



Minnesota Board of Water and Soil Resources.
Minutes.

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**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
JANUARY 26, 2000**

AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Approve Minutes of December 15, 1999

Reports

- Chair - Kathleen Roer
- Executive Director - Ron Harnack
- Dispute Resolution Committee - Jim Haertel
- Wetlands Committee - Darrell Bruggman
- Cost-Share/Soil Conservation Committee - Dwain Otte
- Education and Public Relations Committee - Paul Krabbenhoft
- Financial Oversight Committee - Ginny Imholte
- Administrative Advisory Committee - Kathleen Roer

Agency Reports

- Department of Agriculture
- Department of Health
- Department of Natural Resources
- Minnesota Extension Service
- Pollution Control Agency

Committee Recommendations

1. Cost-Share Committee Recommendations
 - a) State Cost-Share Program Policy
FY 2001 State Cost-Share Program Allocation Policy - Wayne Zellmer - DECISION
 - b) Farmstead Windbreak Practice Specifications - Wayne Zellmer - DECISION
 - c) Lake Flooding in North Central Minnesota - Dale Krystosek - DECISION
2. Water Planning Sub-Committee Recommendation
 - a) Dismissal of Establishment Proceedings for Sunrise River Watershed District - Jim Haertel - DECISION

3. Dispute Resolution Committee Recommendation
 - a) WCA Appeals by St. Paul Audubon Society and ABC League of Women Voters from a Decision of the Rice Creek Watershed District, Files 98-6 and 98-7 - Jim Haertel and John Jaschke - DECISION
4. Financial Oversight Committee Recommendations - Ginny Imholte - DECISION
 - a) Update of SWCD Audit Policy
 - b) Match Requirements for BWSR Grants
 - c) The BWSR Role in Watershed District Audit Requirements
5. Metro Sub-Committee Recommendation - Tim Fredbo and Doug Snyder
 - a) RIM Violation in Scott County - DECISION

Old Business

1. Wetlands Legislation Package Senate File #83 - John Jaschke - DECISION
2. Minnesota River Basin Water Quality Improvement Projects (1999 LCMR Funds) - Jeff Nielsen - DECISION

New Business

1. Preliminary Review of LCMR Proposals - Jim Birkholz - DISCUSSION AND DECISION
2. Update on Feedlot Rule Informational Meetings - Al Kean and MPCA Staff - INFORMATION

Advisory Comments

- Minnesota Association of Townships (MAT)
- Minnesota Association of Conservation District Employees (MACDE)
- Minnesota Association of Soil and Water Conservation Districts (MASWCD)
- Minnesota Association of Watershed Districts (MAWD)
- Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- NACD Annual Meeting, January 30-February 3, Colorado Springs, Colorado
- February 1, 2000 - Legislative Session Begins
- Next BWSR Meeting, February 23, 2000
- Local Water Planning Conference, June 19-21, Bemidji
- MAWD Summer Tour, June 22-24, Detroit Lakes
- June 28-29 BWSR Tour and Meeting, LacQui Parle/Yellow Medicine Counties
- September 27-28 BWSR Tour and Meeting, Lake County

Adjourn

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
FEBRUARY 23, 2000**

AGENDA

9:00 a.m. Call Meeting to Order

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Adopt Agenda

Reports

- Chair – Kathleen Roer
- Executive Director – Ron Harnack
- Dispute Resolution Committee – Jim Haertel
- Wetlands Committee – Darrell Bruggman
- Cost-Share/Soil Conservation Committee – Dwain Otte
- Education and Public Relations Committee – Paul Krabbenhoft
- Financial Oversight Committee – Ginny Imholte
- Administrative Advisory Committee – Kathleen Roer

Agency Reports

- Department of Agriculture
- Department of Health
- Department of Natural Resources
- Minnesota Extension Service
- Pollution Control Agency

Consent Agenda

1. Comprehensive Local Water Plan Extension Requests for Kandiyohi, McLeod, and Renville Counties – Doug Thomas –
DECISION

Committee Recommendations

Metro Subcommittee:

1. Approval of City of Savage Comprehensive Wetland Protection and Management Plan – Doug Snyder – DECISION

Old Business

1. Legislative Update – Ron Harnack – INFORMATION

New Business

1. Special Purpose District Pilot Projects – The Board of Government Innovation and Cooperation – Legislative Initiative - Jim Birkholz – DECISION
2. Minnesota Waterfowl Association (MWA) Special Recognition Award – Ron Harnack – INFORMATION
3. Integrated Funding System – Faye Sleeper, MPCA – INFORMATION
4. Revising Reform Project – Ron Harnack – INFORMATION/DISCUSSION

Advisory Comments

- Minnesota Association of Townships (MAT)
- Minnesota Association of Conservation District Employees (MACDE)
- Minnesota Association of Soil and Water Conservation Districts (MASWCD)
- Minnesota Association of Watershed Districts (MAWD)
- Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- "Lobby Day for CREP" February 24
- Next BWSR Meeting, March 22, 2000

Adjourn

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
MARCH 22, 2000**

AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Minutes of February 23, 2000

Introduction of New Board Members

- Char Kahler
- Jack Frost

Reports

- Chair – Kathleen Roer
- Executive Director – Ron Harnack
- Dispute Resolution Committee – Jim Haertel
- Wetlands Committee – Darrell Bruggman
- Cost-Share/Soil Conservation Committee – Dwain Otte
- Education and Public Relations Committee – Paul Krabbenhoft
- Financial Oversight Committee – Ginny Imholte
- Administrative Advisory Committee – Kathleen Roer

Agency Reports

- Department of Agriculture
- Department of Health
- Department of Natural Resources
- Minnesota Extension Service
- Pollution Control Agency

Consent Agenda

1. City of Eden Prairie Comprehensive Wetland Protection and Management Plan – Doug Snyder – DECISION
2. Red Lake County Request to Change Effective Date of Red Lake County's Local Water Plan – Bill Best - DECISION

Committee Recommendations

Metro Subcommittee:

1. Minnehaha Creek Watershed District Boundary Change Petition – Jim Haertel – DECISION
2. Comfort Lake-Forest Lake Watershed District Hearing – Jim Haertel – DECISION

Old Business

1. Year Two Staffing Grant Agreements with SWCDs for CREP Implementation – Greg Larson – DECISION
2. Update on Grazing Land Activities – Howard Moechnig – INFORMATION
3. Revisiting Reform Project – Ron Harnack – DECISION
4. National Resource Inventory (NRI) Program Update – Susan Ploetz, NRCS Resources Inventory Specialist - INFORMATION

New Business

1. Demonstration on Shoreland Guidebook Project – Marybeth Block, BWSR, and Janell Miersch, Sea Grant – INFORMATION
2. DNR Project WET Facilitator of the Year Award – Kent Lokkesmoe, DNR - INFORMATION

Advisory Comments

- Minnesota Association of Townships (MAT)
- Minnesota Association of Conservation District Employees (MACDE)
- Minnesota Association of Soil and Water Conservation Districts (MASWCD)
- Minnesota Association of Watershed Districts (MAWD)
- Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- Next BWSR Meeting, April 26, 2000

Adjourn

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
APRIL 26, 2000**

AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Minutes of March 22, 2000

Reports

- Chair – Kathleen Roer
- Executive Director – Ron Harnack
- Dispute Resolution Committee – Jim Haertel
- Wetlands Committee – Darrell Bruggman
- Cost-Share/Soil Conservation Committee – Dwain Otte
- Education and Public Relations Committee – Paul Krabbenhoft
- Financial Oversight Committee – Ginny Imholte
- Administrative Advisory Committee – Kathleen Roer

Agency Reports

- Department of Agriculture
- Department of Health
- Department of Natural Resources
- Minnesota Extension Service
- Pollution Control Agency

Consent Agenda

1. Pope County Request for Comprehensive Local Water Plan Extension – Pete Waller – DECISION
2. Itasca County Request for Comprehensive Local Water Plan Extension – Dan Steward – DECISION
3. Stearns County Request for Comprehensive Local Water Plan Extension – Dan Steward – DECISION

Committee Recommendations

Metro Subcommittee:

1. Middle Mississippi River WMO Final Draft Plan – Doug Snyder – DECISION

Old Business

1. Lake Flooding in North Central Minnesota – Wayne Zellmer –
DECISION
2. Grant Agreement with Red River Basin Board – Ron Harnack -
DECISION

New Business

1. Shell Rock River Watershed District Establishment Hearing – Jim
Haertel – DECISION

Advisory Comments

- Minnesota Association of Townships (MAT)
- Minnesota Association of Conservation District Employees
(MACDE)
- Minnesota Association of Soil and Water Conservation Districts
(MASWCD)
- Minnesota Association of Watershed Districts (MAWD)
- Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- Next BWSR Meeting, May 24, 2000
- MAWD Annual Tour, June 22-24, Pelican River Watershed District,
Detroit Lakes
- BWSR Tour and Meeting, June 28-29, Montevideo
- BWSR Meeting, July 26, St. Paul
- BWSR Retreat, August 22-23, Riverwood Conference Center,
Monticello

Adjourn

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
MAY 24, 2000**

AGENDA

9:00 a.m.

Call Meeting to Order

Adopt Agenda

Minutes of April 26, 2000

Reports

- ☐ Chair – Kathleen Roer
- ☐ Executive Director – Ron Harnack
- ☐ Dispute Resolution Committee – Jim Haertel
- ☐ Wetlands Committee – Darrell Bruggman
- ☐ Cost-Share/Soil Conservation Committee – Dwain Otte
- ☐ Education and Public Relations Committee – Paul Krabbenhoft
- ☐ Financial Oversight Committee – Ginny Imholte
- ☐ Administrative Advisory Committee – Kathleen Roer

Agency Reports

- ☐ Department of Agriculture
- ☐ Department of Health
- ☐ Department of Natural Resources
- ☐ Minnesota Extension Service
- ☐ Pollution Control Agency

Consent Agenda

1. Big Stone County Water Plan Extension Request – Doug Thomas –
DECISION
2. Chippewa County Water Plan Extension Request – Doug Thomas
– DECISION
3. Lac Qui Parle County Water Plan Extension Request – Doug
Thomas – DECISION
4. Swift County Water Plan Extension Request – Doug Thomas
DECISION

Committee Recommendations

Wetland Subcommittee

1. Beltrami County Comprehensive Wetland Protection and Management Plan – Dan Eklund – DECISION
2. Koochiching County Comprehensive Wetland Protection and Management Plan – Dan Eklund – DECISION

Metro Water Planning Subcommittee

3. Rice Creek Watershed District Watershed Management Plan Amendment – Phil Belfiori – DECISION
4. Comfort Lake-Forest Lake Watershed District Establishment – Jim Haertel - DECISION

Old Business

1. Legislative Update – Ron Harnack - INFORMATION
2. CREP Agreement – Greg Larson - DECISION

New Business

1. Minnehaha Creek Watershed District Boundary Change – Jim Haertel – DECISION
2. Lower Minnesota River Watershed District Boundary Change – Jim Haertel – DECISION
3. Office of State Soils Specialist – Jim Birkholz and Greg Larson – INFORMATION
4. Watershed District Planning Grants – Doug Thomas – DECISION
5. Video from the USDA National Summit on Private Land Conservation – Ron Harnack – INFORMATION
6. State Envirothon Update – Susan Tsakakis - INFORMATION

Advisory Comments

- ❑ Minnesota Association of Townships (MAT)
- ❑ Minnesota Association of Conservation District Employees (MACDE)
- ❑ Minnesota Association of Soil and Water Conservation Districts (MASWCD)
- ❑ Minnesota Association of Watershed Districts (MAWD)
- ❑ Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- ❑ Local Water Planners Conference, June 19-21, Bemidji
- ❑ MAWD Annual Tour, June 22-24, Pelican River Watershed District, Detroit Lakes
- ❑ BWSR Tour and Meeting, June 28-29, Montevideo
- ❑ BWSR Meeting, July 26, St. Paul
- ❑ BWSR Retreat, August 23, Riverwood Conference Center, Monticello

Adjourn

**BOARD OF WATER AND SOIL RESOURCES
LAC QUI PARLE WILDLIFE MANAGEMENT REFUGE CENTER
14047 20TH STREET, NW
WATSON, MINNESOTA 56295
(320) 734-4451
Thursday, June 29, 2000**

AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Minutes of May 24, 2000

**50th Anniversary Recognition of Lac Qui Parle, Swift, and Yellow
Medicine SWCDs**

Reports

- ☐ Chair – Kathleen Roer
- ☐ Executive Director – Ron Harnack
- ☐ Dispute Resolution Committee – Jim Haertel
- ☐ Wetlands Committee – Darrell Bruggman
- ☐ Cost-Share/Soil Conservation Committee – Dwain Otte
- ☐ Education and Public Relations Committee – Paul Krabbenhoft
- ☐ Financial Oversight Committee – Ginny Imholte
- ☐ Administrative Advisory Committee – Kathleen Roer

Agency Reports

- ☐ Department of Agriculture
- ☐ Department of Health
- ☐ Department of Natural Resources
- ☐ Minnesota Extension Service
- ☐ Pollution Control Agency

Committee Recommendations

Wetland Committee

1. WCA Rule Amendments – John Jaschke – DECISION

Old Business

1. Limited Duration of Easements for CREP – Ron Harnack - DECISION

New Business

1. FY01 SWCD Grant Allocations – Wayne Zellmer – DECISION
2. Area II Minnesota River Basin Projects, FY01 Work Plan – Tabor Hoek – DECISION

Advisory Comments

- ☐ Minnesota Association of Townships (MAT)
- ☐ Minnesota Association of Conservation District Employees (MACDE)
- ☐ Minnesota Association of Soil and Water Conservation Districts (MASWCD)
- ☐ Minnesota Association of Watershed Districts (MAWD)
- ☐ Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- ☐ Minnesota River Basin Joint Powers Board Conference, July 12-13, Chaska
- ☐ Local Water Planners Conference, July 17-19, Bemidji
- ☐ Next BWSR Meeting, July 26, St. Paul
- ☐ BWSR Retreat, August 23, Riverwood Conference Center, Monticello

Adjourn

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
JULY 26, 2000**

AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Minutes of June 29, 2000

Reports

- ☐ Chair – Kathleen Roer
- ☐ Executive Director – Ron Harnack
- ☐ Dispute Resolution Committee – Jim Haertel
- ☐ Wetlands Committee – Darrell Bruggman
- ☐ Cost-Share/Soil Conservation Committee – Dwain Otte
- ☐ Education and Public Relations Committee – Paul Krabbenhoft
- ☐ Financial Oversight Committee – Ginny Imholte
- ☐ Administrative Advisory Committee – Kathleen Roer

Agency Reports

- ☐ Department of Agriculture
- ☐ Department of Health
- ☐ Department of Natural Resources
- ☐ Minnesota Extension Service
- ☐ Pollution Control Agency

Consent Agenda

1. Sherburne County Comprehensive Local Water Plan Extension –
 DECISION
2. Koochiching County Comprehensive Water Plan Update –
 DECISION

Committee Recommendations

Metro Subcommittee

1. Dakota County Groundwater Protection Plan – DECISION

Wetland Committee

2. Wetland Banking Local Public Roads Funding Allocation – John Jaschke – DECISION

New Business

1. Overview of Source Water Protection Activities in Minnesota – Bruce Olson, Department of Health – INFORMATION
2. Shell Rock River Watershed District Establishment – Subcommittee Recommendation - Jim Haertel – DECISION
3. Notice of Boundary Change Petition for the Minnehaha Creek Watershed District and Richfield-Bloomington Watershed Management Organization – Jim Haertel – DECISION
4. Comfort Lake-Forest Lake Watershed District Manager Appointment – Jim Haertel - DECISION
5. Pilot Projects for Restructuring the Organization and Operation of Special Purpose Districts that Manage Natural Resources – Jim Birkholz – INFORMATION/DISCUSSION
6. Conservation Easement Program Work Plan – Tim Fredbo – DECISION
7. Agricultural Disaster Pilot in Northwestern Minnesota – Ron Harnack - DECISION

Advisory Comments

- ☐ Minnesota Association of Townships (MAT)
- ☐ Minnesota Association of Conservation District Employees (MACDE)
- ☐ Minnesota Association of Soil and Water Conservation Districts (MASWCD)
- ☐ Minnesota Association of Watershed Districts (MAWD)
- ☐ Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- ☐ BWSR Retreat, August 23, Riverwood Conference Center, Monticello
- ☐ BWSR Tour and Meeting, September 27-28, Superior Shores Conference Center, Two Harbors

Adjourn

**BOARD OF WATER AND SOIL RESOURCES
SUPERIOR SHORES CONFERENCE CENTER
1521 SUPERIOR SHORES DRIVE
TWO HARBORS, MN 55616
1-800-242-1988
SEPTEMBER 28, 2000**

AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Minutes of August 23, 2000

Reports

- Chair – Kathleen Roer
- Executive Director – Ron Harnack
- Dispute Resolution Committee – Jim Dahlvang
- Wetlands Committee – Darrell Bruggman
- Cost-Share/Soil Conservation Committee – Dwain Otte
- Education and Public Relations Committee – Paul Krabbenhoft
- Financial Oversight Committee – Ginny Imholte
- Administrative Advisory Committee – Kathleen Roer

Agency Reports

As part of agency reports, agency members are asked to review biennial budget issues/initiatives that would impact local governments

- Department of Agriculture
- Department of Health
- Department of Natural Resources
- Minnesota Extension Service
- Pollution Control Agency

Consent Agenda

1. Benton County Request for Comprehensive Local Water Plan Extension – DECISION
2. Kittson County Request for Comprehensive Local Water Plan Extension – DECISION
3. St. Louis County Request for Comprehensive Local Water Plan Extension – DECISION
4. High Island Watershed District Watershed Management Plan Extension - DECISION

Committee Recommendations

1. Minnehaha Creek Watershed District and Richfield-Bloomington Watershed Management Organization Boundary Change – Jack Frost – DECISION

Old Business

1. Review of Retreat - Update BWSR's Strategic Plan – Ron Harnack - DISCUSSION

New Business

1. Draft Program Guidelines for the Red River Valley Set-Aside Program – Ron Shelito - DECISION
2. Biennial Budget – Ron Harnack - INFORMATION

Advisory Comments

- Minnesota Association of Townships (MAT)
- Minnesota Association of Conservation District Employees (MACDE)
- Minnesota Association of Soil and Water Conservation Districts (MASWCD)
- Minnesota Association of Watershed Districts (MAWD)
- Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- BWSR All Staff Retreat, October 9-11, Brainerd
- Next BWSR Meeting, October 25, St. Paul
- MAWD Annual Meeting, Nov. 30 – Dec. 2, Alexandria
- MASWCD Annual Meeting, December 3-5, Bloomington
- AMC Annual Meeting, December 4-5, Rochester

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
OCTOBER 25, 2000**

AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Minutes of September 28, 2000

Reports

- Chair – Kathleen Roer
- Executive Director – Ron Harnack
- Dispute Resolution Committee – Jim Dahlvang
- Wetlands Committee – Darrell Bruggman
- Cost-Share/Soil Conservation Committee – Dwain Otte
- Education and Public Relations Committee – Paul Krabbenhoft
- Financial Oversight Committee – Ginny Imholte
- Administrative Advisory Committee – Kathleen Roer

Agency Reports

- Department of Agriculture
- Department of Health
- Department of Natural Resources
- Minnesota Extension Service
- Pollution Control Agency

Consent Agenda

1. Isanti County Request for Comprehensive Local Water Plan Update
 – DECISION
2. Lake of the Woods County Request for Comprehensive Local
 Water Plan Extension – DECISION
3. Traverse County Request for Comprehensive Local Water Plan
 Extension – DECISION
4. Winona County Request for Comprehensive Local Water Plan
 Extension – DECISION

Committee Recommendations

1. Metro Subcommittee: Carnelian-Marine Watershed District Watershed Management Plan - DECISION

New Business

1. Basin Alliance of the Lower Mississippi in Minnesota (BALMM) – Mary Kells, BWSR board conservationist; Bev Nordby, Mower SWCD and chair of the Alliance; and Norman Senjem, MPCA basin planner - INFORMATION
2. FY 2000 MPCA Feedlot Challenge Grants – Wayne Zellmer, BWSR grants coordinator, and Don Hauge, MPCA – DECISION
3. Valley Branch Watershed District Enlargement and Increase Number of Managers Order for Public Hearing – Jim Haertel – DECISION
4. Brown's Creek Watershed District Enlargement and Increase Number of Managers Order for Public Hearing – Jim Haertel – DECISION

Advisory Comments

- Minnesota Association of Townships (MAT)
- Minnesota Association of Conservation District Employees (MACDE)
- Minnesota Association of Soil and Water Conservation Districts (MASWCD)
- Minnesota Association of Watershed Districts (MAWD)
- Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- MAWD Annual Meeting, Nov. 30 – December 2, Alexandria
- MASWCD Annual Meeting, December 3-5, Bloomington
- AMC Annual Meeting, December 4-5, Rochester
- Next BWSR Meeting, December 13, St. Paul

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
DECEMBER 13, 2000**

AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Minutes of October 25, 2000

Reports

- Chair – Kathleen Roer
- Executive Director – Ron Harnack
- Dispute Resolution Committee – Jim Dahlvang
- Wetlands Committee – Darrell Bruggman
- Cost-Share/Soil Conservation Committee – Dwain Otte
- Education and Public Relations Committee – Paul Krabbenhoft
- Financial Oversight Committee – Ginny Imholte
- Administrative Advisory Committee – Kathleen Roer

Agency Reports

- Department of Agriculture
- Department of Health
- Department of Natural Resources
- Minnesota Extension Service
- Pollution Control Agency

Consent Agenda

1. Aitkin County Request for Comprehensive Local Water Plan Extension – DECISION
2. Lyon County Request for Comprehensive Local Water Plan Extension – DECISION
3. Nicollet County Request for Comprehensive Local Water Plan Extension - DECISION
4. Pine County Request for Comprehensive Local Water Plan Extension – DECISION
5. Sibley County Request for Comprehensive Local Water Plan Extension - DECISION
6. Stevens County Request for Comprehensive Local Water Plan Extension - DECISION

Committee Recommendations

1. Fillmore County Comprehensive Local Water Plan Update – DECISION
2. Houston County Comprehensive Local Water Plan Update – DECISION
3. Todd County Comprehensive Local Water Plan Update – DECISION
4. Capitol Region Watershed District Watershed Management Plan – DECISION

New Business

1. Local Government Accomplishments in 1998 and 1999 Reported via the Local Government Annual Reporting System (LARS) – Eric Mohring – INFORMATION/DISCUSSION
2. 2002/03 Local Water Planning Challenge Grant Policy Changes – Marybeth Block – DECISION
3. Minnesota's Tillage Transect Survey for Monitoring Trends in Crop Residue Management – Derek Fisher - INFORMATION

Advisory Comments

- Minnesota Association of Townships (MAT)
- Minnesota Association of Conservation District Employees (MACDE)
- Minnesota Association of Soil and Water Conservation Districts (MASWCD)
- Minnesota Association of Watershed Districts (MAWD)
- Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- Next BWSR Meeting, January 24, 2001, St. Paul
- NACD Annual Meeting, February 4-8, 2001, Fort Worth, Texas



One West Water Street
Suite 200
St. Paul, MN 55107
(651) 296-3767
Fax (651) 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
(651) 282-9969
Fax (651) 297-5615

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DATE: January 14, 2000
TO: Board of Water and Soil Resources Members, Advisors, Staff
FROM: Ronald D. Harnack, Executive Director
SUBJECT: January 26, 2000 BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, January 26, beginning at 9:00 a.m. The meeting will be held in the BWSR conference room at One West Water Street, St. Paul. The following information pertains to agenda items:

Committee Recommendations

1. Cost-Share Committee Recommendations
 - a) Lake Flooding in North Central Minnesota: At the October 1999 meeting, the Board was requested to consider an emergency funding request for cost-share assistance to flooded areas in north central Minnesota. This item was referred to the Cost-Share Committee for a recommendation. The Committee met on January 10, to determine their recommendation.
DECISION
 - b) State Cost-Share Program Policy
FY 2001 State Cost-Share Program Allocation Policy: The State Cost-Share Program allocations are grants to Soil and Water Conservation Districts (SWCDs) to cost-share with landowners the application of soil and water conservation and water quality improvement practices. The annual legislative appropriation to BWSR for this Program is \$2,120,000. This appropriation is allocated by the Board to SWCDs via the base grants and special project grants programs. The Board will be requested to decide the appropriate amount to allocate for each program and establish certain policies for FY 01.
DECISION
 - c) Farmstead Windbreak Practice Specifications: The Cost-Share Rule is being amended to include farmstead windbreaks as an eligible cost-share practice. Before this rule can be finalized for implementation by SWCDs, practice specifications need to be adopted. DECISION

2. Dispute Resolution Committee Recommendations
 - a) Dismissal of Establishment Proceedings for Sunrise River Watershed District: A citizen petition was filed with the BWSR in September, 1999. The public hearing was held last month. The only support for the proposed watershed district has come from the DNR. The rest of the record shows complete opposition to establishing the watershed district, including all four counties, many cities and townships. The Water Planning Subcommittee consisting of Kathleen Roer, Ginny Imholte, and Dwain Otte presided over the hearing and recommends dismissal of the watershed district establishment proceedings per the attached draft order. DECISION
 - b) WCA Appeals by St. Paul Audubon Society and ABC League of Women Voters from a Decision of the Rice Creek Watershed District, Files 98-6 and 98-7: Both appeals are of the same decision so they have been combined and heard as one appeal. This matter has come before the BWSR previously and was remanded. The appeals deal with complex issues which resulted in difficult deliberations by the DRC. The major issue deals with culverts installed in a public ditch above the as-built bottom elevation due to lack of maintenance, then maintenance conducted with no wetland replacement under the ditch exemption, then the culverts ordered removed with no wetland replacement under the incidental wetland exemption. The DRC recommends the decision of the Rice Creek Watershed District to grant the incidental wetland exemption for the culvert removal be affirmed per the attached draft order. DECISION
3. Financial Oversight Committee Recommendations - See Attached - DECISION
 - a) Update of SWCD Audit Policy
 - b) Match Requirements for BWSR Grants
 - c) The BWSR Role in Watershed District Audit Requirements
4. Metro Sub-Committee Recommendation - See Attached - DECISION
 - a) RIM Violation in Scott County: Tim Fredbo and Doug Snyder presented this RIM violation on the Jeff Smith easement in Scott County to the metro subcommittee meeting on January 11th for their consideration. See attached. DECISION

Old Business

1. Wetlands Legislation Package Senate File #83: The SF#83 stakeholders work group has completed work on a "package" of legislation to achieve greater consistency and coordination between the two state wetland laws. The WHAC and BWSR Wetland Committee met in mid-December and recommended changes or option preferences which were considered by the stakeholder group. It is important for BWSR, representing local government, citizens, and agencies to

review and endorse or direct modifications to the work group's efforts. This item represents the final public discussion of this "package" before it is forwarded on for legislative changes. DECISION

2. Minnesota River Basin Water Quality Improvement Projects (1999 LCMR Funds): The 1999 Minnesota legislative session resulted in an appropriation of \$300,000 for work in the 12 watersheds of the Minnesota River Basin. Development of local leadership at the watershed level received \$100,000, and completion of water quality projects received \$200,000. The projects must utilize practices that are proven effective, must have landowner support, and must be prioritized by the MRBJPB and BWSR. The BWSR shall appropriate only for those projects where the local landowner and counties provide at least 25% of the project cost.

In September of 1999, the MRBJPB announced the process for local governmental units (LGUs) to apply for these funds. The Major Project Review Team (representatives from MRBJPB, BWSR staff, and LGUs) reviewed and prioritized them on November 15, 1999. The Review Team's recommendation was presented to and approved by the MRBJPB at their special meeting on December 6, 1999. The funding recommendation was presented to BWSR on December 17, 1999, and approved. Nine applications were approved.

The Blue Earth River Basin Initiative (BERBI) application was previously tabled by the MRBJPB until more detailed project information was available. At the MRBJPB meeting on January 10, 2000, the Board accepted the additional information and approved BERBI's application for \$43,500.

The funding recommendation for the last of the 10 applications will be presented to BWSR on January 26, 2000, for approval.

BERBI application 6 projects Grant amount \$43,500

Please refer to the attachment for specific information. DECISION

New Business

1. Preliminary Review of LCMR Proposals: This item is carried over from the December 15 BWSR meeting. The Legislative Commission on Minnesota Resources (LCMR) has issued its request for proposals for the 2002-2003 biennium which are due on February 1. The purpose is to discuss the BWSR proposals, share perspectives of board members and approve proposals for submittal to the LCMR. This will also prepare our agency to work with the other environmental cluster agencies and coordinate executive branch recommendations to the LCMR. DISCUSSION AND DECISION
2. Update on Feedlot Rule Informational Meetings: This item is carried over from the December 15 BWSR meeting. The MPCA held information meetings about the

proposed rule revisions for producers and other interested people at seven locations around the state in November. Other involved agencies and the Minnesota Extension Service participated to provide information about programs they administer related to feedlots. The MPCA and MDA also met with members of the House and Senate Agriculture Policy and Environment and Natural Resources Committees in November to provide briefings on the proposed feedlot rule revisions and the role of the Feedlot and Manure Management Advisory Committee. Public hearings on the proposed rules are scheduled for January and February, 2000. MPCA staff will brief the Board about the proposed rule revisions and status of the rule making process. INFORMATION

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

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
JANUARY 26, 2000**

PRELIMINARY AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Approve Minutes of December 15, 1999

Reports

- Chair - Kathleen Roer
- Executive Director - Ron Harnack
- Dispute Resolution Committee - Jim Haertel
- Wetlands Committee - Darrell Bruggman
- Cost-Share/Soil Conservation Committee - Dwain Otte
- Education and Public Relations Committee - Paul Krabbenhoft
- Financial Oversight Committee - Ginny Imholte
- Administrative Advisory Committee - Kathleen Roer

Agency Reports

- Department of Agriculture
- Department of Health
- Department of Natural Resources
- Minnesota Extension Service
- Pollution Control Agency

Committee Recommendations

1. Cost-Share Committee Recommendations
 - a) Lake Flooding in North Central Minnesota - Dale Krystosek -
DECISION
 - b) State Cost-Share Program Policy
FY 2001 State Cost-Share Program Allocation Policy - Wayne
Zellmer - DECISION
 - c) Farmstead Windbreak Practice Specifications - Wayne Zellmer -
DECISION

2. Dispute Resolution Committee Recommendations
 - a) Dismissal of Establishment Proceedings for Sunrise River Watershed District - Jim Haertel - DECISION
 - b) WCA Appeals by St. Paul Audubon Society and ABC League of Women Voters from a Decision of the Rice Creek Watershed District, Files 98-6 and 98-7 - Jim Haertel - DECISION
3. Financial Oversight Committee Recommendations - Ginny Imholte - DECISION
 - a) Update of SWCD Audit Policy
 - b) Match Requirements for BWSR Grants
 - c) The BWSR Role in Watershed District Audit Requirements
4. Metro Sub-Committee Recommendation - Tim Fredbo and Doug Snyder
 - a) RIM Violation in Scott County - DECISION

Old Business

1. Wetlands Legislation Package Senate File #83 - John Jaschke - DECISION
2. Minnesota River Basin Water Quality Improvement Projects (1999 LCMR Funds) - Jeff Nielsen - DECISION

New Business

1. Preliminary Review of LCMR Proposals - Jim Birkholz - DISCUSSION AND DECISION
2. Update on Feedlot Rule Informational Meetings - Al Kean and MPCA Staff - INFORMATION

Advisory Comments

- Minnesota Association of Townships (MAT)
- Minnesota Association of Conservation District Employees (MACDE)
- Minnesota Association of Soil and Water Conservation Districts (MASWCD)
- Minnesota Association of Watershed Districts (MAWD)
- Natural Resources Conservation Service (NRCS)

Upcoming Meetings

- NACD Annual Meeting, January 30-February 3, Colorado Springs, Colorado
- February 1, 2000 - Legislative Session Begins
- Next BWSR Meeting, February 23, 2000

Adjourn

Committee Recommendations

- 1. Cost-Share Committee Recommendations**
 - a) Lake Flooding in North Central
Minnesota - DECISION**

LAKE FLOODING IN NORTH CENTRAL MINNESOTA

Background

At their October Meeting, the BWSR was requested to consider emergency cost share assistance to flooded areas in North Central Minnesota. This item was referred to the Cost Share Committee for recommendation.

Issues

Record rainfall in several Minnesota counties has caused high water levels on many lakes and has accelerated lakeshore and streambank erosion. According to the State Climatology Office's Precipitation Rankings, several counties have had the wettest year in 100 years. This is in addition to an excess of 30 to 40 inches of additional precipitation over the last few years.

The erosion and sedimentation resulting from this record precipitation has negatively impacted fish habitat, degraded lake and stream water quality, and threatened public infrastructure and private property.

Proposal

Target \$100,000 of rollover funds for erosion and water quality projects caused by record precipitation and lake flooding in North Central Minnesota.

Selection Process

Funding would only be available for BWSR approved cost share practices such as shoreline stabilization (including bio-engineering practices), critical area stabilization and streambank stabilization. Projects that achieve maximum public benefits would receive the highest priority.

Eligibility would include counties with lakes that are within the 99th percentile (wettest year in 100 years) of the Precipitation Ranking of the State Climatology Office.

The application process will be a 1 to 2 page application that will be submitted by eligible counties by March 1, 2000. Grants would go out in April 2000.

Committee Recommendations

- 1. Cost-Share Committee Recommendations**
 - b) State Cost-Share Program Policy
FY2001 State Cost-Share Program
Allocation Policy - DECISION**

January 10, 2000

TO : Board Members

FROM : Dwain Otte, Cost Share/Soil Conservation Committee Chair

RE : **FY 01 State cost Share Program Allocation Policy**

Annual Legislative Appropriation - \$2,120,000

The Regular Statewide Cost Share Program and the Special Projects Program are two BWSR cost share programs that share the same legislative appropriation. The Regular Statewide Cost Share grants are allocated as base grants to all SWCDs. The Special Project grants are allocated competitively. The Committee has considered how much of this amount should be allocated to each Program.

For FY 00 the BWSR allocated 90% or \$1,908,000 of this amount in the Regular Statewide Cost Share Program allocation. The remaining 10%, along with any roll-over funds, were allocated for Special Projects.

FY 01 REGULAR STATEWIDE COST SHARE ALLOCATION

The following table shows examples of appropriation percentages and amounts allocated to the Regular Statewide Cost Share Program and the resulting amount remaining for the Special Projects Program.

<u>% Allocated</u>	<u>Amount Allocated</u>	<u>Amount Remaining</u>
100	\$2,120,000	\$ 0
95	2,014,000	106,000
90	1,908,000	212,000
85	1,802,850	318,150
80	1,696,800	424,200

FY 01 SPECIAL PROJECTS PROGRAM

Historical Special Project Requests and Allocations

<u>FY</u>	<u>Requests</u>	<u>Allocations</u>
00	\$ 856,932	\$ 407,585
99	964,241	393,000
98	1,867,319	500,000
97	1,350,187	494,162
96	812,590	365,032
95	561,246	368,060
Ave.	\$1,068,753	\$ 421,307

As of January 10, 2000, the BWSR has approximately \$64,000 in roll-over funds. From historical records, staff estimates an additional \$70,000 in roll-over through the Spring of 2000.

Committee Recommendation

1) FY 01 Regular Statewide Cost share Program Allocation should be 90% of appropriation or \$1,908,000.

2) FY 01 Special Projects Program:

A) Allocations should be funded as:

10% of Legislative Appropriation	\$212,000
Current Roll-Over Funds Available	64,000
Est. Additional Roll-Over through Spring of 2000	<u>70,000</u>
Total	\$346,000

3) Maximum funding per project should be capped at \$40,000.

4) Grants will not be used to pay for SWCD technical and administrative costs.

Committee Recommendations

- 1. Cost-Share Committee Recommendations**
 - c) State Cost-Share Program Policy
Farmstead Windbreak Practice
Specifications - DECISION**

D.5 Farmstead Windbreaks

Primary Practice: Farmstead Windbreak (380)

The numbers in parenthesis corresponds to the practice number in the Field Office Technical Guide (FOTG). Please refer to the FOTG for a definition of the practice, its purpose, applicability, and recommended standards and specifications.

Policies

Cost-sharing is authorized for the materials and activities required to establish or the practice and protect the site during construction of the practice. The components include, but are not limited to:

Materials:

Trees
Herbicides & Fertilizer
Minerals
Tree Mats
Wildlife Control Devices

Activities:

Tree Planting
Fertilizer/Herbicide Application
Weed Control-Mechanical
Site Preparation

- ✓ Cost-sharing is authorized for site preparation, seedlings, tree or shrub planting, and weed control as needed to establish a farmstead windbreak. Cost-sharing is not authorized for planting orchard trees or ornamental plantings.
- ✓ Weed control performed within 36 months of installation, as needed for **establishment**, is authorized at the discretion of the district board. Weed control is not authorized after 36 months when the windbreak is deemed to be established. Mechanical: 3 times/year; Chemical: 1 time/year
- ✓ The tree planting must be protected from destructive fire and destructive grazing as documented in the operation and maintenance plan for the practice.
- ✓ **Maximum** cost-share rates are as follows (districts can set lower rates):
 1. Site Preparation:
 - a. Chemical: 75% of the eligible cost not to exceed \$94 per acre.
 - b. Mechanical: 75% not to exceed \$68 per acre.
 - c. Debris Removal: 75% of the eligible cost not to exceed \$500 per acre. Cost-sharing is not authorized for burning or burying debris.
 2. Trees, Shrubs, and Planting:
 - a. Trees, shrubs: 75% of eligible cost not to exceed \$146 per 100.
 - b. Container conifers: 75% of eligible cost not to exceed \$8 each.
 3. Weed Control:
 - a. Mechanical: 75% of eligible cost for up to 3 cultivations not to exceed \$7.20 per 100 ft. of row per year.
 - b. Chemical: 75% of eligible cost for not to exceed \$2.40 per 100 ft. of row per year.
 - c. Tree mats: Roll - 75% not to exceed \$40/100'; Square - 75% not to exceed \$1 each.
 4. Wildlife Control Devices: 75% of eligible cost not to exceed 4\$ per tree.

Committee Recommendations

2. Dispute Resolution Committee

- a) Dismissal of Establishment
Proceedings for Sunrise River
Watershed District - DECISION**

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

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**In the Matter of the Establishment of the
Sunrise River Watershed District in Anoka,
Chisago, Isanti and Washington Counties
pursuant to Minnesota Statutes § 103D.231**

**ORDER DISMISSING
ESTABLISHMENT
PROCEEDINGS OF SUNRISE
RIVER WATERSHED DISTRICT**

Whereas, more than fifty (50) resident owners residing in the proposed Sunrise River Watershed District in Anoka, Chisago, Isanti, and Washington Counties filed a Petition dated September 2, 1999, with the Board of Water and Soil Resources (Board) on September 2, 1999, to establish a watershed district pursuant to Minn. Stat. § 103D.205, and;

Whereas, the Board has completed its review of the Petition;

Now Therefore, the Board hereby makes the following Findings of Fact, Conclusions, and Order.

FINDINGS

1. **Establishment Petition.** The Petition (Exhibit 1) to establish the Sunrise River Watershed District dated September 2, 1999, was filed with the Board on September 2, 1999. The Petition was signed by more than fifty (50) resident owners in the proposed watershed district pursuant to Minn. Stat. § 103D.205, Subd. 3 (4). On October 11, 1999, Molly O'Rourke, Director, Washington County Assessment, Taxpayer Services and Elections Department, pursuant to Minn. Stat. § 103D.211, certified that more than fifty (50) petitioners were resident owners within the proposed watershed district. (Exhibit 16) The proposed watershed district lies within Anoka, Chisago, Isanti and Washington Counties. Filed with the establishment petition were the required proofs of service on the Anoka County Auditor, the Chisago County Auditor, the Isanti County Auditor, the Washington County Auditor, the Commissioner of the Department of Natural Resources, and the Director of the Division of Waters of the Department of Natural Resources. (Exhibits 2-7)

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2. **Property Description.** The territory to be included in the watershed district is the area in the entire Sunrise River Watershed that is in Anoka, Chisago, Isanti, and Washington Counties, approximately 370 square miles in several communities, which includes land in the Cities of East Bethel and Ham Lake, and the Towns of Columbus and Linwood, in Anoka County; and the Cities of Almelund, Center City, Chisago City, Harris, Lindstrom, North Branch, Stacy, and Wyoming, and the Towns of Chisago Lakes, Fish Lake, Franconia, Lent, Shafer, Sunrise, and Wyoming, in Chisago County; and the Towns of Athens, Cambridge, Isanti, North Branch, Oxford, and South Branch in Isanti County; and the City of Forest Lake, and the Towns of Forest Lake and New Scandia, in Washington County.
3. **District Name.** The name of the proposed district is the "Sunrise River Watershed District".
4. **Number of Managers.** The number of managers for the proposed watershed district is nine (9).
5. **Necessity for Watershed District.** The Petition lists the following:
 - A. The Sunrise River watershed is a tributary to the St. Croix River which has been designated a Natural and Scenic River by the U.S. Congress.
 - B. The Sunrise River watershed land use is rapidly changing from small farm and rural communities to one of expanding cities and rural housing development. Except for a small portion of the watershed, communities do not have safeguards in place to protect water resources from degradation as development occurs.
 - C. A watershed district could provide a standardized set of regulations applied across the watershed to protect resources within the district and reduce the threat of degradation to the St. Croix River.
 - D. A watershed district would provide protection to the area in Anoka County that applied for a district but was turned down because they did not have the financial resources to support a district.
6. **Contemplated Improvements.** According to the Petition, before improvement projects are proposed the following would need to be completed.

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- A. Inventory and classify all water resources within the district.
 - B. Collect water quality and quantity data.
 - C. Develop a uniform set of regulations that the local units of government agree on so water related projects would be treated alike throughout the district.
-
- 7. **Hearing Order.** At its regular meeting on October 27, 1999, the Board determined that the establishment petition met the requirements of Minn. Stat. § 103D.221, Subd. 1, and consequently ordered a hearing to be held on the establishment petition for the Sunrise River Watershed District. Further, the Board ordered that a Water Planning Subcommittee, which is comprised of Kathleen Roer, Ginny Imholte, and Dwain Otte, serve as the hearing panel on behalf of the Board. (Exhibit 18)
 - 8. **Hearing Notice.** Legal notices of the public hearing on the proposed watershed district establishment, pursuant to Minn. Stat. § 103D.221, Subd. 2, were published in the Anoka County Union on November 19 and 26, 1999, (Exhibit 24), in the Cambridge Star on November 17 and 24, 1999, (Exhibit 21), in the Chisago County Press on November 18 and 25, 1999, (Exhibit 22), in the East Central Minnesota Post Review on November 17 and 24, 1999, (Exhibit 25), and in the Forest Lake Times on November 18 and 25, 1999, (Exhibit 23). Further, a copy of the notice was mailed to several addressees including the mayor and administrator for each of the cities within the proposed watershed district, the chair and clerk for each township within the proposed watershed district, the Anoka, Chisago, Isanti and Washington County Boards and administrators, adjoining watershed management organizations and watershed districts, the Anoka, Chisago, Isanti and Washington County Soil and Water Conservation Districts, the state review agencies, various environmental groups and others. (Exhibit 19)
 - 9. **Director's Report.** The Director of the Division of Waters of the Department of Natural Resources filed written reports pursuant to Minn. Stat. § 103D.215 on July 18, and August 3, 1999, regarding the establishment petitions for the Comfort Lake-Forest Lake Watershed District and the Sunrise Watershed District (in Anoka County), respectively, recommending against establishment of the two districts and recommending establishment of the Sunrise River Watershed District in Anoka, Chisago, Isanti and Washington Counties. (Exhibits 14 and 15)
 - 10. **Public Hearing.** A public hearing was held on the establishment of the Sunrise River Watershed District on December 13, 1999, at the Chisago County Senior Center in North Branch. The proceedings were tape recorded. The Board's Water Planning Subcommittee

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presided over the hearing with Dwain Otte as chair.

Jim Haertel, Board staff, entered Exhibits 1 through 32 into the record by reading a brief description of each exhibit.

Exhibit 1. Sunrise River Watershed District Establishment petition dated September 2, 1999, submitted by Roger Johnson, together with 74 petitioner signatures.

Exhibit 2. Receipt of delivery of Establishment Petition (Exhibit 1) by the Anoka County Auditor.

Exhibit 3. Receipt of delivery of Establishment Petition (Exhibit 1) by the Chisago County Auditor.

Exhibit 4. Receipt of delivery of Establishment Petition (Exhibit 1) by the Isanti County Auditor.

Exhibit 5. Receipt of delivery of Establishment Petition (Exhibit 1) by the Washington County Auditor.

Exhibit 6. Receipt of delivery of Establishment Petition (Exhibit 1) by the DNR Commissioner.

Exhibit 7. Receipt of delivery of Establishment Petition (Exhibit 1) by the DNR-Division of Waters Director.

Exhibit 8. Memorandum dated September 7, 1999, to the BWSR Metro Water Planning Subcommittee transmitting the Establishment Petition and setting a subcommittee meeting for September 23, 1999.

Exhibit 9. Public notice dated September 14, 1999, for the BWSR Metro Water Planning Subcommittee meeting on September 23, 1999.

Exhibit 10. Memorandum dated September 14, 1999, from Lynda Peterson, BWSR, regarding the three watershed district petitions for Comfort Lake-Forest Lake, Sunrise WMO and the entire Sunrise River watershed.

Exhibit 11. Memorandum dated September 14, 1999, from Jim Haertel, BWSR, regarding the BWSR Metro Water Planning Subcommittee meeting on the Establishment Petition.

Exhibit 12. Letter dated September 16, 1999, to Roger Johnson acknowledging receipt of Establishment Petition and requesting further information.

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Exhibit 13. Minutes and notes of Jim Haertel of the September 23, 1999, BWSR Metro Water Planning Subcommittee meeting.

Exhibit 14. BWSR Order dated September 23, 1999, establishing the Comfort Lake-Forest Lake Watershed District, together with all 31 exhibits incorporated by reference herein.

Exhibit 15. BWSR Order dated September 23, 1999, dismissing the establishment proceedings of the Sunrise Watershed District, together with all 47 exhibits incorporated by reference herein.

Exhibit 16. Letter dated October 11, 1999, from Molly O'Rourke, Director, Washington County Assessment, Taxpayer Services and Elections Department, certifying that 61 out of 74 signatures on the Establishment Petition are resident owners.

Exhibit 17. Letter dated October 18, 1999, to Roger Johnson regarding the petitioner signature certification, the draft order for the establishment hearing, and requesting further information.

Exhibit 18. BWSR Order dated October 27, 1999, ordering Establishment Hearing.

Exhibit 19. Letter dated November 1, 1999, to several addressees notifying of establishment hearing.

Exhibit 20. Undated single page from Roger Johnson regarding the necessity for the watershed district, contemplated improvements, and the number of managers.

Exhibit 21. Affidavit of publication from the Cambridge Star dated November 24, 1999, of legal notice for establishment hearing.

Exhibit 22. Affidavit of publication from the Chisago County Press dated November 25, 1999, of legal notice for establishment hearing.

Exhibit 23. Affidavit of publication from the Forest Lake Times dated November 25, 1999, of legal notice for establishment hearing.

Exhibit 24. Affidavit of publication from the Anoka County Union dated November 26, 1999, of legal notice for establishment hearing.

Exhibit 25. Affidavit of publication from the East Central Minnesota Post Review dated November 29, 1999, of legal notice for establishment hearing.

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Exhibit 26. Public Notice of Establishment Hearing dated November 30, 1999, for posting.

Exhibit 27. Map, approximately 36" x 36", depicting boundaries of the entire Sunrise Watershed. (This is Exhibit 27 from the Comfort Lake-Forest Lake Watershed District Establishment Hearing and Exhibit 20 from the Sunrise WMO hearing.)

Exhibit 28. City of East Bethel Resolution No. 1999-28 opposing the watershed district establishment.

Exhibit 29. Town of Columbus Resolution No. 99-10 opposing the watershed district establishment.

Exhibit 30. Letter dated December 7, 1999, from Roger Johnson stating the Forest Lake Town Board supports the watershed district establishment.

Exhibit 31. City of Lindstrom Resolution No. 99-12-1 opposing the watershed district establishment.

Exhibit 32. Letter from Jerry Tvedt, Isanti County Coordinator, dated December 9, 1999, stating the Isanti County Board opposes the watershed district establishment.

The following exhibits were entered into the record at the hearing.

Exhibit 33. County of Chisago Resolution No. 991201-1 opposing the watershed district establishment.

Exhibit 34. Chisago County Association of Townships Resolution with accompanying cover letter from Monica Dwyer Abress letter, Secretary/Treasurer, dated December 3, 1999, opposing the watershed district establishment.

After all people present at the public hearing were given an opportunity to speak, the hearing record was left open for three weeks until January 3, 2000, for receipt of written comments.

All testimony at the public hearing was opposed to establishment of the watershed district except for the DNR representative who spoke in favor of establishment.

The following exhibits were received while the record was open.

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Exhibit 35. Letter from Loyda Calander, dated December 13, 1999, opposing the watershed district establishment.

Exhibit 36. Letter from Francis Kvidera, dated December 13, 1999, opposing the watershed district establishment.

Exhibit 37. Linwood Township Resolution No. 99-10 with accompanying letter from the Township Board dated November 24, 1999, opposing the watershed district establishment.

Exhibit 38. City of Stacy Resolution No. 258-1999 opposing the watershed district establishment.

Exhibit 39. City of Wyoming Resolution No. 12-20-99C opposing the watershed district establishment.

Exhibit 40. Chisago Lakes Joint Sewage Treatment Commission Resolution No. 99-12-1 opposing the watershed district establishment.

11. **Board Staff Report.** The Board's Metro Region staff report dated September 14, 1999, (Exhibit 10), recommended against establishment of the Sunrise River Watershed District at this time.

12. **Metropolitan Water Planning Subcommittee.** The Metropolitan Water Planning Subcommittee met on January 11, 2000, and, based on the oral and written record in this matter, decided the proposed watershed district should not be established at this time and the establishment proceedings should be dismissed for the following reasons:

A. The necessity for the proposed watershed district has not been effectively demonstrated and no contemplated improvements have been brought forth.

B. The southerly portion of the proposed watershed district is covered by the Comfort Lake-Forest Lake Watershed District and the Sunrise Watershed Management Organization.

C. The central portion of the proposed watershed district is covered by the Chisago Lakes Lake Improvement District.

D. The affected local units of government are opposed to establishment of the proposed watershed district, as well as a significant representation of the general public.

E. No nominees for manager positions have been provided as required in Minn. Stat. § 103D.205, Subd. 2 (7).

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CONCLUSIONS

1. The petition for establishment of the Sunrise River Watershed District is not valid in accordance with Minn. Stat. § 103D.205 since no nominees for manager positions have been provided pursuant to Minn. Stat. § 103D.205, Subd. 2 (7).
2. The necessity for the proposed watershed district has not been effectively demonstrated and no contemplated improvements have been brought forth pursuant to Minn. Stat. § 103D.205, Subd. 2 (3).
3. At this time the establishment proceedings and record in this matter have not effectively demonstrated that the establishment of the Sunrise River Watershed District would promote the public welfare and public interest, nor would it advance the purpose of Minn. Stat. Chapters 103B and 103D.
4. Proper notice of hearing was given and the public hearing was held in accordance with applicable laws.
5. All relevant substantive and procedural requirements of law and rule have been fulfilled.
6. The Board has proper jurisdiction in the matter of dismissing the establishment proceedings.

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ORDER

The establishment proceedings for the Sunrise River Watershed District petition in Anoka, Chisago, Isanti and Washington Counties dated September 2, 1999, are hereby dismissed in accordance with the aforestated Findings and Conclusions.

Dated this 26th day of January, 2000.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

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By: _____
Kathleen M. Roer, Chair

Committee Recommendations

- 2. Dispute Resolution Committee**
 - b) WCA Appeals by St. Paul
Audubon Society and ABC League
of Women Voters from a Decision
of the Rice Creek Watershed
District - DECISION**

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Minnesota Board of Water and Soil Resources

One West Water Street, Suite 200

St. Paul, MN 55107

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In Re: Wetland Conservation Act Appeal,

St. Paul Audubon Society,

Appellant,

Rice Creek Watershed District,

Respondent.

BWSR File No. 98-6

ORDER

In Re: Wetland Conservation Act Appeal,

ABC League of Women Voters,

Appellant,

Rice Creek Watershed District,

Respondent.

BWSR File No. 98-7

St. Paul Audubon Society ("Audubon") and the ABC League of Women Voters
("League") appeal the September 23, 1998, decision of the Rice Creek Watershed District

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("District") to approve the Minnesota Department of Transportation's (MNDOT) removal of a culvert obstruction in Ditch 53-62 at I-35W as exempt under Minn. Rules Chapter 8420.0122, Subp. 5.C and Minn. Stat. § 103G.2241, Subd. 5 (3) (1996). The exemption is commonly referred to as the incidental wetland exemption. The District is the local government unit ("LGU") administering the Wetland Conservation Act ("WCA"). Audubon and the League brought their appeals to the Board of Water and Soil Resources ("BWSR") pursuant to Minn. Stat. § 103G.2242, Subd. 9 (1998). We consolidated the appeals into this single action.

On November 4, 1999, the Dispute Resolution Committee ("DRC") of BWSR heard oral arguments and considered written memoranda. DRC members Barbara Cobb, Allen Oehlke, Kathleen Roer, and Glenn Annexstad (Chair) were in attendance. A.W. Clapp III, 19955 Quinell Avenue North, Scandia, Minnesota 55073 appeared on behalf of Audubon and the League. Natalie Haas Steffen, 7007 - 164th Avenue Northwest, Ramsey, Minnesota 55303 appeared on behalf of the League. Harold H. Sheff, Smith, Gendler, Shiell, Sheff & Ford, P.A., 3350 U.S. Bank Place, 601 Second Avenue South, Minneapolis, Minnesota 55402, and Michelle J. Ulrich, 1561 Lincoln Avenue, St. Paul, Minnesota 55105 appeared on behalf of the District.

The attorneys for the parties agreed that the record before the District consisted of the following: Exhibits 1-16 as identified on the document index provided by the District.

Following oral arguments, the DRC continued the matter until December 14, 1999. At a meeting on December 14, 1999, with DRC member James Dahlvang now in attendance, a

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majority of the DRC adopted a resolution recommending that the District's approval of the incidental wetland exemption be affirmed.

At its meeting on January 26, 2000, BWSR adopted a resolution to accept the recommendation of the DRC and authorized the Chair of BWSR to issue this Order.

Based upon the entire record of this proceeding, BWSR makes the following:

ORDER

1. The September 23, 1998 decision of the Rice Creek Watershed District approving the removal of a culvert in Ditch 53-62 at I-35W as exempt under Minn. Rules Chapter 8420.0122, Subp. 5.C (1995), amended by 20 Minn. Reg. 2629 (June 10, 1996), and Minn. Stat. § 103G.2241, Subd. 5 (3) (1996) is affirmed.

2. The attached Memorandum is incorporated by reference and made a part of this Order.

Dated: January 26, 2000

Minnesota Board of Water and Soil Resources

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Its Chair

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MEMORANDUM

Pursuant to Minn. Rules Chapter 8420.0250, Subp. 3 (1995), amended by 20 Minn. Reg. 2629 (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.

We find that this standard is satisfied and therefore affirm the decision of the District.

Audubon and the League argue that installation of the I-35W culvert in Ditch 53-62 did not create any wetlands and therefore the incidental wetland exemption does not apply. The District on the other hand argues that the exemption does apply citing support from the technical evaluation panel (TEP) and a September 2, 1997 BWSR opinion letter on the incidental wetland exemption. Also, the District noted that BWSR has clarified that the term "creation" was developed for use in the narrow context of replacement wetlands, whereas under the incidental wetland exemption "created wetlands" can apply to re-created wetlands on areas that were

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previously drained. Minn. Rules Chapter 8420.0110, Subp. 11 (1995), amended by 20 Minn. Reg. 2629 (June 10, 1996). Further, the District and the TEP relied heavily on the evidence of regular ditch maintenance done subsequent to the culvert installation, but prior to the enactment of WCA. Under the particular facts of this case, we find that the District properly applied the law and rules found at Minn. Stat. § 103G.2241, Subd. 5 (3) (1996) and Minn. Rules Chapter 8420.0122, Subp. 5.C (1995), amended by 20 Minn. Reg. 2629 (June 10, 1996) in reaching its determination that the incidental wetland exemption applies to the culvert removal.

We find that the history of ditch maintenance since the culvert installation is a key factor in this decision. It is important to note that the lowering of any culvert in a ditch system where the culvert is higher than the as-built ditch bottom does not qualify under the incidental wetland exemption unless it is determined to be the **sole cause** of the wetland creation or re-creation.

Minimal wetland areas may exist solely because of the culvert. The culvert may have created some additional wetland areas beyond the natural wetland areas or may be solely responsible for the re-creation of wetland areas previously drained. Also, the culvert may have changed the type of some wetland areas by making them wetter. Thus, the only wetland areas eligible for the incidental wetland exemption are those created or re-created solely by the culvert installation. In this case, the majority of the wetland areas will continue to exist and be subject to replacement under WCA after the culvert is removed.

Our review of this matter is narrow in scope and deferential in nature. The District's

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decision enjoys a presumption of correctness and is affirmed here. However, the District acting as the drainage authority should have much earlier ordered the culverts modified as part of their ditch maintenance responsibilities. Under our previous order dated January 28, 1998 remanding the matter, the District was advised to consider and address the issue of "whether the proposed action qualifies as maintenance or repair under the drainage code". Such was not done. Also under the previous order the District was advised to review the exemption "in the context of the total series of related actions". The WCA definition of project states in part "... a project may not be split into components or phases for the sole purpose of gaining additional exemptions". Minn. Stat. § 103G.005, Subd. 14d, Minn. Rules Chapter 8420.0110, Subp. 35 (1995), amended by 20 Minn. Reg. 2629 (June 10, 1996). It is poor practice to phase or piecemeal projects, especially for public authorities when acting as a watershed district, drainage authority and WCA administrator. If maintenance of the entire ditch system was the project objective, it should have been addressed comprehensively under one complete proposal and decision-making process.

This case is limited by the nature of the particular facts and cannot be construed as an application that will guide in the future. Each one of these appeals is considered on their own merits and evaluation done on a case-by-case basis. This determination does not apply beyond these unique circumstances.

Committee Recommendations

3. Financial Oversight Committee - DECISION

- a) Update of SWCD Audit Policy**
- b) Match Requirements for BWSR Grants**
- c) The BWSR Role in Watershed District Audit Requirements**

January 10, 2000

TO: Board of Water and Soil Resources
FROM: Ginny Imholte, Chair, Financial Oversight Committee
SUBJECT: Committee Recommendations

The Committee met on January 10, 2000, in the BWSR conference room. Members in attendance: Ginny Imholte, Barbara Cobb, Allan Oehlke. Staff: Sara Johnson (by phone) and Jim Birkholz.

The Committee took up three issues: 1) Updating SWCD audit policy; 2) Match requirements for BWSR grants; and, 3) Review of the BWSR role in watershed district audit requirements. Only #1 requires board action at this time. Numbers 2 and 3 are recommendations for future board action.

1. Update of SWCD Audit Policy--FOR BOARD DECISION

The committee reviewed the history and purpose of the financial audits of soil and water conservation districts together with the recommendations of the Office of the State Auditor.

The committee recommends that the Board approve:

- a) Raising the threshold for audits from \$300,000 to \$400,000 in revenues since the last audit.**
- b) Change the audit frequency requirement for those SWCDs not reaching the \$400,000 threshold to once every 3 years instead of once every 4 years.**

2. Match Requirements for BWSR Grants (advisory--for future consideration)

The committee reviewed a working paper compiled by a group of local water planners and BWSR staff. Based on the information and options presented, the committee recommends that BWSR eliminate in-kind match requirements for challenge grants and require a straight 25 percent cash match requirement. For small grants less than \$10,000 the committee recommends that the match requirement be eliminated.

The committee also considered the working paper recommendations regarding administrative grants--WCA, Shoreland, Feedlots, ISTS, done as part of the Natural Resources Block Grant. On a split vote the committee agreed that local match requirements should be eliminated from these grants.

3. The BWSR Role in Watershed District Audit Requirements (advisory-for future consideration)

Minnesota Statutes Ch. 103D.355, Subd.1. requires the BWSR to establish a threshold of revenues or expenditure levels which would trigger a CPA or state auditor audit of watershed districts. Watershed districts are currently audited annually. To the best of staff knowledge all but one watershed district is audited by a CPA, thus this is not a major issue. The committee requested staff to communicate with the Minnesota Association of Watershed Districts to seek their reaction to establishing a revenue threshold of \$400,000.

Committee Recommendations

4. Metro Sub-Committee Recommendation

- a) RIM Violation in Scott County -
DECISION**

January 10, 2000

To: Board Members

From: Doug Snyder, Board Conservationist
Tim Fredbo, Easement Program Manager

Re: Jeff Smith RIM Easement Non-Compliance

FINDINGS

1. Mr. Smith's actions caused him to be in non-compliance with the terms of RIM conservation easement 70-02-88-02. The impacts were unintentional.
2. The Scott Soil and Water Board has developed a Corrective Action Plan, in consultation with Cedar Lake Township and Mr. Smith, which allows the impacts to remain, but they feel will achieve greater environmental benefit.
3. The state board, BWSR, now must determine if the proposed changes to the easement identified in the Corrective Action Plan better serves the public interest and welfare, and adequately compensates the state board for the alteration to the conservation easement.

BACKGROUND

Mr. Jeff Smith purchased the 80 acre parcel of land in Cedar Lake Township, Scott County, in 1999, intending to construct his personal residence on the site. The Township issued a driveway permit to allow Mr. Smith to connect his driveway to the township road at a specified location. This location was where an existing field road met the township road. The Township also directed Mr. Smith to contact Scott Soil and Water (District) to see if further permits were required before work began on the site.

Mr. Smith contacted the District, but did not wait for a response before he began work. He erroneously thought the driveway permit allowed him to improve the field road by making it higher and wider to access his building site, which resulted in the landowner being non-compliant with the terms of the RIM easement. The area impacted by the construction was 0.42 acres (Attachment 1).

Mr. Pete Beckius, from the District, visited the site, determined the landowner to be non-compliance with the RIM easement (There are also WCA impacts) and asked Mr. Smith to stop work. A Cease and Desist Order was issued on October 14, 1999 (Attachment 2). A TEP was held the same day at the site. During the TEP, Mr. Smith stated that he was aware the RIM easement existed, but believed, through conversations with the previous owner, the field road was not in the easement area.

The RIM easement in question is 70-02-88-02. The easement covers three discrete field areas, totaling 17 acres, on the southern half of the property (Attachment 3). The easement is 20 years in duration and expires October 1, 2009. The areas impacted in fields 2 and 3 are reed canary grass monoculture.

The District issued a Corrective Action Transmittal asking Mr. Smith to remove the fill or submit an alternative corrective action. Mr. Smith hired Mr. Tom Braman, Acorn Environmental Consultants, Inc. to work with him to resolve the non-compliance. The District Board met on November 9, 1999 and heard Mr. Smith's alternative proposal. The District supports the negotiated Corrective Action Plan titled Attachment A (Attachment 4).

SUMMARY OF RELEVANT RULE AND LAW

The SWCD has the primary responsibility to resolve non-compliant conditions where the landowner has caused or allowed unauthorized alteration of the easement area (Attachment 5). District staff should solicit landowner input when developing a Corrective Action Plan. The District must also determine whether the non-compliance makes the landowner liable to the State of Minnesota for double or treble damages as required in MN Statute Section 103F.515, Subd. 9.

MN Rules 8400.3610, Alteration, Release, or Termination of Conservation Easements states that the state board may alter, release or terminate an easement if the state board determines that the public interests and general welfare are better served by the alteration, release or termination (Attachment 6). The state board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request.

The state board must be compensated by the landowner for all damages and loss of benefits to the conservation easement and the state board may also require reimbursement for administrative expenses and costs incurred in alteration, release, or termination of a conservation easement.

CORRECTIVE ACTIONS CONSIDERED

Staff considered the following 4 possible corrective actions:

1. Remove the fill;
2. Minimize the fill impacts and convert all three fields (17 acres) of the 20-year easement and additional WCA mitigation areas to a perpetual easement;
3. Minimize the fill impacts and convert fields 2 and 3 (9.8 acres), and the WCA mitigation area to perpetual easement; or
4. Accept the District's Corrective Action Plan as meeting the state board's requirements.

Neither the Township or the District was supportive of Mr. Smith being made to pull the road fill out. The TEP also felt wetland impacts would not be lessened by removing the road fill. It was determined that road width should be minimized, but allowed to remain. Therefore, some degree of mitigation is required. The District proposes Field 2, 5.9 acres, be converted from temporary to perpetual easement and the enhancement of habitat in the area for wildlife by excavating three ponds and adding vegetation.

STAFF RECOMMENDATION

Staff feels that Mr. Smith has gained a great deal by being allowed to keep the road in place. Staff recommends the District's Corrective Action plan is acceptable with the following amendments. Field 3 should be converted to perpetual easement. This would bring the total area converted to perpetual easement to 9.38 acres (9.8 - 0.42).

Additional wetlands impacts, outside of the RIM easement area should be addressed with an after-the-fact replacement plan under WCA, concurrently with the RIM Corrective Action Plan. The WCA mitigation area should be included under the RIM conservation easement.

Staff believes the board should be reimbursed for administrative expenses and costs to complete the easement. In the past, BWSR has charged \$500.00 for this activity. Mr. Smith should expand the habitat restoration to include Field 3. Mr. Smith should submit a survey of the new field boundaries, digital and hard copies, to the board for the development of the new easement.

D. Snyder

G. Effman

~~A Sta~~ P. Lynch



WETLAND CONSERVATION ACT CEASE AND DESIST ORDER



Issue 10-14-99
Date

1:00 P.M.
Time

Effective 10-14-99
Date

Name JEFFREY THOMAS SMITH
first middle last

Address 12976 NICOLLET AVE., BURNSVILLE, MN 55337
APT. # 301 city state zip

DOB 10-07-68 OLN S-530-390-792-772 Phone 612-685-4620

THE ABOVE, AND HIS/HER/IT'S AGENTS, CONTRACTORS, HEIRS, SUCCESSORS, AND ASSIGNS, ARE HEREBY ORDERED, PURSUANT TO MINNESOTA STATUTES 103G.2372, TO IMMEDIATELY CEASE AND DESIST ANY ACTIVITY DRAINING OR FILLING THE WETLAND IN THE FOLLOWING AREA:

County SCOTT County Number 70

Location SE 1/4, SECTION 1, CEDAR LAKE TWP.

Pursuant to Minnesota Rules part 8420.0290 you are hereby advised that your application, if any, for an exemption or no-loss determination should be made immediately to the local government unit listed below. If you do not apply for an exemption or no-loss determination within three weeks of the date of the issuance of this order, or if your application is denied, then whatever drain or fill work has been done may require restoration according to a restoration plan designed by the Soil and Water Conservation District.

Local Government Unit CEDAR LAKE TOWNSHIP

Address 25850 BASELINE AVENUE, NEW PRAGUE, MN, 56071
city state zip

Contact person GEORGE PEXA Phone 612-758-2522

ANY VIOLATION OF THIS ORDER IS A MISDEMEANOR

Officer signature Scott Carlson Badge 266 Station 7346

Agency DNR Phone 612-447-3374

original:officer ~ canary:WEO ~ pink:LGU ~ green:SWCD ~ blue:landowner/contractor

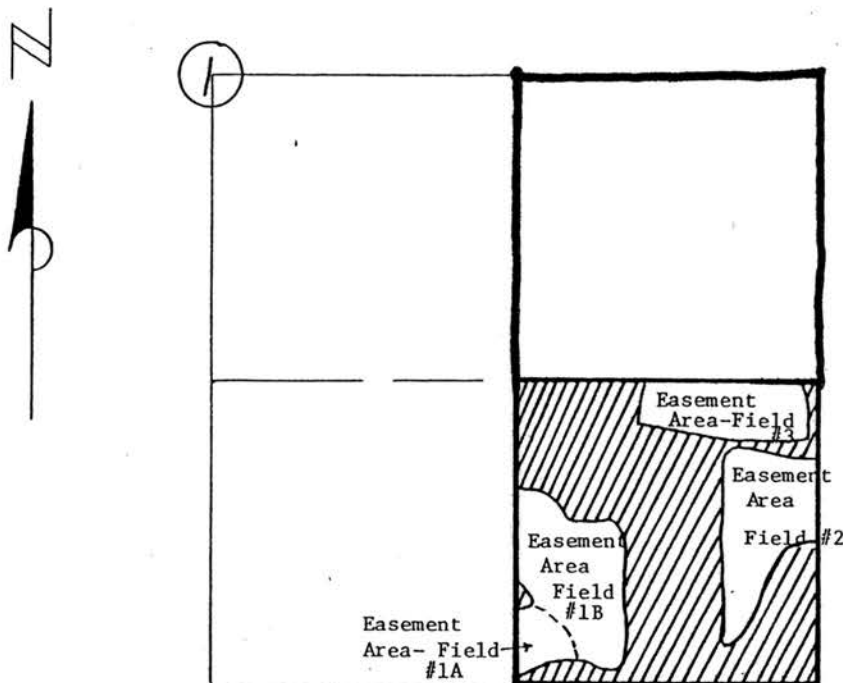


STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE
REINVEST IN MINNESOTA
CONSERVATION EASEMENT
EXHIBIT "A"

MAP 1 OF 1

THIS MAP DELINEATES THE RIM EASEMENT AREA(S) REFERRED TO IN THE ATTACHED EASEMENT CONVEYANCE.

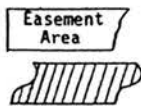
SECTION 1, T. 113 N., R. 22 W., Scott COUNTY



Scale: ☐ 4 Inches = 1 mile

☒ 8 Inches = 1 mile

LEGEND



Boundary of Described Lands

Lands Covered by Easement

Lands Not Included in Easement

Center of Section

For County Recorder Use Only:

Prepared by:

Peter J. Beckius, Soil Conservationist
(SWCD Representative)

Dated:

4/13/89

Scott Soil and Water Conservation District
107 Water Street
Jordan, MN. 55352

Date: January 7, 2000

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

Re: Jeff Smith RIM easement violation

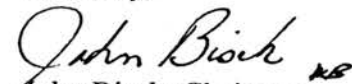
The Scott Soil and Water Conservation District Board of Supervisors have completed a review of the proposed solution to correct the violation of RIM easement # 70-02-88-2.

The Board of Supervisors supports the corrective actions submitted and detailed in Attachment "A" of the Corrective Actions Transmittal dated November 9, 1999 and detailed in the letter to the District Board on December 16, 1999.

The District Board of Supervisors made motion at the November 9, 1999 board meeting to support the corrective actions proposed.

If you have any questions feel free to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "John Bisek". To the right of the signature is a small, stylized monogram or set of initials.

John Bisek, Chairman

Scott Soil and Water Conservation District

CORRECTIVE ACTIONS TRANSMITTAL

SWCD: Scott

Landowner Name: Jeff Smith

Address: 12976 Nicollet Ave. - Apt #301
Burnsville, MN 55337

DESCRIPTION OF NON-COMPLIANCE (to be completed by the district):

Previous landowner failed to notify the Scott SWCD on change of ownership. The current landowner placed fill in the RIM Easement for road construction.

CORRECTIVE ACTIONS REQUIRED:

Item	Deadline
Remove fill from RIM Easement	11/1/99

Approved by SWCD:

(Chairman's Signature)

(Date)

Note: Attach a copy of the Conservation Easement Site Inspection form which identifies the problem.

LANDOWNER RESPONSE:

See Attachment "A"

I, Jeff Smith (print name) have read the *Corrective Actions Required* listed above and forward my statement for consideration by the district in the resolution of this matter.

(Landowner Signature)

(Date)

This form must be signed and returned to the soil and water conservation district office within 30 days after signature by the district for landowner input to be considered.

Attachment "A"

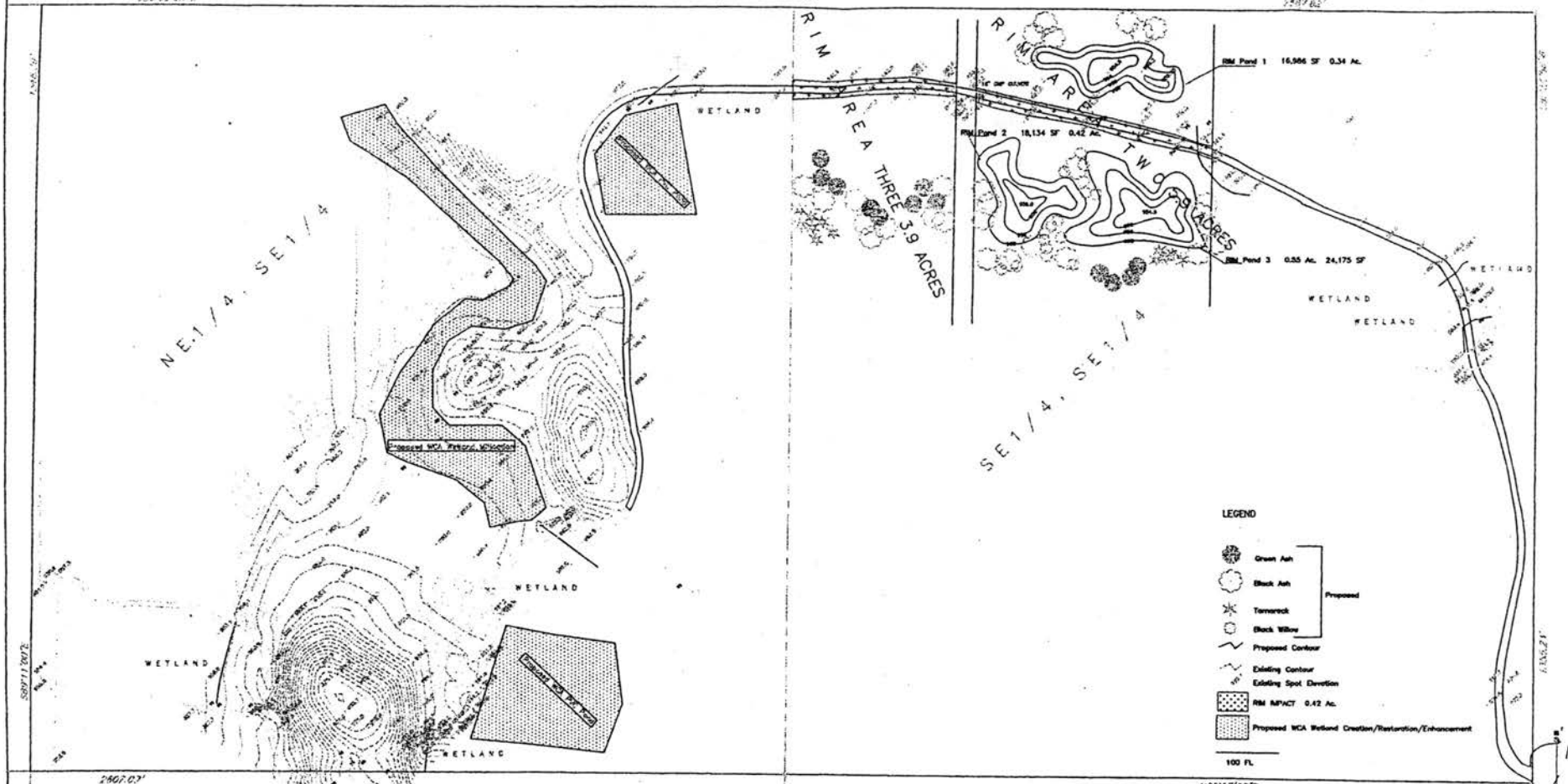
The landowner proposes to mitigate the non-compliance and corrective action recommendation of the Scott SWCD Board of Supervisors, for field #2 of Easement #70-02-88-02 by:

- 1) Excavating 3 wildlife ponds, each pond approximately 1/2 acre in size, according to Scott SWCD specifications.
- 2) Change the existing 20 year easement on field #2 to a perpetual easement.
- 3) Obtaining documentation from a registered professional engineer, supporting the sizing of the culvert used under the field road.
- 4) Obtaining written approval from the Scott County Surveyor's' Office that the proposed culvert is acceptable to be placed within County Ditch #6.
- 5) Complete items #1-4 by June 1, 2000.

TOPOGRAPHIC EXHIBIT FOR: DINA AND JEFF SMITH
CEDAR LAKE, SCOTT COUNTY, MINNESOTA

50°05'35" N

2°57'42" E



LEGEND

- Green Ash
- Black Ash
- Tamarack
- Black Willow
- Proposed Contour
- Existing Contour
- Existing Spot Deviation
- RIM IMPACT 0.42 Ac.
- Proposed MCA Wetland Creation/Restoration/Enhancement

100 FT.

LEGAL DESCRIPTION:

Southwest 1/4 of the Southwest 1/4 and the Northeast 1/4 of the Southwest 1/4 of Section 1, Township 113, Range 22, Scott County, Minnesota

The survey reflects shown ground indications of utility and information available from available drawings. The surveyor makes no guarantee that the underground utilities shown comprise all such utilities in the area, either in service or abandoned. The surveyor's office does not warrant the utility ground utility shown are in the most accurate indicated, although he does certify that they are located as accurately as possible from information available. The surveyor has not physically located underground utilities.

Reference to the sheets are published without the surveyor's approval of the State of Minnesota.

FIGURE 3



CERTIFICATION:

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the Laws of the State of Minnesota.

Signed the 15th day of November, 1998.

Dennis M. Hansen
Minnesota License No. 22440
For Bolton & Menk, Inc.

Proposed RIM ponds and trees by:

ACORN ENVIRONMENTAL CONSULTANTS, INC.

2040 Shuman Avenue South

Bloomington, MN 55420

Phone/Fax (612) 880-4801

E-mail: acorn@att.net

Survey and base drawing by:



BOLTON & MENK, INC.

CONSULTING ENGINEERS & LAND SURVEYORS

1815 EAST HENRY 13, BURNINGWELL, MN 55307 (612) 880-0800

BRANCH OFFICES IN MINNEAPOLIS, MN • ROCHESTER, MN • WILKINSON, MN • JAMES, MN • CORNBELT, MN

B.2 SWCD Non-compliance Determination

1. Now that the facts have been gathered, the district must make a determination whether a landowner is not in compliance with the conservation easement requirements. It is suggested that the SWCD board of supervisors be the decision-maker. Staff should present the information at a formal district board meeting for decision by the board of supervisors.

2. If the district board determines that the landowner is in compliance with the terms of the conservation easement and the conservation plan, then the case is closed.

3. If the district board determines that a non-compliant condition exists, then a Corrective Actions Transmittal form must be completed and sent via registered mail to the landowner. Send a copy to the board conservationist. A standard form [WR-01106] is provided for the district's use. This form should be used to:

reference the specific items that are not in compliance with the easement or the conservation plan;

specify what the landowner must do to correct the situation; and,

give deadlines for performance.

In cases where damage payments are warranted the landowner is also responsible for restoring the easement area at his or her own cost if permanent features have been altered.

The district board must also determine whether the non-compliance makes the landowner liable to the State for double or treble damages as required in Minnesota Statutes Section 103F.515, Subd. 9., which states, in part:

"Subd. 9. Enforcement and damages. (a) A landowner who violates the term of a conservation easement or agreement under this section, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater."

District staff should solicit landowner input when developing a Corrective Action Plan. It is important that the corrective action transmittal not be an absolute mandate because the landowner may have knowledge of certain conditions, or suggest actions to achieve the desired end results, which are somewhat different from what the district has proposed. This provides opportunity for negotiation between the district and the landowner. Deadlines for landowner performance should be practical and reasonable. For example, reseeded of vegetation should be required during the next upcoming recommended seeding period for the cover to be established; removal of unauthorized materials should be accomplished as soon as necessary equipment can access the area, etc.... The district should allow up to 30 days for the landowner to respond and to negotiate.

4. If there is any uncertainty on the part of the district board in making the determination, contact your BWSR board conservationist.

5. Once negotiations are completed the district should complete the Corrective Action Plan portion of the form with the landowner, if possible, and obtain the landowner's signature. If a negotiated plan is not arrived at within the 30-day period, the district should complete the Corrective Action Plan, sign it and provide it to the landowner(s) requesting their concurrence and signature and the return of the form within 10 working days. Landowner compliance with the plan of action should be recorded in the district's conservation easement files.

6. If the landowner fails to comply with the corrective actions identified they will be considered in violation of the terms of the easement.

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS.

The state board may alter, release, or terminate a conservation easement after consultation with the commissioners of agriculture and natural resources. The board may alter, release or terminate an easement only if the state board determines that the public interests and general welfare are better served by the alteration, release, or termination.

The state board must be provided the following information at least 30 days prior to a state board meeting, before the state board will consider a request to alter, release, or terminate a conservation easement:

- A. a copy of the letter from the landowner to the district board justifying the change and identifying how the public interest and general welfare will be better served;
- B. a letter from the district board recommending either approval or disapproval of the proposed change;
- C. a letter from the Department of Natural Resources area wildlife manager recommending either approval or disapproval of the proposed change; and
- D. other supporting documents, including:
 - 1. an aerial photo identifying the requested change;
 - 2. a soil survey map of the area;
 - 3. cropping history information; and
 - 4. other pertinent documentation that will support the request.

The state board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request. The state board must be compensated by the landowner for all damages and loss of benefits to the conservation easement and the state board may also require reimbursement for administrative expenses and costs incurred in the alteration, release, or termination of a conservation easement.

Old Business

- 1. Wetlands Legislation Package Senate File #83 -
DECISION**



MEMO



January 6, 2000

To: Senator Dan Stevens

From: John Jaschke, Wetlands Program Manager, BWSR *A.J.*
John Linc Stine, Permits & Land Use Section Administrator, DNR Waters *JS*

RE: Wetlands Legislation 2000

Attached is the final revised package of draft legislative changes that was reviewed at the December 16th stakeholders meeting. The brief two page summary is followed by a set of endnotes which includes a short "explanation of changes" in addition to the specific details of proposed statute or rule changes.

The final public discussion on this package will be at the January 26th, 2000 BWSR Board meeting scheduled to begin at 9 a.m. in the board conference room at 1 West Water Street.

The main highlights/changes in the January 3rd version of the "package" resulting from the December 16th meeting are; agreement on a limited version of the PWI refinement, evolution of the local road wetland banking program process and funding, movement of some technical items to future (accelerated) rulemaking, and adding a previously discussed item from last year which is sunsetting the Wetland Heritage Advisory Committee.

If you have questions, desire additional explanation or wish for BWSR or DNR to take on further facilitation efforts let us know.

Attachment

c: Wetlands Legislation 2000 Attendees (see attached list)
BWSR Board Members
Wetland Heritage Advisory Committee
Rep. Dennis Ozment
Joe Bagnoli, Governor's Office
Allan Garber, DNR Commissioner
Kent Lokkesmoe, Director, DNR Waters
Lee Pfannmuller, DNR Ecological Services
Ron Harnack, Executive Director, BWSR
Keith Bogut, Department of Finance

WETLANDS LEGISLATION 2000

January 10, 2000

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Background:

1998 - Legislation to study consolidation of state wetland laws enacted. Study completed in December 1998.

1999 - Senate File 83 was introduced to consolidate wetland laws. Bill modified to a list of consensus items with a commitment to address a more comprehensive package by the end of the year. SF83 passed Senate but was not acted on in the House due to time constraints. Stakeholders group facilitated by BWSR and DNR met 6 times from September to December 1999 to develop consensus on this more comprehensive package.

Principles:

1. Coordination with federal programs.
2. No change in "rights", e.g., taxation if W's become P's, and notice to landowners.
3. Simplification and consistency for landowners and project sponsors.
4. Maintaining wetland protection to current standards.
5. Budget neutral for state agencies/local governments/public.
6. Retain landowner "protections"/"rights" currently in the two state laws (Wetland Conservation Act and Protected Waters).

Major Considerations:

Who regulates?

What are the checks and balances of notice/review/oversight?

What standards and processes are used?

I. REGULATORY APPROVAL PROCESSING

A. PROJECT INITIATION

1. WCA LGU or SWCD to take all waters/wetland permit applications using Combined Project Notification (CPN) form (or the unique one for public road projects). LGU/SWCDs can charge fees for services¹.
Optional: LGU/SWCDs distribute CPN form to all regulatory authorities using listing provided by state/federal agencies.
2. 60 Day Timetable for regulatory authorities to make a decision upon receipt of all required information via M.S. 15.99². (DNR is subject to 30 day requirement of section 103G.305).

B. UNIFIED DECISION-MAKING

1. Regulatory authorities either:
 - i. issue authorization for project as proposed (go to Step 4 below); or
 - ii. request joint field review including Technical Evaluation Panel (TEP)
Note: TEP (LGU, BWSR, SWCD) includes DNR for projects affecting or adjacent to Public/Protected Waters and Public/Protected Waters Wetlands³ added via legislation and federal agencies (Corps of Engineers, USDA) added via agreement.
2. LGU/SWCD schedules joint field review
3. Joint field review occurs
4. Regulatory authorities render decisions to project sponsor directly with copies to other regulatory authorities.
5. Appeals may be filed and acted on per existing appeals processes for each individual regulatory authority.

WETLANDS LEGISLATION 2000

January 10, 2000

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II. UNDERPINNINGS

Note: Items A, C, D (except for the funding) and F are part of Senate File 83 which passed the Senate in 1999.

A. PWI Refinement

6. Short Term: case-by-case process to allow DNR to initiate changes which include; Public/Protected Waters Wetlands to WCA wetlands or Public/Protected Waters Wetlands to Public Waters⁴ all with local government unit, county, Watershed District and SWCD approval.
2. Long Term: revise and digitize PWI list/maps for each county
3. No change to jurisdictional boundaries: Wetland boundaries are determined using the '87 Manual, Public/Protected Waters boundaries and shoreland zones continue to use the OHWL boundary.

B. Process consolidation:

- i.) LGU accepts applications for all wetlands and Public/Protected Waters Wetlands and processes using WCA standards and procedures unless DNR decides to require individual permit within 15 working days of receiving the application. Also, DNR and LGU can develop an agreement for LGU to waive WCA decision-making to DNR on Public/Protected Waters if a DNR Public/Protected Waters Work Permit is required⁵.
- ii.) DNR is designated as a TEP member for projects affecting or adjacent to Public/Protected Waters.

C. Enforcement flexibility⁶

D. Public Roads⁷ i.) Notice/Replacement ii.) Funding

E. Soil Science Licensure Exemption⁸ for Wetland Delineation with addition of Technical Appeals option⁹.

F. Consolidation of wetland reporting and common wetland definition¹⁰

G. Wetland typing consistency¹¹ - minimal changes to be supplemented by guidance and technical appeals process.

H. Federal consistency (Clean Water Act, Federal Farm Program)¹²

I. Appeals modifications: add technical appeals option (see endnote #9)

J. Modify elements of Public/Protected Waters and WCA to make common standards for "permanently or semi-permanently flooded areas" (wetland types 3,4,5) relating to:

- Excavation¹³
- Sequencing¹⁴ - *via future Rulemaking*
- Replacement Location¹⁵
- Replacement Ratio¹⁶ - *with future Rulemaking*
- Replacement Credit¹⁷ - *with future Rulemaking*

K. Rulemaking items under accelerated process/Effective Date¹⁸

L. Sunset the Wetland Heritage Advisory Committee¹⁹

Endnotes

1. **LGU/SWCDs can charge Fee for Services**

Explanation of Changes: Allows LGUs and SWCDs to charge fees for technical or administrative services rendered in assisting project sponsors with WCA or other wetland-related regulations.

103G.2242

Subd. 5. **Processing fee.** The local government unit and soil and water conservation district may charge processing fees in amounts not greater than are necessary to cover the reasonable costs of implementing the rules adopted under subdivision 1 and for technical and administrative assistance to landowners in processing other applications for projects affecting wetlands.

2. **Minnesota Statute 15.99 - Time deadline for agency action.**

No changes proposed; language provided for informational purposes only.

Subdivision 1. **Definition.** For purposes of this section, "agency" means a department, agency, board, commission, or other group in the executive branch of state government; a statutory or home rule charter city, county, town, or school district; any metropolitan agency or regional entity; and any other political subdivision of the state.

Subd. 2. **Deadline for response.** Except as otherwise provided in this section and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request. If an agency denies the request, it must state in writing the reasons for the denial at the time that it denies the request.

Subd. 3. **Application; extensions.** (a) The time limit in subdivision 2 begins upon the agency's receipt of a written request containing all information required by law or by a previously adopted rule, ordinance, or policy of the agency. If an agency receives a written request that does not contain all required information, the 60-day limit starts over only if the agency sends notice within ten business days of receipt of the request telling the requester what information is missing.

(b) If an action relating to zoning, septic systems, or expansion of the metropolitan urban service area requires the approval of more than one state agency in the executive branch, the 60-day period in subdivision 2 begins to run for all executive branch agencies on the day a request containing all required information is received by one state agency. The agency receiving the request must forward copies to other state agencies whose approval is required.

(c) An agency response meets the 60-day time limit if the agency can document that the response was sent within 60 days of receipt of the written request.

(d) The time limit in subdivision 2 is extended if a state statute, federal law, or court order requires a process to occur before the agency acts on the request, and the time periods prescribed in the state statute, federal law, or court order make it impossible to act on the request within 60 days. In cases described in this paragraph, the deadline is extended to 60 days after completion of

WETLANDS LEGISLATION 2000

January 10, 2000

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the last process required in the applicable statute, law, or order. Final approval of an agency receiving a request is not considered a process for purposes of this paragraph.

(e) The time limit in subdivision 2 is extended if: (1) a request submitted to a state agency requires prior approval of a federal agency; or (2) an application submitted to a city, county, town, school district, metropolitan or regional entity, or other political subdivision requires prior approval of a state or federal agency. In cases described in this paragraph, the deadline for agency action is extended to 60 days after the required prior approval is granted.

(f) An agency may extend the time limit in subdivision 2 before the end of the initial 60-day period by providing written notice of the extension to the applicant. The notification must state the reasons for the extension and its anticipated length, which may not exceed 60 days unless approved by the applicant.

3. Technical Evaluation Panel (TEP) Changes

Explanation of changes: Adds DNR to TEP when project in or adjacent to a Public Water, provides for updating of '87 Delineation Manual, clarifies that TEP reviews technical matters and provides a recommendation to LGU for a variety of LGU determinations.

103G.2242 Wetland value replacement plans.

Subd. 2. **Evaluation.** Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a technical evaluation panel after an on-site inspection. The technical evaluation panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, ~~and~~ a technical professional with expertise in water resources management appointed by the local government unit, and a technical professional employee of the Department of Natural Resources for projects affecting public waters or wetlands adjacent to public waters. The panel shall use the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987) including updates, supplementary guidance, and replacements, if any, "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (1979 edition). The panel shall provide the wetland determination and recommendations on other technical matters to the local government unit that must approve a replacement plan, wetland banking plan, exemption determination, no-loss determination or wetland boundary or type determination ~~under this section~~, and may recommend approval or denial of the plan. The authority must consider and include the decision of the technical evaluation panel in their approval or denial of a plan or determination.

4. Changes to Public Waters Inventory (PWI)

Explanation of Changes: Clarifies Public Waters definition, and establishes a DNR-initiated process for making changes to the PWI while providing an opportunity for local governments to accept or reject any proposed changes.

103G.005

Subd. 15. **Public waters.** (a) "Public waters" means:

- (1) waterbasins assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221, ~~except wetlands less than 80 acres in size that are classified as natural environment lakes;~~
 - (2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;
 - (3) meandered lakes, excluding lakes that have been legally drained;
 - (4) waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;
 - (5) waterbasins designated as scientific and natural areas under section 84.033;
 - (6) waterbasins located within and totally surrounded by publicly owned lands;
 - (7) waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;
 - (8) waterbasins where there is a publicly owned and controlled access that is intended to provide for public access to the waterbasin;
 - (9) natural and altered watercourses with a total drainage area greater than two square miles;
 - (10) natural and altered watercourses designated by the commissioner as trout streams; and
 - (11) public waters wetlands, unless the statute expressly states otherwise.
- (b) Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

Subd. 15a. **Public waters wetlands.** "Public waters wetlands" means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, that are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas

Subd. 15b. **Protected Waters.** "Protected waters" means those waters of the state identified as public waters or public waters wetlands.

103G.201 [PUBLIC WATERS INVENTORY.] The commissioner shall prepare a public waters inventory map of each county that shows the waters of this state that are designated as public waters under the public waters inventory and classification procedures prescribed under Laws 1979, chapter 199. The public waters inventory map for each county must be filed with the auditor of the county. The commissioner is

authorized to revise the list of public waters prescribed under Laws 1979, chapter 199, to reclassify those type 3, 4, and 5 wetlands previously identified as public waters wetlands under Laws 1979, chapter 199, as public waters or as wetlands under section 103G.005, subdivision 19. The commissioner may only reclassify public waters wetlands as public waters if: (1) they are assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.22; or (2) they are classified as lacustrine wetlands according to Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition). The commissioner shall give priority to reclassification of public waters that are or have the potential to be affected by public works projects. The reclassification is effective within 60 days of the commissioner's notice unless the local government unit, county, the watershed district (if there is one) or soil and water conservation district objects to the reclassification via a board resolution to the commissioner within the 60 day period.

5. **Processing for Public Waters Wetlands and WCA Wetlands**

Explanation of changes: Allows DNR to waive the need for a DNR permit (within 15 working days) if they determine that the WCA process/standards are sufficient for a project that will impact a public waters wetland. Conversely, allows individual LGUs to reach an agreement with DNR that will allow DNR to process a permit that would address both WCA and Public Waters impacts. Benefits include: obligatory teamwork with comprehensive project review, increased efficiency, closer to one-stop-shop, maintains environmental protection at current level with state oversight, consistent with federal regulations/agreements, eliminates two-boundary problem for many wetland projects.

M.S. 103G.245

Subd. 5. Delegation of permit authority to local units of government.

A. The commissioner may delegate public waters work permit authority to the appropriate county or municipality or to watershed districts or watershed management organizations that have elected to assert local authority over protected waters. The public waters work permit authority must be delegated under guidelines of the commissioner and the delegation must be done by agreement with the involved county, municipality, watershed district, or water management organization and in compliance with section 103G.315; and,

B. for projects affecting public waters wetlands, the commissioner may waive the requirement for a public waters work permit if the local government unit, as defined in section 103.005, makes a replacement, no-loss or exemption determination in compliance with sections 103A.201, 103B.3355, 103G.222 through 10G.2373, and rules adopted pursuant to these same sections; and,

C. For projects affecting both Public Waters and wetlands, the local government unit may, by written agreement with the commissioner, waive the requirement for a replacement plan, no-loss or exemption determination if a public waters work permit is required and the commissioner includes the provisions of sections 103A.201, 103B.3355, 103G.222 through 10G.2373, and rules adopted pursuant to these same sections in the public waters work permit.

6. Enforcement Consistency/Flexibility for Landowner Protection

Explanation of Changes: Allows peace officers to issue orders to contractors under the WCA as is currently possible for Public Waters and allows peace officers to issue cease and desist orders for Public Waters violations (rather than an automatic criminal citation) as is now done under the WCA. Together, these provisions give landowners and enforcement personnel a chance to seek administrative remedies for potential violations before a criminal complaint is filed.

[103G.2212] [CONTRACTOR'S RESPONSIBILITY WHEN WORK DRAINS OR FILLS WETLANDS.] Subdivision 1. [CONDITIONS FOR EMPLOYEES AND AGENTS TO DRAIN OR FILL WETLANDS.] An agent or employee of another may not drain or fill a wetland, wholly or partially, unless the agent or employee has: (1) obtained a signed statement from the property owner stating that the wetland replacement plan required for the work has been obtained or that a replacement plan is not required; and (2) mailed a copy of the statement to the local government 3.35 unit with jurisdiction over the wetland. Subd. 2. [VIOLATION IS SEPARATE OFFENSE.] Violation of this section is a separate and independent offense from other violations of sections 103G.2212 to 103G.237. Subd. 3. [FORM FOR COMPLIANCE WITH THIS SECTION.] The board shall develop a form to be distributed to contractors' associations, local government units, and soil and water conservation districts to comply with this section. The form must include: (1) a listing of the activities for which a replacement plan is required; (2) a description of the penalties for violating sections 103G.2212 to 103G.237; (3) the telephone number to call for information on the responsible local government unit; (4) a statement that national wetland inventory maps are on file with the soil and water conservation district office; and (5) spaces for a description of the work and the names, mailing addresses, and telephone numbers of the person authorizing the work and the agent or employee proposing to undertake it.

103G.2372 [ENFORCEMENT.] Subdivision 1. [COMMISSIONER OF NATURAL RESOURCES.] The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting wetlands and public waters. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting a wetland or public waters. In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters. Subd. 2. [MISDEMEANOR.] A violation of an order issued under subdivision 1 is a misdemeanor and must be prosecuted by the county attorney where the wetland or public water is located or the illegal activity occurred. Subd. 3. [RESTITUTION.] The court may, as part of 6.1 sentencing, require a person convicted under subdivision 2 to restore or replace the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters.

7. Local Government Roads - Wetland Banking

Explanation of Changes: Allows local road authorities the choice of either reporting impacts to wetlands when the project proposal is complete or to do so via an annual meeting with the technical review authorities. Allows project reviewers to appeal technical decisions and provides for state replacement/mitigation of all wetland impacts. Allows minor or emergency maintenance without prior reporting. Provides for slight modifications to types of projects to be sought and provides for continued funding of the program.

i.) Notice/Replacement

103G.222, Subd. 1

(m) A replacement plan for wetlands is not required for individual projects that result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction, or replacement of a currently serviceable existing state, city, county, or town public road necessary, as determined by the public transportation authority, to meet state or federal design or safety standards or requirements, excluding new roads or roads expanded solely for additional traffic capacity lanes. This paragraph only applies to authorities for public transportation projects that:

(1) minimize the amount of wetland filling or draining associated with the project and consider mitigating important site-specific wetland functions on-site; and

(2) submit project specific annual reports by January 15 to the board, the technical evaluation panel, the commissioner of natural resources and members of the public requesting a copy at least 30 days prior to construction that indicate the location, amount, and type of wetlands that have been filled or drained during the previous year and a projection of the location, amount, and type of wetlands to be filled or drained by the project or, alternatively, convene an annual meeting of the parties required to receive notice to review projects to be commenced during the upcoming year. Those required to receive notice of public transportation projects may appeal minimization, delineation and on-site mitigation decisions made by the public transportation authority to the board according to the provisions of section 103G.2242, Subd. 9; or

(3) are for minor and emergency maintenance work impacting less than 10,000 square feet. For such projects the public transportation authority shall submit project specific reports, within 30 days of commencing the activity, to the board that indicate the location, amount, and type of wetlands that have been filled or drained.

The technical evaluation panel shall review minimization and delineation decisions made by the public transportation authority and provide recommendations regarding on-site mitigation if requested to do so by the local government unit, a contiguous landowner, or a member of the technical evaluation panel.

Except for state public transportation projects, for which the state department of transportation is responsible, the board must replace the wetlands, and wetland areas of public waters if authorized by the commissioner or a delegated authority, drained or filled by public transportation projects on existing roads ~~in critical rural and urban watersheds.~~

Public transportation authorities at their discretion may deviate from federal and state design standards on existing road projects when practical and reasonable to avoid wetland filling or draining, provided that public safety is not unreasonably compromised. The local road authority and its officers and employees are exempt from liability for any tort claim for injury to persons or property arising from travel on the highway and related to the deviation from the design standards for construction or reconstruction under this paragraph. This paragraph does not preclude an action for damages arising from negligence in construction or maintenance on a highway.

ii.) Funding

Subd. 2. **Road credit funding.** ~~At least 50 percent of money appropriated for road repair wetland replacement credit under this section must be used for wetland restoration in the seven-county metropolitan area:~~

The board shall give priority to restoration projects that will:

- (1) ~~intensify~~ encourage land use that leads to more compact development or redevelopment; ~~or~~
- (2) encourage public ~~or private~~ infrastructure investments which connect ~~urban neighborhoods and suburban~~ ecosystems and communities, attract private sector investment in commercial or residential properties adjacent to the public improvement; or
- (3) ~~complement projects receiving funding under section 473.253~~ are located in critical rural and urban watersheds.

\$2,350,000 is appropriated to the Board of Water and Soil Resources for replacing impacts to wetlands occurring in calendar year 1999. The board may acquire land and related rights in fee or easement and undertake wetland restoration or creation projects to establish wetlands credits or may acquire wetland banking credits established under the provisions of MN Rule 8420.0700 - 8420.0760. The board may enter into agreements with public or private organizations or individuals to acquire land and related rights and undertake wetland restoration or creation projects for this purpose. Up to fifteen percent of this appropriation may be used for professional and technical services to administer the program. This appropriation shall be considered an annual adjustment to the board's budget.

8. Wetland Delineation/Soil Science Licensure Exemption.

Explanation of changes: Clarifies that persons doing wetland delineation work are exempt from licensure requirements for architects, engineers, geoscientists, land surveyors, etc. because:

- i. The 1987 U.S. Army Corps of Engineers Delineation Manual (and subsequent updates - see endnote #3) provides the three-parameter criteria (hydrology, soils and vegetation) for conducting and evaluating wetland delineations;*
- ii. the Technical Evaluation Panel provides the technical review; and*

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iii. *local government decisions on technical matters are subject to appeal (see the next endnote).*

In Minnesota Statute 103G.2242 insert at the end subdivision 2 the following language:

Persons conducting wetland or public waters boundary delineations or type determinations are exempt from the requirements of section 326.

The following language is supported by the stakeholder group but was deemed optional because of the need for an accompanying new fiscal appropriation. However, inclusion of the following language is a prerequisite for the MN Association of Professional Soil Scientists to support the exemption language listed above. Because of the fiscal requirement, it may be that this component would more suitably be addressed in a separate piece of legislation.

The Board of Water and Soil Resources, in consultation with the Minnesota Association of Professional Soil Scientists, the University of Minnesota, and the Wetland Delineators Association, shall establish a professional wetland delineator certification program by March 1, 2002. \$220,000 is appropriated to the Board of Water and Soil Resources for this purpose.

Note: the cost of establishing a wetland delineator certification program is estimated to be \$110,000/year for 2 years for startup (salary, testing development, certification processing and training) and \$75,000/year thereafter if supplemented by user fees for processing and training.

9. **Technical Appeals option**

Explanation of changes: Adds a process for appealing a wetland boundary or type determination independent of another determination (e.g., replacement plan or exemption request) so that landowners can get the technical matters on a property resolved before spending effort on a specific project proposal.

103G.2242

Subd. 9. **Appeal.** Appeal of a replacement plan, exemption, wetland banking, wetland boundary or type determination, or no-loss decision may be obtained by mailing a petition and payment of a filing fee of \$200, which shall be retained by the board to defray administrative costs, to the board within 15 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 15 days, the decision becomes final. The local government unit may require the petitioner to post a letter of credit, cashier's check, or cash in an amount not to exceed \$500. If the petition for hearing is accepted, the amount posted must be returned to the petitioner. Appeal may be made by the wetland owner, by any of those to whom notice is required to be mailed under subdivision 7, or by 100 residents of the county in which a majority of the wetland is located. Within 30 days after receiving a petition, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that the appeal is meritless, trivial, or brought solely for the purposes of delay; that the petitioner has not exhausted all local administrative remedies; that expanded technical review is needed; that the

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local government unit's record is not adequate or that the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit. In determining whether to grant the appeal, the board shall also consider the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or petitioner, and the consequences of the delay resulting from the appeal. All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of chapter 14. A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 4.63 to 14.69.

Proposed WCA Rule language also shown here as it is more complete than the statute language.

MR 8420.0205. DETERMINING WETLAND BOUNDARY OR TYPE.

A landowner may apply for a wetland boundary or type determination from the local government unit. The landowner applying for the determination is responsible for submitting proof necessary to make the determination, such as, but not limited to, wetland delineation field data, observation well data, topographic mapping, survey mapping, and information regarding soils, vegetation, hydrology and groundwater both within and outside of the proposed wetland boundary.

The local government unit should seek the advice of the technical evaluation panel as described in part 8420.0240, and expand the technical evaluation panel if necessary.

The local government unit may place the decision authority for wetland boundary or type determinations with the zoning administrator, or establish other procedures it considers appropriate.

The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. The local government unit decision must be mailed to the landowner, members of the technical evaluation panel, the watershed district or watershed management organization if there is one, and individual members of the public who request a copy within ten calendar days of the decision. The local government unit decision is valid for three years unless the technical evaluation panel determines that natural or artificial changes to the hydrology, vegetation or soils of the area have been sufficient to alter the wetland boundary or type.

MR 8420.0250. Subpart 1. **Appeals of replacement plan, banking plan, exemption, and no-loss, and wetland boundary or type decisions.** The decision of a local government unit to approve, approve with conditions, or reject a replacement plan, banking plan, exemption, or no-loss, or wetland boundary or type request becomes final if not appealed to the board within 15 days after the date on which the decision is mailed to those required to receive notice of the decision.

... remainder of Subpart 1 remains unchanged. . .

Subp. 3. **Board appeal procedures.** 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 appeal is deemed meritless, trivial, or brought solely for the purposes of delay; that the petitioner has not exhausted all local administrative remedies; that expanded technical review is needed; that the local government unit's record is not adequate; or that the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit.

. . . remainder of Subp. 3 remains unchanged. . .

10. **Consolidation of wetland reporting & common wetland scientific definition**

103G.2373 [ANNUAL WETLANDS AND PUBLIC WATERS WETLANDS REPORT.]

By March 1 of each year, the commissioner of natural resources and the board of water and soil resources shall jointly report to the committees of the legislature with jurisdiction over matters relating to agriculture, the environment, and natural resources on: (1) the status of implementation of state laws and programs relating to wetlands and public waters wetlands; (2) the quantity, quality, acreage, types, and public value of wetlands and public waters wetlands in the state; and (3) changes in the items in clause (2).

Minnesota Statutes 1998, section 645.44, is amended by adding a subdivision to read: Subd. 13a. [WETLANDS.] "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes: (1) have a predominance of hydric soils; (2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) under normal circumstances support a prevalence of such vegetation.

11. **Wetland Typing Clarification**

Explanation of changes: Adds a separate category for 1L (floodplain forest) and R (riverine) wetlands. These types are distinctively different than the categories they were previously contained within. No regulatory consequences will result from this change if the changes noted in the following endnote are made.

Rule language used here as it is more complete than the statute language. It will be necessary to convert to statute change in 103G.005, Subd. 17b and Subd. 19.

MN Rule Chapter 8420.0110 DEFINITIONS.

Subp. 52. **Wetlands, a wetland, the wetland, or wetland area.**

A. "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually

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at or near the surface or the land is covered by shallow water.

For purposes of this subpart, wetlands must:

- (1) have a predominance of hydric soils;
- (2) be inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) under normal circumstances, support a prevalence of hydrophytic vegetation.

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

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

D. The wetland size is the area within its boundary. The boundary must be determined according to the United States Army Corps of Engineers Wetland Delineation Manual (January 1987). The wetland type must be determined according to United States Fish and Wildlife Service Circular No. 39 (1971 edition) and Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition). The local government unit may seek the advice of the technical evaluation panel as to the wetland size and type.

Subp. 54a. **Wetland type.** "Wetland type" means a wetland type classified ~~based on~~ ~~according to~~ Wetlands of the United States, United States Fish and Wildlife Service Circular 39 (1971 edition), as summarized in this subpart.

A. "Type 1 wetlands" are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing season. Type 1 wetlands are located in depressions and in overflow bottomlands along watercourses, and in which vegetation varies greatly according to season and duration of flooding and includes bottomland hardwoods as well as herbaceous growths.

B. Type 1L Floodplain Forest wetlands are temporarily flooded and seasonally flooded forest lands, characterized by tall woody vegetation, adjacent to riverine habitats, that are usually inundated for brief periods to extended periods during the growing season. These bottomland hardwoods support a variety of mostly herbaceous plants.

—B: C. "Type 2 wetlands" are inland fresh meadows in which soil is usually without standing water during most of the

growing season but is waterlogged within at least a few inches of the surface. Vegetation includes grasses, sedges, rushes, and various broad-leafed plants. Meadows may fill shallow basins, sloughs, or farmland sags, or may border shallow marshes on the landward side.

—C: D. "Type 3 wetlands" are inland shallow fresh marshes in which soil is usually waterlogged early during a growing season and often covered with as much as six inches or more of water. Vegetation includes grasses, bulrushes, spikerushes, and various other marsh plants such as cattails, arrowheads, pickerelweed, and smartweeds. These marshes may nearly fill shallow lake basins or sloughs, or may border deep marshes on the landward side and are also common as seep areas on irrigated lands.

—D: E. "Type 4 wetlands" are inland deep fresh marshes in which soil is usually covered with six inches to three feet or more of water during the growing season. Vegetation includes cattails, reeds, bulrushes, spikerushes, and wild rice. In open areas, pondweeds, naiads, coontail, water milfoils, waterweeds, duckweeds, water lilies, or spatterdocks may occur. These deep marshes may completely fill shallow lake basins, potholes, limestone sinks, and sloughs, or may border open water in such depressions.

—E: F. "Type 5 wetlands" are inland open fresh water, shallow ponds, and reservoirs in which water is usually less than ten feet deep and is fringed by a border of emergent vegetation similar to open areas of type 4 wetland.

—F: G. "Type 6 wetlands" are shrub swamps in which soil is usually waterlogged during growing season and is often covered with as much as six inches of water. Vegetation includes alders, willows, buttonbush, dogwoods, and swamp privet. This type can occur ~~s-mostly~~ along sluggish streams and occasionally on floodplains.

—G: H. "Type 7 wetlands" are wooded swamps in which soil is waterlogged at least to within a few inches of the surface during growing season and is often covered with as much as one foot of water. This type can occur ~~s-mostly~~ along sluggish streams, on floodplains, on flat uplands, and in shallow basins. Trees include tamarack, arborvitae, black spruce, balsam, red maple, and black ash. Northern evergreen swamps usually have a thick ground cover of mosses. Deciduous swamps frequently support beds of duckweeds and smartweeds.

—H: I. "Type 8 wetlands" are bogs in which soil is usually waterlogged and supports a spongy covering of mosses. This type occurs mostly in shallow basins, on flat uplands, and can occur along sluggish streams. Vegetation is woody or herbaceous or both. Typical plants are heath shrubs, sphagnum moss, and

sedges. In the north, leatherleaf, Labrador-tea, cranberries, carex, and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

J. "Type R (riverine) wetlands" are wetlands which include all wetlands and deepwater habitats contained within a natural open channel which has periodically or continuously moving water or connects bodies of standing water; it may have lateral limits defined by vegetated (palustrine) wetlands instead of channel banks. Aquatic and non-persistent emergent vegetation may be present.

12. Coordination with federal regulatory programs.

Explanation of changes:

Subd. 1. The 1991 federal farm bill has been superceded by the 1996 farm bill which will be superceded by the next farm bill. These changes are intended to allow the state and federal agencies to develop agreements to perpetuate the minimization of regulatory duplication between state wetland regulations and the federal farm program rather than face the elimination of this exemption until a legislative reinstatement can be passed.

Subd. 3 and Subd 9. These changes are needed so that the majority of sponsors of WCA-approved projects that have wetland impacts under 2 acres will be able to take advantage of abbreviated Federal permit review procedures under the new General Permit/Letter of Permission process that replaced the Corps Section 404 nationwide permits in Minnesota. These changes also provide for an administrative solution to strive yet further toward the originally legislated goal of minimizing duplicate regulation.

103G.2241 Exemptions.

Subdivision 1. **Agricultural activities.** (a) A replacement plan for wetlands is not required for:

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

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

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

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

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

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(4) activities in a type 1 wetland on agricultural land, except for ~~bottomland hardwood~~ type 1L wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural land;

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

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

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

(8) agricultural activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that Agriculture Improvement and Reform Act of 1996 and subsequent federal farm program legislation that meet minimum state standards of the WCA (list all the statute references) and approved by the board of water and soil resources, and the commissioners of natural resources, agriculture and the pollution control agency. ~~Land~~ enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program.

(b) The exemption under paragraph (a), clause (4), may be expanded to additional acreage, including types 1, 2, and 6 wetlands that are part of a larger wetland system, when the additional acreage is part of a conservation plan approved by the local soil and water conservation district, the additional draining or filling is necessary for efficient operation of the farm, the hydrology of the larger wetland system is not adversely affected, and wetlands other than types 1, 2, and 6 are not drained or filled.

Subd. 3. **Federal approvals.** A replacement plan for wetlands or a public waters work permit is not required for:

~~(1) activities exempted from authorized under federal Clean Water Act Sec. 404 or Rivers and Harbors Act Sec. 10 regulations under United States Code, title 33, section 1344(f), as in effect on January 1, 1991. that meet minimum state standards of the WCA and Public Waters (cite statute references) and that have been approved by the board of water and soil resources, and the commissioners of natural resources, agriculture and the pollution control agency..~~

(2) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean

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Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clauses (14), limited to when a new road crosses a wetland, and (26), as in effect on January 1, 1991.

Subd. 9. **De minimis.** (a) Except as provided in paragraphs (b), (c), and (d), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project, ~~regardless of the total amount of wetlands filled as part of a project:~~

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

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

(3) 2,000 square feet of type 1, 1L, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area;

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

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

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

(c) This exemption no longer applies to a landowner's portion of a wetland when the cumulative area drained or filled of the landowner's portion since January 1, 1992, is the greatest of:

(1) the applicable area listed in paragraph (a), if the landowner owns the entire wetland;

(2) five percent of the landowner's portion of the wetland; or

(3) 400 square feet.

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

~~(e)~~ This exemption may not be combined with another exemption in this section on a project.

13. Regulation of Excavation in Type 3, 4 or 5 wetlands.

Explanation of changes: Bridges the current DNR standards (regulation of course, current and cross-section) with those for the WCA (by adding excavation) resulting in single standard for all Type 3, 4 and 5 wetland areas ("permanently and semi-permanently flooded" = standing water areas). This allows the process described in Item II.2 on page 2 to result in a single permit decision in the majority of circumstances.

103G.222 Replacement of wetlands.

Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under a replacement plan approved as provided in section 103G.2242, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2243, or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. Mining reclamation plans shall apply the same principles and standards for replacing wetlands by restoration or creation of wetland areas that are applicable to mitigation plans approved as provided in section 103G.2242. Public value must be determined in accordance with section 103B.3355 or a comprehensive wetland protection and management plan established under section 103G.2243. The provisions of this subdivision and section 103G.2241 also apply to excavation in type 3, 4 or 5 wetland areas.

14. Sequencing for Type 3,4,5 areas of WCA wetlands and Public Waters Wetlands

Explanation of changes: Bridges the current DNR standards (complete prohibition on fill for non-public purposes) with those for the WCA resulting in single standard for all Type 3,4 and 5 wetland areas ("permanently and semi-permanently flooded" = standing water areas). This allows the process described in Item II.B on page 2 to result in a single permit decision in the majority of circumstances.

Concept language which will be put in WCA and Public Waters Rule during joint rulemaking.

1. Permanent filling, draining or excavating in the type 3, 4 or 5 wetland areas or public waters wetland (PWW) is not allowed, in the following cases

A. to achieve vegetation control;

B. to create upland areas or to construct a roadway or pathway, or create or improve land accesses from peripheral shorelands to islands, or to facilitate land transportation across the public waters wetlands; except where it is determined that:

(1) there is no feasible or practical alternative to the project that would have less environmental impact; and

(2) the fill, drain or excavation would result in only minor adverse impacts to the wetland or PWW, individually and cumulatively; and

(3) the fill, drain or excavation is otherwise in conformance with part 3.

C. to stabilize beds of wetlands and PWW which cannot support fill materials because of excessive depths of muck, steep bank, bed slope, or other conditions;

D. to stabilize or impound the site of active springs;

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E. to dispose of rock, sand, gravel, or any other solid material resulting from activities outside of wetlands or PWW;

F. filling, drain or excavation of posted fish spawning areas is prohibited

G. The proposed fill, drain or excavation is inconsistent with floodplain, shoreland, and wild and scenic rivers management standards or other local plans and ordinances.

2. Approval required. Except for activities exempted elsewhere in WCA or Public Waters Law, a replacement plan or public waters work permit shall be required for filling, draining or excavating in type 3, 4 or 5 areas of wetlands or PWW, except as prohibited under part 1, and shall meet all of the following requirements:

A. the project will involve a minimum of encroachment, change, or damage to the environment, including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention, as guided by the following principles in descending order of priority:

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

(2) minimizing the impact by limiting the degree or magnitude of the public waters wetland activity to the fringe or peripheral areas of the wetland or public waters wetland;

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

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

(5) compensating for the impact by restoring a wetland or public waters wetland; and

(6) compensating for the impact by replacing or providing substitute wetland or public waters wetland resources or environments in accordance with Minn. Rules 8420.0540-.0760.

B. the fill consists of clean inorganic material that is free of pollutants and nutrients in toxic amounts;

C. the existence of a stable, supporting foundation is present;

D. where erosion protection is deemed necessary, the site conditions and fill material are capable of being stabilized by an approved erosion control method such as riprap, retaining wall, or other method which is consistent with existing land uses on the affected wetland or PWW ;

E. the size, shape, depths, shoreline, and bottom character and topography, and susceptibility of the beds of wetlands and PWW to actions of wind, waves, and currents are such that the fill will be stable.

15. Consistent Replacement Location

Explanation of changes: Language based on negotiated agreement (1-16-98) between state and federal agencies in the State Wetland Plan.

103G.222, Subd. 1

~~(e) Replacement shall be within the same watershed or county as the impacted wetlands, as based on the wetland evaluation in section 103G.2242, subdivision 2, except that a greater than 80 percent area may accomplish replacement in less than 50 percent areas. Wetlands impacted by public transportation projects may be replaced statewide, except that wetlands impacted in a less than 50 percent area must be replaced in a less than 50 percent area, and wetlands impacted in the seven-county twin cities metropolitan area by public highways must be replaced:~~

~~—(1) in the affected county, or, if no restoration opportunities exist in the county;~~

~~—(2) in another seven-county twin cities metropolitan area county.~~

~~—The board must maintain a public list of restoration opportunities within the metropolitan area. Disputes about restoration opportunities for wetland replacement in a watershed or county may be appealed to the board's committee for dispute resolution. Replacement of wetlands may be accomplished under the rules for wetland banking as provided for under section 103G.2242.~~

Replacement wetlands shall be located within the same watershed or county as the impacted wetlands, except that greater than 80 percent areas may accomplish replacement in less than 50 percent areas. When environmentally preferable, replacement wetlands should be located as close to the impacted wetland as possible, preferably in the same watershed.

Siting wetland replacement must follow this priority order:

- 1) On-site or in the same minor watershed as the impacted wetland;
- 2) In the same watershed (81 USGS) as the impacted wetland;
- 3) In the same county as the impacted wetland;
- 4) In an adjacent watershed or county to the impacted wetland; and
- 5) Statewide, only for wetland impacts in "Greater than 80 Percent Areas" and for public transportation projects, except that wetlands impacted in less than 50 percent area must be replaced in a less than 50 percent areas, and wetlands impacted in the seven county metropolitan area must be replaced in the affected county, or, if no restoration opportunities exist in the county, in another seven-county metropolitan area county. This exception does not apply to replacement

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completed using wetland banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996.

When reasonable, practicable and environmentally beneficial replacement opportunities are not available in the first step of the siting priorities listed above, then the search expands to the next step.

For the purposes of this section, reasonable, practicable and environmentally beneficial replacement opportunities, are defined as those that:

- a. Take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration; and
- b. Have a high likelihood of becoming a functional wetland and remaining so in perpetuity; and
- c. Do not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area; and
- d. Are available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

To facilitate this process, regulatory agencies, other entities involved in wetland restoration, and local governments will collaborate to identify potential replacement opportunities within their jurisdictional areas.

16. **Consistent Replacement Ratios**

Explanation of changes: Makes WCA standards for replacement of wetlands (for Types 3, 4, and 5) apply similarly to Public Waters Wetlands under DNR jurisdiction.

103G.222

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

(g) For a wetland or public water wetland located on agricultural land or in a greater than 80 percent area, replacement must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland.

103G.2242

Subdivision 1. **Rules.** (a) The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section and public waters work permits affecting public waters wetlands under section 103G.245. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values; may address the state establishment and administration of a wetland banking program for public and private projects, which may include provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and include the

planting of trees or shrubs.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules or a comprehensive wetland protection and management plan approved under section 103G.2243.

(c) If the local government unit fails to apply the rules, or fails to implement a local comprehensive wetland protection and management plan established under section 103G.2243, the government unit is subject to penalty as determined by the board.

17. Replacement Credit

Note: The following suggested revisions to 8420.0540 were developed by BWSR staff in consultation with the BWSR Interagency Wetland Banking Committee based on local government's, consultant's, etc. experiences with the WCA over the past 3 years since the last WCA changes were made. On November 2, 1999 comments were received from the Interagency Wetland Group and modified accordingly. The purpose of the revisions are five-fold:

*1) To consolidate the location of replacement criteria in one location in the rule/statute.
2) To provide incentive for restoration of degraded wetlands in greater than 80 percent counties where public value credit has no use.*

3) To provide incentive for vegetative restoration of wetlands that are degraded by invasive species such as purple loosestrife.

4) To clarify portions of the rule that are vague, most notably with regards to certain storm water facilities and gravel pits.

5) To make options for establishing wetlands credits consistent with federal requirements so that one replacement/mitigation plan can generally meet the standards of all regulatory authorities. Related to this purpose is assuring that wetland credits deposited in the State Wetland Bank are eligible for use as replacement/mitigation to meet the standards of all regulatory authorities.

It will be necessary to first make a statute change to delete the current specific requirements of 103G.2242, Subd. 12 and allow 103G.2242, Subd. 1 to stand alone as the vehicle for wetland credit establishment.

103G.2242

~~Subd. 12. Replacement credits. (a) No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, and is completed prior to any draining or filling of the wetland.~~

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

~~(c) Notwithstanding section 103G.222, subdivision 1, paragraph (i), the following actions are eligible for replacement credit as determined by the local government unit, including enrollment in a statewide wetlands bank:~~

~~(1) Reestablishment of permanent vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be~~

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~~set aside to receive price supports or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991. Replacement credit may not exceed 50 percent of the total wetland area vegetatively restored;~~

~~(2) Buffer areas of permanent vegetative cover established on upland adjacent to replacement wetlands, provided that the upland buffer must be established at the time of wetland replacement and replacement credit for the buffer may not exceed 75 percent of the replacement wetland area and may only be used for replacement above a 1:1 ratio;~~

~~(3) Wetlands restored for conservation purposes under terminated easements or contracts, provided that up to 75 percent of the restored wetland area is eligible for replacement credit and adjacent upland buffer areas reestablished to permanent vegetative cover are eligible for replacement credit above a 1:1 ratio in an amount not to exceed 25 percent of the restored wetland area; and~~

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

MN Rule Chapter 8420.0540. Subp. 2. **Type of replacement.**

A. The order of preference for the method of replacement, from most preferred to least preferred, is restoration, then creation.

B. Modification or conversion of non-degraded wetlands from one wetland type to another, for example by impoundment of additional water or excavation, does not constitute adequate replacement credit.

C. Wetlands drained or filled under an exemption may not be restored for replacement credit for ten years after draining or filling.

D. The following actions are eligible for replacement credit or wetland banking credit as determined by the local government unit in parts 8420.0500 to 8420.0760:

(1) restoration of the natural hydrology regime and vegetation on effectively drained or filled wetlands and created wetlands in non-wetland areas may receive **new wetland credit** in an amount not to exceed 100 percent of the total wetland area restored or created;

(2) restoration of the natural hydrology regime and vegetation of jurisdictional wetlands that have been degraded by prior drainage, diversion of the natural watershed, or filling may;

a. in a less than 80 percent area, receive **public value credit** in an amount up to 50 percent of the degraded wetland area; and

b. in a greater than 80 percent area, receive **new wetland credit** in an amount not to exceed 25 percent of the total wetland area hydrologically restored

(Note: (1) and (2), in part, moves and rephrases rule language moved from 8420.0540, Subpart 10, F. : Page 64 of Rules)

(H) (3) reestablishment of permanent native, non-invasive (add definition) vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeded to pasture grasses or legumes, or was required to be set aside to receive price supports or other payments under United States Code, title 7, sections 1421 to 1469, in the last ten twenty years

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prior to ~~January 1, 1991~~. the date of application for a replacement plan or bank plan in accordance with one of the following considerations: Replacement credit consists of *new wetland credits* and may not exceed 50 percent of the total wetland area vegetatively restored;

a. if the wetland was annually seeded, in rotation, or set aside for six or more of the last ten twenty years, the wetland is eligible for *public value credit* not to exceed 50 percent of the wetland area; or

b. if the wetland was annually seeded, in rotation, or set aside for ten or more years of the last twenty years, the wetland is eligible for *new wetland credit* based on the percent of the time the wetland area was annually seeded, in rotation, or set aside during the prior twenty year period.

Note: Current rules allow 50 percent new wetland credit for a wetland area was annually seeded, in rotation, or set aside for 6 or more years out of 10 years.

(2) (4) buffer areas of permanent native, non-invasive vegetative cover established or preserved on upland adjacent and contiguous to replacement wetlands and adjacent existing wetlands, provided that the upland buffer must be established at the time of wetland replacement, must have a minimum width of 16.5 feet and the buffer vegetative establishment or preservation plan must be approved by the Technical Evaluation Panel. rReplacement credit for the buffer may not exceed 75 percent of the replacement wetland area and may only be used as *public value credits* for replacement above a 1:1 ratio;

(3) (5) wetlands areas restored for conservation purposes under terminated easements or contracts, provided that are eligible for up to 75 percent of the restored wetland area is eligible for *new wetland credit* and adjacent upland buffer areas reestablished to permanent native, non-invasive vegetative cover are eligible for *public value credit* above a 1:1 ratio in an amount not to exceed 25 percent of the post-restoration wetland area; and

Note: Changes to (5) restrict banking of upland buffer areas that contain invasive species.

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

Note: This section was moved to Section E for continuity purposes.

(6) reestablishment and maintenance of permanent native, non-invasive vegetation cover on a wetland that is dominated by invasive or exotic species may receive *public value credit*. Replacement credit may not exceed 25 percent of the total wetland area vegetatively restored and the vegetative restoration and maintenance plan must be approved by the Technical Evaluation Panel (The Technical Evaluation Panel may require a monitoring period in excess of 12 months after the vegetative restoration is completed before approving the site for replacement credit.); and

Note: Section (6) was added to provide incentive for vegetative restoration.

(7) wetland areas established in non-wetland areas due to mineral extraction activities may be allowed for new wetland credits if all of the following criteria are met:

a. Application for replacement credit is made within five years after the last day that extraction activities have taken place and there is documentation that significant extraction activities occurred during at least one year during the five years prior to the last day extraction activities were documented.

b. The Corps of Engineers has approved the use of the area for wetland replacement,

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- c. The landowner relinquishes all mineral rights or transfers them to the state,
- d. A wetland establishment and management plan have been approved by the TEP and implemented by the landowner,
- e. The wetland area meets the criteria in standards in part 8420.0550,
- f. If the land is not state owned, a conservation easement in favor of the state has been accepted by the state and recorded in the county recorder's office or if the land is state owned, covenants and restrictions are recorded that identify the wetland area is a replacement wetland subject to the provisions of the Wetland Conservation Act.

(Note: the following Section E. was deleted in entirety and replaced with a new Section E. for ease of reading in violation of rule writing protocol.

~~E. The local government unit may allow constructed storm water detention basins constructed in non-wetlands for new wetland credit if the basin conforms to the following specifications:-~~

- ~~—— (1) the basin design uses a two-cell system in which the upstream cell has a 24-hour retention time for a two-year storm event;-~~
- ~~—— (2) the downstream cell is designed for a maximum 12-inch rise in water level for a ten-year storm event;-~~
- ~~—— (3) the standards in part 8420.0550 are followed; and~~
- ~~—— (4) the design goal is a palustrine emergent wetland.-~~

~~Only the downstream cell can be counted for new wetland credit, and the replacement plan must include a plan and schedule for maintenance of the storm water basin system. Storm water detention basins allowed for replacement are not eligible~~

~~for the exemptions in part 8420.0122 and are subject to parts 8420.0500 to 8420.0630.-~~

~~Storm water management basins constructed for the primary purpose of controlling or treating storm water runoff from impervious surfaces or developed areas, not conforming to the specifications in subitems (1) to (4), are not considered wetlands eligible for replacement credit.-~~

E. The local government unit may allow constructed storm water treatment basins for replacement credit provided:

(1) the local governmental unit has adopted, implemented, and funded a storm water management plan that provides for the removal of sediments whenever the phosphorus removal efficiency drops below 50 percent efficiency based on actual water quality monitoring data, calibrated modeling, or physical measurement of the pond volume,

(2) the basins are constructed in non-wetland areas that are directly tributary to public waters, wetlands or other waters of the state that are not storm water treatment ponds, and

(3) the basins are associated with an ongoing or proposed project that will impact a wetland.

The credit allowed must be in accordance with (a) through (d) below:

(a) **public value credit** may be allowed for up to 75 percent of the normal pool area of a isolated one-cell, wet detention basin or the upper cell of a two-cell system provided the basin is designed and constructed to retain at least 60 percent of the phosphorus loading expected in the runoff from a one year - 24 hour storm based on the fully developed watershed tributary to the basin,

(b) **public value credit** may be allowed for up to 75 percent of the one-year design pool area of a storm water infiltration area that also has an established native, non-invasive vegetative cover.

(c) **new wetland credit** may be allowed for up to 100 percent of the normal pool

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area of the downstream cell of a two-cell, wet detention system provided:

1. the two cells are completely separated by a barrier for up to the ten-year critical event;

2. the upstream basin meets the criteria in E., (3), (a), above;

3. the downstream cell is designed for a maximum 12-inch rise in water level for the ten-year critical storm event;

4. the standards in part 8420.0550 are followed; and

5. the design goal is a palustrine emergent wetland for the downstream cell.

(d) Buffer areas installed adjacent to two-celled systems that are consistent with 8420.0540, Subp. 2 may be allowed for **public value credit** in an amount up to 75 percent of the acreage of the downstream cell of a two-cell system, provided the buffer is applied only to the downstream cell, is no narrower than 16.5 feet at any one location, and is adjacent to the entire periphery of the downstream cell.

(e) Storm water detention basins allowed for replacement are not eligible for the exemptions in part 8420.0122 and are subject to parts 8420.0500 to 8420.0630.

Subp. 3. Timing of replacement. Replacement of wetland values must be completed before or concurrent with the actual draining or filling of a wetland, unless an irrevocable bank letter of credit or other security acceptable to the **responsible local** government unit is submitted to the **responsible local** government unit to guarantee successful completion of the replacement. All wetlands to be restored or created for replacement must be designated for replacement before restoration or creation. Submission to the local government unit of the information required in part 8420.0530 and subsequent approval shall be considered evidence of designation for replacement, provided the information is submitted before the actual restoration or creation. The exceptions contained in subpart 5 do not apply to replacement completed using wetland banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996.

Add definitions for:

Native Plant Species means plant species that are indigenous to Minnesota, or that expand their range into Minnesota without being intentionally or unintentionally introduced by human activity.

Non-invasive Plant Species means plant species that do not typically invade or rapidly colonize existing, stable plant communities.

8420.0540, Subp. 10.

~~F. Determining credit for restoration of partially drained wetlands The determination of acres credited for fully restoring the hydrology of a wetland that has been partially, but demonstrably, affected by drainage, is in two parts. The first is the *new wetland credit* (NWC) caused by the restoration, for example, if the prerestoration wetland is one acre and postrestoration will be three acres, the new wetland credit is two acres. The second credit is for the change in value of the prerestoration wetland acres. This is the *public value credit* (PVC) and is equal to 50 percent of the acreage of the prerestoration wetland.~~

~~The credit for increase in new acres can be used in its entirety as *new wetland credit*. The *public value credit* can only be used for that portion of wetland replacement requiring greater than a 1:1 ratio in less than 80 percent areas and 0.5:1 in greater than 80 percent areas.~~

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- ~~—Calculation of partial restoration credits is explained by the following example:~~
- ~~—A partially drained five-acre Type 1 (PEMA) wetland is to be restored to its former state, which would be a ten-acre Type 3 (PEMC) wetland.~~
- ~~—New Wetland Credit = five acres of Type 3 (PEMC) wetland~~
- ~~—Public Value Credit = 2.5 acres of Type 3 (PEMC) wetland~~
(50 percent of five acres of preresoration acreage).

18. Accelerated Rulemaking/Effective Date

This will allow the items requiring interim rulemaking and process changes to take effect in harmony with training and rulemaking efforts so that the complete set of changes takes effect on August 1, 2000.

[RULES.] Within 90 days of the effective date of this section, the board and the commissioner of natural resources, shall adopt rules that amend the rules previously adopted under Minnesota Statutes, sections 103G.2242, subdivision 1, 103B.3355 and 103G.315, subdivision 15. These rules are exempt from the rulemaking provisions of Minnesota Statutes, chapter 14, except that Minnesota Statutes, section 14.386, applies and the proposed rules must be submitted to the senate and house environment and natural resource committees at least 30 days prior to being published in the State Register. The amended rules are effective for two years from the date of publication of the rules in the State Register unless they are superseded by permanent rules.

[EFFECTIVE DATE.] This act is effective the day following final enactment, except that sections (items in endnotes 1, 3, 5, 9, 11, 12, 13, 15, 16) take effect on August 1, 2000.

19. Sunset the Wetland Heritage Advisory Committee

Explanation of Changes: The Wetland Heritage Advisory Committee has fulfilled its role in developing the initial rules and providing program oversight to the startup of the Wetland Conservation Act. The committee members and agencies they serve previously supported expiration of the committee but it was not on the final list of committees abolished under a bill passed for this purpose a few years ago.

103G.2242

Subd. 11. Wetland Heritage Advisory Committee. The governor shall establish a wetland heritage advisory committee consisting of a balanced diversity of interests including agriculture, environmental, and sporting organizations, land development organizations, local government organizations, and other agencies. The committee must consist of nine members including the commissioner of agriculture, or a designee of the commissioner, the commissioner of natural resources, and seven members appointed by the governor. The governor's appointees must include one county commissioner, one representative each from a statewide sporting organization, a statewide conservation organization, an agricultural commodity group, one faculty member of an institution of higher education with expertise in the natural sciences, and one member each from two statewide farm organizations. The committee shall advise the board on the development of rules under this section and, after rule adoption, shall meet at least twice a year to review implementation of the program, to identify strengths and weaknesses, and to recommend

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changes to the rules and the law to improve the program. This committee and its duties shall expire on July 1, 2000.

Old Business

2. **Minnesota River Basin Water Quality
Improvement Projects (1999 LCMR Funds) -
DECISION**

**MINNESOTA RIVER BASIN JOINT POWERS BOARD
WATER QUALITY IMPROVEMENT PROJECTS
LCMR 1999 LOCAL LEADERSHIP GRANT APPLICATIONS**

APPLICANT	PROJECT TITLE	COST ESTIMATE	FUNDING REQUEST	RECOMMENDED FUNDING
Watsonwan SWCD	St. James Creek Channel Restoration Demonstration Restore Approx. 1,000 Feet of Channel on a CREP Parcel	32,000	24,000	24,000.00
Carver SWCD	Rock Inlet Implementation Project 130-15 Foot Muck Pipe Surrounded by Pea Rock	20,000	15,000	15,000.00
Stevens SWCD	Rock Vane Streambank Stabilization Install Rock Vane Materials on 3 Sites	10,125	9,493	9,500.00
Scott County Public Works	Agriculture Drain Tile Inlet Inventory @ BMPs Identify and Install Priority Demo. and Edu. Sites of BMPs Around Drain Tile Inlets		15,000	3750.00
LeSueur SWCD	Blind Tile Inlets Install Approx. 100 Rock Inlets	26,667	25,000	25,000.00
Chippewa SWCD	Berven Streambank Stabilization 600 Feet of Bank Stabilization and Channel Bed Reconstruction	30,000	22,500	22,500.00
WesMin RC&D	Sam Brown Cabin Streambank Stabilization 300 Feet of Stabilization to Preserve a Historical Building	60,000	10,000	10,000.00
Scott County SWCD	Streambank Stabilization Sand Creek Watershed	25,000	14,195	14,195.00
Scott County SWCD	Streambank Stabilization Sand Creek Watershed	500,000	30,000	30,000.00
BERBI	Accelerated Implementation of 6 Projects Projects to be Managed per BERBI Policy		100,000	43,500.00
Pope County Enviromental Services	Trappers Run Watershed Sediment Pond Four-Acre Retention Pond	60,000	42,000	none
Martin County Enviromental Services	G.I.S. and G.P.S. Technology to Inventory Private Drainage Systems into Public Systems	23,460	16,776	none
	Signage Dollars Reserved to Identify the LCMR Projects			2,555.00
	Total LCMR Projects Recommended for Funding		323,964	200,000

January 3, 2000

To: Ralph Malz, MNRJPB

From: Linda Meschke, BERBI Coordinator

Subject: Projects for Review

Below is a list, and attached is supporting documentation, regarding individual projects BERBI has been asked to submit to the Major Projects Review Team for the allocation of \$43,500. I have included the documentation as we had discussed on the phone. If additional information is needed please inform me so it can be gathered.

#	Project Description	County	Cost Share Amount	Brief Description
1	Streambank Protection	Watonwan	\$ 11,250	High priority site along Butterfield Creek. Project involves bank stabilization along 300 feet of bank eliminating an estimated 140 T/Y of sediment being delivered to the river.
2	Grade Stabilization	Watonwan	\$ 3,000	A gully approximately 20 feet long, 3 feet wide and 3 feet deep has formed at the end of a grassed waterway. The solution is to construct a side inlet structure which will have a 200 foot long dike with a height of 2-3 feet at the field edge allowing runoff to temporarily pond. A principle spillway, consisting of 6-8 inch PVC pipe will be installed to provide an outlet. Sediment reduction [estimated] to the river will be 21 T/Y.
3	Terrace	Blue Earth	\$ 9,000	There are currently 7 large draws that are eroding away due to gully erosion. By installing terraces in these locations we will be able to stop the problem from progressing further. Site is within 800 feet of the Maple River and is a high priority. Estimated sediment reduction to the river is 6,132 T/Y.
4	3 Sediment Basins	Waseca	\$ 3,637	This project will provide the construction of three sediment basins to control approximately 900 feet of gully erosion that is occurring and contributing an estimated 237 T/Y of sediment to a nearby County Ditch. This project is a high local priority.
5	Waterway	Waseca	\$ 9,825	Approximately 3200 feet of an old waterway will be replaced preventing an estimated 333 T/Y of sediment from being delivered to the Little Cobb river.
6	Gully Stabilization	Cottonwood	\$ 9,000	About 80 acres drain through this draw to the Watonwan River. A bad gully has formed, and back cutting occurred, where the water drops into the river. A stabilization pond with a tiled outlet will correct the problem and prevent an estimated 55 T/Y of sediment from the river.
			\$45,712	The amount above \$43,500 we will take from our other cost share funds.

Total Project Cost	\$60,949
Cost Share	\$45,712
Landowner Share	\$15,237

No T+A to be used.
Funding recommended: \$43,500

New Business

- 1. Preliminary Review of LCMR Proposals -
DISCUSSION AND DECISION**

draft
LCMR Proposals
FY 2002-2003
Board of Water and Soil Resources

These proposals implement strategic state and local natural resource goals and are efficiently and effectively implemented by building on existing programs and delivery systems.

► **Conservation Reserve Enhancement Program (CREP) in the Minnesota River Basin**

Request \$60M to fully fund balance of CREP 100,000 acre goal, knowing that the amount needed may change based on legislative action on the capital budget. Other ideas with merit which will be referenced in the proposal include: fund "pre-CREP" continuous CRP enrolled lands; address near-metro payment rate/land value disparities; and, target a subwatershed(s).

► **Natural Resource Block Grant Challenge Grant (continuation)**

Accelerate the implementation of priority action items in Comprehensive Local Water Plans statewide. Current LCMR funding is \$1M. Local governments could implement an additional \$3.5M of projects in the next biennium.

► **Web based Geographic Information System Accomplishment Tracking**

This proposal would fund development and testing of a natural resource accomplishment tracking tool for local governments. It would enter information in a GIS format and would be accessible and interactive via the Internet. This system would be a natural progression in the update of the LARS reporting system. \$250,000.

► **Soil Survey Update (continuation)**

Continue the update of existing soil surveys in SE MN (Dodge, Fillmore, Goodhue, Wabasha) and four additional counties in SW MN (Cottonwood, Nobles, Lincoln, Pipestone). Results in better use of soils data in GIS and other applications. Current LCMR funding is \$500T. Proposal is for \$1M. Key partners are the Natural Resources Conservation Service, the University of Minnesota and participating counties.

FOR YOUR INFORMATION

- "Board Member Update"
- Education and Public Relations Committee Meeting Minutes of 12/15/99
- BWSR Capital Budget Request, Fiscal Years 2000-2005
- "2000-2005 Minnesota Strategic Capital Budget Plan Executive Summary"
- Big Stone County Ditch #2, District Court decisions on summary judgement motions
- Minnesota Statutes Annotated Volume 8A and 8B
- Comments on the Integrated Assessment of Hypoxia in the northern Gulf of Mexico
- "Conservation Briefs" - \$1.3 Billion Conservation Package Announced
- National Resources Inventory: Land Conversion Rates by State
- Minnesota Greenways Initiative
- "The Saga Of A BWSR Board Member" by Barb Cobb



Board member Update

January 2000

Southern Region

Local water planning

BC Mary Kells coordinated and facilitated a multi-county (Houston, Fillmore and Winona) and multi-agency (BWSR, the Pollution Control Agency, the Minnesota Department of Agriculture, the Department of Natural Resources, the Minnesota Geological Survey and the Minnesota Department of Health) meeting in Preston, Minnesota, to discuss water plan update procedures, agency participation and review, and watershed management opportunities with the Root River Watershed basin. All three counties are scheduled to update their water plans by December 2000.

Conservation easements

The third 1999 regular Reinvest in Minnesota (RIM) Reserve signup is over. Funding decisions were made easier this year with the ability to secure RIM Reserve easements on top of existing federal Conservation Reserve program (CRP) contracts, similar to what BWSR is doing through

the Conservation Reserve Enhancement Program (CREP). The southern region received 186 requests. In looking ahead to next year, we hope the CRP Extension Program can be expanded to include additional priority sites for RIM beyond just the narrow grass filter and forest buffers.

Wetlands

A busy month for Wetland Conservation Act (WCA)-related activities and technical evaluation panel (TEP) reviews in Houston County, which includes the cities of Winona, Rochester, and Zumbrota. The Don Prow WCA violation in a pristine Type 2/3 wetland complex within the city of Rochester has caught the interest of the Environmental Protection Agency (EPA) enforcement division. This violation dates back to 1995, and considerable work has been done to get this case into court. This work resulted in a WCA case file being presented to the county attorney this past summer. Although the case has not moved along in district court at this time, EPA has come through with a restoration order for this site. Multi-agency communications have resulted in a comprehensive EPA restoration order that encompasses

In looking ahead to next year, we hope the CRP Extension Program can be expanded to include additional priority sites for RIM beyond just the narrow grass filter and forest buffers.

BCs Mary Kells, Tom Fischer and David Sill participated in the workload analysis project undertaken by the soil and water conservation district (SWCD)/Natural Resources Conservation Service (NRCS) partnership and led by NRCS.

WCA violations, DNR public waters violations, and Army Corps of Engineers (ACOE) violations. The landowner/developer has submitted a revised restoration plan to meet these requirements and actual restoration of this site may become a reality. Of course, with it may come stiff administrative penalties from the EPA.

BC Tabor Hoek reports that December 31 marked the deadline for a couple of sticky wetland restoration orders. Neither were complied with; stay tuned.

Miscellaneous

BCs Mary Kells and Dave Peterson coordinated and conducted a soil survey update meeting with staff from Goodhue, Wabasha, Fillmore, and Dodge counties. The purpose was to update the counties on the status and timetable of the Legislative Commission on Minnesota Resources (LCMR) Soil Survey Update grant, review technical and administrative implementation modes and begin development of the grant agreements between BWSR and the counties. BWSR staff member Greg Larson provided information materials for the meeting and will be drafting the agreements based on the outcome of this meeting.

Hot topics

BCs Mary Kells, Tom Fischer and David Sill participated in the workload analysis project undertaken by the soil and water conservation district (SWCD)/Natural

Resources Conservation Service (NRCS) partnership and led by NRCS. To complete this project, NRCS put together six "time teams," which helped ensure that each area was assigning similar amounts of time to similar tasks. BWSR staff members serving on these teams took part in a two-day training session and participated at a state workload analysis quality assurance meeting in Waite Park. This topic has raised many questions and concerns from local SWCDs as area time teams try to average time requirements for completing core work products based on these six time team areas. This is a base line product to assess existing staff workload. Local governments will be able to customize the workload analysis model and data to be more useful for justifying workload and funding needs at the county level for presentation to local funding sources (i.e. county, SWCD, cities, BWSR, etc.).

Metro region

Water planning

BWSR has received many requests from metro watershed management organizations (WMOs) to extend deadlines to finalize new joint powers agreements (JPAs) between members. BWSR is addressing the requests in the following manner:

- BWSR will accept a single one-year extension (mimics language in MS 103.B for plan extensions).

- BWSR will require a schedule for completion of the final JPA and plan as a condition of approving the amendment.
- BWSR will require inclusion of all the "easy" corrections that can be made to the JPA (meaning the additions required by the 1995 statute amendments).
- Each local government will be notified that there will be no further extensions and that immediately upon expiration of the JPA BWSR must notify the county(s) that the WMO has been found to be non-implementing. At this point, the WMO can still execute a JPA; but they have, through inaction, allowed the county to take control of proceedings that could result in formation of a watershed district or continuation of the water management role by the county. In short, the WMO will have lost control, possibly for good.

Staff serving on WMO boards

A law approved last year (the Ozment Commissioner Law) requires the removal of city staff or consultants from serving as representatives on JPA WMO boards by December 31, 1999.

When BWSR looked at the issue in August 1999, the law would have affected approximately 68 of 146 WMO representatives; BWSR staff members estimate that approximately 25 percent of total representatives are still affected.

Although several WMOs intend to try to have the law changed in the 2000 legislative session, we do not believe this effort will be successful in either clarifying the existing law or removing it altogether.

Overall, the issue of representation on WMO boards is not one that correlates to how well the WMOs perform. The primary impact of who serves is in the political/policy arena and not in the environmental area. Our intent is to notify WMOs of the law and let them know that non-compliance could jeopardize future grants; however, BWSR cannot force compliance any more than we can for violation of (for example) the Open Meeting Law. Metro water planning rules do allow for removal of WMO board representatives for malfeasance, although this is by the appointing authority, not BWSR.

Metro water planning grants

A few recent recommendations regarding metro water planning grants:

- Metropolitan area (seven county) has a "partially funded mandate" to conduct watershed planning. Grants were instituted for encouraging completion of second-generation plans. Grants were not available for the first generation and we are assuming they will not be available for third generation.
- It is not practical for BWSR to recover grant monies for non-performance due to the current contract language. We would like to remedy this by adding an additional clause to the (half-dozen) remaining contracts that

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allows BWSR to recover funds if the plan is not submitted by the priority plan date.

- If any grant assistance is contemplated for third generation plans, it should be awarded upon approval of the completed third generation plan. If a WMO is not willing to finance its own planning effort, it isn't realistic to expect them to actually implement any program they might devise. Providing funds after completing a plan would result in rewarding organizations showing a willingness to plan and implement on their own.

Northern Region

Wetlands

The Wetland Conservation Act (WCA) is the star of the show again in the north region. BWSR assistance to local government units (LGUs) as they wrestle with complicated violations, appeals, and consistency in implementation issues takes a lot of field staff time. A few examples:

Board Conservationist (BC) Keith Grow and Wetland Specialist Dan Eklund recently had to walk the Mille Lacs County board through a

wetland appeal that had been remanded back to them from our Dispute Resolution Committee. This was the first appeal the board had heard. Keith and Dan spent a lot of time working with staff to prepare the findings of fact and other appropriate information so that the local appeal process would be handled appropriately. Dennis Johnson, the Department of Natural Resources (DNR) wetland enforcement officer, was a valuable partner in this hearing as well. The Mille Lacs County attorney was very appreciative of the BWSR and DNR assistance.

Dan Eklund, BC Bill Best and Northern Supervisor Ron Shelito spent a cold winter day in Thief River Falls helping the city work through a violation that involves a shoreland ordinance violation and a WCA violation. After wrestling with the jurisdictional issues we decided to pursue restoration under WCA. The city attorney and county attorney were both convinced that this case would be lost in court if prosecuted as a shore land ordinance violation. This is a good example of what on-the-ground WCA implementation is really all about: a bunch of agency people in a room with a bunch of local people, trying to figure out the best strategy to get restoration and knowing that we might end up in court no matter how we proceed. Dan and Bill did an excellent job of coaching the locals on their options. I think we reached a compromise that will get restoration and has a chance of keeping us out of court.

Duluth BC Mark Nelson has several contentious wetland projects in the Duluth area. Home Depot is proposing a three-acre impact for their new

store, Spirit Mountain Ski Area is building a golf course and has not submitted a replacement plan yet, and the city of Hermantown is undergoing a rapid residential development involving many different wetland impacts that are hard to follow.

Dan Eklund reports that he has five County Water Protection and Management Plans (CoWProMPs) in various stages of development. Beltrami has finished its first draft, Clay County is in the process of developing its functions and values model, Aitkin will be initiating a CoProMP in January, the city of Baxter is close to finishing up its plan, and Koochiching is preparing its final draft to bring before BWSR in February/March 2000.

Miscellaneous

Kamal Alsharif, education coordinator, reports that he received the Minnesota Project Wet Facilitator of the Year Award for 1999. Kamal got the award for the many LGU Project Wet workshops that he helped facilitate in 1999. Congratulations to Kamal.

Engineering and Technical Services Section

Conservation Easements

Planning has begun on how to best implement substantially increased funding for the Minnesota River

Conservation Reserve Enhancement Program (CREP) in light of the governor's budget. Although there's no way to know the final appropriation numbers, we're encouraged by the governor's budget and are doing some preliminary planning for implementation.

During calendar year 1999 continuous and regular easement sign-ups, we accepted a total of about 640 easement applications. This is about 3.2 times the number of easement applications accepted in 1998.

BWSR engineering support for CREP, the regular Reinvest in Minnesota (RIM) Reserve Program, the RIM/Wetlands Reserve Program (WRP) partnership, and road replacement wetland banking also hit a new record in 1999. A total of 330 wetland basin restorations are included in the easements accepted in 1999. This is about 2.8 times the number included in easements accepted in 1998.

Polly Remick, easement processing specialist, returned to work part-time this month after an extended illness in December. We're glad she's getting back to better health!

Training

The Partnership Training Calendar for 2000 includes about 140 training sessions to be provided at the area level. Justin Jeffery, BWSR/NRCS training engineer, will also provide a number of state level training sessions for feedlots and other engineering practices.

Pollution Control Agency (PCA), BWSR and Natural Resource Conservation Service (NRCS) staff are

Kamal Alsharif, education coordinator, reports that he received the Minnesota Project Wet Facilitator of the Year Award for 1999.

Nutrient management technical assistance associated with the required manure management plans is expected to greatly increased workload for both government and the private sector.

planning a joint feedlot training session for March 15, 2000. The audience includes county feedlot officers, SWCD staff and NRCS staff. The objective is to promote coordination, consistency and effectiveness in working with livestock producers.

Lakeshore Engineering

Gene Clark, lakeshore engineer, recently helped North Shore soil and water conservation districts (SWCDs) to submit two grant proposals to the Great Lakes Commission. Two relatively new SWCD staff members were motivated to write proposals this year.

Brad Matlack, lakeshore engineering technician, slipped on some ice, fell and broke an ankle and leg. We hope for his speedy recovery!

Hot Topics

Derek Fisher, conservation agronomist, and Al Kean, chief engineer, recently worked with an ad hoc focus group of SWCD staff and supervisors to identify key issues for SWCDs to consider regarding the proposed new feedlot rules. Public hearings on the proposed rules started this week. A major issue for SWCDs is the technical assistance workload the new rules will generate and how SWCDs will be involved. Nutrient management technical assistance associated with the required manure management plans is expected to greatly increased workload for both government and the private sector. Engi-

neering technical assistance needs are also expected to greatly increase to meet the proposed new technical standards and compliance timelines. Construction inspector certification requirements are another key issue for SWCDs.

Education and Public Relations Committee
Minnesota Board of Soil and Water Resources
=====

Board
Members -
FYI

Minutes of 12/15/99 Meeting

Attending
=====

Paul Krabbenhoft (Chair), Jim Anderson, Leland Coe, Ginny Imholte, Clair Nelson, Ron Struss (staff)

Decisions
=====

The Education and Public Relations Committee met after the regular Board meeting on 12/15/99 and directed BWSR staff to investigate educational programs in the following areas (listed in order of priority):

Ditch Maintenance Education for Drainage Authorities
=====

Design and deliver education programs for drainage authorities, who are largely county commissioners, that will cover: 1) Statue 103 and its complexities, 2) Required steps to legally maintain and alter drains, 3) An appreciation of how drainage needs and practices vary across the state, 4) Common problems to avoid, and, 5) Who is in authority, and who to call for assistance.

Quarterly AMC District meetings were suggested as good venues for such training. Ron Struss will contact Liz Templin, UM Extension Liaison at the AMC, about pulling a team of people together to design this training.

Sharing of the Red River Mediation Process
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There is good information coming out of the Red River Mediation Process that should be shared with others. Ron Struss will visit with Ron Harnack, BWSR, Brian Dwight, BWSR, and Paul Swenson, DNR, about possible educational messages and opportunities.

High Lake Level Education
=====

Develop a "PowerPoint" type presentation available on the BWSR Web Site that will give background on: 1) The causes of high lake levels (Bob Merritt, DNR, has materials), 2) Indicates who is in authority, and what authority those entities have, and, 3) Organizational (not technical) solutions available to address high water problems. The information would be designed to help County, WD, SWCD, and BWSR staff in giving presentations to decision makers. Ron Struss will work with Doug Thomas, BWSR, on this project.

Senate Bill 83 Wetlands Legislation

It was noted that our educational needs and priorities might change dramatically depending on the course that Senate Bill 83 takes.

BWSR Public Relations

No decision was made on this issue, but it was noted that many decision makers in the state that should have a clear understanding of the Minnesota Board of Water and Soil Resources, do not.

Submitted by Ron Struss, 12/15/99

RON STRUSS

University of Minnesota Extension - MN Board of Water and Soil Resources

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AGENCY CAPITAL BUDGET REQUEST
Fiscal Years 2000-2005
Dollars in Thousands (\$137,500 = \$138)

Project Title	2000 Agency Priority Ranking	Agency Project Requests for State Funds (\$ by Session)				Statewide Strategic Score	Governor's Recommendation 2000	Governor's Planning Estimate	
		2000	2002	2004	Total			2002	2004
Conservation Easement Programs	1	\$58,100	\$25,700	\$43,890	\$127,690	405	\$35,575	\$50,634	\$10,000
Local Gov't Roads Wetland Banking	2	1,000	4,800	4,900	10,700	275	0	0	0
Total Project Requests		\$59,100	\$30,500	\$48,790	\$138,390		\$35,575	\$50,634	\$10,000

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AGENCY MISSION STATEMENT:

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

To accomplish its mission, the BWSR:

- acquires or supports the acquisition of easements to restore and/or protect critical lands;
- administers grant programs to provide funding to local governments for water and soil resource management;
- promotes water and soil resource partnerships among state, local, and federal governments and private organizations;
- conducts technical training sessions and provides individual assistance to local units of government; and
- coordinates state government water and soil resource activities with local governments.

TRENDS, POLICIES AND OTHER ISSUES AFFECTING THE DEMAND FOR SERVICES, FACILITIES, OR CAPITAL PROGRAMS:

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

- **Non-point source strategy moves to implementation phase.** The strategy for non-point source pollution has moved to the implementation phase. The BWSR's local government network has increased in importance as a means of disseminating financial and technical aid to local governments. The BWSR has the structure and the relationships needed, through local water planning, to address non-point concerns at the local level.
- **Federal actions increase pressure.** Federal actions over the past several years have tended to increase pressure on the BWSR and local governments. Federal Conservation Reserve Enhancement Program (CREP) is making \$163 million available; however this money must be matched with state money. Decreased United States Department of Agriculture (USDA) staffing for the Natural Resources Conservation Service (NRCS) has elevated pressure on local and state governments to provide the technical assistance necessary to design and install conservation practices.

- **Increased acknowledgement of and reliance on the role and capabilities of local government.** Partnerships – particularly between state, local and federal government – are an effective way to accomplish resource protection goals. Over the past several years, state government agencies have grown increasingly dependent on local government to carry out state initiatives. Cooperative resource management is one way to maintain or increase results without increasing funding. State agencies acknowledge that local government officials and staff have advantages that the state does not: knowledge of local resources and attitudes, personal friendships, and an awareness of local needs and priorities. With these increased expectations and the BWSR assistance, some local government capabilities in resource management have grown significantly over the past few years. Local governments now need a wider variety of training and assistance, from the most basic level to advanced, in areas such as technical skills, leadership, and management.
- **Increased natural resource awareness/willingness among the general public, including landowners.** More Minnesotans are becoming concerned about our environment, particularly water quality; many people have noticed deteriorating conditions in their favorite lakes or fishing streams. With approximately one-third of Minnesota adults either owning a cabin or having a family cabin, people are more willing to make reasonable sacrifices to protect and improve water quality. In addition, people are more aware of the need to protect marginal lands, especially those close to critical water resources. The agricultural community has accepted the need to remove marginal agricultural lands from production in order to improve overall production.

PROVIDE A SELF-ASSESSMENT OF THE CONDITION, SUITABILITY, AND FUNCTIONALITY OF PRESENT FACILITIES, CAPITAL PROJECTS, OR ASSETS:

The following information outlines the condition of Minnesota's 23 million acres of cropland and the related conservation needs.

Total Minnesota Cropland: 23 Million Acres**Soil Conservation Needs:****10 Million Acres:**

- Adequately protected from erosion
- Annual erosion is less than the tolerable rate of soil loss
- Need to maintain good management practices

8 Million Acres:

- Eroding at one to two times the tolerable rate of soil loss

- Technical assistance to landowners to implement good management practices to protect soil is key

2.5 Million Acres:

- Eroding at greater than twice the tolerable rate of soil loss.
- Productive land only if protected with conservation practices
- Targeted cost-share programs for structural conservation practices

2.5 Million Acres:

- | | |
|--|---|
| <ul style="list-style-type: none">▪ Marginal land conservation▪ Highly erodible and floodplains▪ Should not be farmed▪ Target with land retirement programs | Funding for BWSR
easement programs will be
used on portions of this land. |
|--|---|

Degrading water quality and diminished fish and wildlife habitats are found throughout all regions of Minnesota. A case in point is the Minnesota River basin. The Minnesota River has suffered serious degradation of water quality from both agricultural and urban development activities in its watershed. Approximately 92% of the basin's 17 thousand square mile area is in agricultural use. Intense land use has made the river one of the country's most polluted and the single largest source of phosphorus and sediment to the Mississippi River.

In the 1970s and 1980s the State of Wisconsin filed lawsuits against the State of Minnesota for exceeding federal water quality standards along the stretch of the Mississippi River shared by the two states. The litigation contended that the major wastewater treatment plants which treat the sewage of the Minneapolis-St. Paul metro area were discharging an inappropriate level of pollutants. In 1986 the State of Minnesota signed an agreement with the United States Environmental Protection Agency (USEPA) that, as part of the re-permitting of the major wastewater treatment plants which serve the Twin Cities Metro area, the state agreed to achieve major reductions in pollutants entering the Mississippi River from the Minnesota River.

To rely on wastewater treatment plan upgrades alone to accomplish water quality goals would require huge investments with decreasing returns on investment. It was decided that pollution from non-point sources in the Minnesota River watershed could be reduced more economically than relying on wastewater treatment plant upgrades alone. Thus, in 1992 the state adopted a goal to clean up the Minnesota River to fishable and swimmable status within 10 years.

The Minnesota River Citizen's Advisory Committee issued a report in 1994 titled - "Working Together: A Plan to Restore the Minnesota River". The first two recommendations in their 11-point action plan are to 1) restore floodplain and riparian areas, and 2) restore wetlands. This report also cites the RIM Reserve program as an important vehicle to help accomplish these 2 recommendations. The primary

component of the strategy to achieve this goal was for the state to acquire, in concert with local and federal initiatives, 200 thousand acres of the floodplain of the Minnesota River proper plus riparian, the land close to the water lands along its major tributaries.

DESCRIBE THE AGENCY'S LONG-RANGE STRATEGIC GOALS AND CAPITAL BUDGET PLAN:

The BWSR Strategic Plan identifies voluntary resource management strategies and related goals. The resource management strategies specified are acquisition, education, incentives and regulation. The plan also identifies goals that focus on assisting local governments and landowners in controlling natural resource management problems.

Agency goals and objectives that are achieved through capital projects include:

- protecting or retiring marginal agricultural and highly sensitive lands;
- targeting limited resources to the highest priority marginal and sensitive lands;
- permitting land managers to focus their stewardship efforts on more productive lands;
- creating natural retention systems to improve surface water runoff and enhance groundwater recharge;
- working towards a net gain of wetland resources;
- installing best management practices on Minnesota lands;

The programs outlined in the capital budget request use incentive strategies as tools available to local government to enhance local program delivery. Incentives provide opportunities to encourage beneficial land and water use practices. They encompass both urban and rural values, and promote both loan and grant programs.

Conservation Easement Programs: As part of the state's efforts to protect marginal land and improve water quality, the BWSR administers (or cooperates) in the administration of various conservation easement programs. All of these programs acquire or support the acquisition of easements to restore or protect critical lands. Regardless of the funding source and targeted areas, the programs are similar in their purposes. In order to understand and place in context the other BWSR conservation easement programs, background on the federal Conservation Reserve Program (CRP) is needed.

Established in 1985 by the federal government, the CRP encourages farmers to voluntarily plant grass and trees on land that needs protection from erosion, to act as windbreaks, or in places where vegetation can improve water quality or provide food and habitat for wildlife. The program is administered by the U.S. Department of Agriculture's Commodity Credit Corporation (CCC) through the Farm Service Agency (FSA). The BWSR works with federal CRP administrators to insure CRP and state-funded easement programs are coordinated. The farmers must enter into contracts with the CCC lasting between 10 and 15 years. In return, they receive annual rental payments, incentive payments for certain activities, and cost-share assistance to establish the protective vegetation.

Recently, the U.S. Congress provided additional funding to enhance the CRP efforts. In 1996, the federal farm program offered a Conservation Reserve Enhancement Program (CREP) option for states to provide for long-term retirement of flood prone cropland. Minnesota applied for and was awarded funding from the federal government for a CREP initiative in the Minnesota River, which would retire up to 100,000 acres of flood prone agricultural land in the basin. These funds are all authorized and appropriated.

The state established the Reinvest In Minnesota Reserve Program in 1986. Since 1986, the state-funded easement programs have secured 82 thousand environmentally sensitive acres throughout the state. The Conservation Easement programs include:

RIM Reserve Match to the Minnesota River Basin Project under Conservation Reserve Enhancement Program (CREP)

The purpose of this program is to retire marginal, flood prone cropland along the Minnesota River and its tributaries and to reduce phosphorus and sediment pollution in the river. The federal program limits the geographic focus to the Minnesota River Basin.

This request provides the state match needed to earn the federal funds already appropriated. The state will leverage \$2.3 federal dollars for each state easement dollar spent.

RIM Reserve: Wetland Reserve Partnership (WRP) Leverage Funding

This program restores previously drained wetlands and protects them from future drainage with a perpetual easement. The combination of a 30-year NRCS WRP easement and a RIM Reserve Perpetual easement streamlines the easement process for both local units of government and landowners. The requested funding provides the state match. The geographic focus of this program is the Prairie Pothole Region.

RIM Reserve (non-CREP) and Permanent Wetland Preserves (PWP)

The purpose of RIM Reserve (non-CREP) is to keep marginal agricultural land out of crop production to protect soil and water quality and support fish and wildlife habitat.

The purpose of PWP is to protect existing wetlands from conversion to other uses by offering financial compensation to landowners in return for a perpetual easement on projects that cannot be funded with federal funds. The geographic focus is statewide.

AGENCY PROCESS USED TO ARRIVE AT THESE CAPITAL REQUEST:

In determining the amount of this request, acreage and application estimates were compiled based on historical program demands. Assumptions were made that the Federal CREP would be fully funded. All estimates considered the amount of eligible land for the program and estimated landowner interest based on past history.

Internal agency estimates were used to arrive at the amount requested for the PWP program. All requests are a reflection of demands for service or assistance of local government and citizens.

AGENCY CAPITAL BUDGET PROJECTS DURING THE LAST SIX YEARS (1992-1998):

Conservation Easement Programs Appropriations

F.Y. 1992	\$1.25 million
F.Y. 1993	\$1.323 million
F.Y. 1994	\$9 million
F.Y. 1996	\$11.5 million
F.Y. 1998	\$15 million

Local Government Roads Wetland Banking Appropriations

F.Y. 1996	\$3,000,000
F.Y. 1998	\$2,750,000

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2000 STATE APPROPRIATION REQUEST: \$58,100

AGENCY PROJECT PRIORITY: 1 of 2

PROJECT LOCATION: Statewide - Multiple locations

PROJECT DESCRIPTION: Conservation Easement Programs

The Board of Water and Soil Resources (BWSR) is requesting \$58.7 million to purchase conservation easements on private land. The BWSR's Reinvest in Minnesota (RIM) conservation reserve programs are important components of the state's efforts to improve water quality by reducing soil erosion and improving wildlife habitat on private lands. RIM is the state's umbrella program for obtaining easements. It is coordinated with the federal conservation easements programs, and implemented through local soil and water conservation districts (SWCD's).

The largest portion of this request, \$45 million, is to partially implement a historic Conservation Reserve Enhancement Program (CREP) agreement between the state and the U.S. Department of Agriculture. This agreement guarantees \$163 million in federal funds for CREP easements on 100,000 acres of flood prone cropland in the Minnesota River watershed. This funding is only available until 9-30-2002, meaning that the BWSR must have completed the agreement phase for all 100,000 acres by 7-1-2002 in order to leave time for the USDA to accomplish their work.

The state has already appropriated \$10 million, leaving a balance of \$60 million to fully leverage available federal funds. The \$45 million in this request would leave a balance of \$15 million in additional state funds needed in the 2002 bonding bill to fully leverage federal funds. The BWSR is working to extend the availability of the federal funds but Congress must open the federal "farm bill" to accomplish an extension - something not scheduled until 2002.

This request is composed of the following components:

- | | |
|--|----------------|
| ■ Conservation Reserve Enhancement Program (CREP): | \$45.0 million |
| ■ RIM Reserve/Wetland Reserve Partnership (WRP): | \$1.1 million |
| ■ Statewide RIM Reserve/Permanent Wetland Preserves (PWP): | \$4.4 million |
| ■ Implementation Funding (\$7.3 million CREP, \$900 RIM) | \$8.2 million |

The RIM Reserve program was established in 1986 "to keep certain marginal agricultural land out of crop production to protect soil and water quality and support fish and wildlife habitat." Funds will be used to acquire conservation easements from landowners, for the purpose of restoring wetlands and establishing permanent vegetative cover. Priority lands for easement acquisition include riparian lands, drained restorable wetlands, sensitive groundwater areas, and marginal agricultural croplands.

RIM Reserve promotes the retirement of marginal lands by paying landowners to stop cropping and grazing, and to plant native grasses, trees, and shrubs instead. This reduces runoff, erosion, and sedimentation, and benefits land, water, fish, and wildlife. Specific benefits to the public include:

- Improves surface water quality by reducing sediment and nutrient loads associated with erosion.
- Prevents contamination of groundwater aquifers by retiring cropland near wellheads and sinkholes.
- Enhances fish and wildlife habitat by establishing permanent vegetative cover.

The process of acquiring an easement involves three distinct stages, application, agreement, and easement. SWCD's determine landowner eligibility, finalize the application, and prioritize in local screening committees. The BWSR selects applications based on state resource protection priorities. The agreement stage entails the most work, as the SWCD works to clear physical conditions or encumbrances from the land, and work with the landowners to develop the conservation plan that will be applied on the easement. The BWSR develops the legal document that spells out payment amounts, acreage, legal description, and responsibilities regarding the easement. During the easement stage, SWCD's work with the landowner to update the abstract and obtain title insurance. The easement is then developed by the BWSR, executed and recorded. BWSR payment to the landowner is then authorized.

Conservation Reserve Enhancement Program (CREP)

In 1985 Congress established a similar program called Conservation Reserve Program. The CRP encourages farmers to plant grasses and trees on land subject to erosion, or where vegetation can improve water quality or provide food and habitat for wildlife. Farmers enter contracts lasting 10 to 15 years. In return, they receive annual rent payments, incentives for certain activities, and cost-share assistance with the planting.

In 1996, Congress provided additional funding to enhance the CRP by funding the Conservation Reserve Enhancement Program (CREP), which provides for long-term retirement of flood prone cropland. Minnesota received enough funding to retire up to 100,000 acres of marginal land in the Minnesota River basin. These funds have been authorized and appropriated.

The focal point of BWSR's capital budget request is the CREP partnership in the Minnesota River Basin. We are currently operating under an agreement with the United States Department of Agriculture (USDA) that creates a partnership between BWSR programs and CREP. This enables the BWSR to leverage an extraordinary amount of federal money in support of Minnesota's long-term goal of cleaning up the Minnesota River. Leveraging the federal funds triples the buying power of conservation easement appropriations.

Capitalizing on the CREP initiative will accelerate Minnesota's effort to achieve the water quality goals agreed to in the Wisconsin lawsuit, which in turn will provide for continued EPA permitting of metro area wastewater treatment plants.

In addition to the environmental benefits, the increased payments to landowners in the Minnesota River Basin will provide welcome relief during a period of extreme hardship for the farm economy.

With funds from the 1998 bonding bill, approximately 15,000 acres have been enrolled in the Minnesota River CREP. Under this joint program, landowners enroll eligible land in a 15-year federal contract, followed by a permanent RIM easement. By paying for the first 15 years, federal funds reduce the state's cost for a permanent easement by 50%.

CREP will promote community sustainability by providing landowners with an alternative to trying to earn a profit on low-lying marginal lands. The economic enhancement is more efficient farming of profitable lands, and additional federal funds at a time when the farm economy is stressed. The "greenways" established by these permanent easements will connect rural and urban areas across the Minnesota landscape. It is a durable legacy of unprecedented value that is available for a limited time.

RIM Reserve/Wetland Reserve Program (WRP)

A second partnership exists between the Natural Resources Conservation Service (NRCS) and the RIM Reserve program. This one splits the cost of wetland restoration easements between RIM Reserve and the NRCS Wetland Reserve Program (WRP). This statewide agreement expires on 12-31-2003. Under this program, landowners sell a 30-year WRP easement and a permanent RIM easement at the same time. Approximately 5 thousand acres are enrolled under this program. Like CREP, this partnership reduces the state's easement costs by 50%. The request of \$1.1 million will restore 2,396 acres of wetlands over the next 2 years.

Statewide RIM Reserve/Permanent Wetland Preserve Program PWP

In order to provide a balanced approach to the protection of marginal land, the BWSR is also requesting \$4.4 million for the (non-CREP) RIM Reserve program. These funds will be used to acquire perpetual easements on marginal agricultural land.

This funding could also be used for the Permanent Wetland Preserve program. PWP acquires perpetual easements on existing type 1 (seasonally flooded basin or flat), type 2 (inland wet meadow), type 3 (cattail), and type 6 (shrub), wetlands and adjacent lands. No federal money is available for this program. The PWP program and the Wetland Conservation Act (WCA) were both passed in 1991 to protect the state's remaining wetlands. PWP discourages the conversion of wetlands exempt under WCA by providing landowners with a financial incentive to retain them. Under these 2

programs, the BWSR expects to put another 4,380 acres of marginal cropland under easement.

Anticipated Outcomes

Enrollment targets for all programs over the 2000-01 biennium are 29,800 acres. Goals and funding costs are summarized below:

Acreage Enrollment Goals:

	RIM/CREP	RIM/WRP	RIM & PWP
To Date	14,000	6,100	61,200
F.Y. 2000-2001	65,000	2,396	4,380
F.Y. 2002-2003	22,000	8,004	5,000
F.Y. 2004-2005	0	0	40,000

State Funds Required to Enroll Goal Acreage:

\$1.0 = 1 million

	RIM/CREP	RIM/WRP	RIM & PWP	Admin.	Total
To Date	\$10.2	\$2.8	\$72.3		\$85.3
F.Y. 2000-2001					
RIM/CREP	\$45.0	0	0	\$7.3	\$52.3
RIM Reserve	0	\$1.1	\$4.4	\$0.3	\$5.8
F.Y. 2002-2003	\$15.0	\$3.6	\$5.0	\$2.1	\$25.7
F.Y. 2004-2005	0	0	\$40.0	\$3.9	\$43.9

IMPACT ON AGENCY OPERATING BUDGETS (FACILITIES NOTES):

The BWSR received a General Fund appropriation from the 1999 Legislature of \$1.203 million for F.Y. 2000, and \$450 thousand for F.Y. 2001 for implementation of easement and grant programs. This is in addition to the \$805 thousand in our base General Fund-operating budget. The CREP and WRP partnerships double the number of easement applications the BWSR must process, but neither of these partnerships provides any federal funding for program implementation at either the state or local level.

The BWSR has adequate funding to implement the conservation easement programs in F.Y. 2000. Accelerating the RIM program to the \$58.7 million level includes

administrative funding of \$8.2 million from this appropriation. Of this amount \$4.9 million will go to SWCD's for their implementation costs. The balance of \$3.3 million will pay for the BWSR costs to implement the conservation easement program. The BWSR did not receive adequate funding for implementation of the conservation easement programs in FY 2001.

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AGENCY CAPITAL BUDGET REQUEST
Fiscal Years 2000-2005
Dollars in Thousands (\$137,500 = \$138)

Project Cost

TOTAL PROJECT COSTS All Years and All Funding Sources	Project Costs All Prior Years	Project Costs FY 2000-01	Project Costs FY 2002-03	Project Costs FY 2004-05	Project Costs All Years	Project Start (Month/Year)	Project Finish (Month/Year)
1. Property Acquisition						07/2000	06/2005
Land, Land and Easements, Options	\$104,620	\$156,200	\$65,300	\$40,000	\$366,120		
Buildings and Land	0	0	0	0	0		
SUBTOTAL	104,620	156,200	65,300	40,000	366,120		
2. Predesign							
SUBTOTAL	0	0	0	0	0		
3. Design Fees							
Schematic	0	0	0	0	0		
Design Development	0	0	0	0	0		
Contract Documents	0	0	0	0	0		
Construction Administration	0	0	0	0	0		
SUBTOTAL	0	0	0	0	0		
4. Project Management						07/2000	06/2005
State Staff Project Management	5,100	4,040	1,850	2,560	13,550		
Construction Management	0	0	0	0	0		
SUBTOTAL	5,100	4,040	1,850	2,560	13,550		
5. Construction Costs							
Site & Building Preparation	0	0	0	0	0		
Demolition/Decommissioning	0	0	0	0	0		
Construction	0	0	0	0	0		
Infrastructure/Roads/Utilities	0	0	0	0	0		
Hazardous Material Abatement	0	0	0	0	0		
Construction Contingency	0	0	0	0	0		
SUBTOTAL	0	0	0	0	0		
6. Art							
SUBTOTAL	0	0	0	0	0		
7. Occupancy							
Furniture, Fixtures and Equipment	0	0	0	0	0		
Telecommunications (voice & data)	0	0	0	0	0		
Security Equipment	0	0	0	0	0		
Commissioning	0	0	0	0	0		
SUBTOTAL	0	0	0	0	0		
8. Inflation							
Midpoint of Construction							
Inflation Multiplier		0.00%	0.00%	0.00%			
Inflation Cost		0	0	0	0		
SUBTOTAL		0	0	0	0		
9. Other						07/2000	06/2005
SUBTOTAL	7,650	6,070	2,760	3,840	20,320		
GRAND TOTAL	\$117,370	\$166,310	\$69,910	\$46,400	\$399,990		

Water & Soil Resources Board
Conservation Easement Programs

AGENCY CAPITAL BUDGET REQUEST
Fiscal Years 2000-2005
Dollars in Thousands (\$137,500 = \$138)

Project Detail

CAPITAL FUNDING SOURCES	Prior Years	FY 2000-01	FY 2002-03	FY 2004-05	TOTAL
State Funds :					
G.O Bonds/State Bldgs	57,320	50,500	23,600	40,000	171,420
General Fund Projects	15,000	7,600	2,100	3,890	28,590
State Funds Subtotal	72,320	58,100	25,700	43,890	200,010
Agency Operating Budget Funds	12,750	2,510	2,510	2,510	20,280
Federal Funds	31,700	105,700	41,700	0	179,100
Local Government Funds	0	0	0	0	0
Private Funds	600	0	0	0	600
Other	0	0	0	0	0
TOTAL	117,370	166,310	69,910	46,400	399,990

IMPACT ON STATE OPERATING COSTS	Current FY 2000-01	Projected Costs (Without Inflation)			
		FY 2000-01	FY 2002-03	FY 2004-05	FY 2006-07
Compensation -- Program and Building Operation	160	4,040	1,850	2,560	2,560
Other Program Related Expenses	2,350	6,070	2,760	3,840	3,840
Building Operating Expenses	0	0	0	0	0
State-Owned Lease Expenses	0	0	0	0	0
Nonstate-Owned Lease Expenses	0	0	0	0	0
Expenditure Subtotal	2,510	10,110	4,610	6,400	6,400
Revenue Offsets	0	0	0	0	0
TOTAL	2,510	10,110	4,610	6,400	6,400
Change from Current FY 2000-01		7,600	2,100	3,890	3,890
Change in F.T.E. Personnel		19.0	3.0	7.0	7.0

PREVIOUS STATE CAPITAL APPROPRIATIONS FOR THIS PROJECT (Legal Citations)	Amount
Laws of Minnesota (year), Chapter, Section, Subdivision	
ML 1998, Chap. 404, Sec. 10, Subd. 2	15,000
ML 1996, Chap. 463, Sec. 11, Subd. 3	11,500
ML 1994, Chap. 643, Sec. 26, Subd. 3	9,000
ML 1993, Chap. 172, Sec. 14, Subd. 3 (e)	823
ML 1993, Chap. 373, Sec. 13, Subd. 1	500
ML 1992, Chap. 558, Sec. 19	1,250
ML 1991 Chap. 354, Art. 11, Sec. 1, Subd. 1(b)	7,000
ML 1991 Chap. 354, Art. 11, Sec. 1, Subd. 1 (a)	5,000
ML 1991, Chap. 254, Art. 1, Sec. 17 (a)	1,900
ML 1991, Chap. 254, Sec. 14, Subd. 6(d)	600
ML 1991, Chap. 254, Sec. 14, Subd. 9 (h)	400
Other Citations (5 defined)	19,347

SOURCE OF FUNDS FOR DEBT SERVICE PAYMENTS (for bond-financed projects)	Amount	Percent of Total
General Fund	50,500	100.0%
User Financing	0	0.0%

STATUTORY AND OTHER REQUIREMENTS	
Project applicants should be aware that the following requirements will apply to their projects after adoption of the bonding bill.	
No	MS 16B.335 (1a): Construction/Major Remodeling Review (Legislature)
Yes	MS 16B.335 (1b): Project Exempt From This Review (Legislature)
No	MS 16B.335 (2): Other Projects (Legislative Notification)
No	MS 16B.335 (3): Predesign Requirement (Administration Dept)
No	MS 16B.335 (4): Energy Conservation Requirements (Agency)
No	MS 16B.335 (5): Information Technology Review (Office of Technology)
No	MS 16A.695: Use Agreement Required (Finance Dept)
No	MS 16A.695: Program Funding Review Required (Agency)
No	Matching Funds Required (as per agency request)

Department of Administration Analysis:

Department of Finance Analysis:

This project is central to the agency's mission and strategic plan and is consistent with the state's interest in reducing non-point source pollution in the Minnesota River, and provides financial assistance to farmers.

The project leverages 2.3 federal dollars for each state dollar spent as well as contributions from landowners, it provides a positive incentive for landowners to take marginal land out of production, it's cost effective and will produce measurably cleaner water.

This project is also consistent with many of the capital budget funding criteria. It's responsible stewardship of past investments in RIM and other clean water programs, it attempts to "finish what we've started", it takes advantage of a unique leveraging of federal funds, and it promotes incentives for positive behavior.

The request includes \$8.2 million for the administrative costs of all the easement programs (CREP, RIM, and PWP). Adequate appropriations for administrative funds are particularly important to ensure that BWSR and the SWCD's can process the increased volume of easements inherent in the CREP program.

Including past appropriations and the current request, the state will have provided approximately \$55 million of the required \$70 million in state funds. Any additional funding appropriated in the 2002 bonding bill would have to be expended before 7-1-02, as the availability of the federal funding ends on 9-30-02, unless the deadline is extended.

While it does provide a rare opportunity to achieve major progress on an important environmental goal, the limited time available to receive the federal funding requires a very large state commitment over a very short period of time. Despite the attractiveness of this incentive, the intense competition for bond dollars makes this commitment extremely difficult to make.

Governor's Recommendation:

The Governor recommends general obligation bonding of \$30.585 million, and \$4.99 million from the general fund. Of this amount, \$25 million in general obligation bonding and \$4.042 million from the General Fund is earmarked for the Conservation Reserve Enhancement Program. This funding level (combined with prior appropriations) means that the state will have provided approximately half of the

STATEWIDE STRATEGIC SCORE		
Criteria	Values	Points
Critical Life Safety Emergency - Existing Hazards	0/700	0
Critical Legal Liability - Existing Liability	0/700	0
Prior Binding Commitment	0/700	0
Strategic Linkage - Agency Six Year Plan	0/40/80/120	120
Safety/Code Concerns	0/35/70/105	0
Customer Service/Statewide Significance	0/35/70/105	70
Agency Priority	0/25/50/75/100	100
User and Non-State Financing	0-100	65
State Asset Management	0/20/40/60	0
State Operating Savings or Operating Efficiencies	0/20/40/60	0
Contained in State Six-Year Planning Estimates	0/25/50	50
Total	700 Maximum	405

required match for the available federal funds. Also included are budget planning estimates of \$43.6 million of bonding, and \$7.034 million from the general fund in 2002, and \$9.0 million of bonding and \$1.0 million from the general fund in 2004.

2000 STATE APPROPRIATION REQUEST: \$1,000

AGENCY PROJECT PRIORITY: 2 of 2

PROJECT LOCATION: Statewide - Multiple Locations

PROJECT DESCRIPTION: Local Government Roads Wetland Banking

Background

The Board of Water and Soil Resources (BWSR) is requesting \$1.0 million to replace wetlands lost to public transportation projects as required under M.S. 103G.222, Subd. 1(m). This program supports the "no-net-loss" requirement of both state and federal regulations. It benefits local road authorities by assigning responsibility for replacing the inevitable loss of wetlands to the state.

Issues and Consequences

The 1998 Legislature appropriated \$2.75 million to this program in the capital budget. This amount was adequate for one year of projects. The BWSR will be unable to meet its statutory obligation to replace these wetlands if additional funds are not appropriated. Alternatives to completely funding the replacement wetlands include:

- Revising the Wetland Conservation Act (WCA) to require local governments to pay for all, or a share of the cost of wetland replacement;
- Allowing some metro area impacts to be replaced outside the 7-county metro area; or
- eliminating the current requirement that redevelopment projects in the 7-county metro area be given priority.

While these options would reduce the state's cost and obligation, they may also jeopardize the stakeholder agreement that resulted in the 1996 revision of the WCA. The BWSR currently has an agreement with the Army Corps of Engineers (COE) that allows this program to meet federal requirements. If the program is not funded, local road authorities will again have to seek separate federal permits and be responsible for their own wetland replacement. Given these options, the BWSR believes state interests are best served by funding this program.

History

The 1996 Legislature amended the WCA after several years of heated controversy finally led to a consensus between local governments, business interests, environmental groups, and others. The local government roads wetland-banking program was one outcome of this resolution process. It transfers responsibility for replacing wetlands lost due to local government road construction from the road authority to BWSR. This eliminates the need for local government transportation officials to undertake and finance environmental reclamation projects, and

consolidates the necessary administrative, financial and technical work. The result is higher quality, more cost effective wetland replacement.

BWSR has adopted a 3-part strategy to establish the wetland credits required by law:

- 1) Develop projects with local or state partners through fee title or easement,
- 2) Purchase wetland credits from existing wetland banking accounts, and
- 3) Acquire easements using existing conservation easement programs.

Program Need

Prior experience shows that approximately 250 acres of wetlands need replacement each year, at an annual cost of \$2.35 million. The number of acres impacted depends on the funding level of local government road construction. In the past several years, this funding has increased by about 2% annually. The cost of establishing the wetlands varies widely, from a low of \$2 thousand/acre in rural Minnesota, to \$100 thousand/acre in the metro area.

BWSR has enough funding to replace wetlands through calendar year 1998. Wetland losses for calendar year 1999 and beyond are not funded. The projected need for FY 1999 through 2001 is \$7.0 million.

IMPACT ON AGENCY OPERATING BUDGETS (Facilities Notes):

BWSR received \$2.75 million for Local Government Roads Wetland Banking in the 1998 capital budget. The cost to implement the program was \$400,000 (15%). Fifteen percent of the current request would be used for realty, engineering, and implementation costs associated with the credit purchase, fee title, or easement acquisition.

OTHER CONSIDERATIONS:

Federal Agreements

Two recently signed agreements between BWSR and the COE provide for federal acceptance of our wetland banking procedures. This means that local government road projects require only one review and approval process. The COE will accept projects approved under state standards, but only if the required wetland replacements are actually funded.

Alternative Financing Options

Some people believe that funding for this program should come from transportation related sources rather than the environmental sources because wetland replacement is precipitated by road construction projects. Others believe that replacing wetland drained or filled by road projects is an environmental benefit, and that transportation funds should only be used for the development or improvement of roads.

A sharing of costs between environmental capital bonding funds, local government gas tax proceeds, and local levy contributions is being discussed with local government organizations, environmental groups and state agencies. A related and parallel effort has begun with legislative policy changes likely to be introduced (S.F. 83).

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AGENCY CAPITAL BUDGET REQUEST
Fiscal Years 2000-2005
Dollars in Thousands (\$137,500 = \$138)

Project Cost

TOTAL PROJECT COSTS All Years and All Funding Sources	Project Costs All Prior Years	Project Costs FY 2000-01	Project Costs FY 2002-03	Project Costs FY 2004-05	Project Costs All Years	Project Start (Month/Year)	Project Finish (Month/Year)
1. Property Acquisition						07/2000	06/2005
Land, Land and Easements, Options	\$5,350	\$850	\$4,080	\$4,166	\$14,446		
Buildings and Land	0	0	0	0	0		
SUBTOTAL	5,350	850	4,080	4,166	14,446		
2. Predesign	0	0	0	0	0		
3. Design Fees							
Schematic	0	0	0	0	0		
Design Development	0	0	0	0	0		
Contract Documents	0	0	0	0	0		
Construction Administration	0	0	0	0	0		
SUBTOTAL	0	0	0	0	0		
4. Project Management						07/2000	06/2005
State Staff Project Management	400	302	720	734	2,156		
Construction Management	0	0	0	0	0		
SUBTOTAL	400	302	720	734	2,156		
5. Construction Costs							
Site & Building Preparation	0	0	0	0	0		
Demolition/Decommissioning	0	0	0	0	0		
Construction	0	0	0	0	0		
Infrastructure/Roads/Utilities	0	0	0	0	0		
Hazardous Material Abatement	0	0	0	0	0		
Construction Contingency	0	0	0	0	0		
SUBTOTAL	0	0	0	0	0		
6. Art	0	0	0	0	0		
7. Occupancy							
Furniture, Fixtures and Equipment	0	0	0	0	0		
Telecommunications (voice & data)	0	0	0	0	0		
Security Equipment	0	0	0	0	0		
Commissioning	0	0	0	0	0		
SUBTOTAL	0	0	0	0	0		
8. Inflation							
Midpoint of Construction							
Inflation Multiplier		0.00%	0.00%	0.00%			
Inflation Cost		0	0	0	0		
SUBTOTAL		0	0	0	0		
9. Other	0	0	0	0	0		
GRAND TOTAL	\$5,750	\$1,152	\$4,800	\$4,900	\$16,602		

CAPITAL FUNDING SOURCES	Prior Years	FY 2000-01	FY 2002-03	FY 2004-05	TOTAL
State Funds :					
G.O Bonds/State Bldgs	3,000	1,000	4,800	4,900	13,700
General Fund Projects	2,750	0	0	0	2,750
State Funds Subtotal	5,750	1,000	4,800	4,900	16,450
Agency Operating Budget Funds	0	152	0	0	152
Federal Funds	0	0	0	0	0
Local Government Funds	0	0	0	0	0
Private Funds	0	0	0	0	0
Other	0	0	0	0	0
TOTAL	5,750	1,152	4,800	4,900	16,602

IMPACT ON STATE OPERATING COSTS	Current FY 2000-01	Projected Costs (Without Inflation)			
		FY 2000-01	FY 2002-03	FY 2004-05	FY 2006-07
Compensation -- Program and Building Operation	262	412	982	996	996
Other Program Related Expenses	0	0	0	0	0
Building Operating Expenses	0	0	0	0	0
State-Owned Lease Expenses	0	0	0	0	0
Nonstate-Owned Lease Expenses	0	0	0	0	0
Expenditure Subtotal	262	412	982	996	996
Revenue Offsets	0	0	0	0	0
TOTAL	262	412	982	996	996
Change from Current FY 2000-01		150	720	734	734
Change in F.T.E. Personnel		0.0	3.0	3.0	3.0

PREVIOUS STATE CAPITAL APPROPRIATIONS FOR THIS PROJECT (Legal Citations)	Amount
Laws of Minnesota (year), Chapter, Section, Subdivision	
ML 1998 Chap. 404, Sec. 10, Subd. 3	2,750
ML 1996 Chap. 463, Sec. 11, Subd. 4	3,000

SOURCE OF FUNDS FOR DEBT SERVICE PAYMENTS (for bond-financed projects)	Amount	Percent of Total
General Fund	1,000	100.0%
User Financing	0	0.0%

STATUTORY AND OTHER REQUIREMENTS	
Project applicants should be aware that the following requirements will apply to their projects after adoption of the bonding bill.	
No	MS 16B.335 (1a): Construction/Major Remodeling Review (Legislature)
Yes	MS 16B.335 (1b): Project Exempt From This Review (Legislature)
No	MS 16B.335 (2): Other Projects (Legislative Notification)
No	MS 16B.335 (3): Predesign Requirement (Administration Dept)
No	MS 16B.335 (4): Energy Conservation Requirements (Agency)
No	MS 16B.335 (5): Information Technology Review (Office of Technology)
No	MS 16A.695: Use Agreement Required (Finance Dept)
No	MS 16A.695: Program Funding Review Required (Agency)
No	Matching Funds Required (as per agency request)

Department of Administration Analysis:

12/7/99

NA

Department of Finance Analysis:

This project is closely aligned with the agency's strategic plan and the six year capital budget plan. It supports the "no net loss" of wetlands provisions in both federal and state policy

The legislature should consider whether or not paying for wetland mitigation needed due to local road projects is an appropriate state role. One economic perspective would have the proposers of projects pay for the external effects (i.e. lost wetlands) of their project decisions; under that alternative, local governments would pay for wetland replacement from highway related state aid funds or other local sources. State highway funds currently cover the costs of wetland replacement required for state road projects.

Governor's Recommendation:

The Governor does not recommend capital funds for this project.

STATEWIDE STRATEGIC SCORE		
Criteria	Values	Points
Critical Life Safety Emergency - Existing Hazards	0/700	0
Critical Legal Liability - Existing Liability	0/700	0
Prior Binding Commitment	0/700	0
Strategic Linkage - Agency Six Year Plan	0/40/80/120	80
Safety/Code Concerns	0/35/70/105	0
Customer Service/Statewide Significance	0/35/70/105	70
Agency Priority	0/25/50/75/100	75
User and Non-State Financing	0-100	0
State Asset Management	0/20/40/60	0
State Operating Savings or Operating Efficiencies	0/20/40/60	0
Contained in State Six-Year Planning Estimates	0/25/50	50
Total	700 Maximum	275

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2000-2005 MINNESOTA STRATEGIC CAPITAL BUDGET PLAN

Executive Summary

*To the
People of
Minnesota
and Their
Legislators*

Last year, I presented my first biennial budget based on straightforward principles of self-sufficiency, doing what's necessary rather than what's nice, and always remembering that it's the people's money. For the 2000 legislative session, I am very pleased to present my *Minnesota Strategic Capital Budget Plan*, which builds on these important principles.

The selection of recommended projects was not an easy task. Total requests from state agencies, higher education institutions and local governments exceed our state's bonding capacity.

Given the difficulty in choosing among competing projects, my administration developed a set of criteria to evaluate all requests for state assistance. Based on these criteria, my recommendations are very clearly directed toward:

- Protecting the investments the state has already made
- Protecting the life and safety of Minnesota residents and state employees
- Completing important projects that have been only partially funded
- Making selective strategic investments consistent with my *Big Plan* goals and smart growth principles

Recommendations include \$400 million in capital projects financed with state general obligation bonds. This is consistent with the 15-year average for past bonding bills and returns the capital budget to a more traditional focus on basic infrastructure needs for state government and higher education institutions.

I look forward to working cooperatively with the Legislature as we go forward in doing the people's business in the 2000 session.



Jesse Ventura
Governor

Executive Summary

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Highlights

The 2000-2005 Minnesota Strategic Capital Budget Plan is the first major capital budget presented to the Legislature by Governor Jesse Ventura.

Governor Ventura recommends a 2000 capital budget of \$400 million in general obligation bonding. Preserving the state's basic infrastructure and selectively investing in strategic initiatives are the two major priorities of the Governor's capital budget.

Basic Bricks and Mortar

Minnesotans expect their elected officials and administrators to be good stewards of state assets and facilities. They expect that state facilities will be kept in good repair, roofs will not leak, indoor air quality will not make employees ill, state institutions will not pollute the environment, and the network of roads and bridges will remain safe for motorists.

To that end, the Governor's capital budget recommends major asset preservation improvements including:

- \$30 million for facility repairs at the Minnesota State Colleges & Universities and \$9 million for infrastructure improvements at the University of Minnesota.
- \$3.3 million for updates to the Capitol building to make it code-compliant and fully functional in anticipation of its Centennial celebration in 2005. This anticipates an additional \$3.3 million in private contributions.
- \$10.6 million to repair storm water and sanitary sewers at the Minnesota Correctional Facility at Faribault to avoid pollution of the Straight River.
- Over \$65 million for a wide variety of code compliance, asset preservation, and urgent repairs to facilities of the departments of Administration, Health, Human Services, Corrections, Military Affairs, Natural Resources, Minnesota Historical Society, Perpich Center for Arts Education, Minnesota State Academies,

Veterans Homes Board, Minnesota Zoo, and Capitol Area Architectural and Planning Board.

- \$30 million for local bridge repairs and replacement.

The Governor also recommends replacing major facilities that have outlived their useful life and no longer adequately support their public programs. This includes:

- \$58 million for construction of a new laboratory and office facility for the Bureau of Criminal Apprehension.
- \$7.7 million for land acquisition and schematic design to replace state-owned facilities for major agencies, which may include the departments of Health, Agriculture and Human Services.

GOVERNOR'S STRATEGIC CAPITAL BUDGET PLAN

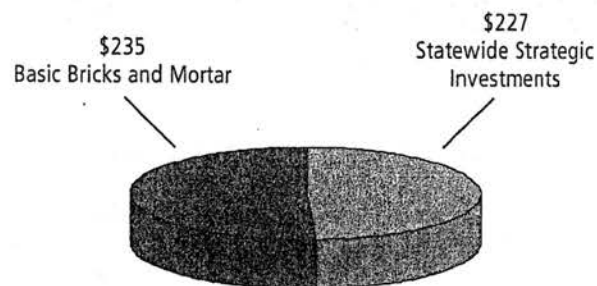
General obligation bonding = \$400 million

Total recommendations = \$462 million

(All financing sources, after cancellations)

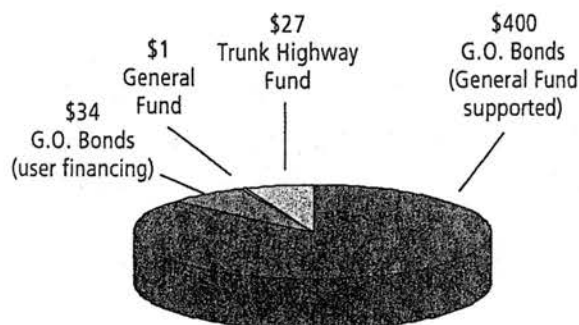
Use of Funds

All Financing Sources
(Dollars in millions)



All Financing Sources

All Financing Sources
(Dollars in millions)



Strategic Investments

The state should always be aware of timely opportunities to make good business decisions for its residents. It should also complete projects that were previously started.

The Governor's capital budget includes a number of recommendations to initiate or complete funding for unique opportunities. Projects that promote strategic investments, draw significant nonstate funds, and are consistent with the principles of *The Big Plan* and smart growth include:

- \$35 million to complete the Molecular and Cellular Biology building at the University of Minnesota, and \$10 million to match an equal amount of private funds for construction of a Microbial and Plant Genomics building.
- \$34.3 million for improvements at Normandale Community College, North Hennepin Community College, and the Minneapolis Community and Technical College.
- \$29 million in state funds to match up to \$163 million in federal funds to protect 100,000 acres of critical sensitive land in the Minnesota River watershed.
- \$20 million in Rural Finance Authority loans to farmers for mortgage assistance. Also, this program is user-financed.
- \$34 million for several K-12 facilities with critical needs, with an intention to propose an enhanced school facility financing program in the next operating budget that will put schools in a better position to address their own needs.
- \$10 million in transitway funding for the Metropolitan Council.
- \$27 for transportation improvement projects, including \$7 million to construct a regional transportation management center.
- \$20 million for program-related improvements at facilities operated by the departments of Corrections, Human Services and Natural Resources.

Making Tough Decisions

After receiving \$1.5 billion in capital requests, Governor Ventura asked members of his cabinet to offer suggestions for how requests might be evaluated. A team of senior officials called "the executive budget team" was formed, that included staff from the Governor's office, Minnesota Planning, and the departments of Finance and Administration, with assistance from other state agencies.

Evaluating Projects

The Governor's charge to the executive budget team was to review all capital funding requests for the 2000 legislative session and develop criteria for evaluating projects. Meeting frequently in fall 1999, the team invited 24 agencies and the state's higher education systems to present their requests. Requests from local government were also reviewed and team members visited project sites around the state. The team concluded its mission by recommending a set of criteria to the Governor.

The Governor reviewed all requests against seven criteria, which included goals from *The Big Plan* and smart growth principles. Local projects were also evaluated against statutory criteria enacted in 1999. Requests that most clearly demonstrated a link to these criteria are projects included in the Governor's strategic capital budget plan.

Predictable Investments for the Six-Year Plan

The Governor's recommendation of \$400 million in general obligation bonding (supported by general fund

debt service) is consistent with the 15-year average of past bonding bills. The size and scope of these recommendations return the capital budget to a more traditional focus on basic infrastructure needs of state government and higher education.

This is an appropriate level of funding given the exceptionally large size of bonding bills in 1998 (\$1 billion) and 1999 (\$116 million).

Funding levels in the Governor's six-year capital plan will provide an adequate, stable and predictable level of investment in each of the three biennia. This will add discipline to the process and preserve adequate future capacity. This is a sufficient amount to cover the state's most pressing needs — without mortgaging the future to fund current requests. Also, Minnesota should be cautious in adding to its physical inventory when the state's operating budget for current facilities is already challenged.

In addition to \$400 million in general obligation bonding supported by general fund debt service, the Governor recommends \$33.9 million in bonding paid by user financing, general fund resources of \$1.3 million, and \$26.8 million from the trunk highway fund. All of these numbers are net totals, after subtractions for selected project cancellations.

*Seven criteria
have been
established for
funding capital
projects that are
consistent with
The Big Plan
and smart growth
principles.*

The Governor recommends cancellation of unused capital appropriations to provide an additional capacity of \$26.8 million in general obligation bonding, \$9.9 million from the general fund, and \$514,000 from the trunk highway fund. These cancellations will shift resources from languishing projects to higher priorities elsewhere in the capital budget.

THE GOVERNOR'S SEVEN CRITERIA FOR RECOMMENDING CAPITAL PROJECTS

1. Protect the life and safety of residents and state employees
2. Provide responsible stewardship of existing state assets and facilities
3. Select projects that are urgent and necessary, rather than merely nice
4. Complete important projects that have only been partially funded
5. Clarify the state's funding role versus that of local government and the private sector
6. Take advantage of unique financing opportunities, particularly for federal matching funds
7. Promote strategic initiatives consistent with goals of *The Big Plan* and smart growth principles

STRATEGIC DIRECTIONS OF THE BIG PLAN

- Healthy, vital communities
- Self-sufficient people
- Service, not systems
- Minnesota: world competition

SMART GROWTH CRITERIA FOR CAPITAL PROJECTS

- Provide wise stewardship of land, buildings and natural resources to sustain them over time
- Select efficient, integrated public investments based on lowest long-term economic, environmental and social costs
- Increase the range of smart growth options
- Reinforce accountability for development decisions

STATUTORY CRITERIA FOR EVALUATING REQUESTS FROM LOCAL GOVERNMENT

- Local funding should be provided to the fullest extent possible
- Projects should fulfill a state mission and have statewide significance
- No new state operating subsidies
- State role should not be expanded
- Projects should not compete against private facilities or create inequities among local jurisdictions
- Local governing body must endorse the project

Perspectives on Capital Investment

The challenges facing Minnesota in its capital and operating budgets are not new. Most of the demographic trends, demands for public services and funding pressures have been with the state for a long time.

As in any budget process, an in-depth understanding of the issues is needed before funding decisions can be made. In the course of evaluating requests from agencies and local government, a number of trends have become clear.

Higher Education in the Changing Marketplace

The combination of aging facilities, growing technology requirements and rapid changes in the marketplace continue to drive the capital needs of Minnesota's higher education systems. With 36 campuses of the Minnesota State Colleges and Universities and four University of Minnesota campuses, these institutions collectively manage 43 million square feet of classroom and administrative space.

Facilities of Minnesota State Colleges and Universities vary in age from 5 to 50 years, with an average age of 20 years at the two-year colleges and 38 years at state universities. Facilities at the University of Minnesota have an average age of 46 years with some facilities up to 118 years old. The construction quality and maintenance record for these facilities vary widely. MnSCU and the University of Minnesota have increased their facility audits in recent years. These audits point to a need for greater investment in basic asset preservation.

Technology continues to drastically redefine the classroom experience,

imposing additional requirements on both new and old facilities for new wiring, better connectivity and reconfigured space. MnSCU describes the challenge as "making mid-century buildings capable of delivering end-of-the millennium knowledge."

Students enter higher education with increasingly sophisticated expectations of technology. This is paralleled from ever-growing demands by employers for graduates with cutting-edge technical skills. Although a shift to scientific and technical occupations is much discussed, the rise of technology has also transformed nontechnical programs in education and the liberal arts. This has forced the entire higher education field to re-evaluate its capital facilities.

Distance learning may also affect some institutions, expanding some and allowing others to engage in more "virtual" learning with fewer bricks and mortar.

Similarly, the boom in technology has fueled a move by higher education to redefine traditional fields, looking for connections across disciplines and areas of knowledge. This drives a similar demand for more flexible work and research space. The age and configuration of campuses sometimes discourages this collaboration, and requires institutions to periodically re-evaluate their needs.

Although Minnesota's booming economy continues to create new jobs at a rapid pace, a shortage of skilled

workers threatens to dampen future economic growth. A recent Dunn and Bradstreet survey found that 56 percent of Minnesota companies were unable to find adequate numbers of skilled workers. Minnesota's K-12 classrooms face similar staff shortages. Continued demands for highly skilled workers will magnify the importance of higher education in the training and development of Minnesota's workforce.

State decision-makers must recognize current trends that shape our lives and drive the demand for state services and facilities.

State Funding for K-12 Schools

Elementary and secondary school buildings face the dual challenges confronting other public institutions; namely, aging facilities and growing demands for technology. K-12 facilities also vary widely in age and scope, with school districts similarly varied in their ability to construct and support the facilities needed for education.

Enrollment declines outside of the Twin Cities leave communities with difficult questions of consolidation and school closings. At the same time, some suburban districts burst with rapidly growing enrollments and repeatedly ask voters for authority to build more schools.

These trends in enrollment and technology prompt the question of the appropriate state role in funding school facilities. While the Minnesota Constitution is quite

clear on the need for the state to assure a basic level of public education, policymakers have generally translated that to mean operating, rather than capital support. State involvement in school projects has been limited to instances where districts lack the resources to provide basic facilities without imposing an undue burden on their voters, or where the state has an overriding policy interest.

Obtaining Ownership of State Buildings

Over the next decade, facility needs for state agencies will be driven by aging buildings and a changing workplace. In order to properly maintain the investment in state facilities, the need for on-going asset preservation funding will continue.

Technology continues to make additional demands on state government. Telecommuting may influence the

AT A GLANCE: MAJOR STATE ASSETS REQUIRING ATTENTION

Minnesota State Colleges and Universities

- 36 colleges on 53 campuses in 46 communities
- 140,000 students and 30,000 graduates per year
- Physical space equivalent to five Malls of America (617 buildings and 18.6 million square feet)
- Average building age of 20 years for college buildings and 38 years for university buildings

University of Minnesota

- 4 campuses
- 379 major buildings
- Average building age of 46 years

Administration

- Custodial control of 21 facilities
- 2.9 million sq.ft. of state-owned space
- 3.8 million sq.ft. of privately-owned leased space
- Deferred maintenance of \$1.5 to \$2 billion

Corrections

- 5.1 million square feet
- Three facilities originated before 1900

Human Services

- Regional treatment centers at 8 locations
- Average age of regional treatment center buildings is 47 years
- Department of Human Services owns and operates 4.8 million square feet

Minnesota Historical Society

- 115 structures at 32 historic sites

Minnesota State Academies

- 2 campuses and 15 major buildings constructed between 1870 and 1983

Department of Natural Resources

- 5.3 million acres of parks, wildlife management areas, scientific and natural areas, and state forests
- 2.3 million sq.ft. in 2,000 active buildings, ranging from vault toilets to office buildings (many buildings on National Register of Historic Places)
- 67 state park and recreation areas receive 8 million visits annually
- 120+ campgrounds, 1,500 boat accesses, 230 fishing piers, 800 dams, and over 1,000 miles of state trails

Transportation

- 150 operations sites
- 12,000 trunk highway miles
- 4,600 bridges on the trunk highway system
- K-12 Facilities
- 1,600 academic and instructional facilities
- Average building age of 32 years

Military Affairs

- 61 armories with 1.8 million square feet
- 1,300 training, maintenance and logistic facilities

need for employee office space. Agency collaborations and co-location of agency operations may be driven by greater demands for seamless delivery of public programs and service efficiencies. State government will continue to face new facility requirements, if only to address continued demands for reconfigured and more flexible work environments.

The efficiency of state-owned space over privately leased space may drive more frequent investment in the construction of state office buildings. Since the late 1970s, the amount of leased space has more than doubled, while the amount of state-owned space has remained relatively constant.

In the metropolitan area, only 29 percent (1.2 million square feet) of state government office space is now owned by the state, while the other 2.9 million square feet is leased from private owners. With studies verifying higher costs associated with the state's dependence on leased space, discussions will continue on the pace and scope of state construction.

Human Services and Correctional Institutions

Minnesota provides facilities throughout the state to help people with special needs or legal sanctions, and provides custodial care to those living in state institutions. Veterans Homes provide long-term care to nearly 1,000 people. The Department of Human Services provides long-term care and other services for roughly 1,500 people and has licensed beds to serve twice as many. The Department of Corrections supervises an adult prison population over 5,500. Each of these beds must be complimented with appropriate facilities to feed, treat and manage resident behavior.

Demands for institutional space are driven by two factors — demographics and treatment protocol. These factors are substantially increasing the need for correctional facilities. Since 1989, penalties for violent

offenders and drug offenders have grown significantly. These changes in law are accelerating an already-growing demand for prison beds, with the adult prison population projected to grow from 6,000 in 2000 to nearly 7,800 in 2008.

Human services facilities have been deliberately downsized during the last three decades. Changes in treatment protocol and state policies have moved people with disabilities back into communities. The downsizing of state facilities is the result of advances in the treatment of people with disabilities, coupled with a growing recognition that all individuals can participate at some level in the activities of daily life. As a result, the population in the state regional treatment centers has decreased from 16,400 persons in 1960 to only 1,500 persons in 1999.

Agriculture, Environment and Natural Resources

Agriculture is a key contributor to the state's economy, a way of life and the principle land use for much of rural Minnesota. Financial challenges in agriculture include the changing nature of world markets, commodity price fluctuations, and less traditional federal financial assistance to farmers. At the same time, increasing awareness of the environmental impacts of agricultural activities places more emphasis on environmental monitoring, compliance, and remediation in all agricultural processes. This will occur from production to processing to final consumption.

Minnesota is increasingly using ecosystem-based approaches when managing environmental and natural resource issues. The interconnectedness of natural systems and environmental problems must be understood within the context of a natural watershed or landscape boundary.

This approach is inherently more complicated. The boundaries of natural systems only occasionally

coincide with political boundaries. Developing solutions to environmental problems means forging partnerships among multiple government agencies, interest groups and concerned citizens.

After a generation of effort, most obvious point sources of pollution have been addressed. Attention has shifted to the much tougher problem of dealing with non-point source pollution, the cumulative effect of many sources of contaminated runoff into the state's waterways. Sources of this pollution include untreated stormwater runoff in urban areas, soil erosion and fertilizers in agricultural areas, and inadequate wastewater treatment. These pollution sources are very difficult to isolate because of their prevalence. In addition, they are caused by individual decisions of citizens and government units that are shaped by economic factors, geography and lifestyle choices.

Rural and urban development issues are inextricably linked to the environment. Minnesota's population continues to grow and its economy is thriving. There is

great demand for land for business and residential development. Most lower-cost land exists on the urban fringe and in rural areas so development continues to move away from the urban core, resulting in sprawl. Sprawl makes the delivery of public services more difficult and costly, reduces open space, fragments fish and wildlife habitat, and makes pollution problems more acute. In rural areas, development is disrupting natural ecosystems and putting pressure on state and local government to provide infrastructure including roads, wastewater treatment facilities, and safe drinking water.

Minnesota has a rich heritage and connection to its lakes, rivers, wetlands, forests, prairies, fish and wildlife. The state has an excellent system of outdoor recreation areas. These resources are the cornerstone of the state's tourism industry. They are used by state residents and nonresidents for camping, fishing, hunting, hiking, biking, boating, skiing, and snowmobiling. Increased participation in these activities has placed a strain on the land, waterways, and recreational facilities.

Basic Bricks and Mortar

Asset preservation and improvements to the state's infrastructure provide the foundation for Governor Ventura's 2000 capital budget. Half of the Governor's recommendations are dedicated to improving or replacing current assets and facilities so they may continue to provide value to the public. In any capital budget, these investments must be the first order of business.

Responsible stewardship requires frequent investments in the state's bricks and mortar. These initiatives often do not attract attention because they do not create new space and lack public visibility. They do, however, ensure that the state retains its productive capacity and avoids future funding emergencies.

Melting the Capital Iceberg

The Department of Administration estimates the state's deferred maintenance backlog to be in excess of \$1.5 billion. This is consistent with the 1998 report of the Legislative Auditor that concluded the state may have up to \$600 million in state facilities that are deteriorated or inoperable, in addition to depreciation funding issues.

Minnesota's deferred maintenance backlog is known as the "capital iceberg." This backlog has accumulated through years of neglect and may require many more years to address.

The capital iceberg has been allowed to grow because there is no clear responsibility for financing asset preservation. Ideally, maintenance and repair costs should be provided through agency operating budgets. Unfortunately, history has shown that only small sums have been set aside for

asset preservation purposes and are often under pressure in times of tight budgets.

Since 1990, the state has started to pay more attention to the needs of asset preservation. Capital appropriations have increased funding for asset preservation at state agencies and higher education systems. These bonding appropriations have helped complete many long-overdue projects. Unfortunately, current funding levels are still not keeping pace with repair needs.

The Governor believes that aggressive funding levels for asset preservation must be provided in both the capital and operating budgets in order to upgrade state facilities and protect the public investment. The state should adequately maintain its current buildings before adding new ones. It must also be a responsible steward of state facilities before assuming responsibility for local needs.

Asset preservation funding is recommended for unanticipated emergencies; removal of safety hazards and hazardous substances; mitigation of building code violations; and repairs to roofs, windows and other structures.

A Time to Replace Aging Facilities

Although on-going repairs must be provided on a timely basis to keep state facilities operational, there are times when buildings outlive their useful life and become obsolete. Old buildings cannot always accommodate new

space needs. Technology and the delivery of state programs have changed dramatically in recent decades. In other cases, normal wear and tear associated with years of use take a toll on buildings.

As a result, the Governor recommends replacing certain state buildings that have come to the end of their useful life.

*Preserving and
improving
the state's
infrastructure
is the cornerstone
of this
capital budget.*

Strategic plan for locating state agencies. This initiative is recommended to address the critical need for land acquisition, design and development of important state buildings in or near the Capitol complex.

In this initiative, the Governor recommends \$100,000 from the general fund for a new *Strategic Plan for Locating State Agencies*, \$2 million in general obligation bonding for design funding for high-priority facilities that will be identified through the strategic plan as needing immediate development, and \$5.7 million in general obligation bonding for property acquisition for such facilities.

It is anticipated that the *Strategic Plan for Locating State Agencies* will review state agency space needs, guide location issues and determine the order of priority for

development of facilities for the departments of Health, Human Services, Agriculture and other state agencies.

Bureau of Criminal Apprehension building. The bureau is located in a facility that is 78 years old and was once was a Department of Transportation garage. The building is no longer suited to house the technology and forensic tests needed to gather criminal evidence. The facility is crowded with no room for growth. The electrical and air handling systems were not designed for laboratory purposes. The bureau needs a larger, more modern facility to house laboratory, investigation, training, criminal justice, and administrative operations to provide services that are needed by the criminal justice system. The Governor recommends \$58 million to replace this facility.

AT A GLANCE: GOVERNOR'S RECOMMENDATIONS FOR SELECTED ASSET PRESERVATION PROJECTS

Projects	Cost in Millions
HEAPR funding for safety and statutory compliance, building repairs, mechanical improvements and space restoration of the Minnesota State Colleges and Universities	\$30.0
CAPRA and asset preservation funding for removal of structural defects and safety hazards, elimination of hazardous substances, and replacement of roofs, windows and mechanical systems	\$14.2
Infrastructure repairs at Minnesota Veterans Homes	\$13.4
Sanitary and storm sewer repairs at the Minnesota Correctional Facility at Faribault	\$10.6
HEAPR funding for infrastructure repair and code improvement projects at the University of Minnesota	\$9.0
Remodeling of the St. Peter Regional Treatment Center to provide secure beds for individuals committed as psychopathic personalities or sexually dangerous persons	\$7.2
Replacing roads, pathways and heating lines at the Minnesota Zoo	\$5.1
Renovation of the Capitol's mechanical and electrical systems, and restoration of historic public spaces in anticipation of its 2005 centennial	\$3.3
Upgrading the antiquated electrical distribution system in the Capitol complex	\$2.5
Building repairs, office renovations, new construction, and disability access improvements at Department of Natural Resources offices statewide	\$2.1
Mold removal in Noyes Hall at the Minnesota State Academies for the Deaf and the Blind	\$2.1
Preserving eight existing historical sites of the Minnesota Historical Society	\$1.8
Repairs to the security wall, guard towers and catwalk at the Minnesota Correctional Facility at Stillwater	\$1.5

Strategic Investments

Selective strategic initiatives are recommended for projects that provide timely investment, and are consistent with *The Big Plan* and smart growth principles.

Supporting the Biological Revolution at the University of Minnesota

The Governor recommends \$45 million for two critical projects at the University of Minnesota that will advance the state's leading role in biology research. These investments will have a dramatic impact on Minnesota's environment and the health of its citizens. In addition, the state's economy will improve dramatically as the research and technology is transferred to the state's agri-business sector.

Molecular and cellular biology, and microbial and plant genomics form the basis of the university's biology initiative. In the past, medical and biological research at the university had a major impact on the development of successful industries in the state, such as the manufacturing of medical devices.

Biological research at the molecular and cellular level is critical to scientific discovery. Inquiry at the level of the cells and their molecules has been responsible for major breakthroughs in developmental biology, genetics, microbiology, molecular medicine, neuroscience and plant sciences. Advances in virtually all of these fields require continually expanding knowledge in molecular and cellular biology.

Of the \$45 million total, \$35 million is recommended to complete the

Molecular and Cellular Biology Building on the East Bank of the university's Minneapolis campus. When complete, the facility will provide space for nearly 600 staff, involving faculty and students from the College of Biological Sciences; the Medical School; the Institute of Technology; and the College of Agricultural, Food and Environmental Sciences. The University financed the first \$35 million of the project to design the building, clear the site, and begin construction. The final funding phase will complete construction, furnish and equip the building.

The remaining \$10 million matches a private donation of \$10 million. Together, these funds will construct a new Microbial and Plant Genomics Building at the university's St. Paul campus. This facility will provide research laboratories and support space for nearly 200 investigators and researchers.

The specialized field of biology known as genomics looks at the basic genetic structure of plants and microbes. The explosive growth in the field makes a strong teaching and research program in genomics critical for both the competitive position of the university and the long-term economic development of the state. Translation of genomics advances into improved crops and microbes will enhance the university's land grant mission by providing agriculture and industry with new economic opportunities in the form of crop diversification, new products from plants and novel microbes for industrial processes.

The center will significantly add to the economic health and the diversity of the state. New business opportunities will be promoted and the pool of highly educated students trained in this developing field will be expanded.

*We must take
advantage
of timely
opportunities
to make
good decisions
and smart
investments.*

Building the Workforce of Tomorrow at Minnesota State Colleges and Universities

In addition to \$30 million for asset preservation at the Minnesota State Colleges and Universities, the Governor recommends \$34.3 million for three MnSCU projects that promote a workforce skilled in science and technology.

With increasingly fierce competition for students, employees and businesses, the state must continue to invest in ventures that put Minnesota in the best position to compete nationally and globally. MnSCU's role in producing a well-educated and skilled workforce is key to accomplishing this goal.

The trio of recommended projects focus on supporting the sciences and providing students with the access to technology they need to be successful in the classroom and in the work world. MnSCU's "Metro Alliance" also increases the chance for the ultimate success of these projects by emphasizing coordination between campuses, improved customer service and increased efficiency.

\$11.4 million is recommended for a state-of-the-art addition to the science laboratories at Normandale Community College in Bloomington. The addition and upgrade will allow technology to be enhanced in classrooms and administrative spaces, and resolve current air quality and asbestos problems.

The \$11.2 million project at North Hennepin Community College is the second phase of a two-phase effort to remodel both the General Education and Science buildings. This phase will remodel the Science Building into a new General Education Building.

The final recommendation is for \$11.7 million to design and construct a new information technology center

and remodel the library at the Minneapolis Community and Technical College. The new technology center and library will bring together the tools for the learning in the 21st century into a single coordinated location to prepare college and corporate customers with the technical skills they need to succeed.

Consistent with financing agreements in previous capital budgets, MnSCU will pay one-third user financing for the debt service costs of these three projects.

Encouraging Local Decision-Making in K-12 Schools

The Governor recommends \$34 million for investments in several K-12 facilities with critical needs. The administration is also considering a proposal for an enhanced school facility financing program for the next operating budget that will put schools in a better position to address their own capital facility needs.

A new facility financing program may be a simpler and more equitable way for the state to support school construction in districts with low property wealth. Currently, districts with low property wealth depend on the state for a "maximum effort loan," subject to an unpredictable planning, application and appropriation process. In addition to uncertainty that the program imposes on students, parents and school officials, it also creates disincentives in prompt repayments. Enhancing the existing debt service equalization aid program would increase the amount of state aid that poor districts with high debt burdens may receive.

However, there are several maximum effort loans that cannot reasonably be delayed. The Governor recommends \$7.5 million for construction of a middle school in Cass Lake, \$4 million for a new elementary school in Caledonia, and \$4.3 million for renovations to both the middle school and an elementary school in Red Lake.

The Governor's budget also recommends \$17.7 million to complete the East Metro Magnet School. The metropolitan magnet school program is designed to expand voluntary desegregation in participating school districts. With the completion of this school and adoption of a new desegregation rule, the Governor recommends evaluating the success of this program and looking at ways to integrate the operating and capital budget programs involved in desegregation.

Supporting Agriculture and Protecting the Environment

The Governor is proposing \$125 million in a number of strategic investments to preserve Minnesota's environment and rich natural heritage. These investments are part of programs administered by the departments of Agriculture and Natural Resources, Board of Water and Soil Resources, Pollution Control Agency, Public Facilities Authority, and Office of Environmental Assistance. These initiatives include cleaning up the Minnesota River, addressing pollution control and water management issues, providing outdoor recreation opportunities, protecting fish and wildlife habitat, and supporting agriculture.

Cleaning up the Minnesota River. The Minnesota River was once a clear, pristine prairie river fed by equally clean tributaries. Fresh water mussels, fish and wild rice flourished in the stream beds, and wildlife were abundant along the banks. Unfortunately, the 20th-century was not kind to the Minnesota River.

Human settlement and agricultural land use have changed the river dramatically. High levels of nitrites, phosphorous, eroded soil, and bacteria from agricultural practices, and inadequately treated wastewater have depleted the river's oxygen, caused odors, and killed aquatic life. Average water levels are significantly higher due to increased rainfall, lost wetlands and agricultural drainage systems. Higher water levels have increased erosion and flooding.

Recreational uses such as swimming and fishing are precluded in much of the watershed.

To help address these issues, the Governor is proposing an unprecedented investment of \$35.575 million in the conservation easement programs administered by the Board of Water and Soil Resources. These programs pay farmers to take marginal agricultural land out of production. In return for a cash payment from the state, landowners sign perpetual easements guaranteeing that the land will not be cultivated and conservation practices will be implemented.

Retiring marginal agricultural lands and implementing conservation practices in buffer areas adjacent to waterways provide several benefits. Runoff of pollutants is filtered and soil loss is minimized, water quality is improved, fish and wildlife habitat is enhanced, and financial assistance is offered to Minnesota farmers.

There are several related easement programs. The Conservation Reserve Enhancement Program (CREP) presents an especially significant opportunity to clean up the Minnesota River and reduce pollution downstream in the Mississippi River.

This program is a partnership between the ongoing state Re-invest in Minnesota (RIM) easement program and the federal Conservation Reserve Program (CRP). Under the partnership, farmers enroll in CREP and are paid from federal funds for a 15-year easement obligating them to remove land from production and implement conservation practices. The land is also enrolled in RIM, with state funding used to create a perpetual easement. This reduces the state's cost to obtain perpetual easements by 50 percent below levels paid through the RIM program.

Under CREP, the state has until September 30, 2002, to match approximately \$163 million in federal funds and

retire 100,000 acres of flood-prone marginal cropland in the Minnesota River watershed. The state must provide \$70 million to fully match the federal funds. Appropriations to date have been \$10 million. This request would provide an additional \$25 million for CREP easements, \$5.5 million for other statewide easement programs, and \$5 million for implementation costs. Additional state appropriations in future capital budgets or a potential extension to federal eligibility dates will need to be considered.

Water management and pollution. The Governor recommends \$26 million for statewide water management infrastructure. Funding is recommended for the Public Facilities Authority for loans to local communities for drinking water and wastewater improvements. The request provides \$5 in federal money for every \$1 of state match. The Clean Water Partnership provides loans to local government for implementing best management practices to restore lakes, rivers and streams, and groundwater aquifers. Flood Hazard Mitigation grants of DNR leverage significant federal and local matching funds. Solid Waste Capital Assistance grants administered by the Office of Environmental Assistance will help local government construct solid waste resource recovery facilities that reduce landfill disposal.

Outdoor recreation. Over \$14 million will be invested in state parks, trails and forests, including funds to:

- Acquire, develop, and rehabilitate buildings, trails, roadways and other facilities within Minnesota's 67 state park and recreation areas

- Complete a segment of the Paul Bunyan State Trail between Hackensack and Walker, connecting the Bunyan trail to the Heartland State Trail (This segment completes construction of the trail between Brainerd and Walker)
- Construct and rehabilitate roads, bridges, trails and campground facilities in state forests
- Provide grants for acquisition, development and rehabilitation of facilities in metropolitan regional parks

Fish and wildlife. The Governor recommends almost \$8 million to acquire, develop and protect important fish, wildlife and plant habitats in Minnesota. These investments will help restore the ecological integrity of key ecosystems within the state, provide "greenways" to connect parcels of open space in the Twin Cities metropolitan area, match private donations to the RIM Critical Habitat match program, and support sustainable hunting and fishing recreation opportunities.

Agricultural assistance. Agriculture is a key contributor to the state's economy, a way of life and the principal land use for much of rural Minnesota. One way the state can support the agricultural economy is by looking for appropriate ways to help farmers lower their cost of production.

The Governor recommends \$20 million in Rural Finance Authority loan participations to help Minnesota farmers reduce their costs and become more competitive in worldwide product markets. RFA purchases an interest in a farmer's first mortgage and the lender reduces the interest rate paid by the farmer on the loan. Loan repayments reimburse the state for the debt service costs.



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PHONE: 651-296-3767
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Board
Packet
FYI

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Number of Pages Sent 8
(including this one)

To: Jeff Nielsen, BWSR - New Ulm; Dave Sill, BWSR - Marshall;
Gary Hopman, Big Stone SWCD; Matt LeHav, A.G.
John L. Stine, DNR - Waters

From: John Jasurka, BWSR
ph: 651-297-3432

Jim H. Steele Woods
This decision
can have impact
on Hugo issue
as well.
JH

Comments: FYI - Big Stone C.D. #2

District Court decisions on summary
judgment motions.

C: Ron Hornack, Greg Larson, Jim Pickholz

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STATE OF MINNESOTA
COUNTY OF BIG STONE

IN DISTRICT COURT
EIGHTH JUDICIAL DISTRICT

COURT ADMINISTRATOR'S NOTICE OF FILING

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IN RE: Minnesota Center for Environmental Advocacy, The Coalition for a Clean
Minnesota River, and New Ulm Area Sportsfisherman, Plaintiffs,
vs.
The Big Stone County Board of Commissioners and The County of Big
Stone, Minnesota, Defendants.

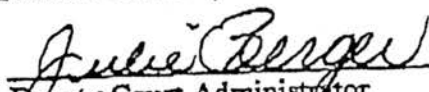
FILE NO: C9-99-42

You are hereby notified that on January 12, 2000, an Order (copy attached) was duly
filed in the above-entitled action.

Dated at Ortonville, Minnesota, this 13th day of January, 2000.

DIANA SHELSTAD, COURT ADMINISTRATOR

By:


Deputy Court Administrator

JAN 18 2000

STATE OF MINNESOTA
COUNTY OF BIG STONE

IN DISTRICT COURT
EIGHTH JUDICIAL DISTRICT

Minnesota Center for Environmental
Advocacy, The Coalition for a Clean
Minnesota River, and New Ulm Area
Sportfishermen,

Case Type: Declaratory Judgment
Court File No. 06-C9-99-042

Plaintiffs,

ORDER

vs.

The Big Stone County Board of Commissioners
and The County of Big Stone, Minnesota,

Defendants.

This matter came before the Court on November 10, 1999, for hearing on Plaintiffs' and Defendants' Motion for Summary Judgment. The Plaintiffs were represented by Attorneys Byron E. Starns and Noah D. Hall of St. Paul, Minnesota. The Defendants were represented by Attorney Jay T. Squires of Minneapolis, Minnesota.

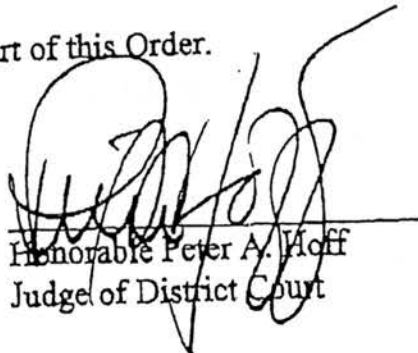
Based upon the file, the record in this case, arguments of counsel, and the briefs submitted, this Court **HEREBY ORDERS**:

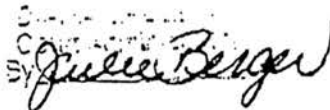
1. Plaintiffs' Motion for Summary Judgment as to Count 8 of the Complaint is partially **GRANTED**. Plaintiffs' Motion for Summary Judgment as to Counts 1 and 3 of the Complaint are **DENIED**.
2. Defendants' Motion for Summary Judgment as to Count 3 of the Complaint is **GRANTED**. Defendants' Motion for Summary Judgment as to all other Counts in the Complaint is **DENIED**.

The attached Memorandum of Law is made a part of this Order.

Dated this 6th day of January, 2000.

FILED
JAN 18 2000


Honorable Peter A. Hoff
Judge of District Court

By 
Julie Berger

JAN 18 2000

MEMORANDUM OF LAW

Rule 56 of the Minnesota Rules of Civil Procedure allows for summary judgment when "there is no genuine issue as to any material fact." M.R.C.P. 56.03. The United States Supreme Court has clarified this standard, stating that summary judgment is proper when a fair-minded jury could not find proof in favor of a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505, 2512 (1986). The trial court must consider whether or not any genuine issues of material fact exist, and not how such issues should be resolved. Vacura v. Haar's Equipment, Inc., 364 N.W.2d 387, 391 (Minn. 1985). The court must consider the evidence in the light most favorable to the nonmoving party. Grondahl v. Bulluck, 318 N.W.2d 240, 243 (Minn. 1982).

The purpose for summary judgment is to secure a just, speedy, and inexpensive disposition of the disputed matter. Vacura, 364 N.W.2d at 391. The court system favors settlement of a dispute without the need for litigation. See Johnson v. St. Paul Ins. Co., 305 N.W.2d 571, 573 (Minn. 1981). Essentially, summary judgment saves time and money while maintaining the purposes behind the rules of civil procedure. Burma v. Stransky, 357 N.W.2d 82, 89 (Minn. 1984).

Count 1. Declaratory Judgment that the Project Falls Within a Mandatory EIS Category.

The Court finds that the definition of "eliminate" in Minn. Rule 4410.4400, subp. 20, as applied to the proposed project, is a material fact in dispute.

Count 2. Declaratory Judgment that an EIS is Required Because the Project has the Potential for Significant Environmental Effects.

The record demonstrates that material facts regarding the environmental impacts of the project are in dispute.

Count 3. Declaratory Judgment that the Upper Minnesota River Watershed District, not Big Stone County, is the Responsible Governmental Unit for the Environmental Review of the Project.

Minnesota Rule 4410.0500, subp. 5(A) provides in pertinent part:

When a single governmental unit proposes to carry out or has sole jurisdiction to approve a project, it shall be the RGU [Responsible Governmental Unit].

JAN 18 2000

In this case, Big Stone County proposed the ditch project and so it is a proper RGU under the rules. Notwithstanding the above rule, the Environmental Quality Board (EQB) may designate a different RGU for a proposed project if it determines that such a designation is proper. Minn. Rules 4410.0500, Subp. 6. While Plaintiffs assert that the Upper Minnesota Watershed District is the proper RGU with sole jurisdiction, the EQB designated Big Stone County as the RGU. Big Stone County is the proper RGU as a matter of law.

Plaintiffs also failed to timely object to the EQB designation of Big Stone County as the RGU. The proper time to challenge this designation would have been in the initial stages of the administrative process before the EQB's declaration. See Iron Rangers for Responsible Ridge Action v. Iron Range Resources, 531 N.W.2d 874, 886 (Minn. App. 1995) (Davies, J. concurring specially). Instead, Plaintiffs failed to challenge Big Stone County as the proper RGU until the filing of this lawsuit. Therefore, Defendants' Motion for Summary Judgment on Count 3 of the Complaint is Granted.

Count 4. Declaratory Judgment that an EIS is Required: Failure to Disclose the Nature and Scope of the Project.

The Court finds that disputed factual issues exist as to whether Defendants disclosed the nature and scope of the project in the EAW as required by law.

Count 5. Declaratory Judgment that an EIS is Required: Failure to Consider the Cumulative Potential Effects of Related or Anticipated Future Projects and Connected Actions and Phased Actions in Violation of EQB Rules.

The Court finds that issues of material fact exist as to whether Defendants properly considered the cumulative impact of the proposed project.

Count 6. Declaratory Judgment that an EIS is Required: Improper Deferral of Analysis of Environmental Impacts.

The Court finds that issues of material fact exist as to whether Defendants improperly deferred consideration of significant environmental effects that may result from the project.

Count 7. Declaratory Judgment that the Project Falls Within a Mandatory EAW Category.

The Court finds that whether the project falls within a mandatory EAW category is not a moot question, as Defendants contend. Further, the Court's finding as to Count 8, that a permit is required pursuant to Minn. Stat. § 103G.245, precludes

Defendants' request for Summary Judgment as to Count 7 of the Complaint. See Minn. Rules 4410.4300, subp 27(A).

Count 8. Declaratory Judgment that Permits and Approvals are Required for the Project.

The Court finds that Defendants have not complied with Minn. Stat. §§ 103E.015 Subd. 2 and 103E.715 by not properly considering the ditch engineer's proposal of maintaining the wetland with a weir. The Court further finds that the project would substantially affect public waters. Therefore, a public waters work permit is required as stated in Minn. Stat. § 103G.245. The Court also finds that Big Stone County must receive permission for the project pursuant to Minn. Stat. § 103E.011, Subd. 3. As to these two prayers for relief in Count 8 of the Complaint Plaintiffs' Motion for Summary Judgment is Granted.

As to Plaintiffs' request in Count 8 of the Complaint for a declaration that the Upper Minnesota River Watershed District is the proper ditch authority, it was determined under Count 3 above that Big Stone County is the proper ditch authority. Plaintiffs' Motion for Summary Judgment as to this request is therefore Denied.

MINNESOTA STATUTES ANNOTATED

Official Classification

Volume 8B

Sections 103E to 114B

2000

Cumulative Annual Pocket Part

For Use In 1999–2000

Replacing 1999 pocket part supplementing 1997 main volume

**Includes laws enacted during the
1999 Regular Session**



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PREFACE

The modern plan of periodic supplementary pamphlets and cumulative Pocket Parts keeps each volume of Minnesota Statutes Annotated constantly to date, both as to the text of the law and as to the constructions and interpretations thereof. The text includes all laws of a general and permanent nature enacted through the 1999 Regular Session of the 81st Legislature.

The arrangement and classification of the laws conform to the general plan and arrangement of Minnesota Statutes as designated by the Revisor of Statutes. Portions of the text appearing in this pocket part were produced from material provided by the Revisor of Statutes of the State of Minnesota and is used with permission. Grateful acknowledgment is made to the Revisor of Statutes for cooperation and service to the Bench and Bar in making the official classifications of laws available.

The annotations from the decisions of the State and Federal courts construing the Statutes close with cases published as of September 25, 1999, reported in:

North Western Reporter, Second Series	-----598 N.W.2d 631
Minnesota Reports	-----312 Minn. (Discontinued)
Supreme Court Reporter	-----119 S.Ct. 2418
United States Reports	-----521 U.S. (part)
Lawyers' Edition, Second Series	-----145 L.Ed.2d (part)
Federal Reporter, Third Series	-----184 F.3d 826
Federal Supplement, Second Series	-----53 F.Supp.2d 1354
Federal Rules Decisions	-----187 F.R.D. 292
Bankruptcy Reporter	-----237 B.R. 864
Federal Claims Reporter	-----44 Fed.Cl. 473
Opinions of the Attorney General	-----Op.Atty.Gen.No. 1035, August 23, 1999

Other Standard Reports

For subsequent judicial constructions, pending the publication of the next supplementary service, see Table of Statutes Construed in the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

Annotations prepared from Law Review Commentaries and the Opinions of the Attorney General, the Ethical Practices Board, and the Lawyer's Professional Responsibility Board are also included in the pocket parts and supplementary pamphlets, where appropriate.

Additionally, Library References to Key Number Digests and to Corpus Juris Secundum provide a convenient aid to research. Administrative Code References provide access to administrative rules adopted by state agencies. Amendment notes, highlighting significant legislative changes in the text of the statutes, are editorially prepared and included in the pocket parts for the convenience of the user.

For the Numerical Table of Chapters of Minnesota Statutes and Minnesota Statutes Annotated, see Volume 3 Pocket Part.

PREFACE

Later laws and annotations will be cumulated in subsequent Pamphlets and Pocket Parts. For advance copies of laws enacted at subsequent sessions of the Legislature, see the Minnesota Session Law Service or the WESTLAW MN-LEGIS Database.

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ABBREVIATIONS

A.B.A.J. -----	American Bar Association Journal
A.L.R. -----	American Law Reports
A.L.R.2d -----	American Law Reports, Second Series
A.L.R.3d -----	American Law Reports, Third Series
A.L.R.4th -----	American Law Reports, Fourth Series
A.L.R.5th -----	American Law Reports, Fifth Series
A.L.R.Fed. -----	American Law Reports, Federal
App. -----	Appendix
Art. -----	Article
B.R. -----	Bankruptcy Reporter
Bench & B. Minn. -----	Bench and Bar
Bench & B. Interim Minn. -----	Bench and Bar Interim
c. -----	Chapter of Act
Ch. -----	Chapter
C.J.S. -----	Corpus Juris Secundum
Cl. -----	Clause
Cl.Ct. -----	Claims Court Reporter
Const. -----	Constitution
Creighton L.Rev. -----	Creighton Law Review
Eff. -----	Effective
Evid. -----	Rules of Evidence
Ex.Sess. -----	Extraordinary Session
Fed.Cl. -----	Federal Claims Reporter
F.2d -----	Federal Reporter, Second Series
F.3d -----	Federal Reporter, Third Series
F.R.D. -----	Federal Rules Decisions
F.Supp. -----	Federal Supplement
1st Sp. -----	First Special Session
Gen.St. -----	General Statutes
Hamline J.Pub.L. & Pol'y -----	Hamline Journal of Public Law and Policy
Hamline L.Rev. -----	Hamline University Law Review
Hennepin Law. -----	Hennepin Lawyer
⊞ (Key Number) -----	State Digest and other units of the American Digest System
L.Ed. -----	U.S. Reports, Lawyers' Edition
L.Ed.2d -----	U.S. Reports, Lawyers' Edition, Second Series
Minn. -----	Minnesota Supreme Court Reports
Minn.J.L. & Pol. -----	Minnesota Journal of Law and Politics
Minn.L.Rev. -----	Minnesota Law Review
Minn.St. -----	Minnesota Statutes
Minn.Trial Law. -----	Minnesota Trial Lawyer
N.W. -----	Northwestern Reporter
N.W.2d -----	Northwestern Reporter, Second Series
No. -----	Number

ABBREVIATIONS

Op. Atty. Gen. -----	Opinions of the Attorney General
Par. -----	Paragraph
PEB -----	Permanent Editorial Board for the Uniform Commercial Code
P.L. -----	Public Law
Prof. Resp. Bd. -----	Lawyers Professional Responsibility Board
Pub. St. -----	Public Statutes
Rev. Laws -----	Revised Laws
RCP -----	Rules of Civil Procedure
RCrP -----	Rules of Criminal Procedure
RCAP -----	Rules of Civil Appellate Procedure
Sec. -----	Section of the Act
Sp. Sess. -----	Special Session
St. -----	Statutes
Subd. -----	Subdivision
Subsec. -----	Subsection
S.Ct. -----	Supreme Court Reporter
U.L.A. -----	Uniform Laws Annotated
U.S. -----	United States Reports
U.S.C.A. -----	United States Code Annotated
Wm. Mitchell L. Rev. -----	William Mitchell Law Review

OFFICIAL STATE STATUTES

The text of M.S.A., West's Minnesota Statutes Annotated, is based on the text of the official statutes of the State of Minnesota. Through the pocket part system, changes in the official text brought about by legislative action or editorial modification are made a part of M.S.A. annually.

The present numbering structure of the official statutes is a decimal system developed unofficially in 1941 and made official for the first time in 1945. Since 1945 there have been a number of publications of the official statutes, or supplements thereof, incorporating new and amendatory matter as well as editorial modifications supplied by the Office of the Revisor of Statutes. The following tabulation lists the publications of the official statutes. It also lists the legislative action included in the particular publication.

Minnesota Statutes 1945-----	Codifies all general matter through Laws 1945
Minnesota Statutes 1949-----	Merges Laws 1947 and 1949
Minnesota Statutes 1953-----	Merges Laws 1951 and 1953
Minnesota Statutes 1957-----	Merges Laws 1955 and 1957
Minnesota Statutes 1961-----	Merges Laws 1959 and 1961
Minnesota Statutes 1965-----	Merges Laws 1963 and 1965
Minnesota Statutes 1967-----	Merges Laws 1967
Minnesota Statutes 1969-----	Merges Laws 1969
Minnesota Statutes 1971-----	Merges Laws 1971
Minnesota Statutes 1973 Supp. -----	Contains Laws 1973
Minnesota Statutes 1974-----	Merges 1973 Supp. and Laws 1974
Minnesota Statutes 1975 Supp. -----	Contains Laws 1975
Minnesota Statutes 1976-----	Merges 1975 Supp. and Laws 1976
Minnesota Statutes 1977 Supp. -----	Contains Laws 1977
Minnesota Statutes 1978-----	Merges 1977 Supp. and Laws 1978
Minnesota Statutes 1979 Supp. -----	Contains Laws 1979
Minnesota Statutes 1980-----	Merges 1979 Supp. and Laws 1980
Minnesota Statutes 1981 Supp. -----	Contains Laws 1981 and Laws 1981, 1st and 2nd Special Sessions
Minnesota Statutes 1982-----	Merges 1981 Supp., Laws 1981, 3rd Special Session and Laws 1982, 1st and 2nd Special Sessions
Minnesota Statutes 1983 Supp. -----	Contains Laws 1982, 3rd Special Session and Laws 1983
Minnesota Statutes 1984-----	Merges 1983 Supp. and Laws 1984
Minnesota Statutes 1985 Supp. -----	Contains Laws 1985, and Laws 1985, 1st Special Session
Minnesota Statutes 1986-----	Merges 1985 Supp., Laws 1986, and Laws 1986, 1st Special Session

OFFICIAL STATE STATUTES

Minnesota Statutes 1987 Supp. -----	Contains Laws 1987 and Laws 1987, 1st Special Session
Minnesota Statutes 1988 -----	Merges 1987 Supp. and Laws 1988
Minnesota Statutes 1989 Supp. -----	Contains Laws 1989
Minnesota Statutes 2nd 1989 Supp. -----	Contains Laws 1989, 1st Special Session
Minnesota Statutes 1990 -----	Merges 1989 Supp., and 2nd 1989 Supp., and Laws 1990
Minnesota Statutes 1991 Supp. -----	Contains Laws 1991
Minnesota Statutes 1992 -----	Merges 1991 Supp. and Laws 1992
Minnesota Statutes 1993 Supp. -----	Contains Laws 1993 and Laws 1993, 1st Special Session
Minnesota Statutes 1994 -----	Merges 1993 Supp., Laws 1994 and Laws 1994, 1st Special Session
Minnesota Statutes 1995 Supp. -----	Contains Laws 1995 and Laws 1995, 1st Special Session
Minnesota Statutes 1996 -----	Merges 1995 Supp. and Laws 1996
Minnesota Statutes 1997 Supp. -----	Contains Laws 1997 and Laws 1997, 1st and 2nd Special Sessions
Minnesota Statutes 1998 -----	Merges 1997 Supp., Laws 1998, and Laws 1998, 1st Special Session
Minnesota Statutes 1999 Supp. -----	Contains Laws 1999

SESSION LAW NUMBERING—1978 AND FOLLOWING YEARS

Beginning in 1978, chapters of the session laws of the regular sessions are numbered consecutively for each biennium with the year of the session preceding the chapter number.

The 1977 Session of the 70th Legislature contained 455 chapters cited as Laws 1977, Chapters 1 to 455, and the 1978 Session of the 70th Legislature contained 341 chapters cited as Laws 1978, Chapters 456 to 797.

The 1979 Session of the 71st Legislature contained 340 chapters cited as Laws 1979, Chapters 1 to 340, and the 1980 Session of the 71st Legislature contained 277 chapters cited as Laws 1980, Chapters 341 to 618.

The 1981 Regular Session of the 72nd Legislature contains 370 chapters cited as Laws 1981, Chapters 1 to 370. The First Special Session of 1981 contains 5 chapters cited as Laws 1981, 1st Sp.Sess., Chapters 1 to 5. The Second Special Session of 1981 contains 6 chapters cited as Laws 1981, 2nd Sp.Sess., Chapters 1 to 6. The Third Special Session of 1981 contains 3 chapters cited as Laws 1981, 3rd Sp.Sess., Chapters 1 to 3. The 1982 Regular Session of the 72nd Legislature contains 272 chapters cited as Laws 1982, Chapters 371 to 642. The First Special Session of 1982 contains 3 chapters cited as Laws 1982, 1st Sp.Sess., Chapters 1 to 3. The Second Special Session of 1982 contains 2 chapters cited as Laws 1982, 2nd Sp.Sess., Chapters 1 and 2. The Third Special Session of 1982 contains 1 chapter cited as Laws 1982, 3rd Sp.Sess., Chapter 1.

The 1983 Regular Session of the 73rd Legislature contains 375 chapters cited as Laws 1983, chapters 1 to 375.

The 1984 Regular Session of the 73rd Legislature contains 283 chapters cited as Laws 1984, chapters 376 to 658.

The 1985 Regular Session of the 74th Legislature contains 309 chapters cited as Laws 1985, chapters 1 to 309. The 1985 First Special Session contains 18 chapters cited as Laws 1985, 1st Sp., chapters 1 to 18.

The 1986 Regular Session of the 74th Legislature contains 166 chapters cited as Laws 1986, chapters 310 to 475. The 1986 First Special Session contains 3 chapters cited as Laws 1986, 1st Sp., chapters 1 to 3.

The 1987 Regular Session of the 75th Legislature contains 405 chapters cited as Laws 1987, chapters 1 to 405. The 1987 First Special Session contains 5 chapters cited as Laws 1987, 1st Sp., chapters 1 to 5.

The 1988 Regular Session of the 75th Legislature contains 315 chapters cited as Laws 1988, chapters 406 to 720.

The 1989 Regular Session of the 76th Legislature contains 356 chapters cited as Laws 1989, chapters 1 to 356. The 1989 First Special Session contains 2 chapters cited as Laws 1989, 1st Sp., chapters 1 and 2.

The 1990 Regular Session of the 76th Legislature contains 256 chapters cited as Laws 1990, chapters 357 to 612.

The 1991 Regular Session of the 77th Legislature contains 356 chapters cited as Laws 1991, chapters 1 to 356.

The 1992 Regular Session of the 77th Legislature contains 247 chapters cited as Laws 1992, chapters 357 to 603.

SESSION LAW NUMBERING

The 1993 Regular Session of the 78th Legislature contains 375 chapters cited as Laws 1993, chapters 1 to 375. The 1993 First Special Session contains 6 chapters cited as Laws 1993, 1st Sp., chapters 1 to 6.

The 1994 Regular Session of the 78th Legislature contains 273 chapters cited as Laws 1994, chapters 376 to 648. The 1994 First Special Session contains 1 chapter cited as Laws 1994, 1st Sp., chapter 1.

The 1995 Regular Session of the 79th Legislature contains 265 chapters cited as Laws 1995, chapters 1 to 265. The 1995 First Special Session contains 3 chapters cited as Laws 1995, 1st Sp., chapters 1 to 3.

The 1996 Regular Session of the 79th Legislature contains 206 chapters cited as Laws 1996, chapters 266 to 471.

The 1997 Regular Session of the 80th Legislature contains 251 chapters cited as Laws 1997, chapters 1 to 251. The 1997 First Special Session contains 5 chapters cited as Laws 1997, 1st Sp., chapters 1 to 5. The 1997 Second Special Session contains 3 chapters cited as Laws 1997, 2nd Sp., chapters 1 to 3.

The 1998 Regular Session of the 80th Legislature contains 257 chapters cited as Laws 1998, chapters 252 to 408. The 1998 First Special Session contains 3 chapters cited as Laws 1998, 1st Sp., chapters 1 to 3.

The 1999 Regular Session of the 81st Legislature contains 250 chapters cited as Laws 1999, chapters 1 to 250.

EFFECTIVE DATES OF LAWS

The session law citations for 1973 and subsequent sessions which follow the text of sections appearing in this pocket part include designated effective dates. The absence of a date means that the general effective date applies or that the date for appropriation acts apply, or that other variations described in notes are controlling.

M.S.A. § 645.02, as amended by Laws 1959, c. 368, § 4, Laws 1971, c. 196, § 1, and Laws 1987, c. 384, art. 1, § 48, provides: "Each act, except one making appropriations, enacted finally at any session of the legislature takes effect on August 1 next following its final enactment, unless a different date is specified in the act. A special law required to be approved by the local government unit affected before it goes into effect becomes effective as to the approving unit the day following the day on which the certificate of approval prescribed by section 645.021 is filed with the secretary of state, unless a later date is specified in the act. When approval of such a special law is required by two or more local government units before it may become effective, the day after the day when the last of the required certificates is filed is the effective date, unless a later date is specified in the act."

"An appropriation act or an act having appropriation items enacted finally at any session of the legislature takes effect at the beginning of the first day of July next following its final enactment, unless a different date is specified in the act."

"Each act takes effect at 12:01 a.m. on the day it becomes effective, unless a different time is specified in the act."

Prior to the 1971 amendment of M.S.A. § 645.02, the general effective date for session laws was one day following final enactment. Final enactment was construed to be the date the bill was signed by the Governor. Laws 1988, c. 479, § 5, effective January 1, 1989 amended the definition of "final enactment" or "enacted finally" contained in § 645.01, subd. 2 to read: "Final enactment" or "enacted finally" for a bill passed by the legislature and signed by the governor means the date and time of day the governor signed the bill. For a bill passed by the legislature and allowed to become law without signature by the governor, it means the end of the last day on which the governor could have returned the bill with a veto to the legislature. For a bill passed by the legislature but vetoed and reconsidered and approved by the legislature after the veto, it means the date and time of day of the final legislative vote approving the vetoed bill."

Beginning on January 1, 1973, the general effective date of "on August 1 next following its final enactment", as now appearing in section 645.02, went into effect. The following tabulation indicates the last date session laws were signed for each session since the 1973 session. With the exception of the 1981 3rd Special Session, the 1982 3rd Special Session, the 1989 1st Special Session, and the 1994 1st Special Session, the general effective date for all laws of all sessions since 1973 was August 1st of the year of the session. The 1982 3rd Special Session and the 1994 1st Special Session contained no legislation with general effective dates.

Year	Session	Latest Approval Date
1973	Regular	June 7, 1973
1974	Regular	April 11, 1974
1975	Regular	June 6, 1975
1976	Regular	April 20, 1976
1977	Regular	June 9, 1977

EFFECTIVE DATES OF LAWS

Year	Session	Latest Approval Date
1978	Regular	April 7, 1978
1979	Regular	June 5, 1979
1979	Extra	June 7, 1979
1980	Regular	April 25, 1980
1981	Regular	June 4, 1981
1981	1st Special	June 6, 1981
1981	2nd Special	July 8, 1981
1981	3rd Special	Jan. 19, 1982
1982	Regular	March 31, 1982
1982	1st Special	March 31, 1982
1982	2nd Special	July 12, 1982
1982	3rd Special	Dec. 13, 1982
1983	Regular	June 14, 1983
1984	Regular	May 7, 1984
1985	Regular	June 7, 1985
1985	1st Special	July 5, 1985
1986	Regular	April 1, 1986
1986	1st Special	April 11, 1986
1987	Regular	June 18, 1987
1987	1st Special	June 25, 1987
1988	Regular	May 7, 1988
1989	Regular	June 3, 1989
1989	1st Special	Oct. 4, 1989
1990	Regular	May 8, 1990
1991	Regular	June 4, 1991
1992	Regular	April 29, 1992
1993	Regular	May 24, 1993
1993	1st Special	May 27, 1993
1994	Regular	May 17, 1994
1994	1st Special	August 31, 1994
1995	Regular	June 1, 1995
1995	1st Special	June 8, 1995
1996	Regular	April 17, 1996
1997	Regular	June 3, 1997
1997	1st Special	June 30, 1997
1997	2nd Special	August 22, 1997
1998	Regular	April 21, 1998
1998	1st Special	April 22, 1998
1999	Regular	May 25, 1999

Year	Session	Latest Approval Date
1977	Regular	June 8, 1977
1978	Regular	April 20, 1978
1978	Regular	June 6, 1978
1979	Regular	April 11, 1979
1979	Regular	June 7, 1979

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Thus: M.S.A. § —

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MINNESOTA STATUTES ANNOTATED

WATER

Chapter 103E

DRAINAGE

GENERAL PROVISIONS

103E.011. Drainage authority powers

Notes of Decisions

1. In general

McLeod County Bd. of Com'rs as Drainage Authority for McLeod County Ditch No. 8 v. State,

Dept. of Natural Resources, App.1996, 549 N.W.2d 630, [main volume] review denied.

PROCEDURE TO REPAIR DRAINAGE SYSTEMS

103E.705. Repair procedure

Notes of Decisions

2. Construction with other laws

McLeod County Bd. of Com'rs as Drainage Authority for McLeod County Ditch No. 8 v. State, Dept. of Natural Resources, App.1996, 549 N.W.2d 630, [main volume] review denied.

routine maintenance and repairs made by a drainage authority pursuant to this section. Op.Atty.Gen., 602-j, July 10, 1997.

7. Cost of repairs

Statutory limitation on cost of repairs made pursuant to a repair petition does not apply to

14. Standing

McLeod County Bd. of Com'rs as Drainage Authority for McLeod County Ditch No. 8 v. State, Dept. of Natural Resources, App.1996, 549 N.W.2d 630, [main volume] review denied.

103E.715. Procedure for repair by petition

Notes of Decisions

Routine repairs 12.5

12.5. Routine repairs

Statutory limitation on cost of repairs made pursuant to a repair petition does not apply to

routine maintenance and repairs made by a drainage authority. Op.Atty.Gen., 602-j, July 10, 1997.

PROTECTION OF WATER RESOURCES

Chapter 103F

PROTECTION OF WATER RESOURCES

FLOODPLAIN MANAGEMENT	Section	REINVEST IN MINNESOTA RESOURCES ACT
Section		
103F.105. Floodplain management policy.		
103F.141. Rules.		
103F.155. Flood protection plans.	103F.515. Conservation reserve program.	
103F.161. Flood hazard mitigation grants.		
		WETLAND PRESERVATION AREAS
MINNESOTA RIVER BASIN JOINT POWERS BOARD	103F.612. Wetland preservation areas.	
103F.378. Minnesota river basin joint powers board.	103F.613. Duration of wetland preservation area.	
		CLEAN WATER PARTNERSHIP
SOIL EROSION	103F.725. Financial and technical assistance.	
103F.461. Groundwater education.		

FLOODPLAIN MANAGEMENT

103F.105. Floodplain management policy

(a) The legislature finds:

(1) a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and

(2) the public interest necessitates sound land use development as land is a limited and irreplaceable resource, and the floodplains of this state are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding.

(b) It is the policy of this state to reduce flood damages through floodplain management, stressing nonstructural measures such as floodplain zoning and floodproofing, flood warning practices, and other indemnification programs that reduce public liability and expense for flood damages.

(c) It is the policy of this state:

(1) not to prohibit but to guide development of the floodplains consistent with legislative findings;

(2) to provide state coordination and assistance to local governmental units in floodplain management;

(3) to encourage local governmental units to adopt, enforce and administer sound floodplain management ordinances;

(4) to provide the commissioner of natural resources with authority necessary to carry out a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state; and

(5) to provide incentives for communities to participate in the national flood insurance program and for citizens of Minnesota to take actions such as purchasing and maintaining flood insurance to reduce future flood damage to private property.

Amended by Laws 1997, 2nd Sp., c. 2, § 17, eff. Aug. 23, 1997.

103F.141. Rules

Subdivision 1. Authority and criteria. The commissioner shall adopt rules to implement sections 103F.101 to 103F.155, including:

PROTECTION OF WATER RESOURCES

§ 103F.161

(1) criteria for determining the floodplain uses that may be permitted without creating an unreasonable public hazard or unduly restricting the capacity of the floodplain to carry and discharge a regional flood;

(2) variance procedures; and

(3) the establishment of criteria for alternative or supplemental floodplain management measures such as floodproofing, subdivision rules, building codes, sanitation rules, and flood warning systems.

Subd. 2. Repealed by Laws 1997, 2nd Sp., c. 2, § 32, eff. Aug. 23, 1997.

Laws 1990, c. 391, art. 6, § 10.

103F.155. Flood protection plans

Subdivision 1. Construction of flood protection measures. If emergency flood protection measures are undertaken, the affected local governmental unit shall submit to the commissioner a plan outlining their use as a part of a future comprehensive flood emergency program. The plan shall be submitted within 120 days after construction.

Subd. 2. Commissioner's review. (a) The commissioner shall review the plan and consult with the state office of civil defense and other appropriate state and federal agencies. Following the review, the commissioner shall accept, require modification, or reject the plan.

(b) If required modifications are not made, or if the plan is rejected, the commissioner shall order the removal of the emergency protection measures and shall not provide grant money under section 103F.161 until the plan is approved or the required modifications are made.

Amended by Laws 1998, c. 401, § 36, eff. April 22, 1998.

103F.161. Flood hazard mitigation grants

Subdivision 1. Grants authorized. (a) The commissioner may make grants to local governments to:

(1) conduct floodplain damage reduction studies to determine the most feasible, practical, and effective methods and programs for mitigating the damages due to flooding within flood prone rural and urban areas and their watersheds; and

(2) plan and implement flood mitigation measures.

(b) The commissioner may cooperate with the North Dakota state water commission, local governmental units, and local water management organizations in this state and in North Dakota, and the United States Army Corps of Engineers to develop hydrologic models and conduct studies to evaluate the practicality and feasibility of flood control measures along the Red river from East Grand Forks to the Canadian border. The commissioner may make grants to local governmental units for these purposes. Flood control measures that may be investigated include agricultural and urban levee systems, wetland restoration, floodwater impoundments, farmstead ring-dikes, and stream maintenance activities.

Subd. 2. Action on grant applications. (a) A local government may apply to the commissioner for a grant on forms provided by the commissioner. The commissioner shall confer with the local government requesting the grant and may make a grant up to \$150,000 based on the following considerations:

(1) the extent and effectiveness of mitigation measures already implemented by the local government requesting the grant;

(2) the feasibility, practicality, and effectiveness of the proposed mitigation measures and the associated nonflood related benefits and detriments;

(3) the level of grant assistance that should be provided to the local government, based on available facts regarding the nature, extent, and severity of flood problems;

(4) the frequency of occurrence of severe flooding that has resulted in declaration of the area as a flood disaster area by the President of the United States;

(5) the economic, social, and environmental benefits and detriments of the proposed mitigation measures;

(6) whether the floodplain management ordinance or regulation adopted by the local government meets the minimum standards established by the commissioner, the degree of enforcement of the ordinance or regulation, and whether the local government is complying with the ordinance or regulation;

(7) the degree to which the grant request is consistent with local water plans developed under chapters 103B and 103D;

(8) the financial capability of the local government to solve its flood hazard problems without financial assistance; and

(9) the estimated cost and method of financing of the proposed mitigation measures based on local money and federal and state financial assistance.

(b) If the amount of the grant requested is \$150,000 or more, the commissioner shall determine, under the considerations in paragraph (a), whether any part of the grant should be awarded. The commissioner must submit an appropriation request to the governor and the legislature for funding consideration before each odd-numbered year, consisting of requests or parts of grant requests of \$150,000 or more. The commissioner must prioritize the grant requests, under the considerations in paragraph (a), beginning with the projects the commissioner determines most deserving of financing.

(c) A grant may not exceed one-half the total cost of the proposed mitigation measures.

(d) After July 1, 1991, grants made under this section may be made to local governments whose grant requests are part of, or responsive to, a comprehensive local water plan prepared under chapter 103B or 103D.

Amended by Laws 1998, c. 401, § 37, eff. April 22, 1998.

MISSISSIPPI HEADWATERS PLANNING AND MANAGEMENT

103F.371. Responsibilities of other governmental units

Notes of Decisions

In general 1

1. In general

City ordinance zoning newly annexed land in Mississippi headwaters area is not subject to re-

quirement for formal review and certification by the Mississippi Headwaters Board, but must nonetheless comply with the Board's comprehensive land use plan. Op.Atty.Gen., 59a-32, May 11, 1999.

103F.375. Incorporation and annexation

Notes of Decisions

In general 1

1. In general

City ordinance zoning newly annexed land in Mississippi headwaters area is not subject to re-

quirement for formal review and certification by the Mississippi Headwaters Board, but must nonetheless comply with the Board's comprehensive land use plan. Op.Atty.Gen., 59a-32, May 11, 1999.

MINNESOTA RIVER BASIN JOINT POWERS BOARD

103F.378. Minnesota river basin joint powers board

Subdivision 1. Duties. The Minnesota river basin joint powers board, established under section 471.59 for the purpose of coordinating efforts to improve water quality in the Minnesota river and achieving the goal of making the Minnesota river suitable for fishing and swimming by the year 2005, has the following duties:

(1) coordination of comprehensive cleanup goals for the Minnesota river by coordinating the work plans of the 12 major watersheds and the member counties of the joint powers

board, state agencies, and the University of Minnesota in cleanup efforts and submission of periodic river cleanup plans for submission to the governor and the legislature;

(2) advising on the development and use of monitoring and evaluation systems in the Minnesota river and the incorporation of the data obtained from these systems into the planning process;

(3) conducting public meetings of the board on at least a quarterly basis at locations within the Minnesota river basin;

(4) conducting an ongoing information and education program concerning the status of the Minnesota river, including an annual conference on the state of the Minnesota river;

(5) providing periodic reports and budget requests to the governor's office and the chairs of the agriculture and environment and natural resources committees of the senate and the house of representatives regarding progress on meeting river water quality management goals and future funding required for this effort;

(6) advising on the development of projects within the 12 major watersheds that are scientifically sound, have landowner support, and reduce inputs of pollutants into the Minnesota river basin; and

(7) administering the distribution of project implementation funds for the 12 major watersheds by approving projects, identifying matching components for each project, and tracking the results achieved for each project.

Subd. 2. Membership. Upon acceptance of the joint powers agreement, each member county that agrees to join the board shall have one county commissioner as its delegate to the board and one county commissioner as an alternate. A technical and citizen advisory committee shall be established to advise the board consisting of a technical representative from each of the counties in the basin and citizens who are not county employees but who have an interest in agriculture, conservation, sporting activities, and other relevant areas as determined by the board.

Amended by Laws 1997, c. 216, § 92.

SOIL EROSION

103F.461. Groundwater education

(a) In each even-numbered year, the board of water and soil resources must review groundwater education activities with local units of government and develop recommendations for improvement in a report to the environmental quality board for review and then to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture as part of the groundwater policy report in section 103A.204. The board must work with agencies and interested groups with responsibility for groundwater education in preparing the report.

(b) The board must ensure that the biennial review of groundwater education with local units of government is coordinated with the Minnesota environmental education advisory board and the nonpoint source education and information strategy of the pollution control agency.

(c) Grants for innovative groundwater education strategies to local units of government identified in this section may be awarded by the board of water and soil resources.

Amended by Laws 1999, c. 86, art. 3, § 10.

REINVEST IN MINNESOTA RESOURCES ACT

103F.515. Conservation reserve program

Subdivision 1. Establishment of program. The board, in consultation with the commissioner of agriculture and the commissioner of natural resources, shall establish and administer a conservation reserve program. The board shall implement sections 103F.505 to

103F.531. Selection of land for the conservation reserve program must be based on its potential for fish and wildlife production, reducing erosion, and protecting water quality.

Subd. 2. Eligible land. (a) Land may be placed in the conservation reserve program if the land meets the requirements of paragraphs (b) and (c).

(b) Land is eligible if the land:

- (1) is marginal agricultural land;
- (2) is adjacent to marginal agricultural land and is either beneficial to resource protection or necessary for efficient recording of the land description;
- (3) consists of a drained wetland;
- (4) is land that with a windbreak would be beneficial to resource protection;
- (5) is land in a sensitive groundwater area;
- (6) is riparian land;
- (7) is cropland or noncropland adjacent to restored wetlands to the extent of up to four acres of cropland or one acre of noncropland for each acre of wetland restored;
- (8) is a woodlot on agricultural land;
- (9) is abandoned building site on agricultural land, provided that funds are not used for compensation of the value of the buildings; or
- (10) is land on a hillside used for pasture.

(c) Eligible land under paragraph (a) must:

- (1) be owned by the landowner, or a parent or other blood relative of the landowner, for at least one year before the date of application;
- (2) be at least five acres in size, except for a drained wetland area, riparian area, windbreak, woodlot, or abandoned building site, or be a whole field as defined by the United States Agricultural Stabilization and Conservation Services;
- (3) not be set aside, enrolled or diverted under another federal or state government program unless enrollment in the conservation reserve program would provide additional conservation benefits or a longer term of enrollment than under the current federal or state program; and
- (4) have been in agricultural crop production for at least two of the last five years before the date of application except drained wetlands, riparian lands, woodlots, abandoned building sites, or land on a hillside used for pasture.

(d) In selecting drained wetlands for enrollment in the program, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985.

(e) In selecting land for enrollment in the program, highest priority must be given to permanent easements that are consistent with the purposes stated in section 103F.505.

Subd. 3. Conservation easements. (a) The board may acquire, or accept by gift or donation, conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on land for windbreak purposes, under subdivision 2, may be only of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years. The negotiation and acquisition of easements authorized by this section are exempt from the contractual provisions of chapters 16B and 16C.

(b) The board may acquire, or accept by gift or donation, flowage easements when necessary for completion of wetland restoration projects.

Subd. 4. Nature of property rights acquired. (a) A conservation easement must prohibit:

- (1) alteration of wildlife habitat and other natural features, unless specifically approved by the board;
- (2) agricultural crop production, unless specifically approved by the board for wildlife management purposes;

(3) grazing of livestock except, for agreements entered before the effective date of Laws 1990, chapter 391, grazing of livestock may be allowed only if approved by the board after consultation with the commissioner of natural resources, in the case of severe drought, or a local emergency declared under section 12.29; and

(4) spraying with chemicals or mowing, except as necessary to comply with noxious weed control laws or emergency control of pests necessary to protect public health.

(b) A conservation easement is subject to the terms of the agreement provided in subdivision 5.

(c) A conservation easement must allow repairs, improvements, and inspections necessary to maintain public drainage systems provided the easement area is restored to the condition required by the terms of the conservation easement.

Subd. 5. Agreements by landowner. The board may enroll eligible land in the conservation reserve program by signing an agreement in recordable form with a landowner in which the landowner agrees:

- (1) to convey to the state a conservation easement that is not subject to any prior title, lien, or encumbrance;
- (2) to seed the land subject to the conservation easement, as specified in the agreement, to establish and maintain perennial cover of either a grass-legume mixture or native grasses for the term of the easement, at seeding rates determined by the board; or to plant trees or carry out other long-term capital improvements approved by the board for soil and water conservation or wildlife management;
- (3) to convey to the state a permanent easement for the wetland restoration;
- (4) that other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if it supports natural vegetation or has not been used in agricultural crop production, will not be converted to agricultural crop production or pasture; and
- (5) that the easement duration may be lengthened through mutual agreement with the board in consultation with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or facilitate its administration.

Subd. 6. Payments for conservation easements and establishment of cover. (a) The board must make the following payments to the landowner for the conservation easement and agreement:

- (1) to establish the perennial cover or other improvements required by the agreement:
 - (i) except as provided in items (ii) and (iii), up to 75 percent of the total eligible cost not to exceed \$75 per acre for limited duration easements and 100 percent of the total eligible cost not to exceed \$100 per acre for perpetual easements;
 - (ii) for native species restoration, 75 percent of the total eligible cost not to exceed \$150 per acre for limited duration easements and 100 percent of the total eligible cost not to exceed \$200 per acre for perpetual easements; and
 - (iii) 100 percent of the total eligible cost of wetland restoration not to exceed \$300 per acre;
- (2) for the cost of planting trees required by the agreement, up to 75 percent of the total eligible cost not to exceed \$200 per acre for limited duration easements, and 100 percent of the total eligible cost not to exceed \$300 per acre for perpetual easements;
- (3) for a permanent easement, 70 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application;
- (4) for an easement of limited duration, 90 percent of the present value of the average of the accepted bids for the federal conservation reserve program, as contained in Public Law Number 99-198, in the relevant geographic area and on bids accepted at the time of easement application; or

(5) an alternative payment system for easements based on cash rent or a similar system as may be determined by the board.

(b) For hillside pasture conservation easements, the payments to the landowner in paragraph (a) for the conservation easement and agreement must be reduced to reflect the value of similar property.

(c) The board may establish a payment system for flowage easements acquired under this section.

(d) For wetland restoration projects involving more than one conservation easement, state payments for restoration costs may exceed the limits set forth in this section for an individual easement provided the total payment for the restoration project does not exceed the amount payable for the total number of acres involved.

(e) The board may use available nonstate funds to exceed the payment limits in this section.

Subd. 7. Easement renewal. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the board and the landowner, under the terms of this section. The board may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

Subd. 8. Correction of conservation easement boundary lines. To correct errors in legal descriptions for easements that affect the ownership interests in the state and adjacent landowners, the board may, in the name of the state, with the approval of the attorney general, convey, without consideration, interests of the state necessary to correct legal descriptions of boundaries. The conveyance must be by quitclaim deed or release in a form approved by the attorney general.

Subd. 9. Enforcement and damages. (a) A landowner who violates the term of a conservation easement or agreement under this section, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

(b) Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney's fees, and any other appropriate relief to enforce sections 103F.505 to 103F.531 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

Amended by Laws 1998, c. 386, art. 2, § 31; Laws 1999, c. 231, § 127.

Historical and Statutory Notes

1998 Legislation

Laws 1998, c. 386, art. 2, § 99, provides:
"This article is effective July 1, 1998, except that it does not apply to any part of the procurement

process that results from a solicitation dated before July 1, 1998."

WETLAND PRESERVATION AREAS

103F.612. Wetland preservation areas

Subdivision 1. Definition. For purposes of sections 103F.612 to 103F.616, "wetland" has the meaning given in section 103G.005, subdivision 19.

Subd. 2. Application. (a) A wetland owner may apply to the county where a wetland is located for designation of a wetland preservation area in a high priority wetland area identified in a comprehensive local water plan, as defined in section 103B.3363, subdivision 3, and located within a high priority wetland region designated by the board of water and soil

resources, if the county chooses to accept wetland preservation area applications. The application must be made on forms provided by the board. If a wetland is located in more than one county, the application must be submitted to the county where the majority of the wetland is located.

(b) The application shall be executed and acknowledged in the manner required by law to execute and acknowledge a deed and must contain at least the following information and other information the board of soil and water resources requires:

(1) legal description of the area to be approved, which must include an upland strip at least 16-½ feet in width around the perimeter of wetlands within the area and may include total upland area of up to four acres for each acre of wetland;

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

(3) name and address of the owner;

(4) a statement by the owner covenanting that the land will be preserved as a wetland and will only be used in accordance with conditions prescribed by the board of water and soil resources and providing that the restrictive covenant will be binding on the owner and the owner's successors or assigns, and will run with the land.

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

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

Subd. 4. Recording. Within five days of the date of application, the county shall forward the application to the county recorder for recording or to the registrar of titles for filing if the land is registered. The county recorder shall record the application containing the restrictive covenant and return it to the applicant. If the land is registered, the registrar of titles shall memorialize the application containing the restrictive covenant upon the certificate of title. The recorder or registrar of titles shall notify the county that the application has been recorded or memorialized.

Subd. 5. Commencement of wetland preservation area. The wetland is a wetland preservation area commencing 30 days from the date the county notifies the landowner of acceptance of the application under subdivision 3.

Subd. 6. Fee. The county may require an application fee to defray administrative costs of the program.

Subd. 7. Maps. The county shall maintain wetland preservation area maps illustrating land covenanted as wetland preservation areas.

Amended by Laws 1999, c. 11, art. 1, §§ 4, 5, eff. Jan. 1, 2000.

103F.613. Duration of wetland preservation area

Subdivision 1. General. A wetland preservation area continues in existence until the owner initiates expiration as provided in this section. The date of expiration must be at least eight years from the date of notice under this section.

Subd. 2. Termination by owner. The owner may initiate expiration of a wetland preservation area by notifying the county on a form prepared by the board of water and soil resources and made available in each county. The notice must describe the property involved and must state the date of expiration. The notice may be rescinded by the owner during the first two years following notice.

Subd. 3. Notice and recording; termination. When the county receives notice under subdivision 2, the county shall forward the original notice to the county recorder for recording or to the registrar of titles for filing if the land is registered and shall notify the regional development commission, where applicable, the board of water and soil resources, and the county soil and water conservation district of the date of expiration. The benefits and limitations of the wetland preservation area and the restrictive covenant filed with the application cease on the date of expiration. If the land is registered, the registrar of titles shall cancel the memorial of the application containing the restrictive covenant upon the certificate of title on the effective date of the expiration.

Subd. 4. Early expiration. A wetland preservation area may be terminated earlier than as provided in this section only in the event of a public emergency upon petition from the owner or county to the governor. The determination of a public emergency must be made by the governor through executive order under section 4.035 and chapter 12. The executive order must identify the wetland preservation area, the reasons requiring the action, and the date of expiration.

Amended by Laws 1999, c. 11, art. 1, § 6, eff. Jan. 1, 2000.

CLEAN WATER PARTNERSHIP

103F.725. Financial and technical assistance

Subdivision 1. Financial assistance. (a) The agency may award grants for up to 50 percent of the eligible cost for:

- (1) the development of a diagnostic study and implementation plan; and
- (2) the implementation of that plan.

(b) The agency shall determine which costs are eligible costs and grants shall be made and used only for eligible costs.

Subd. 1a. Financial assistance; loans. (a) Up to \$36,000,000 of the balance in the water pollution control revolving fund in section 446A.07, as determined by the public facilities authority, may be provided to the commissioner for the establishment of a clean water partnership loan program.

(b) The agency may award loans for up to 100 percent of the costs associated with activities identified by the agency as best management practices pursuant to section 319 and section 320 of the federal Water Quality Act of 1987,¹ as amended, including associated administrative costs.

(c) Loans may be used to finance clean water partnership grant project eligible costs not funded by grant assistance.

(d) The interest rate, at or below market rate, and the term, not to exceed 20 years, shall be determined by the agency in consultation with the public facilities authority.

(e) The repayment must be deposited in the water pollution control revolving fund under section 446A.07.

(f) The local unit of government receiving the loan is responsible for repayment of the loan.

(g) For the purpose of obtaining a loan from the agency, a local government unit may provide to the agency its general obligation note. All obligations incurred by a local government unit in obtaining a loan from the agency must be in accordance with chapter 475, except that so long as the obligations are issued to evidence a loan from the agency to the local government unit, an election is not required to authorize the obligations issued, and the amount of the obligations shall not be included in determining the net indebtedness of the local government unit under the provisions of any law or chapter limiting the indebtedness.

Subd. 2. Technical assistance. The agency may provide technical assistance to local units of government to ensure efficient and effective development and implementation of projects and coordination of projects with other water management activities.

Amended by Laws 1998, c. 404, § 36, eff. April 22, 1998.

¹33 U.S.C.A. §§ 1329, 1330.

Chapter 103G

WATERS OF THE STATE

GENERAL PROVISIONS		Section
		WATER DIVERSION AND APPROPRIATION
Section		
103G.005.	Definitions.	103G.271. Appropriation and use of waters.
		GENERAL PERMIT PROCEDURE
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		STREAMS
WORK AFFECTING PUBLIC WATERS		103G.705. Stream protection and improvement loan program.
103G.245.	Work in public waters.	

GENERAL PROVISIONS

103G.005. Definitions

Subdivision 1. Applicability. The definitions in this section apply to this chapter.

Subd. 2. Abandon. "Abandon" means to give up the use and maintenance of structures or improvements to realty and to surrender them to deterioration. Abandon does not refer to intent to surrender or relinquish title to or a possessory interest in the real property where the structures or improvements are located.

Subd. 2a. Agricultural land. "Agricultural land" means: land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; farm yards; associated building sites; and public and private drainage systems and field roads located on any of the foregoing.

Subd. 3. Altered natural watercourse. "Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.

Subd. 4. Appropriating. "Appropriating" means withdrawal, removal, or transfer of water from its source regardless of how the water is used.

Subd. 5. Artificial watercourse. "Artificial watercourse" means a watercourse artificially constructed by human beings where a natural watercourse was not previously located.

Subd. 6. Basin of origin. "Basin of origin" means the drainage basin of the Great Lakes, the Red River of the North, the Mississippi River, or the Missouri River.

Subd. 6a. Board. "Board" means the board of water and soil resources.

Subd. 7. Commissioner. "Commissioner" means the commissioner of natural resources.

Subd. 8. Consumptive use. "Consumptive use" means water that is withdrawn from its source for immediate further use in the area of the source and is not directly returned to the source.

Subd. 9. Director. "Director" means the director of the division of waters of the department of natural resources.

Subd. 10. Division. "Division" means the division of waters of the department of natural resources.

Subd. 10a. 50 to 80 percent area. "50 to 80 percent area" means a county or watershed with at least 50 but less than 80 percent of the presettlement wetland acreage intact.

Subd. 10b. Greater than 80 percent area. "Greater than 80 percent area" means a county or watershed where 80 percent or more of the presettlement wetland acreage is intact and:

- (1) ten percent or more of the current total land area is wetland; or
- (2) 50 percent or more of the current total land area is state or federal land.

Subd. 10c. Hayland. "Hayland" means an area that was mechanically harvested or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes in six of the last ten years prior to January 1, 1991.

Subd. 10d. Less than 50 percent area. "Less than 50 percent area" means a county or watershed with less than 50 percent of the presettlement wetland acreage intact or any county or watershed not defined as a "greater than 80 percent area" or "50 to 80 percent area."

Subd. 10e. Local government unit. "Local government unit" means:

- (1) outside of the seven-county metropolitan area, a city council or county board of commissioners or their delegate;
- (2) in the seven-county metropolitan area, a city council, a town board under section 368.01, or a watershed management organization under section 103B.211, or their delegate; and
- (3) on state land, the agency with administrative responsibility for the land.

Subd. 11. Meandered lake. "Meandered lake" means a body of water except streams located within the meander lines shown on plats made by the United States General Land Office.

Subd. 12. Municipality. "Municipality" means a home rule charter or statutory city.

Subd. 13. Natural watercourse. "Natural watercourse" means a natural channel that has definable beds and banks capable of conducting confined runoff from adjacent land.

Subd. 13a. Once-through system. "Once-through system" means a space heating, ventilating, air conditioning (HVAC), or refrigeration system used for any type of temperature or humidity control application, utilizing groundwater, that circulates through the system and is then discharged without reusing it for a higher priority purpose.

Subd. 14. Ordinary high water level. "Ordinary high water level" means the boundary of waterbasins, watercourses, public waters, and public waters wetlands, and:

- (1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;
- (2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel; and
- (3) for reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Subd. 14a. Pasture. "Pasture" means an area that was grazed by domesticated livestock or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes in six of the last ten years prior to January 1, 1991.

Subd. 14b. Political subdivision. "Political subdivision" means a county, city, town, school district, or other local government jurisdiction to which the state provides state aids or on which the state imposes state mandates.

Subd. 14c. Presettlement wetland. "Presettlement wetland" means a wetland or public waters wetland that existed in this state at the time of statehood in 1858.

Subd. 14d. Project. "Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the local government unit. As used in this chapter, a project may not be split into components or phases for the sole purpose of gaining additional exemptions.

Subd. 15. Public waters. (a) "Public waters" means:

(1) waterbasins assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221, except wetlands less than 80 acres in size that are classified as natural environment lakes;

(2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;

(3) meandered lakes, excluding lakes that have been legally drained;

(4) waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;

(5) waterbasins designated as scientific and natural areas under section 84.033;

(6) waterbasins located within and totally surrounded by publicly owned lands;

(7) waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;

(8) waterbasins where there is a publicly owned and controlled access that is intended to provide for public access to the waterbasin;

(9) natural and altered watercourses with a total drainage area greater than two square miles;

(10) natural and altered watercourses designated by the commissioner as trout streams; and

(11) public waters wetlands, unless the statute expressly states otherwise.

(b) Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

Subd. 15a. Public waters wetlands. "Public waters wetlands" means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, that are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas.

Subd. 15b. Shoreland wetland protection zone. "Shoreland wetland protection zone" means:

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

(i) 1,000 feet from the ordinary high water level of a waterbasin that is a public water identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; or

(ii) 300 feet from the ordinary high water level of a watercourse identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; and

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

(i) 1,000 feet from the ordinary high water level of a waterbasin that is a public water that is at least ten acres in size within municipalities and at least 25 acres in size in unincorporated areas; or

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

Subd. 15c. Silviculture. "Silviculture" means the management of forest trees.

Subd. 15d. Utility. "Utility" means a sanitary sewer, storm sewer, potable water distribution, and transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications.

Subd. 16. Waterbasin. "Waterbasin" means an enclosed natural depression with definable banks, capable of containing water, that may be partly filled with waters of the state and is discernible on aerial photographs.

Subd. 17. Waters of the state. "Waters of the state" means surface or underground waters, except surface waters that are not confined but are spread and diffused over the land. Waters of the state includes boundary and inland waters.

Subd. 17a. Watershed. "Watershed" means the 81 major watershed units delineated by the map, "State of Minnesota Watershed Boundaries-1979".

Subd. 17b. Wetland type. "Wetland type" means a wetland type classified according to Wetlands of the United States, U.S. Fish and Wildlife Service Circular 39 (1971 edition), as summarized in this subdivision.

(1) "Type 1 wetlands" are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing season. Type 1 wetlands are located in depressions and in overflow bottomlands along watercourses, and in which vegetation varies greatly according to season and duration of flooding and includes bottomland hardwoods as well as herbaceous growths.

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

(3) "Type 3 wetlands" are inland shallow fresh marshes in which soil is usually waterlogged early during a growing season and often covered with as much as six inches or more of water. Vegetation includes grasses, bulrushes, spikerushes, and various other marsh plants such as cattails, arrowheads, pickerelweed, and smartweeds. These marshes may nearly fill shallow lake basins or sloughs, or may border deep marshes on the landward side and are also common as seep areas on irrigated lands.

(4) "Type 4 wetlands" are inland deep fresh marshes in which soil is usually covered with six inches to three feet or more of water during the growing season. Vegetation includes cattails, reeds, bulrushes, spikerushes, and wild rice. In open areas, pondweeds, naiads, coontail, water milfoils, waterweeds, duckweeds, waterlilies, or spatterdocks may occur. These deep marshes may completely fill shallow lake basins, potholes, limestone sinks, and sloughs, or they may border open water in such depressions.

(5) "Type 5 wetlands" are inland open fresh water, shallow ponds, and reservoirs in which water is usually less than ten feet deep and is fringed by a border of emergent vegetation similar to open areas of type 4 wetland.

(6) "Type 6 wetlands" are shrub swamps in which soil is usually waterlogged during growing season and is often covered with as much as six inches of water. Vegetation includes alders, willows, buttonbush, dogwoods, and swamp-privet. This type occurs mostly along sluggish streams and occasionally on floodplains.

(7) "Type 7 wetlands" are wooded swamps in which soil is waterlogged at least to within a few inches of the surface during growing season and is often covered with as much as one foot of water. This type occurs mostly along sluggish streams, on floodplains, on flat uplands, and in shallow basins. Trees include tamarack, arborvitae, black spruce, balsam, red maple, and black ash. Northern evergreen swamps usually have a thick ground cover of mosses. Deciduous swamps frequently support beds of duckweeds and smartweeds.

(8) "Type 8 wetlands" are bogs in which soil is usually waterlogged and supports a spongy covering of mosses. This type occurs mostly in shallow basins, on flat uplands, and along sluggish streams. Vegetation is woody or herbaceous or both. Typical plants are heath shrubs, sphagnum moss, and sedges. In the north, leatherleaf, Labrador-tea, cranberries, carex, and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

Subd. 18. Renumbered subd. 15a in St.1996.

Subd. 19. Wetlands. (a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

(1) have a predominance of hydric soils;

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

(3) under normal circumstances support a prevalence of such vegetation.

(b) Wetlands does not include public waters wetlands as defined in subdivision 15a.

Amended by Laws 1997, c. 2, § 8.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 2, was a corrections bill which, by its title, provided for the correction of miscellaneous oversights, inconsistencies, ambiguities, unintended results, and technical errors of a noncontro-

versial nature. Section 8, in subd. 14a, substituted "in six of the last ten years prior to January 1, 1991" for "of the last years prior to January 1, 1991".

Notes of Decisions

1. Ordinary high water level

Commissioner of Natural Resources was entitled to deference in his interpretation of statutory mandate that person have public-waters work permit to change course of public waters, and, thus, Commissioner, who determined that permit requirement would not be imposed on watershed district's

project involving water above ordinary high water level of lake, was not clearly compelled by law to make permit decision in such case. Pelican Group of Lakes Imp. Dist. v. Minnesota Dept. of Natural Resources, App.1999, 589 N.W.2d 517, review denied.

WETLANDS

103G.221. Drainage of public waters wetlands

Subdivision 1. Drainage of public waters wetlands generally prohibited without replacement. Public waters wetlands may not be drained, and a permit authorizing drainage of public waters wetlands may not be issued, unless the public waters wetlands to be drained are replaced by wetlands that will have equal or greater public value.

Subds. 2, 3. Repealed by Laws 1991, c. 354, art. 10, § 12.

Amended by Laws 1999, c. 86, art. 1, § 19.

103G.2241. Exemptions

Notes of Decisions

Incidental wetlands 2

1. Drainage system repairs

Even if surplus water or wetland had been in existence for 25 years, record did not demonstrate that activity proposed by landowner, installation of drainage outlet, constituted any type of maintenance or repair of existing drainage system, so as to support application of Wetland Conservation Act's exemption for maintenance or repair. Drum v. Minnesota Bd. of Water & Soil Resources, App. 1998, 574 N.W.2d 71.

2. Incidental wetlands

Landowner failed to prove that wetland was enlarged solely as result of township's construction of road without culverts, which allegedly sealed off drainage ditch and interfered with marsh's seepage function, and thus, exception in Wetland Conservation Act under which replacement plan is not required for wetlands created solely as result of actions taken for purpose other than creating wetland did not apply; long-time resident in area stated that he had never seen water in ditch, and record showed that surface area of marsh had steadily increased in size from 1958 to 1992. Drum v. Minnesota Bd. of Water & Soil Resources, App.1998, 574 N.W.2d 71.

103G.2242. Wetland value replacement plans

Subdivision 1. Rules. (a) The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values; may address the state establishment and administration of a wetland banking program for public and private projects, which may include provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and include the planting of trees or shrubs.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules or a comprehensive wetland protection and management plan approved under section 103G.2243.

(c) If the local government unit fails to apply the rules, or fails to implement a local comprehensive wetland protection and management plan established under section 103G.2243, the government unit is subject to penalty as determined by the board.

Subd. 2. Evaluation. Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a technical evaluation panel after an on-site inspection. The technical evaluation panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, and a technical professional with expertise in water resources management appointed by the local government unit. The panel shall use the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (1979 edition). The panel shall provide the wetland determination to the local government unit that must approve a replacement plan under this section, and may recommend approval or denial of the plan. The authority must consider and include the decision of the technical evaluation panel in their approval or denial of a plan.

Subd. 3. Replacement completion. Replacement of wetland values must be completed prior to or concurrent with the actual draining or filling of a wetland, or an irrevocable bank letter of credit or other security acceptable to the local government unit must be given to the local government unit to guarantee the successful completion of the replacement.

Subd. 4. Decision. Upon receiving and considering all required data, the local government unit reviewing replacement plan applications, banking plan applications, and exemption or no-loss determination requests must act on all replacement plan applications, banking plan applications, and exemption or no-loss determination requests in compliance with section 15.99.

Subd. 5. Processing fee. The local government unit may charge processing fees in amounts not greater than are necessary to cover the reasonable costs of implementing the rules adopted under subdivision 1.

Subd. 6. Notice of application. (a) Except as provided in paragraph (b), within ten days of receiving an application for approval of a replacement plan under this section, copies of the complete application must be mailed to the members of the technical evaluation panel, the managers of the watershed district if one exists, and the commissioner of natural resources. Individual members of the public who request a copy shall be provided information to identify the applicant and the location and scope of the project.

(b) Within ten days of receiving an application for approval of a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the application must be mailed to the members of the technical evaluation panel, individual members of the public who request a copy, and the commissioner of natural resources.

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

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

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

Subd. 7. Notice of decision. Within ten days of the approval or denial of a replacement plan under this section, a summary of the approval or denial must be mailed to members of the technical evaluation panel, the applicant, individual members of the public who request a copy, the managers of the watershed district, if one exists, and the commissioner of natural resources.

Subd. 8. Public comment period. Except for activities impacting less than 10,000 square feet of wetland, before approval or denial of a replacement plan under this section, comments may be made by the public to the local government unit for a period of 15 days or more, as determined by the local government unit.

Subd. 9. Appeal. Appeal of a replacement plan, exemption, or no-loss decision may be obtained by mailing a petition and payment of a filing fee of \$200, which shall be retained by the board to defray administrative costs, to the board within 15 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 15 days, the decision becomes final. The local government unit may require the petitioner to post a letter of credit, cashier's check, or cash in an amount not to exceed \$500. If the petition for hearing is accepted, the amount posted must be returned to the petitioner. Appeal may be made by the wetland owner, by any of those to whom notice is required to be mailed under subdivision 7, or by 100 residents of the county in which a majority of the wetland is located. Within 30 days after receiving a petition, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that the appeal is meritless, trivial, or brought solely for the purposes of delay; that the petitioner has not exhausted all local administrative remedies; or that the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit. In determining whether to grant the appeal, the board shall also consider the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or petitioner, and the consequences of the delay resulting from the appeal. All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of chapter 14. A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

Subd. 10. Local requirements. The rules adopted under subdivision 1 shall allow for local government units to use their own notice and public comment procedures so long as the requirements of this section are satisfied.

Subd. 11. Wetland heritage advisory committee. The governor shall establish a wetland heritage advisory committee consisting of a balanced diversity of interests including agriculture, environmental, and sporting organizations, land development organizations, local government organizations, and other agencies. The committee must consist of nine members including the commissioner of agriculture, or a designee of the commissioner, the commissioner of natural resources, and seven members appointed by the governor. The governor's appointees must include one county commissioner, one representative each from a statewide sporting organization, a statewide conservation organization, an agricultural commodity group, one faculty member of an institution of higher education with expertise in the natural sciences, and one member each from two statewide farm organizations. The committee shall advise the board on the development of rules under this section and, after rule adoption, shall meet at least twice a year to review implementation of the program, to identify strengths and weaknesses, and to recommend changes to the rules and the law to improve the program.

Subd. 12. Replacement credits. (a) No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, and is completed prior to any draining or filling of the wetland.

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

(c) Notwithstanding section 103G.222, subdivision 1, paragraph (i), the following actions are eligible for replacement credit as determined by the local government unit, including enrollment in a statewide wetlands bank:

(1) Reestablishment of permanent vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price supports or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991. Replacement credit may not exceed 50 percent of the total wetland area vegetatively restored;

(2) Buffer areas of permanent vegetative cover established on upland adjacent to replacement wetlands, provided that the upland buffer must be established at the time of wetland replacement and replacement credit for the buffer may not exceed 75 percent of the replacement wetland area and may only be used for replacement above a 1:1 ratio;

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

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

Subd. 13. Repealed by Laws 1996, c. 462, § 44, eff. April 12, 1996.

Amended by Laws 1998, c. 312, § 4.

Notes of Decisions

Appeal 3
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1. Jurisdiction

When the petitioner is a member of the technical evaluation panel (TEP) and Board of Water and Soil Resources (BWSR), BWSR has subject matter jurisdiction over the appeal despite petitioner's failure to submit a filing fee. Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Board of Water and Soil Resources (BWSR) had subject matter jurisdiction over appeal of city's approval of landowner's wetland replacement plan, even though petitioner did not pay filing fee, where petitioner was member of both technical evaluation panel (TEP) that reviewed plan and BWSR. Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Board of Water and Soil Resources had statutory authority to promulgate rules regulating wetlands not covered by public waters inventory map, and thus, soil and water conservation district acted within its statutory authority when it promulgated rule clarifying that Wetland Conservation Act's jurisdiction included wetlands greater than ten acres not inventoried on public waters inventory maps, despite claim that legislature had delegated authority to regulate such wetlands solely to Commissioner of Natural Resources. Drum v. Minnesota Bd. of Water & Soil Resources, App.1998, 574 N.W.2d 71.

2. Standing

Member of a technical evaluation panel (TEP) has standing to appeal a local government unit's (LGU's) decision to Board of Water and Soil Resources (BWSR). Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Member of technical evaluation panel (TEP) had standing to appeal city's approval of landowner's to wetland replacement plan Board of Water and Soil

Resources (BWSR). Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

3. Appeal

Petition that lists the parties, the procedural posture, and the stated basis for the local government unit's (LGU's) decision is sufficient to permit review by Board of Water and Soil Resources (BWSR). Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Petition seeking was sufficient to permit Board of Water and Soil Resources (BWSR) to review city's approval of landowner's wetland replacement plan, where letter directed to BWSR listed parties, cited the procedural posture of case, and noted that city denied technical evaluation panel's (TEP) recommendation that city reject plan due to landowner's failure to file a complete application. Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Board of Water and Soil Resources (BWSR) was properly constituted when five of its 17 members reviewed city's approval of landowner's wetland replacement plan, sitting as a dispute resolution committee (DRC) and BWSR adopted DRC's rec-

ommendation to reverse city's decision. Board Order, Kells (BWSR) v. City of Rochester, App. 1999, 597 N.W.2d 332.

Board of Water and Soil Resources (BWSR) complies with statutory requirements by utilizing a five-member committee to hear appeals. Board Order, Kells (BWSR) v. City of Rochester, App. 1999, 597 N.W.2d 332.

4. Review

Court of Appeals reviews a Board of Water and Soil Resources (BWSR) decision pursuant to the procedures in the Administrative Procedure Act for reviewing an agency's decision in a contested-case proceeding. Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Board of Water and Soil Resources (BWSR) decision reversing city's approval of landowner's wetland replacement plan was subject to review pursuant to the procedures in the Administrative Procedure Act for administrative agency decision in a contested-case proceeding. Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

103G.2243. Local comprehensive wetland protection and management plans

Subdivision 1. General requirements; notice and participation. (a) As an alternative to the rules adopted under section 103G.2242, subdivision 1, and the public value criteria established or approved under section 103B.3355, a comprehensive wetland protection and management plan may be developed by a local government unit, or one or more local government units operating under a joint powers agreement, provided that:

(1) a notice is made at the beginning of the planning process to the board, the commissioner of natural resources, the pollution control agency, the commissioner of agriculture, local government units, and local citizens to actively participate in the development of the plan; and

(2) the plan is implemented by ordinance as part of the local government's official controls under chapter 394, for a county; chapter 462, for a city; chapter 366, for a town; and by rules adopted under chapter 103D, for a watershed district; and chapter 103B, for a watershed management organization.

(b) An organization that is invited to participate in the development of the local plan, but declines to do so and fails to participate or to provide written comments during the local review process, waives the right during board review to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan.

Subd. 2. Plan contents. A comprehensive wetland protection and management plan may:

(1) provide for classification of wetlands in the plan area based on:

(i) an inventory of wetlands in the plan area;

(ii) an assessment of the wetland functions listed in section 103B.3355, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board under that section; and

(iii) the resulting public values;

(2) vary application of the sequencing standards in section 103G.222, subdivision 1, paragraph (b), for projects based on the classification and criteria set forth in the plan;

(3) vary the replacement standards of section 103G.222, subdivision 1, paragraphs (f) and (g), based on the classification and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan, and so long as:

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

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

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

(5) in a greater than 80 percent area, based on the classification and criteria set forth in the plan, expand the application of the exemptions in section 103G.2241, subdivision 1, paragraph (a), clause (4), to also include nonagricultural land, provided there is no net loss of wetland values.

Subd. 3. Board review and approval; mediation; judicial review. (a) The plan is deemed approved 60 days after the local government submits the final plan to the board, unless the board disagrees with the plan as provided in paragraph (d).

(b) The board may not disapprove a plan if the board determines the plan meets the requirements of this section.

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

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

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

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

Subd. 4. Effective date; replacement decisions. (a) The plan becomes effective as provided in subdivision 3, paragraphs (d) to (f), and after adoption of the plan into the official controls of the local government.

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

Subd. 5. Plan amendments. Amendments to the plan become effective upon completion of the same process required for the original plan.

Subd. 6. Water planning processes apply. Except as otherwise provided for in this section, all other requirements relating to development of the plan must be consistent with the water plan processes under sections 103B.231 and 103B.311.

Amended by Laws 1997, c. 2, § 9; Laws 1998, c. 312, § 5.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 2, was a corrections bill which, by its title, provided for the correction of miscellaneous oversights, inconsistencies, ambiguities, unintended results, and technical errors of a noncontro-

versial nature. Section 9, in subd. 2, cl. (3)(ii), inserted the reference to § 103G.2242, and in subd. 3, par. (f), substituted "this section" for "this subdivision".

WORK AFFECTING PUBLIC WATERS

103G.245. Work in public waters

Subdivision 1. Permit requirement. Except as provided in subdivisions 2, 11, and 12, the state, a political subdivision of the state, a public or private corporation, or a person must have a public waters work permit to:

(1) construct, reconstruct, remove, abandon, transfer ownership of, or make any change in a reservoir, dam, or waterway obstruction on public waters; or

(2) change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters.

Subd. 2. Exceptions. A public waters work permit is not required for:

(1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E; or

(2) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters.

Subd. 3. Permit application. Application for a public waters work permit must be in writing to the commissioner on forms prescribed by the commissioner. The commissioner may issue a state general permit to a governmental subdivision or to the general public for classes of activities having minimal impact upon public waters under which more than one project may be conducted under a single permit.

Subd. 4. Structures in or adjacent to public waters. (a) The following definitions apply to this subdivision:

(1) "boathouse" means a floating structure that is moored by spuds, cables, ropes, anchors, or chains that may be intended for habitation and has walls, a roof, and either an open well for boats or a floor from wall to wall and does not include houseboats; and

(2) "houseboat" means a motorboat that has either a pontoon or a flat-bottomed hull configuration, and a permanent enclosed superstructure housing, at a minimum, built-in sleeping, cooking, and toilet facilities.

(b) The commissioner, subject to the approval of the county board, may grant and prescribe terms and conditions for granting public waters work permits to establish, construct, maintain, and control wharves, docks, piers, levees, breakwaters, basins, canals, and hangars in or adjacent to public waters of the state, except within the corporate limits of a municipality.

(c) Boathouses are prohibited on public waters of Minnesota, except as allowed by paragraph (d).

(d) The commissioner may issue a public waters work permit for boathouses only:

(1) in areas of historic use for such structures, as determined by the commissioner;

(2) when approved by the local government unit; and

(3) where the boathouse is in existence on public waters prior to January 1, 1997.

(e) A boathouse in existence on public waters prior to January 1, 1997, may be repaired or replaced, provided that the repairs or replacement are consistent with the permit issued by the commissioner under paragraph (d).

Subd. 5. Delegation of permit authority to local units of government. The commissioner may delegate public waters work permit authority to the appropriate county or municipality or to watershed districts or watershed management organizations that have elected to assert local authority over protected waters. The public waters work permit authority must be delegated under guidelines of the commissioner and the delegation must be done by agreement with the involved county, municipality, watershed district, or water management organization and in compliance with section 103G.315.

Subd. 6. Conformance with water and related land resource management plans. A public waters work permit may not be issued under this section if the project does not conform to state, regional, and local water and related land resources management plans.

Subd. 7. Effect on environment and mitigation. (a) A public waters work permit may be issued only if the project will involve a minimum encroachment, change, or damage to the environment, particularly the ecology of the waterway.

(b) If a major change in the resource is justified, public waters work permits must include provisions to compensate for the detrimental aspects of the change.

Subd. 8. Excavation in public waters. Public waters work permits for projects that involve excavation in the beds of public waters may be granted only if:

- (1) the area where the excavation will take place is covered by a shoreland zoning ordinance approved by the commissioner;
- (2) the work under the permit is consistent with the shoreland zoning ordinance; and
- (3) the permit includes provisions for the deposition of excavated materials.

Subd. 9. Project affecting floodwaters. (a) A public waters work permit for a project affecting floodwaters may be granted only if:

- (1) the area covered by the public waters work permit is governed by a floodplain management ordinance approved by the commissioner; and
- (2) the conduct authorized by the public waters work permit is consistent with the floodplain management ordinance, if the commissioner has determined that enough information is available for the adoption of a floodplain ordinance.

(b) A public waters work permit involving the control of floodwaters by structural means, such as dams, dikes, levees, and channel improvements, may be granted only after the commissioner has considered all other flood damage reduction alternatives. In developing a policy on placing emergency levees along the banks of public waters under emergency flood conditions, the commissioner shall consult and cooperate with the office of emergency services.

Subd. 10. Change of level of public waters. (a) A public waters work permit that will change the level of public waters may not be issued unless:

- (1) the shoreland adjacent to the waters to be changed is governed by a shoreland zoning ordinance approved by the commissioner; and
- (2) the change in water level is consistent with the shoreland zoning ordinance.

(b) Standards and procedures for use in deciding the level of public waters must ensure that the rights of all persons are protected when public water levels are changed and must provide for:

- (1) technical advice to persons involved;
- (2) establishing alternatives to help local agencies resolve water level conflicts; and
- (3) mechanics necessary for local resolution of water problems within the state guidelines.

Subd. 11. Emergency repairs. (a) The owner of a dam, reservoir, control structure, or waterway obstruction may make repairs that are immediately necessary in case of emergency

without a public waters work permit under subdivision 1. The owner must immediately notify the commissioner of the emergency and of the emergency repairs being made. The owner must apply for a public waters work permit for the emergency repairs and necessary permanent repairs as soon as practicable.

(b) This subdivision does not apply to routine maintenance not affecting the safety of the structures.

(c) If the commissioner declares there is an emergency and repairs or remedial action are immediately necessary to safeguard life and property, the repairs, remedial action, or both, must be started immediately by the owner.

Subd. 12. Operation of structure prior to permit requirement. The owner of a dam, reservoir, control structure, or waterway obstruction constructed before a public waters work permit was required by law must maintain and operate the dam, reservoir, control structure, or waterway obstruction in a manner approved and prescribed by rule by the commissioner.

Amended by Laws 1997, c. 247, § 1, eff. July 1, 1997.

Notes of Decisions

3. Permit authority

Commissioner of Natural Resources was entitled to deference in his interpretation of statutory mandate that person have public-waters work permit to change course of public waters, and, thus, Commissioner, who determined that permit requirement would not be imposed on watershed district's

project involving water above ordinary high water level of lake, was not clearly compelled by law to make permit decision in such case. *Pelican Group of Lakes Imp. Dist. v. Minnesota Dept. of Natural Resources*, App.1999, 589 N.W.2d 517, review denied.

WATER DIVERSION AND APPROPRIATION

103G.271. Appropriation and use of waters

Subdivision 1. Permit required. (a) Except as provided in paragraph (b), the state, a person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state may not appropriate or use waters of the state without a water use permit from the commissioner.

(b) This section does not apply to use for a water supply by less than 25 persons for domestic purposes.

(c) The commissioner may issue a state general permit for temporary appropriation of water to a governmental subdivision or to the general public for classes of activities that have minimal impact upon waters of the state. The general permit may authorize more than one project and the appropriation or use of more than one source of water. Water use permit processing fees and reports required under subdivision 6 and section 103G.281, subdivision 3, are required for each project or water source that is included under a general permit, except that no fee or report is required for uses totaling less than 15,000,000 gallons annually.

Subd. 2. Permits must be consistent with state and local plans. A water use permit may not be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans if the regional and local plans are consistent with statewide plans.

Subd. 3. Permit restriction during summer months. The commissioner must not modify or restrict the amount of appropriation from a groundwater source authorized in a water use permit issued to irrigate agricultural land under section 103G.295, subdivision 2, between May 1 and October 1, unless the commissioner determines the authorized amount of appropriation endangers a domestic water supply.

Subd. 4. Minimum use exemption and local approval of low use permits. (a) Except for local permits under section 103B.211, subdivision 4, a water use permit is not required for the appropriation and use of less than a minimum amount prescribed by the commissioner by rule.

(b) Water use permits for more than the minimum amount but less than an intermediate amount prescribed by rule must be processed and approved at the municipal, county, or regional level based on rules adopted by the commissioner.

(c) The rules must include provisions for reporting to the commissioner the amounts of water appropriated under local permits.

Subd. 4a. Mt. Simon-Hinckley aquifer. (a) The commissioner may not issue new water use permits that will appropriate water from the Mt. Simon-Hinckley aquifer in a metropolitan county, as defined in section 473.121, subdivision 4, unless the appropriation is for potable water use, there are no feasible or practical alternatives to this source, and a water conservation plan is incorporated with the permit.

(b) The commissioner shall terminate all permits authorizing appropriation and use of water from the Mt. Simon-Hinckley aquifer for once-through systems in a metropolitan county, as defined in section 473.121, subdivision 4, by December 31, 1992.

Subd. 5. Prohibition on once-through water use permits. (a) The commissioner may not, after December 31, 1990, issue a water use permit to increase the volume of appropriation from a groundwater source for a once-through cooling system using in excess of 5,000,000 gallons annually.

(b) Except as provided in paragraph (c), once-through system water use permits using in excess of 5,000,000 gallons annually, must be terminated by the commissioner by the end of their design life but not later than December 31, 2010. Existing once-through systems are required to convert to water efficient alternatives within the design life of existing equipment.

(c) Paragraph (b) does not apply where groundwater appropriated for use in a once-through system is subsequently discharged into a wetland or public waters wetland owned or leased by a nonprofit corporation if:

- (1) the membership of the corporation includes a local government unit;
- (2) the deed or lease requires that the area containing the wetland or public waters wetland be maintained as a nature preserve;
- (3) public access is allowed consistent with the area's status as a nature preserve; and
- (4) by January 1, 2003, the permittee incurs costs of developing the nature preserve and associated facilities that, when discounted to 1992 dollars, exceed twice the projected cost, as determined by the commissioner, of the conversion required in paragraph (b), discounted to 1992 dollars.

The costs incurred under clause (4) may include preparation of plans and designs; site preparation; construction of wildlife habitat structures; planting of trees and other vegetation; installation of signs and markers; design and construction of trails, docks, and access structures; and design and construction of interpretative facilities. The permittee shall submit an estimate of the cost of the conversion required in paragraph (b) to the commissioner by January 1, 1993, and shall annually report to the commissioner on the progress of the project and the level of expenditures.

Subd. 5a. Maintenance of surface water levels. Except as provided in subdivision 5, paragraph (c), the commissioner shall, by January 31, 1994, revoke all existing permits, and may not issue new permits, for the appropriation or use of groundwater in excess of 10,000,000 gallons per year for the primary purpose of maintaining or increasing surface water levels in the seven-county metropolitan area and in other areas of concern as determined by the commissioner. This subdivision does not apply until January 1, 1998, to a municipality that, by January 1, 1994, submits a plan acceptable to the commissioner for maintaining or increasing surface water levels using sources other than groundwater.

Subd. 6. Water use permit processing fee. (a) Except as described in paragraphs (b) to (f), a water use permit processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

- (1) 0.05 cents per 1,000 gallons for the first 50,000,000 gallons per year;
- (2) 0.10 cents per 1,000 gallons for amounts greater than 50,000,000 gallons but less than 100,000,000 gallons per year;

(3) 0.15 cents per 1,000 gallons for amounts greater than 100,000,000 gallons but less than 150,000,000 gallons per year;

(4) 0.20 cents per 1,000 gallons for amounts greater than 150,000,000 gallons but less than 200,000,000 gallons per year;

(5) 0.25 cents per 1,000 gallons for amounts greater than 200,000,000 gallons but less than 250,000,000 gallons per year;

(6) 0.30 cents per 1,000 gallons for amounts greater than 250,000,000 gallons but less than 300,000,000 gallons per year;

(7) 0.35 cents per 1,000 gallons for amounts greater than 300,000,000 gallons but less than 350,000,000 gallons per year;

(8) 0.40 cents per 1,000 gallons for amounts greater than 350,000,000 gallons but less than 400,000,000 gallons per year; and

(9) 0.45 cents per 1,000 gallons for amounts greater than 400,000,000 gallons per year.

(b) For once-through cooling systems, a water use processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

- (1) for nonprofit corporations and school districts, 15.0 cents per 1,000 gallons; and
- (2) for all other users, 20 cents per 1,000 gallons.

(c) The fee is payable based on the amount of water appropriated during the year and, except as provided in paragraph (f), the minimum fee is \$50.

(d) For water use processing fees other than once-through cooling systems:

- (1) the fee for a city of the first class may not exceed \$175,000 per year;
- (2) the fee for other entities for any permitted use may not exceed:
 - (i) \$35,000 per year for an entity holding three or fewer permits;
 - (ii) \$50,000 per year for an entity holding four or five permits;
 - (iii) \$175,000 per year for an entity holding more than five permits;
- (3) the fee for agricultural irrigation may not exceed \$750 per year;
- (4) the fee for a municipality that furnishes electric service and cogenerates steam for home heating may not exceed \$10,000 for its permit for water use related to the cogeneration of electricity and steam; and

(5) no fee is required for a project involving the appropriation of surface water to prevent flood damage or to remove flood waters during a period of flooding, as determined by the commissioner.

(e) Failure to pay the fee is sufficient cause for revoking a permit. A penalty of two percent per month calculated from the original due date must be imposed on the unpaid balance of fees remaining 30 days after the sending of a second notice of fees due. A fee may not be imposed on an agency, as defined in section 16B.01, subdivision 2, or federal governmental agency holding a water appropriation permit.

(f) The minimum water use processing fee for a permit issued for irrigation of agricultural land is \$10 for years in which:

- (1) there is no appropriation of water under the permit; or
- (2) the permit is suspended for more than seven consecutive days between May 1 and October 1.

Subd. 6a. Payment of fees for past unpermitted appropriations. An entity that appropriates water without a required permit under subdivision 1 must pay the applicable water use permit processing fee specified in subdivision 6 for the period during which the unpermitted appropriation occurred. This fee is in addition to any other fee or penalty assessed.

Subd. 7. Transfer of permit. A water use permit may be transferred to a successive owner of real property if the permittee conveys the real property where the source of water is located. The new owner must notify the commissioner immediately after the conveyance and request transfer of the permit.

Amended by Laws 1997, c. 104, § 1, eff. May 1, 1997; Laws 1998, c. 401, § 38, eff. April 22, 1998; Laws 1999, c. 231, § 128.

GENERAL PERMIT PROCEDURE

103G.301. General permit application procedures

Subdivision 1. Application documentation. (a) An application for a permit must be accompanied by:

- (1) maps, plans, and specifications describing the proposed appropriation and use of waters;
- (2) the changes, additions, repairs, or abandonment proposed to be made;
- (3) the waters of the state affected; and
- (4) other data the commissioner may require.

(b) The commissioner may require a statement of the effect the actions proposed in the permit application will have on the environment, including:

- (1) anticipated changes in water and related land resources;
- (2) unavoidable but anticipated detrimental effects; and
- (3) alternatives to the actions proposed in the permit application, including conservation measures to improve water use efficiencies and reduce water demand.

Text of subd. 2 effective until July 1, 2001.

Subd. 2. Permit application fees. (a) An application for a permit authorized under this chapter, and each request to amend or transfer an existing permit, must be accompanied by a permit application fee to defray the costs of receiving, recording, and processing the application or request to amend or transfer.

(b) The application fee for a permit to appropriate water, a permit to construct or repair a dam that is subject to dam safety inspection, a state general permit, or to apply for the state water bank program is \$75. The application fee for a permit to work in public waters or to divert waters for mining must be at least \$75, but not more than \$500, in accordance with a schedule of fees adopted under section 16A.1285.

Text of subd. 2 effective July 1, 2001.

Subd. 2. Permit application fees. An application for a permit authorized under this chapter, and each request to amend or transfer an existing permit, must be accompanied by a permit application fee to defray the costs of receiving, recording, and processing the application or request to amend or transfer.

Subd. 3. Field inspection fees. (a) In addition to the application fee, the commissioner may charge a field inspection fee for:

- (1) projects requiring a mandatory environmental assessment under chapter 116D;
 - (2) projects undertaken without a required permit or application; and
 - (3) projects undertaken in excess of limitations established in an issued permit.
- (b) The fee must be at least \$100 but not more than actual inspection costs.

(c) The fee is to cover actual costs related to a permit applied for under this chapter or for a project undertaken without proper authorization.

(d) The commissioner shall establish a schedule of field inspection fees under section 16A.1285. The schedule must include actual costs related to field inspection, including investigations of the area affected by the proposed activity, analysis of the proposed activity,

consultant services, and subsequent monitoring, if any, of the activity authorized by the permit.

Subd. 4. Refund of fees prohibited. A permit application or field inspection fee may not be refunded for any reason, even if the application is denied or withdrawn.

Subd. 5. State and federal agencies exempt from fee. A permit application or field inspection fee may not be imposed on any state agency, as defined in section 16B.01, or federal governmental agency applying for a permit.

Subd. 5a. Town fees limited. Notwithstanding this section or any other law, no permit application or field inspection fee charged to a town in connection with the construction or alteration of a town road, bridge, or culvert shall exceed \$100.

Subd. 6. Filing application. (a) An application for a permit must be filed with the commissioner and if the proposed activity for which the permit is requested is within a municipality, or is within or affects a watershed district or a soil and water conservation district, a copy of the application with maps, plans, and specifications must be served on the mayor of the municipality, the secretary of the board of managers of the watershed district, and the secretary of the board of supervisors of the soil and water conservation district.

(b) If the application is required to be served on a local governmental unit under this subdivision, proof of service must be included with the application and filed with the commissioner.

Subd. 7. Recommendation of local units of government. (a) If the proposed activity for which the permit is requested is within a municipality, or is within or affects a watershed district or a soil and water conservation district, the commissioner may obtain a written recommendation of the managers of the district and the board of supervisors of the soil and water conservation district or the mayor of the municipality before issuing or denying the permit.

(b) The managers, supervisors, or mayor must file a recommendation within 30 days after receiving of a copy of the application for permit.

Amended by Laws 1999, c. 250, art. 3, § 9, eff. July 1, 2001.

STREAMS

103G.705. Stream protection and improvement loan program

Subdivision 1. Loan program. (a) A political subdivision may apply to the commissioner on forms provided by the commissioner for a loan for up to 90 percent of the total local cost of a project to protect or improve a stream. The commissioner shall apportion loans according to the potential for prevention of immediate harm to the stream, the relative need for maintenance or improvements, the date of the application for the loan, and the availability of funds.

(b) By January 15 of each year, the commissioner must provide the legislature with a list of all applications received by the commissioner, the loan amounts requested, and a listing and explanation of the disposition of the applications.

(c) The commissioner must make the loan to the political subdivision in the amount determined by the commissioner and under the terms specified in this section. Loans made under this section do not require the approval of the electors of the political subdivision as provided in section 475.58 and do not constitute net debt for purposes of section 475.53 or any debt limitation provision of any special law or city charter.

(d) A loan made under this section must be repaid without interest over a period not to exceed ten years. The commissioner may charge an annual administrative fee to the political subdivision.

(e) A political subdivision receiving a loan made under this section must levy for the loan repayment beginning in the year the loan proceeds are received and succeeding years until the loan and the associated administrative costs are repaid. The levy must be for:

- (1) the amount of the annual loan repayment and the associated administrative costs; or

(2) the amount of the annual loan repayment and administrative costs less the amount the political subdivision certifies it has received from other sources for the loan repayment.

Subd. 2. Stream protection and improvement fund. There is established in the state treasury a stream protection and redevelopment fund. All repayments of loans made and administrative fees assessed under subdivision 1 must be deposited in this fund. Interest earned on money in the fund accrues to the fund and money in the fund is appropriated to the commissioner of natural resources for purposes of the stream protection and redevelopment program, including costs incurred by the commissioner to establish and administer the program.

Laws 1999, c. 231, § 129.

Chapter 103H

GROUNDWATER PROTECTION

Section	Section
GROUNDWATER QUALITY MONITORING	EVALUATION AND COMMON DETECTION OF POLLUTION
103H.175. Groundwater quality monitoring.	103H.275. Management of pollutants where groundwater is polluted.

GROUNDWATER QUALITY MONITORING

103H.175. Groundwater quality monitoring

Subdivision 1. Monitoring results to be submitted to the land management information center. The results of monitoring groundwater quality by state agencies and political subdivisions must be submitted to the land management information center.

Subd. 2. Computerized database. The land management information center shall maintain a computerized database of the results of groundwater quality monitoring in a manner that is accessible to the pollution control agency, department of agriculture, department of health, and department of natural resources. The center shall assess the quality and reliability of the data and organize the data in a usable format.

Subd. 3. Report. In each even-numbered year, the pollution control agency, in cooperation with other agencies participating in the monitoring of water resources, shall provide a draft report on the status of groundwater monitoring to the environmental quality board for review and then to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture as part of the report in section 103A.204.

Amended by Laws 1999, c. 86, art. 3, § 11.

EVALUATION AND COMMON DETECTION OF POLLUTION

103H.275. Management of pollutants where groundwater is polluted

Subdivision 1. Areas where groundwater pollution is detected. (a) If groundwater pollution is detected, a state agency or political subdivision that regulates an activity causing or potentially causing a contribution to the pollution identified shall promote implementation of best management practices to prevent or minimize the source of pollution to the extent practicable.

(b) The pollution control agency, or for agricultural chemicals and practices, the commissioner of agriculture may adopt water source protection requirements under subdivision 2 that are consistent with the goal of section 103H.001 and are commensurate with the groundwater pollution if the implementation of best management practices has proven to be ineffective.

(c) The water resources protection requirements must be:

- (1) designed to prevent and minimize the pollution to the extent practicable;
- (2) designed to prevent the pollution from exceeding the health risk limits; and
- (3) submitted to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture.

Subd. 2. Adoption of water resource protection requirements. (a) The pollution control agency, or for agricultural chemicals and practices, the commissioner of agriculture shall adopt by rule water resource protection requirements that are consistent with the goal of section 103H.001 to prevent and minimize the pollution to the extent practicable. The proposed rule must be submitted to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture before adoption. The water resource protection requirements must be based on the use and effectiveness of best management practices, the product use and practices contributing to the pollution detected, economic factors, availability, technical feasibility, implementability, and effectiveness. The water resource protection requirements may be adopted for one or more pollutants or a similar class of pollutants. A water resource protection requirement may not be adopted before January 1, 1991.

(b) Before the water resource protection requirements are adopted, the pollution control agency or the commissioner of agriculture for agricultural chemicals and practices must notify affected persons and businesses for comments and input in developing the water resource protection requirements.

(c) Unless the water resource protection requirements are to cover the entire state, the water resource protection requirements are only effective in areas designated by the commissioner of the pollution control agency by order or for agricultural chemicals and practices in areas designated by the commissioner of agriculture by order. The procedures for issuing the order and the effective date of the order must be included in the water resource protection requirements rule.

(d) The water resource protection requirements rule must contain procedures for notice to be given to persons affected by the rule and order of the commissioner. The procedures may include notice by publication, personal service, and other appropriate methods to inform affected persons of the rule and commissioner's order.

(e) A person who is subject to a water resource protection requirement may apply to the pollution control agency, or for agricultural chemicals and practices the commissioner of agriculture, and suggest an alternative protection requirement. Within 60 days after receipt, the agency or commissioner of agriculture must approve or deny the request. If the pollution control agency or commissioner of agriculture approves the request, an order must be issued approving the alternative protection requirement.

(f) A person who violates a water resource protection requirement relating to pollutants, other than agricultural chemicals, is subject to the penalties for violating a rule adopted under chapter 116. A person who violates a water resource protection requirement relating to agricultural chemicals and practices is subject to the penalties for violating a rule adopted under chapter 18D.

Amended by Laws 1999, c. 86, art. 3, § 12.

Chapter 103I

WELLS, BORINGS, AND UNDERGROUND USES

Section	Section
103I.005. Definitions.	103I.105. Advisory council on wells and borings.
JURISDICTION OVER WELLS AND BORINGS	WELL CONSTRUCTION AND OWNERSHIP
103I.101. Powers and duties of the commissioner of health.	103I.205. Well construction.
	103I.208. Notification filing fees and permit fees.

Section
103I.235. Real property sale; disclosure of location of wells.

WELL SEALING

103I.301. Well sealing requirements.
103I.341. Collection and enforcement of well sealing costs.

ELEVATOR SHAFT BORINGS

103I.401. Elevator shaft borings.

Section
LICENSING AND REGISTRATION

103I.501. Licensing and regulation of wells and borings.
103I.525. Well contractor's license.
103I.531. Limited well/boring contractor's license.
103I.535. Elevator shaft contractor's license.
103I.541. Monitoring well contractors.

VERTICAL HEAT EXCHANGERS

103I.641. Vertical heat exchangers.

103I.005. Definitions

Subdivision 1. Applicability. The definitions in this chapter apply to this chapter.

Subd. 2. Boring. "Boring" means a hole or excavation that is not used to extract water and includes exploratory borings, environmental bore holes, vertical heat exchangers, and elevator shafts.

Subd. 3. Commissioner. "Commissioner" means the commissioner of health.

Subd. 4. Department. "Department" means the department of health.

Subd. 4a. Dewatering well. "Dewatering well" means a nonpotable well used to lower groundwater levels to allow for construction or use of underground space. A dewatering well does not include:

(1) a well or dewatering well 25 feet or less in depth for temporary dewatering during construction; or

(2) a well used to lower groundwater levels for control or removal of groundwater contamination.

Subd. 5. Drive point well. "Drive point well" means a well constructed by forcing a pointed well screen, attached to sections of pipe, into the ground with the screen and casing forced or driven into the ground with a hammer, maul, or weight.

Subd. 6. Elevator shaft. "Elevator shaft" means a bore hole, jack hole, drilled hole, or excavation constructed to install an elevator shaft or hydraulic cylinder.

Subd. 7. Elevator shaft contractor. "Elevator shaft contractor" means a person with an elevator shaft contractor's license issued by the commissioner.

Subd. 8. Environmental bore hole. "Environmental bore hole" means a hole or excavation in the ground that penetrates a confining layer or is greater than 25 feet in depth and enters or goes through a water bearing layer and is used to monitor or measure physical, chemical, radiological, or biological parameters without extracting water. An environmental bore hole also includes bore holes constructed for vapor recovery or venting systems. An environmental bore hole does not include a well, elevator shaft, exploratory boring, or monitoring well.

Subd. 9. Exploratory boring. "Exploratory boring" means a surface drilling done to explore or prospect for oil, natural gas, kaolin clay, and metallic minerals, including iron, copper, zinc, lead, gold, silver, titanium, vanadium, nickel, cadmium, molybdenum, chromium, manganese, cobalt, zirconium, beryllium, thorium, uranium, aluminum, platinum, palladium, radium, tantalum, tin, and niobium, and a drilling or boring for petroleum.

Subd. 10. Explorer. "Explorer" means a person who has the right to drill an exploratory boring.

Subd. 11. Groundwater thermal exchange device. "Groundwater thermal exchange device" means a heating or cooling device that depends on extraction and reinjection of groundwater from an independent aquifer to operate.

Subd. 12. Limited well/boring contractor. "Limited well/boring contractor" means a person with a limited well/boring contractor's license issued by the commissioner.

Subd. 13. Limited well/boring sealing contractor. "Limited well/boring sealing contractor" means a person with a limited well/boring sealing contractor's license issued by the commissioner.

Subd. 14. Monitoring well. "Monitoring well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed to extract groundwater for physical, chemical, or biological testing. "Monitoring well" includes a groundwater quality sampling well.

Subd. 15. Monitoring well contractor. "Monitoring well contractor" means a person who is registered by the commissioner to construct monitoring wells.

Subd. 16. Person. "Person" means an individual, firm, partnership, association, or corporation or other entity including the United States government, any interstate body, the state, and any agency, department, or political subdivision of the state.

Subd. 17. Provisions of this chapter. "Provisions of this chapter" means the sections in this chapter and rules adopted by the commissioner under this chapter.

Subd. 18. Repealed by Laws 1991, c. 199, art. 2, § 29; Laws 1991, c. 355, § 54.

Subd. 19. Repealed by Laws 1990, c. 597, § 73, effective May 4, 1990.

Subd. 20. Vertical heat exchanger. "Vertical heat exchanger" means an earth-coupled heating or cooling device consisting of a sealed closed-loop piping system installed vertically in the ground to transfer heat to or from the surrounding earth with no discharge.

Subd. 21. Well. "Well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed if the excavation is intended for the location, diversion, artificial recharge, or acquisition of groundwater. Well includes monitoring wells, drive point wells, and dewatering wells. "Well" does not include:

(1) an excavation by backhoe, or otherwise for temporary dewatering of groundwater for nonpotable use during construction, if the depth of the excavation is 25 feet or less;

(2) an excavation made to obtain or prospect for oil, natural gas, minerals, or products of mining or quarrying;

(3) an excavation to insert media to repressure oil or natural gas bearing formations or to store petroleum, natural gas, or other products;

(4) an excavation for nonpotable use for wildfire suppression activities; or

(5) borings.

Subd. 22. Well disclosure certificate. "Well disclosure certificate" means a certificate containing the requirements of section 103I.235, subdivision 1, paragraph (e).

Subd. 23. Well contractor. "Well contractor" means a person with a well contractor's license.

Subd. 23a. Well that is in use. A "well that is in use" means a well that operates on a daily, regular, or seasonal basis. A well in use includes a well that operates for the purpose of irrigation, fire protection, or emergency pumping.

Subd. 24. Wellhead protection area. "Wellhead protection area" means the surface and subsurface area surrounding a well or well field that supplies a public water system, through which contaminants are likely to move toward and reach the well or well field.

Amended by Laws 1999, c. 153, §§ 1 to 3.

JURISDICTION OVER WELLS AND BORINGS

103I.101. Powers and duties of the commissioner of health

Subdivision 1. Powers of commissioner. The commissioner has the powers reasonable and necessary to effectively exercise the authority granted by this chapter.

Subd. 2. Duties. The commissioner shall:

(1) regulate the drilling, construction, modification, repair, and sealing of wells and borings;

(2) examine and license well contractors, persons constructing, repairing, and sealing vertical heat exchangers, persons modifying or repairing well casings, well screens, or well diameters; constructing, repairing, and sealing unconventional wells such as drive point wells or dug wells; constructing, repairing, and sealing dewatering wells; sealing wells; installing well pumps or pumping equipment; and excavating or drilling holes for the installation of elevator shafts or hydraulic cylinders;

(3) register and examine monitoring well contractors;

(4) license explorers engaged in exploratory boring and examine individuals who supervise or oversee exploratory boring;

(5) after consultation with the commissioner of natural resources and the pollution control agency, establish standards for the design, location, construction, repair, and sealing of wells, elevator shafts, and borings within the state; and

(6) issue permits for wells, groundwater thermal devices, vertical heat exchangers, and excavation for holes to install elevator shafts or hydraulic cylinders.

Subd. 3. Procedures for permits. The commissioner shall establish procedures for application, approval, and issuance of permits by rule.

Subd. 4. Inspections by commissioner. The commissioner may inspect, collect water samples, and have access, at all reasonable times, to a well or boring site, including wells or borings drilled, sealed, or repaired.

Subd. 5. Commissioner to adopt rules. The commissioner shall adopt rules including:

(1) issuance of licenses for:

(i) qualified well contractors, persons modifying or repairing well casings, well screens, or well diameters;

(ii) persons constructing, repairing, and sealing unconventional wells such as drive points or dug wells;

(iii) persons constructing, repairing, and sealing dewatering wells;

(iv) persons sealing wells;

(v) persons installing well pumps or pumping equipment and excavating holes for installing elevator shafts or hydraulic cylinders; and

(vi) persons constructing, repairing, and sealing vertical heat exchangers;

(2) issuance of registration for monitoring well contractors;

(3) establishment of conditions for examination and review of applications for license and registration;

(4) establishment of conditions for revocation and suspension of license and registration;

(5) establishment of minimum standards for design, location, construction, repair, and sealing of wells to implement the purpose and intent of this chapter;

(6) establishment of a system for reporting on wells and borings drilled and sealed;

(7) establishment of standards for the construction, maintenance, sealing, and water quality monitoring of wells in areas of known or suspected contamination;

(8) establishment of wellhead protection measures for wells serving public water supplies;

(9) establishment of procedures to coordinate collection of well data with other state and local governmental agencies;

(10) establishment of criteria and procedures for submission of well logs, formation samples or well cuttings, water samples, or other special information required for and water resource mapping; and

(11) establishment of minimum standards for design, location, construction, maintenance, repair, sealing, safety, and resource conservation related to borings, including exploratory borings as defined in section 103I.005, subdivision 9.

Until the commissioner adopts rules under this chapter to replace rules relating to wells and borings that were adopted under chapter 156A, the rules adopted under chapter 156A shall remain in effect.

Subd. 6. Fees for variances. The commissioner shall charge a nonrefundable application fee of \$120 to cover the administrative cost of processing a request for a variance or modification of rules adopted by the commissioner under this chapter.

Amended by Laws 1997, c. 203, art. 2, § 4; Laws 1999, c. 153, §§ 4, 5.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 203, art. 2, § 38, provides in part that § 4 (amending subd. 6) is effective July 1, 1998.

103I.105. Advisory council on wells and borings

(a) The advisory council on wells and borings is established as an advisory council to the commissioner. The advisory council shall consist of 18 voting members. Of the 18 voting members:

(1) one member must be from the department of health, appointed by the commissioner of health;

(2) one member must be from the department of natural resources, appointed by the commissioner of natural resources;

(3) one member must be a member of the Minnesota geological survey of the University of Minnesota, appointed by the director;

(4) one member must be a licensed exploratory borer;

(5) one member must be a licensed elevator shaft contractor;

(6) two members must be members of the public who are not connected with the business of exploratory boring or the well drilling industry;

(7) one member must be from the pollution control agency, appointed by the commissioner of the pollution control agency;

(8) one member must be from the department of transportation, appointed by the commissioner of transportation;

(9) one member from the board of water and soil resources appointed by its chair;

(10) one member must be a monitoring well contractor;

(11) six members must be residents of this state appointed by the commissioner, who are actively engaged in the well drilling industry, with not more than two from the seven-county metropolitan area and at least four from other areas of the state who represent different geographical regions; and

(12) one member must be a licensed vertical heat exchanger contractor or be certified by the International Ground Source Heat Pump Association and appointed by the commissioner.

(b) An appointee of the well drilling industry may not serve more than two consecutive terms.

(c) The appointees to the advisory council from the well drilling industry must:

(1) have been residents of this state for at least three years before appointment; and

(2) have at least five years' experience in the well drilling business.

(d) The terms of the appointed members and the compensation and removal of all members are governed by section 15.059, except section 15.059, subdivision 5, relating to expiration of the advisory council does not apply.

Amended by Laws 1999, c. 153, § 6.

WELL CONSTRUCTION AND OWNERSHIP

103I.205. Well construction

Subdivision 1. Notification required. (a) Except as provided in paragraphs (d) and (e), a person may not construct a well until a notification of the proposed well on a form prescribed by the commissioner is filed with the commissioner with the filing fee in section 103I.208. If after filing the well notification an attempt to construct a well is unsuccessful, a new notification is not required unless the information relating to the successful well has substantially changed.

(b) The property owner, the property owner's agent, or the well contractor where a well is to be located must file the well notification with the commissioner.

(c) The well notification under this subdivision preempts local permits and notifications, and counties or home rule charter or statutory cities may not require a permit or notification for wells unless the commissioner has delegated the permitting or notification authority under section 103I.111.

(d) A person who is an individual that constructs a drive point well on property owned or leased by the individual for farming or agricultural purposes or as the individual's place of abode must notify the commissioner of the installation and location of the well. The person must complete the notification form prescribed by the commissioner and mail it to the commissioner by ten days after the well is completed. A fee may not be charged for the notification. A person who sells drive point wells at retail must provide buyers with notification forms and informational materials including requirements regarding wells, their location, construction, and disclosure. The commissioner must provide the notification forms and informational materials to the sellers.

(e) A person may not construct a monitoring well until a permit is issued by the commissioner for the construction. If after obtaining a permit an attempt to construct a well is unsuccessful, a new permit is not required as long as the initial permit is modified to indicate the location of the successful well.

Subd. 2. Emergency permit and notification exemptions. The commissioner may adopt rules that modify the procedures for filing a well notification or well permit if conditions occur that:

- (1) endanger the public health and welfare or cause a need to protect the groundwater; or
- (2) require the monitoring well contractor, limited well/boring contractor, or well contractor to begin constructing a well before obtaining a permit or notification.

Subd. 3. Maintenance permit. (a) Except as provided under paragraph (b), a well that is not in use must be sealed or have a maintenance permit.

(b) If a monitoring well or a dewatering well is not sealed by 14 months after completion of construction, the owner of the property on which the well is located must obtain and annually renew a maintenance permit from the commissioner.

Subd. 4. License required. (a) Except as provided in paragraph (b), (c), or (d), section 103I.401, subdivision 2, or section 103I.601, subdivision 2, a person may not drill, construct, repair, or seal a well or boring unless the person has a well contractor's license in possession.

(b) A person may construct a monitoring well if the person:

- (1) is a professional engineer registered under sections 326.02 to 326.15 in the branches of civil or geological engineering;
- (2) is a hydrologist or hydrogeologist certified by the American Institute of Hydrology;
- (3) is a professional engineer registered with the board of architecture, engineering, land surveying, landscape architecture, and interior design;
- (4) is a geologist certified by the American Institute of Professional Geologists; or
- (5) meets the qualifications established by the commissioner in rule.

A person must register with the commissioner as a monitoring well contractor on forms provided by the commissioner.

(c) A person may do the following work with a limited well/boring contractor's license in possession. A separate license is required for each of the six activities:

- (1) installing or repairing well screens or pitless units or pitless adaptors and well casings from the pitless adaptor or pitless unit to the upper termination of the well casing;
- (2) constructing, repairing, and sealing drive point wells or dug wells;
- (3) installing well pumps or pumping equipment;
- (4) sealing wells;
- (5) constructing, repairing, or sealing dewatering wells; or
- (6) constructing, repairing, or sealing vertical heat exchangers.

(d) Notwithstanding other provisions of this chapter requiring a license or registration, a license or registration is not required for a person who complies with the other provisions of this chapter if the person is:

(1) an individual who constructs a well on land that is owned or leased by the individual and is used by the individual for farming or agricultural purposes or as the individual's place of abode; or

(2) an individual who performs labor or services for a contractor licensed or registered under the provisions of this chapter in connection with the construction, sealing, or repair of a well or boring at the direction and under the personal supervision of a contractor licensed or registered under the provisions of this chapter.

Subd. 5. At-grade monitoring wells. At-grade monitoring wells are authorized without variance and may be installed for the purpose of evaluating groundwater conditions or for use as a leak detection device. An at-grade monitoring well must be installed in accordance with the rules of the commissioner. The at-grade monitoring wells must be installed with an impermeable double locking cap approved by the commissioner and must be labeled monitoring wells.

Subd. 6. Distance requirements for sources of contamination. (a) A person may not place, construct, or install an actual or potential source of contamination any closer to a well than the isolation distances prescribed by the commissioner by rule unless a variance has been prescribed by rule.

(b) The commissioner shall establish by rule reduced isolation distances for facilities which have safeguards in accordance with sections 18B.01, subdivision 26, and 18C.005, subdivision 29.

Subd. 7. Well identification label required. After a well has been constructed, the person constructing the well must attach a label to the well showing the unique well number.

Subd. 8. Wells on property of another. A person may not construct or have constructed a well for the person's own use on the property of another until the owner of the property on which the well is to be located and the intended well user sign a written agreement that identifies which party will be responsible for obtaining all permits or filing notification, paying applicable fees and for sealing the well. If the property owner refuses to sign the agreement, the intended well user may, in lieu of a written agreement, state in writing to the commissioner that the well user will be responsible for obtaining permits, filing notification, paying applicable fees, and sealing the well. Nothing in this subdivision eliminates the responsibilities of the property owner under this chapter, or allows a person to construct a well on the property of another without consent or other legal authority.

Subd. 9. Report of work. Within 30 days after completion or sealing of a well or boring, the person doing the work must submit a verified report to the commissioner containing the information specified by rules adopted under this chapter.

Within 30 days after receiving the report, the commissioner shall send a copy of the report to the commissioner of natural resources, to the local soil and water conservation district where the well is located, and to the director of the Minnesota geological survey.

Amended by Laws 1999, c. 153, §§ 7, 8.

103I.208. Notification filing fees and permit fees

Subdivision 1. Well notification fee. The well notification fee to be paid by a property owner is:

- (1) for a new well, \$120, which includes the state core function fee;
- (2) for a well sealing, \$20 for each well, which includes the state core function fee, except that for monitoring wells constructed on a single property, having depths within a 25 foot range, and sealed within 48 hours of start of construction, a single fee of \$20; and
- (3) for construction of a dewatering well, \$120, which includes the state core function fee, for each well except a dewatering project comprising five or more wells shall be assessed a single fee of \$600 for the wells recorded on the notification.

Subd. 1a. State core function fee. The state core function fee to be collected by the state and delegated boards of health and used to support state core functions is:

- (1) for a new well, \$20; and
- (2) for a well sealing, \$5.

Subd. 2. Permit fee. The permit fee to be paid by a property owner is:

- (1) for a well that is not in use under a maintenance permit, \$100 annually;
- (2) for construction of a monitoring well, \$120, which includes the state core function fee;
- (3) for a monitoring well that is unsealed under a maintenance permit, \$100 annually;
- (4) for monitoring wells used as a leak detection device at a single motor fuel retail outlet, a single petroleum bulk storage site excluding tank farms, or a single agricultural chemical facility site, the construction permit fee is \$120, which includes the state core function fee, per site regardless of the number of wells constructed on the site, and the annual fee for a maintenance permit for unsealed monitoring wells is \$100 per site regardless of the number of monitoring wells located on site;
- (5) for a groundwater thermal exchange device, in addition to the notification fee for wells, \$120, which includes the state core function fee;
- (6) for a vertical heat exchanger, \$120;
- (7) for a dewatering well that is unsealed under a maintenance permit, \$100 annually for each well, except a dewatering project comprising more than five wells shall be issued a single permit for \$500 annually for wells recorded on the permit; and
- (8) for excavating holes for the purpose of installing elevator shafts, \$120 for each hole.

Amended by Laws 1997, c. 203, art. 2, § 5; Laws 1998, c. 407, art. 2, § 23; Laws 1999, c. 247, § 1.

Historical and Statutory Notes**1997 Legislation**

Laws 1997, c. 203, art. 2, § 38, provides in part that § 5 (amending this section) is effective July 1, 1998.

103I.235. Real property sale; disclosure of location of wells

Subdivision 1. Disclosure of wells to buyer. (a) Before signing an agreement to sell or transfer real property, the seller must disclose in writing to the buyer information about the status and location of all known wells on the property, by delivering to the buyer either a statement by the seller that the seller does not know of any wells on the property, or a disclosure statement indicating the legal description and county, and a map drawn from available information showing the location of each well to the extent practicable. In the disclosure statement, the seller must indicate, for each well, whether the well is in use, not in use, or sealed.

(b) At the time of closing of the sale, the disclosure statement information, name and mailing address of the buyer, and the quartile, section, township, and range in which each well

is located must be provided on a well disclosure certificate signed by the seller or a person authorized to act on behalf of the seller.

(c) A well disclosure certificate need not be provided if the seller does not know of any wells on the property and the deed or other instrument of conveyance contains the statement: "The Seller certifies that the Seller does not know of any wells on the described real property."

(d) If a deed is given pursuant to a contract for deed, the well disclosure certificate required by this subdivision shall be signed by the buyer or a person authorized to act on behalf of the buyer. If the buyer knows of no wells on the property, a well disclosure certificate is not required if the following statement appears on the deed followed by the signature of the grantee or, if there is more than one grantee, the signature of at least one of the grantees: "The Grantee certifies that the Grantee does not know of any wells on the described real property." The statement and signature of the grantee may be on the front or back of the deed or on an attached sheet and an acknowledgment of the statement by the grantee is not required for the deed to be recordable.

(e) This subdivision does not apply to the sale, exchange, or transfer of real property:

- (1) that consists solely of a sale or transfer of severed mineral interests; or
- (2) that consists of an individual condominium unit as described in chapters 515 and 515B.

(f) For an area owned in common under chapter 515 or 515B the association or other responsible person must report to the commissioner by July 1, 1992, the location and status of all wells in the common area. The association or other responsible person must notify the commissioner within 30 days of any change in the reported status of wells.

(g) For real property sold by the state under section 92.67, the lessee at the time of the sale is responsible for compliance with this subdivision.

(h) If the seller fails to provide a required well disclosure certificate, the buyer, or a person authorized to act on behalf of the buyer, may sign a well disclosure certificate based on the information provided on the disclosure statement required by this section or based on other available information.

(i) A county recorder or registrar of titles may not record a deed or other instrument of conveyance dated after October 31, 1990, for which a certificate of value is required under section 272.115, or any deed or other instrument of conveyance dated after October 31, 1990, from a governmental body exempt from the payment of state deed tax, unless the deed or other instrument of conveyance contains the statement made in accordance with paragraph (c) or (d) or is accompanied by the well disclosure certificate containing all the information required by paragraph (b) or (d). The county recorder or registrar of titles must not accept a certificate unless it contains all the required information. The county recorder or registrar of titles shall note on each deed or other instrument of conveyance accompanied by a well disclosure certificate that the well disclosure certificate was received. The notation must include the statement "No wells on property" if the disclosure certificate states there are no wells on the property. The well disclosure certificate shall not be filed or recorded in the records maintained by the county recorder or registrar of titles. After noting "No wells on property" on the deed or other instrument of conveyance, the county recorder or registrar of titles shall destroy or return to the buyer the well disclosure certificate. The county recorder or registrar of titles shall collect from the buyer or the person seeking to record a deed or other instrument of conveyance, a fee of \$20 for receipt of a completed well disclosure certificate. By the tenth day of each month, the county recorder or registrar of titles shall transmit the well disclosure certificates to the commissioner of health. By the tenth day after the end of each calendar quarter, the county recorder or registrar of titles shall transmit to the commissioner of health \$17.50 of the fee for each well disclosure certificate received during the quarter. The commissioner shall maintain the well disclosure certificate for at least six years. The commissioner may store the certificate as an electronic image. A copy of that image shall be as valid as the original.

(j) No new well disclosure certificate is required under this subdivision if the buyer or seller, or a person authorized to act on behalf of the buyer or seller, certifies on the deed or other instrument of conveyance that the status and number of wells on the property have not

changed since the last previously filed well disclosure certificate. The following statement, if followed by the signature of the person making the statement, is sufficient to comply with the certification requirement of this paragraph: "I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate." The certification and signature may be on the front or back of the deed or on an attached sheet and an acknowledgment of the statement is not required for the deed or other instrument of conveyance to be recordable.

(k) The commissioner in consultation with county recorders shall prescribe the form for a well disclosure certificate and provide well disclosure certificate forms to county recorders and registrars of titles and other interested persons.

(l) Failure to comply with a requirement of this subdivision does not impair:

(1) the validity of a deed or other instrument of conveyance as between the parties to the deed or instrument or as to any other person who otherwise would be bound by the deed or instrument; or

(2) the record, as notice, of any deed or other instrument of conveyance accepted for filing or recording contrary to the provisions of this subdivision.

Subd. 2. Liability for failure to disclose. Unless the buyer and seller agree to the contrary, in writing, before the closing of the sale, a seller who fails to disclose the existence or known status of a well at the time of sale and knew or had reason to know of the existence or known status of the well, is liable to the buyer for costs relating to sealing of the well and reasonable attorney fees for collection of costs from the seller, if the action is commenced within six years after the date the buyer closed the purchase of the real property where the well is located.

Amended by Laws 1999, c. 11, art. 3, § 6.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 2, art. 1, § 23, repealed Laws 1991, c. 292, art. 2, § 2, which purported to amend this section.

WELL SEALING

103I.301. Well sealing requirements

Subdivision 1. Wells and borings. (a) A property owner must have a well or boring sealed if:

- (1) the well or boring is contaminated or may contribute to the spread of contamination;
- (2) the well or boring was attempted to be sealed but was not sealed according to the provisions of this chapter; or
- (3) the well or boring is located, constructed, or maintained in a manner that its continued use or existence endangers groundwater quality or is a safety or health hazard.

(b) A well that is not in use must be sealed unless the property owner has a maintenance permit for the well.

(c) The property owner must have a well or boring sealed by a registered or licensed person authorized to seal the well or boring, consistent with provisions of this chapter.

Subd. 2. Monitoring wells. The owner of the property where a monitoring well is located must have the monitoring well sealed when the well is no longer in use. The owner must have a well contractor, limited well/boring sealing contractor, or a monitoring well contractor seal the monitoring well.

Subd. 3. Dewatering wells. (a) The owner of the property where a dewatering well is located must have the dewatering well sealed when the dewatering well is no longer in use.

(b) A well contractor, limited well/boring sealing contractor, or limited dewatering well contractor shall seal the dewatering well.

Subd. 4. Sealing procedures. Wells and borings must be sealed according to rules adopted by the commissioner.

Subd. 5. Repealed by Laws 1990, c. 597, § 73, eff. May 4, 1990.

Subd. 6. Notification required. A person may not seal a well until a notification of the proposed sealing is filed as prescribed by the commissioner.

Amended by Laws 1999, c. 153, §§ 9, 10.

103I.341. Collection and enforcement of well sealing costs

Subdivision 1. Lien for sealing costs. The commissioner and the board of water and soil resources have a governmental services lien under section 514.67 for the costs of sealing a well or boring that the commissioner or board has contracted to be sealed under section 103I.315, subdivision 2; or 103I.335. The lien attaches to the real property where the well or boring is located. The lien is perfected by filing the lien with the county recorder or registrar of titles where the well or boring and the property are located and serving or mailing by return receipt a copy of the lien to the property owner.

Subd. 2. Enforcement of lien. The commissioner or the board of water and soil resources may enforce the lien in the manner provided for a judgment lien under chapter 550 or certify the amount to the county auditor, which must be assessed against the property and collected in the same manner as real estate taxes.

Subd. 3. Assessment of installments. (a) In lieu of certifying the entire amount to be collected, the commissioner or the board of water and soil resources may have the amount due assessed in seven or less equal annual installments plus interest due at the rate determined by the state court administrator for judgments under section 549.09.

(b) The interest due is an additional perfected lien on the property without further action by the commissioner or the board of water and soil resources.

(c) The interest and the installment due must be entered on the tax lists for the year and collected in the same manner as real estate taxes for that year by collecting one-half of the total of the installment and interest with and as part of the real estate taxes.

Subd. 4. Satisfaction of lien. The amount due and interest of a lien under this section may be paid at any time. When the amount of the lien including accrued interest is paid, the commissioner or board must execute a satisfaction of the lien and record the satisfaction with the county recorder or registrar of titles where the lien was filed.

Subd. 5. Appropriation of recovered costs. Costs of sealing wells recovered from property owners by the board of water and soil resources must be deposited in the state treasury and credited to the account from which the amounts were originally appropriated. The amounts are continuously appropriated to the board for sealing wells.

Amended by Laws 1997, c. 7, art. 1, § 24.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 7, was a corrections bill which, by its title, corrected erroneous, ambiguous, and omitted text and obsolete references; eliminated

certain redundant, conflicting, and superseded provisions; and made miscellaneous technical corrections.

ELEVATOR SHAFT BORINGS

103I.401. Elevator shaft borings

Subdivision 1. Permit required. (a) A person may not construct an elevator shaft until a permit for the hole or excavation is issued by the commissioner.

(b) The elevator shaft permit preempts local permits except local building permits, and counties and home rule charter or statutory cities may not require a permit for elevator shaft holes or excavations.

Subd. 2. License required. A person may not construct an elevator shaft unless the person possesses a well contractor's license or an elevator shaft contractor's license issued by the commissioner.

Subd. 3. Sealing. A well contractor or elevator shaft contractor must seal a hole or excavation that is no longer used for an elevator shaft. The sealing must be done according to rules adopted by the commissioner.

Subd. 4. Report. Within 30 days after completion or sealing of a hole or excavation for an elevator shaft, the person doing the work must submit a report to the commissioner on forms provided by the commissioner.

Amended by Laws 1997, c. 203, art. 2, § 6.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 203, art. 2, § 38, provides in part that § 6 (amending subd. 1) is effective July 1, 1998.

LICENSING AND REGISTRATION

103I.501. Licensing and regulation of wells and borings

(a) The commissioner shall regulate and license:

- (1) drilling, constructing, and repair of wells;
- (2) sealing of wells;
- (3) installing of well pumps and pumping equipment;
- (4) excavating, drilling, and sealing of holes for the installation of elevator shafts and hydraulic cylinders;
- (5) construction and sealing of environmental bore holes; and
- (6) construction, repair, and sealing of vertical heat exchangers.

(b) The commissioner shall examine and license well contractors, limited well/boring contractors, and elevator shaft contractors, and examine and register monitoring well contractors.

(c) The commissioner shall license explorers engaged in exploratory boring and shall examine persons who supervise or oversee exploratory boring.

Amended by Laws 1999, c. 153, § 11.

103I.525. Well contractor's license

Subdivision 1. Application. (a) A person must file an application and application fee with the commissioner to apply for a well contractor's license.

(b) The application must state the applicant's qualifications for the license, the equipment the applicant will use in the contracting, and other information required by the commissioner. The application must be on forms prescribed by the commissioner.

(c) A person may apply as an individual if the person:

- (1) is not the licensed well contractor representing a firm, sole proprietorship, partnership, association, corporation, or other entity including the United States government, any interstate body, the state and agency, department or political subdivision of the state; and
- (2) meets the well contractor license requirements under provisions of this chapter.

Subd. 2. Application fee. The application fee for a well contractor's license is \$50. The commissioner may not act on an application until the application fee is paid.

Subd. 3. Examination. After the commissioner has approved the application, the applicant must take an examination given by the commissioner.

Subd. 4. Issuance of license. If an applicant meets the experience requirements established by rule, passes the examination as determined by the commissioner, submits the bond under subdivision 5, and pays the license fee under subdivision 6, the commissioner shall issue a well contractor's license.

Subd. 5. Bond. (a) As a condition of being issued a well contractor's license, the applicant, except a person applying for an individual well contractor's license, must submit a corporate surety bond for \$10,000 approved by the commissioner. The bond must be conditioned to pay the state on unlawful performance of work regulated by this chapter in this state. The bond is in lieu of other license bonds required by a political subdivision of the state.

(b) From proceeds of the bond, the commissioner may compensate persons injured or suffering financial loss because of a failure of the applicant to properly perform work or duties.

Subd. 6. License fee. The fee for a well contractor's license is \$250, except the fee for an individual well contractor's license is \$50.

Subd. 7. Validity. A well contractor's license is valid until the date prescribed in the license by the commissioner.

Subd. 8. Renewal. (a) A licensee must file an application and a renewal application fee to renew the license by the date stated in the license.

(b) The renewal application fee shall be set by the commissioner under section 16A.1285.

(c) The renewal application must include information that the applicant has met continuing education requirements established by the commissioner by rule.

(d) At the time of the renewal, the commissioner must have on file all properly completed well reports, well sealing reports, reports of excavations to construct elevator shafts, well permits, and well notifications for work conducted by the licensee since the last license renewal.

Text of subd. 9 effective until July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

(1) the licensee must include an additional late fee set by the commissioner under section 16A.1285; and

(2) the licensee may not conduct activities authorized by the well contractor's license until the renewal application, renewal application fee, late fee, and all other information required in subdivision 8 are submitted.

Text of subd. 9 effective July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

(1) the licensee must include an additional late fee set by the commissioner; and

(2) the licensee may not conduct activities authorized by the well contractor's license until the renewal application, renewal application fee, late fee, and all other information required in subdivision 8 are submitted.

Amended by Laws 1999, c. 250, art. 3, § 10, eff. July 1, 2001.

103I.531. Limited well/boring contractor's license

Subdivision 1. Application. (a) A person must file an application and an application fee with the commissioner to apply for a limited well/boring contractor's license.

(b) The application must state the applicant's qualifications for the license, the equipment the applicant will use in the contracting, and other information required by the commissioner. The application must be on forms prescribed by the commissioner.

Subd. 2. Application fee. The application fee for a limited well/boring contractor's license is \$50. The commissioner may not act on an application until the application fee is paid.

Subd. 3. Examination. After the commissioner has approved the application, the applicant must take an examination given by the commissioner.

Subd. 4. Issuance of license. If an applicant meets the experience requirements established in rule, passes the examination as determined by the commissioner, submits the bond under subdivision 5, and pays the license fee under subdivision 6, the commissioner shall issue a limited well/boring contractor's license. If the other conditions of this section are satisfied, the commissioner may not withhold issuance of a dewatering limited license based on the applicant's lack of prior experience under a licensed well contractor.

Subd. 5. Bond. (a) As a condition of being issued a limited well/boring contractor's license for constructing, repairing, and sealing drive point wells or dug wells, sealing wells or borings, constructing, repairing, and sealing dewatering wells, or constructing, repairing, and sealing vertical heat exchangers, the applicant must submit a corporate surety bond for \$10,000 approved by the commissioner. As a condition of being issued a limited well/boring contractor's license for installing or repairing well screens or pitless units or pitless adaptors and well casings from the pitless adaptor or pitless unit to the upper termination of the well casing, or installing well pumps or pumping equipment, the applicant must submit a corporate surety bond for \$2,000 approved by the commissioner. The bonds required in this paragraph must be conditioned to pay the state on unlawful performance of work regulated by this chapter in this state. The bonds are in lieu of other license bonds required by a political subdivision of the state.

(b) From proceeds of a bond required in paragraph (a), the commissioner may compensate persons injured or suffering financial loss because of a failure of the applicant to properly perform work or duties.

Subd. 6. License fee. The fee for a limited well/boring contractor's license is \$50.

Subd. 7. Validity. A limited well/boring contractor's license is valid until the date prescribed in the license by the commissioner.

Subd. 8. Renewal. (a) A person must file an application and a renewal application fee to renew the limited well/boring contractor's license by the date stated in the license.

(b) The renewal application fee shall be set by the commissioner under section 16A.1285.

(c) The renewal application must include information that the applicant has met continuing education requirements established by the commissioner by rule.

(d) At the time of the renewal, the commissioner must have on file all properly completed well sealing reports, well permits, vertical heat exchanger permits, and well notifications for work conducted by the licensee since the last license renewal.

Text of subd. 9 effective until July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

(1) the licensee must include an additional late fee set by the commissioner under section 16A.1285; and

(2) the licensee may not conduct activities authorized by the limited well/boring contractor's license until the renewal application, renewal application fee, and late fee, and all other information required in subdivision 8 are submitted.

Text of subd. 9 effective July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

(1) the licensee must include an additional late fee set by the commissioner; and

(2) the licensee may not conduct activities authorized by the limited well/boring contractor's license until the renewal application, renewal application fee, and late fee, and all other information required in subdivision 8 are submitted.

Amended by Laws 1999, c. 153, § 12; Laws 1999, c. 250, art. 3, § 11, eff. July 1, 2001.

Historical and Statutory Notes

1999 Legislation

Laws 1999, c. 250, art. 3, § 29, provides in part that § 11, amending subd. 9, is effective July 1, 2001.

103I.535. Elevator shaft contractor's license

Subdivision 1. Application. (a) An individual must file an application and application fee with the commissioner to apply for an elevator shaft contractor's license.

(b) The application must state the applicant's qualifications for the license, the equipment the applicant will use in the contracting, and other information required by the commissioner. The application must be on forms prescribed by the commissioner.

Subd. 2. Application fee. The application fee for an elevator shaft contractor's license is \$50. The commissioner may not act on an application until the application fee is paid.

Subd. 3. Examination. After the commissioner has approved the application, the applicant must take an examination given by the commissioner.

Subd. 4. Issuance of license. If an applicant passes the examination as determined by the commissioner, submits the bond under subdivision 5, and pays the license fee under subdivision 6, the commissioner shall issue an elevator shaft contractor's license to the applicant.

Subd. 5. Bond. (a) As a condition of being issued an elevator shaft contractor's license, the applicant must submit a corporate surety bond for \$10,000 approved by the commissioner. The bond must be conditioned to pay the state on unlawful performance of work regulated by this chapter in this state.

(b) From proceeds of the bond, the commissioner may compensate persons injured or suffering financial loss because of a failure of the applicant to properly perform work or duties.

Subd. 6. License fee. The fee for an elevator shaft contractor's license is \$50.

Subd. 7. Validity. An elevator shaft contractor's license is valid until the date prescribed in the license by the commissioner.

Subd. 8. Renewal. (a) A person must file an application and a renewal application fee to renew the license by the date stated in the license.

(b) The renewal application fee shall be set by the commissioner under section 16A.1285.

(c) The renewal application must include information that the applicant has met continuing education requirements established by the commissioner by rule.

(d) At the time of renewal, the commissioner must have on file all reports and permits for elevator shaft work conducted by the licensee since the last license renewal.

Text of subd. 9 effective until July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

(1) the licensee must include an additional late fee set by the commissioner under section 16A.1285; and

(2) the licensee may not conduct activities authorized by the elevator shaft contractor's license until the renewal application, renewal application fee, and late fee, and all other information required in subdivision 8 are submitted.

Text of subd. 9 effective July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

- (1) the licensee must include an additional late fee set by the commissioner; and
- (2) the licensee may not conduct activities authorized by the elevator shaft contractor's license until the renewal application, renewal application fee, and late fee, and all other information required in subdivision 8 are submitted.

Amended by Laws 1997, c. 7, art. 1, § 25; Laws 1999, c. 250, art. 3, § 12, eff. July 1, 2001.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 7, was a corrections bill which, by its title, corrected erroneous, ambiguous, and omitted text and obsolete references; eliminated

certain redundant, conflicting, and superseded provisions; and made miscellaneous technical corrections.

103I.541. Monitoring well contractors

Subdivision 1. Initial registration after July 1, 1990. After July 1, 1990, a person seeking initial registration as a monitoring well contractor must meet examination and experience requirements adopted by the commissioner by rule.

Subd. 2. Validity. A monitoring well contractor's registration is valid until the date prescribed in the registration by the commissioner.

Subd. 2a. Application. (a) An individual must submit an application and application fee to the commissioner to apply for a monitoring well contractor registration.

(b) The application must be on forms prescribed by the commissioner. The application must state the applicant's qualifications for the registration, the equipment the applicant will use in the contracting, and other information required by the commissioner.

Subd. 2b. Application fee. The application fee for a monitoring well contractor registration is \$50. The commissioner may not act on an application until the application fee is paid.

Subd. 3. Bond. (a) As a condition of being issued a monitoring well contractor's registration, the applicant must submit a corporate surety bond for \$10,000 approved by the commissioner. The bond must be conditioned to pay the state on unlawful performance of work regulated by this chapter in this state. The bond is in lieu of other license bonds required by a political subdivision of the state.

(b) From proceeds of the bond, the commissioner may compensate persons injured or suffering financial loss because of a failure of the applicant to properly perform work or duties.

Subd. 4. Renewal. (a) A person must file an application and a renewal application fee to renew the registration by the date stated in the registration.

(b) The renewal application fee shall be set by the commissioner under section 16A.1285.

(c) The renewal application must include information that the applicant has met continuing education requirements established by the commissioner by rule.

(d) At the time of the renewal, the commissioner must have on file all well reports, well sealing reports, well permits, and notifications for work conducted by the registered person since the last registration renewal.

Text of subd. 5 effective until July 1, 2001.

Subd. 5. Incomplete or late renewal. If a registered person submits a renewal application after the required renewal date:

(1) the registered person must include an additional late fee set by the commissioner under section 16A.1285; and

(2) the registered person may not conduct activities authorized by the monitoring well contractor's registration until the renewal application, renewal application fee, late fee, and all other information required in subdivision 4 are submitted.

Text of subd. 5 effective July 1, 2001.

Subd. 5. Incomplete or late renewal. If a registered person submits a renewal application after the required renewal date:

- (1) the registered person must include an additional late fee set by the commissioner; and
- (2) the registered person may not conduct activities authorized by the monitoring well contractor's registration until the renewal application, renewal application fee, late fee, and all other information required in subdivision 4 are submitted.

Amended by Laws 1999, c. 250, art. 3, § 13, eff. July 1, 2001.

VERTICAL HEAT EXCHANGERS

103I.641. Vertical heat exchangers

Text of subd. 1 effective until Aug. 1, 2000.

Subdivision 1. Requirements. A person may not drill or construct an excavation used to install a vertical heat exchanger unless the person is a well contractor.

Text of subd. 1 effective Aug. 1, 2000.

Subdivision 1. Requirements. A person may not drill or construct an excavation used to install a vertical heat exchanger unless the person is a limited well/boring contractor licensed for constructing, repairing, and sealing vertical heat exchangers or a well contractor.

Subd. 2. Regulations for vertical heat exchangers. Vertical heat exchangers must be constructed, maintained, and sealed under the provisions of this chapter.

Text of subd. 3 effective until Aug. 1, 2000.

Subd. 3. Permit required. (a) A vertical heat exchanger may not be installed without first obtaining a permit for the vertical heat exchanger from the commissioner. A well contractor must apply for the permit on forms provided by the commissioner and must pay the permit fee.

(b) As a condition of the permit, the owner of the property where the vertical heat exchanger is to be installed must agree to allow inspection by the commissioner during regular working hours of department of health inspectors.

Text of subd. 3 effective Aug. 1, 2000.

Subd. 3. Permit required. (a) A vertical heat exchanger may not be installed without first obtaining a permit for the vertical heat exchanger from the commissioner. A limited well/boring contractor licensed for constructing, repairing, and sealing vertical heat exchangers or a well contractor must apply for the permit on forms provided by the commissioner and must pay the permit fee.

(b) As a condition of the permit, the owner of the property where the vertical heat exchanger is to be installed must agree to allow inspection by the commissioner during regular working hours of department of health inspectors.

Amended by Laws 1999, c. 153, §§ 13, 14, eff. Aug. 1, 2000.

Historical and Statutory Notes

1999 Legislation

Laws 1999, c. 153, § 15, provides in part that §§ 13 and 14, amending subds. 1 and 3, are effective August 1, 2000.

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Board
Packet - FYI

December 20, 1999

Gulf of Mexico Hypoxia Working Group
National Oceanic and Atmospheric Administration
National Centers for Coastal Ocean Science
Room 9127
1305 East-West Highway
Silver Spring, MD 20910

RE: Comments on the Integrated Assessment of Hypoxia
In the northern Gulf of Mexico

The undersigned agricultural organizations submit these comments on issues presented in the Integrated Assessment of Hypoxia in the northern Gulf of Mexico.

We represent a vast array of agricultural interests, all of which have a vested and demonstrated concern about our environment. We have a long history of implementing conservation and other stewardship practices. We represent the majority of privately held land in the Mississippi River basin, and strongly believe that successful plans to reduce nutrient losses to the environment will be built on current practices and programs which are voluntary and incentive-based.

While the integrated assessment attempts to draw a simple picture of the causes, consequences and cures for hypoxia, a close reading reveals a more complicated scenario. Data provided in the report indicates that nutrient loads to the river are a contributing factor to hypoxic conditions, not a directly correlated primary cause of hypoxic conditions. In fact, there are many factors that play a role in the incidence and extent of Gulf hypoxia. An action plan that deals with one factor – nutrient enrichment – will be unlikely to significantly reduce Gulf hypoxia. Further, we strongly urge that this report be revised with a critical eye toward the use of proper terminology and consistent units for the following data elements: nutrient inputs to the soil, edge-of-field nutrient load lost to the river, and nutrient loss reductions.

While we believe the assessment should more accurately reflect the multiple contributors, we do not believe corrective action needs to be delayed. In fact, our members have been and are involved in implementing water quality protection measures each and every day. These actions take the form of an array of best management plans that farmers implement to become more efficient and productive in their farming operations. Farmers have an

economic self-interest in reducing nutrient losses. Nutrient loss reductions are direct cost-savings for farmers. That's why farmers are continuing to use soil tests, fertilizer timing and placement methods, nutrient management plans and other BMPs to make maximum use of all nutrient sources. The widespread adoption of conservation tillage practices has helped reduce nutrient loss.

The integrated assessment provides evidence these efforts are working. Figure 2.6 shows outputs, or production, in the basin has been climbing even faster than inputs, leaving less residual nitrogen in the basin. This declining trend in residual nitrogen is a result of farmers implementing practices that make them more efficient. This is a success story that should be heralded and built upon in the action plan.

The Action Plan should build on existing, voluntary, incentive-based program to address nonpoint source pressures rather than rush to place blame in order to justify a regulatory program. As outlined in the integrated assessment, there are several federal incentive programs available to help farmers control nutrient runoff. These include the Conservation Reserve Program, Conservation Reserve Enhancement Program, the Conservation Buffer Initiative, the Wetlands Reserve Program, and the Environmental Quality Incentive Program. An action plan that successfully reduces nutrient loss will build on these existing, incentive-based federal programs as well as voluntary BMPs being implemented by farmers out of their own self-interest. Nutrient loss is a field-specific problem; it will be reduced through farmer education, technical assistance and conservation incentives, leaving them the flexibility to make site-specific management decisions in conjunction with the local public and private advisors. National regulatory measures such as those suggested in the integrated assessment will not be effective and may unintentionally undermine existing, successful water quality improvement initiatives.

The integrated assessment contains many proposals for increased research and monitoring efforts, and we support these proposals. Increased research into the effects and causes of hypoxia and the impact of agricultural practices on water quality will build a better base of understanding of what can and should be done about hypoxia. Increased monitoring is essential to understanding the long-term benefits of these practices.

We in the agricultural community are committed to more efficient nutrient use, which will reduce the incidence of nutrients in water. We continue to support voluntary, incentive-based programs that help farmers adopt these types of practices. We hope the action plan will be built on current voluntary programs that are successful, and not suggest new, regulatory requirements. We continue to call for representation of private agricultural interest in the development of the

final Integrated Assessment and the Action Plan, as required under section 603 (c) of Public Law 105-383.

Sincerely,

Agricultural Retailers Association
American Farm Bureau Federation
American Soybean Association
National Association of Conservation Districts
National Association of Wheat Growers
National Association of State Conservation Agencies
National Association of State Departments of Agriculture
National Cattlemen's Beef Association
National Conservation Buffer Council
National Corn Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Milk Producers Federation
National Pork Producers Council
The Fertilizer Institute

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From: "Laura A. McNichol" <Laura-McNichol@nacdn.net.org>
To: <briefs@nacdn.net.org>
Date: 1/7/00 3:25PM
Subject: Conservation Briefs--January 7, 2000

****\$1.3 Billion Conservation Package Announced****

Vice President Al Gore announced today that the Administration will seek nearly \$1.3 billion in the fiscal year 2001 budget for conservation programs that help farmers take steps to protect water quality and the environment and to preserve farmland. This conservation package is part of a larger Administration budget proposal to strengthen the farm safety net.

Through these USDA programs, participants can receive cost-share assistance, technical assistance, and in many cases, annual payments, for high-priority conservation activities, including wetlands restoration, farmland protection, and comprehensive nutrient management. The centerpiece of the proposal is a new \$600 million program providing additional income to family farmers who voluntarily adopt comprehensive plans to curb erosion and protect water supplies from nonpoint source pollution.

This conservation proposal is over and above NRCS's budget request for FY 2001 and will be included in the budget request President Clinton sends to Congress in early February.

The proposal, totaling nearly \$1.3 billion in FY 2001 mandatory funding, would:

- * Fund a new Conservation Security Program at \$600 million in FY 2001 and 2002.
- * Increase the Environmental Quality Incentives Program by \$125 million per year. The annual authorized level for this program is \$200 million (although Congress limited it to \$174 million in FY 2000 and 1999), and the Initiative would increase the annual level to \$325 million.
- * Increase the Wetlands Reserve Program to enroll 250,000 acres per year.
- * Increase the Conservation Reserve Program to 40 million cumulative acres. The Administration's farm safety net proposal increases the CRP cap set by the 1996 Farm Bill by 3.6 million acres to 40 million acres, allowing more than twice as many acres to sign up in FY 2001 as would be allowed under current law.
- * Increase bonuses for CRP Continuous Signup by \$100 to \$125 million per year, FY 2000 to 2002. The administration also plans to offer bonuses totaling up to \$100 million in FY 2000 and up to \$125 million in fiscal years 2001-2002 to producers who enroll land in CRP through the continuous signup.
- * Increase the Farmland Protection Program to \$65 million per year.
- * Increase the Wildlife Habitat Incentives Program to \$50 million per year.
- * Provide the necessary conservation technical assistance to implement these programs.

Much of this proposal would require Congressional authorization and legislation. NACD is pleased with the proposal and will work to ensure its success over the upcoming appropriations cycle. It presents tremendous opportunities for conservation districts and the conservation

partnership. Please look for more information regarding this proposal in upcoming Briefs.

****USDA Responds to Districts* Reorg Concerns****

USDA officially responded to NACD*s multiple requests and concerns regarding Secretary Dan Glickman*s plan relating to field service center issues and the department*s administrative convergence initiative.

The response, received during Christmas week, has been forwarded to the NACD District Operations Committee for review and analysis.

In order to gain better insight into the Secretary*s plan, specific questions were submitted to the department and meetings have been held with members of his staff. Once again, during one of these meetings, NACD was told that the USDA was moving ahead with a new *modernization* plan that would address both administrative convergence and field service center issues.

NACD is on record asking for the opportunity to have input before the plan is finalized. However, we were told that we would not receive a copy of the plan until administration officials and congressional leaders were briefed in January. NACD is disappointed and will continue to urge the Secretary to fully involve conservation districts, state conservation agencies and RC&D councils in discussions relating to our shared conservation delivery system.

****EPA Releases Stormwater Discharge Report****

The US Environmental Protection Agency has completed a report, *Preliminary Data Summary of Urban Storm Water Best Management Practices,* which is now available for downloading from the EPA website: <http://www.epa.gov/OST/stormwater>.

The study is based largely on existing literature and data on best management practices (BMPs) that are used to control urban storm water runoff. The discussion of BMP performance includes structural BMPs such as infiltration devices, ponds, filters and constructed wetlands; and the effectiveness of non-structural BMPs, low impact development practices and management measures such as maintenance practices, street sweeping, public education and outreach programs. EPA conducted the study to explore how the Agency*s Effluent Guidelines program can contribute to the implementation of the NPDES Storm Water Program.

****EPA Proposes Standard for Dioxins in Biosolids****

EPA is proposing a standard for dioxins in biosolids. Biosolids are treated sewage sludge*the byproduct of municipal wastewater treatment and can be recycled and applied as a fertilizer, disposed of in surface disposal units or incinerated.

The proposal sets a limit of 300 parts per trillion toxic equivalents for dioxins in biosolids that are to be recycled and applied to the land as fertilizer. Facilities preparing biosolids for land application would also be required to follow new monitoring, record keeping and reporting requirements for dioxins in biosolids that are to be land applied. Based

on risk assessment results, the proposed rule does not contain additional limits for dioxins in biosolids that are being placed in surface disposal units or incinerated. A fact sheet and a pre-publication version of the Federal Register notice are available at <http://www.epa.gov/OST/biosolids>.

****Carbon Team Established****

On Monday, December 20, representatives from NACD, NASCA and the National Association of RC&D Councils met with NRCS to discuss partnership initiatives to address global climate change through conservation. A number of conservation practices that stem soil erosion * conservation tillage and tree planting, for example * have the side benefit of taking carbon dioxide from the atmosphere and storing it in the soil and plant materials. By removing carbon dioxide from the atmosphere, this *carbon sequestration* helps to counter the hypothesized greenhouse effect, a warming of the Earth's atmosphere. The partners met to discuss how to turn this benefit into a marketing tool for conservation.

As a result of the meeting, the group established a partnership team on carbon sequestration. The team will develop recommendations concerning the partnership's objectives and ways to advance the capability of districts and their partner to integrate carbon sequestration into natural resource management systems through the existing delivery system. The team will hold its first meeting on Monday to outline a mission statement, respective roles, priorities, specific agreements and an action plan for consideration by leadership. Watch Briefs for more details.

****New Proposal Would Privatize Public Lands****

The Cato Institute, a Washington, DC-based public policy research foundation has proposed a complex new procedure for privatizing all public lands, including national parks and wilderness areas. The institute proposed that all federal lands be divested over the next few decades. The lands would be sold to holders of *certificates.* Under the institute's proposal each American citizen would be given 10 certificates, meaning two billion shares would be issued. Those certificates could then be traded or sold. To protect holders of rights now, such as ranchers, the authors of the proposal would have the ranchers pay grazing fees to the new private owner of surface rights. To obtain a copy of the proposal, *How and Why to Privatize Federal Lands,* go to <http://www.cato.org/pubs/pas/pa-363es.html>.

****Congress to Reconvene Soon****

The second session of the 106th Congress convenes on January 24, 2000. The halls of the Capitol will be abuzz with the top business at hand. NACD is encouraging conservation district officials to take the time now to be working with their Members of Congress while they are still in their districts.

Field hearings on farm policy are likely to be held in different regions around the country during the first quarter of this year. Announcements of dates and locations will be available after the House Agriculture

Committee members meet in later this month. We will keep you informed in upcoming issues of Briefs.

The Congressional District Information Packages (CDIPs) remain an important part of the effort to increase the federal investment in private land conservation. The CDIPs can be found at <http://www.nacdnet.org/govtaff/index.html>.

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National Resources Inventory: Land Conversion Rates by State

Sorted by Average Annual Acres Developed between 1992-1997

1992-1997		1992-1997	1992-1997	1982-1992	1982-1992	1982-1992
RANK	State	Change in Total Land Developed Acres	Average Annual Conversion Rate (acres)	RANK	Change in Total Land Developed Acres	Average Annual Conversion Rate (acres)
1	Texas	1,219,500	243,900	1	1,392,500	139,250
2	Pennsylvania	1,123,200	224,640	10	431,100	43,110
3	Georgia	1,053,200	210,640	5	766,300	76,630
4	Florida	945,300	189,060	2	1,163,100	116,310
5	North Carolina	781,500	156,300	3	935,800	93,580
6	California	694,800	138,960	4	800,200	80,020
7	Tennessee	611,600	122,320	9	441,100	44,110
8	Michigan	550,800	110,160	7	462,300	46,230
9	South Carolina	539,700	107,940	11	400,100	40,010
10	Ohio	521,200	104,240	6	468,600	46,860
11	New York	492,400	98,480	24	225,100	22,510
12	Virginia	467,200	93,440	8	453,600	45,360
13	Alabama	445,300	89,060	14	320,900	32,090
14	Kentucky	354,100	70,820	13	362,800	36,280
15	Washington	350,000	70,000	17	288,300	28,830
16	New Mexico	348,500	69,700	26	166,300	16,630
17	Mississippi	312,600	62,520	31	144,300	14,430
18	Minnesota	311,300	62,260	21	235,600	23,560
19	Missouri	310,500	62,100	25	204,500	20,450
20	Illinois	292,200	58,440	20	246,000	24,600
21	New Jersey	283,200	56,640	16	298,600	29,860
22	Wisconsin	282,800	56,560	19	247,600	24,760
23	Massachusetts	281,500	56,300	22	233,100	23,310
24	West Virginia	275,600	55,120	34	114,100	11,410
25	Indiana	274,400	54,880	23	228,300	22,830
26	Arkansas	237,200	47,440	36	95,800	9,580
27	Oklahoma	224,500	44,900	28	156,800	15,680
28	Maryland	222,300	44,460	30	146,900	14,690
29	Arizona	199,400	39,880	12	374,600	37,460
30	Kansas	192,500	38,500	33	117,000	11,700
31	Louisiana	172,100	34,420	18	263,200	26,320
32	Maine	167,800	33,560	37	92,500	9,250
33	Puerto Rico	153,100	30,620	32	124,600	12,460
34	Oregon	150,400	30,080	27	164,500	16,450
35	Montana	122,700	24,540	42	79,600	7,960
36	Idaho	120,800	24,160	39	85,900	8,590
37	Colorado	120,300	24,060	15	307,400	30,740
38	New Hampshire	107,300	21,460	29	149,200	14,920
39	Utah	105,100	21,020	35	106,900	10,690
40	Iowa	102,900	20,580	45	52,300	5,230
41	Nebraska	81,200	16,240	46	39,200	3,920
42	South Dakota	76,700	15,340	44	60,600	6,060
43	Connecticut	63,400	12,680	40	84,200	8,420
44	Wyoming	52,700	10,540	48	33,700	3,370
45	North Dakota	49,700	9,940	38	86,000	8,600
46	Nevada	41,500	8,300	41	82,700	8,270
47	Delaware	35,100	7,020	47	35,300	3,530
48	Vermont	26,000	5,200	43	64,900	6,490
49	Rhode Island	10,200	2,040	49	26,500	2,650
50	Hawaii	8,700	1,740	50	23,600	2,360
Total		15,966,000	3,193,200		13,884,100	1,388,410

going from
21 to 18 is
not as signif.
as the change
in acreage -
2.6 X's increase

Nationally the
increase was
2.3 X's.

Mn's not
alone in it's
struggle to
cope with
urban growth.

Copy to:

- RSSI TEAM
- Board Packet for Jan
- Barkley - SPA

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Packet - FYI



STATE OF MINNESOTA
Office Memorandum

DEC 27 1999

DATE: December 15, 1999
TO: Brad Moore *KW*
FROM: Keith Wendt, Lee Pfannmuller, Sharon Pfeifer
SUBJECT: Greenways rapid assessment and recommendations

On November 18 we met with you to discuss the status of the department's Greenways Initiative and offered our assistance. After your meeting with Commissioner Garber you sponsored our idea of pulling together a small ad-hoc team to develop a set of recommendations for a short-term "plan of action".

We brought together 2 additional staff to form the team, Brain Stenquist and Terri Yearwood. Beth Carlson also contributed on public participation. Over the last month, we conducted a rapid assessment that brought together existing information on the Greenways initiative, identified gaps that need to be addressed, and defined recommendations for a 6 month plan of action.

Please find the results of our work: *Project Management Recommendations for the Minnesota Greenways Initiative*. We hope this will be useful in efforts to develop a more detailed blueprint needed to productively move ahead with the Greenways initiative.

attachments: *Project Management Recommendations for the Minnesota Greenways Initiative*

c: Allen Garber
Greenways Steering Committee

Project Management Recommendations for the Minnesota Greenways Initiative

Prepared by: Lee Pfannmuller, Sharon Pfeifer, Brian Stenquist,
Keith Wendt, and Terri Yearwood

12-20-99 Draft for Discussion

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Report Purpose

The Commissioner's Management Team Work Plan (FY 2000) called for the adoption of a greenways initiative as a proactive approach to natural resource sustainability. An ad-hoc work team was formed in November '99 to assist in this effort. This report gives recommendations for a Minnesota Greenways initiative "plan of action".

Minnesota Greenways Initiative

Minnesota Greenways is a cooperative initiative that increases opportunities for DNR staff to assist Minnesota communities to identify and plan for the protection, restoration and/or connection of lands and waters that are valued by our residents for their ecological, social and economic benefits. Minnesota Greenways enhances DNR's ability to 1) collect, analyze, and deliver information to local and regional land use decision-makers, and 2) provide for future recreational opportunities.

Greenways: A Strategy for Implementing Ecosystem-based Management

Minnesota Greenways continues and enhances DNR's ecosystem-based management approach by focusing and expanding our capacity to sustain our land and water resources through partnerships. The Minnesota Greenways initiative supports the following DNR management responsibilities identified in its current *Directions* document:

- 1) Expanding partnerships to develop common resource management goals and objectives.
- 2) Promoting integrated natural resource management approaches.
- 3) Accelerating the collection, interpretation, and dissemination of natural resources information to the public.
- 4) Expanding efforts to provide needed technical assistance on natural resources issues to communities and other state agencies.

By focusing on the above responsibilities, the Minnesota Greenways Initiative provides DNR a valuable opportunity to ***elevate natural resources to a higher profile in land use decisions at local and state levels.***

Characteristics of a Greenways Initiative

Team recommendations are based on the following *characteristics* that have defined and guided development of a Greenways initiative to date:

- Minnesota Greenways assists DNR's work with local communities by providing more comprehensive natural resource information for land use decision-making.
- Minnesota Greenways begins at the grassroots level and builds a statewide picture of the natural resources that are most important to protect and connect.
- Minnesota Greenways is envisioned as a statewide network of public and private natural areas, parks and recreational areas, managed forests, wildlife habitat, and other open spaces interconnected by land and water corridors.
- Minnesota Greenways supports cooperative decision-making with many partners.
- Minnesota Greenways will not rely on land acquisition as its primary tool; it builds upon existing public ownership and develops creative approaches to protect and connect habitats and recreational open space (e.g., easements, agreements, and heritage registries).

Minnesota Greenways: Rationale, Goal, and Objectives

Problem Statement: Development and transportation patterns driven by many uncoordinated land use decisions, are unnecessarily resulting in the degradation and loss of natural habitats and recreational open space. Accelerated development is having serious environmental, social, and economic consequences for Minnesotans as we lose opportunities for recreation and sustainable natural resource use.

To address this problem, we need new approaches to meet the challenge of: *Maintaining and improving lands, waters and natural resources while Minnesota's communities and economies grow.*

Goal and Objectives of Minnesota Greenways: The goal of the Minnesota Greenways Initiative is to improve Minnesota's natural resources while Minnesota communities and their economies grow into the 21st century. Specific objectives include:

- Natural resources information and technical assistance delivery will be improved.
- Minnesota's vulnerable natural resources will be more effectively protected through a diversity of land and water management strategies.
- Minnesota's state-managed lands and waters will be enhanced through working cooperatively with surrounding land owners and local units of government to maintain and restore desired public benefits.

Greenways Definition: (-- *We need a concise definition of greenways that paints a picture of what they are and how they may vary depending on the region or purpose in which they are to be applied.* --)

Public Benefits: (-- *We need to develop short, compelling statements on the value of greenways in achieving ecological, economic, recreational, and cultural benefits.* --)

Ecological Benefits (-- describe the value of greenways for habitat and biodiversity protection, migratory corridors for plants, fish, and wildlife, water quality and water regulation, and buffering of natural areas etc. --)

Recreational Benefits (-- describe the value of greenways for providing recreational opportunities such as sport hunting, fishing, bird-watching, photography, hiking, skiing and water sports etc. --)

Economic Benefits (-- describe the value of a healthy natural resource base as a foundation to a strong economy with specific reference to the value of tourism as a leading Minnesota business, the economic role of woodlots, orchards, and community-supported agriculture, and the economic value of ecological services such as flood and erosion control etc. --)

Cultural benefits (-- describe the value of greenways in connecting people with historic and cultural landscapes, providing access to natural resources, revitalizing a sense of place and community, and offering educational opportunities to engage in natural landscapes etc. --)

Greenways and Related Initiatives: What's the Connection?

Greenways embraces current DNR landscape and regional initiatives and provides opportunities for discipline-specific projects to expand through partnerships. A few examples of how Minnesota Greenways connects to other broad, interdisciplinary initiatives include:

- **Smart Growth.** The Minnesota Greenways initiative provides a fundamental strategy to Smart Growth planning and implementation activities at all scales. Greenways provide local communities with useful information as well as technical assistance to make better-informed land use decisions that support the Smart Growth goals of natural resource sustainability and fiscal responsibility. By working with local communities, multiple levels of government, private businesses, and nongovernmental organizations to identify, plan and manage for natural lands, a statewide Greenways initiative will increase awareness of the multiple benefits provided by healthy environments. The initiative will help local communities assess different development scenarios and foster more cost-efficient and environmentally sound land use decisions.
- **Sustainable Forests Initiative.** The department's Sustainable Forests Initiative (see *CMT Work Plan*) is charged with continuing progress on Minnesota Forest Resource Council sustainability goals. Minnesota Greenways offers a framework to achieve elements of sustainable forest management. Greenways will mitigate forest fragmentation, particularly in landscapes dominated by non-forest land uses such as agriculture or urban areas. The Greenways Initiative can provide incentives to protect important forest tracts, increase the size of small, isolated forest fragments, and connect forest tracts with corridors.

Greenways also serve a role in primarily forested landscapes. The forestry GEIS stated the need to establish "linkages between remnant areas of older forest or natural areas" in order to maintain viable populations of plant and animal species associated with large tracts of mature forest habitats. "Linkages can be provided by *connected landscapes*, which may take the form of riparian corridors, wide corridors of extended rotation (ERF), or uneven-aged selection harvest forest between core areas such as patches of old growth, research natural areas, and scientific and natural areas. These networks can potentially reduce the effects of fragmentation without reserving larger contiguous blocks of forest." The Greenways Initiative offers approaches to implement this "connected forest corridor" concept and provide economic opportunities for Minnesota's forest-based tourism and wood-based industries while ensuring habitat protection.

- **Metro Greenways Program.** Cumulative development pressures on Metro's lands and waters over the last two decades engendered the Metro Greenways Program. Now Metro Greenways can play a crucial role in helping a statewide greenways effort as development pressures elsewhere bring about loss of habitat and degradation of natural resources. Although Metro's land base is small, the seven county metropolitan area contains about 53% of the state's voting population. Increasing awareness of metropolitan residents about the importance of greenways is significant, especially as many Metro citizens summer in the rapidly developing areas of the state. After 3 years of development and operation, Metro Greenways can serve as a prototype to other greenways efforts throughout Minnesota, sharing content and process information and making "greenway links" with adjacent regional projects.
- **Statewide Recreational Planning.** Recreational opportunities for local communities are a fundamental part of Minnesota Greenways. Two recent statewide planning efforts illustrate opportunities for Minnesota Greenways. The "Minnesota State Park System Land Study" assesses the current state park system and its adequacy to meet "nature based recreation needs" for the next 25 years. The draft report recommends creating a network, or "greenway", of parks closely linked to population centers that meet both recreation and resource protection needs. The recommended network would more fully represent the diversity of the state's natural features. Equally important is the "Border-to-Border Trail Study" that provides a way to evaluate trail opportunities of nearly 900 off-road trail corridors throughout the state. Minnesota Greenways provides a framework to guide and support these and other recreational initiatives in more coordinated ways.

Lake Management/Watershed Approaches. The Greenways Initiative supports all of the department's efforts directed at sustainable management of lakes, wetlands, streams and rivers. Threats to aquatic environments need to be managed at the larger, watershed scale paying particular attention to the "connections" between land use activities and water quality. Numerous initiatives designed to improve water quality and watershed resources have been initiated as partnerships between the DNR and communities, local governments, and private citizen groups. Minnesota Greenways builds on these successful efforts -- like the Big Sandy Areas Lakes Watershed Project, the Tri-County Leech Lake Watershed Project and the Wells Creek Watershed Project -- and brings additional focus on providing local communities with natural resource information they need to accomplish their goals. Greenways will exist and be promoted at many scales -- including "greenways" of shoreline around the state's lakes and rivers.

Recommended Organizational Structure: Roles and Responsibilities

Minnesota Greenways will require leadership, focused management, creativity, and flexibility to implement the effort throughout the department. Our recommendations highlight four cross-cutting issues: 1) internal resource allocation and management, 2) the role of science and information management, 3) communication and public participation, and 4) partnerships. We recommend a three-pronged organizational approach:

- 1) Establish a project coordinator and project management team** to provide leadership and direction to the initiative;
- 2) Create "limited and focused" support teams** of department staff and/or stakeholders organized to address specific implementation issues or community initiatives that are fundamental to Minnesota Greenways; and
- 3) Use existing networks and teams**, both internal and external, that are currently in place to support greenways activities.

1) Establish a Project Coordinator and Project Management Team:

- **Designate a Minnesota Greenways DNR project coordinator.** The project coordinator will be responsible for overall project design, management, implementation and evaluation. He/she will be responsible for interdisciplinary communication and coordination of the Department's "Greenways" work with external teams and interests (See Appendix A for Principle Task Responsibilities).
- **Establish a project management team.** The project coordinator will work with a small, core project management team. At a minimum, the team should include the Communication Director and the chair(s) of the Science and Information Team and one or more representatives of the network of Community-based Project Coordinators.

A somewhat larger advisory team that includes other internal and external stakeholders should also be considered. To accomplish this, the composition of the current Greenways Steering Committee might be re-examined by the project coordinator to ensure that its composition and structure best addresses initiative needs.

2) Create "Limited and Focused" Support Teams

We recommend a limited number of focused teams to address specific opportunities. These teams may include DNR staff and external stakeholders and citizens; some will be ad hoc and short term; others will be longstanding. Initially, we recommend the creation of:

- **External Teams.** External partners contribute new ideas, perspectives, and support to Minnesota Greenways and extend DNR's limited resources. We recommend the creation of at least two external teams to provide guidance to regional level greenway efforts and to generate external support for Minnesota Greenways. One team may include representatives from local government and nongovernmental organizations which are instrumental to on-the-ground implementation activities (e.g., the Minnesota Association of Counties, League of Minnesota Cities, the Association of Soil and Water Conservation Districts, Regional Development Commissions, MN Parks and Recreation Association, MN Land Trust, the Minnesota Chapter of American Society of Landscape Architects, Izaak Walton League, etc.). A second external group may include representatives of other state agencies, especially those working on the Governor's Smart Growth initiative and Minnesota Planning's Urban Development GEIS.
- **Communications Team.** The Communications Director will design and lead a Greenways informational and educational effort with the help of another department employee for the next several months. We anticipate that they will be creating their own network or team of individuals to help guide and inform their efforts.
- **Network of Community-based Project Coordinators.** The Department is actively helping initiate and/or support many local watershed and landscape projects designed to protect natural resources and open space while accommodating local growth (e.g., the Big Sandy Area Lakes Watershed Project, The Heron Lake Watershed Project, St. Louis River Project, the Tri-County Leech Lake Project, the Big Woods Ecosystem Project, the Clay County Beach Ridges Forum, and the Oak-Savanna Ecosystem Project). Department staff have experience and knowledge in working effectively with citizens and local agencies to provide them the tools they need to support their efforts. These DNR community-based coordinators and other field staff are critical to helping guide the Minnesota Greenways Initiative. The project coordinator and project management team should establish a more formal network of these staff and rely on their experience to build on existing cooperative efforts and help initiate a greenways effort.

- **Science and Information Advisory Team.** Because a cornerstone of the Greenways Initiative is to provide natural resource information to local communities, a major focus should be placed on improving information integration and delivery. DNR has made significant investments in the collection of information to guide management of natural resources. These efforts, however, are often independent of one another, and information is often not easily combined into comprehensive formats that are easy to understand and use. We recommend a Science and Information Advisory Team with responsibility for organizing scientific assessments to provide decision-makers with the best information needed to implement a Greenways Initiative. The team (GIS, social science, recreation, and natural resource technical staff) will help organize DNR staff in broad-scale information gathering, technical review of local projects, and evaluation and interpretation of information. The team will ensure that information is compiled and available in useable formats. Environmental indicators will help monitor status and trends, and help measure progress of greenways actions.

Recommendation: As a first step, the team may consider selecting a large landscape area where significant activities and opportunities provide a real life example of the building blocks of a greenway system of conservation lands (these would include federal, state, and local initiatives such as CREP, RIM, WRP, Forestry Legacy Lands and other privately-owned lands efforts along with existing parks and trails, and scenic byways etc.). This map will paint a concrete and particular picture of what a greenways potentially looks like. It would help bring to life the possibilities and rewards of a greenways framework for better coordination of disparate conservation efforts. This map will illustrate the high-quality easy-to-use products DNR can produce to guide and support the initiative.

3) Use Existing Teams and Networks

Numerous existing committees, teams and networks --both internally and externally-- are critical to the Initiative. We believe the following will be essential to a Greenways organizational structure:

Senior Managers and Regional Teams. DNR senior managers can make significant contributions to a Greenways Initiative by removing organizational barriers, by providing guidance and budgetary support, by helping to market our efforts with legislators and constituent groups, and by coordinating with management staff in other state, federal and local agencies. Senior managers and their regional teams will have three specific responsibilities:

- ***To incorporate the greenways concept in all six DNR regions.*** Senior Managers can delegate and empower regional interdisciplinary teams to assist, develop, and implement shared greenways strategies. The interdisciplinary teams will propose priority greenways strategies. The Regional Team (Regional Director, Regional Supervisors and identified support staff) will define the Region's priorities and dedicate shared resources (e.g. funding resources, staff expertise, and program activities) to accomplish greenway goals. The Regional Director will work with the regional team to facilitate agreement on resource allocation decisions.
- ***To support ongoing projects that contribute to a greenways strategy.*** The Senior Managers will need to support locally-based ecosystem coordinators and regional interdisciplinary teams who are implementing landscape, watershed, and other local projects that are building blocks to a statewide greenways strategy. Priority projects that support greenways will be continued through leveraged use of existing resources (staff, budget, etc.). This will be complemented by leveraging new partnerships and other approaches as needed. Internal DNR allocation of resources (staff, budgets, etc.) will occur through dedication of existing resources.
- ***To support new projects that contribute to a greenways strategy.*** New locally-based greenways efforts will be identified through a regional planning process. Support strategies will be developed to include examining opportunities for new sources of funding such as LCMR, General Fund appropriations, grants from non-governmental sources, and new partnerships.

Operations Managers Team. The Operations Managers Team can promote budget discussions and integration focused across both disciplines and regions. Because interdisciplinary staff and budget support will be critical, we recommend that the Operations Managers team be reconvened to discuss the budget development and support what will be needed by Minnesota Greenways.

External Organizations. Numerous organizations (such as The Nature Conservancy, Minnesota Land Trust, Pheasants Forever, Minnesota Parks and Trails Council etc.) and other state agencies currently support activities that are integral to the Department's Greenways initiative. These groups and sister agencies need to be updated on the agency's greenways initiative and encouraged to expand existing and new areas of cooperation with DNR to achieve common greenway goals.

Communication and Public Involvement: Recommendations

Internal Communication Needs

Short Term: Managers will need to explicitly communicate with staff on how a greenways initiative will be implemented with existing capacity. The following questions need to be addressed:

- Which current activities can be incorporated into greenways efforts?
- Which activities are no longer a priority?
- Which activities will be modified to assist greenways efforts?
- Will greenways efforts require additional activities not currently funded?
- How will all priority activities be carried out under current funding levels?

Greenways will help extend the collaborative stewardship work now being implemented under our ecosystem-based management approach. Communication documents developed to date have helped deliver these messages. Greenways will mean new opportunities to achieve existing resource goals and new challenges to refocus some efforts and adopt new activities when needed.

Long Term: The Communications Director and the Communications Team will have ongoing responsibility for communicating Greenways Initiative activities.

External Communication Needs

The key question an external communication strategy must answer is: What benefits does the greenways approach provide to citizens? Success will depend on the ability to communicate to citizens and stakeholders why investing in greenways is the best use of DNR resources. Why is greenways a more effective investment than other traditional approaches? How will greenways benefit hunters and anglers, park visitors and trail users, birdwatchers, those stakeholders dependent on natural resource commodities like timber, minerals, and water supplies, and environmental interests concerned about natural services such as pollution filtering, soil protection, and biodiversity maintenance. Communication will need to be proactive to avoid misunderstandings on issues such as:

- 1) Greenways and private property rights.
- 2) Greenways and traditional management approaches.
- 3) Greenways, funding sources, and existing management programs.

Public Participation Needs

Participation is an integral part of any major initiative. Participation by agency staff and the varieties of public interests must be fostered throughout the entire project to ensure a quality product and broad support. A comprehensive participation strategy includes a variety of actions from basic communications to stakeholder involvement. A 6 to 12 month initial investment in communicating and consulting with stakeholders will provide valuable insights and lay a foundation for success. The strategy should:

- Foster a process that is open, honest, fair, and inclusive.
- Build support along with content throughout the process.
- Gain understanding and consent from project stakeholders.
- Produce a durable agreement and a product that can be put into action.

Start-up tasks include:

I. Identify stakeholders and their concerns.

- A. Find out who does or should care about the project, inside and outside the DNR.
- B. Communicate early and regularly with these stakeholders.

II Collect broad input on the project's purpose and scope.

- A. Meet formally and informally with key interests to collect and understand their ideas (positive or negative) about what the project could be and the issues as they see them.
 1. *Regional greenways project visits:* Learn from related smaller-scale projects in each of the DNR's administrative regions and to connect with project leaders.
 2. *Consult with DNR staff:* Consult with DNR staff on how Minnesota Greenways could be developed and implemented with existing staff capacity.
 3. *Networking with other stakeholders:* Conduct one-on-one or group meetings with organizations, government units, and key individuals to discuss the project, answer questions, collect input, and seek their support and involvement.
 4. *Information-gathering forums:* Number, format, and specific objectives to be determined; this method to be used only if project reviews and stakeholder networking prove insufficient.

III Inform the Project Work Plan

- A. Use information gathered to develop the long term work plan for the project.
- B. Include ongoing outreach and stakeholder involvement needs in the work plan.

Minnesota Greenway Initiative - 6 Month Work Plan Summary

Task Name	Person Responsible	Percent Complete	Dec	Jan	Feb	Mar	Apr	May	June
I. Short Term (December - January)									
Designate DNR Project Coordinator	Commissioner's Office								
Prepare "Scoping Document"	Project Coord/Mgmt Team	25%							
Define Regional Meetings	Ad hoc Work Team	100%							
Prepare for Regional Meetings	Regional Directors								
Develop Preliminary Staff Budget	Project Coordinator								
Identify Teams and Memberships	Project Coord./Mngt. Team								
Develop LCMR proposal Strategy	Project Coord/Mgmt Team								
II. Mid Term (February-March)									
Establish New Teams	Project Coordinator								
Continue Communications Planning	Comm Director/Project								
Conduct Regional Meetings	Project Coord/								
Produce Regional Meeting Report	Project Coordinator								
Produce Public Participation Plan	Project Coordinator/Planners								
Assess Other State Efforts	Proj Coord/Landscape Leads								
Assess DNR activities	Project Coord/ Mgmt Team								
Evaluate Support Needs	Ops Managers/Project Coord								
III. Long Term									
One year work plan	Project Coord/CO								
Assess DNR roles & responsibilities									
Assess needs for additional support									
LCMR proposal support strategy									
Implement public participation plan									
Greenways into Biennial Budget									
Regional biennial work plans									
Evaluate communication strategy									

An Action Plan for the Next 6 Months

I. Short-term (December 1999 - January 2000)

- A. Designate a DNR Project Coordinator (see Appendix A for key responsibilities)
- B. Draft "Greenways Initiative Scoping Document" and communicate internally; address initiative process and content. Use the following pieces:
 - Harland Heimstra's communication pieces 12/99
 - Dennis Stauffer's Resource Review piece 12/99
 - "Project Mgt. Recommendations for the Minnesota Greenways Initiative" 12/20/99
 - Dennis Stauffer's Communication Plan 12/99

Recommendation: Seek input on "Scoping Document" from field staff working directly with local communities.

- C. Broadly define the scope of the regional input meetings and begin meeting preparation in each region (see Appendix B.).
- D. Address overall budget development needs to support this work effort.
- E. Identify department staff who may serve on the recommended organizational committees.
- F. Develop strategy for working on LCMR proposal(s)

Department LCMR Work Effort:

Department staff are drafting proposals for LCMR consideration to meet a January 7 deadline. During the next four weeks, staff will examine proposals that relate to and support the department's Greenways initiatives (statewide and Metro) and develop a work strategy with the Commissioner's Office.

Recommendation: Internal communications regarding development of LCMR proposals need clear direction and oversight to provide the greatest opportunity for development of a broad and cohesive package that supports the Commissioner's vision. The LCMR process represents an important opportunity for securing funds to help support and drive the new administration's direction. LCMR proposal deadline is February 1, LCMR recommended funds are not available until July 2001.

Coordination with External LCMR Work Effort:

A group of external stakeholders representing several conservation organizations (including The Nature Conservancy, Pheasants Forever, Minnesota Waterfowl Association, Trust for Public Land, Minnesota Land Trust) and have organized to develop a broad LCMR initiative focused on establishing habitat connections in high priority landscapes using a variety of tools, including fee title acquisition, conservation easements and improved management of public and private lands.

Recommendation: The LCMR proposal being prepared by external stakeholders is an important resource management initiative that strongly supports the Commissioner's Greenways vision. The DNR should seriously consider being a major cooperative partner (and state agency lead) for this work effort.

II Mid-term (February - March 2000)

- A. Establish recommended organizational committees.
- B. Develop communication plan for internal and external parties.
- C. Conduct regional meetings.
 - Document regional meetings input (targeted number of stakeholder groups and projects).
 - Evaluate regional meetings
 - Use the following five questions to help guide evaluations:
 - Is the problem real? What does it look like?
 - Is the strategy used appropriate? What does it look like around here?
 - Are people implementing the strategy in this community?
 - What do these folks need to do a better job?
 - What are the future opportunities in this community?
- D. Assess how to effectively solicit broader stakeholder input through public participation plan
- E. Learn from others efforts:
 - Learn from the Metro Greenways experience
 - Learn from the experience of others in the U.S. and abroad
- F. Assess the Department's current activities as they relate to Greenways
- G. Evaluate additional support needs of Project Coordinator and Department efforts.

III. Long-term (April - June 2000)

- A. Based on the work completed in January through March, prepare a detailed one year work plan and a broad framework for the next biennium.
- B. Assess DNR roles and responsibilities.
- C. Assess need for additional resources (staff, mapping, data collection, etc.).
- D. Develop a plan to build support for the LCMR proposal(s).
- E. Implement public participation plan and efforts to solicit broader stakeholder input.
- F. Integrate Greenways into the Department's Biennial Budget Process.
- G. Regions and disciplines work on biennial work plans that highlight Greenways initiatives.
 - Assess need for interdisciplinary staff and financial resources.
- H. Evaluate implementation of communication strategy.

APPENDIX A: Greenways Coordinator -- Principal Task Responsibilities

- A. Develop, implement, and manage statewide greenways initiative, including the creation of a program work plan and budget, establishment of internal and external support teams, and identification and coordination of existing DNR landscape projects and related supportive disciplinary efforts
- B. Provide internal and external leadership in order to better coordinate ongoing and new projects that support the statewide greenways initiative. This may include a principal role of acting as liaison from the Commissioner's Office to other key state agencies.
- C. Track and assess ongoing program needs and efforts to meet projected target dates and products identified in the work plan..
- D. Become knowledgeable about other statewide greenway project approaches and establish good communication links with other key Minnesota efforts, including Smart Growth and Sustainable Forests.
- E. Promote Minnesota Greenways Initiative through presentations and the co-development of communications/educational pieces with the Communication Director.

APPENDIX B: Regional Meetings Guidance

Setting Up Initial Scoping Meetings for the "Minnesota Greenways" Initiative

Purpose of the Meetings:

To **"learn from and connect with"** people who are involved in projects that have the following characteristics:

1. Projects that are addressing the problem of habitat/open space loss and fragmentation, loss of recreational opportunities, and residential/industrial growth;
2. Projects that are using a "greenways" strategy of connecting people, habitats, and open space as part of their project's work;
3. Projects that are promoting good public participation and are citizen-led;
4. Projects that are providing opportunities for good DNR interdisciplinary participation.

These meetings are part of the "Minnesota Greenways" Initiative's early reconnaissance activities.

Products of the Meetings:

1. Local/regional insights on the problems of habitat conversion, recreational open space destruction, and residential/industrial growth and how to address them.
2. Local/regional insights on how the DNR can be of further assistance to local/regional projects.
3. Enhanced communication with external partners about DNR's Minnesota Greenways Initiative.
4. Enhanced personal and professional relationships among people addressing common problems.
5. An evaluation report summarizing insights gathered at the meetings (e.g., opportunities and challenges to implementing the Minnesota Greenways Initiative)

Process of the Meetings:

There are two approaches. These are not mutually exclusive. We suggest starting with "Approach 1" and based on time and need consider following up with "Approach 2". Prior to the meetings we should be communicating with our own staff about the purpose and intent of the meetings, solicit their input and provide them more information about the Minnesota Greenways Initiative.

Approach 1: "Go to their Meetings"

1. Regional Director and staff identify 2-3 local projects with greenway characteristics.
2. DNR staff make contact with the projects and request an invitation for the Commissioner and the Minnesota Greenways Initiative project manager (still to be assigned), and the DNR Communications Director to come and talk with them about their project and how the DNR can be of further assistance.
3. DNR staff help project leaders set up the meeting (if necessary) in the project's local community.
4. DNR Commissioner, Minnesota Greenways Initiative's project manager and the DNR's Communication Director prepare for and attend the meetings.

Approach 2: "Sponsor a Meeting of Leaders from a number of Projects"

- 1) Regional Director and DNR staff identify 3-6 local projects that have greenways characteristics.
- 2) DNR staff make contact with the projects and invite two leaders from each project to meet with the DNR Commissioner and Minnesota Greenways Initiative project manager (still to be assigned), and the DNR Communications Director about their projects and how the DNR can be of further assistance to their work.
- 3) DNR staff set up the meetings.
- 4) DNR Commissioner, Minnesota Greenways Initiative's project manager and the DNR's Communication Director prepare for and attend the meetings.

**CONFERENCE "LAND CONSERVATION SUMMIT 2000:
ADVANCING THE DEBATE IN THE NEW MILLENIUM"**

**FRIDAY AND SATURDAY JULY 28-29, 2000.
UNIVERSITY OF MINNESOTA EARLE BROWN CENTER**

INTRODUCTION

60% of the surface of the United States, over 1.3 billion acres of land, is privately owned. These lands comprise diverse landscape elements and offer a wide range of resources. They represent a part, although an important part, of our national heritage. In the twenty-first century, they must become the focus of attention, particularly as communities across the nation seek to contain urban sprawl and the concomitant loss of recreational open space in, and around, our major urban areas.

The past decade has seen a dramatic increase in the number of local and regional land trusts, non-profit organizations working with private landowners to protect the ecological characteristics of the land considered important to the communities and regions in which they operate. Currently 1,200 land trusts help protect 4.7 million acres in a variety of ways. Increasingly, these organizations are creating conservation easements for landowners to ensure the continued existence of landscape elements and resources. Conservation easement, in fact, have become widely used to protect land, not just by private sector land trusts but also by government agencies.

The purpose of this two-day intensive conference is to stimulate debate about the future of protecting privately owned lands in the United States and the role of conservation easements in those efforts. It will provide a forum for some of the country's most thoughtful and able individuals, several of whom contributed to the forthcoming volume, Protecting the Land: Conservation Easements, Past, Present, and Future. (Handout to be distributed @ RMT)

Participants in the conference will bridge the gap between academics and practitioners, between polemics and action, assessing recent trends in private land conservation, identifying some of the current problems and potential solutions to such efforts, and proposing new directions in the conservation effort. This conference will serve to broaden the debate on private land conservation on a number of levels.

Land Conservation Summit 2000 represents a first attempt to provide a national forum for debate about the protection of private lands. While the umbrella organization for land trusts, the Land Trust Alliance, sponsors an annual conference, this conference will fundamentally differ in several ways. First, the focus will be on the **future** of private land protection rather than the day-to-day

mechanics of using land conservation tools. Second, it will not cater to new and young nonprofit organizations but will address general strategies in public policy and the long-term future of land protection in various regions with their specialized requirements. Thirdly, Land Conservation Summit 2000 will bridge the gap between the Land Trust Alliance conference and the more formal course offered by the Lincoln Land Institute. It may, in fact, set the scene for a new type of nonprofit organization, one that performs as a think-tank for land trusts and private land protection, such as the Center for Conservation and Resource Economics established by one of the organizers in Pennsylvania in 1996.

To ensure formal protracted discussions during the conference each of the ten working sessions will include a maximum of three papers. The author of each invited or accepted paper will talk to a previously circulated detailed synopsis. The facilitator in each session will be an individual knowledgeable in the subject area.

Several publications will result from the conference. A conference proceedings volume will comprise papers written by individual speakers and the discussion amongst the conferees at the particular working sessions. The organizers will also provide additional material they think relevant to such a volume. Appropriate publishers might be university presses, such as the University of Minnesota, or environmental presses, such as Island Press. There may be other outlets for individual contributions. The Back Forty, a publication from the Hastings College of Law, California has already intimated that conference papers addressing legal topics would be most welcome. The Land Tenure Center at the University of Wisconsin, which publishes research papers, has been approached.

Several individuals, who contributed to the book Protecting the Land, are serving as the planning committee for the conference.

- Roderick Squires, Associate Professor of Geography, and member of the graduate faculty in Conservation Biology, University of Minnesota,
- Julie Ann Gustanski, Ph.D. candidate, University of Edinburgh, 4Ever Land Conservation Associates, former Executive Director Buck County Agricultural Land Preservation Program, former Executive Director Farm & Natural Lands Trust, York County, PA
- Tom Daniels, Professor of Geography and Planning, State University of New York at Albany, Albany Land Trust
- Kelly Kindscher, Adjunct Assistant Professor. Environmental Studies Program, University of Kansas, Kansas Biological Survey, Kansas Land Trust
- Todd Mayo Esq., Attorney at Law, Winer and Bennett P.A., Nashua, New Hampshire.

CONFERENCE PROGRAM

FRIDAY, JULY 28

- 10.00 – 12.00 Registration
12.00 – 1.00 Lunch
1.00 – 2.00 Plenary Session "Smart growth – it's not for the birds any more" **Dean Barkley, Director, Minnesota State Planning Agency**
2.15 – 3.45 Two Concurrent Sessions
- Land Use Controls, Conservation Easements and Sustainability. *Facilitator.* Dennis Collins, Wildlands Conservancy, Pennsylvania
- Rethinking Institutional Boundaries. *Facilitator.* Rod Squires, U. of Minnesota
4.00 – 5.30 Two Concurrent Sessions
- Integrating Social, Economic, and Ecological Information. *Facilitator.* Julie Ann Gustanski, University of Edinburgh
- Solutions for Growth Management in the New Millenium. *Facilitator.* John Halsey, Peconic Land Conservancy, New York
5.30 – 6.30 Social Hour
7.00 Dinner
Guest Speaker. Prof. John Fraser Hart, Univ. of Minn. *Title to be arranged.*

SATURDAY, JULY 29

- 9.00 – 10.30 Two Concurrent Sessions
- Conservation Easements and Productive Lands. *Facilitator.* Tom Daniels, State University of New York at Albany
- Drafting Conservation Easements Now and for Perpetuity. *Facilitators.* Rene Leone, Minnesota Land Trust and Judy Anderson, Columbia Land Conservancy, New York.
10.45 – 12.15 Two Concurrent Sessions
- Tax Issues in Private Land Conservation. *Facilitator.* Todd Mayo, attorney at law
- Conservation Easements, Cultural and Natural Lands. *Facilitator.* Kelly Kindscher, University of Kansas
12.30 – 1.45 Lunch. Guest Speaker TBA
2.00 – 3.30 Two Concurrent Sessions
- GIS and Conservation Easements. *Facilitator.* Jay Parrish, Lancaster County Planning Commission, Pennsylvania.
- Conservation Easements in an Urban Context. *Facilitators.* Chuck Matthei, Institute for Community Economics (MA) and David Berge, former Vice-President Vermont National Bank and Director of VNB's Socially Responsible Banking Fund (VT)
3.45 – 4.45 Closing Plenary Session. "Private Land Protection in the New Millenium"

BUDGET

None of the participants will receive reimbursement for travel or expenses and the costs reflect therefore the costs of setting up the conference.

The Department of Geography will provide necessary secretarial help for the conference mailings and design for the brochure.

Departmental Support (mailings, brochure, web page)	\$450
Promotion	\$750
Rental	\$1800
Facilities	\$1000
Audiovisual Equipment	\$3500
Meals/breaks	
U.MN Professional Education and Conference Planning (services associated with planning and setting up conference)	\$9875
Registration (50 @ \$100)	\$5,000
Total	\$22,675

The following institutions will be approached as sponsors.

The Nature Conservancy

The Land Tenure Center, University of Wisconsin

The Trust for Public Land

The Land Trust Alliance

The Orton Family Foundation

The Lincoln Institute of Land Policy

The Joyce Foundation

The College of Liberal Arts, University of Minnesota

LAND CONSERVATION SUMMIT:2000 ADVANCING THE DEBATE IN THE NEW MILLENNIUM

GOALS

- To critically assess recent trends in the conservation of private lands.
- To identify present problems and discuss potential solutions to concerns of the legal community in private land conservation.
- To propose new directions in private land conservation.
- To broaden the conservation debate by linking public policy with the social and economic values

CONFERENCE SCOPE

The purpose of the conference is to advance the debate about private land conservation and the use of conservation easements into the new millennium. In recent years there has been modest growth in the number of acres

SESSION TOPICS

- Land Use Controls, Conservation Easements and Sustainability. Where does our present legal system and statutory controls leave us? How can we improve/achieve integration? (Facilitators: Dennis Collins, Wildlands Conservancy, PA and Brian Ohm, University of Wisconsin, Madison)
- Rethinking Institutional Boundaries: Federal, State & Local Private Partnerships in Land Conservation (Facilitator: Roderick Squires, University of Minnesota)
- Integrating Social and Economic Information with Ecosystem Services in the Evaluation of Conservation Lands (Facilitator: Julie Ann Gustanski, 4Ever Land Conservation Associates and University of Edinburgh)
- Growth Management Solutions & Conservation Innovation for the New Millennium: Technical Solutions (Facilitator: Glenn Radde, Minnesota Department of Natural Resources)
- Public Policy, Growth Management & Land Conservation: The Need for Consistency, the Threat of Change... Innovative Directions for the New Millennium: (Facilitator: Michael Pressman, 1000 Friends of Minnesota)
- Tax Issues in Land Conservation: Where are we and what does the future hold? (Facilitator: Todd Mayo, Winer and Bennett, P.A., NH)
- Conservation Easements and Productive Lands: What Has Been Achieved, What Needs to Be Achieved? Where Do We Go From Here? (Facilitator: Tom Daniels, State University of New York at Albany and Albany Land Trust)
- Conservation Easements, Cultural and Natural Lands...integrating the sciences. What Has Been Achieved?, What Needs to Be Achieved? Where Do We Go From Here? (Facilitator: Kelly Kindscher, University of Kansas and Kansas Land Trust)
- Conservation Easements in Urban Environments: Housing Trusts (Facilitators: Chuck Matthei, Institute for Community Economics and David

PRELIMINARY PROGRAM SCHEDULE

Thursday - 27 July

4:00 - 5:00 PM Early Registration

5:00 - 6:00 PM Informal meal with early arrivals.

Friday - 28 July

10 AM - 12:00 Registration

12:00 - 12:45 PM Lunch

1:00 - 2:00 PM Plenary Session. Speaker: Dean Barkley, Director, Minnesota Planning "Smart growth - it's not for the birds any more"

2:15 - 3:45 PM Concurrent Sessions

- Land Use Controls, Conservation Easements,

Saturday 29 July

9:00 - 10:30 AM Concurrent Sessions

- Public Policy, Growth Management & Land Conservation: The Need for Consistency, the Threat of Change... Innovative Directions for the New Millennium
- Conservation Easements and Productive Lands

10:45 - 12:15 AM Concurrent Sessions

- Tax Issues in Land Conservation
- Conservation Easements, Cultural and Natural Lands...integrating the sciences

12:30 - 1:45 PM Lunch

Speaker: TBA

2:00 - 3:30 PM Concurrent Sessions

- Conservation Easements in Urban Environments: Housing Trusts
- Drafting Conservation Easements in the New Millennium

3:45 - 4:45 PM Closing Plenary Session

A final plenary presentation will bring together the results of the conference Working Groups.

SUBMITTING A PROPOSAL

Abstracts for proposed presentations should not exceed one-page. Authors of all accepted presentation proposals will be required to submit either a detailed outline or the complete paper by June 1, 2000. These materials will be circulated to conference participants as pre-conference proceedings. The volume, together with the talk and the subsequent discussion, will provide the materials for a conference proceedings volume.

Only original contributions should be submitted. Selection for presentation at the conference and publication in the proceedings will be based on originality, contribution to the field, and relevance to the conference themes. At least one author for each paper must register for the conference and present the paper.

Papers must not exceed 12-15 single-spaced pages. All submissions must include on the first page: title, author's name(s), affiliation, complete mailing address, phone number, fax number, and e-mail address. An abstract of 100 words maximum and up to five keywords that fit within the 10 topic session categories should follow the abstract.

Abstracts must be submitted by February 1, 2000. Submissions should be sent to:

Rod Squires
Department of University
University of Minnesota

414 Social Science Building
Minneapolis, MN 55455

By Email: squir001@tc.umn.edu (rich text format preferred)

Queries to Rod Squires (612) 625 0179

THE SAGA OF A BWSR BOARD MEMBER

Eight years ago, I joined this group -
A Metro member of Harnack's B troupe.
Everything's foreign --- I'm so dumb it's a sin!
Til this wonderful staff made the placement, win-win.

Sooo....

I exchanged e-QUIPS with my friend MAWD
Endured many meetings as the token BROAD.
Studied polluted water with ma SQUID
Pushed the REORG button on Pandora's lid.

I WMOed with DNR and EQBed with PCA,
Yes--- I shuttered and stuttered,--- but had my say.
I CREP-t and nearly C R P ed,
When the cost share formula got me teed.

I listened to L C ----M ---- and ---- R
And lobbied each legislative czar.
I looked what feedlots reaped and sowed,
and ducked when "rubber hit the road".
Retooled marginal land for RIM,
Who qualifies? --- better ask Ron or Tim!
D---ear R C increased my stress -
Gave it "bang for buck" - nothing less.

What fun ---- what exciting duels,
When BWSR set the WCA rules.
Mega money the farm bill decrees -
Until things get specific with N R C
S, or is that S C S?
Aw heck, just take a guess.

I gave my all to strategic plans...
Endured Finance's budget demands,
Supported SWCDs with loving fuss -----
Saw the WORLD from a greyhound bus.

I spoke my mind and would not tarry-----
Except for a cig with Kath, Robyn and Mary.
I learned a ton and made great friends,
But now good things must come to an end

So
In words of old, Yowser --- Yowser
IT WAS GREAT BEING PART OF BWSR !

Barb Cobb
1999