



Minnesota Board of Water and Soil Resources.
Minutes.

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January 2000

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

BOARD MEMBERS PRESENT:

Kathleen Roer, Lee Coe, Jerome Deal, Darrell Bruggman, Mark Dittrich-MDA, Clair Nelson, Dwain Otte, Allan Oehlke, Dan Wilson-MDH, Jim Dahlvang, Ginny Imholte, Barb Cobb, Jim Anderson-MES, Wayne Edgerton-DNR.

BOARD MEMBERS ABSENT:

Paul Krabbenhoft
Rod Massey

STAFF PRESENT:

Ron Harnack, Jim Birkholz, Jim Haertel, Dale Krystosek, Mary Jo Anderson, Wayne Zellmer, Greg Larson, Marybeth Block, John Jaschke, Steve Woods, Al Kean

OTHERS PRESENT:

Mary Jo Truchon, League of Women Voters
Jack Frost, Met Council
Bill Clapp, Audubon, League of Women Voters
David Phillips, Attorney General (MNDOT)
Kate Drewry, Rice Creek Watershed District
John Linc Stine, DNR/Waters
Doug Norris, DNR
Sheila Vanney, MASWCD
Tim Gieseke, MACDE

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

- **** **Adopt Agenda** - Moved by Clair Nelson, seconded by Jerome Deal, to adopt the
00-01 agenda as presented. Motion passed on a voice vote.

- **** **Minutes of December 15, 1999** - Jim Dahlvang stated that a correction is needed on
page six, the third line is a duplication and will be deleted "DNR has a concern with this
as far as a possible staff workload issue". Moved by Jim Dahlvang, seconded by Lee
00-02 Coe, to approve minutes of December 15, 1999, as corrected. Motion passed on a
voice vote.

Reports

Chair's Report - Chair Roer attended the EQB meeting. She reported that Susan Schmidt's position, Animal Ag GEIS coordinator, has not yet been filled. The GEIS, Citizens Advisory Committee continues to work on the scoping document. Chair Roer reported that she, Ron Harnack and Jim Birkholz went before the Department of Employee Relations (DOER) HAY committee for request of position allocations for the executive director and assistant director positions, as these positions have not been rated since 1988. This process will provide the compensation range for the positions. Chair Roer stated that this was an interesting process to go through.

Executive Director - Ron Harnack reported that the capital budget has been distributed. BWSR's appropriations is \$5M for RIM, \$25M for CREP, and \$5M for administration of the programs. Ron stated that Senator Frederickson will introduce a bill for full funding of CREP. Ron reported that wetland road replacement did not receive funding, however the meeting with the Governor's office and local government officials was positive. Ron stated that the environmental/conservation group's legacy initiative for funding environmental issues has been distributed.

Ron reported that the Red River mediation is moving along; the biggest struggle is the need for facilitation of meetings. He will be having discussions with Minnesota Extension Service to see if additional resources can be dedicated to facilitation of the watershed work teams. Ron reported that he was reappointed by the Governor to the Red River Basin Board (R2B2). The R2B2 continues to struggle with issues regarding Garrison Diversion and Devils Lake, although things are progressing.

Ron reported that the Ventura administration, through State Planning, is working on the Revisiting Reform Project initiative, an analysis of executive branch reform efforts made during the administrations of Governors Carlson, Perpich and Anderson. The administrative advisory committee will meet today to review BWSR's role and will

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schedule discussions before the Board in February. Ron reported that the legislative session begins on February 1.

Ron reported that BWSR is a recipient of the "1999 Watershed Partners Award" for efforts to prevent pollution and reduce waste by developing and implementing educational programs to reduce urban runoff. Jim Haertel and Ron Struss are key staff that have been instrumental in this effort, awarded by the Office of Environmental Assistance and Governor Ventura.

Ron reported that the Conservation Reserve Enhancement Program (CREP) is doing well; 14,800 acres and going strong. The marketing strategies of the Minnesota River Joint Powers Board are hitting the airwaves and the roadsides this month.

Ron stated that board member appointments have not yet been finalized, he anticipates that to happen in early February. Until appointments are finalized existing board members will serve until June.

Ron stated that Big Stone County Ditch #2 court decision ruled that DNR had permitting authority due to the presence of significant fish and wildlife habitat.

Dispute Resolution Committee - Jim Haertel reported that there are presently three appeals pending; all are WCA appeals. Two of the appeals are on the Board's agenda for action today. They involve the Rice Creek Watershed District. The other pending appeal involves Cub Foods and Chisago County. The Board previously made a decision on Cub Foods in Forest Lake which was remanded. The Chisago County appeal is in abeyance until the City of Forest Lake makes a decision. Since the last Board meeting there were three other appeals that were filed, but all were denied. Two were denied because an LGU staff person made the decision, so the county boards need to hear the matters before they can come before the Board. Those appeals were in Aitkin and Mille Lacs Counties. The other appeal was in Duluth and a final decision had not been made by the LGU. Jim stated that shortly we will probably have three more appeals.

Wetlands Committee - Darrell Bruggman reported that the committee met, those issues will be addressed on the agenda later in the meeting today.

Cost-Share/Soil Conservation Committee - Dwain Otte reported that the Committee met in December, those issues will be addressed on the agenda later in the meeting today.

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Education and Public Relations Committee - Jim Anderson reported that Ron Struss provided leadership at the meeting today. Presentations from Kamal Alsharif, Derek Fisher, and Ron Struss will be made at upcoming committee meetings to report on education efforts statewide. Jim stated that the education committee will provide brief meeting summaries for board members information.

Financial Oversight Committee - Ginny Imholte reported that the committee met, those issues will be addressed on the agenda later in the meeting today.

Administrative Advisory Committee - Chair Roer reported that the committee will meet today to review the Revisiting Reform Project. Chair Roer would like to schedule a meeting with MASWCD, MAWD, and Counties, regarding this effort.

Agency Reports

Mark Dittrich, Department of Agriculture, reported on various Department of Agriculture meetings being held statewide.

Dan Wilson, Department of Health, reported on the "60 Minutes" story that was aired last week regarding MTBE. MTBE is a fuel-reformulated gasoline, which is cheaper than ethanol, and has the potential to be a significant water quality problem. Minnesota has no MTBE in gasoline. Minnesota uses MTBE for jet fuel and diesel. MDH is doing follow-up on this. It's been determined that MTBE has been detected in 20% of the fuel tank spills. Dan reported that Minnesota has a much lower problem with this than other states.

Wayne Edgerton, Department of Natural Resources, stated that the concon issue was heard yesterday in the House Environment and Natural Resources committee. Wayne stated that DNR legislative initiatives include: a fee package for the fish and wildlife division and the wolf issue.

Jim Anderson, Minnesota Extension Service, reported that MES will utilize MES staff statewide to assist with facilitation of Red River mediation, as well as southern Minnesota river basin issues.

Committee Recommendations

Cost-Share Committee Recommendations

Lake Flooding in North Central Minnesota - Dwain Otte explained that in October of 1999 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

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determine their recommendation. Dale Krystosek presented the lake flooding erosion and sedimentation crisis; proposed project eligibility criteria; proposed county eligibility; and the proposed application process. Dwain Otte reported that the Cost-Share Committee recommends funding of \$100,000. Moved by Dwain Otte, seconded by Ginny Imholte, to target \$100,000 of rollover funds for erosion and water quality projects caused by record precipitation and lake flooding in north central Minnesota. 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 one to two page application that will be submitted by eligible counties by March 1, 2000; grants would go out in April, 2000. Motion passed on a voice vote.

State Cost-Share Program Policy - Wayne Zellmer presented the FY01 State Cost-Share Program Allocation Policy. The state cost-share program allocations are grants to SWCDs to cost-share with landowners the application of soil and water conservation and water quality improvement practices. The annual legislative appropriation 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. Wayne reported that 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. Wayne reported that the Cost-Share Committee recommends the following:

- 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 special project should be capped at \$40,000.
- 4) Grants will not be used to pay for SWCD special projects technical and administrative costs.

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- **** Moved by Dwain Otte, seconded by Barb Cobb, to accept the Cost-Share Committee recommendation to approve the items listed above. Motion passed on a voice vote.

00-04

Cost-Share Rule Amendment to Include Farmstead Windbreaks - Dwain Otte distributed a proposed amendment to Motion #99-44, minutes of June 23, 1999. The proposed amendment deletes "which will not include cost-sharing on windbreaks, removal of old groves, buildings, and junk, etc., this allocation will compete with other grants". The cost-share committee recommendation should read, "to adopt the cost-share committee's recommendation on farmstead windbreaks and move forward with the rule amendment."

- **** Moved by Dwain Otte, seconded by Allan Oehlke, to adopt the cost-share committee recommendation to amend the minutes of June 23, 1999, Motion #99-44, strike-out to eliminate "which will not include cost-sharing on windbreaks, removal of old groves, buildings, and junk, etc., this allocation will compete with other grants." Ron Harnack stated that the last legislative session effective date for the legislation was August 1, 1999 states that "we shall reflect that we will cost-share on farmstead windbreaks". Motion passed on a voice vote.

00-05

Farmstead Windbreak Practice Specifications - Wayne Zellmer reported that 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. The Cost-Share Committee

- **** recommends Farmstead Windbreaks, see Attachment A. Moved by Dwain Otte, seconded by Allan Oehlke, to adopt the Cost-Share Committee recommendation on farmstead windbreaks, attached. Motion passed on a voice vote. Chair Roer signed the "Certificate of the Board of Water and Soil Resources; Resolution Adopting Rules, Adopted Amendment to Rules Governing the State Cost-Share Program, Minnesota Rules, Chapter 8400".

00-06

Water Planning Sub-Committee Recommendation

Dismissal of Establishment Proceedings for Sunrise River Watershed District - Jim Haertel reported that 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 Sub-Committee (consisting of Kathleen Roer, Ginny Imholte and Dwain Otte) presided over the hearing and recommends dismissal of the watershed district establishment proceedings. Moved by Ginny Imholte, seconded by Dwain Otte, to dismiss the establishment proceedings of Sunrise River Watershed District. Motion passed on a voice vote.

00-07

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Chair Roer called for a break in the meeting at 10:20 a.m. The meeting reconvened at 10:35 a.m.

Dispute Resolution Committee (DRC) Recommendation

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 reported that 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 very complex and technical 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 appeal came before the DRC on November 4, 1999, and December 14, 1999. The DRC was not unanimous in their decision. 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 draft order.

John Jaschke presented background information on the incidental wetland. John distributed MN RULE 8420.0122 - see Attachment B. John stated that a correction is needed on page two of the document, under "Conclusions: the second line of first paragraph, it states 1996, it should read "1966". John concluded that there is not sufficient data and findings to show that the wetland was created (or recreated) solely by actions (Highway 35W culvert placement in 1966), the purpose of which was not to create the wetland(s) as required by WCA. Chair Roer stated that the DRC heard the appeal, and the DRC had a split vote on this issue. Chair Roer voted against the appeal. She doesn't feel that the watershed district's findings in the record are sufficient to support their decision. Her vote was to reverse the decision. Chair Roer referred to the Drum case and the Court of Appeals decision in that case. Discussion followed.

- **** Moved by Jim Dahlvang, seconded by Allan Oehlke, to accept the DRC's recommendation to affirm the Rice Creek Watershed District's decision to grant the incidental wetland exemption for the culvert. Wayne Edgerton stated that DNR has problems with the issue due to legislative intent, they're opposed to the exemption of the watershed district granted. Affirmative: Dwain Otte, Allan Oehlke, Clair Nelson, Jim Dahlvang, Barb Cobb, Mark Dittrich. Opposed: Kathleen Roer, Ginny Imholte, Wayne Edgerton, Jerome Deal, Lee Coe, Darrell Bruggman, Dan Wilson, Jim Anderson. Motion defeated.
- 00-08

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00-09 After further discussion, moved by Dwain Otte, seconded by Clair Nelson, to refer this back to the DRC for additional deliberations. Affirmative: Dwain Otte, Clair Nelson, Ginny Imholte, Jerome Deal, Barb Cobb, Mark Dittrich. Opposed: Kathleen Roer, Allan Oehlke, Wayne Edgerton, Jim Dahlvang, Lee Coe, Darrell Bruggman, Dan Wilson, Jim Anderson. Motion defeated.

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00-10 After further discussion, moved by Darrell Bruggman, seconded by Lee Coe, to reverse the decision of the Rice Creek Watershed District. Affirmative: Kathleen Roer, Dwain Otte, Clair Nelson, Ginny Imholte, Wayne Edgerton, Jerome Deal, Lee Coe, Barb Cobb, Mark Dittrich, Darrell Bruggman, Dan Wilson, Jim Anderson. Opposed: Allan Oehlke, Jim Dahlvang. Motion carried.

Chair Roer stated that the Rice Creek Watershed District should be aware that BWSR will assist the watershed district as needed to clarify this issue. Chair Roer thanked John Jaschke for his input and effort on this issue.

Financial Oversight Committee Recommendations

Update of SWCD Audit Policy - Ginny Imholte reported that the Financial Oversight Committee (FOC) met on January 10. The FOC 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 FOC recommends: a) raising the threshold for audits from \$300,000 to \$400,000 in accumulated revenues since the last audit; b) change the audit frequency requirement for those SWCDs not reaching the \$400,000 threshold to once every three years instead of once every four years.

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00-11 Moved by Ginny Imholte, seconded by Barb Cobb, to accept the FOC recommendation as presented. Motion passed on a voice vote.

Match Requirements for BWSR Grants - Ginny Imholte explained that the FOC reviewed a working paper compiled by a group of local water planners and BWSR staff. Based on the information and options presented, the committee believes that BWSR should 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 totally 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. Allan Oehlke stated that he was in opposition to elimination of the in-kind match. Ginny reported that this issue will be brought before the board for future consideration.

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The BWSR Role in Watershed District Audit Requirements - Ginny Imholte explained that Minnesota Statutes Chapter 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 FOC requested staff to communicate with the Minnesota Association of Watershed Districts to seek their reaction to establishing a revenue threshold of \$400,000. Ginny reported that this issue will be brought before the board for future consideration. Marybeth Block distributed a working paper regarding the challenge grant for local water planners focus group.

Metro Sub-Committee Recommendation

RIM Violation in Scott County - Tim Fredbo explained the findings and background, summary of relevant rule and law, presented corrective actions, and staff recommendations for the RIM violation in Scott County. Tim stated that Doug Snyder has been instrumental in this violation issue. Moved by Dwain Otte, seconded by Lee

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00-12

Coe to accept the staff recommendation that the District's Corrective Action Plan is acceptable with the amendment of Field 3, which should be converted to perpetual easement. The total area converted to perpetual easement is 9.38 acres, the WCA mitigation area should be included under the RIM conservation easement, administrative expenses and costs to complete the easement should be reimbursed to the Board, the violator will expand the habitat restoration to include Field 3, with a survey of the new field boundaries, digital and hard copies, submitted to the Board for the development of a new easement; with discretion given to Ron Harnack to extend the completion date for just cause to take corrective actions. Motion passed on a voice vote.

Old Business

Wetlands Legislation Package Senate File #83 - John Jaschke explained that 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 Wetland Heritage Advisory Committee (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, citizen, and agencies to review and endorse or direct modifications to the work group's efforts. John presented the "Underpinnings", which is the wetlands legislation 2000 "package" before it is forwarded on for legislative changes. John Linc Stine, DNR, commented on the letter of support from DNR Commissioner Allen Garber. John Linc Stine thanked board members for their patience and John Jaschke for his efforts and all the work he has done to keep people working together.

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- ** Moved by Lee Coe, seconded by Darrell Bruggman, to endorse the Wetlands
00-13 Legislation 2000 package. Motion passed on a voice vote.

Minnesota River Basin Water Quality Improvement Projects (1999 LCMR Funds) - Jeff Nielsen presented the Minnesota River Basin Joint Powers Board water quality improvement projects LCMR 1999 local leadership grant applications for the Blue Earth River Basin Initiative (BERBI). The accelerated implementation of six projects to be managed in accordance with BERBI policy, with no technical and administrative funds to be used. The total funding recommendation is \$43,500. Moved by Allan Oehlke,
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00-14 seconded by Mark Dittrich, to approve BERBI's six projects for a total of \$43,500. Motion passed on a voice vote.

New Business

Preliminary Review of LCMR Proposals - Jim Birkholz distributed BWSR's draft LCMR proposals for FY2002-2003. These proposals implement strategic state and local natural resource goals and are efficiently and effectively implemented by building on existing programs and delivery systems. The five proposals are: 1) Conservation Reserve Enhancement Program (CREP) in the Minnesota River Basin; 2) Natural Resource Block Grant Challenge Grant (continuation); 3) Web Based Geographic Information System Accomplishment Tracking; 4) Soil Survey Update (continuation); and 5) Inventory and Records Modernization of Public Drainage Systems. Jim stated that the deadline for submittal of the LCMR proposals is February 1, 2000. The total of
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00-15 BWSR's proposals for the biennium starting 2001 is \$6 million. Moved by Jim Dahlvang, seconded by Ginny Imholte, to endorse the BWSR draft LCMR proposals for FY 2002-2003, for submittal to LCMR. Motion passed on a voice vote.

Update on Feedlot Rule Informational Meetings - Gretchen Sable, MPCA, distributed information on the current status of feedlots in Minnesota. She reported that MPCA held informational 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. Al Kean distributed an informational document established at the focus group session regarding SWCD issues for the feedlot rules public hearings. This will be distributed to MASWCD for SWCDs. Gretchen commented on the estimated annual costs of proposed requirements and the existing costs of compliance for board member

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information. Al developed a ten-year strategy for technical assistance for animal feedlots and had copies available for board members. Chair Roer thanked Gretchen and Al for their updates.

Advisory Comments

Minnesota Association of Conservation District Employees (MACDE) - Tim Gieseke reported that the MACDE meets tomorrow. The grants process is a high priority item, they are hopeful that the Water Unification Plan process will provide some impetus to more coordinated efforts in grant and loan administration.

Minnesota Association of Soil and Water Conservation Districts (MASWCD) - Sheila Vanney reported that the MASWCD annual convention was held in December; MASWCD received many positive comments. The resolution process is moving forward. Resolutions pertaining to the grants program, exemption of SWCDs, elimination of challenge grant options will be forwarded to Ron Harnack to examine. Sheila stated that living snowfence presentations will be made at local township meetings. Sheila reported that MASWCD has two new board members, Carol Berg from Hubbard SWCD, and co-director Ruth Trask from Beltrami SWCD. Sheila reported that the MASWCD Legislative Briefing and Day at the Capitol will be held March 6-7 at the Kelly Inn in St. Paul. A delegation from MASWCD is going to the NACD National Convention, January 30 - February 3 in Colorado. Sheila announced that Chair Roer will attend the MASWCD leadership graduation ceremony on February 10. Sheila expressed special thanks to the Minnesota Extension Service for facilitation of those meetings. Sheila thanked Mary Jo Anderson and other BWSR staff for their help at the MASWCD convention.

Minnesota Association of Watershed Districts (MAWD) - Ginny Imholte reported that BWSR hosted the MAWD administrators meeting yesterday. Discussion involved legislative initiatives. Ginny reported that a policy resolution committee is being formed, a training and education committee will be set-up, and a watershed assistance team is being developed. Ginny reported that the MAWD Legislative Briefing and Legislative Breakfast will be held on February 24-25 at the Kelly Inn in St. Paul.

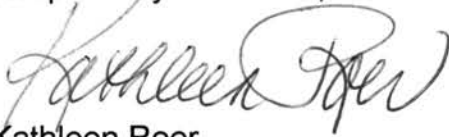
Upcoming Meetings

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

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Chair Roer adjourned the meeting at 1:10 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kathleen Roer", written in dark ink.

Kathleen Roer
Chair

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.

MN RULE 8420.0122

Subp. 5. **Incidental wetlands.** A replacement plan for wetlands is not required for activities in a wetland **created solely** as a result of:

A. beaver dam construction;

B. blockage of culverts through roadways maintained by a public or private entity;

C. actions by public or private entities that were taken for a purpose other than creating the wetland; or

D. any combination of items A to C.

Wetland areas created by beaver activities may be drained by removing those materials placed by beaver. Drainage is permitted by removing or moving materials blocking installed roadway culverts and drainage structures. Additional excavation or removal of other materials is not permitted unless it can be shown by aerial photographs that the proposed activity will not drain or fill wetland that was there before the beaver dam was built or before the culvert became plugged.

Wetlands may be drained or filled if the landowner can show that the wetland was created solely by actions, the purpose of which was not to create the wetland.

Impoundments or excavations constructed in nonwetlands solely for the purpose of effluent treatment, storm water retention, soil and water conservation practices, and water quality improvements, and not as part of a compensatory wetland mitigation process that may, over time, take on wetland characteristics, are also exempt.

WETLAND CONSERVATION ACT APPEAL
Rice Creek Watershed District (RCWD) Ditch 53-62
January 26, 2000 Board Meeting Presentation

Executive Summary

Basis for decision:

Was the WCA law and rule correctly applied to the facts of this case?

DRC Recommendation:

Draft order (in packet) presumes the LGU correctly applied WCA law and rule.

Staff Analysis:

There is insufficient data and findings to "show that the wetland was created (or recreated) solely by actions (Highway 35W culvert placement in 1966), the purpose of which was not to create the wetland(s)". [See Minn. Rules Chapter 8420.0122]

Reasons for presentation to Board:

- This is a very complicated matter with lots of technical data (and data voids) requiring interpretation over a long time period since original ditch construction in 1898-1918.
- All Board members may not have had a chance to thoroughly read and understand the evidence, procedures and findings.
- Staff have evaluated the mass of technical data, legal briefs and procedural matters to get you to the crux of the matter so you can make an informed decision. This is important because the next potential step in the legal process is the state court of appeals which will review the decision based entirely on the record established by BWSR.

Prospect Description/Situation: The culverts in public ditch are the remaining high points. RCWD (drainage authority and WCA decision maker) has ordered them lowered to as-constructed depth in a flat (0% grade) ditch which may drain wetlands upstream of the culvert. The Lexington Avenue culvert has been previously lowered as have several private crossings. Some ditch maintenance has been completed. The Hwy. 35W culvert crossing is the matter of this appeal.

The decision rests on this point:

Has it been shown that the wetlands potentially affected by the ordered culvert lowering were created (or "restored" or "recreated" or "reestablished") solely as a result of the Hwy. 35W culvert installation?

Related but not relevant factors regarding this decision:

1. Create vs. restore definitions in Rule.
2. Segmenting of project.
3. Who is the WCA LGU? Previous decision = RCWD.
4. Ditch maintenance vs. improvement.
5. RCWD as drainage authority and WCA LGU.
6. Could another exemption apply? How many/which wetlands would be affected?
7. Could a no-loss determination apply?

Analysis:

The TEP in conjunction with RCWD made a very thorough effort to discover all relevant historical information regarding this ditch system, the available aerial photos and related climate data, the road crossings and wetland areas in the ditch watershed. The TEP's findings include:

1. 1918-1958: At some unknown date between these years, the Lexington Avenue culvert was replaced with a concrete box culvert at an elevation of approximately 893.0. It is not known if this replacement elevation was accidental or intentional because there is a lack of plan specifications for this area during this time period (*i.e., records missing at Co. Hwy. Dept.*). (TEP Report 7-15-98, pg. 3 of 5.)
2. ..., it is highly unlikely that the culvert was intentionally raised. (TEP report, page 4 of 5)
3. The aerials (photos) do not appear to show significant change in areas which are inundated or saturated from 1945 to 1993. (Anoka Conservation District Aerial Review, Tony Brough, pages 4 and 5). *Implies cause of wetland creation/recreation, it if occurred, did so before 1945.*
4. The ditches were not likely maintained during the "Great Depression", the "Dust Bowl" and World War II due to dry conditions and/or the lack of capital to perform such an operation. (TEP Report, pages 4 and 5.)
5. The ditches upstream of the Lexington Avenue culvert appear to have been well maintained since 1938. (TEP Report, pages 4 and 5.)

Conclusions:

There is insufficient data and findings to "show that the wetland was created (or recreated) solely by actions (Highway 35W culvert placement in 1986), the purpose of which was not to create the wetland(s)"

Additionally, if one considers the Lexington Avenue culvert crossing as equal in effect to the Hwy. 35W crossing, it is possible, but unlikely, that that culvert was installed improperly in a perched fashion (*i.e., 1.5 feet above the as-constructed ditch bottom*). Much more likely is that the culvert was placed on the existing channel on top of accumulated sedimentation that occurred

in the ditch between the date the ditch was constructed and the culvert installation at Lexington Ave. So looking at the available historical information leads to the conclusion that the wetland was not caused solely by the Lexington Avenue culvert either but rather by the sedimentation. Thus, the incidental blockage exemption does/did not apply at the Lexington Ave site either.

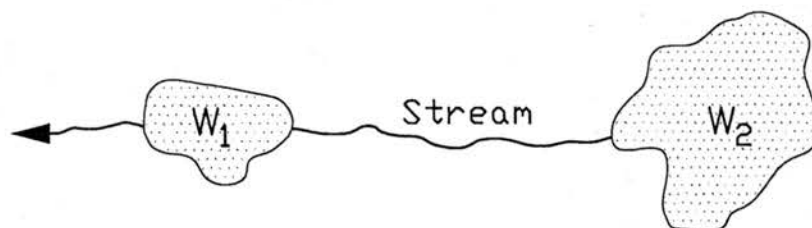
In either case the TEP's preferred recommendation (see item #3 in box below) and the Rice Creek Watershed District's matching decision is incorrect because it considers only ditch maintenance work after placement of the culvert. This interpretation is inconsistent with the intent and even a liberal reading of the rule and would open, for the first time, a loophole whereby removal of an exempt incidental blockage could drain wetlands that were only *retained* by the incidental blockage rather than *created* (or restored or recreated or reestablished) *solely* by the incidental blockage.

TEP Alternative Recommendations:

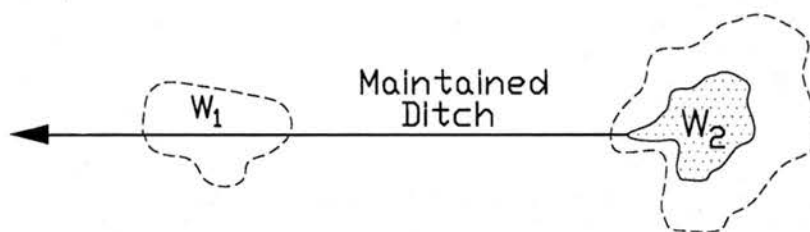
- #1. The Incidental Wetland exemption does not apply wholly or partially based upon the argument presented by the ACD (ruled out during previous vote of 2:1).
- #2. The Incidental Wetland exemption applies only to those wetlands created/restored since the replacement of the culvert under Lexington at approximately 893.00. Those wetlands that were restored due to lack of ditch maintenance prior to the placement of the original culvert are not exempt. The panel points out that it is virtually impossible to quantify how much wetland may have been restored due to lack of ditch maintenance as opposed to culvert placement because of the time frame and the complex hydrology of the area.
- #3. The Incidental Wetland exemption applies to all wetlands drained as a result of the elevation correction to the culverts. The argument varies from the possibility above in that maintenance subsequent to the placement of the culvert would have drained the wetland if the culvert had been placed at the correct height, therefore the wetlands do exist solely as a result of the culvert placement. The drainage system has been maintained several times since the original culvert placement. The effectiveness of that maintenance was reduced as a result of the misplacement of the culvert.

prepared by: John Jaschke, 1-25-00

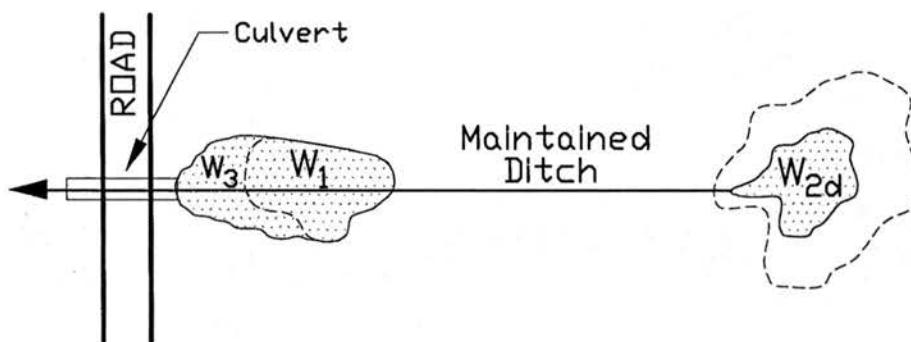
M:ARCWD53.WPD



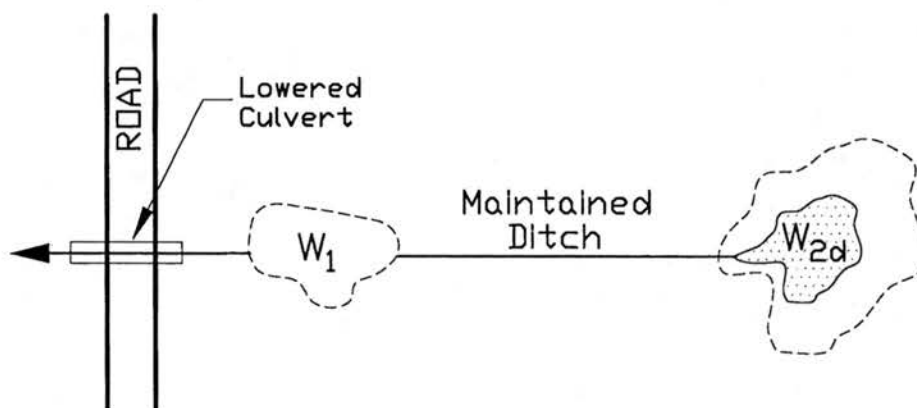
Natural water course



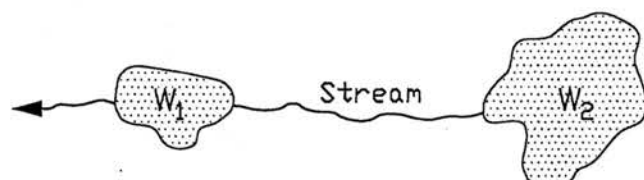
Stream is ditched, thus eliminating w_1 and partially draining w_2



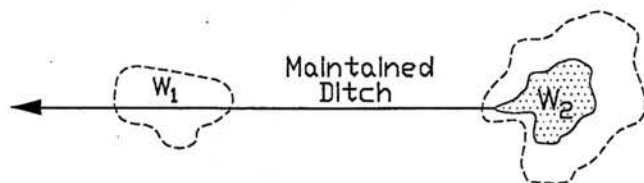
Ditch properly maintained and culvert placed above channel bottom causing blockage and creating wetland area w_3 and recreating w_1 . Culvert is sole cause of blockage leading to creation/recreation of wetlands.



Lowering of culvert to channel bottom (flowline) eliminates only wetland areas created/recreated by improper construction/reconstruction of culvert.



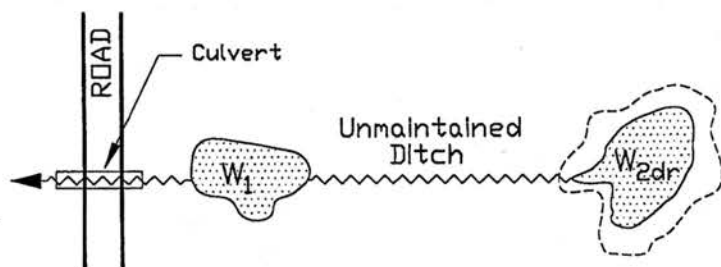
Natural water course



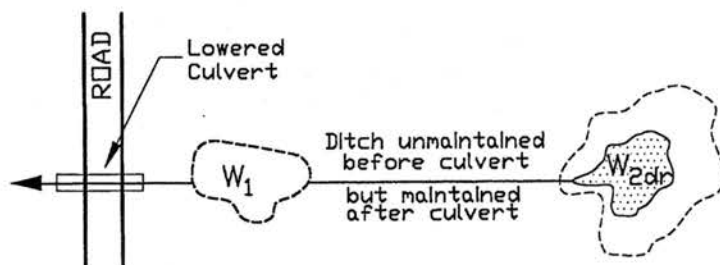
Stream is ditched, thus eliminating w_1 and partially draining w_2



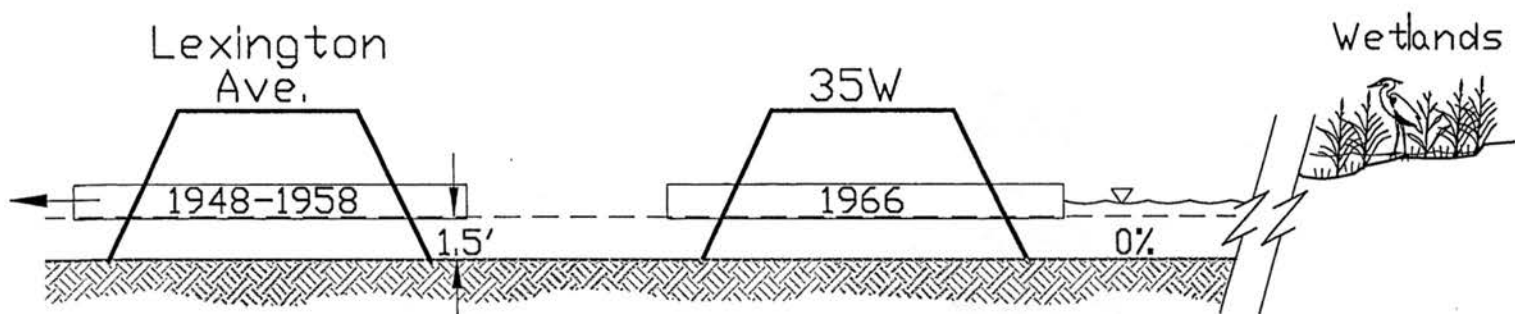
Sedimentation in ditch due to long period of no maintenance blocked the ditch enough to restore w_1 completely and partially restore w_2 .



Road culvert placed at flowline (on existing channel bottom) in unmaintained ditch. Culvert is not sole cause of wetland creation/recreation but would become the control on wetland hydrology if maintenance of the ditch (or improvement) was conducted subsequent to culvert placement.



Lowering culvert after maintenance (or improvement) of the ditch drains wetland w_1 and partially drains w_2 even though the original culvert installation did not create or recreate the wetlands.



No Scale

Wetlands can only be drained when both culverts are lowered and accumulated sediment is removed. Because the Lexington Ave. culvert has already been lowered and some of the accumulated sediment has been removed, the point to be decided in this appeal is:

Has it been shown that the wetlands were created/recreated solely by the installation of the 35W culvert?

BOARD OF WATER AND SOIL RESOURCES
ATTENDANCE ROSTER

	NAME	AFFILIATION	PHONE #
1.	Mary Jo Trucken	League of Women Voters	612-757-3084
2.	Jackie Junt	MRES	651/602-1078
3.	Bill Clepp	Audubon League of Women Voters	657 222-8137
4.	Doug Norris	Mn DNR	651-296-0779
5.	John Linc Stine	MN DNR WATERS	651-296-0440
6.	Kate Drewry	RCWD	651 766 4193
7.	David T. Shultz	A.A. (DOT)	657-296-6472
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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.

LAKE FLOODING EROSION AND SEDIMENTATION CRISIS

BACKGROUND:

- Record rainfall in several Minnesota counties has caused high water levels on many lakes and has accelerated lakeshore and streambank erosion.

EXAMPLE: Cass Lake in Beltrami and Cass County, on one 1,500 stretch of shoreline 12 feet from lake's edge inland has eroded during the past summer, resulting in:

- > Over 2,000 cubic yards of sedimentation to the lake*
- > Input of enough phosphorus to generate 500 TONS of aquatic plants*

- Beltrami County received Presidential Disaster Declaration (#1283) triggering FEMA involvement last fall. *Several counties have had the wettest year in 100 years.....*
- This erosion and sedimentation has, in some cases, negatively impacted fish habitat, degraded lake and stream water quality, and threatened public infrastructure.

PROPOSED PROJECT ELIGIBILITY CRITERIA

GENERAL CRITERIA:

- A) Funding could only be used for BWSR approved cost share practices such as:
 - Shoreline stabilization (including bio-engineering practices)
 - Critical area stabilization
 - streambank stabilization
- B) Project participants would be required to install some level of natural re-vegetation of shoreline. (As determined by SWCD staff in coordination with DNR staff.)

PROJECT SPECIFIC CRITERIA:

- A) Erosion and sedimentation problems impacting public infrastructure. (Roads, bridges, public buildings)
- B) Sedimentation impacting important fish habitat. (As determined by SWCD staff with DNR Fisheries staff recommendations.)
- C) Water quality degradation to important lakes by phosphorus loading caused by erosion and sedimentation. (To be coordinated by SWCD with MPCA staff input)

PROPOSED COUNTY ELIGIBILITY

Counties *in 99th percentile (wettest in 100 years) according to DNR State Climatology Office and with at least 15,000 acres of surface water)*

<u>COUNTY</u>	<u># OF LAKES</u>	<u>SURFACE WATER ACRES</u>
Beltrami	346	346,000
St. Louis	939	338,000
L. Of Woods	5	317,000
Cass	514	258,000
Itasca	945	184,000
Lake	817	118,000
Aitkin	213	114,000
Becker	662	95,000
Hubbard	313	48,000
Clearwater	164	41,000
Marshall	7	32,000
Koochiching	24	32,000
Mahnomen	264	19,000
Polk	332	18,000

PROPOSED APPLICATION PROCESS

- *Application (1 to 2 pages) due to BWSR March 1, 2000*
- *Board Conservationists would meet with SWCDs and review public benefits of proposed projects, and use Special Project review process for evaluating and making recommendations to Grants Team*

Project Ranking Criteria:

- * Extent of erosion*
 - * Nutrient loading (P , sediment)*
 - * Fisheries Impact (by DNR)*
 - * Emphasize use of native vegetation*
 - * Demonstration site suitability*
- *Grants Team review applications and make funding recommendations*
 - *Funding decisions at April Board Meeting*

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 ^{special} project should be capped at \$40,000.

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

special projects

Proposed amendment to motion #99-44

BWSR Meeting Minutes
June 23, 1999
Page Eight

- ** coming biennium. Moved by Allan Oehlke, seconded by Barb Cobb, that the board use
99-43 \$269,000 to allocate \$90,000 to each JPB #1, #5, and #11 total of \$270,000 against their base. Motion passed on a voice vote.

Cost-Share Rule Amendment to Include Farmstead Windbreaks - Wayne Zellmer reported that the 1999 legislature directed BWSR to add farmstead windbreaks as a practice eligible for cost-sharing. This directive allows for an expedited amendment process. Wayne reported that the cost-share committee recommends that staff move forward on the rule amendment, ~~which will not include cost sharing on windbreaks, removal of old groves, buildings, and junk, etc., this allocation will compete with other~~

- adopted*
** ~~grants.~~ Moved by Jim Dahlvang, seconded by Glenn Annexstad, to adopt the cost-
99-44 ~~share committee's recommendation on farmstead windbreaks and move forward with the rule amendment.~~ Motion passed on a voice vote.

Advisory Comments

- Owen Knutson, MASWCD, thanked BWSR for their endorsement.

- Lawrence Svien, NRCS, reported that the 1999 WHIP applications are still in progress. The 1999 EQIP sign-up closed last week. NRCS is installing new computers in service centers with shared databases to eliminate duplication. Lawrence reported that Beltrami SWCD and Sherburne SWCD were the first two pilot SWCDs that just finished GIS digitization. Lawrence reported that he was in Washington, D.C. last week regarding the reinvention business process of the CRP program.

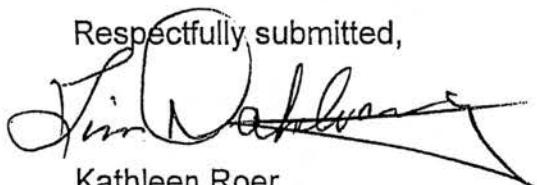
Upcoming Meetings

- NACD North Central Region Meeting, July 11-14, Cedar Rapids, Iowa.
- July 28 meeting in St. Paul, Jim Dahlvang will chair.

Chair Roer reminded board members to submit their year-end expense claims.

Chair Roer adjourned the meeting at 11:55 a.m.

Respectfully submitted,



Kathleen Roer
Chair

Minnesota Board of Water and Soil Resources

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

**Adopted Amendment to Rules Governing the State Cost-Share Program, Minnesota Rules,
Chapter 8400**

I, Kathleen Roer , do hereby certify that I am a member and the Chair of the Board Of Water and Soil Resources, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board Of Water and Soil Resources, duly and properly called and held on the 26 day of January, 2000, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

“RESOLVED, that the rules relating to eligibility for cost-sharing in the form set out in Revisor Of Statutes draft, file number AR 3100, dated 12/06/99, identified as Minnesota Rules, parts 8400.0300 and 8400.1300, are approved and adopted, pursuant to authority vested in the Board Of Water and Soil Resources by Minnesota Statutes, sections 103B.101 Subdivision 7. Ronald Harnack, Executive Director of the Board Of Water and Soil Resources, is authorized to sign the Order Adopting Rules and further is authorized to modify the rules if necessary to obtain the approval of the rules by the Revisor Of Statutes or the Administrative Law Judge and to perform the necessary acts to provide that the rules shall have the force and effect of law.”

IN WITNESS WHEREOF, I have hereunto subscribed my name.

January 26, 2000

Kathleen Roer, Chair
Board Of Water and Soil Resources

Attest by one other Board Member

Signature of Attesting Board Member

Printed Name of Attesting Board Member

DRAFT

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).

DRAFT

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.

DRAFT

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

DRAFT

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**

DRAFT

Minnesota Board of Water and Soil Resources

One West Water Street, Suite 200

St. Paul, MN 55107

DRAFT

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

DRAFT

("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

DRAFT

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

DRAFT

Its Chair

DRAFT

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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

DRAFT

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

DRAFT

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.

11

BWSR Meeting Date _____

Motion:

Affirm WD —

Moved by: _____

Seconded by: _____

Affirmative

Opposed

Dan Wilson
Mark Pittich
~~Annexstad, Glenn~~
Anderson, Jim
~~Bloomgren, Pat~~
Bruggman, Darrell
~~Clark, Sharon~~
Cobb, Barb
Coe, Lee
Dahlvang, Jim
Deal, Jerome
Edgerton, Wayne
Imholte, Ginny
~~Krabbenhoft, Paul~~
~~Massey, Rod~~
Nelson, Clair
Oehlke, Allan
Otte, Dwain
Roer, Kathi

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BWSR Meeting Date _____

Motion: Refer to DRC

Moved by: _____

Seconded by: _____

Affirmative

Opposed

Annexstad, Glenn

Anderson, Jim

Wilson ~~Bloomgren, Pat~~

Bruggman, Darrell

Ditrich ~~Clark, Sharon~~

Cobb, Barb

Coe, Lee

Dahlvang, Jim

Deal, Jerome

Edgerton, Wayne

Imholte, Ginny

Krabbenhoft, Paul

Massey, Rod

Nelson, Clair

Oehlke, Allan

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BWSR Meeting Date _____

Motion:

reverse decision of the US

Moved by: _____

Seconded by: _____

Affirmative

Opposed

~~Annexstad, Glenn~~

Anderson, Jim

Bloomgren, Pat

Bruggman, Darrell

Clark, Sharon

Cobb, Barb

Coe, Lee

Dahlvang, Jim

Deal, Jerome

Edgerton, Wayne

Imholte, Ginny

~~Krabbenhoft, Paul~~

~~Massey, Rod~~

Nelson, Clair

Oehlke, Allan

Otte, Dwain

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Minnesota Board of Water and Soil Resources

One West Water Street, Suite 200

St. Paul, MN 55107

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,

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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.

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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

Its Chair

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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.

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.

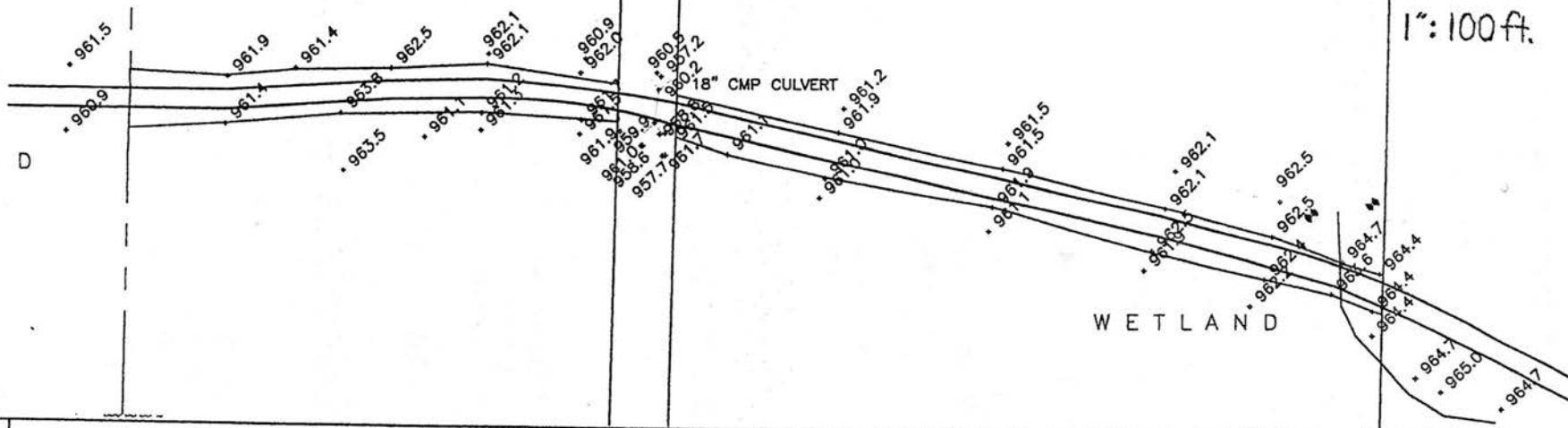
Staff believes the board should be reimbursed for administrative expenses and costs to complete the easement. In the past, BWSR has charged \$500.00 for this activity. Mr. Smith should expand the habitat restoration to include Field 3. Mr. Smith should submit a survey of the new field boundaries, digital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

ATTACHMENT 1

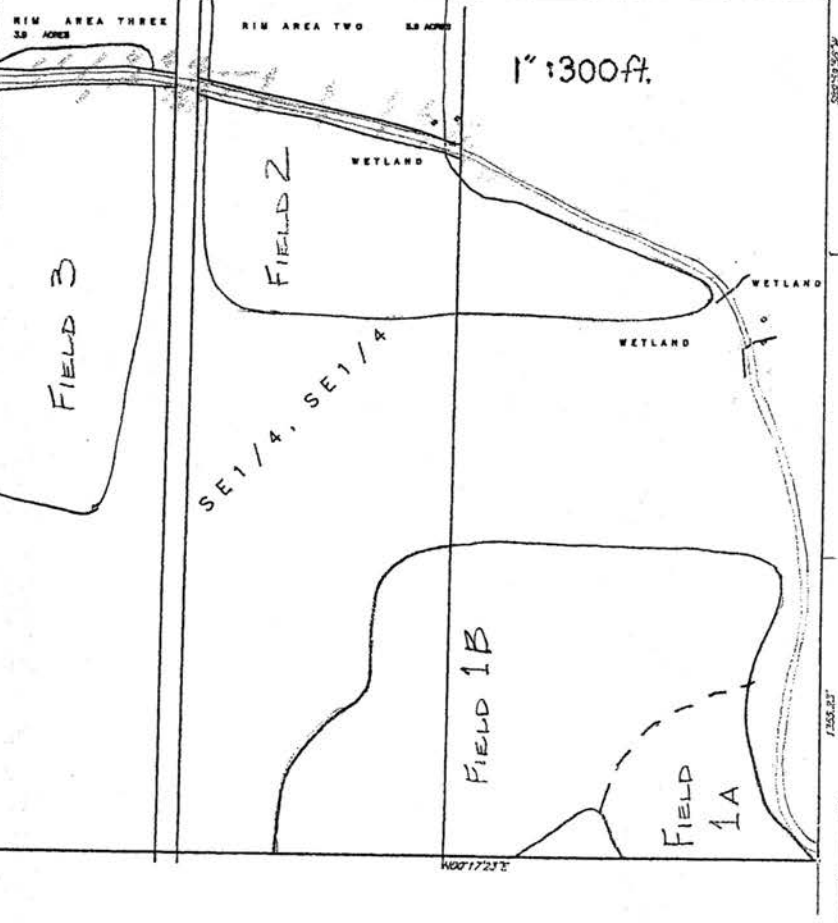
RIM AREA THREE
3.9 ACRES

RIM AREA TWO 5.9 ACRES

1"=100ft.



NE 1/4, SE 1/4



1"=300ft.

D. Snyder

G. Eftmann

~~E. St. 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



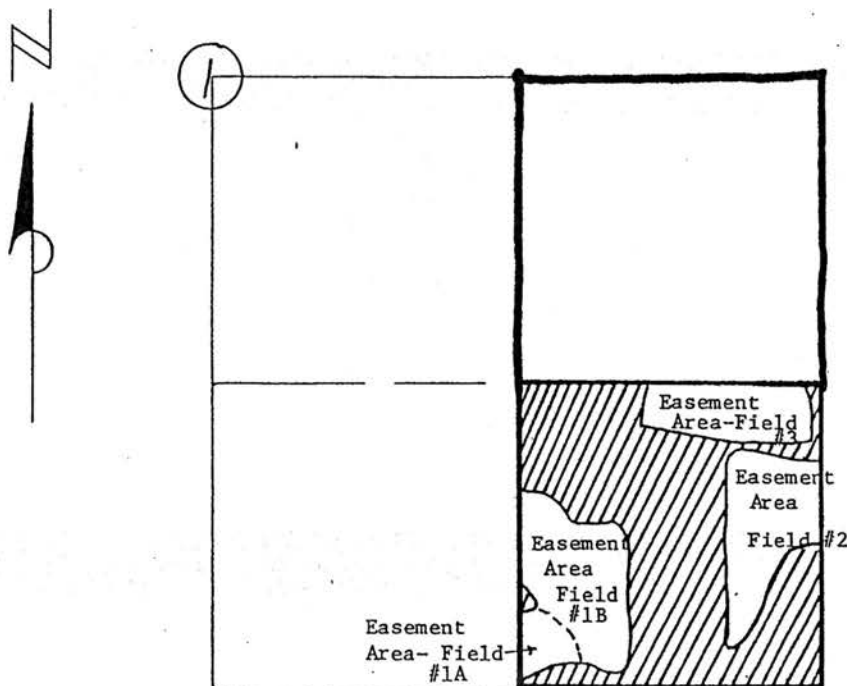
STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE
REINVEST IN MINNESOTA
CONSERVATION EASEMENT
EXHIBIT "A"

ATTACHMENT 3

MAP 1 OF 1

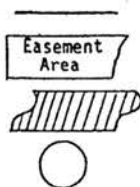
THIS MAP DELINEATES THE RIM EASEMENT AREA(S) REFERRED TO IN THE ATTACHED
EASEMENT CONVEYANCE.

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

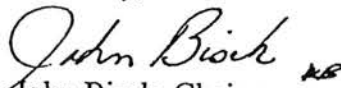
The Scott Soil and Water Conservation District Board of Supervisors have completed a review of the proposed solution to correct the violation of RIM easement # 70-02-88-2.

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,


John Bisek, Chairman

Scott Soil and Water Conservation District

CORRECTIVE ACTIONS TRANSMITTALSWCD: ScottLandowner Name: Jeff SmithAddress: 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:

John F. Brisch
(Chairman's Signature)11-9-99

(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.

Jeff Smith
(Landowner Signature)11-9-99
(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

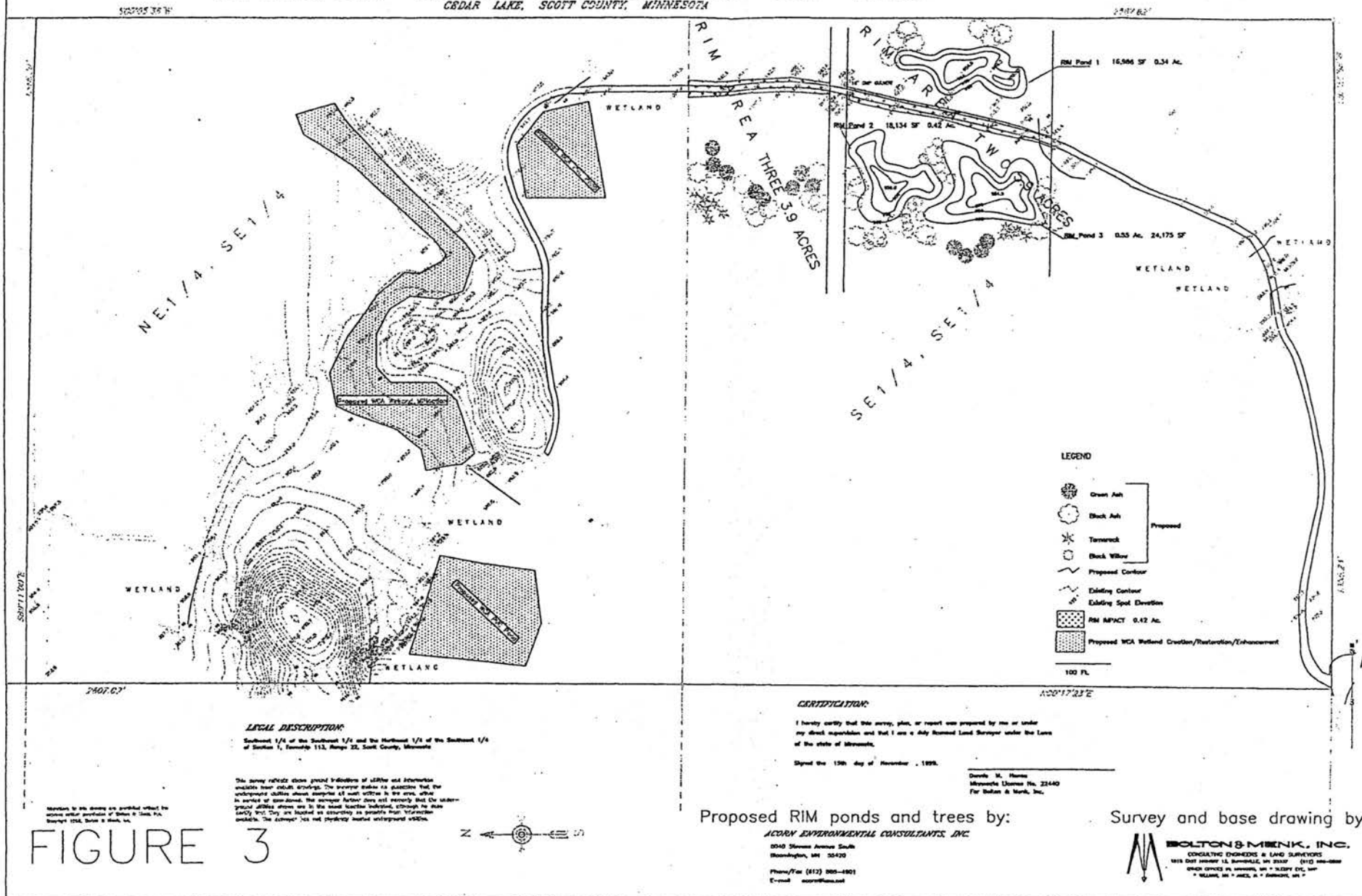


FIGURE 3

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, reseedling 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.

WETLANDS LEGISLATION 2000 Summary

January 25, 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). *Changes allow LGUs and SWCDs to charge fees for technical or administrative services rendered in assisting project sponsors with WCA or other wetland-related regulations.*
2. 60 Day Timetable for regulatory authorities to make a decision upon receipt of all required information via M.S. 15.99. 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)
Changes add 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.
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 Summary

January 25, 2000

M:\LEGIS\SF83SUMM.WPD

II. CHANGES TO LAW (OR RULE)

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

A. Public Waters Inventory (PWI) Refinement

1. Short Term: Changes establish a 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 Waters all with local government unit, county, Watershed District and SWCD approval.
2. Long Term: DNR to 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. Regulatory 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 required. *Changes allow 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 and DNR is designated as a TEP member for projects affecting or adjacent to Public/Protected Waters.*

C. Enforcement flexibility. *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.*

D. Public Roads. *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.*

E. Soil Science Licensure Exemption. *Clarifies that persons doing wetland delineation work are exempt from licensure requirements for architects, engineers, geoscientists, land surveyors, etc. and a process is added 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. Also recommends funding for a wetland*

WETLANDS LEGISLATION 2000 Summary

January 25, 2000

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delineator certification program.

- F. Consolidation of wetland reporting and common wetland definition. No effective change, states what is already done.
- G. Wetland typing consistency. 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.
- H. Federal consistency (Clean Water Act, Federal Farm Program).
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. Eliminating the deductibility of the "de minimis" exemption 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. The language also provides for an administrative solution to strive yet further toward the originally legislated goal of minimizing duplicate regulation.
- I. Appeals modifications. 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.
- 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:
- Excavation. 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.
 - Sequencing. 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 will be done via future Rulemaking without legislative changes needed.
 - Replacement Location. Changes based on language in negotiated agreement (1-16-98) between state and federal agencies in the State Wetland Plan. Sets preference for "closer is better" and allows replacement in neighboring county or watershed.
 - Replacement Ratio. Changes make WCA standards for replacement of

WETLANDS LEGISLATION 2000 Summary

January 25, 2000

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wetlands (for Types 3, 4, and 5) apply similarly to Public Waters Wetlands under DNR jurisdiction in combination with future Rulemaking

- Replacement Credit. Draft rule 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.

- K. 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.
- L. Sunset the Wetland Heritage Advisory Committee. 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.

document prepared by John Jaschke, ph: 651-297-3432, email: john.jaschke@bwsr.state.mn.us



Minnesota Department of Natural Resources

OFFICE OF THE COMMISSIONER

500 Lafayette Road
St. Paul, Minnesota 55155-4037

January 24, 2000

Ms. Kathleen Roer, Chair
Board of Water and Soil Resources
1 West Water Street, Suite 200
St. Paul, MN 55107

Re: SF83, Wetlands Law Simplification

Dear Ms. Roer:

DNR and the Board of Water and Soil Resources (BWSR) have been facilitating discussion among a broad range of interests about simplification of MN's wetland regulation. These meetings have generated a number of suggestions that have been collated into a summary document titled "Wetlands Legislation 2000 Committee, January 10, 2000".

DNR staff have reviewed this document, and the DNR finds the entire Wetlands Legislation 2000 Committee document to be acceptable. I note that Item D from the "Underpinnings" section of the document pertains to funding of public road wetlands replacement efforts. DNR understands that continued funding, to satisfy the requirements of the statutes, is needed to continue to provide wetland replacement for impacts associated with necessary public road maintenance and safety improvements. DNR will support this funding need to the extent it is included in the Governor's budget. The Department recognizes the concerns that have been expressed over the funding source to be used for such replacement (whether the general fund or the transportation fund).

We find the recommendations of the document would increase the consistency of wetlands regulation in MN and will provide the mechanisms to streamline the regulatory decision-making procedures for all units of government that implement wetland regulations in MN. These two outcomes will certainly benefit all Minnesotans.

I want to be clear that the DNR endorses the entire packet in its current form. In addition, however, there are a few items that may warrant further discussion regarding wetland law simplification and consistency, possibly after this 2000 Legislative session.

- ☐ First, the Department's proposed formal participation on a Technical Evaluation Panel (TEP) is limited in the document to projects that affect public waters or wetlands adjacent to public waters. DNR's technical expertise could be of value to local governments beyond that limited role, and it is consistent with our Greenways concept for DNR staff to participate, whenever feasible, in every local TEP. While not required, DNR will participate when invited, within the ability of existing staff and resources.
- ☐ Second, the proposed revision of the Public Waters Inventory (PWI) has been modified as we requested to allow for a gradual modification over time. The package does not afford the possibility of adding wetlands that merit state PWI status; DNR would support a limited ability to add wetlands to the PWI.

DNR INFORMATION: 651-296-6157, 1-888-646-6367 (TTY: 651-296-5484, 1-800-657-3929) FAX: 651-296-4799



Ms. Kathleen Roer
Page 2
January 24, 2000

- ☐ Third, the proposed changes will result in virtually identical wetland protection standards among public waters wetlands and similar type 3, 4 or 5 wetlands regulated through the Wetlands Conservation Act (WCA), except for the replacement of impacts due to repairs of public drainage systems. DNR would support using the WCA standards for replacement of all wetlands impacts associated with repairs of public drainage systems to achieve greater regulatory consistency.

Finally, I would like to congratulate the Board's efforts in preparing a comprehensive package that will benefit MN's natural resources and citizens. Most notably, John Jaschke of your staff has worked diligently to develop consensus among the committee members. John's efforts and the efforts of the Board's Wetlands Committee should be recognized as highly professional and productive.

If you have any questions, please contact John Linc Stine at (651) 296-0440.

Sincerely,



Allen Garber
Commissioner

cc: Senator Dan Stevens
Representative Dennis Ozment
Ron Harnack
Kent Lokkesmoe
Lee Pfannmuller
John Jaschke
John Linc Stine



MEMO



January 6, 2000

To: Senator Dan Stevens

From: John Jaschke, Wetlands Program Manager, BWSR *AJ*
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

1. 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

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.

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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*

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

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

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

23, 1985;

(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. ~~1L~~ and 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;

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

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)

~~(1)~~ (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. Replacement 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.~~

- ~~—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.

SWCD Issues for the Feedlot Rules Public Hearings

The public hearing process is now underway for the MPCA 7020 Feedlot Rule Revisions. Now is the time for you to make your voice heard on any rule-related issues that affect your district's potential for success in the coming years. These rules include opportunity for SWCDs to expand their involvement in working with livestock producers and the private sector for nutrient management and water quality protection.

On January 21, an ad hoc group of SWCD staff and supervisors met with Derek Fisher and Al Kean of the BWSR to discuss the proposed feedlot rule revisions. Gretchen Sabel, MPCA Feedlot Coordinator, participated to answer questions about the proposed rules.

The ad hoc group identified key issues in the rules, or related to the rules, that could affect SWCDs and livestock producer clientele. The following list is being passed along to you for your consideration and potential input during the public hearing and comment process on the proposed feedlot rules.

KEY ISSUES FOR SWCDs:

1. How will the feedlot rules affect SWCD workload and funding?
 - Feedlot registration
 - Engineering and nutrient management technical assistance and review
 - Monitoring and Reporting
2. How will technical approval authority sign-off requirements affect SWCD staff?
3. Getting SWCD Impacts on record! The rules do not assign a role to SWCDs or identify the technical assistance workload associated with the new requirements for feedlot runoff control and nutrient management. **Because many SWCDs do or could perform some or all of the above roles, it would be good to have the record acknowledge the workload associated with the proposed rules. It should also acknowledge the potential SWCD involvement, as well as funding concerns and ideas.**

SOME OF THE KEY ISSUES FOR LIVESTOCK PRODUCERS:

1. Permitting threshold. Should it be 300 animal units?
2. Threshold for Manure Management Plan requirement. Should it be 100 animal units?
3. Livestock access to lakes restriction. Is the restriction reasonable as written? Should it be expanded to rivers, streams and wetlands?
4. Animal Unit definitions. Are the proposed multiplication factors reasonable, particularly the new factors for horses and ducks?
5. Are the stockpiling requirements reasonable?
6. Are the requirements for un-permitted liquid manure storage facilities reasonable?
7. Permit fees.

The ad hoc group encourages you to share these key issues with SWCD supervisors and producers, consider them and provide input to the feedlot rule making process as appropriate.

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 ^{"accumulated"} 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.

**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
Watowwan SWCD	St. James Creek Channel Restoration Demonstration Restore Approx. 1,000 Feet of Channel on a CRBP 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 Environmental Services	Trappers Run Watershed Sediment Pond Four-Acre Retention Pond	60,000	42,000	none
Martin County Environmental 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

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.

► **Inventory and Records Modernization of Public Drainage Systems**

Develop modern inventory of public drainage systems, their characteristics, benefited areas, history of maintenance and fiscal record keeping. A region not more than 25% of the state will be selected. Key partners are AMC, MAWD and DNR. Proposal is for \$1.282M.

**COST-SHARE AND TECHNICAL ASSISTANCE
FOR WATER QUALITY PROTECTION
AT SMALL FEEDLOTS (< 500 Animal Units)**

A 10-YR. STRATEGY

February 1999, Al Kean, BWSR

Executive Summary

Over the past several decades, environmental protection in the United States has developed an increased focus on nonpoint sources of pollution. This progression of priorities, along with the concurrent consolidation of livestock operations, have raised the focus of environmental protection associated with animal feedlots. Although the magnitude of the potential water quality problems and needs associated with feedlots has often appeared to be immense, **recent detailed feedlot inventories in a number of Minnesota counties indicate a more manageable situation.**

Completion of level 3 feedlot inventories at the county level should be accelerated to achieve the considerable benefits of better problem definition, better integration of local and state programs and further development of working relationships with livestock producers at the local level. The existing county-state cost-share program for county level feedlot inventories has helped to substantially accelerate the number of inventories conducted in recent years. Level 3 feedlot inventories involve site-specific definition of feedlot pollution problems.

A 10-yr. strategy is proposed to address the nonpoint pollution abatement needs at small feedlots in Minnesota. This plan is consistent with the proposed new state feedlot rules and the recent USDA-EPA Draft Strategy for Animal Feeding Operations, which have as a goal the year 2008⁹ for full implementation of the associated objectives.

The estimated total number of feedlots in Minnesota that need runoff and manure storage upgrades is approximately 7,800. Estimates of the future rate of decline in the number of feedlots in Minnesota (4% - 8% per year, based on past trends) would reduce the number of small feedlots that need runoff and manure storage upgrades during the next ten years to approximately 5,200 or 3,500, respectively. **For a 10-yr. strategy, it is estimated that an average of 350 - 500 small feedlots would need to be upgraded per year to essentially solve this water quality problem.** The estimated annual cost-share assistance needed above what is currently available to achieve this objective ranges from \$2,850,000 to \$10,450,000 per year, depending on assumed the cost-share rate (50% or 75%) and rate of decline in feedlot numbers (4% per year, or 8% per year).

Current local, state and federal engineering staff can assist approximately 200 small feedlots with runoff and manure storage upgrades per year. Private engineers also assist an undefined number of small feedlots per year. Funding for existing and additional local Soil and Water Conservation District staff through the Nonpoint Engineering Assistance Program would support implementation of this 10-yr. strategy. Use of a portion of cost-share and loan funds for private engineering assistance would also support the goals of this strategy.

Nutrient management associated with land application of manure is receiving increased attention at federal and state levels. **The proposed new feedlot rules for Minnesota and the USDA-EPA Draft Strategy for Animal Feeding Operations include much more rigorous nutrient management planning, soil testing, manure testing and reporting than previously required.** Farm Nutrient Management Assessment Program studies conducted by the MDA indicate substantial opportunities for improved nutrient management on lands where manure is applied. It is expected that a high percentage of all livestock operations in Minnesota could benefit from improved nutrient management. Comprehensive nutrient management involves complex interactions of farm operations and often includes private crop advisors and commercial fertilizer suppliers.

An appropriate combination of research, education, incentives, regulation and coordination are needed to achieve the private and public economic and environmental benefits of comprehensive nutrient management. Certified Crop Advisors and commercial fertilizer suppliers are critical partners in this endeavor. Other key private partners for education and implementation include producer groups, commercial manure applicators and soil and manure testing labs. The most appropriate government role in this arena appears to be to jump-start and nurture adoption of this best management practice. Associated roles include education, technical assistance and oversight of public funds utilized to achieve this objective. Existing local-state partnerships with counties, Soil and Water Conservation Districts and the Minnesota Extension Service could be enhanced to provide front-line assistance with these roles.

The federal government has a limited incentive program for adoption of comprehensive nutrient management practices. This type of program can provide the incentive needed by small feedlot operators to integrate comprehensive nutrient management into their operations. Low interest loans for manure application equipment can also provide effective incentive for adoption of this best management practice.

Many of the programs, initiatives and coordination efforts needed to effectively promote comprehensive nutrient management for livestock operations in Minnesota currently exist or are evolving. However, focus on comprehensive nutrient management as a high priority will need to be accelerated in order to achieve the desired federal and state environmental protection objectives within the next ten years.

Purpose and Scope

The current "generally accepted" estimate of the total number of livestock operations in Minnesota that meet the regulatory definition of a feedlot is approximately 40,000. The number of feedlots statewide with water quality pollution problems and the associated technical and financial assistance needs to correct those problems are much less clear. However, several recent level 3 county feedlot inventories, together with Minnesota agricultural statistics and current livestock industry trends, provide some insight into the scope of potential statewide feedlot pollution problems. In addition, experience of Soil and Water Conservation Districts (SWCDs) and the USDA Natural Resources Conservation Service (NRCS) in Minnesota, combined with data from the Agricultural Best Management Practices (Ag BMP) loan program, provide estimates of the current average financial assistance needs for corrective measures.

A ten-year strategy is proposed for the following reasons:

- 1) Feedlot upgrading for water quality protection is capital and technical assistance intensive. It is not practical for private, or public-private, financial and technical resources to accomplish what remains to be done in Minnesota in a substantially shorter time frame.
- 2) The proposed new state feedlot permitting rules recognize this fact and set a goal of the year 2008 for full implementation of water quality protection goals for smaller feedlots in noncritical locations.
- 3) The USDA-EPA Draft National Strategy for Animal Feeding Operations also sets a goal of the year 2008 for full implementation of its recommendations.

This strategy differentiates between environmental protection associated with feedlot runoff and manure storage, and environmental protection associated with land application of manure (nutrient management). The reasons for this differentiation are the differing economics and historical public involvement with these environmental issues. Addressing feedlot runoff and manure storage problems typically is capital intensive, with a relatively long pay-back period and, therefore, significant economic risk to the livestock producer. Addressing manure application (nutrient management) concerns should have a relatively short pay-back period, but involves more complex interactions of farm operations, often including private nutrient suppliers and advisors. For these reasons, state cost-share for water quality protection at feedlots has historically focused on feedlot runoff and manure storage upgrading. However, the proposed new state feedlot rules and Draft National Strategy put a substantially increased focus on nutrient management. This focus increases the need for public-private partnering for improved nutrient management, as well as feedlot runoff and manure storage, to achieve the needed water quality protection within the target time frame.

Pertinent Background Information

During recent years, more and more counties have accepted delegated state feedlot permitting authority from the MPCA (currently 50 counties +/-), as well as state cost-share funding via the

Natural Resources Block Grant for conducting level 2 or 3 feedlot inventories. MPCA data indicates that approximately 40 counties have conducted, or are conducting, level 2 or 3 feedlot inventories. The MPCA is currently assessing the status of these inventories.

Level 2 inventories identify feedlots with potential pollution problems based on location within shoreland (i.e. within 1,000 feet of a lake, pond or flowage, within 300 feet of a river or stream, or within a delineated floodplain) and the presence of open lots or manure storage structures. Level 3 inventories quantify pollution problems via topographic surveys and use of the feedlot evaluation system (computer model) developed by the USDA Agricultural Research Service.

Estimated Number of Feedlots with Runoff and Manure Storage Problems

Recent level 3 feedlot inventory data from Blue Earth, Nicollet and Martin counties has been summarized by Tina Rosenstein, Nicollet County. This data (attached) seems to validate a generally held belief that feedlots with runoff or manure storage problems are typically smaller operations with outdated facilities located within shoreland and/or with unpermitted earthen basins. In fact, these three inventories indicate that the majority of problem feedlots in those counties have less than 250 animal units. Recent verbal communications with Scott, Faribault and Rock SWCD staff regarding **complete or nearly complete level 3 inventories in these counties support the generalization that the vast majority of problem feedlots have less than 500 animal units.** Data from these six feedlot inventories indicates a percent of feedlots having water quality pollution problems due to feedlot runoff or manure storage ranging from 2 - 31% of existing feedlots.

Another source of information regarding the percentage of feedlots in Minnesota needing runoff or manure storage upgrades for pollution abatement are responses to questions asked of 60 counties and SWCD joint powers groups submitting applications for 1999 Ag BMP loan allocations (49 responded to the pertinent feedlot questions). A summary table compiled by the MDA indicates a range of 0 - 90% of existing feedlots in different counties needing upgrades, with an average of 53%.

Evaluation of this data for only those counties that reportedly have level 3 feedlot inventories complete or in progress indicates a range of 0 - 66.7% of existing feedlots needing upgrades, with an average of 26%. The data in the MDA table for Scott county is known to include feedlots with outdated manure application plans as needing upgrades. It is not known if this is true for any other counties. **Not surprisingly, it appears that counties with level 3 inventories have less identified need for feedlot upgrades than those with less detailed or no inventory.** The less precise estimates of feedlot upgrade needs appear to be substantially high. This is not to say that all counties have the same percentage of existing feedlots that need upgrades for environmental protection. Livestock type, size of operations, topography, geology, etc. are variables affecting the need for feedlot upgrades.

The following facts, inferences and/or assumptions will be used as a basis for estimating the number of feedlots statewide with less than 500 animal units that have feedlot runoff and manure storage problems.

- 1) The vast majority of cattle operations in Minnesota have less than 500 animal units, based on the 1997 Census of Agriculture for Minnesota.
- 2) Cattle operations predominantly involve open feedlots.
- 3) The vast majority of dairy operations in Minnesota still have less than 200 animal units, based on the 1997 Census of Agriculture for Minnesota. However, the number of dairies in Minnesota (approximately 9,600 at the end of 1997) has steadily declined for many years (average loss of about 2 - 3 per day) and the number of large operations has steadily increased in recent years.
- 4) Small dairy operations typically involve open lots.
- 5) Hog operations often utilize total confinement and concrete or earthen manure storage that avoid or minimize feedlot runoff problems.
- 6) A substantial percentage of hog operations in Minnesota have more than 500 animal units.
- 7) The number of operations with various other livestock species is a relatively small percentage of the total number of operations in the state, but many are small and, therefore, likely include a significant percentage of sites with feedlot runoff or manure storage problems.

The following numbers of livestock operations in the state by livestock type are estimated from Minnesota Agricultural Statistics. The estimated percentages of operations having feedlot runoff problems are based on the above-mentioned recent level 3 feedlot inventories, with consideration of the Ag BMP Loan Program application information discussed above.

Livestock Type	Estimated Current Number of Operations in MN	Estimated % of Current Operations with Runoff or Storage Problems	Estimated No. of Current Operations with Runoff or Storage Problems
Cattle and Beef Cows	20,000	20	4,000
Dairy	9,000	30	2,700
Hogs	8,000	10	800
Various Other	3,000	10	300
Totals	40,000	N.A.	7,800

The percentages and total number of feedlots with runoff and/or manure storage problems will become much clearer as additional level 3 county feedlot inventories are completed and the results tabulated.

If current trends are indicative of the next ten years, the number of small feedlots in Minnesota will continue to decline for various social, environmental and economic reasons. **The average rate of decline in the number of feedlot operations in Minnesota has been approximately 4% per year during the past twenty years** (approximately 90,000 feedlots in 1978 and 40,000 feedlots in 1998). Based on the 1997 Census of Agriculture for Minnesota, the number of dairy operations in Minnesota decreased by an average rate of about 6% per year between 1992 and 1997, while the number of hog operations decreased by an average rate of about 10% per year during that period.

These trends could substantially decrease the number of livestock operations with feedlot runoff and manure storage problems over the next ten years. Assuming a 4% decline in the number of livestock operations per year, the total number of feedlots in Minnesota would be approximately 27,000 in ten years. **If feedlots needing runoff or manure storage upgrades decline at 4% per year**, there would be approximately 5,200 of the current estimated 7,800 problem sites still in operation in ten years. This would mean that **pollution abatement would need to be accomplished at approximately 500 feedlots per year for ten years.**

If the decline of small feedlots with pollution problems was twice the overall average rate (i.e. 8% per year), pollution abatement would need to be accomplished at approximately 350 feedlots per year for ten years.

Estimated Financial Assistance Needs for Feedlot Runoff and Manure Storage Upgrades

Based on data from Minnesota SWCDs, the NRCS and the Ag BMP loan program, the current average construction cost for feedlot runoff and manure storage upgrades at small feedlots is approximately \$38,000 per feedlot.

For an average of 500 small feedlot upgrades per year (4% per year decline rate):

- the average annual upgrade construction cost = \$19,000,000
- at a 75% cost-share rate, the annual cost-share need = \$14,250,000
- at a 50% average cost-share rate, the annual cost-share need = \$9,500,000

For an average of 350 small feedlot upgrades per year (8% per year decline rate):

- average annual upgrade construction cost = \$13,300,000
- at a 75% cost-share rate, the annual cost-share need = \$9,975,000
- at a 50% average cost-share rate, the annual cost-share need = \$6,650,000

For fiscal year 2000, with current appropriation levels, state and federal cost-share available for feedlot pollution abatement is approximately:

State Cost-Share Program	\$1,800,000	(\$1,000,000 base Feedlot WQ Cost-Share and \$800,000 of base State Cost-Share Program)
Federal EQIP Program	<u>\$2,000,000</u>	(EQIP = Environmental Quality Incentives Program)
Total Available	\$3,800,000	

For a 4% per year small feedlot decline rate:

- Additional cost-share need at 75% rate = $\$14,250,000 - \$3,800,000 = \$10,450,000$
- Additional cost-share need at 50% rate = $\$9,500,000 - \$3,800,000 = \$5,700,000$

For an 8% per year small feedlot decline rate:

- Additional cost-share need at 75% rate = $\$9,975,000 - \$3,800,000 = \$6,175,000$
- Additional cost-share need at 50% rate = $\$6,650,000 - \$3,800,000 = \$2,850,000$

The Ag BMP loan program has also provided an important source of low interest loan funds for feedlot pollution abatement. For small feedlots, cost-share grants and Ag BMP loans are often piggybacked to fund implementation of feedlot runoff and manure storage upgrades. The Ag BMP loans are repaid by livestock producers to locally revolving loan funds. Due to the economic condition of many small feedlot operations, loan funds alone often will not enable producers to implement feedlot runoff and manure storage upgrades. However, the availability of Ag BMP loan funds can have a significant impact on the distribution and rate of cost-share funding used for small feedlot upgrades.

Because the pay-back period for feedlot runoff and manure storage upgrades typically is relatively long, producers generally must make a decision to stay in operation for a good number of years when these upgrades are implemented (or shut down their livestock operation if they have cited pollution problems).

Estimated Technical Assistance Needs for Feedlot Runoff and Manure Storage Upgrades

At the current time, local, state and federal technical assistance capability for feedlot pollution abatement in Minnesota includes a portion of the time of:

- a) SWCD technicians in all of the state's 91 SWCDs;
- b) 11 SWCD joint powers area teams statewide (map of these areas attached) funded via the state

Nonpoint Engineering Assistance (NPEA) Program, with one engineer and one technician each, except in four of the highest workload areas, where an additional engineer or technician have been temporarily funded via challenge grants;

c) 1 training and design engineer at the BWSR;

d) 7 NRCS area offices with an engineer, technician(s) and resource conservationist in each office; and

e) 1 engineer specialist at the NRCS state office.

Private engineers have provided an increasing amount of technical assistance for feedlot pollution abatement in recent years. Because state and federal technical assistance is focused on feedlots with less than 500 animal units, larger feedlot facilities typically utilize private engineers for design of feedlot runoff and manure storage systems. However, private engineers also assist many feedlots with less than 500 animal units.

SWCD joint powers staff funded via the Nonpoint Engineering Assistance Program have been a major factor in the implementation of feedlot pollution abatement practices statewide since 1995 when this program was created to help implement the Ag BMP and Clean Water Partnership Loan Programs, as well as the State Cost-Share Program. Currently, the NRCS focuses on assisting EQIP-funded feedlot pollution abatement systems and SWCD joint powers staff focus on assisting systems funded via state cost-share and loan programs. Workload coordination and sharing between SWCDs and the NRCS also occurs. **NRCS engineers and technicians currently assist approximately 50 small feedlots per year and SWCD engineers and technicians (including the four temporary NPEA program positions funded via challenge grants) assist approximately 100 - 150 small feedlots per year, both at the local level.** (SWCDs also assist several hundred erosion control, wetland restoration, and other environmental protection practices each year.)

Federal, state and local government technical assistance focused at the local, front-line level is an effective component of cost-share and loan program assistance for pollution abatement at small feedlots. Therefore, maintaining or increasing the number of SWCD engineers and technicians providing technical assistance for feedlot upgrades is an important component of this 10-yr. strategy.

Current funding for the NPEA Program is expected to fall short of fully funding the associated eleven SWCD engineering teams during the upcoming biennium and will not support the current four additional positions in high workload areas. The supplementary funding need to maintain the current level of NPEA program staffing and technical assistance for small feedlots is \$390,000 per year. Without supplementary state funding, SWCDs will need to fund costs not covered by state funding, or the number of NPEA Program staff will need to be reduced. SWCDs do not have taxing authority and, therefore, depend substantially on state funding to implement state programs. A portion of this supplementary funding need could also be met via directing a portion of the technical assistance percentage of feedlot water quality cost-share funding to the NPEA program.

Engineering assistance via private consultants is an eligible use of state cost-share program and Ag BMP loan funding for feedlot pollution abatement. Increased public-private partnering for feedlot technical assistance will be needed to achieve the annual feedlot upgrade goals of this 10-yr. strategy.

Nutrient Management Technical and Financial Assistance

Both federal and state environmental protection strategies and proposed regulations include an increased focus on improved nutrient management for livestock operations. Recent studies by the MDA (via the Farm Nutrient Management Assessment Program) indicate that livestock producers in Minnesota often underestimate available manure nutrients and over apply commercial fertilizer on land where manure is applied. **The proposed new state feedlot rules and the Draft National Strategy for Animal Feeding Operations include much more rigorous nutrient management planning, soil testing, manure testing and reporting than previously required.** Livestock operations where improved nutrient management would be beneficial to water quality protection are expected to include a high percentage of existing small feedlot operations (a much higher percentage than were estimated to need feedlot runoff and manure storage upgrades).

Comprehensive nutrient management by livestock producers involves the many variables associated with livestock and crop production, such as: soil fertility, manure nutrient content, crop rotations, tillage practices, prior year crediting of nutrients, yield goals, manure and commercial fertilizer application rates, incorporation methods and timing. Farm nutrient management often involves private crop consultants and most often involves commercial fertilizer suppliers.

The economic advantages of improved nutrient management should be sustainable after producers effectively incorporate comprehensive nutrient management into their operations. Therefore, the most appropriate role for government in this arena appears to be to jump-start and nurture adoption of this best management practice. **An appropriate combination of research, education, incentives, regulation and coordination are needed to achieve the private and public economic and environmental benefits of comprehensive nutrient management. Certified Crop Advisors and commercial fertilizer suppliers are critical partners in this endeavor.** Other key private partners for education and implementation include producer groups, commercial manure applicators and soil and manure testing labs.

Acceleration and coordination of the efforts of University researchers, Minnesota Extension Service educators, as well as federal, state and local government technical and financial assistance and regulatory programs are needed to support this 10-yr. strategy. Because the economic advantages of comprehensive nutrient management may be relatively small for small livestock operations and their private consultants, focused education, technical assistance and financial incentives will likely be needed to jump-start adoption of comprehensive nutrient management during this 10-yr. strategy.

The federal government (via the NRCS) currently provides incentive payments for comprehensive nutrient management for both livestock and crop producers. The federal program provides incentive payments for three years, with an agreement that the producer will implement a comprehensive nutrient management plan for at least five years. The incentive payment rates are \$4.50 per acre without manure and \$9.00 per acre with manure. There is a limit of 250 acres per producer. Approximately \$200,000 per year is currently allocated for new incentive payments.

Soil and Water Conservation Districts have been an important partner for front-line implementation of state cost-share and revolving loan programs for feedlot runoff and manure storage upgrades in Minnesota. Comprehensive nutrient management is another best management practice for which SWCDs could provide effective local implementation of state technical and financial assistance programs for small feedlots, with appropriate training and funding. Approximately six of the eleven NPEA Program areas of SWCDs have high feedlot pollution abatement workloads.

Low interest loans for more effective manure application equipment could also be an effective component of this strategy to jump-start the adoption of comprehensive nutrient management in Minnesota.

Many of the programs, initiatives and coordination efforts needed to effectively promote comprehensive nutrient management for livestock operations in Minnesota currently exist or are evolving. However, focus on comprehensive nutrient management as a high priority will need to be accelerated in order to achieve the desired federal and state environmental protection objectives within the next ten years.

SUMMARY OF FEEDLOTS IN 3 SOUTH CENTRAL MINNESOTA COUNTIES

NICOLLET COUNTY

SPECIES	TOTAL SITES	# PROBLEM SITES	% PROBLEM SITES	AVG ANIMAL UNITS PER PROBLEM SITE
HOG	213	13	6%	237
DAIRY	108	14	13%	189
CATTLE	56	14	25%	105
POULTRY	4	1	25%	19,000
VARIOUS	90	13	14%	208

- All problem sites except chicken have less than 250 animal units.
- Of the 55 problem sites, 44 are due to runoff from feedlot creating surface water impacts and 10 are due to uncertified manure basins or polluting manure storage creating questionable ground water impacts

BLUE EARTH COUNTY

SPECIES	TOTAL SITES	# PROBLEM SITES	% PROBLEM SITES	AVG ANIMAL UNITS PER PROBLEM SITE
HOG	330	19	5%	175
DAIRY	40	8	20%	108
CATTLE	181	20	9%	113
VARIOUS	72	3	4%	112

- All problem sites have less than 200 animal units.
- The total of 82 poultry sites are not summarized in this table. None have pollution problems, but there are problems within the county with inappropriate stacking of poultry manure from various feedlots. Of the 50 problem sites, 30 are due to runoff from feedlot creating surface water impacts and 20 are due to uncertified manure basins or polluting manure storage creating questionable ground water impacts

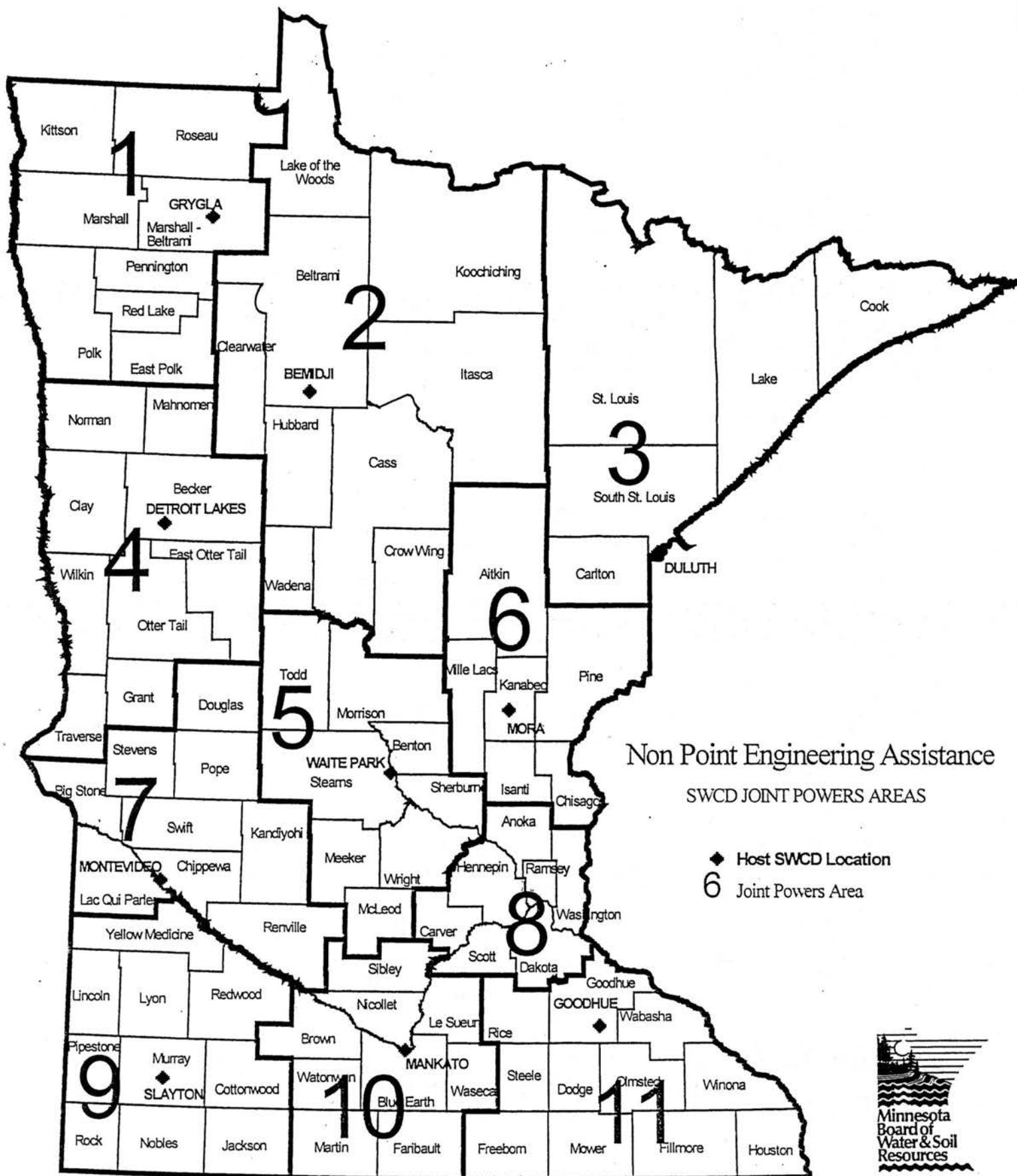
MARTIN COUNTY

SPECIES	TOTAL SITES	# PROBLEM SITES	% PROBLEM SITES	AVG ANIMAL UNITS PER PROBLEM SITE
HOG	437	16	4%	250
DAIRY	90	5	18%	150
CATTLE	101	6	6%	1000
VARIOUS	20	1	5%	200

- The number of problem sites are estimates based on an inventory completed during the winter of 1998 completed by the Martin County Environmental Services Department
- Of the approximately 28 problem sites identified, approximately 22 sites are due to runoff from feedlots creating a potential for surface water impacts. The remaining problem sites are related to manure storage issues resulting in potential surface and groundwater impacts.

DR:ESD:DATA/FEEDLOT/MC/STAT/PROBLOTS.TXT AUGUST 24, 1998

Non Point Engineering Assistance





Current Status of Feedlots in Minnesota

- **40,000 feedlots**
 - 800 have 1,000 AU or more
 - 7,000 have 300-1,000 AU
 - 32,000 have less than 300 AU
- **51 counties are delegated to administer state program**
- **MPCA feedlot staff:**
 - Majority now located in subdistrict offices: Marshall, Willmar, Rochester, Mankato, Detroit Lakes, Brainerd, Duluth
 - 11 compliance/permitting field staff
 - 6 engineers
 - 2 hydrogeologists



Why Revise the Feedlot Rule?

- Chapter 7020 has been in existence for 20 years and in that time we've accomplished a lot
- Almost half of the estimated 40,000 feedlots have been through the permitting process
- However, the environmental status of at least 13,000 feedlots is unknown and an estimated 8,000 have manure runoff problems
- Many of the standards in the revised rule have been in practice for a number of years
- The MPCA has identified ***three high-priority environmental challenges*** posed by feedlots



High-Priority Environmental Challenges Posed by Feedlots

- **Prevention of water pollution
from land application of manure**
- **Prevention of manure runoff
from open-lot feedlots**
- **Continuing to insure proper
siting, design and construction
of new and expanding feedlots**



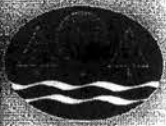
MPCA's Feedlot Rule Revisions

- **Goals for the Feedlot Rule Revisions**
- **Major Sections of Proposed Rule Amendments**
- **Highlight costs associated with changes in a few key areas**



Goals of MPCA's Feedlot Program

- **Focus on the highest impact facilities**
- **Decrease the administrative burden on compliant facilities**
- **Expand the role of delegated counties**
- **Greater field presence**



Major Sections of Proposed Rule

- **Registration Program**
- **Permitting Program**
- **Delegated County
Program**
- **Technical Standards**
 - Standards for
discharge, design,
construction, operation
and closure
 - Includes hydrogen
sulfide exemption



Costs Differences: a Few Key Parts

- **Registration
Permitting**
- **Water Quality
Discharge
Standards**
- **Land
Application of
Manure**



Registration, Permitting and WQ Standards

Size = 50 to 299 AU: Est. 32,000 Facilities

	Proposed Rule	Current Requirements	Cost Difference	Fees
Permit and Regist. Reqts.	Register every 4 years (32,000) Notify if new or exp.	Permit if new or expanding (100 to 200/yr.)	Time savings under registration	\$0
Dis-charge Std.	50% fix by 2003 and 100% fix by 2009 (8,000)	Permit to fix a pollution problem in 20 months (8,000)	Most of costs* deferred until 2009	N/A



Registration, Permitting and WQ Standards

Size = 300 to 999 AU: Est. 7,000 Facilities

	Proposed Rule	Current Require- ments	Cost Difference	Fees
Permit and Regist. Reqs.	Construct- ion permit based on Tech. Stds.	Permit if new or expanding (600 to 700/yr.)	Time savings with proposed Technical Standards	\$0
Dis- charge Std.	Status- Quo	Permit to fix a pollution problem in 20 months (100 to 200/yr.)	No difference	N/A



Registration, Permitting and WQ Standards

Size = 1000 or more AU: Est. 800 Facilities

	Proposed Rule	Current Requirements	Cost Difference	Fees
Permit and Regist. Reqts.	Individual permit (100)	Individual operating permit NPDES	No difference	\$85
	General Permit (700)	SDS (800)		\$1230
Dis-charge Std.	Status-Quo	No discharge	No difference	\$85
				\$260
				N/A

application fee = \$85
annual fee = \$260/\$1230



Land Application of Manure

Land Application of Manure Requirements

Size (AU)	Proposed Rule	Current Require- ments	Cost Difference
100 to 299	Detailed plan by 2005 Testing of soils and manure	Basic plan upon application	Costs for testing Savings from reduced commercial fertilizer use
300 to 999	Same as above by 2002	Same as above	Same as above
1000 +	Detailed plan upon permit application	Detailed plan upon permit application	Same as above



Summary

- **Focus on the highest impact facilities**
- **Decrease the administrative burden on compliant facilities**
- **Costs related to proposed versus existing rules**



Estimated Annual Costs of Proposed Requirements

Economic Sector	Annual Costs 2000 to 2002	Annual Costs 2003 and Beyond
Dairy	\$1,790,000	\$340,000
Beef	\$800,000	\$130,000
Swine	\$1,540,000	\$750,000
Poultry	\$80,000	\$20,000
Total	\$4,210,000	\$1,240,000



Existing Costs of Compliance

	Estimated Avg. Cost per Facility (\$)	Number of Facilities	Total Cost (\$)
2003	\$3,000	8,000	\$24,000,000
2009	\$27,000	8,000	\$216,000,000
Current Rule	\$30,000	8,000	\$240,000,000

NEWS RELEASE



Minnesota Pollution Control Agency

www.pca.state.mn.us

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FOR RELEASE: December 14, 1999

Media Contact: Julie Swiler, (651) 296-6706

MPCA SEEKS PUBLIC COMMENT, ANNOUNCES HEARING SCHEDULE FOR FEEDLOT RULE CHAPTER 7020 PROPOSED REVISION

St. Paul, Minn. -- The Minnesota Pollution Control Agency seeks public comment on proposed revisions to Minnesota Rule Chapter 7020 governing animal feedlots, manure storage areas and pastures handling, and utilization of animal manure and associated process wastewater; and proposed minor changes to Minnesota Rule Chapter 7002 as it relates to feedlots. People are invited to comment in writing on the proposed rule revision from December 20, 1999 through January 19, 2000. An administrative law judge also will hold public hearings on the proposed rule revisions at locations around the state. All interested persons are encouraged to present their views in writing or at a hearing.

The proposed amendments to Chapter 7020 primarily address manure storage, handling and land application; manure runoff from open-lot feedlots; and design and construction standards. They include revisions to definitions, the permitting process, manure-management processes and technical standards.

Public Comment Period

During the 30-day public comment period, individuals may submit written comments to the administrative law judge or to the MPCA. Copies of all comments received by the MPCA are forwarded to the administrative law judge who conducts the public hearing and considers citizens' comments in his final report. Please submit comments to: Administrative Law Judge Allan W. Klein, Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis MN 55401-2138, or to Mary Osborn, Minnesota Pollution Control Agency, 520 Lafayette Road N., St. Paul, MN 55155.

You can obtain copies of the official rule language in several ways:

- in the *State Register*;
- at the *State Register* web page, <http://www.comm.media.state.mn.us/monmag/srmain.htm>;
- by calling the MPCA Feedlot Service Center toll-free at (877) 333-3508; and
- at the MPCA's web page, <http://data.pca.state.mn.us/cgi-bin/pubPDF.pl>

People wishing to comment should make their comments as specific as possible. Please include the following:

- your name and address;

(more)



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Feedlot Rule Revision, page 2

- the rule number that identifies the portion of the proposed rule that is of concern (Example: part 7020.0300, subpart 11, definition of "domestic fertilizer");
- the reason the proposed rule language is of concern; and
- alternative rule language that would address the concern.

Public Hearing

All interested persons also can present their views at the hearing. An administrative law judge will conduct a series of hearings around the state (see the hearing schedule below). Written public comments also will be accepted after the hearing. The due date for comments will be announced at the start of the hearing. For more information about the public comment process or the hearings, contact Julie Swiler at (651) 296-6706 or toll-free at (800) 657-3864. Or, call the Feedlot Service Center toll-free at (877) 333-3508.

FEEDLOT RULE REVISION HEARING SCHEDULE

DATE	LOCATION	ADDRESS	TIME
Monday, January 24, 2000	Little Canada Capitol View Complex Auditorium	70 W. County Road B2 0.4 mile north of Highway 36 on Rice Street and County Road B2	10:00 a.m. until completion
Tuesday, January 25, 2000	Alexandria Douglas County Public Works Center	509 Third Ave. W. ¼ mile west of Broadway (TH29) on 3rd Avenue	Starting at 1:00 p.m. and again at 6:00 p.m.
Wednesday, January 26, 2000	Crookston NW Ag Research Center, U of M Youngquist Auditorium	2900 University Ave. 1 mile north of Crookston at Jct. 2 & 75	Starting at 2:00 p.m. and again at 6:00 p.m.
Monday, January 31, 2000	Brainerd Paul Bunyan Nature Learning Center <i>Nisswa City Hall</i>	1308 County Road 49 N. 371 north 3 miles to Pine Beach Road (77) & 49, go east ¼ mile	Starting at 1:00 p.m. and again at 6:00 p.m.
Tuesday, February 1, 2000	Willmar Willmar Public Library	410 Fifth St. S.W. Hwy. 71 to Trott Ave. Go west 5 blocks on Trott to 5th Street	Starting at 1:00 p.m. and again at 6:00 p.m.
Wednesday, February 2, 2000	Hadley Hadley Community Center	Main Street 6 miles west of Slayton on Hwy. 30	Starting at 1:00 p.m. and again at 6:00 p.m.
Thursday, February 3, 2000	New Ulm New Ulm Country Club	1 Golf Drive Next to Flandreau State Park	Starting at 1:00 p.m. and again at 6:00 p.m.
Monday, February 7, 2000	Lewiston Lewiston Community Center	75 Rice St. 1 block south of Highway 14	Starting at 1:00 p.m. and again at 6:00 p.m.
Tuesday, February 8, 2000	Owatonna Steele County Community Center	1380 S. Elm On the fairgrounds	Starting at 1:00 p.m. and again at 6:00 p.m.
Wednesday, February 9, 2000	Collegeville St. John's University - Science Center Auditorium	I-94, west of St. Cloud. Exit County Rd. 159 (St. John's exit). Auditorium is just east of abbey church.	Starting at 1:00 p.m. Sand again at 6:00 p.m.
Friday, February 11, 2000	Little Canada Capitol View Complex Auditorium	70 W. County Rd. B2 0.4 mile north of Highway 36 on Rice Street and County Road B2	10:00 a.m. until completion

Feb. 10

Little Canada

Feb. 14

PCA Conf.
room

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February 2000

DRAFT

DRAFT

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

BOARD MEMBERS PRESENT:

Kathleen Roer, Darrell Bruggman, Clair Nelson, Paul Krabbenhoft, Jim Dahlvang, Mark Dittrich-MDA, Allan Oehlke, Wayne Edgerton-DNR, Dwain Otte, Jim Anderson-MES, Ginny Imholte, Rod Massey, Barb Cobb

BOARD MEMBERS ABSENT:

Jerome Deal
Dan Wilson, MDH
Lee Coe

STAFF PRESENT:

Ron Harnack, Al Kean, Jim Haertel, Doug Thomas, Mary Jo Anderson, John Jaschke, Jim Birkholz, Doug Snyder

OTHERS PRESENT:

Sheila Vanney, MASWCD
Tim Gieseke, MACDE
Franklin Denn, MAT

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

****** **Adopt Agenda** - Moved by Clair Nelson, seconded by Dwain Otte, to adopt the agenda
00-16 as presented. Motion passed on a voice vote.

****** **Minutes of January 26, 2000** - Moved by Jim Dahlvang, seconded by Darrell
00-17 Bruggman, to approve the minutes of January 26, 2000 as circulated. Jim
complimented Mary Jo Anderson on the minutes. Motion passed on a voice vote.

Reports

Chair's Report - Kathleen Roer reported that she attended the EQB meeting. She also attended the MASWCD leadership session in Alexandria and graduated from this valuable program.

Executive Director - Ron Harnack reported that the Board received a petition to expand the Minnehaha Creek Watershed District, a recommendation will be brought before the Board next month. Ron reported that BWSR staff are coordinating with FSA, NRCS, DNR, and COE regarding wetland communication problems that are putting landowners at risk. Ron reported that the Red River mediation is moving along well, however there needs to be movement on project implementation. Ron met with Jim Anderson and Diane Flynn at Minnesota Extension Service regarding facilitation needs of the Red River mediation process.

Dispute Resolution Committee - Jim Haertel reported that there are presently two WCA appeals pending. One is in Mille Lacs County which involves a violation and restoration order. No action has been taken yet on the appeal and no pre-hearing has been set. The other pending appeal involves Cub Foods and Chisago County. The appeal is in abeyance until the City of Forest Lake makes a decision on the project.

Wetlands Committee - Darrell Bruggman stated that the BWSR legislation on WCA, Senate File#83 is moving forward.

Cost-Share/Soil Conservation Committee - Dwain Otte reported that the cost-share committee will meet after the Board meeting today. The committee will be discussing feedlot cost-share; technical assistance and related cost-share issues that need to be addressed for the June cost-share grant allocation.

Education and Public Relations Committee - Paul Krabbenhoft reported the education and public relations committee will meet today after the board meeting.

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Agency Reports

Mark Dittrich, Department of Agriculture, thanked PCA for the brown bag session on TMDLs. Mark reported that the application period is now open for beaver damage control grants. Mark reported that the Organic Farming Conference will be held on March 16. Discussion followed regarding MDA and PCA compliance of dairy, feedlot, and livestock inspectors duplication of efforts.

Wayne Edgerton, Department of Natural Resources, reported that the legislative session is in full swing; DNR has 119 legislative initiatives that they are tracking. Wayne reported that the third annual landowner appreciation day will be held March 18 at Eagle Bluff in Lanesboro. Wayne announced the annual tour of the DNR dairy farm in Nerstrand will be held June 23-24. Wayne explained the con con land issue.

Jim Anderson, Minnesota Extension Service, reported that Minnesota Water 2000 will be held April 25-26, he encouraged board member attendance. Jim has been meeting with Ron Harnack regarding opportunities for joint efforts statewide. MES is starting a joint effort this spring with PCA on three to five pilot projects with communities regarding ISTS issues.

Rod Massey, Pollution Control Agency, reported that the feedlot rules hearings were completed last week; the comment period is open until March 6. Rod stated that important revisions will be made to those rules. Ron Harnack stated that he's been impressed with the communication between PCA, MDA and BWSR, regarding feedlot issues, Rod agreed.

Consent Agenda

Comprehensive Local Water Plan Extension Requests for Kandiyohi, McLeod, and Renville Counties - Doug Thomas presented the extension requests from Kandiyohi, McLeod and Renville Counties. Staff recommends approval of the three water plan extension requests. Moved by Dwain Otte, seconded by Ginny Imholte, to approve the Comprehensive Local Water Plan extensions for Kandiyohi, McLeod, and Renville Counties. Motion passed on a voice vote.

00-18

Committee Recommendations

Metro Subcommittee

Approval of the City of Savage Comprehensive Wetland Protection and Management Plan - Doug Snyder briefly explained the plan. The metro subcommittee met on January 11 to review the plan and recommends approval. Moved by Dwain Otte, seconded by Clair Nelson, to approve the City of Savage Comprehensive Wetland Protection and Management Plan. Motion passed on a voice vote.

00-19

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Old Business

Legislative Update - Ron Harnack summarized the BWSR legislative tracking sheet. Ron reported that "CREP Day at the Capitol" will be held tomorrow, starting at 9:00 a.m. AMC, then going to the capitol. Congressman Minge, Senator Frederickson and Representative Harder who are authoring bills to fully fund CREP will also be present. The Governor will meet with the group at 3:30 p.m., Senator Frederickson's bill will be heard in the Senate at 4:00 p.m.

Chair Roer called for a break in the meeting at 10:25 a.m. The meeting reconvened at 10:40 a.m.

New Business

Special Purpose District Pilot Projects - The Board of Government Innovation and Cooperation - Legislative Initiative - Jim Birkholz stated that Minnesota Planning and the Board of Government Innovation recently discussed with BWSR the idea of including special purpose districts as eligible for Board of Innovation programs. BWSR staff assisted in drafting language that would create the opportunity for willing special purpose districts and counties to come forward with pilot project proposals to demonstrative alternative models for natural resource program delivery at the local level (House File #3596, Senate File #3369). Ron Harnack stated that this initiative would help remove barriers as recommended in "Crosscurrents". Jim stated that this reflects the BWSR Strategic Plan, it's a good opportunity to cooperatively work together, such as the MASWCD Capacity Building Committee. Moved by Allan Oehlke, seconded by Ginny Imholte, that BWSR endorse this initiative, encourage staff to move forward with this bill. Motion passed on a voice vote.

**
00-20

Minnesota Waterfowl Association (MWA) Special Recognition Award - Ron Harnack announced that BWSR received the MWA's Special Recognition Award at the MWA conservation awards banquet on February 4. BWSR is the first state agency recipient of this special award given for efforts in RIM reserve and other conservation issues. Ron attended the banquet and accepted the award on behalf of BWSR. The Board thanked the MWA for this unique and special recognition.

Integrated Funding System - Faye Sleeper, MPCA, distributed a fact sheet and gave a brief overview of the integrated funding system. MPCA is proposing a strategy that would integrate PCA's water quality grants and loans process into one system that would streamline the existing system, be more accessible by applicants, eliminate or minimize existing administrative duplication. Discussion followed. Chair Roer thanked Faye for providing this information to the board.

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Revisiting Reform Project - Ron Harnack explained that the Ventura administration, through Minnesota Planning, is working on a Revisiting Reform Project initiative, to review executive branch reform efforts made during the administrations of Governors Carlson, Perpich and Anderson. The BWSR administrative advisory committee met with MAWD and MASWCD to review a draft outline. Ron presented a draft and asked board members to review the outline. Discussion followed. Ron asked that the administrative advisory committee convene again before the next board meeting to finalize a document that will be presented to the Board at the March meeting. Chair Roer asked board members to submit their comments to Ron Harnack.

Ron Harnack reported that the board member appointments will be announced in the State Register in the next couple weeks.

Advisory Comments

Minnesota Association of Townships (MAT) - Franklin Denn reported that MAT held their legal seminar in January. Franklin stated that MAT's primary focus is on education, their short-courses will begin next month statewide. Legislation is needed to fund road mitigation or taxes will have to be increased.

Minnesota Association of Conservation District Employees (MACDE) - Tim Gieseke stated that the MDA and PCA memo of agreement on feedlot issue does not include SWCDs. Tim asked that PCA and MDA invite SWCDs to become involved and included. There is confusion and misunderstanding by the agencies as to what some of the SWCDs are doing.

Minnesota Association of Soil and Water Conservation Districts (MASWCD) - Sheila Vanney distributed copies of "Tidbits" for board members information. MASWCD will have representation tomorrow at "CREP Day at the Capitol. Sheila reported that MASWCD area meetings are underway statewide. MASWCD's "Legislative Briefing and Day at the Capitol" will be held March 6-7.

Natural Resources Conservation Service (NRCS) - Tim Koehler reported that Bill Hunt is in Washington, DC. NRCS is partnering with BWSR and Ducks Unlimited regarding easements. State Technical meeting received over \$4M for EQIP to implement conservation projects statewide. CRP sign-up closed a few weeks ago, slower sign-up this time. Tim reported that 25 new field technicians are now in place. NRCS has a tight budget nationwide this year. Ron Harnack requested NRCS to make a presentation on the National Resource Inventory (NRI) program at the March Board meeting.

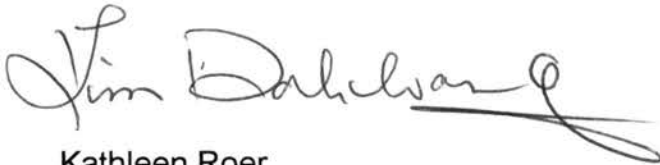
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Minnesota Association of Watershed Districts (MAWD) – Ginny Imholte reported that the MAWD Legislative Breakfast will be held on February 25.

The next BWSR meeting will be March 22, 2000.

Chair Roer adjourned the meeting at 12:15 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kathleen Roer", with a long horizontal flourish extending to the right.

Kathleen Roer
Chair