



Minnesota Board of Water and Soil Resources.
Minutes.

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1/22/97

**BOARD OF WATER AND SOIL RESOURCES
CONFERENCE ROOM, ONE WEST WATER STREET
ST. PAUL, MINNESOTA 55107
JANUARY 22, 1997**

BOARD MEMBERS PRESENT: Barb Cobb, Darrell Bruggman, LeRoy Stensgaard, Tim Hvidsten, Ted Lovdahl, Kathleen Roer, Marv Tripp, Glenn Annexstad, Barb Uppgaard, Dwain Otte, Ginny Imholte

BOARD MEMBERS ABSENT: Jim Rossman

AGENCY MEMBERS PRESENT:

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

AGENCY MEMBERS ABSENT:

Wayne Edgerton, Department of Natural Resources
Wayne Anderson, Pollution Control Agency

OTHERS PRESENT:

Dave Weirens, Association of Minnesota Counties
Vern Wilker and LeAnn Buck, MASWCD
Rick Reimer, MACDE
Ray Bohn, MAWD
Franklin Denn, MAT
Don Wodek, Hennepin SWCD
Dean Rebefoni, Star Tribune

STAFF PRESENT:

Ron Harnack, Doug Thomas, Greg Larson, Wayne Zellmer, and Mary Jo Anderson.

BWSR Meeting Minutes
January 22, 1997
Page Two

Chair Cobb called the meeting to order at 9:05 a.m.

97-01

Adopt Agenda - The Yellow Medicine Watershed District Plan will be addressed on the agenda under the county water plan approvals; also Six Cities Watershed Management Organization Water Management Plan will be removed from the agenda this month. Moved by Ted Lovdahl, seconded by Glenn Annexstad, to approve the agenda with changes. Motion passed on a voice vote.

97-02

Minutes of December 18, 1996 - A change is needed on page one-- board members absent were listed as "agency members absent." Also, a change on page three regarding the Dispute Resolution Committee Report, the last sentence should read "The other appeal in Pine County will be the first compensation claim asked of the state and was filed on December 6, 1996." Moved by LeRoy Stensgaard, seconded by Tim Hvidsten, to approve the minutes of December 18, 1996 as corrected. Motion passed on a voice vote.

Chair's Report - Chair Cobb reported that the BWSR committees will remain the same, except that Barb Uppgaard will now chair the education committee replacing Tim Hvidsten; Tim will be a BWSR liaison to the Nature Conservancy Prairie and Wetland Project in northwestern Minnesota.

Executive Director's Report - Ron Harnack reported that he attended a National Association of Conservation Districts (NACD) partnership meeting in Chicago, January 6-7. The legislature is in session, if members are interested in receiving additional legislative information let Ron know, otherwise Ron will be mailing weekly updates. Ron stated that BWSR's policy legislation is moving forward; 1) BWSR's authority to accept grants, gifts and donations will be authored by Senator Dennis Frederickson and Representative Betty McCollum (they carried this last year also); 2) Agency voting membership for BWSR will be authored by Representative Willard Munger and Representative Steve Sviggum and Senator Gary Laidig; and 3) Four-year terms for SWCD supervisors will be authored by Senator Dennis Frederickson and Representative Tim Finseth. There have been no formal hearings scheduled yet on these legislative items. Ron stated BWSR has been tentatively scheduled before the Senate Ag Committee on January 28-29; and the House Environment Finance Committee on January 30 at 8:30 a.m. Ron reported that the Legislative Commission on Minnesota Resources (LCMR) inquired about coordination of agency grants; Jim Birkholz has been meeting with others on this issue; there has been good discussion. Ron reported that local water planning meetings in the metro area continue with good discussion.

Chair Cobb appointed a BWSR Legislative Committee - Dwain Otte, Kathy Roer, and Barb Cobb will be called upon as needed to attend legislative hearings.

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Ron stated that the Governor's office should have board members appointments made by the February board meeting.

Agency Reports

Jim Anderson, Minnesota Extension Service (MES), reported that January 24 is the closing date to submit applications for the MES/BWSR education position. The search committee for replacement of Barb Liukkonen's position will meet to review applicants. This position will be filled through June 1998.

Paul Burns, Minnesota Department of Agriculture (MDA), reported that \$22 million has been allocated for best management practices (BMP) applications; he appreciated Wayne Zellmer's assistance on this. Paul stated that Farm Bureau is coordinating with MDA in developing a residue management plan for the Amana Colonies; Paul asked for BWSR assistance in this effort.

Consent Agenda

County Water Plan Approvals - Recommendation of Review Committees: Leroy Stensgaard reported that the review committee reviewed the Yellow Medicine and Pipestone County Water Plans and the Yellow Medicine Watershed District Plan; these plans were presented to the review committee and are recommended for approval. Moved by Leroy Stensgaard, seconded by Glenn Annexstad, to approve the Yellow Medicine and Pipestone County Water Plans and the Yellow Medicine Watershed District Plan. Motion passed on a voice vote.

97-03

Glenn Annexstad reported that the review committee met and reviewed the Faribault, Brown, and Steele County Water Plans. The review committee recommends approval of these county water plans. Moved by Glenn Annexstad, seconded by Marv Tripp, to approve the Faribault, Brown, and Steele County Water Plans. Motion passed on a voice vote.

97-04

Requests for Water Plan Extensions - Doug Thomas reported that Goodhue, Martin, and Watonwan have requested county water plan extensions. Moved by Glenn Annexstad, seconded by Ted Lovdahl, to approve the Goodhue, Martin, and Watonwan County water plan extensions. Motion passed on a voice vote.

97-05

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Chair Cobb called for a break in the meeting at 10:00 a.m. The meeting reconvened at 10:20 a.m.

New Business

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Statewide Land Use Bill - Ron briefly summarized the land use bill for the board's information. A formal bill has not yet been introduced; Senate Steve Morse and Representative Dee Long are authors; also Representative Joe Opatz has yet another land use bill. Ron pointed out the three key areas of the bill are: 1) growth corridors; 2) agricultural preservation; and 3) transportation/schools/other areas associated with growth. The Morse bill tabs BWSR as the administering agency; Joe Opatz identifies EQB. BWSR is providing input at this time. Discussion followed. Ron stated that interest groups will be invited to the BWSR meeting in February to hear their perspectives on the land use legislation.

FY98 State Cost-Share Program Allocations - Dwain Otte reported that the review committee met yesterday and recommended the allocated base grant of 85% of the dollars available with the remainder for special projects which will be capped at \$500,000 and granted without allowance for technical assistance. Moved by Dwain Otte, seconded by Ted Lovdahl, to approve the recommended FY98 State Cost-Share Program base grant allocation and special project allocation with its modifications. Motion passed on a voice vote.

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97-06

FY97 Non-Point Engineering Assistance Challenge Grant Allocations - Wayne Zellmer reported that applications were reviewed by the Grants Team and recommend approval of the two-year grant. Discussion followed. Moved by Glenn Annexstad, seconded by Darrell Bruggman, to accept the recommendation and approve the FY97 Non-Point Engineering Assistance Challenge Grant Allocations. Motion passed on a voice vote.

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97-07

University of Minnesota (U of M) Study Regarding Impact of Wetland Regulations on Property Values - Greg Larson introduced Steve Taff, professor at the U of M/Department of Applied Economics, College of Agricultural, Food, and Environmental Sciences. Professor Taff summarized the report. Discussion followed. Moved by Barb Uppgaard, seconded by Lovdahl, that BWSR acknowledge receipt of the report and recommend no legislative action at this time.

**
97-08

BWSR Meeting Minutes
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Lake Superior Position Statement - Barb Cobb signed and distributed copies of a memo that will be sent to the Lake Superior Association regarding their position statement on Lake Superior erosion and sediment control.

Macro Invertebrate Monitoring, Hennepin Conservation District - Don Wodek, Hennepin SWCD Manager, introduced Carolyn Dindorf, SWCD Limnologist; and Connie Fortin, River Watch Coordinator. Carolyn explained the Benthic Macroinvertebrate Monitoring Program and Connie gave a slide presentation showing the hands-on environmental education program. Don Wodek stated that a 12-minute video has been created. Chair Cobb thanked them for coming in and informing the board about this great program.

Advisory Comments

Minnesota Association of Watershed Districts (MAWD): Ray Bohn reported that Senator Dallas Sams and Representative Jim Tunheim with author their legislative effort. Ray stated that the memorandum of understanding with the Minnesota Department of Transportation has been signed. The MAWD legislative breakfast will be held March 14.

Minnesota Association of Conservation District Employees (MACDE): Rick Reimer briefly reported on issues of concern for MACDE such as the landline phone system; wetland delineation discussions; snow conditions relating to farmstead windbreaks for cost-share; and the LARS program.

Minnesota Association of Townships (MAT): Franklin Denn reported that a legal seminar will be held next week with attorneys that work with townships. MAT is been discussing funding needs for townships due to the bad weather conditions.

Minnesota Association of Soil and Water Conservation Districts (MASWCD): Vern Wilker reported that MASWCD will host a legislative session on March 3-4. Vern also reported that Sally Westby is the MASWCD lobbyist. Vern will be attending the National Association of Conservation Districts (NACD) annual meeting February 2-5, in Kansas City, Missouri. LeAnn Buck reported that the "The Farmer Magazine" and MASWCD co-sponsors an award program that recognizes individuals for conservation practices. "The Farmer Magazine" has dedicated six pages of their January 1997 issue to the Outstanding Conservationist Program. The good efforts by everyone involved, including BWSR, is appreciated.

Dave Weirens, Association of Minnesota Counties (AMC), reported that a committee has been established to work on a drainage training project; an informational manual is being developed to assist and workshops will be held. Dave reported that the new AMC president is Peter McLaughlin; he will serve a one year term.

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The next BWSR meeting is February 26, 1997. Ron stated that there will be discussion on pollution credit; and hypoxia in the Gulf of Mexico.

Chair Cobb adjourned the meeting at 12:20 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

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

Jan 23 '97 12:41

P.01/05

DRAFT

**BOARD OF WATER AND SOIL RESOURCES
CONFERENCE ROOM, ONE WEST WATER STREET
ST. PAUL, MINNESOTA 55107
JANUARY 22, 1997**

DRAFT

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Post-It™ brand fax transmittal memo 7671		# of pages: 5	
To: Barb Cobb	From: Mary Jo		
Co:	Co: BWR		
Dept:	Phone: 297-4290		
Fax: 436-2190	Fax: 297-5615		

Please edit - Thank you!

To Mary Jo.

Thanks
B

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

Jan 23 '97 12:41 P.02/05

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

Jan 23 '97 12:42 P.03/05

Ron stated that the Governor's office should have board members appointments made by the February board meeting.

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Jan 23 '97 12:42

P.04/05

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*Memo to,
a policy
committee
of the
500,000 cap
no. tech
policy*

*of 85%
of the dollars
available
with the
remainder for
special projects
which will be
capped at
\$500,000 and
granted without
allowance for
tech assistance.*

*lands-on
syphonate?*

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

Jan 23 '97 12:43 P.05/05

signed. The MAWD legislative breakfast will be held March 14.

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Minnesota Association of Conservation District Employees (MACDE): Rick Reimer briefly reported on issues of concern for MACDE such as the lanwan phone system; wetland delineation discussions; snow conditions relating to farmstead winbreaks for cost-share; and the LARS program.

Minnesota Association of Townships (MAT): Franklin Denn reported that a legal seminar will be held next week with attorneys that work with townships. MAT is been discussing funding needs for townships due to the bad weather conditions.

Minnesota Association of Soil and Water Conservation Districts (MASWCD): Vern Wilker reported that MASWCD will host a legislative session on March 3-4. Vern also reported that Sally Westby is the MASWCD lobbyist. Vern will be attending the National Association of Conservation Districts (NACD) annual meeting February 2-5, in Kansas City, Missouri. LeAnn Buck reported that the "The Farmer Magazine" and MASWCD co-sponsors an award program that recognizes individuals for conservation practices. "The Farmer Magazine" has dedicated six pages of their January 1997 issue to the Outstanding Conservationist Program. The good efforts by everyone involved, including BWSR, is appreciated.

Dave Weirens, Association of Minnesota Counties (AMC), reported that ~~\$50,000 is available for legislative mandated drainage projects~~, a committee has been established to work on this project; an informational manual is being developed to assist and workshops will be held. Dave reported that the new AMC president is Peter McLaughlin; he will serve a one year term.

*use in nags
training
paper?*

The next BWSR meeting is February 26, 1997. Ron stated that there will be discussion on pollution credit; ~~also he and Dwain will discuss~~ hypoxia in the Gulf of Mexico.

Chair Cobb adjourned the meeting at 12:20 p.m.

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

	NAME	AFFILIATION	PHONE #
1.	Dave Werrans	AME	224-3344
2.	Don Telephi	Star Line	673-4432
3.	Don Wodih	HCD	544-8572
4.	Al Ann Buck	MASWCID	690-9028
5.			
6.			
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Board Member Update

December 1996

Our mission:

**to manage water
and soil resources
and to help all
citizens be
stewards of our
irreplaceable
natural
resources.**

Northern Region

Northern Region

Most northern staff spent the month of December thanking God that we did not live in places such as Marshall, Wilmar, or Thief River Falls, as blizzard after blizzard continued to attack Minnesota's western front. When travel permitted, north staff spent time visiting the various conventions and getting some serious schmoozing with clientele done.

Office work included reviewing Reinvest in Minnesota (RIM) Reserve applications from the fall sign up and getting funding recommendations ready. Some good old horse trading went on in the north as board conservationists (BCs) with left over RIM dollars traded them to other, more worthy parts of the state for favors to be named later. Water plan updates continue to roll in as BC Pete Waller brought Traverse and Stevens before the board, BC Keith Grow came in with Kanabec, and BC Mark Nelson brought Carlton to the table. The water plan ad hoc committee process continues to be a valuable learning experience for counties, soil and water districts, BWSR

staff and BWSR board members. The chance for significant one-on-one conversation regarding local resource issues has sparked some intriguing conversations. We may want to continue this process on into the future simply as a means of keeping open lines of communication with our clientele.

Some other individual staff highlights include: BC Dale Krystosek continues to meet with the Wadena SWCD staff on their proposed reclassification of presettlement wetlands. A January meeting has been scheduled with the DNR, BWSR wetland specialists, and Wadena SWCD staff for a final review of the data. This item will likely be before the BWSR board in February. Dale also met with the Otter Tail County attorney and the water plan coordinator to discuss BWSR expectations for the updated Otter Tail water plan. Otter Tail County strongly resisted the initial round of water plan approvals and has reluctantly implemented their water plan. Mistrust of state agency motives was one of the original concerns.

BC Brian Dwight "Trainer Extraordinaire" gave a presentation at

Cost-share dollars are the limiting factor on how much erosion control work Minnesota's only coastal engineer could be accomplishing.

the Minnesota Association of Soil and Water Conservation Districts (MASWCD) convention entitled "Beyond the Monthly Meeting." This presentation was part of a supervisor orientation session that was well attended at the convention. Brian is also currently working with LeeAnn Buck of MASWCD in planning a session for SWCD supervisors and watershed managers on being an effective board member. This session will air sometime in March 1997. Check your cable listings for more details.

Jim Lemmerman "BWSR Tree Guy" has been working with new Wilkin SWCD Manager Don Bajumpaa putting together a demonstration site for windbreak thinning and pruning. Jim also reports that the federal Forest Stewardship Program is being revised for the next five years. Jim is working on a committee addressing this task. Jim's primary goal is to keep SWCDs as a main player in this program. Several SWCDs statewide rely on Forest Stewardship dollars to hire staff foresters to work with landowners on forest best management practice (BMP) projects.

Mark Nelson attended one of the state wetland meetings held in the region. Mark made sure that those present were aware of the 1996 legislative changes to the Wetland Conservation Act (WCA), especially the provision allowing counties to develop Comprehensive Wetland Protection Management Plans (which several counties will be undertaking this year). Mark also reinforced the idea of prioritizing riparian wetlands, especially those

along Lake Superior.

Keith got together with Mark Nelson, Northern Supervisor Ron Shelito, outgoing Area III Director Bob Pigeon, and incoming Area III Director Bob Hoffert to discuss Area III concerns and the transfer of power. There remain many untapped opportunities in Area III and we had a fruitful discussion about some new approaches we can take. Keith wants to set up a similar meeting with Area IV directors.

Keith and other BCs continue to get the new Local Government Annual Reporting System (LARS) out the door. Several small glitches to the system have been uncovered already but nothing major has smacked us upside the head yet. LARS holds a lot of potential for reporting accomplishments both at the local level and state level. It will take at least this first year of use to get the majority of the bugs out of this new system.

Gene Clark, lakeshore engineer, continues to set records for discovering potential erosion control sites along Lake Superior. As a result of the BMP workshops conducted last fall, Gene visited 45 erosion sites and prepared cost estimates for landowners. Cost-share dollars are the limiting factor on how much erosion control work Minnesota's only coastal engineer could be accomplishing.

Ron Shelito spent time in December working out the details of where BWSR's new wetland specialist and training coordinator were going to fit into the Brainerd office. These two new specialist positions represent a new

direction for BWSR and an opportunity to increase the level and quality of service we provide to our clientele. However, since they are new positions, there is a significant amount of red tape that must be managed before the new hires are up and running. Dan Eklund, wetland specialist, started Dec. 30, and Joe Wiltsey, training coordinator, is expected to start sometime in early February.

Engineering and Technical Services Section

Conservation Easements

Tim Fredbo, conservation easement specialist, has been on the phone with many of our board conservationists (BCs) the past several weeks answering questions to help BCs make recommendations for funding of applications submitted during the 1996 sign-up. Some of the BC funding allotments have been shifting around a bit also to help fund high priority applications. Tim and other program staff will be heavy into review of the recommended applications during the next couple of weeks to verify eligibility, wetland restoration feasibility and funding. Final recommendations for funding will be presented to the board in February.

It sounds like the Conservation Reserve Enhancement Program (CREP) proposal submitted to the USDA by the BWSR on behalf of the State of Minnesota has been well received, although official word has

not yet come down from Washington. Conservation easement program staff are getting nervous about the workload that funding by the feds would entail. It's a mixture of anticipation and trepidation.

All the snow and wind in the western part of the state has apparently sparked some renewed interest by Rep. Tim Finseth in the state acquisition of field windbreak easements. The Reinvest in Minnesota (RIM) Reserve Program can purchase conservation easements for living snow fences, but the statutes require them to be a minimum of six rows wide. Tim Fredbo and Ron Harnack recently met with Rep. Finseth to discuss limited duration easements and other RIM Reserve topics, including field windbreaks.

Lakeshore Engineering

Gene Clark, lakeshore engineer, BC Mark Nelson and Chief Engineer Al Kean recently prepared several grant proposals to be submitted to the Great Lakes Commission Soil Erosion and Sedimentation Task Force. Engineering proposals included:

- development of fact sheets and demonstration projects for selection and use of vegetation for slope stabilization
 - demonstration projects for some additional low cost techniques for shoreline stabilization
 - soil testing to identify critical North Shore soil parameters for engineering landslide stabilization designs
- Gene coordinated with So. St. Louis, Lake and Cook SWCD staff to help identify partnering opportunities and priority proposals.

*...the
Conservation
Reserve
Enhancement
Program
(CREP)
proposal
submitted to the
USDA by the
BWSR on behalf
of the State of
Minnesota has
been well
received...*

Gene recently completed the last 13 of 45 feasibility studies and cost estimates that he prepared for North Shore landowners who requested technical assistance after the Shoreline Best Management Practices (BMP) workshops held in 1996.

Gene recently completed the last 13 of 45 feasibility studies and cost estimates that he prepared for North Shore landowners who requested technical assistance after the Shoreline Best Management Practices (BMP) workshops held in 1996. We expect many related special project cost-share requests from North Shore SWCDs.

Brad Matlack is now on board as a lakeshore engineering technician in our Duluth office. He will work half-time for about one year, funded via an EPA 319 grant. You may recall that Brad worked for the BWSR for several years as a feedlot technician. Brad and Gene have begun work on designs for several new shoreline stabilization projects to be constructed this year.

Technical Coordination and Training

Justin Jeffery, training engineer, continues to visit the eleven SWCD Joint Powers Areas (JPAs) for non-point engineering assistance. Our intent is to listen, assist and coordinate. The weather has made this round of visits a bit of a challenge. Justin has been to three of the JPA offices since the middle of December.

A semi-annual meeting of the Natural Resources Conservation Service (NRCS), BWSR and SWCD JPA engineers is planned for early February. Feedlot and manure management technical assistance will be a general focus. Al and Justin also plan to meet separately with the SWCD JPA engineers to discuss ongoing computer-aided design and

drafting coordination, computer hardware and software trends, technical training, future program funding, and other such topics.

Al has been part of an interagency team that is presenting four workshops around the state in January entitled "Manure Management: An Update on State and Federal Programs and Policies". A total of about 110 people attended the workshops held in Avon and Detroit Lakes. The remaining two workshops will be held in Owatonna on 1-22-97 and Wabasso on 1-28-97. The Detroit Lakes workshop was hurried a bit by the cold and blizzards that caused Governor Carlson to call off all public schools for a day recently. Workshop presenters were just able to get out of town before the worst of the storm hit Detroit Lakes and roads were closed.

The nasty winter weather also resulted in the postponement of an Eagle Point software training course for partnership engineers and technicians. This is a custom course for the high-use RoadCalc module of Eagle Point orchestrated by Gene Retka, JPA 10 Engineer, and Justin. An instructor at the Mankato Technical College will teach it on two weekends.

Al and John Brach, NRCS state conservation engineer, have finalized the new technical approval authority system materials for engineering practices and are working with support staff to get the materials in the mail yet this month. The materials include a section for the SWCD Operational Handbook and updated supplements to the NRCS National Engineering Manual. An updated supplement to the NRCS Planning Procedures Handbook for ecological science practices will be

forthcoming from NRCS staff.

Al and John have also sent out requests for nominations of technical experts within the partnership for numerous areas of expertise. The Technical Advisory Committee and others intend to use this technical experts list to help identify individuals to provide input and review for updating practice standards, participating on partnership technical investigation committees, providing intrapartnership consultation and assisting with technical training. Identifying SWCD technical experts to assist with these types of roles has been particularly difficult due to the number of staff and diversity of expertise. Hopefully, this approach will provide for more direct collaboration.

FY 97 NON POINT ENGINEERING ASSISTANCE CHALLENGE GRANT

Amount Available - \$320,490

Amount Requested - \$432,985

Grant Purpose - To provide additional engineering/technical assistance to landowners to implement conservation practices.

The FY 97 Non Point Engineering Assistance (NPEA) Base Grant allocation provided a remaining balance of \$320,490 in the BWSR's appropriation for NPEA this fiscal year. At the August 1996 BWSR Meeting the FY 97 NPEA Challenge Grant was authorized and applications were sent to Joint Powers Boards in November. The BWSR received 13 applications from 10 JPBs for these challenge grant funds.

All applications were reviewed and approved by their respective Board Conservationists before being received in the Central Office. The Grants Team reviewed the applications collectively and submitted the enclosed funding recommendation.

Funding Strategy - Total funds requested exceed the total funds available. In addition, all applications contain components that are of varying funding priority so discounting an entire application is not appropriate or recommended. Secondly, the integrity of the applications will not be adversely affected by being partially funded. Consequently, the following procedure is utilized:

* Requests for training be limited to \$2,000 per JPB

* Requests for computer equipment be limited to \$8,000 per JPB

After applications with training or computer equipment components are reduced to these limits, all applications should be reduced by 13.7%. This procedure results in funding recommendations equal to available funds. Application summaries and funding recommendations are listed below.

FY 97 NPEA CHALLENGE GRANT APPLICATION SUMMARIES**1 Northwestern Minnesota****Equipment**

Surveying	2,500	
Computer	8,600	limit of \$8,000
Pick-up	800	
Office	2,000	

Training	<u>4,500</u>	limit of \$2,000
----------	--------------	------------------

TOTAL REQUESTED	\$ 18,400	RECOMMENDED - \$13,377
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2 North Central Minnesota**Equipment**

Computer	9,000	limit of \$8,000
Surveying	2,000	

Training	<u>2,000</u>	
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	\$ 13,000	RECOMMENDED - \$ 10,356
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3 CCLNS

Salary Commitments	6,500	
Computer Equipment	8,400	limit of \$8,000
Training	<u>2,000</u>	
TOTAL REQUESTED	\$ 16,900	RECOMMENDED - \$ 14,240

4 West Central Minnesota

Equipment		
Computer	17,800	limit of \$8,000
Survey	3,230	
Design	828	
Training	609	
½ Time Wilken SWCD Tech.	26,470	
Norman SWCD Equipment		
Computer	6,350	not recommended
Survey	<u>20,000</u>	not recommended
TOTAL REQUESTED	\$ 75,287	RECOMMENDED - \$ 33,775

5 Central MN Soil & Water Conservation Districts Cluster Five

Equipment		
Survey	2,000	
Computer	13,000	limit of \$8,000
Vehicle	<u>6,000</u>	
TOTAL REQUESTED	\$ 21,000	RECOMMENDED - \$ 13,808

6 IMPACK 6

Training	6,000	limit of \$2,000
Equipment		
Computer	4,900	
Survey	2,500	
Salary Commitment	2,600	
Public Relations	1,000	
Construction Inspection Testing	500	
Administration	<u>875</u>	
TOTAL REQUESTED	\$ 18,375	RECOMMENDED - \$ 12,406

8 Association of Metropolitan SWCDs

Consulting Services	41,250	
Training	1,800	
Survey Equipment	800	
Computer	<u>2,500</u>	
TOTAL REQUESTED	\$ 46,350	RECOMMENDED - \$ 40,000

9 Southwest Prairie

Computer Equipment	7,347	
Hire Additional Technician	56,089	
Vehicle Purchase	<u>7,000</u>	
TOTAL REQUESTED	\$ 70,435	RECOMMENDED - \$ 60,786

10 Zone 10

Equipment

Computer	10,315	limit of \$8,000
Survey	434	
Design	2,000	
Testing	831	
Training	<u>1,878</u>	
TOTAL REQUESTED	\$15,458	RECOMMENDED - \$ 11,342

11 SE SWCD Technical Support

Hire Engineer	117,449	
Computer Equipment	17,530	limit of \$8,000
Administration	<u>2,800</u>	
TOTAL REQUESTED	<u>\$ 137,779</u>	RECOMMENDED - <u>\$110,400</u>

GRAND TOTAL REQUESTED \$ 432,985 RECOMMENDED - \$320,490

Revised 1-21-97

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

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

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

>>>> Minnesota Courts have ruled that state wetland regulations do not constitute a "taking" of private property. <<<<

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

Conclusion:

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

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

New Business #3.

FY 98 REGULAR STATE COST-SHARE PROGRAM ALLOCATION

Annual Legislative Appropriation - \$1,620,000

For FY 97 the BWSR allocated 85% of this appropriation or \$1,377,000. This left a reserve of \$243,000 for competitive special projects grants (actually \$494,162 with *roll-over funds).

The revised Cost-Share Rule states that the Board must allocate at least 70% of the appropriation. The Board will be requested to decide the appropriate amount to allocate for FY 98.

* Roll-over funds are SWCD allocations that are unspent or become unencumbered after the end of the grant period and returned to BWSR. Roll-over funds have then been added to the appropriation amount reserved for the special projects program. This total has been the sum available for the special projects program.

The following table shows examples of selected allocation percentages, the resulting amount allocated and the appropriation amounts remaining to be reserved for the special projects program:

<u>% Allocated</u>	<u>Amount Allocated</u>	<u>Amount Remaining</u>
100	\$1,620,000	\$ 0
95	1,539,000	81,000
90	1,458,000	162,000
85	1,377,000	243,000
80	1,296,000	324,000

HISTORICAL SPECIAL PROJECT REQUESTS AND FUNDING

<u>FY</u>	<u>Requests</u>	<u>Funding</u>
97	\$ 1,350,187	\$ 494,162
96	812,590	365,032
95	561,246	368,060
94	1,106,089	373,599
93	874,884	340,984
Ave.	\$ 940,999	\$ 388,367

The M - Team recommends that 85% (highlighted above) be allocated as base grants and \$243,000 be set aside for the FY 98 Special Projects Program. It is also recommended that \$500,000 maximum be made available for the FY 98 Special Projects Program. If roll-over funds returned to BWSR, plus this \$243,000 exceeds \$500,000, then the excess would be added to the \$1,377,000 for the base grant allocation. The BWSR Cost Share Committee will consider this recommendation at their January 21, 1997 Meeting.

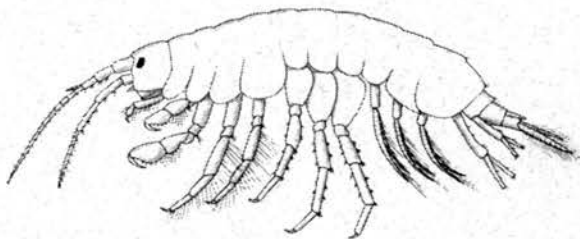
What is the next step?

To discuss the possibility of your school participating in this program call HCD at (612) 544-8572 or talk to us on the Internet at hcd@skypoint.com

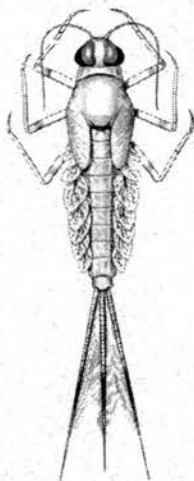
Some common sightings



MIDGE: *Chironomidae* larvae



SCUDS: *Gammarus* adult



MAYFLY: *Baetidae* larvae

Partially funded by

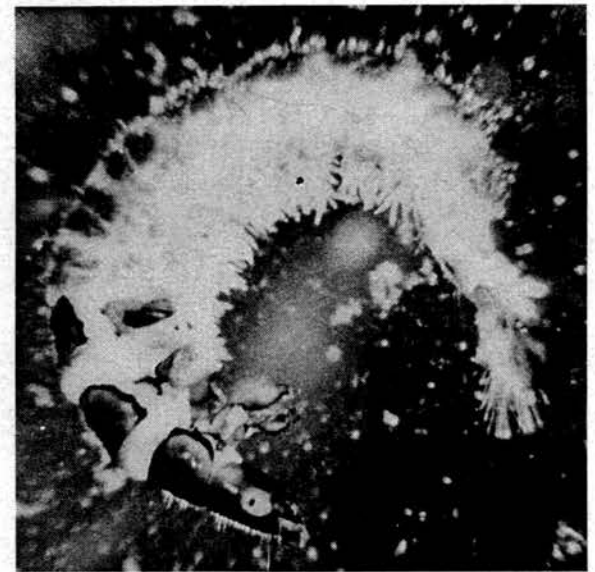
Elm Creek Watershed Management Commission
Hamel Lions Club
Metropolitan Council
Minneapolis City of Lakes Rotary Club
Mississippi Headwaters Board



Hennepin Conservation District
10801 Wayzata Blvd., Suite 240
Minnetonka, MN 55305
phone: 612/544-8572
fax: 612/544-9437
internet: hcd@skypoint.com

Hennepin Conservation District

Benthic Macroinvertebrate Monitoring Program



CADDISFLY: *Hydropsychidae* larvae

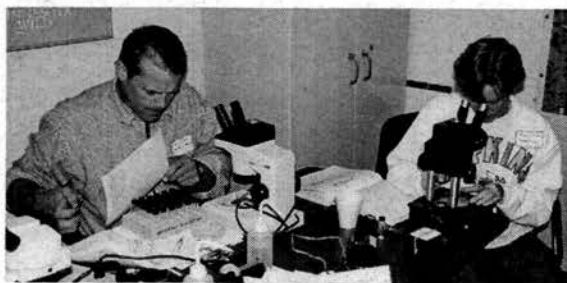
The Hennepin Conservation District is a special purpose local unit of government with staff having expertise in soil and water conservation.

Benthic Macroinvertebrate Monitoring Program

Overview

Benthic macroinvertebrate monitoring is the study of organisms that live all or part of their life cycle on the river bottom. These organisms are important indicators of the biological health of our rivers and streams. The Hennepin Conservation District's (HCD) program integrates high school science teachers and students with professional water quality experts to monitor the streams and report their findings. Macroinvertebrate monitoring is a cost effective method of determining stream water quality.

The U.S. Environmental Protection Agency and many states are now using this type of monitoring to evaluate the health of our rivers and the impacts of pollution. In fact, benthic macroinvertebrate monitoring may tell us more about the condition of rivers and streams than more conventional monitoring of bacteria and chemical characteristics. For citizen groups and schools, benthic macroinvertebrate monitoring is an ideal way to develop a deeper understanding of our rivers and the ways that human activities affect them.



Teachers are trained in both field and classroom techniques.



Downstream student holds net while upstream student stirs-up creek bottom.

Who can apply?

- Any high school or college in Hennepin County

HCD will provide:

- Assigned sample site
- Monitoring and identification equipment
- Field and classroom training for teachers
- Assistance as needed
- Quality assurance
- Summary of results from your school and other schools

Participating schools will be responsible for:

- Spring sampling at assigned location
- Fall sampling at assigned location
- Conducting habitat assessment
- Gathering samples
- Identifying macroinvertebrates to the family level
- Reporting results to HCD

Hands on environmental education

Environmental education should be conducted outdoors.

HCD's Benthic Macroinvertebrate Monitoring Program offers the opportunity for students and teachers to participate in a practical scientific application. The results of this program will be used by watershed management organizations and other interested environmental agencies.

The interest and enthusiasm of past participants indicates this is an effective way to experience environmental education.



January 17, 1997

TO: Lake Superior Position Statement endorsees

FROM: Barbara Cobb, chair, Board of Water and Soil Resources

One West Water Street
Suite 200
St. Paul, MN 55107
(612) 296-3767
Fax (612) 297-5615

Field Offices

Northern Region:

394 S. Lake Avenue
Room 403
Duluth, MN 55802
(218) 723-4752
Fax (218) 723-4794

3217 Bemidji Avenue N.
Bemidji, MN 56601
(218) 755-4235
Fax (218) 755-4201

217 S. 7th Street
Suite 202
Brainerd, MN 56401-3660
(218) 828-2383
Fax (218) 828-6036

Southern Region:

Highway 15 S.
Box 756
New Ulm, MN 56073
(507) 359-6074
Fax (507) 359-6018

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

Box 267
1400 E. Lyon Street
Marshall, MN 56258
(507) 537-6060
Fax (507) 537-6368

Metro Region:

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

Members of the Board of Water and Soil Resources (BWSR) commend you for the development of the Lake Superior Position Statement. We agree that the Lake Superior basin area is unique, with special needs and concerns that must be addressed. Your proactive approach of developing action plans to deal with nonpoint pollution issues should be an excellent vehicle to assess your resources, determine your goals, and prioritize your activities.

As you know, BWSR has long been committed to maintaining and improving water quality in the Lake Superior basin. Our support of a Duluth lakeshore engineer, devoted primarily to designing erosion control systems and structures for the north shore area, is indicative of that dedication. The obvious result of that engineering position has been the design and installation of numerous erosion control structures; however, an additional, less obvious benefit has been the increased willingness of local governments in the Duluth area to apply for grants and loans for erosion control projects, secure in the knowledge that the engineering assistance they need is now available. The BWSR plans to continue to support this position.

Additional BWSR support for water quality comes through a variety of other programs, including the Local Water Resources Protection and Management Program, the Cost-Share Program, and the Wetland Conservation Act. Your continued support of these programs will help us achieve our shared goals.

We encourage you to expand your network of supporters to include other local governments and joint powers organizations in the north shore area. The North Shore Management Board, the Arrowhead Regional Development Commission, and others could all be valuable partners. Look as well to other state and federal agencies, including the DNR, NRCS, and the Minnesota Extension Service. As many past successes show, state/federal/local alliances can ensure that each partner uses its capabilities to the fullest, obtaining better results with less time, money and staff.

BWSR believes your position statement is an excellent first step on your journey to create an organized approach to maintaining and improving water quality in the Lake Superior basin. Please continue to include us in your planning and implementation process; we look forward to providing support and assistance.

Sincerely,

Barbara Cobb
chair, Board of Water and Soil Resources

An equal opportunity employer

Printed on recycled paper

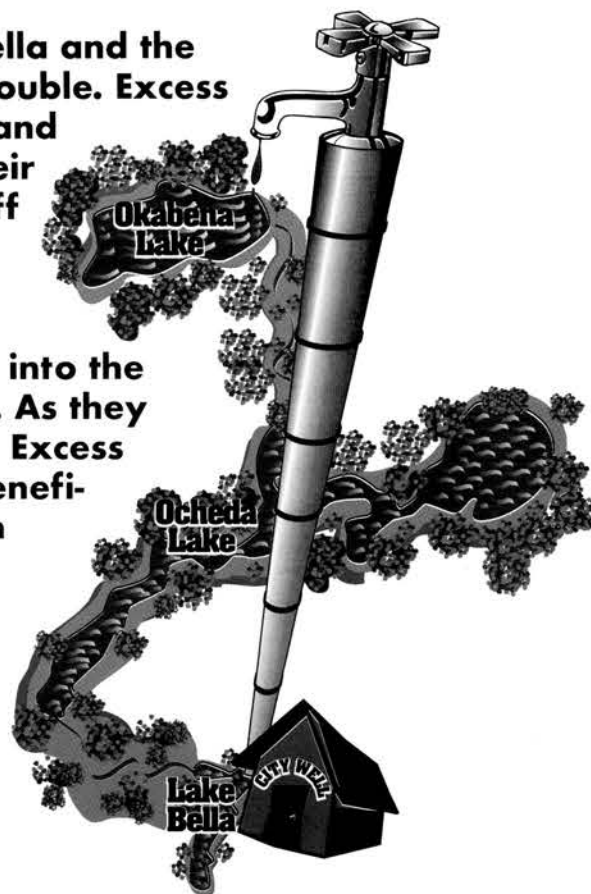
Lakes in Trouble

and cities alike contribute to the problem. Worthington residents need to do their part because urban runoff typically contains more pollution per acre than runoff from farm land. A recent study showed that keeping streets free of leaves and grass clippings alone, reduced storm sewer pollution by 30 to 40 percent.

When leaves or grass clippings are raked onto the street, they make their way into the storm sewers – and from there, directly into Okabena Lake or Okabena Creek. As they decay, they release phosphorus. Too much phosphorus increases algae growth. Excess algae growth can form a scum on a lake and block sunlight needed by other beneficial plants. When algae die and decay, they take necessary oxygen away from fish. Eventually, the lake's ecosystem is destroyed.



Virtually everything on our streets makes its way into storm drains and travels untreated into our lakes and streams.



OKABENA-CHEDA
WATERSHED DISTRICT
P.O. BOX 158
WORTHINGTON, MN 56187

Yeah!

PRINTED ON RECYCLED PAPER

Worthington sits at the top of three watersheds...



Worthington's Watersheds

You don't have to live near a lake to harm it – just in its watershed. Of course, that also means you don't have to live near a lake to help it. Doing just a few small things can make a big difference.

Storm water from the southern and western parts of the city drains into Okabena Lake. From there it flows through Ocheda Lake and into Lake Bella.

Storm sewers in part of southeastern Worthington outlet into County Ditch 6. This water travels a short distance south to Ocheda Lake and then on to Lake Bella.

Water from the north and eastern parts of Worthington flows through storm sewers into Okabena Creek. From there it flows to Heron Lake.



EVERYTHING YOU DO UP HERE . . .

DID you know that those blue green algae blooms are caused by excess fertilizer in the lakes? This brochure offers some helpful tips on how city residents can help save our lakes.

Motor Oil



Oil that drips onto driveways and streets washes into the storm drains and directly into the lakes. Five quarts of oil in a lake can create a slick as large as two football fields and cling to mud and plants for more than six months.

- Keep cars tuned up and repair leaks. Clean up oil spilled on your driveway promptly.
- Deliver used oil to the Nobles County Recycling Center. Other automotive fluids can be delivered to household hazardous waste collection sites. Contact Nobles County Environmental Services at 372-8227 for more information.

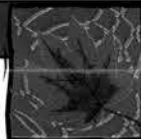
Grass Clippings



Grass clippings left on sidewalks, streets and driveways wash into the storm drains and directly into the lakes. When they decay, they release dangerous amounts of phosphorus.

- Leave grass clippings on your lawn. They provide valuable nutrients. Use a mulching mower or equip a standard mower with a mulching attachment. This reduces the clipping size and increases the rate at which the clippings decompose.
- Sweep up and recycle clippings that fall on the driveway, sidewalk or street. Sweeping clippings into the street is just like sweeping them into the lakes.

Leaves



When leaves are raked or blown into the street, they go into the storm sewers and travel directly to our lakes. As they decay, they release nutrients that harm the lake's ecosystem by promoting excess algae growth which blocks sunlight needed by other beneficial plants. When algae dies and decays, it takes necessary oxygen away from fish. Eventually, the lake's ecosystem is destroyed.

- Compost your leaves with a power mower.
- Use whole or chopped leaves around rose bushes and landscape plants as mulch.
- Bag your leaves and branches and haul them to the Nobles County Recycling Center at no cost.

Litter and Trash



Litter and trash in our storm drains becomes litter and trash in our lakes.

- Sweep up litter and trash from your driveway and sidewalk. Don't sweep it into the street.

Soap

Soap used while washing vehicles in driveways or streets flows directly into storm drains and then untreated, into lakes and streams. Soap contains nutrients that cause algae blooms.

- Wash cars on the lawn rather than the driveway or street. The grass will retain the nutrients and may benefit from the water and free fertilizer.

Okabena Lake

Pet Waste



Pet waste left on or near driveways, sidewalks or streets can make its way into storm drains and travel directly into the lakes. As pet waste decays, it releases nutrients and bacteria that damage a lake's ecosystem.

- Clean up pet waste promptly. This prevents harmful nutrients and bacteria from washing into storm drains and lakes.

Ocheda Lake

Fertilizer and Pesticides

Fertilizer may be necessary for the health of your lawn. However, the nutrients in fertilizer can be harmful to the lakes. Applying the right fertilizer, in the right amount, ensures a healthier lawn and healthier lakes.

- Have your soil tested, knowing what kind of soil you have helps you determine what kind of fertilizer your lawn needs.
- Fill fertilizer spreaders on a hard surface. This makes spills easier to clean up. Never wash spills into the street.
- Close the gate on your spreader when you cross hard surfaces. Sweep up fertilizer that falls on the sidewalk, street or driveway.
- Follow pesticide label directions exactly. Keep pesticides off hard surfaces, and never pour excess pesticides into storm drains.
- Waste pesticides and fertilizers can be delivered to household hazardous waste collection sites. Contact Nobles County Environmental Services at 372-8227 for more information.

Erosion

Soil eroding from construction sites contains nutrients and sediment. Call the Conservation Office at 376-9150 for information on how to keep bare soil in place during construction.

Lake Bella Well Field

Most of the water used by Worthington residents and industry comes from the Bella Well field. This water is pumped from the Ochedyan aquifer under Lake Bella. The Clean Water Partnership study shows that water in the Ochedyan aquifer was recently surface water in Ocheda Lake.

Since Okabena Lake water flows into Ocheda Lake, it is important to protect Okabena's water quality. What flows into the lake may eventually come out Worthington's kitchen taps.

Lake Bella

CITY WELL

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

Charles Holtman

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DEPARTMENT OF APPLIED ECONOMICS

COLLEGE OF AGRICULTURAL, FOOD, AND ENVIRONMENTAL SCIENCES

UNIVERSITY OF MINNESOTA

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

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Contents

Abstract	4
Introduction	5
The link between a wetland regulation and a particular property's value is not as direct as it first might seem.	6
Wetland regulations are presumed to serve the public good on the whole, but the resulting gains and losses may not be evenly distributed among property owners.	7
Wetland regulations might shift property interests from landowners to the public, or they might clarify existing constraints on development of certain properties.	8
Observed changes in property values sometimes can be used to estimate the economic effects of a specific regulation.	9
A measured loss of property value does not automatically mean that a regulation has "taken" a property right.	10
Only after a court first determines that a taking has occurred is the appropriate level of compensation then determined.	12
The appropriate measure of a property value loss is the difference between what the property would be expected to sell for, with and without the regulation.	13
Economists have developed several different ways to measure changes in property value.	15
The present research did not conduct a statistical analysis of the links between specific wetland regulations and actual property values.	16
The Legislature should examine ways to lower public administrative costs and to make the land market more efficient without jeopardizing the benefits of existing wetland protection laws.	17
Conclusion	18
Further Reading	20
Appendix: Case studies	21
A: City of Chaska	22
B: City of Coon Rapids	24

C: City of Andover	25
D: City of Coon Rapids	26
E: City of Blaine	27
F: City of Blackduck	29
G: Roseau County	30
H: City of International Falls	31

Abstract

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

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

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

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

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

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

Introduction

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

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

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

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

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

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

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

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

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

Wetland Conservation Act

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

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

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

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

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

Protected Waters Statute

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

Federal Statutes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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Appendix: Case studies

Methodology

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

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

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

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

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

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

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

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

A: City of Chaska

Summary

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

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

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

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

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

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

Analysis

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

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

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

B: City of Coon Rapids

Summary

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

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

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

Analysis

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

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

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

C: City of Andover

Summary

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

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

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

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

Analysis

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

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

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

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

D: City of Coon Rapids

Summary

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

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

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

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

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

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

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

Analysis

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

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

E: City of Blaine

Summary

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

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

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

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

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

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

Analysis

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

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

F: City of Blackduck

Summary

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

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

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

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

Analysis

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

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

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

The chief response to the landowner's claims would look to both the many years that have elapsed since purchase and the gain that the landowner (either father or son) has accrued over that period. The LGU could further argue that buyers are fairly expected to recognize that laws change over time, that no rights are certain forever. It is not reasonable to expect that land acquired now will be able to be developed in 27 years in accordance with regulations now in place. One could point to zoning law, which does not recognize a right to build under the terms of existing law until approvals have been gained and actual significant expenditures made. In addition, 25 acres were sold for development. Presumably the remaining 130 acres have market value as well. If the owner gains a return on the property at least equal to the opportunity cost, goes this line of reasoning, no loss in value has been suffered. This argument is consistent with the principle that an owner has the right only to a reasonable return, not to the highest return that the land might have provided.

G: Roseau County

Summary

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

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

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

Analysis

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

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

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

H: City of International Falls

Summary

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

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

Analysis

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

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

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

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

2/26/97

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

BOARD MEMBERS PRESENT: Barbara Cobb, Ginny Imholte, Dwain Otte, Kathleen Roer, Marv Tripp, Ted Lovdahl, Glenn Annexstad, Tim Hvidsten

BOARD MEMBERS ABSENT: Barb Uppgaard, Darrell Bruggman, Jim Rossman, LeRoy Stensgaard

AGENCY MEMBERS PRESENT:

Jim Anderson, Minnesota Extension Service
Bob Patton, Department of Agriculture
Wayne Anderson, Pollution Control Agency
Wayne Edgerton, Department of Natural Resources

AGENCY MEMBERS ABSENT:

Kim Benson-Johnson, Department of Health

OTHERS PRESENT:

LeAnn Buck, MASWCD
Don Wodek, Hennepin Conservation District
Franklin Denn, MAT
Woody Love, MAWD
Tim Kohler, NRCS

STAFF PRESENT:

Ron Harnack, Pete Waller, Mark Nelson, Al Kean, Jim Haertel, Tim Fredbo, Mary Jo Anderson

BWSR Meeting Minutes
February 26, 1997
Page Two

Chair Cobb called the meeting to order at 9:05 a.m.

**** 97-09 Adopt Agenda** - Moved by Glenn Annexstad, seconded by Ted Lovdahl, to adopt the agenda as presented. Motion passed on a voice vote.

**** 97-10 Minutes of January 22, 1997** - Moved by Ted Lovdahl, seconded by Ginny Imholte, to approve the minutes of January 22, 1997, as circulated. Motion passed on a voice vote.

Chair's Report - Chair Cobb attended the MASWCD "leadership school" -- balancing ethics, conflict management and transformation were addressed. A strategic plan was developed to address the conflict between greater Minnesota and the metro area interests. Chair Cobb challenged board members to follow this strategic plan which includes: 1) To learn and accept the facts of existence in each area - to walk in each other's shoes; 2) To let our emotions show only our shared mission - good stewardship of the land and water; and 3) To communicate with positives; counter the negative with a positive response. To transform conflict is to release the energy bound in patterns of thought and action that have built up over time and to reshape that energy into new and more positive patterns of relationship. To transform conflict is to build peace.

Executive Director's Report - Ron Harnack commented briefly on the statewide drainage workshops that will be held and he encouraged board members to attend one in their area. Ron gave an update on legislative issues. The BWSR's budget overview was completed in the House. Policy successes include: the change in six to four year term for SWCD supervisors passed in the Senate; state agency voting membership cleared the House Environment Committee and has not yet been heard in the Senate (AMC legislative committee is opposed to agency voting membership); grants, gifts and donations cleared the Senate with a hearing in the House this morning; the land use bill has significantly changed since the last bill, Minnesota Planning is now the key agency in this, the first hearing was yesterday, quite a diverse debate on the land use issue. The Environmental Trust Fund rededication is moving forward, growing interest to have education element. Ron stated that there is discussion on the RIM program "living snowfence" requirements, currently under BWSR administrative cost-share approach, shelterbelts and windbreaks are excluded, this will be introduced soon. SWCD elections for Ramsey and Washington County to elect from the district rather than the county passed both Senate and House. Increased cost-share initiative from MASWCD; WCA meetings on mining issue are being held, BWSR is in opposition to this issue. General services dollars is also an MASWCD initiative which will be heard in the House this morning. Ron will distribute his update to board members.

Dispute Resolution Committee (DRC) Report - Kathy Roer reported that the DRC heard the Peterson vs Minnehaha Creek appeal; the Drum vs Douglas County appeal will be heard in March; and a new appeal was received yesterday from Wright County. Kathy stated that the DRC heard seven appeals last year, all were WCA appeals. Kathy commended Jim Haertel for doing an

BWSR Meeting Minutes
February 26, 1997
Page Three

excellent job of screening appeals prior to coming before the DRC.

Education and Public Relations Committee - Ron Harnack stated that he, Jim Birkholz, Ron Shelito, Fred Bergsrud, Jim Anderson, and Barb Luikkonen met yesterday with Minnesota Extension Service regarding the joint MES/BWSR education position; the BWSR's Education and Public Relations Committee will put this issue on their agenda.

Agency Reports

Jim Anderson, MES, reported that interviews continue for Barb Luikkonen's position; March 15 is the deadline date to have this process wrapped up.

Bob Patton, MDA, stated that he is sitting in today for Paul Burns. He introduced Becky Balk who is also working in MDA's Planning Division.

Wayne Anderson, PCA, he stated that PCA is working on strategic planning; staff are very involved in the strategic planning effort. Wayne has been involved in the "Big River Partnership" project that recognizes the big issues on the Mississippi River; with statewide representation from agencies and associations in an effort to form common ground.

Wayne Edgerton, DNR, stated that Channel 5 held a call-in poll regarding the Environmental Trust Fund, where should the funds go? Wayne said the environment received the fewest votes; not a scientific poll, but interesting anyway.

Chair Cobb called for a break in the meeting at 9:55 a.m., the meeting reconvened at 10:05 a.m.

Hypoxia Presentation - Ron Harnack introduced Giles Randall, Professor and Soil Scientist at the University of Minnesota/Southern Experiment Station. Professor Randall defined hypoxia as a zone of low dissolved oxygen concentration in water; concern for hypoxia in the Gulf of Mexico attributed to increased nutrient loading from the Mississippi River, primarily nitrate. Discussion followed. Chair Cobb thanked Professor Randall for coming before the board with this information.

Chair Cobb reported that Don Wodek will be leaving Hennepin Conservation District and to Mercury Waste Solutions, Inc., as executive vice president. Chair Cobb thanked him for his many contributions in the environmental arena.

Comprehensive Land Use Planning - Ron introduced Lee Ronning, Land Stewardship Project (LSP); Jim Mulder, Association of Minnesota Counties (AMC); and Joel Jamnick, League of Minnesota Cities (LMC). Each gave their organization's perspectives of comprehensive land use planning. Lee Ronning stated that the LSP's position is that comprehensive land use planning must be mandated and monitored by an outside watchdog group. Land use planning must address social

BWSR Meeting Minutes

February 26, 1997

Page Four

justice, and economic equity, with local entities having flexibility. Jim Mulder stated that AMC agrees with LSP in that comprehensive planning is needed, but they are concerned with the state's direction. A flexible system is needed. Joel Jamnick stated that LMC has a split position on land use proposals on the table; however, LMC is concerned with funding for greater Minnesota, difficult to reach agreement in the legislature; LMC's goal is to have the state define and determine their own system's plans; they agree with LSP in flexibility for local entities. Discussion followed. Chair Cobb thanked them for coming in today.

Pollution Credit Trading - Wayne Anderson, PCA, stated that pollution credit trading is win/win situation for the environment. Scott Wallace, HDR Consulting, explained the point - nonpoint source trading concept. This is a corporate sponsorship program for public - private partnerships. Discussion followed. Chair Cobb thanked Wayne and Scott for explaining this to the board today.

Chair Cobb adjourned the meeting for lunch at 11:55 p.m. The meeting reconvened at 12:40 p.m.

Consent Agenda

County Water Plan Approvals - Tim Hvidsten reported that the review committee met in February and reviewed the Clearwater, Marshall, Polk and Red Lake County Comprehensive Water Plans. The review committee recommended approval of the Clearwater, Polk and Red Lake County Water Plans; with BWSR staff directed to work with Marshall County on a five-year review of their plan.

97-11 Motion made by Tim Hvidsten, seconded by Ginny Imholte, to approve the Clearwater, Polk, Red Lake and Marshall County Water Plans. Motion passed on a voice vote.

Policy to Allow Release of Expiring Ten-Year Reinvest In Minnesota (RIM) Easements - Tim Fredbo explained the expiration dates of easements and how changes have been made since 1986 when the program first began; landowners enrolled in the RIM program view 1997 as the eleventh year. Staff recommends Option #2 - this would not require landowners to pay the state for release; release would be verified by the SWCD; landowners must work with the local SWCD to implement a plan on the released acres that will minimize erosion and sedimentation from the site in transition; and release is approved by BWSR. Discussion followed. Motion made by Tim Hvidsten, seconded by Glenn Annexstad, to adopt Option #2, the release is case-by-case as requested. Motion passed on a voice vote.

97-12

Proposed Permanent Rules Governing Board Review of Watershed District Rules - Jim Haertel explained that this is in the preliminary review process. Discussion followed. Referred to DRC.

Proposed Permanent Rules Relating to Board Interventions in Judicial or Administrative Proceedings - Jim Haertel explained that this is also in the preliminary review process. Discussion followed. Referred to DRC.

BWSR Meeting Minutes

February 26, 1997

Page Five

97-13**

Peterson vs. Minnehaha Creek Watershed District (WCA Appeal) - Kathy Roer explained the case; the recommendation of the DRC is to affirm the decision of MCWD. Motion made by Kathy Roer, seconded by Ted Lovdahl, to accept the DRC's recommendation to approve the affirmation of the MCWD. Motion passed on a voice vote.

97-14**

Drainage Inventory Pilot Program - Barbara Ohman presented the Wetland Committee's recommendation for funding projects totaling \$176,099 to the drainage inventory pilot program. Motion made by Ted Lovdahl, seconded by Dwain Otte, that the board approve the Wetland Committee's recommendation to fund the drainage inventory pilot program projects. Motion passed on a voice vote.

Chair Cobb introduced BWSR staff attending: Mark Nelson from Duluth, Pete Waller from Brainerd, Jeff Nielsen from New Ulm, John Jaschke, Barbara Ohman, and Jim Birkholz.

Advisory Comments

Minnesota Association of Townships (MAT): Franklin Denn briefly commented on land use planning. He reported that MAT will be conducting statewide township officers short courses with MES.

Natural Resource Conservation Service (NRCS): Tim Kohler reported that Bill Hunt had surgery three weeks ago; Bill is doing well and will hopefully be back to work full-time again soon. Tim reported that CRP sign-ups start on Monday, NRCS will work with FSA to make determinations. Tim stated that EQUIP (the old ACP program) funding for Minnesota will be know soon; Bill Hunt's funding recommendation for Minnesota must be submitted by March 24, 65% of funding will be for targeted areas. NRCS will be conducting a statewide training effort for each county to enhance customer service efforts, the goal is to pull the service center concept together, this effort is paid for out of USDA's budget.

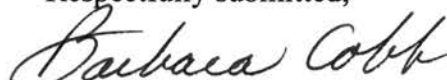
Chair Cobb presented Ron Harnack with a watch for his 25-year state service award.

Ron Harnack stated that the BWSR meeting in August will be held in Marshall County.

Chair Cobb reported that this would be her last meeting as Chair of BWSR. She thanked everyone for everything!

Chair Cobb adjourned the meeting at 1:50 p.m.

Respectfully submitted,


Barbara Cobb, Chair

DRAFT

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

DRAFT

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A handwritten signature, possibly 'MP', is written in the right margin. A large diagonal line is drawn across the page, starting from the middle of the 'AGENCY MEMBERS ABSENT' section and extending towards the bottom right corner.

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Roy Ramsey & Washington Co.

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Proposed Permanent Rules Relating to Board Interventions in Judicial or Administrative Proceedings - Jim Haertel explained that this is also in the preliminary review process. Discussion followed. ~~Chair Cobb directed staff to meet with the Attorney General's Office and the Dispute Resolution Committee to discuss this further.~~ *Referred to DRC.*

Peterson vs. Minnehaha Creek Watershed District (WCA Appeal) - Kathy Roer explained the case; the recommendation of the DRC is to affirm the ~~recommendation of the SWCD~~ ^{decision of the MCWD}. Motion made by Kathy Roer, seconded by Ted Lovdahl, to accept the DRC's recommendation to approve the affirmation of the ~~SWCD~~. Motion passed on a voice vote.

MCWD

Drainage Inventory Pilot Program - Barbara Ohman presented the Wetland Committee's recommendation for funding projects totaling \$176,099 to the drainage inventory pilot program. Motion made by Ted Lovdahl, seconded by Dwain Otte, that the board approve the Wetland Committee's recommendation to fund the drainage inventory pilot program projects. Motion passed on a voice vote.

Chair Cobb introduced BWSR staff attending: Mark Nelson from Duluth, Pete Waller from Brainerd, Jeff Nielsen from New Ulm, John Jaschke, Barbara Ohman, and Jim Birkholz

Advisory Comments

Minnesota Association of Townships (MAT): Franklin Denn briefly commented on land use planning. He reported that MAT will be conducting statewide township officers short courses with MES.

Natural Resource Conservation Service (NRCS): Tim Kohler reported that Bill Hunt had gallbladder surgery and an appendectomy three weeks ago; Bill is doing well and will hopefully be back to work

full-time again soon. Tim reported that CRP sign-ups start on Monday, NRCS will work with FSA to make determinations. Tim stated that EQUIP (the old ACP program) funding for Minnesota will be know soon; Bill Hunt's funding recommendation for Minnesota must be submitted by March 24, 65% of funding will be for targeted areas. NRCS will be conducting a statewide training effort for each county to ^{enhance} ~~discuss~~ customer service efforts, the goal is to pull the service center concept together, this effort is paid for out of USDA's budget.

Chair Cobb presented Ron Harnack with a watch for his 25-year state service award.

Ron Harnack stated that the BWSR meeting in August will be held in Marshall County.

Chair Cobb reported that this would be her last meeting as Chair of BWSR. She thanked everyone for everything!

Chair Cobb adjourned the meeting at 1:50 p.m.

Respectfully submitted,

Barbara Cobb, Chair

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

Feb 27 '97 15:10 P.01/05

DRAFT

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

DRAFT

BOARD MEMBERS PRESENT: Barbara Cobb, Ginny Imholte, Dwain Otte, Kathleen Roer, Marv Tripp, Ted Lovdahl, Glenn Annexstad, Tim Hvidsten

BOARD MEMBERS ABSENT: Barb Uppgaard, Darrell Bruggman, Jim Rossman, LeRoy Stensgaard

AGENCY MEMBERS PRESENT:

Jim Anderson, Minnesota Extension Service
Bob Patton, Department of Agriculture
Wayne Anderson, Pollution Control Agency
Wayne Edgerton, Department of Natural Resources

AGENCY MEMBERS ABSENT:

Kim Benson-Johnson, Department of Health

OTHERS PRESENT:

LeAnn Buck, MASWCD
Don Wodek, Hennepin Conservation District
Franklin Denn, MAT
Woody Love, MAWD
Tim Kohler, NRCS

STAFF PRESENT:

Ron Harnack, Pete Waller, Mark Nelson, Al Kean, Jim Hactcl, Tim Fredbo, Mary Jo Anderson

6 pages

*Back to Mary Jo
Thanks - put the
distribution of the
conflict strategic
plan in the minutes so
I can go on vacation
& not think about things
to do when we get
back 2 days before
mtg. On to vacation
- yeah ☺*

Post-It® Fax Note	7671	Date	2/27/97	Pages	5
To	Barb Cobb	From	Mary Jo		
Co./Dept.		Co.	BWSR		
Phone #		Phone #	297-4290		
Fax #	436-2190	Fax #			

please edit - Thank you!

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

Feb 27 '97 15:10 P.02/05

Chair Cobb called the meeting to order at 9:05 a.m.

Adopt Agenda - Moved by Glenn Annexstad, seconded by Ted Lovdahl, to adopt the agenda as presented. Motion passed on a voice vote.

Minutes of January 22, 1997 - Moved by Ted Lovdahl, seconded by Ginny Imholte, to approve the minutes of January 22, 1997, as circulated. Motion passed on a voice vote.

Chair's Report - Chair Cobb attended the MASWCD "leadership school" -- balancing ethics, conflict management and transformation were addressed. A strategic plan was developed to change the conflict between greater Minnesota and the metro area. Chair Cobb challenged board members to follow this strategic plan which includes: 1) accept what you learn; 2) let emotions show only the shared; and 3) communicate with positives, counter the negative response. Chair Cobb will distribute the strategic plan to board members for their information.

Executive Director's Report - Ron Harnack commented briefly on the statewide drainage workshops that will be held and he encouraged board members to attend. Ron gave an update on legislative issues. The BWSR's budget overview was completed in the House. Policy successes include: the change in six to four year term for SWCD supervisors passed in the Senate; state agency voting membership cleared the House Environment Committee and has not yet been heard in the Senate (AMC is formally opposed to agency voting membership); grants, gifts and donations cleared the Senate; a hearing in the House this morning; the land use bill has significantly changed since the last bill, Minnesota Planning is now the key agency in this, the first hearing was yesterday, quite a diverse debate on the land use issue. The Environmental Trust Fund is moving forward with allocations for education. Ron stated that there is discussion on the RIM program "living snowfence" requirements, currently under BWSR administrative cost-share approach, shelterbelts and windbreaks are excluded, this will be introduced soon. SWCD elections in the metro area to elect from the district rather than the county passed both Senate and House. Cost-share initiative from MASWCD; WCA meetings on mining issue are being held, BWSR is in opposition to this issue. General services also a MASWCD initiative which will be heard in the House this morning. Ron will distribute his update to board members.

Dispute Resolution Committee (DRC) Report - Kathy Roer reported that the DRC heard the Peterson vs Minnehaha Creek appeal; the Drum vs Douglas County appeal will be heard in March; and a new appeal was received yesterday from Wright County. Kathy stated that the DRC heard seven appeals last year, all were WCA appeals. Kathy commended Jim Haertel for doing an excellent job of screening appeals before they come before the DRC.

Education and Public Relations Committee - Ron Harnack stated that he met yesterday with Minnesota Extension Service regarding the joint MES/BWSR education position; the BWSR's Education and Public Relations Committee is invited to be involved in this effort as well.

Agency Reports

Jim Anderson, MES, reported that interviews continue for Barb Luikkonen's position; March 15 is the deadline date to have this process wrapped up.

legislative
committee

?
one of the
story problem
re being
re marked
re education

address

* see
attached
page.

one in their area

re dedication

prior to

- ★
1. To learn and accept the facts of existence in each area - to walk in each other's shoes.
 2. To let our emotions show only our shared mission - good stewardship of the land & water.
 3. To communicate with positives; counter the negative with a positive response.

To transform conflict is to release the energy bound in patterns of thought & action that have built up over time and to reshape that energy into new and more positive patterns of relationship. To transform conflict is to build peace.

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

Feb 27 '97 15:11 P.03/05

Bob Patton, MDA, stated that he is sitting in today for Paul Burns. He introduced Becky Balk who is also working in MDA's Planning Division.

Wayne Anderson, PCA, he stated that PCA is working on strategic planning; staff are very involved in the strategic planning effort. Wayne has been involved in the "Big River Partnership" project that recognizes the big issues on the Mississippi River; with statewide representation from agencies and associations in an effort to form common ground.

Wayne Edgerton, DNR, stated that Channel 5 held a call-in poll regarding the Environmental Trust Fund, where should the funds go? Wayne said the environment received the fewest votes!

Chair Cobb called for a break in the meeting at 9:55 a.m., the meeting reconvened at 10:05 a.m.

Hypoxia Presentation - Ron Harnack introduced Giles Randall, Professor and Soil Scientist at the University of Minnesota/Southern Experiment Station. Professor Randall defined hypoxia as a zone of low dissolved oxygen concentration in water; concern for hypoxia in the Gulf of Mexico attributed to increased nutrient loading from the Mississippi River, primarily nitrate. Discussion followed. Chair Cobb thanked Professor Randall for coming before the board with this information.

Chair Cobb reported that Don Wodek will be leaving Hennepin Conservation District and going to ~~Mercury Waste Solutions, Inc.~~ as Exec. V.P.

Chair Cobb thanked him for his many contributions in the environmental arena.

Comprehensive Land Use Planning - Ron introduced Lee Ronning, Land Stewardship Project (LSP); Jim Mulder, Association of Minnesota Counties (AMC); and Joel Jannick, League of Minnesota Cities (LMC). Each gave their organization's perspectives of comprehensive land use planning. Lee Ronning stated that the LSP's position ^{is that} on comprehensive land use planning must be mandated and monitored by an outside watchdog group based on social justice, and economic equity, with local entities having flexibility. Jim Mulder stated that AMC agrees with LSP in that comprehensive planning is needed, but they are concerned with the state's direction on waste management; a flexible system is needed. Joel Jannick stated that LMC has a split position on any and all land use proposals on the table; however, LMC is concerned with funding for greater Minnesota, difficult to reach agreement in the legislature; LMC's goal is to have the state define and determine their own system's plans; they agree with LSP in flexibility ^{for} of locals. Discussion followed. Chair Cobb thanked them for coming in today. *to mandate such as wa done with waste management*

Pollution Credit Trading - Wayne Anderson, PCA, stated that pollution credit trading is part of the Clean Water Partnership Act; the pollution credit trading is a win/win situation for the environment. Scott Wallace, HDR Consulting, explained the point - nonpoint source trading concept. This is a corporate sponsorship program for public - private partnerships. Discussion followed. Chair Cobb thanked Wayne and Scott for explaining this to the board today.

Chair Cobb adjourned the meeting for lunch at 11:55 p.m. The meeting reconvened at 12:40 p.m.

Consent Agenda

County Water Plan Approvals - Tim Hvidsten reported that the review committee met in February

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

Feb 27 '97 15:12 P.04/05

*a five year review of**I thought it was a "5 year review" designation. Ask someone OK.*

and reviewed the Clearwater, Marshall, Polk and Red Lake County Comprehensive Water Plans. The review committee recommended approval of the Clearwater, Polk and Red Lake County Water Plans; with BWSR staff directed to work with Marshall County on their plan. Motion made by Tim Hvidsten, seconded by Ginny Imholte, to approve the Clearwater, Polk, Red Lake and Marshall County Water Plans. Motion passed on a voice vote.

Policy to Allow Release of Expiring Ten-Year Reinvest In Minnesota (RIM) Easements - Tim Fredbo explained the expiration dates of easements and how changes have been made since 1986 when the program first began; landowners enrolled in the RIM program view 1997 as the eleventh year. Staff recommends Option #2 - this would not require landowners to pay the state for release; release would be verified by the SWCD; landowners must work with the local SWCD to implement a plan on the released acres that will minimize erosion and sedimentation from the site in transition; and release is approved by BWSR. Discussion followed. Motion made by Tim Hvidsten, seconded by Glenn Annexstad, to adopt Option #2, the release is case-by-case as requested. Motion passed on a voice vote.

Proposed Permanent Rules Governing Board Review of Watershed District Rules - Jim Haertel explained that this is in the preliminary review process. Discussion followed.

Proposed Permanent Rules Relating to Board Interventions in Judicial or Administrative Proceedings - Jim Haertel explained that this is also in the preliminary review process. Discussion followed. Chair Cobb directed staff to meet with the Attorney General's Office and the Dispute Resolution Committee to discuss this further.

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

Feb 27 '97 15:12 P.05/05

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Chair Cobb presented Ron Harnack with a watch for his 25-year state service award.

Ron Harnack stated that the BWSR meeting in August will be held in Marshall County.

Chair Cobb reported that this would be her last meeting as Chair of BWSR. She thanked everyone for everything!

Chair Cobb adjourned the meeting at 1:50 p.m.

Respectfully submitted,

Barbara Cobb, Chair

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

**Clearwater County Comprehensive
Local Water Plan Update**

(For Board Action)

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

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

On February 12, 1997, the BWSR Water Plan Review Committee met with representatives of Clearwater County and BWSR staff to review and discuss the Plan Update.

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

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

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

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

**Marshall County Comprehensive
Local Water Plan Update**

(For Board Action)

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

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

On February 12, 1997 the BWSR Water Plan Review Committee met with representatives of Marshall County and BWSR staff to review and discuss the Plan Update.

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

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

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

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

**Polk County Comprehensive
Local Water Plan Update**

(For Board Action)

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

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

On February 12, 1997, the BWSR Water Plan Review Committee met with representatives of Polk County and BWSR staff to review and discuss the Plan Update.

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

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

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

RECEIVED
FEB 10 1997

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

**Red Lake County Comprehensive
Local Water Plan Update**

(For Board Action)

The Red Lake County Comprehensive Local Water Plan (Plan) was approved by the Minnesota Board of Water and Soil Resources (BWSR) on February 28, 1990, and adopted by the Red Lake County on May 14, 1990. Red Lake County submitted a Plan Update, required in the Plan, to the BWSR on July 22, 1996, to begin the final 90 day review period. The final review period ended on October 20, 1996.

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

On February 12, 1997, the BWSR Water Plan Review Committee met with representatives of Red Lake County and BWSR staff to review and discuss the Plan Update.

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

New information collected was added to the Plan in a **Summary of Accomplishments**. The Plan includes the eighteen required assessments with an assessment by major watershed, when applicable, and a general description of the two major watersheds in Red Lake County. Narrative is included that describes the criteria used by the task force to determine **High Priority Wetland Areas**. The county identified both the **Clearwater River and Red Lake River major watersheds** as high priority for the preservation, enhancement, restoration, and establishment of wetlands. The Comprehensive Local Water Plan Task Force used information collected through federal, state, and local projects to make assessments used to develop goals and objectives. Goals and objectives were ranked high, medium and low priority by the task force. The Plan has three (3) broad goals to **Protect, Maintain, and Improve Land Resources Related to Water, Groundwater Resources, and Surface Water Resources**.

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



MEMORANDUM

February 14, 1997

One West Water Street
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(612) 296-3767
Fax (612) 297-5615

Field Offices

Northern Region:

394 S. Lake Avenue
Room 403
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(218) 723-4752
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3217 Bemidji Avenue N.
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217 S. 7th Street
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261 Highway 15 S.
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Fax (507) 537-6368

Metro Region:

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

TO: Board Members

FR: *Jim* Haertel, Water Management Specialist

PH: (612) 297-2906

RE: DRAFT RULES

Two sets of draft rules are being proposed and are enclosed for your review and comment.

One draft rule, MR 8420.0255, pertains to appeals of watershed district rules that are brought before the Board. This rule is required by Minn. Stat. § 103D.537.

The other draft rule, MR 8420.0010, pertains to determinations of water law and policy that are brought before the Board. This rule is required by Minn. Stat. § 103A.325.

Both of these draft rules are in the preliminary review process. Neither of these draft rules have been published in the state register for comment.

If you have any questions or wish to discuss, please contact me.

Enclosures

c: Ron Harnack, Jim Birkholz, Greg Larson, Doug Thomas, Metro Region
Matt Seltzer

Board of Water and Soil Resources**New Business #2****Proposed Permanent Rules Governing Board Review of Watershed District Rules****8420.0255 BOARD REVIEW OF DISTRICT RULES.**

Subpart 1. How obtained. Review by the board of the validity of a watershed district rule under Minnesota Statutes, section 103D.537, is obtained by:

A. filing a petition for review with the board within 30 calendar days of final adoption of the rule;

B. serving the petition upon the watershed district; and

C. filing proof of service with the board.

Subp. 2. Contents of petition. The petition must describe briefly the rule to be reviewed, the errors claimed by the petitioner, and the manner in which the rule to be reviewed interferes with or impairs the rights or privileges of the petitioner. A copy of the rule to be reviewed must be attached to the petition.

Subp. 3. Decision to grant petition. Within 30 days after receiving the petition, the board or its dispute resolution committee or executive director shall decide whether to grant the petition and hear the appeal. The board or its dispute resolution committee or executive director shall grant the petition unless the board considers the appeal meritless, trivial, or brought solely for the purposes of delay.

Subp. 4. Record. Review of the validity of a watershed district rule is on the record made in the proceeding before the managers of the watershed district. Upon appeal, the watershed district shall forward to the board the record on which it based its decision. If an audio or video recording of the proceedings before the managers is available but has not yet been transcribed, the watershed district need not provide a verbatim transcript unless the petitioner requests it and makes arrangements to pay the reasonable costs of preparing a transcript. A watershed district may prepare and submit a verbatim transcript at its own cost and expense.

1 Subp. 5. Briefing. A briefing schedule must be established by the staff of the board
2 and communicated to the participants.

3 Subp. 6. Participants. Only an interested party may file a petition for review. The
4 participants in the appeal are the petitioner, the watershed district, and other interested
5 parties who apply for and are granted permission to participate by the board or its
6 dispute resolution committee or executive director.

7 Subp. 7. Hearing and decision. Oral arguments on the appeal must be held before the
8 dispute resolution committee of the board, which shall make a recommendation to the
9 board. The board shall make the final decision.

10 Subp. 8. Standard of review. A watershed district rule is presumed to be valid. The
11 board shall declare the rule invalid only if it exceeds the statutory authority of the
12 watershed district, was adopted without compliance with applicable procedural
13 requirements, is inconsistent with the watershed management plan approved by the
14 watershed district, or is arbitrary and capricious. The board shall not rule on
15 constitutional issues. *or the desirability of the project.*

16 Subp. 9. Appeal of board decision. A final decision of the board may be appealed to
17 the court of appeals in accordance with Minnesota Statutes, sections 14.63 to 14.69.

*need
change
in statute*

*Kim Kottler
1/15/95*

2/14/97

Board of Water and Soil Resources

Proposed Permanent Rules Relating to Board Interventions in Judicial or Administrative Proceedings

8415.0010 DETERMINATION OF WATER LAW AND POLICY.

Subpart 1. Intervention Criteria. (a) Upon proper petition to intervene, the board of water and soil resources shall intervene if the proceeding in which intervention is sought is a contested case or court referral and the administrative law judge or district judge certifies that there is an important question of water law or policy involved, the resolution of which is doubtful either because of previously unresolved conflicts of water law between statutes or because of lack of precedent on an issue on which the law is vague. The board shall intervene if the board concurs with the judge's certification, has special expertise in the matter, and has the resources to complete the intervention proceedings.

(b) Upon proper petition to intervene, the board of water and soil resources may intervene if the proceeding in which intervention is sought is brought by an agency, or others as deemed appropriate by the board. The board shall intervene if the board determines that there is an important question of water law or policy involved, the resolution of which is doubtful either because of previously unresolved conflicts of water law between statutes or because of the lack of precedent of an issue on which the law is vague, that the board has special expertise in the matter, and has the resources to complete the intervention proceedings.

Subpart 2. Procedure. If the board intervenes, the dispute resolution committee of the board shall take written statements of fact and legal argument from the parties. Thirty minutes of oral arguments must be allowed if a party requests it. The resulting report to the parties, agency, and judge must

2/14/97

- 22 recommend how the important and doubtful question of water law or policy should be resolved and the
23 basis and reason for the recommendation. The board shall not recommend resolutions of issues of
24 disputed fact.

Nonpoint Source Trading for Rahr Malting Company

Rahr Malting Company is planning to build a wastewater treatment plant to treat its waste discharging to the Minnesota River. Currently the company pays to have its food process wastewater treated at the Blue Lake Metropolitan Wastewater Treatment Facility. The company is attempting to optimize the costs of their process, including wastewater treatment.

A new facility on a river requires a permit which has conditions for treatment. These requirements are to ensure the river's natural processes for handling waste are not exceeded. However, in the Minnesota River during low flows, high levels of pollutant loading already exist in the metropolitan reach of the river. Therefore, the MPCA has put a cap on pollutant discharges on the Minnesota River in the metropolitan area. This cap set a 40% reduction goal for upstream pollutants and placed tight restrictions on metropolitan wastewater treatment plants. Due to this limit, if Rahr Malting Company wants to discharge wastewater to the Minnesota River, they can not add to the assigned loading levels. The company had two alternatives to meet existing requirements: 1) for the MPCA to reassign loading from the Blue Lake Wastewater Treatment Plant to Rahr Malting, or 2) for Rahr Malting to accept restrictive conditions on their treated process water and to reduce upstream loading by an equal amount of their loading. Option two was selected. It also should be noted that improvements in water quality need to occur in addition to the 40% reduction goal.

The permit for Rahr Malting Company requires the most restrictive limits on the Minnesota River. In addition to tighter year around limits and the first phosphorus limit on the river, the permit requires Rahr's

wastewater load to be offset through "trading." The offset will be accomplished by Rahr Malting setting aside funds for incentives to adopt BMPs. In addition to Rahr Malting achieving their goals, they will be partnering with others in the Minnesota River Basin.

What BMPs are eligible for funding from Rahr Malting?

1. BMP options that reduce sheet, rill and ephemeral gully erosion (not including high residue tillage).
2. BMP options that stabilize gully and bank erosion.
3. Methods to exclude livestock from stream or river riparian zones.
4. Rotational grazing with livestock excluded from riparian zones.
5. Constructed wetland treatment systems for storm water run-off.

Who is eligible to participate in this program?

Rahr Malting will be seeking those sites which provide the best pollution reduction credits for their cost. The sites must be upstream of Shakopee in the Minnesota River Basin.

Why were those BMPs selected?

The BMPs listed above were selected because they meet the following criteria:

- Equivalent -- must be able to scientifically credit the BMP.
- Accountable -- projects may be tracked or monitored, as well as, subject to a contract with Rahr Malting for long term assurance.
- Additional -- promoting areas of nonpoint source reductions which are not widely adopted.

News Release

Minnesota Pollution Control Agency
520 Lafayette Road North, St. Paul, Minnesota 55155-4194



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For release January 28, 1997

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Rahr: Curt Sparks, HDR Engineering, (612) 591-5427

GOVERNOR CARLSON LAUDS INNOVATIVE POLLUTION CONTROLS FOR RAHR MALTING COMPANY

The Minnesota Pollution Control Agency and the Rahr Malting Company have agreed on terms for an innovative new wastewater discharge permit that gives the company flexibility to "trade" discharge limits on the wastewater it produces. The permit, one of the first in the nation to include the concept of trading, was lauded by Governor Arne H. Carlson as an environmental landmark.

In exchange for permission to discharge wastewater into one part of the Minnesota River from Rahr's malting facility in Shakopee, the new permit requires the company to reduce the amount of pollutants going into other parts of the river, primarily from agricultural land uses. The net effect will be to lower the total pollution in the river.

"This innovative permit helps accomplish two priorities of our administration," Governor Carlson said.

"First, it speeds up cleanup of the Minnesota River, so it can once again be a recreational resource. And it also continues a strong partnership we've established with business to address together the needs of the environment. Because the best way to get positive results is to work together."

The Rahr facility processes barley to make malt used in brewing, in the process generating large quantities of wastewater. Currently Rahr sends its wastewater to the Metropolitan Council's Blue Lake wastewater treatment facility on the Minnesota River. To save costs and operate more efficiently, the company is considering building its own wastewater treatment plant, which requires a discharge permit from the MPCA.

But because the Minnesota is already seriously affected, the MPCA strictly limits how much and what type of wastewater can be discharged to the river from new "point" sources such as wastewater treatment plants. So Rahr sought to, in effect, trade permission to create a new point source at one place on the river in exchange for reducing pollutants from non-point sources (such as runoff) elsewhere on the river.

The MPCA agreed to the concept, which was proposed by Rahr's consultant, HDR Engineering, and entered permit negotiations with the company. The issuance of the permit allows Rahr to move forward with the design phase of the project.

"We're excited about this permit," said MPCA Commissioner Peder Larson. "It's a win-win situation. Because of this cooperative partnership, the company gets the flexibility they need and the Minnesota River gets less overall pollution."

The new permit allows Rahr, should the company decide to go ahead, to treat and discharge wastewater containing certain levels of oxygen-demanding materials directly to the Minnesota River from an on-site wastewater plant. (Excess organic matter, such as sediment or nutrients carried in runoff, lowers the amount of dissolved oxygen in rivers and lakes, which can negatively affect water quality.) In exchange, the company will implement a variety of measures -- such as erosion control, wetland restoration and set-asides -- on lands elsewhere in the Minnesota's watershed that will reduce the total amount of oxygen demand on the river by an equivalent or greater amount.

Larson also said the Rahr permit is an example of how the regulators are looking more at the health of whole watersheds and ecosystems, rather than just end-of-pipe discharges. "We hope to be doing more of these permits," Larson said. "It helps us to protect water resources better by expanding our focus to include watersheds."

The permit also breaks new ground in that a statewide environmental group, the Minnesota Center for Environmental Advocacy, was an active participant with Rahr and the MPCA in negotiating the permit's terms. According to MCEA officials, the group became involved because the important precedents set in the permit can guide future water-quality improvements on the Minnesota River.

"As far as we know, this is a national first. It sets a strong precedent because the nonpoint reductions are enforceable and verifiable -- this was our primary concern," said Mark Ten Eyck, MCEA senior attorney. "The MPCA did a terrific job in putting together this trading program, and Rahr paved the way for corporate stewardship on the Minnesota River."

Rahr Malting Company Vice President Bob Micheletti said, "We began the process of seeking this permit as a way to control costs. What we ended up with is a resource management alternative that gives us this flexibility. It was an easy choice for us to make the commitment to help clean up the Minnesota River. We appreciate that the MPCA and MCEA were willing to look at an innovative point/non-point trading program to help us stay competitive and at the same time help clean up the river."

The specific lands on which the company will implement this requirement are not yet determined, but MPCA officials said there are plenty of opportunities for such work in the Minnesota basin. The company, MCEA and MPCA have agreed on the types of actions that will meet the requirements, and the permit provides calculations to figure the resulting equivalent reductions in pollution impacts to the river. The company plans to implement the requirements using a mix of its own and other private or public lands, as well as providing assistance to other groups or local governments which are doing similar projects to protect water quality on the Minnesota river.

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Minnesota Board Of Water And Soil Resources
One West Water Street, Suite 200
St. Paul, Minnesota 55107

In re: Dale Peterson,

BWSR File No. 96-5

Appellant,

vs.

ORDER

Minnehaha Creek Watershed District,

Respondent.

This is an appeal by Dale Peterson (Peterson) from an exemption determination made by the Minnehaha Creek Watershed District (MCWD). Peterson applied for renewal of a permit to place 3,800 cubic yards of fill in a wetland located in Shorewood, Minnesota. MCWD is the local government unit for the Wetland Conservation Act of 1991 (WCA). By Order dated September 12, 1996, MCWD found that the activities proposed in Peterson's permit application were not exempt from the replacement requirements of WCA.

On February 10, 1997, the Dispute Resolution Committee (DRC) of the Minnesota Board of Water and Soil Resources (BWSR) heard oral arguments. Mark V. Steffenson of Henningson & Snoxell, LTD., 6160 Summit Drive, # 640, Brooklyn Center, Minnesota 55430, appeared on behalf of Peterson. Waverley Eby Booth and Louis N. Smith of Smith Parker, P.L.L.P., 808 Colwell Building, 123 North Third Street, Minneapolis, Minnesota 55401, appeared on behalf of MCWD.

The attorneys for the parties agreed that the record for purposes of this appeal consists of the following: a bound volume labeled "Record for the Minnehaha Creek Watershed District," consisting of 60 separately tabbed documents; transcripts of meetings dated May 9, 1996, August 22, 1996, and September 12, 1996; and, the engineer's report of Wenck Associates dated April 6, 1995, consisting of two pages.

Following oral arguments on the merits, the DRC adopted a resolution recommending that the exemption determination of MCWD be affirmed.

At a meeting of BWSR on February 26, 1997, BWSR adopted a resolution to accept the recommendation of the DRC and authorize the chair of BWSR to issue this Order.

Based on the entire record of this proceeding, BWSR makes the following

ORDER

1. The September 12, 1996, Order of the Minnehaha Creek Watershed District with regard to a wetland on the property of Dale Peterson in Shorewood, Minnesota is affirmed.
2. The attached Memorandum is incorporated by reference and made a part of this Order.

Dated: 2 - 26, 1997

Minnesota Board of Water and Soil Resources

By: Barbara Cobb
Its Chair

MEMORANDUM

Pursuant to Minn. R. 8420.0250, subp. 3 (June 10, 1996), our standard of review is as follows:

The board will affirm the local government unit's decision if the local government unit's findings of fact are not clearly erroneous; if the local government unit correctly applied the law to the facts, including this chapter; and if the local government unit made no procedural errors prejudicial to a party. Otherwise, the board will reverse the decision, amend it, or remand it with instructions for further proceedings.

Peterson does not dispute any of the findings of fact stated in MCWD Order, and there is no allegation that MCWD made procedural errors prejudicial to Peterson. The sole issue is whether MCWD correctly applied the law to the facts. We find that this standard is satisfied and therefore affirm MCWD's decision.

The exemption for approved development in Minn. R. 8420.0122, subp. 8 (June 10, 1996) (emphasis added) provides as follows:

Subp. 8. Approved development. A replacement plan for wetlands is not required for development projects and ditch improvement projects in the state that have received preliminary or final plat approval or have infrastructure that has been installed or has local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. . . .

Subdividers who have obtained preliminary plat approval in the specified time period, and other project developers with one of the listed approvals timely obtained, provided approval has not expired and the project remains active, may drain and fill wetlands, to the extent documented by the approval, without replacement.

As indicated by the underlined language in the above passage, the project must remain active to qualify for the exemption. Here, MCWD correctly applied the law to the undisputed facts in finding that the exemption did not apply. Among other things, it should be noted that Peterson's

attempts to sell the property are not sufficient for the wetland fill project to be considered "active."

We are unpersuaded by Peterson's arguments regarding invalid rulemaking and estoppel. Although MCWD made a mistake in the application of the exemption in 1995, this would not justify or require perpetuation of the mistake in the 1996 Order. The role of MCWD as the local government unit is to apply the BWSR rules for the WCA program, and MCWD properly performed its role in denying Peterson's 1996 request for an exemption.

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Introduced by Morse, S. Kelley, Dille,
Laidig, Vickerman

S.F. No. 738

February 20, 1997

Companion H.F. No. _____

Referred to Committee on LOCAL & METROPOLITAN GOVERNMENT

Reproduced by PHILLIPS LEGISLATIVE SERVICE

1 A bill for an act
2 relating to planning; establishing goals for
3 community-based planning; permitting counties and
4 municipalities to prepare community-based plans;
5 requiring the metropolitan council to meet the
6 community-based planning goals; establishing an
7 advisory council to develop the framework for
8 implementing community-based planning; appropriating
9 money; amending Minnesota Statutes 1996, sections
10 394.24, subdivision 1; and 462.357, subdivision 2;
11 proposing coding for new law in Minnesota Statutes,
12 chapters 4A; 394; 462; and 473.

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

14 Section 1. [4A.08] [COMMUNITY-BASED PLANNING GOALS.]

15 The goals of community-based planning are:

16 (1) [CITIZEN PARTICIPATION.] To develop a community-based
17 planning process with broad citizen participation in order to
18 build local capacity to plan for sustainable development and to
19 benefit from the insights, knowledge, and support of local
20 residents;

21 (2) [ECONOMIC DEVELOPMENT.] To create sustainable economic
22 development strategies and provide economic opportunities
23 throughout the state that will achieve a balanced distribution
24 of growth statewide;

25 (3) [CONSERVATION.] To protect, preserve, and enhance the
26 state's resources, including agricultural land, forests, surface
27 water and groundwater, recreation and open space, native
28 biodiversity and ecosystems, scenic areas, and significant
29 historic and archaeological sites;

1 (4) [LIVABLE COMMUNITY DESIGN.] To strengthen communities
2 by following the principles of livable community design in
3 development and redevelopment, including integration of all
4 income and age groups, mixed land uses and compact development,
5 affordable and life-cycle housing, green spaces, access to
6 public transit, bicycle and pedestrian ways, and enhanced
7 aesthetics and beauty in public spaces;

8 (5) [HOUSING.] To provide and preserve an adequate supply
9 of affordable and life-cycle housing throughout the state;

10 (6) [TRANSPORTATION.] To focus on the movement of people
11 and goods, rather than on the movement of automobiles, in
12 transportation planning, and to maximize the efficient use of
13 the transportation infrastructure by increasing the availability
14 and use of appropriate public transit throughout the state
15 through land-use planning and design that makes public transit
16 economically viable and desirable;

17 (7) [LAND-USE PLANNING.] To establish a community-based
18 framework as a basis for all decisions and actions related to
19 land use;

20 (8) [PUBLIC INVESTMENTS.] To ensure that funding required
21 for new or improved infrastructure needed to accommodate new
22 development, including, but not limited to, roads, water, sewers
23 and sewage treatment facilities, schools, and recreation areas,
24 will be available before proceeding with the new development;

25 (9) [PUBLIC EDUCATION.] To support research and public
26 education on a community's and the state's finite capacity to
27 accommodate growth, and the need for planning and resource
28 management that will sustain growth; and

29 (10) [SUSTAINABLE DEVELOPMENT.] To provide a better quality
30 of life for all residents while maintaining nature's ability to
31 function over time by minimizing waste, preventing pollution,
32 promoting efficiency, and developing local resources to
33 revitalize the local economy.

34 Sec. 2. [4A.09] [TECHNICAL ASSISTANCE.]

35 The office shall provide local governments technical and
36 financial assistance in preparing their comprehensive plans to

1 meet the community-based planning goals in section 4A.08. Joint
2 planning districts, formed under section 394.232, subdivision 4,
3 or 462.3535, subdivision 3, must receive priority for technical
4 or financial assistance.

5 Sec. 3. [4A.10] [PLAN REVIEW AND APPROVAL.]

6 The office shall review and approve community-based
7 comprehensive plans prepared by counties, including the
8 community-based plans of municipalities that are incorporated
9 into a county's plan, as required in section 394.232.

10 Sec. 4. [394.232] [COMMUNITY-BASED PLANNING.]

11 Subdivision 1. [GENERAL.] A county may prepare a
12 comprehensive plan that meets the goals of community-based
13 planning in section 4A.08.

14 Subd. 2. [COORDINATION.] A county that prepares a
15 community-based plan shall coordinate its plan with the plans of
16 its neighbors and its constituent municipalities and towns in
17 order both to prevent its plan from having an adverse impact on
18 other jurisdictions and to complement plans of other
19 jurisdictions. The county's plan must incorporate the
20 community-based plan of any municipality or town in the county.

21 Subd. 3. [REVIEW AND APPROVAL.] The county shall submit
22 its community-based plan to the office of strategic and
23 long-range planning for review and approval. The county shall
24 not adopt or implement the plan until it has been approved.

25 Subd. 4. [JOINT PLANNING.] Under the joint exercise of
26 powers provisions in section 471.59, a county may establish a
27 joint planning district with other counties, municipalities, and
28 towns, that are geographically contiguous, to adopt a single
29 community-based plan for the district. The county may delegate
30 its authority to adopt official controls under this chapter, to
31 the board of the joint planning district.

32 Subd. 5. [PLAN UPDATE.] The county board, or the board of
33 the joint planning district, shall review and update the
34 community-based comprehensive plan periodically, but at least
35 every ten years, and submit the updated plan to the office of
36 strategic and long-range planning for review and approval.

1 Sec. 5. Minnesota Statutes 1996, section 394.24,
2 subdivision 1, is amended to read:

3 Subdivision 1. [ADOPTED BY ORDINANCE.] Official controls
4 which shall further the purpose and objectives of the
5 comprehensive plan and parts thereof shall be adopted by
6 ordinance. The board shall not adopt or implement official
7 controls that are inconsistent or in conflict with the adopted
8 comprehensive plan. If a comprehensive plan is in conflict with
9 an official control, the official control must be brought into
10 conformance with the plan by the board. The comprehensive plan
11 must provide guidelines for the timing and sequence of the
12 adoption of official controls to ensure planned, orderly, and
13 staged development and redevelopment consistent with the
14 comprehensive plan.

15 Sec. 6. [462.3535] [COMMUNITY-BASED PLANNING.]

16 Subdivision 1. [GENERAL.] A municipality may prepare a
17 community-based comprehensive municipal plan that meets the
18 goals of community-based planning in section 4A.08.

19 Subd. 2. [COORDINATION.] A municipality that prepares a
20 community-based comprehensive municipal plan shall coordinate
21 its plan with the plans, if any, of the county and the
22 municipality's neighbors both in order to prevent the plan from
23 having an adverse impact on other jurisdictions and to
24 complement the plans of other jurisdictions. The municipality
25 shall prepare its plan to be incorporated into the county's
26 community-based plan, if the county is preparing or has prepared
27 one, and shall otherwise assist and cooperate with the county in
28 its community-based planning.

29 Subd. 3. [JOINT PLANNING.] Under the joint exercise of
30 powers provisions in section 471.59, a municipality may
31 establish a joint planning district with other municipalities or
32 counties that are geographically contiguous, to adopt a single
33 community-based plan for the district. A municipality may
34 delegate its authority to adopt official controls under sections
35 462.351 to 462.364, to the board of the joint planning district.

36 Sec. 7. Minnesota Statutes 1996, section 462.357,

1 subdivision 2, is amended to read:

2 Subd. 2. [GENERAL REQUIREMENTS.] At any time after the
3 adoption of a land use plan for the municipality, the planning
4 agency, for the purpose of carrying out the policies and goals
5 of the land use plan, may prepare a proposed zoning ordinance
6 and submit it to the governing body with its recommendations for
7 adoption. Subject to the requirements of subdivisions 3, 4 and
8 5, the governing body may adopt and amend a zoning ordinance by
9 a two-thirds vote of all its members. ~~If the comprehensive~~
10 ~~municipal plan is in conflict with the zoning ordinance, the~~
11 ~~zoning ordinance supersedes the plan.~~ The governing body may
12 not adopt or implement official controls that are inconsistent
13 or conflict with the adopted comprehensive municipal plan. If a
14 comprehensive municipal plan is in conflict with an official
15 control, the official control must be brought into conformance
16 with the plan by the governing body. The plan must provide
17 guidelines for the timing and sequence of the adoption of
18 official controls to ensure planned, orderly, and staged
19 development and redevelopment consistent with the plan.

20 Sec. 8. [473.1455] [METROPOLITAN DEVELOPMENT GUIDE GOALS.]

21 The metropolitan council shall amend the metropolitan
22 development guide, as necessary, to reflect and implement the
23 community-based planning goals in section 4A.08. The office of
24 strategic and long-range planning shall review and approve the
25 metropolitan development guide. The council may not approve
26 local comprehensive plans or plan amendments after June 1, 1998,
27 until its metropolitan development guide has been approved by
28 the office of strategic and long-range planning.

29 Sec. 9. [ADVISORY COUNCIL ON COMMUNITY-BASED PLANNING.]

30 Subdivision 1. [ESTABLISHMENT; PURPOSE.] An advisory
31 council on community-based planning is established to provide a
32 forum for discussion and development of the framework for
33 community-based planning and the incentives and tools to
34 implement the plans.

35 Subd. 2. [DUTIES.] The advisory council shall propose
36 legislation for the 1998 legislative session to establish the

1 framework to implement community-based planning. The advisory
2 council shall:

3 (1) develop a model process to involve citizens in
4 community-based planning from the beginning of the planning
5 process;

6 (2) hold meetings statewide to solicit advice and
7 information on how to implement community-based planning;

8 (3) develop specific, measurable criteria by which plans
9 will be reviewed for consistency with the goals in section
10 4A.08, and approved by the office of strategic and long-range
11 planning;

12 (4) recommend a procedure for review and approval of
13 community-based plans;

14 (5) recommend a process for coordination of plans among
15 local jurisdictions;

16 (6) recommend an alternative dispute resolution method for
17 citizens and local governments to use to challenge proposed
18 plans or the implementation of plans;

19 (7) recommend incentives to encourage state agencies to
20 implement the goals of community-based planning;

21 (8) recommend incentives for local governments to develop
22 community-based plans, including for example, assistance with
23 computerized geographic information systems, builders' remedies
24 and density bonuses, and revised permitting processes;

25 (9) describe the tools and strategies that a county may use
26 to achieve the goals, including, but not limited to, densities,
27 urban growth boundaries, purchase or transfer of development
28 rights programs, public investment surcharges, transit and
29 transit-oriented development, and zoning and other official
30 controls;

31 (10) recommend the time frame in which the community-based
32 plans must be completed;

33 (11) consider the need for ongoing stewardship and
34 oversight of sustainable development initiatives and the
35 community-based planning process; and

36 (12) make other recommendations to implement

1 community-based planning as the advisory council determines
2 would be necessary or helpful in achieving the goals.

3 Subd. 3. [MEMBERSHIP.] The advisory council consists of 22
4 members who serve at the pleasure of the appointing authority as
5 follows:

6 (1) four members of the house of representatives appointed
7 by the speaker, two of whom shall be members of the minority
8 caucus;

9 (2) four members of the senate appointed by the committee
10 on rules and administration of the senate, two of whom shall be
11 members of the minority caucus;

12 (3) the commissioners, or their designees, of the
13 departments of natural resources, agriculture, transportation,
14 and trade and economic development, and the director, or the
15 director's designee, of the office of strategic and long-range
16 planning;

17 (4) the chair of the metropolitan council;

18 (5) four public members, appointed by the speaker of the
19 house of representatives; and

20 (6) four public members, appointed by the committee on
21 rules and administration of the senate.

22 The advisory council may form an executive committee to
23 facilitate the work of the council.

24 Subd. 4. [CHAIR.] The advisory council shall select from
25 among its members a person to serve as chair.

26 Subd. 5. [ADMINISTRATION.] The office of strategic and
27 long-range planning, with assistance from other state agencies
28 and the metropolitan council as needed, shall provide
29 administrative and staff assistance to the advisory council.

30 Subd. 6. [EXPENSES.] The office of strategic and
31 long-range planning shall compensate members of the advisory
32 council. Members shall receive per diem and expenses as
33 provided by Minnesota Statutes, section 15.059, subdivision 3.

34 Subd. 7. [EXPIRATION.] This section expires June 30, 1998.

35 Sec. 10. [CITATION.]

36 Sections 1 to 9 may be cited as the "Community-based

1 Planning Act."

2 Sec. 11. [APPROPRIATIONS.]

3 Subdivision 1. [PLANNING GRANTS.] \$..... is appropriated
4 from the general fund to the director of the office of strategic
5 and long-range planning for planning grants to counties and
6 municipalities that elect to prepare community-based plans.
7 This appropriation is available beginning in fiscal year 1999
8 and remains available until expended.

9 Subd. 2. [TECHNOLOGY GRANTS.] \$..... is appropriated
10 from the general fund to the director of the office of strategic
11 and long-range planning for technology grants to counties and
12 municipalities that elect to prepare community-based plans.
13 This appropriation is available beginning in fiscal year 1999
14 and remains available until expended.

15 Subd. 3. [ADVISORY COUNCIL.] \$..... is appropriated in
16 fiscal year 1998 from the general fund to the director of the
17 office of strategic and long-range planning for compensation for
18 members of the advisory council under section 9, subdivision 6,
19 and administrative and staff expenses. This appropriation is
20 available until expended.

21 Sec. 12. [APPLICATION.]

22 Minnesota Statutes, section 473.1455, applies in the
23 counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and
24 Washington.

February 13, 1997

TO: Board Members

FR: Tim Fredbo, Easement Program Manager



RE: **DECISION** - Policy to allow release of expiring 10 yr RIM easements

Enclosed please find a proposal that would allow landowners with 1986 10 year RIM easements a release from their easement obligations if they request one, and comply with conditions outlined in the proposed policy.

Many SWCDs and landowners with easements that expire after June 1, 1997 have expressed concern that they will not be able to crop their land in 1997. Many landowners consider 1997 as their 11th year of setting aside land in a 10 year RIM Reserve easement.

Landowners have a valid claim. Expiration dates in easements correspond to when a landowner was allowed to sign his easement, not to when his/her commitment to RIM actually began. RIM applications were approved in the fall of 1986, and from that point on RIM procedure in place at the time did not allow landowners to crop, hay or graze their land while easements were being processed.

To date, BWSR staff has been standing firm on current policy which allows no activity on easements until after the expiration date. John Weis, Sherburne County, is the first landowner to challenge the policy by writing to the Board and requesting a release as allowed by RIM Reserve statute and rule. As planting season gets closer we could see more requests. Easement staff does not want to bring every request from a 10 year easement holder to the Board since meetings are only held once a month and decisions may not be timely, especially if numerous requests are received.

Representative Tim Finseth is aware of this issue and will introduce legislation to allow a release if we do not adopt a policy that effectively deals with it. It would be to our advantage to resolve this within our agency rather than having this play out in the legislature.

The policy that staff is proposing necessitates that landowners work with SWCD's to minimize erosion and sedimentation impacts associated with bringing easement lands back into production, and that BWSR staff would ultimately approve the release.

February 12, 1997

TO: Board Members

FR: Tim Fredbo, Easement Program Manager



RE: Expiration of 1986 10 yr. RIM Easements

ISSUE:

Landowners and SWCD's have repeatedly expressed concerns with easement expiration dates that will prohibit easement lands from being cropped this year. They view 1997 as their 11th crop year in a RIM easement that was only intended to be a 10 year commitment.

BACKGROUND:

A landowner in Sherburne County with a 10 yr. easement that expires on June 15, 1997 has requested the Board to grant him a release from his 151 acre easement to allow him to get a crop in this year. A copy of his letter is included as *Attachment 1*. He wants to begin to work up his land by April 15th. No other landowners have formally requested a release, but informal inquiries by SWCD's have occurred. They have raised concerns that landowners are frustrated with current Board policy that prohibits cropping on easement lands until after the expiration date. A total of 718 easements, encompassing 16,204 acres, are expiring in 1997. About 126 expire after June 1, and encompass 3,317 acres and we anticipate many of these easement holders may request an early release to allow ample time to get a crop planted.

Representative Tim Finseth, District 1B, intends to introduce legislation to allow 10 yr. Easement holders with late expiration dates to get out of their easement commitments early. We have made Representative Finseth aware of this case and he is willing to wait and see how our Board deals with this issue.

FINDINGS:

The very first RIM Reserve sign-up was held in the early fall of 1986. Applicants were accepted into the program in November 1986. RIM was a new program and at that time everyone expected that easements would be in place by the spring of '87. In some cases, difficulties were encountered that delayed conveyance of the easements to the state. Many of these processing delays were beyond the landowner's control. For example, mortgage companies were hesitant to grant their consent on lands that they had interest in. This was the case in Mr. Weis's situation. The RIM program requires all liens and encumbrances on the land titles be cleared. SWCD and BWSR staff may have also caused unintentional delays in easement application processing. It was a new program and all the glitches needed to be worked out.

The 1986 approved RIM applicants were not given the option of utilizing (cropping, haying, or grazing) their land in 1987 while the easement was being processed, as current applicants are now. All parties, including the BWSR, expected that easements would be conveyed by spring of

'87. In April of 1987, when it became apparent that some easement expiration dates would not coincide with planting dates in 1997, a memo was sent by BWSR to SWCD's. This memo instructed SWCD's to discuss with landowners the implication of a late signing date, that it could cause problems for 1997 cropping, and landowners should be fully aware of what he/she is signing. It would be optimistic to assume that this message was effectively conveyed by SWCD staff to all their easement applicants. In light of the inquiries and pending legislative action, it would appear that the implications of late expiration dates were not clear to all landowners. Many applicants were instructed to plant a temporary cover crop in the spring of 1987.

The early out provision that has been provided for Conservation Reserve Program (CRP) participants has also created an expectation among RIM 10 yr. easement holders that the state should also provide this opportunity.

The legal staff from the Attorney General's (AG) office believe if BWSR decides to stand firm on expiration dates stipulated in easements, landowners would not have a strong legal case to oppose since they signed a document with an expiration date clearly stipulated. However, for those landowners whose easements may have been delayed, through no fault of their own, standing firm on existing expiration dates creates animosity and mistrust of government programs. If a landowner did not plant a crop, hay or graze the land in 1987, 1997 marks their 11th year of commitment to the RIM program. The legislative intent of the 1986 RIM program was clearly for 10 crop years. This Sherburne County landowner, and others with late expiration dates, have satisfied the legislative intent of the RIM Reserve program regardless of the expiration date stipulated in their easements.

As a potential solution to this issue, BWSR staff have discussed the possibility of paying landowners to extend their 10 year RIM easement contracts to this fall or the spring of 1998. I have consulted with the AG's office on this idea and we do not have the authority to make such payments. Legislation would be needed to enable us to do this.

In Mr. Weis's case, we have received letters from both the Sherburne SWCD Board and the DNR Area Wildlife Manager that do not oppose the early release of his easement lands. Copies are enclosed as *Attachments 2 & 3*.

OPTIONS AND RECOMMENDATION:

The BWSR could choose to stick with current policy which allows no activity on easements until after expiration dates. Staff feels that this course of action would complicate relations with SWCD's and RIM landowners and trigger legislative action, and therefore should not be considered.

The BWSR needs to allow landowners with late expiring 10 year easements to bring their land back into agricultural crop production this spring. By not doing so, BWSR risks losing the trust of landowners, and less than desirable political consequences. The BWSR needs to find a workable solution for all parties.

BWSR staff has considered two policy options to deal with this issue. *Option 1* would require a payment from landowners for an early release of RIM lands. *Option 2* would not require landowners to pay the state for a release.

***Option 1* Release with pay-back. NOT RECOMMENDED**

Some feel that landowners need to be held accountable for unfulfilled easement time that the state has legally paid for as stipulated by expiration dates in easements they willingly signed. Using this option, BWSR would allow landowners to crop their land prior to their expiration dates, and in return they pay the state back for time remaining until the expiration date.

The following policy with respect to 10 yr. limited duration easements is proposed:

The BWSR hereby allows landowners with 1986 10 yr. limited duration easements that expire in 1997 the ability to crop, hay, or graze their easement land if the following criteria are met:

1. Land has been out of agricultural production (not hayed, grazed or cropped) for a period of 10 crop years as a result of enrollment in the RIM program. This will need to be verified by the local SWCD.
2. Landowners who want to bring their RIM parcels into agricultural production prior to their expiration date will have to pay the state for unfulfilled easement time as determined by their original easement payment amount and expiration date stipulated in their easement.

John Weis Example:

$\$38,228.40(\text{easmt. payment}) \div 120 \text{ months} = \$318.57/\text{month}$
 $\$318.57 \times 2 \text{ months (early out)} = \$637.14 \text{ (payback amt.)}$

3. Landowners must work with the local SWCD to implement a plan on the released acres that will minimize erosion and sedimentation from the site in transition.
4. Release is approved by BWSR staff.

***Option 2* Release with no pay-back requirement. RECOMMENDED**

Same policy as proposed in Option 1, but with no payment from landowners required as stipulated in criteria 2, above.

A meeting of some of our RIM Reserve Advisory Committee members (MASWCD, Pheasants Forever, MN Waterfowl Assn., Audubon Society, Nature Conservancy, DNR, Ag., SWCD's) was held to consider these early out options on February 11, 1997. For those who were unable to attend I have discussed this issue with them. A significant majority of the group can support either option 1 or 2. The MASWCD, and SWCD's I have contacted, feel strongly that option 2 is the best course of action.

RECEIVED
JAN 13 1997

ATTACHMENT 1
January 11, 1997
3847-75th Ave. S.E.
St. Cloud, MN 56304
320-251-2094

One West Water Street
Suite 200
St. Paul, Minnesota 55107

Board Members of the Minnesota Board of Water and Soil Resources
To Whom it may Concern:

We are asking that our Reinvest In Minnesota Conservation Reserve program contract be shortened so that we can start farming this land in early spring of 1997, not when we signed our contract on June 15th, 1987?

We knew we were going to request to enter the R & M program before we received a letter from Carol Milligan on July 23, 1986, we had already planted this land into soy and Brome grass in the fall of 1985. We did talk to Greg Larson on August 15, 1986 and also Wayne & Edgerton on August 27, 1986 to discuss any questions we had in regard to the Reinvest Reserve Program.

On November 3, 1986 we received a letter from D'Wayne De Ziel, (Enclosure A) stating our application for the R & M program had been accepted.

We have always mortgaged our land farthest from home to be able to pay in full for land that joins our homestead or is close to our buildings, and will continue to do so if the opportunity arises. These parcels we asked to be put in the R & M program, were all paid for previously and my wife and I were holder and have always held all the warranty deeds for these properties. The banker and the bank's attorney (Lynn Vice President), was not in favor of my wife and I signing this contract, we insisted and finally we were given the opportunity to sign the R & M Contract on June 15th, 1987, the same day they signed the mortgage's

-Continued on 2-

- 2 -

Consent to Conservation Easement Corporation (Enclosure B). That was the first, only and last time any person having a mortgage on our property, tried to control our use of our land.

The same day the bank called to let us know we could pick up our abstracts. June 15, 1986 we immediately drove to the bank, picked up our abstracts and delivered them to the Sherburne County S. W. C. D. and signed our contract, (Enclosure C) proves our point.

We have faithfully honored our contract for over 10 years. It is not our fault that the bank became very uncooperative and opposed to signing the mortgage consent to the Conservation easement Corporation (Enclosure B).

We've had a good relationship with the Sherburne County S. W. C. D. over the past ten years and see no reason why this cannot continue. It was definitely the First American National Bank's failure to cooperate why this contract was not signed sooner than June 15, 1987. From November 18, 1986 to June 15, 1987, a period of seven months was ample time for them to sign the consent form. These two men are no longer working for the First American National Bank, the mortgages have all been paid and we are no longer associated with that bank.

Under these circumstances, conditions and our ages, we are asking for our R. D. M. contract to be discontinued or terminated on April 15, 1997. Please follow Minn. Statute § 103.535, Subd. 5, concerning the release of conservation easements. We know the public interest and general welfare will be better served by terminating the contract two months earlier. If you have any questions, please do not hesitate to contact us. Thank you.

Enclosures: A + B + C

Sincerely,

Jerrell A. Weir

John N. Weir

P.S. Remember we have honored this contract since May, 1986, well over 10 years.

ATTACH. 2

RECEIVED
FEB 05 1997

SHERBURNE SOIL AND WATER
CONSERVATION DISTRICT

14855 Hwy. 10
Elk River, MN 55330
Tel. (612) 241-1170
Fax (612) 241-1161



**MINNESOTA
SOIL AND WATER CONSERVATION DISTRICTS**

February 4, 1997

Tim Fredbo, RIM Reserve Coordinator
Board of Soil and Water Resources
One West Water Street
Suite 200
St. Paul, MN 55107

Mr. Fredbo;

Regarding John Weis's RIM easement, no. 71-18-86-1, the Sherburne SWCD has no objections to changing the release date from 6/15/97 to 4/15/97.

The easement in question has not been cropped for ten years and it appears that the delay in signing it originally was due to obtaining mortgage releases.

If you have any questions, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Debbie Seeley".

Debbie Seeley, Vice-Chair
Sherburne SWCD Board of Supervisors



STATE OF
MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

PHONE NO.

Section of Wildlife, 4140 Thielman Lane, Suite 203, St. Cloud, MN 56301
320/255-4276

RECEIVED

FEB 10 1997

FILE NO.

ATTACH. 3.

February 4, 1997

Tim Fredbo
RIM Reserve Coordinator, BWSWR
One West Water St., Suite 200
St. Paul, MN 55107

Dear Mr. Fredbo:

Bill Bronder, Sherburne SWCD, asked me to give you our recommendations on a request made by Mr. John Weis (Sherburne County, 71-18-86-1) to option out of his RIM reserve agreement on April 15, 1997 instead of June 15, 1997. From a wildlife habitat viewpoint the two month difference will have a minimal negative impact. Therefore, we have little concern over this proposed variance.

Sincerely,

Fred Bengtson
Assistant Area Wildlife Manager

hh

c: Bill Bronder

Drainage Inventory Pilot Program: Wetland Committee and Team recommendation.

The group again reviewed the eleven proposals for the Pilot Drainage Inventory Program at a joint meeting held February 10th in St. Cloud. The new information (as requested by the group based on a preliminary review in December) provided by the project sponsors and Board Conservationists to refine these proposals was very helpful. After a separate discussion of each of the proposals the group individually ranked their top seven proposals which were subsequently tabulated together. Seven of the eleven proposals were deemed to most clearly meet the intent of the pilot program -- which is to learn what it will take to do a drainage inventory in various parts of the state. The four unfunded project proposals from Red Lake Watershed/Clearwater Co., Bois de Sioux Watershed District, Stearns County, and Faribault County were very sound proposals to expand drainage inventory work already underway and would be excellent candidates for future funding intended to build capacity (potentially leading to a statewide inventory). The group unanimously endorsed putting the unused 1996 WCA NRBG funds (\$76,099) towards the drainage inventory pilot funds which allows for a total of \$176,099 to be allocated under the Drainage Inventory Pilot Program. The group unanimously recommended funding the following projects at the following levels:

Douglas County	\$27,099
Lake of the Woods County	\$35,000
Martin County	\$25,000
Buffalo Creek Watershed District	\$55,000
(McLeod County = \$40,000; Renville County = \$15,000)	
Mower	\$14,000
Pope County	<u>\$20,000</u>
Total:	\$176,099

This recommendation was reported to M-Team members and will be submitted to the BWSR Board at the February 1997 meeting for decision.

**Applicants for BWSR Drainage Inventory Pilot Grants
listed with BWSR Board Conservationist (BC)**

<u>Applicant/BC</u>	<u>Grant Request</u>
Bois De Sioux Watershed District/Pete Waller	\$26,500
Douglas County/Pete Waller	\$27,360
Faribault County/Chris Hughes	\$25,000
Lake of the Woods County/Brian Dwight	\$35,000
Martin County/Chris Hughes	\$25,000
McLeod County/Tom Fischer	\$45,000
Mower County/ Dave Peterson	\$14,000
Pope County/Pete Waller	\$20,000
Red Lake Watershed District/Brian Dwight	\$26,300
Renville County/Tom Fischer	\$15,000
Stearns County/Pete Waller	<u>\$27,600</u>
TOTAL GRANT REQUEST	\$286,760

FOR YOUR INFORMATION
(this material does not pertain to the BWSR meeting)

- 1) 1996 RIM Reserve Sign-Up Results
- 2) Memorandum of Understanding Between BWSR, Minnesota Association of Watershed Districts, and Minnesota Department of Transportation
- 3) Memo dated January 27, 1997, to Legislators regarding Assessment Report Regarding the Impact of Wetland Regulations on Property Values
- 4) 1997 Water Planners Conference, June 8-10, 1997
- 5) Public Drainage: An Overview of Procedure, Roles and Responsibilities
- 6) Information Packet from Minnesota Association of Watershed Districts

February 13, 1997

TO: Board Members

FR: Tim Fredbo, Easement Program Manager 

RE: **INFORMATION** - 1996 RIM Reserve Sign-up Results

For your information, preliminary results of the 96-01 RIM sign-up are shown on the attached pie chart. This chart shows easement numbers by type which have been accepted for funding, and total dollar amounts and corresponding acreage of funded and non-funded applications.

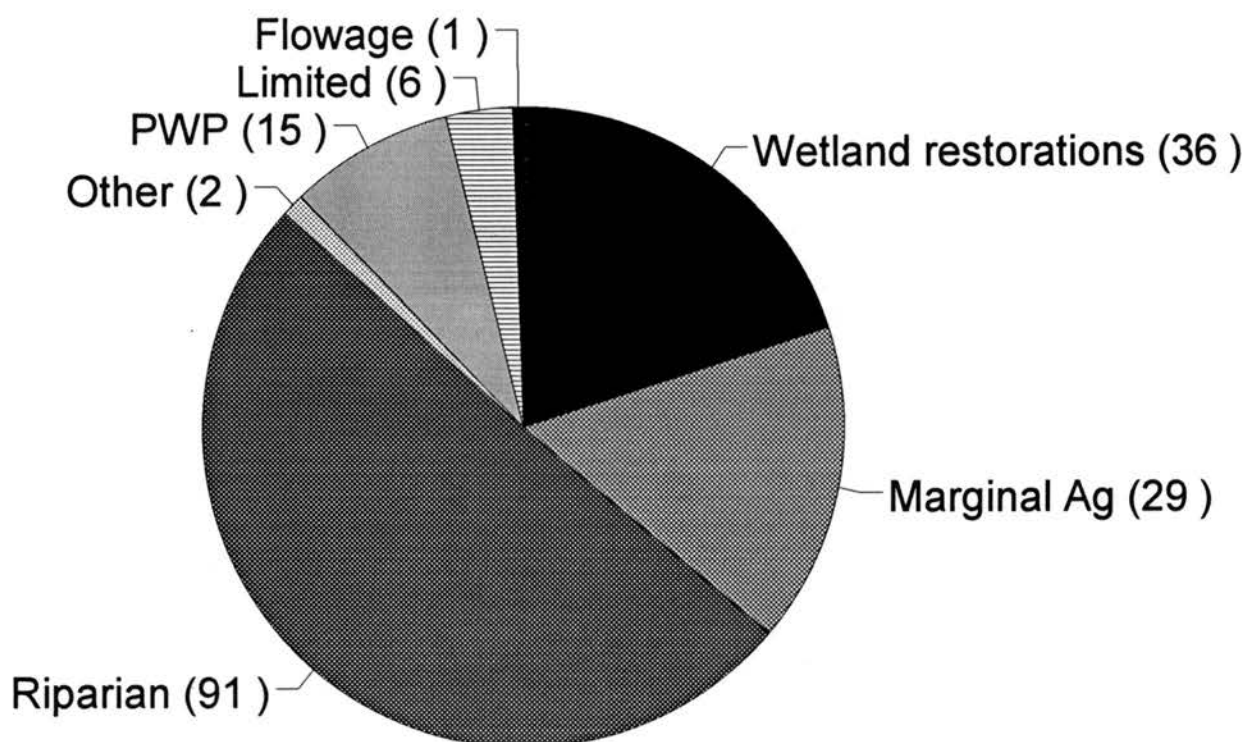
A total of 180 applications, which encompass 6,697 acres, have been tentatively approved for funding at a cost of \$5,494,551.31. Easement staff is still going through applications and entering information into the RIM database so these results may change slightly. After all applications are reviewed and in the database, more detailed financial and acreage information, by easement type, will be available and passed on to the Board.

Important items to note from this chart: 1) Approximately 55% of easement funds from this sign-up have been allocated to the MN River watershed area. 2) Ratio of applications funded (supply) to total non-funded or applications received (demand) is less than in previous years. This can be attributed to more efficient management of the application process and that we funded approximately \$900,000 worth of additional applications over the \$4.6 million that was made available for the sign-up. BC's are all asked to submit 3 pending applications that they would want funded if funds are available. The \$900,000 was available as a result of canceled applications from previous sign-ups and grant reimbursements.

I will be at the Board meeting on the 26th to answer any questions you may have regarding this information.

RIM 96-01 SIGN UP

Breakdown by Easement Type



	<i>Acres</i>	<i>Dollars</i>	<i>Quantity</i>
Total funded applications	6,697.6	5,494,551.31	180
Total nonfunded applications	3,958.7	3,476,024.56	101

Notes

1. The ratio of funded applications to total applications is lower than in previous years. This can be attributed to better management of the application process at the state and local levels.

2. 55.4% of the funded application dollars are in the Minnesota River Basin.

Funding allocation breakdown

Bonding	4.6 million
Previous bonding balances and grant reimbursements	.9 million

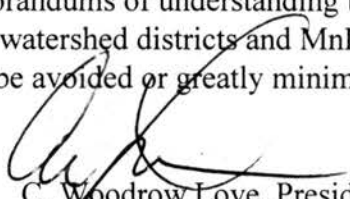
TO: Minnesota Watershed Districts &
Minnesota Department of Transportation District Offices and Metro Division

The 1996 Minnesota Legislature explicitly gave watershed districts permit authority over the Minnesota Department of Transportation (MnDOT) for their transportation projects. A strong partnership between watershed districts and MnDOT offices is necessary to insure an efficient and effective permitting and information exchange process for both parties. With this understanding the Minnesota Association of Watershed Districts (MAWD), MnDOT, and the Board of Water and Soil Resources (BWSR) agreed that the goal of preservation, protection and enhancement of water and related land resources, while insuring that the transportation needs of the people of the State of Minnesota are met, would be best accomplished through early coordination and cooperation between watershed districts and MnDOT District/ Division Offices.

To assist in achieving the goal of early coordination and cooperation MAWD, MnDOT, and BWSR have jointly developed a model memorandum of understanding for watershed districts and MnDOT District/Division Offices to use. The content of the model memorandum of understanding has been agreed upon by each of the partners at the state level. Its purpose is to provide a framework that commits each partner to a coordination strategy that defines how project information will be exchanged between the partners, how notification for projects will occur, and how disputes will be resolved. Watershed District's that are exercising permit authority over MnDOT transportation projects and the MnDOT District/ Division Offices are strongly recommended to enter into a memorandum of understanding using the attached model. Modifications to the memorandum are encouraged to tailor it to fit the needs of individual districts.

Adoption of memorandums of understanding by the partners will insure that the goals and objectives of both watershed districts and MnDOT will be achieved in a efficient manner, and that conflicts will be avoided or greatly minimized.




C. Woodrow Love, President
Minnesota Association of Watershed Districts




For James Denn, Commissioner
Minnesota Department of Transportation




Ron Harnack, Executive Director
Minnesota Board of Water and Soil Resources

MEMORANDUM OF UNDERSTANDING
BETWEEN THE

_____ WATERSHED DISTRICT
and the
MINNESOTA DEPARTMENT OF TRANSPORTATION
DISTRICT _____
FOR THE

THE PRESERVATION, PROTECTION AND ENHANCEMENT OF WATER AND
RELATED LAND RESOURCES THROUGH EARLY COORDINATION AND
COOPERATION ON PERMITTED ACTIVITIES.

INTRODUCTION AND PURPOSE

This memorandum of Understanding (MOU) establishes procedures, and processes for guiding the activities and decisions of the _____ Watershed District (___ WD) and the Minnesota Department of Transportation, District _____ (MnDOT) in matters relating to the acquisition of ___ WD permits, and compliance with ___ WD rules required under Laws of Minnesota 1996, Chapter 407, Section 42. Through these procedures and processes both parties wish that due consideration be given to water and related land resources under the jurisdiction of the ___ WD in the development and construction of transportation projects by the MnDOT while insuring that the transportation needs of the people of the state of Minnesota, represented by the programs and projects of MnDOT, are given due consideration in the plans, policies, rules, and programs, and projects of the ___ WD.

The ___ WD and MnDOT play vital roles in the preservation and enhancement of the quality of life of Minnesota residents. A primary purpose of the ___ WD is to conserve water resources of the state by supplementing existing land use regulations, with an exclusive focus on water quality and water quantity. MnDOT is charged with the provision and management of an efficient and safe transportation system to insure that goods and resources can be transported to and from markets efficiently and at low cost. MnDOT has a role in enabling Minnesota residents and others to travel to home, work, and to the public and private recreational facilities in Minnesota. Although their primary responsibilities are different, ___ WD and MnDOT have many areas of mutual interest, and the citizens of Minnesota will be best served by early coordination and cooperation, with each assisting the other to obtain its objectives.

It is therefore appropriate for the ___ WD and MnDOT to consider the potential effects on the state's water resources resulting from transportation construction; to assure that opportunities for joint development and joint use of rights-of-way are identified; and to insure that the economic and social functions provided by MnDOT are given due consideration in the policies, rules, and permit requirements of the ___ WD.

Both parties recognize that the objectives of this MOU can best be realized through close coordination and cooperation between their respective staffs during the planning and development stages of projects, and through cooperative problem solving approach in the environmental review and permitting stages.

COORDINATION COMMITMENTS

Each party commits to a comprehensive coordination process. This process shall begin early in project conceptualization and shall continue throughout project development. Post construction coordination may also be appropriate. MnDOT District staff shall involve the __WD in the pre-design and final design stages of construction projects and maintenance projects requiring permits. The __WD shall provide to MnDOT copies of plans, policies, rules and permit requirements. The __WD shall also provide MnDOT the opportunity to review and comment on revisions to their rules and regulations in the same manner as prescribed for the Board of Water and Soil Resources under M.S. 103D.341, Subd. 2(b). Through early coordination the review of proposed rules or rule amendments by MnDOT should be able to be expedited.

For purposes of this agreement coordinators shall be designated by MnDOT and the __WD. The designated coordinator shall be responsible for coordinating all activities between the MnDOT District and the __WD, including but not limited to receipt and dissemination of information and materials involving the implementation of this MOU.

The coordinators shall meet at least once each year, or as needed in order to facilitate coordination and cooperation in the review of projects, programs and procedures of mutual interest. The emphasis of the meetings shall be the consideration of water and related land resources and their integration into the MnDOT's project development process; and issues or questions of cost, administration or scheduling experienced by MnDOT as a result of __WD rules, regulations and permits. These meetings shall focus on the near term activities and long term plans.

CAPITAL IMPROVEMENT COORDINATION AND PLANNING INFORMATION EXCHANGE

The coordinators shall receive and disseminate information involving the implementation of policies, rules and guidelines for the development of construction and maintenance projects requiring permits by MnDOT. Information shall include, but is not limited to the following:

1. Copies of current MnDOT State Transportation Improvement Program (STIP) and Transportation Improvement Work Program shall be transmitted to the designated __WD coordinator by MnDOT's District Office when published.

2. Copies of all current capital improvement plans within the __WD as well as a copy of the __WD comprehensive watershed management plan and rules and regulations shall be submitted to MnDOT Coordinator.
3. Copies of a detailed boundary map of the __WD as well as a copy of maps identifying legal drainage or water conveyance systems under the jurisdiction of the __WD, shall be submitted to the MnDOT Coordinator.
4. Upon review of Transportation Improvement Programs, and when practicable, the __WD shall provide comments to the MnDOT, identifying those projects with potential impacts on water and related land resources and potential permit considerations. The __WD shall also identify opportunities for joint development or enhancement of water and related land resources and provide detailed information on the scope of the development or enhancement project and what MnDOT's contribution or work effort might entail. The items indicated in this section shall be an agenda item for the annual joint meeting.
5. MnDOT shall review the plans and other documents provided by the __WD, and when appropriate, provide comments to the __WD, identifying those policies, plans, programs, rules or rule revisions that may have potential impacts on the administration, plans, projects or facilities of MnDOT.

PROJECT DEVELOPMENT FOR CONSTRUCTION AND MAINTENANCE PROJECTS

1. All MnDOT Project Path Reports, Project Memorandum, and Study Reports on MnDOT trunk highway projects, which add paved areas or affect drainage, will be distributed by the MnDOT District Office to the __WD for review and comment.
2. All Environmental Assessments, Environmental Assessment Worksheets, and Environmental Impact Statements developed by MnDOT or the __WD, for projects affecting MnDOT trunk highways, will be distributed to the other agency through existing federal and state environmental review processes for review and comment as provided for under state law and rule.
3. The MnDOT District staff will notify the __WD of the date, time, and place of any public hearing or other significant public meeting held in association with the proposed MnDOT project.
4. The __WD will notify the MnDOT District of the date, time and place of any public hearing or publicly noticed meeting held in association with a proposed __WD project, which may affect a trunk highway, comprehensive watershed management plan revision, or revision to its rules and regulations.

5. Environmental review documents prepared on proposed MnDOT projects shall identify any permits required by the __WD; describe potential impacts on water and related land resources; describe those measures planned to avoid potential impacts to water and related land resources; and describe reasonable measures to avoid or minimize environmental impacts. Planning and project documents prepared by the __WD shall identify potential short and long term impacts to transportation facilities, and shall identify those measures, if any, by which the project will accommodate present and future transportation needs.
6. Upon receipt of documents prepared by MnDOT for proposed transportation projects the __WD will provide a determination of the need for __WD permits, and may include information regarding opportunities for joint development and enhancement. Comments will be directed to MnDOT District Coordinator within 45 days of receipt of information. MnDOT District Coordinator will respond within 45 days of receipt of information related to __WD projects..

PROJECT FINANCE

Funds available to MnDOT by law can only be expended for transportation purposes, including mitigation of actual impacts. "Moments of Opportunity" will sometimes present themselves, when a significant advantage to a water or related land resource can be obtained by minimal MnDOT expenditure. Consistent with the FHWA Environmental Policy Statement, MnDOT will take a positive role when such moments arise. However, it is not the responsibility of MnDOT to mitigate above and beyond the actual impact caused by a proposed project. Financial responsibility for __WD suggested enhancement projects which are above and beyond the actual transportation impact shall rest with the __WD. Mitigation of adverse effects of transportation projects required by the __WD shall be based on sound scientific principals and be accompanied by the __WD's recommendation of need and specific end results. Specific plan recommendations shall be included whenever possible.

UNRESOLVED CONCERNS

Proposed transportation projects, proposed enhancement projects, and proposed maintenance projects which require __WD permits may result in unresolved issues between the MnDOT and the __WD. It shall be the policy of each party that such issues shall be resolved at the lowest possible level in each organization, where staff are most familiar with the issue. Figure 1, below, lays out the hierarchy of the issue resolution process.

Every effort shall be made to resolve issues of a permit at a level no higher than step 2.

Figure 1
Issue Resolution Process

- Step 1. Resolution of issue by MnDOT District staff and a subcommittee of the __WD Board of Managers including staff, and/or consultants.
- Step 2. Resolution of issue by MnDOT District Engineer or Office Director and _WD Board of Managers.
- Step 3. Request for resolution of the dispute by MnDOT to the Board of Water and Soil Resources pursuant to M.S. 103D.539. For purposes of this agreement the MnDOT will be represented on the dispute resolution committee.
- Step 4. Appeal, by MnDOT of the __WD rules to BWSR, pursuant to M.S. 103D.537.
- Step 5. Appeal of permit, rule or order of the __WD by a declaratory judgement action brought under chapter 555.

The procedures outlined herein shall be effective immediately upon signature of the of the MnDOT Transportation District Engineer and the __WD, and shall remain in effect until decided otherwise by either party.

MnDOT Transportation District Engineer

Date: _____

__WD , Chairman

Date: _____



One West Water Street
Suite 200
St. Paul, MN 55107
(612) 296-3767
Fax (612) 297-5615

Field Offices

Northern Region:

394 S. Lake Avenue
Room 403
Duluth, MN 55802
(218) 723-4752
Fax (218) 723-4794

3217 Bemidji Avenue N.
Bemidji, MN 56601
(218) 755-4235
Fax (218) 755-4201

217 S. 7th Street
Suite 202
Brainerd, MN 56401-3660
(218) 828-2383
Fax (218) 828-6036

Southern Region:

261 Highway 15 S.
New Ulm, MN 56073-8915
(507) 359-6074
Fax (507) 359-6018

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

Box 267
1400 E. Lyon Street
Marshall, MN 56258
(507) 537-6060
Fax (507) 537-6368

Metro Region:

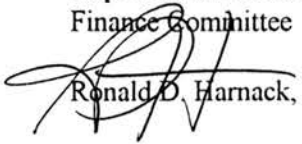
One West Water Street
Suite 250
St. Paul, MN 55107
(612) 282-9969
Fax (612) 297-5615

An equal opportunity employer

Printed on recycled paper

DATE: January 27, 1997

TO: **Senator Dallas Sams**, Chair Agriculture and Rural Development
Committee
Senator Robert Lessard, Chair, Environment and Natural Resources
Committee
Senator Steve Morse, Chair, Finance Division of Environment and
Natural Resources Committee
Representative Steve Wenzel, Chair, Agriculture Committee
Representative Willard Munger, Chair, Environment and Natural
Resources Committee
Representative Tom Osthoff, Chair, Environment and Natural Resources
Finance Committee

FROM:  Ronald D. Harnack, Executive Director

SUBJECT: Assessment Report Regarding the Impact of Wetland Regulations on
Property Values

As required by Chapter 407, Section 8, Subdivision 6(b) [Laws of 1996], I am submitting a report that assesses the impact of wetland regulations on property values. The report was prepared by the University of Minnesota Department of Applied Economics in consultation with the Wetland Heritage Advisory Committee, property rights and taxpayers groups and the Office of Attorney General.

At their January 22nd meeting, the Board of Water and Soil Resources accepted the report and moved that it be forwarded to you with the recommendation that "legislation modifying compensation to landowners regulated by state wetland laws is not currently needed." The following rationale guided that recommendation:

- ▶ The Wetland Conservation Act has a compensation provision to landowners [Section 103G.237].
- ▶ Minnesota Courts have found that state wetland regulations do not constitute a taking of private property.
- ▶ The 1996 amendments to the Wetland Conservation Act appear to have resolved most concerns about the Wetland Conservation Act and the impact of the amendments will require time to judge.

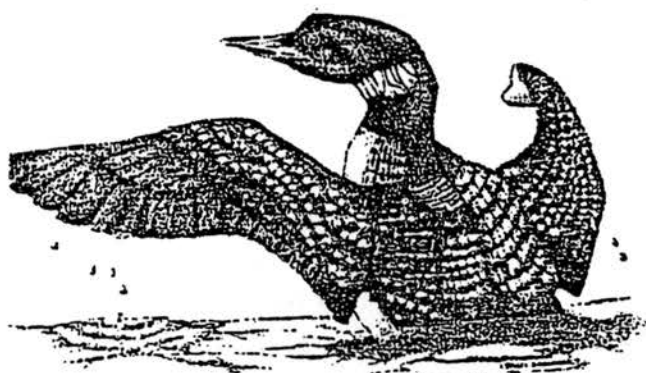
The author of the report, Professor Steve Taff, is available to brief your committees on his findings.

RDH:mja

Enclosures

cc: Members of the Wetland Heritage Advisory Committee
Board of Water and Soil Resources
Joe Preiner, Minnesota Property Rights Association
Dave Zavoral, Minnesota Land Rights Association
Matthew Seltzer, Attorney General's Office
- Minnesota Taxpayers Association
- Steve Taff, University of Minnesota
John Jaschke, Wetland Program Manager
- Legislative Reference Library

Memo



To: Water Plan Coordinators
From: 1997 State Water Plan Coordinators Conference Committee
David Abazs, Chair
Date: March 1, 1997
Re: SECOND CALL FOR

CONFERENCE - ORAL PRESENTATION ABSTRACTS

POSTER DISPLAYS AND AWARD NOMINATIONS

CONFERENCE DATE: JUNE 8, 9 AND 10, 1997 in Two Harbors, MN

ORAL PRESENTATIONS

We invite interested counties, multi-county groups, special projects, agencies, etc. to submit a short abstract (250 words or less) that describes the project. Abstracts will be used to select final workshops for the conference.

Maximum presentation time should be 40 minutes— with a 10 minute question or comment period now scheduled per session. Please be sure your abstract includes your name or contact name, county or counties and agencies represented, phone number, etc. Selected presenters will be notified in March/April.

ABSTRACTS ARE DUE NO LATER THAN MARCH 14, 1997

POSTER DISPLAYS – For those interested in a poster display – please send a title and short description of your poster. Please include name, county, counties or group, and any other necessary information.

Send abstract and poster information to :

GAIL WATCZAK, BWSR Office
394 S. Lake Avenue Room 403
Duluth, MN 55802





Award Nominations

- Categories:**
- 🏆 Outstanding Land Treatment Project
 - 🏆 Outstanding Groundwater Project
 - 🏆 Outstanding Surface Water Project
 - 🏆 Outstanding Education Project
 - 🏆 Friend(s) of Water Planning
 - 🏆 Water Plan Coordinator of the Year



Nominations: *all nominations should include the following information . . .*

- ① category
- ② name of project and coordinator(s): individual and/or organization
- ③ project location (if applicable)
- ④ short narrative (500 words or less) explaining why the project or person should be considered
- ⑤ name of person(s) submitting nomination
- ⑥ nominations can be submitted by any county water planner or group of water planners



Deadline: April 1, 1997

Submit To: Water Planners Conference '97
c/o Gail Watzak
Board of Water & Soil Resources
394 S Lake Ave, Rm 403
Duluth MN 55802



Mail all oral presentation abstracts, poster displays and award nominations to the address listed above.





RECEIVED
FEB 11 1997

RDH

Brd info packet
Feb 97



February 8, 1997

TO: Watershed Districts

FROM: Ray Bohn, MAWD

RE: Attachments

PACKET CONTENTS

Legislative Update

The session is now well underway. Please take a moment to review the enclosed Legislative Update and circulate to your managers and staff. Please keep in contact on any issues of concern to your watershed. This Legislative Update has also been provided via our FAX-NET and e-mail. If your WD has a new e-mail address, please let us know!

MAWD/MnDOT Memorandum of Understanding

Since the passage of our MnDOT permitting legislation last session, MAWD has been working with MnDOT and BWSR to formulate an early communication and cooperation process with MnDOT. MAWD, MnDOT, and BWSR recently signed off on a *model memorandum of understanding* for Watershed Districts and MnDOT District/Division Offices to use. While we understand this is a model agreement worked out at the state level, its purpose is to provide a framework for you to work with your local MnDot Office. It is not written in stone, and we anticipate refinements depending on the individual circumstances for each Watershed District and MnDot Office. We strongly recommend you take advantage of this process and tailor it to fit your needs. MAWD can provide this document on computer disk for your use.

MAWD Legislative Breakfast & Day at the Capitol

Enclosed is a form for the Legislative Breakfast on March 14th. If you haven't made you reservations yet, please do so today!

Watershed District Update & Rules Request

We are enclosing a form for you to complete and return to MAWD which will allow us to update the information in our files and on your Home Page. Currently every watershed district has a page on the MAWD Home Page which lists the information on the Update

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Page 2

sheet. To insure this information is current, you can visit the MAWD Home Page at www.mnwatershed.org and click on "Where is My Watershed District" and then click on your watershed district's alpha listing. You can send any new information to the MAWD office directly by clicking on the mail box graphic and sending an e-mail to the MAWD office.

If you don't have computer capability, just send us any changes you've had in the past year (new managers, new terms, new attorney, etc.) on the enclosed form, or fax to us at 612-686-8679.

Another MAWD goal is to put all watershed district rules on individual WD home pages. One of the most asked question we receive is about WD rules, and if we can get all watershed district rules on the internet, we'll be able to easily direct the public to your rules. Please send us a paper copy and a computer disk of your current rules if possible, if not, send us a paper copy.

Thank you for your cooperation!!

MAWD on the WWW -- www.mnwatershed.org

MAWD has been working hard the past year to get our web site up and operating. It is finally at the stage where we want to start adding more information (see rules request above) to make the individual watershed district home pages as useful to your public as possible. *If you have other information about your watershed district you would like added to your home page, please forward those material to the MAWD office.* If you have it on a computer disk, please send that, or just e-mail the documents to us at Raybohnmg@aol.com.

We have already received requests from several watershed districts to update and add to their home page. We're delighted to work with you to make the MAWD Home Page and your home page as good as it can be! We'll also be sending you in the near future your own "home page address" you can advertise in your local media or on WD materials. It will allow your public to go directly to your WD home page!

If you have questions regarding the MAWD Home Page and how we can better interact with your individual watershed district, please call Ray Bohn at the MAWD office.

MPCA Seminar

Construction Site Erosion and Sediment Control Plan Design and Storm Water Quality Management Through the Use of Detention Basins seminars information enclosed.

Sponsored by the MPCA. FYI only.



MAWD Legislative Update

Volume 1, February 8, 1997

The 1997 Legislative Session, while getting off to a slow start through the month of January, has definitely picked-up steam in February.

Most committees are just beginning to hear bills after completing the introductory overviews for new committee members. Members in both Houses have introduced over 400 bills, so committees should have plenty of bills to hear.

MAWD

HF419 Rep. Tunheim/SFXXX, Sen. Sams -- MAWD has one major piece of legislation dealing with the ability of watershed districts to secure loans through the Clean Water Partnership Program. Watershed districts have faced a hurdle in obtaining these low cost loans because the loans received through the CWP must be secured with a general obligation (GO) note supported by a favorable opinion of recognized bond counsel. Watershed districts outside of the metro area do not have the authority to pledge the full faith and credit necessary to issue such notes as security for a CWP loan, thus cannot avail themselves of this resource.

The solution to the problem is that MPCA, with active support from BWSR and MAWD is proposing legislation to amend M.S. 103D to allow watershed districts the authority to pledge their full faith and credit to issue GO notes only for the purpose of securing loans through the CWP program. We anticipate our first hearing in the House in by mid-February.

Local WD Legislation: Two local watershed district bills MAWD is assisting watershed districts with pertain to increasing administrative levy limits. Sauk River WD is asking to increase it's levy \$25,000 for one year, and Wild Rice WD is asking to extend for another 5 years it's present levy limit of \$200,000.

Other legislation of interest to watershed districts include:

BWSR

Communication and Information Management: This budget initiative project will allow BWSR to improve its base level of technology to meet industry standards. The goals of this system are to provide for better electronic communication between BWSR and WDs, SWCDs, and water plan coordinators, electronic reporting of BWSR program data, ability to measure impact of state resource programs, development of BWSR web site, and integration of existing databases.

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Re-establishment of agencies' voting rights: *HF266 Munger/SFXXX*; This would re-establish agencies as voting members of the BWSR.

Miscellaneous Legislation

HF503 Olson, E./SF63 Vickerman -- Beaver Damage Control; establishes a board to distribute money to local units of government to control beaver activities that cause damage to public roads and adjacent private property. Appropriation unknown at this time.

SF 296 Frederickson/HF232 Finseth -- Changes the terms of office of SWCD supervisors from 6 to 4 years.

SF76 Morse/HF113 Munger -- An amendment to the Minnesota Constitution extending lottery proceeds dedication to the Environmental and Natural Resources Trust Fund until the year 2050. This bill has already had hearings in both Houses, and is presently hung-up in the House Environmental & Natural Resources Finance Committee because of two amendments added to the bill. One would change the dedication date from 2050 to 2020, and the other would set aside 25% of the funds for capital projects only. Watch for a lot more action on this legislation.

Want to know more about what's happening at the legislature or to get full text/bill summaries of this legislation -- contact <http://www.leg.state.mn.us> to reach the Minnesota Legislature on the World Wide Web:

You can also access the legislative web site by visiting the MAWD Home Page at www.mnwatershed.org.

MAWD 1997 Legislative Breakfast

The MAWD Legislative Breakfast is set for 7:30 a.m., Friday, March 14, 1997 at the Kelly Inn in St. Paul (legislative briefing, 7-9 p.m., Thursday, March 13, Kelly Inn). See the latest MAWD Watershed News & Events or visit our home page for more information.

Please put this important date on your calendar today & RSVP to the MAWD office.

MAWD e-mail address: Raybohnmg@aol.com

Please distribute copies of this Legislative Update within your watershed district.

LEGISLATIVE BREAKFAST AND DAY AT THE CAPITOL

Friday, March 14, 1997
Kelly Inn, St. Paul



When and Where:

The Minnesota Association of Watershed Districts is hosting a legislative breakfast and information meetings. A legislative update by key players in the 1997 legislative session will be held Thursday, March 13 from 7:00 to 9:00 p.m. Breakfast on Friday will be at 7:30 a.m. This will allow time for you to visit with individual legislators in their office and attend committee meetings.

The purpose of the legislative day is for managers to meet with legislators one-on-one to get better acquainted and to make them aware of watershed districts' perspective on key issues.

Who should attend:

Watershed districts are invited to send a manager or managers and are responsible for inviting their local legislators to the breakfast and setting up meetings with legislators later in the day. Legislators' calendars fill quickly, so call soon. Legislators may attend the breakfast at their own expense, or, if they are willing to speak to the group they can come at our expense.

Registration is Due March 7.

Cost of the breakfast is \$15 per person.

Please send or fax in the form below with payment for managers attending and list those legislators with whom you are meeting.

Overnight Accommodations:

A block of rooms has been reserved at the Kelly Inn for the night of March 13. Please call (612)227-8711 by February 13 and identify yourself with MAWD. Room rates are \$57 single and \$67 double, plus tax.

Questions: Call (612)452-8506 or fax (612)686-8679 Ray Bohn or e-mail at <raybohnmg@aol.com>

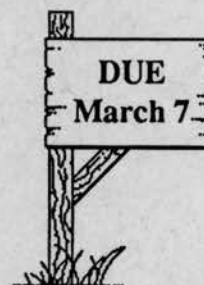
SCHEDULE OF EVENTS

Thursday, March 13

- 3:00- 6:00 p.m. MAWD Board Meeting
7:00 - 9:00 p.m. Legislative Briefing, Kelly Inn
9:00 p.m. MAWD Committee Meetings

Friday, March 14

- 7:30 a.m. Legislative Breakfast
9:30 a.m.-
4:00 p.m. Meetings with legislators.
12:00 -
1:45 p.m. Room 107, State Capitol
Senate Environment Committee Meeting
Topic to be announced



Registration Form - 1997 Legislative Breakfast Minnesota Association of Watershed Districts

Name(s) of attendees: _____

Organization: _____

Address: _____ City, Zip: _____

Phone: (____) _____

Total attending: _____ @ \$15 per person = Total enclosed

Legislative Meetings:

Make checks payable to MAWD and mail with this form by March 7 to MAWD, 3848 Westbury Dr., St. Paul, MN 55123

MAWD Watershed District Update Worksheet

Watershed District: _____

(Complete recent changes only)

District Mailing Address: _____

District Meeting: _____

Board of Managers:

Name	Address	Office	County	Term Expires	Phone
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_____	_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____	_____

District Attorney: _____

District Administrator: _____

Other Staff: _____

District Engineer: _____

Watershed District Rules: Please send a copy (computer disk if possible) of your current Watershed District Rules to the MAWD Office, 3848 Westbury Drive, St. Paul, MN 55123.

Thank you for taking the time to fill out this update. We will be processing the information on this form to update your home page on the MAWD Home Page. Please return this form to MAWD, 3848 Westbury Dr., St. Paul, MN 55123, or fax to 612-686-8679 or e-mail information to: Raybohnmg@aol.com.