



Minnesota Board of Water and Soil Resources.
Minutes.

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**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
JANUARY 24, 2001**

AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Minutes of December 13, 2000

Reports

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

Agency Reports

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

Consent Agenda

1. Meeker County Request for Comprehensive Local Water Plan Extension – DECISION

Committee Recommendations

1. Sunrise River WMO Watershed Management Plan – Metro Water Planning Subcommittee – DECISION
2. Richfield Bloomington WMO Watershed Management Plan – Metro Water Planning Subcommittee - DECISION
3. Brown's Creek Watershed District Enlargement and Increase Number of Managers – Jim Haertel – DECISION
4. Valley Branch Watershed District Enlargement and Increase Number of Managers – Jim Haertel – DECISION

5. Carnelian-Marine Watershed District Enlargement and Increase Number of Managers Hearing – Jim Haertel – DECISION

New Business

1. Revised WCA Corrective Action/Oversight Policy – John Jaschke – DECISION
2. FY01 NPEA Challenge Grants – Wayne Zellmer - DECISION

Advisory Comments

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

Upcoming Meetings

- NACD Annual Meeting, February 4-8, Fort Worth, Texas
- Farm Forum, February 12, Radisson South, Bloomington
- Next BWSR Meeting, February 28, 2001, St. Paul



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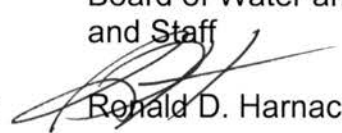
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DATE: January 12, 2001

TO: Board of Water and Soil Resources Members, Advisors
and Staff

FROM:  Ronald D. Harnack, Executive Director

SUBJECT: January 24th BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, January 24, 2001, beginning at 9:00 a.m. The meeting will be held in the BWSR conference room at One West Water Street, St. Paul. The following information pertains to the agenda items:

Consent Agenda

1. Meeker County Request for Comprehensive Local Water Plan Extension: See attached. DECISION

Committee Recommendations

1. Sunrise River WMO Watershed Management Plan: The Metro Water Planning Subcommittee met on January 9, 2001, and heard a presentation on the plan by Chris Lord of the Anoka SWCD. The Metro Region recommended approval of the plan. The subcommittee found the plan to meet the requirements of Minnesota Statutes Chapter 103B, Minnesota Rules Chapter 8410 and unanimously recommends the plan be approved per the attached draft order. DECISION
2. Richfield Bloomington WMO Watershed Management Plan: The Metro Water Planning Subcommittee met on January 9, 2001, and heard a presentation on the plan by Scott Anderson from the City of Bloomington and Todd Hubmer of WSB and Associates. The Metro Region recommended approval of the plan. The subcommittee found the plan to meet the requirements of Minnesota Statutes Chapter 103B, Minnesota Rules Chapter 8410 and unanimously recommends the plan be approved per the attached draft order. DECISION

3. Brown's Creek Watershed District Enlargement and Increase Number of Managers: A public hearing was held on November 27, 2000, on the petition submitted by Washington County. The record was held open for three weeks. The Metro Water Planning Subcommittee presided over the hearing and met on January 9, 2001. Based on all the information in the record, the subcommittee unanimously recommends that the district be enlarged and that the number of managers remain at five per the attached draft order. DECISION

4. Valley Branch Watershed District Enlargement and Increase Number of Managers: A public hearing was held on November 29, 2000, on the petition submitted by Washington County. The record was held open for three weeks. The Metro Water Planning Subcommittee presided over the hearing and met on January 9, 2001. Based on all the information in the record, the subcommittee unanimously recommends that the district be enlarged, that the number of managers remain at five, and that the name be changed to the "Lower St. Croix Valley Watershed District" per the attached draft order. DECISION

5. Carnelian-Marine Watershed District Enlargement and Increase Number of Managers Hearing: Washington County filed a petition with the Board on December 6, 2000, to enlarge and increase the number of managers of the Carnelian-Marine Watershed District. Most of the enlargement is proposed in the area of the Marine on St. Croix Watershed Management Organization. The increase in number of managers is proposed as two additional managers for a two year interim period. The petition is a result of the water governance study that Washington County conducted. The petition is proper and staff recommend a hearing be held per the attached draft order. DECISION

New Business

1. Revised WCA Corrective Action/Oversight Policy: The purpose of this policy is to establish the process that will be utilized to correct Local Government Unit implementation and administration problems involving the Minnesota Wetland Conservation Act. The strategy of this policy is to provide a clear, concise, timely route to resolution through implementation of a series of specific steps. See the attached process and flowchart for the revised policy. DECISION
2. FY 01 NPEA Challenge Grants: Non Point Engineering Assistance Challenge Grants provide additional engineering/technical assistance funding to SWCD Joint Powers Boards. The grant purpose is to assist landowners to implement high priority conservation practices. DECISION

If you have any questions, please feel free to give me a call. I look forward to seeing you on January 24!

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
JANUARY 24, 2001**

PRELIMINARY AGENDA

9:00 a.m. Call Meeting to Order

Adopt Agenda

Minutes of December 13, 2000

Reports

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

Agency Reports

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

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Committee Recommendations

1. Sunrise River WMO Watershed Management Plan – Metro Water Planning Subcommittee – DECISION
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New Business

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Advisory Comments

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

Upcoming Meetings

- NACD Annual Meeting, February 4-8, Fort Worth, Texas
- Farm Forum, February 12, Radisson South, Bloomington
- Next BWSR Meeting, February 28, 2001, St. Paul

Consent Agenda

1. Meeker County Request for
Comprehensive Local Water Plan
Extension
DECISION

MEEKER COUNTY COMPREHENSIVE LOCAL WATER PLAN (FOR BOARD ACTION)

Meeker County has a comprehensive Local Water Plan (CLWP), which was approved by the Minnesota Board of Water and Soil Resources (BWSR) on June 26, 1996. Meeker County's board of commissioners locally adopted their CLWP on July 18, 1996. The effective date (end date) is December 31, 2001.

The 1995 amendments to the Comprehensive Local Water Management Act, M. S. 103B.301, give the BWSR authority to grant extensions to counties for the purpose of extending the end dates of their water plans. These extensions must be requested in writing and cannot be for more than two years.

At their December 15, 1999, board meeting, the BWSR approved a local water planning document which addressed BWSR expectations, internal actions and multi-planning strategies. Multi-planning strategies addressed granting CLWP extensions to counties where other planning efforts (water or watershed level) are currently underway. These other efforts require the input of the water planner and associated technical advisors in the county. Completion of other water planning efforts would be benefit the CLWP update.

Meeker County is an active participant in other major planning efforts currently underway: the CROW (Crow River Organized Watershed) Project, amending the county zoning and feedlot ordinance, and implementing the recently adopted county land use plan. Participation in these activities requires county staff and work effort.

Meeker County is also an active participant in the Middle Minnesota Joint Powers Board (JPB), which consists of Kandiyohi, McLeod, Meeker and Renville counties. This JPB was organized when the water planning effort was initiated in Minnesota. The JPB was instrumental during the process of developing the four original water plans and the four updates five years later. Meeker County's current update was the last one of the four to be completed.

Because of other major planning efforts underway in Kandiyohi, McLeod and Renville counties, each of these three counties requested and received approval from the BWSR to extend the end date of their plans to December 31, 2002. This extension has placed Meeker County one year out of sync with the other three counties.

On December 19, 2000, the Meeker County board of commissioners approved a resolution which requests that the BWSR grant an extension to the existing Meeker County CLWP in order to once again become in sync with the other three counties in the JPB.

Board Conservationist Tom Fischer recommends approval of Meeker County's extension request. Their existing CLWP would be extended until December 31, 2002.

**RESOLUTION REQUESTING EXTENSION
OF
COUNTY COMPREHENSIVE WATER PLAN**

WHEREAS, 1995 amendments to the Comprehensive Local Water Planning Act, M.S. 103B.301 gave the MN Board of Water and Soil Resources (BWSR) authority to extend the ending date of local water plans for a period not to exceed 1 year; and

WHEREAS, Meeker County has a current state approved and locally adopted Comprehensive Local Water Plan with an end date of 12/31/01; and

WHEREAS, Meeker County is an active participant in other major planning efforts currently underway such as the Crow River Watershed, amending the zoning and feedlot ordinance, and implementing the recently adopted Land Use Plan; and

WHEREAS, these other major planning efforts will result in information that will benefit the county during its Comprehensive Local Water Plan update efforts; and

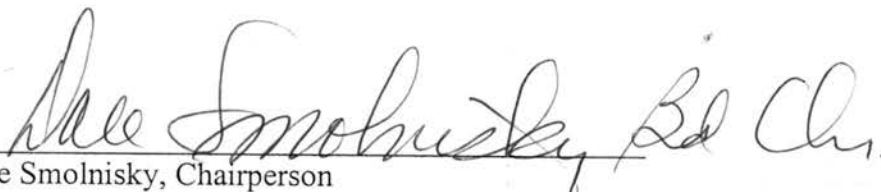
WHEREAS, to continue as an active participant and obtain information that will benefit the Comprehensive Local Water Plan update, Meeker County will not be able to complete its Comprehensive Local Water Plan update prior to 12/31/01.

NOW, THEREFORE BE IT RESOLVED, the Meeker County Board of Commissioners request from BWSR an extension of their existing Comprehensive Local Water Plan to coincide with extensions for McLeod, Renville and Kandiyohi counties because of their affiliation on the Four County Water Planning Joint Powers Board.

BE IT FURTHER RESOLVED, that Meeker County will insure continued public participation in the form of Water Plan Advisory Committee and Public Information meetings.

BE IT FURTHER RESOLVED, that no projects will be ordered or commenced under M.S. 103B subd. 3 and 4 during the extension period.

Approved this 19th day of December 2000


Dale Smolnisky, Chairperson

DRAFT

DRAFT

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

In the Matter of Extending the Comprehensive Local Water Plan
For **Meeker County** (1995 Minnesota Session Law, Chapter 184,
Section 24, authorizing BWSR to grant extensions).

Whereas, Meeker County has a state approved Comprehensive Local Water Plan that is effective until December 31, 2001, pursuant to Minnesota Statute 1990, Section 103B.301, and

Whereas, the Meeker County Board of Commissioners requested an extension of their Comprehensive Local Water Plan to the Board of Water and Soil Resources on December 19, 2000, pursuant to Minnesota Session Law 1995, Chapter 184, Section 24, and

Whereas, the Board of Water and Soil Resources has authorization to grant extensions pursuant to Minnesota Session Law 1995, Chapter 184, Section 24.

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

FINDINGS OF FACT

1. On December 21, 2000, the Board of Water and Soil Resources received a resolution from Meeker County requesting an extension of their Comprehensive Local Water Plan.
2. On December 22, 2000, the Board of Water and Soil Resources staff reviewed and recommended approval of the extension request by Meeker County.

CONCLUSIONS

1. All relevant requirements of law and rule have been fulfilled. The Board of Water and Soil Resources has proper jurisdiction in the matter of extending the Comprehensive Local Water Plan of Meeker County pursuant to Minnesota Session Law 1995, Chapter 184, Section 24.

ORDER

The Board of Water and Soil Resources hereby approves the extension of the Meeker County Comprehensive Local Water Plan until December 31, 2002. Dated at St. Paul, Minnesota, this 24th day of January 2001.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Kathleen Roer, Chairperson

Committee Recommendations

1. Sunrise River WMO Watershed
Management Plan
DECISION

DRAFT

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

DRAFT

In the Matter of the review of the Watershed
Management Plan for the **Sunrise River Watershed**
Management Organization pursuant to Minnesota
Statutes Section 103B.231, Subdivision 9.

**ORDER
APPROVING WATERSHED
MANAGEMENT PLAN**

Whereas, the Sunrise River Watershed Management Organization (SRWMO) submitted a Watershed Management Plan (Plan) to the Minnesota Board of Water and Soil Resources (Board) pursuant to Minnesota Statutes Section 103B.231, Subd. 9, and;

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

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

FINDINGS OF FACT

1. **Establishment.** In April 1985, a Joint Powers Agreement (JPA) was entered into by the cities of East Bethel and Ham Lake and the townships of Linwood and Columbus. The 2000 JPA replaced the existing agreement executed in 1985 that created the SRWMO. The essential purpose of the SRWMO is to seek cooperation and assistance of governmental agencies, municipalities, and citizens within the WMO in order to conserve the WMO's natural resources.
2. **Requirement to Plan.** The Metropolitan Water Management Act requires the preparation of a watershed management plan for the subject watershed area which meets the requirements of Minnesota Statutes Sections 103B.201 to 103B.251.
3. **Nature of the Watershed.** The legal boundary of the SRWMO is approximately 45,300 acres in size. The SRWMO is located in the northeastern corner of Anoka County. The area within the SRWMO is primarily agriculture and wetlands, however the watershed is experiencing great pressure from developments. The area's significant water resources include Coon, Linwood, and Martin Lakes; also Carlos Avery Wildlife Management Area covers a large area of the WMO.

DRAFT

4. **Local review.** The SRWMO circulated a copy of the draft Plan to local units of government, the county, the state review agencies, the metropolitan council, and the Board for their review pursuant to Minnesota Statutes Section 103B.231, Subd. 7.

5. **Agency Review.** On February 29, 2000 the state review agencies met to discuss the draft Plan of the SRWMO. The following summarize each agency's comments.

5a. **Metropolitan Council Review.** On March 16, 2000 the Metropolitan Council provided written comments on the Plan to the Board containing the following findings and conclusions:

1. The Plan's policies are consistent with the policies of the Council's *Water Resources Management Development Guide*.
2. The inventory of land and water resources is fairly complete.
3. The Council asked the WMO to note the primary goals for the first generation plan and indicate whether or not they were met.
4. The Council recommended the SRWMO review land use plans from the local units of governments and identify any inconsistencies between the SRWMO and the local plans.
5. The SRWMO should work with its member communities on adopting and enforcing equitable erosion control standards.
6. The Council is concerned that the watershed's member communities may not have the resources necessary to implement the local water management plans.

5b. **Department of Natural Resources Review.** On March 24, 2000 the Department of Natural Resources provided written comment on the Plan and recommended amendments to include:

1. The primary recommendation from the DNR is the concern of declining water quality throughout the watershed, coupled with increased development.
2. The SRWMO will need more stringent standards and a willingness on the part of the SRWMO to work with local communities to ensure that these standards are met.

5c. **Department of Health Review.** No written comments were provided to the Board.

5d. **Department of Agriculture Review.** Recommended approval of the Plan.

5e. **Pollution Control Agency Review.** No written comments were provided to the Board.

On September 11, 2000 and November 7, 2000 the SRWMO responded in writing to the state review agencies concerns.

DRAFT

6. **Board Review.** On August 10, 2000 the SRWMO submitted an amended Plan that addressed most of the above noted agency concerns. The Council and the Board were the only agencies to provide the SRWMO with additional comments regarding the amended Plan. The Metro Water Planning Subcommittee of the Board and Board staff met with the SRWMO on January 9, 2001. The SRWMO made a presentation of the final amended Plan and requested the Plan be approved by the Board at the next Board meeting. The Subcommittee recommended approval of the plan.

7. **Highlights of the Plan.** The following are some of the highlights of the Plan as amended:

- a) The SRWMO will rely on each member municipalities to address their own water resource management issues;
- b) Each member municipality will administer maintenance programs. The member municipalities are encouraged to perform maintenance activities that reduce non-point source pollution according to minimum guidelines established by the WMO;
- c) Land use management rests with the member municipalities;
- d) This plan focuses on collecting resource information by monitoring, inventories, and investigations to enable more proactive resource management planning in the future;
- e) The annual budget for implementation of the management plan has increased from zero dollars to a total of \$1.07 million over the next 10 years. Much of this increase comes from on-going municipal projects. More than \$350,000 will be funded over the next 10 years (averaging \$35,000 per year) from the SRWMO for administration, data collection and inventory.

CONCLUSIONS

1. All relevant substantive and procedural requirements of law and rule have been fulfilled.
2. The Board has proper jurisdiction in the matter of approving a Watershed Management Plan for the Sunrise River Watershed Management Organization pursuant to Minnesota Rules Chapter 8410 and Minnesota Statutes Section 103B.201, Subd. 9.
3. The Sunrise River Watershed Management Organization Watershed Management Plan attached to this Order defines water and related land use problems within the SRWMO's boundaries, possible solutions thereto, general objectives and policies of the SRWMO, and an implementation program.
4. The attached Plan is in conformance with the requirements of Minnesota Rules Chapter 8410 and Minnesota Statutes Sections 103B.201 to 103B.251.

ORDER

The Board hereby approves the attached Plan dated January 2001 as the Watershed Management Plan for the Sunrise River Watershed Management Organization.

Dated at Saint Paul, Minnesota this 24th day of January 2001.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

DRAFT

BY: Kathleen Roer
Chair

Committee Recommendations

2. Richfield Bloomington WMO
Watershed Management Plan
DECISION

DRAFT

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

DRAFT

In the Matter of the review of the Watershed
Management Plan for the **Richfield Bloomington**
Watershed Management Organization pursuant to
Minnesota Statutes Section 103B.231, Subdivision 9.

**ORDER
APPROVING WATERSHED
MANAGEMENT PLAN**

Whereas, the Richfield Bloomington Watershed Management Organization (RBWMO) submitted a Watershed Management Plan (Plan) to the Minnesota Board of Water and Soil Resources (Board) pursuant to Minnesota Statutes Section 103B.231, Subd. 9, and;

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

Now therefore, the Board hereby makes the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. **Establishment.** The RBWMO was formed on December 19, 1983. The agreement was amended and bylaws adopted January 23, 1984. The essential purpose of the RBWMO is to provide for the long-term management of water and associated land resources within the Richfield Bloomington Watershed.
2. **Requirement to Plan.** The Metropolitan Water Management Act requires the preparation of a watershed management plan for the subject watershed area which meets the requirements of Minnesota Statutes Sections 103B.201 to 103B.251.
3. **Nature of the Watershed.** The legal boundary of the RBWMO is approximately 7.55 square miles in size. The RBWMO is located in the center of the Twin Cities metropolitan area. The area within the RBWMO is a highly developed urban watershed, which includes The Mall of America, and is immediately west-southwest of the MSP International Airport; yet there remain some possible redevelopment and retrofit opportunities within the watershed. The area's significant water resources include Woodlake and Richfield Lake. All surface waters flow to the Lower Minnesota River.

DRAFT

4. **Local review.** The RBWMO circulated a copy of the draft Plan to local units of government, the county, the state review agencies, the metropolitan council, and the Board for their review pursuant to Minnesota Statutes Section 103B.231, Subd. 7.

5. **Agency Review.** Three state review agencies provided initial comments (60-day review) of the draft Plan to the Board. The Board incorporated the comments from the agencies into a single document to send to the RBWMO. The joint agency review letter was sent to the RBWMO on June 2, 2000. The following summarize each agency's key comments.

5a. **Metropolitan Council Review.** On May 26, 2000 the Metropolitan Council provided written comments on the Plan to the Board containing the following findings and conclusions:

1. The Plan's policies are consistent with the policies of the Council's *Water Resources Management Development Guide*.
2. Recommends the RBWMO develop a water-quality monitoring program.
3. The Plan needs to contain a function and value assessment for wetlands.
4. The Plan should include a specific statement about Best Management Practices requirements for redevelopment areas.
5. The RBWMO should work with its member communities on adopting and enforcing equitable erosion control standards.
6. The plan needs additional maps and discussions detailing stormwater management systems and flow direction, inter-municipal flooding and rate-control, and regulatory and permitting programs.

5b. **Pollution Control Agency Review.** On June 2, 2000 the MPCA provided the Board and the RBWMO written comments on the Plan containing the following findings and conclusions:

1. The hydrologic system section should be expanded to provide a more complete inventory of all water resources.
2. The need to monitor water resources to determine their condition should be discussed.
3. The Plan should clarify if NURP standards and MPCA BMP guidelines will be used on redevelopments in the watershed.
4. The magnitude of illegal connections to the stormwater system should be discussed in greater detail.

5c. **Department of Health Review.** No written comments were provided to the Board.

5d. **Department of Agriculture Review.** No written comments were provided to the Board.

5e. **Department of Natural Resources Review.** No written comments were provided to the Board.

6. Additional Review Comment

In addition to the state agency review, the RBWMO received extensive comments from the US Fish and Wildlife Service regarding the impact of the Plan on the Minnesota Valley National Wildlife Refuge. The major concerns identified were:

1. The Plan is inadequate because it emphasizes the preference to use regional stormwater retention basins without considering other BMPs.
2. The Plan does not adequately address refuge wetlands from toxic spills or accidents or who is responsible for cleanup if a spill occurs.
3. The Plan should identify a priority street sweeping schedule for all portions of the watershed where untreated runoff drains to wetlands in the Minnesota River Valley.

DRAFT

On January 21, 2000 the RBWMO responded in writing to the state and federal review agencies concerns.

7. **Board Review.** On August 22, 2000 the RBWMO submitted an amended Plan that addressed most of the above noted agency concerns. During the 45-day review the Council and MPCA provided the RBWMO with additional comments regarding the amended Plan. The RBWMO agreed to address the issues and amended the Plan. The RBWMO submitted a revised final Plan to the Board on October 27, 2000.

The Metro Water Planning Subcommittee of the Board and Board staff met with the RBWMO on January 9, 2001. The RBWMO made a presentation of the final amended Plan and requested the Board approve the Plan at the next Board meeting. Members of the Metro Water Plan Review Committee of the Board voted to approve the Plan.

8. **Highlights of the Plan.** The following are some of the key highlights and implementation strategies of the Plan as amended:

- a) The RBWMO will incorporate the standards and requirements of the Nationwide Urban Runoff Program and MPCA's Best Management Practices for all new developments and redevelopment;
- b) The RBWMO defers to the member cities all responsibilities for addressing storm water runoff water quality problems;
- c) The RBWMO encourages the development of enhanced infiltration practices whenever it is practical;
- d) Member cities will be responsible for establishing erosion and sedimentation controls and standards as approved by RBWMO;
- e) The RBWMO has identified the method to be used to mediate inter-jurisdictional storm water rate and volume issues should member cities be unable to resolve them; and
- f) If appropriate actions are not taken by the member cities the RBWMO shall take action to correct the problem.

CONCLUSIONS

- 1. All relevant substantive and procedural requirements of law and rule have been fulfilled.
- 2. The Board has proper jurisdiction in the matter of approving a Watershed Management Plan for the Richfield Bloomington Watershed Management Organization pursuant to Minnesota Rules Chapter 8410 and Minnesota Statutes Section 103B.201, Subd. 9.
- 3. The Richfield Bloomington Watershed Management Organization Watershed Management Plan attached to this Order defines water and related land use problems within the RBWMO's boundaries, possible solutions thereto, general objectives and policies of the RBWMO, and an implementation program.
- 4. The attached Plan is in conformance with the requirements of Minnesota Rules Chapter 8410 and Minnesota Statutes Sections 103B.201 to 103B.251.

ORDER

The Board hereby approves the attached Plan dated December 1999 as the Watershed Management Plan for the Richfield Bloomington Watershed Management Organization.

Dated at Saint Paul, Minnesota this 26th day of April 2000.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

DRAFT

BY: Kathleen Roer
Chair

Committee Recommendations

3. Brown's Creek Watershed District
Enlargement and Increase Number
of Managers
DECISION

DRAFT

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

DRAFT

In the Matter of the Enlargement and Increasing
the Number of Managers of the Brown's Creek
Watershed District in Washington County
pursuant to Minnesota Statutes §§ 103D.261 and .305

**ORDER ENLARGEMENT
OF BROWN'S CREEK
WATERSHED DISTRICT**

Whereas, Washington County filed a Petition dated September 26, 2000 with the Board of Water and Soil Resources (Board) on September 28, 2000, to enlarge the Brown's Creek Watershed District pursuant to Minn. Stat. § 103D.261, and increase the number of managers of the Brown's Creek Watershed District pursuant to Minn. Stat. § 103D.305, 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 OF FACT

1. **Establishment Petition.** The Petition (Exhibit 2) to enlarge and increase the number of managers of the Brown's Creek Watershed District dated September 26, 2000, was filed by Washington County with the Board on September 28, 2000.
2. **Property Description.** The territory to be included in the watershed district, the Petitioned Area, is located in Washington County entirely within the metropolitan area and is approximately 9.7 square miles contiguous to the Brown's Creek Watershed District, which includes land in the Cities of Bayport, Oak Park Heights, and Stillwater, and the town of Baytown, and further depicted on a map attached to the petition as Exhibit A. The Petitioned Area includes the northern portion of the Middle St. Croix River Watershed Management Organization.

DRAFT

3. **District Name.** The Petition specifies the name of the enlarged district shall remain the "Brown's Creek Watershed District".
4. **Number of Managers.** The Petition specifies the number of managers shall be increased to seven (7) for two years, then return to the present number of five (5).
5. **Reasons for Change.** The Washington County Board authorized a Water Governance Study to identify and evaluate the best governance structure for water management in the County. The resulting report was adopted by the Washington County Board. The Petition is a direct result of the report and specifies the following:
 - A. Washington County has a relatively large number of watershed management organizations of small size compared to other metropolitan counties.
 - B. The ineffectiveness of some joint powers agreement watershed management organizations in Washington County.
 - C. Insufficient budget due to small size and limited tax capacity of some watershed management organizations.
 - D. Joint Powers Agreement Watershed Management Organizations have not established offices or a clear point of communication.
 - E. Washington County has coordinated issues relating to the enlargement such as financing policies, watershed management plans, and board manager representation.
6. **Hearing Order.** At its regular meeting on October 25, 2000, the Board determined that the Petition met the requirements of Minn. Stat. §§ 103D.261 and 103D.305, and consequently ordered a public hearing to be held on the Petition for the Brown's Creek Watershed District Enlargement and Increase Number of Managers. (Exhibit 7)
7. **Hearing Notice.** Legal notice of the public hearing on the proposed watershed district enlargement and increase number of managers, pursuant to Minn. Stat. §§ 103D.261, Subd. 1 (c) and 103D.305, Subd. 4, was published in the Stillwater Evening Gazette on November 7 and 16, 2000, and in the Lillie Suburban Newspaper the Oakdale-Lake Elmo Review on November 8 and 15, 2000. (Exhibits 10 and 11) Further, a copy of the hearing notice was

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mailed to approximately 30 addressees including the Washington County Auditor, Washington County Attorney, Washington County Administrator, legal counsel for the watershed district, all of the cities in the proposed watershed district, all of the towns in the proposed watershed district, the SWCD, and the DNR. (Exhibit 8)

8. **Public Hearing.** A public hearing was held on the enlargement and increasing the number of managers of the Brown's Creek Watershed District on November 27, 2000, at the Washington County Government Center, 14900 North 61st Street, Room 560, Stillwater, Minnesota. The proceedings were tape recorded. The hearing panel was the Metro Water Planning Subcommittee which consisted of Board members Kathleen Roer, Dwain Otte, and Jack Frost as chair.

Jim Haertel, Board staff, entered Exhibits 1 through 11 into the record by reading a brief description of each exhibit.

Exhibit 1. Letter dated September 26, 2000, from Linda Krafthefer, Washington County Assistant Attorney, forwarding the Petition, which is Exhibit 2.

Exhibit 2. Petition dated September 26, 2000, from Washington County to enlarge the Brown's Creek Watershed District and increase the number of managers.

Exhibit 3. Attachment to Petition labeled "Exhibit A" which is a map of the proposed enlargement.

Exhibit 4. Attachment to Petition labeled "Exhibit B" which is a document entitled "Report for Water Governance Study, Washington County, Minnesota" dated May, 1999.

Exhibit 5. Letter dated October 12, 2000, from Linda Krafthefer, Washington County Assistant Attorney, forwarding Acceptance of Service of Petition.

Exhibit 6. Acceptance of Service of Petition signed by Louis Smith, Brown's Creek Watershed District Counsel, dated September 27, 2000.

Exhibit 7. Order dated October 25, 2000, from the Board of Water and Soil Resources for a Public Hearing on the Petition.

Exhibit 8. Letter dated November 3, 2000, from Jim Haertel to approximately 30 addressees notifying them of the public hearing, including copies of the legal notice and map.

Exhibit 9. Legal Notice of Public Hearing dated October 26, 2000, signed by Jim Haertel.

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Exhibit 10. Affidavit of Publication dated November 21, 2000, of Legal Notice in the Stillwater Evening Gazette on November 7 and 16, 2000.

Exhibit 11. Affidavit of Publication dated November 15, 2000, of Legal Notice in the Lillie Suburban Newspaper the Oakdale-Lake Elmo Review on November 8 and 15, 2000.

Exhibit 12. Written testimony dated November 27, 2000 of Craig Leiser.

Exhibit 13. Map presented by Craig Leiser entitled "Boundary Between Valley Branch WD and Brown's Creek WD.

Exhibit 14. Brown's Creek Watershed District Resolution No. 00-03 dated August 7, 2000 adopting a position regarding the Washington County Water Governance Study.

Exhibit 15. Middle St. Croix River Watershed Management Organization Resolution No. 00-02 dated July 13, 2000 opposing the proposed merger of the Brown's Creek Watershed District, Carnelian-Marine Watershed District, Marine on the St. Croix Watershed Management Organization, and the Middle St. Croix River Watershed Management Organization.

Exhibit 16. A cover page entitled "The State of Watershed Water Quality Management in Minnesota" by Environmental Ground, Inc., undated, funded by Minnesota Future Resources Fund and The McKnight Foundation, with pages 125 and 126 attached and reference to the entire document.

Exhibit 17. Middle St. Croix River Watershed Management Organization Resolution No. 00-02 dated July 13, 2000, regarding an unfavorable position towards the Washington County Water Governance Study proposal.

Exhibit 18. Document entitled "Washington County Petition for Enlargement of Brown's Creek Watershed District Public Hearing – November 27, 2000 Testimony Submitted by Washington County", consisting of 6 pages.

After all people present at the public hearing were given an opportunity to speak, the hearing record was left open for three weeks until 4:30 PM on December 18, 2000, for receipt of written comments. The following exhibits were received while the record was open.

Exhibit 19. BWSR Metro Region Staff report dated December 18, 2000 recommending the proposed enlargement be approved and the board of managers stay at five.

Exhibit 20. Washington County cover page received December 18, 2000, transmitting exhibits 21-27.

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Exhibit 21. Document entitled "Washington County Petition for Enlargement of Brown's Creek Watershed District Public Hearing – November 27, 2000 Testimony Submitted by Washington County", consisting of 6 pages.

Exhibit 22. Bound document entitled "Implementation Strategy Report Washington County Water Governance Study Adopted in July 1999 by the County Board of Commissioners".

Exhibit 23. Two pages detailing the number of WMO's affecting LGU's and levy values.

Exhibit 24. Three pages detailing the size of the proposed enlargement.

Exhibit 25. One page showing expiration dates of Board of Manager terms for Brown's Creek WD.

Exhibit 26. Document entitled "Washington County Water Governance Project Participatory process documentation, July 1998-December 2000".

Exhibit 27. Document entitled "A Comparative Review of Watershed Management plans and rules for Northern Washington County's water management organizations", dated September 2000.

Exhibit 28. E-mail from Jane Harper to Phil Belfiori received December 18, 2000 entitled "Washington County's Petition to Enlarge the Brown's Creek Watershed District and to Increase the Number of Managers" supplemental testimony to explain the revised strategy time line for full consolidation into a Northern Washington County Water Unit.

9. **Board Staff Report.** The Board's metro region staff report dated December 18, 2000, (Exhibit 19) supported the proposed enlargement be approved and the number of managers remain at five.
10. **Hearing Panel.** The hearing panel met on January 12, 2001, and, based on the oral and written record in this matter, decided with a unanimous vote to recommend to the full Board that the Brown's Creek Watershed District be enlarged as proposed in the Petition and that the number of managers remain at five instead of being increased to seven for a period of two years as proposed in the Petition. The enlargement would be for the public welfare and public interest and the purpose of Minnesota Statutes Chapters 103B and 103D would be served. The proposed increase in number of managers would not benefit the public welfare, public interest and the purpose of Minnesota Statutes Chapters 103B and 103D.

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In arriving at a decision on the number of managers, the hearing panel noted the following:

- (A) there is presently one manager position vacant which the Washington County Board should make an effort to fill with a qualified candidate from the enlargement area;
- (B) two manager terms expire in nine months which affords the Washington County Board additional opportunities in the very near future for manager representation in the enlargement area;
- (C) a watershed district manager should consider and represent the entire watershed and not one area, one subwatershed, one city, or one town;
- (D) watershed district managers "... must be appointed to fairly represent the various hydrologic areas within the watershed district by residence of the manager appointed" (See Minn. Stat. § 103D.311, Subd. 3 (c));
- (E) the area, population and number of water resource issues of the enlarged watershed district are not as large or great in comparison to other metropolitan watershed districts, which almost all have five managers;
- (F) there is presently only one metropolitan watershed district that has more than five managers and it is much larger in area, has a much greater population and has many more water resource issues than the enlarged watershed district;
- (G) five managers is the number the Petition specifies after a two year transition period of an additional two managers;
- (H) during the transition period the enlarged watershed district should appoint a transition team from the enlargement area to consult with the watershed district managers.

The hearing panel also recommended that the watershed management plan for the Brown's Creek Watershed District be amended within two years to include the enlargement area.

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CONCLUSIONS

1. The Petition for the enlargement and increasing the number of managers of the Brown's Creek Watershed District is valid in accordance with Minn. Stat. §§ 103D.261 and 103D.305.
2. Proper notice of hearing was given and the public hearing was held in accordance with applicable laws.
3. All relevant substantive and procedural requirements of law and rule have been fulfilled.
4. The Board has proper jurisdiction in the matter of ordering a watershed district enlargement.
5. The enlargement of the Brown's Creek Watershed District as proposed in the Petition would be for the public welfare and public interest and the purpose of Minnesota Statutes Chapters 103B and 103D would be served.
6. Increasing the number of managers of the Brown's Creek Watershed District as proposed in the Petition would not benefit the public welfare, public interest and the purpose of Minnesota Statutes Chapters 103B and 103D.
7. During the transition period the Brown's Creek Watershed District should appoint a transition team from the enlargement area to consult with the watershed district managers.
8. The Brown's Creek Watershed District Watershed Management Plan should be amended within two years to include the enlargement area.

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ORDER

The Board hereby orders that the Brown's Creek Watershed District be enlarged per the Washington County Petition (Exhibit 2) dated September 26, 2000, according to Exhibit A of said Petition (Exhibit 3) attached and made a part of this Order hereof and that the number of managers remain at five.

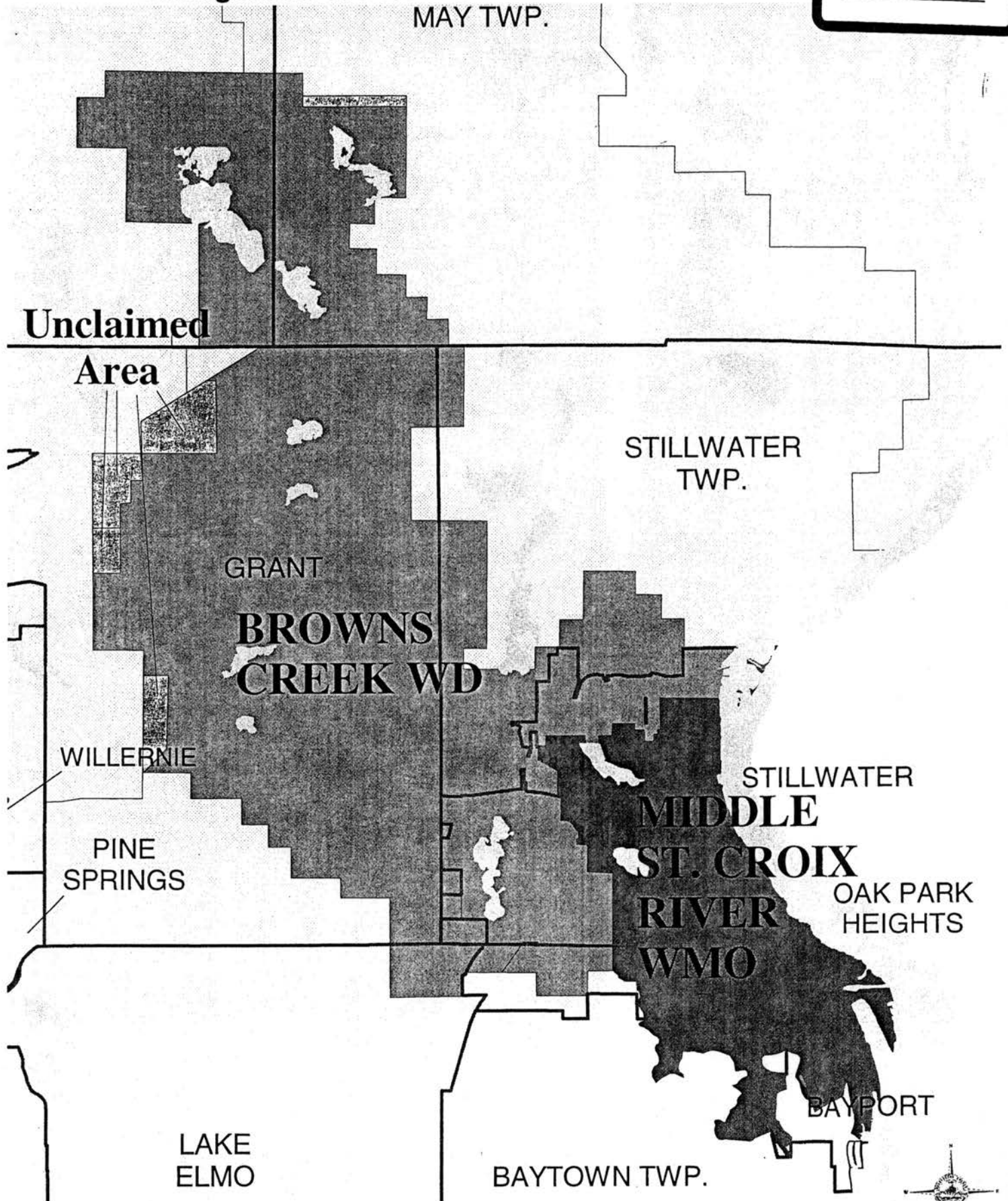
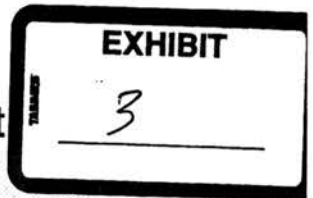
Dated at Saint Paul, Minnesota this 24th day of January, 2001.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

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By: _____
Kathleen M. Roer, Chair

Exhibit A
Washington County
Enlargement of Brown's Creek Watershed District
MAY TWP.



Committee Recommendations

4. Valley Branch Watershed District
Enlargement and Increase Number
of Managers
DECISION

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

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In the Matter of the Enlargement and Increasing
the Number of Managers of the Valley Branch
Watershed District in Washington County
pursuant to Minnesota Statutes §§ 103D.261 and .305

**ORDER ENLARGEMENT
AND NAME CHANGE OF
VALLEY BRANCH
WATERSHED DISTRICT**

Whereas, Washington County filed a Petition dated September 7, 2000 with the Board of Water and Soil Resources (Board) on September 14, 2000, to enlarge and change the name of the Valley Branch Watershed District pursuant to Minn. Stat. § 103D.261, and increase the number of managers of the Valley Branch Watershed District pursuant to Minn. Stat. § 103D.305, 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 OF FACT

1. **Establishment Petition.** The Petition (Exhibit 2) to enlarge, change the name, and increase the number of managers of the Valley Branch Watershed District dated September 7, 2000, was filed by Washington County with the Board on September 14, 2000.
2. **Property Description.** The territory to be included in the watershed district, the Petitioned Area, is located in Washington County entirely within the metropolitan area and is approximately 59.3 square miles contiguous to the Valley Branch Watershed District, which includes land in the Cities of Afton, Bayport, Cottage Grove, Hastings, Lake St. Croix Beach, Lakeland, Lakeland Shores, Oak Park Heights, and St. Mary's Point, and the towns of Baytown, Denmark, and West Lakeland, and further depicted on a map attached to the

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Petition as Exhibit A. The Petitioned Area includes the southern portion of the Middle St. Croix River Watershed Management Organization and the entire Lower St. Croix Watershed Management Organization.

3. **District Name.** The Petition specifies the name of the enlarged district shall be the "Lower St. Croix Valley Watershed District".
4. **Number of Managers.** The Petition specifies the number of managers shall be increased to seven (7) for two years, then return to the present number of five (5).
5. **Reasons for Change.** The Washington County Board authorized a Water Governance Study to identify and evaluate the best governance structure for water management in the County. The resulting report was adopted by the Washington County Board. The Petition is a direct result of the report and specifies the following:
 - A. Washington County has a relatively large number of watershed management organizations of small size compared to other metropolitan counties.
 - B. The ineffectiveness of some joint powers agreement watershed management organizations in Washington County.
 - C. Insufficient budget due to small size and limited tax capacity of some watershed management organizations.
 - D. Joint Powers Agreement Watershed Management Organizations have not established offices or a clear point of communication.
 - E. Washington County has coordinated issues relating to the enlargement such as financing policies, watershed management plans, and board manager representation.
6. **Hearing Order.** At its regular meeting on October 25, 2000, the Board determined that the Petition met the requirements of Minn. Stat. §§ 103D.261 and 103D.305, and consequently ordered a public hearing to be held on the Petition for the Valley Branch Watershed District Enlargement and Increase Number of Managers. (Exhibit 6)

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7. **Hearing Notice.** Legal notice of the public hearing on the proposed watershed district enlargement and increase number of managers, pursuant to Minn. Stat. §§ 103D.261, Subd. 1 (c) and 103D.305, Subd. 4, was published in the Stillwater Evening Gazette on November 7 and 16, 2000, and in the Lillie Suburban Newspaper the Oakdale-Lake Elmo Review on November 8 and 15, 2000. (Exhibits 9 and 10) Further, a copy of the hearing notice was mailed to approximately 60 addressees including the Washington County Auditor, Washington County Attorney, Washington County Administrator, legal counsel for the watershed district, all of the cities in the proposed watershed district, all of the towns in the proposed watershed district, the SWCD, and the DNR. (Exhibit 7)
8. **Public Hearing.** A public hearing was held on the enlargement and increasing the number of managers of the Valley Branch Watershed District on November 29, 2000, at the Lake Elmo City Hall, 3800 Laverne Avenue North, Lake Elmo, Minnesota. The proceedings were tape recorded. The hearing panel was the Metro Water Planning Subcommittee which consisted of Board members Dwain Otte, Jack Frost, and Kathleen Roer as chair.

Jim Haertel, Board staff, entered Exhibits 1 through 10 into the record by reading a brief description of each exhibit.

Exhibit 1. Letter dated September 12, 2000, from Howard Turrentine, Washington County Assistant Attorney, forwarding the Petition, which is Exhibit 2.

Exhibit 2. Petition dated September 7, 2000, from Washington County to enlarge the Valley Branch Watershed District and increase the number of managers.

Exhibit 3. Attachment to Petition labeled "Exhibit A" which is a map of the proposed enlargement.

Exhibit 4. Attachment to Petition labeled "Exhibit B" which is a document entitled "Report for Water Governance Study, Washington County, Minnesota" dated May, 1999.

Exhibit 5. Acceptance of Service of Petition signed by Raymond Marshall, Valley Branch Watershed District Counsel, dated September 11, 2000.

Exhibit 6. Order dated October 25, 2000, from the Board of Water and Soil Resources for a Public Hearing on the Petition.

Exhibit 7. Letter dated November 3, 2000, from Jim Haertel to approximately 60 addressees notifying them of the public hearing, including copies of the legal notice and map.

Exhibit 8. Legal Notice of Public Hearing dated October 26, 2000, signed by Jim Haertel.

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Exhibit 9. Affidavit of Publication dated November 21, 2000, of Legal Notice in the Stillwater Evening Gazette on November 7 and 16, 2000.

Exhibit 10. Affidavit of Publication dated November 15, 2000, of Legal Notice in the Lillie Suburban Newspaper the Oakdale-Lake Elmo Review on November 8 and 15, 2000.

Exhibit 11. Document entitled "Washington County Petition for Enlargement of Valley Branch Watershed District Public Hearing – November 29, 2000 Testimony Submitted by Washington County", consisting of 10 pages.

Exhibit 12. Bound document entitled "Implementation Strategy Report Washington County Water Governance Study" adopted July 1999 by the County Board of Commissioners.

Exhibit 13. One sheet of paper showing acreage and square miles for Brown's Creek and Valley Branch Watershed Districts for both existing and proposed (new).

Exhibit 14. Color map, approximately 11" by 17" entitled "Approximate Natural Watershed" dated November 13, 2000.

Exhibit 15. Four pages entitled "Washington County Water Governance Study Implementation Strategy Report" dated February 2000.

Exhibit 16. May 18, 2000 letter from Jane Harper to five addressees regarding "Treasurers Subcommittee Meeting" including six attached pages.

Exhibit 17. Brown's Creek Watershed District Resolution No. 00-03 dated August 7, 2000 regarding a favorable position towards the Washington County Water Governance Study proposal.

Exhibit 18. Carnelian-Marine Watershed District resolution dated August 7, 2000 regarding an unfavorable position towards the Washington County Water Governance Study proposal.

Exhibit 19. City of Oak Park Heights Resolution No. 00-10-51 regarding an unfavorable position towards the Washington County Water Governance Study proposal.

Exhibit 20. Lake St. Croix Beach Resolution No. 00-12 regarding an unfavorable position towards the Washington County Water Governance Study proposal.

After all people present at the public hearing were given an opportunity to speak, the hearing record was left open for three weeks until 4:30 PM on December 20, 2000, for receipt of written comments. The following exhibits were received while the record was open.

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Exhibit 21. West Lakeland Township Resolution No. 2000-6 dated November 15, 2000 not supporting the Petition.

Exhibit 22. BWSR Metro Region Staff Report dated December 18, 2000, recommending the proposed enlargement be approved and the board of managers be increased to seven.

Exhibit 23. Washington County cover page received December 19, 2000, transmitting exhibits 24 and 25.

Exhibit 24. Three pages detailing the size of the proposed enlargement.

Exhibit 25. Document entitled "Washington County Water Governance Study Participation Process Documentation July 1998-December 2000".

Exhibit 26. City of Lakeland Resolution No. 2000-16 dated December 19, 2000 not supporting the Petition.

Exhibit 27. City of Lakeland Shores Resolution No. 2000-12-2 dated December 6, 2000 not supporting the Petition.

Exhibit 28. Facsimile transmittal from City of Oak Park Heights of what appears to be an article from a newspaper about the Carnelian-Marine Watershed District winning a state award.

Note: all the following exhibits were delivered from David Beaudet on December 20, 2000.

Exhibit 29. Two pages entitled "History of Water Governance Study for Washington County, Minnesota" from May 1998-September 2000.

Exhibit 30. Washington County Board Agenda for March 7, 2000 with attached request for Board Action on the Implementation Strategy Report for the Water Governance Study.

Exhibit 31. Six legal pages numbered 377-382 dated September 19, 2000, excerpted from Washington County Board of Commissioners meeting minutes, detailing the Brown's Creek WD petition.

Exhibit 32. One legal page numbered 176 dated June 1, 1999, excerpted from Washington County Board of Commissioners meeting minutes, with some details about the Comfort Lake-Forest Lake WD petition and the Water Governance Study.

Exhibit 33. Washington County Board Agenda and excerpted minutes from August 8, 2000 regarding the Petition.

Exhibit 34. Washington County request for Board Action and excerpted minutes from April 4, 2000 regarding the Water Governance Study.

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Exhibit 35. Excerpts from Washington County Board of Commissioners meeting minutes of June 27, 2000, regarding the Water Governance Study.

Exhibit 36. One page from Craig Leiser on the Northern Unit Work Group dated around March 13, 2000.

Exhibit 37. One page entitled "Financial Guidelines for Watershed North".

Exhibit 38. One page entitled "Watershed Mtg" dated 3/8/00.

Exhibit 39. One page entitled "Boundary Issues".

Exhibit 40. One page entitled "North Washington Water Unit Property Tax Impact".

Exhibit 41. Middle St. Croix WMO Resolution No. 00-02 dated July 13, 2000 not supporting the Petition.

Exhibit 42. Four pages entitled "Washington County Water Governance Study Boundaries Work Group November 22, 1999 Meeting Summary".

Exhibit 43. Four page letter dated March 20, 2000, from the Managers of the Carnelian-Marine Watershed District to the Washington County Board of Commissioners recommending a phased approach to watershed district enlargements.

Exhibit 44. Three pages entitled "Washington County Water Governance Study North Unit Phasing Work Group March 13, 2000 Meeting Summary".

Exhibit 45. Five pages entitled "Washington County Water Governance Study Report on Joint Meeting of North Unit Phasing and Boundaries Work Groups July 10, 2000".

Exhibit 46. Two pages entitled "Washington County Water Governance Study North Unit Phasing Work Group August 2000".

Exhibit 47. Three pages entitled "Washington County Water Governance Study Boundary Concerns – Central Communities September 22, 1999 Meeting Summary".

Exhibit 48. Four pages entitled "Boundaries Work Group".

Exhibit 49. Two pages entitled "Staffing and Budget Summary for Water Management Organizations in Washington County January 2000".

Exhibit 50. 42 pages with the cover dated July 6, 1999, from Jane Harper to the Water Governance Work Group regarding the County Board presentation – July 20, 1999.

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9. **Board Staff Report.** The Board's metro region staff report dated December 18, 2000, (Exhibit 22) supported the proposed enlargement be approved and the number of managers be increased to seven.
10. **Hearing Panel.** The hearing panel met on January 12, 2001, and, based on the oral and written record in this matter, decided with a unanimous vote to recommend to the full Board that the Valley Branch Watershed District be enlarged as proposed in the Petition, that the name be changed as proposed in the Petition, and that the number of managers remain at five instead of being increased to seven for a period of two years as proposed in the Petition. The enlargement would be for the public welfare and public interest and the purpose of Minnesota Statutes Chapters 103B and 103D would be served. The increase in number of managers would not benefit the public welfare, public interest and the purpose of Minnesota Statutes Chapters 103B and 103D.

In arriving at a decision on the number of managers, the hearing panel noted the following:

- (A) one Washington County manager term expires in less than ten months which affords the Washington County Board an opportunity in the very near future for manager representation in the enlargement area;
- (B) the single Ramsey County manager term expires in less than nine months and in the near future the small portion of Ramsey County that is in the Valley Branch Watershed District may be included in the Ramsey-Washington Metro Watershed District thereby affording the Washington County Board an opportunity for manager representation in the enlargement area;
- (C) a watershed district manager should consider and represent the entire watershed and not one area, one subwatershed, one city, or one town;
- (D) watershed district managers "... must be appointed to fairly represent the various hydrologic areas within the watershed district by residence of the manager appointed" (See Minn. Stat. § 103D.311, Subd. 3 (c));

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- (E) the area, population and number of water resource issues of the enlarged watershed district are not as large or great in comparison to other metropolitan watershed districts, which almost all have five managers;
- (F) there is presently only one metropolitan watershed district that has more than five managers and it is much larger in area, has a much greater population and has many more water resource issues than the enlarged watershed district;
- (G) five managers is the number the Petition specifies after a two year transition period of an additional two managers;
- (H) during the transition period the enlarged watershed district should appoint a transition team from the enlargement area to consult with the watershed district managers.

The hearing panel also recommended that the watershed management plan for the Lower St. Croix Valley Watershed District be amended within two years to include the enlargement area.

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CONCLUSIONS

1. The Petition for the enlargement, name change, and increasing the number of managers of the Valley Branch Watershed District is valid in accordance with Minn. Stat. §§ 103D.261 and 103D.305.
2. Proper notice of hearing was given and the public hearing was held in accordance with applicable laws.
3. All relevant substantive and procedural requirements of law and rule have been fulfilled.
4. The Board has proper jurisdiction in the matter of ordering a watershed district enlargement and name change.
5. The enlargement of the Valley Branch Watershed District as proposed in the Petition would be for the public welfare and public interest and the purpose of Minnesota Statutes Chapters 103B and 103D would be served.
6. The name of the enlarged Valley Branch Watershed District should be changed to the "Lower St. Croix Valley Watershed District" pursuant to Minn. Stat. § 103D.261, Subd. 2 (b).
7. Increasing the number of managers of the Valley Branch Watershed District as proposed in the Petition would not benefit the public welfare, public interest and the purpose of Minnesota Statutes Chapters 103B and 103D.
8. During the transition period the Lower St. Croix Valley Watershed District should appoint a transition team from the enlargement area to consult with the watershed district managers.
9. The Lower St. Croix Valley Watershed District Watershed Management Plan should be amended within two years to include the enlargement area.

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ORDER

The Board hereby orders that the Valley Branch Watershed District be enlarged per the Washington County Petition (Exhibit 2) dated September 7, 2000, according to Exhibit A of said Petition (Exhibit 3) attached and made a part of this Order hereof, that the name be changed to the "Lower St. Croix Valley Watershed District", and that the number of managers remain at five.

Dated at Saint Paul, Minnesota this 24th day of January, 2001.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

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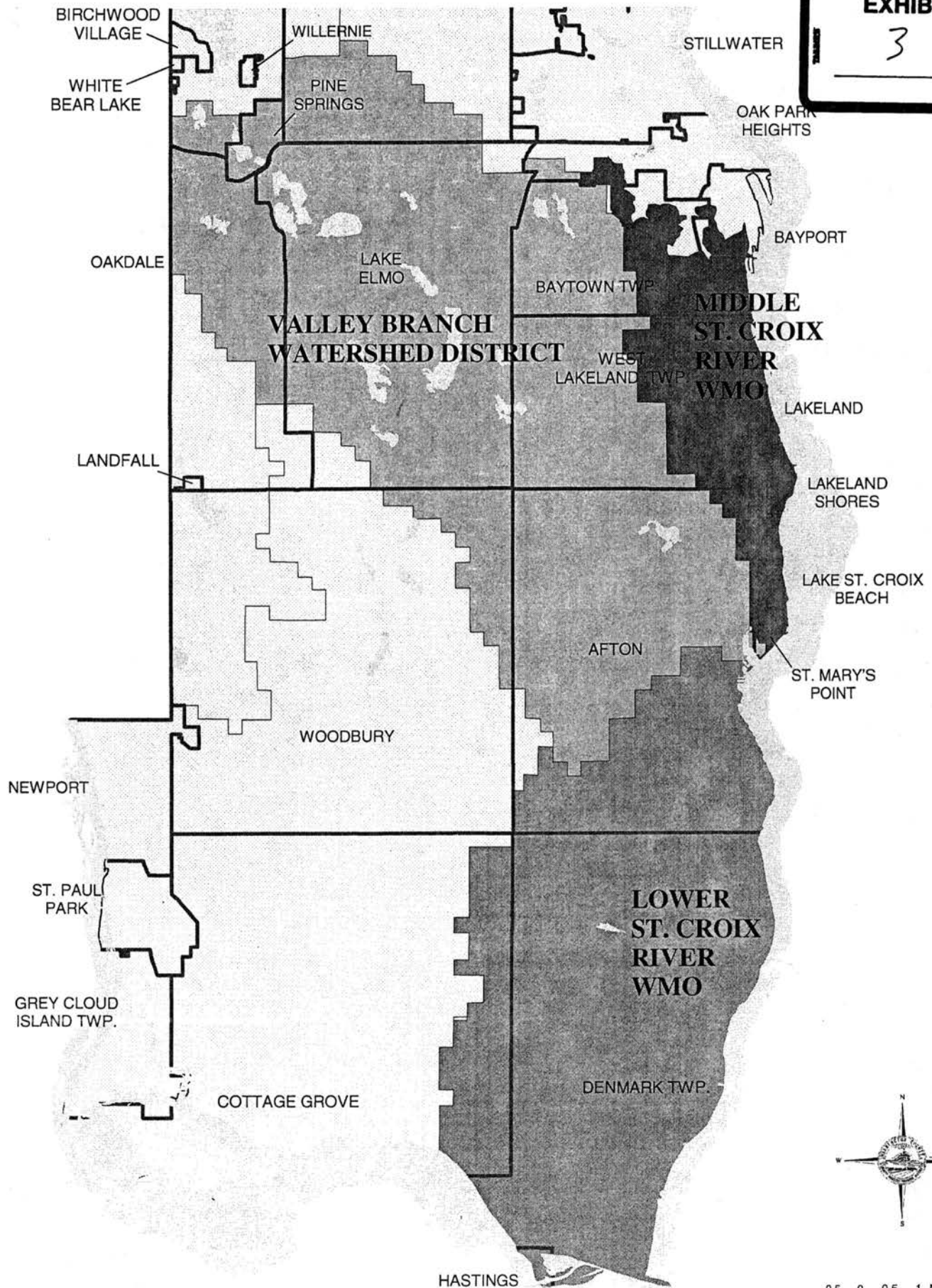
By: _____
Kathleen M. Roer, Chair

EXHIBIT A

Proposed Lower St. Croix River Watershed District
(Enlargement of Valley Branch Watershed District)

EXHIBIT

3



Committee Recommendations

5. Carnelian-Marine Watershed District
Enlargement and Increase Number
of Managers Hearing
DECISION

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 Enlargement and Increasing
the Number of Managers of the Carnelian-Marine
Watershed District in Washington County pursuant
to Minnesota Statutes §§ 103D.261 and 103D.305

**ORDER ENLARGEMENT
AND INCREASE NUMBER
OF MANAGERS HEARING**

Whereas, Washington County filed a Petition dated November 28, 2000 with the Board of Water and Soil Resources (Board) on December 6, 2000, to enlarge the Carnelian-Marine Watershed District pursuant to Minn. Stat. § 103D.261 and increase the number of managers of the Carnelian-Marine Watershed District pursuant to Minn. Stat. § 103D.305, 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. **Petition.** The Petition to enlarge and increase the number of managers of the Carnelian-Marine Watershed District was filed by Washington County with the Board on December 6, 2000.
2. **District Name.** The name of the proposed enlarged watershed district shall remain the "Carnelian-Marine Watershed District".

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3. **Property Description.** The territory to be included in the watershed district, the Petitioned Area, is located in Washington County entirely within the metropolitan area and is approximately 39 square miles contiguous to the Carnelian-Marine Watershed District, which includes land in the City of Marine on St. Croix and in the towns of May, New Scandia and Stillwater, and further depicted on a map attached to the petition as Exhibit A. The Petitioned Area includes the Marine on St. Croix Watershed Management Organization.
4. **Increase Number of Managers.** The Board of Managers is proposed to be increased from five managers to seven managers for the first two years, then return to five managers after the first two years. The two proposed new manager positions would represent the subwatershed currently managed by the Marine on St. Croix Watershed Management Organization.
5. **Reasons for change.** The Washington County Board authorized a Water Governance Study to identify and evaluate the best governance structure for water management in the County. The resulting report was adopted by the Washington County Board. The Petition is a direct result of the report and specifies the following:
 - A. Washington County has a relatively large number of watershed management organizations of small size compared to other metropolitan counties.
 - B. The ineffectiveness of some joint powers agreement watershed management organizations in Washington County.
 - C. Insufficient budget due to small size and limited tax capacity of some watershed management organizations.
 - D. Joint Powers Agreement Watershed Management Organizations have not established offices or a clear point of communication.
 - E. Washington County has coordinated issues relating to the enlargement such as financing policies, watershed management plans, and board manager representation.
6. **Petition Service.** The petition was served on the Board and the Carnelian-Marine Watershed District pursuant to Minn. Stat. § 103D.261, Subd. 1 (b).

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7. **Hearing Location.** The hearing should be held at the Marine on St. Croix City Council Chambers, 121 Judd Street, Marine on St. Croix, Minnesota. The facility is handicap accessible and located within the proposed Carnelian-Marine Watershed District.
8. **Hearing Panel.** The Board's Metropolitan Water Planning Subcommittee, presently consisting of Kathleen Roer, Dwain Otte, and Jack Frost, should preside over the hearing due to their familiarity with the issues, and bring a recommendation to the Board.
9. **Hearing Time.** The pertinent parties have been coordinated with such that the hearing should be held on Monday, February 26, 2001, starting at 7:00 PM.

CONCLUSIONS

1. The Petition for the enlargement and increasing the number of managers of the Carnelian-Marine Watershed District is valid in accordance with Minn. Stat. §§ 103D.261 and 103D.305.
2. All relevant substantive and procedural requirements of law and rule have been fulfilled.
3. The Board has proper jurisdiction in the matter of ordering a watershed district enlargement and increase number of managers hearing.

ORDER

The Board hereby orders that the hearing on the Enlargement and Increase Number of Managers of the Carnelian-Marine Watershed District be heard by the Metropolitan Water Planning Subcommittee on Monday, February 26, 2001, starting at 7:00 PM at the Marine on St. Croix City Council Chambers, 121 Judd Street, Marine on St. Croix, Minnesota.

Dated this 24th day of January, 2001.

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MINNESOTA BOARD OF WATER AND SOIL RESOURCES

By: _____
Kathleen M. Roer, Chair

New Business

1. Revised WCA Corrective
Action/Oversight Policy
DECISION

**MN Board of Water and Soil Resources
WCA Corrective Action/Oversight Policy**

Approval Date _____
Resolution # _____

The purpose of this policy is to establish the process that will be utilized to correct Local Government Unit (LGU) implementation and administration problems involving the Minnesota Wetland Conservation Act (WCA). The strategy of this policy is to provide a clear, concise, timely route to resolution through implementation of the following steps:

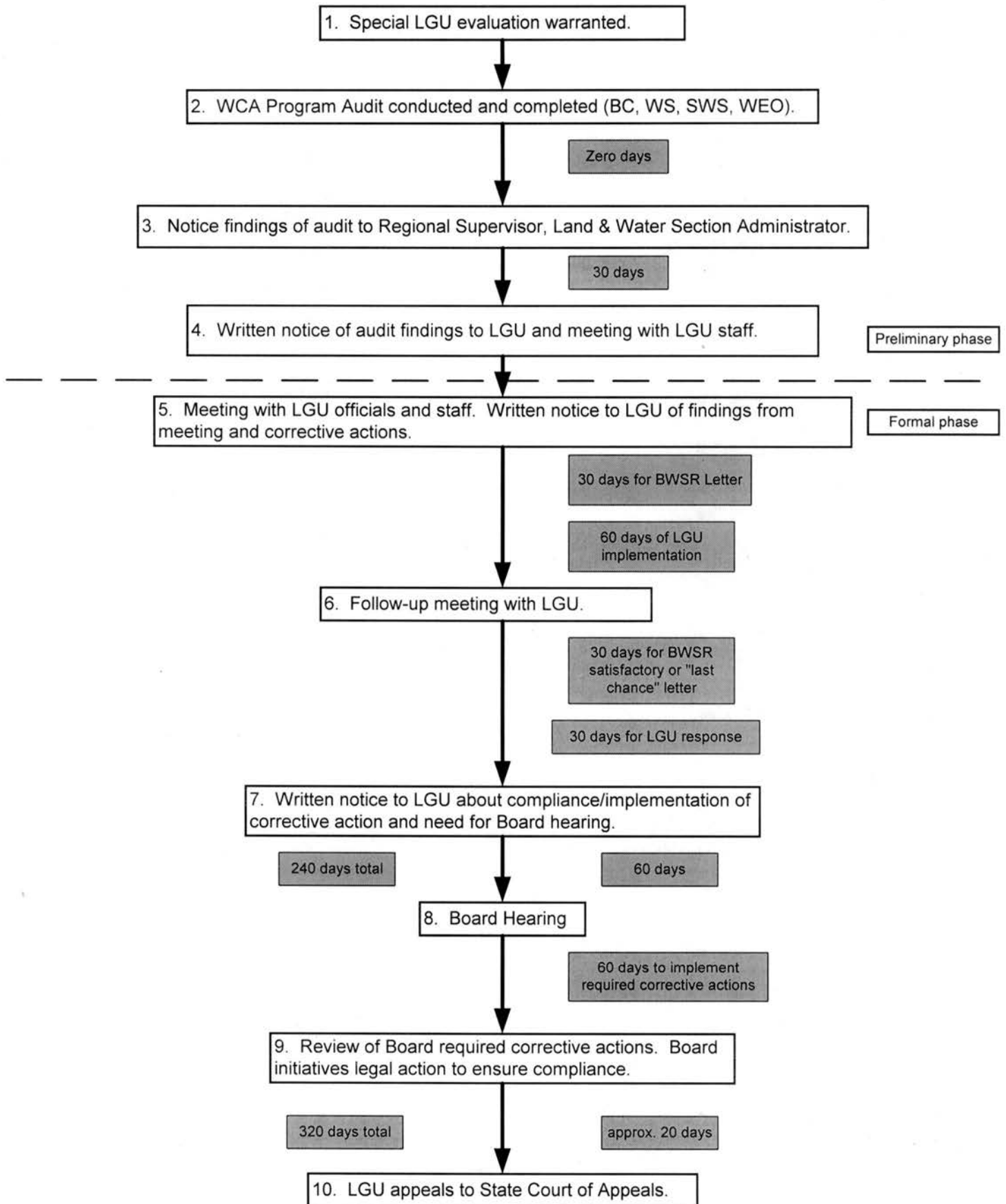
- 1) BWSR staff receives complaints or believes that special evaluation of a particular LGU is necessary.
- 2) A combination of the following staff shall conduct an investigation of the situation:
 - Board Conservationist (BC)
 - Wetland Specialist (WS)
 - Senior Wetland Specialist (SWS)
 - DNR Wetland Enforcement Officer (WEO)

This investigation shall:

- Verify who the responsible LGU is and that WCA has been adopted
 - Conduct an audit of WCA actions, grant funds and coordination efforts
 - Consult with other regulatory agency representatives
- 3) Staff will promptly notify Regional Supervisor (RS) and Land Water Section Administrator (LWSA) of findings upon audit completion. Staff, RS, and LWSA shall review the findings and determine if the situation requires continued implementation of this process or some other remedy.
 - 4) Within 30 days after completing the audit, the RS and BC shall notify the LGU staff in writing and via a meeting of findings which may include:
 - LGU properly applying WCA and no further action is needed; or
 - LGU needs to make minor changes in WCA application with BWSR assistance; or
 - LGU application is flawed seriously enough to require continuation of this process into the formal place.

- 5) If continued action is deemed necessary, BWSR staff shall arrange a meeting with appropriate LGU staff and elected officials to discuss the findings of the audit and determine any necessary corrective actions. Within 30 days after this meeting, BWSR staff shall provide the LGU with written findings and recommendations for corrective actions to be implemented by the LGU within 60 days from receipt of the written findings and recommendations.
- 6) BWSR Staff shall schedule a follow-up meeting at the end of the 60-day implementation process to review progress by the LGU. If corrective action(s) are proceeding satisfactorily, the RS and BC will notify the LGU of such in writing within 30 days and continue monitoring. If implementation is not proceeding satisfactorily, staff shall recommend to the Executive Director (ED) that a letter to the LGU be issued indicating unsatisfactory implementation of corrective measures and request a written response from the LGU within 30 days. This is a "last chance" provision.
- 7) The staff shall review the response received from the LGU. If the response is unsatisfactory, the Executive Director (ED) shall recommend to the Board that the LGU appear at a hearing before the Board, or committee thereof appointed by the Board, in accordance with MN Rule 8420.0260.
- 8) If a hearing is ordered and if it is determined at this hearing that corrective action is necessary, the Board shall write the LGU directing specific corrective action within 60 days.
- 9) If after the 60 day period described in Step #8 the LGU has not corrected the problem to the satisfaction of the Board, the Board shall take appropriate legal action to ensure compliance. Actions may include:
 - Declaring a moratorium until actions are corrected;
 - Withholding WCA funding
 - Assignment of WCA authority to another party
 - State auditor review of LGU
 - Legal actions by State of Minnesota
- 10) An LGU appeal of the Board's decision may be taken to the State Court of Appeals as specified in MN Rule 8420.0280 (Appeal from Board Decision).

WCA OVERSIGHT/CORRECTIVE ACTION PLAN
November 17, 2000



New Business

2. FY 01 NPEA Challenge Grants
DECISION

FY 01 NON POINT ENGINEERING ASSISTANCE CHALLENGE GRANTS

Amount Available - \$135,939

Grant Purpose – To provide additional engineering/technical assistance to landowners to implement high priority conservation practices.

Funding Priorities - The funding priorities as set forth by BWSR are that first funding should be to the JPBs 1) whose SWCDs received FY 01 Feedlot Water Quality Management Grants; and, 2) that will be employing additional staff to provide technical assistance.

Funding Recommendation - The BWSR received Applications from 7 JPBs requesting \$275,111. The total requested also includes \$11,970 for Eagle Point software updates recommended by BWSR staff.

Applications were reviewed by the G – Team. Applications recommended to be funded are itemized on the enclosed spreadsheet.

FY 01 NON POINT ENGINEERING ASSISTANCE CHALLENGE GRANT APPLICATIONS

AVAILABLE FUNDS - \$135,939

JPB	RECEIVED FWQMG	DESCRIPTION	FUNDS REQUESTED	FUNDS RECOMMENDED
1	NO	PURCHASE A SECOND SEAT OF AUTOCAD AND EAGLE POINT.	\$6,400	\$0
2	NO	HIRE A 1/2 FTE TECHNICIAN for 2YRS. APPLICANT TO PROVIDE A 1 : 1 CASH MATCH.	\$45,000	\$20,363
3	NO		\$0	
4	NO		\$0	
5	YES	HIRE A FT TECHNICIAN FOR 2 YRS. APPLICANT PROVIDING A 1 : 1 CASH MATCH. COMPUTERS AND EQUIPMENT.	\$40,000 \$39,350	\$23,100 \$5,000
6	NO	HIRE SUMMER INTERN FOR TECHNICAL ASSISTANCE. 2 SUMMERS	\$12,000	\$6,605
7	YES	ADDITIONAL FUNDS FOR CONSULTING ENGINEERING.	\$5,000	\$0
8	YES		\$0	
9	YES	CONTINUATION OF CURRENT (FY 99) CHALLENGE GRANT POSITION. 1 YR.	\$47,434	\$37,368
10	YES		\$0	
11	YES	FUNDS FOR BUDGET SHORTFALL FOR THE EMPLOYMENT OF 2 ENGINEERS. 2 YRS. ADDITIONAL TOTAL SURVEY STATION.	\$56,837 \$11,120	\$27,020 \$4,513
ALL		EAGLE POINT SOFTWARE UPDATE FOR ALL JPBs.	\$11,970	\$11,970
TOTAL			\$275,111	\$135,939

H:01NPEACGR

FOR YOUR INFORMATION
(January 24, 2001)

- BWSR Update
- BWSR News Release
- Farm Bill Forum information
- Minnesota Senate and House of Representatives 2001 Membership
- Minnesota Statutes Annotated, Volume 8A and 8B
- Wetland Regulations Legislative Report
- "Agri News" article, *Carver SWCD honored for marketing conservation*
- "Agri News" article, *SWCDs establish priorities based on needs*
- Memo from Helen Bohrer, regarding mileage rate



Board of Water and Soil Resources UPDATE

A publication of the Minnesota Board of Water and Soil Resources

January 2001

SOUTH

The Quad Lakes Restoration Project seeks to improve the water quality of five lakes in Southern Blue Earth and Northern Faribault counties. That's right, five lakes! The association was formed to oversee this restoration project and decided to stick with the name of the project and organization that had taken them thus far. Bass, Lura, Rice (near Wells), Rice (near Delevan), and Minnesota lakes benefit from the work of the Quad Lakes Association. It's always a fun meeting with a bunch of citizens that simply want to preserve shoreland from further development, restore wetlands, and stabilize shoreline.

To date, the Quad Lakes Association has received \$650,000 from BWSR and LCMR grants to the Faribault SWCD. Bob Brush is the volunteer watershed project director. The Faribault SWCD has worked with the association to develop a process that is similar to the state cost-share program. Michele Stindtman tracks projects for financial reporting, while the DNR fisheries division tracks the water quality improvement aspects. The Quad Lakes Association develops project plans and recommends payment with the final decisions resting with Faribault SWCD. The process had some bumps that needed to get worked through early. Bidding on jobs, notification of county boards on land purchases, and timely payments to contractors were some of the things that needed to be hammered out as projects started to get done. With respectful and timely discussion, they did get things worked out, and the group is working well together.

Shoreline protection and restoration, preventing shoreline development, and wetland restoration have been the backbone of the Quad Lakes project. Bob Brush, as the volunteer project director, coordinated the restoration of four miles of eroding Lura Lake shoreline at a cost of \$148,000. One and one-half miles were accomplished at a minimal cost of \$31,000. Bob was able to convince the Faribault and Blue Earth county boards of the benefit this work would have on improved water quality and economics. Lura Lake is a three-mile-long lake straddling the Blue Earth and Faribault county lines. Daly Park is a Blue Earth County park that has benefited from a significant increase in campers over the last few years.

Bob also coordinated the acquisition of 230 acres of oak-lined shoreline on three different pieces. By teaming up to match funds with the Lura Lake Association, Pheasants Forever, Minnesota Deerhunters, and the National Turkey Federation, the Quad Lakes Association successfully acquired these shorelands through gifting the land or dollars for the land to the DNR. Bob explains that he heard about these pieces of land coming up for sale one night and the next morning, he and the DNR paid a visit to the landowner. Soon, another piece of oak-lined shoreline was preserved from development.

The Lake Association and the DNR staff are also CREP advocates and have been making landowners aware of CREP and the benefits it provides. Landowners are routinely directed to the Faribault or Blue Earth County SWCDs for further information.

-Submitted by Chris Hughes

NORTH

Not a lot to report this month with the holidays and all. Here's a sampling:

WCA

Due primarily to a high rate of staff turnover locally, the Mille Lacs County wetland program was in need of an overhaul. BC Keith Grow and wetland specialist Dan Eklund have been working closely with the local staff for the past six months to help put in place a local structure to implement WCA. They were successful, at least for now. Ron Shelito, Keith Grow, and Dan Eklund met with Mille Lacs County staff, SWCD staff, one commissioner, and an SWCD supervisor on Dec. 14, 2000, and reviewed steps taken by the Mille Lacs SWCD and county staff to improve communications and strengthen WCA implementation. The steps taken locally include: written definition of WCA roles and responsibilities for the county and SWCD; establishment of a monthly TEP panel meeting; attendance at WCA training by SWCD and county staff; and establishment of a local appeals board within the county.

Ron Harnack travel north to Little Falls on Dec. 20, 2000, to meet with a small group of WCA LGUs and BWSR field staff to discuss WCA allocation issues and potential rules issues.

Board of Water and Soil Resources Update, Page 2

Some points that were made at the meeting were:

- Site visits create a major WCA workload. Local staff reported that they site visit most every site.
- General landowner assistance takes a lot of LGU time and often does not show up in reports.
- Trust level between agencies and locals needs improvement.
- Locals need more flexibility to be more restrictive on high quality wetlands and less restrictive on others.

The group agreed that this type of meeting was worth doing and thanked Ron and John Jaschke for taking the time to meet with them.

Water Planning

We shot our first third-generation water plan through the system. The BWSR water plan committee met with the Todd County Water Plan group Dec. 7, 2000, in Brainerd. This plan was written by a consultant and was done in concert with the county overall comprehensive planning effort. There should be good cooperation between the two planning efforts in the future.

Education

Kamal Alsharif reports that the 2001 state envirothon will be held at Camp Wilderness Boy Scout Camp near Park Rapids May 23.

Kamal met with Stearns County Extension and other LGU folks to plan for the second environmental day. The group was successful in its first-year's effort and is considering expanding the one-day event to three days this year to accommodate the high demand from area schools.

-Submitted by Ron Shelito

METRO

Expect a large managers packet for your January meeting.

Many water plans were submitted to the Metro Region for review and should be ready for actions by the board at the January meeting. These include plan approvals for Sunrise River and Richfield-Bloomington WMOs. Browns Creek and Valley Branch Watershed Districts are seeking to enlarge their territories in conformance with the Washington County governance study findings. We expect at least two additional watershed district enlargement petitions to come before the board in 2001 as the governance study plan is implemented.

The Bassett WMO is kicking off an aggressive public informa-

tion effort as it rolls out a draft plan. This area of Hennepin County has been receiving a lot of attention from the League of Women Voters and several legislators who desire greater citizen participation in the WMO's activities. The Pioneer-Sarah and Elm Creek WMOs are just starting their second-generation planning effort in Western Hennepin County. These watersheds have opted to conduct a joint planning process, which bifurcates into two separate plans at the tail end of the process. It is an interesting approach, which hopefully creates some synergy that is currently lacking in this area.

Dakota and Scott counties are currently putting the finishing touches on paperwork for a Board of Innovation grant to study governance options in the Vermillion River Watershed. The grant award is a welcome sight, as it will help minimize the time that the watershed is not overseen by a coordinating body.

In addition to the Washington County district enlargements we anticipate arriving in early 2001, the board will be receiving the Carver County water plan, a Wright County WCA appeal action, a plan amendment from the South Washington Watershed District for the largest capital improvement project in its history, and the Black Dog WMO and Grass Lake WMO plans.

It is going to be a busy 2001!

-Submitted by Steve Woods

ETS

BWSR engineering technicians Karen Bonde, Jim Luniewski, and Kevin Zytkevich recently completed

development of numerous topographic base maps from late fall and winter total station survey work for CREP, RIM/WRP and regular RIM wetland restoration projects. These maps serve as the base for SWCD and BWSR design of wetland restorations, which is in full swing during the winter months.

Recent RIM and RIM/WRP wetland restoration applications have been reviewed and ranked by BWSR (Tom Wenzel, design engineer) and NRCS staff. There were a number of large restoration projects that ranked high this year. Selection of these large, high quality projects will result in fewer numbers of projects for these programs than in recent years, which is good in light of our very heavy wetland restoration design workload for CREP.

Over the past several years, Justin Jeffery, training and design engineer, has developed several engineering training courses

Board of Water and Soil Resources Update, Page 3

using Corel Presentations. Since then, BWSR switched to Microsoft software, including Power Point. Deb Salinas, office support staff, is helping Justin make the conversion to Power Point so we'll have the courses in a format that others can use. As is often the case, it's more complicated than we first expected.

Justin has made plans for a four-day construction inspection training course in March in Rochester. It will be followed by a one-day hands-on training session for concrete testing. Spread the word and check the Schedule of Events for details.

In our continuing efforts to seek grants for North Shore water quality protection, Gene Clark, lakeshore engineer, has partnered with the S. St. Louis SWCD to apply for another Great Lakes Commission grant. This one is for a revegetation demonstration project on the high clay bank in Sucker Bay. We're a bit disappointed that a planned partnership application with the U of M Duluth didn't pan out.

Last month, Gene assisted SWCD joint powers area five and Stearns SWCD staff conduct a site inspection of a slope failure on the Mississippi River near Clear Lake. The problem is a difficult one for which the SWCD staff are looking for advice. Snow limited the investigation, which will need follow up in the spring.

Al Kean, chief engineer, has been working with the MDA to help prepare a report to the legislature regarding feedlot financial needs to comply with the new feedlot rules. The report pulled together a lot of numbers about feedlots and feedlot financial and technical assistance programs in Minnesota. The report will be finalized by Feb. 1, when it's due to the legislature.

-Submitted by Al Kean

EASEMENTS

Vanessa Lundheim and Steve Hennessy joined the Conservation Easement section this month. They will work as easement processing assistants and both bring with them individual skills and experience that will be assets for BWSR and the Conservation Easement section.

Vanessa comes to us from the private sector where she has over 15 years of experience in office administration, file management, and data processing.

Steve comes to us from the Minnesota DNR with work experience as a GIS/planner for the Division of Parks. Steve has a B.S. degree in recreation resource management from the University of Minnesota. He has excellent experience with GIS

mapping, creating digital information, and managing GIS data in ArcView.

They started their employment on Jan. 3 and are presently in a temporary work space until the office building modifications are completed, which we are hoping will be completed by mid-March.

-Submitted by Kevin Lines

BRIEFS

The Grants Team has created a resource within BWSR's e-mail system to keep everyone up to date on grant-related activities. The resource is called "Grants Activity." In this resource you can find the following: a calendar outlining when grant-related items are due; and folders, which contain information such as compliance, forms, memos, and links.

This resource was designed as a communication tool. Users can ask grant-related questions and share information. One of its key benefits is that it is in one central location.

Accessing the resource is easy. Here are the steps:

1. Log onto the Internet. (*Remote offices must use their back-up GroupWise icon.*)
2. Access your GroupWise mailbox.
3. Proxy into the resource by typing "Grants Activity" or "Activity, Grants."

In addition to the internal resource, please check the BWSR website for a monthly grants calendar that our LGUs can use. If you have question about these new features, contact Michelle Lewis at 651-296-2428.

A karst curriculum was the subject of a story in the Jan. 9 edition of the *Rochester Post-Bulletin*. The traveling exhibit and curriculum will be at three nature centers in Southern Minnesota through April 27. The exhibit and curriculum were made by the Science Museum of Minnesota for the Southeast Minnesota Water Resources Board to help teach about the fragile karst geology of the region. The project was made possible through a grant that LCMR/BWSR administered to the Southeast Joint Powers Board.

**Deadline for next
Update: February 21**



NEWS RELEASE

Minnesota Board of Water and Soil Resources • One West Water Street, #200 • St. Paul, MN 55107
Contact: Peter Raeker, Communications Office; 651-296-0884; fax: 651-297-5615

January 8, 2001
For immediate release

BWSR REPORTING SYSTEM ANALYZES PROJECT OUTCOMES

As part of its mission to assist local governments to manage and conserve their water and soil resources, the Minnesota Board of Water and Soil Resources funnels state dollars to local government to carry out a variety of natural resource projects and planning functions.

While these funds are used to put projects such as erosion control, water quality improvement practices, and easements on the ground, there is an increasing need to measure the benefits and determine the effectiveness of state spending. Two years of data (1998 and 1999) collected through a new reporting system, administered by BWSR and called the Local Government Annual Reporting System—or LARS for short, gives a picture of the outcomes of the funded projects for pollution reduction in terms of soil saved, sediment reduction, and phosphorus reduction.

"Measuring outcomes is an important part of our enterprise," says Ron Harnack, executive director of the Board of Water and Soil Resources. "We began to see more of an emphasis on outcomes during the Carlson administration; Gov. Ventura's Big Plan also places a priority on accountability. It's clear that we need to keep assessing what the state is getting for its investment."

In 1996 BWSR, in cooperation with the Minnesota Pollution Control Agency and other agencies, started to develop the computerized reporting system LARS. The system calculates pollution reduction variables according to data that local units of government gather in the field. LARS can do both project reporting and financial reporting.

"For the first time in the history of the soil and water conservation movement, we are able to estimate statewide the pollution reduction resulting from state-funded conservation programs," Harnack continued. "We're able to do that by calculating the reduction of sediment and phosphorus entering our lakes, rivers, streams, and wetlands. That's important since phosphorus and sediment are considered the two greatest threats to surface water quality in Minnesota," he said.

Experts point out that soil erosion contributes to lower yields and higher fertilizer requirements; sedimentation clogs rivers, lakes, and wetlands; and phosphorus is the primary pollutant associated with eutrophication, where excess nutrients cause the proliferation of algae and aquatic vegetation in bodies of water.

The effort recorded through LARS demonstrates both the magnitude of the number of projects and the tremendous water quality benefit that results from those projects, Harnack said.

-More-

Following is a snapshot of the analysis from LARS:

1998-99 Land & Water Treatment Summary

- Total projects: 5,986
- Total cost: \$26.1 million
- State cost: \$10.7 million
- Occupier cost: \$8.3 million
- Local government unit cost: \$4.2 million
- Federal government cost: \$2.6 million
- Other cost: \$.3 million

Of those projects, more than 4,000 were analyzed with pollution reduction calculations. The soil loss reduction was calculated at 777,000 tons/year; sediment reduction was 166,000 tons/year; and phosphorus reduction was 438,000 pounds/year.

1998-99 Easement Summary

- Total easements with payments: 991
- Easement payments: \$30.2 million
- Practice payments: \$4.5 million

Of the total projects, 445 easements were analyzed with pollution reduction calculations. The soil loss reduction was calculated at 176,000 tons/year; sediment reduction was 61,000 tons/year; and phosphorus reduction was 77,000 pounds/year.

1998-99 Local Water Planning Education Projects

- 1998 total participants: 967,000
- 1999 total participants: 948,000

Local governments play a key role in educating citizens on a variety of natural resources issues. Education projects include education fairs, newsletters, training workshops, open houses, and water- and soil-testing days.

1998-99 Land & Water Treatment Projects Sediment Reduction by Major Watershed (see map)

This map illustrates one of the benefits of land and water treatment projects put in place in 1998-99 through local units of government. The benefit shown here is the reduction of sediment into lakes, rivers, streams, and wetlands.

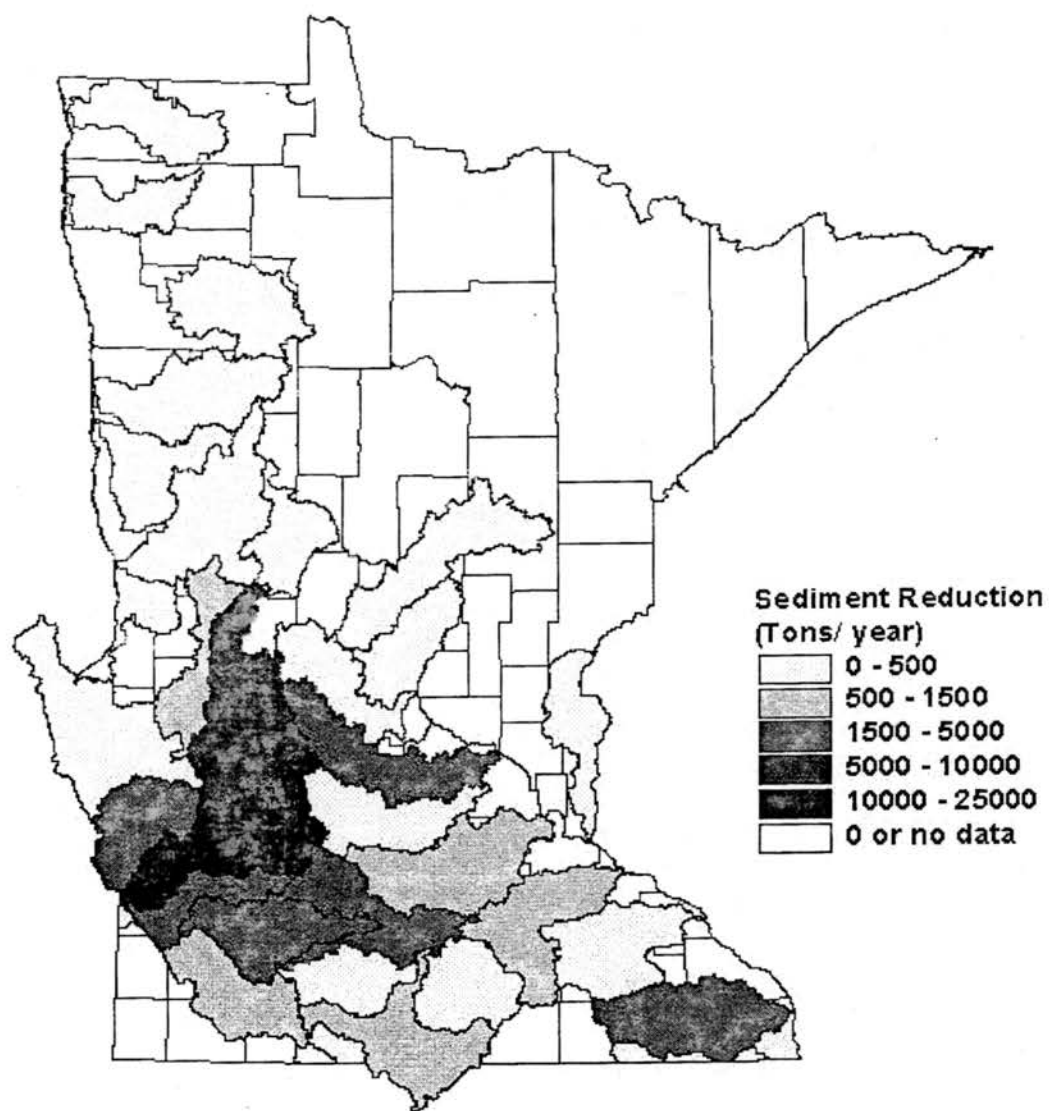
1998-99 Easements Sediment Reduction by Major Watershed (see map)

This map illustrates one of the benefits of easement projects put in place in 1998-99 through local units of government. The benefit shown here is the reduction of sediment into lakes, rivers, streams, and wetlands.

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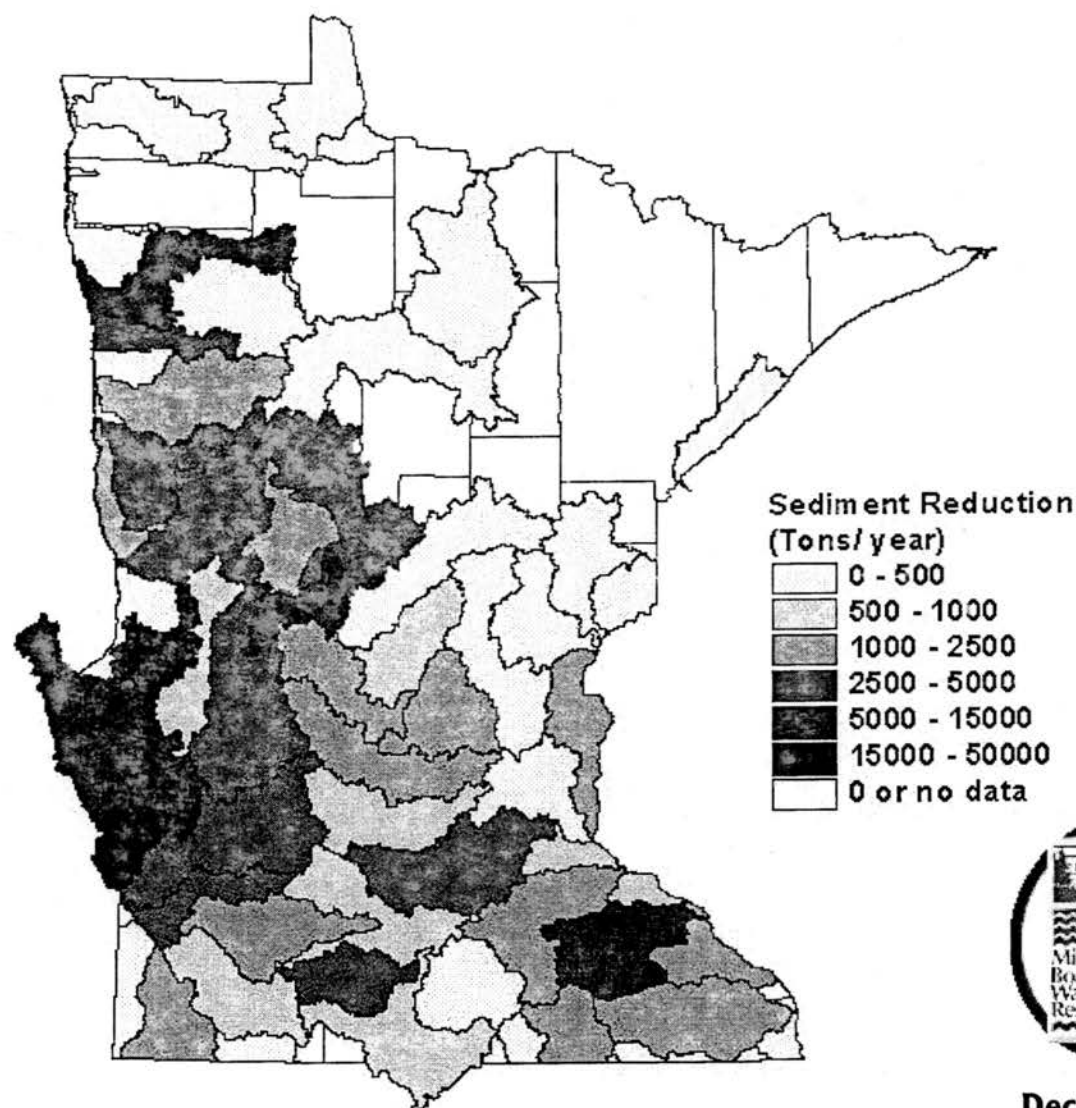
Media please note: an electronic copy of a Powerpoint presentation (called LARS presentation) with various charts and graphs is available by visiting BWSR's ftp site: <ftp://ftp.bwsr.state.mn.us>. This news release is available at www.bwsr.state.mn.us/news/news.html.

1998-1999 Easements Sediment Reduction by Watershed



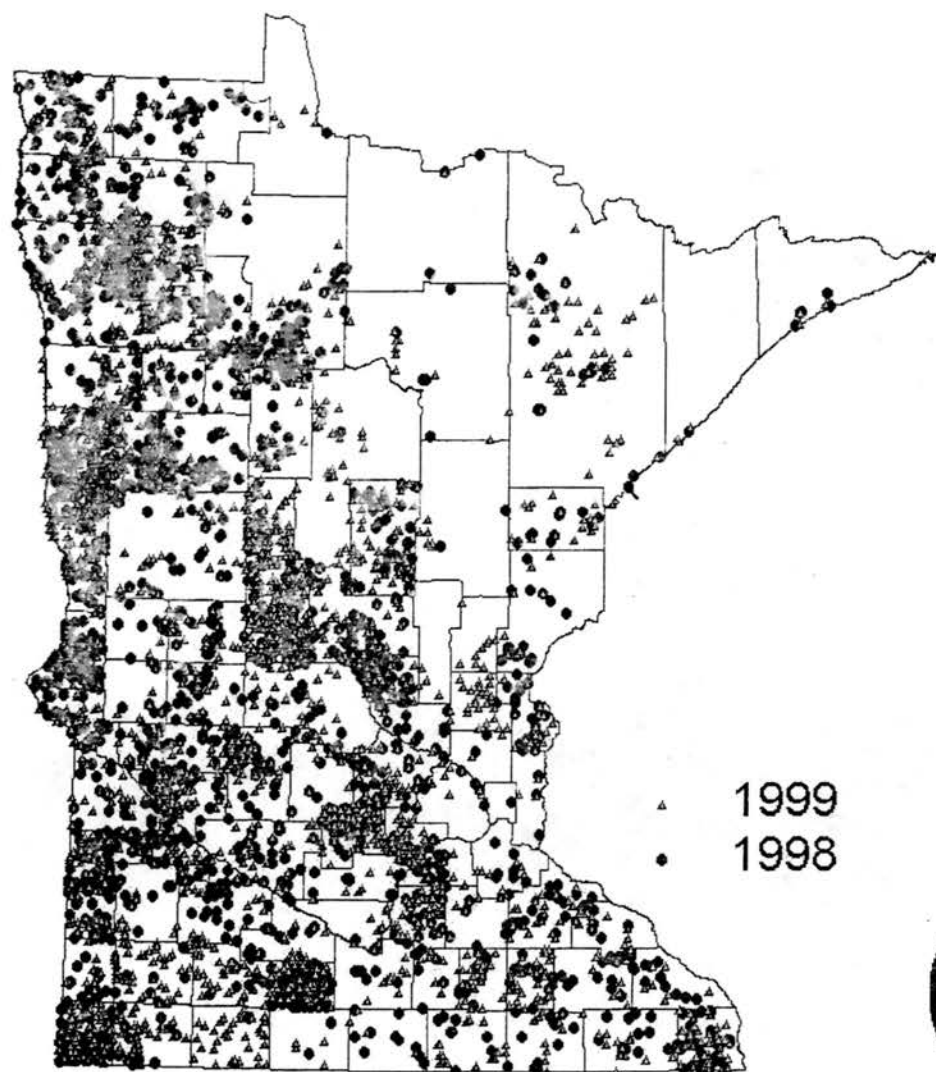
December 2000

1998-99 Land & Water Treatment Projects Sediment Reduction by Major Watershed



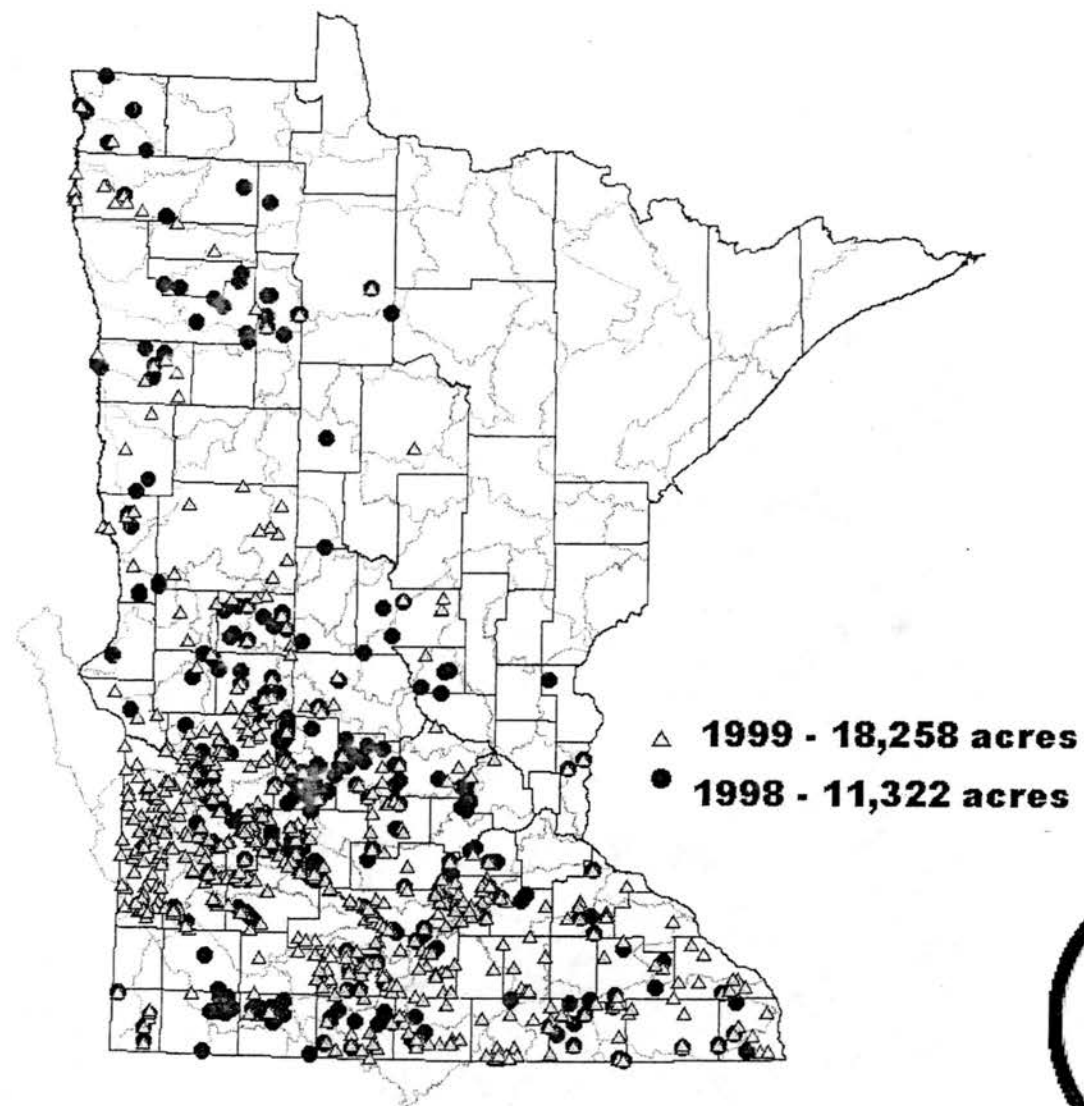
December 2000

1998-99 Land and Water Treatment Projects



December 2000

Easements 1998-1999



December 2000



January 18, 2001

The Honorable Collin Peterson
U.S. Representative
110 Second Street S., Suite 112
Waite Park, MN 56387

Dear Congressman Peterson:

Federal farm bill policies and programs tremendously influence the health of the water, soil, wildlife and related natural resources in Minnesota. The Board of Water and Soil Resources, along with the Departments of Natural Resources and Agriculture, believe it is vitally important that individuals and groups with an interest in agriculture and resource management gather to discuss the upcoming Federal Farm Bill.

We cordially invite you to participate in a Farm Bill forum to be held on **Monday, February 12, 2001** at the Radisson South in Bloomington. The goal of the forum is to create a unified and strong accord that communicates Minnesota's position regarding the conservation provisions of the 2002 Farm Bill. Forum participants will have a chance to propose performance-enhancing changes to existing USDA conservation programs, as well as generate new ideas for the next farm bill and recommend desired funding levels.

Craig Cox, Executive Director of the Soil and Water Conservation Society (SWCS), will moderate the forum. The SWCS recently undertook a project to help key stakeholders and policymakers shape the conservation provisions of the 2002 farm bill. The project, *Seeking Common Ground*, held five workshops across the country where state and local leaders experienced in the current conservation policy and programs discussed refinements needed in existing programs, as well as what large scale changes are needed. Please go to the SWCS website at www.swcs.org for information regarding the preliminary findings of those workshops (7 pages); or the complete report *Reforming the Farm Bill: Ideas from the Grassroots* (92 pages). If you want copies but do not have access to the Internet call the BWSR at (651) 297-4290.

In order to compile recommendations for the 2002 Farm Bill in a one day session we will all need to do our homework. **It is important that participants submit their name and their top three recommendations for change in the 2002 Farm Bill to the BWSR no later than February 1, 2001.** I would prefer you submit your recommendations in writing via email, U.S. Postal Service or fax using the following information:

Email: maryjo.anderson@bwsr.state.mn.us

U.S. Postal Service: BWSR, ATT: MaryJo Anderson
One West Water Street, Suite 200
St. Paul, MN 55107

Fax number: 651-297-5615

If you have questions about the forum, or would like to convey your attendance and recommendations verbally, please call Doug Thomas, BWSR at (651) 297-5617 or Wayne Edgerton, DNR at (651) 297-8341.

A map and agenda are enclosed. I look forward to seeing you at the Forum.

Sincerely,

Ronald Harnack
mjo

Ronald Harnack
Executive Director, BWSR

Cc: Maynard Pick

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The Honorable Collin Peterson
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The Honorable William Luther
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David Torgerson, Director
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Red Lake Falls, MN 56750

2002 FARM BILL FORUM

AGENDA

- 8:30 a.m. Sign-in & coffee and rolls
- 9:00 a.m. Welcome & Introductions
- 9:00 a.m. Participants are asked to suggest three changes, in writing to BWSR prior to the meeting, in existing conservation programs that would make the most difference in improving the performance of those programs. If a recommendation has to do with increased funding, it should include the specific program and preferred funding level. Beyond funding, ideas are sought on how programs might be improved by changing the way those programs are administered, their priorities or scope.
- Participants are also encouraged to imagine if they could wipe the slate clean, and then tell us how they would design a new agricultural conservation program.
- 9:30 a.m. Additions, Questions and Clarifications About Ideas for Change
- 11:30 a.m. Expression of Opinions by Participants
- This segment of the day will allow participants to express their opinion on (a) which ideas they have the strongest objections to, and (b) which ideas they think will make the most constructive difference from the conservation point of view.
- 12:00 noon Lunch (provided)
- 1:00 p.m. Clarify Objections to and Support for Specific Recommendations
- 3:00 p.m. Summary and Closing Remarks
- 4:00 p.m. Adjourn



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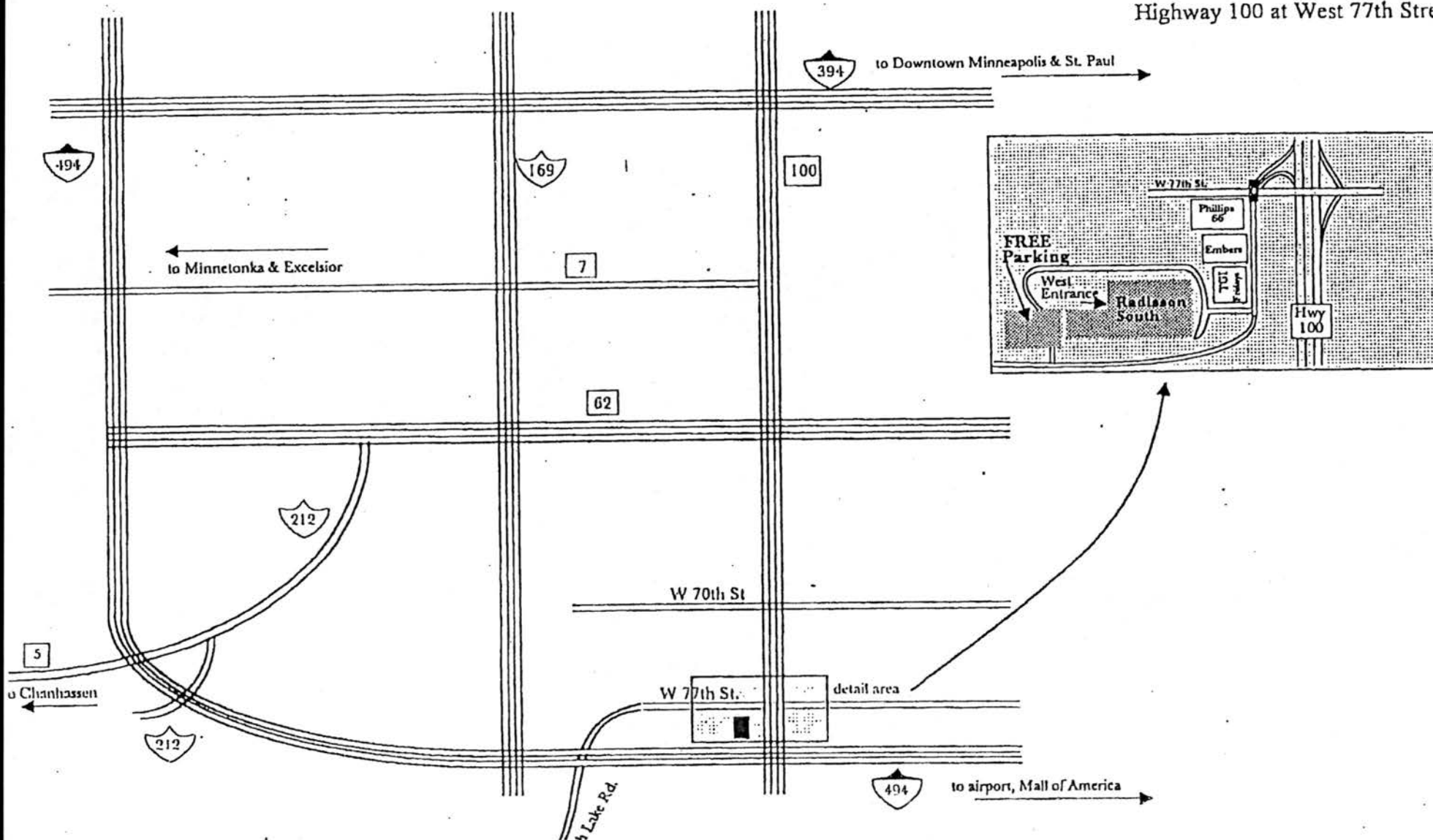
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MINNESOTA STATUTES ANNOTATED

Official Classification

Volume 8A

Sections 97 to 103D

2001

Cumulative Annual Pocket Part

For Use In 2000-2001

Replacing 2000 pocket part supplementing 1997 main volume

**Includes laws enacted during the
2000 Regular Session**



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PREFACE

The modern plan of periodic supplementary pamphlets and cumulative Pocket Parts keeps each volume of Minnesota Statutes Annotated constantly to date, both as to the text of the law and as to the constructions and interpretations thereof. The text includes all laws of a general and permanent nature enacted through the 2000 Regular Session of the 81st Legislature.

The arrangement and classification of the laws conform to the general plan and arrangement of Minnesota Statutes as designated by the Revisor of Statutes. Portions of the text appearing in this pocket part were produced from material provided by the Revisor of Statutes of the State of Minnesota and is used with permission. Grateful acknowledgment is made to the Revisor of Statutes for cooperation and service to the Bench and Bar in making the official classifications of laws available.

The annotations from the decisions of the State and Federal courts construing the Statutes close with cases published as of October 14, 2000, reported in:

North Western Reporter, Second Series	616 N.W.2d 925
Minnesota Reports	312 Minn. (Discontinued)
Supreme Court Reporter	120 S.Ct. 2245
United States Reports	521 U.S. (part)
Lawyers' Edition, Second Series	149 L.Ed.2d (part)
Federal Reporter, Third Series	225 F.3d 666
Federal Supplement, Second Series	110 F.Supp.2d 1083
Federal Rules Decisions	196 F.R.D. 78
Bankruptcy Reporter	253 B.R. 114
Federal Claims Reporter	47 Fed.Cl. 374
Opinions of the Attorney General	Op.Atty.Gen.No. 852, August 4, 2000

Other Standard Reports

For subsequent judicial constructions, pending the publication of the next supplementary service, see the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

Annotations prepared from Law Review Commentaries and the Opinions of the Attorney General, the Ethical Practices Board, and the Lawyer's Professional Responsibility Board are also included in the pocket parts and supplementary pamphlets, where appropriate.

Additionally, Library References to Key Number Digests and to Corpus Juris Secundum provide a convenient aid to research. Administrative Code References provide access to administrative rules adopted by state agencies. Amendment notes, highlighting significant legislative changes in the text of the statutes, are editorially prepared and included in the pocket parts for the convenience of the user.

For the Numerical Table of Chapters of Minnesota Statutes and Minnesota Statutes Annotated, see Volume 3 Pocket Part.

PREFACE

Later laws and annotations will be cumulated in subsequent Pamphlets and Pocket Parts. For advance copies of laws enacted at subsequent sessions of the Legislature, see the Minnesota Session Law Service or the WESTLAW MN-LEGIS Database.

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ABBREVIATIONS

A.B.A.J.	American Bar Association Journal
A.L.R.	American Law Reports
A.L.R.2d	American Law Reports, Second Series
A.L.R.3d	American Law Reports, Third Series
A.L.R.4th	American Law Reports, Fourth Series
A.L.R.5th	American Law Reports, Fifth Series
A.L.R.Fed.	American Law Reports, Federal
App.	Appendix
Art.	Article
B.R.	Bankruptcy Reporter
Bench & B. Minn.	Bench and Bar
Bench & B. Interim Minn.	Bench and Bar Interim
c.	Chapter of Act
Ch.	Chapter
C.J.S.	Corpus Juris Secundum
Cl.	Clause
Cl.Ct.	Claims Court Reporter
Const.	Constitution
Eff.	Effective
Evid.	Rules of Evidence
Ex.Sess.	Extraordinary Session
Fed.Cl.	Federal Claims Reporter
F.2d	Federal Reporter, Second Series
F.3d	Federal Reporter, Third Series
F.R.D.	Federal Rules Decisions
F.Supp.	Federal Supplement
1st Sp.	First Special Session
Gen.St.	General Statutes
Hamline J.Pub.L. & Pol'y	Hamline Journal of Public Law and Policy
Hamline L.Rev.	Hamline University Law Review
Hennepin Law.	Hennepin Lawyer
☞ (Key Number)	State Digest and other units of the American Digest System
L.Ed.	U.S. Reports, Lawyers' Edition
L.Ed.2d	U.S. Reports, Lawyers' Edition, Second Series
Minn.	Minnesota Supreme Court Reports
Minn.J.L. & Pol.	Minnesota Journal of Law and Politics
Minn.L.Rev.	Minnesota Law Review
Minn.St.	Minnesota Statutes
Minn.Trial Law.	Minnesota Trial Lawyer
N.W.	Northwestern Reporter
N.W.2d	Northwestern Reporter, Second Series
No.	Number
Op.Atty.Gen.	Opinions of the Attorney General

ABBREVIATIONS

Par. -----	Paragraph
PEB -----	Permanent Editorial Board for the Uniform Commercial Code
P.L. -----	Public Law
Prof.Resp.Bd. -----	Lawyers Professional Responsibility Board
Pub.St. -----	Public Statutes
Rev. Laws -----	Revised Laws
RCP -----	Rules of Civil Procedure
RCrP -----	Rules of Criminal Procedure
RCAP -----	Rules of Civil Appellate Procedure
Sec. -----	Section of the Act
Sp.Sess. -----	Special Session
St. -----	Statutes
Subd. -----	Subdivision
Subsec. -----	Subsection
S.Ct. -----	Supreme Court Reporter
U.L.A. -----	Uniform Laws Annotated
U.S. -----	United States Reports
U.S.C.A. -----	United States Code Annotated
Wm.Mitchell L.Rev. -----	William Mitchell Law Review

OFFICIAL STATE STATUTES

The text of M.S.A., West's Minnesota Statutes Annotated, is based on the text of the official statutes of the State of Minnesota. Through the pocket part system, changes in the official text brought about by legislative action or editorial modification are made a part of M.S.A. annually.

The present numbering structure of the official statutes is a decimal system developed unofficially in 1941 and made official for the first time in 1945. Since 1945 there have been a number of publications of the official statutes, or supplements thereof, incorporating new and amendatory matter as well as editorial modifications supplied by the Office of the Revisor of Statutes. The following tabulation lists the publications of the official statutes. It also lists the legislative action included in the particular publication.

Minnesota Statutes 1945 -----	Codifies all general matter through Laws 1945
Minnesota Statutes 1949 -----	Merges Laws 1947 and 1949
Minnesota Statutes 1953 -----	Merges Laws 1951 and 1953
Minnesota Statutes 1957 -----	Merges Laws 1955 and 1957
Minnesota Statutes 1961 -----	Merges Laws 1959 and 1961
Minnesota Statutes 1965 -----	Merges Laws 1963 and 1965
Minnesota Statutes 1967 -----	Merges Laws 1967
Minnesota Statutes 1969 -----	Merges Laws 1969
Minnesota Statutes 1971 -----	Merges Laws 1971
Minnesota Statutes 1973 Supp. -----	Contains Laws 1973
Minnesota Statutes 1974 -----	Merges 1973 Supp. and Laws 1974
Minnesota Statutes 1975 Supp. -----	Contains Laws 1975
Minnesota Statutes 1976 -----	Merges 1975 Supp. and Laws 1976
Minnesota Statutes 1977 Supp. -----	Contains Laws 1977
Minnesota Statutes 1978 -----	Merges 1977 Supp. and Laws 1978
Minnesota Statutes 1979 Supp. -----	Contains Laws 1979
Minnesota Statutes 1980 -----	Merges 1979 Supp. and Laws 1980
Minnesota Statutes 1981 Supp. -----	Contains Laws 1981 and Laws 1981, 1st and 2nd Special Sessions
Minnesota Statutes 1982 -----	Merges 1981 Supp., Laws 1981, 3rd Special Session and Laws 1982, 1st and 2nd Special Sessions
Minnesota Statutes 1983 Supp. -----	Contains Laws 1982, 3rd Special Session and Laws 1983
Minnesota Statutes 1984 -----	Merges 1983 Supp. and Laws 1984
Minnesota Statutes 1985 Supp. -----	Contains Laws 1985, and Laws 1985, 1st Special Session
Minnesota Statutes 1986 -----	Merges 1985 Supp., Laws 1986, and Laws 1986, 1st Special Session

OFFICIAL STATE STATUTES

Minnesota Statutes 1987 Supp. -----	Contains Laws 1987 and Laws 1987, 1st Special Session
Minnesota Statutes 1988 -----	Merges 1987 Supp. and Laws 1988
Minnesota Statutes 1989 Supp. -----	Contains Laws 1989
Minnesota Statutes 2nd 1989 Supp. -----	Contains Laws 1989, 1st Special Session
Minnesota Statutes 1990 -----	Merges 1989 Supp., and 2nd 1989 Supp., and Laws 1990
Minnesota Statutes 1991 Supp. -----	Contains Laws 1991
Minnesota Statutes 1992 -----	Merges 1991 Supp. and Laws 1992
Minnesota Statutes 1993 Supp. -----	Contains Laws 1993 and Laws 1993, 1st Special Session
Minnesota Statutes 1994 -----	Merges 1993 Supp., Laws 1994 and Laws 1994, 1st Special Session
Minnesota Statutes 1995 Supp. -----	Contains Laws 1995 and Laws 1995, 1st Special Session
Minnesota Statutes 1996 -----	Merges 1995 Supp. and Laws 1996
Minnesota Statutes 1997 Supp. -----	Contains Laws 1997 and Laws 1997, 1st and 2nd Special Sessions
Minnesota Statutes 1998 -----	Merges 1997 Supp., Laws 1998, and Laws 1998, 1st Special Session
Minnesota Statutes 1999 Supp. -----	Contains Laws 1999
Minnesota Statutes 2000 -----	Merges 1999 Supp. and Laws 2000

SESSION LAW NUMBERING—1978 AND FOLLOWING YEARS

Beginning in 1978, chapters of the session laws of the regular sessions are numbered consecutively for each biennium with the year of the session preceding the chapter number.

The 1977 Session of the 70th Legislature contained 455 chapters cited as Laws 1977, Chapters 1 to 455, and the 1978 Session of the 70th Legislature contained 341 chapters cited as Laws 1978, Chapters 456 to 797.

The 1979 Session of the 71st Legislature contained 340 chapters cited as Laws 1979, Chapters 1 to 340, and the 1980 Session of the 71st Legislature contained 277 chapters cited as Laws 1980, Chapters 341 to 618.

The 1981 Regular Session of the 72nd Legislature contains 370 chapters cited as Laws 1981, Chapters 1 to 370. The First Special Session of 1981 contains 5 chapters cited as Laws 1981, 1st Sp.Sess., Chapters 1 to 5. The Second Special Session of 1981 contains 6 chapters cited as Laws 1981, 2nd Sp.Sess., Chapters 1 to 6. The Third Special Session of 1981 contains 3 chapters cited as Laws 1981, 3rd Sp.Sess., Chapters 1 to 3. The 1982 Regular Session of the 72nd Legislature contains 272 chapters cited as Laws 1982, Chapters 371 to 642. The First Special Session of 1982 contains 3 chapters cited as Laws 1982, 1st Sp.Sess., Chapters 1 to 3. The Second Special Session of 1982 contains 2 chapters cited as Laws 1982, 2nd Sp.Sess., Chapters 1 and 2. The Third Special Session of 1982 contains 1 chapter cited as Laws 1982, 3rd Sp.Sess., Chapter 1.

The 1983 Regular Session of the 73rd Legislature contains 375 chapters cited as Laws 1983, chapters 1 to 375.

The 1984 Regular Session of the 73rd Legislature contains 283 chapters cited as Laws 1984, chapters 376 to 658.

The 1985 Regular Session of the 74th Legislature contains 309 chapters cited as Laws 1985, chapters 1 to 309. The 1985 First Special Session contains 18 chapters cited as Laws 1985, 1st Sp., chapters 1 to 18.

The 1986 Regular Session of the 74th Legislature contains 166 chapters cited as Laws 1986, chapters 310 to 475. The 1986 First Special Session contains 3 chapters cited as Laws 1986, 1st Sp., chapters 1 to 3.

The 1987 Regular Session of the 75th Legislature contains 405 chapters cited as Laws 1987, chapters 1 to 405. The 1987 First Special Session contains 5 chapters cited as Laws 1987, 1st Sp., chapters 1 to 5.

The 1988 Regular Session of the 75th Legislature contains 315 chapters cited as Laws 1988, chapters 406 to 720.

The 1989 Regular Session of the 76th Legislature contains 356 chapters cited as Laws 1989, chapters 1 to 356. The 1989 First Special Session contains 2 chapters cited as Laws 1989, 1st Sp., chapters 1 and 2.

The 1990 Regular Session of the 76th Legislature contains 256 chapters cited as Laws 1990, chapters 357 to 612.

The 1991 Regular Session of the 77th Legislature contains 356 chapters cited as Laws 1991, chapters 1 to 356.

The 1992 Regular Session of the 77th Legislature contains 247 chapters cited as Laws 1992, chapters 357 to 603.

SESSION LAW NUMBERING

The 1993 Regular Session of the 78th Legislature contains 375 chapters cited as Laws 1993, chapters 1 to 375. The 1993 First Special Session contains 6 chapters cited as Laws 1993, 1st Sp., chapters 1 to 6.

The 1994 Regular Session of the 78th Legislature contains 273 chapters cited as Laws 1994, chapters 376 to 648. The 1994 First Special Session contains 1 chapter cited as Laws 1994, 1st Sp., chapter 1.

The 1995 Regular Session of the 79th Legislature contains 265 chapters cited as Laws 1995, chapters 1 to 265. The 1995 First Special Session contains 3 chapters cited as Laws 1995, 1st Sp., chapters 1 to 3.

The 1996 Regular Session of the 79th Legislature contains 206 chapters cited as Laws 1996, chapters 266 to 471.

The 1997 Regular Session of the 80th Legislature contains 251 chapters cited as Laws 1997, chapters 1 to 251. The 1997 First Special Session contains 5 chapters cited as Laws 1997, 1st Sp., chapters 1 to 5. The 1997 Second Special Session contains 3 chapters cited as Laws 1997, 2nd Sp., chapters 1 to 3.

The 1998 Regular Session of the 80th Legislature contains 157 chapters cited as Laws 1998, chapters 252 to 408. The 1998 First Special Session contains 3 chapters cited as Laws 1998, 1st Sp., chapters 1 to 3.

The 1999 Regular Session of the 81st Legislature contains 250 chapters cited as Laws 1999, chapters 1 to 250.

The 2000 Regular Session of the 81st Legislature contains 251 chapters cited as Laws 2000, chapters 251 to 501.

EFFECTIVE DATES OF LAWS

The session law citations for 1973 and subsequent sessions which follow the text of sections appearing in this pocket part include designated effective dates. The absence of a date means that the general effective date applies or that the date for appropriation acts apply, or that other variations described in notes are controlling.

M.S.A. § 645.02, as amended by Laws 1959, c. 368, § 4, Laws 1971, c. 196, § 1, and Laws 1987, c. 384, art. 1, § 48, provides: "Each act, except one making appropriations, enacted finally at any session of the legislature takes effect on August 1 next following its final enactment, unless a different date is specified in the act. A special law required to be approved by the local government unit affected before it goes into effect becomes effective as to the approving unit the day following the day on which the certificate of approval prescribed by section 645.021 is filed with the secretary of state, unless a later date is specified in the act. When approval of such a special law is required by two or more local government units before it may become effective, the day after the day when the last of the required certificates is filed is the effective date, unless a later date is specified in the act."

"An appropriation act or an act having appropriation items enacted finally at any session of the legislature takes effect at the beginning of the first day of July next following its final enactment, unless a different date is specified in the act."

"Each act takes effect at 12:01 a.m. on the day it becomes effective, unless a different time is specified in the act."

Prior to the 1971 amendment of M.S.A. § 645.02, the general effective date for session laws was one day following final enactment. Final enactment was construed to be the date the bill was signed by the Governor. Laws 1988, c. 479, § 5, effective January 1, 1989 amended the definition of "final enactment" or "enacted finally" contained in § 645.01, subd. 2 to read: "Final enactment" or "enacted finally" for a bill passed by the legislature and signed by the governor means the date and time of day the governor signed the bill. For a bill passed by the legislature and allowed to become law without signature by the governor, it means the end of the last day on which the governor could have returned the bill with a veto to the legislature. For a bill passed by the legislature but vetoed and reconsidered and approved by the legislature after the veto, it means the date and time of day of the final legislative vote approving the vetoed bill."

Beginning on January 1, 1973, the general effective date of "on August 1 next following its final enactment", as now appearing in section 645.02, went into effect. The following tabulation indicates the last date session laws were signed for each session since the 1973 session. With the exception of the 1981 3rd Special Session, the 1982 3rd Special Session, the 1989 1st Special Session, and the 1994 1st Special Session, the general effective date for all laws of all sessions since 1973 was August 1st of the year of the session. The 1982 3rd Special Session and the 1994 1st Special Session contained no legislation with general effective dates.

Year	Session	Latest Approval Date
1973	Regular	June 7, 1973
1974	Regular	April 11, 1974
1975	Regular	June 6, 1975
1976	Regular	April 20, 1976
1977	Regular	June 9, 1977

EFFECTIVE DATES OF LAWS

Year	Session	Latest Approval Date
1978	Regular	April 7, 1978
1979	Regular	June 5, 1979
1979	Extra	June 7, 1979
1980	Regular	April 25, 1980
1981	Regular	June 4, 1981
1981	1st Special	June 6, 1981
1981	2nd Special	July 8, 1981
1981	3rd Special	Jan. 19, 1982
1982	Regular	March 31, 1982
1982	1st Special	March 31, 1982
1982	2nd Special	July 12, 1982
1982	3rd Special	Dec. 13, 1982
1983	Regular	June 14, 1983
1984	Regular	May 7, 1984
1985	Regular	June 7, 1985
1985	1st Special	July 5, 1985
1986	Regular	April 1, 1986
1986	1st Special	April 11, 1986
1987	Regular	June 18, 1987
1987	1st Special	June 25, 1987
1988	Regular	May 7, 1988
1989	Regular	June 3, 1989
1989	1st Special	Oct. 4, 1989
1990	Regular	May 8, 1990
1991	Regular	June 4, 1991
1992	Regular	April 29, 1992
1993	Regular	May 24, 1993
1993	1st Special	May 27, 1993
1994	Regular	May 17, 1994
1994	1st Special	August 31, 1994
1995	Regular	June 1, 1995
1995	1st Special	June 8, 1995
1996	Regular	April 17, 1996
1997	Regular	June 3, 1997
1997	1st Special	June 30, 1997
1997	2nd Special	August 22, 1997
1998	Regular	April 21, 1998
1998	1st Special	April 22, 1998
1999	Regular	May 25, 1999
2000	Regular	May 30, 2000

MINNESOTA STATUTES ANNOTATED

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MINNESOTA STATUTES ANNOTATED

GAME AND FISH

Chapter 97A

GAME AND FISH

GENERAL PROVISIONS		Section	
Section		97A.245.	Rewards.
97A.015.	Definitions.		PENALTIES
97A.028.	Crop protection assistance.		
97A.037.	Hunter, trapper, and angler harassment prohibited.	97A.331.	Penalties related to hunting.
97A.045.	Commissioner, general powers and duties.		LICENSES AND PERMITS
97A.0455.	Submission of proposed emergency rule to attorney general.	97A.405.	License requirements.
97A.055.	Game and fish fund.	97A.411.	Validity of licenses.
97A.061.	Payment in lieu of taxes.	97A.415.	License restrictions.
97A.065.	Dedication of certain receipts.	97A.421.	Validity and issuance of licenses after conviction.
97A.071.	Wildlife acquisition account.	97A.431.	Moose licenses.
97A.075.	Use of license revenues.	97A.435.	Turkey licenses; application and eligibility.
97A.085.	Game refuges.		
97A.095.	Waterfowl protected areas.	97A.441.	Licenses to be issued without a fee.
97A.101.	Public water reserves and management designation.	97A.445.	Exemptions from license requirement.
97A.111.	Repealed.	97A.465.	Military personnel; fishing and hunting.
97A.133.	State wildlife management areas.	97A.473.	Resident lifetime licenses.
97A.135.	Acquisition of wildlife lands.	97A.474.	Nonresident lifetime licenses.
97A.137.	Hunting, fishing, and trespassing in wildlife management areas.	97A.4742.	Lifetime fish and wildlife trust fund.
		97A.475.	License fees.
		97A.485.	Issuance of licenses.
ENFORCEMENT		POSSESSION AND TRANSPORTATION OF WILD ANIMALS	
97A.223.	Seizure and administrative forfeiture of certain firearms and abandoned property.	97A.505.	Possession of wild animals.

GENERAL PROVISIONS

97A.015. Definitions

Subdivision 1. Applicability. The terms defined in this section apply to this chapter and chapters 97B and 97C.

Subd. 2. Angling. "Angling" means taking fish with a hook and line. An "angler" is a person who takes fish by angling.

Subd. 3. Big game. "Big game" means deer, moose, elk, bear, antelope, and caribou.

Subd. 4. Buy. "Buy" includes barter, exchange for consideration, offer to buy, or attempt to buy.

Subd. 5. Camp. "Camp" means the temporary abode of a person fishing, hunting, trapping, vacationing, or touring, while on a trip or tour including resorts, tourist camps, and other establishments providing temporary lodging.

Subd. 6. Chub. "Chub" means shortnose cisco, shortjaw cisco, longjaw cisco, bloater, kiyi, blackfin cisco, and deepwater cisco.

Subd. 7. Cisco. "Cisco" means *Coregonus artedii* and includes lake herring and tullibee.

Subd. 8. Closed season. "Closed season" means the period when a specified protected wild animal may not be taken.

Subd. 9. Commercial fishing. "Commercial fishing" means taking fish, except minnows, for sale.

Subd. 10. Commissioner. "Commissioner" means the commissioner of natural resources.

Subd. 11. Condemnation. "Condemnation" means the exercise of the right of eminent domain in the manner provided under chapter 117.

Subd. 12. Contraband. "Contraband" means:

(1) a wild animal taken, bought, sold, transported, or possessed in violation of the game and fish laws, and all instrumentalities and devices used in taking wild animals in violation of the game and fish laws that are subject to confiscation; and

(2) wild rice and other aquatic vegetation harvested, bought, sold, transported, or possessed in violation of chapter 84.

Subd. 13. Conviction. "Conviction" means: (1) a final conviction after a trial or a plea of guilty; (2) a forfeiture of cash or collateral deposited to guarantee an appearance of a defendant in court, if the forfeiture has not been vacated or the court has not reinstated the trial within 15 days after the forfeiture; or (3) a breach of a condition of release without bail.

Subd. 14. Dark house. "Dark house" means a structure set on the ice of state waters that is darkened to view fish in the water beneath the structure.

Subd. 15. Designated trout lake; designated trout stream. "Designated trout lake" or "designated trout stream" means a lake or stream designated by the commissioner as a trout lake or a trout stream under section 97C.005.

Subd. 16. Director. "Director" means the director of the division of fish and wildlife.

Subd. 17. Division. "Division" means the division of fish and wildlife of the department of natural resources.

Subd. 18. Enforcement officer. "Enforcement officer" means the commissioner, the director of the enforcement division, a conservation officer, or a game refuge manager.

Subd. 19. Firearm. "Firearm" means a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air.

Subd. 20. Firearms safety certificate. "Firearms safety certificate" means the certificate issued under section 97B.015 or an equivalent certificate issued by another state or other evidence that meets with the requirements of section 97B.020.

Subd. 21. Fish house. "Fish house" means a structure set on the ice of state waters to provide shelter while taking fish by angling.

Subd. 22. Fur-bearing animals. "Fur-bearing animals" means mammals that are protected wild animals, except big game.

Subd. 23. Game. "Game" means big game and small game.

Subd. 24. Game birds. "Game birds" means migratory waterfowl, pheasant, ruffed grouse, sharp-tailed grouse, Canada spruce grouse, prairie chickens, gray partridge, bobwhite quail, turkeys, coots, gallinules, sora and Virginia rails, American woodcock, and common snipe.

Subd. 25. Game fish. "Game fish" means walleye, sauger, yellow perch, channel catfish, flathead catfish; members of the pike family, *Esoxidae*, including muskellunge and northern pike; members of the sunfish family, *Centrarchidae*, including largemouth bass, smallmouth bass, sunfish, rock bass, white crappie, black crappie, members of the temperate bass family,

Percichthyidae, including white bass and yellow bass; members of the salmon and trout subfamily, *Salmoninae*, including Atlantic salmon, chinook salmon, coho salmon, pink salmon, kokanee salmon, lake trout, brook trout, brown trout, rainbow (steelhead) trout, and splake; members of the paddlefish family, *Polyodontidae*; members of the sturgeon family, *Acipenseridae*, including lake sturgeon, and shovelnose sturgeon. "Game fish" includes hybrids of game fish.

Subd. 25a. Guardian. "Guardian" means a legal guardian of a person under age 16, or a person 18 or older who has been authorized by the parent or legal guardian to supervise the person under age 16.

Subd. 26. Hunting. "Hunting" means taking birds or mammals.

Subd. 26a. In-the-round. "In-the-round" means fish with heads, tails, fins, skins, and scales intact.

Subd. 27. License. "License" means a license or stamp issued under the game and fish laws.

Subd. 27a. License identification number. "License identification number" means a verification number issued under the authority of the commissioner in conjunction with the electronic purchase of a license or stamp and valid until the license is received by the purchaser.

Subd. 28. Migratory waterfowl. "Migratory waterfowl" means brant, ducks, geese, tundra swans, trumpeter swans, and whooper swans.

Subd. 29. Minnows. "Minnows" means: (1) members of the minnow family, *Cyprinidae*, except carp and goldfish; (2) members of the mudminnow family, *Umbidae*; (3) members of the sucker family, *Catostomidae*, not over 12 inches in length; (4) bullheads, ciscoes, lake whitefish, goldeyes, and mooneyes, not over seven inches long; and (5) leeches.

Subd. 30. Minnow dealer. "Minnow dealer" means a person taking minnows for sale, buying minnows for resale, selling minnows at wholesale, or transporting minnows for sale.

Subd. 31. Minnow retailer. "Minnow retailer" means a person selling minnows at retail from an established place of business.

Subd. 32. Motor vehicle. "Motor vehicle" means a self-propelled vehicle or a vehicle propelled or drawn by a self-propelled vehicle that is operated on a highway, on a railroad track, on the ground, in the water, or in the air.

Subd. 33. Nonresident. "Nonresident" means a person who is not a resident.

Subd. 34. Open season. "Open season" means the period when a specified protected wild animal may be taken.

Subd. 35. Person. "Person" means an individual only if used in reference to issuing licenses to take wild animals, but otherwise means an individual, firm, partnership, joint stock company, association, or public or private corporation.

Subd. 36. Possession. "Possession" means both actual and constructive possession and control of the things referred to.

Subd. 37. Predator. "Predator" means a gray wolf, coyote, fox, lynx, or bobcat.

Subd. 37a. Processing. "Processing" means rendering a species of aquatic life for food, bait, or other purposes so that it is no longer alive.

Subd. 38. Protected birds. "Protected birds" means all birds except unprotected birds.

Subd. 39. Protected wild animals. "Protected wild animals" are the following wild animals: big game, small game, game fish, rough fish, minnows, leeches, alewives, ciscoes, chubs, and lake whitefish, and the subfamily *Coregoninae*, rainbow smelt, frogs, turtles, clams, mussels, gray wolf, mourning doves, and wild animals that are protected by a restriction in the time or manner of taking, other than a restriction in the use of artificial lights, poison, or motor vehicles.

Subd. 40. Public access. "Public access" means an access that is publicly owned and accessible to the public without charge.

Subd. 41. Public waters. "Public waters" means waters defined in section 103G.005, subdivision 15.

Subd. 42. Resident. "Resident" means: (1) an individual who is a citizen of the United States or a resident alien, and has maintained a legal residence in the state at least the immediately preceding 60 days; (2) a nonresident under the age of 21 who is the child of a resident; (3) a domestic corporation; or (4) a foreign corporation authorized to do business in the state that has conducted a licensed business at a location within the state for at least ten years.

Subd. 43. Rough fish. "Rough fish" means carp, buffalo, sucker, sheepshead, bowfin, burbot, cisco, gar, goldeye, and bullhead.

Subd. 44. Sale. "Sale" means an exchange for consideration, and includes barter, offer to sell, and possession with intent to sell.

Subd. 45. Small game. "Small game" means game birds, gray squirrel, fox squirrel, cottontail rabbit, snowshoe hare, jack rabbit, raccoon, lynx, bobcat, red fox and gray fox, fisher, pine marten, opossum, badger, cougar, wolverine, muskrat, mink, otter, and beaver.

Subd. 46. Sunfish. "Sunfish" means bluegill, pumpkinseed, green sunfish, orange spotted sunfish, longear sunfish, and warmouth. "Sunfish" includes hybrids of sunfish.

Subd. 47. Taking. "Taking" means pursuing, shooting, killing, capturing, trapping, snaring, angling, spearing, or netting wild animals, or placing, setting, drawing, or using a net, trap, or other device to take wild animals. Taking includes attempting to take wild animals, and assisting another person in taking wild animals.

Subd. 48. Transport, transportation. "Transport, transportation" means causing or attempting to cause wild animals to be carried or moved by a device and includes accepting or receiving wild animals for transportation or shipment.

Subd. 49. Undressed bird. "Undressed bird" means:

(1) a bird, excluding migratory waterfowl, pheasant, Hungarian partridge, or grouse, with feet and feathered head intact;

(2) a migratory waterfowl, excluding geese, with a fully feathered wing and head attached;

(3) a pheasant, Hungarian partridge, or grouse with one leg and foot or the fully feathered head or wing intact; or

(4) a goose with a fully feathered wing attached.

Subd. 50. Undressed fish. "Undressed fish" means fish with heads, tails, fins and skins intact, whether entrails, gills, or scales are removed or not.

Subd. 51. Unloaded. "Unloaded" means, with reference to a firearm, without ammunition in the barrels and magazine, if the magazine is in the firearm. A muzzle loading firearm with a flintlock ignition is unloaded if it does not have priming powder in a pan. A muzzle loading firearm with percussion ignition is unloaded if it does not have a percussion cap on a nipple.

Subd. 52. Unprotected birds. "Unprotected birds" means English sparrow, blackbird, starling, magpie, cormorant, common pigeon, chukar partridge, quail other than bob-white quail, mute swan, and great horned owl.

Subd. 53. Unprotected wild animals. "Unprotected wild animals" means wild animals that are not protected wild animals including weasel, coyote (brush wolf), gopher, porcupine, striped skunk, and unprotected birds.

Subd. 54. Waters of this state; state waters. "Waters of this state" and "state waters" include all boundary and inland waters.

Subd. 55. Wild animals. "Wild animals" means all living creatures, not human, wild by nature, endowed with sensation and power of voluntary motion, and includes mammals, birds, fish, amphibians, reptiles, crustaceans, and mollusks.

Amended by Laws 1997, c. 216, § 77; Laws 1997, c. 226, §§ 12 to 14; Laws 2000, c. 463, § 22.

97A.028. Crop protection assistance

Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this section.

(b) "Agricultural crops" means annually seeded crops, legumes, fruit orchards, tree farms and nurseries, turf farms, and apiaries.

(c) "Parcel" has the meaning given in section 272.03, subdivision 6.

(d) "Specialty crops" means fruit orchards, vegetables, tree farms and nurseries, turf farms, and apiaries.

(e) "Stored forage crops" means hay, silage, grain, or other crops that have been harvested and placed in storage for commercial livestock feeding.

Subd. 2. Technical assistance. The commissioner shall establish a statewide program to provide technical assistance to persons for the protection of agricultural crops from destruction by wild animals. As part of the program, the commissioner shall develop and identify the latest and most effective abatement techniques; acquire appropriate demonstration supplies and materials required to meet specialized needs; train property owners, field staff, public land managers, extension agents, pest control operators, and others; provide technical manuals and brochures; and provide field personnel with supplies and materials for damage abatement demonstrations and short-term assistance and for the establishment of food or lure crops where appropriate.

Subd. 3. Emergency deterrent materials assistance. (a) For the purposes of this subdivision, "cooperative damage management agreement" means an agreement between a landowner or tenant and the commissioner that establishes a program for addressing the problem of destruction of the landowner's or tenant's specialty crops or stored forage crops by wild animals, or destruction of agricultural crops by flightless Canada geese.

(b) A landowner or tenant may apply to the commissioner for emergency deterrent materials assistance in controlling destruction of the landowner's or tenant's specialty crops or stored forage crops by wild animals, or destruction of agricultural crops by flightless Canada geese. Subject to the availability of money appropriated for this purpose, the commissioner shall provide suitable deterrent materials when the commissioner determines that:

(1) immediate action is necessary to prevent significant damage from continuing; and

(2) a cooperative damage management agreement cannot be implemented immediately.

(c) A person may receive emergency deterrent materials assistance under this subdivision more than once, but the cumulative total value of deterrent materials provided to a person, or for use on a parcel, may not exceed \$3,000 for specialty crops, or \$750 for stored forage crops, or \$500 for agricultural crops damaged by flightless Canada geese. If a person is a coowner or cotenant with respect to the specialty crops for which the deterrent materials are provided, the deterrent materials are deemed to be "provided" to the person for the purposes of this paragraph.

(d) As a condition of receiving emergency deterrent materials assistance under this subdivision, a landowner or tenant shall enter into a cooperative damage management agreement with the commissioner. Deterrent materials provided by the commissioner may include repellents, fencing materials, or other materials recommended in the agreement to alleviate the damage problem. If requested by a landowner or tenant, any fencing materials provided must be capable of providing long-term protection of specialty crops. A landowner or tenant who receives emergency deterrent materials assistance under this subdivision shall comply with the terms of the cooperative damage management agreement.

Amended by Laws 1997, c. 216, §§ 78, 79.

97A.037. Hunter, trapper, and angler harassment prohibited

Subdivision 1. Interference with taking wild animals prohibited. A person who has the intent to prevent or disrupt another person from taking or preparing to take a wild animal or enjoyment of the out-of-doors must not disturb or interfere with that person if that person is lawfully taking or preparing to take a wild animal. "Preparing to take a wild

animal" includes travel, camping, and other acts that occur on land or water where the affected person has the right or privilege to take lawfully a wild animal.

Subd. 2. Disturbing wild animals prohibited. A person who has the intent to prevent or disrupt a person from lawfully taking the animals may not disturb or engage in an activity that will tend to disturb wild animals.

Subd. 3. Persons intending to harass hunters, trappers, and anglers may not remain on land. A person who has intent to violate subdivision 1 or 2 may not enter or remain on public lands, or on private lands without permission of the owner.

Subd. 4. Peace officer order; penalty. A person must obey the order of a peace officer to stop the harassing conduct that violates this section if the officer observes the conduct. For purposes of this subdivision, "harassing conduct" does not include a landowner's or lessee's action to enforce the trespass law. Violation of this subdivision is a misdemeanor.

Amended by Laws 1998, c. 401, § 33, eff. April 22, 1998.

Validity

Section 97A.037 was held unconstitutional in part in the case of State v. Miner, App.1996, 556 N.W.2d 578. See Notes of Decisions, post.

Notes of Decisions

Validity 1

1. Validity

Statute prohibiting harassment of hunters, trappers, and anglers was improper content-based regulation of speech and conduct and violated First Amendment to extent that statute applied to person whose only intent was to dissuade taking of wild animal or enjoyment of the out-of-doors. *State v. Miner, App.1996, 556 N.W.2d 578, review denied.*

Provisions of statute prohibiting harassment of hunters, trappers, and anglers are severable, and thus, while application of statute when person acts only with intent to dissuade is barred under First Amendment, statute remains complete and capable of being applied when person, acting with intent to prevent or disrupt taking of wild animal or enjoyment of the out-of-doors, disturbs or interferes with another person who is lawfully taking wild animal or preparing to take wild animal. *State v. Miner, App.1996, 556 N.W.2d 578, review denied.*

Statute prohibiting harassment of hunters, trappers, and anglers, as partially invalidated to preclude application to person whose only intent was to dissuade taking of wild animal or enjoyment of out-of-doors, was valid time, place, and manner restriction of protected expression; as modified, statute deals only with conduct of disturbing or interfering with another person who is lawfully taking or preparing to take wild animal or enjoy

out-of-doors, and has no connection with speech. *State v. Miner, App.1996, 556 N.W.2d 578, review denied.*

Statute prohibiting harassment of hunters, trappers, and anglers, as partially invalidated to preclude application to person whose only intent was to dissuade taking of wild animal or enjoyment of out-of-doors, is not unconstitutionally overbroad or vague; statute limits its application to times when and places where taking wild animal is legal, as modified is limited in application to conduct that intrudes upon person who is taking or preparing to take wild animal and causes that person to be distracted, and requires state to prove that defendant acted with intent to prevent or disrupt taking of wild animal. *State v. Miner, App.1996, 556 N.W.2d 578, review denied.*

Statute prohibiting harassment of hunters, trappers, and anglers, as partially invalidated to preclude application to person whose only intent was to dissuade taking of wild animal or enjoyment of out-of-doors, was not unconstitutional as applied to protesters who disrupted bowhunters who were participating in hunt held to reduce deer population in county park; even assuming that protesters were expressing idea protected by First Amendment by their conduct, statute furthered important governmental interest in regulating taking of wild animals, and created no greater restriction on First Amendment rights than necessary. *State v. Miner, App.1996, 556 N.W.2d 578, review denied.*

97A.041. Exhibition of wildlife

Administrative Code References

Wildlife exhibits, see Minn. Rules 6244.2100 et seq.

97A.045. Commissioner, general powers and duties

Subdivision 1. Duties; generally. The commissioner shall do all things the commissioner determines are necessary to preserve, protect, and propagate desirable species of wild animals. The commissioner shall make special provisions for the management of fish and wildlife to insure recreational opportunities for anglers and hunters. The commissioner shall acquire wild animals for breeding or stocking and may dispose of or destroy undesirable or predatory wild animals.

Subd. 2. Power to protect wild animals. (a) The commissioner may protect a species of wild animal in addition to the protection provided by the game and fish laws, by further limiting or closing seasons or areas of the state, or by reducing limits in areas of the state, if the commissioner determines the action is necessary to prevent unnecessary depletion or extinction, or to promote the propagation and reproduction of the animal.

(b) The commissioner may protect a species of wild animal in the state by emergency rule adopted under section 84.027, subdivision 13, by prohibiting or allowing taking of the animal whether or not the animal is protected under the game and fish laws. The commissioner must make findings of the necessity of a rule authorized under this paragraph and may authorize taking by special permit with or without fee under conditions prescribed in the rule by the commissioner.

(c) The commissioner may protect a species of wild animal in the state by emergency rule adopted under section 84.027, subdivision 13, by allowing importation, transportation, or possession of the wild animal or prohibiting these activities except by special permit with or without fee under conditions prescribed in the rule by the commissioner.

Subd. 3. Power to modify dates of seasons. If the statutory opening date of a season for taking protected wild animals, except a season prescribed under federal regulations, is not on a Saturday, the commissioner may designate the nearest Saturday to the statutory date as the opening day of the season. If the statutory closing date falls on a Saturday, the commissioner may extend it through the following day.

Subd. 4. Boundary waters. The commissioner may regulate the taking, possession, and transportation of wild animals from state and international boundary waters. The rules may include:

(1) special seasons for taking fish; and

(2) restrictions on the limits of fish that may be taken, possessed, or transported from international boundary waters by a person possessing both a Minnesota angling license and an angling license from an adjacent Canadian province.

Subd. 5. Power to prescribe the form of permits and licenses. The commissioner may prescribe the form of permits, licenses, and tags issued under the game and fish laws.

Subd. 6. Duty to disseminate information. The commissioner shall collect, compile, publish, and disseminate statistics, bulletins, and information related to conservation.

Subd. 7. Duty to encourage stamp design and purchases. (a) The commissioner shall encourage the purchase of:

(1) Minnesota migratory waterfowl stamps by nonhunters interested in migratory waterfowl preservation and habitat development;

(2) pheasant stamps by persons interested in pheasant habitat improvement;

(3) trout and salmon stamps by persons interested in trout and salmon stream and lake improvement; and

(4) turkey stamps by persons interested in wild turkey management and habitat improvement.

(b) The commissioner shall make rules governing contests for selecting a design for each stamp.

Subd. 8. Hunting and fishing license reciprocity with Wisconsin. The commissioner may enter into an agreement with game and fish licensing authorities in the state of

Wisconsin under which Wisconsin residents owning real property in Minnesota are allowed to purchase annual nonresident game and fish licenses at fees required of Minnesota residents, provided Minnesota residents owning real property in Wisconsin are allowed to purchase identical nonresident licenses in Wisconsin upon payment of the Wisconsin resident license fee. The commissioners of natural resources in Minnesota and Wisconsin must agree on joint standards for defining real property ownership. The commissioner shall present the joint standards to the senate and house committees having jurisdiction over environment and natural resources matters.

Subd. 9. Notice of rulemaking. In addition to notice requirements under chapter 14, the commissioner shall attempt to notify persons or groups of persons affected by rules adopted under the game and fish laws by public announcements, press releases, and other appropriate means as determined by the commissioner.

Subd. 10. Reciprocal agreements on violations. The commissioner, with the approval of the attorney general, may enter into reciprocal agreements with game and fish authorities in other states and the United States government to provide for:

(1) revocation of the appropriate Minnesota game and fish licenses of Minnesota residents for violations of game and fish laws committed in signatory jurisdictions which result in license revocation in that jurisdiction;

(2) reporting convictions and license revocations of residents of signatory states for violations of game and fish laws of Minnesota to game and fish authorities in the nonresident's state of residence; and

(3) release upon signature without posting of bail for residents of signatory states accused of game and fish law violations in this state, providing for recovery, in the resident jurisdiction, of fines levied if the citation is not answered in this state.

As used in this subdivision, "conviction" includes a plea of guilty or a forfeiture of bail.

Amended by Laws 1997, c. 226, § 15.

Notes of Decisions

Indian treaty rights 8

8. Indian treaty rights

Minnesota fish and wildlife management statute did not confer upon Department of Natural Resources (DNR) unilateral, unreviewable authority to determine "harvestable surplus" levels for both treaty and nontreaty harvests, for purpose of allocating Chippewa hunting and fishing rights under 1887 treaty, and, thus, such determinations were subject to judicial review, to ensure that state met burden of showing that regulation was conservation-based and did not discriminate against treaty rights. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, D.Minn.1997, 952 F.Supp. 1362, affirmed 124 F.3d 904, rehearing and suggestion for rehearing en banc denied, certiorari granted 118 S.Ct. 2295, 524 U.S. 915, 141 L.Ed.2d 156, affirmed 119 S.Ct. 1187, 526 U.S. 172, 143 L.Ed.2d

270, certiorari denied 119 S.Ct. 1333, 526 U.S. 1038, 143 L.Ed.2d 497, certiorari denied 119 S.Ct. 1376, 526 U.S. 1060, 143 L.Ed.2d 535.

Even if state regulation of Indian treaty hunting, fishing, and gathering rights, in interests of conservation, meets appropriate standards and is not discriminatory, state is barred from regulating treaty rights if, as a matter of fact, tribes can effectively self-regulate and tribal regulations are adequate to meet conservation needs. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, D.Minn.1997, 952 F.Supp. 1362, affirmed 124 F.3d 904, rehearing and suggestion for rehearing en banc denied, certiorari granted 118 S.Ct. 2295, 524 U.S. 915, 141 L.Ed.2d 156, affirmed 119 S.Ct. 1187, 526 U.S. 172, 143 L.Ed.2d 156, affirmed 119 S.Ct. 1187, 526 U.S. 172, 143 L.Ed.2d 156.

97A.0455. Submission of proposed emergency rule to attorney general

Subdivision 1. Submission. The commissioner shall submit to the attorney general the proposed emergency rule as published, with any modifications. On the same day that it is submitted, the commissioner shall mail notice of the submission to all persons who requested to be informed that the proposed emergency rule has been submitted to the attorney general. If the proposed emergency rule has been modified, the notice must state that fact, and must state that a free copy of the proposed emergency rule, as modified, is available upon request from the commissioner.

Subd. 2. Review. The attorney general shall review the proposed emergency rule as to its legality, review its form to the extent the form relates to legality, and shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the commissioner. The attorney general shall send a statement of reasons for disapproval of the rule to the commissioner, the chief administrative law judge, the legislative coordinating commission, and to the revisor of statutes.

The attorney general shall disregard any error or defect in the proceeding due to the commissioner's failure to satisfy any procedural requirement imposed by law or rule if the attorney general finds:

(1) that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process; or

(2) that the commissioner has taken corrective action to cure the error or defect so that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.

Subd. 3. Costs. The attorney general shall assess the commissioner for the actual cost of processing rules under this section. The commissioner shall include in the department's budget money to pay the attorney general's assessment. Receipts from the assessment must be deposited in the state treasury and credited to the general fund.

Amended by Laws 1998, c. 254, art. 1, § 22.

97A.055. Game and fish fund

Subdivision 1. Establishment; purposes. The game and fish fund is established as a fund in the state treasury.

Subd. 2. Receipts. The state treasurer shall credit to the game and fish fund all money received under the game and fish laws including receipts from:

(1) licenses issued;

(2) fines and forfeited bail;

(3) sales of contraband, wild animals, and other property under the control of the division;

(4) fees from advanced education courses for hunters and trappers;

(5) reimbursements of expenditures by the division;

(6) contributions to the division; and

(7) revenue credited to the game and fish fund under section 297A.44, subdivision 1, paragraph (e), clause (1).

Subd. 3. Game and fish fund fees. To reduce yearly fluctuations of the game and fish fund balance and to provide improved long-range planning of the fund, the policy of the state is to make fee adjustments as part of the budget process. Agency responsibilities are:

(a) The commissioner of natural resources must make specific requests for fee adjustments for all receipt items in the game and fish fund as a part of the fee report.

(b) The commissioner of finance must review the fee report and make recommendations for each fee. The commissioner of finance must submit a six-year projection on revenues and expenditures to the legislature.

Subd. 4. Annual reports. (a) By November 15 each year, the commissioner shall submit to the legislative committees having jurisdiction over appropriations and the environment and natural resources reports on each of the following:

(1) the amount of revenue from the following and purposes for which expenditures were made:

(i) the small game license surcharge under section 97A.475, subdivision 4;

(ii) the Minnesota migratory waterfowl stamp under section 97A.475, subdivision 5, clause (1);

- (iii) the trout and salmon stamp under section 97A.475, subdivision 10;
 - (iv) the pheasant stamp under section 97A.475, subdivision 5, clause (2); and
 - (v) the turkey stamp under section 97A.475, subdivision 5, clause (3);
 - (2) the amounts available under section 97A.075, subdivision 1, paragraphs (b) and (c), and the purposes for which these amounts were spent;
 - (3) money credited to the game and fish fund under this section and purposes for which expenditures were made from the fund;
 - (4) outcome goals for the expenditures from the game and fish fund; and
 - (5) summary and comments of citizen oversight committee reviews under subdivision 4a.
- (b) The report must include the commissioner's recommendations, if any, for changes in the laws relating to the stamps and surcharge referenced in paragraph (a).

Subd. 4a. Citizen oversight committees. (a) The commissioner shall appoint committees of affected persons to review the reports prepared under subdivision 4 and other relevant information and make recommendations to the legislature and the commissioner for improvements in the management and use of money in the game and fish fund.

(b) The commissioner shall appoint the following committees:

- (1) a committee to review the annual game and fish fund report and address general game and fish fund issues;
- (2) a committee to address funding issues related to fishing;
- (3) a committee to review the report on the small game license surcharge and the report required in subdivision 4, paragraph (a), clause (2), and address funding issues related to hunting;
- (4) a committee to review the trout and salmon stamp report and address funding issues related to trout and salmon;
- (5) a committee to review the report on the migratory waterfowl stamp and address funding issues related to migratory waterfowl;
- (6) a committee to review the report on the pheasant stamp and address funding issues related to pheasants; and
- (7) a committee to review the report on the turkey stamp and address funding issues related to wild turkeys.

(c) The committees must make recommendations to the commissioner for outcome goals from expenditures.

Subd. 5. Pelting fees. The commissioner may pay a pelting fee to a person who recovers, treats, preserves, or transports the pelt of a fur-bearing animal that is accidentally killed or is lawfully taken under section 97B.655. The commissioner may adopt rules setting pelting fees and governing their payment. The amounts necessary to pay the fees are appropriated from the game and fish fund to the commissioner.

Amended by Laws 2000, c. 463, §§ 2, 3; Laws 2000, c. 488, art. 3, § 26, eff. May 16, 2000.

97A.061. Payment in lieu of taxes

Subdivision 1. Applicability; amount. (a) The commissioner shall annually make a payment to each county having public hunting areas and game refuges. Money to make the payments is annually appropriated for that purpose from the general fund. This section does not apply to state trust fund land and other state land not purchased for game refuge or public hunting purposes. The payment shall be the greatest of:

- (1) 35 percent of the gross receipts from all special use permits and leases of land acquired for public hunting and game refuges;
 - (2) 50 cents per acre on land purchased actually used for public hunting or game refuges;
- or

(3) three-fourths of one percent of the appraised value of purchased land actually used for public hunting and game refuges.

(b) The payment must be reduced by the amount paid under subdivision 3 for croplands managed for wild geese.

(c) The appraised value is the purchase price for five years after acquisition. The appraised value shall be determined by the county assessor every five years after acquisition.

Subd. 2. Allocation. (a) Except as provided in subdivision 3, the county treasurer shall allocate the payment among the county, towns, and school districts on the same basis as if the payments were taxes on the land received in the year. Payment of a town's or a school district's allocation must be made by the county treasurer to the town or school district within 30 days of receipt of the payment to the county. The county's share of the payment shall be deposited in the county general revenue fund.

(b) The county treasurer of a county with a population over 39,000 but less than 42,000 in the 1950 federal census shall allocate the payment only among the towns and school districts on the same basis as if the payments were taxes on the lands received in the current year.

Subd. 3. Goose management croplands. (a) The commissioner shall make a payment on July 1 of each year to each county where the state owns more than 1,000 acres of crop land, for wild goose management purposes. The payment shall be equal to the taxes assessed on comparable, privately owned, adjacent land. Money to make the payments is annually appropriated for that purpose from the general fund. The county treasurer shall allocate and distribute the payment as provided in subdivision 2.

(b) The land used for goose management under this subdivision is exempt from taxation as provided in sections 272.01 and 273.19.

Subd. 4. Offset of payments. Payments to a county or town under this section must be reduced by the amount of payment to that county or town under section 477A.12 for the same lands in the same year.

Subd. 5. Allocation of payments. Notwithstanding section 477A.14, the amounts paid to a county under section 477A.14 for lands that are also subject to payment under this section shall be allocated within the county in accordance with subdivision 2.

Amended by Laws 2000, c. 490, art. 6, §§ 1, 2.

Historical and Statutory Notes

2000 Legislation

Laws 2000, c. 490, art. 6, §§ 1 and 2, also provide that subs. 4 and 5 are effective for payments made in calendar year 2001 and thereafter.

97A.065. Dedication of certain receipts

Subdivision 1. Fish and turtles from rough fish removal. Money received from the sale of fish and turtles taken under rough fish removal operations is continuously available for rough fish removal.

Subd. 2. Fines and forfeited bail. (a) Fines and forfeited bail collected from prosecutions of violations of: the game and fish laws; sections 84.091 to 84.15; sections 84.81 to 84.91; section 169A.20, when the violation involved an off-road recreational vehicle as defined in section 169A.03, subdivision 16; chapter 348; and any other law relating to wild animals or aquatic vegetation, must be paid to the treasurer of the county where the violation is prosecuted. The county treasurer shall submit one-half of the receipts to the commissioner and credit the balance to the county general revenue fund except as provided in paragraphs (b), (c), and (d). In a county in a judicial district under section 480.181, subdivision 1, paragraph (b), as added in Laws 1999, chapter 216, article 7, section 26, the share that would otherwise go to the county under this paragraph must be submitted to the state treasurer for deposit in the state treasury and credited to the general fund.

(b) The commissioner must reimburse a county, from the game and fish fund, for the cost of keeping prisoners prosecuted for violations under this section if the county board, by

resolution, directs: (1) the county treasurer to submit all fines and forfeited bail to the commissioner; and (2) the county auditor to certify and submit monthly itemized statements to the commissioner.

(c) The county treasurer shall submit one-half of the receipts collected under paragraph (a) from prosecutions of violations of sections 84.81 to 84.91, and 169A.20, except receipts that are surcharges imposed under section 357.021, subdivision 6, to the commissioner and credit the balance to the county general fund. The commissioner shall credit these receipts to the snowmobile trails and enforcement account in the natural resources fund.

(d) The county treasurer shall indicate the amount of the receipts that are surcharges imposed under section 357.021, subdivision 6, and shall submit all of those receipts to the state treasurer.

Subd. 3. Repealed by Laws 1994, c. 561, § 28, par. (c), eff. July 1, 1995.

Subd. 4. Repealed by Laws 1987, c. 149, art. 1, § 54.

Subd. 5. **Restitution for wild animals.** Money collected from restitution under section 97A.341 for wild animals killed, injured, or possessed in violation of the game and fish laws must be used by the commissioner for replacement, propagation, or protection of wild animals.

Amended by Laws 1997, 1st Sp., c. 2, § 7; Laws 1998, c. 367, art. 8, § 1, eff. Jan. 1, 1999; Laws 1999, c. 243, art. 11, § 1; Laws 2000, c. 478, art. 2, § 7; Laws 2000, c. 495, § 29.

Historical and Statutory Notes

1998 Legislation

Laws 1998, c. 367, art. 8, § 1, rewrote subd. 2, which formerly read:

"Subd. 2. Fines and forfeited bail. (a) Fines and forfeited bail collected from prosecutions of violations of: the game and fish laws; sections 84.091 to 84.15; sections 84.81 to 84.88; section 169.121, when the violation involved an off-road recreational vehicle as defined in section 169.01, subdivision 86; chapter 348; and any other law relating to wild animals or aquatic vegetation, must be paid to the treasurer of the county where the violation is prosecuted. The county treasurer shall submit one-half of the receipts to the commissioner and credit the balance to the county general revenue fund except as provided in paragraphs (b), (c), and (d).

"(b) The commissioner must reimburse a county, from the game and fish fund, for the cost of keeping prisoners prosecuted for violations under this section if the county board, by resolution, directs: (1) the county treasurer to submit all fines and forfeited bail to the commissioner; and (2) the county auditor to certify and submit monthly itemized statements to the commissioner.

"(c) The county treasurer shall indicate the amount of the receipts that are assessments or surcharges imposed under section 609.101 and shall submit all of those receipts to the commissioner. The receipts must be credited to the game and fish fund to provide peace officer training for persons employed by the commissioner who are licensed under section 626.84, subdivision 1, clause (c), and who possess peace officer authority for the purpose of enforcing game and fish laws.

"(d) The county treasurer shall submit one-half of the receipts collected under paragraph (a) from prosecutions of violations of sections 84.81 to 84.91,

and 169.121, including receipts that are assessments or surcharges imposed under section 609.101, to the commissioner and credit the balance to the county general fund. The commissioner shall credit these receipts to the snowmobile trails and enforcement account in the natural resources fund."

1999 Legislation

Laws 1999, c. 243, art. 11, § 13, par. (a), provides:

"(a) Sections 2 [amending § 273.1398, subd. 2] and 6 [amending § 477A.03, subd. 2] are effective for aids payable in 2000. The other provisions of this article providing for the transfer of fees and fines to the state are effective January 1, 2000, with respect to counties in the eighth judicial district, and July 1, 2000, with respect to counties in the fifth, seventh, and ninth judicial districts."

Laws 1999, c. 243, art. 11, § 13, par. (b), provides that notwithstanding par. (a), this article does not take effect unless the state assumes the district court costs under 1999 S.F. No. 2221, article 7. S.F. No. 2221, article 7, was enacted as Laws 1999, c. 216, art. 7. Laws 1999, c. 216, art. 7, § 27, enacted § 480.182, relating to the state's assumption of certain court costs.

2000 Legislation

Laws 2000, c. 478, art. 2, § 7, in part directed the revisor of statutes to conform citations in statutory text to reflect the repeal of parts of chapter 169 and the enactment of chapter 169A.

Laws 2000, c. 478, art. 2, § 9, par. (b), provides in part that § 7, instructing the revisor of statutes to conform citations in statutory text to reflect the repeal of part of chapter 169 and the enactment of chapter 169A, is effective January 1, 2001, for crimes committed and conduct occurring on or after that date, and that violations occurring before

January 1, 2001, which are listed in § 169A.03, subds. 20 and 21, are considered qualified prior impaired driving incidents for all purposes under this act.

Laws 2000, c. 495, § 29, in subd. 2, par. (c), twice substituted "commissioner" for "state treasurer".

97A.071. Wildlife acquisition account

Subdivision 1. Account established. The wildlife acquisition account is established as an account in the game and fish fund.

Subd. 2. Revenue from the small game license surcharge and lifetime licenses. Revenue from the small game surcharge and \$4 annually from the lifetime fish and wildlife trust fund, established in section 97A.4742, for each license issued under sections 97A.473, subdivisions 3 and 5, and 97A.474, subdivision 3, shall be credited to the wildlife acquisition account and the money in the account shall be used by the commissioner only for the purposes of this section, and acquisition and development of wildlife lands under section 97A.145 and maintenance of the lands, in accordance with appropriations made by the legislature.

Subd. 2a. Use of wildlife acquisition account money. Of the money annually appropriated and available from the wildlife acquisition account:

- (1) at least 50 percent must be used for land costs; and
- (2) the remainder may only be used for other land acquisition costs, development, and maintenance of wildlife lands, and activities under subdivision 3.

Subd. 3. Waterfowl breeding grounds in Canada. The wildlife acquisition account may be used for developing, preserving, restoring, and maintaining waterfowl breeding grounds in Canada under agreement or contract with any nonprofit organization dedicated to the construction, maintenance, and repair of projects that are acceptable to the governmental agency having jurisdiction over the land and water affected by the projects. The commissioner may execute agreements and contracts if the commissioner determines that the use of the funds will benefit the migration of waterfowl into the state.

Subd. 4. Repealed by Laws 1994, c. 561, § 28.

Subd. 5. Definitions. (a) The definitions in this subdivision apply to this section.

(b) "Development" means fencing, signing, and onsite improvement of the land that is related to the purposes for which the land was acquired. Development includes material or equipment that is purchased or rented and labor that is necessary to provide for the onsite improvement of the land.

(c) "Land costs" means the purchase price of land acquired by the commissioner under section 97A.145.

(d) "Maintenance" means noxious weed control and other onsite functions performed on a regular basis to sustain the environmental conditions that result from the original improvement of the land.

(e) "Other acquisition costs" means acquisition coordination costs, costs of engineering services, appraisal fees, attorney fees, taxes, assessments required at the time of purchase, and recording fees for land acquired by the commissioner under section 97A.145.

Amended by Laws 2000, c. 341, § 1, eff. April 7, 2000.

97A.075. Use of license revenues

Subdivision 1. Deer, bear, and lifetime licenses. (a) For purposes of this subdivision, "deer license" means a license issued under section 97A.475, subdivisions 2, clauses (4), (5), and (9), and 3, clauses (2), (3), and (7), and licenses issued under section 97B.301, subdivision 4.

(b) At least \$2 from each annual deer license and \$2 annually from the lifetime fish and wildlife trust fund, established in section 97A.4742, for each license issued under section 97A.473, subdivision 4, shall be used for deer habitat improvement or deer management programs.

(c) At least \$1 from each annual deer license and each bear license and \$1 annually from the lifetime fish and wildlife trust fund, established in section 97A.4742, for each license issued under section 97A.473, subdivision 4, shall be used for deer and bear management programs, including a computerized licensing system. Fifty cents from each deer license is appropriated for emergency deer feeding. Money appropriated for emergency deer feeding is available until expended. When the unencumbered balance in the appropriation for emergency deer feeding at the end of a fiscal year exceeds \$1,500,000 for the first time, \$750,000 is canceled to the unappropriated balance of the game and fish fund.

Thereafter, when the unencumbered balance in the appropriation for emergency deer feeding exceeds \$1,500,000 at the end of a fiscal year, the unencumbered balance in excess of \$1,500,000 is canceled and available for deer and bear management programs and computerized licensing.

Subd. 2. Minnesota migratory waterfowl stamp. (a) Ninety percent of the revenue from the Minnesota migratory waterfowl stamps must be credited to the waterfowl habitat improvement account. Money in the account may be used only for:

(1) development of wetlands and lakes in the state and designated waterfowl management lakes for maximum migratory waterfowl production including habitat evaluation, the construction of dikes, water control structures and impoundments, nest cover, rough fish barriers, acquisition of sites and facilities necessary for development and management of existing migratory waterfowl habitat and the designation of waters under section 97A.101;

(2) management of migratory waterfowl;

(3) development, restoration, maintenance, or preservation of migratory waterfowl habitat; and

(4) acquisition of and access to structure sites.

(b) Money in the account may not be used for costs unless they are directly related to a specific parcel of land or body of water under paragraph (a), clause (1), (3), or (4), or to specific management activities under paragraph (a), clause (2).

Subd. 3. Trout and salmon stamp. (a) Ninety percent of the revenue from trout and salmon stamps must be credited to the trout and salmon management account. Money in the account may be used only for:

(1) the development, restoration, maintenance, and preservation of trout streams and lakes;

(2) rearing of trout and salmon and stocking of trout and salmon in streams and lakes and Lake Superior;

(3) acquisition of easements and fee title along trout waters;

(4) identifying easement and fee title areas along trout waters; and

(5) research and special management projects on Lake Superior and the anadromous portions of its tributaries.

(b) Money in the account may not be used for costs unless they are directly related to a specific parcel of land or body of water under paragraph (a) or to specific fish rearing activities under paragraph (a), clause (2).

Subd. 4. Pheasant stamp. (a) Ninety percent of the revenue from pheasant stamps must be credited to the pheasant habitat improvement account. Money in the account may be used only for:

(1) the development, restoration, and maintenance of suitable habitat for ringnecked pheasants on public and private land including the establishment of nesting cover, winter cover, and reliable food sources;

(2) reimbursement of landowners for setting aside lands for pheasant habitat;

(3) reimbursement of expenditures to provide pheasant habitat on public and private land; and

(4) the promotion of pheasant habitat development and maintenance, including promotion and evaluation of government farm program benefits for pheasant habitat.

(b) Money in the account may not be used for:

(1) costs unless they are directly related to a specific parcel of land under paragraph (a), clauses (1) to (3), or to specific promotional or evaluative activities under paragraph (a), clause (4); or

(2) any personnel costs.

Subd. 5. Turkey stamps. (a) Ninety percent of the revenue from turkey stamps must be credited to the wild turkey management account. Money in the account may be used only for:

(1) the development, restoration, and maintenance of suitable habitat for wild turkeys on public and private land including forest stand improvement and establishment of nesting cover, winter roost area, and reliable food sources;

(2) acquisitions of, or easements on, critical wild turkey habitat;

(3) reimbursement of expenditures to provide wild turkey habitat on public and private land;

(4) trapping and translocation of wild turkeys; and

(5) the promotion of turkey habitat development and maintenance, population surveys and monitoring, and research.

(b) Money in the account may not be used for:

(1) costs unless they are directly related to a specific parcel of land under paragraph (a), clauses (1) to (3), a specific trap and transplant project under paragraph (a), clause (4), or to specific promotional or evaluative activities under paragraph (a), clause (5); or

(2) any permanent personnel costs.

Amended by Laws 1997, c. 216, § 80; Laws 1997, c. 226, § 16; Laws 1999, c. 249, § 11; Laws 2000, c. 341, § 2, eff. April 7, 2000.

97A.085. Game refuges

Subdivision 1. State parks. All state parks are designated as game refuges.

Subd. 2. Establishment by commissioner. The commissioner may designate a contiguous area of at least 640 acres as a game refuge if more than 50 percent of the area is in public ownership.

Subd. 3. Establishment by petition of land holders. The commissioner may designate a land area described in a petition as a game refuge. The petition must be signed by the owner, the lessee, or the person in possession of each tract in the area. A certificate of the auditor of the county where the lands are located must accompany the petition stating that the persons named in the petition are the owners, lessees, or persons in possession of all of the land described according to the county records. The game refuge must be a contiguous area of at least 640 acres unless it borders or includes a marsh, or other body of water or watercourse suitable for wildlife habitat.

Subd. 4. Establishment by petition of county residents. The commissioner may designate as a game refuge a contiguous area of at least 640 acres, described in a petition, signed by 50 or more residents of the county where the area is located. The game refuge may be designated only if the commissioner finds that protected wild animals are depleted and are in danger of extermination, or that it will best serve the public interest.

Subd. 4a. Hearing required. Before designating a game refuge under this section, the commissioner must hold a public hearing within the county where the majority of the proposed game refuge exists. Notices of the time and place of the hearing must be posted in five conspicuous places within the proposed game refuge at least 15 days before the hearing. A notice of the hearing must be published in a legal newspaper in each county where the area is located at least seven days before the hearing.

Subd. 5. Game refuge for specified game. The commissioner may designate a game refuge under this section for only specified species. The game refuge must be posted accordingly.

Subd. 6. Area included in game refuge. A state game refuge includes all public lands, waters, highways, and railroad right-of-way within the refuge boundary and, in the discretion of the commissioner, may include adjacent public lands and waters.

Subd. 7. Game refuge boundary posting. (a) The designation of a state game refuge is not effective until the boundary has been posted with notices that measure at least 12 inches.

(b) The notices must be posted at intervals of not more than 500 feet or less along the boundary. The notices must also be posted at all public road entrances to the refuges, except where the boundary is also an international or state boundary in public waters. Where the boundary of a refuge extends more than 500 feet continuously through a body of water, instead of placing notices in the water, notices with the words, "Adjacent Waters Included," may be placed on the shoreline at the intersection of the boundary and the water 20 feet or less above the high water mark and at intervals of 500 feet or less along the shoreline.

(c) A certification by the commissioner or the director, or a certification filed with the commissioner or director by a conservation officer, refuge supervisor, or other authorized officer or employee, stating that the required notices have been posted is prima facie evidence of the posting.

Subd. 8. Modification or abandonment. A state game refuge may be vacated or modified by the commissioner under the same procedures required for establishment of the refuge, except that a refuge established or modified under subdivision 2 or 3 may be vacated or modified following a public hearing as specified in subdivision 4a.

Amended by Laws 1997, c. 187, art. 3, § 23, eff. June 30, 1997; Laws 1997, c. 226, § 17.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 187, art. 3, § 33, provides that the exemptions in this article (in part amending this section) are eliminated because the entity is not

subject to c. 14, or the agency action is not a rule, and that the agency or other entity need not comply with c. 14, in order to take actions affected by the amendments and repeals in this article.

97A.095. Waterfowl protected areas

Subdivision 1. Migratory waterfowl refuges. The commissioner shall designate by rule any part of a state game refuge as a migratory waterfowl refuge if there is presented to the commissioner a petition signed by ten resident licensed hunters describing an area that is primarily a migratory waterfowl refuge. The commissioner shall post the area as a migratory waterfowl refuge. A person may not enter a posted migratory waterfowl refuge during the open migratory waterfowl season unless accompanied by or under a permit issued by a conservation officer or game refuge manager. Upon a request from a private landowner within a migratory waterfowl refuge, an annual permit must be issued to provide access to the property during the waterfowl season. The permit shall include conditions that allow no activity which would disturb waterfowl using the refuge during the waterfowl season.

Subd. 2. Waterfowl feeding and resting areas. The commissioner may, by rule, designate any part of a lake as a migratory feeding or resting area. Before designation, the commissioner must receive a petition signed by at least ten local resident licensed hunters describing the area of a lake that is a substantial feeding or resting area for migratory waterfowl, and find that the statements in the petition are correct, and that adequate, free public access to the lake exists near the designated area. The commissioner shall post the area as a migratory waterfowl feeding and resting area. Except as authorized in rules adopted by the commissioner, a person may not enter a posted migratory waterfowl feeding and resting area, during a period when hunting of migratory waterfowl is allowed, with watercraft or aircraft propelled by a motor, other than an electric motor of less than 30 pounds thrust. The commissioner may, by rule, further restrict the use of electric motors in migratory waterfowl feeding and resting areas.

Subd. 3. Hunting on Muskrat Lake. The commissioner may prohibit migratory waterfowl hunting on Muskrat Lake in Beltrami county by posting accordingly.

Subd. 4. Swan lake migratory waterfowl refuge. The land described in Laws 1999, chapter 81, section 2, is designated Swan Lake migratory waterfowl refuge under subdivision 1.

Amended by Laws 1999, c. 81, § 1; Laws 2000, c. 495, § 30.

97A.101. Public water reserves and management designation

Subdivision 1. Reserves. The commissioner may designate and reserve public waters of the state to propagate and protect wild animals.

Subd. 2. Management designation. (a) The commissioner may designate, reserve, and manage public waters for wildlife after giving notice and holding a public hearing. The hearing must be held in the county where the major portion of the waters is located. Notice of the hearing must be published in a legal newspaper within each county where the waters are located at least seven days before the hearing.

(b) The commissioner may contract with riparian owners for water projects under section 103G.121, subdivision 3, and may acquire land, accept local funding, and construct, maintain, and operate structures to control water levels under section 103G.505 to manage designated waters.

Subd. 3. Fishing may not be restricted. Seasons or methods of taking fish may not be restricted under this section.

Subd. 4. Restrictions on airboats, watercraft, and recreational vehicles. (a) The use of airboats is prohibited at all times on lakes designated for wildlife management purposes under this section unless otherwise authorized by the commissioner.

(b) The commissioner may restrict the use of motorized watercraft and recreational vehicles on lakes designated for wildlife management purposes by posting all public access points on the designated lake.

Amended by Laws 1997, c. 226, § 18.

97A.111. Repealed by Laws 1997, c. 226, § 51

97A.133. State wildlife management areas

Subdivision 1. Establishment. State wildlife management areas are established and designated as provided under this section. State wildlife management areas are located and named as indicated in this section.

Subd. 2. Payment in lieu of taxes. The consolidated conservation lands included in state wildlife management areas are subject to the payment in lieu of tax as provided in section 477A.12, paragraph (a), clause (1).

Subd. 3. All-terrain vehicle travel within designated wildlife management areas. (a) On lands acquired by the state under chapter 84A that are designated after January 1, 1986, as wildlife management areas, the commissioner shall, by January 15, 2003, identify and designate corridor trails in corridors of disturbance that the commissioner determines are appropriate to connect trails, forest roads established under section 89.71, subdivision 1, and public highways to provide reasonable travel for all-terrain vehicles. The commissioner shall consult with wildlife management area users, including both motorized and nonmotorized trail users, in identifying and designating corridor trails under this paragraph. Corridor trail establishment must be in compliance with other state and federal law. Local governments and other trail sponsors may propose the designation of corridor trails, including the designation as a grant-in-aid trail for the purposes of funding under section 84.927, subdivision 2.

(b) The following forest roads shall be open to travel by all-terrain vehicles when the roads are open to other noncommercial vehicles:

(1) the Rapid River forest road, beginning at the west boundary of the Red Lake wildlife management area at the southwest corner of Section 7, Township 156 North, Range 35 West, Beltrami county, thence in an easterly and northeasterly direction through the Red Lake wildlife management area to the east boundary of the Red Lake wildlife management area at

the southwest corner of Section 7, Township 157 North, Range 33 West, Lake of the Woods county;

(2) the Blanchard forest road, beginning at the junction of the North Shore Road along the northern shore of Upper Red Lake and the Blanchard state forest road at the west section line of Section 30, Township 155 North, Range 31 West, Beltrami county, thence in a westerly direction to the west section line of Section 31, Township 155 North, Range 32 West; and

(3) the Moose River forest road, beginning at the junction of Dick's Parkway state forest road and the Moose River state forest road at the southwest corner of Section 31, Township 36 West, Range 158 North, thence in a westerly direction along the Moose River state forest road to the junction of Beltrami county road 706.

(c) The commissioner shall sign each road and trail designated under this subdivision indicating the motorized uses allowed.

(d) For the purposes of this subdivision, "corridors of disturbance" means rights-of-way such as ditches, ditch banks, transmission lines, pipelines, permanent roads, winter roads, and recreational trails. The existence of a corridor of disturbance eligible for corridor designation may be demonstrated by physical evidence, document recorded in the office of the county recorder or other public official, aerial survey, or other evidence similar to the above. Cross-country motorized use of land shall not cause that land to be considered a corridor of disturbance.

Subd. 4. Agder wildlife management area, Marshall county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 23; Laws 2000, c. 485, § 27]

Subd. 5. Aitkin wildlife management area, Aitkin county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 2; Laws 2000, c. 485, § 27]

Subd. 6. Bear Creek wildlife management area, Roseau county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 7. Benville wildlife management area, Beltrami county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 3; Laws 2000, c. 485, § 27]

Subd. 8. Border wildlife management area, Roseau county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 9. Carmalee wildlife management area, Beltrami county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 4; Laws 2000, c. 485, § 27]

Subd. 10. Carp Swamp wildlife management area, Lake of the Woods county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 5; Laws 2000, c. 485, § 27]

Subd. 11. Cedar wildlife management area, Marshall county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 6; Laws 2000, c. 485, § 27]

Subd. 12. Cedarbend wildlife management area, Roseau county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 13. Clear River wildlife management area, Roseau county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 14. East Branch wildlife management area, Roseau county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 15. East Park wildlife management area, Marshall county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 16. Eckvoll wildlife management area, Marshall county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 7; Laws 2000, c. 485, § 27]

Subd. 17. Elm Lake wildlife management area, Marshall county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 8; Laws 2000, c. 485, § 27]

Subd. 18. Enstrom wildlife management area, Roseau county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 19. Espelie wildlife management area, Marshall county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 9; Laws 2000, c. 485, § 27]

Subd. 20. Fireweed wildlife management area, Beltrami county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 21. Foote wildlife management area, Mahnomen county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 10; Laws 2000, c. 485, § 27]

Subd. 22. Four Mile Bay wildlife management area, Lake of the Woods county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 11; Laws 2000, c. 485, § 27]

Subd. 23. Golden Valley wildlife management area, Roseau county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 24. Graceton wildlife management area, Lake of the Woods county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 12; Laws 2000, c. 485, § 27]

Subd. 25. Grayling Marsh wildlife management area, Aitkin county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 13; Laws 2000, c. 485, § 27]

Subd. 26. Grygla wildlife management area, Marshall county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 14; Laws 2000, c. 485, § 27]

Subd. 27. Gun Dog wildlife management area, Beltrami county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 15; Laws 2000, c. 485, § 27]

Subd. 28. Hamre wildlife management area, Beltrami county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 16; Laws 2000, c. 485, § 27]

Subd. 29. Hayes wildlife management area, Roseau county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 30. Huntly wildlife management area, Marshall county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 31. Killian wildlife management area, Mahnomen county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 17; Laws 2000, c. 485, § 27]

Subd. 32. Kimberly wildlife management area, Aitkin county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 18; Laws 2000, c. 485, § 27]

Subd. 33. Larry Bernhoft wildlife management area, Lake of the Woods county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 19; Laws 2000, c. 485, § 27]

Subd. 34. Lee wildlife management area, Beltrami county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 20; Laws 2000, c. 485, § 27]

Subd. 35. Little Willow wildlife management area, Aitkin county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 21; Laws 2000, c. 485, § 27]

Subd. 36. Marbel wildlife management area, Roseau county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 22; Laws 2000, c. 485, § 27]

Subd. 37. McGregor Marsh wildlife management area, Aitkin county.

[Laws 2000, c. 485, §§ 16, 27]

Subd. 38. Moose River wildlife management area, Beltrami county.

[Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 24; Laws 2000, c. 485, § 27]

Subd. 39. Moylan wildlife management area, Marshall county.

- [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 25; Laws 2000, c. 485, § 27]
 Subd. 40. Nereson wildlife management area, Roseau county.
 [Laws 2000, c. 485, §§ 16, 27]
 Subd. 41. New Maine wildlife management area, Marshall county.
 [Laws 2000, c. 485, §§ 16, 27]
 Subd. 42. Palmville wildlife management area, Marshall and Roseau counties.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 26; Laws 2000, c. 485, § 27]
 Subd. 43. Prosper wildlife management area, Lake of the Woods county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 27; Laws 2000, c. 485, § 27]
 Subd. 44. Red Lake wildlife management area, Beltrami county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 28; Laws 2000, c. 485, § 27]
 Subd. 45. Robert Wickstrom wildlife management area, Aitkin county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 29; Laws 2000, c. 485, § 27]
 Subd. 46. Rocky Point wildlife management area, Lake of the Woods county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 30; Laws 2000, c. 485, § 27]
 Subd. 47. Roseau Lake wildlife management area, Roseau county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 31; Laws 2000, c. 485, § 27]
 Subd. 48. Rosver wildlife management area, Roseau county.
 [Laws 2000, c. 485, §§ 16, 27]
 Subd. 49. Salo wildlife management area, Aitkin county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 32; Laws 2000, c. 485, § 27]
 Subd. 50. Saw-Whet wildlife management area, Beltrami county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 33; Laws 2000, c. 485, § 27]
 Subd. 51. Sem wildlife management area, Marshall county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 34; Laws 2000, c. 485, § 27]
 Subd. 52. Sharp wildlife management area, Marshall county.
 [Laws 2000, c. 485, §§ 16, 27]
 Subd. 53. Skime wildlife management area, Roseau county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 35; Laws 2000, c. 485, § 27]
 Subd. 54. Snowshoe wildlife management area, Marshall county.
 [Laws 2000, c. 485, §§ 16, 27]
 Subd. 55. South Shore wildlife management area, Lake of the Woods and Roseau counties.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 36; Laws 2000, c. 485, § 27]
 Subd. 56. Spooner wildlife management area, Lake of the Woods county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 37; Laws 2000, c. 485, § 27]
 Subd. 57. Thief Lake wildlife management area, Marshall county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 38; Laws 2000, c. 485, § 27]
 Subd. 58. Valley wildlife management area, Marshall county.
 [Laws 2000, c. 485, §§ 16, 27]
 Subd. 59. Vanose wildlife management area, Mahnomen county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 39; Laws 2000, c. 485, § 27]
 Subd. 60. Wabun wildlife management area, Mahnomen county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 40; Laws 2000, c. 485, § 27]

- Subd. 61. Wannaska wildlife management area, Roseau county.
 [Laws 2000, c. 485, §§ 16, 27]
 Subd. 62. Wapiti wildlife management area, Beltrami county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 41; Laws 2000, c. 485, § 27]
 Subd. 63. Willow Run wildlife management area, Beltrami county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 42; Laws 2000, c. 485, § 27]
 Subd. 64. Willowsippi wildlife management area, Aitkin county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 43; Laws 2000, c. 485, § 27]
 Subd. 65. Wolf Trail wildlife management area, Beltrami county.
 [Laws 2000, c. 485, § 16; Laws 2000, c. 485, § 21, subd. 44; Laws 2000, c. 485, § 27]
 Laws 2000, c. 485, §§ 16, 21, 27, eff. May 16, 2000.

Historical and Statutory Notes

2000 Legislation

Laws 2000, c. 485, § 15, effective May 16, 2000, provides:

"Consolidated-conservation lands are lands that have a unique status under the legislative acts of 1929, 1931, and 1933 that created boundaries for the lands to become consolidated-conservation lands in Beltrami, Koochiching, Lake of the Woods, Aitkin, Mahnomen, Marshall, and Roseau counties. The counties and the commissioner of natural resources have had joint interests, responsibilities, and receipts of revenues from the consolidated-conservation lands as provided by law which have led to disagreements and frustration over the designation and use of these lands. The lands were privately owned and became tax-forfeited from drainage and property taxes leaving the counties with the burden of providing infrastructure without taxable lands to provide supporting

revenue. The commissioner of natural resources has been charged with developing game preserves, forestry areas, and other state purposes on these lands that were previously privately owned and drained wholly or partially for settlement. The goals and uses for the consolidated-conservation lands require a working relationship between the counties and the commissioner to resolve state and county concerns for the lands.

"It is the purpose of this act to designate certain consolidated-conservation lands as forestry or wildlife management lands with certain uses so that there is no further dispute about the status of those lands, to provide increased payments in lieu of taxes to support county infrastructure, and to provide a structure and forum for the counties and the commissioner to resolve identified issues and make common recommendations to the legislature."

97A.135. Acquisition of wildlife lands

Subdivision 1. Public hunting and wildlife areas. (a) The commissioner or the commissioner of administration shall acquire and improve land for public hunting, game refuges, and food and cover planting. The land may be acquired by a gift, lease, easement, purchase, or condemnation. At least two-thirds of the total area acquired in a county must be open to public hunting. The commissioner may designate land acquired under this subdivision as a wildlife management area for the purposes of the outdoor recreation system.

(b) The commissioner of administration may transfer money to the commissioner for acquiring wildlife lands to qualify for Pittman-Robertson funds. The transferred money is reappropriated to the commissioner for the wildlife land acquisition.

Subd. 2. Disposal of unsuitable hunting areas. The commissioner shall sell or exchange land acquired for public hunting that is unnecessary or unsuitable. The land may not be sold for less than its purchase price. The land may be exchanged for land of equal value that adds to existing public hunting areas. The sales and exchanges must be approved by the executive council. This subdivision does not apply to land in a wildlife management area.

Subd. 2a. Disposal of land in wildlife management areas. (a) The commissioner may sell or exchange land in a wildlife management area authorized by designation under section 86A.07, subdivision 3, 97A.133, or 97A.145 if the commissioner vacates the designation before the sale or exchange in accordance with this subdivision. The designation may be vacated only if the commissioner finds, after a public hearing, that the disposal of the land is in the public interest.

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(b) A sale under this subdivision is subject to sections 94.09 to 94.16. An exchange under this subdivision is subject to sections 94.341 to 94.348.

(c) Revenue received from a sale authorized under paragraph (a) is appropriated to the commissioner for acquisition of replacement wildlife management lands.

(d) Land acquired by the commissioner under this subdivision must meet the criteria in section 86A.05, subdivision 8, and as soon as possible after the acquisition must be designated as a wildlife management area under section 86A.07, subdivision 3, 97A.133, or 97A.145.

(e) In acquiring land under this subdivision, the commissioner must give priority to land within the same geographic region of the state as the land conveyed.

Subd. 3. Cooperative farming agreements. On any public hunting, game refuge, wildlife management area, or scientific and natural area lands, the commissioner may enter into written cooperative farming agreements on a sharecrop basis, without competitive bidding, for the purpose of wildlife and plant management. Cooperative farming agreements may also be used to allow pasturing of livestock. The agreements may provide for the bartering of a share of any crop, produced from these lands, for services or products that will enhance or benefit the management of state lands for plant and animal species. Cooperative farming agreements pursuant to this section shall not be considered leases for tax purposes under section 272.01, subdivision 2, or 273.19.

Amended by Laws 2000, c. 485, § 17, eff. May 16, 2000.

97A.137. Hunting, fishing, and trespassing in wildlife management areas

Subdivision 1. Hunting and fishing. Wildlife management areas are open to hunting and fishing unless closed by rule of the commissioner or by posting under subdivision 2.

Subd. 2. Commissioner may restrict entry to designated areas. The commissioner may, by posting in accordance with section 97B.001, subdivision 4, designate areas within wildlife management areas that are closed to entry for the purpose of providing areas where disturbance of wildlife can be minimized. A person may not enter an area posted under this subdivision except as authorized by rule or a permit issued by the commissioner.

Subd. 3. Use of motorized vehicles by disabled hunters. The commissioner may issue a special permit, without a fee, authorizing a hunter with a permanent physical disability to use a snowmobile or all-terrain vehicle in wildlife management areas. To qualify for a permit under this subdivision, the disabled person must possess:

- (1) the required hunting licenses; and
- (2) a permit to shoot from a stationary vehicle under section 97B.055, subdivision 3.

Amended by Laws 2000, c. 265, § 1.

Historical and Statutory Notes

2000 Legislation

Laws 2000, c. 265, § 3, provides that § 1 (amending subd. 3 of § 97A.137) and § 2 (amending subd. 3 of § 97B.055) are effective January 1,

2001 and any temporary or permanent permits issued prior to January 1, 2001, under Minnesota Statutes 1998, section 97B.055, subdivision 3, are automatically rescinded effective January 1, 2001.

ENFORCEMENT

97A.223. Seizure and administrative forfeiture of certain firearms and abandoned property

Subdivision 1. Property subject to seizure and forfeiture. (a) An enforcement officer must seize:

- (1) firearms possessed in violation of state or federal law or court order; and
- (2) property described in section 97A.221, subdivision 1, where no owner can be determined.

(b) Property seized under this section is subject to administrative forfeiture.

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Subd. 2. Notice of seizure and intent to forfeit. When property is seized under subdivision 1, the enforcement officer shall serve any known owner and person possessing the property with a notice of the seizure and intent to forfeit the property. The notice must be in writing, describing the property seized, the date of seizure, and notice of the right to appeal the seizure and forfeiture as described in subdivision 3.

Subd. 3. Appeal; final order. Seizure and administrative forfeiture of property under this section may be appealed under the procedures in section 116.072, subdivision 6, if the owner or other person from whom the property was seized requests a hearing by notifying the commissioner in writing within 45 days after seizure of the property. For purposes of this section, the terms "commissioner" and "agency" as used in section 116.072 mean the commissioner of natural resources. If a hearing is not requested within 45 days of seizure, the forfeiture becomes a final order and not subject to further review.

Subd. 4. Other remedies. The authority to forfeit firearms and other property under this section is in addition to other remedies available under state and federal law.

Subd. 5. Disposal of forfeited property. Forfeited property under this section may be disposed of as contraband according to section 97A.221, subdivision 4.

Laws 2000, c. 466, § 1, eff. May 16, 2000.

97A.245. Rewards

The commissioner may pay rewards for information leading to the conviction of a person that has violated a provision of laws relating to wild animals or threatened or endangered species of wildlife. A reward may not exceed \$500, except a reward for information relating to big game or threatened or endangered species of wildlife, may be up to \$1,000 and a reward for information relating to gray wolves may be up to \$2,500. The rewards may only be paid from funds donated to the commissioner for these purposes and may not be paid to salaried conservation officers or peace officers.

Amended by Laws 1998, c. 401, § 34, eff. April 22, 1998; Laws 2000, c. 463, § 22.

PENALTIES

97A.331. Penalties related to hunting

Subdivision 1. Hunting while under the influence of alcohol or a controlled substance. A person that violates the provision of section 97B.065 relating to hunting while under the influence of alcohol or a controlled substance is guilty of a gross misdemeanor.

Subd. 2. Shining. A person that violates section 97B.081, relating to the use of an artificial light to locate wild animals while in possession of a firearm, bow, or other implement capable of killing big game is guilty of a gross misdemeanor.

Subd. 3. Transporting illegal big game. A person that knowingly transports big game taken in violation of the game and fish laws is guilty of a gross misdemeanor.

Subd. 4. Taking and possessing big game out of season. A person that takes or illegally possesses big game during the closed season is guilty of a gross misdemeanor.

Subd. 5. Moose; elk; caribou. A person that unlawfully takes, transports, or possesses moose, elk, or caribou in violation of the game and fish laws is guilty of a gross misdemeanor.

Subd. 6. Pine marten; otter; fisher; wolverine. A person that takes, transports, or possesses pine marten, otter, fisher, or wolverine in violation of the game and fish laws is guilty of a gross misdemeanor.

Subd. 7. Gray wolf. A person who takes, harasses, destroys, buys, sells, possesses, transports, or ships a gray wolf in violation of the game and fish laws is guilty of a gross misdemeanor.

Amended by Laws 2000, c. 463, § 4.

LICENSES AND PERMITS

97A.405. License requirements

Subdivision 1. Protected wild animals. Unless allowed under the game and fish laws, a person may not take, buy, sell, transport, or possess protected wild animals of this state without a license.

Subd. 2. Personal possession. (a) A person acting under a license or traveling from an area where a licensed activity was performed must have in personal possession either: (1) the proper license, if the license has been issued to and received by the person; or (2) the proper license identification number or stamp validation, if the license has been sold to the person by electronic means but the actual license has not been issued and received.

(b) If possession of a license or a license identification number is required, a person must exhibit, as requested by a conservation officer or peace officer, either: (1) the proper license if the license has been issued to and received by the person; or (2) the proper license identification number or stamp validation and a valid state driver's license, state identification card, or other form of identification provided by the commissioner, if the license has been sold to the person by electronic means but the actual license has not been issued and received.

(c) If the actual license has been issued and received, a receipt for license fees, a copy of a license, or evidence showing the issuance of a license, including the license identification number or stamp validation, does not entitle a licensee to exercise the rights or privileges conferred by a license.

(d) A license or stamp issued electronically and not immediately provided to the licensee shall be mailed to the licensee within 30 days of purchase.

Subd. 3. Duplicate licenses. The commissioner shall prescribe rules for issuing duplicate licenses to persons whose licenses are lost or destroyed. A duplicate license may not be issued unless the applicant takes an oath covering the facts of loss or destruction of the license.

Subd. 4. Replacement licenses. The commissioner may permit licensed firearms deer hunters to change zone or season options before the regular firearms deer season begins. The commissioner may issue a replacement license if the applicant submits the original firearms deer license that is being replaced and the applicant pays any increase in cost between the original and the replacement license.

Amended by Laws 1997, c. 216, § 81; Laws 2000, c. 495, § 31.

97A.411. Validity of licenses

Subdivision 1. License period. (a) Except as provided in paragraphs (b), (c), and (d), a license is valid during the lawful time within the license year that the licensed activity may be performed. A license year begins on the first day of March and ends on the last day of February.

(b) A license issued under section 97A.475, subdivision 6, clause (5), 97A.475, subdivision 7, clause (2), (3), (5), or (6), or 97A.475, subdivision 12, clause (2), is valid for the full license period even if this period extends into the next license year, provided that the license period selected by the licensee begins at the time of issuance.

(c) When the last day of February falls on a Saturday, an annual resident or nonresident fish house or dark house license, including a rental fish house or dark house license, obtained for the license year covering the last day of February, is valid through Sunday, March 1 and the angling license of the fish house licensee is extended through March 1.

(d) A lifetime license issued under section 97A.473 or 97A.474 is valid during the lawful time within the license year that the licensed activity may be performed for the lifetime of the licensee.

Subd. 2. Signature on stamps. A stamp issued under the game and fish laws must be signed by the licensee across the front of the stamp to be valid.

Subd. 3. Deer license. (a) Except as provided in paragraphs (b) and (c), a license to take deer by archery, firearms, or muzzleloader issued after the opening of the related archery, firearms, or muzzleloader deer season, respectively, is not valid until the second day after it is issued.

(b) The commissioner may issue a license to take additional deer under section 97B.301, subdivision 4, that is valid immediately upon issuance.

(c) Paragraph (a) does not apply to deer licenses for discharged military personnel under section 97A.465, subdivision 4.

Amended by Laws 1997, c. 226, §§ 19, 20; Laws 1998, c. 252, § 1, eff. Feb. 13, 1998; Laws 2000, c. 341, § 3, eff. April 7, 2000.

97A.415. License restrictions

Subdivision 1. One license per person. Only one trapping and big game license of each kind may be issued to a person in a license year unless authorized by commissioner's rule.

Subd. 2. Transfer prohibited. A person may not lend, transfer, borrow, or solicit a license or permit, license identification number, application for a license or permit, coupon, tag, or seal, or use a license, permit, license identification number, coupon, tag, or seal not issued to the person unless otherwise expressly authorized.

Subd. 3. Nonresidents. Nonresidents may not obtain a license for an activity unless the activity is expressly authorized for nonresidents.

Amended by Laws 1997, c. 216, § 82.

97A.421. Validity and issuance of licenses after conviction

Subdivision 1. General. (a) The annual license of a person convicted of a violation of the game and fish laws relating to the license or wild animals covered by the license is void when:

(1) a second conviction occurs within three years under a license to take small game or to take fish by angling or spearing;

(2) a third conviction occurs within one year under a minnow dealer's license;

(3) a second conviction occurs within three years for violations of section 97A.425 that do not involve falsifications or intentional omissions of information required to be recorded, or attempts to conceal unlawful acts within the records;

(4) two or more misdemeanor convictions occur within a three-year period under a private fish hatchery license; or

(5) the conviction occurs under a license not described in clause (1), (2), or (4) or is for a violation of section 97A.425 not described in clause (3).

(b) Except for big game licenses and as otherwise provided in this section, for one year after the conviction the person may not obtain the kind of license or take wild animals under a lifetime license, issued under section 97A.473 or 97A.474, relating to the game and fish law violation.

Subd. 2. Issuance of license after conviction for buying and selling wild animals. A person may not obtain a license to take any wild animal or take wild animals under a lifetime license, issued under section 97A.473 or 97A.474, for a period of three years after being convicted of buying or selling game fish, big game, or small game, and the total amount of the sale is \$300 or more.

Subd. 3. Issuance of a big game license after conviction. A person may not obtain any big game license or take big game under a lifetime license, issued under section 97A.473, for three years after the person is convicted of:

(1) a gross misdemeanor violation under the game and fish laws relating to big game;

(2) doing an act without a required big game license; or

(3) the second violation within three years under the game and fish laws relating to big game.

Subd. 4. Issuance after intoxication or narcotics conviction. A person convicted of a violation under section 97B.065, relating to hunting while intoxicated or using narcotics, may not obtain a license to hunt with a firearm or by archery or hunt with a firearm under a lifetime license, issued under section 97A.473 or 97A.474, for five years after conviction.

Subd. 5. Commissioner may reinstate certain licenses after conviction. If the commissioner determines that the public welfare will not be injured, the commissioner may reinstate licenses voided under subdivision 1 and issue licenses to persons ineligible under subdivision 2. The commissioner's authority applies only to licenses to:

- (1) maintain and operate fur or game farms or private fish hatcheries;
- (2) take fish commercially in Lake of the Woods, Rainy Lake, Namakan Lake, or Lake Superior;
- (3) buy fish from Lake of the Woods, Rainy Lake, Namakan Lake, or Lake Superior commercial fishing licensees; and
- (4) sell live minnows.

Subd. 6. Applicability to moose or elk licenses. In this section the term "license" includes an application for a license to take either moose or elk.

Amended by Laws 1997, c. 226, § 21; Laws 2000, c. 341, § 4, eff. April 7, 2000.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 226, § 21, in subd. 1, par. (a), added cl. (4), relating to two or more misdemeanor convictions within a three-year period, redesignat-

ed former cl. (4) as cl. (5), and in redesignated cl. (5) substituted "clause (1), (2), or (4)" for "clause (1) or (2)".

97A.431. Moose licenses

Subdivision 1. Number of licenses; party size. The commissioner shall include in a rule setting the dates for a moose season:

- (1) the number of licenses to be issued; and
- (2) the size of a moose hunting party, not to exceed six persons.

Subd. 2. Eligibility. Persons eligible for a moose license shall be determined under this section and commissioner's rule. A person is eligible for a moose license only if the person:

- (1) is a resident;
- (2) is at least age 16 before the season opens; and
- (3) has not been issued a moose license for any of the last five seasons or after January 1, 1991.

Subd. 3. Application for license. An application for a moose license must be on a form provided by the commissioner and accompanied by a \$3 nonrefundable application fee per person. A person may not make more than one application for each season. If a person makes more than one application, the person is ineligible for a license for that season after determination by the commissioner, without a hearing.

Subd. 4. Separate selection; eligibility. (a) The commissioner may conduct a separate selection for up to 20 percent of the moose licenses to be issued for an area. Only owners of, and tenants living on, at least 160 acres of agricultural or grazing land in the area, and their family members, are eligible for the separate selection under this paragraph.

(b) The commissioner must conduct a separate selection for 20 percent of the moose licenses to be issued each year. Only individuals who have applied at least ten times for a moose license and who have never received a license are eligible for this separate selection.

(c) The commissioner may by rule establish criteria for:

- (1) determining eligible family members under paragraph (a); and
- (2) verifying that an individual has made at least ten unsuccessful applications for the purposes of paragraph (b).

(d) A person who is unsuccessful in a separate selection under this subdivision must be included in the selection for the remaining licenses.

Amended by Laws 2000, c. 473, § 1; Laws 2000, c. 495, § 32.

97A.435. Turkey licenses; application and eligibility

Subdivision 1. Number of licenses to be issued. The commissioner shall include in a rule setting the dates for a turkey season the number of licenses to be issued.

Subd. 2. Eligibility. Persons eligible for a turkey license shall be determined by this section and commissioner's rule. A person is eligible for a turkey license only if the person is at least age 16 before the season opens or possesses a firearms safety certificate.

Subd. 3. Application for license. An application for a turkey license must be on a form provided by the commissioner and accompanied by a \$3 application fee. A person may not make more than one application for each season. If a person makes more than one application the person is ineligible for a license for that season after determination by the commissioner, without a hearing.

Subd. 4. Separate selection of eligible licensees. (a) The commissioner may conduct a separate selection for up to 20 percent of the turkey licenses to be issued for any area. Only persons who are owners or tenants of and who live on at least 40 acres of agricultural or grazing land in the area, and their family members, are eligible applicants for turkey licenses for the separate selection. The qualifying agricultural or grazing land may be noncontiguous. Persons who are unsuccessful in a separate selection must be included in the selection for the remaining licenses. Persons who obtain a license in a separate selection must allow public turkey hunting on their land during that turkey season.

(b) The commissioner may by rule establish criteria for determining eligible family members under this subdivision.

Amended by Laws 2000, c. 473, § 2; Laws 2000, c. 495, § 33.

97A.441. Licenses to be issued without a fee

Subdivision 1. Angling and spearing; disabled residents. Licenses to take fish by angling or spearing shall be issued without a fee to a resident that is:

- (1) blind;
- (2) a recipient of supplemental security income for the aged, blind, and disabled;
- (3) a recipient of social security aid to the disabled under United States Code, title 42, section 416, paragraph (i)(1) or section 423(d); or
- (4) is a recipient of workers' compensation based on a finding of total and permanent disability.

Subd. 2. Angling; foreign exchange students. A license to take fish by angling shall be issued without a fee to a citizen of a foreign country that is attending school in this state as an exchange student.

Subd. 3. Angling; residents of state institutions. The commissioner may issue a license, without a fee, to take fish by angling to a person that is a ward of the commissioner of human services and a resident of a state institution upon application by the commissioner of human services.

Subd. 4. Angling; mentally retarded residents. A person authorized to issue licenses must issue, without a fee, a permanent license to take fish by angling to a resident at least 16 years old that is mentally retarded upon being furnished satisfactory evidence of the disability.

Subd. 5. Angling; disabled veterans. A person authorized to issue licenses must issue, without a fee, a permanent license to take fish by angling to a resident who is a veteran, as defined in section 197.447, and that has a 100 percent service connected disability as defined by the United States Veterans Administration upon being furnished satisfactory evidence.

Subd. 6. Taking deer; disabled veterans. A person authorized to issue licenses must issue, without a fee, a license to take deer with firearms or by archery to a resident that is a veteran, as defined in section 197.447, and that has a 100 percent service connected disability as defined by the United States Veterans Administration upon being furnished satisfactory evidence.

Subd. 6a. Taking small game; disabled veterans. A person authorized to issue licenses must issue, without a fee, a license to take small game to a resident who is a veteran, as defined in section 197.447, and who has a 100 percent service connected disability as defined by the United States Veterans Administration upon being furnished satisfactory evidence.

Subd. 7. Owners or tenants of agricultural land. (a) The commissioner may issue, without a fee, a license to take an antlerless deer to a person who is an owner or tenant and is living and actively farming on at least 80 acres of agricultural land, as defined in section 97B.001, in deer permit areas that have deer archery licenses to take additional deer under section 97B.301, subdivision 4. A person may receive only one license per year under this subdivision. For properties with coowners or cotenants, only one coowner or cotenant may receive a license under this subdivision per year. The license issued under this subdivision is restricted to the land owned or leased by the holder of the license within the permit area where the qualifying land is located. The holder of the license may transfer the license to the holder's spouse or dependent. Notwithstanding sections 97A.415, subdivision 1, and 97B.301, subdivision 2, the holder of the license may purchase an additional license for taking deer and may take an additional deer under that license.

(b) A person who obtains a license under paragraph (a) must allow public deer hunting on their land during that deer hunting season, with the exception of the first Saturday and Sunday during the deer hunting season applicable to the license issued under section 97A.475, subdivision 2, clause (4).

Subd. 8. Duplicate licenses. There is no fee for a duplicate license if the original license was issued without a fee.

Subd. 9. Angling assistance to disabled residents. An individual who is providing angling assistance to a disabled resident licensed under subdivision 1, 4, or 5, is not required to possess a license to take fish by angling provided that no lines in addition to those permitted for an individual under section 97C.315 are in the water.

Amended by Laws 1997, c. 95, § 1; Laws 2000, c. 473, § 3.

97A.445. Exemptions from license requirement

Subdivision 1. Angling; Take a Kid Fishing Weekend. A resident over age 18 may take fish by angling without a license during one three-day consecutive period of the angling season designated by rule of the commissioner if accompanied by a child who is under age 16. The commissioner shall publicize the three-day period as "Take a Kid Fishing Weekend."

Subd. 2. Angling; institutional residents. A license is not required to take fish by angling with the written consent of the superintendent or chief executive of the institution for the following persons:

- (1) a resident of a state hospital;
- (2) a patient of a United States Veterans Administration hospital;
- (3) an inmate of a state correctional facility;
- (4) a resident of a licensed nursing or boarding care home, a person who is enrolled in and regularly participates in an adult day care program or other similar organized activity sponsored by a licensed nursing or boarding care home, or a resident of a licensed board and lodging facility; and
- (5) a resident of a drug or alcohol residential treatment program under the age of 20.

Subd. 3. Angling and spearing; disabled railroad and postal retirees. A license is not required to take fish by angling or spearing for a resident that is:

- (1) receiving aid under the federal Railroad Retirement Act of 1937, United States Code, title 45, section 228b(a)5;¹ or

(2) a former employee of the United States Postal Service receiving disability pay under United States Code, title 5, section 8337.

Subd. 4. Angling; Take a Mom Fishing Weekend. Any mother who is a resident of Minnesota may take fish by angling without a license during the Saturday and Sunday of the angling season that coincides with Mother's Day. The commissioner shall publicize the Saturday and Sunday as "Take a Mom Fishing Weekend."

Subd. 5. Small game hunting; Take a Kid Hunting Weekend. A resident over age 18 may take small game by hunting without a license during one Saturday and Sunday of the small game hunting season designated by rule of the commissioner if accompanied by a child who is under age 16. The commissioner shall publicize the Saturday and Sunday as "Take a Kid Hunting Weekend."

Amended by Laws 2000, c. 473, § 4.

¹ Omitted; see, now, 45 U.S.C.A. § 231a.

97A.465. Military personnel; fishing and hunting

Subdivision 1. Residents on leave. A resident that is in the armed forces of the United States, stationed outside of the state, and in the state on leave, may hunt and fish without a license if the resident possesses official military leave papers. The resident must obtain the seals, tags, and coupons required of a licensee, which must be furnished without charge. This subdivision does not apply to the taking of moose or elk.

Subd. 2. Camp Ripley personnel. A nonresident who is in the military and in training at Camp Ripley may obtain a resident license to take fish.

Subd. 3. Nonresidents stationed in the state. The commissioner may issue a resident license to take fish or game to a person in the armed forces of the United States that is stationed in the state. This subdivision does not apply to the taking of moose or elk.

Subd. 4. Discharged resident; obtaining deer license during season. A resident who is discharged from the United States armed forces during, or within ten days before, the firearms deer season may, upon showing the official discharge paper, obtain a firearm deer license during the season that is valid immediately upon issuance.

Amended by Laws 1997, c. 226, § 22.

97A.473. Resident lifetime licenses

Subdivision 1. Resident lifetime licenses authorized. (a) The commissioner may issue a lifetime angling license, a lifetime small game hunting license, a lifetime firearms deer license, or a lifetime sporting license to a person who is a resident of the state for at least one year or who is under age 21 and the child of a person who is a resident of the state for at least one year. The license fees paid for a lifetime license are nonrefundable.

(b) The commissioner may require the holder of a lifetime license issued under this section to notify the department each year that the license is used, by:

- (1) telephone or Internet notification, as specified by the commissioner;
- (2) the purchase of stamps for the license; or
- (3) registration and tag issuance, in the case of the resident lifetime deer license.

Subd. 2. Lifetime angling license; fee. (a) A resident lifetime angling license authorizes a person to take fish by angling in the state. The license authorizes those activities authorized by the annual resident angling license. The license does not include a trout and salmon stamp or other stamps required by law.

(b) The fees for a resident lifetime angling license are:

- (1) age 3 and under, \$227;
- (2) age 4 to age 15, \$300;
- (3) age 16 to age 50, \$383; and
- (4) age 51 and over, \$203.

Subd. 3. Lifetime small game hunting license; fee. (a) A resident lifetime small game hunting license authorizes a person to hunt small game in the state. The license authorizes those hunting activities authorized by the annual resident small game hunting license. The license does not include any of the hunting stamps required by law.

(b) The fees for a resident lifetime small game hunting license are:

- (1) age 3 and under, \$217;
- (2) age 4 to age 15, \$290;
- (3) age 16 to age 50, \$363; and
- (4) age 51 and over, \$213.

Subd. 4. Lifetime firearm deer hunting license; fee. (a) A resident lifetime firearm deer hunting license authorizes a person to take deer with firearms in the state. The license authorizes those activities authorized by the annual resident firearm deer hunting license. The licensee must register and receive tags each year that the license is used. The tags shall be issued at no charge to the licensee.

(b) The fees for a resident lifetime firearm deer hunting license are:

- (1) age 3 and under, \$337;
- (2) age 4 to age 15, \$450;
- (3) age 16 to age 50, \$573; and
- (4) age 51 and over, \$383.

Subd. 5. Lifetime sporting license; fee. (a) A resident lifetime sporting license authorizes a person to take fish by angling and hunt small game in the state. The license authorizes those activities authorized by the annual resident angling and resident small game hunting licenses. The license does not include a trout and salmon stamp or any of the hunting stamps required by law.

(b) The fees for a resident lifetime sporting license are:

- (1) age 3 and under, \$357;
- (2) age 4 to age 15, \$480;
- (3) age 16 to age 50, \$613; and
- (4) age 51 and over, \$413.

Laws 2000, c. 341, § 5, eff. April 7, 2000.

Historical and Statutory Notes

2000 Legislation

Laws 2000, c. 341, § 12, provides in part that the resident licenses under § 5 (enacting § 97A.473) shall be made available by March 1, 2001, and apply to taking game and fish for the 2001 license

year, and that the nonresident licenses under § 6 (enacting § 97A.474) shall be made available by March 1, 2002, and apply to taking game and fish for the 2002 license year.

97A.474. Nonresident lifetime licenses

Subdivision 1. Nonresident lifetime licenses authorized. (a) The commissioner may issue a lifetime angling license or a lifetime small game hunting license to a nonresident. The license fees paid for a lifetime license are nonrefundable.

(b) The commissioner may require the holder of a lifetime license issued under this section to notify the department each year that the license is used, by:

- (1) telephone or Internet notification, as specified by the commissioner; or
- (2) the purchase of stamps for the license.

Subd. 2. Nonresident lifetime angling license; fee. (a) A nonresident lifetime angling license authorizes a person to take fish by angling in the state. The license authorizes those activities authorized by the annual nonresident angling license. The license does not include a trout and salmon stamp or other stamps required by law.

(b) The fees for a nonresident lifetime angling license are:

- (1) age 3 and under, \$447;
- (2) age 4 to age 15, \$600;
- (3) age 16 to age 50, \$773; and
- (4) age 51 and over, \$513.

Subd. 3. Nonresident lifetime small game hunting license; fee. (a) A nonresident lifetime small game hunting license authorizes a person to hunt small game in the state. The license authorizes those hunting activities authorized by the annual nonresident small game hunting license. The license does not include any of the hunting stamps required by law.

(b) The fees for a nonresident lifetime small game hunting license are:

- (1) age 3 and under, \$947;
- (2) age 4 to age 15, \$1,280;
- (3) age 16 to age 50, \$1,633; and
- (4) age 51 and over, \$1,083.

Laws 2000, c. 341, § 6, eff. April 7, 2000.

Historical and Statutory Notes

2000 Legislation

Laws 2000, c. 341, § 12, provides in part that the resident licenses under § 5 (enacting § 97A.473) shall be made available by March 1, 2001, and apply to taking game and fish for the 2001 license

year, and that the nonresident licenses under § 6 (enacting § 97A.474) shall be made available by March 1, 2002, and apply to taking game and fish for the 2002 license year.

97A.4742. Lifetime fish and wildlife trust fund

Subdivision 1. Establishment; purpose. The lifetime fish and wildlife trust fund is established as a fund in the state treasury. All money received from the issuance of lifetime angling, small game hunting, firearm deer hunting, and sporting licenses and earnings on the fund shall be credited to the lifetime fish and wildlife trust fund.

Subd. 2. Investment of fund; use of income from fund. Money in the lifetime fish and wildlife trust fund shall be invested by the state investment board to secure the maximum return consistent with the maintenance of the perpetuity of the fund. The income received and accruing from investments of the fund shall be deposited in the lifetime fish and wildlife trust fund. Each year the commissioner of finance shall transfer from the lifetime fish and wildlife trust fund to the game and fish fund an amount equal to the amount that would otherwise have been collected from annual license fees for each lifetime license. Surcharge amounts shall be transferred based on sections 97A.071, subdivision 2, and 97A.075, subdivision 1.

Subd. 3. Lifetime license fees. By October 15 of each even-numbered year, the commissioner shall report on the adequacy of lifetime license fees and make specific requests for fee adjustments for the lifetime licenses to the legislative committees with jurisdiction over environment and natural resources finance and the commissioner of finance. The commissioner of finance shall review the fee report and make recommendations to the governor and legislature for each fee category under sections 97A.473 and 97A.474, as part of the biennial budget, under sections 16A.10 and 16A.11.

Subd. 4. Annual report. By November 15 each year, the commissioner shall submit a report to the legislative committees having jurisdiction over environment and natural resources appropriations and environment and natural resources policy. The report shall state the amount of revenue received in and expenditures made from revenue transferred from the lifetime fish and wildlife trust fund to the game and fish fund and shall describe projects funded, locations of the projects, and results and benefits from the projects. The report may be included in the game and fish fund report required by section 97A.055, subdivision 4. The commissioner shall make the annual report available to the public.

Laws 2000, c. 341, § 7, eff. April 7, 2000.

97A.475. License fees

Subdivision 1. Requirements for issuance. A license shall be issued when the requirements of the law are met and the license fee specified in this section is paid.

Text of subd. 2 effective until March 1, 2001.

Subd. 2. Resident hunting. Fees for the following licenses, to be issued to residents only, are:

- (1) for persons under age 65 to take small game, \$10;
- (2) for persons age 65 or over, \$5;
- (3) to take turkey, \$16;
- (4) to take deer with firearms, \$22;
- (5) to take deer by archery, \$22;
- (6) to take moose, for a party of not more than six persons, \$275;
- (7) to take bear, \$33;
- (8) to take elk, for a party of not more than two persons, \$220;
- (9) to take antlered deer in more than one zone, \$44;
- (10) to take Canada geese during a special season, \$3; and
- (11) to take an antlered buck throughout the state in any open deer season, except as restricted under section 97B.305, \$66.

Text of subd. 2 effective March 1, 2001.

Subd. 2. Resident hunting. Fees for the following licenses, to be issued to residents only, are:

- (1) for persons under age 65 to take small game, \$12;
- (2) for persons age 65 or over, \$6;
- (3) to take turkey, \$18;
- (4) to take deer with firearms, \$25;
- (5) to take deer by archery, \$25;
- (6) to take moose, for a party of not more than six persons, \$310;
- (7) to take bear, \$38;
- (8) to take elk, for a party of not more than two persons, \$250;
- (9) to take antlered deer in more than one zone, \$50;
- (10) to take Canada geese during a special season, \$4; and
- (11) to take an antlered buck throughout the state in any open deer season, except as restricted under section 97B.305, \$66.

Text of subd. 3 effective until March 1, 2001.

Subd. 3. Nonresident hunting. Fees for the following licenses, to be issued to nonresidents, are:

- (1) to take small game, \$56;
- (2) to take deer with firearms, \$110;
- (3) to take deer by archery, \$110;
- (4) to take bear, \$165;
- (5) to take turkey, \$56;
- (6) to take raccoon, bobcat, fox, coyote, or lynx, \$137.50;
- (7) to take antlered deer in more than one zone, \$220; and

- (8) to take Canada geese during a special season, \$3.

Text of subd. 3 effective March 1, 2001.

Subd. 3. Nonresident hunting. Fees for the following licenses, to be issued to nonresidents, are:

- (1) to take small game, \$73;
- (2) to take deer with firearms, \$125;
- (3) to take deer by archery, \$125;
- (4) to take bear, \$195;
- (5) to take turkey, \$73;
- (6) to take raccoon, bobcat, fox, coyote, or lynx, \$155;
- (7) to take antlered deer in more than one zone, \$250; and
- (8) to take Canada geese during a special season, \$4.

Subd. 4. Small game surcharge. Fees for annual licenses to take small game must be increased by a surcharge of \$4. An additional commission may not be assessed on the surcharge and this must be stated on the back of the license with the following statement: "This \$4 surcharge is being paid by hunters for the acquisition and development of wildlife lands."

Subd. 5. Hunting stamps. Fees for the following stamps are:

- (1) migratory waterfowl stamp, \$5;
- (2) pheasant stamp, \$5; and
- (3) turkey stamp, \$5.

Text of subd. 6 effective until March 1, 2001.

Subd. 6. Resident fishing. Fees for the following licenses, to be issued to residents only, are:

- (1) to take fish by angling, for persons under age 65, \$15;
- (2) to take fish by angling, for persons age 65 and over, \$5.50;
- (3) to take fish by angling, for a combined license for a married couple, \$20.50;
- (4) to take fish by spearing from a dark house, \$15; and
- (5) to take fish by angling for a 24-hour period selected by the licensee, \$8.

Text of subd. 6 effective March 1, 2001.

Subd. 6. Resident fishing. Fees for the following licenses, to be issued to residents only, are:

- (1) to take fish by angling, for persons under age 65, \$17;
- (2) to take fish by angling, for persons age 65 and over, \$6.50;
- (3) to take fish by angling, for a combined license for a married couple, \$25;
- (4) to take fish by spearing from a dark house, \$17; and
- (5) to take fish by angling for a 24-hour period selected by the licensee, \$8.50.

Text of subd. 7 effective until March 1, 2001.

Subd. 7. Nonresident fishing. Fees for the following licenses, to be issued to nonresidents, are:

- (1) to take fish by angling, \$31;
- (2) to take fish by angling limited to seven consecutive days selected by the licensee, \$21.50;
- (3) to take fish by angling for a 72-hour period selected by the licensee, \$18;

- (4) to take fish by angling for a combined license for a family, \$41.50;
- (5) to take fish by angling for a 24-hour period selected by the licensee, \$8; and
- (6) to take fish by angling for a combined license for a married couple, limited to 14 consecutive days selected by one of the licensees, \$32.

Text of subd. 7 effective March 1, 2001.

Subd. 7. Nonresident fishing. Fees for the following licenses, to be issued to nonresidents, are:

- (1) to take fish by angling, \$34;
- (2) to take fish by angling limited to seven consecutive days selected by the licensee, \$24;
- (3) to take fish by angling for a 72-hour period selected by the licensee, \$20;
- (4) to take fish by angling for a combined license for a family, \$46;
- (5) to take fish by angling for a 24-hour period selected by the licensee, \$8.50; and
- (6) to take fish by angling for a combined license for a married couple, limited to 14 consecutive days selected by one of the licensees, \$35.

Text of subd. 8 effective until March 1, 2001.

Subd. 8. Minnesota sporting. The commissioner shall issue Minnesota sporting licenses to residents only. The licensee may take fish by angling and small game. The fee for the license is:

- (1) for an individual, \$20; and
- (2) for a combined license for a married couple to take fish and for one spouse to take small game, \$27.50.

Text of subd. 8 effective March 1, 2001.

Subd. 8. Minnesota sporting. The commissioner shall issue Minnesota sporting licenses to residents only. The licensee may take fish by angling and small game. The fee for the license is:

- (1) for an individual, \$23; and
- (2) for a combined license for a married couple to take fish and for one spouse to take small game, \$32.

Subd. 9. Repealed by Laws 1994, c. 561, § 28(b), eff. March 1, 1995.

Subd. 10. Trout and salmon stamp. The fee for a trout and salmon stamp is \$8.50.

Text of subd. 11 effective until March 1, 2001.

Subd. 11. Fish houses and dark houses; residents. Fees for the following licenses are:

- (1) for a fish house or dark house that is not rented, \$10; and
- (2) for a fish house or dark house that is rented, \$23.

Text of subd. 11 effective March 1, 2001.

Subd. 11. Fish houses and dark houses; residents. Fees for the following licenses are:

- (1) for a fish house or dark house that is not rented, \$11.50; and
- (2) for a fish house or dark house that is rented, \$26.

Text of subd. 12 effective until March 1, 2001.

Subd. 12. Fish houses; nonresident. Fees for fish house licenses for a nonresident are:

- (1) annual, \$31.50; and

- (2) seven consecutive days, \$18.50.

Text of subd. 12 effective March 1, 2001.

Subd. 12. Fish houses; nonresident. Fees for fish house licenses for a nonresident are:

- (1) annual, \$33; and
- (2) seven consecutive days, \$19.

Text of subd. 13 effective until March 1, 2001.

Subd. 13. Netting whitefish and ciscoes for personal consumption. The fee for a license to net whitefish and ciscoes in inland lakes and international waters for personal consumption is, for each net, \$9.

Text of subd. 13 effective March 1, 2001.

Subd. 13. Netting whitefish and ciscoes for personal consumption. The fee for a license to net whitefish and ciscoes in inland lakes and international waters for personal consumption is, for each net, \$10.

Subd. 14. Deleted by amendment, Laws 1997, c. 216, § 83.

Subd. 15. Fishing guides. The fee for a license to operate a charter boat and guide anglers on Lake Superior or the St. Louis river estuary is:

- (1) for a resident, \$35;
- (2) for a nonresident, \$140; or
- (3) if another state charges a Minnesota resident a fee greater than \$140 for a Lake Superior or St. Louis river estuary fishing guide license in that state, the nonresident fee for a resident of that state is that greater fee.

Subd. 16. Resident hunting guides. The fees for the following resident guide licenses are:

- (1) to guide bear hunters, \$82.50; and
- (2) to guide turkey hunters, \$22.

Subd. 17. Repealed by Laws 1994, c. 623, art. 1, § 47, eff. May 11, 1994.

Subd. 18. Shooting preserves. The fee for a shooting preserve license is:

- (1) for a private shooting preserve, \$100; and
- (2) for a commercial shooting preserve, \$500.

Subd. 19. Taxidermists. The fee for a taxidermist license, to be issued for a three-year period to residents only, is:

- (1) for persons age 18 and older, \$44; and
- (2) for persons under age 18, \$27.50.

Text of subd. 20 effective until March 1, 2001.

Subd. 20. Trapping license. The fee for a license to trap fur-bearing animals is:

- (1) for persons over age 13 and under age 18, \$5.50; and
- (2) for persons age 18 and older, \$18.

Text of subd. 20 effective March 1, 2001.

Subd. 20. Trapping license. The fee for a license to trap fur-bearing animals is:

- (1) for persons over age 13 and under age 18, \$6; and
- (2) for persons age 18 and older, \$20.

Subd. 21. Fur buying and selling; residents. (a) The fee for a license for a resident to buy and sell raw furs is \$110.

- (b) The fee for a supplemental license to buy and sell furs is \$55.

Subd. 22. Fur buying and selling; nonresidents. The fee for a license for a nonresident to buy and sell raw furs is \$500.

Subd. 23. Raw fur tanning. The fee for a license to tan and dress raw furs to be issued to residents and nonresidents is \$16.50.

Subd. 24. Game and fur farms. The fee for a game and fur farm license is \$16.50.

Subd. 25. Muskrat farms. The fee for a muskrat farm license is \$11.

Subd. 26. Minnow dealers. The fees for the following licenses are:

- (1) minnow dealer, \$100;
- (2) minnow dealer's vehicle, \$15;
- (3) exporting minnow dealer, \$350; and
- (4) exporting minnow dealer's vehicle, \$15.

Subd. 27. Minnow retailers. The fees for the following licenses, to be issued to residents and nonresidents, are:

- (1) minnow retailer, \$15; and
- (2) minnow retailer's vehicle, \$15.

Subd. 28. Nonresident minnow haulers. The fees for the following licenses, to be issued to nonresidents, are:

- (1) exporting minnow hauler, \$675; and
- (2) exporting minnow hauler's vehicle, \$15.

Subd. 29. Private fish hatcheries. The fees for the following licenses to be issued to residents and nonresidents are:

- (1) for a private fish hatchery, with annual sales under \$200, \$35;
- (2) for a private fish hatchery, with annual sales of \$200 or more, \$70; and
- (3) to take sucker eggs from public waters for a private fish hatchery, \$210, plus \$4 for each quart in excess of 100 quarts.

Subd. 29a. Repealed by Laws 1992, c. 566, § 23, eff. Feb. 28, 1993.

Subd. 30. Commercial netting of fish. The fees to take commercial fish are:

- (1) commercial license fees:
 - (i) for residents and nonresidents seining and netting in inland waters, \$90;
 - (ii) for residents netting in Lake Superior, \$50;
 - (iii) for residents netting in Lake of the Woods, Rainy, Namakan, and Sand Point lakes, \$50;
 - (iv) for residents seining in the Mississippi River from St. Anthony Falls to the St. Croix River junction, \$50;
 - (v) for residents seining, netting, and set lining in Wisconsin boundary waters from Lake St. Croix to the Iowa border, \$50; and
 - (vi) for a resident apprentice license, \$25; and
- (2) commercial gear fees:
 - (i) for each gill net in Lake Superior, Wisconsin boundary waters, and Namakan Lake, \$3.50 per 100 feet of net;
 - (ii) for each seine in inland waters, on the Mississippi River as described in section 97C.801, subdivision 2, and in Wisconsin boundary waters, \$7 per 100 feet;
 - (iii) for each commercial hoop net in inland waters, \$1.25;
 - (iv) for each submerged fyke, trap, and hoop net in Lake Superior, St. Louis Estuary, Lake of the Woods, and Rainy, Namakan, and Sand Point lakes, and for each pound net in Lake Superior, \$15;

(v) for each stake and pound net in Lake of the Woods, \$60; and

(vi) for each set line in the Wisconsin boundary waters, \$20

Subds. 31 to 37. Deleted by amendment, Laws 1997, c. 216, § 83.

Subd. 38. Fish buyers. The fees for licenses to buy fish from commercial fishing licensees to be issued residents and nonresidents are:

- (1) for Lake Superior fish bought for sale to retailers, \$70;
- (2) for Lake Superior fish bought for sale to consumers, \$15;
- (3) for Lake of the Woods, Namakan, Sand Point, and Rainy Lake fish bought for sale to retailers, \$140; and
- (4) for Lake of the Woods, Namakan, Sand Point, and Rainy Lake fish bought for shipment only on international boundary waters, \$15.

Subd. 39. Fish packer. The fee for a license to prepare dressed game fish for transportation or shipment is \$20.

Subd. 40. Fish vendors. The fee for a license to use a motor vehicle to sell fish is \$35.

Subd. 41. Turtle sellers. The fee for a license to take, transport, purchase, and possess turtles for sale is \$70.

Subd. 42. Frog dealers. The fee for the licenses to deal in frogs that are to be used for purposes other than bait are:

- (1) for a resident to purchase, possess, and transport frogs, \$100;
- (2) for a nonresident to purchase, possess, and transport frogs, \$280; and
- (3) for a resident to take, possess, transport, and sell frogs, \$15.

Subd. 43. Duplicate licenses. The fees for duplicate licenses are:

- (1) for licenses to take big game, \$5; and
- (2) for other licenses, \$2.

Subd. 44. Replacement licenses. The fee for a replacement firearms deer license is \$5.

Amended by Laws 1997, c. 216, § 83; Laws 1997, c. 226, §§ 23, 24; Laws 1999, c. 57, § 1; Laws 2000, c. 341, § 8, eff. April 7, 2000; Laws 2000, c. 463, §§ 5 to 13, eff. March 1, 2001; Laws 2000, c. 473, § 5; Laws 2000, c. 495, §§ 34, 35.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 216, § 161, provides in part that § 83 (amending this section) is effective March 1, 1998.

97A.485. Issuance of licenses

Subdivision 1. Commissioner. The commissioner shall issue and sell licenses. The commissioner shall furnish licenses and applications to agents authorized to issue licenses.

Subd. 1a. Repealed by Laws 1992, c. 513, art. 3, § 79, eff. July 1, 1992.

Subd. 2. County auditors to sell licenses. County auditors are agents of the commissioner for the issuance and sale of licenses. The commissioner may require a county auditor to provide a corporate surety bond in addition to the auditor's official bond.

Subd. 2a. Licenses to take additional deer. The commissioner may appoint federal, state, or local government employees to be agents of the commissioner for the sale of licenses or permits to take additional deer under section 97B.301, subdivision 4. A bond is not required of a government employee appointed under this subdivision.

Subd. 3. Appointment of subagents. A county auditor may appoint residents to be subagents of the auditor within the county or adjacent counties to issue and sell licenses. The auditor shall notify the commissioner of the name and address of a subagent when appointed.

The appointment may be revoked by the auditor at any time, and when directed by the commissioner, the auditor must revoke the appointment.

Subd. 4. Application to sell licenses by subagent. To be a subagent, a person must apply in writing to an appropriate county auditor in a manner approved by the commissioner. The auditor must provide a subagent the choice either to provide a bond for licenses on consignment, or pay for licenses before furnishing the licenses. License application forms may only be furnished to subagents in groups of ten or more for resident licenses and five or more for nonresident licenses.

Subd. 5. County auditors responsible for licenses and fees. (a) The county auditor is responsible for licenses and fees received by the subagents, except in a county that has a population over 150,000 and an area greater than 5,000 square miles and in a county where the county auditor does not retain fees paid for licenses. In these counties the responsibility imposed on the county auditor is imposed on the county.

(b) The county auditor must promptly deposit all money received from the sale of licenses with the county treasurer. The auditor must promptly submit payments and required reports as required by the commissioner.

Subd. 6. Licenses to be sold and issuing fees. (a) Persons authorized to sell licenses under this section must sell the following licenses for the license fee and the following issuing fees:

- (1) to take deer or bear with firearms and by archery, the issuing fee is \$1;
 - (2) Minnesota sporting, the issuing fee is \$1; and
 - (3) to take small game, for a person under age 65 to take fish by angling or for a person of any age to take fish by spearing, and to trap fur-bearing animals, the issuing fee is \$1;
 - (4) for a trout and salmon stamp that is not issued simultaneously with an angling or sporting license, an issuing fee of 50 cents may be charged at the discretion of the authorized seller; and
 - (5) for stamps other than a trout and salmon stamp, and for a special season Canada goose license, there is no fee.
- (b) An issuing fee may not be collected for issuance of a trout and salmon stamp if a stamp is issued simultaneously with the related angling or sporting license. Only one issuing fee may be collected when selling more than one trout and salmon stamp in the same transaction after the end of the season for which the stamp was issued.
- (c) The auditor or subagent shall keep the issuing fee as a commission for selling the licenses.
- (d) The commissioner shall collect the issuing fee on licenses sold by the commissioner.
- (e) A license, except stamps, must state the amount of the issuing fee and that the issuing fee is kept by the seller as a commission for selling the licenses.
- (f) For duplicate licenses, the issuing fees are:
- (1) for licenses to take big game, 75 cents; and
 - (2) for other licenses, 50 cents.

Subd. 7. County auditor's commission. The county auditor shall retain for the county treasury a commission of four percent of all license fees collected by the auditor and the auditor's subagents, excluding:

- (1) the small game surcharge;
- (2) all issuing fees;
- (3) \$2.50 of the license fee for the licenses in section 97A.475, subdivisions 6, clauses (1), (3), and (5), 7, 8, 12, and 13; and
- (4) the license to take fish by angling for persons age 65 and over. In addition, the auditor shall collect the issuing fees on licenses sold by the auditor to a licensee.

Subd. 8. Redemption of unsold licenses. The commissioner must redeem unsold licenses submitted within the redemption time prescribed by the commissioner. Licenses

that are not submitted for redemption within the prescribed time are considered to have been sold and the auditor or county to whom the licenses were furnished are accountable for them. A county auditor must refund the license fees prepaid by the auditor's subagent for unsold licenses submitted within a time period established by the commissioner. Unsold resident and nonresident 24-hour angling licenses held by a subagent may not be returned prior to the end of the license year unless the appointment of the subagent is revoked under subdivision 3, or voluntarily terminated by the subagent.

Subd. 9. Certain licenses not to be issued after season opens. The following licenses may not be issued after the day before the opening of the related firearms season:

- (1) to guide bear hunters; and
- (2) to guide turkey hunters.

Subd. 10. Return of unsold deer and bear licenses. Subagents must return stubs and unsold licenses for the taking of deer to the county auditor on the first business day after the first day of the firearms deer season. Subagents must return stubs and unsold licenses for guiding bear hunters to the county auditor as prescribed by the commissioner.

Subd. 11. Rules for accounting and procedures. The commissioner shall prescribe rules for the accounting and procedural requirements necessary to assure the efficient handling of licenses and license fees. The commissioner may, by rule, establish standards for the appointment and revocation of subagents to assure the efficient distribution of licenses throughout the state.

Text of subd. 12 effective until March 1, 2001.

Subd. 12. Youth deer license. The commissioner may, for a fee of \$5, issue to a resident under the age of 16 a license, without a tag, to take deer with firearms. A youth holding a license issued under this subdivision may hunt under the license only if accompanied by a licensed hunter who is at least 18 years of age and possesses a valid tag. A deer taken by a youth holding a license issued under this subdivision must be promptly tagged by the licensed hunter accompanying the youth. Section 97B.301, subdivision 6, does not apply to a youth holding a license issued under this subdivision.

Text of subd. 12 effective March 1, 2001.

Subd. 12. Youth deer license. The commissioner may, for a fee of \$5.50, issue to a resident under the age of 16 a license, without a tag, to take deer with firearms. A youth holding a license issued under this subdivision may hunt under the license only if accompanied by a licensed hunter who is at least 18 years of age and possesses a valid tag. A deer taken by a youth holding a license issued under this subdivision must be promptly tagged by the licensed hunter accompanying the youth. Section 97B.301, subdivision 6, does not apply to a youth holding a license issued under this subdivision.

Amended by Laws 1997, c. 226, §§ 25 to 27; Laws 2000, c. 463, § 14, eff. March 1, 2001.

POSSESSION AND TRANSPORTATION OF WILD ANIMALS

97A.505. Possession of wild animals

Subdivision 1. Repealed by Laws 1987, c. 149, art. 1, § 54.

Subd. 2. Possession of unlawful animals brought into the state prohibited. A person may not possess a wild animal that has been unlawfully taken, bought, sold, or possessed outside the state, or unlawfully shipped into the state.

Subd. 3. Repealed by Laws 1987, c. 149, art. 1, § 54.

Subd. 3a. Transportation of animals into state. Wild animals lawfully taken, bought, sold, or possessed outside the state may be brought or shipped into the state unless otherwise provided by law.

Subd. 3b. Wild animals taken on Red Lake Reservation lands within the Northwest Angle. Wild animals taken and tagged in accordance with the Red Lake Band's conservation

code on the Red Lake Reservation lands in Minnesota north of the 49th parallel shall be considered lawfully taken and possessed under state law.

Subd. 4. Storage of protected wild animals. A person that stores protected wild animals for others must plainly mark the package, in ink, with the name and address of the owner, the license number of the person taking the animal, and the number and species in the package. A person may not use a commercial cold storage warehouse for protected wild animals, except lawfully taken fish and furs.

Subd. 5. License not required for animals acquired by gift. Lawfully taken protected wild animals may be transferred by gift. A person is not required to have a license to possess and transport protected wild animals acquired by gift.

Subd. 6. Repealed by Laws 1987, c. 149, art. 1, § 54.

Subd. 7. Exceptions to this section. This section does not apply to mounted specimens of wild animals, antlers, tanned hides, and dressed furs lawfully taken.

Amended by Laws 2000, c. 406, § 1.

Chapter 97B

HUNTING

HUNTING RESTRICTIONS AND REQUIREMENTS		Section	
			DEER
Section		97B.301.	Deer licenses and limits.
97B.002.	Civil trespass.	97B.312.	Repealed.
97B.015.	Firearms safety and wildlife identification course.		SMALL GAME
97B.020.	Firearms safety certificate required.	97B.645.	Gray wolves.
97B.025.	Hunter and trapper education.	97B.646.	Gray wolf management plan.
97B.025.	Hunter and trapper education.	97B.655.	Taking animals causing damage.
97B.031.	Use and possession of firearms.	97B.667.	Removal of beaver dams and lodges by road authorities.
97B.051.	Transportation of archery bows.		Predator control program.
97B.055.	Discharging firearms and bows and arrows.	97B.671.	
97B.065.	Hunting while under the influence of alcohol or a controlled substance.		BIRDS
97B.066.	Chemical testing.	97B.715.	Pheasants.
97B.071.	Blaze orange requirements.	97B.721.	License and stamp required to take turkey; tagging and registration requirements.
97B.075.	Hunting restricted between evening and morning.		MIGRATORY WATERFOWL
97B.1055.	Hunting by persons with mental retardation or a related condition.		
97B.106.	Crossbow permits for hunting and fishing.	97B.801.	Minnesota migratory waterfowl stamp required.
97B.112.	Special hunts for youth.	97B.802.	Special Canada goose season license required.
			FUR-BEARING ANIMALS, TRAPPING
97B.211.	Hunting big game by archery.	97B.926.	Pine marten and fisher zone.

HUNTING RESTRICTIONS AND REQUIREMENTS

97B.001. Trespass

Notes of Decisions

Indian treaty rights 6

6. Indian treaty rights

Exercise by Chippewa Indian bands, under 1837 treaty, of usufructuary rights on "private lands" open to public would be restricted to those private lands open to general public for hunting, fishing, and gathering by operation of state law, and would not include undeveloped, nonagricultural, and non-

posted privately owned lands that were open to public for hunting so long as consent to enter was not orally withdrawn. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, D.Minn.1997, 952 F.Supp. 1362, affirmed 124 F.3d 904, rehearing and suggestion for rehearing en banc denied, certiorari granted 118 S.Ct. 2295, 524 U.S. 915, 141 L.Ed.2d 156, affirmed 119 S.Ct. 1187, 526 U.S. 172, 143 L.Ed.2d 270, certiorari denied 119 S.Ct. 1333, 526 U.S. 1038, 143 L.Ed.2d 497, certiorari denied 119 S.Ct. 1376, 526 U.S. 1060, 143 L.Ed.2d 535.

97B.002. Civil trespass

Subdivision 1. Authority to issue. Conservation officers, sheriffs, and deputies may issue citations to a person who trespasses in violation of section 84.90 or 97B.001 or removes a sign posted to prevent trespass without permission of the owner of the property.

Subd. 2. Penalty amount. The citation must impose the following penalty amounts:

- (1) \$50 for the first violation;
- (2) \$200 for the second violation in a three-year period;
- (3) for a third or subsequent violation in a three-year period, the penalty shall be \$500 and loss of every license or registration being used; and
- (4) \$50 for removal of a sign posted pursuant to this section.

Subd. 3. Appeals. Citations may be appealed under the procedures in section 116.072, subdivision 6, if the person requests a hearing by notifying the commissioner in writing within 15 days after receipt of the citation. If a hearing is not requested within the 15-day period, the citation becomes a final order not subject to further review.

Subd. 4. Enforcement of field citations. Field citations may be enforced under section 116.072, subdivisions 9 and 10.

Subd. 5. Cumulative remedy. The authority to issue field citations is in addition to other remedies available under statutory or common law, except that the state may not seek penalties under any other provision of law for the incident subject to the citation.

Subd. 6. Payment of penalty. Penalty amounts shall be remitted within 30 days of issuance of the penalty citation to the issuer.

Subd. 7. Allocation of penalty amounts. Penalty amounts are deposited to the county or the commissioner for deposit in the game and fish fund depending upon who issues the citation.

Amended by Laws 2000, c. 466, § 2, eff. May 16, 2000.

97B.015. Firearms safety and wildlife identification course

Subdivision 1. Establishment. The commissioner shall make rules establishing a statewide course in the safe use of firearms and identification of wild mammals and birds. At least one course must be held within the boundary of each school district. The courses must be conducted by the commissioner in cooperation with other organizations. The courses must instruct youths in commonly accepted principles of safety in hunting and handling common hunting firearms and identification of various species of wild mammals and birds by sight and other unique characteristics.

Subd. 2. Administration, supervision, and enforcement. (a) The commissioner shall appoint a qualified person from the enforcement division under civil service rules as supervisor of hunting safety and prescribe the duties and responsibilities of the position. The

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commissioner shall determine and provide the enforcement division with the necessary personnel for this section.

(b) The commissioner may appoint one or more county directors of hunting safety in each county. An appointed county director is responsible to the enforcement division. The enforcement division may appoint instructors necessary for this section. County directors and instructors shall serve on a voluntary basis without compensation. The enforcement division must supply the materials necessary for the course. School districts may cooperate with the commissioner and volunteer instructors to provide space for the classroom portion of the training.

Subd. 3. Liability insurance. The commissioner shall obtain insurance to cover all liability incurred by the county directors and instructors for bodily injury, death, and property damage in the performance of their duties under this section.

Subd. 4. Student fee. To defray the expense of the course, the enforcement division shall collect a fee from each person that takes the firearm safety course. The commissioner shall establish a fee that neither significantly overrecovers nor underrecovers costs, including overhead costs, involved in providing the services. The fee is not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply. The fees shall be deposited in the game and fish fund and the amount thereof is appropriated annually to the enforcement division of the department of natural resources for the administration of the program. In addition to the fee established by the commissioner, instructors may charge each person up to the established fee amount for class materials and expenses.

Subd. 5. Firearms safety certificate. The commissioner shall issue a firearms safety certificate to a person that satisfactorily completes the required course of instruction. A certificate may not be issued to a person under age 12. A person that is age 11 may take the firearms safety course and may receive a firearms safety certificate at age 12. The form and content of the firearms safety certificate shall be prescribed by the commissioner.

Subd. 6. Provisional certificate for persons with mental retardation or a related condition. Upon the recommendation of a course instructor, the commissioner may issue a provisional firearms safety certificate to a person who satisfactorily completes the classroom portion of the firearms safety course but is unable to pass the written or an alternate format exam portion of the course because of mental retardation or a related condition as defined in section 97B.1055, subdivision 1. The certificate is valid only when used according to section 97B.1055.

Amended by Laws 2000, c. 473, § 6; Laws 2000, c. 495, §§ 36, 37.

97B.020. Firearms safety certificate required

(a) Except as provided in this section, a person born after December 31, 1979, may not obtain an annual license to take wild animals by firearms unless the person has a firearms safety certificate or equivalent certificate, driver's license or identification card with a valid firearms safety qualification indicator issued under section 171.07, subdivision 13, previous hunting license, or other evidence indicating that the person has completed in this state or in another state a hunter safety course recognized by the department under a reciprocity agreement. A person who is on active duty and has successfully completed basic training in the United States armed forces, reserve component, or national guard may obtain a hunting license or approval authorizing hunting regardless of whether the person is issued a firearms safety certificate.

(b) A person born after December 31, 1979, may not use a lifetime license to take wild animals by firearms, unless the person meets the requirements for obtaining an annual license under paragraph (a).

Amended by Laws 1999, c. 231, § 125; Laws 2000, c. 341, § 9, eff. April 7, 2000.

97B.025. Hunter and trapper education

Text of section effective until July 1, 2001.

The commissioner may establish education courses for hunters and trappers. The commissioner shall collect a fee from each person attending a course. The commissioner shall

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establish the fee under section 16A.1285. The commissioner shall establish a fee that neither significantly overrecovers nor underrecovers costs, including overhead costs, involved in providing the services. The fee is not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply. The fees shall be deposited in the game and fish fund and the amount thereof is appropriated annually to the enforcement division of the department of natural resources for the administration of the program. In addition to the fee established by the commissioner, instructors may charge each person up to the established fee amount for class materials and expenses. School districts may cooperate with the commissioner and volunteer instructors to provide space for the classroom portion of the training.

Amended by Laws 2000, c. 495, § 38.

For text of section effective July 1, 2001, see § 97B.025, post.

97B.025. Hunter and trapper education

Text of section effective July 1, 2001.

The commissioner may establish education courses for hunters and trappers. The commissioner shall collect a fee from each person attending a course. The commissioner shall establish a fee that neither significantly overrecovers nor underrecovers costs, including overhead costs, involved in providing the services. The fee is not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply. The fees shall be deposited in the game and fish fund and the amount thereof is appropriated annually to the enforcement division of the department of natural resources for the administration of the program. In addition to the fee established by the commissioner, instructors may charge each person up to the established fee amount for class materials and expenses. School districts may cooperate with the commissioner and volunteer instructors to provide space for the classroom portion of the training.

Amended by Laws 1999, c. 250, art. 3, § 8, eff. July 1, 2001; Laws 2000, c. 495, § 38.

For text of section effective until July 1, 2001, see § 97B.025, ante.

Historical and Statutory Notes

2000 Legislation

Laws 2000, c. 488, art. 12, § 23, effective May 16, 2000, provides that Laws 1999, c. 250, art. 3,

does not repeal rules or fees in effect on the day before July 1, 2001, the effective date of Laws 1999, c. 250, art. 3.

97B.031. Use and possession of firearms

Subdivision 1. Firearms and ammunition that may be used to take big game. (a) A person may take big game with a firearm only if:

- (1) the rifle, shotgun, and handgun used is a caliber of at least .23 inches;
 - (2) the firearm is loaded only with single projectile ammunition;
 - (3) a projectile used is a caliber of at least .23 inches and has a soft point or is an expanding bullet type;
 - (4) the ammunition has a case length of at least 1.285 inches;
 - (5) the muzzle-loader used is incapable of being loaded at the breech;
 - (6) the smooth-bore muzzle-loader used is a caliber of at least .45 inches; and
 - (7) the rifled muzzle-loader used is a caliber of at least .40 inches.
- (b) A person may not take big game with a .30 caliber M-1 carbine cartridge.

(c) Notwithstanding paragraph (a), clause (4), a person may take big game with a ten millimeter cartridge that is at least 0.95 inches in length and may take big game with a .45 Winchester Magnum cartridge.

Subd. 2. Handguns for small game. A person may take small game with a handgun of any caliber in a manner prescribed by the commissioner.

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Subd. 3. Firearms larger than ten gauge prohibited. A person may not use a firearm with a bore larger than a ten gauge to take a protected wild animal.

Subd. 4. Silencers prohibited. A person may not own or possess a silencer for a firearm or a firearm equipped to have a silencer attached.

Amended by Laws 2000, c. 473, § 7.

97B.051. Transportation of archery bows

Except as specified under section 97B.055, subdivision 2, a person may not transport an archery bow in a motor vehicle unless the bow is:

- (1) unstrung;
- (2) completely contained in a case; or
- (3) in the closed trunk or rear-most enclosed portion of a motor vehicle that is not accessible from the passenger compartment.

Amended by Laws 2000, c. 428, § 1, eff. April 21, 2000; Laws 2000, c. 473, § 8.

97B.055. Discharging firearms and bows and arrows

Subdivision 1. Restrictions related to highways. (a) A person may not discharge a firearm or an arrow from a bow on, over, or across an improved public highway at a big game animal. A person may not discharge a firearm or bow and arrow within the right-of-way of an improved public highway at a big game animal. The commissioner may by rule extend the application of this subdivision to the taking of migratory waterfowl in designated locations.

(b) A person may not discharge a firearm or an arrow from a bow on, over, across, or within the right-of-way of an improved public highway at a decoy of a big game animal that has been set out by a licensed peace officer.

Subd. 2. Restrictions related to motor vehicles. A person may not take a wild animal with a firearm or by archery from a motor vehicle except as permitted in this section. A person may transport a bow uncased while in an electric motor-powered boat and may take rough fish while in the boat.

Subd. 3. Hunting from vehicle by disabled hunters. (a) The commissioner may issue a special permit, without a fee, to discharge a firearm or bow and arrow from a stationary motor vehicle to a person who obtains the required licenses and who has a permanent physical disability that is more substantial than discomfort from walking. The permit recipient must be:

- (1) unable to step from a vehicle without aid of a wheelchair, crutches, braces, or other mechanical support or prosthetic device; or
- (2) unable to walk any distance because of a permanent lung, heart, or other internal disease that requires the person to use supplemental oxygen to assist breathing.

(b) The permanent physical disability must be established by medical evidence verified in writing by a licensed physician or chiropractor. The commissioner may request additional information from the physician or chiropractor if needed to verify the applicant's eligibility for the permit. Notwithstanding section 97A.418, the commissioner may, in consultation with appropriate advocacy groups, establish reasonable minimum standards for permits to be issued under this section. In addition to providing the medical evidence of a permanent disability, the applicant must possess a valid disability parking certificate authorized by section 169.345 or license plates issued under section 168.021.

(c) A person issued a special permit under this subdivision and hunting deer may take a deer of either sex, except in those antlerless permit areas and seasons where no antlerless permits are offered. This subdivision does not authorize another member of a party to take an antlerless deer under section 97B.301, subdivision 3.

(d) A permit issued under this subdivision is valid for five years.

(e) The commissioner may deny, modify, suspend, or revoke a permit issued under this section for cause, including a violation of the game and fish laws or rules.

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(f) A person who knowingly makes a false application or assists another in making a false application for a permit under this section is guilty of a misdemeanor. A physician or chiropractor who fraudulently certifies to the commissioner that a person is permanently disabled as described in this section is guilty of a misdemeanor.

Subd. 4. Taking bounty animals from airplanes and snowmobiles. The commissioner may issue a special permit, without fee, to take animals that the state pays a bounty for, from an airplane or a snowmobile.

Amended by Laws 1997, c. 226, § 28, eff. May 31, 1997; Laws 2000, c. 265, § 2; Laws 2000, c. 428, § 2, eff. April 21, 2000.

Historical and Statutory Notes

2000 Legislation

Laws 2000, c. 265, § 3, provides that § 1 (amending subd. 3 of § 97A.137) and § 2 (amending subd. 3 of § 97B.055) are effective January 1,

2001 and any temporary or permanent permits issued prior to January 1, 2001, under Minnesota Statutes 1998, section 97B.055, subdivision 3, are automatically rescinded effective January 1, 2001.

97B.065. Hunting while under the influence of alcohol or a controlled substance

Subdivision 1. Acts prohibited. (a) A person may not take wild animals with a firearm or by archery:

- (1) when the person is under the influence of alcohol;
- (2) when the person is under the influence of a controlled substance, as defined in section 152.01, subdivision 4;
- (3) when the person is under the influence of a combination of any two or more of the elements in clauses (1) and (2);
- (4) when the person's alcohol concentration is 0.10 or more;
- (5) when the person's alcohol concentration as measured within two hours of the time of taking is 0.10 or more; or
- (6) when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to operate a firearm or bow and arrow.

(b) An owner or other person having charge or control of a firearm or bow and arrow may not authorize or permit an individual the person knows or has reason to believe is under the influence of alcohol or a controlled substance, as provided under paragraph (a), to possess the firearm or bow and arrow in this state or on a boundary water of this state.

Subd. 2. Arrest. A peace officer may arrest a person for a violation under subdivision 1 without a warrant upon probable cause, without regard to whether the violation was committed in the officer's presence.

Subd. 3. Preliminary screening test. When an officer authorized under subdivision 2 to make arrests has reason to believe that the person may be violating or has violated subdivision 1, paragraph (a), the officer may require the person to provide a breath sample for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of the preliminary screening test must be used for the purpose of deciding whether an arrest should be made under this section and whether to require the chemical tests authorized in section 97B.066, but may not be used in any court action except: (1) to prove that a test was properly required of a person under section 97B.066, or (2) in a civil action arising out of the operation of a firearm or bow and arrow. Following the preliminary screening test, additional tests may be required of the person as provided under section 97B.066. A person who refuses a breath sample is subject to the provisions of section 97B.066 unless, in compliance with that section, the person submits to a blood, breath, or urine test to determine the presence of alcohol or a controlled substance.

Subd. 4. Evidence. In a prosecution for a violation of subdivision 1, paragraph (a), or an ordinance in conformity with it, the admission of evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine is governed by section 169A.45.

Subd. 5. Penalties. (a) A person who violates a prohibition in subdivision 1, or an ordinance in conformity with it, is subject to the penalties provided in section 97A.331.

(b) A person who hunts during the period the person is prohibited from hunting under subdivision 6 is guilty of a misdemeanor.

Subd. 6. Hunting privileges suspended. Upon conviction, and in addition to any penalty imposed under subdivision 5, the person is subject to the limitations on hunting provided in section 97A.421.

Subd. 7. Duties of commissioner. The court shall promptly forward to the commissioner copies of all convictions and criminal and civil penalties imposed under subdivision 5 and section 97B.066, subdivision 2. The commissioner shall notify the convicted person of the period during which the person is prohibited from hunting under subdivision 6 and section 97A.421. The commissioner shall also periodically circulate to appropriate law enforcement agencies a list of all persons who are prohibited from hunting under subdivision 6 and section 97A.421.

Subd. 8. Immunity from liability. The state or political subdivision that employs an officer who is authorized under subdivision 2 to make an arrest for violations of subdivision 1 is immune from any liability, civil or criminal, for the care or custody of the hunting equipment in the physical control of the person arrested if the officer acts in good faith and exercises due care.

Amended by Laws 1997, 1st Sp., c. 2, § 67; Laws 2000, c. 478, art. 2, § 7.

Historical and Statutory Notes

1997 Legislation

Laws 1997, 1st Sp., c. 2, § 67, in part, instructed the revisor of statutes to substitute a reference to § 169.121, subd. 2, for a reference to § 86B.331, subd. 4, in subd. 4 of this section.

2000 Legislation

Laws 2000, c. 478, art. 2, § 7, in part directed the revisor of statutes to conform citations in statutory text to reflect the repeal of parts of chapter 169 and the enactment of chapter 169A.

Laws 2000, c. 478, art. 2, § 9, par. (b), provides in part that § 7, instructing the revisor of statutes to conform citations in statutory text to reflect the repeal of part of chapter 169 and the enactment of chapter 169A, is effective January 1, 2001, for crimes committed and conduct occurring on or after that date, and that violations occurring before January 1, 2001, which are listed in § 169A.03, subds. 20 and 21, are considered qualified prior impaired driving incidents for all purposes under this act.

97B.066. Chemical testing

Subdivision 1. Mandatory chemical testing. A person who takes wild animals with a bow or firearm in this state or on a boundary water of this state is required, subject to the provisions of this section, to take or submit to a test of the person's blood, breath, or urine for the purpose of determining the presence and amount of alcohol or a controlled substance. The test shall be administered at the direction of an officer authorized to make arrests under section 97B.065, subdivision 2. Taking or submitting to the test is mandatory when requested by an officer who has probable cause to believe the person was hunting in violation of section 97B.065, subdivision 1, paragraph (a), and one of the following conditions exists:

- (1) the person has been lawfully placed under arrest for violating section 97B.065, subdivision 1, paragraph (a);
- (2) the person has been involved while hunting in an accident resulting in property damage, personal injury, or death;
- (3) the person has refused to take the preliminary screening test provided for in section 97B.065, subdivision 3; or
- (4) the screening test was administered and indicated an alcohol concentration of 0.10 or more.

Subd. 2. Penalties; refusal; revocation of hunting privilege. (a) If a person refuses to take a test required under subdivision 1, none must be given but the officer authorized to make arrests under section 97B.065, subdivision 2, shall report the refusal to the commissioner of natural resources and to the authority having responsibility for prosecution of misde-

meanor offenses for the jurisdiction in which the incident occurred that gave rise to the test demand and refusal.

On certification by the officer that probable cause existed to believe the person had been hunting while under the influence of alcohol or a controlled substance, and that the person refused to submit to testing, the commissioner shall impose a civil penalty of \$500 and shall prohibit the person from hunting for one year.

On behalf of the commissioner, an officer requiring a test or directing the administration of a test shall serve on a person who refused to permit a test immediate notice of intention to prohibit the person from hunting, and to impose the civil penalty set forth in this subdivision. If the officer fails to serve a notice of intent to suspend hunting privileges, the commissioner may notify the person by certified mail to the address on the license of the person. The notice must advise the person of the right to obtain administrative and judicial review as provided in this section. The prohibition imposed by the commissioner takes effect ten days after receipt of the notice. The civil penalty is imposed 30 days after receipt of the notice or upon return of the certified mail to the commissioner, and must be paid within 30 days of imposition.

(b) A person who hunts during the period the person is prohibited from hunting as provided under paragraph (a) is guilty of a misdemeanor.

Subd. 3. Rights and obligations. At the time a test is requested, the person must be informed that:

- (1) Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance;
- (2) if the person refuses to take the test, the person is subject to a civil penalty of \$500 and is prohibited for a one-year period from hunting, as provided under subdivision 2; and
- (3) that the person has the right to consult with an attorney, but that this right is limited to the extent it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test.

Subd. 4. Requirement of urine test. Notwithstanding subdivision 1, if there is probable cause to believe there is impairment by a controlled substance that is not subject to testing by a breath test, a blood or urine test may be required even after a breath test has been administered.

Subd. 5. Chemical tests. Chemical tests administered under this section are governed by section 169A.51.

Subd. 6. Repealed by Laws 1997, 1st Sp., c. 2, § 69.

Subd. 7. Administrative review. (a) At any time during the period of prohibition or revocation imposed under this section, the person may request in writing a review of the order imposing sanctions under this section. If the person makes a request for administrative review within 30 days following receipt of a notice and order imposing sanctions, the request shall stay imposition of the civil penalty. Upon receiving the request for review, the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and other material information brought to the attention of the commissioner and determine whether sufficient cause exists to sustain the order.

(b) Within 15 days after receiving the request, the commissioner shall issue a written report ordering that the prohibition, revocation, or civil penalty be either sustained or rescinded. The review provided in this subdivision is not subject to the contested case provisions of the Administrative Procedure Act under chapter 14. The availability of administrative review does not have an effect upon the availability of judicial review under this section.

Subd. 8. Judicial review. (a) Within 30 days following receipt of a notice and order imposing sanctions under this section, a person may petition the court for review. The petition must be filed with the district court administrator in the county where the incident occurred giving rise to the test demand and refusal, together with proof of service of a copy on the commissioner and the prosecuting authority for misdemeanor offenses for the jurisdiction in which the incident occurred. A responsive pleading is not required of the

commissioner of natural resources, and court fees may not be charged for the appearance of the representative of the commissioner in the matter.

(b) The petition must be captioned in the name of the person making the petition as petitioner and the commissioner as respondent. The petition must state specifically the grounds upon which the petitioner seeks rescission of the order imposing sanctions.

(c) The filing of the petition does not stay the revocation or prohibition against hunting. However, the filing of a petition stays imposition of the civil penalty. The judicial review shall be conducted according to the rules of civil procedure.

Subd. 9. Hearing. (a) A hearing under this section must be before a district court judge in the county where the incident occurred which gave rise to the test demand and refusal. The hearing must be to the court and may be conducted at the same time as hearings upon pretrial motions in the criminal prosecution under section 97B.065. The hearing must be recorded. The commissioner must be represented by the prosecuting authority for misdemeanor offenses for the jurisdiction in which the incident occurred which gave rise to the test demand and refusal.

(b) The hearing must be held at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The reviewing court may order a temporary stay of the balance of the prohibition or revocation if the hearing has not been conducted within 60 days after filing of the petition, upon the application of the petitioner and upon terms the court deems proper.

(c) The scope of the hearing must be limited to the issues of:

(1) whether the officer had probable cause to believe that the person violated section 97B.065;

(2) whether one of the conditions in subdivision 1 existed;

(3) whether the person was informed as prescribed in subdivision 3; and

(4) whether the person refused to submit to testing.

(d) It is an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds.

(e) The court shall order that the prohibition or revocation be either sustained or rescinded and shall either sustain or rescind the civil penalty. The court shall forward a copy of the order to the commissioner.

Subd. 10. Payment of civil penalty. The civil penalty imposed under subdivision 2 must be paid to the political subdivision that represents the commissioner on the petition for judicial review or, in the event that a petition is not filed, to the political subdivision that would have represented the commissioner had a petition been filed. If a person does not pay the civil penalty, the prohibition against hunting is automatically extended until the political subdivision reports to the commissioner in writing that the penalty has been paid.

Subd. 11. Enforcement of civil penalty. (a) If a person does not pay the civil penalty imposed under subdivision 2 within 30 days of the date it was imposed, the prosecuting authority representing the commissioner may petition the district court in the county where the incident occurred to file the order imposing the civil penalty as an order of the court.

(b) Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the penalty, attorney fees, costs, and interest may be assessed against any person who fails to pay the civil penalty.

Amended by Laws 1997, 1st Sp., c. 2, §§ 8 to 13, 67; Laws 2000, c. 478, art. 2, § 7.

Historical and Statutory Notes

1997 Legislation

Laws 1997, 1st Sp., c. 2, § 70, provides in part that §§ 8 to 13 (amending subd. 5 and adding subds. 7 to 11), 67 (in part amending subd. 5), and 69 (in part repealing subd. 6) are effective January 1, 1998 and apply to violations occurring on or

after that date. However, violations occurring before January 1, 1998, which are listed in § 169.121, subd. 3, par. (a), are considered prior impaired driving convictions or prior license revocations for purposes of: determining conditional release, long-term monitoring, criminal penalties, sentencing,

and administrative licensing sanctions for a person charged for or convicted of a violation occurring on or after January 1, 1998.

2000 Legislation

Laws 2000, c. 478, art. 2, § 7, in part directed the revisor of statutes to conform citations in statutory text to reflect the repeal of parts of chapter 169 and the enactment of chapter 169A.

Laws 2000, c. 478, art. 2, § 9, par. (b), provides in part that § 7, instructing the revisor of statutes

to conform citations in statutory text to reflect the repeal of part of chapter 169 and the enactment of chapter 169A, is effective January 1, 2001, for crimes committed and conduct occurring on or after that date, and that violations occurring before January 1, 2001, which are listed in § 169A.03, subds. 20 and 21, are considered qualified prior impaired driving incidents for all purposes under this act.

97B.071. Blaze orange requirements

(a) Except as provided in rules adopted under paragraph (c), a person may not hunt or trap during the open season where deer may be taken by firearms under applicable laws and ordinances, unless the visible portion of the person's cap and outer clothing above the waist, excluding sleeves and gloves, is blaze orange. Blaze orange includes a camouflage pattern of at least 50 percent blaze orange within each foot square. This section does not apply to migratory waterfowl hunters on waters of this state or in a stationary shooting location or to trappers on waters of this state.

(b) Except as provided in rules adopted under paragraph (c), and in addition to the requirement in paragraph (a), a person may not take small game other than turkey, migratory birds, raccoons, and predators, except when hunting with nontoxic shot or while trapping, unless a visible portion of at least one article of the person's clothing above the waist is blaze orange. This paragraph does not apply to a person hunting by falconry.

(c) The commissioner may, by rule, prescribe an alternative color in cases where paragraph (a) or (b) would violate the Religious Freedom Restoration Act of 1993, Public Law Number 103-141.¹

(d) A violation of paragraph (b) shall not result in a penalty, but is punishable only by a safety warning.

Amended by Laws 2000, c. 473, § 9.

¹ 42 U.S.C.A. § 2000bb et seq.

97B.075. Hunting restricted between evening and morning

A person may not take protected wild animals, except raccoon and fox, with a firearm between the evening and morning times established by commissioner's rule, except big game may be taken from one-half hour before sunrise until one-half hour after sunset, and, except as otherwise prescribed by the commissioner during the first eight days of the season, until January 1, 2001, waterfowl may be taken from one-half hour before sunrise until sunset during the entire season prescribed by the commissioner.

Amended by Laws 1997, c. 226, § 29.

97B.081. Using artificial lights to locate animals

Notes of Decisions

Indian treaty rights 9

9. Indian treaty rights

Evidence that deer became winter-stressed prior to December 31 did not create genuine issue of material fact as to whether prohibiting deer shining over bait in December by Chippewa exercising hunting rights under 1837 treaty was necessary for conservation and was least restrictive alternative, thus entitling Mille Lacs Band and intervening Wisconsin bands to summary judgment on inappli-

cability, to members exercising their treaty rights pursuant to tribal regulation, of Minnesota statutes that prohibited deer shining and authorized Commissioner of Natural Resources to prescribe areas and seasons in which deer could be taken and rules that prohibited use of bait and prescribed seasons for taking deer by firearms. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, D.Minn.1997, 952 F.Supp. 1362, affirmed 124 F.3d 904, rehearing and suggestion for rehearing en banc denied, certiorari granted 118 S.Ct. 2295, 524 U.S. 915, 141 L.Ed.2d 156, affirmed 119 S.Ct. 1187, 526 U.S. 172, 143 L.Ed.2d 270, certiorari denied 119 S.Ct. 1333,

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Note 9

526 U.S. 1038, 143 L.Ed.2d 497, certiorari denied
119 S.Ct. 1376, 526 U.S. 1060, 143 L.Ed.2d 535.

HUNTING

97B.1055. Hunting by persons with mental retardation or a related condition

Subdivision 1. Definitions. For purposes of this section and section 97B.015, subdivision 6, "person with mental retardation or a related condition" means a person who has been diagnosed as having substantial limitations in present functioning, manifested as significantly subaverage intellectual functioning, existing concurrently with demonstrated deficits in adaptive behavior, and who manifests these conditions before the person's 22nd birthday. A person with a related condition means a person who meets the diagnostic definition under section 252.27, subdivision 1a.

Subd. 2. Obtaining a license. (a) Notwithstanding section 97B.020, a person with mental retardation or a related condition may obtain a firearms hunting license with a provisional firearms safety certificate issued under section 97B.015, subdivision 6.

(b) Any person accompanying or assisting a person with mental retardation or a related condition under this section must possess a valid firearms safety certificate issued by the commissioner.

Subd. 3. Assistance required. A person who obtains a firearms hunting license under subdivision 2 must be accompanied and assisted by a parent, guardian, or other adult person designated by a parent or guardian when hunting. A person who is not hunting but is solely accompanying and assisting a person with mental retardation or a related condition need not obtain a hunting license.

Subd. 4. Prohibited activities. (a) This section does not entitle a person to possess a firearm if the person is otherwise prohibited from possessing a firearm under state or federal law or a court order.

(b) No person shall knowingly authorize or permit a person, who by reason of mental retardation or a related condition is incapable of safely possessing a firearm, to possess a firearm to hunt in the state or on any boundary water of the state.

Laws 2000, c. 473, § 10.

97B.106. Crossbow permits for hunting and fishing

Subdivision 1. Qualifications for crossbow permits. (a) The commissioner may issue a special permit, without a fee, to take big game, small game, or rough fish with a crossbow to a person that is unable to hunt or take rough fish by archery because of a permanent or temporary physical disability.

(b) To qualify for a crossbow permit under this section, a temporary disability must render the person unable to hunt or fish by archery for a minimum of two years after application for the permit is made. The permanent or temporary disability must be established by medical evidence, and the inability to hunt or fish by archery for the required period of time must be verified in writing by a licensed physician or chiropractor.

(c) The person must obtain the appropriate license.

Subd. 2. Crossbow equipment and requirements. (a) A crossbow used for hunting under the provisions of this section must:

- (1) be fired from the shoulder;
- (2) deliver at least 42 foot-pounds of energy at a distance of ten feet;
- (3) have a stock at least 30 inches long;
- (4) have a working safety; and
- (5) be used with arrows or bolts at least ten inches long.

(b) An arrow or bolt used to take big game or turkey under the provisions of this section must meet the legal arrowhead requirements in section 97B.211, subdivision 2.

HUNTING

§ 97B.301

(c) An arrow or bolt used to take rough fish with a crossbow under the provisions of this section must be tethered or controlled by an attached line.

Amended by Laws 2000, c. 428, § 3, eff. April 21, 2000.

97B.112. Special hunts for youth

The commissioner may by rule establish criteria, special seasons, and limits for youth hunters to take big game and small game by firearms or archery in designated areas or times. The criteria may also include provisions for an unlicensed adult to assist a youth hunter during a special season or special hunt established under this section.

Laws 1997, c. 226, § 30.

BIG GAME

97B.211. Hunting big game by archery

Subdivision 1. Possession of firearms prohibited. Except when hunting bear, a person may not take big game by archery while in possession of a firearm.

Subd. 2. Arrowhead requirements. Arrowheads used for taking big game must be sharp, have a minimum of two metal cutting edges, be of a barbed broadhead design, and must have a diameter of at least seven-eighths inch. The commissioner may allow retractable broadhead arrowheads that meet the other requirements of this subdivision.

Amended by Laws 1997, c. 226, § 31.

DEER

97B.301. Deer licenses and limits

Subdivision 1. Licenses required. A person may not take deer without a license. A person must have a firearms deer license to take deer with firearms and an archery deer license to take deer by archery except as provided in this section.

Subd. 2. Limit of one deer. Except as provided in subdivisions 3 and 4, a person may obtain one firearms deer license and one archery deer license in the same license year, but may take only one deer.

Subd. 3. Party hunting. If two or more persons with licenses to take deer by firearms, or two or more persons with licenses to take deer by archery, are hunting as a party, a member of the party may take more than one deer, but the total number of deer taken by the party may not exceed the number of persons licensed to take deer in the party.

Subd. 4. Taking more than one deer. (a) The commissioner may, by rule, allow a person to take more than one deer. The commissioner shall prescribe the conditions for taking the additional deer including:

- (1) taking by firearm or archery;
- (2) obtaining additional licenses; and
- (3) payment of a fee not more than the fee for a firearms deer license; and
- (4) the total number of deer that an individual may take.

(b) In Kittson, Lake of the Woods, Marshall, Pennington, and Roseau counties, a person may obtain one firearms deer license and one archery deer license in the same license year, and may take one deer under each license. The commissioner may limit the use of this provision in certain years to protect the deer population in the area.

Subd. 5. Repealed by Laws 1995, c. 220, § 141, par. (a); Laws 1995, 1st Sp., c. 1, § 48, eff. June 2, 1995.

Subd. 6. Residents under age 16 may take deer of either sex. A resident under the age of 16 may take a deer of either sex except in those antlerless permit areas and seasons where

no antlerless permits are offered. In antlerless permit areas where no antlerless permits are offered, the commissioner may provide a limited number of youth either sex permits to residents under age 16, under the procedures provided in section 97B.305, and may give preference to residents under the age of 16 that have not previously been selected. This subdivision does not authorize the taking of an antlerless deer by another member of a party under subdivision 3.

Subd. 7. All season buck license. A resident may obtain an all season buck license to take one buck by firearm or archery during any season statewide. A person obtaining an all season buck license does not qualify for hunting under subdivision 3 or 4.

Amended by Laws 1997, c. 226, § 32; Laws 2000, c. 341, § 10, eff. April 7, 2000; Laws 2000, c. 473, § 11; Laws 2000, c. 495, § 39, eff. May 31, 2000.

97B.311. Deer seasons and restrictions

Notes of Decisions

Indians 3

3. Indians

Evidence that deer became winter-stressed prior to December 31 did not create genuine issue of material fact as to whether prohibiting deer shining over bait in December by Chippewa exercising hunting rights under 1837 treaty was necessary for conservation and was least restrictive alternative, thus entitling Mille Lacs Band and intervening Wisconsin bands to summary judgment on inapplicability, to members exercising their treaty rights pursuant to tribal regulation, of Minnesota statutes

that prohibited deer shining and authorized Commissioner of Natural Resources to prescribe areas and seasons in which deer could be taken and rules that prohibited use of bait and prescribed seasons for taking deer by firearms. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, D.Minn.1997, 952 F.Supp. 1362, affirmed 124 F.3d 904, rehearing and suggestion for rehearing en banc denied, certiorari granted 118 S.Ct. 2295, 524 U.S. 915, 141 L.Ed.2d 156, affirmed 119 S.Ct. 1187, 526 U.S. 172, 143 L.Ed.2d 270, certiorari denied 119 S.Ct. 1333, 526 U.S. 1038, 143 L.Ed.2d 497, certiorari denied 119 S.Ct. 1376, 526 U.S. 1060, 143 L.Ed.2d 535.

97B.312. Repealed by Laws 2000, c. 495, § 53

Historical and Statutory Notes

The repealed section, which directed the commissioner of natural resources to consider expand-

ing muzzle-loading hunting areas, was derived from Laws 1993, c. 229, § 1.

SMALL GAME

97B.645. Gray wolves

Subdivision 1. Use of dogs and horses prohibited; use of guard animals. Except as provided in this subdivision, a person may not use a dog or horse to take a gray wolf. A person may use a guard animal to harass, repel, or destroy wolves to protect a person's livestock, domestic animals, or pets. A person whose guard animal destroys a gray wolf under this subdivision must protect all evidence and report the taking to a conservation officer as soon as practicable but no later than 48 hours after the gray wolf is destroyed.

Subd. 2. Permit required to snare. A person may not use a snare to take a wolf except under a permit from the commissioner.

Subd. 3. Destroying gray wolves in defense of human life. A person may, at any time and without a permit, take a gray wolf in defense of the person's own life or the life of another. A person who destroys a gray wolf under this subdivision must protect all evidence and report the taking to a conservation officer as soon as practicable but no later than 48 hours after the gray wolf is destroyed.

Subd. 4. Harassment of gray wolves. To discourage gray wolves from contact or association with people and domestic animals, a person may, at any time and without a permit, harass a gray wolf that is within 500 yards of people, buildings, dogs, livestock, or other domestic pets and animals. A gray wolf may not be purposely attracted, tracked, or

searched out for the purpose of harassment. Harassment that results in physical injury to a gray wolf is prohibited.

Subd. 5. Destroying gray wolves threatening livestock, guard animals, or domestic animals. An owner of livestock, guard animals, or domestic animals, and the owner's agents may, at any time and without a permit, shoot or destroy a gray wolf when the gray wolf is posing an immediate threat to livestock, a guard animal, or a domestic animal located on property owned, leased, or occupied by the owner of the livestock, guard animal, or domestic animal. A person who destroys a gray wolf under this subdivision must protect all evidence and report the taking to a conservation officer as soon as practicable but no later than 48 hours after the gray wolf is destroyed.

Subd. 6. Destroying gray wolves threatening domestic pets. An owner of a domestic pet may, at any time and without a permit, shoot or destroy a gray wolf when the gray wolf is posing an immediate threat to a domestic pet under the supervision of the owner. A person who destroys a gray wolf under this subdivision must protect all evidence and report the taking to a conservation officer as soon as practicable but no later than 48 hours after the gray wolf is destroyed.

Subd. 7. Investigation of reported gray wolf takings. (a) In response to a reported gray wolf taking under subdivision 3, 5, or 6, the commissioner shall:

- (1) investigate the reported taking;
- (2) collect appropriate written and photographic documentation of the circumstances and site of the taking, including, but not limited to, documentation of animal husbandry practices;
- (3) confiscate salvageable remains of the gray wolf killed; and
- (4) dispose of any salvageable gray wolf remains confiscated under this subdivision by sale or donation for educational purposes.

(b) The commissioner shall produce monthly reports of activities under this subdivision.

(c) In response to a reported gray wolf taking under subdivision 5, the commissioner must notify the county extension agent. The county extension agent must recommend what, if any, cost-conscious livestock best management practices and nonlethal wolf depredation controls are needed to prevent future wolf depredation. Any best management practices recommended by the county extension agent must be consistent with the best management practices developed by the commissioner of agriculture under section 3.737, subdivision 5.

Subd. 8. Shooting or trapping gray wolves to protect livestock, domestic animals, or pets in zone b. (a) Notwithstanding the provisions of subdivisions 1 and 4 to 7, and season and time of day restrictions in the game and fish laws, but subject to the remaining provisions of the game and fish laws, in zone B, a person may:

- (1) shoot a gray wolf on land owned, leased, or managed by the person at any time to protect the person's livestock, domestic animals, or pets; or
- (2) employ a predator controller certified under section 97B.671 to trap a gray wolf on land owned, leased, or managed by the person or on land within one mile of the land owned, leased, or managed by the person to protect the person's livestock, domestic animals, or pets.

(b) The person must report the gray wolf shot or trapped under this subdivision to a conservation officer as soon as practicable but no later than 48 hours after the gray wolf was shot or trapped. The gray wolf must be disposed of as prescribed by the commissioner.

Subd. 9. Open season. There shall be no open season for gray wolves for five years after the gray wolf is delisted under the federal Endangered Species Act of 1973. After that time, the commissioner may prescribe open seasons and restrictions for taking gray wolves, but must provide opportunity for public comment.

Subd. 10. Release of wolf-dog hybrids and captive gray wolves. A person may not release a wolf-dog hybrid. A person may not release a captive gray wolf without a permit from the commissioner.

Subd. 11. Federal law. Notwithstanding the provisions of this section, a person may not take, harass, buy, sell, possess, transport, or ship gray wolves in violation of federal law.

Subd. 12. Definitions. (a) For purposes of this section, the terms used have the meanings given.

(b) "Guard animal" means a donkey, llama, dog, or other domestic animal specifically bred, trained, and used to protect livestock, domestic animals, or pets from gray wolf depredation.

(c) "Immediate threat" means the observed behavior of a gray wolf in the act of stalking, attacking, or killing livestock, a guard animal, or a domestic pet under the supervision of the owner. If a gray wolf is not observed stalking or attacking, the presence of a gray wolf feeding on an already dead animal whose death was not caused by gray wolves is not an immediate threat.

(d) "Zone B" means all that part of Minnesota south and west of a line beginning on state trunk highway No. 48 at the eastern boundary of the state; thence westerly along state trunk highway No. 48 to interstate highway No. 35; thence northerly on interstate highway No. 35 to state highway No. 23; thence west one-half mile on state highway No. 23 to state trunk highway No. 18; thence westerly along state trunk highway No. 18 to state trunk highway No. 65; thence northerly on state trunk highway No. 65 to state trunk highway No. 210; thence westerly along state trunk highway No. 210 to state trunk highway No. 6; thence northerly on state trunk highway No. 6 to Emily; thence westerly along county state-aid highway No. 1, Crow Wing county, to county state-aid highway No. 2, Cass county; thence westerly along county state-aid highway No. 2 to Pine River; thence northwesterly along state trunk highway No. 371 to Backus; thence westerly along state trunk highway No. 87 to U.S. highway No. 71; thence northerly along U.S. highway No. 71 to state trunk highway No. 200; thence northwesterly along state trunk highway No. 200 to county state-aid highway No. 2, Clearwater county; thence northerly along county state-aid highway No. 2 to Shevlin; thence along U.S. highway No. 2 to Bagley; thence northerly along state trunk highway No. 92 to Gully; thence northerly along county state-aid highway No. 2, Polk county, to county state-aid highway No. 27, Pennington county; thence along county state-aid highway No. 27 to state trunk highway No. 1; thence easterly along state trunk highway No. 1 to county state-aid highway No. 28, Pennington county; thence northerly along county state-aid highway No. 28 to county state-aid highway No. 54, Marshall county; thence northerly along county state-aid highway No. 54 to Grygla; thence west and northerly along state highway No. 89 to Roseau; thence northerly along state trunk highway No. 310 to the Canadian border.

Amended by Laws 2000, c. 463, §§ 15, 22.

97B.646. Gray wolf management plan

The commissioner, in consultation with the commissioner of agriculture, shall adopt a gray wolf management plan that includes goals to ensure the long-term survival of the gray wolf in Minnesota, to reduce conflicts between gray wolves and humans, to minimize depredation of livestock and domestic pets, and to manage the ecological impact of wolves on prey species and other predators.

Laws 2000, c. 463, § 16.

97B.655. Taking animals causing damage

Subdivision 1. Owners and occupants may take certain animals. A person may take mink, squirrel, rabbit, hare, raccoon, lynx, bobcat, fox, opossum, muskrat, or beaver on land owned or occupied by the person where the animal is causing damage. The person may take the animal without a license and in any manner except by poison, or artificial lights in the closed season. Raccoons may be taken under this subdivision with artificial lights during open season. A person that kills mink, raccoon, lynx, bobcat, fox, opossum, muskrat, or beaver under this subdivision must notify a conservation officer or employee of the division within 24 hours after the animal is killed.

Subd. 2. Special permit for taking protected wild animals. The commissioner may issue special permits under section 97A.401, subdivision 5, to take protected wild animals that are damaging property.

Amended by Laws 1997, c. 226, § 33.

97B.667. Removal of beaver dams and lodges by road authorities

When a drainage watercourse is impaired by a beaver dam and the water damages or threatens to damage a public road, the road authority, as defined in section 160.02, subdivision 9, may remove the impairment and any associated beaver lodge within 300 feet of the road.

Amended by Laws 1997, c. 216, § 84.

97B.671. Predator control program

Subdivision 1. Authorization to take predators. If the commissioner determines that predators are damaging domestic or wild animals and further damage can be prevented, the commissioner shall authorize the taking of the predators by predator controllers. The commissioner shall define the area where the predators may be taken, the objectives to be achieved, procedures for notifying predator controllers, payments to be made, the methods to be used, and when the predator control shall cease.

Subd. 2. Certification of predator controllers. (a) The commissioner shall certify a person as a predator controller if the person has not violated a provision of this section and meets qualifications of experience, ability, and reliability. The commissioner shall establish application procedures, prescribe forms, and maintain a list of predator controllers. The application procedures must include reports from conservation officers and other department field personnel as to the ability and reliability of the applicants.

(b) The commissioner may revoke a certification if the predator controller violates a provision of sections 97B.601 to 97B.671 or 97B.901 to 97B.945 or a rule of the commissioner relating to fur-bearing animals.

Subd. 3. Predator control payments. The commissioner shall pay a predator controller the amount the commissioner prescribes for each predator taken. The commissioner shall pay at least \$25 but not more than \$60 for each coyote taken. The commissioner may require the predator controller to submit proof of the taking and a signed statement concerning the predators taken.

Subd. 4. Gray wolf control. (a) The commissioner shall provide a gray wolf control training program for certified predator controllers participating in gray wolf control.

(b) After the gray wolf is delisted under the federal Endangered Species Act of 1973, in zone B, as defined under section 97B.645, subdivision 12, if the commissioner, after considering recommendations from an extension agent or conservation officer, has verified that livestock, domestic animals, or pets were destroyed by a gray wolf within the previous five years, and if the livestock, domestic animal, or pet owner requests gray wolf control, the commissioner shall open a predator control area for gray wolves.

(c) After the gray wolf is delisted under the federal Endangered Species Act of 1973, in zone A, as defined under paragraph (g), if the commissioner, after considering recommendations from an extension agent or conservation officer, verifies that livestock, domestic animals, or pets were destroyed by a gray wolf, and if the livestock, domestic animal, or pet owner requests gray wolf control, the commissioner shall open a predator control area for gray wolves for up to 60 days.

(d) A predator control area opened for gray wolves may not exceed a one-mile radius surrounding the damage site.

(e) The commissioner shall pay a certified gray wolf predator controller \$150 for each wolf taken. The certified gray wolf predator controller must dispose of unsalvageable remains as directed by the commissioner. All salvageable gray wolf remains must be surrendered to the commissioner.

(f) The commissioner may, in consultation with the commissioner of agriculture, develop a cooperative agreement for gray wolf control activities with the United States Department of Agriculture. The cooperative agreement activities may include, but not be limited to, gray wolf control, training for state predator controllers, and control monitoring and recordkeeping.

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(g) For the purposes of this subdivision, “zone A” means that portion of the state lying outside of zone B, as defined under section 97B.645, subdivision 12.

Amended by Laws 2000, c. 463, §§ 17, 18.

BIRDS

97B.715. Pheasants

Subdivision 1. Stamp required. (a) Except as provided in paragraph (b) or section 97A.405, subdivision 2, a person required to possess a small game license may not hunt pheasants without:

- (1) a pheasant stamp in possession; and
- (2) a pheasant stamp validation on the small game license when issued electronically.

(b) The following persons are exempt from this subdivision:

- (1) residents under age 18 or over age 65; and
- (2) persons hunting on licensed commercial shooting preserves.

Subd. 2. Daily and possession hen pheasant limits. A person may not take more than one hen pheasant in one day or possess more than two hen pheasants.

Subd. 3. Hunting hours. A person may not take pheasants between the evening time that the commissioner establishes by rule and 9:00 a.m.

Amended by Laws 1997, c. 216, § 85.

97B.721. License and stamp required to take turkey; tagging and registration requirements

(a) Except as provided in paragraph (b) or section 97A.405, subdivision 2, a person may not take a turkey without a turkey license and:

- (1) a turkey stamp in possession; and
- (2) a turkey stamp validation on the turkey license when issued electronically.

(b) The requirement in paragraph (a) to possess a turkey stamp or a license validation does not apply to persons under age 18.

(c) The commissioner may by rule prescribe requirements for the tagging and registration of turkeys.

Amended by Laws 1997, c. 216, § 86.

MIGRATORY WATERFOWL

97B.801. Minnesota migratory waterfowl stamp required

(a) Except as provided in this section or section 97A.405, subdivision 2, a person required to possess a small game license may not take migratory waterfowl without:

- (1) a Minnesota migratory waterfowl stamp in possession; and
- (2) a migratory waterfowl stamp validation on the small game license when issued electronically.

(b) Residents under age 18 or over age 65 and persons hunting on their own property are not required to possess a stamp or a license validation under this section.

Amended by Laws 1997, c. 216, § 87.

97B.802. Special Canada goose season license required

Except as provided in this section, a person required to possess a small game license may not take Canada geese during a special season without a valid special season Canada goose

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license in possession. Residents under age 18 or over age 65 and persons hunting on their own property are not required to possess the license.

Laws 1997, c. 226, § 34.

FUR-BEARING ANIMALS, TRAPPING

97B.926. Pine marten and fisher zone

Where a combined pine marten and fisher trapping zone exists, the commissioner must provide an option of a combined limit of fisher and marten.

Laws 1997, c. 226, § 35.

Chapter 97C

FISHING

FISHING HABITAT		Section
97C.001.	Experimental waters.	97C.335. Use of artificial lights to take fish prohibited.
97C.02.	Acquisition of critical aquatic habitat.	97C.355. Dark houses and fish houses.
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97C.321.	Restrictions on unattended lines.	97C.801. Taking rough fish on Mississippi river.

FISHING HABITAT

97C.001. Experimental waters

Subdivision 1. Definition; designation. (a) Experimental waters are lakes and streams where special regulations are used and evaluated to meet a specific fisheries objective.

(b) The commissioner may designate any waters of the state having free access to the public as experimental waters. The designated experimental waters may not exceed 200 lakes and 50 streams at one time. For all experimental waters, the commissioner shall develop an evaluation plan and specify a termination date. On the termination date, the commissioner shall vacate or extend the experimental waters designation, or designate the experimental waters as special management waters under section 97C.005. The commissioner shall by rule establish methods and criteria for public initiation of experimental waters designation and for public participation in the evaluation of the waters designated.

(c) Designation of experimental waters under this section is not subject to chapter 14.

Subd. 2. Public notice and meeting. (a) Before the commissioner designates, or vacates or extends the designation of, experimental waters, a public meeting must be held in the county where the largest portion of the waters is located.

(b) At least 90 days before the public meeting and during the open angling season for fish the taking of which is, or is proposed to be, regulated under subdivision 3 on the waters under consideration, notice of the proposed designation, vacation, or extension must be posted at publicly maintained access points on the water.

(c) Before the public meeting, notice of the meeting must be published in a news release issued by the commissioner and in a newspaper of general circulation in the area where the proposed experimental waters are located. The notice must be published at least once between 30 and 60 days before the meeting, and at least once between seven and 30 days before the meeting.

(d) The notices required in this subdivision must summarize the proposed action, invite public comment, and specify a deadline for the receipt of public comments. The commissioner shall mail a copy of each required notice to persons who have registered their names with the commissioner for this purpose. The commissioner shall consider any public comments received in making a final decision.

(e) If a water to be designated is a lake with a water area of more than 1,500 acres, or is a stream or river with a reach of more than six miles, a public meeting must also be held in the seven-county metropolitan area.

Subd. 3. Seasons, limits, and other requirements. The commissioner may, in accordance with the procedures in subdivision 2 or by rule under chapter 14, establish open seasons, limits, methods, and other requirements for taking fish on experimental waters.

Amended by Laws 2000, c. 473, § 12.

97C.02. Acquisition of critical aquatic habitat

The commissioner shall acquire lands that are critical for fish and other aquatic life and that meet criteria described for aquatic management areas in section 86A.05, subdivision 14. The lands that are acquired may be developed to manage lakes, rivers, streams, and adjacent wetlands and lands for aquatic life, water quality, intrinsic biological value, public fishing, and other compatible outdoor recreational uses. The land may be acquired by gift, lease, easement, or purchase. The commissioner shall designate land acquired under this subdivision as aquatic management areas for the purposes of the outdoor recreation system.

Laws 2000, c. 495, § 40.

97C.035. Endangered fish populations

Subdivision 1. Conditions. If the commissioner determines that fish are in danger of dying, or if waters will be restored with the use of piscicides, the commissioner may rescue the fish under subdivision 2 or allow taking of the fish under subdivision 3.

Subd. 2. Rescue of fish. If the commissioner rescues fish endangered by lack of oxygen in the winter, the fish may be transferred to other waters, sold, or otherwise disposed of.

Subd. 3. Taking of fish. (a) The commissioner may authorize residents to take fish:

- (1) in any quantity;
- (2) in any manner, except by use of seines, hoop nets, fyke nets, and explosives; and
- (3) for personal use only, except rough fish may be sold.

(b) The commissioner may authorize the taking of fish by posting notice conspicuously along the shore of the waters and publishing a news release in a newspaper of general circulation in the area where the waters are located.

Amended by Laws 1997, c. 226, § 36.

97C.041. Commissioner may remove rough fish and catfish

The commissioner may take rough fish, lake whitefish, and rainbow smelt with seines, nets, and other devices. The commissioner may also take catfish with seines, nets, and other devices on the Minnesota-Wisconsin boundary waters. The commissioner may hire or contract persons, or issue permits, to take the fish. The commissioner shall prescribe the manner of taking and disposal. The commissioner may award a contract under this section without competitive bidding. Before establishing the contractor's compensation, the commis-

sioner must consider the qualifications of the contractor, including the contractor's equipment, knowledge of the waters, and ability to perform the work.

Amended by Laws 2000, c. 495, § 41.

97C.081. Fishing contests

Subdivision 1. Restrictions. A person may not conduct a fishing contest on waters except as provided in this section.

Subd. 2. Contests without a permit. A person may conduct a fishing contest without a permit from the commissioner provided:

- (1) the following criteria are met:
 - (i) there are 30 participants or less for open water contests and 150 participants or less for ice fishing contests;
 - (ii) the entry fee is \$25 per person or less;
 - (iii) the total prize value is \$25,000 or less; and
 - (iv) the contest is not limited to trout species only;
- (2) the following criteria are met:
 - (i) the contest is not limited to specifically named waters; and
 - (ii) the contest is not limited to trout species only; or
- (3) all the contest participants are age 18 years or under.

Subd. 3. Contests requiring a permit. (a) A person must have a permit from the commissioner to conduct a fishing contest that does not meet the criteria in subdivision 2. Permits shall be issued without a fee.

(b) If entry fees are over \$25 per person, or total prizes are valued at more than \$25,000, and if the applicant has either:

- (1) not previously conducted a fishing contest requiring a permit under this subdivision; or
- (2) ever failed to make required prize awards in a fishing contest conducted by the applicant, the commissioner may require the applicant to furnish the commissioner evidence of financial responsibility in the form of a surety bond or bank letter of credit in the amount of \$25,000.

Subd. 4. Restrictions. The commissioner may by rule establish restrictions on fishing contests to protect fish and fish habitat and for the safety of contest participants.

Subd. 5. Ice fishing contest in conjunction with raffle. An organization that is permitted under this section and licensed by the lawful gambling control board to conduct raffles may conduct a raffle in conjunction with an ice fishing contest. The organization may sell a combined ticket for a single price for the ice fishing contest and raffle, provided that the combined ticket states in at least eight-point type the amount of the price that applies to the ice fishing contest and the amount that applies to the raffle. All other provisions of sections 349.11 to 349.23 apply to the raffle.

Subd. 6. Permit application process. (a) Beginning September 1 each year, the commissioner shall accept permit applications for fishing contests to be held in the following year.

(b) If the number of permit applications received by the commissioner from September 1 through the last Friday in October exceeds the limits specified in subdivisions 7 and 8, the commissioner shall notify the affected applicants that their requested locations and time period are subject to a drawing. After notification, the commissioner shall allow the affected applicants a minimum of seven days to change the location or time period requested on their applications, provided that the change is not to a location or time period for which applications are already at or above the limits specified in subdivisions 7 and 8.

(c) After the applicants have been given at least seven days to change their applications, the commissioner shall conduct a drawing for all locations and time periods for which applications exceed limits. First preference in the drawings shall be given to applicants for

established or traditional fishing contests, and second preference to applicants for contests that are not established as traditional fishing contests based on the number of times they have been unsuccessful in previous drawings. Except for applicants of established or traditional fishing contests, an applicant who is successful in a drawing loses all accumulated preference.

(d) The commissioner has until December 7 to approve or deny permit applications that are submitted by 4:30 p.m. on the last Friday in October. The commissioner may approve a permit application that is received after 4:30 p.m. on the last Friday in October if approving the application would not result in exceeding the limits in subdivisions 7 and 8.

Subd. 7. Weekend limitations. (a) On all waters 55,000 acres or less, the commissioner may ensure that each of the state's waters has at least two weekends per month with no permitted fishing contests.

(b) Unless otherwise authorized by the commissioner, permitted fishing contests that are conducted for more than one day may not include more than one weekend day from Memorial Day weekend through Labor Day weekend.

(c) The commissioner may not approve permits for fishing contests on a weekend with a fishing season opener if the contest targets a species for which the season is opening.

Subd. 8. Limits on number of fishing contests. (a) The number of permitted fishing contests allowed each month on a water body shall not exceed the following limits:

Size/acres	Maximum number of permitted fishing contests	Maximum number of large permitted fishing contests	Maximum number of permitted fishing contest days
less than 2,000	2	0	4
2,000-4,999	3	1	6
5,000-14,999	4	2	8
15,000-55,000	5	3	10
more than 55,000	no limit	no limit	no limit

(b) For boundary waters, the limits on the number of permitted fishing contests shall be determined based on the Minnesota acreage.

Subd. 9. Permit restrictions. (a) The commissioner may require fishing contest permittees to limit pre-fishing to week days only as a condition of a fishing contest permit. The commissioner may require proof from permittees that pre-fishing restrictions on the permit are communicated to fishing contest participants and enforced.

(b) The commissioner may require permit restrictions on the hours that a permitted fishing contest is conducted, including, but not limited to, starting and ending times.

(c) The commissioner may require permit restrictions on the number of parking spaces that may be used on a state-owned public water access site. The commissioner may require proof from permittees that parking restrictions on the permit are communicated to fishing contest participants and enforced.

(d) To prevent undue loss of fish, the commissioner may require restrictions for off-site weigh-ins on a fishing contest permit or may deny permits requesting an off-site weigh-in.

(e) A person may not transfer a fishing contest permit to another person.

(f) Failure to comply with fishing contest permit restrictions may be considered grounds for denial of future permit applications.

Subd. 10. Definitions. For purposes of this section, the following terms have the meanings given:

(a) "Permitted fishing contest" means an open water fishing contest or ice fishing contest that requires a permit from the commissioner under subdivision 3.

(b) "Large permitted fishing contest" means an open water fishing contest with more than 50 boats or more than 100 participants that requires a permit from the commissioner under subdivision 3.

(c) "Participant" means a person who is taking part in a fishing contest.

(d) "Permitted fishing contest day" means a day on a water body where a permitted fishing contest is held. Two permitted fishing contests that are held on the same water body on the same day count as two permitted fishing contest days.

(e) "Off-site weigh-in" means a weigh-in of fish from a fishing contest at a location that is not adjacent to the waters listed on the fishing contest permit.

(f) "Prefishing" means fishing by participants of a permitted fishing contest prior to the scheduled dates of the contest on waters listed on the fishing contest permit.

Amended by Laws 2000, c. 473, §§ 13 to 19.

PROPAGATION

97C.211. Private fish hatcheries

Subdivision 1. License required. A person may not operate a private fish hatchery without a private fish hatchery license. A private fish hatchery is a facility for raising fish, including minnows, for sale, stocking waters, angling, or processing. A private fish hatchery license is valid for five years but must be renewed annually.

Subd. 2. Rules for operation. The commissioner shall prescribe rules that allow a person to maintain and operate a private fish hatchery to raise and dispose of fish. The commissioner shall establish and assess a fee to cover the cost of inspection and disease certification of private hatcheries.

Subd. 2a. Acquisition of fish. (a) A private fish hatchery may not obtain fish outside of the state unless the fish or the source of the fish are approved by the commissioner. The commissioner may apply more stringent requirements to fish or a source of fish from outside the state than are applied to fish and sources of fish from within the state. The commissioner must either approve or deny the acquisition within 30 days after receiving a written request for approval. Minnows acquired must be processed and not released into public waters, except as provided in section 97C.515, subdivision 4. A request may be for annual acquisition.

(b) If the commissioner denies approval, a written notice must be submitted to the applicant stating the reasons for the denial and the commissioner must:

- (1) designate approved sources to obtain the desired fish or fish eggs; or
- (2) sell the fish or fish eggs from state fish hatcheries at fair market value.

Subd. 3. Fishing license not required for persons to take fish. A person may take fish by angling without a fishing license at a licensed private fish hatchery or an artificial pool containing only fish purchased from a private fish hatchery, if the operator of the hatchery or pool furnishes each person catching fish a certificate prescribed by the commissioner. The certificate must state the number and species of the fish caught and other information as prescribed by the commissioner. A person without a fishing license may possess, ship, and transport within the state the fish caught in the same manner as fish taken by a resident with a fishing license.

Subd. 4. License required to take sucker eggs. A person may not take sucker eggs from public waters for a private fish hatchery without a license to do so.

Subd. 5. Price of walleye fry. The commissioner may not sell walleye fry for less than fair market value, defined as the average price charged by private walleye fry wholesalers located in Minnesota.

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Subd. 6. Nonpublic records. Information on production, harvest, and sales of aquatic life by a private fish hatchery is nonpublic information.

Amended by Laws 1997, c. 226, §§ 37, 38.

FISHING METHODS

97C.305. Trout and salmon stamp

Subdivision 1. Requirement. Except as provided in subdivision 2 or section 97A.405, subdivision 2, a person over age 16 and under age 65 required to possess an angling license must have a trout and salmon stamp in possession and a trout stamp validation on the angling license when issued electronically to:

- (1) take fish by angling in:
 - (i) a stream designated by the commissioner as a trout stream;
 - (ii) a lake designated by the commissioner as a trout lake; or
 - (iii) Lake Superior; or
- (2) possess trout or salmon taken in the state by angling.

Subd. 2. Exception. A trout and salmon stamp is not required to take fish by angling or to possess trout and salmon if:

- (1) the person:
 - (i) possesses a license to take fish by angling for a period of 24 hours from the time of issuance under section 97A.475, subdivision 6, clause (5), or subdivision 7, clause (5), and
 - (ii) is taking fish by angling, or the trout or salmon were taken by the person, during the period the license is valid; or
- (2) the person is taking fish, or the trout or salmon were taken by the person, as authorized under section 97C.035.

Amended by Laws 1997, c. 216, § 88.

97C.311. Lake Superior fishing guide license

Subdivision 1. License required. A person may not operate a charter boat and guide anglers on Lake Superior or the St. Louis river estuary for compensation without a fishing guide license. For purposes of this subdivision and section 97A.475, subdivision 15, "St. Louis river estuary" means the United States Coast Guard navigable waters of the lower St. Louis river to the Minnesota state highway No. 23 bridge.

Subd. 2. Rules. The commissioner shall adopt rules for:

- (1) issuance of the licenses, including qualifications for licensees; and
- (2) record keeping and reporting by licensees.

Subd. 3. Federal requirements. A person may not use a watercraft for activities authorized under this section unless the watercraft complies with all applicable licensing and safety requirements of the United States Coast Guard.

Amended by Laws 1999, c. 57, § 2.

97C.321. Restrictions on unattended lines

Subdivision 1. General prohibition. A person may not take fish by angling with a set line or an unattended line except as provided in this section and rules adopted under the game and fish laws.

Subd. 2. Ice fishing. A person may use an unattended line to take fish through the ice if:

- (1) the person is within sight of the line; or

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(2) a tip-up is attached to the line and the person is within 200 feet of the tip-up.

Amended by Laws 1997, c. 226, § 39.

97C.325. Prohibited methods of taking fish

Notes of Decisions

Indian treaty rights 3

3. Indian treaty rights

Chippewa Indians could gillnet, in territory ceded under 1837 treaty, on those lakes of under 1,000 acres which were identified in Mille Lacs Band's management plan and conservation code, subject to restrictions contained therein, as Minnesota failed to establish genuine issue of material fact as to whether Band's regulations met its conservation

concerns, where complete prohibition of gillnetting in lakes of under 1,000 acres was not the least restrictive measure to address state's conservation concerns. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, D.Minn.1997, 952 F.Supp. 1362, affirmed 124 F.3d 904, rehearing and suggestion for rehearing en banc denied, certiorari granted 118 S.Ct. 2295, 524 U.S. 915, 141 L.Ed.2d 156, affirmed 119 S.Ct. 1187, 526 U.S. 172, 143 L.Ed.2d 270, certiorari denied 119 S.Ct. 1333, 526 U.S. 1038, 143 L.Ed.2d 497, certiorari denied 119 S.Ct. 1376, 526 U.S. 1060, 143 L.Ed.2d 535.

97C.331. Snagging fish prohibited

Notes of Decisions

Indian treaty rights 1

1. Indian treaty rights

Chippewa Indians could gillnet, in territory ceded under 1837 treaty, on those lakes of under 1,000 acres which were identified in Mille Lacs Band's management plan and conservation code, subject to restrictions contained therein, as Minnesota failed to establish genuine issue of material fact as to whether Band's regulations met its conservation

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97C.335. Use of artificial lights to take fish prohibited

A person may not use artificial lights to lure or attract fish or to see fish in the water while spearing, except that while angling, a person may affix to the end of a fishing line a lighted artificial bait with hooks attached. Any battery that is used in lighted fishing lures cannot contain any intentionally introduced mercury.

Amended by Laws 2000, c. 308, § 1; Laws 2000, c. 463, § 19; Laws 2000, c. 473, § 20, eff. May 16, 2000.

97C.355. Dark houses and fish houses

Subdivision 1. Identification required. All shelters on the ice of state waters, including dark houses and fish houses, must have the name and address or driver's license number of an owner legibly painted on the exterior with characters at least three inches high.

Subd. 2. License required. A person may not take fish from a dark house or fish house unless the house is licensed and has a durable license tag attached to the exterior as prescribed by the commissioner, except as provided in this subdivision. The commissioner must issue a durable tag that is at least two inches in diameter with a 3/16 inch hole in the center with a dark house or fish house license. The durable tag must be marked with a number to correspond with the license and the year of issue. A dark house or fish house license is not required of a resident on boundary waters where the adjacent state does not charge a fee for the same activity.

Subd. 3. Door must open from outside. A person may not use a dark house or fish house unless the door is constructed so that it can be opened from the outside when it is in use.

Subd. 4. Distance between houses. A person may not erect a dark house or fish house within ten feet of an existing dark house or fish house.

Subd. 5. Burning of structures. A person may not burn a structure on the ice of state waters without permission of the commissioner. The commissioner may allow burning only after determining that the structure cannot be removed from the ice by another reasonable manner. The owner must remove the remains of the burned structure from the ice.

Subd. 6. Restrictions for nonresidents. A nonresident may obtain a license for a fish house but the house may not be unattended.

Subd. 7. Dates and times houses may remain on ice. (a) A fish house or dark house may not be on the ice between 12:00 a.m. and one hour before sunrise after the following dates:

(1) the last day of February, for state waters south of a line starting at the Minnesota-North Dakota border and formed by rights-of-way of U.S. Route No. 10, then east along U.S. Route No. 10 to Trunk Highway No. 34, then east along Trunk Highway No. 34 to Trunk Highway No. 200, then east along Trunk Highway No. 200 to U.S. Route No. 2, then east along U.S. Route No. 2 to the Minnesota-Wisconsin border; and

(2) March 15, for other state waters.

A fish house or dark house on the ice in violation of this subdivision is subject to the enforcement provisions of paragraph (b). The commissioner may, by rule, change the dates in this paragraph for any part of state waters. Copies of the rule must be conspicuously posted on the shores of the waters as prescribed by the commissioner.

(b) A conservation officer must confiscate a fish house or dark house in violation of paragraph (a). The officer may remove, burn, or destroy the house. The officer shall seize the contents of the house and hold them for 60 days. If the seized articles have not been claimed by the owner, they may be retained for the use of the division or sold at the highest price obtainable in a manner prescribed by the commissioner.

(c) When the last day of February, under paragraph (a), clause (1), or March 15, under paragraph (a), clause (2), falls on a Saturday, a fish house or dark house may be on the ice between 12:00 a.m. and one hour before sunrise until 12:00 a.m. the following Monday.

Subd. 8. Confiscation of unlawful structures. Structures on the ice in violation of this section may be confiscated and disposed of, retained by the division, or sold at the highest price obtainable, in a manner prescribed by the commissioner.

Amended by Laws 1998, c. 252, § 2, eff. Feb. 13, 1998.

MINNOWS

97C.501. Minnow licenses required

Subdivision 1. Minnow retailers. (a) A person may not be a minnow retailer without a minnow retailer license except as provided in subdivisions 2, paragraph (d), and 3. A person must purchase a minnow retailer license for each minnow retail outlet operated, except as provided by subdivision 2, paragraph (d).

(b) A minnow retailer must obtain a minnow retailer's vehicle license for each motor vehicle used by the minnow retailer to transport more than 12 dozen minnows to the minnow retailer's place of business, except as provided in subdivision 3. A minnow retailer is not required to obtain a minnow retailer's vehicle license if minnows are being transported by common carrier and information is provided that allows the commissioner to find out the location of the shipment in the state.

Subd. 2. Minnow dealers. (a) A person may not be a minnow dealer without a minnow dealer license except as provided in subdivision 3.

(b) A minnow dealer must obtain a minnow dealer's vehicle license for each motor vehicle used to transport minnows. The serial number, motor vehicle license number, make, and model must be on the license. The license must be conspicuously displayed in the vehicle.

(c) A minnow dealer may not transport minnows out of the state without an exporting minnow dealer license. A minnow dealer must obtain an exporting minnow dealer's vehicle license for each motor vehicle used to transport minnows out of the state. The serial number, motor vehicle license number, make, and model must be on the license. The license must be conspicuously displayed in the vehicle.

(d) A person with a minnow dealer's license may sell minnows at one retail outlet. A minnow dealer must obtain a minnow retailer license for each additional retail outlet operated. A minnow dealer operating a retail outlet under a minnow dealer's license must list the following information for the retail outlet: name of the business; city; state; zip code; and legal description or fire number. The retail outlet name and location may be changed by making application to the commissioner.

Subd. 3. License exemption for minors selling leeches. A resident under age 18 may take leeches, sell leeches at retail, and transport leeches without a minnow retailer or dealer license.

Subd. 4. Nonresident minnow haulers. (a) A nonresident may not transport minnows in a motor vehicle without an exporting minnow hauler license.

(b) A nonresident must obtain an exporting minnow hauler's vehicle license for the motor vehicle used to transport minnows. The serial number, motor vehicle license number, make, and model must be on the license. The license must be conspicuously displayed in the vehicle.

(c) Only one nonresident motor vehicle license may be issued to an exporting minnow hauler.

Amended by Laws 1997, c. 216, § 89; Laws 2000, c. 495, §§ 42, 43.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 216, § 161, provides in part that § 89 (amending subd. 2) is effective March 1, 1998.

97C.505. Minnows

Subdivision 1. Authority to take, possess, buy, and sell. (a) Minnows may be taken, possessed, bought, and sold, subject to the restrictions in this chapter and in rules adopted by the commissioner under paragraph (b). A person may not take, possess, or sell minnows except for use as bait or for ornamental or aquacultural purposes.

(b) The commissioner may adopt rules for the taking, possession, purchase, sale, and transportation of minnows.

Subd. 2. Continuous open season. The open season for taking minnows is continuous, except as provided in subdivisions 3 and 4.

Subd. 3. Closing waters. The commissioner may close any state waters for commercially taking minnows if a survey is conducted and the commissioner determines it is necessary to close the waters to prevent depletion or extinction of the minnows.

Subd. 4. Repealed by Laws 1995, 1st Sp., c. 1, § 48, eff. June 2, 1995.

Subd. 5. Restrictions on taking from trout waters. A person may not take minnows from designated trout lakes or trout streams without a special permit issued by the commissioner.

Subd. 6. Approved equipment required. A person must use equipment approved by the commissioner to possess or transport minnows for sale. This subdivision does not apply to licensed aquatic farms.

Subd. 7. Interference prohibited. A person may not knowingly damage, disturb, or interfere with legal commercial minnow harvest operations.

Amended by Laws 1997, c. 226, § 40.

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97C.521. Transportation of carp fingerlings prohibited

Except as provided in section 17.4984, subdivision 2, paragraph (g), a person may not transport live carp fingerlings.

Amended by Laws 2000, c. 331, § 5.

REPTILES

97C.605. Turtles

Subdivision 1. License required. A person may not take, possess, or transport turtles without an angling license, except as provided in subdivision 2.

Subd. 2. Seller's license. (a) A person may not take, possess, transport, or purchase turtles for sale without a turtle seller's license, except as provided in this subdivision.

(b) A person does not need a turtle seller's license or an angling license:

(1) when buying turtles for resale at a retail outlet;

(2) when buying a turtle at a retail outlet; or

(3) if the person is a nonresident buying a turtle from a licensed turtle seller for export out of state. Shipping documents provided by the turtle seller must accompany each shipment exported out of state by a nonresident. Shipping documents must include: name, address, city, state, and zip code of the buyer; number of each species of turtle; and name and license number of the turtle seller.

Subd. 3. Taking; methods prohibited. (a) Except as allowed in paragraph (b), a person may take turtles in any manner, except by use of:

(1) explosives, drugs, poisons, lime, and other harmful substances;

(2) traps; or

(3) nets other than anglers' fish landing nets.

(b) A person with a turtle seller's license may take turtles with a floating turtle trap that:

(1) has one or more openings above the water surface that measure at least ten inches by four inches; and

(2) has a mesh size of not less than one-half inch, bar measure.

The commissioner may prescribe additional regulations for taking turtles for sale.

Subd. 4. Artificial lights. The commissioner may issue permits to take turtles with the use of artificial lights in designated waters.

Amended by Laws 2000, c. 495, §§ 44, 45.

NETTING AND COMMERCIAL FISHING

97C.801. Taking rough fish on Mississippi river

Subdivision 1. Repealed by Laws 1997, c. 216, § 90; Laws 1997, c. 226, § 51.

Subd. 2. Commercial fish netting on Mississippi river. (a) A license is required to commercially take rough fish with seines in the Mississippi river from the St. Croix river junction to St. Anthony Falls.

(b) A person may take rough fish in the Mississippi river, from the St. Croix river junction to St. Anthony Falls, only with the following equipment and methods:

(1) operations shall be conducted only in the flowing waters of the river and in tributary backwaters prescribed by the commissioner;

(2) seines may be used only as prescribed by this section and rules adopted by the commissioner;

(3) seines must be hauled to a landing immediately after being placed;

WATER PLANNING AND PROJECT IMPLEMENTATION

(4) two seines may not be joined together in the water; and

(5) a seine may not be landed between sunset and sunrise.

Amended by Laws 1997, c. 216, § 90; Laws 1997, c. 226, § 41.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 216, § 161, provides in part that § 90 (amending this section) is effective March 1, 1998.

WATER

Chapter 103A

WATER POLICY AND INFORMATION

WATER INFORMATION

Section

103A.43. Water assessments and reports.

WATER INFORMATION

103A.43. Water assessments and reports

(a) The environmental quality board shall evaluate and report to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture and the legislative commission on Minnesota resources on statewide water research needs and recommended priorities for addressing these needs. Local water research needs may also be included.

(b) The environmental quality board shall work with the pollution control agency and the department of agriculture to coordinate a biennial assessment and analysis of water quality, groundwater degradation trends, and efforts to reduce, prevent, minimize, and eliminate degradation of water. The assessment and analysis must include an analysis of relevant monitoring data.

(c) The environmental quality board shall work with the department of natural resources to coordinate an assessment and analysis of the quantity of surface and ground water in the state and the availability of water to meet the state's needs.

(d) The environmental quality board shall coordinate and submit a report on water policy including the analyses in paragraphs (a) to (c) to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture and the legislative commission on Minnesota resources by September 15 of each even-numbered year. The report may include the groundwater policy report in section 103A.204.

Amended by Laws 1999, c. 86, art. 3, § 7.

Chapter 103B

WATER PLANNING AND PROJECT IMPLEMENTATION

BOARD OF WATER AND SOIL RESOURCES

Section

Section

103B.101. Board of water and soil resources.

METROPOLITAN SURFACE WATER MANAGEMENT

103B.227. Watershed management organizations.

WATER PLANNING AND PROJECT IMPLEMENTATION

Section 103B.231. Watershed plans. COMPREHENSIVE LOCAL WATER PLANNING AND MANAGEMENT 103B.321. Duties of the board.	Section LOCAL WATER RESOURCES PROTECTION AND MANAGEMENT PROGRAM 103B.351. Committee oversight; report required. LAKE IMPROVEMENT DISTRICTS 103B.535. Order establishing district. 103B.545. Referendum on establishment. 103B.551. Board of directors. 103B.555. Financing. 103B.571. Annual meeting of district. 103B.581. Termination.
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BOARD OF WATER AND SOIL RESOURCES

103B.101. Board of water and soil resources

Subdivision 1. Membership. The board of water and soil resources is composed of 12 members knowledgeable of water and soil problems and conditions within the state and five ex officio members.

Subd. 2. Voting members. (a) The members are:

- (1) three county commissioners;
- (2) three soil and water conservation district supervisors;
- (3) three watershed district or watershed management organization representatives;
- (4) three citizens who are not employed by, or the appointed or elected officials of, a governmental office, board, or agency;
- (5) the commissioner of agriculture;
- (6) the commissioner of health;
- (7) the commissioner of natural resources;
- (8) the commissioner of the pollution control agency; and
- (9) the director of the University of Minnesota extension service.

(b) Members in paragraph (a), clauses (1) to (4), must be distributed across the state with at least three members but not more than five members from the metropolitan area, as defined by section 473.121, subdivision 2; and one from each of the current soil and water conservation administrative regions.

(c) Members in paragraph (a), clauses (1) to (4), are appointed by the governor. In making the appointments, the governor may consider persons recommended by the association of Minnesota counties, the Minnesota association of soil and water conservation districts, and the Minnesota association of watershed districts. The list submitted by an association must contain at least three nominees for each position to be filled.

(d) The membership terms, compensation, removal of members and filling of vacancies on the board for members in paragraph (a), clauses (1) to (4), are as provided in section 15.0575.

Subd. 3. Repealed by Laws 1997, c. 28, § 4.

Subd. 4. Employees. The board may employ an executive director in the unclassified service and other permanent and temporary employees in accordance with chapter 43A. The board may prescribe the powers and duties of its officers and employees and may authorize its employees and members of the board to act on behalf of the board.

Subd. 5. Officers. The governor shall appoint a chair from among the members of the board in subdivision 2, paragraph (a), clauses (1) to (4), with the advice and consent of the senate. The board shall elect a vice-chair and any other officers that it considers necessary from its membership.

Subd. 6. Quorum. A majority of the board is a quorum.

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Note 1

Subd. 7. Hearings and rulemaking. The board may hold public hearings and adopt rules necessary to execute its duties.

Subd. 8. Repealed by Laws 1997, c. 28, § 4.

Subd. 9. Powers and duties. In addition to the powers and duties prescribed elsewhere, the board shall:

(1) coordinate the water and soil resources planning activities of counties, soil and water conservation districts, watershed districts, watershed management organizations, and any other local units of government through its various authorities for approval of local plans, administration of state grants, and by other means as may be appropriate;

(2) facilitate communication and coordination among state agencies in cooperation with the environmental quality board, and between state and local units of government, in order to make the expertise and resources of state agencies involved in water and soil resources management available to the local units of government to the greatest extent possible;

(3) coordinate state and local interests with respect to the study in southwestern Minnesota under United States Code, title 16, section 1009;

(4) develop information and education programs designed to increase awareness of local water and soil resources problems and awareness of opportunities for local government involvement in preventing or solving them;

(5) provide a forum for the discussion of local issues and opportunities relating to water and soil resources management;

(6) adopt an annual budget and work program that integrate the various functions and responsibilities assigned to it by law; and

(7) report to the governor and the legislature by October 15 of each even-numbered year with an assessment of board programs and recommendations for any program changes and board membership changes necessary to improve state and local efforts in water and soil resources management.

The board may accept grants, gifts, donations, or contributions in money, services, materials, or otherwise from the United States, a state agency, or other source to achieve an authorized purpose. The board may enter into a contract or agreement necessary or appropriate to accomplish the transfer.

Any money received is hereby appropriated and dedicated for the purpose for which it is granted.

Subd. 10. Committee for dispute resolution. A committee of the board is established to hear and resolve disputes, appeals, and interventions under sections 103A.301 to 103A.341; 103B.231, subdivision 9; 103B.345; and 103D.535. The committee consists of two of the three citizen members; one county commissioner member; one soil and water conservation district supervisor member; and one watershed district or watershed management organization representative member. The committee is appointed by the board chair.

Subd. 11. Engineering work and appearances at hearings by director. The director of the division of waters of the department of natural resources shall perform engineering work requested by the board of water and soil resources and shall appear in all hearings and proceedings before the board of water and soil resources affecting waters within the state.

Amended by Laws 1997, c. 28, §§ 1 to 3; Laws 1997, c. 109, § 1.

Notes of Decisions

Appeal 1

1. Appeal

Board of Water and Soil Resources (BWSR) was properly constituted when five of its 17 members reviewed city's approval of landowner's wetland

replacement plan, sitting as a dispute resolution committee (DRC) and BWSR adopted DRC's recommendation to reverse city's decision. Board Order, Kells (BWSR) v. City of Rochester, App. 1999, 597 N.W.2d 332.

Board of Water and Soil Resources (BWSR) complies with statutory requirements by utilizing a five-member committee to hear appeals. Board

§ 103B.101

WATER PLANNING AND PROJECT IMPLEMENTATION

Note 1

Order, Kells (BWSR) v. City of Rochester, App.
1999, 597 N.W.2d 332.

METROPOLITAN SURFACE WATER MANAGEMENT

103B.227. Watershed management organizations

Subdivision 1. Appointment of members. Watershed management organizations shall notify the board of water and soil resources of member appointments and vacancies in member positions within 30 days. Appointing authorities shall fill vacant positions by 90 days after the vacancy occurs.

Subd. 2. Notice of board vacancies. Appointing authorities for watershed management organization board members shall publish a notice of vacancies resulting from expiration of members' terms and other reasons. The notices must be published at least once in a newspaper of general circulation in the watershed management organization area. The notices must state that persons interested in being appointed to serve on the watershed management organization board may submit their names to the appointing authority for consideration. After December 31, 1999, staff of local units of government that are members of the watershed management organization are not eligible to be appointed to the board. Published notice of the vacancy must be given at least 15 days before an appointment or reappointment is made.

Subd. 3. Removal. Appointing authorities may remove members of watershed management organization boards for just cause. The board of water and soil resources shall adopt rules prescribing standards and procedures for removing members of watershed management organization boards for just cause.

Subd. 4. Newsletter. A watershed management organization shall publish and distribute at least one newsletter or other appropriate written communication each year to residents. The newsletter or other communication must explain the organization's water management programs and list the officers and telephone numbers.

Subd. 5. Requests for proposals for services. A watershed management organization shall at least every two years solicit interest proposals for legal, professional, or technical consultant services before retaining the services of an attorney or consultant or extending an annual services agreement.

Subd. 6. Repealed by Laws 1995, c. 184, § 32.

Subd. 7. Drainage systems. Watershed management organizations may accept transfer of drainage systems under sections 103B.205 to 103B.255.

Amended by Laws 1999, c. 231, § 126.

103B.231. Watershed plans

Subdivision 1. Requirement. (a) A watershed management plan is required for watersheds comprising all minor watershed units wholly or partly within the metropolitan area. For minor watershed units having more than 90 percent of their area within the metropolitan area, the watershed management plan must be prepared, adopted, and implemented in accordance with the requirements of sections 103B.205 to 103B.255.

(b) Minor watershed units having 90 percent or less of their area within the metropolitan area shall prepare a plan or have the county prepare a watershed management plan for their area in accordance with the requirements of sections 103B.101 and 103B.205 to 103B.355, as determined by the board of water and soil resources.

Subd. 2. Optional participation in metropolitan water management organization. Local government units outside of the metropolitan area, having territory that is within a watershed part of which is subject to the requirements of this section, may enter into an agreement under section 103B.211. A local government unit that enters into an agreement under this subdivision has the duties imposed and the authority granted in sections 103B.205 to 103B.255.

WATER PLANNING AND PROJECT IMPLEMENTATION

§ 103B.231

Subd. 3. Responsible units. (a) Where a watershed management organization exists, the plan for the watershed must be prepared and adopted by the organization.

(b) If a watershed management organization located wholly outside of Hennepin and Ramsey counties, is terminated, or the board of water and soil resources determines a plan is not being implemented in accordance with its rules, the county or counties containing the watershed unit shall prepare, adopt, and implement the watershed plan and for this purpose the county or counties have the planning, review, permitting, and financing authority of a watershed management organization specified in sections 103B.211 to 103B.255.

(c) If a watershed management organization within the metropolitan area and wholly or partly within Hennepin or Ramsey counties is terminated or the board of water and soil resources determines a plan is not being implemented, the county or counties shall petition for the establishment of a watershed district under chapter 103D, provided that a district established pursuant to a petition:

(1) may not cross a primary river or a river forming the boundary between a metropolitan county and a county outside the metropolitan area; and

(2) may not cross county boundaries to include territory whose distinguishing characteristic is multiple drainage points into a primary river.

(d) A watershed management organization may request a county to prepare all or part of a plan.

(e) A county may delegate the preparation of all or part of a plan to the county soil and water conservation district.

(f) Upon request of a statutory or home rule charter city or town, a county may delegate the preparation of all or part of a plan to the city or town.

(g) If the board of water and soil resources determines that a watershed management organization or county has not developed a draft plan, is not implementing the plan, has not delegated implementation of the plan, and has not petitioned for the creation of a watershed district:

(1) state agencies may withhold from local government units state funding for water programs for projects within the watershed;

(2) state agencies may withhold from local government units delegation of state water resource regulatory authority within the watershed;

(3) state agencies may suspend issuance of water-related permits within the watershed; and

(4) the board may request state agencies to withhold portions of state aid funding used for the installation of curb and gutter and other drainage facilities of public transportation projects within the watershed.

The provisions of this paragraph apply until the board of water and soil resources determines that a plan is being implemented in accordance with its rules.

(h) Appeals from the board of water and soil resources determination are made in the same manner as appeals under section 103B.345, subdivision 5.

Subd. 3a. Priority schedule. (a) The board of water and soil resources in consultation with the state review agencies and the metropolitan council shall develop a priority schedule for the revision of plans required under this chapter.

(b) The prioritization should be based on but not be limited to status of current plan, scheduled revision dates, anticipated growth and development, existing and potential problems, and regional water quality goals and priorities.

(c) The schedule will be used by the board of water and soil resources in consultation with the state review agencies and the metropolitan council to direct watershed management organizations of when they will be required to revise their plans.

(d) Upon notification from the board of water and soil resources that a revision of a plan is required, a watershed management organization shall have 24 months from the date of notification to revise and submit a plan for review.

(e) In the event that a plan expires prior to notification from the board of water and soil resources under this section, the existing plan, authorities, and official controls of a watershed management organization shall remain in full force and effect until a revision is approved.

(f) A one-year extension to submit a revised plan may be granted by the board.

(g) Watershed management organizations submitting plans and draft plan amendments for review prior to the board's priority review schedule, may proceed to adopt and implement the plan revisions without formal board approval if the board fails to adjust its priority review schedule for plan review, and commence its statutory review process within 45 days of submittal of the plan revision or amendment.

Subd. 4. General standards. (a) The watershed management plan must specify the period covered by the plan and must extend at least five years but no more than ten years from the date the board approves the plan. Plans that contain revision dates inconsistent with this section must comply with that date, provided it is not more than ten years beyond the date of board approval.

(b) The plan must be reviewed for consistency with an adopted county groundwater plan, and revised to the degree necessary to become compliant with the groundwater plan no later than two years after adoption by the county. A one-year extension may be granted by the board. Upon the request of a watershed management organization, the county shall provide a written statement that:

(1) identifies any substantial inconsistencies between the watershed plan and the groundwater plan and any substantial adverse effects of the watershed plan on the groundwater plan; and

(2) evaluates, estimates the cost of, and recommends alternatives for amending the watershed plan to rectify any substantial inconsistencies and adverse effects.

(c) The plan shall contain the elements required by subdivision 6. Each element shall be set out in the degree of detail and prescription necessary to accomplish the purposes of sections 103B.205 to 103B.255, considering the character of existing and anticipated physical and hydrogeologic conditions, land use, and development and the severity of existing and anticipated water management problems in the watershed.

(d) Existing plans of a watershed management organization shall remain in force and effect until amended or superseded by plans adopted under sections 103B.205 to 103B.255.

(e) Watershed management organizations shall coordinate their planning activities with contiguous watershed management organizations and counties conducting water planning and implementation under sections 103B.101 and 103B.301 to 103B.355.

Subd. 5. Repealed by Laws 1995, c. 184, § 32.

Subd. 6. Contents. (a) The plan shall:

(1) describe the existing physical environment, land use, and development in the area and the environment, land use, and development proposed in existing local and metropolitan comprehensive plans;

(2) present information on the hydrologic system and its components, including drainage systems previously constructed under chapter 103E, and existing and potential problems related thereto;

(3) state objectives and policies, including management principles, alternatives and modifications, water quality, and protection of natural characteristics;

(4) set forth a management plan, including the hydrologic and water quality conditions that will be sought and significant opportunities for improvement;

(5) describe the effect of the plan on existing drainage systems;

(6) identify high priority areas for wetland preservation, enhancement, restoration, and establishment and describe any conflicts with wetlands and land use in these areas;

(7) describe conflicts between the watershed plan and existing plans of local government units;

(8) set forth an implementation program consistent with the management plan, which includes a capital improvement program and standards and schedules for amending the comprehensive plans and official controls of local government units in the watershed to bring about conformance with the watershed plan; and

(9) set out procedures and timelines for amending the plan.

(b) The board shall adopt rules to establish standards and requirements for amendments to watershed plans. The rules must include:

(1) performance standards for the watershed plans, which may distinguish between plans for urban areas and rural areas;

(2) minimum requirements for the content of watershed plans and plan amendments, including public participation process requirements for amendment and implementation of watershed plans;

(3) standards for the content of capital improvement programs to implement watershed plans, including a requirement that capital improvement programs identify structural and nonstructural alternatives that would lessen capital expenditures; and

(4) how watershed plans are to specify the nature of the official controls required to be adopted by the local units of government, including uniform erosion control, stormwater retention, and wetland protection ordinances in the metropolitan area.

Subd. 7. Review of the draft plan. (a) Upon completion of the plan but before final adoption by the organization, the organization must submit the draft plan for a 60-day review and comment period to all counties, the metropolitan council, the state review agencies, the board of water and soil resources, soil and water conservation districts, towns, and statutory and home rule charter cities having territory within the watershed. A local government unit that expects that substantial amendment of its local comprehensive plan will be necessary to bring local water management into conformance with the watershed plan must describe as specifically as possible, within its comments, the amendments to the local plan that it expects will be necessary. If the county has a groundwater plan, the county must review and comment on the consistency of the watershed plan with the county groundwater plan. Differences among local governmental agencies regarding the plan must be mediated. Notwithstanding sections 103D.401, 103D.405, and 473.165, the council shall review the plan in the same manner and with the same authority and effect as provided for the council's review of the comprehensive plans of local government units under section 473.175. The council shall comment on the apparent conformity with metropolitan system plans of any anticipated amendments to local comprehensive plans. The council shall advise the board of water and soil resources on whether the plan conforms with the management objectives and target pollution loads stated in the council's water resources plan and shall recommend changes in the plan that would satisfy the council's plan.

(b) The watershed management organization must respond in writing to any concerns expressed by the review agencies within 30 days of receipt thereof.

(c) The watershed management organization must hold a public hearing on the draft plan no sooner than 30 days and no later than 45 days after the 60-day review period of the draft plan. The board or boards of the affected counties shall approve or disapprove projects in the capital improvement program which may require the provision of county funds pursuant to section 103B.251 or 103D.901, subdivision 2. Each county has up until the date of the public hearing on the draft plan to complete its review of the capital improvement program. If the county fails to complete its review within the prescribed period, unless an extension is agreed to by the organization the program shall be deemed approved. If the watershed extends into more than one county and one or more counties disapprove of all or part of a capital improvement program while the other county or counties approve, the program shall be submitted to the board of water and soil resources for review pursuant to subdivision 9.

Subd. 8. Review by metropolitan council and state review agencies. After completion of the review under subdivision 7, the draft plan, any amendments thereto, all written comments received on the plan, a record of the public hearing, and a summary of changes incorporated as a result of the review process shall be submitted to the metropolitan council, the state review agencies, and the board of water and soil resources for final review. The

state review agencies shall review and comment on the consistency of the plan with state laws and rules relating to water and related land resources. The state review agencies shall forward their comments within 45 days after they receive the final review draft of the plan to the board. A state review agency may request and receive up to a 30-day extension of this review period from the board.

Subd. 9. Approval by the board. After completion of the review under subdivision 8, the board shall review the plan for conformance with the requirements of sections 103B.205 to 103B.255, and chapter 103D. The board shall not prescribe a plan, but may disapprove all or parts of a plan which it determines is not in conformance with the requirements of sections 103B.205 to 103B.255, and chapter 103D. If the capital improvement program is the subject of a dispute between counties, the board of water and soil resources shall make a final decision on the issue. The decision shall be binding on the organization and the counties involved. The board shall complete its review under this section within 90 days.

Subd. 10. Adoption and implementation. (a) The organization shall adopt and implement its plan within 120 days after compliance with the provisions of subdivision 9 and approval of the plan by the board of water and soil resources. A watershed district may implement its approved plan and approved capital improvement program by resolution of the majority of the board of managers and without respect to the provisions of chapter 103D requiring the managers to wait upon petitions for projects, to submit projects for review by the board of water and soil resources, and to limit the cost and purposes of projects.

(b) The board of water and soil resources shall adopt rules establishing standards and criteria for making determinations of whether watershed management organizations and counties are implementing watershed plans as required under subdivision 1.

Subd. 11. Amendments. To the extent and in the manner required by the adopted plan, all amendments to the adopted plan shall be submitted to the towns, cities, county, the metropolitan council, the state review agencies, and the board of water and soil resources for review in accordance with the provisions of subdivisions 7, 8, and 9. Amendments necessary to revise the plan to be consistent with the county groundwater plan, as required by subdivision 4, must be submitted for review in accordance with subdivisions 7, 8, and 9. Minor amendments to a plan shall be reviewed in accordance with standards prescribed in the watershed management plan.

Subd. 12. Repealed by Laws 1995, c. 184, § 32.

Subd. 13. Appeals of plan failures. Persons aggrieved by an alleged failure to comply with the provisions of an approved plan may request review by the board of water and soil resources. The board shall establish a procedure for resolving disputes and making a determination on whether the plan is being implemented.

Subd. 14. Annual report. The board of water and soil resources shall adopt rules establishing:

(1) requirements for annual watershed management organization financial reports to the board, including a report on administrative, project, and other expenditures;

(2) standards for annual financial audits by certified public accountants, procedures for the board to follow before ordering state financial and performance audits as determined by the board, and procedures for charging the costs of financial and performance audits to the watershed management organization; and

(3) requirements for the content of annual activity reports to the board, which must include the number and type of permits issued, complaints received, plan and ordinance violations, projects constructed, new officers installed, variances granted, status of local unit adoption and enforcement of model ordinance requirements, and financial conditions of the watershed management organization.

Amended by Laws 1998, c. 312, § 1.

COMPREHENSIVE LOCAL WATER PLANNING AND MANAGEMENT

103B.321. Duties of the board

Subdivision 1. General. The board shall:

(1) develop guidelines for the contents of comprehensive water plans that provide for a flexible approach to meeting the different water and related land resources needs of counties and watersheds across the state;

(2) coordinate assistance of state agencies to counties and other local units of government involved in preparation of comprehensive water plans, including identification of pertinent data and studies available from the state and federal government;

(3) conduct an active program of information and education concerning the requirements and purposes of sections 103B.301 to 103B.355 in conjunction with the association of Minnesota counties;

(4) determine contested cases under section 103B.345;

(5) establish a process for review of comprehensive water plans that assures the plans are consistent with state law;

(6) report to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture as required by section 103B.351; and

(7) make grants to counties for comprehensive local water planning, implementation of priority actions identified in approved plans, and sealing of abandoned wells.

Subd. 2. Rulemaking. The board shall adopt rules to implement sections 103B.301 to 103B.355.

Subd. 3. Local advisory committee. The board shall use a committee, consisting of persons representing counties, soil and water conservation districts, municipalities, and townships and persons interested in water planning, to assist the board in the water planning process. Members must be appointed, serve, and be paid their expenses but may not receive other compensation, pursuant to section 15.014.

Amended by Laws 1999, c. 86, art. 3, § 8.

LOCAL WATER RESOURCES PROTECTION AND MANAGEMENT PROGRAM

103B.351. Committee oversight; report required

The board shall, on or before January 15 of each year, submit to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture a written report on the board's functions and the implementation of sections 103B.201 to 103B.355 since the previous report under this section was submitted. The report to the committees must include the board's recommendations for changes to sections 103B.201 to 103B.355 and any recommendations for funding. The board shall also report to the committees at other times requested by the committees.

Amended by Laws 1999, c. 86, art. 3, § 9.

LAKE IMPROVEMENT DISTRICTS

103B.535. Order establishing district

An order establishing a district must state the:

(1) name of the district;

(2) boundaries of the district, which are encouraged to be as consistent as practical with natural hydrologic boundaries;

(3) water and related land resources management programs and services to be undertaken;

(4) manner of financing programs and services; and

(5) number, qualifications, terms of office, and method of election, removal, and filling of vacancies of the board of directors, including a method for property owners not present at the annual meeting to participate in the election of the district board.

Amended by Laws 2000, c. 396, § 1.

103B.545. Referendum on establishment

Subdivision 1. Petition. Twenty-six percent of the property owners within the lake improvement district proposed by the board or a joint county authority on its own initiative under section 103B.515, by petition under section 103B.521, or by the commissioner under section 103B.531, may petition for a referendum on establishing the district before the effective date of its establishment. After receiving the petition, the county board, joint county authority, or commissioner that proposed establishing the district must issue an order staying the establishment until a referendum vote is taken of all qualified voters and property owners within the proposed lake improvement district.

Subd. 2. Election. The county board or joint county authority shall conduct a special election in July or August after receiving the referendum petition. The special election must be held within the proposed lake improvement district. The county auditor shall administer the special election.

Subd. 3. Question submitted to voters. The question to be submitted and voted upon by the qualified voters and property owners within the proposed lake improvement district must be stated substantially as follows:

"Should a lake improvement district be established to provide (description of intended water and related land resources improvements) and financed by (description of revenue sources)?"

Subd. 4. Certification of vote and establishment. The county auditor must certify the vote on the question submitted. If a majority of those voting on the question favor establishing the proposed lake improvement district, the stay on establishing the district is lifted. If a majority of those voting on the question do not favor establishing the proposed lake improvement district, the establishment is denied.

Amended by Laws 2000, c. 396, § 2.

103B.551. Board of directors

Subdivision 1. Membership. After a lake improvement district is established, the county board, joint county authority, or commissioner that established the district shall appoint persons to serve as an initial board of directors for the district. Subsequent board members must be elected by persons owning property in the district at the annual meeting of the district. The number, qualifications, terms of office, and method of election, removal, and filling of vacancies of directors shall be as provided in the order creating the board of directors. The initial and all subsequent boards of directors must include persons owning property within the district, and a majority of the directors must be residents of the district.

Subd. 2. Compensation. The directors shall serve with compensation as determined by the property owners at the annual meeting and may be reimbursed for their actual expenses necessarily incurred in the performance of their duties in the manner provided for county employees.

Subd. 3. Powers. County boards, joint county authorities, statutory and home rule cities, and towns may, by order, delegate the powers in this section to the board of directors of a district to be exercised within the district. Programs and services undertaken must be consistent with the statewide water and related land resources plan prepared by the commissioner of natural resources and with regional water and related land resources plans. A body of water may not be improved by using authority granted under this section unless the public has access to some portion of the shoreline. County boards, joint county authorities, statutory and home rule cities, and towns may delegate their authority to a district board of directors to:

(1) acquire by gift or purchase an existing dam or control works that affects the level of waters in the district;

(2) construct and operate water control structures that are approved by the commissioner of natural resources under section 103G.245;

(3) undertake projects to change the course current or cross section of public waters that are approved by the commissioner of natural resources under section 103G.245;

(4) acquire property, equipment, or other facilities, by gift or purchase to improve navigation;

(5) contract with a board of managers of a watershed district within the lake improvement district or the board of supervisors of a soil and water conservation district within the district for improvements under chapters 103C and 103D;

(6) undertake research to determine the condition and development of the body of water and the water entering it and to transmit the results of the studies to the pollution control agency and other interested authorities;

(7) develop and implement a comprehensive plan to eliminate water pollution;

(8) conduct a program of water improvement and conservation;

(9) construct a water, sewer, or water and sewer system in the manner provided by section 444.075 or other applicable laws;

(10) receive financial assistance from and participate in projects or enter into contracts with federal and state agencies for the study and treatment of pollution problems and related demonstration programs;

(11) make cooperative agreements with the United States or state government or other counties or cities to effectuate water and related land resource programs;

(12) maintain public beaches, public docks, and other public facilities for access to the body of water;

(13) provide and finance a government service of the county or statutory or home rule city that is not provided throughout the county or, if the government service is provided, the service is at an increased level within the district; and

(14) regulate water surface use as provided in sections 86B.205, 103G.605, and 103G.621.

Amended by Laws 2000, c. 396, § 3.

103B.555. Financing

Subdivision 1. Revenue. The county board or joint county authority may undertake projects of improvement consistent with purposes of the district. To finance projects and services of the district, the county board or joint county authority may, only after seeking other sources of funding:

(1) assess the costs of the projects upon benefited property within the district in the manner provided under chapter 429;

(2) impose service charges on the users of lake improvement district services within the district;

(3) issue obligations as provided in section 429.091;

(4) levy an ad valorem tax solely on property within the lake improvement district, to be appropriated and expended solely on projects of special benefit to the district; or

(5) impose or issue any combination of service charges, special assessments, obligations, and taxes.

Subd. 2. Tax additional to other levies. A tax under subdivision 1 may be in addition to amounts levied on all taxable property in the county for the same or similar purposes.

Subd. 3. Budgeting for operations. The county board or county boards forming the joint county authority shall include appropriate provisions in their budget for the operation of a lake improvement district.

Amended by Laws 2000, c. 396, § 4.

§ 103B.571

WATER PLANNING AND PROJECT IMPLEMENTATION

103B.571. Annual meeting of district

Subdivision 1. Time. A district must have an annual meeting. The first annual meeting shall be scheduled during the month of July or August and be held annually in that period unless changed by vote of the previous annual meeting.

Subd. 2. Notice. The annual meeting shall be preceded by two weeks' published notice and written notice mailed at least ten days in advance of the meeting to the county board or joint county authority, town boards and statutory and home rule charter cities wholly or partially within the district, the pollution control agency, commissioner of natural resources, and if there is a proposed project by the district having a cost in excess of \$5,000, all property owners within the assessment area.

Subd. 3. Agenda. (a) At the annual meeting the district property owners present shall:

- (1) elect one or more directors to fill any midterm vacancies in the board of directors;
- (2) approve a budget for the fiscal year;
- (3) approve or disapprove proposed projects by the district having a cost to the district in excess of \$5,000; and
- (4) take up and consider other business that comes before them.

(b) At the annual meeting all district property owners, including absent members as provided in the order establishing the district, shall elect one or more directors for board positions with expiring terms.

Subd. 4. Annual report. Each year the board of directors shall prepare and file a report of the financial conditions of the district, the status of all projects in the district, the business transacted by the district, other matters affecting the interests of the district, and a discussion of the directors' intentions for the succeeding years. Copies of the report shall be transmitted to the county board or joint county authority, town boards and city councils of statutory and home rule charter cities wholly or partially within the district, the commissioner of natural resources, and the pollution control agency by four months after the annual meeting.

Amended by Laws 2000, c. 396, § 5.

103B.581. Termination

Subdivision 1. Petition. Termination of a district may be initiated by petition requesting the termination of the district. The petition must be signed by 26 percent of the property owners in a district within 30 days after receiving a petition. The county board or joint county authority must set a time and place for a hearing on terminating the district.

Subd. 2. Findings and order. If the board or joint county authority determines that the existence of the district is no longer in the public welfare or public interest and it is not needed to accomplish the purpose of the Lake Improvement District Law, the board or joint county authority shall make the findings and terminate the district by order. On filing a certified copy of the findings and order with the secretary of state, pollution control agency, and commissioner of natural resources the district is terminated and ceases to be a political subdivision of the state.

Subd. 3. Termination of financing. If a district is terminated under subdivision 2, additional water and related land resource management programs may not be undertaken with money raised by a special tax within the district, and additional special water and related land resource management taxes may not be levied within the district. If money raised by past special tax levies within the district has been exhausted, further operation and maintenance of existing programs may be financed by appropriations from the general revenue fund of an affected county.

Amended by Laws 1999, c. 86, art. 1, § 18.

SOIL AND WATER CONSERVATION DISTRICTS

§ 103C.301

WHITE BEAR LAKE CONSERVATION DISTRICT

103B.661. Board

Notes of Decisions

Regulatory powers 1

1. Regulatory powers

Statute creating conservation district preempted any regulations imposed by city regarding size of boats moored to private docks on lake, even though legislation creating conservation district

did not expressly preempt local regulation or explicitly give conservation district authority to regulate "use" of private docks; statute governing conservation district, read as whole, represented effort by local municipalities to cede authority to board to regulate all manner of activities affecting lake. M.S.A. §§§§ 103B.651, subd. 4, City of Birchwood Village v. Simes, App.1998, 576 N.W.2d 458.

Chapter 103C

SOIL AND WATER CONSERVATION DISTRICTS

DISTRICT BOARDS		Section	COST-SHARING CONTRACTS
Section			
103C.301.	Initial election of supervisors.	103C.501.	Cost-sharing contracts for erosion control and water management.
103C.305.	General election of supervisors.		
103C.311.	Formation of supervisor districts.		
103C.315.	Supervisors.		

DUTIES OF THE STATE BOARD

103C.401. Board of water and soil resources.

DISTRICT BOARDS

103C.301. Initial election of supervisors

Subdivision 1. Nominating petitions. Within 30 days after the date that the secretary of state issues a certificate of organization of a district, or during additional time as the state board may allow, nominating petitions may be filed with the state board nominating legal voters as candidates for election as supervisors. Three supervisors shall be elected for terms to expire on December 31 following the second general election after their initial election. Each petition must be signed by one or more legal voters of the district. If a person signs petitions nominating more than three candidates, the signature may not be counted on any petition.

Subd. 2. Notice of election. The state board shall give due notice of the time and place where the election will be held in the district and specify in the notice the names of all candidates and the terms for which they are nominated.

Subd. 3. Ballots. The state board shall prepare ballots for the election with the surnames of the candidates printed in alphabetical order for each term, a square before each name, and a direction to insert an X mark in the square before three names with different terms to indicate the voter's choice.

Subd. 4. Voting. All legal voters shall be eligible to vote at the election.

Subd. 5. Election. The three candidates who receive the highest numbers respectively of the votes cast for each of three positions at the election shall be the elected supervisors. In case of a tie, the election shall be determined by lot, under the direction of the state board. The state board shall supervise the election, pay expenses of the election, prescribe rules for the election, determine the eligibility of voters, and publish the results.

Subd. 6. Elected supervisor term. Except to fill a vacancy or for initial elections, supervisors shall be elected for four-year terms.

Amended by Laws 1997, c. 173, §§ 1, 2.

103C.305. General election of supervisors

Subdivision 1. Time for election. Except for elections under section 103C.301 held after the organization of the district, elections must be held at the state general election specified in section 204D.03, subdivision 2. A primary may not be held.

Subd. 2. Filing for office; affidavit of candidacy. A candidate for the office of supervisor shall file an affidavit of candidacy with the county auditor of the county in which the district office is located during the period provided for filing affidavits of candidacy for county offices in section 204B.09, subdivision 1. The county auditor accepting affidavits of candidacy shall forward copies of all affidavits filed by candidates for supervisor to the auditor of any other county in which the office is voted on.

Subd. 3. Ballots. Ballots shall be prepared by the county auditor. The names of candidates shall be placed on the "canary ballot" described in section 204D.11, subdivision 3.

Subd. 4. Election. Laws relating to elections for county office shall govern to the extent that they are consistent with this section and section 103C.311. The county auditor shall certify the result to the state board. If the district includes land in more than one county, the county auditor shall immediately certify to the state board the vote, as shown by the report of the county canvassing board, for candidates voted for in more than one county. In the latter case, the state board shall certify and publish the result.

Subd. 5. Election within areas governed by Indian tribes. In a district where a supervisor nomination district is entirely within lands of an American Indian tribe or band to which county election laws do not apply, a supervisor to represent the district shall be elected or appointed as provided by the governing body of the tribe or band.

Subd. 6. Vacancy. (a) If a vacancy occurs in the office of an elected supervisor more than 56 days before the next state primary, the district board shall fill the vacancy by appointment. The supervisor appointed shall hold office until the first Monday in January following the next general election. A successor shall be elected at the general election following the appointment and hold office for the remainder of the term or for the next regular term, whichever is appropriate.

(b) If a vacancy occurs less than 56 days before the next state primary, the district board shall fill the vacancy by appointment. The appointed supervisor shall hold office until the expiration of the term or until the first Monday in January following the second succeeding general election, whichever is shorter. A successor shall be elected at the general election preceding expiration of the appointed term and hold office for the remainder of the term or for the next regular term, whichever is appropriate.

(c) All terms under this subdivision continue until a successor has been elected and has qualified.

Amended by Laws 1997, c. 173, § 3; Laws 2000, c. 467, § 2.

103C.311. Formation of supervisor districts

Subdivision 1. Supervisors elected at large. (a) The district board, after the initial election has been held, shall, with the approval of the state board, divide a district into five supervisor districts for purposes of nomination for election. At each election after the division, one or more supervisors shall be nominated from each supervisor district.

(b) If the boundary of a soil and water conservation district has been substantially changed by a division of the district, the district shall be divided into five supervisor districts for nomination purposes.

(c) This subdivision does not disqualify a supervisor during the term for which the supervisor was elected or nominated for election. Supervisors nominated from the supervisor districts shall be included on the ballot for election from the entire area included in the soil and water conservation district.

(d) A certified copy of the minutes or the resolution of the supervisors establishing supervisor districts must be promptly filed by the chair of the district board with the county auditor of the counties where the district is located and with the state board.

Subd. 2. Supervisors elected by districts. (a) In the counties of Ramsey and Washington, the district board, with the approval of the state board, may by resolution provide that supervisors will be elected by supervisor districts as provided in this subdivision.

(b) The supervisor districts must be composed of precincts established by county and municipal governing bodies under section 204B.14. The districts must be compact, include only contiguous territory, and be substantially equal in population. The districts must be numbered in a regular series. The districts must be drawn by the county board of the county containing the largest area of the soil and water conservation district, in consultation with the district board and with the approval of the state board. The boundaries of the districts must be redrawn after each decennial federal census as provided in section 204B.135. A certified copy of the resolution establishing supervisor districts must be filed by the chair of the district board with the county auditor of the counties where the soil and water conservation district is located, with the state board, and with the secretary of state at least 30 days before the first date candidates may file for the office of supervisor.

(c) Each supervisor district is entitled to elect one supervisor. A supervisor must be a resident of the district from which elected.

(d) The district board shall provide staggered terms for supervisors elected by district. After each redistricting, there shall be a new election of supervisors in all the districts at the next general election, except that if the change made in the boundaries of a district is less than five percent of the average population of all the districts, the supervisor in office at the time of the redistricting shall serve for the full term for which elected. The district board shall determine by lot the seats to be filled for a two-year term, a four-year term, and a six-year term.

Amended by Laws 1997, c. 130, § 1; Laws 1997, c. 173, § 4.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 130, § 2, provides that § 1 (amending this section) is effective July 1, 1997,

without local approval, pursuant to § 645.023, subd. 1, par. (a).

103C.315. Supervisors

Subdivision 1. Members. (a) The district board shall consist of five supervisors, elected or appointed as provided in sections 103C.201, subdivision 8, 103C.301, and 103C.305.

(b) Supervisors must be legal voters residing in the district.

Subd. 2. Terms. The two supervisors appointed by the state board upon the establishment of a district serve terms ending on the first Monday in January following the next general election after their appointment. Their successors shall be elected for terms of four years commencing on the first Monday in January and until a successor is elected or appointed and has qualified. Vacancies in the office of supervisor appointed by the state board shall be filled by the state board.

Subd. 3. Quorum. A majority of the supervisors is a quorum and the concurrence of a majority in any matter is required for its determination except as otherwise expressly provided.

Subd. 4. Compensation. A supervisor shall receive compensation for services as the state board may determine, and may be reimbursed for expenses, including traveling expenses, necessarily incurred in the discharge of duties. A supervisor may be reimbursed for the use of the supervisor's own automobile in the performance of official duties at a rate up to the maximum tax-deductible mileage rate permitted under the federal Internal Revenue Code.

Subd. 5. Removal of supervisor. A supervisor may be removed by the state board upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

Subd. 6. Compatible offices. The office of soil and water conservation district supervisor and the offices of mayor, clerk, clerk-treasurer, or council member in a statutory or home rule charter city of not more than 2,500 population contained in whole or in part in the soil and

water conservation district are compatible offices and one person may hold both offices. The office of soil and water conservation district supervisor and the office of town clerk or town supervisor in a town of not more than 2,500 population contained in whole or in part in the soil and water conservation district are compatible offices and one person may hold both offices. A person holding both offices shall refrain from voting or taking any other formal action on any matter coming before the soil and water conservation district board or the city council or town board that has a substantial effect on both the soil and water conservation district and the city or town. This subdivision does not apply to an office located in whole or in part in Anoka, Hennepin, Ramsey, or Washington county.

Amended by Laws 1997, c. 173, § 5; Laws 1998, c. 401, § 35, eff. April 22, 1998; Laws 2000, c. 467, § 3.

DUTIES OF THE STATE BOARD

103C.401. Board of water and soil resources

Subdivision 1. Powers and duties. In addition to the powers and duties of the state board provided by other law, the state board shall:

- (1) offer to assist the district boards to implement their programs;
- (2) keep the district boards of the state informed of the activities and experience of other districts and facilitate cooperation and an interchange of advice and experience among the districts;
- (3) coordinate the programs and activities of the districts with appropriate agencies by advice and consultation;
- (4) approve or disapprove the plans or programs of districts relating to the use of state funds administered by the state board;
- (5) secure the cooperation and assistance of agencies in the work of the districts and develop a program to advise and assist appropriate agencies in obtaining state and federal funds for erosion, sedimentation, flooding, and agriculturally related pollution control programs;
- (6) develop and implement a public information program concerning the districts' activities and programs, the problems and preventive practices relating to erosion control, sedimentation, agriculturally related pollution, flood prevention, and the advantages of formation of districts in areas where their organization is desirable;
- (7) divide and consolidate districts without a hearing or a referendum to confine districts within county limits, without allowing a district, if feasible and practicable, to contain less than four full or fractional congressional townships;
- (8) assist the statewide program to inventory and classify the types of soils in the state as determined by the Minnesota cooperative soil survey;
- (9) identify research needs and cooperate with other public agencies in research concerning the nature and extent of erosion, sedimentation, flooding and agriculturally related pollution, the amounts and sources of sediment and pollutants delivered to the waters of the state, and long-term soil productivity;
- (10) develop structural, land use management practice, and other programs to reduce or prevent soil erosion, sedimentation, flooding, and agriculturally related pollution;
- (11) develop a system of priorities to identify the erosion, flooding, sediment, and agriculturally related pollution problem areas that most need control systems; and
- (12) ensure compliance with statewide programs and policies established by the state board by advice, consultation, and approval of grant agreements with the districts.

Subd. 2. Use of funds. (a) Funds made available to a district from the state for expenditures necessary for its operations may be used only for purposes authorized by the state board.

(b) A district may designate the board of county commissioners to act as the agent of the district to receive and expend the funds at the direction and with the approval of the district board.

(c) At least annually the state board shall audit, in a manner it prescribes, the expenditure of the funds.

Amended by Laws 1997, c. 109, § 2.

COST-SHARING CONTRACTS

103C.501. Cost-sharing contracts for erosion control and water management

Subdivision 1. Cost share authorization. The state board may allocate available funds to districts to share the cost of systems or practices for erosion or sedimentation control or water quality improvement that are designed to protect and improve soil and water resources.

Subd. 2. Request by district board. (a) A district board requesting funds of the state board must submit an application in a form prescribed by the board containing:

- (1) a comprehensive plan;
- (2) an annual work plan; and
- (3) an application for cost-sharing funds.

(b) The comprehensive and annual work plans must be completed as provided in section 103C.331, subdivision 11. After review of the district's comprehensive plan, the state board must approve the comprehensive plan with necessary amendments or reject the plan.

Subd. 3. Approval of application. If the state board approves the comprehensive plan, including the plan's most recent amendment, the annual work plan, and the application of the district, the state board shall determine the specific amount of funds to allocate to the district for cost-sharing contracts.

Subd. 4. Cost-sharing funds. (a) The state board shall allocate at least 70 percent of cost-sharing funds to areas with high priority erosion, sedimentation, or water quality problems. The areas must be selected based on the statewide priorities established by the state board. The allocated funds must be used for conservation practices for high priority problems identified in the comprehensive and annual work plans of the districts.

(b) The remaining cost-sharing funds may be allocated to districts as follows:

- (1) for technical and administrative assistance, not more than 20 percent of the funds; and
- (2) for conservation practices for lower priority erosion, sedimentation, or water quality problems.

Subd. 5. Contracts by districts. (a) A district board may contract on a cost-share basis to furnish financial aid to a land occupier or to a state agency for permanent systems for erosion or sedimentation control or water quality improvement that are consistent with the district's comprehensive and annual work plans.

(b) The duration of the contract may be the time required to complete the planned systems. A contract must specify that the land occupier is liable for monetary damages, not to exceed the amount of financial assistance received from the district, for failure to complete the systems or practices in a timely manner or maintain the systems or practices as specified in the contract.

(c) A contract may provide for cooperation or funding with federal agencies. A land occupier or state agency may provide the cost-sharing portion of the contract through services in kind.

(d) The state board or the district board may not furnish any financial aid for practices designed only to increase land productivity.

Subd. 6. Rules. (a) The state board shall adopt rules prescribing:

- (1) procedures and criteria for allocating funds for cost-sharing contracts;

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SOIL AND WATER CONSERVATION DISTRICTS

- (2) standards and guidelines for cost-sharing contracts;
 - (3) the scope and content of district comprehensive plans, plan amendments, and annual work plans;
 - (4) standards and methods necessary to plan and implement a priority cost-sharing program, including guidelines to identify high priority erosion, sedimentation, and water quality problems;
 - (5) the share of the cost of conservation practices to be paid from cost-sharing funds; and
 - (6) requirements for districts to document their efforts to identify and contact land occupiers with high priority erosion problems.
- (b) The rules may provide that cost-sharing may be used for farmstead windbreaks and shelterbelts for the purposes of energy conservation and snow protection.

Amended by Laws 1997, c. 216, § 91.

Chapter 103D

WATERSHED DISTRICTS

BOARD OF WATER AND SOIL RESOURCES	Section
Section	FUNDING OF WATERSHED DISTRICT AND PROJECTS
103D.105. Board hearings.	
PROJECT REPAIRS AND IMPROVEMENTS	103D.905. Funds of watershed district.
103D.641. Work without bid.	

BOARD OF WATER AND SOIL RESOURCES

103D.105. Board hearings

Subdivision 1. Procedure. (a) A rulemaking hearing must be conducted under chapter 14.

(b) Notwithstanding chapter 14, other hearings under this chapter, except hearings under paragraph (a), shall be conducted by the board under this section. The board may refer the hearing to one or more members of the board or an administrative law judge to hear evidence and make findings of fact and report them to the board.

Subd. 2. Procedure for noncontroversial plans or petitions. (a) If the board finds that a watershed management plan or petition that would be given a hearing under subdivision 1, paragraph (b), is noncontroversial, the board may, except in a proceeding to establish or terminate a watershed district, proceed under this subdivision.

(b) The board must give notice that the watershed management plan or petition has been filed. The notice must be made:

- (1) by publication in a legal newspaper in each county affected by the watershed district;
 - (2) by mail to the auditor of each county affected by the watershed management plan or petition; and
 - (3) by mail to the chief executive officer of each city affected.
- (c) The notice must:
- (1) describe the actions proposed by the plan or petition;
 - (2) invite written comments on the plan or petition for consideration by the board;
 - (3) state that a person who objects to the actions proposed in the plan or petition may submit a written request for hearing to the board within 30 days of the last publication of the notice of filing of the plan or petition; and

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(4) state that if a timely request for hearing is not received, the board may make a decision on the plan or petition at a future meeting of the board.

(d) If one or more timely requests for hearing are received, the board must hold a hearing on the plan or petition.

Amended by Laws 1998, c. 312, § 2.

PROJECT REPAIRS AND IMPROVEMENTS

103D.641. Work without bid

If the managers find that the estimated cost of repair, including all fees and costs incurred for proceedings relating to it, is less than \$25,000, it may have the work done by contract without advertising for bids.

Amended by Laws 1998, c. 312, § 3.

FUNDING OF WATERSHED DISTRICT AND PROJECTS

103D.905. Funds of watershed district

Subdivision 1. Generally. The money of a watershed district consists of the funds established in this section.

Subd. 2. Organizational expense fund. (a) An organizational expense fund, consisting of an ad valorem tax levy, shall not exceed 0.01596 percent of taxable market value, or \$60,000, whichever is less. The money in the fund shall be used for organizational expenses and preparation of the watershed management plan for projects.

(b) The managers may borrow from the affected counties up to 75 percent of the anticipated funds to be collected from the organizational expense fund levy and the counties affected may make the advancements.

(c) The advancement of anticipated funds shall be apportioned among affected counties in the same ratio as the net tax capacity of the area of the counties within the watershed district bears to the net tax capacity of the entire watershed district. If a watershed district is enlarged, an organizational expense fund may be levied against the area added to the watershed district in the same manner as provided in this subdivision.

(d) Unexpended funds collected for the organizational expense may be transferred to the administrative fund and used for the purposes of the administrative fund.

Subd. 3. Administrative fund. An administrative fund, consisting of an ad valorem tax levy, may not exceed 0.02418 percent of taxable market value, or \$125,000, whichever is less. The money in the fund shall be used for general administrative expenses and for the construction or implementation and maintenance of projects of common benefit to the watershed district. The managers may make an annual levy for the administrative fund as provided in section 103D.911. In addition to the annual administrative levy, the managers may annually levy a tax not to exceed 0.00798 percent of taxable market value for a period not to exceed 15 consecutive years to pay the cost attributable to the basic water management features of projects initiated by petition of a municipality of the watershed district.

Subd. 4. Bond fund. A bond fund consists of the proceeds of special assessments, storm water charges, loan repayments, and ad valorem tax levies pledged by the watershed district for the payment of bonds or notes issued by the watershed district. The bond fund is to be used for the payment of the principal of, premium or administrative surcharge, if any, and interest on the bonds and notes issued by the watershed district and for payments required to be made to the federal government under section 148(f) of the Internal Revenue Code of 1986, as amended through December 31, 1996.

Subd. 5. Construction or implementation fund. (a) A construction or implementation fund consists of:

- (1) the proceeds of watershed district bonds or notes or of the sale of county bonds;

(2) construction or implementation loans from the pollution control agency under sections 103F.701 to 103F.761, or from any agency of the federal government; and

(3) special assessments, storm water charges, loan repayments, and ad valorem tax levies levied or to be levied to supply funds for the construction or implementation of the projects of the watershed district, including reservoirs, ditches, dikes, canals, channels, storm water facilities, sewage treatment facilities, wells, and other works, and the expenses incident to and connected with the construction or implementation.

(b) Construction or implementation loans from the pollution control agency under sections 103F.701 to 103F.761, or from an agency of the federal government may be repaid from the proceeds of watershed district bonds or notes or from the collections of storm water charges, loan repayments, ad valorem tax levies, or special assessments on properties benefited by the project.

Subd. 6. Preliminary fund. A preliminary fund consists of funds authorized to be provided. The preliminary fund is to be used for preliminary work on proposed works of the watershed district.

Subd. 7. Repair and maintenance funds. Repair and maintenance funds are established under section 103D.631, subdivision 2.

Subd. 8. Survey and data acquisition fund. (a) A survey and data acquisition fund is established and used only if other funds are not available to the watershed district to pay for making necessary surveys and acquiring data.

(b) The survey and data acquisition fund consists of the proceeds of a property tax that can be levied only once every five years. The levy may not exceed 0.02418 percent of taxable market value.

(c) The balance of the survey and data acquisition fund may not exceed \$50,000.

(d) In a subsequent proceeding for a project where a survey has been made, the attributable cost of the survey as determined by the managers shall be included as a part of the cost of the work and the sum shall be repaid to the survey and data acquisition fund.

Subd. 9. Project tax levy. In addition to other tax levies provided in this section or in any other law, a watershed district may levy a tax:

(1) to pay the costs of projects undertaken by the watershed district which are to be funded, in whole or in part, with the proceeds of grants or construction or implementation loans under sections 103F.701 to 103F.761;

(2) to pay the principal of, or premium or administrative surcharge, if any, and interest on, the bonds and notes issued by the watershed district pursuant to section 103F.725; or

(3) to repay the construction or implementation loans under sections 103F.701 to 103F.761.

Taxes levied with respect to payment of bonds and notes shall comply with section 475.61.

Amended by Laws 1997, c. 231, art. 2, §§ 2 to 4, eff. June 3, 1997.

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Official Classification

Volume 8B

Sections 103E to 114B

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PREFACE

The modern plan of periodic supplementary pamphlets and cumulative Pocket Parts keeps each volume of Minnesota Statutes Annotated constantly to date, both as to the text of the law and as to the constructions and interpretations thereof. The text includes all laws of a general and permanent nature enacted through the 2000 Regular Session of the 81st Legislature.

The arrangement and classification of the laws conform to the general plan and arrangement of Minnesota Statutes as designated by the Revisor of Statutes. Portions of the text appearing in this pocket part were produced from material provided by the Revisor of Statutes of the State of Minnesota and is used with permission. Grateful acknowledgment is made to the Revisor of Statutes for cooperation and service to the Bench and Bar in making the official classifications of laws available.

The annotations from the decisions of the State and Federal courts construing the Statutes close with cases published as of October 14, 2000, reported in:

North Western Reporter, Second Series	616 N.W.2d 925
Minnesota Reports	312 Minn. (Discontinued)
Supreme Court Reporter	120 S.Ct. 2245
United States Reports	521 U.S. (part)
Lawyers' Edition, Second Series	149 L.Ed.2d (part)
Federal Reporter, Third Series	225 F.3d 666
Federal Supplement, Second Series	110 F.Supp.2d 1083
Federal Rules Decisions	196 F.R.D. 78
Bankruptcy Reporter	253 B.R. 114
Federal Claims Reporter	47 Fed.Cl. 374
Opinions of the Attorney General	Op.Atty.Gen.No. 852, August 4, 2000

Other Standard Reports

For subsequent judicial constructions, pending the publication of the next supplementary service, see the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

Annotations prepared from Law Review Commentaries and the Opinions of the Attorney General, the Ethical Practices Board, and the Lawyer's Professional Responsibility Board are also included in the pocket parts and supplementary pamphlets, where appropriate.

Additionally, Library References to Key Number Digests and to Corpus Juris Secundum provide a convenient aid to research. Administrative Code References provide access to administrative rules adopted by state agencies. Amendment notes, highlighting significant legislative changes in the text of the statutes, are editorially prepared and included in the pocket parts for the convenience of the user.

For the Numerical Table of Chapters of Minnesota Statutes and Minnesota Statutes Annotated, see Volume 3 Pocket Part.

PREFACE

Later laws and annotations will be cumulated in subsequent Pamphlets and Pocket Parts. For advance copies of laws enacted at subsequent sessions of the Legislature, see the Minnesota Session Law Service or the WESTLAW MN-LEGIS Database.

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ABBREVIATIONS

A.B.A.J.	American Bar Association Journal
A.L.R.	American Law Reports
A.L.R.2d	American Law Reports, Second Series
A.L.R.3d	American Law Reports, Third Series
A.L.R.4th	American Law Reports, Fourth Series
A.L.R.5th	American Law Reports, Fifth Series
A.L.R.Fed.	American Law Reports, Federal
App.	Appendix
Art.	Article
B.R.	Bankruptcy Reporter
Bench & B. Minn.	Bench and Bar
Bench & B. Interim Minn.	Bench and Bar Interim
c.	Chapter of Act
Ch.	Chapter
C.J.S.	Corpus Juris Secundum
Cl.	Clause
Cl.Ct.	Claims Court Reporter
Const.	Constitution
Eff.	Effective
Evid.	Rules of Evidence
Ex.Sess.	Extraordinary Session
Fed.Cl.	Federal Claims Reporter
F.2d	Federal Reporter, Second Series
F.3d	Federal Reporter, Third Series
F.R.D.	Federal Rules Decisions
F.Supp.	Federal Supplement
1st Sp.	First Special Session
Gen.St.	General Statutes
Hamline J.Pub.L. & Pol'y	Hamline Journal of Public Law and Policy
Hamline L.Rev.	Hamline University Law Review
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☞ (Key Number)	State Digest and other units of the American Digest System
L.Ed.	U.S. Reports, Lawyers' Edition
L.Ed.2d	U.S. Reports, Lawyers' Edition, Second Series
Minn.	Minnesota Supreme Court Reports
Minn.J.L. & Pol.	Minnesota Journal of Law and Politics
Minn.L.Rev.	Minnesota Law Review
Minn.St.	Minnesota Statutes
Minn.Trial Law.	Minnesota Trial Lawyer
N.W.	Northwestern Reporter
N.W.2d	Northwestern Reporter, Second Series
No.	Number
Op.Atty.Gen.	Opinions of the Attorney General

ABBREVIATIONS

Par. -----	Paragraph
PEB -----	Permanent Editorial Board for the Uniform Commercial Code
P.L. -----	Public Law
Prof.Resp.Bd. -----	Lawyers Professional Responsibility Board
Pub.St. -----	Public Statutes
Rev. Laws -----	Revised Laws
RCP -----	Rules of Civil Procedure
RCrP -----	Rules of Criminal Procedure
RCAP -----	Rules of Civil Appellate Procedure
Sec. -----	Section of the Act
Sp.Sess. -----	Special Session
St. -----	Statutes
Subd. -----	Subdivision
Subsec. -----	Subsection
S.Ct. -----	Supreme Court Reporter
U.L.A. -----	Uniform Laws Annotated
U.S. -----	United States Reports
U.S.C.A. -----	United States Code Annotated
Wm.Mitchell L.Rev. -----	William Mitchell Law Review

OFFICIAL STATE STATUTES

The text of M.S.A., West's Minnesota Statutes Annotated, is based on the text of the official statutes of the State of Minnesota. Through the pocket part system, changes in the official text brought about by legislative action or editorial modification are made a part of M.S.A. annually.

The present numbering structure of the official statutes is a decimal system developed unofficially in 1941 and made official for the first time in 1945. Since 1945 there have been a number of publications of the official statutes, or supplements thereof, incorporating new and amendatory matter as well as editorial modifications supplied by the Office of the Revisor of Statutes. The following tabulation lists the publications of the official statutes. It also lists the legislative action included in the particular publication.

Minnesota Statutes 1945 -----	Codifies all general matter through Laws 1945
Minnesota Statutes 1949 -----	Merges Laws 1947 and 1949
Minnesota Statutes 1953 -----	Merges Laws 1951 and 1953
Minnesota Statutes 1957 -----	Merges Laws 1955 and 1957
Minnesota Statutes 1961 -----	Merges Laws 1959 and 1961
Minnesota Statutes 1965 -----	Merges Laws 1963 and 1965
Minnesota Statutes 1967 -----	Merges Laws 1967
Minnesota Statutes 1969 -----	Merges Laws 1969
Minnesota Statutes 1971 -----	Merges Laws 1971
Minnesota Statutes 1973 Supp. -----	Contains Laws 1973
Minnesota Statutes 1974 -----	Merges 1973 Supp. and Laws 1974
Minnesota Statutes 1975 Supp. -----	Contains Laws 1975
Minnesota Statutes 1976 -----	Merges 1975 Supp. and Laws 1976
Minnesota Statutes 1977 Supp. -----	Contains Laws 1977
Minnesota Statutes 1978 -----	Merges 1977 Supp. and Laws 1978
Minnesota Statutes 1979 Supp. -----	Contains Laws 1979
Minnesota Statutes 1980 -----	Merges 1979 Supp. and Laws 1980
Minnesota Statutes 1981 Supp. -----	Contains Laws 1981 and Laws 1981, 1st and 2nd Special Sessions
Minnesota Statutes 1982 -----	Merges 1981 Supp., Laws 1981, 3rd Special Session and Laws 1982, 1st and 2nd Special Sessions
Minnesota Statutes 1983 Supp. -----	Contains Laws 1982, 3rd Special Session and Laws 1983
Minnesota Statutes 1984 -----	Merges 1983 Supp. and Laws 1984
Minnesota Statutes 1985 Supp. -----	Contains Laws 1985, and Laws 1985, 1st Special Session
Minnesota Statutes 1986 -----	Merges 1985 Supp., Laws 1986, and Laws 1986, 1st Special Session

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Minnesota Statutes 1987 Supp. -----	Contains Laws 1987 and Laws 1987, 1st Special Session
Minnesota Statutes 1988 -----	Merges 1987 Supp. and Laws 1988
Minnesota Statutes 1989 Supp. -----	Contains Laws 1989
Minnesota Statutes 2nd 1989 Supp. -----	Contains Laws 1989, 1st Special Session
Minnesota Statutes 1990 -----	Merges 1989 Supp., and 2nd 1989 Supp., and Laws 1990
Minnesota Statutes 1991 Supp. -----	Contains Laws 1991
Minnesota Statutes 1992 -----	Merges 1991 Supp. and Laws 1992
Minnesota Statutes 1993 Supp. -----	Contains Laws 1993 and Laws 1993, 1st Special Session
Minnesota Statutes 1994 -----	Merges 1993 Supp., Laws 1994 and Laws 1994, 1st Special Session
Minnesota Statutes 1995 Supp. -----	Contains Laws 1995 and Laws 1995, 1st Special Session
Minnesota Statutes 1996 -----	Merges 1995 Supp. and Laws 1996
Minnesota Statutes 1997 Supp. -----	Contains Laws 1997 and Laws 1997, 1st and 2nd Special Sessions
Minnesota Statutes 1998 -----	Merges 1997 Supp., Laws 1998, and Laws 1998, 1st Special Session
Minnesota Statutes 1999 Supp. -----	Contains Laws 1999
Minnesota Statutes 2000 -----	Merges 1999 Supp. and Laws 2000

SESSION LAW NUMBERING—1978 AND FOLLOWING YEARS

Beginning in 1978, chapters of the session laws of the regular sessions are numbered consecutively for each biennium with the year of the session preceding the chapter number.

The 1977 Session of the 70th Legislature contained 455 chapters cited as Laws 1977, Chapters 1 to 455, and the 1978 Session of the 70th Legislature contained 341 chapters cited as Laws 1978, Chapters 456 to 797.

The 1979 Session of the 71st Legislature contained 340 chapters cited as Laws 1979, Chapters 1 to 340, and the 1980 Session of the 71st Legislature contained 277 chapters cited as Laws 1980, Chapters 341 to 618.

The 1981 Regular Session of the 72nd Legislature contains 370 chapters cited as Laws 1981, Chapters 1 to 370. The First Special Session of 1981 contains 5 chapters cited as Laws 1981, 1st Sp.Sess., Chapters 1 to 5. The Second Special Session of 1981 contains 6 chapters cited as Laws 1981, 2nd Sp.Sess., Chapters 1 to 6. The Third Special Session of 1981 contains 3 chapters cited as Laws 1981, 3rd Sp.Sess., Chapters 1 to 3. The 1982 Regular Session of the 72nd Legislature contains 272 chapters cited as Laws 1982, Chapters 371 to 642. The First Special Session of 1982 contains 3 chapters cited as Laws 1982, 1st Sp.Sess., Chapters 1 to 3. The Second Special Session of 1982 contains 2 chapters cited as Laws 1982, 2nd Sp.Sess., Chapters 1 and 2. The Third Special Session of 1982 contains 1 chapter cited as Laws 1982, 3rd Sp.Sess., Chapter 1.

The 1983 Regular Session of the 73rd Legislature contains 375 chapters cited as Laws 1983, chapters 1 to 375.

The 1984 Regular Session of the 73rd Legislature contains 283 chapters cited as Laws 1984, chapters 376 to 658.

The 1985 Regular Session of the 74th Legislature contains 309 chapters cited as Laws 1985, chapters 1 to 309. The 1985 First Special Session contains 18 chapters cited as Laws 1985, 1st Sp., chapters 1 to 18.

The 1986 Regular Session of the 74th Legislature contains 166 chapters cited as Laws 1986, chapters 310 to 475. The 1986 First Special Session contains 3 chapters cited as Laws 1986, 1st Sp., chapters 1 to 3.

The 1987 Regular Session of the 75th Legislature contains 405 chapters cited as Laws 1987, chapters 1 to 405. The 1987 First Special Session contains 5 chapters cited as Laws 1987, 1st Sp., chapters 1 to 5.

The 1988 Regular Session of the 75th Legislature contains 315 chapters cited as Laws 1988, chapters 406 to 720.

The 1989 Regular Session of the 76th Legislature contains 356 chapters cited as Laws 1989, chapters 1 to 356. The 1989 First Special Session contains 2 chapters cited as Laws 1989, 1st Sp., chapters 1 and 2.

The 1990 Regular Session of the 76th Legislature contains 256 chapters cited as Laws 1990, chapters 357 to 612.

The 1991 Regular Session of the 77th Legislature contains 356 chapters cited as Laws 1991, chapters 1 to 356.

The 1992 Regular Session of the 77th Legislature contains 247 chapters cited as Laws 1992, chapters 357 to 603.

SESSION LAW NUMBERING

The 1993 Regular Session of the 78th Legislature contains 375 chapters cited as Laws 1993, chapters 1 to 375. The 1993 First Special Session contains 6 chapters cited as Laws 1993, 1st Sp., chapters 1 to 6.

The 1994 Regular Session of the 78th Legislature contains 273 chapters cited as Laws 1994, chapters 376 to 648. The 1994 First Special Session contains 1 chapter cited as Laws 1994, 1st Sp., chapter 1.

The 1995 Regular Session of the 79th Legislature contains 265 chapters cited as Laws 1995, chapters 1 to 265. The 1995 First Special Session contains 3 chapters cited as Laws 1995, 1st Sp., chapters 1 to 3.

The 1996 Regular Session of the 79th Legislature contains 206 chapters cited as Laws 1996, chapters 266 to 471.

The 1997 Regular Session of the 80th Legislature contains 251 chapters cited as Laws 1997, chapters 1 to 251. The 1997 First Special Session contains 5 chapters cited as Laws 1997, 1st Sp., chapters 1 to 5. The 1997 Second Special Session contains 3 chapters cited as Laws 1997, 2nd Sp., chapters 1 to 3.

The 1998 Regular Session of the 80th Legislature contains 157 chapters cited as Laws 1998, chapters 252 to 408. The 1998 First Special Session contains 3 chapters cited as Laws 1998, 1st Sp., chapters 1 to 3.

The 1999 Regular Session of the 81st Legislature contains 250 chapters cited as Laws 1999, chapters 1 to 250.

The 2000 Regular Session of the 81st Legislature contains 251 chapters cited as Laws 2000, chapters 251 to 501.

EFFECTIVE DATES OF LAWS

The session law citations for 1973 and subsequent sessions which follow the text of sections appearing in this pocket part include designated effective dates. The absence of a date means that the general effective date applies or that the date for appropriation acts apply, or that other variations described in notes are controlling.

M.S.A. § 645.02, as amended by Laws 1959, c. 368, § 4, Laws 1971, c. 196, § 1, and Laws 1987, c. 384, art. 1, § 48, provides: "Each act, except one making appropriations, enacted finally at any session of the legislature takes effect on August 1 next following its final enactment, unless a different date is specified in the act. A special law required to be approved by the local government unit affected before it goes into effect becomes effective as to the approving unit the day following the day on which the certificate of approval prescribed by section 645.021 is filed with the secretary of state, unless a later date is specified in the act. When approval of such a special law is required by two or more local government units before it may become effective, the day after the day when the last of the required certificates is filed is the effective date, unless a later date is specified in the act."

"An appropriation act or an act having appropriation items enacted finally at any session of the legislature takes effect at the beginning of the first day of July next following its final enactment, unless a different date is specified in the act."

"Each act takes effect at 12:01 a.m. on the day it becomes effective, unless a different time is specified in the act."

Prior to the 1971 amendment of M.S.A. § 645.02, the general effective date for session laws was one day following final enactment. Final enactment was construed to be the date the bill was signed by the Governor. Laws 1988, c. 479, § 5, effective January 1, 1989 amended the definition of "final enactment" or "enacted finally" contained in § 645.01, subd. 2 to read: "Final enactment" or "enacted finally" for a bill passed by the legislature and signed by the governor means the date and time of day the governor signed the bill. For a bill passed by the legislature and allowed to become law without signature by the governor, it means the end of the last day on which the governor could have returned the bill with a veto to the legislature. For a bill passed by the legislature but vetoed and reconsidered and approved by the legislature after the veto, it means the date and time of day of the final legislative vote approving the vetoed bill."

Beginning on January 1, 1973, the general effective date of "on August 1 next following its final enactment", as now appearing in section 645.02, went into effect. The following tabulation indicates the last date session laws were signed for each session since the 1973 session. With the exception of the 1981 3rd Special Session, the 1982 3rd Special Session, the 1989 1st Special Session, and the 1994 1st Special Session, the general effective date for all laws of all sessions since 1973 was August 1st of the year of the session. The 1982 3rd Special Session and the 1994 1st Special Session contained no legislation with general effective dates.

Year	Session	Latest Approval Date
1973	Regular	June 7, 1973
1974	Regular	April 11, 1974
1975	Regular	June 6, 1975
1976	Regular	April 20, 1976
1977	Regular	June 9, 1977

EFFECTIVE DATES OF LAWS

Year	Session	Latest Approval Date
1978	Regular	April 7, 1978
1979	Regular	June 5, 1979
1979	Extra	June 7, 1979
1980	Regular	April 25, 1980
1981	Regular	June 4, 1981
1981	1st Special	June 6, 1981
1981	2nd Special	July 8, 1981
1981	3rd Special	Jan. 19, 1982
1982	Regular	March 31, 1982
1982	1st Special	March 31, 1982
1982	2nd Special	July 12, 1982
1982	3rd Special	Dec. 13, 1982
1983	Regular	June 14, 1983
1984	Regular	May 7, 1984
1985	Regular	June 7, 1985
1985	1st Special	July 5, 1985
1986	Regular	April 1, 1986
1986	1st Special	April 11, 1986
1987	Regular	June 18, 1987
1987	1st Special	June 25, 1987
1988	Regular	May 7, 1988
1989	Regular	June 3, 1989
1989	1st Special	Oct. 4, 1989
1990	Regular	May 8, 1990
1991	Regular	June 4, 1991
1992	Regular	April 29, 1992
1993	Regular	May 24, 1993
1993	1st Special	May 27, 1993
1994	Regular	May 17, 1994
1994	1st Special	August 31, 1994
1995	Regular	June 1, 1995
1995	1st Special	June 8, 1995
1996	Regular	April 17, 1996
1997	Regular	June 3, 1997
1997	1st Special	June 30, 1997
1997	2nd Special	August 22, 1997
1998	Regular	April 21, 1998
1998	1st Special	April 22, 1998
1999	Regular	May 25, 1999
2000	Regular	May 30, 2000

MINNESOTA STATUTES ANNOTATED

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Thus: M.S.A. § —

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MINNESOTA STATUTES ANNOTATED

WATER

Chapter 103E

DRAINAGE

GENERAL PROVISIONS

Section

103E.011. Drainage authority powers.

GENERAL PROVISIONS

103E.005. Definitions

United States Code Annotated

Census relating to irrigation, see 13 U.S.C.A.
§§ 5, 141.

Notes of Decisions

Purpose 1.5

1. Construction and application

The drainage ditch laws must be liberally construed, so as to promote the public health and the drainage and reclamation of wet or overflowed land. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

With respect to drainage proceedings, the statutory provisions are part of a complete statutory scheme designed to govern the establishment of a drainage system and since they relate to the same

subject matter, they are in pari materia and should be construed together. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

1.5. Purpose

Minnesota's laws pertaining to drainage ditches were adopted with the intent of reclaiming agricultural land by disposing of excess water that renders the land unillable, and fairly allocating the costs among benefited landowners. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

103E.011. Drainage authority powers

Subdivision 1. Generally. The drainage authority may make orders to:

- (1) construct and maintain drainage systems;
- (2) deepen, widen, straighten, or change the channel or bed of a natural waterway that is part of the drainage system or is located at the outlet of a drainage system;
- (3) extend a drainage system into or through a municipality for a suitable outlet; and
- (4) construct necessary dikes, dams, and control structures and power appliances, pumps, and pumping machinery as provided by law.

Subd. 2. Drainage of waterbasins and watercourses. A drainage authority may not drain a water body or begin work or activity regulated by the public waters work permit requirement under section 103G.245 in a watercourse until the commissioner determines that

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the water body or watercourse is not public waters. If a water body or watercourse is determined to be public waters, the drainage proceedings are subject to section 103G.215 relating to replacing public waters and the water bank program.

Subd. 3. Permission of commissioner for work in public waters; application. (a) The drainage authority must receive permission from the commissioner to:

- (1) remove, construct, or alter a dam affecting public waters;
- (2) establish, raise, or lower the level of public waters; or
- (3) drain any portion of a public water.

(b) The petitioners for a proposed drainage project or the drainage authority may apply to the commissioner for permission to do work in public waters or for the determination of public waters status of a water body or watercourse.

Subd. 4. Flood control. The drainage authority may construct necessary dams, structures, and improvements and maintain them to impound and release flood water to prevent damage. The dams, structures, and improvements may be constructed with or without a drainage project. For a water body or watercourse that is not public waters the drainage authority may:

- (1) lower or establish the level of water in the water body or watercourse to control flood waters;
- (2) build structures and improvements to maintain a water body or watercourse for flood control or other public purposes; and
- (3) construct dikes or dams in a water body to maintain water at the level designated by the drainage authority and to drain part of the water body.

Subd. 5. Use of external sources of funding. Notwithstanding other provisions of this chapter, a drainage authority may accept and use funds from sources other than, or in addition to, those derived from assessments based on the benefits of the drainage system for the purposes of wetland preservation or restoration or creation of water quality improvements or flood control. The sources of funding authorized under this subdivision may also be used outside the benefited area but must be within the watershed of the drainage system.

Amended by Laws 2000, c. 488, art. 3, § 27, eff. May 16, 2000.

Notes of Decisions

1. In general

McLeod County Bd. of Com'rs as Drainage Authority for McLeod County Ditch No. 8 v. State,

Dept. of Natural Resources, App.1996, 549 N.W.2d 630, [main volume] review denied.

103E.091. Appeals

Notes of Decisions

9. Parties

A landowner who seeks to challenge the amount of benefits or damages awarded in an establishment order for a drainage project does not have

standing to appeal awards that relate exclusively to lands not owned by that party. Improvement of County Ditch No. 86, Branch 1, County of Blue Earth v. Phillips, App.2000, 614 N.W.2d 756.

PETITIONS FOR DRAINAGE PROJECTS

103E.215. Improvement of drainage system

Notes of Decisions

Costs, separate parts 6.7

Separable parts 6.5

Costs 6.7

6.5. Separable parts

Main tile line of drainage system was a "separable" part of the system, as statutory basis for

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Note 4.5

allowing allocation, in the survey report, of proportionate estimated cost of the proposed improvement required to repair the separable part of the existing system and the estimated proportionate cost of the added work required for the improvement, where the improvement excluded several miles of laterals and 600 feet of current open ditch at the outlet. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

"Separable" does not mean "geographically separable" or a "discrete and independent ditch system," within meaning of statute providing that if the existing drainage system needs repair and the petition for the improvement is for a separable part only of the existing drainage system, the engineer may include in the detailed survey report a statement showing the proportionate estimated cost of the proposed improvement required to repair the separable part of the existing system and the estimated proportionate cost of the added work required for the improvement. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

FINAL HEARING

103E.341. Drainage authority final order

Notes of Decisions

Costs 7.5

7.5. Costs

"Costs," within meaning of statutes regarding cost-benefit analysis for drainage projects and assessment of costs, include the cost of construction and also the cost of activities such as hauling dirt, removing trees, damage to growing crops, and surveyor's costs. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

8. Benefits exceeding costs

The elimination of repair costs if improvements were made to drainage ditch could be considered

6.7. — Costs, separate parts

Where a drainage ditch improvement project relates to a separable portion of the ditch only, improvement costs beyond the costs of repairs must be subtracted from improvement benefits and repair costs must be subtracted from redetermination benefits for purposes of the statutory cost-benefit analysis. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

20. — Costs, repair or improvement

"Costs," within meaning of statutes regarding cost-benefit analysis for drainage projects and assessment of costs, include the cost of construction and also the cost of activities such as hauling dirt, removing trees, damage to growing crops, and surveyor's costs. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

Unlike the cost of repairs, the cost of an improvement to a drainage ditch is not borne by the entire ditch system but only by the owners of those lands that benefited by the improvement. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

when making the statutory cost-benefit analysis of the proposed improvement project. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

Where a drainage ditch improvement project relates to a separable portion of the ditch only, improvement costs beyond the costs of repairs must be subtracted from improvement benefits and repair costs must be subtracted from redetermination benefits for purposes of the statutory cost-benefit analysis. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

REDETERMINATION OF BENEFITS

103E.351. Redetermination of benefits and damages

Notes of Decisions

Damages 4.5

4.5. Damages

Generally, the types of "damages" resulting from establishment of a public drainage ditch,

within meaning of statute requiring viewers to redetermine present day benefits and damages for a drainage project, are the cost of building the ditch and the damage to any lands through which it passes. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

OUTLETS FOR DRAINAGE SYSTEMS

103E.401. Use of drainage system as an outlet

Notes of Decisions

8. Improvements

Statute establishing when express authority is necessary for use of drainage system as an outlet did not require upstream drainage authority to apply for an outlet permit from a downstream drainage authority, where planned improvement to upstream system did not drain any new lands. *Stensrud v. Lyon County Ditch # 7*, App.2000, 609 N.W.2d 286, review denied.

Statute establishing when express authority is necessary for use of drainage system as an outlet does not require an upstream drainage authority to apply for an outlet permit from a downstream drainage authority when the planned improvement to the upstream system does not increase the area drained by the downstream authority. *Stensrud v. Lyon County Ditch # 7*, App.2000, 609 N.W.2d 286, review denied.

PROCEDURE TO REPAIR DRAINAGE SYSTEMS

103E.705. Repair procedure

Notes of Decisions

2. Construction with other laws

McLeod County Bd. of Com'rs as Drainage Authority for McLeod County Ditch No. 8 v. State, Dept. of Natural Resources, App.1996, 549 N.W.2d 630, [main volume] review denied.

7. Cost of repairs

Statutory limitation on cost of repairs made pursuant to a repair petition does not apply to

routine maintenance and repairs made by a drainage authority pursuant to this section. *Op. Atty. Gen.*, 602-j, July 10, 1997.

14. Standing

McLeod County Bd. of Com'rs as Drainage Authority for McLeod County Ditch No. 8 v. State, Dept. of Natural Resources, App.1996, 549 N.W.2d 630, [main volume] review denied.

103E.715. Procedure for repair by petition

Notes of Decisions

Routine repairs 12.5

routine maintenance and repairs made by a drainage authority. *Op. Atty. Gen.*, 602-j, July 10, 1997.

12.5. Routine repairs

Statutory limitation on cost of repairs made pursuant to a repair petition does not apply to

103E.735. Drainage system repair fund

Notes of Decisions

2. Contributions and transfers to fund

Generally, all owners of land through which the drainage ditch passes share in the cost of repairing the ditch, even though some of them may receive

no direct benefit from the repair. In re Improvement of Murray County Ditch No. 34, 2000, 615 N.W.2d 40, rehearing denied.

Chapter 103F

PROTECTION OF WATER RESOURCES

FLOODPLAIN MANAGEMENT

- Section
103F.105. Floodplain management policy.
103F.141. Rules.
103F.155. Flood protection plans.

- Section
103F.161. Flood hazard mitigation grants.

Section
MINNESOTA RIVER BASIN JOINT
POWERS BOARD

- 103F.378. Minnesota river basin joint powers board.

SOIL EROSION

- 103F.461. Groundwater education.

Section
REINVEST IN MINNESOTA
RESOURCES ACT

- 103F.515. Conservation reserve program.

WETLAND PRESERVATION AREAS

- 103F.612. Wetland preservation areas.
103F.613. Duration of wetland preservation area.

CLEAN WATER PARTNERSHIP

- 103F.725. Financial and technical assistance.

FLOODPLAIN MANAGEMENT

103F.105. Floodplain management policy

(a) The legislature finds:

(1) a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and

(2) the public interest necessitates sound land use development as land is a limited and irreplaceable resource, and the floodplains of this state are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding.

(b) It is the policy of this state to reduce flood damages through floodplain management, stressing nonstructural measures such as floodplain zoning and floodproofing, flood warning practices, and other indemnification programs that reduce public liability and expense for flood damages.

(c) It is the policy of this state:

(1) not to prohibit but to guide development of the floodplains consistent with legislative findings;

(2) to provide state coordination and assistance to local governmental units in floodplain management;

(3) to encourage local governmental units to adopt, enforce and administer sound floodplain management ordinances;

(4) to provide the commissioner of natural resources with authority necessary to carry out a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state; and

(5) to provide incentives for communities to participate in the national flood insurance program and for citizens of Minnesota to take actions such as purchasing and maintaining flood insurance to reduce future flood damage to private property.

Amended by Laws 1997, 2nd Sp., c. 2, § 17, eff. Aug. 23, 1997.

103F.141. Rules

Subdivision 1. Authority and criteria. The commissioner shall adopt rules to implement sections 103F.101 to 103F.155, including:

(1) criteria for determining the floodplain uses that may be permitted without creating an unreasonable public hazard or unduly restricting the capacity of the floodplain to carry and discharge a regional flood;

(2) variance procedures; and

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PROTECTION OF WATER RESOURCES

(3) the establishment of criteria for alternative or supplemental floodplain management measures such as floodproofing, subdivision rules, building codes, sanitation rules, and flood warning systems.

Subd. 2. Repealed by Laws 1997, 2nd Sp., c. 2, § 32, eff. Aug. 23, 1997.

Laws 1990, c. 391, art. 6, § 10.

103F.155. Flood protection plans

Subdivision 1. Construction of flood protection measures. If emergency flood protection measures are undertaken, the affected local governmental unit shall submit to the commissioner a plan outlining their use as a part of a future comprehensive flood emergency program. The plan shall be submitted within 120 days after construction.

Subd. 2. Commissioner's review. (a) The commissioner shall review the plan and consult with the state office of civil defense and other appropriate state and federal agencies. Following the review, the commissioner shall accept, require modification, or reject the plan.

(b) If required modifications are not made, or if the plan is rejected, the commissioner shall order the removal of the emergency protection measures and shall not provide grant money under section 103F.161 until the plan is approved or the required modifications are made.

Amended by Laws 1998, c. 401, § 36, eff. April 22, 1998.

103F.161. Flood hazard mitigation grants

Subdivision 1. Grants authorized. (a) The commissioner may make grants to local governments to:

(1) conduct floodplain damage reduction studies to determine the most feasible, practical, and effective methods and programs for mitigating the damages due to flooding within flood prone rural and urban areas and their watersheds; and

(2) plan and implement flood mitigation measures.

(b) The commissioner may cooperate with the North Dakota state water commission, local governmental units, and local water management organizations in this state and in North Dakota, and the United States Army Corps of Engineers to develop hydrologic models and conduct studies to evaluate the practicality and feasibility of flood control measures along the Red river from East Grand Forks to the Canadian border. The commissioner may make grants to local governmental units for these purposes. Flood control measures that may be investigated include agricultural and urban levee systems, wetland restoration, floodwater impoundments, farmstead ring-dikes, and stream maintenance activities.

Subd. 2. Action on grant applications. (a) A local government may apply to the commissioner for a grant on forms provided by the commissioner. The commissioner shall confer with the local government requesting the grant and may make a grant up to \$150,000 based on the following considerations:

(1) the extent and effectiveness of mitigation measures already implemented by the local government requesting the grant;

(2) the feasibility, practicality, and effectiveness of the proposed mitigation measures and the associated nonflood related benefits and detriments;

(3) the level of grant assistance that should be provided to the local government, based on available facts regarding the nature, extent, and severity of flood problems;

(4) the frequency of occurrence of severe flooding that has resulted in declaration of the area as a flood disaster area by the President of the United States;

(5) the economic, social, and environmental benefits and detriments of the proposed mitigation measures;

(6) whether the floodplain management ordinance or regulation adopted by the local government meets the minimum standards established by the commissioner, the degree of enforcement of the ordinance or regulation, and whether the local government is complying with the ordinance or regulation;

PROTECTION OF WATER RESOURCES

§ 103F.378

(7) the degree to which the grant request is consistent with local water plans developed under chapters 103B and 103D;

(8) the financial capability of the local government to solve its flood hazard problems without financial assistance; and

(9) the estimated cost and method of financing of the proposed mitigation measures based on local money and federal and state financial assistance.

(b) If the amount of the grant requested is \$150,000 or more, the commissioner shall determine, under the considerations in paragraph (a), whether any part of the grant should be awarded. The commissioner must submit an appropriation request to the governor and the legislature for funding consideration before each odd-numbered year, consisting of requests or parts of grant requests of \$150,000 or more. The commissioner must prioritize the grant requests, under the considerations in paragraph (a), beginning with the projects the commissioner determines most deserving of financing.

(c) A grant may not exceed one-half the total cost of the proposed mitigation measures.

(d) After July 1, 1991, grants made under this section may be made to local governments whose grant requests are part of, or responsive to, a comprehensive local water plan prepared under chapter 103B or 103D.

Subd. 3. Red river basin flood mitigation projects. Notwithstanding subdivision 2, a grant for implementation of a flood hazard mitigation project in the Red river basin that is consistent with the 1998 mediation agreement and approved by the Red river flood damage reduction work group may be for up to 75 percent of the cost of the proposed mitigation measures for the Agassiz-Audubon, North Ottawa, Hay creek, and Thief river subwatershed projects.

Amended by Laws 1998, c. 401, § 37, eff. April 22, 1998; Laws 2000, c. 492, art. 1, § 41, eff. May 16, 2000.

MISSISSIPPI HEADWATERS PLANNING AND MANAGEMENT

103F.371. Responsibilities of other governmental units

Notes of Decisions

In general 1

1. In general

City ordinance zoning newly annexed land in Mississippi headwaters area is not subject to re-

quirement for formal review and certification by the Mississippi Headwaters Board, but must nonetheless comply with the Board's comprehensive land use plan. Op.Atty.Gen., 59a-32, May 11, 1999.

103F.375. Incorporation and annexation

Notes of Decisions

In general 1

1. In general

City ordinance zoning newly annexed land in Mississippi headwaters area is not subject to re-

quirement for formal review and certification by the Mississippi Headwaters Board, but must nonetheless comply with the Board's comprehensive land use plan. Op.Atty.Gen., 59a-32, May 11, 1999.

MINNESOTA RIVER BASIN JOINT POWERS BOARD

103F.378. Minnesota river basin joint powers board

Subdivision 1. Duties. The Minnesota river basin joint powers board, established under section 471.59 for the purpose of coordinating efforts to improve water quality in the Minnesota river and achieving the goal of making the Minnesota river suitable for fishing and swimming by the year 2005, has the following duties:

(1) coordination of comprehensive cleanup goals for the Minnesota river by coordinating the work plans of the 12 major watersheds and the member counties of the joint powers board, state agencies, and the University of Minnesota in cleanup efforts and submission of periodic river cleanup plans for submission to the governor and the legislature;

(2) advising on the development and use of monitoring and evaluation systems in the Minnesota river and the incorporation of the data obtained from these systems into the planning process;

(3) conducting public meetings of the board on at least a quarterly basis at locations within the Minnesota river basin;

(4) conducting an ongoing information and education program concerning the status of the Minnesota river, including an annual conference on the state of the Minnesota river;

(5) providing periodic reports and budget requests to the governor's office and the chairs of the agriculture and environment and natural resources committees of the senate and the house of representatives regarding progress on meeting river water quality management goals and future funding required for this effort;

(6) advising on the development of projects within the 12 major watersheds that are scientifically sound, have landowner support, and reduce inputs of pollutants into the Minnesota river basin; and

(7) administering the distribution of project implementation funds for the 12 major watersheds by approving projects, identifying matching components for each project, and tracking the results achieved for each project.

Subd. 2. Membership. Upon acceptance of the joint powers agreement, each member county that agrees to join the board shall have one county commissioner as its delegate to the board and one county commissioner as an alternate. A technical and citizen advisory committee shall be established to advise the board consisting of a technical representative from each of the counties in the basin and citizens who are not county employees but who have an interest in agriculture, conservation, sporting activities, and other relevant areas as determined by the board.

Amended by Laws 1997, c. 216, § 92.

SOIL EROSION

103F.461. Groundwater education

(a) In each even-numbered year, the board of water and soil resources must review groundwater education activities with local units of government and develop recommendations for improvement in a report to the environmental quality board for review and then to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture as part of the groundwater policy report in section 103A.204. The board must work with agencies and interested groups with responsibility for groundwater education in preparing the report.

(b) The board must ensure that the biennial review of groundwater education with local units of government is coordinated with the Minnesota environmental education advisory board and the nonpoint source education and information strategy of the pollution control agency.

(c) Grants for innovative groundwater education strategies to local units of government identified in this section may be awarded by the board of water and soil resources.

Amended by Laws 1999, c. 86, art. 3, § 10.

REINVEST IN MINNESOTA RESOURCES ACT

103F.515. Conservation reserve program

Subdivision 1. Establishment of program. The board, in consultation with the commissioner of agriculture and the commissioner of natural resources, shall establish and adminis-

ter a conservation reserve program. The board shall implement sections 103F.505 to 103F.531. Selection of land for the conservation reserve program must be based on its potential for fish and wildlife production, reducing erosion, and protecting water quality.

Subd. 2. Eligible land. (a) Land may be placed in the conservation reserve program if the land meets the requirements of paragraphs (b) and (c).

(b) Land is eligible if the land:

(1) is marginal agricultural land;

(2) is adjacent to marginal agricultural land and is either beneficial to resource protection or necessary for efficient recording of the land description;

(3) consists of a drained wetland;

(4) is land that with a windbreak would be beneficial to resource protection;

(5) is land in a sensitive groundwater area;

(6) is riparian land;

(7) is cropland or noncropland adjacent to restored wetlands to the extent of up to four acres of cropland or one acre of noncropland for each acre of wetland restored;

(8) is a woodlot on agricultural land;

(9) is abandoned building site on agricultural land, provided that funds are not used for compensation of the value of the buildings; or

(10) is land on a hillside used for pasture.

(c) Eligible land under paragraph (a) must:

(1) be owned by the landowner, or a parent or other blood relative of the landowner, for at least one year before the date of application;

(2) be at least five acres in size, except for a drained wetland area, riparian area, windbreak, woodlot, or abandoned building site, or be a whole field as defined by the United States Agricultural Stabilization and Conservation Services;

(3) not be set aside, enrolled or diverted under another federal or state government program unless enrollment in the conservation reserve program would provide additional conservation benefits or a longer term of enrollment than under the current federal or state program; and

(4) have been in agricultural crop production for at least two of the last five years before the date of application except drained wetlands, riparian lands, woodlots, abandoned building sites, or land on a hillside used for pasture.

(d) In selecting drained wetlands for enrollment in the program, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985.

(e) In selecting land for enrollment in the program, highest priority must be given to permanent easements that are consistent with the purposes stated in section 103F.505.

Subd. 3. Conservation easements. (a) The board may acquire, or accept by gift or donation, conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on land for windbreak purposes, under subdivision 2, may be only of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years. The negotiation and acquisition of easements authorized by this section are exempt from the contractual provisions of chapters 16B and 16C.

(b) The board may acquire, or accept by gift or donation, flowage easements when necessary for completion of wetland restoration projects.

Subd. 4. Nature of property rights acquired. (a) A conservation easement must prohibit:

(1) alteration of wildlife habitat and other natural features, unless specifically approved by the board;

(2) agricultural crop production, unless specifically approved by the board for wildlife management purposes;

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PROTECTION OF WATER RESOURCES

(3) grazing of livestock except, for agreements entered before the effective date of Laws 1990, chapter 391, grazing of livestock may be allowed only if approved by the board after consultation with the commissioner of natural resources, in the case of severe drought, or a local emergency declared under section 12.29; and

(4) spraying with chemicals or mowing, except as necessary to comply with noxious weed control laws or emergency control of pests necessary to protect public health.

(b) A conservation easement is subject to the terms of the agreement provided in subdivision 5.

(c) A conservation easement must allow repairs, improvements, and inspections necessary to maintain public drainage systems provided the easement area is restored to the condition required by the terms of the conservation easement.

Subd. 5. Agreements by landowner. The board may enroll eligible land in the conservation reserve program by signing an agreement in recordable form with a landowner in which the landowner agrees:

(1) to convey to the state a conservation easement that is not subject to any prior title, lien, or encumbrance;

(2) to seed the land subject to the conservation easement, as specified in the agreement, to establish and maintain perennial cover of either a grass-legume mixture or native grasses for the term of the easement, at seeding rates determined by the board; or to plant trees or carry out other long-term capital improvements approved by the board for soil and water conservation or wildlife management;

(3) to convey to the state a permanent easement for the wetland restoration;

(4) that other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if it supports natural vegetation or has not been used in agricultural crop production, will not be converted to agricultural crop production or pasture; and

(5) that the easement duration may be lengthened through mutual agreement with the board in consultation with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or facilitate its administration.

Subd. 6. Payments for conservation easements and establishment of cover. (a) The board must make the following payments to the landowner for the conservation easement and agreement:

(1) to establish the perennial cover or other improvements required by the agreement:

(i) except as provided in items (ii) and (iii), up to 75 percent of the total eligible cost not to exceed \$75 per acre for limited duration easements and 100 percent of the total eligible cost not to exceed \$100 per acre for perpetual easements;

(ii) for native species restoration, 75 percent of the total eligible cost not to exceed \$150 per acre for limited duration easements and 100 percent of the total eligible cost not to exceed \$200 per acre for perpetual easements; and

(iii) 100 percent of the total eligible cost of wetland restoration not to exceed \$300 per acre;

(2) for the cost of planting trees required by the agreement, up to 75 percent of the total eligible cost not to exceed \$200 per acre for limited duration easements, and 100 percent of the total eligible cost not to exceed \$300 per acre for perpetual easements;

(3) for a permanent easement, 70 percent of the township average equalized estimated market value of agricultural property as established by the commissioner of revenue at the time of easement application;

(4) for an easement of limited duration, 90 percent of the present value of the average of the accepted bids for the federal conservation reserve program, as contained in Public Law Number 99-198, in the relevant geographic area and on bids accepted at the time of easement application; or

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(5) an alternative payment system for easements based on cash rent or a similar system as may be determined by the board.

(b) For hillside pasture conservation easements, the payments to the landowner in paragraph (a) for the conservation easement and agreement must be reduced to reflect the value of similar property.

(c) The board may establish a payment system for flowage easements acquired under this section.

(d) For wetland restoration projects involving more than one conservation easement, state payments for restoration costs may exceed the limits set forth in this section for an individual easement provided the total payment for the restoration project does not exceed the amount payable for the total number of acres involved.

(e) The board may use available nonstate funds to exceed the payment limits in this section.

Subd. 7. Easement renewal. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the board and the landowner, under the terms of this section. The board may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

Subd. 8. Correction of conservation easement boundary lines. To correct errors in legal descriptions for easements that affect the ownership interests in the state and adjacent landowners, the board may, in the name of the state, with the approval of the attorney general, convey, without consideration, interests of the state necessary to correct legal descriptions of boundaries. The conveyance must be by quitclaim deed or release in a form approved by the attorney general.

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

(b) Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney's fees, and any other appropriate relief to enforce sections 103F.505 to 103F.531 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

Amended by Laws 1998, c. 386, art. 2, § 31; Laws 1999, c. 231, § 127.

Historical and Statutory Notes

1998 Legislation

Laws 1998, c. 386, art. 2, § 99, provides:
"This article is effective July 1, 1998, except that it does not apply to any part of the procurement

process that results from a solicitation dated before July 1, 1998."

WETLAND PRESERVATION AREAS

103F.612. Wetland preservation areas

Subdivision 1. Definition. For purposes of sections 103F.612 to 103F.616, "wetland" has the meaning given in section 103G.005, subdivision 19.

Subd. 2. Application. (a) A wetland owner may apply to the county where a wetland is located for designation of a wetland preservation area in a high priority wetland area identified in a comprehensive local water plan, as defined in section 103B.3363, subdivision 3, and located within a high priority wetland region designated by the board of water and soil

resources, if the county chooses to accept wetland preservation area applications. The application must be made on forms provided by the board. If a wetland is located in more than one county, the application must be submitted to the county where the majority of the wetland is located.

(b) The application shall be executed and acknowledged in the manner required by law to execute and acknowledge a deed and must contain at least the following information and other information the board of water and soil resources requires:

(1) legal description of the area to be approved, which must include an upland strip at least 16-½ feet in width around the perimeter of wetlands within the area and may include total upland area of up to four acres for each acre of wetland;

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

(3) name and address of the owner;

(4) a statement by the owner covenanting that the land will be preserved as a wetland and will only be used in accordance with conditions prescribed by the board of water and soil resources and providing that the restrictive covenant will be binding on the owner and the owner's successors or assigns, and will run with the land.

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

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

Subd. 4. Recording. Within five days of the date of application, the county shall forward the application to the county recorder for recording or to the registrar of titles for filing if the land is registered. The county recorder shall record the application containing the restrictive covenant and return it to the applicant. If the land is registered, the registrar of titles shall memorialize the application containing the restrictive covenant upon the certificate of title. The recorder or registrar of titles shall notify the county that the application has been recorded or memorialized.

Subd. 5. Commencement of wetland preservation area. The wetland is a wetland preservation area commencing 30 days from the date the county notifies the landowner of acceptance of the application under subdivision 3.

Subd. 6. Fee. The county may require an application fee to defray administrative costs of the program.

Subd. 7. Maps. The county shall maintain wetland preservation area maps illustrating land covenanted as wetland preservation areas.

Amended by Laws 1999, c. 11, art. 1, §§ 4, 5, eff. Jan. 1, 2000.

103F.613. Duration of wetland preservation area

Subdivision 1. General. A wetland preservation area continues in existence until the owner initiates expiration as provided in this section. The date of expiration must be at least eight years from the date of notice under this section.

Subd. 2. Termination by owner. The owner may initiate expiration of a wetland preservation area by notifying the county on a form prepared by the board of water and soil resources and made available in each county. The notice must describe the property involved and must state the date of expiration. The notice may be rescinded by the owner during the first two years following notice.

Subd. 3. Notice and recording; termination. When the county receives notice under subdivision 2, the county shall forward the original notice to the county recorder for recording or to the registrar of titles for filing if the land is registered and shall notify the regional development commission, where applicable, the board of water and soil resources, and the county soil and water conservation district of the date of expiration. The benefits and limitations of the wetland preservation area and the restrictive covenant filed with the application cease on the date of expiration. If the land is registered, the registrar of titles shall cancel the memorial of the application containing the restrictive covenant upon the certificate of title on the effective date of the expiration.

Subd. 4. Early expiration. A wetland preservation area may be terminated earlier than as provided in this section only in the event of a public emergency upon petition from the owner or county to the governor. The determination of a public emergency must be made by the governor through executive order under section 4.035 and chapter 12. The executive order must identify the wetland preservation area, the reasons requiring the action, and the date of expiration.

Amended by Laws 1999, c. 11, art. 1, § 6, eff. Jan. 1, 2000.

CLEAN WATER PARTNERSHIP

103F.725. Financial and technical assistance

Subdivision 1. Financial assistance. (a) The agency may award grants for up to 50 percent of the eligible cost for:

(1) the development of a diagnostic study and implementation plan; and

(2) the implementation of that plan.

(b) The agency shall determine which costs are eligible costs and grants shall be made and used only for eligible costs.

Subd. 1a. Financial assistance; loans. (a) Up to \$36,000,000 of the balance in the water pollution control revolving fund in section 446A.07, as determined by the public facilities authority, may be provided to the commissioner for the establishment of a clean water partnership loan program.

(b) The agency may award loans for up to 100 percent of the costs associated with activities identified by the agency as best management practices pursuant to section 319 and section 320 of the federal Water Quality Act of 1987,¹ as amended, including associated administrative costs.

(c) Loans may be used to finance clean water partnership grant project eligible costs not funded by grant assistance.

(d) The interest rate, at or below market rate, and the term, not to exceed 20 years, shall be determined by the agency in consultation with the public facilities authority.

(e) The repayment must be deposited in the water pollution control revolving fund under section 446A.07.

(f) The local unit of government receiving the loan is responsible for repayment of the loan.

(g) For the purpose of obtaining a loan from the agency, a local government unit may provide to the agency its general obligation note. All obligations incurred by a local government unit in obtaining a loan from the agency must be in accordance with chapter 475, except that so long as the obligations are issued to evidence a loan from the agency to the local government unit, an election is not required to authorize the obligations issued, and the amount of the obligations shall not be included in determining the net indebtedness of the local government unit under the provisions of any law or chapter limiting the indebtedness.

Subd. 2. Technical assistance. The agency may provide technical assistance to local units of government to ensure efficient and effective development and implementation of projects and coordination of projects with other water management activities.

Amended by Laws 1998, c. 404, § 36, eff. April 22, 1998.

133 U.S.C.A. §§ 1329, 1330.

MILLE LACS PRESERVATION AND DEVELOPMENT BOARD

103F.806. Application

Historical and Statutory Notes

1988 Legislation

In St.1998, the revisor of statutes deleted this section on the stated grounds "No local approval filed".

103F.807. Definitions

Historical and Statutory Notes

1988 Legislation

In St.1998, the revisor of statutes deleted this section on the stated grounds "No local approval filed".

103F.808. Mille Lacs preservation and development board

Historical and Statutory Notes

1988 Legislation

In St.1998, the revisor of statutes deleted this section on the stated grounds "No local approval filed".

103F.809. Mille Lacs Lake comprehensive land use plan

Historical and Statutory Notes

1988 Legislation

In St.1998, the revisor of statutes deleted this section on the stated grounds "No local approval filed".

103F.810. Responsibilities of other government units

Historical and Statutory Notes

1988 Legislation

In St.1998, the revisor of statutes deleted this section on the stated grounds "No local approval filed".

103F.811. Review and certification of land use actions

Historical and Statutory Notes

1988 Legislation

In St.1998, the revisor of statutes deleted this section on the stated grounds "No local approval filed".

Chapter 103G

WATERS OF THE STATE

GENERAL PROVISIONS

Section

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Section

WORK AFFECTING PUBLIC WATERS

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STREAMS

103G.705. Stream protection and improvement loan program.

GENERAL PROVISIONS

103G.005. Definitions

Subdivision 1. Applicability. The definitions in this section apply to this chapter.

Subd. 2. Abandon. "Abandon" means to give up the use and maintenance of structures or improvements to realty and to surrender them to deterioration. Abandon does not refer to intent to surrender or relinquish title to or a possessory interest in the real property where the structures or improvements are located.

Subd. 2a. Agricultural land. "Agricultural land" means: land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; farm yards; associated building sites; and public and private drainage systems and field roads located on any of the foregoing.

Subd. 3. Altered natural watercourse. "Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.

Subd. 4. Appropriating. "Appropriating" means withdrawal, removal, or transfer of water from its source regardless of how the water is used.

Subd. 5. Artificial watercourse. "Artificial watercourse" means a watercourse artificially constructed by human beings where a natural watercourse was not previously located.

Subd. 6. Basin of origin. "Basin of origin" means the drainage basin of the Great Lakes, the Red River of the North, the Mississippi River, or the Missouri River.

Subd. 6a. Board. "Board" means the board of water and soil resources.

Subd. 7. Commissioner. "Commissioner" means the commissioner of natural resources.

Subd. 8. Consumptive use. "Consumptive use" means water that is withdrawn from its source for immediate further use in the area of the source and is not directly returned to the source.

Subd. 9. Director. "Director" means the director of the division of waters of the department of natural resources.

Subd. 10. Division. "Division" means the division of waters of the department of natural resources.

Subd. 10a. 50 to 80 percent area. "50 to 80 percent area" means a county or watershed with at least 50 but less than 80 percent of the presettlement wetland acreage intact.

Subd. 10b. Greater than 80 percent area. "Greater than 80 percent area" means a county or watershed where 80 percent or more of the presettlement wetland acreage is intact and:

- (1) ten percent or more of the current total land area is wetland; or
- (2) 50 percent or more of the current total land area is state or federal land.

Subd. 10c. Hayland. "Hayland" means an area that was mechanically harvested or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes in six of the last ten years prior to January 1, 1991.

Subd. 10d. Less than 50 percent area. "Less than 50 percent area" means a county or watershed with less than 50 percent of the presettlement wetland acreage intact or any county or watershed not defined as a "greater than 80 percent area" or "50 to 80 percent area."

Subd. 10e. Local government unit. "Local government unit" means:

- (1) outside of the seven-county metropolitan area, a city council or county board of commissioners or their delegate;
- (2) in the seven-county metropolitan area, a city council, a town board under section 368.01, or a watershed management organization under section 103B.211, or their delegate; and
- (3) on state land, the agency with administrative responsibility for the land.

Subd. 11. Meandered lake. "Meandered lake" means a body of water except streams located within the meander lines shown on plats made by the United States General Land Office.

Subd. 12. Municipality. "Municipality" means a home rule charter or statutory city.

Subd. 13. Natural watercourse. "Natural watercourse" means a natural channel that has definable beds and banks capable of conducting confined runoff from adjacent land.

Subd. 13a. Once-through system. "Once-through system" means a space heating, ventilating, air conditioning (HVAC), or refrigeration system used for any type of temperature or humidity control application, utilizing groundwater, that circulates through the system and is then discharged without reusing it for a higher priority purpose.

Subd. 14. Ordinary high water level. "Ordinary high water level" means the boundary of waterbasins, watercourses, public waters, and public waters wetlands, and:

- (1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;
- (2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel; and
- (3) for reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Subd. 14a. Pasture. "Pasture" means an area that was grazed by domesticated livestock or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes in six of the last ten years prior to January 1, 1991.

Subd. 14b. Political subdivision. "Political subdivision" means a county, city, town, school district, or other local government jurisdiction to which the state provides state aids or on which the state imposes state mandates.

Subd. 14c. Presettlement wetland. "Presettlement wetland" means a wetland or public waters wetland that existed in this state at the time of statehood in 1858.

Subd. 14d. Project. "Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the local government unit. As used in this chapter, a project may not be split into components or phases for the sole purpose of gaining additional exemptions.

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

- (1) waterbasins assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221;
- (2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;
- (3) meandered lakes, excluding lakes that have been legally drained;
- (4) waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;
- (5) waterbasins designated as scientific and natural areas under section 84.033;
- (6) waterbasins located within and totally surrounded by publicly owned lands;
- (7) waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;
- (8) waterbasins where there is a publicly owned and controlled access that is intended to provide for public access to the waterbasin;
- (9) natural and altered watercourses with a total drainage area greater than two square miles;
- (10) natural and altered watercourses designated by the commissioner as trout streams; and
- (11) public waters wetlands, unless the statute expressly states otherwise.

(b) Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

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

Subd. 15b. Shoreland wetland protection zone. "Shoreland wetland protection zone" means:

- (1) for local government units that have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone is:
 - (i) 1,000 feet from the ordinary high water level of a waterbasin that is a public water identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; or
 - (ii) 300 feet from the ordinary high water level of a watercourse identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; and
- (2) for local government units that do not have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone is:
 - (i) 1,000 feet from the ordinary high water level of a waterbasin that is a public water that is at least ten acres in size within municipalities and at least 25 acres in size in unincorporated areas; or
 - (ii) 300 feet from the ordinary high water level of a watercourse identified by the public waters inventory under section 103G.201.

Subd. 15c. Silviculture. "Silviculture" means the management of forest trees.

Subd. 15d. Utility. "Utility" means a sanitary sewer, storm sewer, potable water distribution, and transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications.

Subd. 16. Waterbasin. "Waterbasin" means an enclosed natural depression with definable banks, capable of containing water, that may be partly filled with waters of the state and is discernible on aerial photographs.

Subd. 17. Waters of the state. "Waters of the state" means surface or underground waters, except surface waters that are not confined but are spread and diffused over the land. Waters of the state includes boundary and inland waters.

Subd. 17a. Watershed. "Watershed" means the 81 major watershed units delineated by the map, "State of Minnesota Watershed Boundaries-1979".

Subd. 17b. Wetland type. "Wetland type" means a wetland type classified according to Wetlands of the United States, U.S. Fish and Wildlife Service Circular 39 (1971 edition), as summarized in this subdivision.

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

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

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

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

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

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

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

(8) "Type 8 wetlands" are bogs in which soil is usually waterlogged and supports a spongy covering of mosses. This type occurs mostly in shallow basins, on flat uplands, and along sluggish streams. Vegetation is woody or herbaceous or both. Typical plants are heath shrubs, sphagnum moss, and sedges. In the north, leatherleaf, Labrador-tea, cranberries, carex, and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

Subd. 18. Renumbered subd. 15a in St.1996.

Subd. 19. Wetlands. (a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

(1) have a predominance of hydric soils;

(2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances support a prevalence of such vegetation.

(b) For the purposes of regulation under this chapter, the term wetlands does not include public waters wetlands as defined in subdivision 15a.

Amended by Laws 1997, c. 2, § 8; Laws 2000, c. 382, §§ 1, 2, eff. April 14, 2000.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 2, was a corrections bill which, by its title, provided for the correction of miscellaneous oversights, inconsistencies, ambiguities, unintended results, and technical errors of a noncontro-

versial nature. Section 8, in subd. 14a, substituted "in six of the last ten years prior to January 1, 1991" for "of the last years prior to January 1, 1991".

Notes of Decisions

1. Ordinary high water level

Commissioner of Natural Resources was entitled to deference in his interpretation of statutory mandate that person have public-waters work permit to change course of public waters, and, thus, Commissioner, who determined that permit requirement would not be imposed on watershed district's

project involving water above ordinary high water level of lake, was not clearly compelled by law to make permit decision in such case. Pelican Group of Lakes Imp. Dist. v. Minnesota Dept. of Natural Resources, App.1999, 589 N.W.2d 517, review denied.

PUBLIC WATERS DESIGNATION AND USE

103G.201. Public waters inventory

(a) 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.

(b) The commissioner is authorized to revise the list of public waters established under Laws 1979, chapter 199, to reclassify those types 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).

(c) The commissioner must provide notice of the reclassification to the local government unit, the county board, the watershed district, if one exists for the area, and the soil and water conservation district. Within 60 days of receiving notice from the commissioner, a party required to receive the notice may provide a resolution stating objections to the reclassification. If the commissioner receives an objection from a party required to receive the notice, the reclassification is not effective. If the commissioner does not receive an objection from a party required to receive the notice, the reclassification of a wetland under paragraph (b) is effective 60 days after the notice is received by all of the parties.

(d) The commissioner shall give priority to the reclassification of public waters wetlands that are or have the potential to be affected by public works projects.

Amended by Laws 2000, c. 382, § 3, eff. April 14, 2000.

WETLANDS

103G.221. Drainage of public waters wetlands

Subdivision 1. Drainage of public waters wetlands generally prohibited without replacement. Public waters wetlands may not be drained, and a permit authorizing drainage of public waters wetlands may not be issued, unless the public waters wetlands to be drained are replaced by wetlands that will have equal or greater public value.

Subds. 2, 3. Repealed by Laws 1991, c. 354, art. 10, § 12.

Amended by Laws 1999, c. 86, art. 1, § 19.

103G.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 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.

Laws 2000, c. 382, § 4, eff. April 14, 2000.

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. Sections 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands.

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

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

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

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

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

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

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

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

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that a deed restriction is placed on the altered wetland prohibiting nonagricultural use for at least ten years.

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

(e) Except as provided in paragraph (f), for a wetland or public waters 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.

(f) For a wetland or public waters 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.

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

(h) Except in a greater than 80 percent area, only wetlands that have been restored from previously drained or filled wetlands, wetlands created by excavation in nonwetlands, wetlands created by dikes or dams along public or private drainage ditches, or wetlands created by dikes or dams associated with the restoration of previously drained or filled wetlands may be used in a statewide banking program established in rules adopted under section 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

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

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

(k) For projects involving draining or filling of wetlands associated with a new public transportation project in a greater than 80 percent area, public transportation authorities, other than the state department of transportation, may purchase credits from the state wetland bank established with proceeds from Laws 1994, chapter 643, section 26, subdivision 3, paragraph (c). Wetland banking credits may be purchased at the least of the following, but in no case shall the purchase price be less than \$400 per acre: (1) the cost to the state to establish the credits; (2) the average estimated market value of agricultural land in the township where the road project is located, as determined by the commissioner of revenue;

or (3) the average value of the land in the immediate vicinity of the road project as determined by the county assessor. Public transportation authorities in a less than 80 percent area may purchase credits from the state at the cost to the state to establish credits.

(l) 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;

(2) except as provided in clause (3), submit project-specific reports 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 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; and

(3) for minor and emergency maintenance work impacting less than 10,000 square feet, 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.

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, subdivision 9. 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.

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.

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

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

(o) One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens shall provide satisfactory documentation to the local government unit. The local government

unit shall consider the petition and forward the request to the board under paragraph (n) or provide a reason why the petition is denied.

Subd. 2. Road credit funding. The board shall give priority to restoration projects that:

(1) will encourage land use that leads to more compact development or redevelopment;

(2) will encourage public or private infrastructure investments which connect ecosystems and communities, attract private sector investment in commercial or residential properties adjacent to the public improvement; or

(3) are located in critical rural and urban watersheds.

Subd. 3. Wetland replacement siting. (a) Siting wetland replacement must follow this priority order:

(1) on site or in the same minor watershed as the affected wetland;

(2) in the same watershed as the affected wetland;

(3) in the same county as the affected wetland;

(4) in an adjacent watershed or county to the affected wetland; and

(5) statewide, only for wetlands affected in greater than 80 percent areas and for public transportation projects, except that wetlands affected in less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands affected 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.

(b) The exception in paragraph (a), clause (5), 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.

(c) When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in paragraph (a), the applicant may seek opportunities at the next level.

(d) For the purposes of this section, "reasonable, practicable, and environmentally beneficial replacement opportunities" are defined as opportunities that:

(1) take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration;

(2) have a high likelihood of becoming a functional wetland that will continue in perpetuity;

(3) do not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area; and

(4) are available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes.

(e) Regulatory agencies, local government units, and other entities involved in wetland restoration shall collaborate to identify potential replacement opportunities within their jurisdictional areas.

Amended by Laws 2000, c. 382, § 5, eff. April 14, 2000.

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 1985,¹ 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 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural land;

(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:

(i) annually enrolled in the federal Agriculture Improvement and Reform Act of 1996 and is subject to United States Code, title 16, sections 3821 to 3823, in effect on January 1, 2000; or

(ii) subject to subsequent federal farm program restrictions that meet minimum state standards under this chapter and sections 103A.202 and 103B.3355 and that have been approved by the board of water and soil resources, the commissioners of natural resources and agriculture, and the pollution control agency.

(b) Land enrolled in a federal farm program under paragraph (a), clause (8), is eligible for easement participation for those acres not already compensated under a federal program.

(c) 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. 2. Drainage. (a) For the purposes of this subdivision, "public drainage system" means a drainage system as defined in section 103E.005, subdivision 12, and any ditch or tile lawfully connected to the drainage system.

(b) A replacement plan is not required for draining of type 1 wetlands, or up to five acres of type 2 or 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:

(1) during the 20-year period that ended January 1, 1992:

(i) there was an expenditure made from the drainage system account for the public drainage system;

(ii) the public drainage system was repaired or maintained as approved by the drainage authority; or

(iii) no repair or maintenance of the public drainage system was required under section 103E.705, subdivision 1, as determined by the public drainage authority; and

(2) the wetlands are not drained for conversion to:

(i) platted lots;

(ii) planned unit, commercial, or industrial developments; or

(iii) any development with more than one residential unit per 40 acres.

If wetlands drained under this paragraph are converted to uses prohibited under clause (2) during the ten-year period following drainage, the wetlands must be replaced under section 103G.222.

(c) A replacement plan is not required for draining or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing public drainage systems.

(d) A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems other than public drainage systems.

(e) A replacement plan is not required for draining or filling of wetlands resulting from activities conducted as part of a public drainage system improvement project that received final approval from the drainage authority before July 1, 1991, and after July 1, 1986, if:

(1) the approval remains valid;

(2) the project remains active; and

(3) no additional drainage will occur beyond that originally approved.

(f) The public drainage authority may, as part of the repair, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent drainage of the wetland.

(g) Wetlands of all types that would be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve, under section 103F.516. The board shall give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

Subd. 3. Federal approvals. A replacement plan for wetlands is not required for:

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

(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 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; or

(3) activities authorized under the federal Clean Water Act, section 404, or the Rivers and Harbors Act, section 10, regulations that meet minimum state standards under this chapter and sections 103A.202 and 103B.3355 and that have been approved by the board of water and soil resources, the commissioners of natural resources and agriculture, and the pollution control agency.

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

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

(1) beaver dam construction;

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

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

(4) any combination of clauses (1) to (3).

Subd. 6. Utilities; public works. A replacement plan for wetlands is not required for:

- (1) placement, maintenance, repair, enhancement, or replacement of utility or utility-type service if:
 - (i) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and
 - (ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;
- (2) activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;
- (3) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing or acquired interstate pipeline rights-of-way;
- (4) emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and does not result in the draining or filling, wholly or partially, of a wetland;
- (5) normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland; or
- (6) repair and updating of existing individual sewage treatment systems as necessary to comply with local, state, and federal regulations.

Subd. 7. Forestry. A replacement plan for wetlands is not required for:

- (1) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters; or
- (2) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch, or tile line; filling is avoided wherever possible; and there is no drainage of the wetland or public waters.

Subd. 8. Approved development. A replacement plan for wetlands is not required for development projects and ditch improvement projects in the state that have received preliminary or final plat approval or have infrastructure that has been installed or has local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. As used in this subdivision, "infrastructure" means public water facilities, storm water and sanitary sewer piping, outfalls, inlets, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement to a parcel within the context of an approved development plan.

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

- (1) 10,000 square feet of type 1, 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, 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, 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, 2, 3, 4, 5, 6, 7, or 8 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) This exemption may not be combined with another exemption in this section on a project.

Subd. 10. Wildlife habitat. A replacement plan for wetlands is not required for:

- (1) deposition of spoil resulting from excavation within a wetland for a wildlife habitat improvement project, if:
 - (i) the area of deposition does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion;
 - (ii) the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and
 - (iii) the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or
- (2) duck blinds.

Subd. 11. Exemption conditions. (a) A person conducting an activity in a wetland under an exemption in subdivisions 1 to 10 shall ensure that:

- (1) appropriate erosion control measures are taken to prevent sedimentation of the water;
- (2) the activity does not block fish passage in a watercourse; and
- (3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

(b) An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

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

Amended by Laws 2000, c. 382, §§ 6 to 8.

¹⁷ U.S.C.A. § 1631; 16 U.S.C.A. § 3801 et seq.

Notes of Decisions

Incidental wetlands 2

1. Drainage system repairs

Even if surplus water or wetland had been in existence for 25 years, record did not demonstrate that activity proposed by landowner, installation of drainage outlet, constituted any type of maintenance or repair of existing drainage system, so as to support application of Wetland Conservation Act's exemption for maintenance or repair. Drum

v. Minnesota Bd. of Water & Soil Resources, App. 1998, 574 N.W.2d 71.

2. Incidental wetlands

Landowner failed to prove that wetland was enlarged solely as result of township's construction of road without culverts, which allegedly sealed off drainage ditch and interfered with marsh's seepage function, and thus, exception in Wetland Conservation Act under which replacement plan is not required for wetlands created solely as result of actions taken for purpose other than creating wet-

Note 2

land did not apply; long-time resident in area stated that he had never seen water in ditch, and record showed that surface area of marsh had steadily increased in size from 1958 to 1992. *Drum v. Minnesota Bd. of Water & Soil Resources*, App.1998, 574 N.W.2d 71.

103G.2242. Wetland value replacement plans

Subdivision 1. Rules. (a) The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section 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.

Subd. 2. Evaluation. (a) 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, 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 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.

(b) Persons conducting wetland or public waters boundary delineations or type determinations are exempt from the requirements of chapter 326. By January 15, 2001, the board, in consultation with the Minnesota Association of Professional Soil Scientists, the University of Minnesota, and the Wetland Delineators' Association, shall submit a plan for a professional wetland delineator certification program to the legislature.

Subd. 2a. Wetland boundary or type determination. (a) 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, including, 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.

(b) A local government unit that receives an application under paragraph (a) may seek the advice of the technical evaluation panel as described in subdivision 2, and, if necessary, expand the technical evaluation panel. The local government unit may delegate the decision authority for wetland boundary or type determinations with the zoning administrator, or establish other procedures it considers appropriate.

(c) The local government unit decision must be made in compliance with section 15.99. Within ten calendar days of the decision, 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 one exists, and individual members of the public who request a copy.

(d) 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.

Subd. 3. Replacement completion. Replacement of wetland values must be completed prior to or concurrent with the actual draining or filling of a wetland, or an irrevocable bank letter of credit or other security acceptable to the local government unit must be given to the local government unit to guarantee the successful completion of the replacement.

Subd. 4. Decision. Upon receiving and considering all required data, the local government unit reviewing replacement plan applications, banking plan applications, and exemption or no-loss determination requests must act on all replacement plan applications, banking plan applications, and exemption or no-loss determination requests in compliance with section 15.99.

Subd. 5. Processing fee. The local government unit 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.

Subd. 6. Notice of application. (a) Except as provided in paragraph (b), within ten days of receiving an application for approval of a replacement plan under this section, copies of the complete application must be mailed to the members of the technical evaluation panel, the managers of the watershed district if one exists, and the commissioner of natural resources. Individual members of the public who request a copy shall be provided information to identify the applicant and the location and scope of the project.

(b) Within ten days of receiving an application for approval of a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the application must be mailed to the members of the technical evaluation panel, individual members of the public who request a copy, and the commissioner of natural resources.

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

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

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

Subd. 7. Notice of decision. Within ten days of the approval or denial of a replacement plan under this section, a summary of the approval or denial must be mailed to members of the technical evaluation panel, the applicant, individual members of the public who request a copy, the managers of the watershed district, if one exists, and the commissioner of natural resources.

Subd. 8. Public comment period. Except for activities impacting less than 10,000 square feet of wetland, before approval or denial of a replacement plan under this section, comments may be made by the public to the local government unit for a period of 15 days or more, as determined by the local government unit.

Subd. 9. Appeal. (a) 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:

- (1) the wetland owner;
- (2) any of those to whom notice is required to be mailed under subdivision 7; or
- (3) 100 residents of the county in which a majority of the wetland is located.
- (b) 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:

- (1) the appeal is meritless, trivial, or brought solely for the purposes of delay;
- (2) the petitioner has not exhausted all local administrative remedies;
- (3) expanded technical review is needed;
- (4) the local government unit's record is not adequate; or
- (5) the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit.

(c) 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.

(d) All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of chapter 14. A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

Subd. 10. Local requirements. The rules adopted under subdivision 1 shall allow for local government units to use their own notice and public comment procedures so long as the requirements of this section are satisfied.

Subd. 11. Expired July 1, 2000.

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

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

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

(1) Reestablishment of permanent vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price supports or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991. Replacement credit may not exceed 50 percent of the total wetland area vegetatively restored;

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

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

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

Subd. 13. Repealed by Laws 1996, c. 462, § 44, eff. April 12, 1996.

Amended by Laws 1998, c. 312, § 4; Laws 2000, c. 382, §§ 9, 10, eff. April 14, 2000; Laws 2000, c. 382, §§ 11 to 13; Laws 2000, c. 382, § 14, eff. April 14, 2000.

Historical and Statutory Notes

2000 Legislation

Subdivision 11, which related to the wetland heritage advisory committee, expired on July 1, 2000.

Notes of Decisions

Appeal 3
Jurisdiction 1
Review 4
Standing 2

1. Jurisdiction

When the petitioner is a member of the technical evaluation panel (TEP) and Board of Water and Soil Resources (BWSR), BWSR has subject matter jurisdiction over the appeal despite petitioner's failure to submit a filing fee. Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Board of Water and Soil Resources (BWSR) had subject matter jurisdiction over appeal of city's approval of landowner's wetland replacement plan, even though petitioner did not pay filing fee, where petitioner was member of both technical evaluation panel (TEP) that reviewed plan and BWSR. Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Board of Water and Soil Resources had statutory authority to promulgate rules regulating wetlands not covered by public waters inventory map, and thus, soil and water conservation district acted within its statutory authority when it promulgated rule clarifying that Wetland Conservation Act's jurisdiction included wetlands greater than ten acres not inventoried on public waters inventory maps, despite claim that legislature had delegated authority to regulate such wetlands solely to Commissioner of Natural Resources. Drum v. Minnesota Bd. of Water & Soil Resources, App.1998, 574 N.W.2d 71.

2. Standing

Member of a technical evaluation panel (TEP) has standing to appeal a local government unit's (LGU's) decision to Board of Water and Soil Resources (BWSR). Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Member of technical evaluation panel (TEP) had standing to appeal city's approval of landowner's wetland replacement plan Board of Water and Soil

Resources (BWSR). Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

3. Appeal

Petition that lists the parties, the procedural posture, and the stated basis for the local government unit's (LGU's) decision is sufficient to permit review by Board of Water and Soil Resources (BWSR). Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Petition seeking was sufficient to permit Board of Water and Soil Resources (BWSR) to review city's approval of landowner's wetland replacement plan, where letter directed to BWSR listed parties, cited the procedural posture of case, and noted that city denied technical evaluation panel's (TEP) recommendation that city reject plan due to landowner's failure to file a complete application. Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Board of Water and Soil Resources (BWSR) was properly constituted when five of its 17 members reviewed city's approval of landowner's wetland replacement plan, sitting as a dispute resolution committee (DRC) and BWSR adopted DRC's recommendation to reverse city's decision. Board Order, Kells (BWSR) v. City of Rochester, App. 1999, 597 N.W.2d 332.

Board of Water and Soil Resources (BWSR) complies with statutory requirements by utilizing a five-member committee to hear appeals. Board Order, Kells (BWSR) v. City of Rochester, App. 1999, 597 N.W.2d 332.

4. Review

Court of Appeals reviews a Board of Water and Soil Resources (BWSR) decision pursuant to the procedures in the Administrative Procedure Act for reviewing an agency's decision in a contested-case proceeding. Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

Board of Water and Soil Resources (BWSR) decision reversing city's approval of landowner's wetland replacement plan was subject to review pursuant to the procedures in the Administrative Procedure Act for administrative agency decision

§ 103G.2242

Note 4

in a contested-case proceeding. Board Order, Kells (BWSR) v. City of Rochester, App.1999, 597 N.W.2d 332.

103G.2243. Local comprehensive wetland protection and management plans

Subdivision 1. General requirements; notice and participation. (a) As an alternative to the rules adopted under section 103G.2242, subdivision 1, and the public value criteria established or approved under section 103B.3355, a comprehensive wetland protection and management plan may be developed by a local government unit, or one or more local government units operating under a joint powers agreement, provided that:

(1) a notice is made at the beginning of the planning process to the board, the commissioner of natural resources, the pollution control agency, the commissioner of agriculture, local government units, and local citizens to actively participate in the development of the plan; and

(2) the plan is implemented by ordinance as part of the local government's official controls under chapter 394, for a county; chapter 462, for a city; chapter 366, for a town; and by rules adopted under chapter 103D, for a watershed district; and chapter 103B, for a watershed management organization.

(b) An organization that is invited to participate in the development of the local plan, but declines to do so and fails to participate or to provide written comments during the local review process, waives the right during board review to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan.

Subd. 2. Plan contents. A comprehensive wetland protection and management plan may:

(1) provide for classification of wetlands in the plan area based on:

(i) an inventory of wetlands in the plan area;

(ii) an assessment of the wetland functions listed in section 103B.3355, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board under that section; and

(iii) the resulting public values;

(2) vary application of the sequencing standards in section 103G.222, subdivision 1, paragraph (b), for projects based on the classification and criteria set forth in the plan;

(3) vary the replacement standards of section 103G.222, subdivision 1, paragraphs (f) and (g), based on the classification and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan, and so long as:

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

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

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

(5) in a greater than 80 percent area, based on the classification and criteria set forth in the plan, expand the application of the exemptions in section 103G.2241, subdivision 1, paragraph (a), clause (4), to also include nonagricultural land, provided there is no net loss of wetland values.

WATERS OF THE STATE

WATERS OF THE STATE

§ 103G.2372

Subd. 3. Board review and approval; mediation; judicial review. (a) The plan is deemed approved 60 days after the local government submits the final plan to the board, unless the board disagrees with the plan as provided in paragraph (d).

(b) The board may not disapprove a plan if the board determines the plan meets the requirements of this section.

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

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

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

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

Subd. 4. Effective date; replacement decisions. (a) The plan becomes effective as provided in subdivision 3, paragraphs (d) to (f), and after adoption of the plan into the official controls of the local government.

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

Subd. 5. Plan amendments. Amendments to the plan become effective upon completion of the same process required for the original plan.

Subd. 6. Water planning processes apply. Except as otherwise provided for in this section, all other requirements relating to development of the plan must be consistent with the water plan processes under sections 103B.231 and 103B.311.

Amended by Laws 1997, c. 2, § 9; Laws 1998, c. 312, § 5.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 2, was a corrections bill which, by its title, provided for the correction of miscellaneous oversights, inconsistencies, ambiguities, unintended results, and technical errors of a noncontro-

versial nature. Section 9, in subd. 2, cl. (3)(ii), inserted the reference to § 103G.2242, and in subd. 3, par. (f), substituted "this section" for "this subdivision".

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 waters are located or the illegal activity occurred.

Subd. 3. Restitution. The court may, as part of 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.

Amended by Laws 2000, c. 382, § 15, eff. April 14, 2000.

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).

Amended by Laws 2000, c. 382, § 16, eff. April 14, 2000.

WORK AFFECTING PUBLIC WATERS

103G.245. Work in public waters

Subdivision 1. Permit requirement. Except as provided in subdivisions 2, 11, and 12, the state, a political subdivision of the state, a public or private corporation, or a person must have a public waters work permit to:

- (1) construct, reconstruct, remove, abandon, transfer ownership of, or make any change in a reservoir, dam, or waterway obstruction on public waters; or
- (2) change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters.

Subd. 2. Exceptions. A public waters work permit is not required for:

- (1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E; or

- (2) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters.

Subd. 3. Permit application. Application for a public waters work permit must be in writing to the commissioner on forms prescribed by the commissioner. The commissioner may issue a state general permit to a governmental subdivision or to the general public for classes of activities having minimal impact upon public waters under which more than one project may be conducted under a single permit.

Subd. 4. Structures in or adjacent to public waters. (a) The following definitions apply to this subdivision:

- (1) "boathouse" means a floating structure that is moored by spuds, cables, ropes, anchors, or chains that may be intended for habitation and has walls, a roof, and either an open well for boats or a floor from wall to wall and does not include houseboats; and

- (2) "houseboat" means a motorboat that has either a pontoon or a flat-bottomed hull configuration, and a permanent enclosed superstructure housing, at a minimum, built-in sleeping, cooking, and toilet facilities.

(b) The commissioner, subject to the approval of the county board, may grant and prescribe terms and conditions for granting public waters work permits to establish, construct, maintain, and control wharves, docks, piers, levees, breakwaters, basins, canals, and hangars in or adjacent to public waters of the state, except within the corporate limits of a municipality.

(c) Boathouses are prohibited on public waters of Minnesota, except as allowed by paragraph (d).

(d) The commissioner may issue a public waters work permit for boathouses only:

- (1) in areas of historic use for such structures, as determined by the commissioner;
- (2) when approved by the local government unit; and
- (3) where the boathouse is in existence on public waters prior to January 1, 1997.

(e) A boathouse in existence on public waters prior to January 1, 1997, may be repaired or replaced, provided that the repairs or replacement are consistent with the permit issued by the commissioner under paragraph (d).

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

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

(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, and 103G.222 to 103G.2373, and rules adopted pursuant to these same sections in the public waters work permit.

Subd. 6. Conformance with water and related land resource management plans. A public waters work permit may not be issued under this section if the project does not conform to state, regional, and local water and related land resources management plans.

Subd. 7. Effect on environment and mitigation. (a) A public waters work permit may be issued only if the project will involve a minimum encroachment, change, or damage to the environment, particularly the ecology of the waterway.

(b) If a major change in the resource is justified, public waters work permits must include provisions to compensate for the detrimental aspects of the change.

Subd. 8. Excavation in public waters. Public waters work permits for projects that involve excavation in the beds of public waters may be granted only if:

- (1) the area where the excavation will take place is covered by a shoreland zoning ordinance approved by the commissioner;
- (2) the work under the permit is consistent with the shoreland zoning ordinance; and
- (3) the permit includes provisions for the deposition of excavated materials.

Subd. 9. Project affecting floodwaters. (a) A public waters work permit for a project affecting floodwaters may be granted only if:

- (1) the area covered by the public waters work permit is governed by a floodplain management ordinance approved by the commissioner; and

(2) the conduct authorized by the public waters work permit is consistent with the floodplain management ordinance, if the commissioner has determined that enough information is available for the adoption of a floodplain ordinance.

(b) A public waters work permit involving the control of floodwaters by structural means, such as dams, dikes, levees, and channel improvements, may be granted only after the commissioner has considered all other flood damage reduction alternatives. In developing a policy on placing emergency levees along the banks of public waters under emergency flood conditions, the commissioner shall consult and cooperate with the office of emergency services.

Subd. 10. Change of level of public waters. (a) A public waters work permit that will change the level of public waters may not be issued unless:

(1) the shoreland adjacent to the waters to be changed is governed by a shoreland zoning ordinance approved by the commissioner; and

(2) the change in water level is consistent with the shoreland zoning ordinance.

(b) Standards and procedures for use in deciding the level of public waters must ensure that the rights of all persons are protected when public water levels are changed and must provide for:

(1) technical advice to persons involved;

(2) establishing alternatives to help local agencies resolve water level conflicts; and

(3) mechanics necessary for local resolution of water problems within the state guidelines.

Subd. 11. Emergency repairs. (a) The owner of a dam, reservoir, control structure, or waterway obstruction may make repairs that are immediately necessary in case of emergency without a public waters work permit under subdivision 1. The owner must immediately notify the commissioner of the emergency and of the emergency repairs being made. The owner must apply for a public waters work permit for the emergency repairs and necessary permanent repairs as soon as practicable.

(b) This subdivision does not apply to routine maintenance not affecting the safety of the structures.

(c) If the commissioner declares there is an emergency and repairs or remedial action are immediately necessary to safeguard life and property, the repairs, remedial action, or both, must be started immediately by the owner.

Subd. 12. Operation of structure prior to permit requirement. The owner of a dam, reservoir, control structure, or waterway obstruction constructed before a public waters work permit was required by law must maintain and operate the dam, reservoir, control structure, or waterway obstruction in a manner approved and prescribed by rule by the commissioner.

Amended by Laws 1997, c. 247, § 1, eff. July 1, 1997; Laws 2000, c. 382, § 17.

Notes of Decisions

3. Permit authority

Commissioner of Natural Resources was entitled to deference in his interpretation of statutory mandate that person have public-waters work permit to change course of public waters, and, thus, Commissioner, who determined that permit requirement would not be imposed on watershed district's

project involving water above ordinary high water level of lake, was not clearly compelled by law to make permit decision in such case. Pelican Group of Lakes Imp. Dist. v. Minnesota Dept. of Natural Resources, App.1999, 589 N.W.2d 517, review denied.

WATER DIVERSION AND APPROPRIATION

103G.271. Appropriation and use of waters

Subdivision 1. Permit required. (a) Except as provided in paragraph (b), the state, a person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state may not appropriate or use waters of the state without a water use permit from the commissioner.

(b) This section does not apply to use for a water supply by less than 25 persons for domestic purposes.

(c) The commissioner may issue a state general permit for temporary appropriation of water to a governmental subdivision or to the general public for classes of activities that have minimal impact upon waters of the state. The general permit may authorize more than one project and the appropriation or use of more than one source of water. Water use permit processing fees and reports required under subdivision 6 and section 103G.281, subdivision 3, are required for each project or water source that is included under a general permit, except that no fee or report is required for uses totaling less than 15,000,000 gallons annually.

Subd. 2. Permits must be consistent with state and local plans. A water use permit may not be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans if the regional and local plans are consistent with statewide plans.

Subd. 3. Permit restriction during summer months. The commissioner must not modify or restrict the amount of appropriation from a groundwater source authorized in a water use permit issued to irrigate agricultural land under section 103G.295, subdivision 2, between May 1 and October 1, unless the commissioner determines the authorized amount of appropriation endangers a domestic water supply.

Subd. 4. Minimum use exemption and local approval of low use permits. (a) Except for local permits under section 103B.211, subdivision 4, a water use permit is not required for the appropriation and use of less than a minimum amount prescribed by the commissioner by rule.

(b) Water use permits for more than the minimum amount but less than an intermediate amount prescribed by rule must be processed and approved at the municipal, county, or regional level based on rules adopted by the commissioner.

(c) The rules must include provisions for reporting to the commissioner the amounts of water appropriated under local permits.

Subd. 4a. Mt. Simon-Hinckley aquifer. (a) The commissioner may not issue new water use permits that will appropriate water from the Mt. Simon-Hinckley aquifer in a metropolitan county, as defined in section 473.121, subdivision 4, unless the appropriation is for potable water use, there are no feasible or practical alternatives to this source, and a water conservation plan is incorporated with the permit.

(b) The commissioner shall terminate all permits authorizing appropriation and use of water from the Mt. Simon-Hinckley aquifer for once-through systems in a metropolitan county, as defined in section 473.121, subdivision 4, by December 31, 1992.

Subd. 5. Prohibition on once-through water use permits. (a) The commissioner may not, after December 31, 1990, issue a water use permit to increase the volume of appropriation from a groundwater source for a once-through cooling system using in excess of 5,000,000 gallons annually.

(b) Except as provided in paragraph (c), once-through system water use permits using in excess of 5,000,000 gallons annually, must be terminated by the commissioner by the end of their design life but not later than December 31, 2010. Existing once-through systems are required to convert to water efficient alternatives within the design life of existing equipment.

(c) Paragraph (b) does not apply where groundwater appropriated for use in a once-through system is subsequently discharged into a wetland or public waters wetland owned or leased by a nonprofit corporation if:

(1) the membership of the corporation includes a local government unit;

(2) the deed or lease requires that the area containing the wetland or public waters wetland be maintained as a nature preserve;

(3) public access is allowed consistent with the area's status as a nature preserve; and

(4) by January 1, 2003, the permittee incurs costs of developing the nature preserve and associated facilities that, when discounted to 1992 dollars, exceed twice the projected cost, as

determined by the commissioner, of the conversion required in paragraph (b), discounted to 1992 dollars.

The costs incurred under clause (4) may include preparation of plans and designs; site preparation; construction of wildlife habitat structures; planting of trees and other vegetation; installation of signs and markers; design and construction of trails, docks, and access structures; and design and construction of interpretative facilities. The permittee shall submit an estimate of the cost of the conversion required in paragraph (b) to the commissioner by January 1, 1993, and shall annually report to the commissioner on the progress of the project and the level of expenditures.

Subd. 5a. Maintenance of surface water levels. Except as provided in subdivision 5, paragraph (c), the commissioner shall, by January 31, 1994, revoke all existing permits, and may not issue new permits, for the appropriation or use of groundwater in excess of 10,000,000 gallons per year for the primary purpose of maintaining or increasing surface water levels in the seven-county metropolitan area and in other areas of concern as determined by the commissioner. This subdivision does not apply until January 1, 1998, to a municipality that, by January 1, 1994, submits a plan acceptable to the commissioner for maintaining or increasing surface water levels using sources other than groundwater.

Subd. 6. Water use permit processing fee. (a) Except as described in paragraphs (b) to (f), a water use permit processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

- (1) 0.05 cents per 1,000 gallons for the first 50,000,000 gallons per year;
- (2) 0.10 cents per 1,000 gallons for amounts greater than 50,000,000 gallons but less than 100,000,000 gallons per year;
- (3) 0.15 cents per 1,000 gallons for amounts greater than 100,000,000 gallons but less than 150,000,000 gallons per year;
- (4) 0.20 cents per 1,000 gallons for amounts greater than 150,000,000 gallons but less than 200,000,000 gallons per year;
- (5) 0.25 cents per 1,000 gallons for amounts greater than 200,000,000 gallons but less than 250,000,000 gallons per year;
- (6) 0.30 cents per 1,000 gallons for amounts greater than 250,000,000 gallons but less than 300,000,000 gallons per year;
- (7) 0.35 cents per 1,000 gallons for amounts greater than 300,000,000 gallons but less than 350,000,000 gallons per year;
- (8) 0.40 cents per 1,000 gallons for amounts greater than 350,000,000 gallons but less than 400,000,000 gallons per year; and
- (9) 0.45 cents per 1,000 gallons for amounts greater than 400,000,000 gallons per year.

(b) For once-through cooling systems, a water use processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

- (1) for nonprofit corporations and school districts, 15.0 cents per 1,000 gallons; and
 - (2) for all other users, 20 cents per 1,000 gallons.
- (c) The fee is payable based on the amount of water appropriated during the year and, except as provided in paragraph (f), the minimum fee is \$50.
- (d) For water use processing fees other than once-through cooling systems:
- (1) the fee for a city of the first class may not exceed \$175,000 per year;
 - (2) the fee for other entities for any permitted use may not exceed:
 - (i) \$35,000 per year for an entity holding three or fewer permits;
 - (ii) \$50,000 per year for an entity holding four or five permits;
 - (iii) \$175,000 per year for an entity holding more than five permits;

(3) the fee for agricultural irrigation may not exceed \$750 per year;

(4) the fee for a municipality that furnishes electric service and cogenerates steam for home heating may not exceed \$10,000 for its permit for water use related to the cogeneration of electricity and steam; and

(5) no fee is required for a project involving the appropriation of surface water to prevent flood damage or to remove flood waters during a period of flooding, as determined by the commissioner.

(e) Failure to pay the fee is sufficient cause for revoking a permit. A penalty of two percent per month calculated from the original due date must be imposed on the unpaid balance of fees remaining 30 days after the sending of a second notice of fees due. A fee may not be imposed on an agency, as defined in section 16B.01, subdivision 2, or federal governmental agency holding a water appropriation permit.

(f) The minimum water use processing fee for a permit issued for irrigation of agricultural land is \$10 for years in which:

- (1) there is no appropriation of water under the permit; or
- (2) the permit is suspended for more than seven consecutive days between May 1 and October 1.

Subd. 6a. Payment of fees for past unpermitted appropriations. An entity that appropriates water without a required permit under subdivision 1 must pay the applicable water use permit processing fee specified in subdivision 6 for the period during which the unpermitted appropriation occurred. This fee is in addition to any other fee or penalty assessed.

Subd. 7. Transfer of permit. A water use permit may be transferred to a successive owner of real property if the permittee conveys the real property where the source of water is located. The new owner must notify the commissioner immediately after the conveyance and request transfer of the permit.

Amended by Laws 1997, c. 104, § 1, eff. May 1, 1997; Laws 1998, c. 401, § 38, eff. April 22, 1998; Laws 1999, c. 231, § 128.

GENERAL PERMIT PROCEDURE

103G.301. General permit application procedures

Subdivision 1. Application documentation. (a) An application for a permit must be accompanied by:

- (1) maps, plans, and specifications describing the proposed appropriation and use of waters;
- (2) the changes, additions, repairs, or abandonment proposed to be made;
- (3) the waters of the state affected; and
- (4) other data the commissioner may require.

(b) The commissioner may require a statement of the effect the actions proposed in the permit application will have on the environment, including:

- (1) anticipated changes in water and related land resources;
- (2) unavoidable but anticipated detrimental effects; and
- (3) alternatives to the actions proposed in the permit application, including conservation measures to improve water use efficiencies and reduce water demand.

Text of subd. 2 effective until July 1, 2001.

Subd. 2. Permit application fees. (a) An application for a permit authorized under this chapter, and each request to amend or transfer an existing permit, must be accompanied by a permit application fee to defray the costs of receiving, recording, and processing the application or request to amend or transfer.

(b) The application fee for a permit to appropriate water, a permit to construct or repair a dam that is subject to dam safety inspection, a state general permit, or to apply for the state water bank program is \$75. The application fee for a permit to work in public waters or to divert waters for mining must be at least \$75, but not more than \$500, in accordance with a schedule of fees adopted under section 16A.1285.

Text of subd. 2 effective July 1, 2001.

Subd. 2. Permit application fees. An application for a permit authorized under this chapter, and each request to amend or transfer an existing permit, must be accompanied by a permit application fee to defray the costs of receiving, recording, and processing the application or request to amend or transfer.

Subd. 3. Field inspection fees. (a) In addition to the application fee, the commissioner may charge a field inspection fee for:

- (1) projects requiring a mandatory environmental assessment under chapter 116D;
- (2) projects undertaken without a required permit or application; and
- (3) projects undertaken in excess of limitations established in an issued permit.

(b) The fee must be at least \$100 but not more than actual inspection costs.

(c) The fee is to cover actual costs related to a permit applied for under this chapter or for a project undertaken without proper authorization.

(d) The commissioner shall establish a schedule of field inspection fees under section 16A.1285. The schedule must include actual costs related to field inspection, including investigations of the area affected by the proposed activity, analysis of the proposed activity, consultant services, and subsequent monitoring, if any, of the activity authorized by the permit.

Subd. 4. Refund of fees prohibited. A permit application or field inspection fee may not be refunded for any reason, even if the application is denied or withdrawn.

Subd. 5. State and federal agencies exempt from fee. A permit application or field inspection fee may not be imposed on any state agency, as defined in section 16B.01, or federal governmental agency applying for a permit.

Subd. 5a. Town fees limited. Notwithstanding this section or any other law, no permit application or field inspection fee charged to a town in connection with the construction or alteration of a town road, bridge, or culvert shall exceed \$100.

Subd. 6. Filing application. (a) An application for a permit must be filed with the commissioner and if the proposed activity for which the permit is requested is within a municipality, or is within or affects a watershed district or a soil and water conservation district, a copy of the application with maps, plans, and specifications must be served on the mayor of the municipality, the secretary of the board of managers of the watershed district, and the secretary of the board of supervisors of the soil and water conservation district.

(b) If the application is required to be served on a local governmental unit under this subdivision, proof of service must be included with the application and filed with the commissioner.

Subd. 7. Recommendation of local units of government. (a) If the proposed activity for which the permit is requested is within a municipality, or is within or affects a watershed district or a soil and water conservation district, the commissioner may obtain a written recommendation of the managers of the district and the board of supervisors of the soil and water conservation district or the mayor of the municipality before issuing or denying the permit.

(b) The managers, supervisors, or mayor must file a recommendation within 30 days after receiving of a copy of the application for permit.

Amended by Laws 1999, c. 250, art. 3, § 9, eff. July 1, 2001.

Historical and Statutory Notes

2000 Legislation

Laws 2000, c. 488, art. 12, § 23, effective May 16, 2000, provides that Laws 1999, c. 250, art. 3,

does not repeal rules or fees in effect on the day before July 1, 2001, the effective date of Laws 1999, c. 250, art. 3.

SUNKEN LOG RECOVERY

103G.650. Recovering sunken logs on inland waters

Subdivision 1. Definitions. (a) Unless the language or context clearly indicates that a different meaning is indicated, the following terms, for the purposes of this section, shall have the meanings given to them.

(b) "District office" means the office of the area forest supervisor, unless otherwise stipulated in a lease issued under this section.

(c) "Inland waters" means navigable bodies of water within the boundaries of this state, excluding boundary lakes and boundary rivers.

(d) "Log" means a portion of the trunk of a felled tree that has not been further processed for any end use.

(e) "Officer" means a forest officer, conservation officer, or other peace officer.

(f) "Person" means a natural person, including a person acting in a representative capacity, or a corporation, firm, or association of whatever nature or kind.

(g) "Submerged lands" means beds of navigable waters below the low water mark.

Subd. 2. Title to sunken logs and historical artifacts. Notwithstanding section 16B.25, title and ownership of a log or historical artifact that rests for more than one year on submerged land owned by the state in inland waters is considered abandoned property that has forfeited to the state.

Subd. 3. Application to remove sunken logs. A person who wishes to raise and remove logs that are resting on submerged lands owned by the state and that are located in inland waters shall make application to the commissioner for a lease. A person may not hold more than three leases at one time. Each lease must be for a specific lake or river. A resident applicant shall include with the application a fee of \$500. A nonresident applicant shall include a fee of \$2,500. The applicant shall:

(1) identify the inland lake or river where the logs will be raised;

(2) identify the submerged land area requested for the lease by providing the section, township, and range in which the inland water is located;

(3) specify the methods to be used in raising the sunken logs, including any techniques with the potential to disturb lake bed material;

(4) provide evidence of a general liability insurance policy that names the state as a coinsured party and that is in force for the lease with limits of at least \$300,000 per occurrence and \$1,000,000 in aggregate; and

(5) include any additional information required by the commissioner.

Subd. 4. Review of applications. The commissioner shall review and approve applications in order by time and date received to prevent two or more applications being approved for the same lease. The commissioner shall immediately notify the Minnesota historical society of each application received. The commissioner shall publish notice of each application in the State Register and allow 30 days for public comment. Within 60 days after the time date stamp of receipt, the commissioner shall either approve, modify and approve, or deny an application. In determining whether to approve an application, the commissioner shall consider:

(1) whether the project requires a permit under section 103G.245;

(2) whether the proposed project may affect public rights in navigable waters;

(3) whether the proposed project is subject to any requirements arising under federal law; and

(4) whether the project meets ecological criteria for protection of fish, wildlife, and native plants and their habitats.

Subd. 5. Lease terms. (a) The terms and conditions in this subdivision must be specified in leases issued under this section.

(b) A lease is effective for three years and is not transferable. A lease may be renewed within 90 days of expiration for a fee of \$50.

(c) Within one year after the effective date of the lease, the lessee shall commence operations to recover the logs covered by the lease or the lease must be canceled.

(d) The lease must specify the lake or river where the sunken logs may be raised. No lake or river may be covered by more than one lease under this section unless the water body is located in more than one county, in which case one lease may be issued in each county.

(e) The lessee shall comply with all conditions attached to the lease by the commissioner to protect the public rights in navigable water, ensure compliance with federal requirements, and protect aquatic habitats.

(f) The lessee shall only recover logs that are submerged at a water depth of 20 feet or more. The lessee is entitled to ownership of only the sunken logs recovered during the time covered by the lease from submerged lands described in the lease.

(g) The location where the recovered logs are deposited on shore is subject to approval by the commissioner but in no case may the operations interfere with the public's use of public accesses.

(h) The lessee shall plainly place the number of the lease on all logs recovered to adequately identify the logs from the time they are hauled onto shore until they are delivered to the manufacturing facility where they will be processed.

(i) The commissioner reserves the right to revoke the lease for failure to follow the terms and conditions of the lease.

(j) The only acceptable method of recovery is by winching so as to minimize disturbance of lake or riverbed material.

(k) The commissioner shall bill the lessee for the value of the recovered logs based on a rate of 25 percent of the weighted average selling price for all logs sold from state lands for the preceding 12 months.

(l) If the commissioner determines that use of the lease area will interfere with the present or future management objectives of the commissioner, a lease may be canceled upon 21 business days' written notice from the commissioner to the lessee.

(m) The lessee shall indemnify the commissioner against all claims, damages, costs, and expenses, including attorney fees, arising either from reclamation or from any negligence on the part of the lessee.

(n) All divers used in recovery must be certified by the National Association of Scuba Diving Schools or the Professional Association of Diving Instructors.

(o) A lessee must notify personnel at the appropriate department district office five working days before raising submerged logs.

(p) The commissioner and staff have access to leased premises, recovery vehicles, and land vehicles for inspection at any and all reasonable times. Failure to comply must result in immediate suspension of recovery and loss of the lease.

(q) It is the responsibility of the lessee to notify the Minnesota historical society before commencing log removal. Upon locating historic items, the lessee must notify the Minnesota historical society within one business day. The historical society shall then make a determination on the disposition of the items found. The staff of the historical society shall have access to leased premises, recovery vehicles, and land vehicles for inspection at any and all reasonable times. Failure to comply must result in immediate and permanent suspension of all leases held by the lessee.

(r) An officer shall enforce the terms and conditions of a lease issued under this section.

(s) If the lessee finds what the lessee reasonably believes to be a pollutant or contaminant, the lessee shall contact the pollution control agency within 24 hours.

(t) If the lessee recovers a log with an American Indian tribal mark or brand, the lessee shall notify the nearest tribal government authority within five business days.

Subd. 6. Disposition of revenue. Money collected under this section must be deposited in the state treasury and credited as follows:

(1) application fees must be credited to the general fund;

(2) lease proceeds must be credited to the game and fish fund, unless the submerged lands are permanent school fund lands; and

(3) lease proceeds for leases of submerged lands that are permanent school fund lands must be credited to the permanent school fund.

Subd. 7. Penalties. (a) Recovery of sunken logs that are removed from submerged lands without a lease issued by the commissioner under this section is trespass as defined in section 90.301.

(b) After the first offense under this subdivision, a person may not apply for or work under a lease issued under this section to remove sunken logs for a period of one year.

(c) After the second offense under this subdivision, a person may not apply for or work under a lease issued under this section to remove sunken logs.

Laws 2000, c. 337, § 1, eff. June 1, 2000.

STREAMS

103G.705. Stream protection and improvement loan program

Subdivision 1. Loan program. (a) A political subdivision may apply to the commissioner on forms provided by the commissioner for a loan for up to 90 percent of the total local cost of a project to protect or improve a stream. The commissioner shall apportion loans according to the potential for prevention of immediate harm to the stream, the relative need for maintenance or improvements, the date of the application for the loan, and the availability of funds.

(b) By January 15 of each year, the commissioner must provide the legislature with a list of all applications received by the commissioner, the loan amounts requested, and a listing and explanation of the disposition of the applications.

(c) The commissioner must make the loan to the political subdivision in the amount determined by the commissioner and under the terms specified in this section. Loans made under this section do not require the approval of the electors of the political subdivision as provided in section 475.58 and do not constitute net debt for purposes of section 475.53 or any debt limitation provision of any special law or city charter.

(d) A loan made under this section must be repaid without interest over a period not to exceed ten years. The commissioner may charge an annual administrative fee to the political subdivision.

(e) A political subdivision receiving a loan made under this section must levy for the loan repayment beginning in the year the loan proceeds are received and succeeding years until the loan and the associated administrative costs are repaid. The levy must be for:

(1) the amount of the annual loan repayment and the associated administrative costs; or

(2) the amount of the annual loan repayment and administrative costs less the amount the political subdivision certifies it has received from other sources for the loan repayment.

Subd. 2. Stream protection and improvement fund. There is established in the state treasury a stream protection and redevelopment fund. All repayments of loans made and administrative fees assessed under subdivision 1 must be deposited in this fund. Interest earned on money in the fund accrues to the fund and money in the fund is appropriated to the

commissioner of natural resources for purposes of the stream protection and redevelopment program, including costs incurred by the commissioner to establish and administer the program.

Laws 1999, c. 231, § 129.

Chapter 103H

GROUNDWATER PROTECTION

GROUNDWATER QUALITY MONITORING	Section
Section	EVALUATION AND COMMON DETECTION OF POLLUTION
103H.175. Groundwater quality monitoring.	103H.275. Management of pollutants where groundwater is polluted.

GROUNDWATER QUALITY MONITORING

103H.175. Groundwater quality monitoring

Subdivision 1. Monitoring results to be submitted to the land management information center. The results of monitoring groundwater quality by state agencies and political subdivisions must be submitted to the land management information center.

Subd. 2. Computerized database. The land management information center shall maintain a computerized database of the results of groundwater quality monitoring in a manner that is accessible to the pollution control agency, department of agriculture, department of health, and department of natural resources. The center shall assess the quality and reliability of the data and organize the data in a usable format.

Subd. 3. Report. In each even-numbered year, the pollution control agency, in cooperation with other agencies participating in the monitoring of water resources, shall provide a draft report on the status of groundwater monitoring to the environmental quality board for review and then to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture as part of the report in section 103A.204.

Amended by Laws 1999, c. 86, art. 3, § 11.

EVALUATION AND COMMON DETECTION OF POLLUTION

103H.275. Management of pollutants where groundwater is polluted

Subdivision 1. Areas where groundwater pollution is detected. (a) If groundwater pollution is detected, a state agency or political subdivision that regulates an activity causing or potentially causing a contribution to the pollution identified shall promote implementation of best management practices to prevent or minimize the source of pollution to the extent practicable.

(b) The pollution control agency, or for agricultural chemicals and practices, the commissioner of agriculture may adopt water source protection requirements under subdivision 2 that are consistent with the goal of section 103H.001 and are commensurate with the groundwater pollution if the implementation of best management practices has proven to be ineffective.

(c) The water resources protection requirements must be:

(1) designed to prevent and minimize the pollution to the extent practicable;

(2) designed to prevent the pollution from exceeding the health risk limits; and

(3) submitted to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture.

Subd. 2. Adoption of water resource protection requirements. (a) The pollution control agency, or for agricultural chemicals and practices, the commissioner of agriculture shall adopt by rule water resource protection requirements that are consistent with the goal of section 103H.001 to prevent and minimize the pollution to the extent practicable. The proposed rule must be submitted to the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture before adoption. The water resource protection requirements must be based on the use and effectiveness of best management practices, the product use and practices contributing to the pollution detected, economic factors, availability, technical feasibility, implementability, and effectiveness. The water resource protection requirements may be adopted for one or more pollutants or a similar class of pollutants. A water resource protection requirement may not be adopted before January 1, 1991.

(b) Before the water resource protection requirements are adopted, the pollution control agency or the commissioner of agriculture for agricultural chemicals and practices must notify affected persons and businesses for comments and input in developing the water resource protection requirements.

(c) Unless the water resource protection requirements are to cover the entire state, the water resource protection requirements are only effective in areas designated by the commissioner of the pollution control agency by order or for agricultural chemicals and practices in areas designated by the commissioner of agriculture by order. The procedures for issuing the order and the effective date of the order must be included in the water resource protection requirements rule.

(d) The water resource protection requirements rule must contain procedures for notice to be given to persons affected by the rule and order of the commissioner. The procedures may include notice by publication, personal service, and other appropriate methods to inform affected persons of the rule and commissioner's order.

(e) A person who is subject to a water resource protection requirement may apply to the pollution control agency, or for agricultural chemicals and practices the commissioner of agriculture, and suggest an alternative protection requirement. Within 60 days after receipt, the agency or commissioner of agriculture must approve or deny the request. If the pollution control agency or commissioner of agriculture approves the request, an order must be issued approving the alternative protection requirement.

(f) A person who violates a water resource protection requirement relating to pollutants, other than agricultural chemicals, is subject to the penalties for violating a rule adopted under chapter 116. A person who violates a water resource protection requirement relating to agricultural chemicals and practices is subject to the penalties for violating a rule adopted under chapter 18D.

Amended by Laws 1999, c. 86, art. 3, § 12.

Chapter 103I

WELLS, BORINGS, AND UNDERGROUND USES

Section	Section
103I.005. Definitions.	WELL SEALING
JURISDICTION OVER WELLS AND BORINGS	103I.301. Well sealing requirements.
103I.101. Powers and duties of the commissioner of health.	103I.341. Collection and enforcement of well sealing costs.
103I.105. Advisory council on wells and borings.	ELEVATOR SHAFT BORINGS
WELL CONSTRUCTION AND OWNERSHIP	103I.401. Elevator shaft borings.
103I.205. Well construction.	LICENSING AND REGISTRATION
103I.208. Notification filing fees and permit fees.	103I.501. Licensing and regulation of wells and borings.
103I.235. Real property sale; disclosure of location of wells.	103I.525. Well contractor's license.

WELLS, BORINGS, AND UNDERGROUND USES

Section	Section
103I.531. Limited well/boring contractor's license.	103I.541. Monitoring well contractors.
103I.535. Elevator shaft contractor's license.	VERTICAL HEAT EXCHANGERS
	103I.641. Vertical heat exchangers.

103I.005. Definitions

Subdivision 1. Applicability. The definitions in this chapter apply to this chapter.

Subd. 2. Boring. "Boring" means a hole or excavation that is not used to extract water and includes exploratory borings, environmental bore holes, vertical heat exchangers, and elevator shafts.

Subd. 3. Commissioner. "Commissioner" means the commissioner of health.

Subd. 4. Department. "Department" means the department of health.

Subd. 4a. Dewatering well. "Dewatering well" means a nonpotable well used to lower groundwater levels to allow for construction or use of underground space. A dewatering well does not include:

- (1) a well or dewatering well 25 feet or less in depth for temporary dewatering during construction; or
- (2) a well used to lower groundwater levels for control or removal of groundwater contamination.

Subd. 5. Drive point well. "Drive point well" means a well constructed by forcing a pointed well screen, attached to sections of pipe, into the ground with the screen and casing forced or driven into the ground with a hammer, maul, or weight.

Subd. 6. Elevator shaft. "Elevator shaft" means a bore hole, jack hole, drilled hole, or excavation constructed to install an elevator shaft or hydraulic cylinder.

Subd. 7. Elevator shaft contractor. "Elevator shaft contractor" means a person with an elevator shaft contractor's license issued by the commissioner.

Subd. 8. Environmental bore hole. "Environmental bore hole" means a hole or excavation in the ground that penetrates a confining layer or is greater than 25 feet in depth and enters or goes through a water bearing layer and is used to monitor or measure physical, chemical, radiological, or biological parameters without extracting water. An environmental bore hole also includes bore holes constructed for vapor recovery or venting systems. An environmental bore hole does not include a well, elevator shaft, exploratory boring, or monitoring well.

Subd. 9. Exploratory boring. "Exploratory boring" means a surface drilling done to explore or prospect for oil, natural gas, kaolin clay, and metallic minerals, including iron, copper, zinc, lead, gold, silver, titanium, vanadium, nickel, cadmium, molybdenum, chromium, manganese, cobalt, zirconium, beryllium, thorium, uranium, aluminum, platinum, palladium, radium, tantalum, tin, and niobium, and a drilling or boring for petroleum.

Subd. 10. Explorer. "Explorer" means a person who has the right to drill an exploratory boring.

Subd. 11. Groundwater thermal exchange device. "Groundwater thermal exchange device" means a heating or cooling device that depends on extraction and reinjection of groundwater from an independent aquifer to operate.

Subd. 12. Limited well/boring contractor. "Limited well/boring contractor" means a person with a limited well/boring contractor's license issued by the commissioner.

Subd. 13. Limited well/boring sealing contractor. "Limited well/boring sealing contractor" means a person with a limited well/boring sealing contractor's license issued by the commissioner.

Subd. 14. Monitoring well. "Monitoring well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed to extract groundwater for

WELLS, BORINGS, AND UNDERGROUND USES

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physical, chemical, or biological testing. "Monitoring well" includes a groundwater quality sampling well.

Subd. 15. Monitoring well contractor. "Monitoring well contractor" means a person who is registered by the commissioner to construct monitoring wells.

Subd. 16. Person. "Person" means an individual, firm, partnership, association, or corporation or other entity including the United States government, any interstate body, the state, and any agency, department, or political subdivision of the state.

Subd. 17. Provisions of this chapter. "Provisions of this chapter" means the sections in this chapter and rules adopted by the commissioner under this chapter.

Subd. 18. Repealed by Laws 1991, c. 199, art. 2, § 29; Laws 1991, c. 355, § 54.

Subd. 19. Repealed by Laws 1990, c. 597, § 73, effective May 4, 1990.

Subd. 20. Vertical heat exchanger. "Vertical heat exchanger" means an earth-coupled heating or cooling device consisting of a sealed closed-loop piping system installed vertically in the ground to transfer heat to or from the surrounding earth with no discharge.

Subd. 21. Well. "Well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed if the excavation is intended for the location, diversion, artificial recharge, or acquisition of groundwater. Well includes monitoring wells, drive point wells, and dewatering wells. "Well" does not include:

- (1) an excavation by backhoe, or otherwise for temporary dewatering of groundwater for nonpotable use during construction, if the depth of the excavation is 25 feet or less;
- (2) an excavation made to obtain or prospect for oil, natural gas, minerals, or products of mining or quarrying;
- (3) an excavation to insert media to repressure oil or natural gas bearing formations or to store petroleum, natural gas, or other products;
- (4) an excavation for nonpotable use for wildfire suppression activities; or
- (5) borings.

Subd. 22. Well disclosure certificate. "Well disclosure certificate" means a certificate containing the requirements of section 103I.235, subdivision 1, paragraph (k).

Subd. 23. Well contractor. "Well contractor" means a person with a well contractor's license.

Subd. 23a. Well that is in use. A "well that is in use" means a well that operates on a daily, regular, or seasonal basis. A well in use includes a well that operates for the purpose of irrigation, fire protection, or emergency pumping.

Subd. 24. Wellhead protection area. "Wellhead protection area" means the surface and subsurface area surrounding a well or well field that supplies a public water system, through which contaminants are likely to move toward and reach the well or well field.

Amended by Laws 1999, c. 153, §§ 1 to 3; Laws 2000, c. 260, § 15.

JURISDICTION OVER WELLS AND BORINGS

103I.101. Powers and duties of the commissioner of health

Subdivision 1. Powers of commissioner. The commissioner has the powers reasonable and necessary to effectively exercise the authority granted by this chapter.

Subd. 2. Duties. The commissioner shall:

- (1) regulate the drilling, construction, modification, repair, and sealing of wells and borings;
- (2) examine and license well contractors, persons constructing, repairing, and sealing vertical heat exchangers, persons modifying or repairing well casings, well screens, or well diameters; constructing, repairing, and sealing unconventional wells such as drive point wells or dug wells; constructing, repairing, and sealing dewatering wells; sealing wells; installing

well pumps or pumping equipment; and excavating or drilling holes for the installation of elevator shafts or hydraulic cylinders;

- (3) register and examine monitoring well contractors;
- (4) license explorers engaged in exploratory boring and examine individuals who supervise or oversee exploratory boring;
- (5) after consultation with the commissioner of natural resources and the pollution control agency, establish standards for the design, location, construction, repair, and sealing of wells, elevator shafts, and borings within the state; and

(6) issue permits for wells, groundwater thermal devices, vertical heat exchangers, and excavation for holes to install elevator shafts or hydraulic cylinders.

Subd. 3. Procedures for permits. The commissioner shall establish procedures for application, approval, and issuance of permits by rule.

Subd. 4. Inspections by commissioner. The commissioner may inspect, collect water samples, and have access, at all reasonable times, to a well or boring site, including wells or borings drilled, sealed, or repaired.

Subd. 5. Commissioner to adopt rules. The commissioner shall adopt rules including:

- (1) issuance of licenses for:
 - (i) qualified well contractors, persons modifying or repairing well casings, well screens, or well diameters;
 - (ii) persons constructing, repairing, and sealing unconventional wells such as drive points or dug wells;
 - (iii) persons constructing, repairing, and sealing dewatering wells;
 - (iv) persons sealing wells;
 - (v) persons installing well pumps or pumping equipment and excavating holes for installing elevator shafts or hydraulic cylinders; and
 - (vi) persons constructing, repairing, and sealing vertical heat exchangers;
- (2) issuance of registration for monitoring well contractors;
- (3) establishment of conditions for examination and review of applications for license and registration;
- (4) establishment of conditions for revocation and suspension of license and registration;
- (5) establishment of minimum standards for design, location, construction, repair, and sealing of wells to implement the purpose and intent of this chapter;
- (6) establishment of a system for reporting on wells and borings drilled and sealed;
- (7) establishment of standards for the construction, maintenance, sealing, and water quality monitoring of wells in areas of known or suspected contamination;
- (8) establishment of wellhead protection measures for wells serving public water supplies;
- (9) establishment of procedures to coordinate collection of well data with other state and local governmental agencies;
- (10) establishment of criteria and procedures for submission of well logs, formation samples or well cuttings, water samples, or other special information required for and water resource mapping; and
- (11) establishment of minimum standards for design, location, construction, maintenance, repair, sealing, safety, and resource conservation related to borings, including exploratory borings as defined in section 103I.005, subdivision 9.

Until the commissioner adopts rules under this chapter to replace rules relating to wells and borings that were adopted under chapter 156A, the rules adopted under chapter 156A shall remain in effect.

Subd. 6. Fees for variances. The commissioner shall charge a nonrefundable application fee of \$120 to cover the administrative cost of processing a request for a variance or modification of rules adopted by the commissioner under this chapter.

Amended by Laws 1997, c. 203, art. 2, § 4; Laws 1999, c. 153, §§ 4, 5.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 203, art. 2, § 38, provides in part that § 4 (amending subd. 6) is effective July 1, 1998.

103I.105. Advisory council on wells and borings

(a) The advisory council on wells and borings is established as an advisory council to the commissioner. The advisory council shall consist of 18 voting members. Of the 18 voting members:

- (1) one member must be from the department of health, appointed by the commissioner of health;
- (2) one member must be from the department of natural resources, appointed by the commissioner of natural resources;
- (3) one member must be a member of the Minnesota geological survey of the University of Minnesota, appointed by the director;
- (4) one member must be a licensed exploratory borer;
- (5) one member must be a licensed elevator shaft contractor;
- (6) two members must be members of the public who are not connected with the business of exploratory boring or the well drilling industry;
- (7) one member must be from the pollution control agency, appointed by the commissioner of the pollution control agency;
- (8) one member must be from the department of transportation, appointed by the commissioner of transportation;
- (9) one member from the board of water and soil resources appointed by its chair;
- (10) one member must be a monitoring well contractor;
- (11) six members must be residents of this state appointed by the commissioner, who are actively engaged in the well drilling industry, with not more than two from the seven-county metropolitan area and at least four from other areas of the state who represent different geographical regions; and
- (12) one member must be a licensed vertical heat exchanger contractor or be certified by the International Ground Source Heat Pump Association and appointed by the commissioner.

(b) An appointee of the well drilling industry may not serve more than two consecutive terms.

(c) The appointees to the advisory council from the well drilling industry must:

- (1) have been residents of this state for at least three years before appointment; and
- (2) have at least five years' experience in the well drilling business.

(d) The terms of the appointed members and the compensation and removal of all members are governed by section 15.059, except section 15.059, subdivision 5, relating to expiration of the advisory council does not apply.

Amended by Laws 1999, c. 153, § 6.

WELL CONSTRUCTION AND OWNERSHIP

103I.205. Well construction

Subdivision 1. Notification required. (a) Except as provided in paragraphs (d) and (e), a person may not construct a well until a notification of the proposed well on a form prescribed by the commissioner is filed with the commissioner with the filing fee in section 103I.208. If after filing the well notification an attempt to construct a well is unsuccessful, a new notification is not required unless the information relating to the successful well has substantially changed.

(b) The property owner, the property owner's agent, or the well contractor where a well is to be located must file the well notification with the commissioner.

(c) The well notification under this subdivision preempts local permits and notifications, and counties or home rule charter or statutory cities may not require a permit or notification for wells unless the commissioner has delegated the permitting or notification authority under section 103I.111.

(d) A person who is an individual that constructs a drive point well on property owned or leased by the individual for farming or agricultural purposes or as the individual's place of abode must notify the commissioner of the installation and location of the well. The person must complete the notification form prescribed by the commissioner and mail it to the commissioner by ten days after the well is completed. A fee may not be charged for the notification. A person who sells drive point wells at retail must provide buyers with notification forms and informational materials including requirements regarding wells, their location, construction, and disclosure. The commissioner must provide the notification forms and informational materials to the sellers.

(e) A person may not construct a monitoring well until a permit is issued by the commissioner for the construction. If after obtaining a permit an attempt to construct a well is unsuccessful, a new permit is not required as long as the initial permit is modified to indicate the location of the successful well.

Subd. 2. Emergency permit and notification exemptions. The commissioner may adopt rules that modify the procedures for filing a well notification or well permit if conditions occur that:

- (1) endanger the public health and welfare or cause a need to protect the groundwater; or
- (2) require the monitoring well contractor, limited well/boring contractor, or well contractor to begin constructing a well before obtaining a permit or notification.

Subd. 3. Maintenance permit. (a) Except as provided under paragraph (b), a well that is not in use must be sealed or have a maintenance permit.

(b) If a monitoring well or a dewatering well is not sealed by 14 months after completion of construction, the owner of the property on which the well is located must obtain and annually renew a maintenance permit from the commissioner.

Subd. 4. License required. (a) Except as provided in paragraph (b), (c), or (d), section 103I.401, subdivision 2, or section 103I.601, subdivision 2, a person may not drill, construct, repair, or seal a well or boring unless the person has a well contractor's license in possession.

(b) A person may construct a monitoring well if the person:

- (1) is a professional engineer registered under sections 326.02 to 326.15 in the branches of civil or geological engineering;
- (2) is a hydrologist or hydrogeologist certified by the American Institute of Hydrology;
- (3) is a professional engineer registered with the board of architecture, engineering, land surveying, landscape architecture, and interior design;
- (4) is a geologist certified by the American Institute of Professional Geologists; or
- (5) meets the qualifications established by the commissioner in rule.

A person must register with the commissioner as a monitoring well contractor on forms provided by the commissioner.

(c) A person may do the following work with a limited well/boring contractor's license in possession. A separate license is required for each of the six activities:

- (1) installing or repairing well screens or pitless units or pitless adaptors and well casings from the pitless adaptor or pitless unit to the upper termination of the well casing;
- (2) constructing, repairing, and sealing drive point wells or dug wells;
- (3) installing well pumps or pumping equipment;
- (4) sealing wells;
- (5) constructing, repairing, or sealing dewatering wells; or
- (6) constructing, repairing, or sealing vertical heat exchangers.

(d) Notwithstanding other provisions of this chapter requiring a license or registration, a license or registration is not required for a person who complies with the other provisions of this chapter if the person is:

(1) an individual who constructs a well on land that is owned or leased by the individual and is used by the individual for farming or agricultural purposes or as the individual's place of abode; or

(2) an individual who performs labor or services for a contractor licensed or registered under the provisions of this chapter in connection with the construction, sealing, or repair of a well or boring at the direction and under the personal supervision of a contractor licensed or registered under the provisions of this chapter.

Subd. 5. At-grade monitoring wells. At-grade monitoring wells are authorized without variance and may be installed for the purpose of evaluating groundwater conditions or for use as a leak detection device. An at-grade monitoring well must be installed in accordance with the rules of the commissioner. The at-grade monitoring wells must be installed with an impermeable double locking cap approved by the commissioner and must be labeled monitoring wells.

Subd. 6. Distance requirements for sources of contamination. (a) A person may not place, construct, or install an actual or potential source of contamination any closer to a well than the isolation distances prescribed by the commissioner by rule unless a variance has been prescribed by rule.

(b) The commissioner shall establish by rule reduced isolation distances for facilities which have safeguards in accordance with sections 18B.01, subdivision 26, and 18C.005, subdivision 29.

Subd. 7. Well identification label required. After a well has been constructed, the person constructing the well must attach a label to the well showing the unique well number.

Subd. 8. Wells on property of another. A person may not construct or have constructed a well for the person's own use on the property of another until the owner of the property on which the well is to be located and the intended well user sign a written agreement that identifies which party will be responsible for obtaining all permits or filing notification, paying applicable fees and for sealing the well. If the property owner refuses to sign the agreement, the intended well user may, in lieu of a written agreement, state in writing to the commissioner that the well user will be responsible for obtaining permits, filing notification, paying applicable fees, and sealing the well. Nothing in this subdivision eliminates the responsibilities of the property owner under this chapter, or allows a person to construct a well on the property of another without consent or other legal authority.

Subd. 9. Report of work. Within 30 days after completion or sealing of a well or boring, the person doing the work must submit a verified report to the commissioner containing the information specified by rules adopted under this chapter.

Within 30 days after receiving the report, the commissioner shall send a copy of the report to the commissioner of natural resources, to the local soil and water conservation district where the well is located, and to the director of the Minnesota geological survey.

Amended by Laws 1999, c. 153, §§ 7, 8.

103I.208. Notification filing fees and permit fees

Subdivision 1. Well notification fee. The well notification fee to be paid by a property owner is:

- (1) for a new well, \$120, which includes the state core function fee;
- (2) for a well sealing, \$20 for each well, which includes the state core function fee, except that for monitoring wells constructed on a single property, having depths within a 25 foot range, and sealed within 48 hours of start of construction, a single fee of \$20; and
- (3) for construction of a dewatering well, \$120, which includes the state core function fee, for each well except a dewatering project comprising five or more wells shall be assessed a single fee of \$600 for the wells recorded on the notification.

Subd. 1a. State core function fee. The state core function fee to be collected by the state and delegated boards of health and used to support state core functions is:

- (1) for a new well, \$20; and
- (2) for a well sealing, \$5.

Subd. 2. Permit fee. The permit fee to be paid by a property owner is:

- (1) for a well that is not in use under a maintenance permit, \$100 annually;
- (2) for construction of a monitoring well, \$120, which includes the state core function fee;
- (3) for a monitoring well that is unsealed under a maintenance permit, \$100 annually;
- (4) for monitoring wells used as a leak detection device at a single motor fuel retail outlet, a single petroleum bulk storage site excluding tank farms, or a single agricultural chemical facility site, the construction permit fee is \$120, which includes the state core function fee, per site regardless of the number of wells constructed on the site, and the annual fee for a maintenance permit for unsealed monitoring wells is \$100 per site regardless of the number of monitoring wells located on site;
- (5) for a groundwater thermal exchange device, in addition to the notification fee for wells, \$120, which includes the state core function fee;
- (6) for a vertical heat exchanger, \$120;
- (7) for a dewatering well that is unsealed under a maintenance permit, \$100 annually for each well, except a dewatering project comprising more than five wells shall be issued a single permit for \$500 annually for wells recorded on the permit; and
- (8) for excavating holes for the purpose of installing elevator shafts, \$120 for each hole.

Amended by Laws 1997, c. 203, art. 2, § 5; Laws 1998, c. 407, art. 2, § 23; Laws 1999, c. 247, § 1.

Historical and Statutory Notes**1997 Legislation**

Laws 1997, c. 203, art. 2, § 38, provides in part that § 5 (amending this section) is effective July 1, 1998.

103I.235. Real property sale; disclosure of location of wells

Subdivision 1. Disclosure of wells to buyer. (a) Before signing an agreement to sell or transfer real property, the seller must disclose in writing to the buyer information about the status and location of all known wells on the property, by delivering to the buyer either a statement by the seller that the seller does not know of any wells on the property, or a disclosure statement indicating the legal description and county, and a map drawn from available information showing the location of each well to the extent practicable. In the disclosure statement, the seller must indicate, for each well, whether the well is in use, not in use, or sealed.

(b) At the time of closing of the sale, the disclosure statement information, name and mailing address of the buyer, and the quartile, section, township, and range in which each well

is located must be provided on a well disclosure certificate signed by the seller or a person authorized to act on behalf of the seller.

(c) A well disclosure certificate need not be provided if the seller does not know of any wells on the property and the deed or other instrument of conveyance contains the statement: "The Seller certifies that the Seller does not know of any wells on the described real property."

(d) If a deed is given pursuant to a contract for deed, the well disclosure certificate required by this subdivision shall be signed by the buyer or a person authorized to act on behalf of the buyer. If the buyer knows of no wells on the property, a well disclosure certificate is not required if the following statement appears on the deed followed by the signature of the grantee or, if there is more than one grantee, the signature of at least one of the grantees: "The Grantee certifies that the Grantee does not know of any wells on the described real property." The statement and signature of the grantee may be on the front or back of the deed or on an attached sheet and an acknowledgment of the statement by the grantee is not required for the deed to be recordable.

(e) This subdivision does not apply to the sale, exchange, or transfer of real property:

- (1) that consists solely of a sale or transfer of severed mineral interests; or
- (2) that consists of an individual condominium unit as described in chapters 515 and 515B.

(f) For an area owned in common under chapter 515 or 515B the association or other responsible person must report to the commissioner by July 1, 1992, the location and status of all wells in the common area. The association or other responsible person must notify the commissioner within 30 days of any change in the reported status of wells.

(g) For real property sold by the state under section 92.67, the lessee at the time of the sale is responsible for compliance with this subdivision.

(h) If the seller fails to provide a required well disclosure certificate, the buyer, or a person authorized to act on behalf of the buyer, may sign a well disclosure certificate based on the information provided on the disclosure statement required by this section or based on other available information.

(i) A county recorder or registrar of titles may not record a deed or other instrument of conveyance dated after October 31, 1990, for which a certificate of value is required under section 272.115, or any deed or other instrument of conveyance dated after October 31, 1990, from a governmental body exempt from the payment of state deed tax, unless the deed or other instrument of conveyance contains the statement made in accordance with paragraph (c) or (d) or is accompanied by the well disclosure certificate containing all the information required by paragraph (b) or (d). The county recorder or registrar of titles must not accept a certificate unless it contains all the required information. The county recorder or registrar of titles shall note on each deed or other instrument of conveyance accompanied by a well disclosure certificate that the well disclosure certificate was received. The notation must include the statement "No wells on property" if the disclosure certificate states there are no wells on the property. The well disclosure certificate shall not be filed or recorded in the records maintained by the county recorder or registrar of titles. After noting "No wells on property" on the deed or other instrument of conveyance, the county recorder or registrar of titles shall destroy or return to the buyer the well disclosure certificate. The county recorder or registrar of titles shall collect from the buyer or the person seeking to record a deed or other instrument of conveyance, a fee of \$20 for receipt of a completed well disclosure certificate. By the tenth day of each month, the county recorder or registrar of titles shall transmit the well disclosure certificates to the commissioner of health. By the tenth day after the end of each calendar quarter, the county recorder or registrar of titles shall transmit to the commissioner of health \$17.50 of the fee for each well disclosure certificate received during the quarter. The commissioner shall maintain the well disclosure certificate for at least six years. The commissioner may store the certificate as an electronic image. A copy of that image shall be as valid as the original.

(j) No new well disclosure certificate is required under this subdivision if the buyer or seller, or a person authorized to act on behalf of the buyer or seller, certifies on the deed or other instrument of conveyance that the status and number of wells on the property have not

changed since the last previously filed well disclosure certificate. The following statement, if followed by the signature of the person making the statement, is sufficient to comply with the certification requirement of this paragraph: "I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate." The certification and signature may be on the front or back of the deed or on an attached sheet and an acknowledgment of the statement is not required for the deed or other instrument of conveyance to be recordable.

(k) The commissioner in consultation with county recorders shall prescribe the form for a well disclosure certificate and provide well disclosure certificate forms to county recorders and registrars of titles and other interested persons.

(l) Failure to comply with a requirement of this subdivision does not impair:

(1) the validity of a deed or other instrument of conveyance as between the parties to the deed or instrument or as to any other person who otherwise would be bound by the deed or instrument; or

(2) the record, as notice, of any deed or other instrument of conveyance accepted for filing or recording contrary to the provisions of this subdivision.

Subd. 2. Liability for failure to disclose. Unless the buyer and seller agree to the contrary, in writing, before the closing of the sale, a seller who fails to disclose the existence or known status of a well at the time of sale and knew or had reason to know of the existence or known status of the well, is liable to the buyer for costs relating to sealing of the well and reasonable attorney fees for collection of costs from the seller, if the action is commenced within six years after the date the buyer closed the purchase of the real property where the well is located.

Amended by Laws 1999, c. 11, art. 3, § 6.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 2, art. 1, § 23, repealed Laws 1991, c. 292, art. 2, § 2, which purported to amend this section.

WELL SEALING

103L.301. Well sealing requirements

Subdivision 1. Wells and borings. (a) A property owner must have a well or boring sealed if:

(1) the well or boring is contaminated or may contribute to the spread of contamination;

(2) the well or boring was attempted to be sealed but was not sealed according to the provisions of this chapter; or

(3) the well or boring is located, constructed, or maintained in a manner that its continued use or existence endangers groundwater quality or is a safety or health hazard.

(b) A well that is not in use must be sealed unless the property owner has a maintenance permit for the well.

(c) The property owner must have a well or boring sealed by a registered or licensed person authorized to seal the well or boring, consistent with provisions of this chapter.

Subd. 2. Monitoring wells. The owner of the property where a monitoring well is located must have the monitoring well sealed when the well is no longer in use. The owner must have a well contractor, limited well/boring sealing contractor, or a monitoring well contractor seal the monitoring well.

Subd. 3. Dewatering wells. (a) The owner of the property where a dewatering well is located must have the dewatering well sealed when the dewatering well is no longer in use.

(b) A well contractor, limited well/boring sealing contractor, or limited dewatering well contractor shall seal the dewatering well.

Subd. 4. Sealing procedures. Wells and borings must be sealed according to rules adopted by the commissioner.

Subd. 5. Repealed by Laws 1990, c. 597, § 73, eff. May 4, 1990.

Subd. 6. Notification required. A person may not seal a well until a notification of the proposed sealing is filed as prescribed by the commissioner.

Amended by Laws 1999, c. 153, §§ 9, 10.

103L.341. Collection and enforcement of well sealing costs

Subdivision 1. Lien for sealing costs. The commissioner and the board of water and soil resources have a governmental services lien under section 514.67 for the costs of sealing a well or boring that the commissioner or board has contracted to be sealed under section 103L.315, subdivision 2; or 103L.335. The lien attaches to the real property where the well or boring is located. The lien is perfected by filing the lien with the county recorder or registrar of titles where the well or boring and the property are located and serving or mailing by return receipt a copy of the lien to the property owner.

Subd. 2. Enforcement of lien. The commissioner or the board of water and soil resources may enforce the lien in the manner provided for a judgment lien under chapter 550 or certify the amount to the county auditor, which must be assessed against the property and collected in the same manner as real estate taxes.

Subd. 3. Assessment of installments. (a) In lieu of certifying the entire amount to be collected, the commissioner or the board of water and soil resources may have the amount due assessed in seven or less equal annual installments plus interest due at the rate determined by the state court administrator for judgments under section 549.09.

(b) The interest due is an additional perfected lien on the property without further action by the commissioner or the board of water and soil resources.

(c) The interest and the installment due must be entered on the tax lists for the year and collected in the same manner as real estate taxes for that year by collecting one-half of the total of the installment and interest with and as part of the real estate taxes.

Subd. 4. Satisfaction of lien. The amount due and interest of a lien under this section may be paid at any time. When the amount of the lien including accrued interest is paid, the commissioner or board must execute a satisfaction of the lien and record the satisfaction with the county recorder or registrar of titles where the lien was filed.

Subd. 5. Appropriation of recovered costs. Costs of sealing wells recovered from property owners by the board of water and soil resources must be deposited in the state treasury and credited to the account from which the amounts were originally appropriated. The amounts are continuously appropriated to the board for sealing wells.

Amended by Laws 1997, c. 7, art. 1, § 24.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 7, was a corrections bill which, by its title, corrected erroneous, ambiguous, and omitted text and obsolete references; eliminated

certain redundant, conflicting, and superseded provisions; and made miscellaneous technical corrections.

ELEVATOR SHAFT BORINGS

103L.401. Elevator shaft borings

Subdivision 1. Permit required. (a) A person may not construct an elevator shaft until a permit for the hole or excavation is issued by the commissioner.

(b) The elevator shaft permit preempts local permits except local building permits, and counties and home rule charter or statutory cities may not require a permit for elevator shaft holes or excavations.

Subd. 2. License required. A person may not construct an elevator shaft unless the person possesses a well contractor's license or an elevator shaft contractor's license issued by the commissioner.

Subd. 3. Sealing. A well contractor or elevator shaft contractor must seal a hole or excavation that is no longer used for an elevator shaft. The sealing must be done according to rules adopted by the commissioner.

Subd. 4. Report. Within 30 days after completion or sealing of a hole or excavation for an elevator shaft, the person doing the work must submit a report to the commissioner on forms provided by the commissioner.

Amended by Laws 1997, c. 203, art. 2, § 6.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 203, art. 2, § 38, provides in part that § 6 (amending subd. 1) is effective July 1, 1998.

LICENSING AND REGISTRATION

103L.501. Licensing and regulation of wells and borings

(a) The commissioner shall regulate and license:

- (1) drilling, constructing, and repair of wells;
- (2) sealing of wells;
- (3) installing of well pumps and pumping equipment;
- (4) excavating, drilling, and sealing of holes for the installation of elevator shafts and hydraulic cylinders;
- (5) construction and sealing of environmental bore holes; and
- (6) construction, repair, and sealing of vertical heat exchangers.

(b) The commissioner shall examine and license well contractors, limited well/boring contractors, and elevator shaft contractors, and examine and register monitoring well contractors.

(c) The commissioner shall license explorers engaged in exploratory boring and shall examine persons who supervise or oversee exploratory boring.

Amended by Laws 1999, c. 153, § 11.

103L.525. Well contractor's license

Subdivision 1. Application. (a) A person must file an application and application fee with the commissioner to apply for a well contractor's license.

(b) The application must state the applicant's qualifications for the license, the equipment the applicant will use in the contracting, and other information required by the commissioner. The application must be on forms prescribed by the commissioner.

(c) A person may apply as an individual if the person:

- (1) is not the licensed well contractor representing a firm, sole proprietorship, partnership, association, corporation, or other entity including the United States government, any interstate body, the state and agency, department or political subdivision of the state; and
- (2) meets the well contractor license requirements under provisions of this chapter.

Subd. 2. Application fee. The application fee for a well contractor's license is \$50. The commissioner may not act on an application until the application fee is paid.

Subd. 3. Examination. After the commissioner has approved the application, the applicant must take an examination given by the commissioner.

Subd. 4. Issuance of license. If an applicant meets the experience requirements established by rule, passes the examination as determined by the commissioner, submits the bond under subdivision 5, and pays the license fee under subdivision 6, the commissioner shall issue a well contractor's license.

Subd. 5. Bond. (a) As a condition of being issued a well contractor's license, the applicant, except a person applying for an individual well contractor's license, must submit a corporate surety bond for \$10,000 approved by the commissioner. The bond must be conditioned to pay the state on unlawful performance of work regulated by this chapter in this state. The bond is in lieu of other license bonds required by a political subdivision of the state.

(b) From proceeds of the bond, the commissioner may compensate persons injured or suffering financial loss because of a failure of the applicant to properly perform work or duties.

Subd. 6. License fee. The fee for a well contractor's license is \$250, except the fee for an individual well contractor's license is \$50.

Subd. 7. Validity. A well contractor's license is valid until the date prescribed in the license by the commissioner.

Subd. 8. Renewal. (a) A licensee must file an application and a renewal application fee to renew the license by the date stated in the license.

(b) The renewal application fee shall be set by the commissioner under section 16A.1285.

(c) The renewal application must include information that the applicant has met continuing education requirements established by the commissioner by rule.

(d) At the time of the renewal, the commissioner must have on file all properly completed well reports, well sealing reports, reports of excavations to construct elevator shafts, well permits, and well notifications for work conducted by the licensee since the last license renewal.

Text of subd. 9 effective until July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

- (1) the licensee must include an additional late fee set by the commissioner under section 16A.1285; and
- (2) the licensee may not conduct activities authorized by the well contractor's license until the renewal application, renewal application fee, late fee, and all other information required in subdivision 8 are submitted.

Text of subd. 9 effective July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

- (1) the licensee must include an additional late fee set by the commissioner; and
- (2) the licensee may not conduct activities authorized by the well contractor's license until the renewal application, renewal application fee, late fee, and all other information required in subdivision 8 are submitted.

Amended by Laws 1999, c. 250, art. 3, § 10, eff. July 1, 2001.

Historical and Statutory Notes

2000 Legislation

Laws 2000, c. 488, art. 12, § 23, effective May 16, 2000, provides that Laws 1999, c. 250, art. 3,

does not repeal rules or fees in effect on the day before July 1, 2001, the effective date of Laws 1999, c. 250, art. 3.

103L.531. Limited well/boring contractor's license

Subdivision 1. Application. (a) A person must file an application and an application fee with the commissioner to apply for a limited well/boring contractor's license.

(b) The application must state the applicant's qualifications for the license, the equipment the applicant will use in the contracting, and other information required by the commissioner. The application must be on forms prescribed by the commissioner.

Subd. 2. Application fee. The application fee for a limited well/boring contractor's license is \$50. The commissioner may not act on an application until the application fee is paid.

Subd. 3. Examination. After the commissioner has approved the application, the applicant must take an examination given by the commissioner.

Subd. 4. Issuance of license. If an applicant meets the experience requirements established in rule, passes the examination as determined by the commissioner, submits the bond under subdivision 5, and pays the license fee under subdivision 6, the commissioner shall issue a limited well/boring contractor's license. If the other conditions of this section are satisfied, the commissioner may not withhold issuance of a dewatering limited license based on the applicant's lack of prior experience under a licensed well contractor.

Subd. 5. Bond. (a) As a condition of being issued a limited well/boring contractor's license for constructing, repairing, and sealing drive point wells or dug wells, sealing wells or borings, constructing, repairing, and sealing dewatering wells, or constructing, repairing, and sealing vertical heat exchangers, the applicant must submit a corporate surety bond for \$10,000 approved by the commissioner. As a condition of being issued a limited well/boring contractor's license for installing or repairing well screens or pitless units or pitless adaptors and well casings from the pitless adaptor or pitless unit to the upper termination of the well casing, or installing well pumps or pumping equipment, the applicant must submit a corporate surety bond for \$2,000 approved by the commissioner. The bonds required in this paragraph must be conditioned to pay the state on unlawful performance of work regulated by this chapter in this state. The bonds are in lieu of other license bonds required by a political subdivision of the state.

(b) From proceeds of a bond required in paragraph (a), the commissioner may compensate persons injured or suffering financial loss because of a failure of the applicant to properly perform work or duties.

Subd. 6. License fee. The fee for a limited well/boring contractor's license is \$50.

Subd. 7. Validity. A limited well/boring contractor's license is valid until the date prescribed in the license by the commissioner.

Subd. 8. Renewal. (a) A person must file an application and a renewal application fee to renew the limited well/boring contractor's license by the date stated in the license.

(b) The renewal application fee shall be set by the commissioner under section 16A.1285.

(c) The renewal application must include information that the applicant has met continuing education requirements established by the commissioner by rule.

(d) At the time of the renewal, the commissioner must have on file all properly completed well sealing reports, well permits, vertical heat exchanger permits, and well notifications for work conducted by the licensee since the last license renewal.

Text of subd. 9 effective until July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

(1) the licensee must include an additional late fee set by the commissioner under section 16A.1285; and

(2) the licensee may not conduct activities authorized by the limited well/boring contractor's license until the renewal application, renewal application fee, and late fee, and all other information required in subdivision 8 are submitted.

Text of subd. 9 effective July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

(1) the licensee must include an additional late fee set by the commissioner; and

(2) the licensee may not conduct activities authorized by the limited well/boring contractor's license until the renewal application, renewal application fee, and late fee, and all other information required in subdivision 8 are submitted.

Amended by Laws 1999, c. 153, § 12; Laws 1999, c. 250, art. 3, § 11, eff. July 1, 2001.

Historical and Statutory Notes

1999 Legislation

Laws 1999, c. 250, art. 3, § 29, provides in part that § 11, amending subd. 9, is effective July 1, 2001.

does not repeal rules or fees in effect on the day before July 1, 2001, the effective date of Laws 1999, c. 250, art. 3.

2000 Legislation

Laws 2000, c. 488, art. 12, § 23, effective May 16, 2000, provides that Laws 1999, c. 250, art. 3,

103L.535. Elevator shaft contractor's license

Subdivision 1. Application. (a) An individual must file an application and application fee with the commissioner to apply for an elevator shaft contractor's license.

(b) The application must state the applicant's qualifications for the license, the equipment the applicant will use in the contracting, and other information required by the commissioner. The application must be on forms prescribed by the commissioner.

Subd. 2. Application fee. The application fee for an elevator shaft contractor's license is \$50. The commissioner may not act on an application until the application fee is paid.

Subd. 3. Examination. After the commissioner has approved the application, the applicant must take an examination given by the commissioner.

Subd. 4. Issuance of license. If an applicant passes the examination as determined by the commissioner, submits the bond under subdivision 5, and pays the license fee under subdivision 6, the commissioner shall issue an elevator shaft contractor's license to the applicant.

Subd. 5. Bond. (a) As a condition of being issued an elevator shaft contractor's license, the applicant must submit a corporate surety bond for \$10,000 approved by the commissioner. The bond must be conditioned to pay the state on unlawful performance of work regulated by this chapter in this state.

(b) From proceeds of the bond, the commissioner may compensate persons injured or suffering financial loss because of a failure of the applicant to properly perform work or duties.

Subd. 6. License fee. The fee for an elevator shaft contractor's license is \$50.

Subd. 7. Validity. An elevator shaft contractor's license is valid until the date prescribed in the license by the commissioner.

Subd. 8. Renewal. (a) A person must file an application and a renewal application fee to renew the license by the date stated in the license.

(b) The renewal application fee shall be set by the commissioner under section 16A.1285.

(c) The renewal application must include information that the applicant has met continuing education requirements established by the commissioner by rule.

(d) At the time of renewal, the commissioner must have on file all reports and permits for elevator shaft work conducted by the licensee since the last license renewal.

Text of subd. 9 effective until July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

(1) the licensee must include an additional late fee set by the commissioner under section 16A.1285; and

(2) the licensee may not conduct activities authorized by the elevator shaft contractor's license until the renewal application, renewal application fee, and late fee, and all other information required in subdivision 8 are submitted.

Text of subd. 9 effective July 1, 2001.

Subd. 9. Incomplete or late renewal. If a licensee fails to submit all information required for renewal in subdivision 8 or submits the application and information after the required renewal date:

(1) the licensee must include an additional late fee set by the commissioner; and

(2) the licensee may not conduct activities authorized by the elevator shaft contractor's license until the renewal application, renewal application fee, and late fee, and all other information required in subdivision 8 are submitted.

Amended by Laws 1997, c. 7, art. 1, § 25; Laws 1999, c. 250, art. 3, § 12, eff. July 1, 2001.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 7, was a corrections bill which, by its title, corrected erroneous, ambiguous, and omitted text and obsolete references; eliminated certain redundant, conflicting, and superseded provisions; and made miscellaneous technical corrections.

2000 Legislation

Laws 2000, c. 488, art. 12, § 23, effective May 16, 2000, provides that Laws 1999, c. 250, art. 3, does not repeal rules or fees in effect on the day before July 1, 2001, the effective date of Laws 1999, c. 250, art. 3.

103I.541. Monitoring well contractors

Subdivision 1. Initial registration after July 1, 1990. After July 1, 1990, a person seeking initial registration as a monitoring well contractor must meet examination and experience requirements adopted by the commissioner by rule.

Subd. 2. Validity. A monitoring well contractor's registration is valid until the date prescribed in the registration by the commissioner.

Subd. 2a. Application. (a) An individual must submit an application and application fee to the commissioner to apply for a monitoring well contractor registration.

(b) The application must be on forms prescribed by the commissioner. The application must state the applicant's qualifications for the registration, the equipment the applicant will use in the contracting, and other information required by the commissioner.

Subd. 2b. Application fee. The application fee for a monitoring well contractor registration is \$50. The commissioner may not act on an application until the application fee is paid.

Subd. 3. Bond. (a) As a condition of being issued a monitoring well contractor's registration, the applicant must submit a corporate surety bond for \$10,000 approved by the commissioner. The bond must be conditioned to pay the state on unlawful performance of work regulated by this chapter in this state. The bond is in lieu of other license bonds required by a political subdivision of the state.

(b) From proceeds of the bond, the commissioner may compensate persons injured or suffering financial loss because of a failure of the applicant to properly perform work or duties.

Subd. 4. Renewal. (a) A person must file an application and a renewal application fee to renew the registration by the date stated in the registration.

(b) The renewal application fee shall be set by the commissioner under section 16A.1285.

(c) The renewal application must include information that the applicant has met continuing education requirements established by the commissioner by rule.

(d) At the time of the renewal, the commissioner must have on file all well reports, well sealing reports, well permits, and notifications for work conducted by the registered person since the last registration renewal.

Text of subd. 5 effective until July 1, 2001.

Subd. 5. Incomplete or late renewal. If a registered person submits a renewal application after the required renewal date:

(1) the registered person must include an additional late fee set by the commissioner under section 16A.1285; and

(2) the registered person may not conduct activities authorized by the monitoring well contractor's registration until the renewal application, renewal application fee, late fee, and all other information required in subdivision 4 are submitted.

Text of subd. 5 effective July 1, 2001.

Subd. 5. Incomplete or late renewal. If a registered person submits a renewal application after the required renewal date:

(1) the registered person must include an additional late fee set by the commissioner; and

(2) the registered person may not conduct activities authorized by the monitoring well contractor's registration until the renewal application, renewal application fee, late fee, and all other information required in subdivision 4 are submitted.

Amended by Laws 1999, c. 250, art. 3, § 13, eff. July 1, 2001.

Historical and Statutory Notes

2000 Legislation

Laws 2000, c. 488, art. 12, § 23, effective May 16, 2000, provides that Laws 1999, c. 250, art. 3,

does not repeal rules or fees in effect on the day before July 1, 2001, the effective date of Laws 1999, c. 250, art. 3.

VERTICAL HEAT EXCHANGERS

103I.641. Vertical heat exchangers

Subdivision 1. Requirements. A person may not drill or construct an excavation used to install a vertical heat exchanger unless the person is a limited well/boring contractor licensed for constructing, repairing, and sealing vertical heat exchangers or a well contractor.

Subd. 2. Regulations for vertical heat exchangers. Vertical heat exchangers must be constructed, maintained, and sealed under the provisions of this chapter.

Subd. 3. Permit required. (a) A vertical heat exchanger may not be installed without first obtaining a permit for the vertical heat exchanger from the commissioner. A limited well/boring contractor licensed for constructing, repairing, and sealing vertical heat exchangers or a well contractor must apply for the permit on forms provided by the commissioner and must pay the permit fee.

(b) As a condition of the permit, the owner of the property where the vertical heat exchanger is to be installed must agree to allow inspection by the commissioner during regular working hours of department of health inspectors.

Amended by Laws 1999, c. 153, §§ 13, 14, eff. Aug. 1, 2000.

Historical and Statutory Notes

1999 Legislation

Laws 1999, c. 153, § 15, provides in part that §§ 13 and 14, amending subds. 1 and 3, are effective August 1, 2000.

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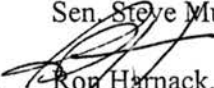
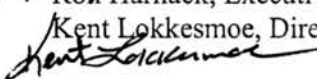


MEMORANDUM



January 12, 2001

TO: Rep. Mark Holsten, Chair, Environment and Natural Resources
Finance Committee
Rep. Dennis Ozment, Chair, Environment and Natural Resources
Policy Committee
Rep. Tim Finseth, Chair, Agriculture and Rural Development Policy Committee
Rep. Robert Ness, Chair, Agriculture and Rural Development Finance Committee
Sen. Len Price, Chair, Environment and Agriculture Budget Division
Senator Jane Krentz, Chair, Environment and Natural Resources Policy
Committee
Sen. Steve Murphy, Agriculture, General Legislation and Veterans Affairs Committee

FROM:  Ron Harnack, Executive Director, BWSR
 Kent Lokkesmoe, Director, DNR-Waters

RE: **Wetland Regulatory Refinements - Report to the Legislature**

Attached is the report required by *ML 2000, Chap. 382, Sec. 19*, addressing consensus recommendations for modifications to wetland regulatory programs. This report was prepared in consultation with the same stakeholders who worked to develop the consensus changes in last year's legislation.

If you have any questions, please contact John Jaschke, BWSR at 651-297-3432 or John Linc Stine, DNR-Waters at 651-296-0440.

Attachment

c: Joe Bagnoli, Governor's Office
Keith Bogut, Executive Budget Officer, Department of Finance
John Linc Stine, DNR - Waters
John Jaschke, BWSR
Lee Pfannmuller, DNR - Ecological Services
Dave Weirens, Association of Minnesota Counties
LeAnn Buck, Minnesota Association of Soil and Water Conservation Districts
Reme Stone, League of Minnesota Cities
John Dooley, Minnesota Association of Townships
Senator Roger Moe
Representative Steve Sviggum
Senator Dan Stevens

WETLAND REGULATIONS LEGISLATIVE REPORT

January 12, 2001

This report has been prepared according to Senate File 83 (MN Laws 2000 Chapter 382, Sec 19) which states that: "by January 15, 2001, the board of water and soil resources and the commissioner of natural resources shall provide a joint report to the house and the senate committees responsible for agriculture and environmental policy on further technical changes to the Wetland Conservation Act and rules to provide for an improved regulatory consolidation process, public water inventory refinement, and other changes to improve wetland regulatory programs. The report shall include the language on any recommended draft law and rule changes." The estimated cost of preparing this report is \$5000 which reflects contributions of BWSR and DNR staff time and overhead costs.

This report was developed based on input from agency staff, local governments and various interest groups. A draft of this report was reviewed by the stakeholders group that worked to develop Senate File 83 last year. The short term actions items listed in this report represent recommendations that did not have any objections from the stakeholders (see attached list). Items for action are summarized below with suggested statute language changes listed in the endnotes.

1. Analysis of Previous Changes

- i. Wetland Conservation Act (Minnesota Rules, Chapter 8420) and DNR permit rules (Minnesota Rules, Part 6115) were amended in accordance with Section 20, Ch. 382, Laws 2000, effective July 31, 2000. These exempt rules must be replaced by permanent rules by July 31, 2002.
- ii. DNR is beginning the process of digitizing its public waters inventory maps to evaluate the reclassification of public waters wetlands consistent with Section 3, Ch. 382 Laws 2000. No public waters wetlands have been reclassified pursuant to this authority as of this date. The digital public water inventory update process is planned to be complete as of January 2002.
- iii. Less than 10 letters waiving DNR permit authority have been issued since the rule revisions were adopted, and there have been no agreements written with local government units by DNR as authorized by Section 17, Ch. 382 Laws 2000.
- iv. Less than 10 cease and desist orders have been written by enforcement authorities for work affecting public waters, pursuant to Section 15, Ch. 382 Laws 2000. A few of the orders have resulted in restoration plans delivered to the landowner.
- v. DNR has identified staff contacts for all Wetlands Conservation Act (WCA) Technical Evaluation Panels (TEP) throughout the state in order to implement Section 10, Ch. 382 Laws 2000. This information has been communicated to the Local Government Units (LGU) that administer the WCA. DNR has not appealed any WCA LGU decisions

as a result of its participation in a TEP since passage of Ch. 382 Laws 2000.

- vi. Joint training sessions between BWSR and DNR Waters, Enforcement and Ecological Services staff were held in May and September. Additional Sessions for all DNR field staff and for local governments are scheduled for January 2001.
- vii. Changes in work responsibilities at the local government unit and DNR field level are not yet quantifiable as most of the 2000 legislative and rule changes did not take effect until near the end of the growing/construction season.
- viii. An analysis of very recent major changes to the federal 404 program resulting from a 01/09/01 Supreme Court case needs to be done to determine the implications to state programs.

2. Ideas for Future Short Term Action

A. Policy Items

1. Ability for DNR to reclassify a public waters wetland (W) as a public water (P) where a state or federal government agency has become a landowner (of land adjacent to the public waters wetland) subsequent to the completion of the Public Waters Inventory (PWI). These public waters wetlands would have received the public water classification (P) had the state or federal government been a landowner (of land adjacent to the public waters wetland) prior to the PWI. This will make the classification of public waters wetlands consistent with M.S. 103G.005, Subd. 15ⁱ.
2. Provide DNR with authority to waive its permit jurisdiction for specific projects that affect wetland areas within public waters. This could provide greater simplification to public road authorities when they are conducting road projects that affect multiple water bodiesⁱⁱ.
3. Start the process of state 404 Assumption (and Federal Farm program delegation to the state via contract) to achieve greater regulatory simplificationⁱⁱⁱ.
4. Change appeal period in WCA to 30 calendar days instead of 15 working days in order to achieve consistency with related land use decision-making and public waters law. Also, it is likely to reduce the number of appeals as parties have a greater chance to become informed and work things out informally^{iv}. Since all decisions have the potential to be appealed, agencies will develop guidance or forms to inform project sponsors.
5. Calcareous Fen rulemaking authority to incorporate some of the recently developed guidelines^v.
6. Consider use of forgivable Administrative Penalty Orders for wetland/waters violations. This proposal will reduce civil litigation and criminal citations while providing a better means of accomplishing restoration^{vi}.

7. Wetland Delineator certification program enactment/funding (see separate report) to enhance quality of work for landowners and by government officials^{vii}.
8. Wetland replacement standards in statute related to NWC and PVC should be eliminated and directed to be developed in rule. Too much detail for the statute^{viii}.
9. Provide means to file wetland/waters restoration orders on the deed so that potential buyers will know of any unresolved regulatory issues before they buy property^{ix}.

B. Fiscal Items

10. Funding (\$500,000) of a digital wetland and water body inventory to simplify the information used by citizens, state and local governments and private consultants to determine the regulatory entity covering their property or jurisdiction. This inventory would integrate available National Wetlands Inventory, Public Waters Inventory and the Stream hydrography data into one common geographic information system and would be provided to all federal and state agencies and local government units that implement the Wetlands Conservation Act.
11. A general fund budget item for the local government public road wetland replacement program (approximately \$2.75 million dollars per year – see separate report attached) would assure state commitment to existing requirements.
12. Refinement and funding for the Permanent Wetlands Preserve program (\$500,000) would allow it to be a targeted and flexible relief mechanism to buffer Public Drainage and Wetland regulatory conflicts.
13. LGU inflationary administrative grant increase for WCA program responsibilities (\$3.6 million per biennium same as since 1993, inflation "catchup" requires \$4.5 million per biennium).
5. Wetland Delineator certification program funding (\$150,000 per year -see separate attached report and endnote *vii*) would provide for implementation of a consensus proposal to enhance the quality of work for landowners and by government officials.

14. Ideas for Future Longer-term Action

The longer-term actions items listed below are those that will require additional stakeholder involvement in order to develop specific recommendations for action.

A. Policy Items

1. WCA exemptions made same for wetland types 3, 4, and 5 as for PWW. Public Drainage relationship to WCA (Drainage Exemption) should be made explicit and Public Waters protection should be made equal or greater protection than WCA.

2. Evaluate and then clarify or eliminate federal connections (404, Swampbuster, GP/LOP, GP-1) to state law/rule to make sure they are operating together and eliminate inconsistencies and redundancies.
3. Comprehensive and consistent administrative oversight and appeal process for all local land use decisions related to water and land use that are based on state standards (e.g., wetlands, shoreland, floodplain, ISTS).
4. Allow replacement of a portion of some metro or northern MN wetlands in the MN River basin for a set period of time upon which this provision would sunset.
5. Clarify the statutory terminology for wetlands and public water resources of all forms (lakes, streams, ditches, wetlands, etc.). The evolution of the statutes with regard to water law has resulted in a variety of terms that could be simplified; however, extensive study of the implications would be required since the terminology is widespread in MN statutes.
6. Consider authorizing periodic updates to the Public Waters Inventory.

B. Fiscal Items

7. Statewide Inventory of Public Drainage Systems.
8. Comprehensive updated digital inventory of public waters and wetlands.

Report prepared by John Jaschke, BWSR and John Linc Stine, DNR-Waters
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ENDNOTES: **Recommended Statute Changes**

i **103G.201 Public waters inventory.**

(a) 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.

(b) The commissioner is authorized to revise the list of public waters established under Laws 1979, chapter 199, to reclassify those types 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), or;

(3) the state or federal government has become title holder to any of the beds or shores of the public waters wetland, unless the owner declares that the water is not necessary for the purposes of the public ownership, subsequent to the preparation of the public waters inventory map filed with the auditor of the county, pursuant to paragraph (a).

(c) The commissioner must provide notice of the reclassification to the local government unit, the county board, the watershed district, if one exists for the area, and the soil and water conservation district. Within 60 days of receiving notice from the commissioner, a party required to receive the notice may provide a resolution stating objections to the reclassification. If the commissioner receives an objection from a party required to receive the notice, the reclassification is not effective. If the commissioner does not receive an objection from a party required to receive the notice, the reclassification of a wetland under paragraph (b) is effective 60 days after the notice is received by all of the parties.

(d) The commissioner shall give priority to the reclassification of public waters wetlands that are or have the potential to be affected by public works projects.

ii **103G.245, Subdivision 5 is amended as follows:**

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.

(b) For projects affecting public waters wetlands or wetland areas of public waters as determined by the commissioner, the commissioner may waive the requirement for a public waters work permit if the local government unit makes a replacement, no-loss, or exemption determination in compliance with sections 103A.201, 103B.3355, and 103G.222 to 103G.2373, and rules adopted pursuant to these same sections.

(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, and 103G.222 to 103G.2373, and rules adopted pursuant to these same sections in the public waters work permit.

iii

M.S. 103G.127 Permit program under section 404 of the federal Clean Water Act.

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

iv

M.S. 103G.2242, Subd. 9. Appeal. (a) 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 ~~45~~ 30 calendar days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within ~~45~~ 30 calendar 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:

(1) the wetland owner;

(2) any of those to whom notice is required to be mailed under subdivision 7; or

(3) 100 residents of the county in which a majority of the wetland is located.

(b) 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:

(1) the appeal is meritless, trivial, or brought solely for the purposes of delay;

(2) the petitioner has not exhausted all local administrative remedies;

(3) expanded technical review is needed;

(4) the local government unit's record is not adequate; or

(5) the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit.

(c) 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.

(d) All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of the filing of the local government unit's record and the written briefs submitted for the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of chapter 14. A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

M.S. 103G.223 Calcareous fens.

Calcareous fens, as identified by the commissioner, may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner, under an approved management plan, decides some alteration is necessary. The commissioner, in conjunction with the board, may adopt rules related to the designation of calcareous fens and related to the development and approval of calcareous fen management plans. The commissioner may inventory calcareous fens using procedures referenced in section 103G.201.

^{vi} **Note:** A draft DNR supported bill (Revisor # 01-0338, dated 12/05/00) proposes Administrative Penalty Order (APO) authority for the commissioner to address public waters and shoreland violations in a new section of statute 103G.252 and 103G.253. This authority mirrors that already in place for the commissioners of Health and the Pollution Control Agency. The maximum monetary amount of the administrative penalty order would be \$10,000 for each violator for all violations by the violator identified in an inspection or review of compliance. The penalty could be forgiven if compliance was achieved. The objective is to lessen the reliance on criminal prosecution for matters that could be handled through administrative means. In order to achieve consistency, edits need to be made to apply this language to the Wetland Conservation Act (WCA) by either expanding the commissioner's APO authority to WCA or establishing similar authority for the Board of Water and Soil Resources. The stakeholders group felt this authority should perhaps be limited to repeat offenders.

^{vii} **M.S. 103G.2242, Subd. 2a. Wetland Delineator Certification.** The board shall establish a professional wetland delineator certification program by adopting rules by July 1, 2004 to establish standards for education, experience, and performance for persons completing wetland delineations.

Delineator certification shall become mandatory on July 1, 2004. Wetlands may be delineated without certification by individual landowners for any project on their property, and for all non-regulatory projects. \$150,000 is appropriated from the general fund to the board of water and soil resources for each year of the biennium to be used for administrative expenses. This appropriation is to be considered an addition to the board's base budget and funds from either year can be carried forward and expended any time during the biennium.

viii **103G.2242 Wetland value replacement plans.**

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), and based on rules adopted by the board in conjunction with the commissioners of natural resources and agriculture, the following actions, as well as others established in rule, are eligible for replacement credit as determined by the local government unit, including enrollment in a statewide wetlands bank:

(1) Reestablishment of permanent native, non-invasive vegetative cover on a wetland on agricultural land that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was ~~required to be set aside to receive price supports or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991.~~ Replacement credit may not exceed 50 percent of the total wetland area vegetatively restored in a land retirement program during the past 10 years;

(2) Buffer areas of permanent native, non-invasive vegetative cover established or preserved 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 is based on the replacement of wetland functions and on an approved stormwater management plan for the local government ~~may not exceed 75 percent of the treatment pond area and may only be used for replacement above a 1:1 ratio.~~

(5) Notwithstanding section 103G.222, Subd. 1, (f) and (g), restoration projects with exceptional natural resource value may be eligible for replacement credit if approved by the board or the commissioner.

ix

M.S. 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. Restoration or replacement orders may be recorded by the commissioner of natural resources, conservation officers, or peace officers as a deed restriction on the property until the conditions of the order are met or the order is rescinded.

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 waters are located or the illegal activity occurred.

Subd. 3. Restitution. The court may, as part of 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

Jan. 11, 2001

SF83 Stakeholders

1/15/01 Leg. Report

<u>Name</u>	<u>REPRESENTING</u>
John Line Stine	DNR Waters
John Jaschke	BWSR
Kurt Deter	Counties, Watersheds, Viewers Ass, Drainage Inspector
Todd Manley	DNR Engr.
John Dooley	Mn. Assn. of Towns
Nick Tiedeken	M-1005
Kath Hanson	Minnesota Power
Tomotru	St Louis County
Sarma Straumanis	Mn/DOT
Con Christensen	MDNR-Eco Serv
Kelly J Bopray	Minn Assoc PROF SOIL SCIENTIST
Lawrence S Zdon	MPCA
Mark Dittrich	MDA
Ray Bohm	MAWD
John Jaschke	BWSR
Eric Evenson	MCWD
Louis Hark	Krebsbach & Hark Ltd
Susan Scribner	MAWD
Tim Edman	Sen. Stevens

A Plan for the Certification of Wetland Delineators in Minnesota

Senate File 83 (Chapter 382, Minnesota Laws of 2000) required the Board of Water and Soil Resources (BWSR), in consultation with the Minnesota Association of Professional Soil Scientists (MAPSS), the University of Minnesota (UM), and the Wetland Delineators Association (WDA) to submit a plan for a professional delineator certification program to the legislature by January 15, 2001.

Representatives of the aforementioned groups and individuals from state and federal agencies, local units of government and private consulting firms met several times during 2000. Staff from the BWSR chaired the meetings. The following text reflects the views of the participants and the process used to reach the recommendations which are at the end of this report.

Benefits of delineator certification

- A wetland delineator certification program would provide stability to the implementation of the Wetland Conservation Act and other wetland regulations by formally recognizing individuals uniquely qualified to perform wetland delineations.
- The regulatory process should be more efficient in that wetland delineation and typing determinations should be less frequently questioned.
- Consumers will be protected by knowing that delineations will be conducted by qualified persons operating under a code of ethics.
- The environment will be better served in that the jurisdictional boundaries of wetlands may be more precisely delineated.
- The practice of wetland delineation will be recognized as a distinct skill with economic value in the marketplace.
- Wetland delineators will have the responsibility to maintain and enhance their skills.

Comparison to other certification programs

Delineator certification programs of the U.S. Army Corps of Engineers and State of New Hampshire were reviewed. The Minnesota program for the certification of individuals involved with individual sewage treatment systems (ISTS) was also reviewed for its applicability to wetlands. This proposal reflects many aspects of those programs.

General nature of the proposed certification program

- With respect to all aspects of delineator certification, no distinction is made between public and private sector delineators.
- Certification will apply only to delineation. However, because wetland regulations often require that a wetland be classified by type (Circular 39 or Cowardin, et al.), it is expected that a certified wetland delineator be competent in wetland typing.

- Certification is required for practitioners from other states who delineate wetlands in Minnesota.
- A wetland delineator certification program would establish appropriate standards for education, experience, and performance for persons completing delineations.
- Delineator certification should become mandatory on July 1, 2004, after a three-year (voluntary) phase-in period. The effect of this is that, except for exempt persons or projects, after July 1, 2004, wetland delineations may be performed only by certified delineators.
- Exemptions: wetlands may be delineated without certification:
 - by individual landowners for projects on their property, and
 - for projects non-regulatory in nature such as wetland inventories.

Peer review committee

A code of conduct and ethics agreement must be developed as part of a compliance program. Compliance includes complaints, sanctions, probation, decertification, and the associated protocols and procedures, which will be developed during rulemaking. The BWSR will chair an enforcement/ethics committee with other members nominated by MAPSS, WDA, UM, and representatives of local units of government, private sector delineators, and state and federal agencies. This committee will also evaluate applications and associated documentation concerning training and experience.

Applicability to federal agencies and regulations

Endorsement of delineator certification will be sought from federal agencies by use of memoranda of agreement. The memoranda will address participation of federal staff in the planning and conduct of training and the applicability of delineator certification to federal regulations. The BWSR will assume responsibility for this task.

Implementation of delineator certification

Administrative tasks, including training, and budget estimates are provided in *Attachment A*. It must be noted that without funding a delineator certification program cannot be initiated. The parties to this report do not exist in sufficient numbers to make this program self-supporting. Regarding a location for the program, the BWSR office in St. Paul is the first choice. Other options discussed included contracting with a private vendor. The BWSR is a preferred location due to its involvement with many aspects of wetland management and regulation. Training is major component of delineator certification, both in terms of initial certification and continuing education. All parties agreed that a major effort should be made to develop a cadre of in-state trainers from among public and private sector professionals. In addition, the University of Minnesota was urged to add to its offerings a course applicable to wetland delineation.

Specific elements of certification

Education, training, and experience requirements are summarized in Attachment B. Considerable discussion occurred during the development of these elements. As written, they reflect a balance between stringent requirements which could exclude most delineators currently practicing and minimal standards that would not screen out incompetent practioners.

Enactment of the certification program

- The program would be authorized by legislation in 2001. That legislation would frame the basic principles, establish guidelines for the voluntary (phase I) program, and authorize the BWSR to make appropriate amendments to the rules of the Wetland Conservation Act.
- Rule amendments must be completed and in effect by July 1, 2004.

Recommendation

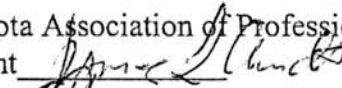
Finding that the establishment of a wetland delineator certification program is in the public interest and would further the management and protection of wetlands, it is the recommendation of the undersigned parties that legislation and an associated appropriation be pursued during the 2001 legislative session.

Signatures:

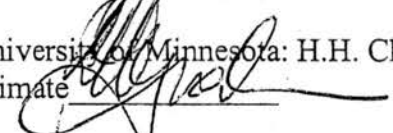
Board of Water and Soil Resources: Ron Harnack, Executive Director



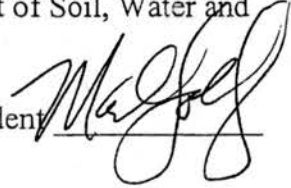
Minnesota Association of Professional Soil Scientists: Jim Arndt, President



University of Minnesota: H.H. Cheng; Head, Department of Soil, Water and Climate



Wetland Delineators Association: Mark Kjolhaug, President



Note: Letters of support and a list of meeting dates and attendees are attached

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Attachment A
BUDGET: Wetland Delineator Certification Program

	Estimated Annual Costs		
	Phase I (Prior to 7-01-2004)	Phase II (After 7-01-2004)	In-kind contributions
A. Administrative			
• Record keeping	<u>\$100,000</u>	\$75,000*	
• Enforcement	• \$75,000		
- Complaints	professional staff (1		
- Investigation	FTE)		
• Collection of fees	• \$25,000 clerical		
• Develop and	(0.5 FTE)		
administer exams			
B. Training			
• Coordinate curriculum	\$50,000**	\$50,000**	\$50,000 (based on past
• Organize and arrange			contributions)
training			<u>Sources:</u>
			• BWSR
			• DNR
			• U of M
			• Corps of Engineers
			• NRCS
			• USFWS

Assumptions:

- Potentially 500 people will seek to become certified prior to July 1, 2004 (Phase I). The number certified by that date will stay relatively constant thereafter (new certifications may be slightly more than those vacating their certification).
- The certification fee is proposed to be \$50.00 per calendar year.
- After July 1, 2004 (phase II), the extent to which certification fees can be considered annual revenue will be predictable. That is not true, however, before July 1, 2004 because the frequency of certification cannot be predicted. Consequently, certification fees are not budgeted as implementation revenue during Phase I. Certification fees collected during Phase I will be used for training and will subsidize participants share of training costs.

Notes:

*Certification fees are estimated to provide \$25,000 in annual revenue (500 * \$50.00).

**Participants also pay \$50,000, or ½ of total training costs. As stated under assumptions, revenue from certifications will be used to subsidize participants share of training costs.

Attachment B
SUMMARY OF WETLAND DELINEATOR
CERTIFICATION PROGRAM

ELEMENTS	PHASE I	PHASE II
Date	3 years in duration, beginning July 1, 2001	Beginning July 2, 2004
Voluntary Certification	Yes	
Mandatory Certification		Yes
Education and Training	One of the following needed plus experience before exam can be taken: - Broad coursework¹ <u>or</u> - A 4-5 day delineation course	Both of the following plus experience ² needed before exam can be taken: - Broad coursework <u>and</u> - A 4-5 day delineation course or equivalent training
Experience	3 years (2 years with masters or PhD degree in a related field)	3 years (2 years with Masters or PhD degree in a related field)
Written Examination	Yes	Yes
Type of Examination	Basic	Comprehensive
Field Examination	No	No
Ethics Agreement	Yes	Yes
Compliance with sanctions and other enforcement actions	No	Yes
References	Yes (names only, letters not needed)	Yes (names only, letters not needed)
Continuing education required to maintain certification	Yes	Yes

Comments:

- Certification gained during phase I carries over to phase II
- Continuing education is defined as "*Pertinent seminars or training sessions totaling 8 or more hours in duration each calendar year.*"
- Experience is defined as "*Where wetland management, wetland regulation, wetland delineation or wetland ecology activities are among the primary duties of their employment. A person so employed for one year would have experience equaling one year.*"
- Practitioners from other states doing wetland delineations in Minnesota must also be certified.

¹ Coursework would include wetland specific courses and other classes drawn from physical or biological sciences and engineering.

² "In-training" status will be granted to persons lacking experience but who pass the exam(s). Persons with "in-training" status will be eligible for certification upon proof of experience.

WETLAND DELINEATOR CERTIFICATION PROGRAM

Meeting Dates and Participants

MEETING DATES:

August 17, 2000
September 12, 2000
October 24, 2000
December 14, 2000

PARTICIPANTS

<u>Name</u>	<u>Representing</u>	<u>Phone</u>	<u>E-mail Address</u>
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Todd Udvig	SEH	651-765-2957	tudvig@sehinc.com
Tom Murphy	MAPSS/LS & D	612-335-1424	Tm1421@leonard.com
Tony Brough	Rice Creek WD	651-766-4195	tonybrough@yahoo.com

Minnesota Local Government Roads Wetland Replacement Report to the Legislature and the Governor For FY02-03 Budget Consideration

October 16, 2000 (minor edits and resent electronically 11-16-00)

Report Requirement

ML 2000, Chap. 492, Sec. 9, Subd. 5. "By October 15, 2000, the board of water and soil resources shall make a recommendation to the governor and the legislature on the inclusion of wetland replacement under Minnesota Statutes, section 103G.222, subdivision 1, paragraph (m), as a biennial budget item."

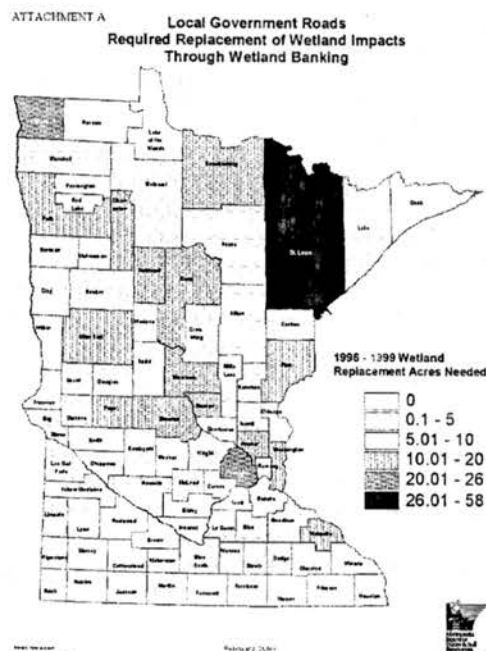
Program Summary

The Minnesota Local Government Roads Wetland Replacement program was established in law in 1996 to replace wetlands lost to local government public transportation projects as required under M.S. 103G.222, Subd. 1(l). This program supports the "no-net-loss" requirements of both state and federal regulations. It benefits: (a) local road authorities by assigning responsibility for replacing the inevitable loss of wetlands to the state; (b) environmental interests by establishing higher quality wetland replacement sites; and (c) state taxpayers by reducing the overall costs of constructing these replacement wetlands due to economies of scale realized through this collective process.

Program History and Outcomes

The 1996 and 2000 Legislatures amended the Wetland Conservation Act (WCA) after several years of controversy and regulatory inconsistency among local governments, business interests, environmental groups, and others. The local government roads wetland replacement program was a key outcome of these amendments as it transferred responsibility for replacing wetlands lost due to local government road construction from the local road authority to BWSR. This eliminates the need for local government transportation officials to undertake and finance environmental reclamation projects, and consolidates the necessary technical, financial and other implementation work. The result is higher quality, more cost-effective wetland replacement. See Figure 1 for distribution of local road projects wetland replacement needs.

Figure 1. Distribution of local road projects wetland replacement needs.



Benefits realized by the Local Government Roads Wetland Replacement program include:

- 1) Regulatory simplification and efficient and improved wetland mitigation are achieved by eliminating the need for each local road authority to maintain its own staff expertise and budget to mitigate impacts to wetlands from road projects.
- 2) Fragmented impacts from road projects are consolidated in targeted areas to provide habitat, water quality and other wetland functions away from traffic and highway runoff areas.
- 3) Water management goals such as improving water quality, flood control, greenway preservation and wildlife corridor enhancement can be better addressed collectively.
- 4) Site selection, ranking of project proposals and setting program strategies consistent with overall State and Federal wetland goals are achieved through an interagency committee process.

BWSR has adopted a 3-part strategy to achieve the wetland replacement required by law:

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

Financial History

From the beginning, consensus has not been reached on whether this program should be funded from transportation sources, environmental sources or some combination of the two and thus it has always been funded with capital budget sources (see Table 1). Most recently, this program was funded for one year from the capital (bonding) budget by the 2000 legislature via a \$2.3 million capital appropriation with \$400 thousand supplement allocated for annual implementation costs. This amount was similar to previous appropriations and adequate for one year of projects covering the state's obligations at least through calendar year 1999. Prior experience shows that approximately 220 acres of wetlands need replacement each year, at an annual cost of \$2.75 million. The number of acres impacted depends most directly on the money available to local governments for road construction. The cost of establishing the wetlands varies widely, from a low of \$2 thousand/acre in rural Minnesota, up to \$100 thousand/acre for some urban renewal projects in the metro area. The BWSR projects that to meet its statutory obligations for the next two years will require \$5.5 million.

Table 1. Appropriation History

<u>Legislative Action</u>	<u>Appropriation</u>
2000 Bonding <i>ML 2000, Chap. 492, Sec. 9, Subd. 5</i>	\$ 2,300,000
1998 Capital Budget General Fund <i>ML 1998, Chap. 404, Sec. 10, Subd. 3</i>	\$ 2,750,000
1996 Bonding <i>ML 1996, Chap. 463, Sec. 11, Subd. 4</i>	\$3,000,000

Environmental Funding Sources

Environmental/natural resource restoration projects are funded using a variety of sources (e.g., the general fund, dedicated funds, capital funds and a variety of federal, state, local and private sources). See Table 3 for a breakdown of recent biennial appropriations.

Table 2: Direct Appropriations to Environment, Natural Resources, and Agriculture Agencies for 2000-2001 Biennium, by Fundⁱⁱ

Fund	\$ Thousands	%
General	\$421,587	60
Petro Tank Release	6,976	1
State Government	89	-
Special Revenue	723	-
Environmental	43,928	6
Solid Waste	14,382	6
Natural Resources	52,238	7
Game and Fish	121,934	18
Future Resources	14,840	2
Environmental Trust	25,460	4
Great Lakes Protection	200	-
	\$702,357	100%

Transportation Funding Sources

The state of Minnesota has approximately 130,000 miles of local streets and highways (See Table 1). This reflects Minnesota's entire roadway system.

Table 3. Approximate Mileage by Systemⁱⁱⁱ

Trunk Highway (MnDOT)	11,930 (8.9%)
County State Aid	30,320 (22.5%)
County Road (local)	15,040 (11.2%)
City State Aid	2,690 (2.0%)
City (local streets)	15,310 (11.4%)
Township Roads	59,290 (44.1%)
Total	134,580 miles

In 1998, approximately \$2.8 billion in revenue was raised and available for Minnesota's roadway system. These revenues come from state highway user tax funds (motor fuel tax and motor vehicle registration), local property taxes, bonds and notes, and Minnesota's General Fund.

Of the \$2.8 billion available for all Minnesota roadways, Mn/DOT is responsible for the oversight of about \$1.5 billion in annual funding for highways. These state highway revenues are used for the construction and maintenance of about 12,000 miles of state trunk highways. Mn/DOT also distributes state funds and provides technical assistance for more than 33,000 miles of county state-aid and municipal state-aid highways and streets (see Table 2).

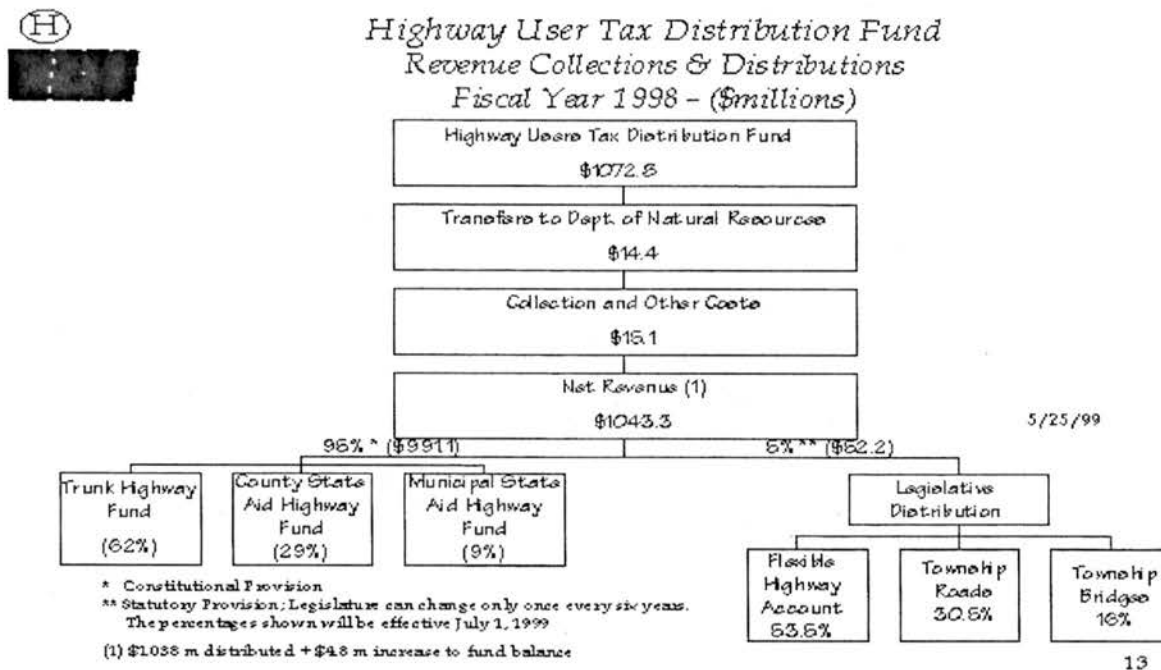
Table 4. Approximate Highway User Tax Distribution for 1999

*** (does not include any local or non-state aid funds)^{iv}**

Trunk Highway	\$647 million (61.0%)
County State Aid Highway *	\$303 million (28.6%)
Municipal State Aid*	\$94 million (8.9%)
Township Road Account*	\$17 million (1.6%)
Total	\$1.1 billion

State highway revenues are derived from various sources. A majority of the funding is provided through the Highway User Tax Distribution Fund that is comprised of motor fuel and motor vehicle registration taxes. The fund was established through a 1956 constitutional amendment and 1957 legislation, and is dedicated exclusively to "highway purposes" by the Minnesota Constitution^v. Five percent of the funding can be modified once every six years by the Legislature and was last modified in 1999. Thus, the next opportunity to make this modification does not occur until 2005. Figure 2 illustrates the dedicated funding sources for Minnesota's roads and highways.

Figure 2. Highway User Tax Distribution Fund – 1998 Distribution



Program Rationale and Consequences

Local governments (counties, cities and townships) believe strongly this state mandate should be a base element in BWSR's budget. The Legislature also recognized the ongoing state obligation this program fulfills and thus included the requirement for this report in the appropriation language last year. There is stakeholder consensus on the benefits of the program and the need to permanently fund this state obligation. Without a continued state commitment to this funding, local governments face paying for this work out of their transportation budgets, which will:

- 1) Reduce or delay completion of local government road projects;
- 2) Increase local property tax levies;
- 3) Require a reversal of recent statute changes and undo a fragile stakeholder consensus that resulted in recent wetland regulatory reforms (*ML 2000, Chap. 382*); and
- 4) Negate an agreement with the U.S. Army Corps of Engineers (COE) that allows this program to meet federal regulatory requirements meaning local road authorities will again have to seek individual federal permits and be responsible for wetland replacement.

Last year the BWSR developed several options for potentially reducing the state's fiscal obligation. None of these options were viewed as acceptable by the consortium of stakeholders who developed the consensus proposal which lead to the statutory changes. The options were:

1. A. Reduce replacement ratio to 1:1 statewide = 30% cost reduction.

- B. Reduce replacement ratio to 1.5:1 from 2:1 in metro, <50% areas, and 50-80% areas = 15% cost reduction.
2. Delete requirement to fund urban-renewal projects = 10% cost reduction.
 3. Allow half of metro area filled wetlands to be replaced in non-metro areas = 18% cost reduction.
 4. Combinations:
 Combine #1A with #2 = 40% cost reduction.
 Combine #1B with #2 = 25% cost reduction.
 Combine #2 with #3 = 28% cost reduction.

Given the disinterest in pursuing non-consensus policy changes, the BWSR believes both state and local government interests are best served by continued and permanent funding for this program in an amount based on the documented need of \$2.75 million per year (\$5.5 million for the FY02-03 biennium).

Recommendation

A recommendation for shared state funding of this mandated program is outlined in Table 4, which balances a shared responsibility between existing transportation sources (in proportion to existing current state contributions) and the general fund for the portion that would otherwise have to come from local property tax revenues. The decision on whether this program should be funded from transportation sources, the general fund, some combination of the two, or other sources must be decided through the legislative process.

Table 5. Shared State Funding Proposal

Local Road Authorities	Local Road Funding*		Estimated Annual Replacement Wetland Acres **	Proposed Annual Funding (\$ thousands)	
	State %	Local %		Transportation State-Aid Fund	General Fund
Township***	< 10	> 90	106.3	0	1,328
City	15	85	32.3	61	343
County	67	33	81.4	682	336
TOTALS			220	\$743	\$2,007

* Based on state-aid funding proportions in Table 4, excluding Trunk Highways.

** Based on 1996-1999 reports, number of road miles, and average annual costs to replace wetlands statewide (\$2.75 million) as mandated by M.S. 103G.222, Subd. 1(e).

*** Township road authorities receive approximately \$17 million per year for 59,290 miles of roads. These funds are dispersed, based on population and road miles, to townships having local levies for road projects^{vi}. These estimates are based on an estimated cost per mile for road work equal to half of that for county roads.

Report Prepared by:

John Jaschke, Land and Water Section Administrator

MN Board of Water and Soil Resources

phone: 651-297-3432, e-mail: john.jaschke@bwsr.state.mn.us

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Endnotes:

ⁱ **M.S. 103G.222, Subd. 1(l) -- as amended by MN Laws 2000, Chapter 382.**

~~(m)~~ (l) 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) except as provided in clause (3), submit annual project-specific 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; and

(3) for minor and emergency maintenance work impacting less than 10,000 square feet, 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.

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, subdivision 9. 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 FISCAL ISSUE BRIEF Environment, Natural Resources and Agriculture Budget 2000-2001, page 1, *Senate Office of Fiscal Policy Analysis, February 2000*.
<http://www.senate.leg.state.mn.us/departments/FiscalAnalysis/reports.htm>

ⁱⁱⁱ Mn/DOT Office of State Aid for Local Transportation, Mike Pinsonneault, December 1999.

^{iv} Mn/DOT Office of State Aid for Local Transportation, Mike Pinsonneault, December 1999.

^v Mn/DOT Financial and Management Analysis Section, "Moving Minnesota from 2000 to 2020", pg. 92, <http://www.oim.dot.state.mn.us/PDPA/Plan.html>.

^{vi} Personal communication, Mn/DOT Office of State Aid for Local Transportation, Mike Pinsonneault, November 2000.

Carver SWCD honored for marketing conservation

◆ Legwork required to spread the message

By Janet Kubat Willette

Agri News staff writer

WACONIA, Minn. — Selling conservation to landowners is similar to marketing other products.

You can't sit and wait for people to come to you, said Tim Gieseke, district manager for the Carver Soil and Water Conservation District.

Gieseke, who has a business management and marketing background, helped take conservation to kitchen tables across Carver County.

"There's no business that I'd ever heard of that survives by an ad in the paper," Gieseke said.

The Carver Soil and Water Conservation District has been marketing conservation along Bevens Creek since 1998. The creek is a tributary to the Minnesota River that drains 50,000 acres. It starts in the Green Isle area, dropping into the Minnesota River bluffs.

The Carver SWCD promoted

four affordable conservation practices to landowners in the watershed, Gieseke said: Harvestable grassed buffer strips; rock inlets; manure management plans; and red cedar tree revetments for streambank stabilization.

About 40 percent of the people they talked to put a conservation practice in place, Gieseke said, and they're aiming higher.

"When we started the Bevens Creek project, we kind of thought this was a 10 year project," he said. "We know that if you're going to fix non-point source pollution, you're going to need about 75 percent participation."

The Carver SWCD was honored for its marketing efforts in the Bevens Creek project by the National Association of Conservation Districts last month. They won the Marketing Excellence Award and will fly to Ft. Worth, Texas, to claim the prize next month.

The Marketing Excellence Award started about five years ago, said Ron Francis, NACD director of public affairs. It recognizes conservation districts that apply basic business methods to conservation practices

Agri News 1/11/01 The Bevens Creek Restoration Project

The project is funded by the Twin Cities Water Quality Initiative Project of the Metropolitan Council. This project provides accelerated conservation practice implementation through education and planning within the Bevens Creek Watershed. Funds are available for implementation of non-structural conservation practices to address non-point source pollution in the watershed.

A grassed buffer strip program has been developed to plant riparian areas into grasses to filter field run-off before it enters ditches and streams. Landowners can sign these areas into 10-year contracts and are allowed to hay the grassed buffers.

Landowners can also receive technical assistance to develop manure and nutrient management plans. In addition, cooperating producers may be provided with additional technical and financial assistance for installation of conservation practices.

● Developed in 1998 with the help of the Metropolitan Council to bring economical conservation practices to all landowners in the watershed.

● Four affordable practices were initiated: harvestable grassed buffer strips; rock inlets; manure management plans, and red cedar tree revetments for stream bank stabilization.

● Forty percent of the feedlot and farm operators in the watershed participated, resulting in the planting of 18 miles of buffer strips; installation of 85 rock inlets, provision of technical assistance for 18 feedlot operators and construction of three red cedar revetments.

Source: Carver County Soil and Water Conservation District, <http://www.co.carver.mn.us/SWCD/Bevens.htm> Agri News graph

with high levels of success.

The first-place winner earns \$500 and a plaque. Second place receives \$250 and a plaque, he said. South Dade County, Fla., won second place in 2000.

"When we began our Bevens Creek Restoration Project in 1998, we had no thoughts about winning awards," Gieseke said. "After a pretty successful two-and-a-half years of marketing our programs, we saw an opportunity to apply for the NACD award. We

have continued to experience success with the Bevens Creek program and now the award is the culmination of our efforts."

The judges selected Carver SWCD because they focused on their mission as a district, Francis said. They identified their target audience and provided information.

Other conservation districts had jazzy programs, Francis said but Carver SWCD focused on the basics to meet its goal.

*Congratulations
to Carver
SWCD
for great
work on
Bevens Creek
and the
lower
Minnesota
River
watershed.*

Great southern Minnesota coverage in AGRI NEWS.

SWCDs establish priorities based on needs

AGRI News 1/11/01

◆ Education key component

By Janet Kubat Willette

Agri News staff writer

Conservation priorities vary according to the needs of those served.

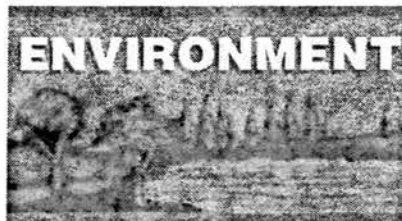
The challenge is reaching out to everyone in the conservation district. That's why the Redwood Soil and Water Conservation District lists education as one of its top priorities.

The Redwood SWCD recently hired a full-time education coordinator, said district administrator Marilyn Bernhardson.

"We could not do it without her," Bernhardson said. Focusing on education has raised the level of the SWCD in Redwood County, he added.

Each month, the SWCD selects a theme, say wind erosion, and promotes it in several ways, she said. They do a monthly radio program, issue news releases and newsletters, and offer displays to banks. The SWCD also promotes conservation to young people through poster and essay contests and school visits. In June, the Redwood SWCD will welcome all state water planners to their county for a workshop, where they will also promote their programs.

Redwood County has had a comprehensive local water plan since the early 1980s, Bernhardson said. It was implemented beginning in 1985 to examine all issues related to water. Three rivers flow through Redwood County: The Minnesota, Cottonwood and Redwood. This makes water a top priority, she said. The



county is also the second most drained in the state, behind neighboring Renville.

All issues covered

The water plan considers all issues related to water quantity, quality and flooding, Bernhardson said. Flood control projects, storm water control projects and wetland conservation figure into the comprehensive plan. The state and county combine to contribute \$37,500 annually to the program, she said. Funding is used for a variety of water-related initiatives, Bernhardson said, including well monitoring and water testing.

The conservation district's other priority this year is the Conservation Reserve Enhancement Program. The program expires in September 2002, and Bernhardson expects to continue taking signups through July, so there's time to process the paperwork.

So far, 3,500 acres in Redwood County have been enrolled into CREP, which is a federal-state partnership to take environmentally sensitive land in the Minnesota River basin out of production.

Landowners enter into 15 year Conservation Reserve Program contracts with USDA and receive annual rental payments, incentive payments for certain activities and cost-share assistance to

establish protective vegetation. The state makes a lump-sum payment to purchase easements to maintain conservation practices beyond the term of the CRP contract.

Enrollment will be targeted to marginal farmland frequently flooded, riparian buffers along cropland and wetland restoration with a high potential for improving water quality and wildlife habitat.

In nearby Watonwan County, living snowfences are a priority, said Extension educator Gary Wyatt. Several counties in the state have applied for Federal Emergency Management Agency grants to help establish living snowfences to prevent or reduce blowing and drifting on rural roadways.

FEMA funds will increase incentives to more than \$3,000 per acre over 15 years, Wyatt said. Most of the plantings are 45 feet wide with two rows of trees or shrubs or tall native grass strips.

Living snowfences haven't caught on in Fillmore County, said Kevin Scheidecker, SWCD district administrator.

But there's been a lot of interest in other continuous Conservation Reserve Programs such as waterways and contour buffer strips.

Feedlots are No. 1

Feedlots are the top issue in Fillmore County for 2001, Scheidecker said.

Feedlot operators had until the end of 2000 to register in Fillmore County or face fines. The Fillmore SWCD is in the process of planning site visits to inform

"Time and time again, we hear from people who don't know who we are."

— Kevin Scheidecker

farmers of technical and financial assistance available through the Soil and Water Conservation District.

The SWCD isn't the lead agency in feedlot management, he said, but it is working hand-in-hand with the county feedlot officer.

"If we're going to make this program work and do a good job for the feedlot owners in the county, we've got to work together," Scheidecker said.

About 1,500 cards were returned from livestock producers in Fillmore County, he said. About 200 to 300 producers raise livestock only on pasture. The remaining 1,200 to 1,300 producers will be visited by county staff who will share information about services available to help them come into compliance under the new 7020 feedlot rules.

County staff are in the process of prioritizing facilities, with priority given to feedlots located within 300 feet of streams.

Scheidecker is hopeful the agency will meet new potential customers through the feedlot work.

"Time and time again, we hear from people who don't know who we are," he said.

They often hear the same thing from lawmakers.

The Fillmore SWCD strives to

find creative ways to make itself known, Scheidecker said. They are starting to run radio ads and also send out news releases.

"We see a lot of repeat customers," he said. "(But) certainly there are a lot of new customers that come in."

Last year's floods brought in many new customers seeking conservation help, Scheidecker said.

The feedlot rules have also opened up the chance to work with another new customer base: Amish farmers.

"There's a group of people we definitely don't work with a lot," he said.

Know your customers

Tim Gieseke, district manager for the Carver Soil and Water Conservation District, says conservation officials need to know their district.

"You need to find the products you want, what you want to sell at the local level," he said. "You have to design what the local landowners need in your area."

He's hopeful conservation receives a boost in the next farm bill.

The National Association of Conservation Districts is trying to play a much larger role, Gieseke said. Their message is conservation needs to be local and flexible.

From: Helen Bohrer
To: # Everyone at BWSR
Date: 1/5/01 2:42PM
Subject: mileage

Board
Packet
FYI

Since I am getting the same question from a few of you I will repeat the e-mail of Dec 19.

January 1, 2001 the IRS mileage rate will be .345 when a state-owned vehicle is not available and an employee is required to use his/her personal auto to conduct authorized State business. The employee shall be reimbursed at the IRS mileage rate

When a State-owned vehicle is offered and declined by the employee mileage may be paid at the rate of seven cents per mile less (.275) on the most direct route.

AFSCME will remain \$.23 and \$.29