract or agreement
9 must contain an acknowledgment of the covenant provisions in
10 item D, subitem (6), by landowners on which a replacement
11 wetland is proposed and the location and acreage of replacement
12 wetlands. The contract becomes binding upon final approval of
13 the replacement plan;

14 (12) a list of all other local, state, and
15 federal permits and approvals required for the activity; and

16 (13) other information considered necessary by
17 the local government unit for evaluation of the activity;

18 D. for the replacement wetland, item C, subitems (1)
19 to (9) and (11) to (13), and:

20 (1) an explanation of the size and type of
21 wetland that will result from successful completion of the
22 replacement plan;

23 (2) scale drawings showing plan and profile views
24 of the replacement wetland and fixed photo-reference points for
25 monitoring purposes. Photo-reference points should include
26 views of any control structures and enough additional points to
27 adequately depict the entire project;

28 (3) how the replacement wetland shall be
29 constructed, for example, excavation or restoration by blocking
30 an existing tile; the type, size, and specifications of outlet
31 structures; elevations, relative to Mean Sea Level or
32 established bench mark, of key features, for example, sill,
33 emergency overflow, and structure height; and best management
34 practices that will be implemented to prevent erosion or site
35 degradation;

36 (4) for created wetlands only, additional soils

1 information sufficient to determine the capability of the site
2 to produce and maintain wetland characteristics;

3 (5) a timetable that clearly states how and when
4 implementation of the replacement plan shall proceed, and when
5 construction of the replacement wetland shall be finalized;

6 (6) a notice in a form provided by the board
7 attached to and recorded with the deed for lands containing a
8 replacement wetland, specifying the following:

9 (a) the location of the replacement wetland;

10 (b) that the wetland is subject to the act;

11 (c) that the fee title owner is responsible
12 for the costs of repairs or reconstruction, if necessary, or for
13 replacement costs;

14 (d) that reasonable access to the
15 replacement wetland shall be granted to the proper authorities
16 for inspection, monitoring, and enforcement purposes;

17 (e) that costs of title review and document
18 recording is the responsibility of the fee title owner; and

19 (f) that the local government unit or board
20 can require necessary repairs or reconstruction work to return
21 the wetland to the specifications of the approved replacement
22 plan and require reimbursement of reasonable costs from the
23 wetland owner, or can require replacement of the wetland
24 according to the act;

25 (7) a statement that the replacement wetland was
26 not previously restored or created under a prior approved
27 replacement plan;

28 (8) a statement that the replacement wetland was
29 not drained or filled under an exemption during the previous ten
30 years;

31 (9) a statement that the replacement wetland was
32 not restored with financial assistance from public conservation
33 programs;

34 (10) a statement that the replacement wetland was
35 not restored using private funds other than those of the
36 landowner unless the funds are paid back with interest to the

1 individual or organization that funded the restoration and the
2 individual or organization notifies the local government unit in
3 writing that the restored wetland may be considered for
4 replacement;

5 (11) a plan for monitoring the success of the
6 replacement plan in meeting the project goal in subitem (1), and
7 as specified in parts 8420.0610 and 8420.0620; and

8 (12) evidence that a person proposing to create
9 or restore a wetland within the easement of a pipeline as
10 defined in Minnesota Statutes, section 299J.02, subdivision 11,
11 has first notified the easement holder and the director of the
12 Office of Pipeline Safety in writing. The person may not create
13 or restore the wetland if, within 90 days after receiving the
14 required notice, the easement holder or the director of the
15 Office of Pipeline Safety provides to the person a written
16 notice of objection that includes the reasons for the objection;
17 and

18 (13) other information considered necessary for
19 evaluation of the project by the local government unit.

20 E. The applicant must provide information known to
21 the applicant or readily available concerning the special
22 considerations criteria in part 8420.0540, subpart 9.

23 8420.0540 REPLACEMENT PLAN EVALUATION CRITERIA.

24 Subpart 1. Sequencing. Before consideration or approval
25 of a replacement plan, the local government unit must ensure
26 that the applicant has exhausted all possibilities to avoid and
27 minimize adverse wetland impacts according to sequencing in part
28 8420.0520.

29 The applicant must demonstrate to the local government unit
30 that the replacement plan complies with this part and part
31 8420.0550.

32 Subp. 2. Type of replacement.

33 A. The order of preference for the method of
34 replacement, from most preferred to least preferred,
35 is project-specific restoration, project-specific then creation,

1 then-wetland-banking.

2 B. Modification or conversion of nondegraded wetlands
3 from one wetland type to another, for example by impoundment of
4 additional water, does not constitute adequate replacement.

5 C. Wetlands drained or filled under an exemption may
6 not be restored for replacement credit for ten years after
7 draining or filling.

8 D. The following actions are eligible for replacement
9 credit as determined by the local government unit, including
10 enrollment in a statewide wetlands bank:

11 (1) reestablishment of permanent vegetative cover
12 on a wetland that was planted with annually seeded crops, was in
13 a crop rotation seeding of pasture grasses or legumes, or was
14 required to be set aside to receive price supports or other
15 payments under United States Code, title 7, sections 1421 to
16 1469, in six of the last ten years prior to January 1, 1991.
17 Replacement credit may not exceed 50 percent of the total
18 wetland area vegetatively restored;

19 (2) buffer areas of permanent vegetative cover
20 established on upland adjacent to replacement wetlands, provided
21 that the upland buffer must be established at the time of
22 wetland replacement and replacement credit for the buffer may
23 not exceed 75 percent of the replacement wetland area and may
24 only be used as public value credits for replacement above a 1:1
25 ratio;

26 (3) wetlands restored for conservation purposes
27 under terminated easements or contracts, provided that up to 75
28 percent of the restored wetland area is eligible for new wetland
29 credit and adjacent upland buffer areas reestablished to
30 permanent vegetative cover are eligible for public value credit
31 above a 1:1 ratio in an amount not to exceed 25 percent of the
32 restored wetland area; and

33 (4) water quality treatment ponds constructed to
34 pretreat storm water runoff prior to discharge to wetlands,
35 public waters, or other water bodies, provided that the water
36 quality treatment ponds must be associated with an ongoing or

1 proposed project that will impact a wetland and replacement
2 credit for the treatment ponds may not exceed 75 percent of the
3 treatment pond area and may only be used for public value credit
4 above a 1:1 ratio.

5 E. The local government unit may consider allowing
6 constructed storm water detention basins for new wetland credit
7 if the basin conforms to the following specifications:

8 (1) the basin design uses a two-cell system in
9 which the upstream cell has a 24-hour retention time for a
10 two-year storm event;

11 (2) the downstream cell is designed for a maximum
12 12-inch rise in water level for a ten-year storm event;

13 (3) the standards in part 8420.0550 are followed;
14 and

15 (4) the design goal is a palustrine emergent
16 wetland that meets all statutory definitions of a wetland, for
17 example, soils, hydrology, and vegetation.

18 Only the downstream cell can be counted for new wetland
19 credit, and the replacement plan must include a plan and
20 schedule for maintenance of the storm water basin system. Storm
21 water basins which allowed for replacement are not eligible for
22 the exemptions in part 8420.0122 and are subject to parts
23 8420.0500 to 8420.0630.

24 Storm water management basins constructed for the primary
25 purpose of controlling or treating storm water runoff from
26 impervious surfaces or developed areas, not conforming to the
27 specifications in subitems (1) to (4), are not considered
28 wetlands.

29 Subp. 3. Timing of replacement. Replacement of wetland
30 values must be completed before or concurrent with the actual
31 draining or filling of a wetland, unless an irrevocable bank
32 letter of credit or other security acceptable to the responsible
33 government unit is submitted to the responsible government unit
34 to guarantee successful completion of the replacement. All
35 wetlands to be restored or created for replacement must be
36 designated for replacement before restoration or creation.

1 Submission to the local government unit of the information
2 required in part 8420.0530 and subsequent approval shall be
3 considered evidence of designation for replacement, provided the
4 information is submitted before the actual restoration or
5 creation. The exceptions contained in subpart 5 do not apply to
6 replacement completed using wetland banking credits established
7 by a person who submitted a complete wetland banking application
8 to a local government unit by April 1, 1996.

9 Subp. 4. Location of replacement wetlands. Replacement
10 wetlands shall be located within the same watershed or county as
11 the impacted wetlands, except that ~~counties-or-watersheds-in~~
12 ~~which greater than 80 percent or-more-of-the-presettlement~~
13 ~~acreage-is-intact areas~~ may accomplish replacement in counties
14 ~~or-watersheds-in-which less than 50 percent or-more-of-the~~
15 ~~presettlement-wetland-acreage-has-been-filled,-drained,-or~~
16 ~~otherwise-degraded areas.~~ When environmentally preferable,
17 replacement wetlands should be located as close to the impacted
18 wetland as possible, preferably in the same watershed.

19 Subp. 5. **Statewide Replacement for public transportation**
20 projects.

21 A. Wetlands impacted by public transportation
22 projects may be replaced statewide, ~~provided-they-are-approved~~
23 ~~by-the-commissioner-under-an-established-wetland-banking-system,~~
24 ~~or-under-the-rules-in-parts-8420-0700-to-8420-0760;~~ except that
25 wetlands impacted in a less than 50 percent area must be
26 replaced in a less than 50 percent area, and wetlands impacted
27 in the seven-county metropolitan area by public highways must be
28 replaced in the affected county, or, if no restoration
29 opportunities exist in the county, and in another seven-county
30 metropolitan area county.

31 B. The board must maintain a public list of
32 restoration opportunities within the seven-county metropolitan
33 area. The list will be maintained for informational purposes
34 only. Replacement of wetlands may be accomplished under the
35 rules for wetland banking as provided for in parts 8420.0700 to
36 8420.0760.

1 C. For projects involving draining or filling of
2 wetlands associated with a new public transportation project in
3 a greater than 80 percent area, public transportation
4 authorities, other than the state department of transportation,
5 may purchase credits if available from the state wetland bank
6 established with proceeds from Laws 1994, chapter 643, section
7 26, subdivision 3, paragraph (c). Wetland banking credits may
8 be purchased at the least of the following, but in no case shall
9 the purchase price be less than \$400 per acre:

10 (1) the cost to the state to establish the
11 credits;

12 (2) the average estimated market value of
13 agricultural land in the township where the road project is
14 located, as determined by the commissioner of revenue; or

15 (3) the average value of the land in the
16 immediate vicinity of the road project as determined by the
17 county assessor.

18 Public transportation authorities in a less than 80 percent area
19 may purchase credits from the state at the state's cost to
20 establish credits.

21 D. A replacement plan for wetlands is not required
22 for individual projects that result in the filling or draining
23 of wetlands for the repair, rehabilitation, reconstruction, or
24 replacement of a currently serviceable existing state, city,
25 county, or town public road necessary, as determined by the
26 public transportation authority, to meet state or federal design
27 or safety standards or requirements, excluding new roads or
28 roads expanded solely for additional traffic capacity lanes.
29 This item only applies to authorities for public transportation
30 projects that:

31 (1) minimize the amount of wetland filling or
32 draining associated with the project and consider mitigating
33 important site-specific wetland functions on site; and

34 (2) submit annual reports by January 15 to the
35 board and members of the public requesting a copy that indicate
36 the location, amount, and type of wetlands that have been filled

1 or drained during the previous year and a projection of the
2 location, amount, and type of wetlands to be filled or drained
3 during the upcoming year.

4 E. The technical evaluation panel shall review
5 minimization and delineation decisions made by the public
6 transportation authority and provide recommendations regarding
7 on-site mitigation if requested to do so by the local government
8 unit, a contiguous landowner, or a member of the technical
9 evaluation panel.

10 F. Except for state public transportation projects,
11 for which the state Department of Transportation is responsible,
12 the board must replace the wetlands drained or filled by public
13 transportation projects on existing roads. Replacement of the
14 wetlands will occur in critical rural and urban watersheds.

15 G. Public transportation authorities at their
16 discretion may deviate from federal and state design standards
17 on existing road projects when practical and reasonable to avoid
18 wetland filling or draining, provided that public safety is not
19 unreasonably compromised. The local road authority and its
20 officers and employees are exempt from liability for any tort
21 claim for injury to persons or property arising from travel on
22 the highway and related to the deviation from the design
23 standards for construction or reconstruction under this item.
24 This item does not preclude an action for damages arising from
25 negligence in construction or maintenance on a highway.

26 Subp. 5a. Presettlement wetland acres and areas.

27 A. For purposes of this part, the following counties
28 have are greater than 80 percent or-more-of-their-presettlement
29 wetland-acreage-intact areas: Aitkin; Beltrami; Carlton;
30 Cass; Clearwater; Cook; Crow Wing; ~~Houston~~; Hubbard; Isanti;
31 Itasca; Kanabec; Koochiching; Lake; Lake of the Woods; Mille
32 Lacs; Pine; and St. Louis; ~~Wabasha~~; ~~and~~ Winona.

33 B. For purposes of this part, the following counties
34 have are less than 50 percent or-less-of-their-presettlement
35 acreage-intact areas: Big Stone; Blue Earth; Brown; Carver;
36 Chippewa; Clay; Cottonwood; Dakota; Dodge; Douglas; Faribault;

1 Fillmore; Freeborn; Goodhue; Grant; Hennepin; Houston; Jackson;
2 Kandiyohi; Kittson; Lac Qui Parle; Le Sueur; Lincoln; Lyon;
3 Mahnomen; Marshall; Martin; McLeod; Meeker; Mower; Murray;
4 Nicollet; Nobles; Norman; Olmsted; Pennington; Pipestone; Polk;
5 Pope; Ramsey; Red Lake; Redwood; Renville; Rice; Rock; Roseau;
6 Scott; Sibley; Stearns; Steele; Stevens; Swift; Traverse;
7 Wabasha; Waseca; Washington; Watonwan; Wilkin; Winona; Wright;
8 and Yellow Medicine.

9 C. For purposes of this part, the following counties
10 are 50 to 80 percent areas: Anoka; Becker; Benton; Chisago;
11 Morrison; Otter Tail; Sherburne; Todd; and Wadena.

04/24/96

[REVISOR] CMR/DP RD2704

1 ~~REMAINING-ACREAGE-OF-PRESETTLEMENT-WETLANDS~~ WETLAND AREAS
2 Figure 1. ~~Distribution-of-remaining-acreage-of-presettlement~~
3 ~~wetlands-by-county-with-watersheds-superimposed---~~~~Adapted-from:~~
4 ~~Anderson-and-Craig-1984-~~
5 8420.0540 T=1: 1 page - Insert distribution percentage diagram
6 of MN here

1 Subp. 6. Size of replacement wetlands. Replacement
2 wetlands must be of a size sufficient to ensure that they
3 provide equal or greater public value than the wetland that was
4 drained or filled. Except for counties or watersheds in which
5 80 percent or more of the presettlement wetland acreage exists,
6 for a wetland located on nonagricultural land, the minimum size
7 of the replacement wetland must be in the ratio of two acres of
8 replaced wetland for each acre of drained or filled wetland.
9 For a wetland located on agricultural land, or in counties or
10 watersheds in which 80 percent or more of the presettlement
11 wetland acreage exists, the minimum size of the replacement
12 wetland must be in the ratio of one acre of replaced wetland for
13 each acre of drained or filled wetland. The actual replacement
14 ratios required for a replacement wetland may be more than the
15 minimum, subject to the evaluation of wetland functions and
16 values in subpart 10.

17 Except for counties or watersheds in which 80 percent or
18 more of the presettlement wetland acreage exists, future owners
19 may make no use of the wetland after it is altered, other than
20 as agricultural land for a period of ten years unless future
21 replacement to achieve a 2:1 ratio occurs. The landowner shall
22 record a notice of this restriction in the office of the county
23 recorder in which the project is located.

24 Subp. 7. Carbon balance. When it is necessary to replace
25 a drained or filled peatland, the replacement wetland must be
26 revegetated with planted or naturally invading vegetation
27 established within three growing seasons.

28 Subp. 8. Ecological consistency. Restoration and
29 replacement of wetlands must be accomplished according to the
30 ecology of the landscape area affected. A replacement plan that
31 would result in wetlands or wetland characteristics that do not
32 naturally occur in the landscape area in which the replacement
33 will occur will not be approved.

34 Subp. 9. Special considerations. The factors in items A
35 to I, when identified as being applicable to an impact site or a
36 replacement site, must be considered by the local government

1 unit in the review of replacement plans.

2 A. Federal or state-listed endangered species. A
3 replacement plan for activities that involve sites where species
4 listed in parts 6134.0200 to 6134.0400 are known to be present
5 will not be approved if it is determined that the proposed
6 activities will constitute a taking of those listed species
7 under Minnesota Statutes, section 84.0895. Limited information
8 on the presence of listed species at a particular site is
9 available from the ~~department's~~ department of natural resources'
10 natural heritage program. Activities that involve taking listed
11 species are subject to Minnesota Statutes, section 84.0895.

12 B. Rare natural communities. A replacement plan for
13 activities that involve the modification of a rare natural
14 community as determined by the ~~department's~~ Department of
15 Natural Resources' natural heritage program will not be approved
16 if the local government unit determines that the proposed
17 activities will permanently adversely affect the natural
18 community.

19 C. Special fish and wildlife resources. A
20 replacement plan for activities that would have a significant
21 adverse impact that cannot be mitigated on a special or locally
22 significant fish and wildlife resource will not be approved.
23 These activities include, but are not limited to:

- 24 (1) fish passage and spawning areas;
- 25 (2) colonial waterbird nesting colonies;
- 26 (3) migratory waterfowl concentration areas;
- 27 (4) deer wintering areas; and/or
- 28 (5) wildlife travel corridors.

29 Activities involving streams must not block fish passage
30 unless approved by the Department of Natural Resources.

31 D. Archaeological or historic sites. A replacement
32 plan for activities that involve the modification of known
33 archaeological or historical sites on or eligible for the
34 National Register of Historic Places, as designated by the state
35 historic preservation officer, will not be approved if the local
36 government unit determines that the proposed activities will

1 have a significant adverse impact on the archaeological or
2 historical value of the site.

3 E. Groundwater sensitivity. A replacement plan for
4 activities will not be approved if the local government unit
5 determines the activities would have a significant adverse
6 impact on groundwater quality. The publication "Criteria and
7 Guidelines for Assessing Geologic Sensitivity of Ground Water
8 Resources in Minnesota" (MDNR, 1991) may be used as a guide in
9 determining potential impacts.

10 F. Sensitive surface waters. A replacement plan will
11 not be approved if the local government unit determines the
12 activities will have a significant adverse impact on the water
13 quality of outstanding resource value waters listed in part
14 7050.0180 or on trout waters designated by the commissioner.

15 G. Education or research use. Wetlands known to be
16 used for educational or research purposes must be maintained or
17 adequately replaced.

18 H. Waste disposal sites. The local government unit
19 must evaluate the type and amount of waste material found at the
20 site. Activities involving known or potential hazardous wastes
21 or contaminants must be conducted according to applicable
22 federal and state standards.

23 I. Consistency with other plans. The local
24 government unit must consider the extent to which proposed
25 activities are consistent with other plans, such as watershed
26 management plans, land use plans, zoning, and master plans.

27 Subp. 10. Evaluation of wetland functions and values.

28 A. Evaluation options. Replacement wetlands must
29 replace the functions and values that are lost from a wetland
30 that is drained or filled. When environmentally preferable, a
31 replacement wetland should replace the same combination of
32 functions and values provided by the impacted
33 wetland. Replacement of wetland functions and values may occur
34 at more than one location. The wetland type index system in
35 items D and E uses relative values of wetland functions compared
36 across wetland types to evaluate the adequacy of wetland

1 replacement. The local government unit may allow the evaluation
 2 of wetlands by measuring and comparing public values specified
 3 in Minnesota Statutes, section 103B.3355, with the current
 4 version of the Minnesota wetland evaluation methodology or
 5 another scientifically accepted methodology in item G.

6 B. Wetland types: wetlands classification
 7 equivalency chart. For purposes of this part, the following
 8 table serves as a key for using Table 2 (part 8420.0540, subpart
 9 10, item D, subitem (1)) and Table 4 (part 8420.0550, subpart 3)
 10 and as a wetland classification equivalency chart for the
 11 wetland classification developed by the United States Fish and
 12 Wildlife Service (Cowardin et al. 1979), and the approximate
 13 wetland type from the United States Fish and Wildlife Service
 14 Circular No. 39 (1971 edition).
 15 Table 1. Wetland Classification Equivalency Chart. The
 16 Cowardin classification includes system, subsystem, class,
 17 subclass, and/or water regime. The Circular 39 wetland type is
 18 approximated.

19 Cowardin-System	Table-2-and-4-Row	Approximate
20 Class-or-Subsystem	and-Column-Headings	Circular-39-Type
21 and-Water-Regime		
22 PEMA	PEA	1
23 PEMB	PEB	2
24 PEMC	PEC	3
25 PEMD	PEC	3
26 PEME	PEC	3
27 PEMF	PEP	4
28 PEMG	PEP	4
29 PEMH	PEP	4
30 PEMI	PEA	1
31 PEMK	PEP	4
32 PEMW	PEA	1
33 PEMY	PEB	2
34 PEMZ	PEP	4
35 PEMU	PEP	4
36		
37 PSSA	PSA	6
38 PSSB-(except-PSS3B)	PSB	6
39 PSS3B	PSX	8
40 PSSE	PSE	6
41 PSSB	PSE	6
42 PSSE	PSE	6
43 PSSP	PSE	6
44 PSSG	PSE	6
45 PSSH	PSE	6
46 PSSJ	PSA	6
47 PSSK	PSE	6
48 PSSW	PSA	6
49 PSSY	PSB	6
50 PSSZ	PSE	6
51 PSSU	PSE	6
52		
53 PFOA	PPA	1

1	PF0B	PF0B	7
2	PF0C	PPE	7
3	PF0D	PPE	7
4	PF0E	PPE	7
5	PF0F	PPE	7
6	PF0G	PPE	7
7	PF0H	PPE	7
8	PF0J	PFA	1
9	PF0K	PPE	7
10	PF0W	PFA	1
11	PF0Y	PF0B	7
12	PF0Z	PPE	7
13	PF0U	PPE	7
14			
15	PMb-(a11)	PSX	8
16			
17	PAB-(a11)	PA	5
18			
19	PUB-(a11)	PU	5
20			
21	PRB-(a11)	PU	5
22			
23	P0W-(a11)	PU	5
24			
25	PUS-(a11)	PU	5
26			
27	b1-(a11)	b1	5*
28	b2-(a11)	b2	5
29			
30	R2-(a11)	R2	**
31	R3-(a11)	R3	**
32	R4-(a11)	R4	**
33			

Cowardin SystemCircular 39

34	<u>L1 (all)</u>	<u>5*</u>
35	<u>L2ABF</u>	<u>4</u>
36	<u>L2ABG</u>	<u>5</u>
37	<u>L2ABH</u>	<u>5</u>
38	<u>L2EMA</u>	<u>5</u>
39	<u>L2EMB</u>	<u>5</u>
40	<u>L2EMF</u>	<u>4</u>
41	<u>L2EMG</u>	<u>4</u>
42	<u>L2EMH</u>	<u>5</u>
43	<u>L2RS</u>	<u>5</u>
44	<u>L2UB</u>	<u>5</u>
45	<u>L2US</u>	<u>4</u>
46		
47		
48	<u>PABF</u>	<u>4</u>
49	<u>PABG</u>	<u>4</u>
50	<u>PABH</u>	<u>5</u>
51	<u>PEMA</u>	<u>1</u>
52	<u>PEMB</u>	<u>2</u>
53	<u>PEMC</u>	<u>3</u>
54	<u>PEMD</u>	<u>3</u>
55	<u>PEME</u>	<u>2</u>
56	<u>PEMF</u>	<u>3</u>
57	<u>PEMG</u>	<u>4</u>
58	<u>PEMH</u>	<u>4</u>
59	<u>PEMJ</u>	<u>1</u>
60	<u>PEMU</u>	<u>3</u>
61	<u>PEMW</u>	<u>1</u>
62	<u>PEMY</u>	<u>3</u>
63	<u>PEMZ</u>	<u>4</u>
64	<u>PFOA</u>	<u>1L**</u>
65	<u>PFO1B</u>	<u>7</u>
66	<u>PFO2B</u>	<u>8</u>
67	<u>PFO4B</u>	<u>8</u>
68	<u>PFO5B</u>	<u>7</u>
69	<u>PFO6B</u>	<u>7</u>
70	<u>PFO7B</u>	<u>8</u>
71	<u>PFOC</u>	<u>7</u>

1	PFOD	7
2	PFOF	7
3	PFOJ	1L**
4	PFOU	1L**
5	PFOW	1L**
6	PFOY	7
7	PRB (all)	5
8	PSSA	6
9	PSS1B	6
10	PSS2B	8
11	PSS3B	8
12	PSS4B	8
13	PSS5B	6
14	PSS6B	6
15	PSS7B	8
16	PSSC	6
17	PSSD	6
18	PSSF	6
19	PSSG	6
20	PSSH	6
21	PSSJ	6
22	PSSW	6
23	PSSY	6
24	PSSZ	6
25	PSSU	6
26	PUBB	4
27	PUBF	4
28	PUBG	5
29	PUBH	5
30	PUS (all)	1
31	R1	R2***
32	R2 (all)	R2***
33	R3 (all)	R3***
34	R4 (all)	R4***
35	R5	R4***

37 * Circular No. 39 does not classify deep water as a wetland
38 type, but for purposes of this table, these areas can be
39 approximated as a type 5.

40 ** 1L wetlands by Circular No. 39 are Type 1 Bottomland
41 Hardwoods.

42 *** No equivalent. Circular No. 39 does not address riverine
43 wetlands.

44 "K" water regimes are often municipal/industrial water
45 facilities.

46 NOTE: In the case of wetland identified using the Cowardin
47 system with both numerator and denominator wetland types, the
48 numerator type is considered the dominant wetland type, with the
49 exception that the denominator wetland type is to be used when
50 the numerator wetland type vegetation is dead.

51 ~~Table 47 in part 8420:05507 provides technical~~
52 ~~specifications for constructing wetland types. In evaluating a~~
53 ~~wetland replacement plan, the local government unit must~~
54 ~~determine whether the wetland type stated as the replacement~~

1 plan-goal-will-result-from-the-replacement-plan-specifications.
2 If-a-wetland-type-other-than-the-replacement-plan-goal-is-likely
3 to-result, the-local-government-unit-must-evaluate-the-plan
4 based-on-this-determination.

5 The-local-government-unit-may-consider-allowing-constructed
6 storm-water-detention-basins-for-replacement-credit-if-the-basin
7 conforms-to-the-following-specifications:

8 (a)-the-basin-design-uses-a-two-cell-system
9 in-which-the-upstream-cell-has-a-24-hour-retention-time-for-a
10 two-year-storm-event;

11 (b)-the-downstream-cell-is-designed-for-a
12 maximum-12-inch-rise-in-water-level-for-a-ten-year-storm-event;

13 (c)-the-standards-in-part-8420:0550-are
14 followed;-and

15 (d)-the-design-goal-is-a-palustrine-emergent
16 wetland-that-meets-all-statutory-definitions-of-a-wetland;-for
17 example;-soils;-hydrology;-and-vegetation.

18 Only-the-downstream-cell-can-be-counted-for-wetland-credit;
19 and-the-replacement-plan-must-include-a-plan-and-schedule-for
20 maintenance-of-the-storm-water-basin-system;--Storm-water-basins
21 which-allowed-for-replacement-are-not-eligible-for-the-exemption
22 in-part-8420:0120;-subpart-10;-and-are-subject-to-parts
23 8420:0500-to-8420:0630.

24 Stormwater-management-basins-constructed-for-the-primary
25 purpose-of-controlling-or-treating-stormwater-runoff-from
26 impervious-surfaces-or-developed-areas;-not-conforming-to-the
27 specifications-in-units-(a)-to-(d);-are-not-considered
28 wetlands;--These-are-therefore-exempt-from-replacement-plan
29 requirements-when-constructed-in-nonwetlands;-and-also-cannot-be
30 considered-for-credit-as-part-of-a-replacement-plan;-regardless
31 of-their-location.

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- 1 STATE OF MINNESOTA WATERSHED BOUNDARIES - 1979
- 2 (81 MAJOR WATERSHED UNITS)
- 3 Figure 2.

1 C. Replacement ratios for in-kind replacement. When
2 wetland functions lost as a result of drainage or filling are
3 replaced by restoring a wetland of the same type, and having the
4 same topographic setting, in the same watershed and with the
5 same ~~inlet-and-outlet-characteristics~~ topographic setting ratio
6 as described in item D, subitem {3} (2), and related
7 definitions, the replacement shall be considered to be in-kind
8 and the minimal replacement ratio shall be used to determine the
9 necessary size of the replacement wetland. For impacted
10 wetlands on agricultural land, or in counties or watersheds in
11 which 80 percent or more of the presettlement wetland acreage
12 exists, the minimum replacement ratio is 1:1, requiring an equal
13 area be replaced for the area impacted. Except for counties or
14 watersheds in which 80 percent or more of the presettlement
15 wetland acreage exists, for impacted wetlands on nonagricultural
16 land, the minimum replacement ratio is 2:1, requiring two times
17 the impacted area be replaced.

18 D. Out-of-kind replacement ratios. If the wetland
19 functions lost as a result of drainage or filling are to be
20 replaced by creating a wetland or restoring a wetland of a
21 different type or in a different topographic setting than the
22 impacted wetland, or if the replacement wetland is in a
23 watershed other than the impacted wetland or had different inlet
24 and outlet characteristics than the impacted wetland, the
25 replacement shall be considered to be out-of-kind and the local
26 government unit shall use the replacement ratios in this subpart
27 to determine the amount of replacement wetland needed to replace
28 the lost wetland values.

29 (1) Wetland type ratio. Differences in wetland
30 functions and values among wetland types are to be evaluated and
31 replaced using the wetland type ratio table in this part, to be
32 applied as specified in subitem {5} (4). The wetland type ratio
33 table incorporates an evaluation of public values as specified
34 in Minnesota Statutes, section 103B.3355, for the purposes of
35 comparison among wetland types.

36 If a wetland to be drained or filled exhibits more than one

1 wetland type as determined by the technical evaluation panel,
2 and more than one wetland type is proposed to be drained or
3 filled, the local government unit shall use the following
4 procedure to determine needed replacement. The acreage of each
5 wetland type to be converted to nonwetland shall be determined.
6 The wetland type ratio table shall then be used to determine the
7 amount of replacement wetland for each wetland type. The sum of
8 the replacement for each wetland type shall be the resultant
9 acreage requirement for the wetland type ratio.

1 Table 2. Wetland type ratio values for use in determining
2 wetland replacement ratios for out-of-kind
3 replacement. Circular No. 39 wetland types include Type 1
4 (seasonally flooded basin or flat), Type 1L (bottomland
5 hardwoods), Type 2 (wet meadow), Type 3 (shallow marsh), Type 4
6 (deep marsh), Type 5 (shallow open water), Type 6 (shrub swamp),
7 Type 7 (wooded swamp), Type 8 (bog), R2 (lower perennial river),
8 R3 (upper perennial river), and R4 (intermittent river).
9 8428-0540-T-2:--1/2-page---insert-replacement-wetland-chart
10 here

	<u>Impacted Wetland</u>	<u>Replacement Wetland</u>					
		<u>1</u>	<u>1L</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
1							
2							
3							
4							
5							
6							
7	<u>1</u>	1.0	1.5	1.0	1.0	1.0	1.5
8	<u>1L</u>	3.0	1.0	1.5	1.0	1.0	1.5
9	<u>2</u>	1.0	1.5	1.0	1.0	1.0	1.5
10	<u>3</u>	3.0	1.5	1.5	1.0	1.0	1.5
11	<u>4</u>	3.0	1.5	1.5	1.0	1.0	1.5
12	<u>5</u>	3.0	1.5	1.5	1.0	1.0	1.0
13	<u>6</u>	2.0	1.5	1.0	1.0	1.0	1.5
14	<u>7</u>	2.0	1.5	1.0	1.0	1.0	1.5
15	<u>8</u>	1.0	1.0	1.0	1.0	1.0	1.5
16	<u>R2</u>	3.0	1.5	1.5	1.0	1.0	1.0
17	<u>R3</u>	3.0	1.5	1.5	1.0	1.0	1.0
18	<u>R4</u>	2.0	1.5	1.5	1.0	1.0	1.0
19							
20	<u>Impacted Wetland</u>	<u>Replacement Wetland</u>					
21							
22							
23		<u>6</u>	<u>7</u>	<u>8</u>	<u>R2</u>	<u>R3</u>	<u>R4</u>
24							
25	<u>1</u>	2.0	1.0	1.5	3.0	1.5	3.0
26	<u>1L</u>	2.0	1.5	3.0	2.0	1.5	2.0
27	<u>2</u>	2.0	1.0	2.0	3.0	1.5	3.0
28	<u>3</u>	3.0	1.5	3.0	3.0	1.5	3.0
29	<u>4</u>	3.0	1.5	3.0	3.0	1.5	3.0
30	<u>5</u>	3.0	1.5	3.0	2.0	1.0	2.0
31	<u>6</u>	1.0	1.0	2.0	2.0	1.5	2.0
32	<u>7</u>	2.0	1.0	2.0	3.0	1.5	3.0
33	<u>8</u>	2.0	1.0	1.0	2.0	1.5	2.0
34	<u>R2</u>	3.0	1.5	3.0	1.0	1.0	1.5
35	<u>R3</u>	3.0	1.5	3.0	2.0	1.0	2.0
36	<u>R4</u>	3.0	1.5	2.0	1.0	1.0	1.0
37							

38 *See text Table 1 of subpart 10, item B, for wetland
39 classification equivalency.

40 NOTE:--Wetland-types-B1, B2, and-R2-are-generally-not-subject-to
41 this-chapter-and-cannot-be-used-for-wetland-replacement, but-are
42 included-for-possible-future-coordination-purposes.

43 (2)-Hydrologic-unit-ratio:

44 (a)-Except-as-noted-in-unit-(b), when-a
45 replacement-wetland-is-located-in-a-different-hydrologic-unit
46 than-the-impacted-wetland, as-indicated-by-the-United-States
47 Geological-Survey-Hydrologic-Unit-Map-for-Minnesota-(Figure-2),
48 the-following-ratios-must-be-applied, as-specified-in-subitem
49 (5):

Location-of-sites	Replacement-ratio
Within-same-watershed	0:0
Different-watershed	0:1
Different-accounting-unit	0:3
Different-subregion	0:5
Different-region	1:0
(b)-The-hydrologic-unit-ratio-does-not-apply	

57 when-replacement-for-impacts-within-counties-or-watersheds

1 having-80-percent-or-more-of-their-presettlement-wetland-acreage
 2 intact-is-accomplished-in-counties-or-watersheds-in-which-50
 3 percent-or-more-of-the-presettlement-acreage-has-been-drained-or
 4 filled-

5 {3}-Inlet-and-outlet-characteristics (2)

6 Topographic setting ratio. If the inlet and outlet
 7 characteristics of a replacement wetland differ from those of
 8 the impacted wetland, the following ratios shall be applied, as
 9 specified in subitem {5} (4).

10 ~~The-inlet-and-outlet-characteristics~~ The topographic
 11 setting ratio does not apply when replacement for impacts within
 12 counties-or-watersheds-having a greater than 80 percent or-more
 13 of-their-presettlement-wetland-acreage-intact-is-accomplished-in
 14 counties-or-watersheds-in-which area is accomplished in a less
 15 than 50 percent area or more-of-the-presettlement-acreage-has
 16 been-drained-or-filled to wetland replacement projects conducted
 17 by the board for public transportation projects on existing
 18 roads.

19 ~~Table-3---Inlet-and-Outlet-Characteristics-~~

20 Impact	21 Replacement	22 Flow-	23 Tributary	24 Floodplain	25 Isolated
26 Wetland	27 Wetland	28 Through			
	Riverine				
23 Riverine	0.0	0.2	0.4	0.6	1.0
24 Flow-					
25 Through	0.2	0.0	0.4	0.6	0.8
26 Tributary	0.4	0.2	0.0	0.2	0.4
27 Floodplain	0.6	0.6	0.2	0.0	0.2
28 Isolated	1.0	0.8	0.4	0.2	0.0

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- 1 -HYDROLOGIC-UNITS
- 2 Figure-2-
- 3 8420-0540-T-3---1-page---Insert-hydrologic-unit-map-of-MN-here

1 -STATE-OF-MINNESOTA-WATERSHED-BOUNDARIES---1979

2 -(81-MAJOR-WATERSHED-UNITS)

3 Figure-3-

4 8428-0540-F-4:--1-page---Insert-watershed-boundaries-map-of-MN

5 here

6 Table 3. Topographic Setting Ratios.

7				
8	<u>Impacted</u>		<u>Replacement</u>	
9	<u>Wetland</u>		<u>Wetland</u>	
10				
11	<u>Topographic</u>	<u>Shoreland</u>	<u>Riverine</u>	<u>Floodplain</u>
12	<u>Setting</u>			
13				
14	<u>Shoreland</u>	<u>0</u>	<u>0.2</u>	<u>0.4</u>
15	<u>Riverine</u>	<u>0</u>	<u>0</u>	<u>0.2</u>
16	<u>Floodplain</u>	<u>0</u>	<u>0</u>	<u>0</u>
17	<u>Flow-Through</u>	<u>0</u>	<u>0</u>	<u>0</u>
18	<u>Tributary</u>	<u>0</u>	<u>0</u>	<u>0</u>
19	<u>Isolated</u>	<u>0</u>	<u>0</u>	<u>0</u>
20				
21				
22	<u>Impacted</u>		<u>Replacement</u>	
23	<u>Wetland</u>		<u>Wetland</u>	
24				
25	<u>Topographic</u>	<u>Flow-Through</u>	<u>Tributary</u>	<u>Isolated</u>
26	<u>Setting</u>			
27				
28	<u>Shoreland</u>	<u>0.6</u>	<u>0.8</u>	<u>1.0</u>
29	<u>Riverine</u>	<u>0.4</u>	<u>0.6</u>	<u>0.8</u>
30	<u>Floodplain</u>	<u>0.2</u>	<u>0.4</u>	<u>0.6</u>
31	<u>Flow-Through</u>	<u>0</u>	<u>0.2</u>	<u>0.4</u>
32	<u>Tributary</u>	<u>0</u>	<u>0</u>	<u>0.2</u>
33	<u>Isolated</u>	<u>0</u>	<u>0</u>	<u>0</u>
34				

1 ~~†4†~~ (3) Local public value ratio. A local
2 government unit may by ordinance establish additional local
3 public value ratios to address wetland conservation or
4 preservation issues of local concern. These ratios must have a
5 minimum value of zero and should be based on wetland management
6 objectives of a local water management plan adopted under
7 Minnesota Statutes, chapter 103B or 103D. The local
8 preservation public value ratios must be applied as specified in
9 subitem ~~†5†~~ (4).

10 +5+ (4) Application of replacement ratios. The
11 required replacement ratio for out-of-kind replacement shall be
12 the sum of the wetland type ratio plus the hydrologic
13 unit topographic setting ratio ~~plus the inlet and outlet~~
14 ~~characteristics ratio~~ plus the local public value ratio. When
15 this ratio is less than the minimum in-kind ratio of 1:1 for
16 wetlands on agricultural land or in ~~counties or watersheds in~~
17 ~~which greater than~~ 80 percent ~~or more of the presettlement~~
18 ~~wetland acreage exists~~ areas, or 2:1 for wetlands on
19 nonagricultural lands in ~~counties where 50 percent or less of~~
20 ~~presettlement wetlands exist~~ less than 80 percent areas, the
21 minimum in-kind ratio shall be the required replacement ratio.

22 E. Determining impacts of partial drainage. In cases
23 where wetlands will be partially or incompletely drained, the
24 amount of wetland to be replaced must be determined ~~according-to~~
25 ~~the-following-formula~~ as follows:

```

26      ±
27  Where: NI=OA-----{RA}
28          RR
29  NI--Net impact-(acres-of-original-wetland-type-to-be
30  -replaced)
31  OA--Original-acreage-of-original-wetland-type
32  RR--Replacement-ratio-determined-from-table
33  -17-using-the-original-wetland-type-as-the
34  -impacted-wetland-type-and-the-wetland-type
35  -resulting-from-the-partial-drainage-as-the
36  -replacement-wetland-type
37  RA--Remaining-acres-of-the-original-wetland
38  Calculation-of-partial-drainage-credit-is-explained-by-the
39  following-example:

```

40 A-ten-acre-type-3-(PEMC)-wetland-is-partially-drained
41 resulting-in-a-five-acre-type-1-(PEMA)-wetland--(N=1
42 10---1/3{5}=-8-1/3}-Eight-and-one-third-acres-of-type

1 3-wetland-is-the-net-impact-subject-to-replacement-

2 The area impacted by partially draining a wetland is
 3 determined in two parts. The wetland area where the hydrology
 4 is totally removed must be replaced in its entirety. The area
 5 that is partially drained must be replaced in an amount that is
 6 50 percent of the acreage of the remaining wetland area.

7 Calculation of partial drainage is explained by the
 8 following example:

9 Partial drainage of a ten-acre Type 3 (PEMC) wetland to a
 10 five-acre Type 1 (PEMA) wetland would require replacing five
 11 acres of Type 3 wetland plus 2.5 acres of Type 3 wetland for a
 12 total of 7.5 acres of Type 3 acres of replacement wetland.

13 F. Determining credit for restoration of partially
 14 drained wetlands. in-cases-where-partially-drained-wetlands-are
 15 restored-to-their-former-state,-the-acres-credited-for-restoring
 16 a-partially-drained-wetland-is-in-two-parts:--The-first-is-the
 17 new-wetland-credit-(NWC)-caused-by-the-restoration-(for-example,-
 18 if-the-prerestoration-wetland-is-one-acre-and-postrestoration
 19 will-be-three-acres,-the-new-wetland-credit-is-two-acres).--The
 20 second-credit-is-for-the-change-in-value-of-the-prerestoration
 21 wetland-acres.--This-is-the-public-value-credit-(PVC)-and-must
 22 be-computed-as-follows:

23 8420:0540-F=5:--5-picas---Insert-PVC-equation-here

24 Where: PVC--Public-value-credit
 25 RR--Replacement-ratio,-determined-from-table
 26 -17-using-the-prerestoration-wetland-type
 27 -as-the-replacement-wetland-type,-and-the
 28 -postrestoration-type-as-the-impacted-wetland
 29 -type
 30 OA--Wetland-acreage-before-restoration

31 The-credit-for-increase-in-new-acres-can-be-used-in-its
 32 entirety.--The-public-value-credit-can-only-be-used-for-that
 33 portion-of-wetland-replacement-requiring-greater-than-a-1:1
 34 ratio.

35 Calculation-of-partial-restoration-credits-is-explained-by
 36 the-following-example:

37 A-partially-drained-five-acre-type-1-(PEMA)-wetland-is-to
 38 be-restored-to-a-ten-acre-type-3-(PEMC)-wetland.

39 8420:0540-F=6:--5-picas---Insert-equation-here

40 This-restoration-is-proposed-as-replacement-for-a-ten-acre

1 type-6-(PSSA)-wetland.---The-wetland-is-located-on
2 nonagricultural-land-in-a-"less-than-80-percent-county-or
3 watershed"--so-the-minimum-replacement-ratio-is-2:1.---This-means
4 20-acres-of-replaced-wetland-is-needed.

5 From-the-wetland-type-value-in-table-2, the-replacement
6 ratio-is-1.---The-replacement-is-located-in-the-same-watershed,
7 so-the-hydrologic-unit-ratio-is-0.0.---The-inlet-and-outlet
8 characteristics-are-isolated-for-the-impacted-wetland-and
9 tributary-for-the-replacement-wetland, so-the-inlet-and-outlet
10 characteristics-ratio-is-0.4.---The-out-of-kind-replacement-ratio
11 is-the-sum-of-1.0+-0.0+-0.4=-1.4.---This-is-less-than-the
12 minimum-of-2:1, so-additional-acreage-is-needed.

13 To-ensure-no-net-loss-of-wetlands, at-least-ten-acres-of
14 new-wetland-credit-must-be-used-to-offset-the-ten-acres-of
15 wetland-lost.---The-remaining-ten-acres-of-required-replacement
16 can-use-either-new-wetland-credit-or-public-value-credit.

17 The-proposed-restoration-is-insufficient-to-replace-the
18 proposed-impact, therefore-an-identical-site-is-also-selected
19 for-restoration.---From-site-one, new-wetland-credit-equals-five,
20 from-site-two, new-wetland-credit-equals-five, (5+-5=-10-acres
21 of-NWC).---The-no-net-loss-wetland-acreage-requirement-is
22 satisfied.---Ten-acres-must-still-be-found-to-satisfy-the-2:1
23 requirement.---Site-one-still-has-three-and-one-third-acres-of
24 public-value-credit, as-does-site-two, (3-1/3+-3-1/3=-6-2/3).
25 An-additional-three-and-one-third-acres-of-either-new-wetland
26 credit-or-public-value-credit-must-be-found-to-meet-the
27 additional-acreage-requirements. The acres credited for fully
28 restoring the hydrology of a wetland that has been partially,
29 but demonstrably affected by drainage, is in two parts. The
30 first is the new wetland credit (NWC) caused by the restoration,
31 for example, if the preresoration wetland is one acre and
32 postrestoration will be three acres, the new wetland credit is
33 two acres. The second credit is for the change in value of the
34 preresoration wetland acres. This is the public value credit
35 (PVC) and is equal to 50 percent of the acreage of the
36 preresoration wetland.

1 The credit for increase in new acres can be used in its
2 entirety. The public value credit can only be used for that
3 portion of wetland replacement requiring greater than a 1:1
4 ratio.

5 Calculation of partial restoration credits is explained by
6 the following example:

7 A partially drained five-acre Type 1 (PEMA) wetland is to
8 be restored to its former state, which would be a ten-acre Type
9 3 (PEMC) wetland.

10 New Wetland Credit = five acres of Type 3 (PEMC) wetland

11 Public Value Credit = 2.5 acres of Type 3 (PEMC) wetland
12 (50 percent of five acres of preresoration acreage)

13 G. Alternative Evaluation Methodologies. The local
14 government unit may evaluate the replacement plan using a
15 scientifically accepted methodology that evaluates all wetland
16 functions specified in Minnesota Statutes, section 103B.3355,
17 for both the impacted and replacement wetlands. Such
18 alternative methodologies must be approved by the board, in
19 consultation with the commissioners of natural resources and
20 agriculture, and local government units. Currently acceptable
21 alternative methodologies include: "Minnesota Routine
22 Assessment Methodology for Evaluating Wetland Functions" (Draft
23 version - September 1995, Version 1 - May 1996); "Minnesota
24 Wetland Evaluation Methodology (for the North Central United
25 States)" (USACOE, September 1988); "Wetland Evaluation
26 Technique" (USCOE, Version 2.0, 1987); The Hydrogeomorphic
27 Functional Assessment Methodology (as developed by the USACOE
28 based on Wetlands Research Program Technical Report WRP-DE-3,
29 August 1993); Oregon Freshwater Wetland Assessment Methodology
30 (Oregon Division of State Lands, December 1993); and Method for
31 the Comparative Evaluation of Nontidal Wetlands in New Hampshire
32 (New Hampshire Department of Environmental Services, March 1991).
33 Other methodologies may be used following board approval and
34 publication in the Environmental Quality Board Monitor.

35 When using alternative evaluation methodologies to evaluate
36 replacement plans, the ratio of impact wetland to replacement

1 wetland must not be less than the minimum acreage requirements
2 as listed in part 8420.0540, subpart 6, except as provided for
3 in part 8420.0650, subpart 2. Further, a replacement wetland
4 approved using an alternative evaluation methodology must be
5 rated as having equal or greater functional equivalence for all
6 functions listed in Minnesota Statutes, section 103B.3355.

7 H. Special cases or appeals. For projects of unusual
8 complexity, or replacement plans that have been denied and are
9 being appealed, and for which the local government unit believes
10 an alternative evaluation process may produce a substantially
11 different replacement requirement, the local government unit may
12 evaluate the replacement plan using the current version of the
13 Minnesota wetland evaluation methodology or another
14 scientifically accepted methodology approved by the board, in
15 consultation with the commissioner, that evaluates all wetland
16 functions and values for both the impacted and replacement
17 wetlands.

18 When using ~~the-Minnesota-wetland-evaluation-methodology-or~~
19 ~~another-board-in-consultation-with-the-commissioner-approved a~~
20 board-approved methodology to evaluate replacement plans, the
21 ratio of impact wetland to replacement wetland must not be less
22 than the minimum acreage requirements as listed in part
23 8420.0540, subpart 6. Further, ~~the-hydrologic-unit-ratio-in~~
24 ~~item-D-subitem-(2), the inlet-and-outlet~~
25 characteristics topographic setting ratio in item D,
26 subitem ~~(3)~~ (2), and the local public value ratio, if any, in
27 item D, subitem ~~(4)~~ (3), must also be considered when using the
28 ~~Minnesota-wetland-evaluation-methodology-or-another a~~ board-in
29 ~~consultation-with-the-commissioner-approved-methodology.~~

30 H- I. Adequacy decision. A replacement plan that
31 fails to meet the requirements in items A to G must be
32 considered inadequate in replacing lost functions and values and
33 shall not be approved by the local government unit. A
34 replacement plan that has been considered by the local
35 government unit and not approved may be revised and resubmitted
36 for consideration by the local government unit. As required by

1 part 8420.0250, the decision of a local government unit to
2 approve, approve with conditions, or not approve a replacement
3 plan becomes final if not appealed to the board within 30 days
4 after the date on which the decision is mailed to those required
5 to receive notice of the decision. Before construction of the
6 replacement wetland may proceed, the notice specified in part
7 8420.0530, item D, subitem (6), must be recorded and proof of
8 recording provided to the local government unit.

9 ~~Fr--Replacement-wetlands-eligible-for-RIM--A~~
10 ~~landowner-who-drains-or-fills-a-wetland-and-replaces-it-by~~
11 ~~restoring-an-impacted-wetland-on-the-landowner's-property-under~~
12 ~~an-approved-replacement-plan-may-apply-to-the-board-for~~
13 ~~enrollment-of-the-replacement-wetland-into-the-Reinvest-in~~
14 ~~Minnesota-program-no-sooner-than-one-year-after-completion-of~~
15 ~~the-replacement-project.~~

16 8420.0550 WETLAND REPLACEMENT STANDARDS.

17 Subpart 1. General requirements. The standards and
18 guidelines in this part shall be used in wetland creation and
19 restoration efforts to ensure adequate replacement of wetland
20 functions and values.

21 Table 4 ~~provides-general-guidelines-for-the-physical~~
22 ~~characteristics-that-each-type-of-replacement-wetland-should~~
23 ~~have.~~, in subpart 3, provides technical specifications for
24 constructing wetland types. In evaluating a wetland replacement
25 plan, the local government unit must determine whether the
26 wetland type stated as the replacement plan goal will result
27 from the replacement plan specifications. If a wetland type
28 other than the replacement plan goal is likely to result, the
29 local government unit must evaluate the plan based on this
30 determination.

31 Subp. 2. Specific requirements. The standards in items A
32 to H shall be followed in all wetland replacements unless the
33 technical evaluation panel determines that a standard is clearly
34 not appropriate.

35 A. Water control structures must be constructed using

1 specifications provided in the Minnesota Wetland Restoration
2 Guide or their equivalent. Control structures may be subject to
3 the Department of Natural Resources dam safety regulations.

4 B. Best management practices must be established and
5 maintained adjacent to the entire perimeter of all replacement
6 wetlands.

7 C. For replacement wetlands where the dominant
8 vegetation of the wetland type identified as the replacement
9 goal in part 8420.0530, item D, subitem (1), is not likely to
10 recover naturally in a five-year period, wooded and shrub
11 wetlands especially, the replacement wetland must be seeded or
12 planted with appropriate species, as determined by the ~~soil-and~~
13 ~~water-conservation-district, in coordination with the department~~
14 technical evaluation panel. If the replacement wetland is
15 seeded or planted, the seed or planting stock should be of local
16 wetland origin to preserve local genotypes. During the
17 monitoring period, the applicant must take reasonable steps to
18 prevent invasion by any species, for example, purple loosestrife
19 and Eurasian water milfoil, that would defeat the revegetation
20 goal of the replacement plan.

21 D. Erosion control measures as determined by the soil
22 and water conservation district must be employed during
23 construction and until permanent ground cover is established to
24 prevent siltation of the replacement wetland or nearby water
25 bodies.

26 E. For all restored wetlands where the original
27 organic substrate has been stripped away and for all created
28 wetlands, provisions must be made for providing an organic
29 substrate. When feasible, the organic soil used for backfill
30 should be taken from the drained or filled wetland.

31 F. The bottom contours of created types 3, 4, and 5
32 wetlands should be undulating, rather than flat, to provide a
33 variety of water depths to be consistent with part 8420.0540,
34 subpart 8.

35 G. Sideslopes of created wetlands and buffer strip
36 must not be steeper than 5:1, five feet horizontally for every

1 one foot vertically as averaged around the wetland. Sideslopes
2 of 10:1 to 15:1 are preferred.

3 H. Created wetlands should have an irregular edge to
4 create points and bays to be consistent with part 8420.0540,
5 subpart 8.

1 Subp. 3. Table 4. Physical characteristics of wetlands
 2 referencing the wetland classification equivalency chart found
 3 in part 8420.0540, subpart 10, item B.

4 WETLAND 5 TYPE	MEAN DEPTH*	WATERSHED RATIO	DOMINANT VEGETATION**	DEPRESSIONAL?
6				
7 FORESTED				
8 PFA (T1)	INTMTNT	---	TREES	SOMETIMES
9 PFB (T7)	SATUR'D	≥ 3:1	TREES	YES
10 PFC (T7)	6" - 3'	≥ 5:1	TREES	YES
11 SCRUB-SHRUB				
12 PSA (T6)	INTMTNT	---	SHRUBS	YES
13 PSB (T6)	SATUR'D	≥ 3:1	SHRUBS	YES
14 PSX (T8)	SATUR'D	≥ 3:1	SHRUBS	SOMETIMES
15 PSC (T6)	SAT.-INT.	---	SHRUBS	YES
16 EMERGENT				
17 PEA (T1)	INTMTNT	---	HERB/EMERG	YES
18 PEB (T2)	SATUR'D	≥ 3:1	HERB/EMERG	YES
19 PEC (T3)	6" - 2'	≥ 5:1	HERB/EMERG	YES
20 PEF (T4)	2' - 4'	≥ 10:1	HERB/EMERG	YES
21 DEEP MARSH				
22 PA (T5)	4' - 6'	≥ 15:1	AQUATIC BED	YES
23 PU (T5)	4' - 6'	≥ 15:1	ALGAE/FLOATG	YES
24 LAKES				
25 L1 (T5)	≥ 6'	≥ 25:1	ALGAE/FLOATG	YES
26 L2 (T5)	≤ 6'	≥ 25:1	HERB	YES
27 RIVERINE				
28 R2 (NA)	≥ 2'	---	ALGAE, SUB	FLOWAGE
29 R3 (NA)	6" - 2'	---	ALGAE, SUB	FLOWAGE
30 R4 (NA)	INTMTNT	---	RIPARIAN	FLOWAGE
31				

32 * INTMTNT = Intermittent or temporarily flooded, SATUR'D =
 33 Saturated in the rooting zone

34 ** HERB = Herbaceous, EMERG = Emergent, SUB = Submergent, FLOATG
 35 = Floating-leaved

36 8420.0610 DURATION OF MONITORING.

37 Monitoring shall be by means of an annual report as
 38 specified in part 8420.0620 and shall continue for five years
 39 following completion of the wetland replacement project, or
 40 until the technical evaluation panel deems the replacement
 41 wetland to be fully functional. Through written notification to
 42 the applicant, the local government unit may extend the required
 43 monitoring period for not more than an additional five-year
 44 period if, ~~at the end of the initial five-year period,~~ the goal
 45 of the replacement plan has not been achieved, but may be
 46 achieved with more time.

47 8420.0620 MONITORING ANNUAL REPORT.

48 Subpart 1. Purpose. The purpose of the annual report is
 49 to describe actual wetland restoration or creation activities

1 completed during the past year, activities planned for the
2 upcoming year, and the information in subpart 2. The applicant
3 shall submit the annual report to the local government
4 unit where the replacement wetland is located on a date
5 determined by the local government unit until the applicant has
6 fulfilled all of the requirements of the local government unit.
7 The local government unit, at its discretion, may prepare the
8 annual report for the applicant.

9 Subp. 2. Report content. The annual report shall include
10 the following information and other site-specific information
11 identified by the local government unit:

12 A. a description of the project location, size,
13 current wetland type (Cowardin classification), and desired
14 wetland type (goal);

15 B. a comparison of the as-built specifications versus
16 the design specifications (first annual plan only) and a
17 rationale for significant changes;

18 C. hydrology measurements: at least three seasonal
19 water level elevations during the period April through October
20 (msl or referenced to a known bench mark);

21 D. a list of the dominant vegetation in the wetland,
22 including common names of the vegetation exceeding 20 percent
23 coverage and an estimate of coverage, for example, 50 percent
24 willow, 20 percent cattail, and 30 percent sedge; and

25 E. color photographs of the project area taken
26 anytime during the period June through August, referenced to the
27 fixed photo-reference points identified on the wetland
28 replacement plan and labeled accordingly.

29 8420.0650 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT
30 PLANS.

31 Subpart 1. General requirements; notice and participation.

32 A. As an alternative to the rules adopted under
33 Minnesota Statutes, section 103G.2242, subdivision 1, and the
34 public value criteria established or approved under Minnesota
35 Statutes, section 103B.3355, a comprehensive wetland protection

1 and management plan may be developed by a local government unit,
2 or one or more local government units operating under a joint
3 powers agreement, provided that:

4 (1) a notice is made at the beginning of the
5 planning process to the board, the commissioner of natural
6 resources, the Pollution Control Agency, local government units,
7 and local citizens to actively participate in the development of
8 the plan; and

9 (2) the plan is implemented by ordinance as part
10 of the local government unit's official controls under Minnesota
11 Statutes, chapter 394, for a county; Minnesota Statutes, chapter
12 462, for a city; Minnesota Statutes, chapter 366, for a town;
13 and by rules adopted under Minnesota Statutes, chapter 103D, for
14 a watershed district; and Minnesota Statutes, chapter 103B, for
15 a watershed management organization.

16 B. An organization that is invited to participate in
17 the development of the local plan, but declines to do so and
18 fails to participate or to provide written comments during the
19 local review process, waives the right during board review to
20 submit comments, except comments concerning consistency of the
21 plan with laws and rules administered by that agency. In
22 determining the merit of an agency comment, the board shall
23 consider the involvement of the agency in the development of the
24 local plan.

25 Subp. 2. Plan contents. A comprehensive wetland
26 protection and management plan may:

27 A. provide for classification of wetlands in the plan
28 area based on:

29 (1) an inventory of wetlands in the plan area;

30 (2) an assessment of the wetland functions listed
31 in Minnesota Statutes, section 103B.3355, using a methodology
32 chosen by the technical evaluation panel from one of the
33 methodologies established or approved by the board under that
34 section; and

35 (3) the resulting public values;

36 B. vary application of the sequencing standards in

1 Minnesota Statutes, section 103G.222, subdivision 1, paragraph
2 (b), for projects based on the classification and criteria set
3 forth in the plan;

4 C. vary the replacement standards of Minnesota
5 Statutes, section 103G.222, paragraphs (f) and (g), based on the
6 classification and criteria set forth in the plan, for specific
7 wetland impacts provided there is no net loss of public values
8 within the area subject to the plan, and so long as:

9 (1) in a 50 to 80 percent area, a minimum acreage
10 requirement of one acre of replaced wetland for each acre of
11 drained or filled wetland requiring replacement is met within
12 the area subject to the plan; and

13 (2) in a less than 50 percent area, a minimum
14 acreage requirement of two acres of replaced wetland for each
15 acre of drained or filled wetland requiring replacement is met
16 within the area subject to the plan, except that replacement for
17 the amount above a 1:1 ratio can be accomplished as described in
18 part 8420.0540, subpart 2;

19 D. in a greater than 80 percent area, allow
20 replacement credit, based on the classification and criteria set
21 forth in the plan, for any project that increases the public
22 value of wetlands, including activities on adjacent upland
23 acres; and

24 E. in a greater than 80 percent area, based on the
25 classification and criteria set forth in the plan, expand the
26 application of the exemptions in Minnesota Statutes, section
27 103G.2241, paragraph (a), clause (4), to also include
28 nonagricultural land, provided there is no net loss of wetland
29 values.

30 Subp. 3. Board review and approval; mediation; judicial
31 review.

32 A. The plan is deemed approved 60 days after the
33 local government unit submits the final plan to the board,
34 unless the board disagrees with the plan as provided in item D.

35 B. The board may not disapprove a plan if the board
36 determines the plan meets the requirements of this part.

1 C. In its review of a plan, the board shall advise
2 the local government unit of those elements of the plan that are
3 more restrictive than state law and rules for purposes of
4 Minnesota Statutes, section 103G.237,

5 D. If the board disagrees with the plan or any
6 elements of the plan, the board shall, in writing, notify the
7 local government unit of the plan deficiencies and suggested
8 changes. The board shall include in the response to the local
9 government unit the scientific justification, if applicable, for
10 the board's concerns with the plan. Upon receipt of the board's
11 concerns with the plan, the local government unit has 60 days to
12 revise the plan and resubmit the plan to the board for
13 reconsideration, or the local government unit may request a
14 hearing before the board. The board shall hold a hearing within
15 the boundaries of the jurisdiction of the local government
16 within 60 days of the request for hearing. After the hearing,
17 the board shall, within 60 days, prepare a report of its
18 decision and inform the local government unit.

19 E. If, after the hearing, the board and local
20 government unit disagree on the plan, the board shall, within 60
21 days, initiate mediation through a neutral party. If the board
22 and local government unit agree in writing not to use mediation
23 or the mediation does not result in a resolution of the
24 differences between the parties, then the board may commence a
25 declaratory judgment action in the district court of the county
26 where the local government unit is located. If the board does
27 not commence a declaratory judgment action within the applicable
28 60-day period, the plan is deemed approved.

29 F. The declaratory judgment action must be commenced
30 within 60 days after the date of the written agreement not to
31 use mediation or 60 days after conclusion of the mediation. If
32 the board commences a declaratory judgment action, the district
33 court shall review the board's record of decision and the record
34 of decision of the local government unit. The district court
35 shall affirm the plan if it meets the requirements of this part.

36 Subp. 4. Effective date; replacement decisions.

1 A. The plan becomes effective as provided in subpart
2 3, items D to F, and after adoption of the plan into the
3 official controls of the local government unit.

4 B. After the effective date of the plan, a local
5 government unit shall make replacement decisions consistent with
6 the plan.

7 Subp. 5. Plan amendments. Amendments to the plan become
8 effective upon completion of the same process required for the
9 original plan.

10 Subp. 6. Water planning processes apply. Except as
11 otherwise provided for in this part, all other requirements
12 relating to development of the plan must be consistent with the
13 water plan processes under Minnesota Statutes, sections 103B.231
14 and 103B.311.

15 STANDARDS AND CRITERIA FOR STATE WETLAND BANKING

16 8420.0710 DEFINITIONS.

17 Subpart 1. Scope. For purposes of parts 8420.0700 to
18 8420.0760, the terms in this part have the meanings given them.

19 Subp. 2. Account or wetland bank account. "Account" or
20 "wetland bank account" means a record of wetland debits and
21 credits established by an account holder within the state
22 wetland banking system.

23 Subp. 3. Account holder. "Account holder," in the state
24 wetland banking system, is a person, corporation, government
25 agency, or organization that is the owner of credits.

26 Subp. 4. Applicant. "Applicant" is a person, corporation,
27 government agency, or organization that makes an application to
28 withdraw wetland credits from the wetland bank.

29 Subp. 5. Credits or wetland credits or wetland banking
30 credits. "Credits" or "wetland credits" or "wetland banking
31 credits" means acres or parts of acres of restored or created
32 wetland, ~~catalogued by abbreviated-Cowardin-et-al-wetland-type~~
33 ~~from type and topographic setting, or areas as described in part~~
34 ~~8420.0540, subpart 107-item-B 2, and-inlet-and-outlet~~
35 ~~characteristics-deposited~~ that have been approved for deposit in

1 the wetland bank.

2 Subp. 6. State wetland banking system, wetland bank, or
3 bank. "State wetland banking system," "wetland bank," or "bank"
4 means a system of identifying wetlands restored or created for
5 replacement credit, providing for, and facilitating and tracking
6 the exchange of wetland credits for projects that require
7 replacement plans.

8 8420.0720 PRINCIPLES OF WETLAND BANKING.

9 Subpart 1. Goal. Implementation of a wetland banking
10 system must comply with the purposes and goals of the act by
11 achieving a no-net loss in the quantity, quality, and biological
12 diversity of Minnesota's existing wetlands.

13 Subp. 2. Sequencing prerequisite. The state wetland
14 banking system may only be used for replacement of drained or
15 filled wetlands when the local government unit determines that
16 the applicant has complied with all of the sequencing
17 requirements of part 8420.0520; that the project would otherwise
18 be allowed if adequate replacement could be secured by the
19 applicant; that project-specific replacement is not reasonable
20 or desirable; and that the owner of the account agrees to the
21 withdrawal of credits from the account.

22 Subp. 3. Geographic limitations. ~~In-counties-having~~
23 ~~greater-than-80-percent-of-their-presettlement-wetlands-intact,~~
24 Wetland banking is allowed for any impact, however, wetland
25 impacts should be replaced in a location that either most
26 closely resembles lost functions and public values at the impact
27 site or in a location that maximizes important wetland functions
28 and public values. ~~Wetland-banking-in-counties-with-less-than~~
29 ~~80-percent-of-their-presettlement-wetlands-intact-can-be~~
30 ~~considered-only-in-situations-involving-impacts-of-less-than~~
31 ~~five-acres,-except-in-certain-circumstances-as-noted-in-part~~
32 ~~8420.0740-subpart-27-item-B7-subitem-(2)-~~

33 Subp. 4. Eligible wetlands. Restored wetlands are
34 eligible for deposit into the wetland bank. Created wetlands
35 are eligible for deposit in the wetland bank in counties in

1 which 80 percent or more of the presettlement wetlands are
2 intact. In other counties, created wetlands are eligible for
3 deposit in the bank only if they are created by excavation in
4 nonwetlands, by dikes or dams along public or private drainage
5 ditches, or by dikes or dams associated with the restoration of
6 previously drained or filled wetlands. ~~Modification-or~~
7 ~~conversion-of-nondegraded-naturally-occurring-wetlands-from-one~~
8 ~~type-to-another-are-not-eligible-for-enrollment-in-a-statewide~~
9 ~~wetlands-bank.~~

10 Subp. 5. Ineligible wetlands. Wetlands that are drained
11 or filled under an exemption in part ~~8420-0120~~ 8420.0122 and
12 subsequently restored are not eligible for deposit in the
13 wetland bank. Modification or conversion of nondegraded
14 naturally occurring wetlands from one type to another are not
15 eligible for enrollment in a statewide wetlands bank.

16 Subp. 6. Account balance. Accounts must maintain a
17 positive balance. A wetland bank account shall specify acreage
18 by wetland type deposited by the account holder minus subsequent
19 withdrawals.

20 Subp. 7. Credit transfers. Wetland credits may be
21 transferred to another account holder providing the fee title or
22 easement ~~or-license~~ is transferred also, and providing all the
23 remaining credit for a wetland remains in one account. Wetland
24 credits may be transferred to another account holder without
25 transferring the fee title or easement if all the credits
26 transferred are used for replacement credit by the transferee.
27 Wetland credits may be withdrawn by an applicant and partial
28 withdrawals are allowed. The account holder is responsible for
29 the success of the wetland until completion of monitoring.
30 After completion of monitoring, the fee title owner or easement
31 or license holder and anyone who has contracted with the owner
32 is responsible for maintaining the wetland and replacing it
33 according to this chapter if the wetland is subsequently drained
34 or filled, by structural failure, or otherwise.

35 Subp. 8. Deed recording. For wetlands proposed for
36 deposit, a deed covenant must be recorded stating that the

1 subject wetland was or will be restored or created for
2 mitigation banking purposes.

3 Subp. 9. Qualification. A wetland cannot be deposited for
4 credit that cannot, under parts 8420.0500 to 8420.0630, be used
5 for replacement.

6 8420.0740 PROCEDURES.

7 Subpart 1. Deposits and credits.

8 A. Restored wetlands are eligible for deposit into
9 the wetland bank. Created wetlands are eligible for deposit in
10 the wetland bank in counties in which 80 percent or more of the
11 presettlement wetlands are intact. In other counties, created
12 wetlands are eligible for deposit in the bank only if they are
13 created by excavation in nonwetlands, by dikes or dams along
14 public or private drainage ditches, or by dikes or dams
15 associated with the restoration of previously drained or filled
16 wetlands. Modification or conversion of nondegraded naturally
17 occurring wetlands from one type to another are not eligible for
18 enrollment in a statewide wetlands bank.

19 B. Wetland replacement credits approved before July
20 1, 1993, are eligible for deposit into the state wetland banking
21 system if the wetland replacement credit was authorized by a
22 public agency specifically for a wetland bank that has been
23 approved by the commissioner. Also, wetland replacement credits
24 that have been deposited in a local government unit bank before
25 July 1, 1993, and after January 1, 1992, are eligible for
26 deposit into the state wetland banking system if the deposit
27 meets all the criteria in parts 8420.0700 to 8420.0760 based on
28 a site inspection and review by the board and the commissioner.

29 C. After July 1, 1993, wetlands restored or created
30 without prior local government unit approval as specified in
31 this part are not eligible for deposit into the wetland bank.

32 D. The minimum wetland acreage eligible to establish
33 an account in the wetland bank is 0.1 acres.

34 E. There is no maximum wetland acreage eligible for
35 deposit in the wetland bank. The local government unit, upon

1 recommendation of the technical evaluation panel, must identify
2 the acreage that will receive credit. As an incentive to
3 encourage the deposit of small wetlands, the local government
4 unit shall assign credit to wetland acreage as follows:

5	Wetland	Credit
6	Acreage	
7	0 to 10 acres	100 percent
8	over 10 acres	90 percent
9	The local government unit may modify the credit given, up	

10 to a maximum of 100 percent, if agreed to by the technical
11 evaluation panel.

12 F. The initial deposit of wetland credits must be
13 done by the fee title owner or easement or license holder of the
14 wetland.

15 G. Except as provided for in item B, in order to
16 deposit wetland acres into the wetland bank, the depositor must
17 notify the local government unit in writing, before restoration
18 or creation, that the proposed wetland is specifically
19 designated for deposit into the wetland bank. This notification
20 may be part of the documentation requested in item H. In cases
21 where excess wetland acreage is expected to result from a
22 specific replacement plan according to parts 8420.0530 to
23 8420.0550, the owner must indicate on the replacement plan that
24 the excess acreage is to be considered available for wetland
25 banking.

26 H. In cases where a wetland is proposed to be
27 restored or created solely for wetland banking purposes, that
28 is, the wetland is not part of a project-specific wetland
29 replacement plan, the depositor must submit to the local
30 government unit a bank plan containing the information required
31 in part 8420.0530, items A and D.

32 A copy of the bank plan shall be mailed to members of the
33 technical evaluation panel, members of the public who have
34 requested a copy, and members of the watershed district or
35 watershed management organization if there is one. Based on
36 input from the technical evaluation panel and other comments
37 received, the local government unit must determine the
38 likelihood that the restoration or creation will be successful

1 and, if affirmative, approve the plan and advise the depositor
2 of the wetland ~~acreage~~ credits likely to be accepted into the
3 wetland bank. Approval of the plan shall be considered official
4 acknowledgment that the wetland is designated for replacement.

5 I. In cases where a wetland is to be restored or
6 created by an agency, department, or subdivision of the local
7 government unit for deposit into the wetland bank, the local
8 government unit must prepare the information required in part
9 8420.0530, items A and D, and notice this information according
10 to part 8420.0740, subpart 1, item H.

11 J. The proposed wetland must be restored or created
12 within two years of approval or the bank plan must be
13 resubmitted for consideration. Upon approval, the depositor
14 shall restore or create the wetland and notify the local
15 government unit when construction has been completed. The
16 technical evaluation panel shall inspect the site when
17 construction is completed to ensure that construction
18 specifications have been followed. Failure to follow approved
19 construction specifications is sufficient grounds for the local
20 government unit to deny consideration of the wetland for banking.

21 K. No sooner than six months after construction has
22 been completed and approved for restored wetlands, and no sooner
23 than one year after construction has been completed and approved
24 for created wetlands, the depositor shall contact the local
25 government unit to request a final determination of wetland bank
26 acceptability and approved quantities of wetland credits for
27 deposit. The technical evaluation panel shall ensure that
28 sufficient time has been allowed for the wetland to become
29 established, especially vegetation and hydrology, before making
30 this determination. If the technical evaluation panel has
31 reason to believe that the wetland characteristics may change
32 substantially, the panel must postpone its recommendation to the
33 local government unit until the wetland has stabilized.

34 Based on a site visit, the technical evaluation panel will
35 determine the size and type of wetland, ~~using the abbreviated~~
36 ~~Cowardin-et-al classification in part 8420.0540, subpart 10,~~

1 ~~item-B,~~ as well as ~~inlet-and-outlet~~ topographic setting
2 characteristics resulting from the to be deposited wetland. The
3 technical evaluation panel will provide the information to the
4 local government unit.

5 L. The local government unit shall notify the
6 depositor of its findings as to the suitability of the wetland
7 and approved wetland credits. If the depositor chooses to
8 proceed with a deposit into the bank, the depositor must record
9 the notice specified in part 8420.0530, item D, subitem (6), and
10 submit proof of the recording to the local government unit for
11 the wetlands to be deposited. If the depositor chooses not to
12 proceed with the deposit, the depositor may return the wetland
13 to its preconstruction condition without replacement within five
14 years. At any time within the five-year period, the depositor
15 may request certification for deposit into the bank or may amend
16 the bank plan and submit the plan to the local government unit
17 for approval and subsequent certification. After five years,
18 any activity in the wetland is subject to this chapter.

19 M. To be deposited into the bank, the following
20 information concerning the wetland must be submitted to the
21 board by the local government unit in which the wetland is
22 located:

23 (1) name, address, and telephone number of the
24 depositor;

25 (2) location of the wetland, including legal
26 description, public land survey coordinates, county, and
27 watershed;

28 (3) a copy of the deed for the property
29 containing the wetland with the required covenant recorded;

30 (4) size of the wetland acreage to be deposited,
31 to the 0.1 acre, by wetland type~~-using-the-abbreviated~~
32 ~~Edwardin-et-al-classification-in-part-8420-05407-subpart-10,~~
33 ~~item-B,~~ and ~~inlet-and-outlet~~ topographic setting
34 characteristics; and

35 (5) certification that the wetland is approved
36 for deposit into the bank.

1 N. The board shall acknowledge the deposit to the
2 depositor and local government unit and officially enter the
3 information in item M into the wetland bank. Information on
4 deposited wetlands shall be available from the board on request
5 according to subpart 2, item D.

6 O. Wetlands deposited into the wetland bank, on which
7 withdrawals have occurred, are subject to replacement for any
8 subsequent drainage or filling.

9 P. Wetlands deposited into the wetland bank are
10 subject to the monitoring provisions in part 8420.0750.

11 Subp. 2. Withdrawals.

12 A. Before consideration of use of the wetland bank,
13 applicants must satisfy the requirements of part 8420.0520. It
14 must be clearly demonstrated that the applicant has made a good
15 faith effort to avoid, minimize, rectify, or reduce or eliminate
16 over time the impact on the wetland, and that no feasible and
17 prudent alternative to the impact exists. The local government
18 unit must certify that the project would otherwise be allowed if
19 adequate replacement could be secured by the applicant and that
20 the applicant has made a good faith effort to do so and has not
21 succeeded in locating a site.

22 B. The use of the wetland bank is limited to:
23 ~~{1}-projects-occurring-in-counties-having-greater~~
24 ~~than-80-percent-of-their-presettlement-wetlands;~~

25 ~~{2}-counties-with-less-than-80-percent-of-their~~
26 ~~presettlement-wetlands-remaining,-with-the-use-of-the-wetland~~
27 ~~bank-limited-to:~~

28 ~~{a)-linear-type-transportation-or-utility~~
29 ~~projects-with-impacts-less-than-five-acres-per-basin,-minus-any~~
30 ~~project-specific-replacement-acreage;~~

31 ~~{b)-other-projects-with-a-cumulative-impact~~
32 ~~of-less-than-five-acres,-minus-any-project-specific-replacement~~
33 ~~acreage,-or~~

34 ~~{c) allowed~~ whenever the local government
35 unit determines that the use of the wetland bank is reasonable
36 and desirable.

1 C. When using the wetland bank to replace drained or
2 filled wetlands, the replacement must comply with part 8420.0540.

3 D. The board, on request, will provide the following
4 information to persons making inquiries concerning available
5 wetland bank deposits with a local government unit jurisdiction,
6 county, or watershed:

7 (1) account holder: name, address, and telephone
8 number;

9 (2) available wetlands: wetland acres by
10 ~~abbreviated-Cowardin-et-al--classification~~ type and ~~inlet-and~~
11 ~~outlet~~ topographic setting characteristics;

12 (3) location: section, township, range, county,
13 and watershed.

14 E. The applicant may then contact, negotiate, and
15 purchase the required wetland ~~acreage~~ credits from the account
16 holder. When the account holder and applicant come to
17 agreement, the applicant will provide requested information on a
18 notarized credit transfer withdrawal form developed by the
19 board, and include the credit transfer withdrawal form as part
20 of the wetland replacement plan transmitted to the local
21 government unit. The credit transfer withdrawal form will
22 include information indicating the wetland type by acres
23 for ~~transferal~~ withdrawal, location of banked wetland, and the
24 ~~inlet-and-outlet~~ topographic setting characteristics of the
25 banked wetland.

26 F. The local government unit must circulate the
27 applicant's wetland replacement plan and the credit transfer
28 withdrawal form to identify specific wetland bank credits as the
29 applicable replacement wetland, using the public comment and
30 review process in part 8420.0230 and to the local government
31 unit whose jurisdiction covers the location of the wetland
32 bank ~~acreage~~ credits. The local government unit must contact
33 the board to verify that replacement credits indicated on the
34 credit transfer withdrawal form are available before final
35 approval of wetland bank withdrawals.

36 G. ~~Wetlands-impacted-by-public-transportation~~

1 projects-may-be-replaced-statewide,-provided-the-replacements
2 are-approved-by-the-commissioner-under-an-established-wetland
3 banking-system-or-under-the-rules-for-wetland-banking-as
4 provided-for-in-parts-8420:0700-to-8420:0760-

5 The-commissioner-shall-notify-the-local-government-unit-and
6 the-board-of-the-decision-within-30-days-of-the-date-that-the
7 replacement-plan-is-received-by-the-commissioner---if-the
8 commissioner-does-not-approve-the-replacement-plan,-the-local
9 government-unit-shall-not-approve-the-replacement-plan-

10 H. On approval of the applicant's wetland replacement
11 plan using wetland bank acreage credits as wetland replacement,
12 the local government unit shall notify the board to debit the
13 appropriate banked wetland by type and acreage. The board will
14 complete the accounting transactions and send a notice of credit
15 transfer withdrawal to the account holder.

16 ~~H.~~ H. The applicant shall not be allowed to begin
17 proposed drain or fill activities until the local government
18 unit formally approves the wetland replacement plan using the
19 acknowledged wetland bank credits as replacement.

20 ~~H.~~ I. An individual, corporation, local government
21 unit, or other organization may buy and hold credits from
22 account holders in the bank for later use or resale. Transfer
23 of credits must be accomplished through use of a board credit
24 transfer form, and must be maintained in an account in the state
25 wetland banking system. An account will be established for the
26 individual or organization on presentation to the board of a
27 credit transfer form, and required organization information.
28 The board will notify both account holders on transfer of the
29 wetland credits. An account transfer must be accompanied by
30 transfer of the fee title or easement ~~or-license~~ unless the
31 credits will not be again transferred and will be held for
32 future withdrawal only for replacement of wetland impacts by the
33 transferee. A credit for a wetland may not be split between
34 accounts. Wetland credits may also be transferred between banks
35 approved by the board.

1 8420.0750 AUDITING AND MONITORING.

2 Subpart 1. Annual report and audit.

3 A. The board will develop wetland bank deposit,
4 withdrawal, and credit transfer and withdrawal forms and
5 distribute them to local government units indicating a desire to
6 certify restored wetland ~~acreage~~ credits for deposit in the
7 wetland bank.

8 B. The wetland bank data file maintained by the board
9 will contain at least the following information:

10 (1) wetland acres by ~~abbreviated-Cowardin-et-al-~~
11 ~~classification~~ type, ~~inlet-and-outlet~~ topographic setting
12 characteristics, restoration or creation date, and bank
13 acceptance date, fee owner, location by (public land survey
14 coordinates, local government unit, county, and watershed of the
15 banked wetland); and

16 (2) previous withdrawals against each banked
17 wetland by impact wetland (wetland acres by ~~abbreviated~~
18 ~~Cowardin-et-al--classification~~ type, ~~inlet-and-outlet~~
19 topographic setting characteristics, date of wetland impact),
20 ownership (fee owner, address, telephone number) and location
21 (public land survey coordinates, local government unit, county,
22 and watershed of the impacted wetland).

23 C. The board may periodically inspect wetland bank
24 records and correspondence maintained by a local government unit
25 to determine compliance with this part.

26 D. An annual wetland bank report shall be prepared
27 and distributed by the board to applicable local government
28 units, soil and water conservation districts, watershed
29 districts, watershed management organizations, the ~~department~~
30 departments of natural resources and agriculture, and on request.

31 Subp. 2. Monitoring.

32 A. After the wetland is entered into the bank, the
33 local government unit responsible for monitoring under part
34 8420.0230 and the account holder shall continue monitoring
35 according to parts 8420.0600 to 8420.0630. The account holder
36 is responsible for the success of the wetland until completion

1 of monitoring, even after all the credit has been withdrawn.

2 B. The board shall inspect wetlands deposited into
3 the wetland bank at least once each five years to ensure that
4 the wetlands conform to conditions specified in the approved
5 bank plan, and to make a determination of needed corrective
6 action.

7 STANDARDS AND CRITERIA FOR IDENTIFICATION,
8 PROTECTION, AND MANAGEMENT OF CALCAREOUS FENS

9 8420.1010 PURPOSE.

10 The purpose of parts 8420.1010 to 8420.1060 is to provide
11 minimum standards and criteria for the identification,
12 protection, and management of calcareous fens as authorized by
13 Minnesota Statutes, section 103G.223. Calcareous fens may not
14 be drained or filled or otherwise altered or degraded except as
15 provided for in a management plan approved by the commissioner.

16 Part ~~8420.0120~~ 8420.0122 does not apply to calcareous fens.

17 8420.1040 MANAGEMENT PLANS.

18 Calcareous fens may not be drained or filled or otherwise
19 altered or degraded except as provided for in a management plan
20 approved by the commissioner. The commissioner will provide
21 technical assistance to landowners or project sponsors in the
22 development of management plans.

23 8420..... TIME DEADLINE FOR AGENCY ACTION.

24 Subpart 1. Definition. For purposes of this part, "agency"
25 means a department, agency, board, commission, or other group in
26 the executive branch of state government; a statutory or home
27 rule charter city, county, town, or school district; any
28 metropolitan agency or regional entity; and any other political
29 subdivision of the state.

30 Subp. 2. Deadline for response. Except as otherwise
31 provided in this part and notwithstanding any other law to the
32 contrary, an agency must approve or deny within 60 days a
33 written request relating to zoning, septic systems, or expansion
34 of the metropolitan urban service area for a permit, license, or
35 other governmental approval of an action. Failure of an agency

1 to deny a request within 60 days is approval of the request. If
2 an agency denies the request, it must state in writing the
3 reasons for the denial at the time that it denies the request.

4 Subp. 3. Application; extensions.

5 A. The time limit in subpart 2 begins upon the
6 agency's receipt of a written request containing all information
7 required by law or by a previously adopted rule, ordinance, or
8 policy of the agency. If an agency receives a written request
9 that does not contain all required information, the 60-day limit
10 starts over only if the agency sends notice within ten business
11 days of receipt of the request telling the requester what
12 information is missing.

13 B. If an action relating to zoning, septic systems,
14 or expansion of the metropolitan urban service area requires the
15 approval of more than one state agency in the executive branch,
16 the 60-day period in subpart 2 begins to run for all executive
17 branch agencies on the day a request containing all required
18 information is received by one state agency. The agency
19 receiving the request must forward copies to other state
20 agencies whose approval is required.

21 C. An agency response meets the 60-day time limit if
22 the agency can document that the response was sent within 60
23 days of receipt of the written request.

24 D. The time limit in subpart 2 is extended if a state
25 statute, federal law, or court order requires a process to occur
26 before the agency acts on the request, and the time periods
27 prescribed in the state statute, federal law, or court order
28 make it possible to act on the request within 60 days. In cases
29 described in this item, the deadline is extended to 60 days
30 after completion of the last process required in the applicable
31 statute, law, or order. Final approval of an agency receiving a
32 request is not considered a process for purposes of this item.

33 E. The time limit in subpart 2 is extended if:

34 (1) a request submitted to a state agency

35 requires prior approval of a federal agency; or

36 (2) an application submitted to a city, county,

1 town, school district, metropolitan or regional entity, or other
2 political subdivision requires prior approval of a state or
3 federal agency.

4 In cases described in this item, the deadline for agency
5 action is extended to 60 days after the required prior approval
6 is granted.

7 F. An agency may extend the timeline under this
8 subpart before the end of the initial 60-day period by providing
9 written notice of the extension to the applicant. The
10 notification must state the reasons for the extension and its
11 anticipated length, which may not exceed 60 days unless approved
12 by the applicant.

13 REPEALER. Minnesota Rules, parts 8420.0110, subparts 5, 13, 26,
14 27, and 47; 8420.0120; and 8420.0250, subpart 2, are repealed.

**STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES**

**In the Matter of the Proposed Adoption
of Amendments to Implement the Wetland
Conservation Act of 1991 as Amended**

**FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER ADOPTING RULES**

FINDINGS

1. 1996 Minn. Laws, ch. 462, sec. 39, provides that the board shall adopt rules that amend the rules previously adopted under Minnesota Statutes, sections 103G.2242, subdivision 1, and 103B.3355, to implement the Wetland Conservation Act of 1991.

2. 1996 Minn. Laws, ch. 462, sec. 39, further provides that such amended rules are exempt from the rulemaking provisions of Minnesota Statutes, chapter 14, except that Minnesota Statutes, section 14.386 applies.

3. A draft of the amended rules was presented to the Wetland Heritage Advisory Committee for review and comment on April 22, 1996. Members of the public were given an opportunity to comment on the draft of the amended rules at the meeting.

4. Subsequent to the meeting of the Wetland Heritage Advisory Committee, the staff of the board prepared a further revised draft of the amended rules. This further revised draft is set forth in Revisor of Statutes draft, file number _____, dated _____, identified as Minnesota Rules, parts 8420.0100 to 8420.1050 ("Revisor's Draft").

5. The staff of the board consulted with the staffs of the commissioners of natural resources and agriculture in the preparation of the amended rules.

6. At a meeting on April 25, 1996, the board approved and adopted the amended rules as set forth in the Revisor's Draft. The board further authorized Ronald D. Harnack, Executive Director of the board to sign the Findings of Fact, Conclusions, and Order Adopting Rules and to modify the amended rules if necessary to obtain the approval of the amended rules by the revisor of statutes and the office of administrative hearings.

7. Copies of the amended rules were submitted to the senate and house environment and natural resource committees on April ___, 1996.

8. The staff of the board, in consultation with the staff of the Attorney General, has an Explanation of Legality dated April ___, 1996, to support the legality of the amended rules, which is hereby incorporated by reference.

9. Pursuant to Minnesota Statutes, section 14.386, the amended rules will be submitted to the revisor of statutes and office of administrative hearings for approval and thereafter published in the State Register.

CONCLUSIONS

1. The board duly acquired and has jurisdiction over this proceeding.
2. All relevant legal and procedural requirements of statute and rule have been complied with.
3. The amended rules are legal.
4. The amended rules will have the force and effect of law after (a) the revisor of statutes approves the form of the amended rules by certificate, (b) the office of administrative hearings approves the amended rules as to legality, and (c) a copy of the amended rules is published in the State Register.
5. The amended rules will be effective for two years from the date of publication of the amended rules in the State Register unless they are superseded by permanent rules.

NOW, THEREFORE, IT IS ORDERED that the amended rules relating to the Wetland Conservation Act of 1991, in the form set out in Revisor of Statutes draft, file number _____, dated _____, identified as Minnesota Rules, parts 8420.0100 to 8420.1050 are adopted this _____ day of _____, 1996, pursuant to authority vested in the Board by 1996 Minn. Laws, ch. 462, sec. 39.

Dated: _____

Ronald Harnack
Executive Director

M E M O R A N D U M



April 4, 1996

TO: BWSR Wetland Team
BWSR Wetland Subcommittee

FR: John Jaschke, BWSR *JA*
(612)297-3432

RE: WCA Rule Development: Draft Timeline

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Yesterday, Greg, Jim and I laid out the timeline for 60 day WCA Emergency Rule development -- per M.S. 14.386 and the new WCA bill. (Ron was out, and Matt Seltzer has not yet reviewed it, hence the timeline is still a draft.) The new statute will be effective the day after the Governor signs the bill -- which is expected late next week. Assuming an April 9th signature, the bill would become effective on April 10th. Thus the rule development schedule in reverse is as follows:

Draft WCA Emergency Rule Development Timeline

Monday, June 10	Effective date of revised rule (upon <i>State Register</i> publication).
Friday, May 24	Rule to <i>State Register</i> for publication (1 week prior to publication).
Friday, May 10	Rule to Office of Administrative Hearings (1 week to approve).
Friday, May 3	Rule to Revisor of Statutes for certification (1 week to certify).
Thursday, April 25	BWSR Board meeting - draft rule approval at MN Valley Wildlife Refuge.
Monday, April 22	Wetland Heritage Advisory Committee public hearing on proposed rule at Room 10, State Office Building.
Tuesday, April 16	Mail draft rule to interested parties announcing the WHAC meeting.
Tuesday, April 16	BWSR field staff meeting in St. Cloud to review WCA changes.
Friday, April 12	BWSR Wetland Team/Subcommittee/LGU staff meeting to review rough draft of revised rule.

c: Ron Harnack
Greg Larson
Jim Birkholz
BWSR Field Staff
Land and Water Section
Matt Seltzer, AG
Tanja Kozicky, Gov. Carlson's Office
BWSR Board Members
Interagency Wetlands Group
Wetland Heritage Advisory Committee

s:timelin.rul

Summary of 1996 Wetland Conservation Act (WCA) Changes



Public Roads

Provides that the Board of Water and Soil Resources (BWSR) will replace wetlands drained or filled from the repair, reconstruction or rehabilitation for *existing* local government public roads to meet safety and design standards. Wetland impacts from *new* road projects in greater than 80 percent areas may be mitigated by purchasing credits from a subsidized state wetland bank. Road authorities in other areas may purchase credits at cost. Metro area replacement is required for metro area wetland impacts.

Exemptions

The exemptions are reformatted for easier interpretation. Expansion of exemptions are:

- Agricultural land defined more broadly to apply ag exemptions to all farming areas.
- Repair and updating of existing individual sewage treatment systems.
- Spoil deposition up to 0.5 acre for wildlife habitat improvement projects.
- **Drainage exemption:** Exempts impacts to all wetlands except types 3, 4 and 5 that have existed for more than 25 years as part of a public ditch maintenance or repair project. Exempts draining of type 1, and type 2 and 6 wetlands less than 5 acres within the assessment area if the public ditch system has been actively maintained, inspected or assessed in the 20 years prior to 1/1/92. Allows spoil disposal into wetlands along the side of the ditch. Provides a mechanism and financial incentive for landowners to protect wetlands along a ditch system. Exempts wetlands impacts to private drainage systems as long as wetlands are not drained that have existed for more than 25 years. Funds a pilot drainage inventory and training for ditch authorities.
- The *deminimis* exemption (the amount not regulated) is expanded from 400 square feet outside of the shoreland wetland protection zone to:
 - In a greater than 80 percent area, 10,000 square feet of wetland type 1, 2, 6 or 7 (except for white cedar and tamarack wetlands);
 - In a 50 to 80 percent area, 5,000 square feet of wetland type 1, 2, 6 or 7 (except for white cedar and tamarack wetlands);
 - In a less than 50 percent area, 2,000 square feet of wetland types 1, 2 or 6.
 - For wetland types not listed above, a 400 square foot *deminimis* applies outside the shoreland areas.
 - A 400 square foot *deminimis* applies within shoreland areas.
 - A 5% cumulative cap applies to this exemption depending on the size and ownership of the wetland.

Local Control, Regionalization and Flexibility

Local units of government may develop a Comprehensive Wetland Protection and Management Plan as an alternative to the state rule.

→ Greater than 80 percent areas gain the following flexibility from doing a plan:

- Replacement credit may be allowed for any project that increases the public value of a wetland, including activities in adjacent uplands;
- The ag exemptions for types 1,2,6 may be expanded to non-ag land;
- The application of sequencing may be varied; and
- Wetland impacts may be replaced anywhere within the plan area.

→ 50 to 80 percent areas gain the following flexibility from doing a plan:

- The replacement ratio is reduced from a minimum of 2:1 to 1:1;
- The application of sequencing may be varied; and
- Wetland impacts may be replaced anywhere within the plan area.

→ less than 50 percent areas gain the following flexibility from doing a plan:

- The application of sequencing may be varied; and
- Wetland impacts may be replaced anywhere within the plan area.

→ wetland functional assessments are the basis for public value determinations.

→ Unless the board objects, the plan is deemed approved 60 days after the local government submits it to the board.

→ The local government must adopt the plan as an ordinance.

Process Streamlining

- Project notification is streamlined and the time for local government decisions is shortened from 30 to 10 days.
- Provides for on-site sequencing.
- Appeals to BWSR are by petition with a filing fee. The local government may also require a bond.
- A toll-free number to obtain information on minimizing wetland impacts is established.

Local Government Liability Prevention

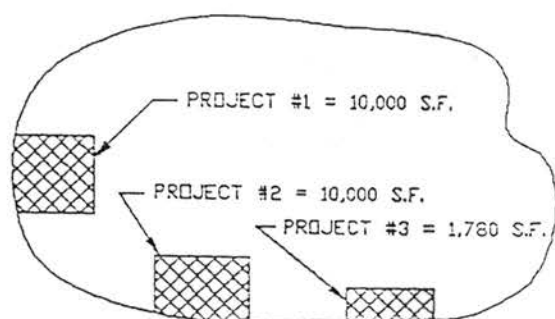
The state will assume liability for costs of claims against a local government unit incurred as a result of proper implementation of the WCA.

MN WETLAND CONSERVATION ACT DEMINIMIS EXEMPTION (SENATE A54 AMENDMENT)

EXAMPLE:

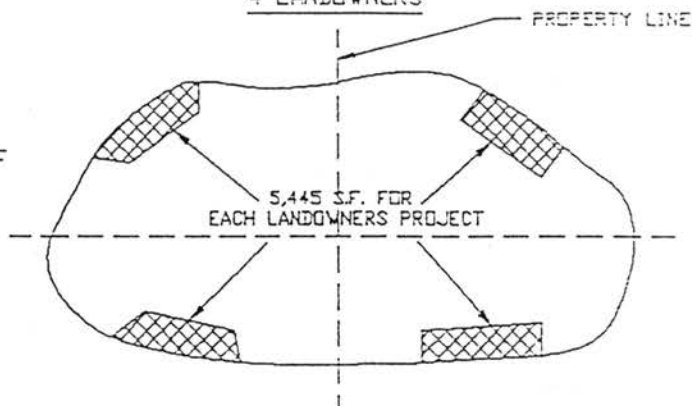
- * GREATER THAN 80% AREA
- * TYPE 1,2,6,7 (EXCLUDING WHITE CEDAR & TAMARACK) WETLANDS
- * OUTSIDE OF SHORELAND WETLAND PROTECTION ZONE

1 LANDOWNER



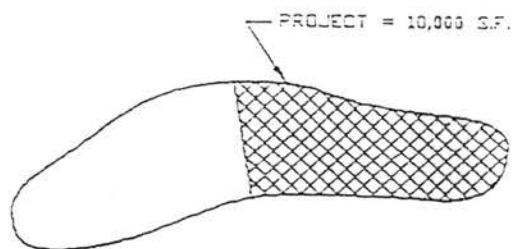
5% OF 10 ACRES = 21,780 S.F.
DEMINIMIS AMOUNT = 10,000 S.F.

4 LANDOWNERS



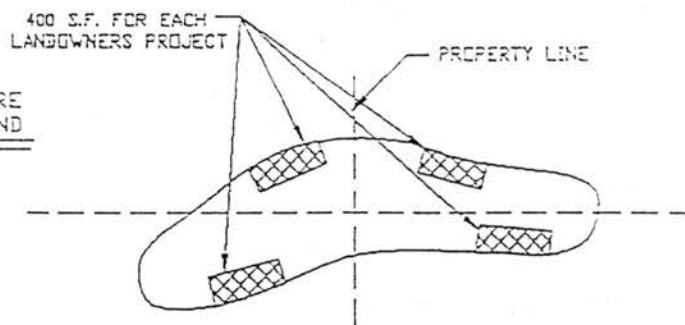
5% OF $\frac{10 \text{ ACRES}}{4}$ = 5,445 S.F.
DEMINIMIS AMOUNT = 5,445 S.F. EACH

1 LANDOWNER



5% OF 0.5 ACRES = 1,089 S.F.
DEMINIMIS AMOUNT = 10,000 S.F.

4 LANDOWNERS



5% OF $\frac{0.5 \text{ ACRES}}{4}$ = 272 S.F.
DEMINIMIS AMOUNT = 400 S.F. EACH

NOT TO SCALE

Assessment of 1996 Amendments to the *Minnesota Wetland Conservation Act*



The 1996 changes to the Wetland Conservation Act will make the law more workable for all areas of the state, particularly those areas with a high percentage of wetlands remaining, while maintaining a high level of resource protection. Specifically, the 1996 amendments offer the following:

- * The changes give local governments and citizens the opportunity to approach wetland protection as a part of a comprehensive water management strategy. To accomplish this, the bill provides for the integration of wetland protection measures with the local water planning process and local zoning ordinances.
- * Rather than focusing strictly on the acreage amount of wetlands drained or filled in a given situation, the changes provide for the functional assessment of wetlands. This means that wetlands will be replaced based upon the amount of actual benefits they provide, as well as their size. This will help ensure the preservation of the public values of the state's wetland and water resources.
- * Recognizing the importance of Minnesota's lakes and rivers to our quality of life, and the role wetlands play in preserving the quality of our surface waters, the amendments emphasize stringent wetland protection standards within shoreland areas.
- * The amendments streamline the approval process for landowners proposing projects that impact wetlands by enabling local governments to act in a reasonable time frame, including allowing on-site determinations for small projects. In addition, the bill offers opportunities to provide landowners with "one-stop-shopping" for project information and decisions via a toll-free phone number and local government program integration.
- * Recognizing the need for safe roads and wetland protection, the bill establishes a dedicated state fund for restoring wetlands impacted by local road authorities. This program will generate successful wetland replacement sights in a cost-effective and efficient manner.
- * The level of benefits wetlands provide often depends in part upon the adjacent land use. By providing additional incentives to include vegetative buffers and water quality treatment systems in these areas, the amendments will enhance the water quality and wildlife habitat benefits of wetlands.
- * The changes provide for a strong state participation and oversight role in the development, implementation and enforcement of local government comprehensive wetland protection and management plans. This state presence is intended to ensure that the law is consistently and fairly administered.

Provides relief beyond the existing law for:

AGRICULTURAL ACTIVITIES

- * Agricultural land is defined more broadly as land used for horticultural, row, close grown, pasture, hayland crops, growing nursery stocks, animal feedlots, drainage systems; and associated buildings -- thus expanding application of the ag exemptions.
- * Exempts type 6 wetlands less than 2 acres, on ag land.
- * Exempts type 1, type 2 and type 6 parts of larger wetlands on ag land (with an approved conservation plan) to allow for efficient farming operations.
- * Drainage exemption: Exempts impacts to all wetlands except types 3, 4 and 5 that have existed for more than 25 years as part of a public ditch maintenance or repair project. Exempts draining of type 1, and type 2 and 6 wetlands less than 5 acres within the assessment area if the public ditch system has been actively maintained, inspected or assessed in the 20 years prior to 1/1/92. Allows spoil disposal into wetlands along the side of the ditch. Provides a mechanism and financial incentive for landowners to protect wetlands along a ditch system. Exempts wetlands impacts to private drainage systems as long as wetlands are not drained that have existed for more than 25 years. Funds a pilot drainage inventory and training for ditch authorities.
- * Allows replacement credit for vegetative restoration of farmed wetlands.
- * Allows replacement credit for maintaining wetlands restored under an expiring conservation agreement.

Provides relief beyond the existing law for:

SMALL LANDOWNERS & DEVELOPERS

- * streamlines notification and approval process and provides for on-site sequencing.
- * exemptions are categorized for easier interpretation.
- * exempts "accidental" wetlands for private landowners.
- * exempts repair and updating of existing individual sewage treatment systems as necessary to comply with local, state and federal regulations.
- * Exempts impacts to all wetlands that have existed for less than 25 years as part of a private ditch maintenance or repair project.
- * The de minimis exemption (the amount not regulated) is expanded from 400 square feet outside of the shoreland wetland protection zone to:
 - In a greater than 80 percent area, 10,000 square feet of wetland type 1, 2, 6 or 7 (except for white cedar and tamarack wetlands);
 - In a 50 to 80 percent area, 5,000 square feet of wetland type 1, 2, 6 or 7 (except for white cedar and tamarack wetlands);
 - In a less than 50 percent area, 2,000 square feet of wetland types 1, 2 or 6.
 - A 400 square foot de minimis applies within the shoreland wetland protection zone and outside the shoreland wetland protection zone for wetland types not listed above.
 - The exemption has a cumulative cap set at either the de minimis amount, 5 percent of the wetland owned, or 400 square feet.
 - Persons proposing to conduct a de minimis activity must contact the BWSR at a toll-free number to obtain information on ways to minimize wetland impacts.
- * Allows replacement credit for:
 1. the installation of upland buffer areas; and
 2. the installation of water quality treatment ponds adjacent to wetlands; and
 3. for vegetative restoration of farmed wetlands; and
 4. for maintaining wetlands restored under an expiring conservation agreement.
- * Wildlife Habitat Improvement: exempts deposition of up to one-half acre of spoil resulting from excavation within a wetland for wildlife habitat improvement purposes.
- * A pumping rate and schedule for the Lincoln-Pipestone rural water district is established that will provide and adequate water supply and protection for rare wetlands (calcareous fens) in the area of the Burr Well Field.

Provides relief beyond the existing law for:

LOCAL GOVERNMENT CONTROL, REGIONALIZATION & FLEXIBILITY

Allows local governments to adopt local comprehensive wetland protection and management plans which, after a review and approval process by the board of water and soil resources, provide an alternative to the rules governing the act. The plans offer the following specific relief from the rules *beyond* that provided by changes elsewhere as noted above:

→ Greater than 80 percent areas gain the following flexibility from doing a plan:

- Replacement credit may be allowed for any project that increases the public value of a wetland, including activities in adjacent uplands;
- The ag exemptions for types 1,2,6 may be expanded to non-ag land;
- The application of sequencing may be varied; and
- Individual impacts may be replaced anywhere within the plan area.

→ 50 to 80 percent areas gain the following flexibility from doing a plan:

- The replacement ratio is reduced from a minimum of 2:1 to 1:1;
- The application of sequencing may be varied; and
- Individual impacts may be replaced anywhere within the plan area.

→ less than 50 percent areas gain the following flexibility from doing a plan:

- The application of sequencing may be varied; and
- Individual impacts may be replaced anywhere within the plan area.

→ wetland functional assessments must be used as the basis for public value determinations.

→ A process is provided concerning the resolution of disputes, and unless the board objects, the plan is deemed approved 60 days after the local government submits it to the board.

→ The local government must adopt the plan as an ordinance.

→ state agencies will participate in the planning process, and may only comment on issues outside of their authority if they participate in the planning process from the outset. The BWSR must consider the involvement of a state agency when reviewing their comments.

* Counties are given the option of participating in the Wetland Preservation Areas program which provides a property tax exemption to landowners owning wetlands in High Priority Areas as identified in local water plans. The state reimburses the county for the lost tax revenue.

Provides relief beyond the existing law for:

LOCAL GOVERNMENT LIABILITY PREVENTION

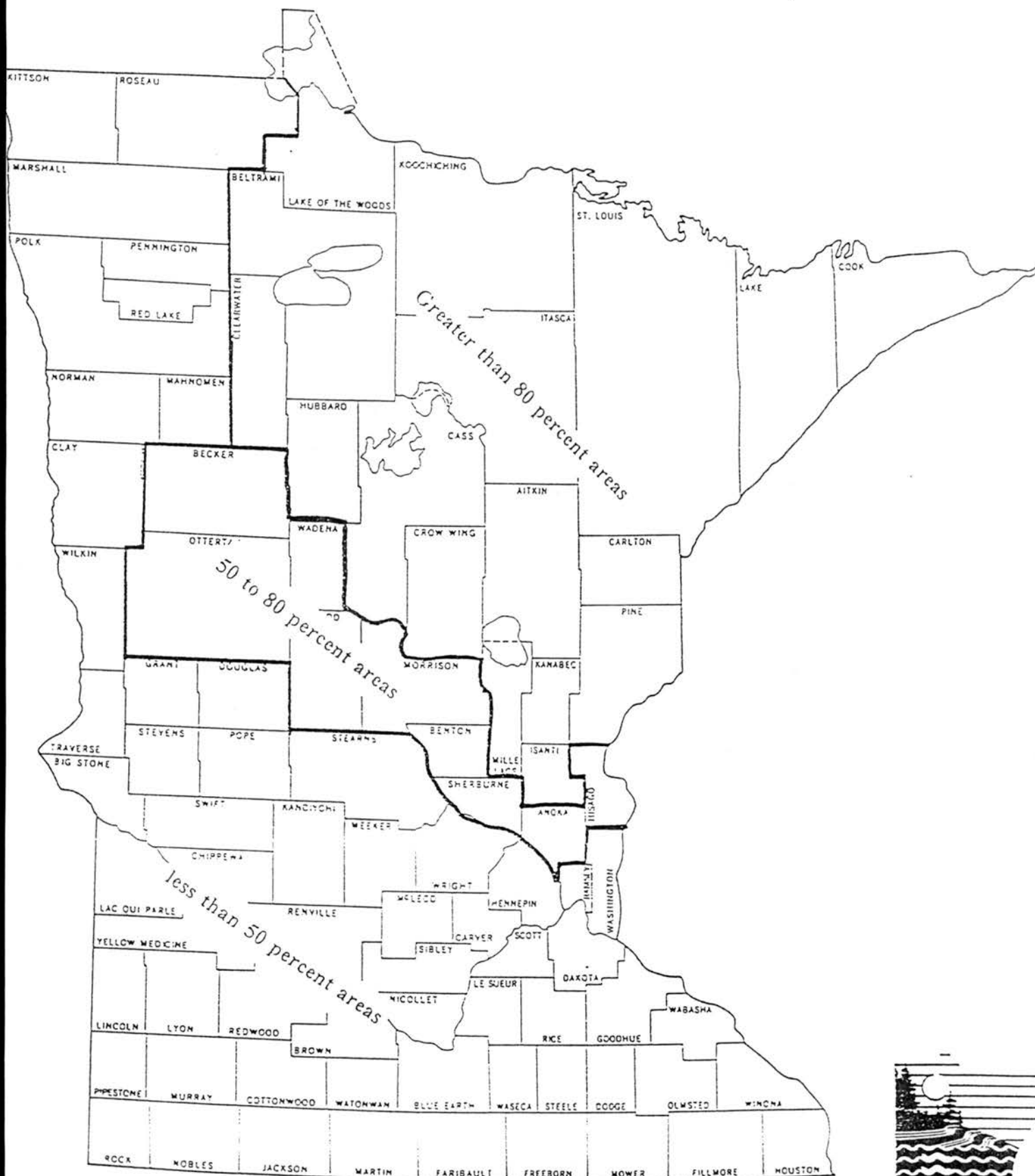
Requires the state to pay claims against, and assist in the defense of, the local government if they are properly implementing the law and a court awards a takings or damages claim against the local government.

Provides relief beyond the existing law for:

PUBLIC ROADS

- * eliminates the requirement for a replacement plan as the Board of Water and Soil Resources (BWSR) will replace wetlands drained or filled from existing local government public road projects conducted to repair, reconstruct or rehabilitate for safety or design purposes.
- * allows greater than 80 percent areas to utilize a subsidized cash banking system for new public road projects at a reduced rate requiring a payment of only twice the land value of the impacted wetland (approx. 10 percent of actual cost). Road authorities in other areas may purchase credits at cost.
- * reduces notification process, provides for on-site sequencing
- * Allows replacement credit for:
 1. the installation of upland buffer areas; and
 2. water quality treatment ponds adjacent to wetlands; and
 3. for vegetative restoration of farmed wetlands; and
 4. for maintaining wetlands restored under an expiring conservation agreement.
- * requires metro road wetland impacts to be replaced in the same county or in the seven county metro area.
- * allows account holders or project sponsors for wetland banking credits to sell or use them as they could prior to the WCA amendment changes.

Minnesota Wetland Conservation Act: Wetland Areas





1996 AMENDMENTS TO THE MN Wetland Conservation Act DRAINAGE EXEMPTION

- (i) maintenance and repair activities on public drainage systems which drain wetland types 1, 2, 6, 7, 8 that have existed for any length of time;
 - (ii) maintenance and repair activities on public drainage systems which drain wetland types 3, 4, and 5 that have been in existence for less than 25 years;
 - (iii) maintenance and repair which fills wetlands located within the right-of-way acreage of the ditch or within a one rod width on either side of the ditch, whichever is greater, and the filling is limited to the side casting of spoil materials resulting from the maintenance and the spoil deposition area is stabilized to prevent erosion;
 - (iv) drainage of wetlands that have formed in the bottom of ditches, were created solely as a result of beaver dam construction, or were created accidentally;
 - (v) draining or filling wetlands that were planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was in set-aside or CRP in *six of the last ten years* prior to January 1, 1991;
 - (vi) drainage of type 1 wetlands on agricultural land;
 - (vii) drainage of type 2 and type 6 wetlands less than two acres on ag land (may be expanded to parts of larger wetlands if part of a conservation plan);
 - (viii) Exempts draining of type 1. and type 2 and 6 wetlands less than 5 acres within the assessment area for conversion to agricultural or rural land if the public drainage system was actively maintained, inspected or assessed in the 20 years before 1/1/92.
 - (ix) maintenance and repair activities on private drainage systems which drain wetland Types 1 - 8 that have been in existence for less than 25 years.
-

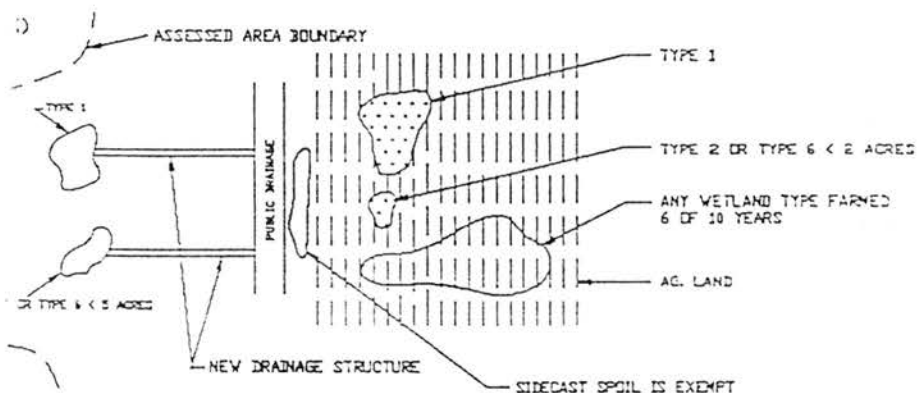
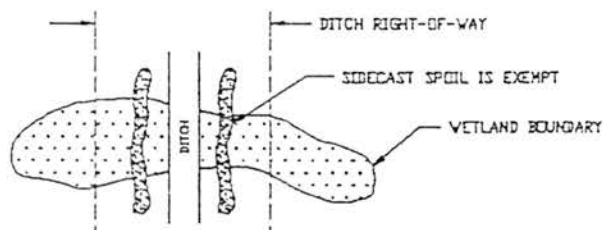
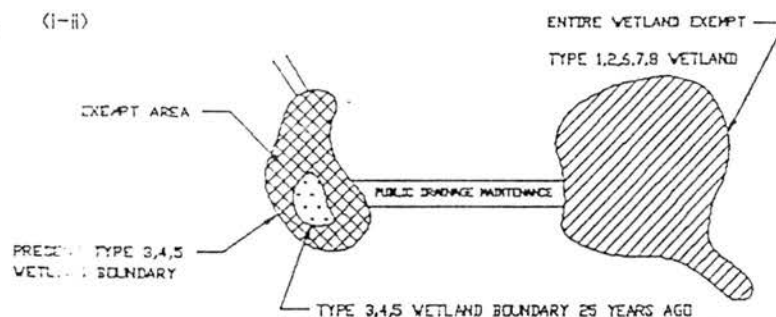
Boldface = Changes expanding the exemption from current law

(See graphical depictions of this exemption on the reverse side of this sheet.)

AMENDED WCA - DRAINAGE EXEMPTION

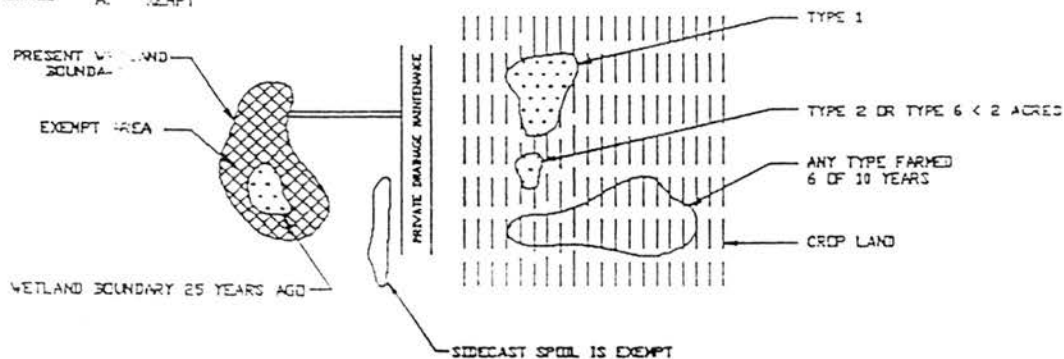
PUBLIC
DRAINAGE

(i-ii)



PRIVATE
DRAINAGE

A. EXEMPT



USDA ¹⁹⁹⁶ Farm Bill *Conservation Provisions*

April 1996

Summary

United States Department of Agriculture

Conservation Provisions of the 1996 Farm Bill

THE conservation provisions of the 1996 farm bill simplify existing conservation programs and improve their flexibility and efficiency. The bill also creates new programs to address high priority environmental protection goals.

The farm bill authorizes more than \$2.2 billion in additional funding for conservation programs, extends the Conservation Reserve Program and Wetland Reserve Program, and creates new initiatives to improve natural resources on America's private lands.

To qualify for market transition payments under basic commodity programs which replace traditional farm subsidies, farm operators must agree to abide by Conservation Compliance and Wetlands Conservation (Swampbuster) provisions in the 1996 farm bill.

Umbrella Program Reform

The bill reforms an existing program, the Environmental Conservation Acreage Reserve Program (ECARP), which encompasses the existing Conservation Reserve Program, the new Environmental Quality Incentives Program, and the Wetland Reserve Program.

Conservation Reserve Program

The CRP protects highly erodible and environmentally sensitive lands with grass, trees, and other long-term cover.

The farm bill:

- Allows up to 36.4 million acres to be enrolled at any one time. New enrollments can replace expired or terminated contracts.
- Allows owners or operators who entered into a contract before 1995 to terminate contracts on certain acres after giving written notice. Contracts must have been in effect for at least five years. Lands with high environmental values are not eligible for early release.
- Gives the Secretary discretionary authority to offer future early outs for CRP acres.

Environmental Quality Incentives

The Environmental Quality Incentives Program (EQIP) is a new program which combines the functions of the Agricultural Conservation Program, Water Quality Incentives Program, Great Plains Conservation Program and the Colorado River Basin Salinity Control Program.

EQIP is funded at \$130 million in fiscal year 1996 and \$200 million annually thereafter. Livestock-related conservation practices will receive 50 percent of program funding.

The farm bill:

- Establishes conservation priority areas where significant water, soil, and related natural resource problems exist, in cooperation with state and federal agencies and with the state technical committees.
- Gives higher priority to areas where state or local governments offer financial or technical assistance, or where agricultural improvements will help meet water quality objectives.
- Establishes 5-to 10-year contracts to provide technical assistance and pay up to 75 percent of the costs of conservation practices such as manure management systems, pest management, and erosion control.
- Defines land eligible for EQIP contracts as agricultural land that poses a serious problem to soil, water, or related resources.
- Does not allow large livestock operations (to be defined through a public rule-making process) to be eligible for cost-share assistance for animal waste management facilities, but they do remain eligible for technical assistance.
- Requires activities under the contract to be carried out according to a conservation plan.
- Limits total cost-share and incentive payments to any person to \$10,000 annually, and to \$50,000 for the life of the contract.
- Phases in EQIP over the next six months, and then ends the Agricultural Conservation Program,

Colorado River Basin Salinity Control Program, Water Quality Incentives Program, and the Great Plains Conservation Program.

Wetland Reserve Program

The WRP will have an enrollment cap of 975,000 acres. Program changes provide more flexibility and help landowners work toward a goal of no net loss of wetlands.

The revised WRP:

- Requires that, beginning October 1, 1996, one-third of total program acres be enrolled in permanent easements, one-third in 30-year easements, and one-third in restoration only cost-share agreements. Individuals may choose the category for their eligible land.
- Stipulates that effective October 1, 1996, no new permanent easements may be enrolled until at least 75,000 acres of temporary easements have entered the program.
- Provides landowners with 75 percent to 100 percent cost-sharing for permanent easements, 50 percent to 75 percent for 30-year easements, and 50 percent to 75 percent for restoration cost-share agreements. Cost-sharing will help pay for restoration.

Wetland Conservation (Swampbuster)

The 1996 farm bill makes several policy changes to existing Swampbuster provisions to give farmers more flexibility in complying with wetland conservation requirements while protecting natural resources:

- Expands areas where mitigation can be used. This allows individuals to work with producers, conservation districts or other relevant entities to select the best area for mitigating wetlands.
- Provides more options for mitigation, including restoration, enhancement, or creation as long as wetland functions and values are maintained.
- Encourages effective and timely use of "minimal effect" determinations. This change allows the National Resources Conservation Service (NRCS), working with state technical committees, to identify practices that have a minimal effect on the environment and put them on a "fast track."
- Stipulates that wetland conversion activities, authorized by a permit issued under Section 404 of the Clean Water Act, which make agriculture production possible, will be accepted for farm bill purposes if they were adequately mitigated.

- Revises the concept of "abandonment" to ensure that as long as land is used for agriculture, a certified Prior Converted cropland designation remains in effect. When done under an approved plan, landowners with Farmed Wetlands (FW) and Farmed Wetlands Pasture (FWP) may allow an area to revert to wetland status, and convert it back to an FW or FWP for agricultural purposes without violating the Swampbuster provision.
- Requires wetland determinations to be certified by NRCS. Previous wetland determinations will be certified to verify their accuracy. A certified wetland determination will remain in effect as long as the land is used for agricultural purposes or until the owner or operator requests a review from the Secretary.
- Provides the Secretary with the discretion to waive penalties for ineligibility and to grant time to restore converted wetlands.
- Provides the Secretary with authority to identify for individual producers which programs are affected by Swampbuster violations and how much the penalty is.
- Establishes a pilot program for wetland mitigation banking in order to allow USDA to assess how well mitigation banking works for agriculture.

Wetlands Memorandum of Agreement

The farm bill expands the definition of agricultural land contained in the interagency Wetlands MOA to include not only cropland and pasture land, but also tree farms, rangeland, native pasture land, and other land used for livestock production.

Conservation Research and Education

The farm bill creates the National Natural Resources Conservation Foundation as a charitable nonprofit corporation to fund research and educational activities relating to conservation on private lands.

The foundation will promote innovative solutions to conservation problems through public-private partnerships. It will also accept private gifts of money or property to be used for conservation activities. Congress has authorized \$1 million annually from 1997 through 1999.

The new foundation will offer grants for research, education, and demonstration projects. Grants will also assist conservation districts in building resources to carry out local conservation programs.

The foundation will be administered by a nine-member board of trustees appointed by the Secretary.

Conservation Compliance

The farm bill makes several policy changes in the operation of Conservation Compliance:

- Directs USDA employees who are providing on-site technical assistance to work with landowners to correct an observed potential compliance problem. Landowners will have up to one year to take corrective action before a violation is reported.
- Encourages farmers to maintain records of residue measurement, including those provided by a third party. Where appropriate, USDA will use these measurements when conducting annual status reviews to determine erosion levels.
- Authorizes county committees to provide relief in cases of undue economic hardship.
- Revises "good faith" to ensure penalties are commensurate with violations.

NRCS Technical Guide

The farm bill requires public notice at the state level of future changes in the NRCS technical guide that affect Swampbuster and Conservation Compliance.

Conservation of Private Grazing Land

The grazing lands provision is a new program to ensure technical, educational, and related assistance is provided to landowners on the nation's 642 million acres of private grazing lands. In fiscal year 1996, \$20 million is authorized. This amount increases to \$60 million by the third year.

Farmland Protection Program

The Farmland Protection Program is a new program under which the Secretary will join with state or local governments to purchase conservation easements. Based on voluntary participation, it only applies to land which farmers want to preserve in agriculture.

The program:

- Protects between 170,000 and 340,000 acres of farmland.
- Authorizes up to \$35 million in total federal funding.
- Requires land to be subject to a pending offer from a state or local farmland conservation program in order to participate.

Task Force on Agricultural Air Quality

The 1996 farm bill establishes a task force on agricultural air quality. The Chief of the Natural Resources Conservation Service will chair the task force.

Flood Risk Reduction

This provision authorizes voluntary contracts that provide one lump sum payment to producers who farm land with high flood potential. The payment will equal 95 percent of the seven-year market transition payments, and other payments to offset estimated federal outlays on frequently flooded land.

In return, the producer agrees to comply with applicable wetlands and highly erodible land requirements and to forego commodity loans, crop insurance, conservation program payments, and disaster payments.

Wildlife Habitat Incentives Program

This new provision will help landowners improve wildlife habitat on private lands. The program will have \$50 million in CRP funds for wildlife habitat improvement.

The program:

- Provides cost-sharing to landowners for developing habitat for upland wildlife, wetland wildlife, endangered species, fisheries and other wildlife.
- Provides for consulting with state technical committees to set priorities for cost-share measures and habitat development projects.

Emergency Watershed Protection Program Floodplain Easements

The farm bill authorizes the Secretary to purchase floodplain easements under the Emergency Watershed Protection Program.

State Technical Committees

State technical committees help develop technical standards for conservation programs. The farm bill requires public notice of meetings and expands committee membership to include representatives of non-government organizations such as agricultural producers, non-profit conservation organizations, agribusiness, and experts on the economic and environmental impacts of conservation techniques.

Conservation Farm Option

This is a pilot program for producers of wheat, feed grains, upland cotton, and rice who are eligible for Agriculture Market Transition Contracts. Under this program, landowners may consolidate their CRP, WRP, and EQIP payments into one annual payment. The participants enter into a 10-year contract and adopt a conservation farm plan approved by the Secretary. Initially, \$7.5 million is authorized, increasing to \$62.5 million in 2002. Total authorized funding is \$197.5 million.

Resource Conservation and Development Program

This program is reauthorized as is until 2002.

Forestry Incentives Program

This program is reauthorized as is until 2002.

Soil Survey

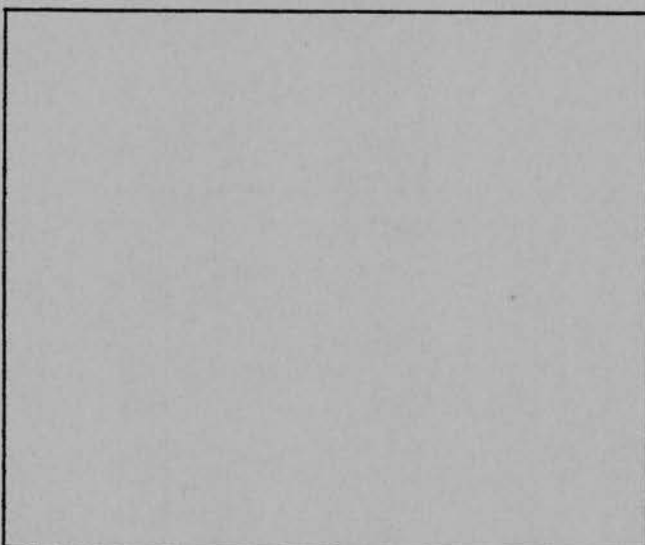
The farm bill provides flexibility in determining how soil survey information is communicated to the public.

Everglades

The farm bill supports ongoing efforts to protect the Everglades ecosystem. This provision authorizes \$200 million for restoration activities including land acquisition. Authority is also provided to sell or exchange an additional \$100 million in federal land to help protect the Everglades.

Bypass Flows on Forest Service Lands

A task force will be appointed to study the issue of bypass flows and related water rights on national forest land. In the interim, there will be an 18-month moratorium on bypass flow requirements during the renewal of Forest Service permits for water supply facilities.



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FIFTH BIENNIAL CONFERENCE ON WATER RESOURCES IN MINNESOTA

MINNESOTA WATER '96

Changing Patterns of Power and Responsibility:
Implications for Water Policy



May 20-21, 1996
Minneapolis Convention Center
Minneapolis, Minnesota

Session topics:

- Devolution of government responsibilities in water management
- Water monitoring and assessment in Minnesota
- Changing roles and needs in water education
- River basin management
- Lake and stream management
- Water management decision tools

Plenary speakers include: Valdas Adamkus, U.S. Environmental Protection Agency; Steve Hansen, Minnesota River Basin Joint Powers Board; Curt Johnson, Metropolitan Council; David Moreau, University of North Carolina; Steve Morse, MN Senator, District 32; Ron Severs, Cloquet Forestry Center; Bruce Vento, U.S. Congressman, MN 4th District; Chuck Williams, MN Pollution Control Agency & Environmental Quality Board

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