



Minnesota Board of Water and Soil Resources.
Minutes.

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February 2002

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET
LOWER LEVEL CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
WEDNESDAY, FEBRUARY 27, 2002**

AGENDA

9:00 a.m. Call Meeting to Order

Pledge of Allegiance

Adopt Agenda

Minutes of January 23, 2002

Open Mike (10-minute agenda time, two-minute limit/person)

Reports

- Chair – Lee Coe
- Executive Director – Ron Harnack
- Dispute Resolution Committee – Lee Coe
- Wetlands Committee – Darrell Bruggman
- Cost-Share/Soil Conservation Committee – Dwain Otte
- Education and Public Relations Committee – Paul Krabbenhoft
- Administrative Advisory Committee – Lee Coe

Agency Reports

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

Consent Agenda

- ☐ Morrison County Request for Comprehensive Local Water Plan Extension – DECISION
- ☐ Ottertail County Request for Comprehensive Local Water Plan Extension – DECISION

Committee Recommendations

Metro Water Planning Subcommittee

1. Order Boundary Change for the Ramsey-Washington Metro and Valley Branch Watershed Districts – DECISION

Discussion and Decision

1. Presentation of Southeast CREP Initiative – Bev Nordby, Kevin Scheidecker, Norm Senjem - DECISION
2. Ramsey SWCD Resolution – Supervisors Elected by Districts – Jim Birkholz - DECISION

Information and Discussion

1. Budget and Legislative Update – Ron Harnack
2. Hennepin County Appointment of District Supervisors – Philip Eckhert, Director, Hennepin County Department of Environmental Services
3. Presentation on Organics – Victor Ormsby

Advisory Comments

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

12:30 p.m. Adjourn for lunch break

1:00 p.m. Reconvene as a Committee of the Whole: Local Water Management – Past/Present/Future

Upcoming Meetings

- Next BWSR Meeting, March 27, 2002, St. Paul
- BWSR Meeting, April 24, 2002, St. Paul
- BWSR Meeting, May 22, St. Paul
- BWSR will hold meeting and tour in Kandiyohi County (July or August)
- BWSR Meeting, September 25, 2002, in conjunction with the Local Water Planners Conference, September 23-25, Hinckley



DATE: February 15, 2002
TO: Board of Water and Soil Resources Members, Advisors, Staff
FROM: Ronald D. Harnack, Executive Director *RDH*
SUBJECT: February 27th BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, February 27, 2002, beginning at 9:00 a.m. The meeting will be held in the BWSR conference room, lower level, at One West Water Street, St. Paul. Parking is available across the street from the building. Please display the enclosed "temporary parking permit" on your vehicle's dashboard.

The following information pertains to agenda items:

Consent Agenda:

- Morrison County Request for Comprehensive Local Water Plan Extension – see attached. DECISION
- Ottertail County Request for Comprehensive Local Water Plan Extension – see attached. DECISION

Committee Recommendations

Metro Water Planning Subcommittee

1. Order Boundary Change for the Ramsey-Washington Metro and Valley Branch Watershed Districts: The Ramsey-Washington Metro Watershed District and the Valley Branch Watershed District submitted a joint petition on November 16, 2001, for a minor boundary change. A landowner owns two lots that are split between the two watershed districts. The landowner wants to combine the two lots into one lot, but before that can be done both lots need to be in one watershed district. Notice was published and no hearing was requested. The Metropolitan Water Planning Subcommittee unanimously agreed to recommend the proposed boundary change be approved, per the attached draft Order. DECISION

Discussion and Decision

1. Presentation of Southeast CREP Initiative: BWSR staff have been participating in the development of this initiative and support the proposal. DECISION

Bemidji 3217 Bemidji Avenue N. Bemidji, MN 56601 phone (218) 755-4235 fax (218) 755-4201	Brainerd 217 S. 7th Street Suite 202 Brainerd, MN 56401 phone (218) 828-2383 fax (218) 828-6036	Duluth 394 S. Lake Avenue Room 403 Duluth, MN 55802 phone (218) 723-4752 fax (218) 723-4794	Fergus Falls 413 W. Stanton Avenue Fergus Falls, MN 56537 phone (218) 736-5445 fax (218) 736-7215	Marshall 1400 E. Lyon Street Box 267 Marshall, MN 56258 phone (507) 537-6060 fax (507) 537-6368	New Ulm 261 Highway 15 S. New Ulm, MN 56073 phone (507) 359-6074 fax (507) 359-6018	Rochester 40 16th Street S.E. Suite A Rochester, MN 55904 phone (507) 285-7458 fax (507) 280-2875	Saint Paul One West Water Street Suite 250 Saint Paul, MN 55107 phone (651) 282-9969 fax (651) 284-0000
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2. Ramsey SWCD Resolution – Supervisors Elected by Districts: SWCD law (see attached M.S. 103C) provides for election by district for Ramsey and Washington Counties upon resolution of the district board and by BWSR. Ramsey SWCD has submitted a resolution to elect supervisors by district beginning in the 2002 general election. Staff recommends approval so that Ramsey SWCD can meet their general election timeframes. DECISION

Information and Discussion

1. Budget and Legislative Update: See the attached budget update and spreadsheet comparison of the Governor/Senate/House proposals for addressing the budget deficit. Also included are impacts for LGUs. This information is also available on BWSR's website: www.bwsr.state.mn.us
2. Hennepin County Appointment of District Supervisors: See attached draft #6.
3. Presentation on Organics: Victor Ormsby will provide information on a proposed Memorandum of Agreement with the Department of Agriculture relating to organics.

Reconvene as Committee of the Whole: LOCAL WATER MANAGEMENT – Past/Present/Future: Local water management is the cornerstone of BWSR's efforts and periodically it is beneficial to review each program to understand the history and where we are today and set forth a vision for the future. This month staff lead discussion on the history of county water planning, metro water planning, groundwater planning and where we are today. Review the outcomes, the strengths and the weaknesses. Laying the foundation for future discussions of "where do we go from here"? Future goals/objectives and expectations; measures of success; how do other water resources issues relate to water planning (watershed based; drainage; TMDL's; land-use connections) and agency responsibilities and expectations; to name a few. Establishing one set of statutes, policies, procedures, authorities rather than three or four.

If you have any questions regarding the agenda, please feel free to give me a call at 651-296-0878. If bad weather conditions exist in your area and you are unable to attend the meeting due to travel restrictions, please notify the Board office by noon on Tuesday, if possible. I look forward to seeing you on February 27th!

RDH:mja
Enclosures

TEMPORARY PARKING PERMIT

**BWSR Meeting
One West Water Street
Lower Level Conference Room
February 27, 2002**

TEMPORARY PARKING PERMIT

**BWSR Meeting
One West Water Street
Lower Level Conference Room
February 27, 2002**

Consent Agenda

- Morrison County Request for
Comprehensive Local Water Plan
Extension
DECISION

MORRISON COUNTY COMPREHENSIVE LOCAL WATER PLAN EXTENSION
(FOR BOARD ACTION)

Morrison County has a Comprehensive Local Water Plan (CLWP) which was approved by the Minnesota Board of Water and Soil Resources on February 28, 1996. The effective date (end date) of this CLWP was February 28, 2001.

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 addresses granting CLWP extensions to counties where other planning efforts are currently underway. These other efforts require the input of the water planner and associated technical advisors in the county. Completion of other planning efforts would benefit the CLWP update.

In February 2001, Morrison County applied for a one year extension of their local water plan in order to better coordinate the update with their land use plan, especially related to ISTS and shoreland issues. The BWSR approved a one year extension at their February 28, 2001 meeting.

On June 25, 2001 BWSR entered into a grant agreement with Morrison County in order to receive input for the water planning rules rewrite process. The County's interest in coordinating their water plans and land use plans was part of the reason for BWSR's interest in the special purpose grant. Products from the grant will be a series of white papers on issues including :

- Local / State Water Planning Links
- Water Planning Data Elements and Resource Assessments
- Linking Land Use and Water Plans
- Wetlands / Drainage
- Local Governance Structure
- Local Water Plan Rules

On September 5, 2001, the Morrison County Water Planning Coordinator and Assistant Planning and Zoning Administrator resigned to accept another position, leaving the position vacant. The position was vacant from September 5 to December 3, 2001, a period of about three months. The county has also noted that during the much of the fall it was difficult to coordinate the project with appropriate staff due to the state employees strike.

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

The Morrison County Water Plan Update will be going out for local review in March. By this schedule the county should have it's Update before the Board in July. Given the unusual circumstances with the water plan coordinator position vacant for three months, and the important nature of the white papers the county is developing with their consultant, I support the county's request for a one-year extension, and recommend approval.

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 Morrison County (1995 Minnesota Session Law, Chapter 184,
Section 24 authorizing BWSR to grant extensions).

Whereas, Morrison County had a state approved Comprehensive Local Water Plan that is effective until February 28, 2001 pursuant to Minnesota Statute 1990, Section 103B.301, and

Whereas, the Morrison County Board of Commissioners requested an extension of the Comprehensive Local Water Plan to the Board of Water and Soil Resources on December 29, 2000, pursuant to Minnesota Session Law 1995, Chapter 184, Section 24, and

Whereas, The Board of Water and Soil Resources approved an extension of the Morrison County Comprehensive Local Water Plan until February 28, 2002, and

Whereas, The Board of Water and Soil Resources entered into a grant agreement with Morrison County on June 25, 2001 to develop input and recommendations for BWSR for the rewriting of Local Water Planning Rules.

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 January 24, 2002, the Board of Water and Soil Resources received a resolution from Morrison County requesting an extension of their Comprehensive Local Water Plan.
2. On February 11, 2002, the Board of Water and Soil Resources staff reviewed and recommended approval of the extension request by Morrison 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 Morrison 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 Morrison County Comprehensive Local Water Plan until February 28, 2003. Dated at St. Paul, Minnesota, this 27th day of February, 2002.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Leland Coe, Chairman

**RESOLUTION
MORRISON COUNTY BOARD OF COMMISSIONERS**

**REQUESTING EXTENSION FOR THE REVISION OF THE
MORRISON COUNTY COMPREHENSIVE LOCAL WATER PLAN**

DATE: JANUARY 22, 2002

WHEREAS, 1995 amendments to the Comprehensive Local Water Planning Act, M.S. 103B.311 gave the MN Board of Water And Soil (BWSR) authority to extend the ending date of local water plans for a period not to exceed 2 years; and

WHEREAS, Morrison County has a current state approved and locally adopted Comprehensive Local Water Plan with and end date of February 28, 2002 as extended from February 28, 2001.

WHEREAS, Morrison County is an active participant in other major projects currently underway such as Enhanced 911, Individual Sewage Treatment Grant, Shoreline Grant and other land use projects and programs, which require county staff and commissioner time and work effort; and

WHEREAS, Morrison County was impacted by the Minnesota State workers strike and was kept from any coordination with appropriate staff on the New Comprehensive Water Plan.

WHEREAS, Morrison County had a change of personnel in the Local Water Planner position and a redefinition of the position to allow more time spent on Local Water Planning Tasks, has a current state approved and locally adopted Comprehensive Local Water Plan with and end date of February 28, 2002 as extended from February 28, 2001.

WHEREAS, Morrison County has entered into a pilot program with the Board of Water and Soil Resources (BWSR) to produce a series of "White Papers" to (1. Identify how local water planning can influence county comprehensive planning and subsequent land use controls; (2. Assess county comprehensive water planning program requirements and their efficacy in promoting wise water management at the local level; and (3. Assist the various roles and relationships between local units of governments in implementing County Comprehensive Water Plans and related state programs administered by local governments, and would compromised the quality of the products produced without further review and analysis of the processes of the current Local Water Plan Rewrite.

WHEREAS, Morrison County does intend to start the final phase and create the Local Water Plan draft for review by 28 February 2002.

NOW, THEREFORE BE IT RESOLVED: That the Morrison County Board of Commissioners request from MN Board of Water and Soil Resources (BWSR) an additional 12 month extension for a total extension of 2 years (February 28, 2003) of their existing Comprehensive Local Water Plan.

BE IT FURTHER RESOLVED, THAT THE Morrison County will ensure 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.311 subd. 4 during the extension period

Ayes: 5 Nays: 0

Passed the 22nd day of January, 2002.

Don Meyes

Chair, Morrison County Board of Commissioners

Consent Agenda

- Ottertail County Request for
Comprehensive Local Water Plan
Extension
DECISION

OTTERTAIL COUNTY COMPREHENSIVE LOCAL WATER PLAN (FOR BOARD ACTION)

Ottertail County has a Comprehensive Local Water Plan (CLWP), which was approved, by the Minnesota Board of Water and Soil Resources and locally adopted via county resolution in 1995. The effective date (end date) of this CLWP is June 30, 2002.

The 1995 amendments to the Comprehensive Local Water Management Act, M.S. 103B.301, gives the Board of Water and Soil Resources authority to grant extensions to counties for the purpose of extending the ending date 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 addresses granting justify 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 benefit the CLWP update.

During the summer of 2001 Ottertail County delegated administration of the CLWP to the East & West Ottertail SWCDs. The SWCDs are developing an active Task Force in an effort to increase public participation in the management of the county's water & soil resources. Other resource plans the SWCDs are involved in are: the Ottertail River Watershed, Pomme de Terre River Watershed, Wellhead or Source Water Protection Plans for Perham and Fergus Falls, and the Sand Plains Monitoring Cooperative. Other implementation efforts currently underway by the SWCDs include CREP, CCRP marketing and implementation (greater than 380 easements/contracts in 2001).

Board Conservationist Pete Waller recommends approval of Ottertail County's two-year extension request to June 30, 200~~4~~.

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 **Ottertail** County (1995 Minnesota Session Law, Chapter 184,
Section 24 authorizing BWSR to grant extensions).

Whereas, Ottertail County has a state approved Comprehensive Local Water Plan that is effective until
June 30, 2002 pursuant to Minnesota Statute 1990, Section 103B.301, and

Whereas, the Ottertail County Board of Commissioners requested an extension of the Comprehensive
Local Water Plan to the Board of Water and Soil Resources, 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 November 1, 2001, the Board of Water and Soil Resources received a resolution from Ottertail
County requesting an extension of their Comprehensive Local Water Plan.
2. On January 15, 2002, the Board of Water and Soil Resources staff reviewed and recommended
approval of the extension request by Ottertail 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
Ottertail 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 Ottertail County
Comprehensive Local Water Plan until June 30, 2004. Dated at St. Paul, Minnesota, this 27th day of
February, 2002.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Leland Coe, Chair

OCT 30 2001

**OTTER TAIL COUNTY RESOLUTION NO. 2001 – 54
RESOLUTION REQUESTING THE EXTENSION OF OTTER TAIL COUNTY COMPREHENSIVE
LOCAL WATER PLAN**

Commissioner Lee offered the following resolution:

WHEREAS, The 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 2 years; and

WHEREAS, Otter Tail County has a current State approved and locally adopted Comprehensive Local Water Plan with an end date of June 30, 2002; and

WHEREAS, Otter Tail County on May 22, 2001, adopted Resolution No. 2001-27, transferring the Comprehensive Local Water Plan responsibilities to the East and West Otter Tail Soil & Water Conservation Districts.

WHEREAS, East & West Otter Tail Soil and Water Conservation Districts are active participants in the planning and implementation of the following projects:

- State Cost Share Implementation
- Feedlot Cost Share Program
- Perham Wellhead Protection
- Otter Tail River Improvement Project
- Pomme de Terre River Association Project
- Conservation Reserve Enhancement Program
- Continuous CRP Sign-up

These projects require District time and work effort.

NOW, BE IT FURTHER RESOLVED, that the Otter Tail County Board of Commissioners request from BWSR a two (2) year extension (June 30, 2004) of their existing Comprehensive Local Water Plan.

BE IT FURTHER RESOLVED, Otter Tail County will insure continued public participation in the form of Water Plan Task Force and Public Information meetings.

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

Commissioner Mosher seconded the adoption of the resolution, and it was declared upon the following vote: Ayes: 5 Nays: 0

Adopted this 16th day of October, 2001.

Dated: Oct. 16, 2001

OTTER TAIL COUNTY BOARD OF COMMISSIONERS

By: Roger Froemming
Roger Froemming, County Board Chair

Attest: Larry Krohn
Larry Krohn, Clerk

I, Larry S. Krohn, County Coordinator for the County of Otter Tail, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Otter Tail County, Minnesota, at their session held on the 16th day of October, 2001, now on file in my office, and have found the same to be a true and correct copy thereof.

Larry S. Krohn
Larry S. Krohn, County Coordinator

Committee Recommendation

Metro Water Planning Subcommittee

1. Order Boundary Change for the
Ramsey-Washington Metro and
Valley Branch Watershed District
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 Boundary Change for the
Ramsey-Washington Metro Watershed District and
the Valley Branch Watershed District in the City of
Oakdale pursuant to Minnesota Statutes § 103B.215

**ORDER
BOUNDARY
CHANGE**

Whereas, the Ramsey-Washington Metro Watershed District and the Valley Branch Watershed District filed a joint Petition dated October 25, 2001 and November 7, 2001 with the Board of Water and Soil Resources (Board) on November 16, 2001, to change the boundary of the Ramsey-Washington Metro Watershed District and the Valley Branch Watershed District pursuant to Minn. Stat. § 103B.215, 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. **Petition.** The Petition (See Exhibit A) to change the boundary of the Ramsey-Washington Metro Watershed District (RWMWD) and the Valley Branch Watershed District (VBWD) was filed by the RWMWD Board of Managers and the VBWD Board of Managers with the Board on November 16, 2001.
2. **Property Description.** The territory included in the boundary change, the Petitioned Area, consists of Lots 9 and 10, Block 1, Brochmann Acres in the City of Oakdale. The Petitioned Area is depicted on maps attached to the Petition as Map 1 and Map 2, and further identified by parcel identification numbers (PIN) in Map 2.

DRAFT

3. **Reasons for Boundary Change.** The Petition lists the following:
 - A. The City of Oakdale, by Resolution #2001-135, requested the RWMWD and the VBWD to modify their boundaries to consolidate Lots 9 and 10, Block 1, Brochmann Acres, into one watershed district rather than being split between the VBWD (Lot 9) and the RWMWD (Lot 10). The landowner wants to combine the two parcels into a single parcel and cannot have the single parcel split between two watershed districts.
 - B. Upon investigation of the hydrological characteristics of the two parcels, it was determined that the majority of the two lots are within the RWMWD
4. **Filing Notice.** Minn. Stat. § 103B.215, Subd. 3 requires a notice of filing be published twice and, if a hearing is requested within twenty days of the last publication, publish notice of hearing twice and hold a hearing. Legal notice of filing was published in the Lillie Suburban Newspaper the Oakdale-Lake Elmo Review on January 2 and 9, 2002, and in the Ramsey County Review on January 2 and 9, 2002. Further, on January 3, 2002 a letter was sent concerning the filing complete with a copy of the legal notice of filing and a map to several interested parties.
5. **Public Hearing.** No public hearing was held since no written request for hearing was received within the time period specified in Minn. Stat. § 103B.215, Subd. 3. Further, no comments were received within the specified time period.
6. **Concurrence.** The City of Oakdale concurs in the Petition as evidenced by their resolution and letter of concurrence.
7. **Termination Effect on Benefits and Damages.** The property affected is and remains liable for its proper share of any outstanding indebtedness of the watershed district applying to the property before this order, and levies and assessments for the indebtedness continue in force until the debt is fully paid.

DRAFT

8. **Metropolitan Water Planning Subcommittee.** The Metropolitan Water Planning Subcommittee on February 4, 2002, based on the record in this matter, decided the boundary change should be recommended for approval to the full board. A draft plan amendment that includes this boundary change should be submitted by each watershed district within one year of the date of this order and the plan amendment could be approved within two years of the date of this order. In arriving at a decision, the subcommittee noted the following:

- (A) The governing body of the city and the two watershed districts having jurisdiction over the territory proposed to be added or transferred concurs in the Petition;
- (B) The proposed boundary change is consistent with the purposes and requirements of Minn. Stat. §§ 103B.205 to 103B.255 and would advance the purpose of Minn. Stat. § 103D;
- (C) The proposed boundary change can be accomplished in conformance with Minn. Stat. § 103B.225;
- (D) The proposed boundary change would benefit the public welfare and public interest.

DRAFT

CONCLUSIONS

1. The Petition for boundary change of the RWMWD and the VBWD is valid in accordance with Minn. Stat. § 103B.215.
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 boundary change.
4. The proposed boundary change should be approved per the Petition.
5. The governing body of the city and the two watershed districts having jurisdiction over the territory proposed to be added or transferred concurs in the Petition.
6. The proposed boundary change is consistent with the purposes and requirements of Minn. Stat. §§ 103B.205 to 103B.255 and would advance the purpose of Minn. Stat. § 103D.
7. The proposed boundary change can be accomplished in conformance with Minn. Stat. § 103B.225.
8. The proposed boundary change would benefit the public welfare and public interest.
9. A draft plan amendment that includes this boundary change should be submitted by each watershed district within one year of the date of this order and the plan amendment could be approved within two years of the date of this order.

DRAFT

ORDER

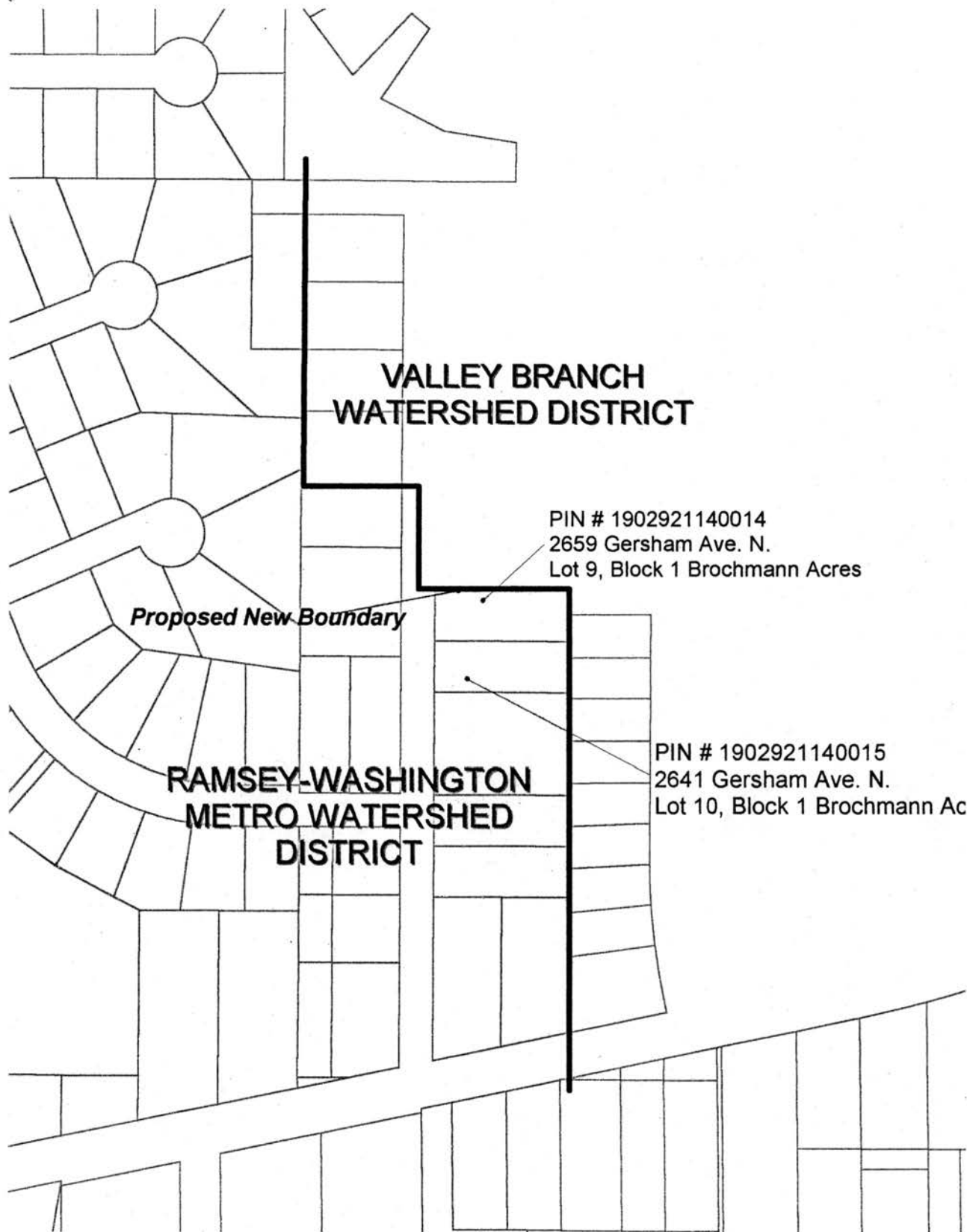
The Board hereby orders that the boundaries of the Ramsey-Washington Metro Watershed District and the Valley Branch Watershed District are changed per the October 25, 2001 and November 7, 2001 Petition according to Map 2 of said Petition attached herewith and fully incorporated herein. Lot 9, Block 1, Brochmann Acres in the City of Oakdale is transferred from the Valley Branch Watershed District to the Ramsey-Washington Metro Watershed District.

Dated this 27th day of February, 2002.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

DRAFT

By: _____
Leland G. Coe, Chair



Map 2 Proposed District Boundary

(Includes Lot 9, Block 1 Brochmann Acres
in Ramsey-Washington Metro Watershed District)



Discussion and Decision

1. Presentation of Southeast CREP
Initiative
DECISION

Landscape Buffer Initiative Lower Mississippi River Basin in Minnesota

(Jan 18 2002 DRAFT)

Summary

A locally led group called the Basin Alliance for the Lower Mississippi in Minnesota (BALMM) has developed a Landscape Buffer Initiative. This initiative is part of a comprehensive basin plan to protect and restore the region's surface water and groundwater resources. The initiative calls for the placement of multifunctional vegetated buffers in four types of strategic locations on the landscape to reduce runoff, soil erosion and water contamination while providing high quality wildlife habitat and abatement of peak stream flows:

- Highly Erodible Land –

Resource Assessment: 210,000 acres *Acreage Goal* --40,000
Allocate 40,000 acres for contour buffers and critical area seedings to protect the region's most erosive fields and sensitive cold-water trout streams and increase wildlife habitat, mainly in karst topography to the east.

- Riparian Zones –

Resource Assessment: --110,000 acres *Acreage Goal* --25,000
Allocate 25,000 acres to provide critically needed protection against stream sedimentation and fecal coliform bacteria, mainly in the headwaters region to the west.

- Wetland Restoration Sites

Resource Assessment --100,000 acres *Acreage Goal* --20,000
Allocate 20,000 acres to restore the functions and values of wetlands, and reduce peak stream flows.

- Groundwater Protection Zones

Resource Assessment: --37,600 acres *Acreage Goal* --10,500
Allocate 10,500 acres to provide protection around sinkholes, in wellhead protection areas, and in focused recharge zones, mainly in karst topography.

The BALMM Buffer Initiative subcommittee will provide ongoing direction and support for the project. It is hoped that the RIM Reserve Program can be combined with the Conservation Reserve Program to provide payments for permanent easements. Local Soil and Water Conservation Districts, supported by the Natural Resources Conservation Service, Department of Natural Resources, Board of Water and Soil Resources, and others, will lead the implementation of the initiative. Significant additional technical assistance will be required to implement the Initiative within a 3-5 year period.

Land Use, Water Quality and the Landscape Buffer Initiative

The Lower Mississippi River Basin in southeastern Minnesota includes all or part of 17 counties covering 7,266 square miles (4,650,100 acres) of land. Lakes are relatively scarce, but rivers are abundant, with 11,000 stream miles draining surface and groundwater to the Mississippi River. Of these, 736 miles have sufficiently cold and clear water to be designated as trout streams by the Department of Natural Resources.

Beautiful bluffs, springs, caves and trout streams abound in the eastern basin, where steep topography and erosive soils increase the potential for pollutant runoff and sedimentation of streams. Thousands of sinkholes and scores of disappearing streams highlight the close connection between surface water and groundwater. The presence of fractured limestone bedrock lying close below the surface presents a widespread risk of groundwater contamination, especially where recharge is focused in narrow zones along geological formations.

In the southwestern part of the basin, Mississippi tributaries emerge as small streams out of a prairie landscape once rich in wetlands, now extensively drained to support a productive agriculture. Further to the north, in the western Cannon River Watershed, remnants of the Big Woods hardwood forest intermingle with mixed crop and livestock farming in a rolling terrain interspersed with lakes and wetlands.

Water quality data from the past three decades show both positive and negative trends. On the positive side, concentrations of un-ionized ammonia, biochemical oxygen demand and total phosphorus are trending downwards. On the negative side, concentrations of nitrate nitrogen show a steady increase, and concentrations of fecal coliform bacteria and total suspended solids often exceed water quality standards. Shallow groundwater in karst topography often shows high concentrations of nitrates and fecal coliform bacteria.

Relatively diverse land use combined with steep stream gradients and cold groundwater supplies for base flow create a relatively high potential for stream water quality. Gains in soil conservation practices in recent decades have helped to reverse some of the adverse effects of highly erosive land use practices, especially in the steep terrain of the bluffs. However, dramatic shifts in agricultural land use away from perennial vegetation (hay and pasture) in favor of row crops is reducing landscape diversity and threatening to increase soil erosion, stream sedimentation, and nitrate leaching to groundwater. According to the National Resources Inventory conducted by the USDA, perennial vegetation as measured by two land use categories – pasture and noncultivated cropland – declined by 180,000 acres, or 28 percent, from 1982 to 1997. During about the same period, the percentage of cropland occupied by corn and soybeans increased from 64 percent in 1974 to 80 percent in 1999 in the 9-county area of Southeastern Minnesota, according to Minnesota

Department of Agriculture statistics. A particularly worrisome trend is the replacement of alfalfa with soybeans on steeply sloping fields once protected by contour strip farming of hay and corn.

Increasing perennial vegetation by 200,000 acres is an important land use goal that BALMM has established to address environmental concerns associated with these trends. Strategies to achieve this goal include: 1) promotion of cattle production, especially rotational livestock grazing; 2) changing the federal farm program to provide support for hay along with current program crops; 3) improved forest land management; and 4) the strategic use of vegetated landscape buffers.

The BALMM Landscape Buffer Initiative takes a targeted, strategic approach to encouraging conversion of cropland to perennial vegetation. It identifies four types of locations on the landscape where perennial vegetation can provide maximum benefits. These include contour strips on steeply sloping fields, riparian strips bordering cropland; focused groundwater recharge areas; and wetlands converted to cropland. The BALMM strategy also calls for incentives that help to integrate buffer strips with complementary conservation practices for maximum effectiveness. These include bonus payments to farmers who agree to:

- 1) maintain a buffer width of 100 feet to maximize wildlife benefits;
- 2) ensure that cropland adjacent to or upslope of the buffer maintains a rotation average of 30 percent crop residue cover or receives equivalent erosion control from alternative measures;
- 3) maintain a riparian buffer around fields designated for manure application.

Flexibility: Ideally, the buffer initiative should be sufficiently flexible to allow limited grazing as well as rotation of buffered acreage on contour strips to meet farmers' soil management needs. Also, flexibility to allocate acreage among eligible practices, and among different counties and regions, in response to landowner interest, is needed to make the initiative responsive to farmers' needs and local government priorities.

Acreage Needs Assessment

Four broad types of landscape buffers are needed to address environmental concerns in the Lower Mississippi River Basin. Estimates of acreage needs for each of these types of buffers are provided below:

1. Highly Erodible Land:

Resource Assessment: --210,000 acres *Acreage Goal* -- **40,000 acres.**
Critical Area Seedings and Contour Buffer Strips on steep, erosion-prone land where row crops are raised and hay acreage is not sufficient to provide effective

strip cropping. Soil erosion in this area threatens to degrade soil productivity and harm water quality, especially by causing sediment embedment in cold-water streams with the potential to support trout. This acreage is predominantly in the eastern basin in karst topography, although all counties include significant acreage of such land. Land use analysis using the Universal Soil Loss Equation shows the following need to achieve the BALMM goal of T soil loss on highly erodible land in the basin. This is based on a combination of critical area seeding and hardwood forest establishment on 25 percent of farmland that is eroding at 4T or greater, plus the use of contour buffer strips in conjunction with conservation tillage on additional highly erodible land, as shown in the table below:

Erosion Rate	Acres of Highly Erodible Land	Acres in Critical Area Seeding and Hardwood Forest	Contour Buffer Acreage Needed to Reach T
Greater than 4T	60,000	15,000	6,750 (15% of field on 45,000 acres HEL)
From 2T to 4T	150,000		18,000 (12% of field)
Total	210,000	15,000	24,750

2. Riparian Buffer Strips.

Resource Assessment --110,000 acres
acres.

Acreage Goal -- **25,000**

The water quality benefits provided by riparian buffer strips range from erosion control and pollutant filtering to streambank stabilization and improved habitat for stream biota and wildlife. Land cover analysis using GIS and satellite imagery indicates that tributaries in the western basin are the least protected with vegetated buffers. (see table below). Most have well under half of riparian acreage in perennial vegetation. Streams in the region are moderately impaired by turbidity (or suspended solids) and fecal coliform bacteria. For counties with primarily karst topography, a relatively high percentage of riparian acreage is vegetated. However, some of the vegetated acreage is pastureland that may be eroding at high rates. In addition, the upper reaches of tributaries in this region sometimes have low percentages of riparian land in permanent vegetation. Thus, riparian buffers in the eastern basin also can provide important benefits. Basinwide, if implemented along with conservation practices in the upland and riparian zones, as called for in the BALMM basin plan scoping document, riparian buffer strips can go a long way toward meeting water quality standards and providing broad ecological benefits to the region.

Land Cover within 100 Feet of Streams			
County	Percent Row Crop	Percent Vegetated	Other
Dodge	54	37	9
Fillmore	27	62	11
Freeborn	63	28	9
Goodhue	38	50	12
Houston	15	73	12
Mower	60	32	8
Olmsted	36	50	14
Rice	53	36	11
Steele	50	40	10
Wabasha	24	63	13
Winona	16	74	10

Percent of land within 100 feet of streams that is in row crops, vegetated, or other land uses. Source: Minnesota Department of Natural Resources

To achieve the target of 50% vegetated land use in the 100 foot (either side) riparian zone in the western basin, and meet the need for improved riparian vegetation management in karst topography, will require an estimated 25,000 additional acres of permanent riparian vegetation, basinwide.

3. Wetland Restoration:

Resource Assessment—100,000 acres *Acreage Goal*-- 20,000 acres
 The drainage, cultivation and development of land have combined to greatly increase the speed of runoff and the peak flows of streams following significant snow melt and rainfall events, as well as greatly reducing wildlife habitat provided by wetlands. The restoration of wetlands in strategic locations can begin to reverse these adverse effects. Opportunities for wetland restoration are greatest in the in the headwaters region in the western basin, while more limited opportunities exist in the river valleys and elsewhere in the karst region. In Mower and Steele, the SWCD's estimate 18,000 acres could be restored based on NWI maps and soils information. Multiply that by the 5 western counties and add acres for the eastern part of the basin the resource need is 100,000 acres. It is proposed that 18,000 acres be targeted for wetland restoration in the headwaters region. The NRCS will be requested to evaluate how wetland restoration can be targeted in this region to maximize reductions in peak stream flows on the Cedar, Root, Zumbro, Cannon and Vermillion Rivers, in addition to Spring Valley Creek and other streams with severe flooding problems. An additional 2,000 acres are needed for wetland restoration elsewhere in the basin.

4. Buffers for Groundwater Protection.

Resource Assessment --37,500 acres *Acreage Goal* --10,500.00 acres.

Vegetated buffers can offer significant protection of drinking water supplies, especially in karstic areas of the basin with a high potential for groundwater contamination. The following three types of locations have been selected for special focus:

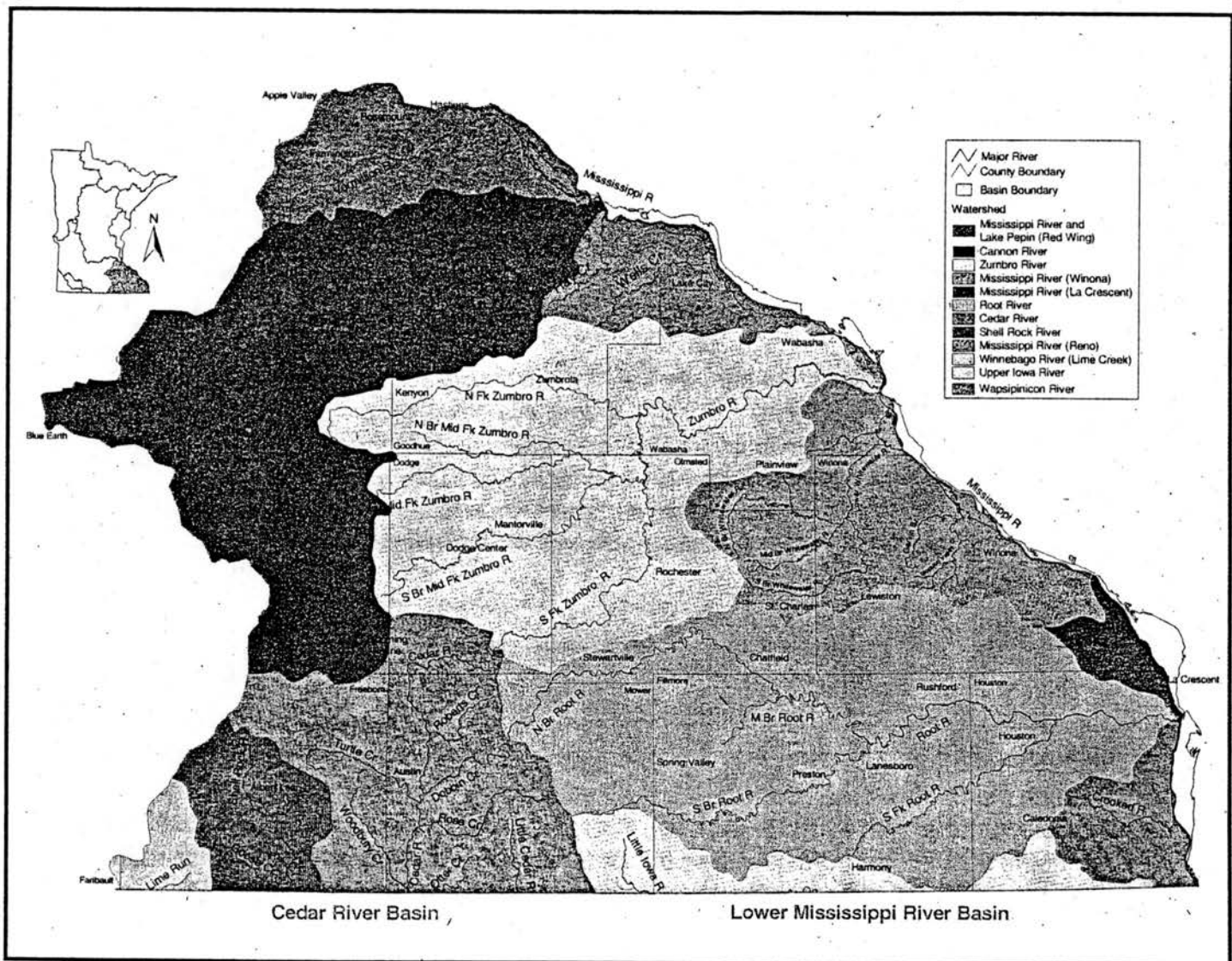
- Sinkhole Protection – An estimated 1,500 acres are needed, based on a 0.25 acre buffer around a total of 5990 sinkholes on farmland.
- Focused Recharge Zone at Decorah Shale outcroppings. This zone occurs throughout karst topography. Olmsted County has worked to identify, map and explore biological filtering alternatives for this recharge zone for several years. Estimated acreage of cropland within this zone in Olmsted County alone is 16,000 acres. Our goal basinwide would be to secure half of this amount for permanent easements with perennial vegetation, or 8,000 acres.
- Wellhead Protection Areas. – Department of Health estimates 20,000 acres of cropland are a part of wellhead protection areas in the basin. 1,000 would be the acreage goal that could provide protection to drinking water within wellhead protection areas that include agricultural land.

Locally Led Implementation

The BALMM Buffer Initiative subcommittee will provide ongoing direction and support for the project. Local Soil and Water Conservation Districts, supported by the Natural Resources Conservation Service, Department of Natural Resources, Board of Water and Soil Resources, and others, will lead the implementation of the initiative. **Significant additional technical assistance will be required to implement the Initiative within a 5-7 year period.**

Balmm!

Basin Alliance for the Lower Mississippi in Minnesota



Providing local leadership
for
Water Quality Protection & Improvement
in the Lower Mississippi River Basin

Water Quality Concerns

The Lower Mississippi River Basin abounds with beautiful bluffs, springs, caves and dozens of streams capable of supporting trout, small mouth bass and other popular game fish species. It is a strong recreational magnet for tourists and residents alike as a growing population seeks high-quality outdoor experience. However, decades of monitoring show that both ground water and surface water are being polluted as a result of human activities in both rural and urban areas. Water quality standards for nitrate nitrogen and fecal coliform bacteria are widely exceeded, while sediment from soil erosion damages fish and wildlife habitat from small trout brooks to the mighty Mississippi.

Why a Basin Alliance?

To an ever-increasing extent, water quality protection and improvement efforts in Minnesota and up and down the Mississippi River are being organized by drainage basin. Public and private funding sources are showing a growing preference for working through basin initiatives rather than supporting a host of separate, uncoordinated efforts.

The reason is simple. To achieve measurable water quality improvements, all significant contributors to water quality problems within the drainage basin need to contribute to the solution. This poses a challenge to local, state and federal agencies responsible for land and water resource management. Rather than working strictly within political boundaries (counties, cities, and states), basin management requires coordinating with other agencies across political boundaries within the hydrologic boundaries of a basin. A basin organization can help to facilitate this coordination.

Origins of BALMM

The Basin Alliance for the Lower Mississippi in Minnesota (BALMM) was formed in October 1999 to coordinate efforts to protect and improve water quality in the Lower Mississippi River Basin. Alliance members include Soil and Water Conservation District managers and county water planners together with a host of regional, state and federal agencies and organizations. These members decided to coordinate their efforts through an informal, ad-hoc alliance rather than forming an additional unit of regional government.

Purpose of BALMM

The purpose of BALMM is to create an organized, unified effort in the Lower Mississippi River Basin that will:

1. Make the case to the public, elected officials and funding sources for giving priority attention to water quality restoration and protection in southeastern Minnesota;
2. Establish ongoing coordination of local, state, tribal and federal agencies to plan and implement water quality protection and restoration activities that are economically and environmentally sustainable and reflect local and downstream priorities.

Accomplishments

Within its first year, BALMM developed the Lower Mississippi River Basin Plan Scoping Document which includes measurable, pollutant-specific water quality goals along with 10 strategies for achieving them. These strategies are being implemented through existing organizations. For example, the nine-county Southeast Minnesota Water Resources Board has secured a federal grant to implement the BALMM feedlot strategy, and the Area 7 Minnesota Association of SWCDs is taking the lead on soil conservation strategy implementation.

BALMM Strategies

BALMM members put a strong emphasis on implementing land use practices to improve or protect water quality. These strategies include three approaches to managing broad areas – Watershed Management, Aquifer Protection, and Flood Plain Management — along with seven specific land-use strategies that can be implemented as part of one or more of these comprehensive area strategies. These are:

Perennial Vegetation Increase acreage of well-managed hay and pastureland, vegetative buffer strips, woodlands, etc. This will increase infiltration and reduce surface runoff following rain and snow melt events.

Wetland Protection and Restoration Work with willing landowners to restore wetland functions in critical parts of the landscape.

Soil Conservation on Row-Crop Land Promote conservation tillage, contour farming and install needed structures to keep erosion at or below the replacement rate of soil erosion.

Urban and Rural-Residential Land Management Reduce impacts from urban stormwater and wastewater, while managing urban development.

Nutrient and Pesticide Management Promote optimal use of fertilizer and chemicals to minimize runoff and leaching from farm fields and urban land.

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BALMM Members

Area 7 Minnesota Soil and Water Conservation Districts Association, Bluffland Environmental Watch, Cannon River Watershed Partnership, Dakota County/SWCD, Minnesota Board of Water and Soil Resources, Minnesota Department of Agriculture, Minnesota Department of Health, Minnesota Department of Natural Resources, Minnesota-Wisconsin Boundary Area Commission, Natural Resources Conservation Service, Prairie Island Indian Community, Southeast Minnesota Water Resources Board, St. Mary's University Resource Studies Center, University of Minnesota Extension, U.S. Fish & Wildlife Service, Whitewater River Watershed Project

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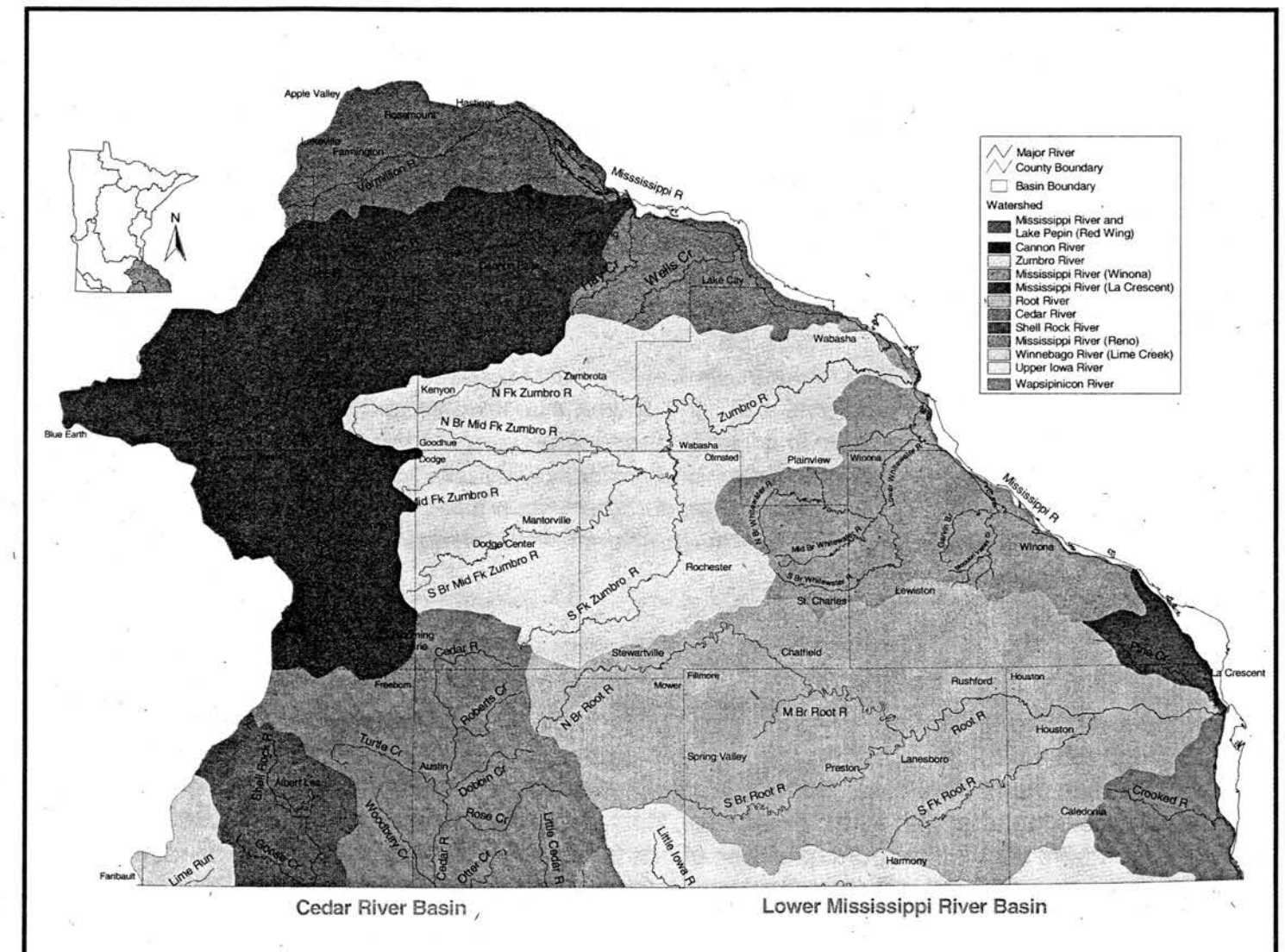
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Discussion and Decision

2. Ramsey SWCD Resolution –
Supervisors Elected by Districts
DECISION

February 14, 2002

TO: Members, Board of Water and Soil Resources

FROM: Jim Birkholz

SUBJECT: Ramsey SWCD request to elect supervisors by districts—FOR DECISION

BWSR is in receipt of a request from the Ramsey SWCD to implement their authority in MS 103C to elect their supervisors from supervisor election districts. The request is to establish the procedures in time for the 2002 office filings and elections.

Analysis

Laws 1997, c. 130, sec. 1, added special authority to soil and water conservation district law in the counties of Ramsey and Washington. This authority allows these and only these districts the option to conduct SWCD supervisor elections by supervisor districts. The general SWCD law requires supervisor elections to be conducted county-wide with nomination from geographic supervisor districts. To date, neither the Ramsey nor the Washington SWCD have implemented this special authority authorized in 1997.

For Ramsey SWCD to implement their special election authority requires approval of the BWSR (State Board) at two intervals. First, the State Board must give approval to the district action invoking its authority by resolution to conduct the elections by supervisor districts. That is the matter before the board at its February 27 meeting. Secondly, at a later date, the State Board must approve the supervisor (election) districts that the county board is authorized to draw. This second approval by the State Board needs to be given early enough so that filing the resolution establishing the supervisor (election) districts can be done at least 30 days prior to the first date candidates may file for the office of supervisor. This year, by my count, filing for office will begin on July 2.

Staff Recommendation

The Ramsey SWCD resolution to pursue election of their supervisors by supervisor (election) districts for the 2002 election is in order. **Approval is recommended.**

To stay on schedule for office filing dates, the State Board should anticipate taking action in April or May at the latest regarding the supervisor (election) districts that will be drawn by the Ramsey County Board.

SOIL AND WATER CONSERVATION DISTRICTS

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.

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

- 103C.301. Initial election of supervisors.
- 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.

Section

COST-SHARING CONTRACTS

- 103C.501. Cost-sharing contracts for erosion control and water management.

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. A supervisor must be a resident of the supervisor district to be elected.

(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; Laws 2001, 1st Sp., c. 10, art. 18, § 3, eff. Jan. 1, 2002.

Historical and Statutory Notes

1997 Legislation

Laws 1997, c. 130, § 2, provides that § 103C.311, subd. 1, par. (a), without local approval, pursuant to § 645.023, subd. 1, par. (a), (amending this section) is effective July 1, 1997.

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.

Ramsey Soil and Water Conservation District



2015 Rice Street
Roseville, MN 55113-6814
Fax 651/488-3478
Telephone 651/488-1476

February 6, 2002

RECEIVED

FEB 07 2002

Bd. of Water & Soil Resources
St. Paul

Mr. Ron Harnack
Executive Director
Minnesota Board of Water and Soil Resources
One West Water Street, Suite 200
St. Paul, MN 55107

Dear Mr. Harnack:

On February 5, 2002, the Ramsey Soil and Water Conservation District Board of Supervisors passed the attached resolution pursuant to Minnesota Statutes 103C.311, subdivision 2, **Supervisors elected by districts**.

According to the statute, it is necessary to have the approval of the BWSR Board. Please place this request on the February 2002 BWSR board meeting agenda. It is our intent for this change to be in effect for the 2002 general elections, therefore, this will require BWSR's immediate assistance.

Please contact our District Manager, Tom Petersen, with any questions.

Sincerely,


Ingrid Bjorklund
District Chair

cc. Ramsey SWCD Board of Supervisors
Linda Peterson, BWSR Board Conservationist
Janice Rettman, Ramsey County Board Liaison to the Ramsey SWCD

chair letter to BWSR. feb. 06,02

Resolution

Board of Supervisors

RAMSEY SOIL AND WATER CONSERVATION DISTRICT

Presented by: Ingrid Bjorklund

Date: 02-05-02

No.: 02-02-04

Resolved the Ramsey Soil and Water Conservation District supervisors will be elected by supervisor district pursuant to Minnesota Statutes 2000 Chapter 103C.311, Subd. 2, beginning with the 2002 general election.

By: 

Ingrid Bjorklund, Chair

By: 

Tom Petersen, District Manager

Information and Discussion

1. Budget and Legislative Update

From: Tammy McGlone
To: # Everyone at BWSR
Date: 2/13/02 11:05AM
Subject: Budget Update

Both the House and Senate have now passed out their budget reduction spreadsheets. The Senate has actually passed a bill off the floor and it is in the House pending conference. The House passed out their spreadsheet listing the cuts and will move their bill out tonight. This has been a very fast process and has required lots of hours from Ron, Doug and Steve at the Legislature over the last couple of weeks and I thank them for their time.

The attached spreadsheet shows you a comparison of the Governor, House and Senate positions. These cuts have been taken as permanent reductions to the agency budgets. That is shown in the tails portions of the attached spreadsheet. You will see that all three reduction proposals have significant differences, both in numbers and approaches. This is the beginning of the process. The House will probably pass their budget bills off the floor early next week. At some point, probably later in the week, we should begin the conference committee process.

Both sides of the Legislature did treat BWSR well. In many comparisons, the Legislature treated BWSR better than we could have hoped for. Obviously, when you look at the numbers, you will see that the Senate cuts are less than the House and would not have the same impacts. The House position takes less cuts to districts but a greater, permanent cut to NRBG. (See the tails.)

We will be putting this information on the web-site so that our partners and clients will see the impacts. You may, therefore, want to take a look at the attached so that if you are asked, you are familiar with the comparisons. You can also feel free to talk about these impacts with your SMT members or Doug, Steve, Ron or myself.

We are moving on a very fast track right now so we will do our best to keep you all informed. If you have any questions, don't hesitate to follow up with us so you have the information you need.

Thanks for your time.

Tammy McGlone
Board of Water and Soil Resources
Administrative Services Director
651-282-2929
tammy.mcglone@bwsr.state.mn.us

Capital Budget Bill- 2002 Session

		Fund	Governor's Rec	Fund	Senate Rec
104	Lewis and Clark Rural Water			GF	\$180
105	Dam Improvements	Bond	\$700	Bond	\$1,700
106	Flood Hazard Mitigation Grants	Bond	\$15,500	Bond	\$28,500
107	Stream Protection and Restoration	Bond	\$500	Bond	\$1,000
108	Water Access Aquisition and Development	Bond	\$1,500	Bond	\$1,500
109	Lake Superior Safe Harbors			Bond	\$1,750
110	Fish Hatchery Improvements	Bond	300	Bond	\$300
111	Fisheries Acquisition and Improvements	Bond	\$500	Bond	\$500
112	SNA Aquisition and Improvement	Bond	\$500	Bond	\$2,500
113	Natural and Scenic Area Land Aquisition Grants	Bond	\$1,000	Bond	\$1,000
114	RIM-Wildlife Dev/Habitat Improvement	Bond	\$3,000	Bond	\$3,000
115	Native Prairie Bank Easement	Bond	\$500	Bond	\$1,000
116	<i>DNR Total</i>	Total	\$88,350	Total	\$117,172
117		GF		GF	\$180
118		Bond	\$88,350	Bond	\$116,992
119					
120	<i>Pollution Control Agency</i>				
121	Closed Landfill Cleanup Program	Bond	\$10,000	Bond	\$10,000
122	Brownfield to Greenspace Grants			Bond	\$1,500
123		Total	\$10,000	Total	\$11,500
124		GF		GF	
125		Bond	\$10,000	Bond	\$11,500
126					
127	<i>Office of Environmental Assistance</i>				
128	Capital Assistance Program	Bond	\$3,000	Bond	\$3,450
129		Total	\$3,000	Total	\$3,450
130					
131	<i>Board of Water & Soil Resources</i>				
132	RIM Reserve Easements	Bond	\$7,000	Bond	\$7,000
133	Streambank,Lakeshore and Roadside Erosion Control			Bond	\$2,000
134	Local Gov't Road Wetland Replacement			Bond	\$3,000
135	Lazarus Creek			Bond	\$1,500
136	Browns Creek			Bond	\$1,300
137	<i>BOWSR Total</i>	Total	\$7,000	Total	\$14,800
138		GF	\$0	GF	
139		Bond	\$7,000	Bond	\$14,800
140					
141	<i>Agriculture</i>				
142	Rural Finance Authority Loan Participation	UF	\$15,000	UF	\$15,000
143	Metro Greenhouse and Storage Bay			Bond	\$292
144	<i>Agriculture Total</i>	Total	\$15,000	Total	\$15,292
145		UF	\$15,000	UF	\$15,000
146				GF	
147		Bond	\$0	Bond	\$292
148					
149	<i>Zoological Gardens</i>				
150	Asset Preservation	Bond	\$3,000	Bond	\$3,000
151	Asia Trail	Bond	\$7,184	Bond	\$7,184
152	<i>Zoological Gardens Total</i>	Total	\$10,184	Total	\$10,184
153		GF		GF	
154		Bond	\$10,184	Bond	\$10,184
155					

[illegible]

Dollars in Thousands											
	FY 03			Budget	TAILS FY 04				TAILS FY 05		
	Gov. Rec.	House	Senate		Gov. Rec.	House	Senate		Gov. Rec.	House	Senate
7.0	(523.0)	(600.0)	(260.0)	4,707.0	(523.0)	(600.0)	(260.0)	4,707.0	(523.0)	(600.0)	(260.0)
5.0	(2,051.5)	(1,300.0)	(400.0)	4,735.0	(799.6)	0.0	(400.0)	4,735.0	(799.6)	0.0	(400.0)
9.0	(49.0)	(49.0)	(49.0)	189.0	(189.0)	(49.0)	(189.0)	189.0	(189.0)	(49.0)	(189.0)
3.0	(977.2)	(977.2)	(191.0)	5,268.0	(382.0)	(977.2)	(191.0)	5,268.0	(382.0)	(977.2)	(191.0)
7.0	(198.3)	0.0	0.0	4,037.0	0.0	0.0	0.0	4,037.0	0.0	0.0	0.0
5.0	(3,799.0)	(2,926.2)	(900.0)	18,936.0	(1,893.6)	(1,626.2)	(1,040.0)	18,936.0	(1,893.6)	(1,626.2)	(1,040.0)
1.0	0.0	(500.0)	0.0		1,841.0	0.0	0.0		1,841.0	0.0	0.0
5.0	0.0	(205.0)	0.0		205.0	(205.0)	0.0		205.0	(205.0)	0.0

Information and Discussion

2. Hennepin County Appointment of District Supervisors

MIKE OPAT
CHAIR



612-348-7881
FAX-348-8701
mike.opat@co.hennepin.mn.us

BOARD OF HENNEPIN COUNTY COMMISSIONERS

A-2400 GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487-0240

January 30, 2002

Richard Rupp, President
Minnesota Association of Soil and Water Conservation Districts
790 Cleveland Avenue Suite 216
St. Paul, Minnesota 55166

Dear Mr. Rupp:

Thank you for your letter concerning the future of the Hennepin Conservation District (HCD).

The Hennepin County Board of Commissioners has strong interest in the areas of environmental protection and conservation. We are, however, reviewing various options related to how HCD activities and related services are provided within Hennepin County.

The County Board no longer sees an elected Conservation District Board as fitting the needs of the County—we value many of the functions, but we would like them to continue under a different structure.

Unfortunately, the Hennepin Conservation District has incurred significant legal fees over the past several years relating to employment and management issues. The County Board remains concerned about the HCD's difficulty in maintaining a constructive and productive workplace. The cost of continued litigation ultimately reduces the amount of money available to fund the Conservation District's core mission.

As you may know, the County Board restricted the HCD's access to a portion of its 2002 County appropriation. Unless there is a change in state law to allow Conservation District Board members to be appointed I think it is likely that the County Board will cease to provide property tax funding and examine developing an internal alternative to the HCD.

The County's goal is maximize the impact of the property tax funding and to improve conservation activities in Hennepin County. As we move toward a discussion at the Legislature, it would be appreciated if the MASWCD and the Board of Soil and Water Resources (BSWR) would at least consider the County Board's concerns for good policy, operations and fiscal responsibility.

Sincerely,


Mike Opat, Chair
Hennepin County Board of Commissioners

Post-it® Fax Note	7671	Date	2/14/02	# of pages	1
To	Ron Harnack	From			
Co./Dept.	BSWR	Co.	MASWCD		
Phone #		Phone #	690 9028		
Fax #	297 5615	Fax #			



Draft #6

A bill for an act relating to local government; providing for the appointment of supervisors for the Hennepin County soil and water conservation district; providing for the transition from an elected to an appointed board; amending Minnesota Statutes 2001, Chapter 383B by adding a section: 383B.82.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA

Section 1. Minnesota Statutes 2001, Chapter 383B, is amended by adding a section to read:

383B.82 Appointment of supervisors for the Hennepin soil and water conservation district.

Subd. 1. Supervisors appointed in Hennepin County. Notwithstanding the provisions of chapter 103C.305, 103C.311 and 103C.315 in the county of Hennepin, the board of commissioners of Hennepin County shall appoint the board of supervisors of the Hennepin soil and water conservation district in the manner provided herein.

Subd. 2. Supervisor districts. (a) The Hennepin County board of commissioners shall, subject to the approval of the Minnesota Board of Water and Soil Resources, divide the county into five districts. Upon establishing the boundaries of the five districts, the chair of the Hennepin County board of commissioners shall promptly file with the state board a certified copy of the resolution of the Hennepin County board establishing the districts.

(b) The boundaries of the districts may be amended by the County board of commissioners, subject to the approval of the state board; provided, however, that the boundaries of the districts shall be reviewed by the County board of commissioners and submitted to the state board for approval at least once every ten years.

Subd. 3. Appointment of board of supervisors. (a) The district board shall consist of five supervisors with one supervisor appointed to represent each district.

(b) The term of office for a district supervisor shall be four years. The terms of office for the supervisors shall be staggered. When a vacancy in the office of supervisor occurs prior to the expiration of the term of office, the county board shall appoint a replacement to serve the remainder of the term.

(c) When filling vacancies on the board of supervisors, the Hennepin County board of commissioners shall publish a notice of all vacancies on the district board and solicit applications pursuant to the Hennepin County Open Appointments Policy. The application period shall end not less than 30 days from the date the vacancy is first published.

(d) To be eligible to serve as a supervisor for a district, a person must be an eligible voter residing in such district.

Subd. 4. Transition rule. The appointment of supervisors pursuant to Subd. 3 shall commence with regard to filling vacancies occurring upon the expiration of the terms of the elected supervisors, or to fill any vacancies occurring before that time.

Sec.2. Effective date.

Section 1 is effective on the day following approval by the Hennepin County board of commissioners and approval by the board of supervisors of the Hennepin County soil and water conservation district and compliance with Minnesota Statutes, section 645.021.

Information and Discussion

3. Presentation on Organics



United States
Department of
Agriculture

Natural
Resources
Conservation
Service

P.O. Box 2890
Washington, D.C.
20013

REC

NOV 20 2001

11/21/01

*Please take
the lead on
this*

NOV 09 2001

WJH

SUBJECT: CPA - MOU Between the Organic Trade Association and the
Natural Resources Conservation Service

TO: Regional Conservationists
State Conservationists
Deputy Chiefs
Division Directors

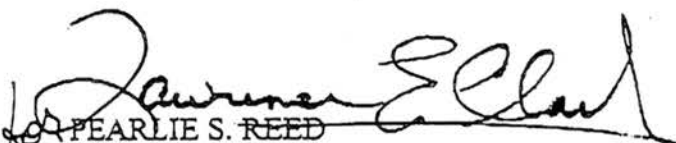
File Code: 180

The attached Memorandum of Understanding (MOU) was developed at the request of the Organic Trade Association (OTA) to assist its members enhancement of ecological harmony within the environment as part of their certification process.

The Organic Foods Production Act was Title XXI of the 1990 Farm Bill. Its purpose was to establish national standards for the production and handling of foods labeled as "organic." Organic agriculture is based on minimal use of off-farm inputs, and on management practices that restore and enhance the ecological balance of natural systems.

This MOU provides an excellent opportunity for the Natural Resources Conservation Service to interact with this unique and rapidly growing sector of agriculture. Also, it provides a framework for cooperative efforts in a number of areas, which can have a direct effect on conservation. State Conservationists are encouraged to actively work with their State OTA organization in States where they exist.

Further information can be found on their web-site at www.ota.com. If you have any questions or comments, please call Edward Brzostek, Resource Conservationist at (202) 720-1868.


PEARLIE S. REED
Chief

Attachment

NRCS A-3A75-1-114

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ORGANIC TRADE ASSOCIATION
AND THE
U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

This Memorandum of Understanding (MOU) is entered into between the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) and the Organic Trade Associations (OTA). NRCS and OTA are engaged in compatible activities. OTA activities include the development of production standards and farm plans for organic agriculture and protection of natural resources. These are areas in which NRCS has expertise and program responsibilities. Effective cooperation can aid significantly in advancing the missions of NRCS and OTA.

I. AUTHORITY

This MOU is entered into in accordance with the:

- Soil Conservation and Domestic Allotment Act, as amended (Public Law 74-46, 49 Stat. 163, 16 U.S.C. 590a-f); which established the Soil Conservation Service to conserve soil and water nationwide by providing technical assistance to farmers and ranchers among other things.

II. BACKGROUND

OTA is an umbrella organization for the organic industry. It includes organic growers, processors, distributors, suppliers, brokers, retailers, certifiers, non-profit organizations, and individuals. OTA offers informational services, educational resources, and promotional programs to its members.

OTA works with growers and handlers to comply with the Organic Food Production Act (OFPA) Title XXI of the 1990 Farm Bill. The purpose of the act was to establish national standards for the production and handling of foods labeled as organic. A National Organic Program (NOP) is being established for organic standards to oversee and require mandatory certification of organic production.

NRCS A-3A75-1-114

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NRCS is the lead Federal agency for conservation on private land. In carrying out this role, NRCS provides voluntary conservation planning and technical assistance to farmers, ranchers, and other landowners to address the natural resource concerns on the Nation's private and nonfederal land.

NRCS administers a variety of technical assistance and cost-share programs, working primarily through conservation districts. These programs include: (1) providing technical assistance in conservation and development of soil, water, and related natural resources; (2) developing soil surveys and providing soil survey information and interpretations; (3) reducing flood and sedimentation damages; (4) alleviating and preventing agriculture-related pollution; (5) providing technical assistance to all operators including small farms, limited resource farmers, Indians, and minorities; and (6) providing resource data for use by private landowners, groups, local and state governments, and other Federal agencies for land use planning.

Opportunities for cooperative efforts exist in a number of areas including: (1) conservation planning with organic growers to benefit soil, water, and related natural resources by reducing soil erosion, improving water quality, increasing soil organic matter, managing nutrients, controlling pests, promoting biological nitrogen fixation, providing weed suppression and soil moisture management; (2) enhancing the quantity and quality of organic commodities; and (3) identifying soil erosion hazards and limitations of soils for organic farming. Conservation technical assistance to address these activities is provided to individuals, groups, and units of government.

III. PURPOSE

The purpose of this MOU is to establish a framework for cooperation between NRCS and OTA on program activities that involve the conservation of natural resources specifically related to organic farming

IV. RESPONSIBILITIES

A. NRCS agrees to:

1. Provide conservation technical assistance at the national level to develop guidance on natural resources conservation.
2. Provide a list of State Conservationists, along with the phone numbers and addresses to serve as contacts for States that have councils participating with OTA.

NRCS A-3A75-1-114

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3. Furnish conservation technical assistance for conservation measures in organic farm plans.
4. Provide soil survey information, soil interpretations, and conservation planning assistance to develop and implement conservation plans consistent with the grower's objectives to achieve sound land use and conservation treatment while producing quality organic crops.
5. Share web-site information on conservation programs.

B. OTA agrees to:

1. Discuss conservation assistance needs of organic growers annually with NRCS and recommend priorities.
2. Recommend conservation planning to growers to aid them in meeting the National Organic Program's crop production standards.
3. Inform OTA members of the opportunities and advantages of developing a conservation plan and including it in their organic farm plan.

C. It is mutually agreed upon by both parties:

1. To cooperate in developing and implementing conservation farm plans for organic crop production.
2. To encourage the use of demonstrations and field days with organic field operations to showcase conservation and organic production.
3. To share training opportunities to improve knowledge of respective functions and operations.
4. To share information on conferences, newsletters, and training opportunities.
5. That the Executive Director of OTA and the Director, Conservation Operations Division, NRCS will develop procedures to insure good communications and coordination at the various levels of each organization.
6. That this MOU is neither a fiscal nor funds obligating document. Any endeavor by either party that involves the reimbursement, contribution of funds, transfer of anything of value between the parties will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors shall be outlined in separate agreements; shall be made in

NRCS A-3A75-1-114

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writing by representatives of both parties; and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority.

7. This MOU in no way restricts either party from participating in similar activities with other public or private agencies, or organizations, and individuals.
8. That each party agrees it will be responsible for its own acts and results thereof and shall not be responsible for the acts of the other parties and the results thereof. Each party therefore agrees that it will assume all risk and liability to itself, its agents or employees, for any injury to persons or property resulting in any manner from the conduct of its own operations, and the operations of its agents or employees, under this MOU, and for any loss, cost, damage, or expense resulting at any time from failure to exercise proper precautions, of or by itself or its own agents or its own employees, while occupying or visiting the projects under and pursuant to this MOU. The Government's liability shall be governed by the provisions of the Federal Tort Claims Act (28 U.S.C. 2671-80).

V. DURATION

This MOU shall become effective the date of the last signature and continue in effect for a period of five years or until modified or terminated. This MOU may be modified or amended upon written consent of both parties. This MOU may be terminated with a 30-day written notice from either party.

VI. PROVISIONS

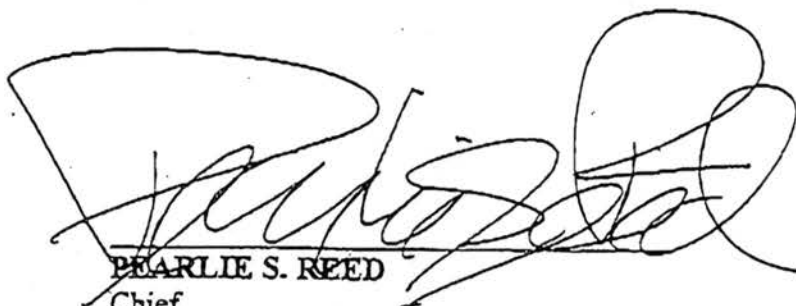
- A. All activities and programs conducted under this MOU shall be administered in accordance with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Department of Justice (DOJ) regulations enforcing nondiscrimination requirements, and departmental rules and regulations. Compliance ensures access in all aspects of program delivery of benefits and services to the public without regards to their race, color, national origin, religion, sex, age, disability, marital status, familial status, parental status, sexual orientation, or because all or part of an individual's income is derived from any public assistance program.

NRCS A-3A75-1-114

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B. All activities conducted under this MOU shall be in compliance with the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D).

Accepted by:



PEARLIE S. REED
Chief
Natural Resources Conservation Service

9/19/01
DATE



KATHERINE T. DIMATTEO
Executive Director
Organic Trade Association

9/26/01
DATE

Notes from December 19, 2001 Meeting to Discuss Opportunities for Collaboration between NRCS and MDA on Organic Agriculture

Attendees list and Memorandum of Understanding attached. Notes are not intended to be minutes of the meeting. Notes taken by Mary Hanks, reviewed by Barry Hamilton.

Bill Hunt, Minnesota State Conservationist, and Barry Hamilton, Minnesota RC&D Coordinator, expressed their commitment and the commitment of the NRCS to assist farmers in developing organic farming systems and address their resource concerns. A Memorandum of Understanding between the NRCS (signed by Chief Pearlie Reed) and the Organic Trade Association outlined the roles and responsibilities agreed upon for the NRCS (attached). In Minnesota, NRCS will work in partnership with the Minnesota Department of Agriculture. Bill indicated that NRCS would support MDA's leadership role and encouraged MDA to convene the partners to develop a plan of action.

Mary Hanks gave a brief overview of the current organic agriculture activities at the MDA. Barry Hamilton, Russ Ruud, and Dean Schmidt contributed to a description of the structure and function of the RC&Ds including a list of the services that RC&Ds can provide: planning assistance, technical assistance, grant writing, information and education, regional connections, and organizational support.

Meeting participants then listed areas where the RC&Ds and NRCS staff could collaborate with MDA. These suggestions are listed below. Activities are not listed in order of priority.

1. Draft amendments to state technical standards to support participation by organic farmers such as changes to field border/buffer description to allow setbacks on organic farms to qualify as field borders/buffers in the continuous CRP program; changes in technical standard practice descriptions to include non-herbicide options; connect the NRCS conservation plan to an organic farm plan required for certification.
2. Assist farmers to make the transition to organic farming on land coming out of CRP. Use EQIP education funds for this purpose including demonstration projects.
3. Consider the opportunities in the area of agroforestry – timber belts as buffers, wood production.
4. Share the planned MDA state registry of organic producers and other organic industry components with NRCS, FSA, USDA Risk Management programs to encourage participation by organic producers in the available programs.
5. Train RC&D and other NRCS field staff.
6. Apply strategies similar to those used to encourage conservation tillage and grazing such as supporting local organic farmer groups modeled after grazing groups or ridge till clubs.
7. In the area of composting, use RC&D funds and contacts for farmer demonstrations, compost research and marketing.
8. Use RC&D capacity to help develop partnerships with "green conscious" consumers, buyers, processors, producers.
9. Work with MDA funded value-added cooperatives in RC&D regions; talk about marketing and demand for locally produced foods.

10. Include information about the profitability of organic production/marketing in communications with farmers in the regions.
11. Train NRCS field staff so that they can provide technical assistance to organic producers; include in summer conservation planning training sessions; use organic farmers, certifiers, MDA staff, Extension as trainers at local workshops, field days.
12. Make changes in EQIP cost share criteria to increase participation by organic producers.
13. Investigate possible transition cost-share payments using EQIP funds as is done in Iowa.
14. Discuss allowing an organic plan to serve as a conservation plan option.
15. Review existing technical standards and modify to apply to organic farmers and to comply with federal organic standards.
16. Provide conservation planning assistance to organic farmers.
17. Promote the availability of cost share and other assistance related to field windbreaks, vegetative buffer strips, field borders to organic farmers; modify standards on establishment of these practices to allow for a no pesticide option.
18. Provide outreach to Hmong farmers and to the tribes.
19. Organize a two-day meeting for MDA, NRCS, RC&D, and others to develop a joint comprehensive plan.
20. Secure funds to promote nutrition, organic and sustainable agriculture and to educate consumers about buying better food.
21. Use local "experts" to promote organic agriculture.
22. Use RC&Ds as fiscal agents for projects; partner to secure funding.
23. Work with MDA to get the word out about RC&D mission and roles.
24. Work with regional RC&D councils to find partners.
25. Provide organic technical assistance to livestock graziers.
26. Communicate the message about maximizing profit not yield and the need to grow the market as we promote organic production.
27. Include organic producers in federal risk management programs; link to production adjustment policy.
28. Provide financial support during transition; investigate what might already be available through rural development and other programs.
29. Get organic farming "coded" for FSA and NRCS programs.
30. Support RC&D and NRCS field staff attendance at local and regional organic conferences.
31. Add an NRCS representative to the MDA's Organic Advisory Task Force.

Barry indicated that organic farmers fall under the limited resource farmer designation in federal agricultural policy. Bill stated that he takes the MOU with the Organic Trade Association very seriously and wants to be consistent with MDA Commissioner Hugoson's priorities and collaborate under MDA's leadership. He expressed his support for staff and council member attendance at organic conferences, for investigating the use of EQIP funds to support transition to organic production as Iowa is doing, for reviewing and amending NRCS technical standards so that they meet both conservation and organic requirements, and volunteered to contact University of Minnesota administrators to discuss priorities of organic research and outreach. Russ Ruud concluded the meeting with a statement of support from the RC&D councils to promote a sustainable and healthy agriculture.

FOR YOUR INFORMATION

(February 27, 2002)

- "Board Member Update"
- "Soil and water conservation behaviors within the upper Mississippi River Basin" article from the *Journal of Soil and Water Conservation*



Board of Water and Soil Resources UPDATE

A publication of the Minnesota Board of Water and Soil Resources

February 2002

ENGINEERING

Wow! The Minnesota River Basin CREP is quickly nearing its 100,000-acre goal, well

before the Sept. 30, 2002, federal-state agreement deadline. BWSR engineering and easement staff is helping to squeeze any excess funding out of previously funded easements, so we can take in all the acres reasonably possible. Although the large number of easements in process makes this quite a challenge, BWSR and SWCD staff continue to evolve the way we do business to make this program a great success for conservation in Minnesota and a great example for the U.S.

During the third week of February, South St. Louis SWCD is sponsoring two workshops for Lake Superior shoreland property owners. The purpose is to increase awareness about shoreland and watershed best management practices and to inform property owners about what the SWCD, BWSR, and current programs can do to help address runoff and erosion problems. R.C. Boehm, SWCD manager, has been a primary facilitator of these workshops. Gene Clark, BWSR lakeshore engineer, will present information and examples about shoreline stabilization and nearshore runoff management practices. SWCD staff will address vegetation management for erosion control and watershed management issues associated with land use changes, rural and urban runoff, streambank erosion, among others. Similar workshops conducted several years ago along the North Shore generated significant property owner interest in runoff management and erosion control.

In early February, Gene Clark, Mark Nelson, Ron Shelito, and Al Kean met with the managers of the four Lake Superior Association of SWCDs to assess workloads, trends, priorities, and partnerships for lakeshore and watershed engineering assistance. These SWCDs appreciate the engineering assistance provided by BWSR and through the Nonpoint Engineering Assistance (NPEA) Program. These partnerships continue to assist private landowners with shoreline and

streambank erosion control and are getting more involved in stormwater management and related watershed-based conservation practice assistance. The SWCD managers requested continued assistance by BWSR to seek and manage federal and state grants that assist conservation on private lands in the Lake Superior Watershed and help the SWCDs develop their conservation assistance programs.

A joint meeting of SWCD Nonpoint Engineering Assistance, NRCS, and BWSR engineers and technicians is scheduled for Feb. 25-27 in St. Cloud. The focus is on sharing of training, innovations, and other experience in conservation engineering. It has been nearly 2 years since our last joint meeting. The joint agenda is full and includes presentations by staff from all of the conservation assistance partners. Separate NRCS and NPEA/BWSR meetings will be held on Feb. 27. This joint meeting will provide 16 hours of professional development hours (PDHs) toward the current requirements for continuing education for licensed professional engineers.

The NPEA Committee, which includes supervisors from each of the associated 11 SWCD joint powers boards (JPBs), as well as BWSR and MASWCD staff, met on Feb. 12. The focus was on assessing the current financial and workload status of the program and its future direction. Costs of engineering staff are expected to outpace the flat state funding for the program and JPB operating reserves by the end of this fiscal year or next. The JPBs are planning or implementing various budget-balancing measures, including charging fees for services and seeking contributions from member SWCDs. The consensus (by lack of disagreement) was to maintain the 11 joint powers areas, at least for now. It was requested by several JPBs that MASWCD help the SWCDs take more leadership for this program through MASWCD's committee structure, and that both MASWCD and BWSR do more to help develop statewide SWCD support for this SWCD capacity-building program.

-Submitted by Al Kean

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SOUTH

The most successful CREP in the nation has nearly hit its target. Landowners responded in a big way this January. The success of the program can be attributed to the hard work of field offices, partners, and BWSR staff.

With received and pending applications coming in at more than 100,000 acres, we can feel good about how the program has been received by landowners and local conservation staff. Implementation will remain the focus of attention for the remainder of this calendar year. Most of the paperwork, some of the vegetative cover, and wetland restoration work will take place this year. The majority of practices will be put in place in 2003.

There continues to be a strong interest in CREP and certainly a need for more riparian protection. To date, the Minnesota River basin has achieved approximately 20-25 percent riparian protection.

CREP has formed a foundation that we can build upon with other corridor projects and Continuous CRP. One underlying theme is that it takes well-trained people on the front lines working directly with landowners.

-Submitted by Jeff Nielsen

METRO

Fourteen metro area cities are jointly producing "point of purchase" consumer information on phosphorus free lawn fertilizers. Most of the cities have ordinances restricting the use of phosphorus lawn fertilizer and will be providing in-store information to help consumers in product selection. A brochure, product signs, and sales staff information packet are being produced through the project. More than 30 individuals are involved in the project, for which Ron Struss is providing coordination.

Urban nonpoint source pollution control is more about people than pipes. Based on that precept, Ron Struss made recommendations to expand education requirements of the developing MPCA Phase II stormwater permit. The recommendations were endorsed and will be in the draft permit that goes out for comment in March. Included in the recommendations are:

- Education programs be planned around specific target audiences;
- Education programs are to be built around resource needs and educational goals;
- Educational programs are fully integrated with on-going education of watershed districts, SWCDs, and counties.

In 1999, BWSR coordinated a clean water media campaign in cooperation with WaterShed Partners and Metropolitan Council. Efforts are underway to revive the campaign, adding to it elements that will support cities in meeting up-coming Phase II stormwater permit requirements. Once again, WaterShed Partners and Metropolitan Council will be sponsors. Final funding level decision by Metropolitan Council is pending. Ron Struss is coordinating "Think Clean Water" revival discussions.

Dakota and Scott counties have selected joint county boards as their JPA WMO governance option. Board membership, advisory commission, and special tax district will be developed this spring or summer. Look for the plan to reappear later in 2002.

The Metro Rules committee has developed a "75 percent draft" that will focus on three or four principles. Look for a final draft rule to be developed in spring or summer.

South Washington Watershed District has floated a \$6 million bond for acquisition of emergency storage areas in southern Woodbury. Look for a minor and general plan amendment in spring or summer.

*Deadline for next edition:
March 20*

CAPACITY

In December I presented the results of a survey of soil and water conservation district supervisors and staff regarding issues identified as important to the capacity of SWCDs to implement their local conservation programs. Note that the primary role of SWCDs across the state is to assist the owners and users of *private* lands to implement conservation measures on the lands and waters under their stewardship. Obviously in a state where over three-quarters of the land is in private ownership and, increasingly, the state is depending on local units of government to deliver natural resources conservation programs, a good investment toward a quality environment is to strengthen SWCD programs in each community.

Toward that end, the Minnesota Association of Soil and Water Conservation Districts has sponsored a District Capacity Committee. The committee's role has been to explore barriers to SWCD success, to debate and recommend actions that would provide more opportunities for all SWCDs to build stronger local programs, and to be an advocate for implementation of its recommendations. BWSR has provided a significant portion of my half-time position to support the Capacity project.

The SWCD Capacity Committee recommends major action in these areas:

- **Rewrite the SWCD enabling statute (MS103C)** to modernize it and create new governance, authority, and financing options in order to best support a network of strong locally based conservation programs across the state.
- **Complete a district self-assessment process and provide follow up support** to all SWCDs within the next two years.
- **Keep building the working relationships between SWCDs and state agencies** that do environmental programs.
- **Increase training opportunities** for SWCD boards and staff.
- **Create more opportunities for SWCDs to quickly address emerging natural resource issues** with creative and cost effective local conservation initiatives.

SWCD statute update

Of late, I've been spending more of my time preparing

for the update of the SWCD statute. To summarize the approach we will be taking it would be good to review the Capacity Committee SWCD Statute (MS 103C) Findings:

- Parts of MS 103C are obsolete and must be "modernized";
- MS 103C is often rigid and confining rather than flexible and enabling;
- Piecemeal fixes to MS 103C are not desirable; comprehensive updating is a better approach.
- Local government's role in natural resources management will continue to grow to meet changing societal expectations. Updating the SWCD statute is essential to create a framework that supports and encourages positive growth and development of local government conservation programs.

Capacity Committee SWCD Statute Update Guiding Principles are as follows:

- "One size fits all" mandates do not work.
- Decision-making role of local boards should be emphasized.
- More flexibility and options (choices) in the areas of governance, authorities, and financing should be available to local boards.
- Financial and other incentives should encourage local boards to be proactive.
- SWCD partners must be included in the change process.

What's next?

With the survey results and this basic direction in hand, the Capacity Committee is sponsoring two workshops in late March to further explore with SWCD supervisors and employees possible statutory changes they might embrace. The invitees to the workshops are the people who responded to the SWCD survey last fall and said they would be willing to be contacted regarding their responses.

How do others get involved?

- A process has been designed to start the statute change discussion with the SWCDs themselves and their association leadership and then to expand the discussion to partners and other stakeholders. Just as the proverbial pebble tossed in the pond sends out ripples, we will seek out all parties that have a stake

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in this issue to inform them and engage them in the statute update process. And just as it is hoped that many SWCD ideas will gain support through this process, it is also intended to be a rich opportunity to stimulate ideas from partners and stakeholders feeding back into the MASWCD Capacity Committee. It is hoped that the many policy discussions that take place will improve ideas, expand the vision, and enhance partnerships.

- The process laid out here is intended to acknowledge the leadership role of the MASWCD to proactively initiate changes to the statute that affects their members the most and then to use that initiative as a jumping off point to engage others with a vital interest in SWCD business. After the workshops, the Capacity Committee will compile and analyze the results and bring them back to the MASWCD Board of Directors for consideration. We would like to get concurrence to move ahead with an outline of ideas for a statute update that would be used to engage our conservation partners and stakeholders. Federal, state, local, and private partners and stakeholders will be vigorously engaged at this critical step. We anticipate this outreach effort to get underway during April with a lot of work done early in the summer. In reality this process will likely continue until the ink is dry on a new statute in 2003.
- In midsummer MASWCD will begin to prepare for the next legislative session. Strategy discussions to engage the legislature and governor's office can focus on this time period.
- It is hoped that enough thought has been put into the new statute by mid to late summer to begin drafting actual language. This will be a real test as conceptual ideas spring to life in terms of a draft bill.
- The goal is to have a coalition of solid support from local, state, federal, and private partners and stakeholders by the time legislation is introduced. We want this support to be based on meaningful discourse and participation. We will work ceaselessly to develop a shared vision, build trust, and reach agreement based on frank discussion and a commitment to a good government approach to soil and water conservation.
- In the end it is our goal to craft an enduring statute update that serves the needs of the districts well into the future. We view our work as a tribute to and a

continuation of the work done by early conservation pioneers such as Hugh Hammond Bennett, M.L. Wilson, and Philip Glick. These visionary leaders were largely responsible for creating the original model act in 1935 that led to the formation of soil conservation districts across our country. I think they would expect no less from us in this present day than to keep their vision fresh in our government laws and institutions.

How does BWSR stay involved? Part of my responsibility is to keep our agency staff and board informed and involved. For the Board's part I would suggest that your May retreat would be a great time to get into the SWCD statute in more depth. And remember there's more to the SWCD Capacity Project than updating the statute—I'll cover more in the next Update.

If you have comments or want more information please feel free to call me at 651-296-0879. I look forward to working with you on this important project.

-Submitted by Jim Birkholz

L & WS

Vesledahl: The Flagship Project of the BWSR Road Mitigation Program

The amendment to the Wetland Conservation Act in 1996 requiring BWSR to replace wetland impacts for improvement to county, city, and township road greatly expanded the mission of BWSR. This has meant that an average of 200 plus acres of wetland credits have to be established under this program each year to mitigate public road impacts reported to us. BWSR is trying to meet this need three methods: 1) direct purchase of credits from private banks, 2) funding bank projects with private landowners, and 3) by development of our own sites or partnering with other units of government.

The Vesledahl project is the latter type of project. It is a joint MnDOT-BWSR project near Winger in Polk County. The 1,900-acre tract of land purchased in fee mostly by MnDOT. The plan is to restore about 120 wetland basins creating about 700 acres of New Wetland Credit (NWC) and an additional 500 or so of upland Public Value Credit (PVC). An agreement between BWSR and MnDOT provides for the distribution of the credits based on each agency's relative contribution, including cash, staff time, and associated expenses. After

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the credits are certified and disbursed, the land will be transferred to the DNR to be managed as a State Wildlife Management Area.

The project evolved from the first request for proposals BWSR sent out in 1997. At the time, the scope of the project seemed too large to take on by itself. Steve and Bob Vesledahl desired to sell some of their land near Winger to help cash-flow their large farming operation. Then MnDOT offered to partner on the project. An agreement was reached to have MnDOT use their expertise and system to purchase the bulk of the land and BWSR would design and restore the wetlands using BWSR's expertise. A marriage made in heaven! Well, not quite, but the project has moved forward with only minor glitches.

The land was closed on in 1999 and construction and planting commenced in 2000. BWSR ended up having to purchase in fee an additional 80 acres of land from Ken Bratager in order to maximize the restoration potential. Since the project was so large, it was decided to develop it in three phases, about 600 acres a year for three years. Phase 1 was planned for 2000, Phase 2 for 2001, and Phase 3 for 2002. Weather has held this schedule back a little. The following table shows where we are at presently:

Phase 1 Planting	Summer 2000	Completed
Phase 1 Construction	Fall 2000 & Spring 2001	Completed
Phase 2 Planting	Summer 2001	Completed
Phase 2 Construction	Spring 2002	Planned
Phase 3 Planting	Summer 2002	Planned
Phase 3 Construction	Fall 2002	Planned

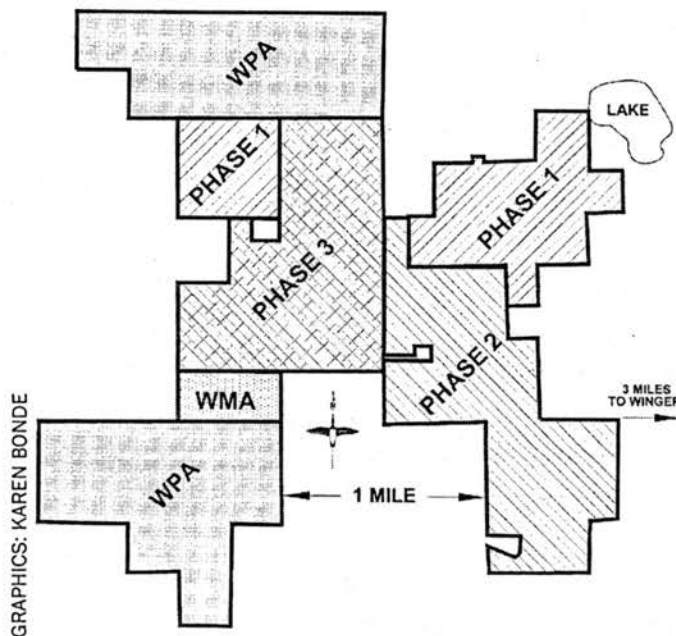
The project has presented some notable challenges, milestones, and other factoids:

- The 600-plus acre Phase 1 planting was the largest single block of native planting ever done by a state agency in Minnesota. Prairie Restorations, Inc., the most experienced firm providing this type of service in the state, got the contract. The largest block they had ever planted prior to this was 200-250 acres.
- All seed planted thus far has been local native harvest, with minimal supplementation of native seed from production plots. Most seed has come from the native prairie managed by the Nature

Conservancy. Consequently, native plant community, when established, will be as close to a native prairie restoration as is possible.

- The site will yield 134 to 150 restored wetland basins with an average size of 4.9 acres and a range of size varying from 0.25 to 50 acres.
- There were more than 17 miles of wetland edge that had to be staked on the 50 or so wetlands on the 640-acre Phase 1 of the project. It took Bill Best and myself 2.5 days to accomplish that task. This amount of "wetland edge" is testament to quality and diversity of the wetlands that can result from a project of this scale.
- The project is unique in that much of the water is by design taken out the upstream end of an existing ditch system and is routed through numerous wetland basins over the course of two miles before re-entering the ditch system. The combination of routing the water in this manner and the

VESLEDAHL WETLAND BANK PROJECT



establishment of the native prairie will greatly reduce runoff and flooding downstream.

- The price per credit received will be in the range of \$2,500 per acre of credit, about one-half of the going average rate for credits across the state.

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- The project links two existing federal WPAs (690 acres) and one state WMA (80 acres) and will create one contiguous public land area over 2,600 acres in size that will be open to public hunting, bird watching, and other forms of passive outdoor recreation. The dividends for this project will go much further than just replacing public road impacts.
- Because of the engineering genius of Tom Wenzel, an annual flooding problem of a school bus route on a township road has been resolved. The town board officials were very appreciative of this. Tom has enjoyed working on a project of this scale as it allows much more creativity in managing and conveying runoff than does a single site restoration affected by adjoining properties.
- The project is the result of a true team effort involving many key players. Below is a list of some of the key players who saw the vision and kept things moving in the right direction:

-**Dan Eklund**, BWSR: agency coordination, project selection, wetland bank process;

-**Bill Best**, BWSR: agency coordination, project staking, easement coordination;

-**Tom Wenzel**, BWSR: engineering design, field survey, construction, coordination;

-**Karen Bonde**, BWSR: engineering design, field survey, preparation of specifications;

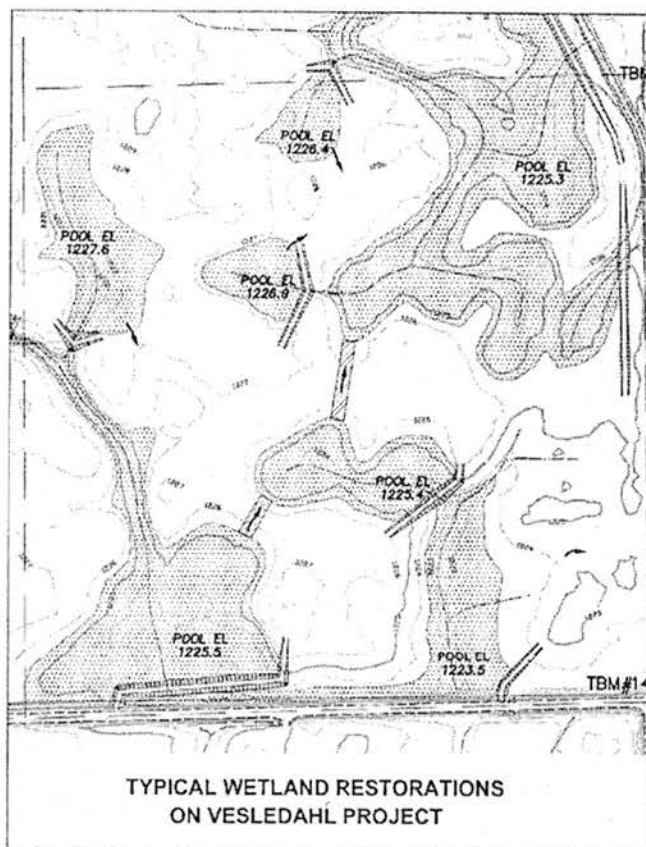
-**Bruce Sandstrom**, BWSR: general project coordination, preparation of planting specifications, land acquisition, field staking;

-**Jim Luniewski**, BWSR: surveying;

-**John Filardo**, MDNR: contract bidding, construction supervision;

-**Kim Montgomery**, DNR: preparation of bid packages & advertising;

-**Chuck Frach**, MnDOT: handled all of MnDOT's land acquisition;



-**Bob Jacobson**, MnDOT: assisted in planting specifications;

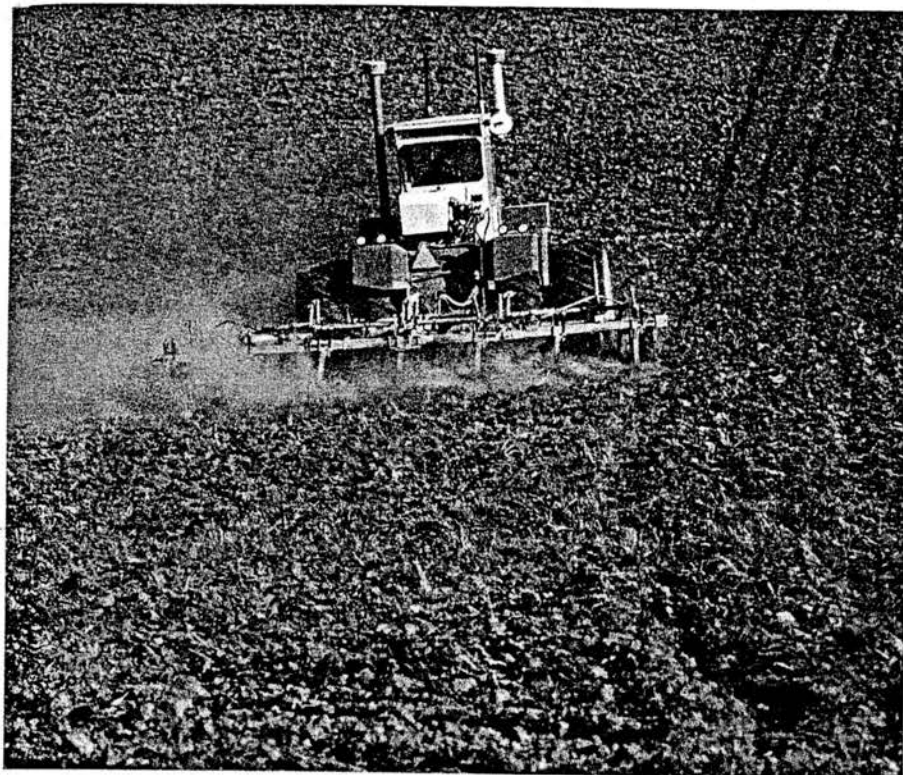
-**Mike Kaminkar**, MnDOT: early project coordination, EAW preparation;

-**Karen Bedeau**, MnDOT: public relations, organized four public meetings.

Everyone that has been involved with this project is anxious to see the fruits of their work. As you can see, the Vesledahl project is unique from many standpoints and will be a public asset long after the wetland credits derived from it are assigned to qualified public road wetland impacts.

-Submitted by Bruce Sandstrom

Feature



Soil and water conservation behaviors within the upper Mississippi River Basin

By Ted L. Napier

After seven decades of conservation programs that have consumed billions of dollars of economic resources and vast quantities of human resources, soil erosion and subsequent degradation of water resources remain serious environmental issues within the United States (US). Millions of tons of chemical-rich topsoil are lost each year from agricultural land, which contributes to environmental degradation.

Environmental degradation associated with soil erosion is frequently classified into two broad categories of

damages, termed on-site and off-site costs. Some of the most significant on-site costs of soil erosion are as follows: loss of farm income, loss of resale value of land resources, reduced output of agricultural products, reduced aesthetic quality of land resources, and loss of agricultural fertilizers and pesticides (Napier, et al, 2000a; Lovejoy and Napier, 1986). On-site costs are primarily borne by landowners and often serve as motivators for land owner-operators to take corrective action to prevent further environmental degradation. Some of the most significant off-site damages are as follows: loss of wildlife habitat, loss of recreation opportunities due to water pollution, sedimentation of streams and reser-

voirs, sedimentation of highway ditches, sedimentation of railroad lines, and increased costs of making water safe for human consumption (Halcrow, et al. 1982; Napier, et al. 1988). Off-site damages are nearly always primarily borne by nonfarm groups. While nonfarm populations do not contribute to agricultural pollution, they are required to pay for ameliorating the damages caused by farmers who elect to use production systems that contribute to environmental degradation.

Agricultural polluters are seldom motivated to assume the costs of preventing soil erosion because off-site damages have little direct effect on farm populations. This lack of concern for off-site damages associated with soil erosion among farmers is problematic because the greatest proportion of environmental damages from erosion are damages occurring off-site.

If the maintenance of long-term productivity of land resources and the protection of water resources are societal goals that are to be achieved, widespread adoption of conservation production systems by land owner-operators is essential. To motivate landowners to adopt and use conservation production systems necessitates identification of factors that facilitate or impede adoption.

Two factors frequently discussed as major barriers to adoption of conservation production systems are as follows: 1) availability of technologies and techniques to resolve erosion problems, and 2) lack of awareness of the need for behavioral change on the part of the operator. While these factors have been repeatedly identified as barriers to adoption of conservation production systems at the farm level, research conducted during the past two decades seriously challenges such assertions.

Availability of technologies and techniques to resolve erosion problems has not been a barrier to adoption of conservation production systems within the US for at least two decades. Physical scientists have developed a host of technologies and

Ted L. Napier is a professor in the Department of Human and Community Resource Development at Ohio State University.

techniques that have been demonstrated to be effective in reducing or eliminating practically any erosion problem that has been identified to date (El Swaify, et al, 1985; Lal and Stewart, 1995). Unfortunately, many farm operators have elected not to adopt and to use existing conservation production systems.

Lack of awareness of environmental consequences associated with using degrading farming practices is also often offered as an explanation of why land owner-operators choose not to adopt and to use conservation production systems. Such explanations are also inappropriate because empirical research has repeatedly demonstrated that land owner-operators are aware of the negative consequences associated with using degrading agricultural production systems. It has also been demonstrated that production agriculturalists are aware of existing technologies and techniques to address environmental problems (Lovejoy and Napier, 1986; Napier, et al 2000a; Swanson and Clearfield, 1994).

An alternative explanation for adoption of soil and water conservation production systems is economic return to investment. This perspective asserts that farmers will not voluntarily adopt conservation production systems that are not profitable. Since most conservation production practices have been shown not to be profitable in the short-term and often not profitable in the long-term (Batte and Bacon, 1995; Mueller, et al. 1985; Putman and Alt, 1987), non-adoption appears to be a rational economic decision for many agriculturalists. It is extremely difficult to motivate farmers to adopt production systems that do not immediately increase farm income. Such findings strongly suggest that resolution of environment problems associated with agricultural pollution is more of a socioeconomic issue than a lack of awareness of environmental problems and availability of technological solutions (Lovejoy and Napier, 1986).

The purpose of this paper is to provide a brief overview of the major

research findings focused on the socioeconomics of soil and water conservation within the US. Particular emphasis will be placed on findings from a multi-state project recently conducted within the North Central Region to assess how social, economic, and policy factors have influenced adoption of conservation production systems. Findings from existing research are discussed in the context of future soil and water conservation initiatives within the study watersheds and for future US conservation policy.

Behavioral Change Models

During the past 70 years, soil and water conservation programs and policies have relied heavily on voluntary participation by resource owners and managers (Lovejoy and Napier, 1986; Napier, 1990; Napier, et al. 2000a; Swanson and Clearfield, 1994). Public policies have been developed and implemented on the assumption that land owners/operators have the right to adopt or to reject conservation production systems based solely on personal preference. Subsequently, conservation programs and policies have been designed to encourage adoption of conservation production systems using incentives rather than disincentives.

The most commonly used approach to motivate land owner-operators to adopt and to use conservation production systems is a combination of information, partial economic subsidy, and technical assistance. This approach emphasizes the use of information to make potential adopters aware of the need for behavioral change. Technical assistance and small economic subsidies are employed to reduce the risk associated with experimenting with conservation production systems. This strategy for encouraging land owner-operators to adopt and to use conservation production systems is consistent with assumptions and arguments advanced by the traditional diffusion paradigm (Rogers, 1995) and social learning models (Bandura, 1971) for

modifying behaviors. Both of these theoretical traditions have contributed indirectly to the formation of conservation agendas within the US.

The traditional diffusion paradigm basically argues that human beings will change behaviors when they are informed that it is in their best socioeconomic interests to do so. The diffusion model argues that human beings will be motivated to change behaviors when it is demonstrated that alternative action options will produce more desirable outcomes or will generate greater quantities of existing rewards than present behaviors are capable of producing for them. The paradigm asserts that human beings are motivated to change behaviors when they are made aware of problems that require attention and are informed of means to resolve them. The model advances the position that access to information and learning experiences are major factors affecting behavioral change. This theoretical perspective posits that land owner-operators who are informed of the personal advantages associated with adopting conservation production systems will do so.

Several components of social learning theory also provide theoretical support for contemporary soil and water conservation programs and policies that emphasize information, partial subsidies, and technical assistance. Social learning theory basically assumes that human beings are reward seeking and punishment-avoiding creatures who are motivated to act by expectations of rewards. While the theory recognizes that human beings can be motivated to act by different types of rewards, the perspective asserts that established behaviors have been motivated by and reinforced by rewards. If human beings do not expect to receive rewards from the enactment of a specific behavior, they will be reluctant to enact the behavior.

Like the traditional diffusion paradigm, social learning theory argues that all human behaviors are the

result of learning experiences. The theory asserts that when human beings learn that specific behaviors produce certain desirable outcomes, those same behaviors will be repeated until rewards cease to be forthcoming or until alternative behaviors are identified that will produce greater quantities of desirable rewards or rewards that are more highly valued. Social learning theory strongly suggests that farmers who have learned that specific farming practices have produced desirable outcomes in the past will be reluctant to change their farming practices because they fear desirable rewards will cease to be forthcoming. Farmers will continue to employ production practices that have generated rewards in the past until they discover that rewards are no longer forthcoming from the use of such practices or until new production systems are created that will generate even greater quantities of desired rewards.

While the traditional diffusion paradigm and social learning theory provide theoretical justification for existing soil and water initiatives within the US, both theoretical perspectives fail to address structural barriers to adoption. Both perspectives assume away institutional factors that frequently impede adoption of alternative behavioral patterns.

Theoretical models that ignore structural barriers to behavioral change are destined to be inadequate for predicting adoption of conservation production systems because structural barriers often prevent potential adopters from implementing behaviors that they would very much like to enact. Some of the most frequently noted structural barriers to behavioral change are socioeconomic status constraints, human capital constraints, and public policies that define certain behaviors as being appropriate.

Structural theory basically argues that human beings must have access to requisite resources and human skills to successfully implement many behavioral changes. Successful enactment of behavior change oftentimes

requires economic resources and human skills to produce desired outcomes. Socioeconomic status constraints, such as the lack of access to economic resources, often result in rejection of technologies and/or techniques that require such inputs. The policy environment in which a person is required to enact behaviors is also an important consideration because human beings are frequently constrained by public policies that inhibit certain actions that individuals would like to enact. This component of the theory suggests that land owner-operators who do not possess requisite human and economic resources to successfully implement conservation production systems will not adopt such production practices. It also suggests that the policy environment in which individuals are required to enact behaviors will affect behavioral outcomes.

Given the shortcomings of the traditional diffusion paradigm and the social learning model, it was reasoned that it would be necessary to combine these perspectives with selected components of structural theory to produce a theoretical perspective that would have greater applicability to the prediction of conservation adoption behaviors. Therefore, a synthesis theory was developed that combined information, partial economic subsidies, and technical assistance factors with structural variables assessing human skills, access to economic resources and, the conservation policy arena in which farms are operated. It was expected that access to information, technical assistance, and partial subsidies would be necessary but not sufficient conditions for land owner-operators to adopt conservation production systems. It was expected that structural factors, such as access to economic resources, availability of human skills, and the existence of public policies favorable to adoption of conservation, would be required before the theoretical perspective would be able to predict adoption of conservation production systems at the farm level.

Research Situation

Data to assess the merits of the theoretical modeling were collected from 1,011 primary farm operators in three watersheds in the North Central Region of the US during the fall of 1998 and winter of 1999. The watersheds were purposely selected to ensure diversity in terms of watershed size, climate, topography, crop specialization, and exposure to conservation programs designed to motivate farmers to adopt conservation production systems. Land owner-operators in the Darby Creek watershed of Ohio, the Lower Minnesota River watershed of Minnesota, and the Maquoketa River watershed of Iowa were asked to complete a structured questionnaire. A response rate of about 80 percent was achieved using a drop-off-pick-up-later approach. Given the sample size, high response rate, and wide geographical distribution of respondents, it is argued the study samples are representative of the study watersheds.

The Darby Creek watershed is west of Columbus, Ohio and is approximately 141,643 ha. (355,000 acres) in size. The watershed has been in a state of transition from agriculture to suburbs for at least three decades. A significant proportion of agricultural land has been converted to nonagricultural uses. It is highly probable that the transition of agricultural land to suburban housing will accelerate in the future. While agriculture as an economic activity is declining within the watershed, the watershed still contains a viable agricultural base.

Topography within the watershed is flat to gently rolling. Soils are highly productive and farmers specialize in grain production. Agricultural pollution is primarily the result of farm chemicals being displaced from cultivated cropland. Soil erosion from cultivated cropland is quite low within the watersheds.

Extensive conservation efforts have been focused on land owner-operators within the Darby Creek watershed, during the last decade. In

1991 the watershed was chosen by federal and state agencies to serve as a laboratory for demonstrating the effectiveness of soil and water conservation programs designed to facilitate adoption of conservation production systems via use of information, technical assistance, and partial economic subsidies. Conservation programs implemented within the watershed placed priority on the provision of information to local farmers to make them aware of agricultural pollution problems and to foster an environmental ethic among resident agriculturalists. Information efforts were supplemented with extensive economic resources targeted for cost sharing. The goal of the targeted Darby Creek watershed program was to demonstrate that the information-technical assistance-partial economic subsidy approach used in most contemporary soil and water conservation efforts would be successful in motivating watershed farmers to adopt and use conservation production systems.

A host of public and private conservation organizations have been actively promoting soil and water conservation within the Darby Creek watershed. Millions of dollars of federal, state, and local funding have been employed to encourage land operators to adopt and use conservation production systems. During the first few years of the conservation efforts within the watershed, over 1 million dollars of public and private economic resources were being used for conservation efforts within the watershed each year. Human resources were also extensively allocated to conservation efforts within the watershed. Some of the most notable human resources were paid federal and state conservation agency personnel, conservationists financed by several private organizations, and many local volunteers. All of these resources were focused on a watershed that contained about 1000 owners of agricultural land who for the most part were not engaged in production agriculture. Most landowners were renting their land to small

number of tenant farmers so that they would be taxed on agricultural use value rather than the potential uses of the land resources.

Given the massive amount of resources applied to the Darby Creek watershed, it was expected that widespread adoption of soil and water conservation production systems would be observed among watershed farmers. If contemporary soil and water conservation initiatives have any affect on conservation behavior of land owner-operators, it was reasoned that Darby Creek watershed farmers would report significantly higher rates of adoption than land owner-operators in the other watersheds. This research expectation was based on the fact that land operators within the Darby Creek watershed had been exposed to much more extensive conservation program efforts than their counterparts in the other watersheds.

The second study group is composed of farmers within the Maquoketa River watershed, which is located west of Dubuque, Iowa. The watershed is approximately 485,633 ha. (1.2 million acres) in size with topography ranging from flat to steep slopes. Soils within the watershed are quite fertile but subject to severe erosion. Land operators specialize in grain and animal production. Pork production constitutes a significant portion of farm income within this watershed. Pollution is primarily due to soil displacement and chemical contamination of surface and groundwater resources.

Soil and water conservation agencies have been active within the watershed. Traditional federal conservation programs have been supplemented with state initiatives. A watershed conservation group composed of federal, state, and local conservationists has assumed leadership of watershed programs. Compared with conservation efforts within the Ohio watershed, farmers within the Iowa watershed have been exposed to significantly less conservation programming. However, Iowa watershed farmers have been exposed to

significantly more conservation programming than the Minnesota watershed group. If involvement in soil and water conservation programs significantly influences adoption of conservation production systems, then farmers within the Iowa watershed should report significantly less adoption of soil and water conservation production systems than farmers in the Ohio watershed and more adoption than farmers in the Minnesota watershed.

The Lower Minnesota River watershed is located south and west of Minneapolis, Minnesota and is composed of approximately 566,572 ha. (1.4 million acres) of land. Much of the land within the study region outside of Minneapolis suburbs is devoted to production agriculture. Changes in land use on the fringe of Minneapolis have been observed for several decades, however, the watershed is quite large and most of the land resources are devoted to production agriculture.

Topography within the watershed varies from flat land along the river and on the plateau to steep slopes between the two farming areas. The soils are highly productive and land operators specialize in grain and animal production. A significant portion of the farm population within the watershed is engaged in the production of dairy products. Pollution occurs in the form of soil displacement and chemical contamination of surface and groundwater resources. Local conservation organizations have been active within the Minnesota watershed. However, conservation efforts have been much less intensive compared with conservation initiatives implemented within the Ohio and Iowa watersheds. If involvement in soil and water conservation programs significantly influences adoption of conservation production systems, then farmers within the Minnesota watershed should report significantly less adoption of soil and water conservation production systems than farmers in the other two watersheds.

Research Methodologies

Study participants were asked to provide detailed information about a number of personal and farm-based factors. Some of the specific variables assessed are as follows: production practices employed at the time of data collection, psychosocial attitudes toward soil and water conservation, expectations about inter-generational transfer of the farm operation, expectations about adoption of precision farming, perceptions of risk associated with using agricultural chemicals, fertilizer application rates, output per acre for farm products produced, perceived profitability of conservation production systems, and personal characteristics of the primary farm operator. These data were used to examine the merits of the theoretical expectations outlined above.

Respondents were chosen using a systematic random sampling procedure that was developed to distribute the sample proportionately throughout each watershed. Only individuals who were actively engaged in production agriculture were eligible to be included within the study. Approximately, 80 percent of eligible farm owner-operators who were asked to participate in the study completed a questionnaire.

Descriptive statistics were used to examine general trends within the data set. Multiple regression, analysis of variance, and discriminant analysis were used to examine the merits of theoretical perspectives developed from the diffusion, social learning, and structural theories. Missing data were attributed the mean which has been shown to be the most efficient method for salvaging observations when the number of observations is high, the correlations are low, the percentage of missing cases is low (Donner, 1982).

Research Findings and Conclusions

Research findings revealed that respondents within the three watersheds were significantly different on a number of personal characteristics

and behavioral patterns. Ohio farmers reported much larger tracts of land being farmed and reported longer tenure as farm owner-operators. They also hired more farm laborers and reported higher income from farm sources, which would be expected given the larger acreage being operated. A higher percentage of Ohio respondents indicated that their children would operate the family farm in the future even though about one-half of the respondents in all three watersheds indicated their children would not operate the family farm in the future. Minnesota farmers reported operating their farms the fewest number of years, which is partial function of Minnesota farmers being younger than respondents within the other watersheds. Minnesota respondents indicated that they had completed more years of formal education than farmers in the other watersheds even though the educational achievement level was relatively high in all study watersheds. Data for Minnesota respondents revealed they worked more days off-farm for salary. Minnesota farmers also reported the lowest level of economic and technical assistance for conservation from various agencies. They also reported the highest percentage of farm income derived from dairy, reported the highest debt level, and indicated that they lived the longest distance to a large city. Iowa farmers reported the lowest percentage of farm income derived from grain production and the highest percentage derived from animal production.

Information was collected about agricultural production practices being used on respondent farms at the time of data collection. A total of 18 different production practices that could be used on midwestern farms were assessed. A number of different approaches were employed in the statistical modeling to operationalize use of conservation production systems. This was done to ensure that study findings were not being affected by how the adoption variables were being computed.

The diffusion-social learning-structural model outlined above was used to predict that the Ohio group would report the highest level of conservation adoption behaviors followed by Iowa and Minnesota respectively. Several theoretical perspectives were developed from the theories outlined above to predict variance in the conservation adoption measures within each watershed.

Research findings revealed that Minnesota respondents reported a significantly lower level of soil and water conservation adoption than the other two study groups, which was consistent with research expectations. However, Ohio and Iowa respondents were not significantly different in terms of adoption of conservation production systems. These findings strongly suggest that extensive exposure to traditional soil and water conservation programs does not necessarily result in higher levels of adoption (Napier, 2000a). It was concluded that concentrated conservation efforts within the Darby Creek watershed in Ohio were misdirected and that millions of dollars of economic resources and extensive human resources had produced little tangible changes in conservation behaviors. It was suggested that resources allocated to the conservation efforts within the Darby Creek watershed would have been better employed in other conservation endeavors within the state.

Research findings also revealed that variables hypothesized to predict extent of use of conservation production systems at the farm level were not very useful for that purpose within the three watersheds (Napier, 2000a; Napier, 2000b; Napier, et al. 2000b; Napier and Tucker, 2000; Robinson and Napier, 2001). While farmers in each of the watersheds had adopted some conservation production practices, they continued to employ production practices that contributed to environmental degradation. It is highly probable that benefits achieved by adoption of selected conservation production practices were significantly nullified by contin-

ued use of the degrading practices. It is argued that whole farm planning is sorely needed within each of the study watersheds (Napier, 2000a).

Study findings focused on adoption of conservation production systems consistently revealed that factors such as access to information, farming experience, technical assistance, partial economic subsidies, farm size, personal characteristics of the primary farm operator, debt-to-asset ratio, farm income, participation in government conservation programs, and a host of other variables examined in the studies were not useful for predicting extent of use of conservation production systems. It was concluded that existing intervention strategies employed by federal, state, and local conservation groups are probably failing to motivate land owner-operators to implement and use conservation systems. It was suggested that new intervention strategies would be required to address agricultural pollution issues.

The only soil and water conservation production practice that could be explained with any success using the theoretical perspectives developed to guide the research efforts was "willingness of land owner-operators to adopt precision farming" (Napier, et al. 2000c). The theoretical perspective developed from selected components of the classical diffusion model was shown to have some utility for predicting which farmers would be most likely to adopt precision farming within the next five years. Farmers exhibiting the highest probability of adopting precision farming technologies within the next five years reported the following characteristics: higher farm income, larger farm size, younger, more years of formal education, greater access to information, and expected profits from conservation production systems. These findings are consistent with the traditional diffusion model.

Application rates of farm chemicals were assessed in the study. Since nutrient contamination of water resources is such an important environmental issue, an attempt was

made to build statistical models to predict ratio of nutrients applied per unit of output. Lowering rates of fertilizer application without reducing farm output is highly desirable from the perspective of the land owner-operator and for protecting environmental quality. Several components of the theoretical model outlined above were used to develop research expectations relative to fertilizer use (Napier and Tucker, 2000b).

Research findings revealed that characteristics of land owner-operators who applied fertilizer in a manner that produced the highest level of output per unit input were not much different from those who were less efficient. Factors such as farm size, education, access to information, farm income, attitudes, land tenure, access to technical assistance, debt-to-asset ratio, and personal characteristics of the primary farm operator were shown to be poor predictors of the ratio of pounds of fertilizer applied per acre per bushel of grain produced. These findings bring into serious question assertions made about the type of farmers who are applying fertilizers in an environmentally unfriendly manner. Evidence from this study strongly suggests that little can be stated about who is over-applying fertilizers within the study watersheds. These research findings consistently replicated findings from previous research focused on adoption of reduced fertilizer application rates (Napier and Sommers, 1994).

Statistical models were developed from the data set to predict use of various information sources and channels of information (Tucker and Napier, 2001). Many assertions have been made about the preferred sources and channels of information for farm-level decision making. Respondents were asked to indicate how frequently they had used 22 different sources and channels of information when they needed information about soil and water conservation issues. The goal of the modeling was to determine what factors

influence the choice of information source and the choice of information channel.

Study findings revealed that respondents in each of the three watersheds used multiple sources and channels for information about soil and water conservation issues. The most important source was the Farm Service Agency, followed by agricultural chemical dealers, Natural Resources Conservation Service, and other farmers. The most important channel for soil and water conservation information was a farm magazine followed by the radio. The Cooperative Extension Service which has traditionally been a conduit for agricultural information to land owner-operators was shown to be a relatively insignificant actor for transmitting information about soil and water conservation within the study watersheds.

Multivariate analysis of the source data revealed that variables commonly used to explain use of information sources were not very useful for that purpose. Study findings clearly indicated that user profiles associated with specific sources of conservation information couldn't be legitimately formulated within any of the study groups. These findings strongly suggest that market research is needed to determine where providers of conservation information should target their information campaigns.

Summary and Conclusion

Research findings focused on use of conservation production systems strongly suggest that existing intervention approaches employed to motivate land owner-operators to adopt and to use conservation production systems will be marginal at best and probably failures in the long-term. The findings suggest that other approaches will probably be required to achieve national soil and water quality goals.

Study findings from the three watersheds demonstrated that contemporary theoretical explanations of why farmers adopt or reject soil and

water conservation production systems are not very useful for that purpose. Findings reported here are consistent with previously reported investigations in the field and strongly suggest that new theoretical approaches will be required.

Perhaps now is an appropriate time to approach the issue of predicting adoption of soil and water conservation practices using an inductive approach? Perhaps researchers should approach land owner-operators and inquire why they have or have not adopted conservation production systems. Using information provided via these responses, it may be possible to build a theoretical perspective that will have predictive ability in future research focused on adoption of conservation production systems.

Study findings strongly suggest that continued use of existing soil and water conservation programs will probably result in little improvement in the existing environmental situation. If we continue employing the voluntary approach we have used in the last seven decades, it is highly likely that several decades into the future someone will be presenting a paper with similar conclusions to a similar group of professionals using a longer time frame of reference.

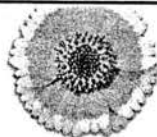
ENDNOTES

This was as an invited plenary paper presented at the 2001 North American Benthological Society conference La Crosse, Wisconsin, June 4-7, 2001.

Funding for the project that produced the publications summarized here was provided by a grant from the United States Environmental Protection Agency and from salaries provided by the Ohio State University. Positions advanced in this paper are solely those of the author and do not represent official positions of the funding agencies.

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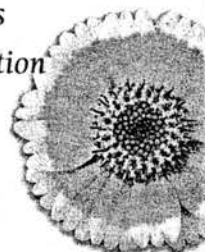
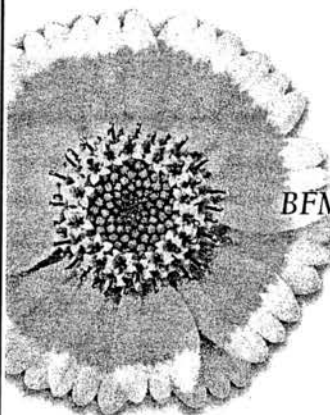
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March 2002

**BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET
LOWER LEVEL CONFERENCE ROOM
ST. PAUL, MINNESOTA 55107
WEDNESDAY, MARCH 27, 2002**

AGENDA

9:00 a.m. Call Meeting to Order

Pledge of Allegiance

Adopt Agenda

Minutes of February 27, 2002

Open Mike (10-minute agenda time, two-minute limit/person)

Reports

- Chair – Lee Coe
- Executive Director – Ron Harnack
- Dispute Resolution Committee – Lee Coe
- Wetlands Committee – Darrell Bruggman
- Cost-Share/Soil Conservation Committee – Dwain Otte
- Education and Public Relations Committee – Paul Krabbenhoft
- Administrative Advisory Committee – Lee Coe

Agency Reports

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

Committee Recommendations

Northern Water Planning Subcommittee

1. Itasca County Comprehensive Local Water Plan Update –
DECISION

Dispute Resolution Committee

2. WCA Appeal of Rice Creek Watershed District Decision
Involving Washington County Judicial Ditch No. 2 –
DECISION

New Business

1. Petition for Discontinuance of the Hennepin Conservation District – Jim Haertel - DECISION
2. Washington SWCD Resolution – Supervisors Elected by Districts – Jim Birkholz - DECISION
3. Landowner Request to Terminate a 36-Acre RIM Reserve Conservation Easement in Swift County – Kevin Lines - DECISION

Information and Discussion

1. Electronic Mail Update – Tim Ogg and Peter Raeker

Advisory Comments

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

12:00 p.m. Adjourn for lunch break

12:30 – 3:00 p.m. Reconvene as a Committee of the Whole: Local Water Management

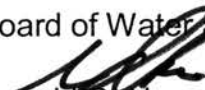
Upcoming Meetings

- Next BWSR Meeting April 24, 2002, St. Paul
- BWSR Meeting May 22, St. Paul
- BWSR will hold meeting and tour in Kandiyohi County (July or August)
- BWSR Meeting, September 25, 2002, in conjunction with the Local Water Planners Conference, September 23-25, Hinckley



DATE: March 18, 2002

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

FROM:  Ronald D. Harnack, Executive Director

SUBJECT: March 27th BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, March 27, 2002, beginning at 9:00 a.m. The meeting will be held in the BWSR conference room, lower level, at One West Water Street, St. Paul. Parking is available across the street from the building. Please display the enclosed "temporary parking permit" on your vehicle's dashboard.

The following information pertains to agenda items:

Committee Recommendations

1. *Northern Water Planning Subcommittee*

Itasca County Comprehensive Local Water Plan Update - Itasca County has completed the update of their third generation water plan. On March 8, 2002, water plan coordinator Art Norton, Itasca County Board Chair Bob Frick, and members of the local water planning task force met with the BWSR Northern Water Plan Review Committee to review the update and provide a recommendation to the full board. See attached. DECISION

2. *Dispute Resolution Committee*

WCA Appeal of Rice Creek Watershed District Decision Involving Washington County Judicial Ditch No. 2 – The Minnesota Center for Environmental Advocacy and a BWSR TEP member both appealed a decision of the Rice Creek WD to grant the WCA federal approval exemption on Washington county Judicial Ditch No. 2 near Hugo. It should be noted that the Rice Creek WD denied the same exemption on a similar matter (Hentges, Anoka Co. Ditch 53 – 62) which, under appeal, was affirmed by both BWSR and the Court of Appeals. The DRC reviewed written briefs and then held a hearing on February 6, 2002. The DRC continued the hearing until March 11, 2002. Based on the written and oral record in this appeal, the DRC recommends the Rice Creek WD approval be reversed per the attached draft Order. DECISION

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fax (507) 359-6018

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phone (507) 285-7458
fax (507) 280-2875

Saint Paul
One West Water Street
Suite 250
Saint Paul, MN 55107
phone (651) 282-9969
fax (651) 284-0000

New Business

1. Petition for Discontinuance of the Hennepin Conservation District – A petition to discontinue the Hennepin Conservation was filed by Mr. Keefe Schunk with BWSR pursuant to Minn. Stat. 103C.225. Over 25 occupiers of land in the District signed the petition. Minn. Stat. 103C.225, Subd. 3 (a) requires BWSR to hold a referendum. Staff recommend the referendum be ordered per the attached draft Order. If ordered, the Administrative Advisory Committee meeting scheduled for March 28 on the petition will be cancelled. DECISION
2. Ramsey SWCD Resolution – Supervisors Elected by Districts – Last month the Board tabled action pending certification of decision by Ramsey SWCD's resolution to elect supervisors by districts. DECISION
3. Washington SWCD Resolution – Supervisors Elected by Districts – The Washington SWCD resolution to pursue election of their supervisors by supervisor (election) districts for the 2002 election is in order. See attached resolution. DECISION
4. Landowner Request to Terminate a 36-Acre RIM Reserve Conservation Easement in Swift County – see attached information - DECISION

Information and Discussion

1. Electronic Mail Update – Tim Ogg and Peter Raeker will present information regarding the use of electronic mail.

Reconvene as Committee of the Whole: LOCAL WATER MANAGEMENT

If you have any questions regarding the agenda, please feel free to give me a call at 651-296-0878. If bad weather conditions exist in your area and you are unable to attend the meeting due to travel restrictions, please notify the Board office by noon on Tuesday, if possible. I look forward to seeing you on March 27th!

RDH:mja
Enclosures

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COMMITTEE RECOMMENDATIONS

Northern Water Planning Subcommittee

1. Itasca County Comprehensive
Local Water Plan Update
DECISION

OVERVIEW – MARCH 2002
THIRD GENERATION ITASCA COUNTY COMPREHENSIVE LOCAL WATER
PLAN UPDATE

Background

BWSR approved the original Itasca County Water Plan in November 1990. Itasca County began work on their first update of their water plan in 1994. The county began work on their third generation water plan in January 2001 , after receiving a one-year extension.

Water Plan Highlights

Since approval of the first water plan, the Itasca Soil and Water Conservation District has been responsible for implementation. Itasca County has an active 11 member water plan implementation committee, which meets monthly. Itasca County is a forested county with 945 lakes. The county's economy depends to a large extent on tourism related to its vast surface waters. Not surprisingly, the Itasca County water plan has focused implementation actions on its lake resources. Following is a list of some of the highlights the county has achieved over the past six years.

- Completion of 30 lake assessments.
- Completion of base line water quality data for the Big Fork River.
- Initiation of low-interest septic loan program.
- First Itasca County Lakes and Rivers Festival.
- Installation of dozens of lakeshore erosion projects.
- Continuing support for MES lakeshore vegetation specialist.
- Tripling of volunteer water resource monitoring (98 lakes).
- Completion of livestock inventory.
- Development of Itasca County lake vulnerability study.
- Initiation of the Jessie Lake Clean Water Partnership.
- Initiation of the Lake Carrying Capacity Study.
- Initiation of the Diatom Algae Study.

County Description

Itasca County is located in north-central Minnesota. The County experienced declining population during the 1980's concurrent with a recession in the mining industry. During the 1990's the county's population made up these losses, and is again on the rise. Other north central lake counties have experienced larger population and development increases. A DNR study showed a 31% increase in Itasca's lakeshore development between 1982 and 1998 (Kelly and Stinchfield, MDNR, 1998). While development is on the increase, the county's principal land cover is woodland, half of the county is either state, federal or county forest land. . Itasca County has 550,000 acres of wetlands. These forested and wetland land uses have gone a long ways to maintain the excellent water quality that Itasca County is known for. The county is using the water planning process to build a strategy that will direct development in such a way that it enjoys good water quality into the future.

I. Executive Summary, Itasca County Water Plan Implementation

Background

Itasca County is very large, and contains an **abundance of surface water**. There are about 950 lakes over ten acres in size within its boundaries, covering almost 9 per cent (170,000 acres) of the total area of the county. Over 1853 miles of streams drain the county's watersheds, including 119 miles of the Mississippi River and 71 miles of the Big Fork River. Wetlands are present on over 550,000 acres, about one-third of the total land surface. Approximately 95% of presettlement wetlands still remain.

Surface and ground water quality and land use issues relating to surface water have become increasingly important to the people who live and recreate in Itasca County. Development, industry, agriculture and lake use issues are the primary factors that can affect water quality, fish and wildlife habitat, recreation and aesthetics.

The population of the county has increased substantially during the past ten years. From 1980 to 1990, the decrease in mining activity was a primary reason for a decline in population from 43,069 to 40,863. According to the most recent federal census, **the population of Itasca County had increased to 43,992 by the year 2000, an increase of almost 8%.** Other nearby counties, notably Aitkin and Cass, have seen even greater increases in population. Much of the increase in these three counties has been attributed to new shoreland development and conversion of seasonal to permanent residences, especially in shoreland areas. A study of lakeshore development in Itasca County showed a 31% increase in shoreland dwellings between 1982 and 1998 (Kelly and Stinchfield, MDNR, 1998). Shoreland values on some of the county's more desirable lakes have increased dramatically in the last ten years.

Itasca County Comprehensive Land Use Plan, 2000

A major effort to develop a comprehensive land use plan was initiated by the county in 1998. Following many public meetings, reviews and revisions by a large citizen's committee and technical advisory panel, **the Itasca County Board of Commissioners adopted the plan on May 23, 2000.**

Many existing plans, including the county water plan, were incorporated into the county comprehensive plan. Because of the detailed attention that was paid to water resource issues in the county comprehensive plan, many of the "Implementation Tools" in the comprehensive plan are updated versions of "Action Items" of the 1995 update of the County Water Plan. The Itasca County Water Plan Implementation Committee (WPIC) has used **the "Implementation Tools" listed in the year 2000 County Comprehensive Land Use Plan to form the basis of the year 2001 Itasca County Local Water Plan Update.** The public meetings conducted by WPIC have supported this decision. **Year 2000 Implementation Tools are listed in Section V-A of this document.**

A few water resource issues important to Itasca County citizens did not make it into the comprehensive land use plan. Most of these issues deal with groundwater. Additionally, at several meetings of the county water plan update, suggestions for new ideas were solicited. **These remaining issues are recommended for inclusion into the 2002-2007 local water plan update and are described in detail in Section V-B.**

A summary of all of the Action Steps and Implementation Tools is listed below in **Table 1.**

**Table 1. Summary of Implementation Steps,
2002-2007 Itasca County Water Plan**

Priority A – (for immediate action; highest priority for staff time and funds)

- 1. Surface water quality and quantity.** Acquire and interpret baseline data.
 - including annual lake assessments, river and lake volunteer and agency monitoring, diatom study
- 2. Groundwater quality and quantity.** Acquire and interpret baseline data.
 - Groundwater Monitoring. Support groundwater monitoring efforts (Priority B action).
 - Sensitive Groundwater Areas. Monitor the efforts of state agencies to map and identify groundwater recharge areas (Priority B action).
 - Hydrogeologic Atlas. Assist efforts to formulate a series of maps of the county or Area 1 (Priority B action).
- 3. Lake carrying capacity.** Develop standards for different lake types.
- 4. Establish a hierarchy of lake development suitability,** based on carrying capacity standards
- 5. Updating and enforcing zoning ordinances** relating to water quality.
 - Incorporate lake carrying capacity into existing shoreland ordinance to prevent overdevelopment.
 - Develop performance zoning or overlay districts to guide development (Areas 2,4,5).
 - Define lot sizes in shoreland areas (Area 4).
 - Cluster development standards. Develop a cluster development option in the zoning ordinance to protect environmentally sensitive areas.
 - Establish a hierarchy of lake suitability with respect to back lot development, based on carrying capacity standards
 - Updating and enforcing zoning ordinances relating to water quality (Priority B action).
 - Limit road improvements to discourage backlot development (Priority B action).
 - Shoreland buffers between lakes and cluster developments (Priority B action)
 - Resort development standards. Develop performance standards (Priority B action).
- 6. Protect and restore natural aquatic and shoreland vegetation.**
 - Provide technical and financial assistance to individual landowners.
 - Tax incentives/conservation easements to preserve undeveloped shoreland areas.
 - Incentives for restoring native plants along lakes and rivers.
 - Blue Waters legislation (Priority C action).
- 7. Protection of environmentally sensitive lands, lakeshore, river corridors and watersheds.**
 - Coordinate with other governmental entities.
 - Public ownership (Priority B action).
- 8. Reduce nutrient loading to water bodies from septic systems.**
 - Create and promote a low-interest septic loan program for upgrading non-compliant systems.
 - Require septic systems that meet high performance standards (Priority B action).
 - Encourage alternative waste treatment methods that exceed current standards (Priority B action).
 - Sewer service to heavily developed shoreland areas (Priority C action).
- 9. Road and building construction standards.** Encourage/require erosion control, stormwater detention ponds and other treatment measures for new construction.

Table 1. Summary of Implementation Steps, cont'd
2002-2007 Itasca County Water Plan

Priority B – (high priority, but time frame and/or funding is uncertain; may need to wait for completion of a related Priority A item).

10. **Develop variance and conditional use standards** that promote the protection of water quality.
11. **Wellhead/Watershed protection.** Work with municipalities on their wellhead protection plans
12. **New river management plans.** Develop and adopt plans for the Swan, Prairie and other rivers
 - Develop lake-specific or watershed-based management plans.
13. **Improved farm nutrient and chemical management** to reduce erosion and chemical pollution.
14. **Mississippi River and primary lakes in Area 5.** Protect recreational and open space potential in the Mississippi River corridor and along the primary lakes in Area 5, esp. Winnie, Natures and Island.

Priority C – (Important, but of lower priority. Will be done as time and funding allow.)

15. **Lake waste disposal.** Educate lake and river users on the proper disposal of waste.
16. **Shoreland expansion areas.** Designate areas appropriate for new development.
 - Resort promotion. Develop programs that assist resorts in promotion and development.
 - New recreational facilities, to meet identified needs, including public lakeshore accesses.
 - Campgrounds. Develop additional capacity where there is adequate infrastructure.
17. **Design standards.** Adopt landscape design standards for shoreland areas.
 - Reduce visual impacts. Create and distribute educational materials that educate shoreland owners.
18. **Floodplain maps.** Update, revise and consolidate.
19. **Private drinking water wells.** Monitor abandoned wells and encourage well sealing.
 - Private well water quality. Encourage periodic sampling of private drinking water wells.
20. **River Defense Network.** Support and participate in RDN and related emergency spill response.

Water Plan Strategies

A summary of Itasca County Water Plan accomplishments during the past 5 years is listed in Table 2 on the following page.

Water quality monitoring has been a primary focus of the Itasca County Water Plan since its beginning in 1990. Between 1990 and 1995, detailed one-year water quality assessments were completed by the county and volunteers on 44 lakes and 3 major rivers. During the past six years, an additional 30 lakes have been assessed. Many of these lakes are small to medium in size. A summary of lake data (Table 4) shows generally very high water quality, except on certain lake types, notably shallow lakes with large watersheds. Additionally, some lakes have been impacted by specific causes. River water quality is generally quite high. There does not appear to be an overall trend in water quality, either in a positive or negative direction. This information has provided an important base for lake and river management decisions, such as development, land use and fisheries projects. **Collection of surface water data will continue to be a priority area of focus for the County Water Plan.**

A major goal of the water plan will be to assist local units of government, landowners and other interested groups to make land and water use decisions regarding potential impacts to water quality as a result of land use changes. In conjunction with water quality and lake/watershed information, **computer modeling is being used to help decision makers answer questions regarding the impact to surface waters from land and water use changes.**

The Itasca County surface water program will continue to strengthen its **lake and river management program**. In the early 1990's, the focus was on large watershed studies of impacted lakes, including Lake Winnibigoshish, Cass Lake and Trout Lake. Proactive lake management was accelerated in the late 1990's with the inclusion of Deer Lake as one of five lakes in the state's pilot "Lake Sustainability" program. Following that project, in 2001, nine of the county's 27 lake associations have embarked on lake management planning that also incorporates leadership training, through the "Healthy Lakes" program of the Initiative Foundation.

Shoreland and watershed management activities will focus on the most significant factors that affect lake conditions in Itasca County. These are primarily septic systems, near shore land use activities, agriculture, development, silvicultural practices, erosion control and water levels.

More **groundwater-related projects** have been completed during the past five years than in the first years of county water plan implementation. A joint Minnesota Geological Survey (MGS), Minnesota Department of Health (MDH), Mississippi Headwaters Board (MHB) and Itasca County well location verification survey has been incorporated into the new County Well Index and includes detailed well log information. The Minnesota Department of Natural Resources is heading up additional groundwater studies on the Mesabi Iron Range. Specific groundwater-related studies have also been undertaken to increase understanding of the connections between groundwater and surface water quality.

Beginning in late 2001, the glacial geology and gravel resources of Itasca County will be mapped. The three-year project is a combined effort of the county highway department, MDNR and MGS. The primary goal of the project is to delineate areas favorable for road building material. However, another **major benefit of the mapping will be significantly increased knowledge of groundwater resources.**

DRAFT

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

DRAFT

In the Matter of Reviewing the Comprehensive Water Plan Update
for Itasca County (Minnesota Statutes 1990, Section 103B.311,
Subdivision 4 and Section 103B.315, Subdivision 5 and Minnesota
Rules 9300.0170).

ORDER APPROVING
COMPREHENSIVE
WATER PLAN

Whereas, the Itasca County Board of Commissioners adopted a Comprehensive Water Plan (Plan) on December 31, 1995, under authority of M.S. 1990, Section 103B.301, which was approved by the Minnesota Board of Water and Soil Resources (Board), December 20, 1995, pursuant to M.S. 1990, Section 103B.315, Subd. 5, and

Whereas, the Plan provided for updating in 2000 pursuant to M.S. 1990, Section 103B.311, Subd. 4, and

Whereas, the Itasca County Board of Commissioners submitted a Comprehensive Water Plan Update (Plan Update) to the Board on December 27, 2001, pursuant to M.S. 1990, Section 103B.315, Subd. 5, and

Whereas, the Board has completed its review of the Plan Update:

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

FINDINGS OF FACT

1. M.S. 1990, Section 103B.311, Subd. 4, requires adopted Comprehensive Water Plans to be updated on a recurring basis.
2. On February 4, 2000, Itasca County passed a resolution requesting from BWSR a one-year extension on their timeframe to develop their Comprehensive Water Plan Update. On April 26, 2000, the BWSR approved the Itasca County request for an extension.
3. Itasca County completed a draft Plan Update on September 7, 2001, and submitted it to affected local units of government for review and comment pursuant to Section 103B.315, Subd. 1.
4. On September 7, 2001, Itasca County submitted a draft Plan Update to the Departments of Agriculture, Health, and Natural Resources, the Pollution Control Agency, the State Planning Agency and the Minnesota Geological Survey for preliminary review and comment.

5. On November 2, 2001, Itasca County held a public hearing on the Plan Update, pursuant to Section 103B.315, Subd. 4, for the purpose of obtaining public input into the Plan Update.
6. On December 27, 2001, Itasca County submitted its Plan Update along with all written comments received on the Plan Update, and a record of the public hearing to the Board for final State review pursuant to Section 103B.315, Subd. 5.
7. On March 1, 2002, a written overview of the Itasca County Plan Update was presented to the Board for their information and review.
8. **Minnesota Department of Agriculture (MDA) Review:** No written preliminary or final review comments were received from the MDA.
9. **Minnesota Department of Health (MDH) Review:** In its final review comments dated January 14, 2002, the MDH recommended approval of the Itasca County Water Plan Update.
10. **Minnesota Department of Natural Resources (DNR) Review:** In its final dated March 7, 2002, the DNR provided written comments on the Plan Update. The DNR noted in particular the county's efforts to collaborate among all levels of government and focus management strategies on a watershed basis. The DNR comments also noted that field staff have participated in the planning process at the advisory committee, and that many of their comments have already been built into the Update.
11. **Minnesota Pollution Control Agency (MPCA) Review:** No written preliminary or final review comments were received from the MPCA.
12. **Minnesota State Planning Agency/Environmental Quality Board (EQB) Review:** In its final review comments dated November 20, 2001, the EQB noted that they found no areas that were inconsistent with state laws. The EQB also noted the importance of the county coordinating the Update process with the County Comprehensive Land Use Plan process.
13. **Minnesota Geological Survey (MGS) Preliminary Review:** In its final review comments dated December 4, 2001, the MGS provided written comments on the Plan Update. The MGS recommended approval of the update.
14. **Minnesota Board of Water and Soil Resources:** On December 3, 2001, the BWSR provided written comments on the Plan Update. Comments provided included a summary of implementation actions over the past six years and comments related to the executive summary, prioritizing actions, adding implementation cost estimates, watershed context, summarizing challenge grant projects, broadening the state-local partnership and lakeshore buffers. BWSR field staff met with Itasca SWCD staff on February 19, 2002 to discuss review of the update.
15. **County Response to Agency Comments:** In its final Plan Update submitted to the Board on March 21, 2002, Itasca County incorporated some of the changes and additions to the Plan Update as recommended in the agency and local comments. The BWSR concluded its final review of the Plan Update and state agencies' comments on March 10, 2002.

16. **The Board Water Plan Review Committee:** On March 8, 2002, the Board committee met in Grand Rapids with Board staff and representatives from Itasca County to review and discuss the Plan Update. Those in attendance were Leland Coe and Darrell Bruggman of the Board of Water and Soil Resources Board; Ron Shelito and Dan Steward of the Brainerd Regional Office; Chairman of the Itasca County Water Plan Implementation Committee Richard Lacher, Chairman of the Itasca County Board Bob Frick; Don Simons and Ted Lovdahl of the Itasca SWCD Board; SWCD staff Art Norton and Noel Griesse; and Don Dewey staff to the Itasca County Planning and Zoning Department. The water plan review committee met to determine whether all relevant law and rule requirements had been met and to hear comments from the county on the planning process.

17. On March 8, 2002, the BWSR water plan review committee recommended that the Board of Water and Soil Resources Board approve Itasca County Plan Update.

CONCLUSIONS

1. All relevant requirements of law and rule have been fulfilled. The Board has proper jurisdiction in the matter of approving a Comprehensive Water Plan Update of Itasca County pursuant to Minnesota Statutes 1990, 103B.311, Subd. 4, and Minnesota Rules, 9300.0170, Subp. 4.
2. The Itasca County Plan Update attached to this Order states water and water-related problems within the county, possible solutions, general goals, objectives and actions of the county, and an implementation program. The attached Plan Update is in conformance with the requirements of Minnesota Statutes 1990, 103B.301 and Minnesota Rules Chapter 9300.

ORDER

The Board hereby approves the attached Plan as the Comprehensive Water Plan Update of Itasca County, dated at St. Paul, Minnesota, this twenty-seventh day of March, 2002.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Lee Coe, Chair

COMMITTEE RECOMMENDATIONS

Dispute Resolution Committee

2. WCA Appeal of Rice Creek
Watershed District Decision
Involving Washington county
Judicial Ditch No. 2
DECISION

DRAFT

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

DRAFT

In re: Wetland Conservation Act
Exemption Determination for Washington
County Judicial Ditch No. 2

BWSR File Nos. 01-8 and 01-9

ORDER

This is an appeal by Janette Brimmer, Minnesota Center for Environmental Advocacy, and an appeal by Lynda Peterson, Technical Evaluation Panel ("TEP") member and representative of the Minnesota Board of Water and Soil Resources ("BWSR"), of a decision of the Rice Creek Watershed District ("RCWD") made on August 22, 2001, involving an exemption request pursuant to the federal approval exemption of the Wetland Conservation Act ("WCA") regarding Washington County Judicial Ditch No. 2. The two appeals of the same decision were combined and heard as one. The exemption determination by the RCWD was a reversal of its earlier position with regard to the federal approval exemption that took place in the Anoka County Ditch 53-62 proceeding, which was ultimately taken to the Court of Appeals where the Court affirmed RCWD's denial of the federal approval exemption. After the parties were allowed to brief issues related to the Judicial Ditch No. 2 proceeding, the BWSR Dispute Resolution Committee ("DRC") met on February 6, 2002, to hear the oral arguments of the parties. During this time, the Appellants in the *Hentges* decision also sought review of their case before the Minnesota Supreme Court. After hearing the arguments on February 6, 2002, the DRC took the matter under advisement and continued deliberations until the March 11, 2002, meeting. DRC consideration of this matter was conducted at the BWSR offices at One West Water Street, St. Paul, Minnesota. DRC members, Leland Coe ("Chair"), Clair Nelson, Dwain Otte, and Char Kahler were in attendance. Appellant Minnesota Center for Environmental Advocacy was represented by Janette K. Brimmer, Minnesota Center for Environmental Advocacy, 26 Exchange Street, Suite 206, St. Paul, Minnesota 55101. Appellant BWSR staff was represented by Matthew B. Seltzer, Assistant Attorney General, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127. Paul R. Haik, Krebsbach & Haik, Ltd., 701 Fourth Avenue South, Suite 500, Minneapolis, MN 55415-1631, appeared on behalf of the landowners and John C. Kolb, P.O. Box 1497, St. Cloud, Minnesota 56302-1497, appeared on behalf of the Rice Creek Watershed District.

Based on the entire record in this matter and all the proceedings herein and after discussion and consideration of motions the DRC voted 3 to 1 to reverse the decision of the Rice Creek Watershed District. That recommendation was then presented to the BWSR Board.

At its meeting on March 27, 2002, BWSR adopted a resolution to accept the recommendation of the DRC and authorize the Chair of BWSR to issue this Order.

Based on the record of these proceedings, BWSR makes the following:

ORDER

1. That the August 22, 2001 decision of the Rice Creek Watershed District regarding the federal approval exemption of the Wetland Conservation Act for Washington County Judicial Ditch No. 2 is hereby reversed; and
2. The attached Memorandum is incorporated by reference and made a part of this Order.

Dated: March 27, 2002.

Minnesota Board of Water and Soil Resources

DRAFT

Its Chair

DRAFT

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

DRAFT

In re: Wetland Conservation Act
Exemption Determination for
Washington County Judicial
Ditch No. 2

BWSR File Nos. 01-8 and 01-9

MEMORANDUM

INTRODUCTION

The Minnesota Center for Environmental Advocacy and staff of the Minnesota Board of Water and Soil Resources ("BWSR") as a member of the Technical Evaluation Panel ("TEP"), appealed the August 22, 2001 exemption determination made by the Rice Creek Watershed District ("RCWD"). RCWD had determined that the "federal approvals" exemption found in Minn. R. 8420.0122, subp. 3A (1999 & Supp. No. 2, 2000) would apply to a project to restore Washington County Judicial Ditch No. 2 ("JD2") to its originally constructed condition.

In June 2001, six property owners on JD2 applied to RCWD for a determination of whether restoring JD2 to its originally constructed condition would qualify for the federal approvals exemption. A TEP was formed and met on July 12, 2001. The TEP included Appellant Peterson as the representative of BWSR staff. The TEP recommended that the exemption be denied on the basis of the limitation stated in the third paragraph of Minn. R. 8420.0122, subp. 3A. The TEP concluded:

The TEP finds that a previously stated reason for the request for repair of JD2 (to decrease the wetness of the land) does not comply with the conditions stated in the Rule, Subp. 3A, as to the purpose of the activity. The TEP also finds that excavation within the ditch, to restore the as-built profile adopted by RCWD, would likely have wetland impacts, such as converting a wetland to a nonwetland, partly draining it, or reducing wetland area.

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Exhibit ("Ex.") 11.

RCWD held a hearing on the exemption request on August 8 and 22, 2001. Exs. 29-30. The TEP presented its report and recommended denial of the exemption. Ex. 29. Despite legal advice to the contrary, the RCWD Board decided by a vote of 3 to 2 to grant the exemption. Ex. 30. By letter dated September 4, 2001, Appellant Peterson appealed RCWD's decision pursuant to Minn. R. 8420.0250 (1999). An appeal was also filed by the Minnesota Center for Environmental Advocacy.

STANDARD OF REVIEW

Pursuant to the Wetland Conservation Act, the procedure for reviewing an appeal is provided in Minnesota Rule 8420.0250.

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

The Board and its dispute resolution committee have found that BWSR does have jurisdiction over this matter. Upon review by the DRC and the full Board, the RCWD determination cannot be affirmed.

The Board is charged with the ultimate responsibility for implementing the Wetland Conservation Act and hears appeals from local government decisions. Minn. Stat. § 103G.2242, subd. 9 (2001); *see also* Minn. R. 8420.0250. Decisions on the merits of an appeal are subject to judicial review under Minn. Stat. § 14.63 through 14.69 (2001). *Drum v. Minnesota Board of Water and Soil Resources*, 574 N.W.2d 71, 74 (Minn. Ct. App. 1998). The *Drum* decision reflects long-standing recognition by Minnesota courts that ditch maintenance and drainage

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activity is subject to the state's current environmental laws. *See, McLeod County Board of Commissioners v. State of Minn. Dept. of Natural Resources*, 549 N.W.2d 630-33 (Minn. Ct. App. 1996) *pet. rev. denied* (Minn., Aug. 1996).

RCWD'S EXEMPTION DETERMINATION.

The federal approvals exemption is implemented through Minn. R. 8420.0122, subp. 3A.

This rule provides as follows:

Federal approvals. A replacement plan for wetlands is not required for activities described in items A and B.

A. Activities exempted from federal regulation under United States Code, title 33, section 1344(f), as in effect on January 1, 1991.

The local government unit may certify the exemption only if the landowner furnishes proof of qualification for one of the exemptions from the United States Army Corps of Engineers.

This exemption does not apply to a project with the purpose of converting a wetland to a nonwetland, either immediately or gradually, or converting the wetland to another use, or when the fill will result in significant discernible change to the flow or circulation of water in the wetland, or partly draining it, or reducing the wetland area.

(Emphasis added.) Impact to wetlands was clearly established in the records. The proposed work would convert wetlands to nonwetlands, drain wetlands, and reduce wetland areas. *See* Exs. 11, 14, 16, 23. Pursuant to the plain language of the rule, the exemption does not apply.

Moreover, RCWD, in its capacity as the local government unit ("LGU") for WCA, must follow BWSR rules. BWSR'S review in this matter is narrowly focused on the application of its rules which expressly provide that exemption determinations "shall be based on the exemptions standards in part 8420.0122." Minn. R. 8420.0210 (1999 & Supp. No. 2, 2000).

It was not the role of RCWD as an LGU for the implementation of WCA to determine the validity of the BWSR rule for the federal approvals exemption; that is a matter for the Courts to decide.

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In a decision filed January 4, 2002, the Minnesota Court of Appeals addressed this very issue when it upheld the validity of Minn. R. 8420.0122, subp. 3A. The Court of Appeals held that BWSR acted within its statutory authority in adopting the rule. *See Hentges v. Rice Creek Watershed Dist.*, No. C7-01-799, slip op. at 7 (Minn. Ct. App. Jan. 4, 2002). The Court of Appeals concluded that the BWSR rule is consistent with the Legislature's goal of achieving no net loss of wetlands:

In enacting the Wetland Conservation Act of 1991, the Minnesota legislature clearly stated its intent to "achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands * * *." Minn. Stat. § 103A.201, subd. 2(b)(1) (2000). To achieve "no net loss" of wetlands, the legislature provided the requirement that partly drained wetlands be replaced. Minn. Stat. § 103G.222, subd. 1(a) (2000). On its face, rule 8420.0122, subp. 3A, comports with legislative intent because, if followed, the rule will ensure that even ditch maintenance that causes wetland drainage will not result in net loss of Minnesota wetlands.

Hentges, slip op. at 7.

The *Hentges* decision controls resolution of this appeal. The Respondents have offered no compelling arguments that distinguish the present case. RCWD is bound by law to apply the provisions of the WCA to any proposed maintenance of the ditch.

Denial of the federal approvals exemption will not preclude work on the ditch. As noted by the TEP in its report to RCWD, the WCA drainage exemption, Minn. R. 8420.0122, subp. 2 (1999 & Supp. No. 2, 2000), provides an exemption that is applicable to the repair of public drainage systems. Ex. 11. A proposal to do work on JD2 could be reviewed under this exemption.

After reviewing the entire record of this proceeding and examining the relevant case law that has upheld the clear language of Minn. R. 8420.0122, subp. 3A, BWSR has concluded that RCWD improperly applied the law to this case when it granted the federal approvals exemption.

NEW BUSINESS

1. Petition for Discontinuance of the
Hennepin Conservation District
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 Petition for Discontinuance
of the Hennepin Conservation District and
Conducting a Referendum pursuant to
Minnesota Statutes Section 103C.225

**ORDER
TO CONDUCT
REFERENDUM**

Whereas, a Petition to discontinue the Hennepin Conservation District was received from Mr. Keefe Schunk on August 24, 2001, pursuant to Minn. Stat. § 103C.225, Subd. 1, and;

Whereas, over 25 occupiers of land in the District signed the Petition, and;

Whereas, Minn. Stat. § 103C.225, Subd. 3 (a) requires the Board of Water and Soil Resources to "...give due notice of the holding of a referendum, supervise the referendum, and issue appropriate regulations governing the conduct of the referendum".

Now Therefore, the Board hereby makes the following Order.

ORDER

The Board hereby orders that a referendum on the discontinuance of the Hennepin Conservation District be conducted on or before November 5, 2002, pursuant to Minn. Stat. § 103C.225, Subd. 3.

Dated at Saint Paul, Minnesota this _____th day of March, 2002.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

DRAFT

By: _____
Leland G. Coe, Chair

NEW BUSINESS

2. Ramsey SWCD Resolution –
Supervisors Elected by Districts
DECISION

Washington SWCD and Ramsey SWCD Request to Elect Supervisors by Districts – DECISION

BWSR is in receipt of a request from the Ramsey SWCD and Washington SWCD to implement their authority in MS 103C to elect their supervisors from supervisor election districts. The request is to establish the procedures in time for the 2002 office filings and elections.

Analysis

Laws 1997, c. 130, sec. 1, added special authority to soil and water conservation district law in the counties of Ramsey and Washington. This authority allows these and only these districts the option to conduct SWCD supervisor elections by supervisor districts. The general SWCD law requires supervisor elections to be conducted county-wide with nomination from geographic supervisor districts. To date, neither the Ramsey nor the Washington SWCD have implemented this special authority authorized in 1997.

For Washington SWCD and Ramsey SWCD to implement their special election authority requires approval of the BWSR (State Board) at two intervals. First, the State Board must give approval to the district action invoking its authority by resolution to conduct the elections by supervisor districts. That is the matter before the State Board at its March 27 meeting. Secondly, at a later date, the State Board must approve the supervisor (election) districts that the county board is authorized to draw. This second approval by the State Board needs to be given early enough so that filing the resolution establishing the supervisor (election) districts can be done at least 30 days prior to the first date candidates may file for the office of supervisor. This year, filing for office will begin on July 2.

Staff Recommendation

The Washington SWCD resolution to pursue election of their supervisors by supervisor (election) districts for the 2002 election is in order. **Approval is recommended.**

The Ramsey SWCD resolution to pursue election of their supervisors by supervisor (election) districts for the 2002 election is in order. **Approval is recommended.**

To stay on schedule for office filing dates, the State Board should anticipate taking action in April or May at the latest regarding the supervisor (election) districts that will be drawn by the County Boards.

NEW BUSINESS

3. Washington SWCD Resolution –
Supervisors Elected by Districts
DECISION

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**MINNESOTA
SOIL AND WATER CONSERVATION DISTRICTS**

**WASHINGTON SOIL AND WATER
CONSERVATION DISTRICT**

1825 Curve Crest Blvd., Room 101
Stillwater, MN 55082
(651) 430-6820 Fax: (651) 430-6819

RECEIVED

MAR 14 2002

Bd. of Water & Soil Resources
St. Paul

March 13, 2002

Mr. Ron Harnack
Executive Director
Minnesota Board of Water and Soil Resources
One West Water Street, Suite 200
St. Paul, MN 55107

Dear Mr. Harnack:

On March 13, 2002, the Washington Soil and Water Conservation District Board of Supervisors passed the attached resolution pursuant to Minnesota Statutes 103C.311, subdivision 2, **Supervisors elected by districts.**

According to the statute, it is necessary to have the approval of the BWSR Board. Please place this request on the BWSR board meeting agenda as soon as possible. It is our intent for this change to be in effect for the 2002 general elections, therefore, this will require BWSR's immediate assistance.

Please contact our District Manager, Konrad Koosmann, with any questions.

Sincerely,

Louise Smallidge
District Chair

Cc. Washington SWCD Board of Supervisors
Phil Belfiori, BWSR Board Conservationist

RESOLUTION

Board of Supervisors

WASHINGTON SOIL AND WATER CONSERVATION DISTRICT

Presented by: Louise Smallidge

Date: 03-13-02

Resolved the Washington Soil and Water Conservation District supervisors will be elected by supervisor district pursuant to Minnesota Statutes 2000 Chapter 103C.311, Subd. 2, beginning with the 2002 general election.

By:

Louise Smallidge
Louise Smallidge, Chair

By:

Konrad Koosmann
Konrad Koosmann, District Manager

NEW BUSINESS

4. Landowner Request to Terminate
a 36-Acre RIM Reserve
Conservation Easement in Swift
County

DECISION

March 11, 2002

TO: Board Members

THRU: Kevin Lines, Easement Section Administrator

FR: Tim Fredbo, Conservation Easement Specialist

RE: Release of Conservation Easement 76-06-89-01, Mark Lange

BACKGROUND:

Shortly after January 4, 2002, the Swift SWCD received two letters from Mark Lange requesting a release from the perpetual RIM Reserve conservation easement on his property in the E1/2 of the NE1/4 of Section 1, T122N, R37W, Swift County. The easement covers 36 acres in this parcel. Mr. Lange purchased this property on May 28, 1993 from Orville Rudningen, the landowner who originally enrolled the property. The easement was recorded on June 22, 1990. A copy of the recorded easement is included as *attachment 1*. Mr. Lange is now trying to sell the 80 acre parcel. According to Mr. Lange, he has had potential buyers turn him down because of the perpetual easement. Mr. Lange also contends that he was never told about the perpetual easement being in place on the property prior to his purchase of said property. For these reasons he is seeking a release from this easement.

This easement was eligible for RIM as a marginal cropland easement. The State paid \$14,758.56 for this perpetual easement in 1990. In addition, the landowner was paid \$3,479.05 for installing conservation practices on the site. This brings total payments for this easement to \$18,237.61. The easement has been established to 23 acres of introduced grasses (RR-1), 9 acres of native grasses (RR-2), and 4 acres of trees (RR-3).

I have received the information required for the Board to consider a release of this easement as required in Sec. 8400.3610 of the RIM Rules (*attachment 2*). The first paragraph of the rule states that the Board may terminate an easement only if the Board determines that the public interests and general welfare are better served by the termination. The rules require the local SWCD Board and DNR Area Wildlife Manager to consider the landowners request to release or alter an easement.

SUMMARY OF INFORMATION PROVIDED TO SUPPORT REQUEST:

Mr. Lange has submitted a total of three letters in support of his request. They are all included as *attachment 3*. The thrust of all these letters is that Mr. Lange feels as if he has been wronged because the terms and conditions of the RIM easement were not clearly laid out to him prior to purchasing the property. Mr. Lange now wants to sell his land and get out of the state because he feels there is someone threatening to harm he and his family. Mr. Lang feels the RIM easement is preventing him from selling his land.

The Swift SWCD Board has considered Mr. Lang's request to terminate his easement. The request was denied on January 10, 2002 (*attachment 4*).

The DNR Area Wildlife Supervisor, David Soehern, has also reviewed Mr. Lang's request. Mr. Soehern also does not approve the release. A copy of his February 2, 2002 letter is included as *attachment 5*.

FINDINGS:

I have discussed this situation quite thoroughly with Mr. Lang. The easement is a legal, recorded document, taken on highly erodible cropland, paid for by the state, and is serving as excellent wildlife habitat while totally controlling erosion on the site. Mr. Lang feels that someone from the State or SWCD should have explained everything to him prior to his purchase of the land. If the BWSR or the SWCD had been contacted by Mr. Lang, we would have given him all the information he would have needed. Neither one of us were ever contacted by Mr. Lang prior to his purchase.

Mr. Lang trusted the realtors, closers, and others he was working with at the time of the sale. Evidently, nobody explained to Mr. Lang what he was purchasing, and Mr. Lang asked no questions. Mr. Lang was under the assumption that he had a 10 year easement, not a perpetual easement.

The BWSR and the SWCDs are not in a position to monitor all pending and proposed sales of lands containing RIM easements. If prospective buyers do their homework we get inquiries about our easements. This easement is a recorded document of public record. Mr. Lang should have looked into this prior to deciding to purchase this property.

Mr. Lang has stated that the public interest would be served by the release of this easement because it would be preventing possible violence against he and his family. The public good of the easement is for the natural resource benefits that the state is deriving from the easement. Mr. Lang's personal safety is a totally unrelated matter.

OPTIONS AND STAFF RECOMMENDATION:

1. Approve of the release or termination of the easement. **NOT RECOMMENDED.**
Given the procedure we have established for potential release of easements the landowner would have to pay back the funds received from the state to terminate the easement, plus a \$500 administrative expense. This would equal \$18,737.61 in this case. To date, the Board has never released an entire easement because a landowner decides he doesn't want to abide by the terms and conditions of his easement anymore. We have done one partial release of 3.5 acres. This was done because the landowner owned no other land that was eligible for the program. In all other cases we have worked out a trade where we release land in question and replace it with the same number of acres of program eligible land that the landowner owns. Landowner establishes cover plantings at his own cost.

2. Deny the request to terminate the easement. **RECOMMENDED.**

The 36-acres of land under easement continues to provide significant wildlife habitat and soil conservation, the purposes for which the land was enrolled in RIM Reserve. The SWCD and DNR Wildlife concur. Termination of the easement will NOT serve the public interest or general welfare as required by law. Therefore, the request to terminate should be denied.

ATTACHMENT
1

STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES
"RIM" RESERVE CONSERVATION PROGRAM
PERPETUAL EASEMENT
FOR MARGINAL AGRICULTURAL LAND, AND CROPLAND ADJACENT TO PUBLIC WATERS

This EASEMENT, MADE THIS 25 day of May, 19 90, between _____
Orville Rudningen, single

hereinafter collectively referred to as Grantors, and the State of Minnesota, by and through the Board of Water and Soil Resources, hereinafter referred to as Board.

WITNESSETH

WHEREAS, the REINVEST IN MINNESOTA RESOURCES ACT OF 1986 ("RIM"), Minn. Stat. Sec. 40.40, et seq., and 84.95 et seq., as amended, authorizes the Board to acquire conservation easements on certain lands to protect soil, water quality and to enhance fish and wildlife habitat; and

WHEREAS, the Grantors are the owners of marginal agricultural land or land adjacent to marginal agricultural land or cropland adjacent to public waters, and desires to convey a conservation easement covering such lands to the State of Minnesota.

NOW, THEREFORE, the Grantors, for themselves, their heirs, successors and assigns, in consideration of the sum of Fourteen Thousand Seven Hundred Fifty Eight and 56/100 (\$ 14,758.56) DOLLARS, do hereby grant, convey and warrant to the Board, its successors and assigns, forever, a perpetual conservation easement in accordance with the terms and conditions as hereafter described, the provisions of Minn. Stat. Sec. 40.40, et seq. and 84.95 et seq. and all rules adopted thereto, over and upon the land located within the following described real property in _____
Swift _____ County, State of Minnesota, to-wit:

Part of the E $\frac{1}{2}$ NE $\frac{1}{4}$, Section 1, T.122N., R.37W.

The location of the land subject to this easement, hereinafter referred to as the "easement area," consisting of 36.0 acres, is shown on "Exhibit A" which is attached and incorporated herein. This easement is subject to all easements, roadways, minerals and mineral rights of record.

FURTHER, Grantors, for themselves, their heirs, successors and assigns do further grant, convey and warrant to the Board, its successors and assigns for the duration of the easement, the right to enter upon the easement area for the purpose of inspection and enforcement of this easement, together with the right to ingress and egress to the easement area from a public road. Established access routes shall be used whenever feasible.

FURTHER, Grantors represent and warrant that there are no hazardous substances, pollutants, or contaminants in or on the easement area.

NO RIGHTS HEREIN ARE GRANTED TO THE GENERAL PUBLIC FOR ACCESS TO OR ENTRY UPON THE LANDS DESCRIBED HEREIN.

IN ADDITION, THE GRANTORS, FOR THEMSELVES, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT THAT THEY:

1. Shall establish and maintain the vegetative cover and other conservation practices on the easement area as described in the Conservation Plan, which is attached and is incorporated herein as "Exhibit B." Any amendment to the Conservation Plan shall be mutually agreed upon in writing and located in the office of the Board or the Soil and Water Conservation District for the area, or their successors.
2. Shall be responsible for weed control, and shall not spray with chemicals or mow, except as necessary to comply with noxious weed control laws or emergency control of pests necessary to protect the public health.
3. Shall not alter wildlife habitat, natural features or the vegetative cover and other conservation practices established in the Conservation Plan, unless with the prior written approval of the Board.
4. Shall not graze livestock on the easement area.
5. Shall not produce agricultural crops except with the prior written approval of the Board for wildlife management purposes.

6. This Easement shall be enforceable at the discretion of the Board as provided in Minn. Stat. Sec. 40.43 Subd. such other relief as may be authorized by law.
7. Shall restore easement area to the condition described in the Conservation Plan after any lawful repair or improvement necessary to maintain a public drainage system.
8. Shall notify the Board in writing of the names and addresses of the new owners within 30 days after the conveyance of all or part of the title or interest in the land described herein.
9. Shall pay when due all taxes and assessments, if any, that may be levied against easement area.
10. That this easement shall run with the land and shall be binding upon the Grantors, their heirs, successors and assigns.
11. Shall not place, erect or construct any structures or objects of any type, temporary or permanent, on the easement area.
12. Shall undertake the protection and management of the easement area in accordance with the conditions set forth in this easement.

FURTHER, any ambiguities in this easement shall be construed in a manner which best effectuates the purpose of protecting soil, improving water quality, and enhancing fish and wildlife habitat.

FURTHER, THE GRANTORS, FOR THEMSELVES, COVENANT that they shall not convert to agricultural crop production or introduced pasture, any other land supporting natural vegetation owned or leased as part of the same farm operation, at the time of application, if said lands support natural vegetation or has not been used in agricultural crop production or introduced pasture.

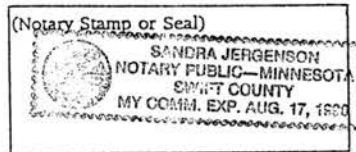
IN TESTIMONY WHEREOF, the Grantors have hereto set their hands this day and year first above written.

Orville Rudningen
Orville Rudningen

ACKNOWLEDGEMENT BY GRANTORS

STATE OF Minnesota
COUNTY OF Swift

The foregoing instrument was acknowledged before me this 25 day May, 1990 by
Orville Rudningen, single



Sandra Jergenson
Notary Public Signature
Commission expires on August 17, 1990

ACCEPTANCE AND APPROVAL (For State Use Only) (No Notary Required)

STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES

By J. R. Bell
Title Executive Director
Dated 6/8/90

As to Form and Execution
ATTORNEY GENERAL

By Carl M. Conney
Special Assistant Attorney
Dated 6-15-90
County Recorder Use Only

This instrument was drafted by:
Board of Water and Soil Resources
155 South Wabasha Street, Suite 104
St. Paul Minnesota 55107

MAINTENANCE REQUIREMENT

The landowner understands that the landowner and all successors, assigns, and heirs are required to establish and maintain the conservation practices described in this Conservation Plan for the entire period of the conservation easement. The Conservation Plan may be revised by the mutual agreement of the landowner and the state by the execution and recording of a Revised Conservation Plan. In addition, the landowner understands that the landowner is fully responsible for controlling noxious weeds and pests. The landowner also understands that a representative of the local Soil and Water Conservation District must certify conservation practice completion according to approved specifications before reimbursement payments can be made for the costs of installing the conservation practices.

LANDOWNER(S)

By Quint Redman

Dated: 5/25/90

By _____

Dated: _____

OTHER INTERESTED PARTIES
(If Applicable)

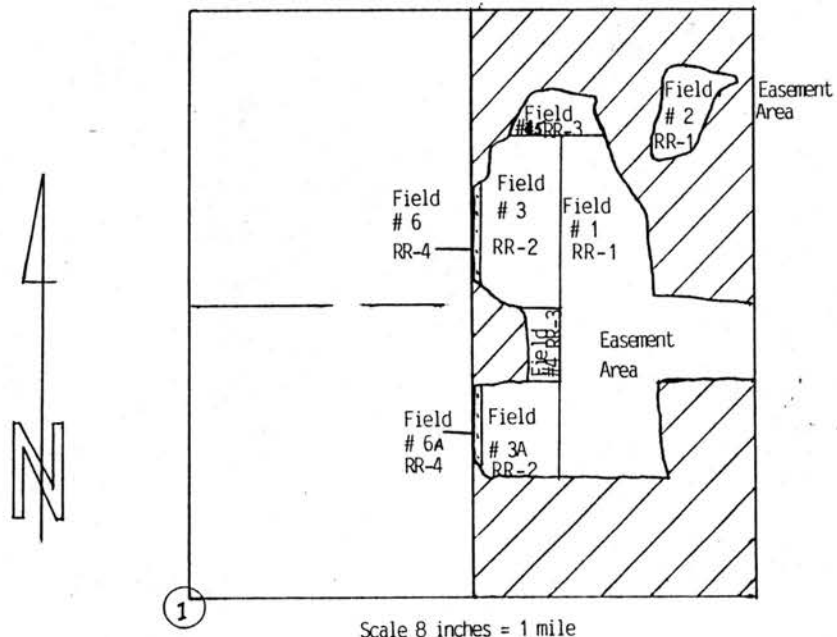
By _____

Dated: _____

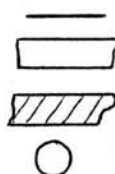
By _____

Dated: _____

CONSERVATION PLAN MAP



LEGEND



Boundary of Described Lands

Lands Covered by Easement

Lands Not Included in Easement

Center of Section

OFFICE OF COUNTY RECORDER
COUNTY OF SWIFT, MINN.

I hereby certify that the within instrument
was filed in this office for record on the
22nd day of June

A.D. 19 90, at 10:30 o'clock A. M.

and was duly recorded in Book 141

of Deeds on page 726

by Bernie Dubek Deputy

SWIFT
NOTARY

for the limited duration easement on the area.

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS.

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

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

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

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

8400.3630 APPROVED PRACTICES.

Subpart 1. **Criteria.** Approved practices must have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, or enhancement of fish and wildlife habitat. Approved practices are further specified in the easement program practice specifications. Practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for conservation easement program cost-sharing, but are considered an approved practice and, therefore, are allowed on enrolled acres if they are included in the conservation plan.

12/31/01

R.I.M. lease?

Mark and Vicki Lange property

80-15 acre⁺ home, 760 Hwy. 104 N.E. Sumburg, Mn. 56289
Swift County

we do not recognize or agree to terms of a R.I.M. lease which
were not explained or gone over with us by or before 5/28/93.
when we bought the property we were told by

Alan Juhnke of Alliance Land Co. that part of the
property was in a 10 year government program in
which 6 or 7 years had already gone by and there were
3 or 4 years left to go. Allan said that at the time
of "closing" we would be informed as to the terms
and information of the government program.

At the time of closing at the Bonanza Valley
State Bank in Brooten, Mn. May 28th 1993 the people
present were Mark, Vicki and Faye Lange, banker Martin
Hjerde, Orville Rudningen, and Allan Juhnke. No terms
or information of the so-called R.I.M. government program
were gone over with us (Langes). We were not given any
papers, or told anything about the R.I.M. program at all,
as far as we knew there were 3 or 4 years remaining
on the program in which this was alright with us.
About a year or so later after the 5/28/93 closing date
I (Mark Lange) was visiting with Orville Rudningen
and when I stated to him that we knew hardly
anything about the R.I.M. program except that 2 or 3
years were left to go Orville hollered "oh, shit,
you mean Allan didn't go over all that with you?"
I told Orville, no and Orville was really upset that
we weren't informed.

Now we have the property listed for sale
and we have no idea of the "terms" of this R.I.M. program.

CONT.

we are told by our realtor Bruce Vogel from Edina Realty in Willmar that the R.I.M. program makes it more difficult to sell our property.

we feel we have been wronged, deceived, misled and want to know whether or not we have any way to be taken off of this R.I.M. program because the 10 years we were told we had our property in R.I.M. for is now run out.

we also were never explained in any way other than there were 3 or 4 years left to go in R.I.M. and this was only by Allan Juhnke, no one at the closing said a word they just handed all the papers over to us including Richard Ranning papers where he eludes to some sort of "terms" to the R.I.M. easement.

we were uninformed and kept in the dark about the information about R.I.M.

I, Mark R. Lange "ALL Rights Reserved"

signed the property documents in like manner and today remove my signature off those documents of Earnest Money Contract of Sale dated May 21, 1993. if this in any way voids the first document then there would be no Settlement Statement as I knew that not everything was explained to us at time of the Earnest Contract so I reserved my rights with and as part of my signature, which now I'm seeking whatever remedy I may have to have this wrong to us made right by no one going over anything with us about what really R.I.M. is.

I "Reject in Full" any agreement past the original understanding we had of a 10 year program on R.I.M.
Mark R. "ALL Rights Reserved" Lange

January 4, 2002

RE: RIM Easement
Mark, Vicki & Faye Lange
760 Hwy. 104 NE
Sunburg, MN 56289
Phone - 320-366-0000
80.15 acres, Swift county

This letter is being sent in addition to a letter dated December 31, 2001, which was a partial listing of reasons we ask you to remove our property off of a RIM easement program that was entered into by Orville Rudningen, who was the previous owner.

Just this morning on a phone conversation with Tom Orr of Swift County Soil and Water, we expressed more serious and extremely confidential and private security reasons for selling the property. The property is listed with Bruce Vogel of Edina Realty in Willmar, in which in about this first month of listing, the 3 parties that were interested in our property became uninterested when they found out it was on a RIM program.

We were extra cautious not to say anything to Tim Tredbo on January 3, 2002, on a taped phone conversation, due to our taking every precaution we can imagine to not give out any extra information as to our plans on why or where we are moving. The fewer people that know why we are moving will be that many fewer people that don't ask questions where we are moving to. All the information that we herein give, we give you written permission to contact any of the government or law enforcement people involved.

Just this morning, Tom Orr stated there were provisions for alteration, termination or being released from the conservation RIM easement. We herein want to state a more complete listing and we want to stress that we want no information we here give to go to any private party that may contact you as to our plans.

Tom Orr this morning stated after we shared with him the reasons we will next give to you, that if there was a reason for us to be released from the program, it seemed to him that the reasons we have would indeed be a reason to be released, although he said he could not make any decisions as to the matter.

1. When we bought the property back in 1993, we were told by Alan Juhnke, realtor at Alliance Realty in Willmar, that the farm was on a government program for a 10 year period, in which 3 or 4 years were yet remaining, and that Orville Rudningen, then owner, would go over more details and terms with us about that before closing. At the time we bought the farm we had not intended to farm it so we didn't see a problem with leaving it on a government program for 3 or 4 more years. We had a title opinion done by Rich Ronning, attorney in Willmar, which was handed to us at the closing date of the property, which was May 28, 1993. The closing of our property took place at Bonanza Valley State Bank in Brooken, MN. Martin Gjerde, bank officer was present (who within a few months went to prison), as well as ourselves, Orville Rudningen, and Alan Juhnke. Nothing was said to us about any "terms" of the so-called government program which 3 or 4 years were remaining, so we saw no red flags, so to say, about problems that soon after revealed themselves, that being that this so-called RIM program had "terms" and was perpetual. To this, even to this very day, we are not aware of what is called "terms" and no one made us aware of any information whatsoever, other than the 3 or 4 years remaining on this program. We in no way would have bought this property if we knew that the program was perpetual and had "terms". After the closing we were handed the title opinion in which the attorney talked about "terms" of a rim easement, but no mention from anyone what this meant. When I (Mark Lange) was visiting with Orville Rudningen about a year or so after we owned the property, Orville got really upset when he found out that no one went over any "terms" or conditions of the RIM easement with us.

Since talking to Josh, Tom Orr and Tim Tredbo about us not being informed of the "terms" of this RIM

easement, each one of them have blamed either the realtor, the lawyer, or Orville Rudningen for not telling us, including blaming us. There seems to be a lot of confusion as to who should have told us about "terms" of some contract we were supposedly involved in, and this was even from Tim Tredbo who kept shuffling blame from us to Orville to others. Each person we have talked to like Tom Orr, Josh and Tim Tredbo, have stated we were wronged and should have been informed about the RIM program before the closing date of our property. We cannot be part of any lease, easement or contract that we have no knowledge of and we are not of an understanding of.

2. Tom Orr this morning stated that if the "public interest and general welfare of the community would be better served" we could be released and terminated from any previous RIM easement contract. Here is a serious reason that we need to get our property sold and move as soon as possible, and why we need your help on this issue as soon as possible in a timely manner of this seriousness.

On November 16, 2001, we were helping a man (Mr. Anderson) who had been involved in one way or another with the death of a young woman out west, and serious injury to another woman recently as well. This man is now hospitalized in the Willmar Regional Treatment Center, and is diagnosed as "psychotic NOS". He is a brilliant violent psychopath who has a vast amount of knowledge in making chemicals, bombs, explosives, poisons, guns, torture, and is brilliant at knowing how to manipulate anyone. He promised to kill the 3 of us, Mark, Vicki, and our daughter Faye who is 19 years old and lives at home. This man has written in his own handwritten notes about how anyone who he feels is against him is going to perish. This man's mother in a taped phone conversation, told us "he will probably blow you up when you are sleeping". His mother testified in court that even though she loves him, she knows that he is capable of destroying many people. Ken Hanson, sheriff of Swift County, called and talked to us about how he would like Mr. Anderson on a bus and sent back out west where he came from, because he doesn't want him anywhere around this area. Mr. Anderson also had threatened to sexually have his way with Natalie Capps and Sue Nelson, Swift County social workers, Vicki Syverson, Swift County HRA, and Jen Westrum, Counseling Associates, as he knew these women wanted him to have rough sex with them.

Dr. Stephens at Willmar Regional Treatment Center and Dr. Nadolny who know that Mr. Anderson is seriously mentally ill, know that he has some troubling violent behaviors. Since we were the #1 witnesses at the court hearing and the threats to our lives, it is important that we move with extreme discretion and maximum privacy in a timely manner, which your assistance to see to it we are removed from any RIM easement as soon as possible will remove the possibility of either the 3 of us being murdered or us having to kill Mr. Anderson to save our lives. The community and public would definitely not find this beneficial to the community and themselves to have a murderous disaster take place when it more than likely could be avoided if we can sell our property and move as soon as possible, as we also plan to leave no forwarding address or trace to where we're going, as no family or friends we plan to make aware of our move.

Mr. Anderson has expressed while being hospitalized that he is quite upset with us but since he has not been found guilty or been caught in the act of violence, the hospital can only keep him so long, even though they want him committed on a far longer stay at the hospital.

We have had only several parties in this first month of our property being listed, in which the realtor told us the RIM easement discouraged the possible buyers. Now since, as we have mentioned, the information we here in gave you, we ask you to act upon the best interests of the public, which includes even us and the community, in releasing us from the RIM easement to enhance our possibilities of selling our property and moving on.

3. Mark Lange has been diagnosed with being mentally disabled, with severe chronic Post Traumatic Stress Disorder due to the murder-suicide of Mark's parents on April 3, 1992 in St. Cloud, MN, and also physically disabled due to a serious injury to his back. These problems greatly increase in severity due to the stress involved by trying to sell the property and move as soon as possible and the upkeep of the property is unbearable, along with thinking that Mr. Anderson has many places to approach, hide and

carry out his plans at our property. This could be eliminated or helped not to happen by us moving and having no one knowing where we have gone, as there will be no forwarding address to anything or anyone. Therefore the community and public would greatly benefit by removing the possibility of trouble in this area.

To verify any of this information, feel free to contact Ken Hanson, Swift County sheriff, Robin Finke, Swift County Attorney, Natalie Capps, Sue Nelson, Swift County Social workers, and Jen Westrum, Counseling Associates.

We feel that these life threatening reasons and danger to the community and public, as Mr. Anderson states he wants to be in the area, would be greatly diminished when we can sell our property and move out of the area. This along with we also had no understanding, information or knowledge of any "terms" to the RIM easement.

Please act upon this in a timely manner to assist everyone in safety and the removal of extremely traumatic experiences which seem very likely otherwise.

Thank You.

Mark "All Rights Reserved" Lange

Mark "All Rights Reserved" Lange

Vicki "All Rights Reserved" Lange

Vicki "All Rights Reserved" Lange

Faye "All Rights Reserved" Lange

Faye "All Rights Reserved" Lange



Lange's received S.C.S. & W.C.D. letter 2/25/02

February 26, 2002

To: Swift County Soil & Water Conservation District and all persons therein concerned, Tom Orr, Josh (helper of Tom), Tim Tredbo, and Minnesota Department of Natural Resources, all persons therein concerned, David Soehren, etc., and anyone involved in this issue.

In this written response to a letter I received from the Swift County Soil & Water Conservation District in which I have been turned down to have Orville Rudningen's agreement of a R.I.M. program released from our farm, I do "REJECT IN FULL" your decision, based upon in part here are just some of the reasons why I (we) "REJECT" your decision are as follows:

1. Thomas Orr in a taped phone conversation said if there is a reason to have our land taken off RIM would be the reasons I discussed with Thomas by phone, in which Thomas asked me to put what I told him in writing, as this, according to Thomas, would be a good reason in his thinking that our land could be released or terminated off of RIM. Now I see in the letters that Thomas perhaps was one of the parties who denied our request. If so, this is very misleading and deceitful on Thomas' part to deceive us and we feel wronged by being deceived, as this is the only conclusion we see after first trusting Thomas. He is an employee of the county or state, isn't he?
2. If Thomas wasn't part of the decision, then is he a lawyer? Why did Thomas advise us to put information on paper to be considered that was of no value?
3. If Thomas wasn't part of the decision, then he wronged us grossly in his deceitful advice, as he surely should be qualified to say what he did to us on tape. If not, he should not have advised us. Either way, we are wronged by Thomas Orr.
4. The tapes we have by many different employees that are connected to county and state and the RIM program are very misleading and accusing that many different parties were negligent in how we bought the land under a RIM program that was with Orville Rudningen, and that yes, according to people like Tim Tredbo, Thomas Orr, and Josh (at SCS&WCD) we, the Lange's, were wronged and yes, something can be done to help us. In fact, on tape, Tim Tredbo wanted to know how he could help us. This is whether or not Tim Tredbo had the authority to "help" us after hearing our request. Does Tim have this authority to remove Orville Rudningen's RIM agreement from our land? If not, why was Tim misleading us? How many "wrongs" make a "right"?
5. I demand the home addresses and phone numbers of all parties involved, as perhaps a personal suit needs to be pursued, or a Title 18 section 241 or 242, as I am not in any contract with any RIM. We were not made aware of any terms or we had no understanding of Orville Rudningen's RIM agreement.
6. When we bought the farm, the realtor never told us anything about the RIM terms, the banker didn't, and Thomas Orr or any other SCS&WCD person didn't tell us anything about "their" agreement with Orville Rudningen either. We have been wronged by such incompetent and deceitful dealings and this wrongful treatment is going on even now. The SCS&WCD could have made their agreement with Orville that if the land sold, that Orville would need to give them the name(s) of the new possible owners so that the new possible owners could be informed about the easement. Is it a plan to deceive "new owners" of land under RIM? We never have had the RIM terms gone over with us, even today, yet on tape we're told that Orville did have the RIM terms gone over with him. We were expected to take over Orville's contract, but we weren't allowed to go over the terms with a RIM employee so that we could understand the terms. We have been deprived of equal treatment under the law. Do you condone and support our "rights" being violated? Do you act in unison with two or more parties to also deprive us of equal treatment under the law? Doesn't this constitute a "conspiracy" to violate our "rights", because many of your comrades on taped phone conversations, stated that we were wronged, and that

we should have been aware of the RIM terms and easement as Orville was. This is on tape - the admissions that the Lange's are the wronged parties and now you continue to support wronging us?

7. I request also the names and addresses of those lawfully concerned that are in a position of authority over those that decided against us. Who are your superiors? Who oversees those that have here wronged us?

8. Be it known that according to our understanding, our land had a Rim agreement with Orville Rudningen, as we were not legally provided certain provisions under the law.

9. David Soehren's letter dated 2/2/02 to SCS&WCD is wrong, as he has not enough information to reasonably decide as he did. We "REJECT IN FULL" all the decisions against us. David should have also seen to it that a RIM representative was made aware we were buying the land so that David or someone else with RIM could/should have "made known" to us the terms, so that we could be in an understanding of Orville's contract.

In David's letter, his #2 is completely void of reason. We could not be curious about something (terms) we were not aware of. We, simply put, were not aware of any "terms" of a RIM easement between Orville Rudningen and SCS&WCD, so we had no warning or idea to ask about any "terms".

David's #3 is clearly David's misunderstanding or denial to look at consequences that arise when the public is confronted with murders that can be prevented. Now that the psychopath has escaped from the State Mental Hospital, this situation is extremely dire, and even many slogans on law enforcement signs say "Public Safety" and they also are concerned about the person who made death threats against us, so if law enforcement is concerned with this person and his death threats because it is included in "Public Safety", then where do all of you including David, get off saying it's only "Mr. Lange's personal situation"? Law enforcement and the State of Minnesota consider this issue a "Public Safety" issue and you don't? Why? It seems that David is malicious against "Mr. Lange". It's not only "Mr. Lange" the death threats are made against. Mr. Lange's wife and daughter are also threatened. And since we were the main witnesses to put this violent psychopath in treatment, he is cunning, planning, brilliant and is planning to carry out his threats as he feels no conscience. Maybe David is of the same as he refers to all of us being threatened as only "Mr. Lange's personal situation". This in itself is wrong and he has ignored other concerned parties that he was made aware of. Why?

Also, the psychopath who made these threats made threats of sexual sorts on county and state workers who, if he carries out his threats against them, they also are part of the public, aren't they? If you are aware that there is a possible murderous plan, the land here would definitely have a taint on it for the public, wouldn't it? We also were just e-mailed that a perpetual buyer again turned down our land because of Orville's RIM easement.

We have not seen anyone here for inspections except in 1995. We will expect that there will not be any increased visits to our farm or this will clearly be understood to us that we are being maliciously aggravated.

Within 10 days of your receipt of this letter if we get no written reply, we will understand that yet additional malice is against us by you and others involved in the decision and this issue.

Thank You,

Mark "ALL RIGHTS RESERVED" Lange

Mark "All Rights Reserved" Lange

UCC 1-207
" DISCHARGED
WITHOUT PREJUDICE "

Swift County Soil & Water Conservation District
1430 Utah Ave. North
Benson, Minnesota 56215
(320) 842-7201-Ext. 3

Thursday, January 10, 2002

The Swift County Soil and Water Conservation District disapproves the request by Mark Lange to terminate the Reinvest In Minnesota Easement with the State of Minnesota. This property had previously been purchased in 1993 from Orville Rudningen.

Swift County Soil and Water Conservation District,

Chairman of the Board

A handwritten signature in black ink, appearing to read "Steinar Olson". The signature is fluid and cursive, with the first name "Steinar" written in a larger, more prominent script than the last name "Olson".



Minnesota Department of Natural Resources

Division of Wildlife

National Guard Armory, 25 North Munsterman St.

Appleton, MN 56208

PHONE: (320) 289-2493

FAX: (320) 289-2551

February 2, 2002

Swift County Soil and Water Conservation District
1430 Utah Ave. North
Benson, MN. 56215

Dear Sirs,

I recommend disapproval of Mr. Mark Lange's request for termination of the Reinvest In Minnesota easement on his property for the following reasons:

- 1) A previous landowner took the easement and it was deed recorded. Mr. Lange should have known the extent of the easement at the time he purchased the property.
- 2) Mr. Lange has owned the property a long time. If the easement terms were an issue they should have been addressed before now.
- 3) The service of public interest and general welfare referred to in sub. A of 8400.3610 (Alteration, Release, or Termination of Conservation Easements) means the public value of the easement for it's original purpose (soil and water conservation and wildlife habitat) rather than Mr. Lange's personal situation.

Sincerely,

A handwritten signature in cursive script, appearing to read 'David Soehren'.

David Soehren
Area Wildlife Supervisor



DATE: March 18, 2002

TO: Wayne Smith, Nobles County
Paul Nelson, Prior Lake/Spring Lake Watershed District
Michele Stindtman, Faribault County
Allan Kuseske, North Fork Crow River Watershed District
Paul Moline, Carver County
John Sumption, Cass County

FROM: John Jaschke, Land and Water Section *jj* *da*
Administrator

SUBJECT: **March 17 and April 24 Board Meeting Presentations**

I would like to first of all thank you for agreeing to present your ideas, accomplishments and perspectives on the various ways that local water planning efforts have been implemented in your jurisdiction. The schedule for both the March and April BWSR meetings is a 12:30 p.m. to 3:00 p.m. session on each of these days. The presentation schedule is as follows:

March 27 – Paul Nelson, Michele Stindtman, Alan Kuseske
April 24 – Wayne Smith, Paul Moline, John Sumption

The format for your presentation is up to you. We will plan for a 15-minute presentation with at least that amount of time reserved for questions and discussion with our Board Members. Attached is a listing of BWSR Board Members. In case you are interested in some talking/thinking points in preparation for your presentation, the following may be helpful:

1. Discuss how you have used water planning to achieve your organizations goals and the goals of other local and state organizations' that have been part of the water planning processes.
2. How have water planning efforts under your jurisdiction influenced or directly affected other local or state efforts in water resource management?
3. Are there any new, innovative or unique aspects to the work that has been done through your local water planning program?
4. Do you have any perspective or ideas on how local water planning programs could be better integrated either with each other or with programs of other local and state organizations?

Again, I wish to thank you for your willingness to present to our Board Members as they move forward with anticipated modifications to the local water planning statutes and rules in the next year.

Bemidji 3217 Bemidji Avenue N. Bemidji, MN 56601 phone (218) 755-4235 fax (218) 755-4201	Brainerd 217 S. 7th Street Suite 202 Brainerd, MN 56401 phone (218) 828-2383 fax (218) 828-6036	Duluth 394 S. Lake Avenue Room 403 Duluth, MN 55802 phone (218) 723-4752 fax (218) 723-4794	Fergus Falls 413 W. Stanton Avenue Fergus Falls, MN 56537 phone (218) 736-5445 fax (218) 736-7215	Marshall 1400 E. Lyon Street Box 267 Marshall, MN 56258 phone (507) 537-6060 fax (507) 537-6368	New Ulm 261 Highway 15 S. New Ulm, MN 56073 phone (507) 359-6074 fax (507) 359-6018	Rochester 40 16th Street S.E. Suite A Rochester, MN 55904 phone (507) 285-7458 fax (507) 280-2875	Saint Paul One West Water Street Suite 250 Saint Paul, MN 55107 phone (651) 282-9969 fax (651) 284-0000
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Attached are some background information prepared for Board members at the previous meeting, which covered the history and purpose of water planning programs.

Please feel free to call me at 651-297-3432 or your board conservationist, if you have questions.

JJ:da

cc: Marybeth Block, Local Water Planning Coordinator
Jim Haertel, Water Management Specialist
Regional Supervisors
Board Conservationists
Doug Thomas, Assistant Director
Ron Harnack, Executive Director

Attachments

FOR YOUR INFORMATION
March 27, 2002

- **"BWSR Update"**
- **Updated BWSR Member Listing
(Reappointment of Jerome Deal, Paul Krabbenhoft, Clair Nelson –
terms expire 01/01/06)**
- **Memo of March 19, 2002, to agencies regarding 90-day review of the
Carlton County Comprehensive Local Water Management Plan**
- **Memo of March 21, 2002, to agencies regarding 90-day review of the
Pine County Comprehensive Local Water Management Plan**
- **"Charting a Course for the Future: Report of the State Water
Program Reorganization Project"**
- **Memo of March 22, 2002, from NACD regarding Farm Bill**
- **Information from WCA Rules Hearing**



Board of Water and Soil Resources UPDATE

A publication of the Minnesota Board of Water and Soil Resources

March 2002

NORTH

WETLANDS: Wetland Specialist Dale Krystosek reports that the Sunset View

Resort Violation project has been a huge workload item in Itasca County. Over five acres of wetland have been impacted on Lake Winnibigoshish. There have been complaints made by DNR, Leech Lake Reservation, and neighbors concerning the wetland impacts of the project. This complex set of issues includes misapplication of an exemption and flawed wetland determination, a trespass issue with the Chippewa National Forest, and a five-year plan with the planning and zoning office to bring the resort into compliance with setback and septic regulations. In the end, we crafted a restoration and replacement plan that was accepted by the LGU, the landowner, the wetland enforcement officer, and BWSR.

Dale is working with DNR, the Otter Tail county attorney, and LGU to prepare for an upcoming court case related to the Ruther violation. Mr. Ruther is currently facing 13 counts of violation of cease and desist orders and restoration orders.

Dale met twice with Carlton County and Carlton SWCD to provide guidance on interpretation of forest road exemption. Several developers had been attempting to use the exemption to facilitate access for suspected residential development.

FORESTRY: Jim Lemmerman was the BWSR point person for the six wetland rule-revision sessions around the state. Over 350 people attended the sessions and many comments were received.

Jim has been part of a work group that has put together a guidebook for private forestland owners with small acreage. The name of the book is *Beyond the Suburbs*. There were 15,000 copies printed with a grant from the USDA Forest Service. Jim received a Certificate of Appreciation from the DNR for his part on the committee.

WATERSHEDS: BWSR Watershed District Coordinator Brian Dwight has been involved in the Corps of Engineers RECON study of the Red River Valley. The intent of the study is to identify the flood control projects in the valley that might have a federal interest. At this point, three draft Project Management Plans (PMP) have been developed to submit to Washington to fund feasibility studies. Projects have been identified in three areas: on the main stem; in the Wild Rice WD; and from Fargo-Moorhead upstream.

Wild Rice Watershed District is in the final phase of the "Systems Approach Planning Process" (SAPP). This is a project that the watershed district was engaged in before the genesis of the "Mediation Agreement." The SAPP has met all expectations of the Mediation Agreement as it related to the planning process. Plan completion is expected to be in July 2002.

-Submitted by Ron Shelito

METRO

The Metro Region has spent the month tracking down and addressing legislative issues while wrapping up Cost-Share and WCA audits. We continue to spend a substantial portion of time working with the metro watershed planning rule revisions. Phil Belfiori and Jim Haertel just sent out the latest package of materials to the group for our next meeting in early April. This group has jelled well and has been able to address close to four dozen tweaks, deletions, and additions in their quest to streamline reviews, increase flexibility, and raise the accountability of metro plans.

Lynda Peterson has been instrumental in coordinating the replacement of wetland acres associated with the construction of the correctional facility in Chisago County. She's been pulling together Corrections and Administration officials, the SWCD, and the county in order to get movement on the replacement. Legislative inquiries have been plentiful due to the sponsorship of special legislation to appropriate money for this pur-

Board of Water and Soil Resources Update, Page 2

pose. Replacement of the wetland is required through a Governor's Executive Order.

Doug Snyder had performed a similar coordinating function with the Minneapolis Park and Recreation Board, State Historical Preservation Office, and the Minnehaha Creek Watershed District. Special legislation was introduced that would have essentially overturned the local WCA decision and allowed for wetland replacement outside of the immediate project area and sub-watershed. The parties cleared up misunderstandings and brought the entire concept plan into focus so all were dealing with the same project understanding. The bill is not expected to advance further into law as a result.

Ron Struss has spent several weeks coordinating the diffusion of information on the various "no-P fertilizer" proposals from his dual Extension/BWSR position. In addition he is building a consortium of organizations in need of education outreach in order to pull off "pooled communication." This groups many smaller sums of money and gets a consistent message out to a broader audience concurrently for a larger net effect. He is also working with the metro SWCDs to see how they might do a similar endeavor on a smaller scale and tailored for SWCD accomplishments in the metro in advance of next session's push for MS 103C modernization. He has kept up a frenetic schedule in spite of continuing uncertainties with the funding of his position due to cutbacks in both of his "co-employers."

-Submitted by Steve Woods

L & WS

State law requires that SWCDs be audited every year or on a schedule agreed to by the Office of the State Auditor (OSA). BWSR's current agreement with the OSA is that the SWCDs will be audited at least once every three years or when their cumulative revenues reach \$400,000 since their last audit. The OSA has also agreed to allow the SWCDs to hire any CPA they choose, as long as that CPA is certified by the State Board of Accountancy. However, BWSR may request that the OSA perform the audit if circumstances or suspicions warrant a more scrutinizing audit.

If a CPA is performing the audit, the draft of the audit must be sent to the OSA for review, prior to releasing the final report. There is a small charge for this review. The

final audit reports are due to BWSR by Dec. 31 of the following year.

The required audit is a financial audit, not a program compliance audit. For the most part, they do not uncover inappropriate use of state funds or matters involving noncompliance of program funds. It is up to BWSR staff to monitor the expenditures of state grant funds.

CPAs are also requested to include a "Management and Compliance Letter" and a "Letter of Findings." These letters should report any errors made in the district's accounting practices as well as any violations of state laws, such as bidding and contracting, deposit requirements and allowable investments, and conflicts of interest.

Financial audits will not "test" every check and receipt written by a district, but rather only a small random sampling of each. History has shown us that districts can pass an audit, yet still have major financial inconsistencies. If a bookkeeper chooses not to write a receipt for monies received, there is little likelihood that anyone outside the SWCD office is going to uncover the omission. Checks written for non-district expenditures, but not entered into an accounting system, can go unnoticed unless an auditor is testing that particular check number during an audit. There is a disclaimer in every audit stating the audit opinion is based on the items tested. Therefore, it is the responsibility of the district board to establish a system of checks and balances, such as having the bank statement sent to the home of the district treasurer for review.

Every year, a few districts do not have their scheduled audit performed or do not have one completed on time. Occasionally, the delay is because of the heavy workload at the OSA and the reviews are not completed in a timely manner. It is often February or March of the following year after the due date that all of the audits are received. BWSR is still awaiting audits for 1999. Unfortunately, because the audit due date is six months later than our grant period begins, the next fiscal year's grants to SWCDs are sent out before we know if the audit requirement for the previous year was met. If it was not, the grant for the following year is held up (unofficially), until the audit is received. At present, there is no penalty for late or missing audits.

Board of Water and Soil Resources Update, Page 3

BWSR staff works closely with the OSA to monitor the completion of SWCD audits. Occasionally, an agreement is reached to waive a district audit (e.g. a large pass-through grant has pushed the district past the threshold) or to require an unscheduled audit.

Audit costs vary greatly, depending on the CPA charges, the number of transactions to be audited, and the number of years since the last audit. The range runs from \$700 to \$3,000. The OSA fee is usually \$50 to \$70. The audit expense for most districts is \$1,200 to \$1,500. There are 40-50 district audits required each year.

-Submitted by Sara Johnson

ENGINEERING

As the 100,000-acre goal for the Minnesota River CREP draws closer, the largest wave of workload is progressing from marketing and applications to conservation practice implementation. This is moving the largest engineering assistance workload from wetland restoration project investigation toward final design and construction. Although SWCD, BWSR, and other partners still have quite a number of wetland restoration site investigations to conduct (i.e. topographic surveys, drainage system, road and utility investigations), the number will continue to decrease now.

The partnerships for CREP implementation are evolving, as the wave of workload moves from marketing to conservation practice implementation. BWSR engineering staff members continue to facilitate evolving partnerships with SWCDs, SWCD Nonpoint Engineering Assistance program folks, Ducks Unlimited, the U.S. Fish and Wildlife Service, and private consultants. Our collective work is interesting, rewarding, and challenging. CREP has brought in many large tracts with multiple restorations as well as many large wetland basins with multiple owners and complex drainage situations. We hear talk about more construction contractors showing interest in the wetland restoration construction workload. Al Kean, chief engineer, is communicating with the Land Improvement Contractors Association to promote and help facilitate this construction contractor involvement.

The Great Lakes Commission (GLC) recently announced the recipients of its annual grants for Great Lakes water quality protection. BWSR, in partnership

with North Shore SWCDs, was awarded two cost-share grants this year (\$25,000 each), one for low-cost shoreline stabilization and one for a low impact development demonstration of pervious parking area construction to reduce runoff and improve water quality. Over the past 6 years, Gene Clark, BWSR lakeshore engineer, has served as project manager for 8 GLC grants totaling \$115,000 for Lake Superior water quality protection.

One of BWSR's LCMR grant proposals, in cooperation with the DNR, will involve armor stone for Lake Superior shoreline stabilization and safe harbor construction. The talk on the street is that the LCMR competition will be fierce this year, due to state budget cuts and many entities looking for alternative sources of funding for Minnesota resource protection and enhancement.

The Technical and Scientific Advisory Committee for the Red River Basin Flood Damage Reduction Work Group (it's a mouthful usually abbreviated as the TSAC for the FDR Work Group) is currently working on two studies. One is in regard to the effects of wetland bounce on the natural resource benefits of wetlands with outflow controls compared to natural (uncontrolled) wetlands. Field investigations and hydrologic analyses have been conducted at 29 wetland sites from the southern to the northern parts of the Red River Basin in Minnesota over the past 2 years. The results are currently being analyzed and a report being developed. As is often the case, the data has a lot of scatter and crystal clear conclusions are more difficult to reach than we might expect. The final report is expected during of summer of 2002.

The other current TSAC project is to propose a Red River Basin flood damage reduction (FDR) strategy to better enable a coordinated approach to flood damage reduction that addresses both tributary and mainstem FDR goals. It's intended that the associated report will include a proposed long-term vision for mainstem FDR goals and how those goals might be achieved. This project is also

*Deadline for next edition:
April 17*

Board of Water and Soil Resources Update, Page 4

expected to be completed during the summer of 2002. Al Kean, chief engineer, represents BWSR on the Red River TSAC. The work of the TSAC is interesting, enlightening, and challenging, due to the diverse expertise and distant locations of its members as well as the limited time we can devote to this effort. However, e-mail helps!

- Submitted by Al Kean

BRIEFS

Governor Jesse Ventura announced the reappointment of Jerome Deal, Paul Krabbenhoft, and Clair Nelson to the Board of Water and Soil Resources. All three persons are appointed to four-year terms expiring on Jan. 2, 2006.

Deal, Wheaton, is the president of Bois de Sioux Watershed, a member of the Red River Watershed Management Board, and the Red River Flood Reduction Work Group. Deal, who is currently vice-president of the Board of

Water and Soil Resources, has served on the board as a representative of watershed districts since December 1998.

Krabbenhoft, Moorhead, has been an elected supervisor to the Clay County Soil and Water Conservation District since 1985 and has been its acting chair since 1995. He has also been co-director of the Minnesota Association of Soil and Water Conservation District for Area II, which includes 15 Minnesota counties, since 1995.

Krabbenhoft has served on the board as a representative of soil and water conservation district supervisors since February 1998.

Nelson, Finland, has been an elected member of the Lake County Board of Commissioners since 1997 and serves on a number of local boards and committees. Nelson has served on the board since December 1998 as a representative of county commissioners.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, SUITE 200
ST. PAUL, MINNESOTA 55107
Phone: 651-296-3767
Fax: 651-297-5615

Appointed Members

	<u>Appointment Designation</u>	<u>Term Expires</u>	<u>Telephone/Fax</u>	
Leland Coe, Chair , 3948 Nebish Road NE Tenstrike, 56683 leecoe@paulbunyan.net	Citizen	01-06-03	218-243-2597	Home/Fax
Karen Harder , 4601 Emerson Ave. S. Minneapolis, 55409-2339 ktharder@efg.com	Citizen	01-03-05	612-824-4136 612-824-4132	Home Fax
Char Kahler , 1966 50 th St. Fairmont, 56031 chark@kaco.net	Citizen	01-05-04	507-235-9837 507-238-2244 507-235-9619	Home Office Fax
Paul Krabbenhoft , 1119 - 25th Avenue South Moorhead, 56560 pkrabbenhoft@yahoo.com	SWCD	01-01-06	218-233-0313 701-281-3033 701-277-1570	Home Office Fax
Victor Ormsby , R.R. 3, Box 163 Winona, 55987-9515	SWCD	01-03-05	507-454-7676	Home
Dwain Otte , 606 Zanmiller Drive West Northfield, 55057 dnotte@rconnect.com	SWCD	01-05-04	507-645-4370	Home
Jerome Deal , 1501 Second Ave., So. Wheaton, 56296	Watershed	01-01-06	320-563-8377 320-563-4987	Home Fax
Jack Frost , 2324 Maple Lane Maplewood, 55109 jfrost@uswest.net	Watershed	01-05-04	651-602-1078 651-602-1130	Office Fax
Ginny L. Imholte , 720 So. Shore Drive Box 663, Detroit Lakes, 56501 imholte@lakesnet.net	Watershed	01-06-03	218-847-4236 218-847-4433 218-847-5059	Home Office Fax
Darrell Bruggman , 45898 State Hwy. 65 McGregor, 55760	Co. Commr.	01-06-03	218-426-3330 218-927-7374	Home Fax
JoAnn Coover , 3791 - 180 th Ave., N. Minneota, 56264 djcoover@mvtwireless.com	Co. Commr.	01-03-05	320-669-7173 507-537-9354	Home/Fax Office
Clair Nelson , Lake County Courthouse, 601 Third Avenue, Two Harbors, 55616	Co. Commr.	01-01-06	218-353-7385 218-834-8320 218-834-8360	Home Office Fax

State Agency Members:

Sharon Clark 90 W. Plato Blvd., St. Paul, MN 55155 Sharon.clark@state.mn.us	Department of Agriculture	651-297-1551 651-297-5522	Office Fax
Dan Wilson Well Management Section, P.O. Box 64975, St. Paul, MN 55164-0975 Daniel.Wilson@health.state.mn.us	Department of Health	651-215-0812 651-215-0978	Office Fax
Wayne Edgerton 500 Lafayette Road, St. Paul, MN 55155 Wayne.Edgerton@dnr.state.mn.us	Department of Natural Resources	651-297-8341 651-296-4799	Office Fax
Jim Anderson 439 Borlaug Hall, 1991 Upper Buford Circle, St. Paul, MN 55108 Ander045@umn.edu	U of M/Dept. of Soil, Water & Climate	612-625-8209 612-625-2208	Office Fax
Lisa Thorvig 520 Lafayette Road, St. Paul, MN 55155 Lisa.Thorvig@pca.state.mn.us	Pollution Control Agency	651-296-8811 651-296-6334	Office Fax



March 19, 2002

TO: Commissioner, Minnesota Department of Agriculture (MDA)
Commissioner, Minnesota Department of Health (MDH)
Commissioner, Minnesota Department of Natural Resources (DNR)
Commissioner, Minnesota Pollution Control Agency (PCA)
Chair, Minnesota Environmental Quality Board (EQB)
Director, Minnesota Geological Survey (MSG)

FROM: Ronald Harnack, Executive Director

RE: *Carlton County Comprehensive Local Water Management Plan*

On Tuesday, March 19, 2002, the Minnesota Board of Water and Soil Resources (BWSR) will begin the official 90-day state review of the updated *Carlton County Comprehensive Local Water Management Plan*. Pursuant to Minnesota Rules, Chapter 9300.0170 the BWSR is forwarding the county water plan for your agency's review and comment. You have 45 days from receipt of this letter to submit comments, in writing, to the BWSR identifying the portions of the plan that the agency has determined to be inconsistent with the state law.

The *Carlton County Comprehensive Local Water Management Plan* is being sent to your agency's 103B Technical Review Committee Member under separate cover. The 103B Technical Review Committee Members are:

- MDA, Mark Zabel
- MDH, Art Persons
- DNR, John Fax
- PCA, Glenn Skuta
- EQB, Gretchen Sabel
- MGS, Barb Palen

Thank you for helping local resource managers protect and conserve their water resources through comprehensive local water management plans.

c: BWSR Board Members
BWSR Executive Team
Mark Nelson, BWSR Board Conservationist
Joan Weyandt-Fulton, Carlton County Water Plan Coordinator

Bemidji 3217 Bemidji Avenue N. Bemidji, MN 56601 phone (218) 755-4235 fax (218) 755-4201	Brainerd 217 S. 7th Street Suite 202 Brainerd, MN 56401 phone (218) 828-2383 fax (218) 828-6036	Duluth 394 S. Lake Avenue Room 403 Duluth, MN 55802 phone (218) 723-4752 fax (218) 723-4794	Fergus Falls 413 W. Stanton Avenue Fergus Falls, MN 56537 phone (218) 736-5445 fax (218) 736-7215	Marshall 1400 E. Lyon Street Box 267 Marshall, MN 56258 phone (507) 537-6060 fax (507) 537-6368	New Ulm 261 Highway 15 S. New Ulm, MN 56073 phone (507) 359-6074 fax (507) 359-6018	Rochester 40 16th Street S.E. Suite A Rochester, MN 55904 phone (507) 285-7458 fax (507) 280-2875	Saint Paul One West Water Street Suite 250 Saint Paul, MN 55107 phone (651) 282-9969 fax (651) 284-0000
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March 21, 2002

TO: Commissioner, Minnesota Department of Agriculture (MDA)
Commissioner, Minnesota Department of Health (MDH)
Commissioner, Minnesota Department of Natural Resources (DNR)
Commissioner, Minnesota Pollution Control Agency (PCA)
Chair, Minnesota Environmental Quality Board (EQB)
Director, Minnesota Geological Survey (MSG)

FROM: Ronald Harnack, Executive Director

RE: *Pine County Comprehensive Local Water Management Plan*

On Thursday, March 21, 2002, the Minnesota Board of Water and Soil Resources (BWSR) will begin the official 90-day state review of the updated *Pine County Comprehensive Local Water Management Plan*. Pursuant to Minnesota Rules, Chapter 9300.0170 the BWSR is forwarding the county water plan for your agency's review and comment. You have 45 days from receipt of this letter to submit comments, in writing, to the BWSR identifying the portions of the plan that the agency has determined to be inconsistent with the state law.

The *Pine County Comprehensive Local Water Management Plan* is being sent to your agency's 103B Technical Review Committee Member under separate cover. The 103B Technical Review Committee Members are:

- MDA, Mark Zabel
- MDH, Art Persons
- DNR, John Fax
- PCA, Glenn Skuta
- EQB, Gretchen Sabel
- MGS, Barb Palen

Thank you for helping local resource managers protect and conserve their water resources through comprehensive local water management plans.

c: BWSR Board Members
BWSR Executive Team
Keith Grow, BWSR Board Conservationist
Richard Noyes, Pine County Water Plan Coordinator

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Charting a Course for the Future:

Report of the State Water Program
Reorganization Project



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Minnesota Planning develops long-range plans for the state, stimulates public participation in Minnesota's future and coordinates public policy among state agencies, the Minnesota Legislature and other units of government.

The Environmental Quality Board, staffed by Minnesota Planning, draws together five citizens and the heads of 10 state agencies that play a vital role in Minnesota's environment and development. The board develops policy, creates long-range plans and reviews proposed projects that would significantly influence Minnesota's environment.

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Executive Summary

Charting a Course for the Future is the final work product of the State Water Program Reorganization Study ordered by 2001 Legislature, and conducted by the Minnesota Planning staff with assistance from the Environmental Quality Board. Minnesota Planning developed the reorganization plan while focusing on three criteria specified by the Legislature. The three criteria specify that all plans and implementation projects should be coordinated with and related to an overall water management plan, similar programs and functions should be assigned to a single agency when feasible and inherent conflicts of interest should be avoided. Input on the study came from a survey of local governments involved in water management, from the EQB's Water Resources Committee and review of past reorganization studies.

FINDINGS AND RECOMMENDATIONS

During the course of developing the plan, the concept of steering water management agencies in an overall direction, as opposed to moving its parts around, became the focus of the report. As a result, findings are dealt with in terms of the issues identified in the legislative language, and recommendations that will help to chart the course for water resources management in the future are offered.

1. Legislative coordination

The current committee structure in the Legislature does not put any single group of legislators in charge of all water policy and programs. This may result in fragmented policy direction and does not facilitate the Legislature taking a broad look at the state's water management and policy framework. The report recommends recreation of the Legislative Water Commission or other

coordinative body – such as a bicameral task force – to review all water program budgets holistically and deal with critical policy issues including lake development, ground water withdrawals, drainage law and integration of water planning and comprehensive planning.

2. Executive branch coordination

Coordination between agencies at the operational level appears to be effective – crises can be dealt with efficiently and initiatives that span agency lines are developed. Policy-level coordination across agency lines is often more thorny, especially in the area of emerging issues. According to *Minnesota Statutes*, Section 103B.151, executive branch coordination on broad water policy issues is to come through the Environmental Quality Board. This coordination has varied in effectiveness, but is critical.

The report recommends that the EQB examine the current coordinative structures. This review should include the charge of and representation on the EQB Water Resources Committee and evaluate whether it can be an effective coordinative body. Two other coordinative options are suggested – EQB water staff working directly with the board itself on water issues, and formation of a Governor's sub-cabinet to include those agencies that have water responsibilities.

3. Greater support to local governmental units

Local governments are taking an ever-larger role in water management and protection, acting as agents of the state in delegated programs and as contractors to the state in providing water management services. This involvement is focused through local water plans, now in their third generation. Future progress will depend on the commitment of state and local governments to integrating water planning with comprehensive land use planning.

4. Comprehensive water monitoring and data management revamping

Water monitoring is essential to understanding the resource and the pressures that threaten its health. Many federal, state and local agencies collect water data, as do some private citizens. The report recommends that a strategic plan for monitoring be developed, as well as water monitoring plans (including ground water) for each of Minnesota's water basins to inform and guide all this work. These plans are in various stages of completion now, and are being developed with varying degrees of detail. The plans need to be detailed enough that anyone who wants to get involved in monitoring can tell where their efforts would be most useful.

The report also recommends that an independent study of water monitoring be conducted, with special attention as to whether structural change in the organization of state water monitoring programs would improve the situation.

5. Review of enforcement tools used by regulatory agencies for consistency

The enforcement tools used by state agencies vary and the funds available for conducting enforcement activities are stretched. The use of administrative penalty order authority by all agencies should be examined.

OTHER FINDINGS

The appearance of overlap occurs when two agencies work in similar areas. This study finds that these interactions are generally complementary and allow for people with different backgrounds and perspectives to work together for a common goal. One area where two state programs do overlap to some degree is in the flood damage reduction programs administered by DNR and BWSR. Conflict of interest by state agencies in

administration of water programs does not appear to be a widespread problem at this time.

OTHER MAJOR REPORT CONTENTS

Key information to support the findings is found in several other sections of the report. There is a section that provides a functional description of state water programs, by building on the Chart of State Agency Water Programs, which was developed in the early stages of the project. The areas described are: research, monitoring, data management, regulation and enforcement, financial and technical assistance, education and outreach, and planning and policy development. For each of these areas the agencies involved are listed as well as a description of the current situation, a vision, needs, and an example of interagency coordination in that area.

The report also includes a description of state water agency missions, further examples of interagency coordination, results of the survey conducted for the project, a recap of past reorganization studies and examples of water management initiatives from other states.

Introduction

The Omnibus Agriculture and Environment funding bill (*Laws of Minnesota 2001 First Special Session*, Chapter 2, section 155) required the director of the Office of Strategic and Long-Range Planning (Minnesota Planning) to develop a plan for the reorganization of state water programs and functions. Staff began work on the project in early July 2001, seeking advice from the Water Resources Committee of the Environmental Quality Board then and throughout the study.

The law provides that the reorganization plan meet three goals:

1. All specific plans and implementation projects should be coordinated with and related to an overall water management plan.
2. Similar programs and functions should be assigned to a single agency when feasible.
3. Inherent conflicts of interest should be avoided.

The Legislature asked for three work products:

- A chart listing all the current water programs and functions of state government, submitted on August 15, 2001
- A preliminary plan for reorganizing the state water programs and functions submitted on January 30, 2002.
- A final plan with draft legislative language to accomplish the reorganization, due on February 15, 2002.

This reorganization report was done in concert with the Governor's Water Unification Initiative which began in 1999. *Minnesota Watermarks: Gauging the Flow of Progress 2000-2010* is the state's 10-year plan to protect and conserve water, and the first major product of the initiative. There is considerable synergy between the initiative and this report, both in their development and in how they may interact in the future. On a smaller scale, this mirrors the interaction among plans, agencies and governmental units which this report recognizes as essential to achieving effective resource-based water planning and management.

Meetings, discussions and interviews helped to shape the report's recommendations and findings. These included meetings with the Water Resources Committee and its agency members, other staff within each agency with water-related responsibilities, outside interest groups and representatives of local government units. The chart of state agency programs, prepared in August 2001, showed that local government units were the primary recipient in 38 of the state's 101 water-related programs; local governments are also the primary decision-makers on issues of land use development. A questionnaire assessed their views of the state's water programs. Finally, review of past reports helped to identify both the strengths and weaknesses in Minnesota's water policy and program development. This historical information provided a foundation for this report. For more detail on report development, please refer to the Background and Information Sources sections.

Some might see this report as a way to help resolve the current budget crisis through cost-cutting measures. Such an approach would likely cause more harm than good. Rather than focus on programmatic changes, the report seeks to change the way water

policy is developed, legislated and administered through better integration and collaboration of all parties responsible for the development and implementation of water policy and plans.

THE ENVIRONMENTAL QUALITY BOARD WATER RESOURCES COMMITTEE

The EQB Water Resources Committee was formed to foster the effective integration of water programs and policies. In 1983, the Minnesota Legislature merged functions of the Water Planning Board into the EQB, assigning a set of duties now codified in *Minnesota Statutes*, section 103B.151. In 1985, the EQB established the Water Resources Committee to help it carry out its duties to coordinate and integrate water policy, planning and programs in Minnesota. In the Ground Water Protection Act of 1989, the Legislature assigned the committee responsibility for developing a series of biennial water reports. While the EQB's other water-related responsibilities are vested directly in the board or chair, the EQB has historically looked to the committee to fulfill these responsibilities, subject to its approval.

Since then, the committee has grown to include the Metropolitan Council, Minnesota Geological Survey and University of Minnesota Extension Service in addition to the original six state agencies and two citizen representatives from the EQB. Representatives from the USDA Natural Resources Conservation Service and U.S. Geological Survey are also regular attendees. The committee members include:

- Minnesota Board of Water and Soil Resources (BWSR)
- Minnesota Department of Agriculture (MDA)
- Minnesota Department of Health (MDH)
- Minnesota Department of Natural Resources (DNR)
- Minnesota EQB citizen representatives and staff

- Minnesota Pollution Control Agency (PCA)
- Minnesota Geological Survey (MGS)
- University of Minnesota Extension Service (MES)
- Metropolitan Council (METC)

Effective coordination occurs among these agencies; this report includes 14 such examples. Currently, coordination seems to be most effective when dealing with crises or specific initiatives, when there is something tangible that must be dealt with quickly. In these cases, the agencies contact each other and determine an appropriate joint course of action. Coordination is on an operational level and does not deal with overall policy or priority establishment. This is different from the policy-oriented coordination expected of the EQB and its Water Resources Committee.

The need for interagency coordination at the policy level and the effectiveness of the current system are a major focus of this report. According to *Minnesota Statutes*, sections 103A.204 and 103B.151, the EQB is responsible for development of comprehensive, long-range plans for water resources; coordination of water management and regulation activities among state agencies with water responsibilities; and coordination of local, state and federal planning activities. This coordination is only effective when the agencies to be coordinated actively participate and when EQB staff resources are sufficient to manage the effort.

Findings specific to the legislative goals

Coordination and relation to overall water management plan. In general, each agency is set up to address particular resource issues or constituencies. Its success is measured by progress toward objectives defined through

its mission and strategic plan. (The missions are provided later in this report.) Interagency coordination, while expected by Minnesota citizens and the Legislature, is often not considered so high a priority as fulfilling an agency's immediate responsibilities. Funding is generally not allocated to support coordination. Both these reasons hinder greater coordination across agencies toward an overall water management plan.

In the interviews, agencies noted that all programs are dynamic and subject to change over time. The complexities of water and diverse values stand in the way of providing simple answers to the issues of water management. Agencies also noted that natural variability (flood or drought) can occur on a scale that overrides human solutions – in other words, government cannot solve every problem.

Coordination needs to occur beyond state agency boundaries. The Minnesota Geological Survey and University of Minnesota Extension Service/Water Resources Center stand apart from the state agencies, both administratively and by function. However, their roles in research, education, public outreach and basic science are essential to providing the understanding upon which other programs, particularly those involving ground water, depend.

The Metropolitan Council is another unique member of the Water Resources Committee because of the special functions it provides within the seven-county metropolitan area. In some ways, it operates like a state agency; in others, more like a regional or local government. Because of its unique perspectives, it is a valued member of the committee.

While the programs of the above organizations were included in the August 2001 Chart of State Water Programs, this

report focuses on the analysis of those agencies and water programs of state government proper.

The state water plan and its biennial updates are intended to bring together the diverse water planning activities of local, regional, state and federal bodies and integrate these plans with state strategies. Development of the state water plan is required of the EQB in *Minnesota Statutes*, section 103B.151, and was bolstered in the current administration by the Governor's Executive Order 99-15, which established the Water Unification Initiative. The state plan and biennial updates have helped to inform interested parties of water issues, as well as to guide policy development. The effectiveness of these plans in shaping executive and legislative priorities would be enhanced if the plans were tied more closely to the budget process.

Overlap and duplication. Overlap among state water programs occurs in some instances, but the notion that such overlap results in duplication is more perceived than real. For example, both the Department of Natural Resources and Minnesota Geological Survey have a geophysics program. However, the MGS program is based on research and works on a regional scale while the DNR program is more problem-oriented and site specific. They share geophysical investigation equipment and technical expertise. Collaboration also occurs in the development of county atlases; the MGS provides the geological framework and the DNR does the hydrogeology work. Both depend on the county well index that the MGS and the Department of Health have developed for baseline data. Although these functions could be combined, there may be little gain in efficiency.

Necessarily, distinct services are also provided by hydrogeologists in four agencies. MDH hydrogeologists aid in the development of wellhead protection plans, a major

undertaking to safeguard the health of public water supplies. Department of Agriculture hydrogeologists monitor the movement of fertilizers and pesticides through the soil into shallow ground water systems. DNR hydrogeologists investigate and resolve questions of well interference and analyze surface and ground water connections. Pollution Control Agency hydrogeologists model ground water pollutant transport, evaluate ground water contamination at remediation sites, design cleanup protocol and offer technical assistance. These distinct agency functions might only be combined at some risk to diminishing the mandated outcomes of the programs they serve.

One area of duplication is the Area II Flood Damage Reduction program administered by BWSR and the statewide FDR program administered by DNR. The Area II program began in the late 1970s and currently serves nine counties in southwest Minnesota with an annual state allocation of \$189,000. The statewide FDR program began in 1987 and distributes approximately \$10 million per year in flood damage reduction funds. However, Area II staff described how its work has expanded to take in smaller projects like the maintenance and clean-out of stock ponds or the replacement of bridges with culverts in order to provide water storage along roadsides. Area II used some of its grant money to help fund a wetlands restoration project. These activities go beyond those established for the program by *Minnesota Statutes*, sections 103F.173 – 103F.187.

Conflict of interest and separation of program functions. Conflicts of interest do not appear to be a major problem, largely because Minnesota's "advocacy" system of water management provides for checks and balances among the state programs. A more detailed explanation is found in *Crosscurrents: Managing Water Resources*, a 1996 Minnesota Planning report.

The 1989 Ground Water Protection Act called upon the Commissioner of Agriculture to annually review water monitoring data to determine whether a pesticide is detected broadly enough in ground water to be labeled "common detection." If so, then MDA must develop and promote voluntary best management practices to minimize the impacts of a pesticide's use. MDA is in the process of reviewing information that may lead to a common detection recommendation. Critics have raised concerns that there is a conflict of interest between environmental protection and agriculture promotion. Building a bigger role for the Department of Health in the decision process may help alleviate the perception of a conflict of interest.

Compliance monitoring and the establishment of standards are appropriately linked to the regulatory functions of agencies. The training and technical assistance activities that agencies currently provide in association with their regulatory functions help to explain why regulations are needed and increase acceptance and compliance. State agencies continue to provide technical assistance and training in water protection to local governments.

Functional description of state water programs

To some degree, all state water programs perform the functions of research, monitoring, data management, regulation and enforcement, financial and technical assistance, education and outreach, and planning and policy development. These functions are somewhat different from those listed on the chart of water programs that was prepared in August 2001; however, they present a more comprehensive view of how a water program develops, beginning with basic research, the necessary first step. Functions

are described beginning with a list of the agencies that are involved, a description of the current situation, a vision statement and discussion of what would be needed to attain that vision. Each function ends with an example of interagency coordination. Additional examples are listed at the end of the report.

RESEARCH

Purpose: To acquire a basic understanding of natural and impacted water systems through sound scientific study, including the collection and interpretation of high-quality scientific data.

Agencies involved: A primary task of MGS, USGS and components of DNR, MDH and university researchers. EQB is responsible for identifying state research needs and priorities.

Situation: Important scientific progress continues to be made. In general, however, progress is slow and expensive. Acceleration will require inputs of new money and further improvements in interagency cooperation at the research, planning and strategy level.

Vision: A statewide hydrological, geological and biological framework from which resource-related programs at all levels of government can draw.

Needs: Accelerated funding of the county geologic atlas program, regional hydrogeologic assessments, county biological surveys and related local training programs; completion of soil surveys; additional work on defining the sustainability of ground water reserves in specific areas; and a more complete understanding of both ground and surface water quality.

INTERAGENCY COORDINATION

Nitrate contamination in a rural water supply well field. In 1997, water being pumped into the Lincoln-Pipestone Rural Water distribution system from the Holland well field exceeded the 10 milligrams per liter nitrate-nitrogen drinking water standard. Although the Minnesota Department of Health administers the Public Water Supply Supervision Program, finding practical solutions far beyond water treatment were needed. The well field is located entirely in an agricultural area of Pipestone County and even the water utility intensively farmed the land immediately surrounding their wells. Furthermore, knowledge of local interaction between ground water and surface water and local nutrient application practices was sketchy.

The Minnesota departments of Agriculture, Health and Natural Resources; the Board of Water and Soil Resources; and the Pollution Control Agency formed a team to work with Lincoln-Pipestone Rural Water to address the problem. The Pipestone County Soil and Water Conservation District, University of Minnesota Southwest Research and Outreach Center, Extension staff, Natural Resources Conservation Service, USDA-Agricultural Research Service, local landowners, and the Minnesota Rural Water Association soon became active participants. This coalition of partners has numerous accomplishments, including:

- Construction of a nitrate treatment plant to address the immediate need to bring water quality back into compliance with drinking water standards.
- Detailed interviews with area farmers to determine nutrient application practices, to identify potential problems and to design appropriate educational responses.

- LCMR and EPA 319 funding which provided support to develop locally needed agricultural research, demonstration plots and education, and leverage to obtain federal cost sharing for accelerated adoption of nutrient management planning.
- Enrollment of the land immediately surrounding the wells into the Conservation Reserve Program (in partnership with an area hunting club).
- Implementation of localized research on "phytofiltration." This may eventually allow the use of perennial forages such as alfalfa for cleaning up contaminated aquifers and for recycling the nitrate removed by the treatment facility.
- Integration of state and local geological data to develop a better understanding of the local hydrogeology.
- Delineation of the wellhead protection area and development of a plan to address long-term nutrient management issues.
- Development of a long-term public information program and an outreach and education plan for landowners.

This project shows that local, state and federal organizations can work collaboratively to address ground water contamination issues through applied research and targeted investigations. It also clearly demonstrates the need for proactive planning and implementation of protection measures before development of a water supply. MDH now works with water utilities to help prevent situations like this from occurring.

MONITORING

Purpose: To measure physical, chemical and biological parameters on the quantity and quality of surface water and ground water and the health of aquatic systems. This is done to: establish baseline or ambient resource conditions; document trends and identify

degradation; investigate problems by identifying specific causes of impairments, quantifying loads, allocating reductions and designing management actions; and measure effectiveness of the results of actions. In addition, monitoring is conducted by both regulatory agencies and regulated parties to demonstrate compliance with permit or other required conditions.

Agencies involved: Major task of PCA, MDA, MDH and components of DNR. Local governments also do monitoring, especially for identifying nonpoint related water quality problems and defining solutions. The EQB is directed to work with agencies to coordinate biennial assessments of water quality and availability.

Situation: Many monitoring programs function smoothly for their intended purposes. However, ambient or baseline monitoring necessary for determining trends is often the first to be cut in times of tight budgets and is consequently often lacking. Some shortcomings in data sharing and data interpretation could be overcome by improvements in data gathering. New technologies such as the interpretation of satellite imagery to determine changes in water quality offer promise, but require funding for testing and application.

Vision: A consistent, long-term, statewide, resource-based monitoring system that draws from the input and expertise of various agencies, research organizations, local government units and citizen volunteers and is based upon good science, standardized measurements, quality control and appropriate training. Statewide updating and analysis of land cover and land use is routine.

Needs: Water monitoring is a critical foundation for sound water management. There is a need to increase representative monitoring of both surface and ground water

to identify impacted waters and establish baseline conditions from which future trends can be determined. Minnesota also needs to continue the development of basin monitoring plans by interagency teams in order to determine actions for improving water resource management through cooperative agreements among agencies, local government units and the University of Minnesota. Because of the fundamental importance of monitoring to the management of both surface and ground water, Minnesota needs a formal mechanism for the coordination of state-wide monitoring efforts.

INTERAGENCY COORDINATION

Interagency water monitoring initiative. This 1997 initiative was a concerted effort to identify and fill the critical gaps in Minnesota's water monitoring. Participants included the principal state water monitoring agencies (MPCA, BWSR, MDNR, MDA, MDH) as well as the Metropolitan Council and the University of Minnesota.

The initiative grew out of the 1992 Minnesota Water Monitoring Plan, an interagency effort of the EQB. The agencies examined the progress made as a result of the plan and prioritized the remaining needs. The goal was a more complete picture of Minnesota's waters to help ensure that dollars are spent wisely, leading to state and local water-management programs that are cost-effective and directly accountable. The result was the proposal of a number of coordinated efforts involving two or more agencies as well as local groups. The initiative's proposal was the first of its kind in Minnesota, and has in turn led to further cooperative monitoring. Examples are numerous:

- Integrated condition monitoring for streams, a joint effort of the PCA and DNR, has strengthened a program that

brings together chemical, physical and biological water monitoring.

- Lake monitoring has improved with an Interagency Lakes Coordinating Committee and PCA lake assessment projects that are cooperative efforts with lake associations and local government.
- The new Citizen Stream Monitoring Program, modeled after the Citizen Lake Monitoring Program, works with local organizations and has involved several hundred citizens across the state in monitoring their local water resources.
- Fish contaminant monitoring has been strengthened through interagency efforts of PCA, MDH and DNR.
- The MDA has formed agricultural chemical monitoring cooperatives with various counties and cities.
- The PCA's increased data management efforts have been instrumental in getting and using monitoring data generated by other state agencies and local groups.

These efforts were successful in bringing together programs and enhancing cooperation among agencies at the operational level. However, the need for development of a common monitoring strategy and consistent methodologies among monitoring entities still exists, and is discussed later in this report.

DATA MANAGEMENT

Purpose: To manage water resource data such as chemical analyses of water, water-level and flow measurements, water clarity and turbidity measurements, well construction and geological information from well logs, precipitation and aquatic ecosystem variations, among others. The function involves the organization, storage, retrieval and dissemination of data for the benefit of agencies, local government units, educators, researchers, consultants and the general public.

Agencies involved: All agencies have responsibilities in this area.

Situation: On most issues related to water resources, effective decision-making requires sound scientific data. Several agencies and affiliated units presently have well-managed information systems that are designed to handle data to meet the needs of specific agency missions and goals. However, there is no overall system to efficiently link together data sets for the benefit of other agencies, governmental units and researchers having a need for the same data.

Vision: Data gathered by an agency or unit of government is easily accessed and used by others who need the information.

Needs: All agencies and government units should provide their data in a geo-referenced form (GIS) following appropriate data standards so they are easily usable by others. At a minimum, there should be links from one agency to the appropriate page on another agency's Web site. Going beyond these simple links, a Web site is needed in which a reference map could be used to locate specific water resource information and agency points of contact.

INTERAGENCY COORDINATION

Evaluation of water supply safety in Minnesota. The Minnesota departments of Health, Agriculture and Natural Resources and the Pollution Control Agency were asked by the administration to assess water supply safety in Minnesota in the aftermath of the September 11 attacks.

MDH, PCA and DNR have regulated facility data computerized and geographically located so that information can be shared and displayed on maps using GIS. This greatly facilitated the assessment and allowed it to be done quickly. The MDA did not receive funding to allow them to completely computerize and locate regulated facilities

with pesticides. This leaves a "hole" in the information and assessment, and points to the importance of all agencies having the necessary resources to use available technology.

Minnesota agencies that work with water protection and control have traditionally cooperated in sharing data and have tried to create electronic systems that meet their individual needs, while still encouraging broader use of valuable information. This electronic sharing of information allows everyone to do a better job of assessment, evaluation and planning. The limiting factor has been a lack of consistent funding rather than an unwillingness to cooperate or share.

REGULATION AND ENFORCEMENT

Purpose: To regulate uses that affect the quantity or quality of Minnesota's water resources and aquatic habitat, and implement policies designed to protect water resources. This includes the development of standards, application and enforcement of rules and other regulatory tools and the delegation of authority, as appropriate, to local government. One element of regulation includes the use of voluntary controls such as best management practices in place of permits, provided there is sufficient monitoring to ensure compliance to water resource standards.

Agencies involved: Primary task of PCA, MDH, MDA and DNR. Secondary task of BWSR.

Situation: Water quality and quantity are regulated through a system of statutes and rules. Permits and other types of approvals are common regulatory tools. This system has evolved over time and has adjusted to respond to changing circumstances including the trend toward greater local control and decision-making. Enforcement efficiency is an issue at all levels of government because of the time required and associated legal costs

involved in judicial review. Administrative penalty orders help to ensure compliance with state laws and rules, but require legislative authorization. The departments of Agriculture, Health and the PCA currently have this authority, as do local government units in their land use controls. An administrative penalty order allows the regulating authority to issue a fine and/or request for corrective action without having to resort to legal action. For example, the DNR currently lacks this authority for its waters permits. A violation of permit rules is handled as a misdemeanor through the local court and county attorney. Administrative penalty orders are more efficient than either an administrative hearing or criminal proceeding and less costly.

Vision: There is greater clarity in regulatory functions among agencies, local government units and the public. Local water plans are closely linked to land use planning and zoning, and counties have assumed many of the previous roles of state agencies in providing oversight and guidance on local water resource issues relating to ground water, lakes, wetlands, rivers and streams. Where appropriate, counties and other designated local government units have assumed or superseded state agency regulatory controls of water resources. State agencies continue to provide local technical support and training. Where agency regulations are still needed, they are combined into joint permits through interagency agreements.

Needs: Greater state regulatory agency participation with local governmentals on the development and implementation of local water plans and interagency coordination on the development of permit regulations that lead to simplified forms, local assistance, training and enforcement. All regulatory agencies should have the authority to use administrative penalty orders as a tool for enforcement.

INTERAGENCY COORDINATION

Funding for feedlot upgrades. After successfully working together on the feedlot rule (mostly through the Feedlot and Manure Management Advisory Committee meetings), the Minnesota Pollution Control Agency, the Department of Agriculture and the Board of Water and Soil Resources decided it was worthwhile to collaborate on other initiatives to help farmers meet environmental requirements. Specifically, the agencies knew that the new feedlot rule would have a financial impact on some feedlot owners, and they wanted to make sure that the state could provide financial and technical assistance to those who needed it.

Staff from these three agencies and the Department of Finance met to determine the financial impact the new rule would have on feedlot owners. The result was MDA's Financial Needs Assessment Report to the Legislature. Using information in the report, the four agencies continued to meet to develop a strategy for the administration to allocate cost-share money for environmental corrections. The Legislature appropriated \$2.3 million per year in cost-share money based on the strategy.

Additionally, funding was increased for delegated counties in the feedlot program, putting technical assistance right at the local level. Money was also appropriated for nine new feedlot positions at the PCA to improve permit efficiencies and provide technical assistance to feedlot owners.

By working together, the agencies were able to develop a strategy that all could support. Each agency's expertise was tapped to prepare the package. Although this example does not relate specifically to enforcement, it does show how agencies worked together with the Legislature to improve environmental compliance.

Financial and technical assistance

Purpose: To assist local governmental units and citizens through grants, technical assistance and emergency response, and to coordinate with government units on projects of mutual local, state and federal interest.

Agencies involved: A task of all agencies dependent upon specific needs.

Situation: It appears that financial and technical assistance services are adequately delivered, although the questionnaire revealed some complaints about agency availability and the red tape involved in securing grants. Multi-agency responses to emergencies (floods, spills) and in dealing with emergency planning (security of water supplies, safety of food supplies) have generally been well-coordinated, timely and efficient. Agencies coordinate on some grant programs, but more coordination is possible and should continue to be explored. One particular need is to ensure that assistance activities integrate solutions to water problems with land and other related issues. Coordination of technical assistance is exemplified in the Local Solutions Alliance, a multi-agency pilot initiative that delivers integrated assistance to communities requesting help with comprehensive planning, community design and other specific priorities.

Vision: Agencies provide timely, coordinated and integrated financial and technical assistance while the relationship between agencies and local government units grows to one of equal partners having separate roles in managing and protecting Minnesota's water resources.

Needs: Counties seek greater support from state agencies to develop and implement their comprehensive local water plans.

Recommendations in a county's local water plan should be fully integrated into its comprehensive land use plan; the two plans should work together to help manage future development while sustaining critical resources.

Local government units also require access to state agency information and expertise in the development of their plans. This requires greater availability and participation of state agency field staff with local planning efforts. To help in avoiding gaps or overlaps, there should be more local interagency teams and shared points of contact among agencies. Such support should be incorporated into an agency's work plan. Agency work plans need to include staff time for coordination and assistance, and staff must be recognized for their successful efforts in these areas.

INTERAGENCY COORDINATION

Natural Resources Block Grant Program. This is a program that works to streamline assistance and funding to local governments and landowners, coordinate activities of state agencies and local governments, and measure environmental benefits of their implementation efforts.

In 1991, the Legislature created the Natural Resources Block Grant Program, administered by the Board of Water and Soil Resources. This program provides funding to local governments for activities conducted under comprehensive local water planning and the Wetland Conservation Act (BWSR), the feedlot program and on-site sewage treatment program (PCA), and the shoreland management program (DNR).

This program eliminated duplicate processes of three agencies by consolidating them into a single grant application, work plan and budget, and annual report. This move has reduced costs for both state and local government. The concept of this program fits

nicely into how local governments plan for and implement water and natural resource projects and activities. The application process is designed to complement the local process of providing education and information, monitoring and data collection, inventory and mapping, land and water treatment, and planning and environmental controls. This allows local governments to see how various programs and departments fit together into a more comprehensive approach to addressing their own high priority water-related goals.

An additional benefit has been the ability to get program results reported back to the state in a uniform and consistent manner. In addition to the normal reporting of the number of projects, acres treated and permits issued, the system allows BWSR to estimate the amount of sediment and phosphorous that is kept out of Minnesota's rivers, streams and lakes from the land and water treatment practices implemented by local governments and cooperating landowners.

Agencies are also working to internally integrate funding. From 1998 to 2000, the PCA researched and developed a framework for integrating its nonpoint source and point source funding programs into a single system in order to better allocate funds to the projects and areas of greatest environmental priority. The PCA developed this framework with the assistance of other state and federal agencies, some of which expressed interest in having their agency's funding programs be part of the integrated system. The PCA began implementing the system internally within the nonpoint source program during the past two years, and hopes in the next two years to expand it to include the point source programs and other agency programs.

These examples show how funding programs can be integrated within a given agency. The Natural Resources Block Grant Program also

shows how interagency cooperation can make it simpler for local government partners to access state program funds. Both of these examples provide common ground upon which other agencies can build.

EDUCATION AND OUTREACH

Purpose: To increase general knowledge about the behavior and condition of water resource systems, strategies for water resource protection and management, and public awareness and stewardship of water resource systems. This includes the development, distribution and use of educational materials, and workshops, classes, voluntary actions and other forms of learning.

Agencies involved: A primary function of all agencies, the Minnesota Geological Survey and the University of Minnesota Extension Service.

Situation: Although all agencies have educational objectives, the overall effort to educate the public about water resources lacks coordination and funding. University units (MES, MGS) have clear responsibilities in this area under the University's land-grant mission, but lack the financial resources for sustained general education programs in water. Education of local officials on the impacts of land use decisions on water resources is also lacking, as is a comprehensive effort to include Minnesota's schools in service learning opportunities involving water resources.

Vision: University units, state agencies and schools work together to develop and deliver integrated education materials and opportunities to meet a variety of local needs, including best management practices, better resource-related decisions and stewardship of all natural resources including water.

Needs: Greater support for and participation of University units with state agencies in the development and implementation of research and educational policies and programs related to water resource management at the local level. An example is the statewide support for NEMO (Nonpoint Education for Municipal Officers) or related programs aimed at providing local government decision-makers with knowledge and choices on water resource-related decisions.

Closer linkages of state agencies to all forms of education are needed in order to build citizen awareness and understanding of water resource systems, foster stewardship, and create greater opportunities for applied research and monitoring of natural resources by citizen volunteers and supervised student researchers.

INTERAGENCY COORDINATION

Farmer education. MES is working to educate farmers, agricultural professionals and county staff on new state feedlot rules and appropriate manure management practices. MES, the Pollution Control Agency, the Department of Agriculture, the Board of Water and Soil Resources, the USDA Natural Resources Conservation Service, and the U.S. Environmental Protection Agency have all contributed staff and/or funds to produce publications and make education programs available at the regional and county level throughout the state. The project formed around a federal 319 grant with coordination by MES.

Information for publications and programs was jointly prepared by staff of MES, PCA and NRCS. These same staff delivered regional workshops for county staff and agricultural professionals. At the county level, programs for farmers are organized jointly by MES, county feedlot officers, soil and water conservation districts, and other

organizations. In the first year over 4000 farmers and interested parties attended the county education meetings and 338 county staff attended the regional training sessions. The second year of education programs is now underway.

This model works well when providing training to the agricultural sector. Would it be as effective in helping to educate urban residents? Minnesota needs to continue to explore ways to broaden the environmental understanding of its citizens and leaders.

PLANNING AND POLICY DEVELOPMENT

Purpose: To identify current and emerging water resource issues and develop coherent policies for addressing them. This involves long-range strategic thinking and planning and requires effective communication among agencies and with the Legislature. It also requires coordination with local constituencies and affected parties.

Agencies involved: A primary task of the EQB. Member agencies also have their own planning and policy functions. BWSR has the responsibility of providing input from local government units.

Situation: The EQB has recently produced two documents (*Soundings: A Minnesota Water Plan Assessment*, October 1998, and *Watermarks: Gauging the Flow of Progress 2000 – 2010*, September 2000) that together lay out broad statewide goals for water management in the next decade. *Minnesota Statutes* also requires the development of water plans by counties, watershed districts, and other entities throughout the state, including the seven-county metropolitan area. All of these plans require periodic updating. However, the sequence of these planning events and their relationship to others can cause confusion and frustration. The Governor's Water

Unification Initiative directs the EQB to work with the state's other water agencies to build a state water plan from the diverse elements presented in these more-specific plans.

Vision: A strong link exists between planning and policy development and the resultant implementation and operations of all agencies and levels of government. This results in better legislative support of the policy development process. Issues are brought forward and addressed as needed. Planning is integrative and serves as a vehicle for helping to address local needs. Plans and programs are based on resources and achievable goals.

Needs: There must be greater participation and coordination among state agencies and the Legislature on the development of major water policy and management issues. Within the executive branch, there should be an effective forum to discuss critical water management issues and develop related policies and priorities. Within the legislative branch, there needs to be a similar body where legislators can be informed and contribute to the identification and development of major water policies and priorities for Minnesota.

INTERAGENCY COORDINATION

Water Unification Initiative. Executive Order 99-15 was signed by Governor Ventura in June 1999. This order recognizes that the sustainability of Minnesota's water resources is of primary importance and directly affects Minnesota's economic, environmental and community health; that management should reflect differing conditions throughout the state; that many federal, state and local efforts are focused on river basins for water management purposes; and that local government has a notable role in water management. This order directs the EQB and its member agencies to develop water-related

goals, objectives and measurable outcomes tailored to the state's major river basins for the year 2010. The goals and objectives served as the basis for *Minnesota Water Plan 2000*, published in October 2000.

Now in its second phase, The Water Unification Initiative is working with teams in each of Minnesota's river basins to document the highest priority needs for each basin, and to incorporate the recommendations of local water plans, basin plans and various statewide special-purpose plans into a coordinated set of priorities. According to the executive order, these will determine water priorities, policies and budgets of the Ventura administration. This phase should be complete by July 2002.

INTERAGENCY COORDINATION

The Upper Mississippi Source Water Protection Initiative. The Upper Mississippi River Source Water Protection Initiative was sponsored by the cities of St. Cloud, St. Paul and Minneapolis, the Minnesota Department of Health, the Metropolitan Council, the Mississippi Headwaters Board and the Rivers Council of Minnesota. The geographic scope of this project includes the Mississippi River from its headwaters to the Minneapolis water intake in Fridley and to major Mississippi tributaries. The drainage basin for this stretch of the river covers approximately 19,000 square miles. Additional participants include the 29 community water suppliers along the Mississippi River which pump from shallow aquifers near the river. The project has worked cooperatively with several other initiatives focused on the Upper Mississippi River, reviewed the wealth of information relating to the Mississippi River and associated shallow aquifers, attempted to draw conclusions based on that information, and identified data needs to be addressed through future work.

Several separate research efforts have been conducted in conjunction with the initiative, but have not been made part of it. These efforts include ground water flow modeling, oil and chemical spill prevention and river protection, geologic mapping, characterization of sand and gravel aquifers in the project area, and research on the presence of pharmaceuticals and endocrine-disrupting chemicals in surface water, including the Mississippi River. As the initiative continues, agencies will continue to share information and resources to protect the Mississippi River Basin in Minnesota.

Recommendations

In a system as complex as Minnesota's where many agencies and programs are involved with water, there is an ongoing need for coordination and integration of major water policy and program initiatives. To be effective, such coordination should take place within both the legislative and executive branches of government as well as between them. Because of the importance of water to all forms of development and the impacts such development can have upon water and other natural resources, there needs to be good coordination and collaboration between state agencies and local government units with authority over land use development. These two forms of coordination, coordination on water policy development and the coordination of state agency support and services to local water planning and decision-making, form the basis for many of the recommendations. Each recommendation is followed by related discussion points.

1. Examine how the Legislature can fully appraise the broad spectrum of water-related policy development. Options are to reconstitute the Legislative Water Commission or develop another mechanism to perform the functions of overarching policy formulation, and initiative and budget review.

The Legislative Water Commission was established in the 1989 Ground Water Protection Act and sunsetted in 1996. Re-establishment of the commission or a similar legislative task force would allow a group of legislators to develop deeper understanding of water management issues and to advise their legislative colleagues on water decisions. The commission or task force could also provide periodic legislative review of state water program policies, priorities and budgets. Current legislative committee makeup results in water programs being heard piecemeal by a number of committees without any overall vision from the Legislature. For example, in the House, the Environment and Natural Resources Committee hears the budgets for BWSR, PCA and DNR; the Agriculture Committee hears the MDA budget; the Health and Human Services Committee hears the MDH budget, the Higher Education Committee hears the University of Minnesota budget (including the Minnesota Geological Survey); and the State Government Committee hears the EQB budget. Because of this structure, no single group of legislators is charged with understanding the interrelationships that agencies have in the development and management of water resources.

There are significant policy issues that could be examined by a commission or task force. Four emerging issues needing more policy guidance are lake development pressures, ground water protection, drainage law conflicts with other law and the integration of local water planning with comprehensive land use planning. These issues are discussed in more detail in the section of this report immediately following the recommendations.

Another area demanding attention is the ability of state water programs to deliver the services they are statutorily required to provide, especially in the face of major budget cuts. Future study could include an

examination of all the local government units having water responsibilities, their effectiveness, funding and accountability; the changing roles for local and state government; how to increase efficiencies in the delivery of water-related services.

2. Build an effective executive branch forum for addressing critical water issues through coordinated policy development. The EQB should evaluate the structure, duties and role of the Water Resources Committee and consider options to improve the effectiveness of interagency coordination on water management issues.

The law that ordered the development of the Water Reorganization Project listed three goals for the report. The first was: "All specific plans and implementation projects should be coordinated with and relate to an overall water management plan."

The state water plan is developed every 10 years with updates prepared in the second year of each biennium. Interagency coordination in this process comes through the Environmental Quality Board and its Water Resources Committee. This effort was reaffirmed by the Ventura administration in Executive Order 99-15 which set into motion the Water Unification Initiative. The initiative brings priorities, goals and objectives from local water plans and state agency basin plans into the state water plan. Because of the interactive nature of these plans, it is best to consider the 10 year state water plan as much a process as a product. As it progresses, it will lead to better efficiencies and coordination among all contributors.

Minnesota Statutes, section 103B.151 gives the EQB broad responsibilities for coordination of public water resource management and regulation activities among state agencies, development of the state

water plan, coordination of local, state and federal water planning activities with the state plan and strategies, and development of state water policy recommendations. In 1985, the EQB established the Water Resources Committee to help it carry out these duties. Participating agencies initially designated a high level representative to serve on the committee. For example, the PCA commissioner personally attended meetings while most other agencies sent a designated alternate, either a deputy or assistant commissioner. Three EQB staff were assigned to work with the agencies through this committee. Today, the typical representative is a division director and the EQB staff has been diminished to a single full-time person with some temporary assistance from time to time. In recent years, the Water Resources Committee has not been effective in providing the type of coordination for which it was originally intended. This merits review.

The committee's coordinative function needs to be reaffirmed and reinvigorated. Three options used in the past should be re-evaluated. One option is to reestablish the Water Resources Committee as a major coordinating and policy development body to address the effects of developing resource issues and suggest changes to policy and priorities. The charge, make-up and operation of the committee, its roles and responsibilities, need evaluation in order for this to be successful, including clarification of expectations from the Governor's office. An alternative is to rely on the EQB itself for this function. Ad hoc committees would be established to deal with specific issues as needed. A third option, one used by previous administrations, is formation of a Governor's Environmental Cabinet Cluster to address common concerns. Such a cluster of commissioners might also be effective in helping balance competing needs and issues during periods of extreme budget shortfalls. The three options are not mutually exclusive

and, taken together, could provide a strong system for coordination.

In a large, complex management system, it is critical that there be coordination within all levels of the system. The Water Resources Committee was intended to provide top level administrative leadership and coordination for water policy development. Without this leadership, it is difficult to achieve the appropriate priority and funding to help support and recognize the necessary coordination that is also required at operational levels. This does not detract from the many examples of effective interagency coordination and collaboration found in this report. Rather, it points to how such efforts can be enhanced, especially in the delivery of support and services to local government units where there is emerging need.

3. Provide greater support to local government units, including counties, for the implementation of comprehensive local water plans. Recommendations in a county's local water plan should be fully integrated into its comprehensive land use plan; the two plans should together help manage future development while sustaining critical resources. Counties that make this connection should be given higher priority for increased funding. Along with increased support comes greater local responsibility and a need for clear accountability to demonstrate that state dollars support appropriate state interests.

State agencies should make their technical expertise available to local units through interagency teams with local points of contact. Providing this support should be incorporated into an agency's strategic plan. Agency work plans need to include staff time for providing coordination and technical assistance; staff should be recognized for their successful efforts. State agencies should continue to seek ways in

which various grants available to local government can be better coordinated and integrated. The Board of Water and Soil Resource's Natural Resources Block Grant Program is a good example of how greater coordination and integration of grants can be achieved for comprehensive local water planning.

State agencies are increasingly working with local governments on the planning and implementation of their water programs. In some cases, such as the PCA's feedlot program, state programs are delegated to local units. When this occurs, the local unit acts as an agent of the state in permitting, inspection and enforcement. In other programs, the local unit acts as a contractor. The BWSR programs delivered through the Soil and Water Conservation Districts are examples of these. Other programs give local government added responsibilities, with funding to assist them. Examples include the statewide Shoreland Management Program and the PCA's Individual Sewage Treatment Systems Program. As local units achieve more capacity and responsibility, the functions and roles of state agencies involved with the programs also change. A gradual shift from state agency regulatory activity to greater provision of technical and financial assistance at the local decision-making level has already begun.

The August 2001 Chart of State Water Programs confirmed this trend and revealed that local governments were the primary customers in 38 of the state's 101 water programs. Technical assistance is the primary role of state agencies in 34 of these programs. This assistance goes to a variety of local units, including counties, townships, soil and water conservation districts, watershed districts, water management organizations and others. BWSR is charged with coordinating some of the information flow between local units and state agencies.

Future progress will depend on the commitment of state and local governments to integrating local water planning with comprehensive land use planning. Continuing to raise expectations for outcomes and increasing participation and support of the state agencies in local planning will be critical to realizing mutual goals and objectives.

Minnesota's approach to water planning provides an orderly way of communicating water management goals and objectives between local and state government, and also provides an integrated look at natural resources that crosses political boundaries. The tiered approach (statewide water plan, basin plans, local water plans) recognizes the strengths of both a statewide water plan and its regional differences, and capitalizes on the expertise of individuals at all levels of government. This is particularly evident in the area of resource assessments. In many instances, agency staff at the regional or state level are best equipped to assess resource conditions, rather than each local government on its own.

The framework, in its purest sense, allows each level to do what it is best at doing:

- Statewide plans with broad goals, objectives and indicators help to integrate and coordinate activities.
- Basin plans identify resource values and functions, specific pollutants, reduction targets and problem areas (including water quantity problems and loss of habitat).
- Local plans focus on local implementation and decision-making.

This framework supports what local government is best equipped to do: make local land use decisions and implement actions that work toward achieving specific water-related objectives and standards set by the local water plan and reflected in the basin and state water plans.

In some instances, local and state agency staff who responded to the questionnaire noted a potential for duplication resulting from state and local water planning efforts. There is confusion over how the plans relate to each other. The Governor's Water Unification Initiative should help to resolve remaining issues, roles and relationships. The plans are intended to be interactive. That is, they are neither "top down" nor "bottom up," but a reflection of their interdependence. This framework is intended to optimize the use of human resources, fiscal resources, programs and authorities that exist at each level.

4. Establish a comprehensive and effective water monitoring and data management strategy for Minnesota's surface and ground water resources that is broader than that which can be provided by any one agency or program. This requires the development of integrated long-term, resource-based policies for monitoring and data management that are coordinated across agencies and levels of government and that include volunteer monitoring.

Because all state agencies involved with water have developed mechanisms for meeting their own water monitoring and data management needs, it is critical that this issue be carefully addressed. Otherwise, it might cause unforeseen negative impacts to established water programs. This report has just touched the surface of the need for resource-based monitoring and management.

A coordinative water monitoring and data management body should be assembled to scope out the issues that an independent investigator might then address. This recommendation would require additional time and money to achieve, but the resulting report should guide the development and implementation of a

comprehensive water monitoring and data management strategy.

This report offers the following questions for consideration in such a study:

- Should the Minnesota Geological Survey be expanded to perform basic research and water monitoring for both Minnesota's ground and surface waters similar to what the U.S. Geological Survey provides at the national level? If so, how could this function be elevated to obtain the needed funding?
- Is it better for such a water monitoring and data management function to stand alone in the executive branch, be associated with the University of Minnesota or be housed within an existing agency?
- What other alternatives should be considered? What are their costs?
- How could local and volunteer monitoring initiatives be enhanced and supported so that they contribute to Minnesota's scientific body of water knowledge and also draw from it to meet local needs and interests?
- If the status quo is to be maintained without expansion of the Minnesota Geological Survey or the creation of a new water survey agency, how could both the Legislature and existing state agencies ensure that these needs are met?

Monitoring needs coordination around resources, not agency programs. Many federal and state agencies, local governments and citizen groups are collecting water data. Therefore, a more integrated system of monitoring that involves all levels of government, including citizen volunteers, is required. This system should build on basin monitoring plans now being developed statewide. A good example is the St. Croix basin monitoring plan. Monitoring by federal,

state and local groups is conducted in accordance with the plan, and a much better picture of the resource is gained for all participants.

New tools for monitoring surface water quality that will provide much broader coverage are being developed. For example, satellite imagery is being used to determine trophic status of lakes or changes in land cover. Coupled with water quality data gathered by local or citizen groups, this monitoring information can be used to target public information efforts and provide information to local governments in making appropriate land management decisions. Such work has already begun in certain areas of Minnesota.

Baseline data and ambient monitoring are critical gaps, particularly in the area of ground water. Without them, it is impossible to determine trends in water availability and water quality. Recently, the PCA significantly reduced its ground water monitoring program. It was the only "ambient" ground water quality monitoring program operating at the state level. This leaves a gap in Minnesota's ability to determine ground water quality trends and the impacts of human activities on ground water.

Because of the fundamental importance of monitoring to the management of both surface and ground water, agencies should establish a formal mechanism for the coordination of statewide monitoring efforts including the development of a monitoring handbook for standardized methods. Development of a comprehensive monitoring strategy similar to the 1992 *Minnesota Water Monitoring Plan* would help to sort out the information needs and develop strategies to meet them. The state should also consider the establishment of a water monitoring organization that is separate from any agency's regulatory functions.

State agency water data is not easily consolidated because of the different data management systems involved. Such information needs to be easily accessed by local government units and others who require it for their decision making. Most agencies are working at refining their data into more user-friendly forms using geographic references. The Legislature has identified the need to make water data accessible, coordinated and easily integrated at least three times during the last three decades.

Minnesota Statutes, section 103A.401 directs the Department of Natural Resources to work in cooperation with other state agencies to establish and maintain a statewide water information system to gather, process and distribute information on the availability, distribution, quality and use of waters of the state. This provision of law was adopted by the Legislature in the mid-1970's.

With support from the Legislative Commission on Minnesota Resources, the Minnesota Water Planning Board devoted much time and effort to addressing information systems needs during its existence, from 1977 to 1983. As a result of its efforts, valuable information was automated by several agencies and the Land Management Information Center was able to develop a Systems for Water Information Management (SWIM) program. This program included interagency coordination activities, development of water data standards and a water data catalog, and early attempts to integrate water databases – steps intended to connect and integrate water information and make it accessible. In 1989, the Legislature formally charged the Land Management Information Center at Minnesota Planning with the responsibility of managing ground water quality data (*Minnesota Statutes*, section 103H.175).

Each of these efforts eventually fell short due to a lack of sustained focus and funding.

At a minimum, Water Resources Committee members could work through their agency webmasters to provide appropriate links to other agency Web sites in order to simplify the gathering and use of data by anyone having need of it. An example of such linkage is Lake Finder on the DNR website, www.dnr.state.mn.us. Since such information often is not readily found through an agency's Web site, it may also be beneficial to consider developing a separate Web site like the Office of Environmental Assistance's environmental education site. SEEK (Seeking Environmental Education Knowledge, www.seek.state.mn.us) draws together information provided by a wide number of environmental education programs and parties, both public and private, in one convenient place. It has been highly successful in providing easy access to a wide variety of information for a variety of users. Another promising alternative would be to see if Bridges, an environmental information search engine on the state's Northstar Web site, (www.bridges.state.mn.us) could be modified to provide this function.

5. Evaluate the rationale of providing all state water regulatory agencies uniform measures for enforcement.

Often, state agencies are criticized for lack of enforcement in their regulatory programs. Considered by some as a conflict of interest, the reality is that fiscally tight budgets and escalating costs of legal services are forcing agencies to cut back on their enforcement responsibilities. One partial remedy would be to authorize administrative penalty orders for all state agencies having regulatory programs. The departments of Agriculture and Health and the PCA currently have this authority. An administrative penalty order allows a regulating authority to issue a penalty and/or

request for corrective action without having to resort to a citation under criminal law. For example, DNR currently lacks this authority for its waters permits. A violation of permit rules is handled as a misdemeanor through the local court and county attorney. Administrative penalty orders are often more efficient than either an administrative hearing or criminal proceeding and less costly in legal fees for either side. They do not reduce the full due process under law to which anyone is entitled.

Conclusions

Through a more coordinated development of water policy in both the executive and legislative branches of government, it should be possible to achieve greater integration of water programs without changing the current advocacy approach that agencies follow. This should also result in greater coordination across agency lines in the delivery of services to local governments in their comprehensive planning and decision making functions that affect water resources.

By greater participation of state agencies in local water planning, development and implementation, both the role and function of state agencies will gradually shift from regulation to the support of local government units in their decision making and regulatory functions. In time, this will lead to greater trust and recognition between state agencies and local governments, and greater understanding and appreciation by the general public of the value of Minnesota's water resources and the importance of their protection. The end result will be water management policies that are integrated into local land use decisions and stewardship and that have the following recognizable traits:

- State and local water policies, programs and decisions are transparent (no hidden agendas) and easily understood.

- Planning is integrated and coordinated between state and local interests so that all gain value and have ownership of the plans and related management actions.
- Sufficient data is routinely collected and managed to be understandable and easily used by local decision-makers and citizens.
- Local governments and citizens are empowered and accountable for the management of Minnesota's water resources. There is trust and respect among all involved parties.
- Water planning is integrated at all levels with land use and other elements of comprehensive planning.
- State and local water information, policies, programs and partnerships prevent the emergence of problems of water quality and availability (proactive resource management), and manage water and related land resources on a sustainable basis.

Critical policy development needs

Four critical issues facing the state now need to be addressed:

Minnesota's lakes. The need for a cohesive policy on lakes is more critical now than when it was identified in the 1979 state water program evaluation. Rapid growth in the central lakes area around Brainerd is comparable to the issues of sprawl in the metropolitan area. However, development pressure can occur on any lake in the state. Programs, such as shoreland management, that counties and cities have adopted into their zoning ordinances have helped to shape lake development over the past 30 years, as have voluntary lake associations, their coalitions and statewide organization. Lakes forums were held in 1991 and 2000; these brought together a wide variety of interests from local citizens to state agency officials to

discuss the need for better coordination and support for local lakes initiatives. The first forum was initiated by the Freshwater Foundation with the support of the Blandin Foundation. Although an interagency lakes coordinating committee has been formed to work on lakes issues, lack of funds, a unifying policy, and administrative priorities have prevented greater accomplishments and support for a more comprehensive lakes initiative.

This is an issue that the Water Resources Committee or the EQB should address in their policy development functions. It may be beneficial for one agency to assume leadership on policy development. Such an initiative is intended to complement and not detract from other basin or watershed-based initiatives that are ongoing.

Minnesota's ground water. Minnesota's ground water is the predominant source of water for human use and consumption. It also provides base flow to rivers and streams and is critical to maintaining healthy aquatic habitats in those areas as well as many wetlands and lakes. Over-withdrawal threatens water supply in some areas while contamination from nonpoint sources impacts others. Minnesota's growth and economic development require safe and adequate sources of water. Despite its importance, Minnesota's ground water is largely a "hidden resource," out of sight and out of mind.

Funding for baseline data and monitoring are necessary to better define water sources and identify trends in both water availability and water quality. At the local level, such information needs to be readily available for local land use decisions and plans. Basic education on ground water is also needed. Many agencies are involved in various aspects related to ground water. As John Helland, research analyst for the Minnesota House of

Representatives, reported in his *Survey of the Ground Water Act of 1989* (January 2001) much still remains to be done, including the development of a comprehensive monitoring strategy. This will require the concerted effort of all state agencies involved with ground water in order to build upon the initiatives achieved by the earlier Ground Water Act. It is an appropriate issue for the Water Resources Committee or the EQB to address.

Drainage law. Minnesota's drainage laws date back to the late 1800s. The emphasis then was on draining surplus water from the landscape so it could support agriculture. Although there have been efforts to update it, the drainage law requires attention to meet the growing needs and issues of the 21st Century.

Past efforts to update the drainage law fell short because of its complexities and the competing interests of those affected by it. There are many constituencies involved in this issue and tackling it will require participation by all state water agencies. Historically, drainage law has tended to function independent of other water resource laws. That approach has begun to gradually change as both agriculture and natural resources concerns see the need to modernize the law to meet today's agricultural needs while safeguarding downstream interests and resources. Given the proper attention, such legislation should benefit both concerns.

Integrating water planning and policy into comprehensive planning. Water affects and is affected by all land use decisions. For example, the grading, filling and paving of roadways can alter both surface and subsurface flow patterns and make an area more susceptible to spills and other forms of pollution. Changes in vegetation, land use and land cover resulting from new roads and induced development can alter many local

resources, including water, and have unforeseen impacts on a community.

In similar fashion, recreational development of Minnesota's waters can help to raise both local and nationwide interest and appreciation for Minnesota's rich water resources. While the local economy, tourists and Minnesotans may benefit from enhanced water recreation activities, the increased use can place greater stress upon both natural and social systems.

Even the funding of new sewer lines in developing areas may have unexpected impacts. In helping to protect a water body from the cumulative impacts of many onsite septic systems, it may seem advantageous to support the expansion or construction of municipal sewers. However, sewer lines, like roads, can then induce even more development at or near the water. Loss of natural vegetation along shorelines, greater fertilization and other land alterations often create the perception if not the reality that the quality of both the lake and the lake experience have been degraded. Either way, the improper development of lakeshores can negatively affect a local economy, environment and community.

An appreciation and concern for water must be integrated into comprehensive planning and zoning decisions if the choices made today are to protect existing communities, the environment and future generations.

Agency missions

The following missions provided by the agencies and units of the Water Resources Committee show the diversity that exists in the management of state water programs.

Minnesota Pollution Control Agency. The purpose of the Minnesota Pollution Control Agency is "to meet the variety and complexity of problems relating to water, air, and land pollution in the areas of the state affected thereby, and to achieve a reasonable degree of purity of water, air and land resources of the state consistent with the maximum enjoyment and use thereof in furtherance of the welfare of the people of the state (1967)." Based on enabling legislation, the PCA mission is "to help Minnesotans protect their environment;" the PCA vision is fishable and swimmable lakes and rivers, clean and clear air, uncontaminated land and ground water, and healthy ecosystems. A major function of the PCA is protection of the quality of Minnesota water resources. The PCA uses a basin management strategy for water quality protection and restoration that focuses on water resources and geography rather than on categories of pollutants.

To implement its strategies, the PCA works with federal, state and local government entities, businesses, lake and river associations, nonprofit organizations, legislators and citizens. The PCA Web site at www.pca.state.mn.us provides additional information on its water quality programs.

Department of Health and the Division of Environmental Health. The mission of the Minnesota Department of Health is to protect, maintain and improve the health of all Minnesotans. See: www.health.state.mn.us.

The mission of the Division of Environmental Health is to reduce and prevent the

occurrence of environmentally and occupationally induced disease and injury. The division is the principal agency of state government charged with responsibility for protecting the public health from exposures to environmental hazards. It receives its authority through *Minnesota Statutes*, Chapter 103I and sections 144.381 – 144.385.

Department of Natural Resources. The mission of the Minnesota Department of Natural Resources' mission is to work with citizens to protect and manage the state's natural resources, to provide outdoor recreation opportunities, and to provide for commercial uses of natural resources in a way that creates a sustainable quality of life. The goal of the Division of Waters is to promote water resource conservation and sustainability by working with others to develop a common understanding of water resources and improve its programs and decision-making. The primary role of the Division of Waters' is to manage the conservation and use of Minnesota water resources in the best interests of its people (*Minnesota Statutes*, section 103A.201). Its programs are directed more towards quantity than quality, but many programs have water quality benefits. The division's role is met through a number of regulatory and management programs. See: www.dnr.state.mn.us/water.

Department of Agriculture. The Minnesota Department of Agriculture's original authority, found in *Minnesota Statutes*, Chapter 17, has been significantly augmented since the creation of the department in 1919. The MDA's mission statement reflects current and diverse responsibilities: "To work toward a diverse agriculture industry that is profitable as well as environmentally sound; to protect the public health and safety with regard to food and agricultural products; and to ensure orderly commerce in agricultural food and products."

Two divisions of the MDA have significant roles in water-related programs: Agronomy and Plant Protection and Agricultural Development. Agronomy and Plant Protection is largely a regulatory division with responsibilities of regulating all farm inputs such as pesticides and fertilizers in rural and urban regions of the state. Its mission statement is to: "Serve and protect the citizens of Minnesota and the agricultural industry, environment and economy through education, technical assistance, certification and regulation. This is accomplished through comprehensive regulatory and nonregulatory programs for pesticides, fertilizer, seed, noxious weed, commercial feed, nursery inspection, export certification of plant materials and the management of unwanted agricultural pests."

The Agricultural Development Division's mission is to work toward enhancing the economic potential of Minnesota agriculture now and in the future to produce food, fiber, and other products profitably while protecting the environment. More information is available on the MDA Web site at: www.mda.state.mn.us.

Board of Water and Soil Resources. The mission of BWSR is to provide leadership in assisting local governments to manage and conserve irreplaceable water and soil resources under their stewardship with an emphasis on private lands. BWSR believes that management is best implemented locally, voluntarily, comprehensively, and collaboratively.

The state's role carried out through BWSR is to help ensure that soil and water resources, and the citizens who benefit from them, are well-served by all levels of government. This board provides the tools and coordination necessary for local governments to prioritize and implement conservation on the landscape.

BWSR coordinates resource planning activities of local governments through plan approvals, grant administration, outreach, state-local coordination, and as a forum for discussion among all levels of government (*Minnesota Statutes*, sections 103B.101 subd. 9 and 103A.206). The state has made a significant investment in local government delivery of programs over the years that is achieving an impressive return. As devolution continues, having a solid foundation from which local governments can operate will be critical for achieving the state's conservation goals. BWSR's job is to optimize the transition. See www.bwsr.state.mn.us.

Environmental Quality Board and the Water Resources Committee. The Environmental Quality Board draws together five citizens and the heads of 10 state agencies that play a vital role in Minnesota's environment and development. The board develops policy, creates long-range plans and reviews proposed projects that would significantly influence Minnesota's environment.

The EQB directs the work of the Water Resources Committee through its approval of the EQB work plan. The committee brings together state agencies that have a major role in taking care of the state's waters. Each member looks at water issues from a different angle — drinking water, agriculture, recreation, pollution — and coordinates their concerns through the committee to create a unified, coherent plan for Minnesota's water. The committee leads the Governor's Water Unification Initiative, which is intended to coordinate and integrate water management in Minnesota. More information on the work of the committee can be found at the Web site: www.mnplan.state.mn.us/eqb/water

Minnesota Geological Survey. The Minnesota Geological Survey was established by legislative act on March 1, 1872. The enabling statute (General Laws of Minnesota,

1872, Chapter 30) instructed and authorized the Board of Regents of the University of Minnesota to organize a geological and natural history survey of the state. Section 2 of the 1872 statute provides that the geological survey be undertaken with a "... view to a complete account of the mineral kingdom as represented in the State. ..." Sections 7 and 8 provide that the geologic studies be presented in the form of maps and associated reports, and that they be transmitted as widely as possible to the general public, as well as to the Legislature. See the MGS Web site at: www.geo.umn.edu/mgs.

The mission of the Minnesota Geological Survey is to undertake and promote the scientific study of Minnesota's geology, and to make the results available to the public.

As a research and service arm of the University of Minnesota, the MGS conducts basic and applied earth sciences research to determine the geological framework of Minnesota for the benefit of its citizens. The MGS works to provide a scientifically sound geologic understanding of the geological conditions in the state that can be used to further investigations of mineral resources, water resources, engineering conditions and the environment. This objective is accomplished mainly through the preparation of reports and geologic maps at various scales, using data and interpretive insights derived from direct field study of geological phenomena and the indirect methods of geophysics, remote sensing and geochemistry.

Minnesota Extension Service. The mission of the University of Minnesota Extension Service is to make a difference by connecting community needs and University resources to address critical issues in Minnesota. MES provides research-based information about management of land and water resources

affecting water quality and quantity. Research conducted at the University of Minnesota addresses management of crop nutrients and pests, tillage, agricultural drainage, irrigation, forestry practices, shoreland management, waste water treatment, hydrology, climatology, limnology, resource economics, civil engineering and many other areas affecting quality and quantity of water resources. MES works with public agencies, industry and citizen groups to determine research needs and employ research results in protecting and utilizing water resources of Minnesota.

Additional Examples of Agency Coordination

The following are examples of agency coordination that have been achieved through interagency cooperation on water issues of mutual concern.

County Well Index Database. The County Well Index is a database that stores and retrieves information related to water wells. Although the index is maintained and operated at the Minnesota Geological Survey at the University of Minnesota, it was developed over a 30-year span with the cooperation of several state agencies and private-sector groups.

The MGS has used the geologic descriptions provided by well drillers since the early 1900s. In 1975 it became mandatory for drillers to submit well construction records to the Minnesota Department of Health. LCMR augmented efforts at MGS and MDH to build a database of this information beginning in 1978, again in 1983, and through the DNR in 1989. MGS adds value to the records by interpreting the geology, and builds the database within the context of regional geologic investigations. MDH contributes database expertise, ongoing data entry and funding for data entry at MGS.

Today, the County Well Index is easily available and widely used by local, state and federal agencies in making decisions that affect land and water use and resource and health protection. Well contractors, real estate companies and environmental consulting and engineering companies also use it. Work is underway to broaden the data content and to provide Internet access to the database.

Wellhead Protection Program. The purpose for wellhead protection is to safeguard public health by preventing contamination of public water supply wells to levels that present a health concern. The focus of prevention efforts is the wellhead protection area. This is the surface and subsurface area that contributes water to a public water supply well. Potential contamination sources within the wellhead protection area are managed to offset their potential risk to the public water supply well. Management measures include working with source owners using educational materials, training, technical outreach, financial assistance and regulation. Local wellhead protection teams are formed; they involve public water suppliers, local agencies, state agencies, private organizations, schools, landowners and the general public.

The wellhead protection program has been well received at local, state and federal levels. Generally, people believe protecting drinking water supplies is worthwhile and appreciate being involved locally rather than having state government telling them what to do. The administrative rules for the wellhead protection program were promulgated in 1996 without controversy. The Minnesota Department of Health is bringing over 1500 community and noncommunity water supply systems into the wellhead protection program. Approximately half of these systems use aquifers that are geologically sensitive. Priority is being placed on bringing these "vulnerable" systems into the wellhead

protection program. MDH has set a goal to have all systems in the wellhead protection program by 2006.

Nitrate Well Water Testing Program. The Nitrate Water Testing Program provides water testing services, technical assistance and outreach to thousands of Minnesota well owners. Many of the past successes have been due to the unique partnerships between local and state organizations. The Minnesota Department of Agriculture developed the program and provides statewide coordination. However, the main strength of the program has been its local cooperators, which typically are the soil and water conservation districts, county extension educators, lake associations and environmental service offices. Additionally, regional well inspectors from the Minnesota Department of Health participate at many of the clinics and provide valuable information regarding local hydrogeology and well construction issues.

The program started receiving external funding (LCMR and currently EPA 319 funds) in 1997. Since that time, this program has provided testing services and technical assistance to approximately 4,000 to 6,000 rural homeowners each year. From 50 to 60 counties participate by hosting 80 to 100 annual clinics. Since 1993, over 33,000 water samples have been analyzed.

The overall goals of the Nitrate Well Water Testing Program are to:

- Increase the general awareness of the presence of nitrates by providing "no cost" water testing services and technical support for rural drinking water, irrigation and livestock water supplies.
- Promote best management practices for agricultural producers and urban lawn care providers.
- Identify localized problematic areas and the establishment of broad countywide baseline nitrate conditions.

- Provide the equipment, methods, educational materials and staff training so local government units can provide long-term services to the residents in their counties.

The clinic concept revolves around a number of simple principles: local participation is critical; testing is free to the public with immediate results; the overall program needs to be inexpensive; a nonregulatory atmosphere is important and well owners may remain anonymous; and, the staff's most important goal is to provide the required technical assistance across a diverse audience of well owners. The concept has proven adaptable for county fairs, field day events, public school programs and "stand alone" events.

Conservation easement programs. As of June 2000, the 14-year history of the Reinvest In Minnesota Reserve Program had acquired easements over 77,500 acres of marginal farmland and restorable wetlands. With the addition of the Conservation Reserve Enhancement Program in 1998, there will be an additional 100,000 acres of state funded conservation easements before the end of 2002. In four years Minnesota will have doubled the conservation easement acreage acquired in the first 14 years of the program. It will have done so at an administrative cost of less than 150 dollars per acre and easement acquisition costs of approximately half of the already competitive RIM-reserve rates. This is success one.

Success two will unfold over the next 3 to 5 years as 100,000 additional acres of restored wetland and native prairie vegetation begins to buffer the landscape of the Minnesota River watershed. The 20th Century was not kind to the Minnesota watershed and today it has 95 percent of its area in agricultural production in a predominantly two-crop rotation. These vegetated buffers will provide

wildlife habitat for game and nongame species and much needed diversity on the landscape. The water quality benefits of each acre of conservation easement are impressive. Each acre reduces soil loss by 9.6 tons per year, sedimentation by 4.7 tons per year, and a reduction in total phosphorous reaching waterways by 5.8 pounds per year. Multiplied by 100,000 acres these reductions are substantial.

A third success in this effort was the united efforts of multiple organizations. Federal funding and processing assistance came from the Natural Resources Conservation Service and the Farm Services Agency.

At the state level, PCA monitoring and analysis was useful in identifying the magnitude of the problem in order for BWSR to adapt RIM-reserve to fit the CREP program. BWSR then worked to gather a coalition to get the program approved and funded and put money out for SWCDs to hire "marketers." The DNR played a major role in providing forestry staff and critical "gap funding" to augment the sales force to work through local soil and water conservation districts to literally knock on front doors.

At the local level, the Minnesota River Basin Joint Powers Board was critical in motivating the early marketing efforts and attracting grant dollars from various sources. Its 37-county membership mobilized critical political support and aided efforts of the SWCDs. Without question, the workhorses of the effort were the county SWCDs in the basin. These organizations did sales, design, education and execution of real estate transactions by the thousands. They integrated CREP into their priorities and seized the opportunity to make a difference.

Heavy involvement by nongovernmental organizations such as the McKnight

Foundation, Friends of the Minnesota Valley, Pheasants Forever, the Nature Conservancy and many other groups contributed to deliver the bonding dollars necessary to fulfill the 100,000-acre goal.

Minnesota Recovers disaster task force. The Minnesota Department of Public Safety, Division of Emergency Management convenes the task force following a presidential disaster declaration. Task force members include state and federal agencies that provide services in a disaster. These are Minnesota's Board of Water and Soil Resources; USDA's Natural Resources Conservation Service; the U.S. Department of Commerce's Economic Development Administration; the Federal Emergency Management Agency; Minnesota departments of Natural Resources, Trade and Economic Development and Public Safety's Division of Emergency Management; the U.S. Department of Housing & Urban Development; Minnesota Housing Finance Agency and U.S. Army Corps of Engineers. The Division of Emergency Management plays both a financial and a coordinating role in getting disaster services and financial aid to the affected communities. All work together as partners in determining how best to serve Minnesota's communities during and following a disaster.

Among all the agencies that play a role in flooding and disasters, the DNR has some distinct differences from its partners. DNR money through the Flood Damage Reduction Program is focused on mitigation, the prevention of future damages from disastrous events. It is set up to work quickly in getting the money to communities who have a plan to mitigate flood damages. The DNR does not fund any clean-up work. It focuses entirely on reducing the impacts of future flooding disasters.

Information sources for report

Analysis of the Chart of State Water Programs. The Chart of State Water Programs, completed in August 2001, formed an initial basis for outlining state water programs. Analysis of the chart revealed that local government units were the primary customer in 38 of the state's 101 water programs. Technical assistance is the primary category or function that state agencies provide in 34 of these programs. However, regulatory functions and enforcement are the dominant areas where agency staff devote over half (58 percent) of their cumulative time. These figures are somewhat misleading because of the interconnection of functions within and across agencies. For example, education and technical assistance are often either directly or indirectly associated with an agency's regulatory programs. One agency may also provide financial support or technical assistance and training that may directly or indirectly support another agency's functions. One example of this is the technical review that SWCDs provide to DNR permits which is supported through BWSR.

Through a series of meetings and follow-up discussions, staff from each agency on the Water Resources Committee were interviewed by EQB staff to gain a better understanding of their agency's water programs, roles and functions. Also considered were goals of the project and the findings of earlier reorganization studies. Notes from these meetings are available from the EQB on request.

Water program reorganization questionnaire. Local government units are the primary customer for many of the state's water programs, and they are the decision-makers for many issues concerning land uses affecting water resources. EQB staff developed a questionnaire to gather input

from local government units and others based on the goals presented by the Legislature for the study. The questionnaire was distributed primarily through e-mailed organizational newsletters.

The responses are qualitative and reflect the views of those who are interested in or affected by state water programs. Four of the member agencies on the Water Resources Committee also prepared agency responses to the questionnaire. Excluding the agencies, there were a total of 41 responses: soil and water conservation districts (9), lake associations (6), watershed districts (5), no identification (5), rural water districts (4), citizens (4), county government (4), consultants (2), state agency employee (1) and township government (1). Because it was strictly a qualitative survey, the comments help to provide insight into what people think regarding the current arrangement of state water programs, but lack quantitative value. Following is a summary of survey responses. The full responses are available from the EQB on request.

Many stated that there is not a clear and consistent vision across government on the management of Minnesota's water resources. A number of reasons were given for this inconsistency. One noted that inconsistent positions *within* a given agency can be even more frustrating than those among agencies. These point to the complexities of the system. Others noted the need for more science-based decision-making and the development of a vision and its ownership by and for local citizens who are the ones who can implement land use changes related to water resource management.

When questioned about the "advocacy approach" under which agencies currently operate, the response was about evenly split between those who favored change to a more

unified system and those who preferred the current system of checks and balances. There was a fear that reorganization could lead to reduced flexibility for local governments and groups to deal with projects that they see as being a priority. It could also lead to a loss in specialties and services that agencies currently provide. However, it was also noted that state agencies need to work more with local government units through participation on water planning task forces.

Examples of good coordination on various water planning efforts included local water planning and basin planning, but others noted that there were too many agencies—each with its own plan. Monitoring was seen as an **example of poor coordination**. There should also be better coordination of education efforts among agencies. More coordinated use of GIS and its availability to local governmental units was also mentioned. One person suggested a combined agency Web site where all permit applications, databases and maps could be obtained.

As for **programs needing updating**, many called attention to the need to change the drainage law. Things lacking from current programs include greater long-term monitoring, interagency coordination and a more proactive approach to local planning which puts agency staff at the table as equal members with an attitude of providing assistance and not guidance.

The question of **conflicts of interest** was evenly divided between those who saw it as an issue and those who did not. Some noted that this is simply how the system is set up. Others stated that it is impossible to please all of the people all of the time and that agencies should use science to determine resource needs and act accordingly.

When asked about **priorities for limited funds**, the response was that there is a need for better collaboration at the state and

regional levels in developing and implementing strategies. Others noted the need for improved baseline information and greater emphasis on both ground water and lakes. One noted the importance of hiring coordinators having primary training and experience in people skills since water resource management is as much a social issue as it is a technical one.

In summary, local government units want greater recognition and support for the role that they have in local land and water planning and management. For this role to grow, it will require greater participation and provision of services by the respective state agencies. Clarification of roles and functions at all levels of government and planning is also required.

Participation at association meetings and conferences. Good discussions were held with soil and water conservation district and watershed district administrators at the annual conference of the Minnesota Association of Townships and at the annual meeting of the Minnesota Association of Watershed Districts. These helped to clarify the relationship between state and local government units in water programs and to fortify the issues identified in the questionnaires.

Review of water programs in other states. A review of other states' water programs revealed a range from a "super agency" approach to one of "cooperative resources management" through the funding of state, federal and local government partnerships. Representative examples are summarized in the appendix to this report. These lack in-depth analysis, but do provide useful information about certain management tools such as Maryland's integrated Web site and Water Monitoring Council, and Wisconsin's published standards for the collecting and processing of data.

State water reports and initiatives. This is the 17th report on state water program organization over the last 30 years. Some of these reports have led to broad changes such as the merger of the Soil and Water Conservation Board, the Water Resources Board and the Southern Minnesota Rivers Basin Council to form the current Board of Water and Soil Resources. However, other issues identified in these reports still require work. Among these are the need for better access to data by all potential users and the development of a comprehensive lake management policy within a framework of overall policy coordination.

State Water Resources Program Inventory and Problem Identification (Appendix A: Report of the Management Work Group, Minnesota Water Planning Board, March 1979) described three state roles in water resource management: protector, developer and allocator of water. It sought to identify gaps or overlaps among the various programs and issues of coordination, communication, citizen relations/participation and conflicts in priorities. There were more gaps than overlaps. At the time, there was only one pilot grant-in-aid program for Flood Damage Reduction which was administered by the Soil and Water Conservation Board. The need for a wetlands inventory was noted along with better coordination on permits between the Pollution Control Agency and Department of Natural Resources, better access to data, and a comprehensive lake management policy. While progress has taken place in all of these areas, many issues remain.

A Vision for the Future of Ground Water Management in Minnesota (October 1986), developed by an intragency team of the State Planning Agency, foresaw the emergence of strong comprehensive local water plans with joint powers agreements, as needed, to cover aquifer management. Costs would be shared among federal, state and local contributors

with few strings attached. Water monitoring would be maintained and operated through the local water plan with much of it delegated to SWCDs for action. The state's role would be to provide technical assistance (help in setting up the monitoring network, interpreting data, trends analysis, etc.) and certifying local labs for water analysis. A water policy board would provide oversight, but the priorities and permit decisions would be made locally.

Protecting Minnesota's Waters: An Agenda for Action in the 1987-1989 Biennium (Environmental Quality Board, February 1987) provides an example of the concise way in which water resource priorities were developed and recommended when the Water Resources Committee was composed of commissioner-level representatives.

The Legislative Auditor's report, *Water Quality Monitoring* (February 1987), also reviewed the organization of Minnesota's state water programs. It concluded that many of the gaps and inefficiencies identified in the 1979 report had been markedly improved over the previous five years through increased coordination and cooperation among state agencies. Areas of potential overlap had been resolved through interagency cooperative agreements. Where there was a need, agencies often contracted services from other agencies.

The report also noted areas in need of further coordination, including the development of comprehensive lake management, nonpoint source pollution, pesticide contamination and water shortage policies, data collection and management, and local water planning assistance. It noted that the EQB, after a period of relative inactivity, had made recent progress toward fulfilling its responsibility to coordinate Minnesota's water policies and foster interagency communication through the

board's Water Resources Committee. It recommended that the Legislature make the committee's role explicit in statute and require that it submit a biennial water plan to the Governor and Legislature. It concluded that there was no need for major organizational changes, but that the affected agencies should continue to work out formal agreements for interagency cooperation.

The **Ground Water Protection Act of 1989** was a major executive and legislative initiative that established a policy framework for the protection of Minnesota's ground water. It reflected an integrated approach among state agencies and strong leadership by the Governor. The Legislative Water Commission was established to review state water policy, programs and needs. (This commission sunsetted in 1996.) The Act affirmed the role of the Environmental Quality Board for the development of state water policy and priorities and assigned it a new role in the coordination of information and education on state water resources. It recognized comprehensive local water plans as being a key part of Minnesota's water program and authorized the establishment of local water resources grants through the Board of Water and Soil Resources for the development and implementation of local water plans. Sensitive Area Mapping was assigned to the DNR. The Department of Agriculture's pesticide and fertilizer statutes were significantly rewritten and extensive new authorities were provided to the MDA including the creation of a cleanup reimbursement program funded by industry surcharges, authority to administer and access the state superfund, a permanent waste pesticide collection program, and authority to address ground and surface water issues. The PCA and MDA were assigned to develop management practices and requirements. The Department of Health was responsible for developing health risk limits. The EQB was required to identify water trends, priorities and research needs through biennial reports to the Legislature.

The *Minnesota Water Plan* (Environmental Quality Board, May 1991) called attention to the emergence of comprehensive local water plans as being the key to managing water in the 1990s. It presented itself as a sounding board for evaluation of new policies needed to protect and conserve Minnesota's water into the 21st Century and called for a focus on the resource through integrated lake management and interagency river basin coordination teams. Regional monitoring cooperatives were envisioned along with citizen monitoring. State agencies were to provide technical assistance to local governmental units and a statewide GIS was envisioned to integrate data on surface water, ground water and related resources. Priority was also given to the acceleration of programs for the development of county geologic atlases and regional hydrogeologic assessments to provide the necessary hydrogeologic information for making adequate water management and protection decisions. It called for the strengthening of the well code, the sealing of abandoned wells and the development of wellhead protection plans for public and private wells.

Water Quality Program Evaluation (Minnesota Planning, October 1991) identified emerging water quality trends. With the development of effective controls for point source pollution, there was a growing recognition and emphasis on the need to control nonpoint pollution. There was a heightened focus on pollution prevention and the need for cleanup, and a change in emphasis from the construction of wastewater treatment systems to their maintenance. It recognized an evolving role for local government in water planning and management through the development of active state and local partnerships. The 1991 evaluation of agency programs revealed some common needs: improved coordination, encouraged use of local authorities, improved data management, increased educational efforts, increased

funding and more program evaluation. It saw the EQB and its Water Resources Committee as the coordinator for state actions, BWSR as coordinator for state-local actions and local water plans coordinating local actions.

Both the *Minnesota Water Monitoring Plan* (Environmental Quality Board, April 1992) and the *Assessment of Water Availability in Minnesota* (Environmental Quality Board, December 1992) addressed the need for a strategic plan for monitoring Minnesota's water resources. These reports repeated the *Minnesota Water Plan's* call for a "focus on the resource" and "integrated water resources management," while also noting that federal and state budget cuts had significantly reduced ambient monitoring of both surface and ground water. The *Water Monitoring Plan's* objectives included:

- Substantially expand ambient monitoring.
- Recognize trend analysis as an essential component of water management and routinely incorporate it as a key state and local government duty.
- Support data exchange and analysis across agency borders, programs and levels of government.
- Encourage and expand citizen and local government participation in the monitoring of water resources.
- Provide the basis for a coordinated and integrated water monitoring system.

The *Assessment of Water Availability in Minnesota* called for the acceleration of regional aquifer assessments and county geologic atlases and the expansion of the state's stream flow gauging stations. It recognized the important role of the Minnesota Geological Survey in providing vital information about the state's hydrogeology through its mapping and technical services and called for its full funding. Noting the local governmental authority over land use and growth

management decisions and that comprehensive local water plans could address water supply and use issues, it called for new ties in administration of the state Water Well Construction Code, Water Appropriation Permit Program and local land use decisions. It recommended a pilot local-state program for several counties experiencing growth pressures to develop plans that connect these efforts.

Crosscurrents: Managing Water Resources (December 1996) was prepared by Minnesota Planning in response to the Legislature's call for a reorganization plan that would further sustainable development, improve service delivery, prevent problems, encourage citizen participation and reduce pollution. It recognized that water management efforts evolve within programs and agencies as new needs are identified. Routine review, better coordination and consolidation among agencies should result in programs that capitalize the expertise of specific agencies. Program flexibility should be enhanced to encourage cooperation between state and local governments in meeting water resource needs. "Efforts that can be better handled by local governments or the private sector should be modified and programs should be evaluated to see if they are still needed." It called for a simplification of permitting and other decision-making through the use of joint permits, better coordination among agencies and appropriate delegation to regional offices and local governments. It recognized certain barriers including funding restrictions and budget cuts that force agencies to focus on the maintenance of core programs at the expense of greater efforts in planning or coordination with others. The role and value of local partnerships and citizen monitoring were recognized, and state and local governmental units were encouraged to form "situational alliances" with communities of common interest to accomplish their goals.

Crosscurrents also presented a comprehensive survey of past water management reorganization studies and water management history that is adopted here by reference.

A brief review of the time-line of major changes in Minnesota's management structures begins with the formation of the Department of Agriculture in 1919 and the development of the Department of Conservation and Soil and Water Conservation Board in the 1930s. Through the late sixties and the seventies the Pollution Control Agency was created, the Water Resources Coordinating Committee was formed by the State Planning Agency, and various other boards and councils were created including the Minnesota Water Resources Council, the Environmental Quality Council and Water Planning Board. The 1980s saw the merging of many of these earlier boards with Water Planning being merged into the Environmental Quality Board and the creation of BWSR from the Water Resources Board, Soil and Water Conservation Board and Southern Minnesota Rivers Basin Council. In 1985 the EQB formed the Water Resources Committee.

Minnesota's environmental system is characterized as a "collection of advocacy agencies." Each water resource management agency has a distinct perspective. The system meets the needs of various interest groups and gives them a voice in state government decision-making that might not be possible under one inclusive agency. It forces greater public scrutiny and recognizes the complex nature of water resource issues and the legitimate interests of agencies in dealing with agriculture, health, public safety, natural resource management and pollution control. The external checks and balances of such a system can foster creative tension and diversity in dealing with complex issues. In political terms, an advocacy system promotes

competition and increases public representation of each goal or interest through external checks and balances.

Growing Smart in Minnesota (Office of the Governor, October 1999) represented the Governor's goals and framework for action of a Smart Growth Initiative. Its goals:

- Maximize economic opportunity for all while protecting and enhancing the assets that make Minnesota a great place to live—healthy communities, clean air and water, and Minnesota's unique natural, cultural and historical areas.
- Manage natural resources and agricultural land to ensure they are sustained for future generations.
- Be fiscally prudent by building on existing public investments and avoiding future costs down the road.

Principles for success include **stewardship** (use land and natural resources wisely to sustain them for the future), **efficiency** (make more efficient, integrated public investments), **choice** (give communities smart growth options and choices) and **accountability** (reinforce responsibility and accountability for development decisions).

Minnesota Watermarks: Gauging the Flow of Progress 2000–2010 (September 2000) was based on the Governor's Water Management Unification Initiative and began a 10-year process toward unifying water management in Minnesota.

A survey of the Ground Water Act of 1989 (House Research, January 2001), noted the many accomplishments that agencies had made since 1989 in attaining major goals. The protection of geologically sensitive areas has been incorporated into rules and programs and the mapping of sensitive areas is now an integral part of mapping efforts carried out in collaboration with the

Minnesota Geological Survey. Establishment of the Local Water Resources Protection and Management Program has resulted in state-approved and locally adopted local water management plans in all 80 counties outside the metropolitan area, and ground water plans in five of the seven metropolitan counties. Newly constructed wells now comply fully with all state construction standards and sellers are required to disclose the existence of all known wells. Health Risk Limits for many ground water contaminants have been developed and implemented through the rulemaking process, and the monitoring of community water supplies has been greatly expanded. Through its statutory responsibilities for agricultural chemicals (fertilizers and pesticides), the Department of Agriculture has developed programs that are both innovative and "first of a kind."

Under **unfulfilled goals** of the act, Helland noted the disconnect between surface water, ground water and land use in the current water management system which is aggravated by a lack of local educational and technical assistance. Nitrates in ground water continue to be a concern along with the over-application of pesticides and fertilizers and failure to properly account for nutrient loading as a part of manure application. Research on best management practices, ground water protection and agricultural practices has been limited. Basic information about Minnesota's aquifers is lacking and there is no systematic approach to understanding ground water quality and quantity trends. There is a need for a comprehensive monitoring strategy. Too many agencies are involved and no agency is in charge. There is a lack of leadership and vision. He noted that although counties may be the appropriate level for ground water planning, there continues to be a very poor link between county level plans and the actions of other local governmental units. The ground water quality monitoring

database envisioned by State Planning has not been fully realized. Basic data needs are still unmet. He called for the increased funding of systematic ground water monitoring and for the support of local programs in water planning, inspection of on-site sewage treatment systems and well sealing.

Helland noted the value of the former **Legislative Water Commission** in providing an opportunity for continuity on coverage of issues and development of expertise on water resource problems and programs, and in providing feedback to agencies on water issues through a single forum. He noted some of the emerging threats to ground water not anticipated by the act and called for one agency to be responsible for monitoring and the development of trend information on both water quantity and water quality. "We only show real concern about water resources during crisis—drought or flood. There is little real public education about the limits of water resources."

Appendix

Examples of water management initiatives from other states

Maryland – Water Monitoring Council. The council consists of state, federal and local agency representatives, as well as members of academia, volunteer groups and private industry. The council seeks to promote collaborative and effective monitoring through communication of monitoring activities to other parties and development and promotion of quality assured procedures. The council was started by the Maryland DNR, which along with the Maryland Department of the Environment, does a majority of the state's water data collection. The council also consists of subcommittees that are specialized to deal with various topics including planning, monitoring methods, indicators, data management and assessment and reporting. A key goal of the council is to document Maryland's monitoring activities.

Michigan - Cooperative Resources Management Initiative. The Michigan departments of Agriculture and Natural Resources fund a partnership of state, federal and local governments that is designed to promote long-term natural resource health and sustainability. The program utilizes the divisions of local conservation districts which are combined into regions, and lists contact information for foresters, biologists, resource specialists and others. In some cases the person who answers a resource management question may be a state DNR employee, in other cases it may be an extension specialist. The program also lists county-specific contact information for various other specialists such as resource professionals, NRCS representatives or an extension specialist. A person can use the contact list to locate a specific person or find out who to call for a specific question for both their

county or region. Although this program is aimed at providing technical expertise for land management, many aspects of it could be modified to "cooperatively manage" water resources in Minnesota.

Wisconsin – Large "super agency" structure. The state of Wisconsin is managing natural resources through large agencies with many functions. For example, the Wisconsin DNR is charged with many functions that Minnesota uses a variety of agencies to carry out. These functions in Wisconsin are spread across many divisions including: air and waste; land; forestry; water (which includes fisheries and habitat protection); customer service and external relations; administration and technology; and, enforcement and science. Many functions that are part of Minnesota's PCA, DNR and Health departments are found in Wisconsin's DNR. This management approach does not go without criticism, however. A common criticism of Wisconsin's Natural Resources Department is that they are too centralized and lack "line" management (opposite of Minnesota).

Wisconsin - Department of Natural Resources Integrated Science Services Bureau : terrestrial and aquatic data standards. The Integrated Science Services Bureau within the state of Wisconsin DNR published a document that describes the standards for collecting and processing data gathered by the agency and its contractors. Among the processes described are data collection methods, recording guidelines, locational data standards for everything from plant and animal communities to aquatic biology and chemical and multimedia samples. Wisconsin is still working on getting everyone in the agency to use the standards.

The Wisconsin DNR as one agency collects much of the same data that several agencies would have the responsibility for collecting in Minnesota. While they cannot make everyone

collecting data everywhere in the state adhere to the standards, all parties the Wisconsin DNR contracts with or funds to collect data must adhere to the standards. However, in most cases, data is stored and maintained separately by each program.

Wisconsin – Land conservation districts. The Wisconsin equivalent of a soil and water conservation district is a land conservation district. As in Minnesota, Wisconsin's conservation districts are divided by county. However, LCD staff are county employees, who often sit next to planning and zoning and environmental services staff. In Wisconsin, each county must develop a Land and Water Resource Management Plan. The plans are developed by LCD staff in response to a redesigning of the state's nonpoint programs. State agencies "develop minimum statewide performance standards and prohibitions for nonpoint pollution and soil erosion control" that are ultimately used as a basis to distribute local grants. The plans outline how each county will meet state standards as well as local concerns with state and federal grant assistance (as well as other funds), and also describe how each county will lead the local implementation efforts (with rewards for innovative methods). A Local Conservation Committee, consisting of locally elected county board members, oversees the operation and helps to set direction. Locating LCD staff with planning and zoning and environmental services staff also allows land and water management plans to be developed cooperatively.

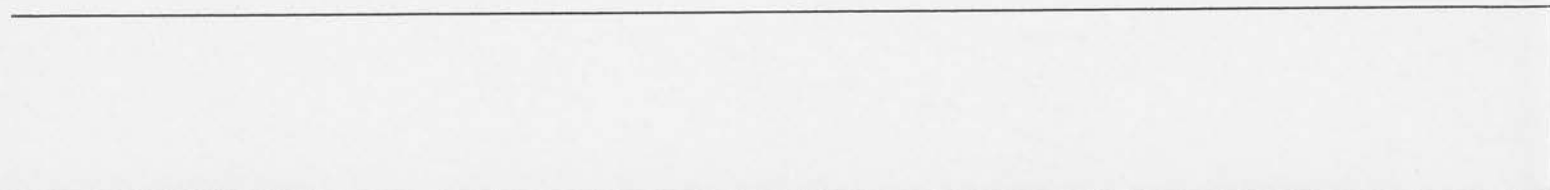
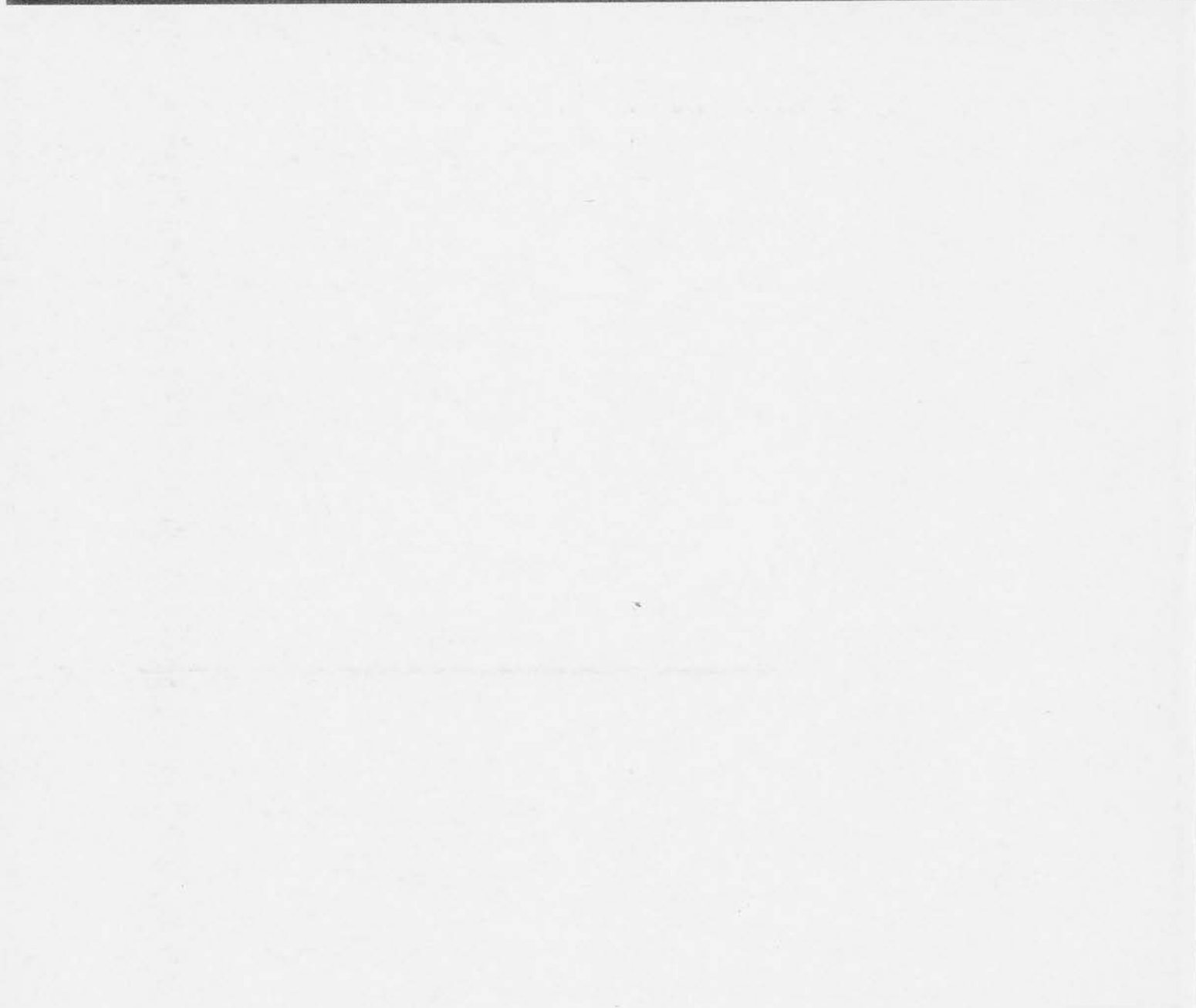
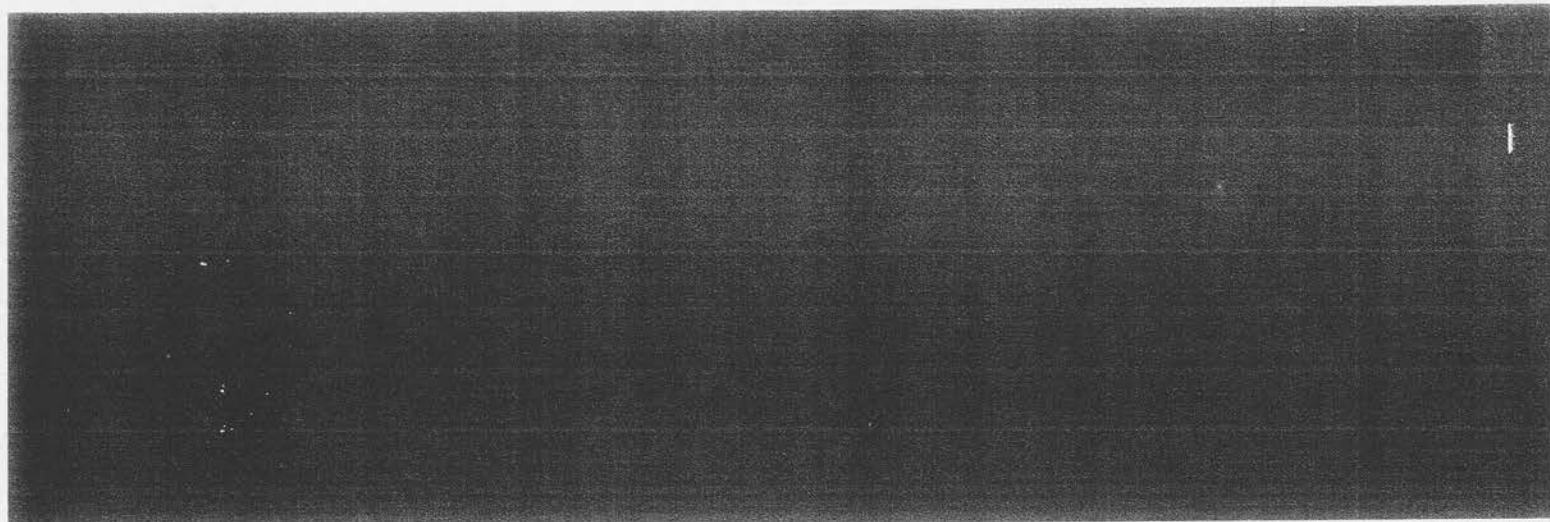
Nebraska – Natural resources districts. Nebraska's conservation districts are loosely organized by basin or similar landscape features. NRDs perform many of the same functions as Minnesota's watershed districts, SWCDs and local water planning combined. However, because so much of Nebraska relies on ground water for drinking water supplies, NRDs have a unique power to designate

Ground Water Management Areas in their jurisdictions. The GWMA program, administered by Nebraska's Department of Environmental Quality, focuses assessment on areas where nonpoint sources of contamination may be a problem. The NDEQ then conducts detailed field surveys to determine relationships between land use practices and contamination sources.

Iowa – Iowa Water Quality Initiative. The Iowa Water Quality Initiative is a package of roughly 15 programs that have a role in improving Iowa's water resources. Overall, the initiative is designed to focus the water quality efforts on the programs that are thought to be the most effective. Most of the programs such as CREP and ISTS are not unique to Iowa, yet they have been identified as key factors in protecting and improving Iowa's waters. Because they have been identified as priorities, they receive special funding. Most programs are administered by the Iowa DNR or Department of Agriculture. Note: The Iowa DNR handles many of the programs that Minnesota's PCA manages (for example, setting total maximum daily loads, or TMDLs, for contaminants).

Maryland – Surf Your Watershed. "The Surf Your Watershed project is a cooperative effort involving the Maryland departments of the Environment and Natural Resources to 'catalog' important environmental, socioeconomic and programmatic information on a watershed basis. The project provides a database in which natural resources and biological information (including hydrologic, hydraulic, and water quality); bibliographic references; contacts, programs and activity descriptions; and other data can coexist and be easily obtained for watershed management, planning and natural resource conservation programs and projects." — excerpts from the Maryland DNR Web site at: www.dnr.state.md.us/watersheds/surf.

Although the water quality and quantity data Maryland lists is limited, the model they use could probably work here for data that is important to Minnesota. In addition, their Web site lists very specific metadata that could be used by resource professionals to determine if the data will work for their needs.





March 22, 2002

To: NACD Officers, Directors, and Staff
State Association Presidents and Executives
State Conservation Agency Administrators
State and Regional Conservationists
NARC&DC Board of Directors

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MAR 25 2002

Bd. of Water & Soil Resources
St. Paul

Dear Friends:

This week our annual NACD Spring legislative conference provided a backdrop for ongoing work on the 2002 farm bill and a number of other important conservation issues.

The meeting kicked off on Sunday afternoon with an overview of NACD 2002 Legislative Priorities and Action Strategies and two spirited workshops, "Lobbying Capitol Hill and Strengthening Your Grassroots Network" and "How to Influence Congress without Leaving Home." Participants also heard from Interior Secretary Gale Norton, USDA Undersecretary for Natural Resources and Environment Mark Rey and NRCS Chief Pearlie Reed. The Monday session included Farm Bill briefings from four Hill staffers from the House and Senate Agricultural Committees.

In a special Tuesday morning session Deputy Agriculture Secretary Jim Moseley addressed the coming implementation of the new Farm Bill conservation programs. He was emphatic in stating that decision-making needs to be at the "ground level."

The conference ended Tuesday evening with Senate Agriculture Committee Chair Tom Harkin and House Conservation, Credit, Rural Development and Research Subcommittee Chair Frank Lucas addressing our closing reception. Both updated participants on the progress of the conferees' work and thanked districts for their support of the conservation provisions in the proposals. Senator Harkin specifically addressed his Conservation Security Program and his intent to include it in the package of conservation provisions. He also underscored his support for ensuring that technical assistance is available to carry out the existing, expanded and new conservation programs. Lucas was forceful in his remarks about new initiatives his committee had championed, such as the grassland reserve program.

Also on Tuesday, as many of the more than three hundred attendees were making contacts with their respective Senate and House representatives, we learned of a compromise between the Senate and House concerning the distribution of funding for the various titles. Briefly, the \$73.5 billion of new funding for the next ten years was allocated by title as follows: Commodity \$48.6 billion; Conservation \$17.1 billion; Nutrition \$6.1 billion; the other 7 titles \$3.3 billion.

National Association of Conservation Districts

509 Capitol Court, NE - Washington, DC 20002
Phone: (202) 547-6223 - Fax: (202) 547-6450

We have enclosed a copy of one of the key issue papers used by delegates to carry a key conservation district message to Congress. This paper champions the two top district priorities—technical assistance and a conservation incentives program. Other issue papers developed for the conference included section 319 funding, revisions needed to the Endangered Species Act, the NRCS Watersheds Program and others. All issue papers, as well as a detailed report on the conference are available on the NACD web site (nacdn.net.org).

Next steps for the completion of the farm bill include work by congressional staff to resolve the many differences between the House and Senate bills. Once staff has resolved as many issues as they can, members of the conference committee will meet after the Easter recess concludes on April 9 to resolve the remaining ones.

Many of you may have opportunities to participate in listening sessions and other public meetings with congressional representatives in their home states and districts over the next two weeks. We encourage you to take these opportunities to listen and to speak to the importance of conservation.

Here in Washington, we will continue working to ensure that the final package on conservation is a balanced one, including an incentives program and adequate technical assistance to carry out the expanded conservation programs of the bill.

And finally once the farm bill is approved by the Congress and signed by the President the implementation of the new and revised conservation programs will begin. Already NACD and conservation districts are participating in several preliminary efforts to ensure improved implementation of these programs.

In addition to the Farm Bill, the federal appropriations cycle is well underway. NACD is following the progress of and weighing in on funding for USDA, Interior agencies and EPA conservation district related programs.

Please stay in touch on these issues. If you any have questions or issues we can help with, feel free to contact the NACD Washington Office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ernest C. Shea". The signature is fluid and cursive, with a large initial "E" and a stylized "S".

Ernest C. Shea
Chief Executive Officer

Enclosures



Increasing Conservation on Private Working Lands in 2002 Farm Bill

The nation's conservation districts applaud both the House and Senate for their strong efforts to pass a new Farm Bill early this year. In particular, we are pleased that conservation, which has been a secondary objective in past Farm Bills, has emerged as a principal component in H.R. 2646 and S. 1731.

Private working lands – America's farms, forests and ranches – comprise more than 70 percent, 1.5 billion acres – of the country's land mass. These lands supply us not only with an abundance of food and fiber, but with proper management give us clean water, clean air, healthy soil and an array of fish and wildlife, as well as other public environmental values. Current Farm Bill conservation programs touch only a relatively small percentage of our private working lands and do not encourage early innovators and those who adopt conservation as the right thing to do. One of the new proposals, which is embraced and endorsed by conservation districts, will provide the opportunity to greatly expand the reach of our conservation efforts. In addition to the clean water, better soil, improved wildlife habitat and other environmental benefits of extending conservation to the entire private working lands community, these initiatives offer a cost-effective way to support the agricultural and rural economies.

Conservation Districts top priorities for the farm bill conference include the following two issues:

1. Conservation Incentives Program

The key to achieving our expanded conservation goals will be to adopt a new conservation incentives program that provides incentives and rewards for all producers who practice good conservation on a day-to-day basis. Current programs target only a small percentage of producers and have narrowly focused targets and priorities. Making incentives available to all producers on all working lands will mark a giant stride forward toward ensuring a productive and viable agriculture industry and a healthy and sustainable environment.

- Recommendation: Establish a stand-alone, formula-driven conservation incentives program for private working lands.

2. Technical Assistance

The availability of adequate technical assistance to implement the Farm Bill conservation programs will be critical to their success. Producers need a high-caliber, well-funded source of technical assistance to help them properly plan, design and install complex conservation treatments.

- Recommendations:
 - ✓ Provide funding for the full cost of technical assistance from within the program accounts of all Farm Bill conservation programs;
 - ✓ Ensure that technical assistance for the Commodity Credit Corporation funded natural resource programs is not constrained by the CCC Section 11 cap.

The nation's private landowners and managers who practice good stewardship each day will be well served by increased funding for existing programs and the enactment of innovative new approaches to private lands conservation. We believe this legislation will become one of the most important tools we have in protecting our nation's natural resources by strengthening and expanding voluntary conservation on America's private working lands.

**Minnesota Rules – Chapter 8420
Wetland Conservation Act**

Board of Water and Soil Resources

**Opening Statement Summary with Proposed Rule Changes And
Statement of Need and Reasonableness Amendments
To Support Proposed Changes**

Introduction

The Wetland Conservation Act (WCA) statute (see M.S. 103A.201, Subd. 2(b)¹) describes the overall goal of wetland conservation. Since meeting these goals require specific processes and standards, the legislature granted the Board of Water and Soil Resources (BWSR) the authority to adopt rules to carry out the program in concert with local governments who implement the day-to-day application of the requisite processes and standards. Because the activities affecting wetlands have implications for both landowners and persons affected by other's actions, the WCA rule attempts to balance public and private interests and communicate the processes and standards clearly, fairly and consistently.

The Board of Water and Soil Resources has reviewed all of the comments received both during the formal comment period from February 11 to March 13, 2002 as well as those received prior to or up until March 22, 2002. In reviewing the comments submitted as well as the feedback obtained at six regional information sessions conducted in February of 2002 -- for the purpose of giving local governments, private sector interest groups and agency staff a chance to understand the proposed rule changes -- we hereby offer some proposed changes as well as explanation as to why certain recommended changes submitted during the public comment period were not made. All comments in this document refer to the version of the Proposed Rule published along with the Dual Notice in the February 11, 2002 *State Register* on pages 1033 through 1081 (see <http://www.comm.media.state.mn.us/bookstore/archives.asp>)

Section 8420.0105 – Page 1036

Newly inserted language in paragraph 5 on page 1036 had been proposed to tie certain provisions of this chapter with those of Chapter 7050 under the oversight of the MN Pollution Control Agency.

Comments from the Pollution Control Agency stated that this opportunity would be better placed in Chapter 7050 Rules and we concur and therefore propose to strike this paragraph.

Section 8420.0110, Subpart 4 – Page 1036

The definition of agricultural land has been amended to clearly state that agricultural land is not land where derivative commercial products from agricultural production are produced nor does it apply to sites that are

¹ (b) The legislature finds that the wetlands of Minnesota provide public value by conserving surface waters, maintaining and improving water quality, preserving wildlife habitat, providing recreational opportunities, reducing runoff, providing for floodwater retention, reducing stream sedimentation, contributing to improved subsurface moisture, helping moderate climatic change, and enhancing the natural beauty of the landscape, and are important to comprehensive water management, and that it is in the public interest to:

- (1) achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;
- (2) increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- (3) avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and
- (4) replace wetland values where avoidance of activity is not feasible and prudent.

primarily animal husbandry operations. Also, land being converted from agricultural production to conservation easements remains agricultural land because some of these areas have the option to become agricultural land when easements expire.

The only comment received contrary to the proposed rule language noted that it gave farmers more options for exemptions than other landowners. While this may or may not be true, the change in the definition is purely for clarification and does not assign or remove any additional rights to this exemption.

Section 8420.0110, Subpart 23 – Page 1037

The definition of impact was proposed to be amended to be consistent with the Scope (Part 8420.0105) which describes what activities are regulated by this chapter. This change addresses comments received that impacts to wetlands need to be defined consistently with regulated activities.

Section 8420.0110, Subpart 34a – Page 1038

The definition of permanently and semi-permanently flooded areas of type 3, 4 or 5 wetlands received comments from several parties noting that the definition proposed was not the same as the definition in the Cowardin, et. al., document which uses similar terminology. BWSR chose to follow the intent of the legislation in MN Laws 2000, Chapter 382 which expanded the scope of the Wetland Conservation Act to allow regulation of excavation in type 3, 4, and 5 wetlands in order to be consistent with the Public Water Law, Minn. Rule Chapter 6115, which had such authority. Therefore, BWSR proposes to adopt exactly the language used by the Department of Natural Resources to implement Chapter 6115 so that excavation activities are regulated as consistently as possible according to legislative intent.

Section 8420.0110, Subpart 54a – Page 1039

In the definition of wetland type here and in another circumstance immediately to follow in Section 8420.0112, the date of the document titled "*Wetlands of the United States, US Fish and Wildlife Service, Circular 3*"⁹ needs to reflect the proper date of that document which is 1956. BWSR has a copy of the document submitted as part of the exhibits and has retained an original copy of the document in our possession which show 1956 as the original publication date. Although it is unknown, there may have been a 1971 reprint of the document, but that document is not in our possession. As an aside BWSR intends to reproduce copies of this document in electronic fashion and post it on our website within the next year to allow persons interested in understanding the wetland typing classification in more detail to review copies of this historical and out-of-print document.

Section 8420.0122, Item N – Page 1040

This item was inadvertently stricken from the Proposed Rule language and needs to be reinstated.

Section 820.0122, Subpart 1, Item A – Page 1040

The language in the last sentence after the words "set-aside" needs to be reinstated in order to retain the limitation for this exemption to wetland types 1 and 2. The term "set-aside" is stricken as it is no longer part of the Federal Farm Program nomenclature.

Section 8420.0122, Subpart 7, Item B – Page 1042

The language here having been proposed for changes will be reinstated to its existing configuration as the changes that were proposed are different than what is listed in the statute. (See MN Statute 103G.2241, Subd 7, Item 2.)

Section 8420.0122, Subpart 9, Item E – Page 1043

Many comments were received regarding the method prescribed to do wetland typing under the "deminimis" exemption. This exemption is frequently applied and requires that the wetland be typed according to

Circular 39 before the deminimis amount can be accurately determined. This language had a great deal of discussion within the stakeholder group and we believed we had a solution crafted, but upon further review and comment we believe an amendment to reduce the distance prescribed on the second line of Item D to 300 feet rather than 1,000 feet is warranted. Exhibits may be used to demonstrate that wetland typing requires professional judgment as well as practicality especially in areas where wetlands are large and continuous for many miles without boundary breaks. We believe replacing the 1,000 feet distance with a 300 feet distance is a better practical way of determining the wetland type as it is more reasonable area for the field evaluation to assess than is 1,000 feet. For example, a circle with the 1,000 feet radius would require evaluation of 72 acres of land whereas a circle with a radius of 300 feet covers only 6.5 acres of land. Since the guidance here is only for wetlands over 40 acres, wetlands that are smaller will be typed according to *Circular 39* standards which generally prescribe a single wetland type for the wetland. However, for larger wetlands (greater than 40 acres), due to the practicality of making field evaluations, an estimate of the wetland type as that within 300' of the deepest water regime will allow for a fair and more consistent application of this exemption.

Also, we are making a proposed change to the last line of Item D and inserting the phrase "in a wetland that is impacted by" after the word "exemption" and deleting the word "on." This language was agreed to at the final stakeholder meeting as a better way of understanding how to apply this exemption in circumstances where linear projects may impact multiple wetlands.

Section 8420.0222, Item C – Page 1044

Several comments mentioned that local governments may have conflict-of-interest circumstances arise if they are able to charge fees for assistance to landowners and then also be in a position to review and approve their applications. The language in Subpart 2, Item C is a direct restatement of the statute (MN Statute 103G.2242, Subd 5). BWSR has previously provided guidance to local government units avoiding conflict-of-interest scenarios and believes that this guidance is sufficient to address any concerns related to comments received (see Exhibit).

Section 8420.0210, 5th Paragraph – Page 1044

Many comments were received related to proposed language in four places the first of which occurs here providing an exception to the 60-day review period prescribed under MN Statute 15.99. This exception was developed to remedy circumstances where applications to impact wetlands are received late in the year and may not allow sufficient time to conduct a field review necessary to verify information submitted which may have been collected earlier during the growing season. Although BWSR believes the proposed language is justifiable and helpful, we have agreed to exclude it in the rule and rather provide guidance to local governments as each local government has some flexibility as to how they carry out the WCA provisions. Prescribing a uniform requirement for all local governments is likely not the best way to accomplish the goal of giving both local governments and landowners some direction on when field review work can and needs to be done as part of the application process.

Section 84.20.0220, 3rd Paragraph – Page 1045

Again, we are striking the exception language to MN Statute 15.99. Also, in Item B we are proposing to insert the word "excavation" before the word "work" in order to be clear that the work of removing debris is allowed under a no-loss as long as the excavation work does not entail subsequent draining or filling which is not intended as part of this no-loss determination.

Section 8420.0225, Item C – Page 1045

Again, the proposal is to remove the language that had provided for an exception to MN Statute 15.99.

Section 8420.0230, Subpart 2 – Page 1046

Again, the proposal is to remove the language that had provided for an exception to MN Statute 15.99.

Section 8420.0240, 2nd Paragraph, 3rd to the last sentence – Page 1047

BWSR proposes to delete the language “is called” and replace it with “makes a recommendation” to be correct in the responsibilities of what the Technical Evaluation Panel (TEP) does. Also, in the same paragraph BWSR proposes to add a sentence at the end that states “If the local government unit does not agree with the Technical Evaluation Panel recommendation, the reasons for the disagreement shall be part of the local government unit’s record of decision.” This is being added so that if and when local government unit decisions are appealed (see part 8420.0250), an assessment of the technical information provided by the Technical Evaluation Panel can be compared with the local government unit’s consideration of that same information as part of their decision-making. This is often a critical element of rendering decisions that are appealed and requires that a point of contention be documented and preferably resolved (or at least documented) as part of the local government unit decision.

In paragraph 3 on Page 1047 there were several comments about the Technical Evaluation Panel role in Wetland Conservation Act determinations. An Exhibit will show the general process of application and decision and the roles of the landowner or applicant, the Technical Evaluation Panel (TEP), and the local government unit (LGU). In this process, the local government unit is the decision-maker whereas the Technical Evaluation Panel is providing assessment and recommendations principally on the technical aspects of proposed projects. BWSR has previously sought guidance from the Attorney General’s Office on application of the Open Meeting Law to the Technical Evaluation Panel assessments and recommendations. This is also included as an Exhibit. We have proposed language to be certain that landowners/applicants have been given prior notice of work that will involve access to their property. However, trespass laws regulate intrusion upon another’s property and those laws generally apply to non-law enforcement government officials therefore no rule amendments to that point are needed.

Section 8420.0260, Item B, Line 3 – Page 1048

BWSR proposes to delete the word “expertise” and replace it with the word “experience” based on comments from some that questioned whether “expertise” implied a level of knowledge that was not based on practical experience. BWSR believes that “experience” is a better term to use in describing what is expected of local government staff applying the Wetland Conservation Act.

Section 8420.0505 – Page 1053

Several comments question whether the wetland banking plans previously approved needed to comply with proposed changes to the rule. That was never the intention and an oversight in the rule drafting inadvertently omitted the term “banking plan” in line 1 of MN Rule 8420.0505 and therefore, we are proposed to insert it.

Section 8420.0510 on Line 2 of Subpart 1 – Page 1053

Comments that the language “convert wetlands to non-wetlands” was unclear and inconsistent with the scope of the rule were received and therefore, we propose to replace the word “convert” with “impact” and delete the phrase “to non-wetlands” to be consistent with the Scope of regulation (part 8420.0105).

Section 8420.0520, Subpart 3, Item C, Subitem 2 – Page 1054

Several comments questioned the language that seemed to imply that the local government unit was making determinations about alternatives and the language was unclear as to who was to generate the alternatives. We propose language on the first line of Subitem 2, which would delete the word “determine” and replace it with the word “evaluate” and insert the word “proposed” before the word “feasible” to make it clear that local governments evaluate proposals for alternatives that are submitted by applicants.

Section 8420.0530, Item D, Sub Item 14 – Page 1056

Several comments question the reasonableness of maintaining control over invasive and non-native plant species on replacement wetlands. While clearly control of noxious weeds and invasive and non-native plant species is a necessary aspect of nearly all replacement plans in order to meet the goals of the WCA as stated in the Introduction above, it is impossible to prescribe the exact level of acceptability for these undesirable species on a given replacement site due to the wide variety of landscape differences and land use influences across the state. We believe removing the language on the second to the last line of Page 1056 beginning with “such” and continuing through the end of that item is warranted as there many other species that are meet the on invasive and non-native plant criteria. Furthermore, we believe the reasonable level of management for these species is that they be controlled. “Control” implies that there is a plan and related action to limit them from becoming dominant and if they do, a plan to correct that circumstance as compared with wetlands of a similar nature and similar location. A related change is proposed in Section 8420.0550.

Section 8420.0540, Subpart 2, Item A – Page 1057

We propose to add a statement at the end of the second sentence, which would state “and restoration of completely impacted wetlands is generally preferred over other methods of replacement.”

This language was suggested by the Department of Natural Resources and is valid in that we are providing more options for replacement that do not begin with completely impacted wetlands but rather with partially impacted wetlands. Restoration of completely impacted wetlands is more likely to ensure the Wetland Conservation Act goal of no-net loss of “wetland quantity” is met in a more directly measurable way, therefore it has some preference.

Section 8420.0541, Subpart 3, Item A – Page 1057, Subpart 6 – page 1058

The most frequently commented on topic during the public notice process related to the installation, size and crediting for upland buffers adjacent to replacement wetlands. There are two locations in the rule where upland buffer credit language has been proposed, the first of which is here and the second of which is in Subpart 6. There is no debate that wetland areas are enhanced and their functions improved if an upland buffer is established in the perimeter of the wetland. These buffers provide important water quality and wildlife habitat functions. The buffers provide filtration of surface runoff of both sediment and nutrients attached to sediments and provide areas for nesting, foraging, and predator escape for a variety of game and non-game wildlife species including waterfowl and amphibians. The literature on the appropriate size of wetland buffers is varied and the most relevant pieces of the literature are submitted as part of an Exhibit.

Obviously, the bigger the buffer the more function that is provided. However, there is both a point of diminishing return and a points of practical application that need to be considered. The point of diminishing return is generally well beyond where it practically is feasible and reasonable to install buffers especially in areas where land for development and other uses is valuable and limited. The Wetland Conservation Act does not regulate activities in upland buffers *unless* those buffers have been *chosen* to be established or created as part of a replacement of a wetland impact elsewhere. (Note: some cities have instituted wetland buffer regulations in their local ordinance). Therefore, installation of any wetland buffer on upland is voluntary in that it can be accomplished also by establishing more wetlands in the same or another location. Nonetheless, given the literature assessment, and considering the reasonableness and practicality of applying the scientific information about wetland buffers on lands of various configurations and locations, we propose to make the following changes.

In Subpart 3, Item A, Page 1057, line 4 we propose to delete the language “that is contiguous with the restored wetland” and in line 5 delete the word “2.5 acres or less” and replace it with “in municipal areas” and delete the language “greater than 2.5 acres” and replace it with “in non-municipal areas”. Since Subpart 3 is a new addition to the rule which will allow the opportunity to establish new wetland credits (NWC) for

areas that are already wetlands (albeit, degraded wetlands), we believe that 50 and 100 foot buffer widths are justifiable and necessary wetlands that are degraded often are so because of upland land uses and thus establishing larger buffer areas is critical to assuring that these previously degraded wetlands will be successfully restored and provide full functions and values in order to replace wetlands that have been drained, filled or excavated elsewhere.

Subpart 6 prescribes the upland buffer area that can be established contiguous to new wetland areas either created or restored from previously converted wetlands. In this setting we believe a reduction from 50 feet to 25 feet for wetlands in municipal areas and a reduction from 100 to 50 feet for wetlands in non-municipal areas is reasonable. We also believe that providing 100 percent rather than 75 percent credit for the buffer area as compared to the replacement wetland area is warranted. This is proposed as the literature does show that a 25 feet buffer is the absolute minimum to achieve some benefit for stormwater management purposes and many wetlands within the municipal areas are providing some of those functions. While improvements to the wildlife habitat function of wetlands is also very important, it is unavoidably true that wildlife habitat in municipal areas has already undergone some permanent degradation and cannot be expected to fully regain what it was before development. The reasonableness of these changes is partly based on the fact that the buffer area is exponentially proportional to the width of the buffer and in areas where land value is high and land area for development is limited, a 50 foot buffer requirement would mean that very few wetland replacement site proposals would offer it.

Section 8420.0541, Subpart 10, Item A, Sub Item 1 – Page 1058

Several comments question the need for a local government unit to have an active Stormwater Management Plan to receive credit for water quality treatment areas. BWSR believe that this is critical in order to maintain and manage these sites over time as they are, by design, planned to have sediment and other deposition that will degrade their capacity and function over time. Also, MN Statute 103G.2242, Subd. 12(c)(4) prescribes this requirement.

Section 8420.0544, Item D – Page 1060

Some comments questioned the changes from “public transportation” to “public road” in this section. MN Statute 103G.222, Subd 1, Item L clearly indicates that the option for a streamlined application and approval process as well as the requirement to have the State take care of the replacement of the wetlands lost due to work on the existing public road projects was solely for public road projects. Appropriation language (see Exhibit) that allocated the funding for the wetland replacement also indicates that it was limited to public road projects. Other public transportation projects do have flexibility provided by the statute (see M.S. 103G.222, Subd. 3) on the location of where they are allowed to establish replacement sites, but the streamlined process and State paying for the mitigation is clearly limited to public *road* projects.

Section 8420.0548, Subpart 2 – Page 1063

Language suggested by the Department of Natural Resources would insert the following at the end of the first sentence “subdivision 7, or Minnesota Rule 6212.1800 and the commissioner does not authorize the taking”. Also, on line 4 of subpart 2 insert the phrase “and non-game research” after “natural” and insert the phrase “or the United States Fish and Wildlife Service” after the word “program”.

Section 8420.0549, Subpart 3, Item C – Page 1068

A typo on line 2 requires that the word “replacement” in its first occurrence be replaced with the word “impacted” so that the first sentence would read “The replacement wetland is in the same watershed as the impacted wetland”.

Section 8420.0550, Subpart 2, Item C – Page 1072

In the second line delete the phrase “subitem (1)” and in line 6 delete the phrase “prevent and manage” and replace it with “control”. As stated previously in Section 8420.0530, we believe that “control” implies a reasonable level of effort to prevent and minimize the invasion of non-native and invasive species. The deletion of the phrase “subitem (1)” is necessary because *all* of Item D is relevant to the replacement plan requirement.

Section 8420.0720, Subparts 7, 8, 10 – Page 1075

In order to provide better phrasing, insert a period after “equivalent” in line 2 and insert the phrase “wetland banking credits may also be” before the word “transferred” on line 2. Subpart 8, insert the sentence at the end of this subpart that says “this subpart does not apply to State land”. This is necessary to clarify that a State conservation easement is redundant if it were to be applied on land and its already in the ownership or control of the State of Minnesota. In Subpart 10, delete all language after the word “marked” in the first line and insert the phrase “As prescribed in the conservation and access easement” prior to the word “the” in the first line. The explanation for this change is that marking of boundaries is in some cases necessary, but depends on the size, location and surrounding land uses of the property and these unique factors can be addressed better in the conservation and access easement rather than made a separate requirement in rule.

Section 8420.0740, Item J – Page 1078

The typo on line 7, the word “depositor” should be stricken through and the phrase “wetland banking plan applicant” should be underlined.

Section 8420.0760 – Page 1079

We will make a change to provide better sentence structure by inserting a period after the word “monitoring” deleting the phrase “provided that” and capitalizing “The”.

Section 8420.0760, Item F – Page 1080

This language was added to address circumstances where landowner, applicant, and account holders have a disagreement with an agency decision to deposit or withdraw or otherwise impose conditions on their accounts. Since in Part 8020.0730, Subpart 2, we are making it clear that the State Wetland Bank under the Board of Water and Soil Resources has responsibility for consistency and accuracy in order to maintain its legitimacy. There is a clear need for this State role as wetland banking credits are bought, sold, and exchanged many times across local government boundaries. If there is a disagreement with a local decision under a wetland banking plan, those obviously can also be appealed to the Board of Water and Soil Resources under Part 8420.0250. However, language here allows for appeal directly to the Board’s Dispute Resolution Committee if an account holder has a disagreement. We are proposing no changes here, but just responding to comments received regarding administration of State Wetland Bank.

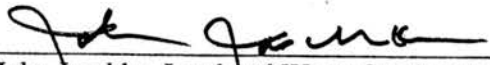
Conclusion

The Board of Water and Soil Resources believe that the changes proposed are an improvement over the proposed Rule published on February 11, 2002 in the *State Register* and are reflective of the substance of the comments received prior to, during, and after the official public comment period which expired on March 13, 2002. BWSR has attempted to balance the interest of local governments who administer the program, State agencies which are both subject to and provide oversight of the program, and landowners -- both rural and urban -- who are required to comply with the provisions of the Wetland Conservation Act.

We believe that the earnest and focused stakeholder input which began with the development of the consensus legislation in 2000 and again in 2001, continued with the non-controversial implementation of the exempt rules, and most recently resulted in a focus on permanent rule development has allowed us to develop a proposed rule which balances the interests of many and accomplishes the goal and that the statute

originally set forth in 1991 and in the several amendments since then. We also believe that these rule changes will accommodate the necessary interaction and achieve consistency goals between the rules which will be adopted soon by the Department of Natural Resources related to Public Waters (Chapter 6115). For all these reasons, we believe that the recommendations for these proposed changes should be considered and accepted.

Signature:


John Jaschke, Land and Water Section Administrator

Date:

3/25/02

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Board of Water and Soil Resources

Rules Relating to the Wetland Conservation Act (WCA) - Chapter 8420 EXHIBIT LIST

- Exhibit 1: The request for comments, as published in the *State Register* on June 25, 2001.
- Exhibit 2: Agency Board resolution for rule adoption date October 25, 2001.
- Exhibit 3: The proposed rules (Revisor's document RD3282), including the Revisor's approval, dated January 24, 2002.
- Exhibit 4: The Statement of Need and Reasonableness (SONAR), dated January 19, 2002.
- Exhibit 5: Addendum to the SONAR, dated March 25, 2002.
- Exhibit 6: A copy of the transmittal letter and a certificate, as signed and dated January 31, 2002, showing that the agency sent a copy of the Statement of Need and Reasonableness to the Legislative Reference Library.
- Exhibit 7: The Dual Notice of Intent to adopt rules, signed and dated January 28, 2002, as mailed.
- Exhibit 8: Office of Administrative Hearings' Approval of Notice Plan for Dual Notice, as signed and dated January 28, 2002.
- Exhibit 9: Certificate of Mailing the Dual Notice in accordance with the notice plan, as signed and dated February 7, 2002, to the parties on the agency's rulemaking list and the additional parties identified in the notice plan. Also, the certificate of agency mailing list, as signed and dated.
- Exhibit 10: Certificate of Mailing the Dual Notice and the Statement of Need and Reasonableness, as signed and dated February 5, 2002 to legislators as required by Minnesota Statutes, Section 14.116.
- Exhibit 11: The rule development schedule, stakeholders list, statewide news release dated February 4, 2002 announcing the proposed rules and the public information meetings, and a paper copy of information on the rules posted on the agency's web page, as provided in the notice plan.
- Exhibit 12A: Written letters with comments and requesting a hearing in response to the Dual Notice.
- Exhibit 12B: Information session comment submittals requesting a hearing.
- Exhibit 12C: Information session comment submittals **not** requesting a hearing.
- Exhibit 12D: Written letters with comments **not** requesting a hearing in response to the Dual Notice.
- Exhibit 13: Certificate of Mailing the notice to those persons who request a hearing dated March 20, 2002 And the Notice of Hearing to Those Who Requested a Hearing also dated March 20, 2002.
- Exhibit 14: Agency (BWSR) proposed rule changes based on comments received. Handwritten markup (by John Jaschke) of February 11, 2002 *State Register* pages 1033-1080.

- Exhibit 15: Opening Statement Summary with Proposed Rule Changes and Statement of Need and Reasonableness Amendments to Support Proposed Changes.
- Exhibit 16A: Minn. Laws of 2000, Chapter 382.
- Exhibit 16B: Minn. Laws of 2001, Chapter 146.
- Exhibit 17: DNR Public Waters (Chapter 6115) and BWSR WCA (Chapter 8420) current exempt rule booklet (baby blue).
- Exhibit 18: "Wetlands in Minnesota" tri-fold color brochure.
- Exhibit 19: WCA - General Procedures for Determinations (transparency).
- Exhibit 20: Wetlands of the United States - U.S. Fish and Wildlife Circular No. 39 (1956) excerpts.
- Exhibit 21: Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et. al., December 1979) excerpts.
- Exhibit 22: National Wetland Inventory (NWI) Map example, Motley NW, Minn. (transparency).
- Exhibit 23: BWSR Guidance: Wetland Delineations by WCA LGU and SWCD Staff (May 12, 1997).
- Exhibit 24: Office of the Attorney General memo Re: Technical Evaluation Panel and Open Meeting Law (June 29, 1994).
- Exhibit 25: Minn. Laws of 2000, Chapter 492, Section 9 excerpt (State appropriation for wetland replacement due to public road projects).
- Exhibit 26: DNR - Ecological Services (Doug Norris) memo Re: Wetland Buffers, with attachments (October 17, 2001).
- Exhibit 27: "Sustaining MN Forest Resources: Voluntary site-level guidelines for landowners, loggers, and resource managers" (February 1999) excerpts.
- Exhibit 28:
- Exhibit 29:
- Exhibit 30:
- Exhibit 31:
- Exhibit 32:
- Exhibit 33:
- Exhibit 34:
- Exhibit 35:

Agency (BWSR) proposed
changes based on comments
received

3/25/02

John Jaschke

Board of Water and Soil Resources

Proposed Permanent Rules Relating to Wetlands

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing are Received

Proposed Amendments to the Wetland Conservation Act Rules; *Minnesota Rules*, Chapter 8420

Introduction. The Minnesota Board of Water and Soil Resources (BWSR) intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28, and rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on March 13, 2002, a public hearing will be held in the Bell and Alexander Room, St. Cloud Civic Center, 10 - 4th Ave. South, St. Cloud, Minnesota, 56301 (phone number 1-800-450-7272), starting at 1:30 p.m. on March 26, 2002 and continuing until those present have been heard, and reconvening in the same location at 7:00 p.m. on March 26, 2002. To find out whether the rules will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after March 13, 2002 and before March 26, 2002.

Agency Contact Person. Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to the agency contact person. The agency contact person is: John Jaschke at MN BWSR, 1 West Water Street, Suite 200, St. Paul, MN 55107, phone: (651) 297-3432, fax: (651) 297-5615, email: john.jaschke@bwsr.state.mn.us

Subject of Rules and Statutory Authority. The proposed rules are about amendments to the Wetland Conservation Act (WCA) rules. The BWSR is proposing rule amendments that will convert existing temporary exempt rules to permanent rules. The proposed rules incorporate legislative changes from *Laws of 2001*, Chapter 146, *Laws of 2000*, Chapter 382, and *Laws of 1998*, Chapter 312. The proposed rules make additional changes to clarify, simplify and improve the effectiveness of the rules. The statutory authority to adopt the rules is *Minnesota Statutes 2000*, sections 103B.3355 and 103G.2242. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed. Also, a free copy of the rules is available upon request from the BWSR by contacting Debbie Anderson at 1 West Water Street, Suite 200, St. Paul, MN 55107, phone: (651) 282-9960, fax: (651) 297-5615, email: debbie.anderson@bwsr.state.mn.us

Comments. You have until 4:30 p.m. on March 13, 2002, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Proposed Rules

comment, and any change proposed. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on March 13, 2002. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and cannot be counted by the agency when determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format/Accommodation. Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The proposed rules may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must be supported by data and views submitted to the agency or presented at the hearing and the adopted rules may not be substantially different than these proposed rules. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing. The hearing scheduled for March 26, 2002, will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rules. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call the agency contact person at (651) 297-3432 after March 13, 2002, to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The hearing will be held on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Richard C. Luis is assigned to conduct the hearing. Judge Richard C. Luis can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, **phone:** (612) 349-2542 and **fax:** (612) 349-2665.

Hearing Procedure. If a hearing is held, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following the comment period, there is a five-working-day rebuttal period during which the agency and any interested person may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day response period. All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. Questions about procedure may be directed to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. The statement may also be reviewed and copies obtained at the cost of reproduction from the agency.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, **phone:** (651) 296-5148 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The rules and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality.

Proposed Rules

You may ask to be notified of the date the rules are submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure After a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date when the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date on which the agency adopts the rules and files them with the Secretary of State, and can make this request at the hearing or in writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: 28 January 2002

Name: Ronald D. Harnack
Title: Executive Director

8420.0100 PURPOSE.

This chapter implements the Wetland Conservation Act of 1991, *Laws 1991*, chapter 354, as amended by *Laws 1993*, chapter 175; *Laws 1994*, chapter 627; ~~and~~ *Laws 1996*, chapter 462; *Laws 2000*, chapter 382; and *Laws 2001*, chapter 146. This chapter shall be interpreted to implement the purpose of the act, which is to:

[For text of items A to D, see M.R. 1999]

8420.0102 INTRODUCTION.

The Wetland Conservation Act achieves the purpose in part 8420.0100 by requiring persons proposing to impact a wetland by draining, excavating, or filling to first, attempt to avoid the impact; second, attempt to minimize the impact; and finally, replace any impacted area with another wetland of at least equal function and value. As specified in greater detail in part 8420.0122, certain projects are exempt from the requirement for a replacement plan under the Wetland Conservation Act.

The Wetland Conservation Act is administered by local government units with oversight provided by the Board of Water and Soil Resources. Enforcement of the act is provided by Department of Natural Resources conservation officers and other peace officers. The Wetland Conservation Act became effective on January 1, 1992, and this chapter and portions of *Minnesota Statutes*, chapters 103A, 103B, 103E, 103F, and 103G, govern its implementation. The public is encouraged to contact their local government unit or soil and water conservation district for general information on wetlands and the interpretation of this chapter. This part is for general introductory information only. The other parts of this chapter shall control over this part.

8420.0103 WETLAND FUNCTIONS FOR DETERMINING PUBLIC VALUES.

The public values of wetlands must be based upon the functions of wetlands ~~for~~ including:

[For text of items A to F, see M.R. 1999]

G. other functions, values, and public uses as identified in board-approved wetland evaluation methods.

The board shall maintain a publicly available list of preapproved wetland evaluation methods.

8420.0105 SCOPE.

Wetlands must not be drained, excavated, or filled wholly or partially unless replaced by restoring or creating wetland areas of at least equal public value. This chapter regulates excavation in the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, and in all wetland types if excavation includes filling or draining or results in conversion to nonwetland.

This chapter does not prevent the use of the bed of wetlands for pasture or cropland during dry periods if dikes, ditches, tile lines, or buildings are not constructed and the agricultural use does not result in the drainage of the wetlands. This chapter does not prevent filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage. This chapter does not prevent control of noxious weeds if the control does not drain or fill the wetland. ~~This chapter does not prevent excavation in wetlands if done in a manner such that the wetlands are not wholly or partially drained or filled.~~

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Proposed Rules

This chapter does not apply to the public waters and public waters wetlands as defined in *Minnesota Statutes*, section 103G.005, subdivisions 15 and 15a, which have been inventoried by the commissioner of natural resources according to *Minnesota Statutes*, section 103G.201, except that:

A. for projects affecting public waters wetlands, and for public transportation projects affecting the wetland areas of public waters, when the commissioner waives the requirement for a public waters work permit consistent with chapter 6115, the local government unit shall make replacement, banking, wetland boundary, wetland type, no-loss, public road project notification, or exemption determinations; or

B. 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 this chapter in the public waters work permit.

This chapter is in addition to other regulations including those of the United States Army Corps of Engineers, United States Department of Agriculture, Minnesota state agencies, watershed districts, and local governments.

~~This chapter may be used as a means to determine compliance with the standards for physical alterations of wetlands pursuant to chapter 7050 if the standards contained in this chapter are determined by the board and the commissioner of the pollution control agency to meet or exceed those in chapter 7050 and the local government unit agrees to implement them.~~

This chapter does not apply to peat mining as defined in *Minnesota Statutes*, section 93.461, which is subject to the permit to mine and reclamation requirements of *Minnesota Statutes*, sections 93.44 to 93.51, and the rules of the commissioner adopted under those sections.

This chapter does not require state agencies to obtain local government unit approvals. However, state agencies shall coordinate with local government units when conducting activities in wetlands within the jurisdiction of the local government unit. The state agencies shall follow the same sequencing and replacement requirements as prescribed by this chapter.

In addition to the provisions of this chapter, governmental decisions on draining, excavating, and filling of wetlands are subject to *Minnesota Statutes*, chapters 116B and 116D, which provide that an action which is likely to have material adverse effects on natural resources must not be allowed if there is a feasible and prudent alternative consistent with the requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its natural resources. Economic considerations alone do not justify adversely effective actions.

8420.0110 DEFINITIONS.

[For text of subps 1 to 1b, see M.R. 1999]

Subp. 2. **Act.** "Act," when not used in reference to a specific state or federal act, means the Wetland Conservation of 1991, *Laws 1991*, chapter 354, as amended by *Laws 1993*, chapter 175; *Laws 1994*, chapter 627; and *Laws 1996*, chapter 462.

Subp. 3. **Activity.** "Activity" means draining or filling a wetland, wholly or partially, or excavating in permanently and semi-permanently flooded areas of type 3, 4, or 5 wetlands.

Subp. 4. **Agricultural land.** "Agricultural land," means land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; farmyards; associated building sites; and public and private drainage systems and field roads located on any of these lands. "Agricultural land" must be used principally for the cultivation or production of plants or farm animals and includes former agricultural land that is presently enrolled in conservation easements.

Subp. 5. [Repealed, 22 SR 1877]

Subp. 5a. **Applicant.** "Applicant" is a person, corporation, government agency, or organization that applies for an exemption, no-loss, wetland boundary, wetland type, replacement plan, or banking plan determination or equivalent, or someone who makes an application to withdraw wetland banking credits from the wetland bank.

[For text of subps 6 to 10, see M.R. 1999]

Subp. 10a. **Contractor.** "Contractor" means an individual, business, or other organization providing a product or service to a landowner or the landowner's agent.

[For text of subp 11, see M.R. 1999]

Subp. 12. **Day.** "Day" means working days when used in a time period of 15 days or less and a calendar days when used in a time period greater than 15 days day unless specified otherwise. The day of the event shall not be used in counting any time period of time.

Subp. 13. [Repealed, 22 SR 1877]

Proposed Rules

Subp. 13a. Degraded wetland. "Degraded wetland" means a wetland that provides minimal wetland function and value due to human activities such as drainage, diversion of watershed, filling, excavating, pollutant runoff, and vegetative or adjacent upland manipulation.

[For text of subps 14 to 16, see M.R. 1999]

Subp. 17. Excavation. "Excavation" means the displacement or removal of the substrate, sediment, or other materials by any method.

Subp. 18. Fill. "Fill" means any solid material added to or redeposited in a wetland that would alter its cross-section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a nonwetland. It does not include posts and pilings for linear projects such as bridges, elevated walkways, or powerline structures, or structures traditionally built on pilings such as docks and boathouses. It does include posts and pilings that result in bringing the wetland into a nonaquatic use or significantly altering the wetland's functions and values, such as the construction of office and industrial developments, parking structures, restaurants, stores, hotels, ~~multifamily~~ housing projects, and similar structures. It does not include slash or woody vegetation, if the slash or woody vegetation originated from vegetation growing in the wetland and does not impair the flow or circulation of water or the reach of the wetland.

[For text of subps 18a to 20a, see M.R. 1999]

Subp. 20b. Hayland. "Hayland" means an area that was mechanically harvested or that was planted with annually seeded crops in a crop rotation seeded to grasses or legumes in six of the last ten years ~~prior to January 1, 1991.~~

[For text of subps 21 and 22, see M.R. 1999]

Subp. 23. Impact. "Impact" means a loss in the quantity, quality, or biological diversity of a wetland caused by draining ~~or~~ filling, or excavating, as described in part 8420.0105 (slope).

Subp. 24. Impacted wetland. "Impacted wetland" means a wetland that has been ~~drained or filled, partially or wholly, and is subject to replacement~~ subjected to an impact.

[For text of subp 25, see M.R. 1999]

Subp. 26. [Repealed, 22 SR 1877]

Subp. 27. [Repealed, 22 SR 1877]

[For text of subp 28, see M.R. 1999]

Subp. 29. Landowner. "Landowner" means a person or entity having the rights necessary to drain, excavate, or fill a wetland, or to establish and maintain a replacement or banked wetland. Typically, the landowner is a fee title owner or a holder of an easement, license, lease, or rental agreement providing the necessary rights. The right must not be limited by a lien or other encumbrance that could override the obligations assumed with the replacement or banking of a wetland.

[For text of subps 29a and 30, see M.R. 1999]

Subp. 30a. Local water plan. "Local water plan" means either a watershed plan pursuant to Minnesota Statutes, sections 103B.201 to 103B.255, a comprehensive local water management plan pursuant to Minnesota Statutes, sections 103B.301 to 103B.355, or a watershed management plan pursuant to Minnesota Statutes, section 103D.401.

[For text of subp 31, see M.R. 1999]

Subp. 31a. Minor watershed. "Minor watershed" means one of the 5,600 minor watersheds established by the Minnesota Department of Natural Resources for the "1979 Watershed Mapping Project" pursuant to Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a).

Subp. ~~31a~~ 31b. New wetland credit or NWC. "New wetland credit" or "NWC" means wetland replacement credit that can be used for any portion of wetland replacement.

Subp. 31c. Native vegetation. "Native vegetation" means plant species that are indigenous to Minnesota, or that expand their range into Minnesota without being intentionally or unintentionally introduced by human activity.

Subp. 32. Nondegraded wetland. "Nondegraded wetland" means a wetland that has not been ~~partially drained or filled degraded~~ by human activities.

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Proposed Rules

Subp. 32a. Noninvasive vegetation. "Noninvasive vegetation" means plant species that do not typically invade or colonize existing, stable plant communities.

Subp. 32b. Nonwetland. "Nonwetland" means upland areas or previously converted areas that do not meet the criteria for classification as a jurisdictional wetland using the United States Army Corps of Engineers Wetland Delineation Manual (January 1987) and deepwater habitats identified using "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin et al., 1979 edition).

Subp. 32c. On site. "On site" means within or directly adjacent to a project.

Subp. 33. Pasture. "Pasture" means an area that was grazed by domesticated livestock or that was planted with annually seeded crops in a crop rotation seeded to grasses or legumes in six of the last ten years prior to January 1, 1991.

[For text of subp 34, see M.R. 1999]

Subp. 34a. Permanently and semipermanently flooded area of a type 3, 4, or 5 wetland. "Permanently and semipermanently flooded area of a type 3, 4, or 5 wetland" means the portion of a type 3, 4, or 5 wetland below the level where the water 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.

Subp. 34a, 34b. Presettlement wetland. "Presettlement wetland" means a wetland or public waters wetland that existed in this state at the time of statehood in 1858.

[For text of subps 35 to 37, see M.R. 1999]

Subp. 37a. Public value credit or PVC. "Public value credit" or "PVC" means wetland replacement credit that can only be used for the portion of wetland replacement requiring greater than required above a 1:1 ratio.

[For text of subp 38, see M.R. 1999]

Subp. 39. Public waters wetlands. "Public waters wetlands" means all types 3, 4, and 5 public waters wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), that were inventoried by the Department of Natural Resources as public waters under Minnesota Statutes, section 103G.201 chapter 6115.

Subp. 39a. Public waters. "Public waters" means public waters as defined in part 6115.0170.

Subp. 40. Replacement wetland. "Replacement wetland" means a wetland restored or created or an area designated in part 8420.0540, subpart 2, items D and E, 8420.0541, or the equivalent, to replace wetland area or public values of wetland functions lost at an impacted wetland.

Subp. 40a. Responsible party. "Responsible party" means an individual, business, or other organization causing the draining, excavation, or filling of wetlands on the property of another, with or without the landowner's permission or approval.

Subp. 41. Restoration. "Restoration" means reestablishment of an area that was historically wetlands but currently provides no or minimal wetland functions due to manmade alteration such as filling or drainage or remains as a degraded wetland.

[For text of subps 42 and 43, see M.R. 1999]

Subp. 44. [See repealer.]

[For text of subps 44a to 45, see M.R. 1999]

[For text of subp 46, see M.R. 1999]

Subp. 47. [Repealed, 22 SR 1877]

Subp. 47a. State wetland banking system, wetland bank, or bank. "State wetland banking system," "wetland bank," or "bank" means a system of identifying wetlands restored or created for replacement credit, providing for, and facilitating and tracking the exchange of wetland banking credits for projects that require replacement plans or wetland mitigation required by other local, state, or federal authorities.

Subp. 47b. Structure. "Structure" means any object erected or placed in, under, over, or anchored or attached to, a wetland area.

[For text of subp 48, see M.R. 1999]

Subp. 49. 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, petroleum products, electricity, telephone, or radio service or communications.

[For text of subps 50 and 51, see M.R. 1999]

Proposed Rules

Subp. 51a. **Wetland banking credits.** "Wetland banking credits" means acres or parts of acres of restored or created wetland or adjacent upland buffer described by type and topographic setting, or areas as described in ~~part parts~~ 8420.0540, ~~subpart 2 and~~ 8420.0541, that have been approved for deposit in the wetland bank.

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

[For text of items A and B, see M.R. 1999]

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

[For text of item D, see M.R. 1999]

¹⁹⁵⁶ [For text of subps 53 and 54, see M.R. 1999]

* Subp. 54a. **Wetland type.** "Wetland type" means a wetland type classified according to Wetlands of the United States, United States Fish and Wildlife Service Circular 39 (1971¹⁹⁵⁶ edition), as summarized in this subpart. "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin et al., 1979 edition) is a separate, parallel wetland typing that may be used to characterize components of a wetland.

[For text of items A to H, see M.R. 1999]

8420.0112 INCORPORATION BY REFERENCE.

This chapter incorporates by reference the following documents and any subsequent updates, addenda, or derivations related to them, as approved by the board:

[For text of items A to E, see M.R. 1999]

~~F. Minnesota Routine Assessment Methodology for Evaluating Wetland Functions (Board of Water and Soil Resources, Version 1.0 May 1996).~~

~~G. Minnesota Wetland Evaluation Methodology for the North Central United States (United States Army Corps of Engineers, September 1988).~~

~~H. The Hydrogeomorphic Functional Assessment Methodology (as developed by the United States Army Corps of Engineers based on Wetlands Research Program Technical Report WRP DE 3, August 1993).~~

~~I. Oregon Freshwater Wetland Assessment Methodology (Oregon Division of State Lands, December 1993).~~

~~J. Method for the Comparative Evaluation of Nontidal Wetlands in New Hampshire (New Hampshire Department of Environmental Services, March 1991).~~

~~K. E. National Wetland Inventory maps (United States Fish and Wildlife Service).~~

~~L. Anderson and Craig, 1984; G. Growing Energy Crops on Minnesota Wetlands: The Land Use Perspective, Anderson and Craig, 1984.~~

~~H. Wetland Restoration Guide, Minnesota Board of Water and Soil Resources (December 1982).~~

~~I. Vegetation in Restored and Created Wetlands, Minnesota Board of Water and Soil Resources, September 2000.~~

~~J. Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group, December 2000.~~

~~K. Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers, Minnesota Forest Resources Council, St. Paul, 1999.~~

~~L. Minnesota Construction Site Erosion and Sediment Control Planning Handbook, Minnesota Board of Water and Soil Resources and the Association of Metropolitan Soil and Water Conservation Districts, St. Paul, 1988.~~

~~M. Agriculture and Water Quality: Best Management Practices for Minnesota, Minnesota Pollution Control Agency, St. Paul, 1991.~~

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Proposed Rules

* N. Storm Water and Wetlands: Planning and Evaluation Guidelines for Addressing Potential Impacts of Urban Storm Water and Snow Melt Runoff on Wetlands, Minnesota Storm Water Advisory Group, 1997. remove strikethrough

These documents are available through the state law library, except the National Wetland Inventory maps, which are available at Minnesota soil and water conservation district offices. None of the documents are subject to frequent change.

8420.0115 SCOPE OF EXEMPTION STANDARDS.

When considering if a drain or fill activity qualifies for an exemption listed in a specified clause of *Minnesota Statutes*, section 103G.2241, the exemption standards in part 8420.0122 apply.

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 determining whether a proposed project is eligible for an exemption and to evaluate alternatives to avoid or minimize wetland impacts.

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.

These exemptions do not apply to calcareous fens as identified by the commissioner.

No exemptions apply to wetlands that have been previously restored or created as a result of an approved replacement plan. All such wetlands are subject to replacement on subsequent drainage, excavation, or filling.

~~Nonexempt~~ Wetlands ~~cannot~~ may not be partially drained, excavated, or filled in order to claim an exemption or no-loss determination on the remainder. Therefore, no exemptions or no-loss determinations can be applied to the remaining wetland that would not have been applicable before the impact. Exemptions may not be combined on a wetland that is impacted by a project.

Present and future owners of wetlands drained or filled without replacement under an exemption in part 8420.0122, subparts 1 and 2, item B, can make no use of the wetland area after it is drained, excavated, or filled, other than as agricultural land, for ten years after the draining, excavating, or filling, unless it is first replaced under the requirements of *Minnesota Statutes*, section 103G.222. Also, for ten years the wetland may not be restored for replacement credit. Except for land in public ownership, at the time of draining, excavation, or filling, the landowner shall record a notice of these restrictions in the office of the county recorder for the county in which the project is located. At a minimum, the recorded document must contain the name or names of the landowners, a legal description of the property to which the restrictions apply, a statement of the restrictions, the date on which the ten-year period expires, the name of the local government which certified the exemption, if such occurred, the signatures of all owners, and an acknowledgment.

A person conducting an activity in a wetland under an exemption in part 8420.0122 shall ensure that:

- A. appropriate erosion control measures are taken to prevent sedimentation of the water;
- B. the activity does not block fish activity in a watercourse; and
- C. the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices as listed in part 8420.0112, and water resource protection requirements established under *Minnesota Statutes*, chapter 103H.

8420.0122 EXEMPTION STANDARDS.

Subpart 1. Agricultural activities.

A replacement plan for wetlands is not required for:

* A. activities in a wetland that was planted with annually seeded crops, or 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. Documentation, such as aerial photographs, United States Department of Agriculture records, or affidavit of landowner must be required by the local government unit to show and use as evidence for this exemption. Set aside land used for this exemption must be wetland types 1 and 2. remove strikethrough

B. activities in a wetland that is or has been enrolled in the federal Conservation Reserve Program under United States Code, title 16, section 3821, that:

(1) was planted with annually seeded crops, or 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

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

Federal documentation that the wetland is or has been enrolled in the federal Conservation Reserve Program may be used as evidence for this exemption. The landowner must also meet the same requirements of item A, except that the years required are at

least six of the ten years preceding the year of enrollment in the federal Conservation Reserve Program. The landowner must also state in writing that the wetland was not restored with assistance from a public or private wetland restoration fund, or that the restoration was done under a contract or easement providing the landowner with the right to drain the restored wetland;

[For text of items C to G, see M.R. 1999]

H. agricultural activities that are:

(1) in a wetland that is on agricultural land annually enrolled in or determined to be eligible for benefits under the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program. The federal Food, Agricultural, Conservation, and Trade Act of 1990 has been replaced with the federal Agriculture Improvement and Reform Act of 1996, Public Law Number 104-127; or

(2) subject to subsequent federal farm program restrictions that meet minimum state standards under this chapter and Minnesota Statutes, 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. The approved conditions and standards shall be noticed by the board to local government units and published in the State Register. The conditions and standards shall take effect 30 days after publication and remain in effect unless superseded by subsequent statute, rule, or notice in the State Register. This exemption may be applied to agricultural land annually enrolled in the federal Agriculture Improvement and Reform Act Farm Program as long as wetlands are not drained, excavated, or filled beyond what would have been allowed under the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3281, subsection (a), clauses (1) to (3), as amended, subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991; is:

(a) allowed under the other exemptions in this part;

(b) necessary to replace, maintain, or repair existing private drainage infrastructure with a capacity not to exceed that which was originally constructed; or

(c) replaced at a ratio of 1:1 or greater under United States Department of Agriculture provisions as supported by documentation from the United States Department of Agriculture may which must be used included as evidence to support this exemption.

If the activity would result in loss of eligibility, the landowner cannot qualify for the exemption ~~by withdrawing from the program.~~

Subp. 2. **Drainage.**

[For text of items A and B, see M.R. 1999]

C. A replacement plan is not required for draining, excavating, 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 conducted or authorized by a public drainage authority pursuant to Minnesota Statutes, chapter 103E.

D. A replacement plan is not required for draining, excavating, 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.

For items C and D, the landowner must provide documentation that the wetlands which will be partially or completely drained by the maintenance have not existed for more than 25 years. Documentation may include, but is not limited to: aerial photographs, climatological records, soil borings, vegetative analysis, elevation surveys, or sworn affidavits.

E. A replacement plan is not required for draining, excavating, 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.

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Proposed Rules

[For text of item F, see M.R. 1999]

G. Wetlands and public waters of all types that ~~would~~ could be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve program established under *Minnesota Statutes*, 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.

Subp. 3. **Federal approvals.** A replacement plan for wetlands is not required for activities described in items A and B.

A. Activities exempted from federal regulation under *United States Code*, title 33, section 1344(f), as in effect on January 1, 1991.

The local government unit may certify the exemption only if the landowner furnishes proof of qualification for one of the exemptions from the United States Army Corps of Engineers.

This exemption does not apply to a project with the purpose of converting a wetland to a nonwetland, either immediately or gradually, or converting the wetland to another use, or when the fill will result in significant discernible change to the flow or circulation of water in the wetland, or partly draining it, or reducing the wetland area.

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

~~This exemption is for the following nationwide permits as they existed on January 1, 1991, and includes the associated regional conditions: 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 25, issued under *Code of Federal Regulations*, title 33, section 330.5. The local government unit may certify such an exemption only if the applicant furnishes proof of qualification for one of these nationwide permits from the United States Army Corps of Engineers. Nationwide permit 14 for a new road does not qualify for this exemption, nor do nationwide permits under numbers not listed in this exemption.~~

~~To qualify for a nationwide permit, the applicant for a United States Army Corps of Engineers permit must meet any regional conditions imposed by the United States Army Corps of Engineers, and must obtain from the Minnesota Pollution Control Agency an individual section 401 certification when required section 404 of the federal Clean Water Act, *United States Code*, title 33, section 1344, or section 10 of the Rivers and Harbors Act of 1899, *United States Code*, title 33, section 403, and regulations that meet minimum state standards under this chapter and that have been approved by the board of water and soil resources, the department of agriculture, the department of natural resources, and the pollution control agency.~~

[For text of subp 4, see M.R. 1999]

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

- A. beaver dam construction;
- B. blockage of culverts through roadways maintained by a public or private entity;
- C. actions by public or private entities that were taken for a purpose other than creating the wetland; or
- D. any combination of items A to C.

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

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

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

[For text of subp 6, see M.R. 1999]

Subp. 7. **Forestry.** A replacement plan for wetlands is not required for:

[For text of item A, see M.R. 1999]

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

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(CITE 26 SR 1042)

Proposed Rules

This exemption is for roads constructed for the primary purpose of providing access for the conduct of silvicultural activities.

[For text of subp 8, see M.R. 1999]

Subp. 9. De minimis.

A. Except as provided in items B ~~to D~~ and C, a replacement plan for wetlands is not required for draining, excavating, or filling the following amounts of wetlands ~~as part of a project, regardless of the total amount of wetlands filled as part of a project:~~

(1) 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone and that are not fringe areas of type 3, 4, or 5 wetlands 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 and that are not fringe areas of type 3, 4, or 5 wetlands 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 and that are not fringe areas of type 3, 4, or 5 wetlands in a less than 50 percent area;

(4) 400 square feet of wetland types not listed in subitems (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 wetland protection zone in areas beyond the building setback if the wetland is not a type 3, 4, or 5 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 subitem, the local shoreland ordinance applies.

B. The amounts listed in item A may not be combined on a project.

C. This exemption no longer applies to a landowner's portion of a wetland when the proposed project impact area and the cumulative area of the landowner's portion drained, excavated, or filled since January 1, 1992, is the greater of:

(1) the applicable area listed in item A, if the landowner owns the entire wetland;

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

(3) 400 square feet.

D. ~~Persons proposing to conduct an activity under this subpart shall contact the board at a toll-free telephone to be provided for information on minimizing wetland impacts. Failure of the person to call does not constitute a violation of this subpart.~~

E. For purposes of this subpart, for wetlands greater than 40 acres, the wetland type may be determined to be the wetland type with the deepest water regime within the wetland and within 1,000³⁰⁰ feet of the impact. This exemption may not be combined with another exemption ~~on a project in this part.~~ in a wetland that is impacted by

Subp. 10. **Wildlife habitat.** A replacement plan for wetlands is not required for:

A. excavation or the associated deposition of spoil ~~resulting from excavation~~ within a wetland for a wildlife habitat improvement project, if:

(1) the area of deposition, and excavation if within the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded with native, noninvasive species to prevent erosion;

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

(3) the project will provide wildlife habitat improvement as certified by the soil and water conservation district or technical evaluation panel using the "Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group, December 2000" or similar criteria approved by the board; or

B. duck blinds.

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Proposed Rules

8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.

Subpart 1. Determinations of local government unit. The local government unit responsible for making exemption, wetland type, wetland boundary, and no-loss determinations and approving replacement and wetland banking plans shall be determined according to items A to E D.

[For text of items A and B, see M.R. 1999]

C. If the activity in a wetland is located in two jurisdictions, the local government unit ~~shall be~~ is the one exercising zoning authority over the project or if both have zoning authority, the one in which most of the wetland loss will occur. If no zoning permits are required, the local government unit ~~shall be~~ is the one in which most of the wetland loss will occur. If an activity will affect wetlands in more than one local government unit, the board will coordinate the project review to ensure consistency and consensus among the local government units involved.

D. In those cases where an activity will occur on state land, the local government unit is the state agency, or the agency's designee, with administrative responsibility for that land.

The board will resolve all questions as to which government entity is the responsible authority, applying the guidelines in items A to E D.

Notwithstanding items A to E D, the Department of Natural Resources shall be the approving authority for activities associated with projects requiring permits to mine under *Minnesota Statutes*, section 93.481, and for projects affecting calcareous fens.

Subp. 2. Local government unit duties.

A. A local government unit must provide knowledgeable and trained staff to manage the program or secure a qualified delegate. Otherwise, the board may declare a moratorium as prescribed in part 8420.0260 or take other appropriate legal action to assure proper implementation and compliance with this chapter. The board may establish standards and requirements for training, experience, and certification.

B. The local government unit may place the decision authority for exemption, no-loss, wetland boundary and type, replacement plan, and wetland banking determinations with local government unit staff according to procedures it establishes. For final determinations made by staff, the local government unit must establish a local appeal process that includes a public hearing before appointed or elected officials.

C. 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 this chapter and for technical and administrative assistance to landowners in processing other applications for projects affecting wetlands.

8420.0210 EXEMPTION DETERMINATIONS.

A landowner intending to drain or fill a wetland without replacement, claiming exemption under part 8420.0122, may contact the local government unit before beginning draining or filling activities for determination whether or not the activity is exempt. A landowner who does not request a determination may be subject to the enforcement provisions in part 8420.0290 and *Minnesota Statutes*, section 103G.2372. The local government unit must keep on file all documentation and findings of fact concerning exemption determinations for a period of ten years.

~~Local government units may offer exemption certificates as part of the wetland program within their jurisdiction. An exemption applies may apply whether or not the local government unit chooses to issue certificates of has made an exemption determination. If the wetland qualifies for an exemption, and the landowner requests a certificate of an exemption determination, then the local government unit must issue make one.~~

The landowner applying for exemption is responsible for submitting the proof necessary to show qualification for the particular exemption claimed, including proof of the requisite property rights to do the activity. The local government unit may evaluate evidence for an exemption without making a determination.

~~The local government unit may place the decision authority for exemption applications with the zoning administrator, or establish other procedures it considers appropriate.~~

The local government unit decision shall be based on the exemptions standards in part 8420.0122. If the decision requires a finding of wetland size or type, the local government unit should seek the advice of the technical panel as described in part 8420.0240. The local government unit decision must be made in compliance with *Minnesota Statutes*, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application, ~~except that applications may be considered incomplete until field verification can be accomplished as soon as suitable field conditions exist, as determined by the local government unit. Applicants shall be notified of such extensions according to procedures in Minnesota Statutes, section 15.99, subdivision 2, paragraph (f).~~ The local government unit decision must be mailed sent to the landowner, members of the technical evaluation panel, the watershed district or water management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy within ten working days of the decision.

8420.0220 NO-LOSS DETERMINATIONS.

A landowner unsure if proposed work will result in a loss of wetland may apply to the local government unit for a determination. A landowner who does not request a determination may be subject to the enforcement provisions in part 8420.0290 and *Minnesota Statutes*, section 103G.2372. The local government unit must keep on file all documentation and findings of fact concerning no-loss determinations for a period of ten years.

The landowner applying for a no-loss determination is responsible for submitting the proof necessary to show qualification for the claim, including proof of the requisite property rights to do the activity. The local government unit may evaluate evidence for a no-loss claim without making a determination.

~~The local government unit may place the decision authority for no-loss applications with the zoning administrator, or establish other procedures it considers appropriate. The local government unit decision must be made in compliance with *Minnesota Statutes*, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application, except that applications may be considered incomplete until field verification can be accomplished as soon as suitable field conditions exist, as determined by the local government unit. Applicants shall be notified of such extensions according to procedures in *Minnesota Statutes*, section 15.99, subdivision 3, paragraph (f).~~ The local government unit decision must be mailed sent to the landowner, members of the technical evaluation panel, the watershed district or water management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy within ten working days of the decision.

The local government unit shall ~~issue~~ make a no-loss ~~certificate~~ determination if the landowner requests and if either:

A. the work will not ~~drain or fill~~ impact a wetland;

B. ~~the work is limited to removal of debris such as trees, logs, stumps, and trash, provided the removal does not alter the original cross-section of the wetland;~~ excavation

~~B. C.~~ C. water level management activities will not result in the conversion of a wetland to another land use;

~~C. D.~~ D. the activities are in a surface impoundment for containment of ~~fossil fuel combustion waste material~~ material or water ~~retention~~ and are not part of a compensatory wetland mitigation program treatment; or

~~D. E.~~ E. the activity is being conducted as part of an approved replacement or banking plan or is conducted or authorized by public agencies for the purpose of wetland restoration ~~and the activity is restricted to placing fill in a previously excavated drainage system to restore a wetland to its original condition.~~ fish and wildlife habitat restoration or improvement using guidance in part 8420.0112, item J, or repair and maintenance of earthen containment structures;

F. the activity is limited to excavation and removal of deposited sediment in constructed stormwater management basins or wetlands that are presently utilized as stormwater management basins, or to excavation and removal of contaminated substrate, and the excavated area is stabilized so as to prevent water quality degradation and the excavation is limited to the minimum dimensions necessary for achieving the desired purpose; or

G. the project is an impact rectification activity listed in part 8420.0520, subpart 5.

8420.0225 WETLAND BOUNDARY OR TYPE DETERMINATIONS.

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 item A may seek the advice of the technical evaluation panel and, if necessary, expand the technical evaluation panel.

~~C. The local government unit decision must be made in compliance with *Minnesota Statutes*, section 15.99, except that applications may be considered incomplete until field verification can be accomplished as soon as suitable field conditions exist, as determined by the local government unit. Applicants shall be notified of such extensions according to procedures in *Minnesota Statutes*, section 15.99, subdivision 3, paragraph (f). Within ten working days of the decision, the local government unit decision must be sent to the landowner, members of the technical evaluation panel, the watershed district or watershed management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy.~~

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Proposed Rules

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.

8420.0230 REPLACEMENT PLAN DETERMINATIONS.

Subpart 1. **Application.** A landowner intending to drain, excavate, or fill a wetland who does not qualify for an exemption or no-loss determination shall obtain approval of a replacement plan from the local government unit before beginning draining or filling. A person who does not do so is subject to the enforcement provisions in this chapter and *Minnesota Statutes*, section 103G.2372.

Within ten days of receipt of an application for an activity affecting less than 10,000 square feet of wetland, the local government unit must ~~mail~~ send a summary of the application, which includes information to identify the applicant and the location and scope of the project, to members of the technical evaluation panel, the commissioner of natural resources, and individual members of the public who have requested a copy. The project notification must state when the comment period ends.

Within ten working days of receipt of an application for approval of a replacement plan for an activity affecting 10,000 square feet or more of total wetland impacts, the local government unit must ~~mail~~ send a copy of the application and an invitation to submit comments to members of the technical evaluation panel; the watershed district or water management organization if there is one; the commissioner of natural resources and individual members of the public who request a copy. Individual members of the public who request a copy must be sent a summary of the application that includes information to identify the applicant and the location and scope of the project. The comment period must be 15 days or more. The project notification must state when the comment period ends.

An application for approval of a replacement plan 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~~ more than 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 plan is located more than 500 feet from the area to be drained or filled under the original replacement plan.

Subp. 2. **Decision.** The local government unit decision shall be based on the replacement standards in parts 8420.0500 to 8420.0630, and on the technical evaluation panel's determination, if there is one, concerning the wetland function and resulting public values, location, size, and type of the wetland being altered. The local government unit decision must be made in compliance with *Minnesota Statutes*, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. ~~except that applications may be considered incomplete until field verification can be accomplished as soon as suitable field conditions exist, as determined by the local government unit. Applicants shall be notified of such extensions according to procedures in Minnesota Statutes, section 15.99, subdivision 3, paragraph (f).~~ The local government unit shall consider and include the technical evaluation panel's recommendation, if there is one, to approve, modify, or reject the proposed replacement plan. The local government unit decision must be ~~mailed~~ sent to the landowner within ten working days of the decision. A summary of the local government unit decision must be ~~mailed~~ sent within ten working days of the decision to those required to receive notice of the application.

For wetland replacement plans involving more than one local government unit, approval of all local government units involved or as specified in part 8420.0200 shall constitute final approval of the replacement plan and is required before the project may proceed. The local government unit with jurisdiction for the impact site must approve all components of the replacement plan, following the procedures in parts 8420.0500 to 8420.0630. The local government unit with jurisdiction for the replacement site shall limit the review to evaluation of the replacement site as in parts 8420.0540 to 8420.0630 and make a decision accordingly.

As part of the approval of the replacement plan, the local government unit with jurisdiction for the replacement site assumes responsibility for ensuring compliance with monitoring provisions according to parts 8420.0600 to 8420.0630. The local government unit with jurisdiction for the replacement site may enter into joint powers agreements with a local government unit with jurisdiction for the impact site, assess fees, or develop other procedures considered necessary to facilitate the process.

8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.

For each local government unit, there is a technical evaluation panel of at least three persons: a technical professional employee of the board, a technical professional employee of the soil and water conservation district of the county in which the activity is occurring, and a technical professional with expertise in water resources wetland management appointed by the local government unit. One member selected by ~~For projects affecting public waters or public waters wetlands or affecting wetlands adjacent to the public waters or public waters wetlands, the technical evaluation panel shall also include a technical professional employee of the department of natural resources. For purposes of this section, "adjacent" means within the shoreland wetland protection zone or 1,000 feet, whichever is less.~~ The local government unit shall ~~act as the contact person and coordinator for~~ coordinate the panel.

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Two members of the panel must be knowledgeable and trained in applying methodologies of the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin, et al., 1979 edition), and including updates, supplementary guidance, or replacements of these methods provided by the board. The panel shall also be knowledgeable and trained in evaluation of wetland functions and the resulting public values. The technical evaluation panel may invite additional ~~wetland experts~~ expertise to help the panel in its work.

* The panel shall make technical ~~determinations on questions of findings and recommendations regarding~~ wetland functions and the resulting public values, location, size, and type for replacement plans, ~~exemption and wetland banking plans and exemption, no-loss requests, avoidance and minimization wetland boundary or type, and sequencing requests,~~ and for comprehensive wetland protection and management plans and wetland ordinances, if requested to do so by the local government unit, the landowner, or a member of the technical evaluation panel. The panel may review replacement plans and wetland banking plans and exemption, no-loss, wetland boundary or type, and sequencing requests, and recommend to the local government unit either approval, approval with changes or conditions, or rejection. When a technical evaluation panel is called, it makes a recommendation to the local government unit. The panel shall make no determinations findings or recommendations without at least one member having made an on-site inspection. Panel ~~determinations~~ findings and recommendations must be documented and endorsed by at least two a majority of the three members.

* Applicants for replacement plans, wetland banking plans and exemption, no-loss, and wetland boundary or type, and sequencing determinations must cooperate in providing local government unit staff and members of the technical evaluation panel and their designated experts with access to proposed project sites for investigation. Such investigations shall be preceded by notice to the landowner or designated agent, unless prior approval has been granted. If an applicant refuses to allow access, the local government unit may deny an application.

If the local government unit has a comprehensive wetland protection and management plan that delineates location, size, and type for all wetlands, approved by the technical evaluation panel, and subsequently incorporated into local ordinance, then the local government unit can make determinations in place of without calling the technical evaluation panel.

~~The panel, or one of its members when so authorized by all of the members, may assist the local government unit in making wetland size and type determinations when asked to do so by the local government unit as part of making an exemption or no loss determination.~~

If requested by the local government unit, the landowner, or a member of the technical evaluation panel, the panel shall answer technical questions or participate in the monitoring of replacement wetlands according to parts 8420.0600 to 8420.0630, and shall similarly participate in the monitoring of banked wetlands according to parts 8420.0700 to 8420.0760.

8420.0250 APPEALS.

Subpart 1. Appeal of replacement plan, banking plan, exemption, and no-loss local government unit decisions. The decision of a local government unit to approve, approve with conditions, or reject a replacement plan, banking plan, public road project notice, exemption, or no-loss, or wetland boundary or type request becomes final if not appealed to the board within ~~45~~ 30 days after the date on which the decision is mailed to those required to receive notice of the decision. This subpart applies to those determinations which are made under comprehensive wetland protection and management plans.

Appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

Appeal is effective upon mailing of the petition and payment of a nonrefundable filing fee of \$200 to the board with evidence that a copy of the petition has been mailed to the local government unit. The filing fee is not required for appeals petitioned by state agencies or members of the technical evaluation panel. Another filing fee is not required for appeals that have been remanded if the filing fee was paid and the same party appeals the new decision made under remand. Subsequent to receipt of a petition, 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 per appeal. The amount posted must be returned to the petitioner unless there is a finding under subpart 3 that the appeal is meritless, trivial, or brought solely for the purposes of delay. The local government unit shall then mail a copy of the petition to all those to whom it was required by part 8420.0230 to mail a copy of the notice of decision.

Subp. 2. [Repealed, 22 SR 1877]

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

If the local government unit does not agree with the technical evaluation panel's recommendation, the reasons for the disagreement shall be part of the local government unit's record of decision.

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Subp. 3. **Board appeal procedures.** Within 30 days after receiving the petition, the board or its dispute resolution committee or executive director shall decide whether to grant the petition and hear the appeal. The board or its ~~dispute resolution committee or executive director~~ shall grant the petition unless the appeal is deemed meritless, trivial, or brought solely for the purposes of delay; that the petitioner has not exhausted all local administrative remedies; or that the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit.

The board or its executive director may stay the local government unit decision until the appeal is resolved.

The board or its executive director may remand the appealed decision back to the local government unit if the petitioner has not exhausted all local administrative remedies such as a local government unit public hearing, if expanded technical review is needed, or if the local government unit's record is not adequate. If an appeal is remanded, the local government unit must make a decision within 60 days unless the remand order, or a subsequent order, specifies a longer period.

After granting the petition, the appeal will shall be heard by the dispute resolution committee and decided by the board within 60 days after granting the petition the filing of the local government unit's record, submittal of the written briefs for the appeal, and the hearing by the dispute resolution committee. Parties to the appeal are the appellant, the landowner, the local government unit, and ~~in the case of replacement plan appeals, all~~ those required to receive notice of the local government unit decision.

The board or its executive director may elect to combine related appeals and process as one decision, either multiple appeals on the same project or appeals of different local government unit decisions on the same project.

Upon appeal, the local government unit shall forward to the board the record on which it based its decision. The board will make its decision on the appeal after hearing. Thirty days' notice of the hearing shall be given by the board to the parties. The parties may present written and oral argument. When the local government unit has made formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings and the proceedings were fairly conducted, the board will base its review on the record. Otherwise it may take additional evidence, or remand the matter.

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

[For text of subp 4, see M.R. 1999]

Subp. 5. [See repealer.]

8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.

~~By January 1, 1994, A.~~ Each local government unit of the state, except tribal lands, shall acknowledge, in writing, to the board that it is assuming its responsibilities under this chapter and the act. Local government units from which an affirmative response is not received ~~will shall~~ be given written notice by the board that there is a 60-day moratorium in the local government unit's jurisdiction on exemption, wetland boundary, wetland type, no-loss, replacement plan, and banking determinations. The board ~~will~~ shall end the moratorium within the 60 days upon written agreement by the local government unit that it will assume its duties under this chapter and the act. If at the end of the initial 60-day moratorium ~~an a written~~ agreement has not been made for the local government unit to apply the law, the board can extend the moratorium until the local government unit agrees to apply the law.

~~B.~~ If the board has information that a local government unit is not following this chapter or the act in making exemption, no-loss, replacement plan, public road project notice reviews, wetland boundary, wetland type, or banking determinations, ~~or if the local government unit does not have knowledgeable and trained staff with expertise in wetland management~~, the board shall notify the local government unit in writing of its concerns. The local government unit shall respond in writing within 60 days of being notified by the board. If not satisfied with the local government unit's written response, ~~or none is received~~, the board shall ask the local government unit to appear at a hearing before the board to discuss the matter. The board may invite comments from other local governments or state and federal agencies. ~~If it is determined the board determines~~ at the hearing, that corrective action is necessary, the board shall write the local government unit directing specific corrective action to occur within 60 days of receiving the board's decision. The notice shall explain the reason for the action.

~~C.~~ If, after the 60-day period described in this part the local government unit has not corrected the problem to the satisfaction of the board, the board shall declare a moratorium as prescribed in item A or take other appropriate legal action to ensure compliance.

8420.0290 ENFORCEMENT PROCEDURES.

Subpart 1. ~~Enforcing~~ Enforcement authorities. The commissioner, conservation officers, and other peace officers may issue cease and desist orders and restoration and replacement orders.

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Subp. 2. **Cease and desist orders.** ~~Site specific~~ Cease and desist orders may be issued when the enforcement authority has probable cause that a drain, excavation, or fill activity is being or has been conducted in a wetland and does not qualify for an exemption or a no-loss determination under parts 8420.0210 and 8420.0220 and is being or has been conducted without prior approval of a replacement plan by a local government unit under part 8420.0230 or involving a determination stayed by the board pursuant to part 8420.0250.

A cease and desist order must not be issued if the landowner has a valid ~~certificate of exemption or, no-loss, or replacement plan determination~~ from the local government unit or a completed and submitted public road project notification that has not been stayed, remanded, or reversed on appeal under provisions of part 8420.0250, or has sufficient evidence to support an exemption or no-loss determination. ~~Otherwise:~~

- ~~A. the enforcement authority may issue a cease and desist order upon discovery of the drain or fill activity;~~
- ~~B. the order may be withheld to give the landowner time to produce the evidence required by part 8420.0122 to the enforcement authority of qualification for an exemption or no-loss determination; or~~
- ~~C. a cease and desist order may be issued with an effective date three weeks from the date of issuance. The enforcement authority shall exercise this option when the enforcement authority cannot readily make a determination on the facts and circumstances to deny a landowner's claim of exemption or no-loss, and continued drain or fill activity would not cause irreparable harm to the wetland.~~

The enforcement authority shall advise the landowner that the landowner's written application, if any, for an exemption ~~or, no-loss, or replacement plan~~ determination, should be made immediately to the local government unit and that whatever drain and excavation, or fill work ~~the landowner that has been done~~ may require restoration ~~according to a restoration plan designed by the soil and water conservation district,~~ if the application for exemption ~~or, no-loss, or replacement plan~~ determination is denied or reversed on appeal.

The enforcement authority issuing a cease and desist order shall promptly submit copies to the soil and water conservation district, local government unit, and Department of Natural Resources.

If an application for an exemption ~~or, no-loss, or replacement plan~~ determination is triggered by a cease and desist order, the local government unit ~~or the technical evaluation panel shall make a decision within three weeks from the date of the application. The local government unit or technical evaluation panel shall review evidence of exemption or no-loss produced by the landowner, inspect the site if necessary, and determine:~~

- ~~(1) if the area in question is a wetland; and~~
- ~~(2) if the activity qualifies for an exemption or no-loss determination under parts 8420.0210 and 8420.0220 shall make the determination in accordance with parts 8420.0210 to 8420.0230.~~

In cases where the cease and desist order has been issued to a local government unit, the determination of exemption or no-loss shall be made by the board.

If the ~~decision~~ determination is that the activity is exempt or results in ~~a no-loss determination~~ no loss of wetland, the decision maker shall ~~issue a certificate of exemption or no-loss,~~ request that the enforcement authority rescind the cease and desist order, pending the outcome of any appeal, and notify the soil and water conservation district, the ~~Department of Natural Resources enforcement authority,~~ and the landowner.

If the application is denied, the decision-maker shall immediately notify the soil and water conservation district, the enforcement authority, and the landowner.

Subp. 3. **Restoration and replacement orders.** The enforcement authority shall issue a restoration order or replacement order when:

- A. the drain, excavation, or fill has already been completed when discovered, or after a cease and desist order has been issued and the landowner does not seek apply for an exemption, replacement plan, or no-loss determination within three weeks, or;
- B. the local government unit grants the application but it is reversed on appeal; or
- C. the local government unit denies the application.

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Promptly upon being informed by the enforcement authority of the need, the soil and water conservation district staff person shall inspect the site and prepare a plan in consultation with the local government unit for restoring the site to its prealtered condition. Restoration shall be ordered unless the soil and water conservation district person, with the concurrence of the technical evaluation panel and the enforcement authority, concludes that restoration is impossible not possible or prudent. The soil and water conservation district shall incorporate its plan into a restoration or replacement order and send it to the enforcement authority for service in person or by certified mail to the landowner or responsible party.

Subp. 3a. Contents of order. ~~The~~ A restoration order must specify ~~a date~~ dates by which the landowner or responsible party must either:

A. restore the wetland according to the soil and water conservation district plan and obtain a certificate of satisfactory restoration from the soil and water conservation district; or

B. submit a complete replacement plan application to the local government unit.

If the replacement plan application is denied, the landowner or responsible party shall restore the wetland as specified in the order.

~~The restoration order shall state that it will shall be canceled when rescinded if the landowner or responsible party obtains a certificate of an after-the-fact replacement plan, exemption, or no-loss determination from the local government unit, or a certificate that replacement has been completed according to an approved replacement plan. Otherwise, the landowner must restore the wetland in the manner required by the restoration order that is not reversed on appeal.~~

A replacement order must specify a date by which the landowner or responsible party must submit a replacement plan to the local government unit and a subsequent date by which the landowner or responsible party must replace the wetland according to the approved replacement plan and obtain a certificate of satisfactory replacement from the soil and water conservation district.

Subp. 3b. Enforcement authority orders. If the soil and water conservation district, with the concurrence of the technical evaluation panel and the enforcement authority, determines that restoration will not restore all the loss caused by the drain, excavation, or fill activity, the enforcement authority may order a combination of restoration and replacement, or may order replacement rather than restoration, ~~as determined by the soil and water conservation district with the concurrence of the technical panel and the enforcement authority.~~ The order must direct the landowner or responsible party to obtain replacement plan approval from the local government unit. The order must specify that if replacement plan approval is not obtained, the landowner or responsible party must restore the wetland ~~in a manner determined by the soil and water conservation district as ordered.~~

Each cease and desist, restoration, and replacement order shall ~~tell the landowner~~ state that violation of the order is a misdemeanor.

If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the soil and water conservation district, with the concurrence of the technical evaluation panel and the enforcement authority, shall determine which is appropriate, and if it is restoration, the method of restoration. If the court orders replacement, the landowner or responsible party must follow the replacement plan process in subpart 4 and parts 8420.0500 to 8420.0630 ~~unless the court orders otherwise.~~

Subp. 3c. Appeals of replacement and restoration orders. A landowner or responsible party may appeal the terms and conditions of a restoration or replacement order issued pursuant to subpart 3 to the board's executive director within 30 days of receipt of written notice by filing a written request for review. If the written request is not submitted within 30 days, the restoration or replacement order becomes final. The executive director shall review the request and supporting evidence and render a decision within 60 days of the request for review. The executive director may stay the restoration order until the appeal is resolved.

Subp. 4. After-the-fact replacement. If a landowner or responsible party seeks approval of a replacement plan after the proposed project has already impacted the wetland, the local government unit ~~may~~ shall require the landowner or responsible party to replace the impacted wetland at a ratio ~~not to exceed~~ twice the replacement ratio otherwise required, unless the local government unit and enforcement authority concur that an increased ratio is not required.

Subp. 5. Misdemeanor. A violation of an order issued under this part is a misdemeanor and must be prosecuted by the county attorney where the wetland is located or the illegal activity occurred.

Subp. 6. Contractor's responsibility when work drains, excavates, or fills wetlands.

A. An agent or employee of another may not drain, excavate, or fill a wetland, wholly or partially, unless the agent or employee has:

(1) obtained a signed statement from the landowner 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.

B. Work in violation of this part is a misdemeanor.

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C. The board shall develop a form to be distributed to contractor's associations, local government units, and soil and water conservation districts to comply with this part. 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 Minnesota Statutes, sections 103G.2212 to 103G.237;
- (3) the telephone number 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.

8420.0300 MINING.

Wetlands may not be drained, excavated, or filled as part of a project for which a permit to mine is required by *Minnesota Statutes*, section 93.481, except as approved by the commissioner. Draining, excavating, or filling of wetlands created by pits, stockpiles, or tailing basins by actions whose purpose was not to create the wetland are exempt under part 8420.0122.

[For text of item A, see M.R. 1999]

B. For mining operations in existence before July 1, 1993, and operated on or after that date under a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals:

(1) no draining, excavating, or filling activities shall be conducted within wetlands for which these activities were approved but not initiated before July 1, 1993, until the operating plan or annual report as required in the permit to mine includes an approved wetland replacement plan for the undisturbed wetlands. The wetland replacement plan shall meet the same principles and standards for replacing wetlands under parts 8420.0500 to 8420.0630;

[For text of subitems (2) and (3), see M.R. 1999]

[For text of item C, see M.R. 1999]

D. This part shall not apply to peat mining as defined under *Minnesota Statutes*, section 93.461, that is subject to the mine permit and reclamation requirements under *Minnesota Statutes*, sections 93.44 to 93.51, and the rules of the commissioner adopted under those sections.

[For text of item E, see M.R. 1999]

8420.0350 HIGH PRIORITY REGIONS AND AREAS.

Subpart 1. **High priority regions.** Parts of the state that are high priority regions for preservation, enhancement, restoration, and establishment of wetlands include all of the ~~counties that have lost less than~~ 50 percent or more of their presettlement wetland base areas, which are those listed in part ~~8420.0540~~ 8420.0544, ~~subpart 5, item B.~~

In all other counties of the state, high priority regions are high priority areas approved as such by the board according to subpart 2.

Subp. 2. **High priority areas.**

[For text of items A and B, see M.R. 1999]

C. In all counties, plans may identify additional high priority areas where preservation, enhancement, restoration, and establishment of wetlands would have high public value by providing benefits for water quality, flood water retention, public recreation, commercial use, and other public uses. High priority areas should be delineated by minor or major watershed. For the purposes of this part, "watershed" means major or minor watershed or subwatershed. To identify high priority areas, the local government unit shall consider ~~at least the landscape characteristics in subitems (1) to (11) at a minimum those items listed in part 8420.0103.~~

~~(1) Land use and cover types. Wetlands located in watersheds having a high proportion of cultivated land, developed areas, or other intensive land use are likely to have high value for water quality, flood water retention, and public recreation. Watersheds with high proportions of intensive land use should be considered as priority preservation and restoration areas.~~

~~(2) Wetland and watershed ratio. Wetlands located in watersheds having a low proportion of wetlands relative to the size of the watershed are likely to have high value for water quality, flood water retention, and public recreation. Watersheds with a low wetland and watershed ratio should be considered as priority preservation and restoration areas.~~

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~~(3) Soil erosion rates. Wetlands located in watersheds where erosion rates are high are likely to have high value for water quality. Watersheds with high erosion rates should be considered as priority preservation and restoration areas.~~

~~(4) Watershed gradient. Wetlands in watersheds where the difference between the highest and lowest points of the watershed is great are likely to have high value for flood water retention and water quality. Watersheds with a high gradient should be considered as priority preservation and restoration areas.~~

~~(5) Surface water retention. Wetlands in watersheds where direct runoff is high are likely to have high value for flood water retention and water quality. Watersheds with high levels of direct runoff should be considered as high priority preservation and restoration areas.~~

~~(6) Soil fertility. Wetlands in watersheds where soil fertility is high are likely to have high value for wildlife habitat and commercial uses. Watersheds with high soil fertility should be considered as high priority preservation and restoration areas.~~

~~(7) Geology. Wetlands in watersheds with high subsurface permeability are likely to have high value for groundwater recharge and water quality. Watersheds with high subsurface permeability should be considered as high priority preservation and restoration areas.~~

~~(8) Wetland complexes. Wetlands in watersheds where a diversity of wetland types and sizes are or were historically present are likely to have high value for public recreation. Watersheds with an existing or historical high diversity of wetland types should be considered as priority preservation and restoration areas.~~

~~(9) Proximity to population centers. Wetlands in watersheds that are close to population centers are likely to have high value for water quality, flood water retention, public recreation, and commercial uses. Watersheds near population centers should be considered as high priority preservation and restoration areas.~~

~~(10) Public ownership. Wetlands in watersheds with a high proportion of land in public ownership are likely to have high value for public recreation. These watersheds may be considered as high priority preservation and restoration areas.~~

~~(11) Significant wildlife use. Wetlands in watersheds with current or historical records of use by significant numbers or species of wildlife or fish are likely to have high value for public recreation and commercial uses. Watersheds with records of significant fish or wildlife use should be considered as high priority preservation and restoration areas.~~

D. The board ~~will~~ shall review the inclusion of high priority areas in plans as part of the standard process for plan review established in statute. High priority areas approved by the board that are not in a high priority region listed in ~~item C~~ subpart 1 become high priority regions with board approval.

8420.0400 WETLAND PRESERVATION AREAS.

Subpart 1. **Purpose.** Wetlands located in areas that are both high priority regions and high priority areas as identified in part 8420.0350 are eligible for enrollment as wetland preservation areas. A wetland so enrolled is exempt from property tax.

Subp. 2. **Landowner application for wetland preservation area.** A landowner may apply to the county or watershed district, if the county chooses to accept wetland preservation areas, for designation of a wetland as a wetland preservation area on forms provided by the board. The applicant must include a strip of upland 16.5 feet wide around the perimeter of the wetland. The applicant may include up to four acres of upland for each acre of wetland.

The application must be accompanied by a restrictive covenant on a form provided by the board. The covenant will contain the same limitations on use that are provided in *Minnesota Statutes*, section 103F.515, subdivision 4, including a covenant that the enrolled upland area will be vegetated by the landowner to permanent vegetation other than noxious weeds. The covenant must be signed, acknowledged, and ready for recording.

Subp. 3. **County or watershed district review of application.** The county or watershed district may accept the application if the wetland is in a high priority region and high priority area, if it includes the 16.5 foot strip, and is accompanied by the proper covenant.

The county or watershed district may limit or reject additional upland proposed to be included according to standards the county establishes.

The county or watershed district may reject the application if the application does not qualify, or send it back for modification and resubmittal if that is appropriate. If the application qualifies, the county or watershed district may approve it and mark the date of approval on the application. The county or watershed district shall notify the landowner of the acceptance or denial of the application within 60 days from the date of the application.

Within five working days of approval of the application, the county or watershed district shall forward it to the county recorder for recording of the restrictive covenant or memorialization of the application on the certificate of title. The county or watershed district shall also send a copy of the approved application to the county assessor for entry in the assessor's records as a wetland

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preservation area. The county or watershed district shall also send copies of the approved application to the soil and water conservation district, the local government unit, and the board.

Subp. 4. **Applicable statutes.** In addition to this chapter, wetland preservation areas are subject to *Minnesota Statutes*, sections 103F.612 to 103F.616, and the property tax provisions of *Minnesota Statutes*, section 272.02, subdivision 1, ~~clause (10)~~ 11.

[For text of subp 5, see M.R. 1999]

Subp. 6. **Fee.** The county or watershed district may require an application fee to defray administrative costs of the program.

[For text of subp 7, see M.R. 1999]

8420.0505 PREVIOUSLY APPROVED ~~REPLACEMENT PLANS DETERMINATIONS.~~

* Replacement ~~plans~~ banking plan ~~plan exemption, public road project notification, wetland boundary, wetland type, and no-loss determinations~~ may be completed under the laws, rules, conditions, and guidelines in effect when they were approved.

8420.0510 REPLACEMENT PLAN PROCEDURES.

* Subpart 1. **Generally.** No person shall drain, excavate in the permanent or semipermanently flooded areas of type 3, 4, or 5 wetlands, or fill a wetland, wholly or partially, or otherwise convert wetlands to nonwetlands without first having a wetland ~~value~~ replacement plan or other determination approved by the governing body of the local government unit, ~~or the lead local government unit if so designated by the board, consistent with parts 8420.0122 to 8420.0290, and provided that the activity is not prohibited under the special considerations provisions in part 8420.0540, subpart 9.~~

[For text of subps 2 and 3, see M.R. 1999]

8420.0520 SEQUENCING.

Subpart 1. **Requirement.** ~~Except for wetlands located in cultivated fields that are subject to subpart 8, and calcareous fens that are subject to subpart 9, The local government unit may not consider or approve a wetland replacement plan unless the local government unit finds that the applicant has demonstrated that the activity impacting a wetland has complied with all of the following principles in descending order or priority:~~

[For text of items A to D, see M.R. 1999]

E. replaces unavoidable impacts to the wetland by restoring or, if wetland restoration opportunities are not reasonably available, creating substitute wetland areas having equal or greater public value as provided for in parts 8420.0530 to 8420.0760.

Exceptions to this part include wetlands located in cultivated fields that are subject to subpart 8, and calcareous fens that are subject to subpart 9.

Subp. 2. **Application options.** An applicant may either submit the information required for sequencing analysis as part ~~the application for replacement plan approval~~ a replacement plan application or apply for a preliminary sequencing determination from the local government unit before preparing a replacement plan. The local government unit may request additional information needed to make a determination. For projects impacting wetland areas less than 10,000 square feet more than the de minimis amount listed in part 8420.0122, subpart 9, item A, the local government unit may provide an on-site sequencing determination without written documentation from the applicant.

Subp. 3. **Determination of impact avoidance.**

A. Avoidance must be required when indicated by part ~~8420.0540, subpart 9~~ 8420.0548.

B. Wetland dependence determination:

[For text of subitems (1) and (2), see M.R. 1999]

C. Alternatives analysis:

(1) The applicant shall provide the local government unit with documentation describing at least two alternatives in addition to the proposed project, to avoid wetland impacts. One ~~of which~~ may be the no-build alternative, that would avoid impacts to wetlands, ~~except that~~. For projects that repair or rehabilitation projects on ~~rehabilitate~~ existing infrastructure, only one alternative is required. The alternatives may include consideration of alternate sites or alternative project configurations on the proposed site.

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Proposed Rules

The alternatives must be judged by the local government unit as good faith efforts, or the local government unit may require the applicant to redraft them for reconsideration.

(2) The local government unit shall ^{evaluate}~~determine~~ whether any ^{proposed} feasible and prudent alternatives are available that would avoid impacts to wetlands. An alternative shall be considered feasible and prudent if it meets all of the following requirements:

- (a) it is capable of being done from an engineering point of view;
- (b) it is in accordance with accepted engineering standards and practices;
- (c) it is consistent with reasonable requirements of the public health, safety, and welfare;
- (d) it is an environmentally preferable alternative based on a review of social, economic, and environmental impacts;

and

- (e) it would create no truly unusual problems.

(3) For projects proposing impacts to type 3, 4, or 5 wetlands, the local government unit shall also determine that there are no environmentally preferable alternatives that would avoid the impact. The local government unit shall consider the following in evaluating alternatives as applicable:

(a) whether the basic project purpose can be reasonably accomplished using one or more other sites in the same general area that would avoid wetland impacts. An alternate site may not be excluded from consideration only because it includes or requires an area not owned by the applicant that could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project;

(b) the general suitability of alternate sites considered by the applicant;

(c) whether reasonable modification of the size, scope configuration, or density of the project would avoid impacts to wetlands;

(d) efforts by the applicant to accommodate or remove constraints on alternatives imposed by zoning standards or infrastructure, including requests for conditional use permits, variances, or planned unit developments; and

(e) the physical, economic, and demographic requirements of the project. Economic considerations alone do not make an alternative not feasible and prudent.

(4) If the local government unit determines that a feasible and prudent alternative exists that would avoid impacts to wetlands, it shall deny the replacement plan. If no feasible and prudent alternative is available that would avoid impacts to wetlands, the local government unit shall evaluate the replacement plan for compliance with subparts 4 to 6.

Subp. 4. Determination of impact minimization.

A. The applicant shall demonstrate to the local government unit's satisfaction that the activity will minimize impacts to wetlands. In reviewing the sufficiency of the applicant's efforts to minimize wetland impacts, the local government unit must consider:

[For text of subitems (1) to (6), see M.R. 1999]

(7) an applicant's efforts to:

(a) modify the size, scope, configuration, or density of the project;

(b) remove or accommodate site constraints including zoning, infrastructure, access, or natural features; ~~and~~

(c) confine impacts to the fringe or periphery of the wetland; and

(d) otherwise minimize impacts.

[For text of item B, see M.R. 1999]

[For text of subps 5 to 7, see M.R. 1999]

Subp. 7a. Sequencing flexibility.

[For text of item A, see M.R. 1999]

B. Flexibility in application of the sequencing steps may be applied, subject to the conditions in item A, as determined by the local government unit if:

(1) the wetland to be impacted has been degraded to the point where replacement of it would result in a certain gain in function and public value;

(2) preservation of a wetland would result in severe degradation of the wetland's ability to function and provide public values, for example, because of surrounding land uses and the wetland's ability to function and provide public values cannot reasonably be maintained through other land use controls or mechanisms;

Proposed Rules

(3) the only feasible and prudent upland site available for wetland replacement or development has greater ecosystem function and public value than the wetland. Although this is a rare circumstance since there will usually be several options for siting the replacement wetland or development, it may be appropriate if the project sponsor:

- (a) demonstrates impact minimization to the wetland;
- (b) agrees to perpetually preserve the designated upland site; and
- (c) completely replaces the impacted wetland's functions and public values; or
- (4) ~~alternatives are demonstrably cost prohibitive such that the only available alternatives would make the projected cost substantially greater than the costs normally associated with similar projects; or~~
- (5) the wetland is a site where human health and safety is a factor.

Subp. 8. **Wetlands on cultivated fields.** If the wetland is located on a cultivated field, ~~replacement must be accomplished and will be replaced~~ through restoration ~~without regard to, then~~ the priority order for sequencing in subpart 1 ~~is not required~~. A wetland drained or filled under this provision must not be converted to nonagricultural land for ten years. The landowner must execute and record a notice of this requirement in the office of the county recorder for the county in which the property is located.

[For text of subp 9, see M.R. 1999]

8420.0530 REPLACEMENT PLAN COMPONENTS.

On an application form approved by the board in consultation with the commissioner of natural resources, provided ~~by~~ through the local government unit, and with ~~needed~~ required attachments supplied by the applicant, the following documentation must be provided, except that for replacement plans utilizing the wetland bank in parts 8420.0700 to 8420.0760, items B, subitem (1); and D, do not apply; instead the applicant shall submit the wetland banking credit withdrawal form prescribed in part 8420.0740, subpart 2, item E:

- A. generally, organizational information, including but not limited to the following:

[For text of subitems (1) to (3), see M.R. 1999]

- B. either;

(1) a signed statement confirming that the wetland acres and values will be replaced before or concurrent with the actual draining or filling of a wetland; or

(2) an irrevocable bank letter of credit, a performance bond, or other security acceptable to the local government unit in an amount sufficient to guarantee the successful completion of the wetland ~~value~~ replacement;

- C. for the impacted wetland:

- (1) a recent aerial photograph or accurate map of the impacted wetland area;
- (2) the location of the wetland, ~~including the county, watershed name or number, and the quarter section public land survey coordinate of the wetland;~~
- (3) the size of the wetland, ~~in acres or square feet;~~
- (4) the type of ~~the~~ wetland ~~using United States Fish and Wildlife Service Circular No. 39 (1971 edition) and National Wetland Inventory mapping conventions (Cowardin et al., 1979);~~
- (5) a list of the dominant vegetation in the impacted wetland area, if known;
- (6) a soils map of the site showing soil type and substrate, where available;
- (7) ~~the estimated size of the watershed that drains surface water into the wetland as determined from a United States Government Survey topographical map or other suitable topographical survey;~~
- (8) the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetlands, and if the wetland is within the shoreland wetland protection zone or floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;
- (9) ~~a map, photograph, or written description of the land use of the immediate watershed;~~

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Proposed Rules

~~(10)~~ (8) the nature of the proposed project, its areal extent, and the impact on the wetland must be described in sufficient detail to allow the local government unit to determine the amount and types of wetland to be impacted and to demonstrate compliance with the replacement sequencing criteria in part 8420.0520, if applicable;

~~(11)~~ (9) evidence of ownership or property rights to the affected areas, ~~including a legal description. When two or more landowners are involved, including both the impact site and the proposed replacement site, a contract or other evidence of agreement signed by all landowners and notarized must be included with the replacement plan. The contract or agreement must contain an acknowledgment of the covenant provisions in item D, subitem (6), by landowners on which a replacement wetland is proposed and the location and acreage of replacement wetlands. The contract becomes binding upon final approval of the replacement plan; and~~

~~(12)~~ (10) a list of all other local, state, and federal permits and approvals required for the activity, if known; and

~~(13) other information considered necessary by the local government unit for evaluation of the activity;~~

D. for the replacement wetland, item C, subitems (1) to (9) and ~~(11) to (13)~~ (7), (9), and (10), and:

(1) an explanation of the size and type of wetland that will result from successful completion of the replacement plan;

(2) scale drawings showing plan and profile views of the replacement wetland ~~and fixed photo reference points for monitoring purposes. Photo reference points should include views of any control structures and enough additional points to adequately depict the entire project;~~

[For text of subitems (3) to (5), (see M.R. 1999)]

(6) a notice in a form provided by the board attached to and recorded with the deed for lands containing a wetland, specifying the following:

(a) the location of the replacement wetland;

(b) that the wetland is subject to the act;

(c) that the fee title owner is responsible for the costs of repairs or reconstruction and management, if necessary, or for replacement costs;

(d) that reasonable access to the replacement wetland shall be granted to the proper authorities for inspection, monitoring, and enforcement purposes;

(e) that costs of title review and document recording is the responsibility of the fee title owner; and

(f) that the local government unit or board can require necessary repairs or reconstruction and revegetation work to return the wetland to the specifications of the approved replacement plan and require reimbursement of reasonable costs from the wetland owner, or can require replacement of the wetland according to the act;

(7) ~~a statement~~ an affidavit that the replacement wetland was not previously restored or created under a prior approved replacement plan;

(8) a statement that the replacement wetland was not drained or filled under an exemption during the previous ten years;

(9) a statement that the replacement wetland was not restored with financial assistance from public conservation programs, or was not restored for other unrelated regulatory purposes;

(10) a statement that the replacement wetland was not restored using private funds other than those of the landowner unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement;

(11) ~~a plan for monitoring the success of the replacement plan in meeting the project goal in subitem (1), and as specified in parts 8420.0610 and 8420.0620~~ a statement by the applicant that monitoring will occur in accordance with parts 8420.0610 and 8420.0620 unless the local government unit will be conducting the monitoring of the wetland replacement area; and

(12) evidence that a person proposing to create or restore a wetland within the easement of a pipeline as defined in *Minnesota Statutes*, section 299J.02, subdivision 11, has first notified the easement holder and the director of the Office of Pipeline Safety in writing. The person may not create or restore the wetland if, within 90 days after receiving the required notice, the easement holder or the director of the Office of Pipeline Safety provides to the person a written notice of objection that includes the reasons for the objection; ~~and~~

(13) evidence that any drainage or property rights potentially detrimental to the replacement wetland have been acquired, subordinated, or otherwise eliminated; and

~~(14) a five-year vegetation establishment and management plan, including seeding rates, planting methods, seed and plant mixes, herbicide treatments, and control of noxious weeds and invasive or nonnative species such as reed canary grass and purple loosestrife;~~

Proposed Rules

E. other information considered necessary for evaluation of the project by the local government unit; and

E. the applicant must provide E. information known to the applicant or readily available concerning the special considerations criteria in part 8420.0540, subpart 9.

8420.0540 REPLACEMENT PLAN EVALUATION CRITERIA.

[For text of subpart 1, see M.R. 1999]

Subp. 2. Type of replacement.

A. The order of preference for the method of replacement, ~~from most preferred to least preferred, is that which is most likely to result in a wetland area that functions wholly, perpetually, and naturally. Generally, wetland restoration, then is preferred over creation~~ and restoration of completely impacted wetlands is generally preferred over other methods of replacement

B. Modification or conversion of nondegraded wetlands from one wetland type to another, ~~for example by impoundment of additional water, by damming, diking, impounding, or excavating~~ does not constitute ~~adequate~~ replacement credit.

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

8420.0541 ACTIONS ELIGIBLE FOR CREDIT.

~~D. Subpart 1. Scope.~~ The following actions in this part are eligible for replacement credit or wetland banking credit as determined by the local government unit in parts 8420.0500 to 8420.0760:

(1) ~~reestablishment of permanent vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeded to pasture grasses or legumes, or was required to be set aside to receive price supports or other payments under United States Code, title 7, sections 1421 to 1469, in 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;~~

Subp. 2. Restoration of completely drained wetland areas. Restoration of the natural hydrology regime and vegetation on completely drained or filled wetlands may receive new wetland credit in an amount not to exceed 100 percent of the total wetland area hydrologically restored.

Subp. 3. Restoration of partially drained wetland areas. Restoration of the natural hydrology regime and vegetation of jurisdictional wetlands that have been degraded by prior drainage, diversion of the natural watershed, or filling may:

A. in a less than 80 percent area, receive public value credit in an amount up to 50 percent of the degraded wetland area or receive new wetland credit in an amount not to exceed 25 percent of the total wetland area hydrologically restored, provided that permanent native, noninvasive vegetation is established within the restored wetland area and on an upland buffer, which may receive replacement credit according to subpart 6, ~~that is contiguous with the restored wetland and that has an average width of at least 50 feet for wetlands 2.5 acres or less and an average width of at least 100 feet for wetlands greater than 2.5 acres and~~ in municipal areas

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

Subp. 4. Exceptional natural resource value projects. Projects that restore exceptional natural resource values of wetlands may receive either public value or new wetland replacement credit solely or in combination as determined by the local government unit with concurrence of the technical evaluation panel. The amount and type of credit allowed shall be based on a functional assessment that documents the restoration of these values.

Subp. 5. Restoration of farmed wetlands. Reestablishment of permanent native, noninvasive vegetative cover on a wetland that was planted with annually seeded crops, was in a crop rotation seeded to pasture grasses or legumes, or was required to be set aside to receive price supports or equivalent payments in six of the last 20 years prior to the date of application for a replacement plan or bank plan may receive credit in accordance with one of the following considerations:

A. if the wetland was annually seeded, in rotation, or set aside for six or more of the last 20 years, the wetland is eligible for public value credit not to exceed 50 percent of the wetland area; or

B. if the wetland was annually seeded, in rotation, or set aside for ten or more of the last 20 years, the wetland is eligible for new wetland credit based on the percent of the time the wetland area was annually seeded, in rotation, or set aside during the prior 20-year period.

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Note:

?typographic error? omission of "minimum"
and "16.5" as strikethrough

in non-municipal areas

Proposed Rules

(2) Subp. 6. Upland buffer areas. Buffer areas of permanent ⁵⁰native and noninvasive ²⁵dominated vegetative cover established or preserved on upland adjacent and contiguous to replacement wetlands may receive credit, provided that the upland buffer ^{in municipal areas}must be established at the time of wetland replacement must have an average width of at least 50 feet for wetlands 2.5 acres or less and an average width of at least 100 feet for wetlands ~~greater than 2.5 acres~~ and the buffer vegetative establishment or preservation plan must be approved by the technical evaluation panel. Replacement credit for the buffer may not exceed 75 percent of the replacement wetland area and may only be used as public value credits for replacement above a 1:1 ratio.

(3) Subp. 7. Wetlands previously restored via conservation easements. Wetland areas restored for conservation purposes under terminated easements or contracts, provided that are eligible for up to 75 percent of the restored wetland area is eligible for new wetland credit and adjacent upland buffer areas reestablished to permanent ¹⁰⁰native, noninvasive vegetative cover are eligible for public value 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 public value credit above a 1:1 ratio.~~

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

(1) the basin design uses a two-cell system in which the upstream cell has a 24 hour retention time for a two-year storm event;

(2) the downstream cell is designed for a maximum 12-inch rise in water level for a ten-year storm event;

(3) the standards in part 8420.0550 are followed; and

(4) the design goal is a palustrine emergent wetland.

Only the downstream cell can be counted for new wetland credit, and the replacement plan must include a plan and schedule for maintenance of the storm water basin system. Storm water detention basins allowed for replacement are not eligible for the exemptions in part 8420.0122 and are subject to parts 8420.0500 to 8420.0630.

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

Subp. 8. Restoration of wetland vegetation. Reestablishment and maintenance of permanent native, noninvasive vegetation cover on a wetland that is dominated by invasive or exotic species may receive public value credit. Replacement credit may not exceed 25 percent of the total wetland area vegetatively restored and the vegetative restoration and maintenance plan must be approved by the technical evaluation panel. The technical evaluation panel may require a monitoring period in excess of 12 months after the vegetative restoration is completed before approving the site for replacement credit.

Subp. 9. Wetlands established via mineral extraction site reclamation. Wetland areas established in nonwetland areas due to mineral extraction activities may receive new wetland credits if all of the following criteria are met:

A. application for replacement credit is made within ten years after the last day that extraction activities have taken place;

B. a wetland establishment and management plan has been approved by the technical evaluation panel and implemented by the landowner or authorized agent;

C. the wetland area meets the criteria in part 8420.0550; and

D. if the land is not state-owned, a conservation easement in favor of the state has been accepted by the state and recorded in the county recorder's office, or if the land is state-owned, covenants and restrictions are recorded that identify that the wetland area is a replacement wetland subject to this chapter.

Subp. 10. Water quality treatment areas.

A. Replacement credit for water quality treatment ponds constructed to pretreat stormwater runoff prior to discharge to wetlands or public waters is allowed, provided that:

(1) the local government unit has an approved and active stormwater management plan;

(2) the basins are constructed in nonwetland areas; and

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

B. Credits are determined according to subitems (1) to (3) by the local government unit with concurrence of the technical evaluation panel.

Proposed Rules

(1) Public value credit may be allowed for up to 100 percent of the normal pool area of an isolated one-cell, wet detention basin or the upper cell of a two-cell system, or for the one-year design pool of a stormwater infiltration area that also has an established native, noninvasive vegetative cover.

(2) New wetland credit may be allowed for up to 100 percent of the normal pool area of the downstream cell of a two-cell, wet detention system, provided:

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

(b) the upstream basin meets the criteria in subitem (1);

(c) the downstream cell is designed for a maximum 24-inch rise in water level for the ten-year critical storm event;

(d) the standards in part 8420.0550 are followed; and

(e) the design goal is a fully functioning wetland for the downstream cell.

(3) Buffer areas installed adjacent to two-celled systems that are consistent with subitem (2) may be allowed for public value credit in an amount up to 75 percent of the acreage of the downstream cell of a two-cell system, provided the buffer is applied only to the downstream cell, has an average width of 50 feet, and is adjacent to the entire periphery of the downstream cell.

C. Stormwater detention basins allowed for replacement are not eligible for the exemptions in part 8420.0122 and are subject to parts 8420.0500 to 8420.0630.

Subp. 11. Wetland creations. All other wetland creation sites may receive new wetland credit in an amount not to exceed 100 percent of the total wetland area created. Except for public projects, a performance bond or other surety shall be secured and held until the local government unit has determined that the design goal for the wetland replacement site, as approved in the replacement plan, is fully achieved.

Subp. 3. 8420.0542 TIMING OF REPLACEMENT.

Replacement of wetland functions and values must be completed before or concurrent with the actual draining or excavation, or filling of a wetland, unless an irrevocable bank letter of credit or other security acceptable to the responsible local government unit is submitted to the responsible local government unit to guarantee successful completion of the replacement. Local government units may require performance bonds or similar instruments to assure that the replacement wetland is successfully established. All wetlands to be restored or created for replacement must be designated for replacement before restoration or creation. Submission to the local government unit of the information required in part 8420.0530 and subsequent approval shall be considered evidence of designation for replacement, provided the information is submitted before the actual restoration or creation. The exceptions contained in ~~subpart 5~~ part 8420.0544 do not apply to replacement completed using wetland banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996.

Subp. 4. 8420.0543 Location of replacement wetlands WETLAND REPLACEMENT SITING. Replacement wetlands shall be located within the same watershed or county as the impacted wetlands, except that greater than 80 percent areas may accomplish replacement in less than 50 percent areas. When environmentally preferable, replacement wetlands should be located as close to the impacted wetland as possible, preferably in the same watershed.

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, for:

(a) wetlands affected in greater than 80 percent areas; and

(b) 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.

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Proposed Rules

B. When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in item A, the applicant may seek opportunities at the next level.

C. For the purposes of item B, "reasonable, practicable, and environmentally beneficial replacement opportunities" means 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.

D. Regulatory agencies, local government units, and other entities involved in wetland restoration shall collaborate to identify potential replacement opportunities within their jurisdictional areas.

Subp. 5. 8420.0544 REPLACEMENT FOR PUBLIC TRANSPORTATION PROJECTS.

A. Wetlands impacted by public transportation projects may be replaced statewide, except that wetlands impacted in a less than 50 percent area must be replaced in a less than 50 percent area, and wetlands impacted in the seven-county metropolitan area by public ~~highways~~ roads must be replaced in the affected county, or, if no restoration opportunities exist in the county, in another seven-county metropolitan area county. The exception in part 8420.0543, item A, subitem (5), does not apply to replacement completed using wetlands banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996.

~~B. The board must maintain a public list of restoration opportunities within the seven-county metropolitan area. The list will be maintained for informational purposes only.~~ Replacement of wetlands may be accomplished under the rules for wetland banking as provided for in parts 8420.0700 to 8420.0760.

C. For projects involving draining, excavating, 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 wetland banking credits if available 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 wetland banking credits from the state at the state's cost to establish wetland banking credits.

D. A replacement plan for wetlands is not required for individual public road projects that result in the ~~filling or~~ draining, excavating, or filling 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 road~~ 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 item only applies to authorities for public ~~transportation road~~ projects that:

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

(2)(a) submit annual, at least 30 days prior to construction, project-specific reports by January 15, and any changes or addenda, to the board, the technical evaluation panel, the commissioner of natural resources, and members of the public requesting a copy 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, excavated, or filled by the project;

(b) convene an annual meeting of the parties required to receive notice to review projects to be commenced during the upcoming year; or

(c) for minor and emergency maintenance work impacting less than 10,000 square feet, the public road authority may submit project-specific reports, within 30 days of commencing the activity, to the board and the technical evaluation panel that indicate the location, amount, and type of wetlands that have been drained, excavated, or filled.

Proposed Rules

E. The technical evaluation panel shall review minimization and delineation decisions made by the public ~~transportation road~~ 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.

F. Those required to receive notice of public road projects may appeal minimization, delineation, and on-site mitigation decisions made by the public road authority to the board according to part 8420.0250.

G. Changes to wetland impacts proposed by local road authorities in item D shall be reported to the board within six months from the date of the change being finalized.

H. Except for state public transportation projects, for which the state Department of Transportation is responsible, the board must replace ~~the public road project impacts to wetlands and wetland areas of public waters if authorized by the commissioner or a delegated authority, that are drained, excavated, or filled by public transportation~~ local government projects on existing roads. Replacement of the wetlands must occur in critical rural and urban watersheds.

~~G. I.~~ Public ~~transportation road~~ 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 item. This item does not preclude an action for damages arising from negligence in construction or maintenance on a highway.

Subp. 5a. 8420.0545 PRESETTLEMENT WETLAND ACRES AND AREAS.

A. For purposes of ~~this part~~ parts 8420.0540 to 8420.0549, the following counties are greater than 80 percent areas: Aitkin; Beltrami; Carlton; Cass; Clearwater; Cook; Crow Wing; Hubbard; Isanti; Itasca; Kanabec; Koochiching; Lake; Lake of the Woods; Mille Lacs; Pine; ~~and St. Louis; and Wadena.~~

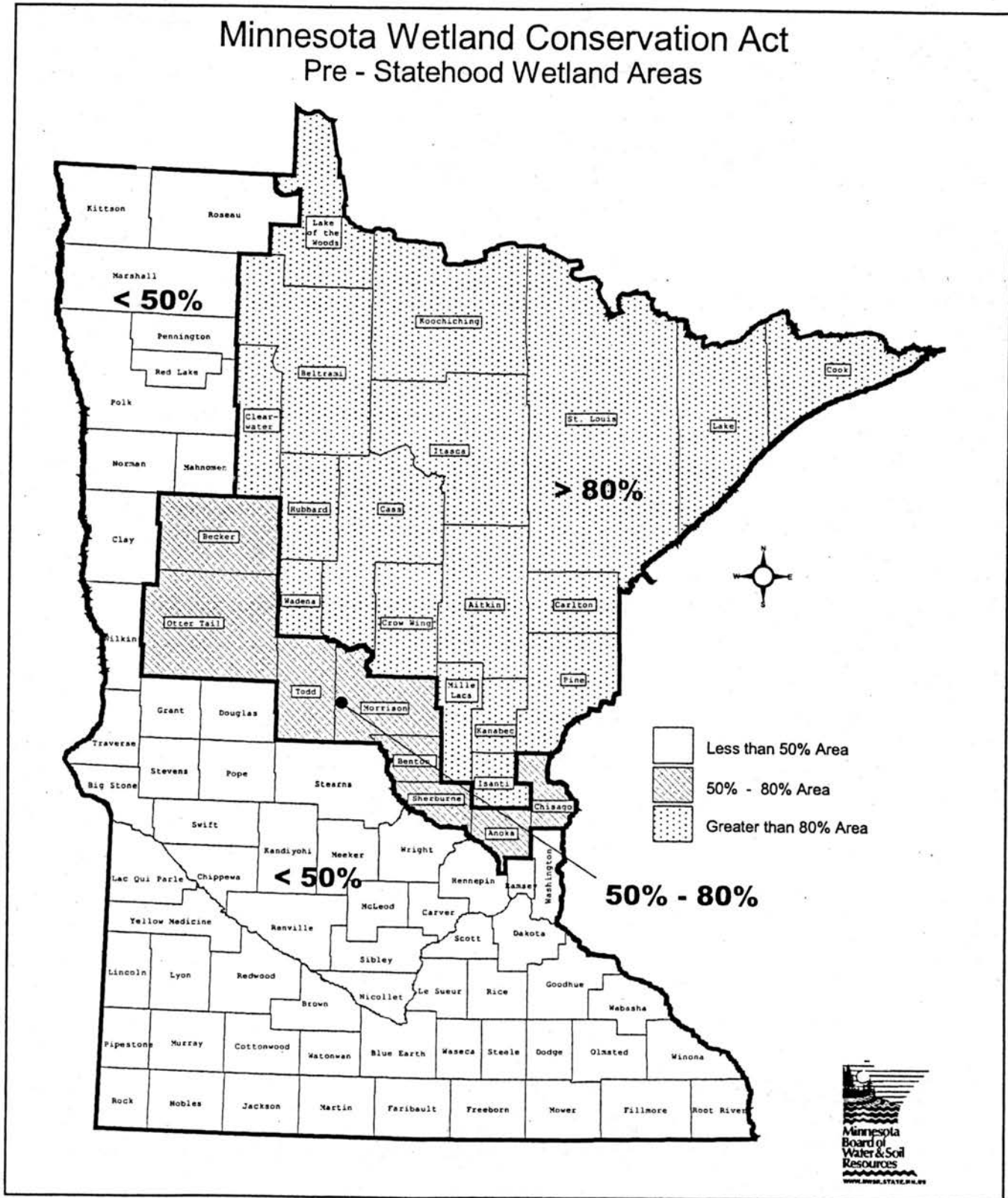
B. For purposes of ~~this part~~ parts 8420.0540 to 8420.0549, the following counties are less than 50 percent areas: Big Stone; Blue Earth; Brown; Carver; Chippewa; Clay; Cottonwood; Dakota; Dodge; Douglas; Faribault; Fillmore; Freeborn; Goodhue; Grant; Hennepin; Houston; Jackson; Kandiyohi; Kittson; Lac Qui Parle; Le Sueur; Lincoln; Lyon; Mahnomen; Marshall; Martin; McLeod; Meeker; Mower; Murray; Nicollet; Nobles; Norman; Olmsted; Pennington; Pipestone; Polk; Pope; Ramsey; Red Lake; Redwood; Renville; Rice; Rock; Roseau; Scott; Sibley; Stearns; Steele; Stevens; Swift; Traverse; Wabasha; Waseca; Washington; Watonwan; Wilkin; Winona; Wright; and Yellow Medicine.

C. For purposes of ~~this part~~ parts 8420.0540 to 8420.0549, the following counties are 50 to 80 percent areas: Anoka; Becker; Benton; Chisago; Morrison; Otter Tail; Sherburne; ~~and Todd; and Wadena.~~

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WETLAND AREAS

Figure 1. [The old map is stricken, the following map is all new material.]



Subp. 6. 8420.0546 SIZE OF REPLACEMENT WETLANDS.

Replacement wetlands must be of a size sufficient to ensure that they provide equal or greater public value than the wetland that was drained or filled. Except in greater than 80 percent areas, for a wetland located on nonagricultural land, the minimum size of the replacement wetland must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland. For a wetland located on agricultural land, or in greater than 80 percent areas, the minimum size of the replacement wetland must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland. The actual replacement ratios required for a replacement wetland may be more than the minimum, subject to the evaluation of wetland functions and values in ~~subpart 10 part~~ 8420.0549.

Except in greater than 80 percent areas, future owners may make no use of the wetland after it is altered, other than as agricultural land for a period of ten years unless future replacement to achieve a 2:1 ratio occurs. The landowner shall record a notice of this restriction in the office of the county recorder in which the project is located.

8420.0547 OTHER REQUIREMENTS.

Subp. 7. Subpart 1. Carbon balance. When it is necessary to replace a drained or filled peatland, the replacement wetland must be revegetated with planted or naturally ~~invading~~ pioneering native vegetation established within three growing seasons.

Subp. 8. 2. Ecological consistency. Restoration and replacement of wetlands must be accomplished according to the ecology of the landscape area affected. A replacement plan that would result in wetlands or wetland characteristics that do not naturally occur in the landscape area in which the replacement will occur will not be approved.

Subp. 9. 8420.0548 SPECIAL CONSIDERATIONS.

Subpart 1. Scope. The factors in ~~items A to I~~ this part, when identified as being applicable to an impact site or a replacement site, must be considered by the local government unit in the review of replacement plans.

A. Subp. 2. Federal or state-listed endangered species. A replacement plan for activities that involve sites where species listed in parts 6134.0200 to 6134.0400 are known to be present ~~will not must be approved~~ denied if it is determined that the proposed activities will constitute a taking of those listed species under *Minnesota Statutes*, section 84.0895. Limited information on the presence of listed species at a particular site is available from the Department of Natural Resources' natural heritage program. Activities that involve taking listed species are subject to *Minnesota Statutes*, section 84.0895. and non-game research

B. Subp. 3. Rare natural communities. A replacement plan for activities that involve the modification of a rare natural community as determined by the Department of Natural Resources' natural heritage program ~~will not must be approved~~ denied if the local government unit determines that the proposed activities will permanently adversely affect the natural community.

C. Subp. 4. Special fish and wildlife resources. A replacement plan for activities that would have a significant adverse impact that cannot be mitigated on a special or locally significant fish and wildlife resource ~~will not must be approved~~ denied. These activities include, but are not limited to:

- (+) **A.** fish passage and spawning areas;
- (+) **B.** colonial waterbird nesting colonies;
- (+) **C.** migratory waterfowl concentration areas;
- (+) **D.** deer wintering areas; and/or
- (+) **E.** wildlife travel corridors.

Subd. 7, or Minn. Rule Chapter 6212.1800
and the commissioner does not
authorize the taking

Activities involving streams must not block fish passage unless approved by the Department of Natural Resources.

D. Subp. 5. Archaeological ~~or~~, historic, or cultural resource sites. A replacement plan for activities that involve the modification of known archaeological ~~or~~, historical, or cultural resource sites on or eligible for the National Register of Historic Places, as designated by the state historic preservation officer, ~~will not must be approved~~ denied, if the local government unit, in consultation with the State Historical Preservation Office, determines that the proposed activities will have a significant adverse impact on the archaeological or historical value of the site.

E. Subp. 6. Groundwater sensitivity. A replacement plan for activities ~~will not must be approved~~ denied if the local government unit determines the activities would have a significant adverse impact on groundwater quality. The publication "Criteria and

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Proposed Rules

Guidelines for Assessing Geologic Sensitivity of Ground Water Resources in Minnesota" (MDNR, 1991) may be used as a guide in determining potential impacts.

F. Subp. 7. Sensitive surface waters. A replacement plan ~~will not must~~ be ~~approved~~ denied if the local government unit determines the activities will have a significant adverse impact on the water quality of outstanding resource value waters listed in part 7050.0180 or on trout waters designated by the commissioner.

G. Subp. 8. Education or research use. Wetlands known to be used for educational or research purposes must be maintained or adequately replaced.

H. Subp. 9. Waste disposal sites. The local government unit must evaluate the type and amount of waste material found at the site. Activities involving known or potential hazardous wastes or contaminants must be conducted according to applicable federal and state standards.

I. Subp. 10. Consistency with other plans. The local government unit must consider the extent to which proposed activities are consistent with other plans, such as watershed management plans, land use plans, zoning, and master plans.

Subp. 10. 8420.0549 EVALUATION OF WETLAND FUNCTIONS AND VALUES.

A. Subpart 1. Evaluation options. Replacement wetlands must replace the functions and values that are lost from a wetland that is drained or filled. When environmentally preferable, a replacement wetland should replace the same combination of functions and values provided by the impacted wetland. Replacement of wetland functions and values may occur at more than one location. ~~The wetland type index system in items D and E uses relative values of wetland functions compared across wetland types to evaluate the adequacy of wetland replacement.~~ The local government unit may allow the evaluation of wetlands by measuring and comparing public values specified in *Minnesota Statutes*, section 103B.3355, with a scientifically accepted methodology in ~~items G and H subparts 7 and 8.~~

B. Subp. 2. Wetland types: wetlands classification equivalency chart. For purposes of this part, the following table serves as a key for using Table 2 (~~item D, subitem (1) subpart 4, item A~~) and Table 4 (~~part 8420.0550, subpart 3~~) and as a wetland classification equivalency chart for the wetland classification developed by the United States Fish and Wildlife Service (Cowardin et al. 1979), and the approximate wetland type from the United States Fish and Wildlife Service Circular No. 39 (1971 edition).

Table 1. **Wetland Classification Equivalency Chart.** The Cowardin classification includes system, subsystem, class, subclass, and/or water regime. The Circular 39 wetland type is approximated.

Cowardin System	Circular 39
L1 (all)	5*
L2ABF	4
L2ABG	5
L2ABH	5
L2EMA	5
L2EMB	5
L2EMF	4
L2EMG	4
L2EMH	5
L2RS	5
L2UB	5
L2US	4
PABF	4
PABG	4
PABH	5
PEMA	1
PEMB	2, 8
PEMC	3
PEMD	3
PEME	2
PEMF	3
PEMG	4
PEMH	4
PEMJ	1
PEMU	3
PEMW	1

PEMY	3
PEMZ	4
PFOA	1L**
PFO1B	7
PFO2B	8 7
PFO4B	8 7
PFO5B	7
PFO6B	7
PFO7B	8 7
PFOC	7
PFOD	7
PFOF	7
PFOJ	1L**
PFOU	1L**
PFOV	1L**
PFOY	7
<u>PMLB</u>	8
PRB (all)	5
PSSA	6
PSS1B	6
PSS2B	8
PSS3B	8
PSS4B	8
PSS5B	6
PSS6B	6
PSS7B	8
PSSC	6
PSSD	6
PSSF	6
PSSG	6
PSSH	6
PSSJ	6
PSSW	6
PSSY	6
PSSZ	6
PSSU	6
PUBB	4 3
PUBF	4
PUBG	5
PUBH	5
PUS (all)	4 3
R1	R2***
R2 (all)	R2***
R3 (all)	R3***
R4 (all)	R4***
R5	R4***

* Circular No. 39 does not classify deep water as a wetland type, but for purposes of this table, these areas can be approximated as a type 5.

** 1L wetlands by Circular No. 39 are Type 1 Bottomland Hardwoods.

*** No equivalent. Circular No. 39 does not address riverine wetlands.

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Proposed Rules

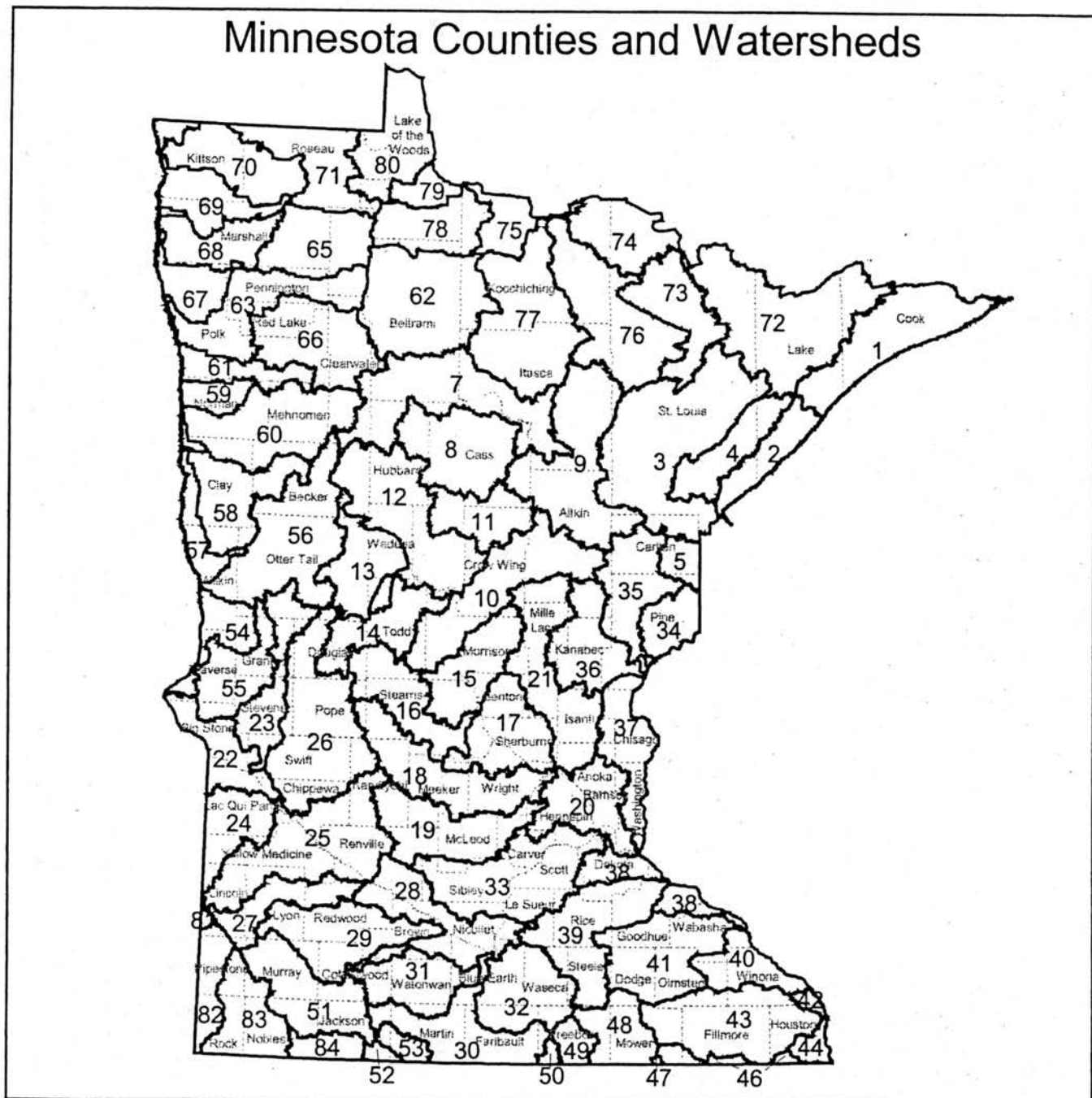
"K" water regimes are often municipal/industrial water facilities.

NOTE: In the case of wetland identified using the Cowardin system with both numerator and denominator wetland types, the numerator type is considered the dominant wetland type, with the exception that the denominator wetland type is to be used when the numerator wetland type vegetation is dead.

STATE OF MINNESOTA WATERSHED BOUNDARIES - 1979 (81 MAJOR WATERSHED UNITS)

Figure 2.

[The old map is stricken, and the following map is all new material.]



LIST OF 81 MAJOR WATERSHED UNITS OF MINNESOTA

- 1 Lake Superior (north)
- 2 Lake Superior (south)
- 3 St. Louis River
- 4 Cloquet River
- 5 Nemadji River
- 7 Mississippi River (Headwaters, Lake Winnibigoshish)
- 8 Leech Lake River
- 9 Mississippi River (Grand Rapids)
- 10 Mississippi River (Brainerd)
- 11 Pine River
- 12 Crow Wing River
- 13 Redeye River (Leaf River)
- 14 Long Prairie River
- 15 Mississippi River (Sartell)
- 16 Sauk River
- 17 Mississippi River (St. Cloud)
- 18 North Fork Crow River
- 19 South Fork Crow River
- 20 Mississippi River (Metro)
- 21 Rum River
- 22 Minnesota River (Headwaters)
- 23 Pomme de Terre River
- 24 Lac qui Parle River
- 25 Minnesota River (Granite Falls)
- 26 Chippewa River
- 27 Redwood River
- 28 Minnesota River (Mankato)
- 29 Cottonwood River
- 30 Blue Earth River
- 31 Watonwan River
- 32 Le Sueur River
- 33 Minnesota River (Shakopee)
- 34 St. Croix River (Upper)
- 35 Kettle River
- 36 Snake River
- 37 St. Croix River (Stillwater)
- 38 Mississippi River (Red Wing) and Lake Pepin
- 39 Cannon River
- 40 Mississippi River (Winona)
- 41 Zumbro River
- 42 Mississippi River (La Crescent)
- 43 Root River
- 44 Mississippi River (~~Neve~~ Revo)
- 46 Upper Iowa River
- 47 Wapsipinican River (Headwaters)
- 48 Cedar River
- 49 Shell Rock River
- 50 Winnebago River (Lime Creek)
- 51 West Fork des Moines River (Headwaters)

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Proposed Rules

- 52 West Fork des Moines River (Lower)
- 53 East Fork des Moines River
- 54 Bois de Sioux River
- 55 Mustinka River
- 56 Otter Tail River
- 57 Red River of the North (Headwaters)
- 58 Buffalo River
- 59 Marsh River
- 60 Wild Rice River
- 61 Sandhill River
- 62 Upper and Lower Red Lake
- 63 Red Lake River
- 65 Thief River
- 66 Clearwater River
- 67 Grand Marais Creek (Red River of the North)
- 68 Snake River
- 69 Tamarack River (Red River of the North)
- 70 Two River
- 71 Roseau River
- 72 Rainy River (Headwaters)
- 73 Vermillion River
- 74 Rainy River (Rainy Lake)
- 75 Rainy River (Manitou)
- 76 Little Fork River
- 77 Big Fork River
- 78 Rapid River
- 79 Rainy River (Baudette)
- 80 Lake of the Woods
- 81 Big Sioux River (Medary Creek)
- 82 Big Sioux River (Pipestone)
- 83 Rock River
- 84 Little Sioux River

C. Subp. 3. Replacement ratios for In-kind wetland replacement. When Wetland functions lost as a result of replacement for drainage, excavation, or filling are replaced by restoring a wetland fill shall be considered in-kind if one of the following applies:

A. the replacement wetland is of the same type, and having as the impacted wetland;

B. the replacement wetland is within the same topographic setting, county as the impacted wetland; or

C. the replacement wetland is in the same watershed and with the same topographic setting ratio as described in item D, subitem (2), and related definitions, the replacement shall be considered to be as the replacement wetland. For in-kind and replacement, the minimal replacement ratio shall be used to determine the necessary size of the replacement wetland. For impacted wetlands on agricultural land, or in counties or watersheds in which greater than 80 percent or more of the presettlement wetland acreage exists areas, the minimum replacement ratio is 1:1, requiring an equal area be replaced for the area impacted. Except for counties or watersheds in which For less than 80 percent or more of the presettlement wetland acreage exists areas and for impacted wetlands on nonagricultural land, the minimum replacement ratio is 2:1, requiring two times the impacted area be replaced and public value credits can be used for the portion of replacement required above 1:1.

D. Subp. 4. Out-of-kind wetland replacement ratios. If the wetland functions lost as a result of drainage or filling are to be replaced by creating a wetland or restoring a wetland of a different type or in a different topographic setting than the impacted wetland, or if the replacement wetland is in a watershed other than the impacted wetland or had different inlet and outlet characteristics than the impacted wetland, the replacement shall be considered to be out of kind and the local government unit shall use the replacement ratios in this subpart to determine the amount of replacement wetland needed to replace the lost wetland values Out-of-kind replacement is any replacement that is not in-kind in subpart 3.

(1) Wetland type ratio. Differences in wetland functions and values among wetland types are to be evaluated and replaced using the wetland type ratio table in this part, to be applied as specified in subitem (4). The wetland type ratio table incorporates an evaluation of public values as specified in Minnesota Statutes, section 103B.3355, for the purposes of comparison among wetland types.

Proposed Rules

If a wetland to be drained or filled exhibits more than one wetland type as determined by the technical evaluation panel, and more than one wetland type is proposed to be drained or filled, the local government unit shall use the following procedure to determine needed replacement. The acreage of each wetland type to be converted to nonwetland impacted shall be determined. The wetland type ratio table shall then be used to determine the amount of replacement wetland for each wetland type. The sum of the replacement for each wetland type shall be the resultant acreage requirement for the wetland type ratio. Table 2. Wetland type ratio values for use in determining wetland replacement ratios for out of kind replacement. Circular No. 39 wetland types include Type 1 (seasonally flooded basin or flat), Type 1L (bottomland hardwoods), Type 2 (wet meadow), Type 3 (shallow marsh), Type 4 (deep marsh), Type 5 (shallow open water), Type 6 (shrub swamp), Type 7 (wooded swamp), Type 8 (bog), R2 (lower perennial river), R3 (upper perennial river), and R4 (intermittent river).

Impacted Wetland	Replacement Wetland					
	1	1L	2	3	4	5
1	1.0	1.5	1.0	1.0	1.0	1.5
1L	3.0	1.0	1.5	1.0	1.0	1.5
2	1.0	1.5	1.0	1.0	1.0	1.5
3	2.0	1.5	1.5	1.0	1.0	1.5
4	3.0	1.5	1.5	1.0	1.0	1.5
5	3.0	1.5	1.5	1.0	1.0	1.0
6	2.0	1.5	1.0	1.0	1.0	1.5
7	2.0	1.5	1.0	1.0	1.0	1.5
8	1.0	1.0	1.0	1.0	1.0	1.5
R2	3.0	1.5	1.5	1.0	1.0	1.0
R3	3.0	1.5	1.5	1.0	1.0	1.0
R4	2.0	1.5	1.5	1.0	1.0	1.0

Impacted Wetland	Replacement Wetland					
	6	7	8	R2	R3	R4
1	2.0	1.0	1.5	3.0	1.5	3.0
1L	2.0	1.5	3.0	2.0	1.5	2.0
2	2.0	1.0	2.0	3.0	1.5	3.0
3	3.0	1.5	3.0	3.0	1.5	3.0
4	3.0	1.5	3.0	3.0	1.5	3.0
5	3.0	1.5	3.0	2.0	1.0	2.0
6	1.0	1.0	2.0	2.0	1.5	2.0
7	2.0	1.0	2.0	3.0	1.5	3.0
8	2.0	1.0	1.0	2.0	1.5	2.0
R2	3.0	1.5	3.0	1.0	1.0	1.5
R3	3.0	1.5	3.0	2.0	1.0	2.0
R4	3.0	1.5	2.0	1.0	1.0	1.0

Replacement Type	Impact Location	
	>80% Area or Ag Land	<80% Area and Non-Ag Land
In-kind (same wetland type or same watershed or same county)	1:1	2:1
Out-of-kind: direct replacement	1.5:1	2.5:1
Out-of-kind: banking	1.25:1	2.25:1

*See Table 1 of item B subpart 2 for wetland classification equivalency.

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Proposed Rules

(2) Topographic setting ratio. If the topographic setting characteristics of a replacement wetland differ from those of the impacted wetland, the following ratios shall be applied, described as specified in subitem (4) topographic, riverine, floodplain, flow-through, tributary, or isolated.

The topographic setting ratio does not apply when replacement for impacts within a greater than 80 percent area is accomplished in a less than 50 percent area or to wetland replacement projects conducted by the board for public transportation projects on existing roads.

Table 3. Topographic Setting Ratios.

Impacted Wetland	Replacement Wetland		
Topographic Setting	Shoreland	Riverine	Floodplain
Shoreland	0	0.2	0.4
Riverine	0	0	0.2
Floodplain	0	0	0
Flow Through	0	0	0
Tributary	0	0	0
Isolated	0	0	0

Impacted Wetland	Replacement Wetland		
Topographic Setting	Flow Through	Tributary	Isolated
Shoreland	0.6	0.8	1.0
Riverine	0.4	0.6	0.8
Floodplain	0.2	0.4	0.6
Flow Through	0	0.2	0.4
Tributary	0	0	0.2
Isolated	0	0	0

(3) Local public value ratio. A local government unit may by ordinance establish additional local public value ratios to address wetland conservation or preservation issues of local concern. These ratios must have a minimum value of zero and should be based on wetland management objectives of a local water management plan adopted under *Minnesota Statutes*, chapter 103B or 103D. The local public value ratios must be applied as specified in subitem (4).

(4) Application of replacement ratios. The required replacement ratio for out of kind replacement shall be the sum of the wetland type ratio plus the topographic setting ratio plus the local public value ratio. When this ratio is less than the minimum in-kind ratio of 1:1 for wetlands on agricultural land or in greater than 80 percent areas, or 2:1 for wetlands on nonagricultural lands in less than 80 percent areas, the minimum in-kind ratio shall be the required replacement ratio.

E. Subp. 5. Determining impacts of partial drainage. In cases where wetlands will be partially or incompletely drained, the amount of wetland to be replaced must be determined as follows:

The area impacted by partially draining a wetland is determined in two parts. The wetland area where the hydrology is totally removed must be replaced in its entirety. The area that is partially drained must be replaced in an amount that is at least 50 percent of the acreage of the remaining wetland area or determined by an assessment of the wetland functions listed in part 8420.0103, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board.

Calculation of partial drainage is explained by the following example:

Partial drainage of a ten-acre Type 3 (PEMC) wetland to a five-acre Type 1 (PEMA) wetland would require replacing five acres of Type 3 wetland plus 2.5 acres of Type 3 wetland for a total of 7.5 acres of Type 3 acres of replacement wetland.

F. Determining credit for restoration of partially drained wetlands.

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

Proposed Rules

The credit for increase in new acres can be used in its entirety. The public value credit can only be used for that portion of wetland replacement requiring greater than a 1:1 ratio.

Calculation of partial restoration credits is explained by the following example:

A partially drained five-acre Type 1 (PEMA) wetland is to be restored to its former state, which would be a ten-acre Type 3 (PEMC) wetland.

New Wetland Credit — five acres of Type 3 (PEMC) wetland

Public Value Credit — 2.5 acres of Type 3 (PEMC) wetland (50 percent of five acres of preresoration acreage)

G. Subp. 6. Alternative evaluation methodologies. The local government unit may evaluate the replacement plan using a scientifically accepted methodology that evaluates all wetland functions specified in *Minnesota Statutes*, section 103B.3355, for both the impacted and replacement wetlands. Such alternative methodologies must be approved and listed by the board, in consultation with the commissioners of natural resources and agriculture, and local government units. ~~Currently acceptable alternative methodologies include: "Minnesota Routine Assessment Methodology for Evaluating Wetland Functions" (Board of Water and Soil Resources, Version 1.0 May 1996); "Minnesota Wetland Evaluation Methodology (for the North Central United States)" (United States Army Corps of Engineers, September 1988); The Hydrogeomorphic Functional Assessment Methodology (as developed by the United States Army Corps of Engineers based on Wetlands Research Program Technical Report WRP DE 3, August 1992); Oregon Freshwater Wetland Assessment Methodology (Oregon Division of State Lands, December 1993); and Method for the Comparative Evaluation of Nontidal Wetlands in New Hampshire (New Hampshire Department of Environmental Services, March 1991).~~ Other methodologies may be used following board approval and publication in the *Environmental Quality Board Monitor*.

When using alternative evaluation methodologies to evaluate replacement plans, the ratio of impact wetland to replacement wetland must not be less than the minimum acreage requirements as listed in subpart 6, except as provided for in part 8420.0650, subpart 2. ~~When using an alternative evaluation methodology to evaluate a wetland replacement plan, the replacement wetland must be projected to have an equal or greater functional level than the impacted wetland for each of the functions listed in part 8420.0103, unless the technical evaluation panel determines that the overall functional level for each of the functions will be maintained within the local government unit's jurisdiction.~~

H. Subp. 7. Special cases or appeals. For projects of unusual complexity, or replacement plans that have been denied and are being appealed, and for which the local government unit believes an alternative evaluation process may produce a substantially different replacement requirement, the local government unit may evaluate the replacement plan using the current version of the Minnesota wetland evaluation methodology or another scientifically accepted methodology approved by the board, in consultation with the commissioner, that evaluates all wetland functions and values for both the impacted and replacement wetlands.

When using a board-approved methodology to evaluate replacement plans, the ratio of impact wetland to replacement wetland must not be less than the minimum acreage requirements as listed in ~~subpart 6~~ part 8420.0546. Further, the topographic setting ratio in ~~item D, subitem (2), subpart 4~~ and the local public value ratio, if any, in ~~item D, subitem (3), subpart 4~~ must also be considered when using a board-approved methodology.

I. Subp. 8. Adequacy decision. A replacement plan that fails to meet the requirements in ~~items A to H~~ this part must be considered inadequate in replacing lost functions and values and ~~shall not~~ must be approved ~~denied~~ by the local government unit. A replacement plan that has been considered by the local government unit and not approved may be revised and resubmitted for consideration by the local government unit. As required by part 8420.0250, the decision of a local government unit to approve, approve with conditions, or ~~not approve~~ deny a replacement plan becomes final if not appealed to the board within ~~15~~ 30 days after the date on which the decision is mailed to those required to receive notice of the decision. ~~Before~~ Within 30 days of completing construction of the a replacement wetland may proceed, the notice specified in part 8420.0530, item D, subitem (6), must be recorded and proof of recording provided to the local government unit.

8420.0550 WETLAND REPLACEMENT STANDARDS.

Subpart 1. General requirements. The standards and guidelines in this part shall be used in wetland creation and restoration efforts to ensure adequate replacement of wetland functions and values.

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Proposed Rules

Table 4, in subpart 3, provides technical specifications for constructing wetland types. In evaluating a wetland replacement plan, the local government unit must determine whether the wetland type stated as the replacement plan goal will result from the replacement plan specifications. If a wetland type other than the replacement plan goal is likely to result, the local government unit must evaluate the plan based on this determination. The local government unit must also determine that the proposed replacement plan will adequately replace functions and public values lost. If adequate replacement of function and public value is not likely to result, the local government must determine what further measures are necessary to obtain adequate replacement or deny the replacement plan.

Subp. 2. **Specific requirements.** The standards in items A to H shall be followed in all wetland replacements unless the technical evaluation panel determines that a standard is clearly not appropriate.

A. Water control structures must be constructed using specifications provided in the Minnesota Wetland Restoration Guide or their equivalent. Control structures may be subject to the Department of Natural Resources dam safety regulations.

B. Best management practices must be established and maintained adjacent to the entire perimeter of all replacement wetlands.

* C. For replacement wetlands where ~~the dominant native, noninvasive~~ vegetation that is characteristic of the wetland type identified as the replacement goal in part 8420.0530, item D, ~~subitem (1), is not likely to recover become dominant~~ naturally in a five-year period, ~~wooded and shrub wetlands especially,~~ the replacement wetland ~~must~~ shall be seeded or planted with appropriate native, noninvasive species, as determined by the technical evaluation panel. If the replacement wetland is seeded or planted, the seed or planting stock should be from native, noninvasive species of local regional wetland origin to preserve local genotypes.

* During the monitoring period, the applicant must take reasonable steps to ~~prevent and manage~~ control invasion by any nonnative or invasive species, for example, reed canary grass, Canada thistle, common buckthorn, spotted knapweed, leafy spurge, purple loosestrife, and Eurasian water milfoil, that would defeat the revegetation goal of the replacement plan.

D. Erosion control measures as determined by the soil and water conservation district must be employed during construction and until permanent ground cover is established to prevent siltation of the replacement wetland or nearby water bodies.

E. For all restored wetlands where the original organic substrate has been stripped away and for all created wetlands, provisions must be made for providing an organic substrate unless the technical evaluation panel recommends otherwise. When feasible, the organic soil used for backfill should be taken from the drained or filled wetland dominated by native, noninvasive species. Organic soil for backfill from wetlands dominated by nonnative, invasive species should be avoided.

F. The bottom contours of created types 3, 4, and 5 wetlands should be undulating, rather than flat, to provide a variety of water depths to, comparable to natural wetlands in the vicinity of the replacement, and be consistent with part 8420.0540 8420.0547, subpart 2.

G. Sideslopes of created portions of wetlands and graded buffer strip strips must not be steeper than 5:1, five feet horizontally for every one foot vertically as averaged around the wetland. Sideslopes of 10:1 to 15:1 are preferred. More than half of the slopes of graded areas inside the exterior boundaries of restored, created, or enhanced wetlands must be no steeper than 10:1 unless the technical evaluation panel concurs that steeper slopes are acceptable.

H. Created wetlands should have an irregular edge to create points and bays ~~to be,~~ consistent with part 8420.0540 8420.0547, subpart 2.

Subp. 3. [See repealer.]

8420.0600 MONITORING.

The purpose of wetland ~~value~~ replacement monitoring is to ensure that the replacement wetland achieves the goal of replacing lost functions and values.

8420.0610 DURATION OF MONITORING.

Monitoring shall be by means of an annual report as specified in part 8420.0620 and shall continue for five years following completion of the wetland replacement project, or until the technical evaluation panel deems the replacement wetland to be fully functional. Through written notification to the applicant, the local government unit may extend the required monitoring period for not more than an additional five-year period if the goal of the replacement plan has not been achieved, but, in the written opinion of the technical evaluation panel, may be achieved with more time.

8420.0620 MONITORING ANNUAL REPORT.

[For text of subpart 1, see M.R. 1999]

Subp. 2. **Report content.** The annual report shall include the following information and other site-specific information identified by the local government unit:

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[For text of items A and B, see M.R. 1999]

C. hydrology measurements: ~~at least three seasonal water level elevations or areal coverage measurements~~ during the period April through October ~~(not or referenced to a known bench mark);~~

D. ~~a list of the dominant vegetation in the wetland, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage, for example, 50 percent willow, 20 percent cattail, and 30 percent sedge~~ a map of plant communities within the boundaries of the replacement site, including hydrologic indicators observed; and

E. color photographs of the project area taken anytime during the ~~period June through August, referenced to the fixed photo-reference points identified on the wetland replacement plan and labeled accordingly~~ growing season.

8420.0630 MONITORING DETERMINATIONS BY THE LOCAL GOVERNMENT UNIT.

The local government unit responsible for monitoring as determined under part 8420.0230:

A. must inspect the project when construction is complete and certify compliance with construction specifications, and may inspect the project at any time during the construction and monitoring period, and any time after that to assess the long-term viability of the replaced wetland. When the local government unit certifies that the construction specifications have been met, the local government unit shall so advise the applicant and return any construction bond or other construction security that the applicant had provided;

[For text of items B and C, see M.R. 1999]

D. shall require one or more of the following actions if during the monitoring period the local government unit finds that the goal of the replacement plan will not be met:

- (1) order the applicant to prepare and implement a new replacement plan;
- (2) issue a cease and desist order on the draining and filling activity if it has not been completed;
- (3) order restoration of the impacted wetland;
- (4) obtain forfeiture of a bond or other security and use the proceeds to replace the lost wetland functions and values;
- (5) ask the district court to order the applicant to fulfill the replacement plan; or
- (6) other actions that the local government unit determines necessary to achieve the goal of the replacement plan.

8420.0650 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

Subpart 1. General requirements, ~~notice~~ and participation.

[For text of item A, see M.R.]

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. The technical evaluation panel must be consulted in all components of plan and ordinance development including, but not limited to, conducting wetland functional assessments, establishing wetland management classifications, and identifying local reference standard wetlands.

C. After board approval and local government adoption, replacement plan, exemption, and no-loss determinations are made according to the plan and ordinance. This part provides minimum standards. Local government units must require equivalent or greater standards and procedures for wetland conservation, but not less.

Subp. 2. Plan contents. ~~A~~ The comprehensive wetland protection and management component of the local water plan may:

A. provide for classification of wetlands in the plan area based on:

- (1) an inventory of wetlands in the plan area;
- (2) an assessment of the wetland functions listed in ~~Minnesota Statutes, section 103B.2355~~ part 8420.0103, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board ~~under that section;~~ and

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(3) the resulting public values;

B. vary application of the sequencing standards in Minnesota Statutes, section 103G.222, subdivision 1, paragraph (b) part 8420.0520, for projects based on the classification and criteria set forth in the plan;

C. vary the replacement standards of Minnesota Statutes, section 103G.222, subdivision 1, paragraphs (f) and (g) part 8420.0540, 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:

[For text of subitems (1) and (2), see M.R.]

D. 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~~

E. 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 Minnesota Statutes, section 103G.2241, subdivision 1, paragraph (a), clause (4) part 8420.0122, subpart 1, item D, to also include nonagricultural land, provided there is no net loss of wetland values;

F. prescribe standards for size and location of replacement wetlands by establishing type requirements, size/ratio requirements, functional quality requirements, location requirements, and wetland mitigation fee in lieu of direct replacement criteria. Requirements for replacement must have a direct relationship with wetland classification as defined in the plan and must result in no net loss of wetland quantity, quality, and biological diversity over the life of the plan which cannot exceed ten years;

G. allow exemptions based on ordinance standards, eligibility criteria, and processes that are not less restrictive than the requirements in parts 8420.0115, 8420.0122, and 8420.0210 based on wetland classifications as defined in the plan; and

H. define and establish high priority wetland areas pursuant to parts 8420.0350 and 8420.0400.

Subp. 2a. Project notice and appeal under local ordinance.

A. The local government unit shall submit to the commissioner of natural resources, the watershed district if there is one, local government units, members of the technical evaluation panel, and local citizens who request it, a copy of the application and provide at least 15 days' notice for comments and a schedule for a hearing if one is to be held. A copy of all decisions shall be forwarded to those mentioned above within ten days of the action.

B. Appeals of ordinance decisions. Persons may appeal replacement plan, no-loss and exemption determinations made pursuant to an approved wetland ordinance according to the procedures defined in part 8420.0250.

Subp. 3. Board review and approval; mediation; judicial review.

[For text of items A to F, see M.R.]

G. The comprehensive wetland protection and management plan may be developed as part of, or in conjunction with, a local water plan. Except as otherwise provided for in this part, all other requirements relating to development of the plan must be consistent with the local water plan processes under Minnesota Statutes, section 103B.231, 103B.311, or 103D.401.

Subp. 4. ~~Effective date; replacement decisions and amendments.~~

A. The plan becomes effective as provided in subpart 3, ~~items D to F~~, and after adoption of the plan into the official controls of the local government unit.

B. All amendments to the adopted plan and ordinance must be approved by the board.

C. After the effective date of the plan, a local government unit shall make replacement, exemption, no-loss, and other determinations consistent with the plan.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. **Local program capacity requirements.** Any local government unit opting to pursue incorporating this chapter into local ordinance must provide documentation to the board demonstrating local capacity to implement the program consistent with requirements prescribed in part 8420.0200, subpart 2, item A.

Subp. 8. **Reporting and oversight.** An annual activity report must be provided to the board which documents compliance with plan standards as required in subpart 2. The annual report shall include such items as the number and type of permits and exemptions issued, including documentation of the area of wetlands impacted and replaced, complaints received, plan and ordinance violations including number of cease and desist orders, projects constructed, variances granted, and local appeal proceedings.

8420.0720 PRINCIPLES OF WETLAND BANKING.

[For text of subpart 1, see M.R. 1999]

Subp. 2. **Sequencing prerequisite.** The state wetland banking system may only be used for replacement of drained or filled wetlands when the local government unit determines that the applicant has complied with all of the sequencing requirements of part 8420.0520; ~~that the project would otherwise be allowed if adequate replacement could be secured by the applicant; that project specific replacement is not reasonable or desirable; and that the owner of the account agrees to the withdrawal of wetland banking credits from the account.~~

Subp. 3. **Geographic limitations.** Wetland banking is allowed for any impact; ~~however, wetland impacts should be replaced in a location that either most closely resembles lost functions and public values at the impact site or in a location that maximizes important wetland functions and public values subject to the requirements of part 8420.0543.~~

Subp. 4. **Eligible wetlands.** ~~Restored wetlands are eligible for deposit into the wetland bank. Created wetlands are eligible for deposit in the wetland bank in counties in which 80 percent or more of the presettlement wetlands are intact. In other counties, created wetlands are eligible for deposit in the bank only if they are created by excavation in nonwetlands, by dikes or dams along public or private drainage ditches, or by dikes or dams associated with the restoration of previously drained or filled wetlands. Only wetland and buffer areas eligible for replacement credit under parts 8420.0540 to 8420.0549 are eligible for deposit in the state wetland bank.~~

[For text of subps 5 and 6, see M.R. 1999] *Wetland banking credits may also be*

* Subp. 7. **Wetland banking credit withdrawals and transfers.** ~~Wetland banking credits may be withdrawn to provide replacement pursuant to an approved replacement plan or equivalent, or transferred to another account holder providing the fee title or easement is transferred also, and providing all the remaining wetland banking credit for a wetland remains in one account for future use or resale if a state conservation easement has been recorded as required in subpart 8. Wetland banking credits may be withdrawn by an applicant and partial withdrawals are allowed. The account holder is responsible for the success of the wetland until completion of monitoring. After completion of monitoring, from an account or transferred to another account by submittal of such requests on forms provided by the board along with any authorized fees. No sale, withdrawal, or transfer of credits is final until the board approves and debits the account of origin. The account holder is responsible for the success of the wetland until completion of monitoring. After completion of monitoring, the fee title owner or easement or license holder and anyone who has contracted with the owner is responsible for maintaining the wetland and replacing it according to this chapter if the wetland is subsequently drained or filled, by structural failure, or otherwise.~~

* Subp. 8. **Deed recording Conservation and access easement.** ~~For wetlands proposed for deposit, a deed covenant must be recorded stating that the subject wetland was or will be restored or created for mitigation banking purposes. No credits may be deposited in the state wetland bank until a perpetual conservation easement, in a format provided by the board, is granted to and accepted by the state. The easement shall provide for preservation of the banked wetland's functions by the fee owner and wetland banking plan applicant. The wetland banking plan applicant must also provide a title insurance policy that is acceptable to the state naming the state of Minnesota as the insured. If the conservation easement does not abut a public road, the fee owner and wetland banking plan applicant must also grant and record an access easement in favor of the board, the local government unit, and any other state, local, or federal regulatory authority that has authorized use of credits from the site for mitigation.~~ *This subpart does not apply to state lands.*

Subp. 8a. **Reporting of sale of credits.** ~~The owner of an account in the state wetland bank must report the sale of credits to the board on withdrawal or transfer forms prescribed by the board and include a copy of the bill of sale. Proposed withdrawals are not complete until at least one regulatory authority has approved the use of the subject credits for a specific purpose. Failure to report credit sales may result in restrictions on withdrawals until the account is reconciled.~~

Subp. 9. [See repealer.]

As prescribed in the conservation and access easement

* Subp. 10. **Marking of boundaries of bank areas.** ~~The boundary of bank areas must be clearly marked with visible monuments such as signs or fence posts at prominent locations. The monuments must be made of nondegradable material and shall be at least four feet in height and contain the wording "Wetland Bank Area - Subject to Use Restrictions."~~

Subp. 11. **Administrative fees.** ~~The board and local government units may collect administrative fees for managing wetland banking accounts.~~

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Subp. 12. Wetland banking appeals. Appeals of the local government unit banking determinations are taken according to part 8420.0250.

8420.0730 ADMINISTRATION AND MANAGEMENT AUTHORITY.

Subpart 1. **Establishment.** The board shall establish a state wetland bank. The board or the board's assignee is responsible for management of the bank including recording all bank transactions, maintaining bank records, and ensuring that the operation of the bank complies with parts 8420.0700 to 8420.0760. The board shall notify all local government units upon establishment of the bank. Any separate banking system including those established by local governments must comply with parts 8420.0700 to 8420.0760 and must be approved by the board and the commissioner.

Subp. 2. **Deposit prerequisites.** To be deposited into the state wetland bank, a wetland must be certified as eligible for deposit by the local government unit in which it is located, according to part 8420.0740, subpart 1. ~~The method of certification by local government units is optional, but wetland banking credits may not be deposited into the bank within that local government unit's jurisdiction without certification.~~ If a local government unit elects to certify wetlands for deposit in the wetland bank, the local government unit is also responsible for ensuring that the monitoring provisions in part 8420.0750 are fulfilled. A local government unit may decline to certify all wetlands within its jurisdiction or, based on a comprehensive local water or wetland protection and management plan, a local government unit may elect to certify wetlands for deposit into the wetland bank only in selected areas, for example, high priority regions and areas. If the local government unit elects to reject or limit banking, it must do so by rule or ordinance, as applicable. The board may reject or modify an application for deposit if, during its review, any part of the bank application or plan is missing, incorrect, or inconsistent with this chapter.

Subp. 3. [See repealer.]

8420.0740 PROCEDURES.

Subpart 1. Deposits and credits.

~~A. Restored wetlands are eligible for deposit into the wetland bank. Created wetlands are eligible for deposit in the wetland bank in counties in which 80 percent or more of the presettlement wetlands are intact. In other counties, created wetlands are eligible for deposit in the bank only if they are created by excavation in nonwetlands, by dikes or dams along public or private drainage ditches, or by dikes or dams associated with the restoration of previously drained or filled wetlands. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.~~

~~B. A.~~ Wetland replacement credits approved before July 1, 1993, are eligible for deposit into the state wetland banking system if the wetland replacement credit was authorized by a public agency specifically for a wetland bank that has been approved by the commissioner. Also, wetland replacement credits that have been deposited in a local government unit bank before July 1, 1993, and after January 1, 1992, are eligible for deposit into the state wetland banking system if the deposit meets all the criteria in parts 8420.0700 to 8420.0760 based on a site inspection and review by the board and the commissioner.

~~C. B.~~ After July 1, 1993, wetlands restored or created without prior local government unit approval as specified in this part are not eligible for deposit into the wetland bank.

~~D. The minimum wetland acreage eligible to establish an account in the wetland bank is 0.1 acres.~~

~~E. C.~~ There is no maximum or minimum wetland acreage eligible for deposit in the wetland bank. Based on the recommendation of the technical evaluation panel, the local government unit, upon recommendation of the technical evaluation panel, must identify the acreage that will receive credit. As an incentive to encourage the deposit of small wetlands, the local government unit shall assign wetland banking credit to wetland acreage as follows: The acreage must be based on a land survey or comparable method of field measurement of the credit areas recommended for deposit. The person making the measurement must certify in writing as to the method and accuracy of the measurement.

Wetland Acreage	Wetland Banking Credit
0 to 10 acres	100 percent
over 10 acres	90 percent

~~The local government unit may modify the credit given, up to a maximum of 100 percent, if agreed to by the technical evaluation panel.~~

~~F. D.~~ The initial deposit of wetland banking credits must be done by the fee title owner or easement ~~or license~~ holder of the wetland bank area.

~~G. E.~~ Except as provided for in item ~~B. A.~~, in order to deposit wetland acres into the wetland bank, the ~~depositor~~ wetland banking plan applicant must notify the local government unit in writing, before restoration or creation, that the proposed wetland is

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specifically designated for deposit into the wetland bank. This notification may be part of the documentation requested in item ~~H~~ E. In cases where excess wetland acreage is expected to result from a specific replacement plan according to parts 8420.0530 to 8420.0550, the owner must indicate on the replacement plan that the excess acreage is to be considered available for wetland banking or lose the opportunity to use the excess credits for future projects. If the excess credit is less than 1.0 acre, an account may be established without the need to grant a perpetual conservation easement to the state of Minnesota.

~~H~~ E. In cases where a wetland is proposed to be restored or created solely for wetland banking purposes, that is, the wetland is not part of a project-specific wetland replacement plan, the ~~depositor~~ wetland banking plan applicant must submit to the local government unit a bank plan containing the information required in part 8420.0530, items A and D. The bank plan must include design plans that show structural, earthmoving, and vegetative management components. The plan must clearly show existing jurisdictional wetlands and areas proposed to receive credit, and be signed, dated, and consistent with part 8420.0550.

A copy of the bank plan shall be mailed to members of the technical evaluation panel, the administrator of the state wetland bank, members of the public who have requested a copy, the commissioner of natural resources, the district office of the United States Army Corps of Engineers, and members of the watershed district or watershed management organization if there is one. Based on input from the technical evaluation panel and other comments received, the local government unit must determine the likelihood that the restoration or creation will be successful and, if affirmative, approve, modify, or reject the banking plan and advise the depositor of the wetland banking credits likely to be accepted into the wetland bank. Approval of the plan shall be considered official acknowledgment that the wetland is designated for replacement. The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. The local government unit decision must be mailed to the wetland banking plan applicant within ten working days of the decision. A summary of the government unit decision must be mailed within ten working days of the decision to those required to receive notice of the application.

~~I~~ G. In cases where a wetland is to be restored or created by an agency, department, or subdivision of the local government unit for deposit into the wetland bank, the local government unit must prepare the information required in part 8420.0530, items A and D, and notice this information according to item ~~H~~ E.

~~J~~ H. The proposed wetland must be restored or created within two years of approval or the bank plan must be resubmitted for consideration. Upon approval, the ~~depositor~~ wetland banking plan applicant shall restore or create the wetland and notify the local government unit when construction has been completed. The technical evaluation panel shall inspect the site when construction is completed to ensure that construction specifications and the vegetation management plan have been followed. Failure to follow approved construction specifications and the vegetation management plan is sufficient grounds for the local government unit to deny consideration of the wetland for banking.

~~K~~ I. Up to 15 percent of the proposed credits are eligible for deposit in the bank immediately after completion of construction and vegetative planting if all of the following subitems apply:

(1) For projects that contain elements that include dams, dikes, or other impoundment features, the construction plans were designed, overseen, and certified by a registered professional engineer.

(2) The technical evaluation panel certifies that the initial planting has been completed in accordance with the vegetation management plan.

(3) The provisions of part 8420.0720, subpart 8a, have been complied with.

The remaining proposed credits may be eligible for deposit no sooner than six months after construction has been completed and approved for restored wetlands, and no sooner than one year after construction has been completed and approved for created wetlands. The ~~depositor~~ wetland banking plan applicant shall contact the local government unit to request a ~~final~~ determination of wetland bank acceptability and approved quantities of wetland banking credits for ~~deposit~~ initial and subsequent deposits. The technical evaluation panel shall ensure that sufficient time has been allowed for the wetland to become established, especially vegetation and hydrology, before making this determination. If the technical evaluation panel has reason to believe that the wetland characteristics may change substantially, the panel must postpone its recommendation to the local government unit until the wetland has stabilized. As part of its initial review and comment on the bank plan, the panel may recommend specific performance standards that are linked to a credit allocation schedule. The wetland banking plan applicant must be advised of any performance standards and credit allocation schedule recommended by the panel.

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Based on a site visit, the technical evaluation panel will determine the size and type of wetland as well as topographic setting characteristics and, if applicable, the new wetland credits and public value credits resulting from the to be deposited wetland. The technical evaluation panel will provide the information to the local government unit.

* ~~L. L.~~ The local government unit shall ~~notify the depositor of its findings as to the suitability of the wetland and approved consider the recommendations of the technical evaluation panel and comments from those required to receive a copy of the banking plan prior to developing findings. The local government unit shall review and approve wetland banking credits and submit the complete wetland bank application for deposit, wetland bank application, and plan to the board. If the depositor chooses to proceed with a deposit into the bank, the depositor must record the notice specified in part 8420.0530, item D, subitem (6), and submit proof of the recording to the local government unit for the wetlands to be deposited. If the depositor wetland banking plan applicant chooses not to proceed with the deposit, the depositor wetland banking plan applicant may return the wetland to its preconstruction condition without replacement within five years. At any time within the five-year period, the depositor wetland banking plan applicant may request certification for the board to deposit any or all eligible and approved credits into the bank or may amend the bank plan and submit resubmit the plan to the local government unit for approval and subsequent board certification. After five years, any activity in the wetland is subject to this chapter.~~

~~M. K.~~ To be deposited into the bank, the following information concerning the wetland must be submitted to the board by the ~~wetland banking plan applicant or by~~ local government unit in which the wetland is located:

- (1) name, address, and telephone number of the ~~depositor wetland banking plan applicant~~;
- (2) ~~location of the wetland, including legal description, public land survey coordinates, county, and watershed a complete copy of the wetland banking plan application, supporting documents, and a survey of the land area that will be subject to restrictions;~~
- (3) a copy of the deed for the property containing the wetland ~~with the required covenant recorded and any easement if the wetland banking plan applicant is not the fee owner~~;
- (4) size of the wetland acreage to be deposited, to the 0.1 acre, by wetland type and topographic setting characteristics and, if applicable, the new wetland credits and public value credits; and
- (5) ~~local government unit~~ certification that the wetland is approved for deposit into the bank.

~~N. L.~~ The board shall acknowledge the deposit to the ~~depositor wetland banking plan applicant~~ and local government unit and officially enter the information in item ~~M. K.~~ into the wetland bank. Information on deposited wetlands shall be available from the board on request according to subpart 2, item D.

~~O. M.~~ Wetlands deposited into the wetland bank, on which withdrawals have occurred, are subject to replacement for any subsequent drainage or filling.

~~P. N.~~ Wetlands deposited into the wetland bank are subject to the monitoring provisions in part 8420.0750.

Subp. 2. Withdrawals.

A. Before consideration of use of the wetland bank, replacement plan applicants must satisfy the requirements of part 8420.0520 or equivalent. ~~It must be clearly demonstrated that the applicant has made a good faith effort to avoid, minimize, rectify, or reduce or eliminate over time the impact on the wetland, and that no feasible and prudent alternative to the impact exists. The local government unit must certify that the project would otherwise be allowed if adequate replacement could be secured by the applicant and that the applicant has made a good faith effort to do so and has not succeeded in locating a site.~~

B. ~~The use of the wetland bank is allowed. Credits from the state wetland bank may be used to mitigate wetland losses authorized by local government units or other local, state, and federal regulatory authorities provided the impacted wetland is within the state of Minnesota and the credit withdrawal procedures of this chapter are followed.~~

C. When using the wetland bank to replace drained or filled wetlands, the replacement must comply with ~~part parts~~ 8420.0540 to 8420.0549.

[For text of item D, see M.R. 1999]

E. The applicant may ~~then~~ contact, negotiate, and purchase the required wetland banking credits from the account holder. When the account holder and applicant come to agreement, the applicant will provide requested information on a ~~notarized~~ wetland banking credit withdrawal form developed by the board, and include the wetland banking credit withdrawal form as part of the wetland replacement plan transmitted to the local government unit. The wetland banking credit withdrawal form will include information indicating the wetland type by acres for withdrawal, location of banked wetland, and the topographic setting characteristics and, if applicable, the new wetland credits and public value credits of the banked wetland.

[For text of item F, see M.R. 1999]

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G. On approval of the applicant's wetland replacement plan using wetland banking credits as wetland replacement, the local government unit shall notify the board to debit the appropriate ~~banked wetland account~~ by type and ~~acreage amount~~. The board will complete the accounting transactions and send a notice of wetland banking credit withdrawal to the account holder and the applicant. No sale, withdrawal, transfer, or use of wetland credits is valid until the board debits a wetland bank account. Wetland credits may be only used once.

H. The applicant shall not be allowed to begin proposed drain or fill activities until the local government unit formally approves the wetland replacement plan using the acknowledged wetland banking credits as replacement and the applicant has received notice of withdrawal of the wetland banking credits from the board or local government unit.

I. An individual, corporation, local government unit, state or federal agency, or other organization may buy and hold wetland banking credits from account holders in the bank for later use or resale. Transfer of wetland banking credits must be accomplished through use of a board wetland banking credit transfer form, and must be maintained in an account in the state wetland banking system. An account will be established for the individual or organization on presentation to the board of a wetland banking credit transfer form, and required organization information evidence that the perpetual conservation easement required by part 8420.0720, subpart 8, has been recorded. The board will notify both account holders on transfer of the wetland banking credits. An account transfer must be accompanied by transfer of the fee title or easement. A wetland banking credit for a wetland may not be split between accounts. Wetland banking credits may also be transferred between banks approved by the board.

8420.0750 AUDITING AND MONITORING.

Subpart 1. Annual report and audit.

[For text of items A to C, see M.R. 1999]

D. ~~An annual~~ A wetland bank status report shall be prepared as part of the report required by Minnesota Statutes, section 103G.2373, and distributed by the board to applicable local government units, soil and water conservation districts, watershed districts, watershed management organizations, the departments of natural resources and agriculture, and on request.

Subp. 2. Monitoring.

A. After the wetland is entered into the bank, the local government unit responsible for monitoring under part 8420.0230 and the ~~account holder wetland banking plan applicant~~ shall continue monitoring according to parts 8420.0600 to 8420.0630. ~~The account holder is responsible for the success of the wetland until completion of monitoring, even after all the credit has been withdrawn. A copy of each monitoring report must be submitted to the local government unit and the board.~~

[For text of item B, see M.R. 1999]

8420.0760 ENFORCEMENT AND CORRECTIVE ACTIONS.

A. ~~Enforcement of parts 8420.0700 to 8420.0750 is governed by part 8420.0290 and Minnesota Statutes, section 103G.2372. The fee owner and the wetland banking applicant, if different from the fee owner, are jointly and severally responsible for the success of the wetland banking project and maintaining the wetland banking project in accordance with the approved wetland banking plan both during and after monitoring, provided that the wetland banking plan applicant, if different from the fee owner, is not responsible after monitoring if the wetland banking plan applicant no longer owns an easement interest in the real estate or credits associated with the banked wetland.~~

B. If, on inspection, the board determines that wetlands deposited in the wetland bank are not in compliance with this chapter, the board must prescribe corrective measures to the local government unit and fee owner or wetland banking plan applicant to bring the wetland into compliance.

C. If satisfactory remediation does not result, the board may refuse future wetland bank certifications by the local government unit and require all wetland replacements to be on a project specific basis and future deposits from the fee owner or wetland banking plan applicant.

D. If, whether during or after the completion of the monitoring, a local government unit or the technical evaluation panel determines that a banked wetland does not substantially meet the specifications in the approved bank plan, the local government unit or technical evaluation panel must notify the board, ~~and~~. The board shall restrict further withdrawals ~~from the account and transfers of all credits associated with the wetland, whether held by the wetland banking plan applicant or a subsequent account holder,~~ until the local government unit or technical evaluation panel notifies the board, or the board otherwise determines, that the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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wetland banking project has been brought into compliance. The board may also restrict withdrawals when a local government unit is the account holder and the board determines that a banked wetland does not substantially meet the specifications in the approved bank plan.

E. The local government unit or the board ~~can~~ may undertake reconstruction work and require reimbursement of reasonable costs from the fee title owner or ~~easement or license holder~~ wetland banking plan applicant.

F. Fee owners, wetland banking plan applicants, or account holders may appeal restrictions on credit withdrawals and transfers, civil penalties, or demands for reimbursement of reconstruction costs to the dispute resolution committee of the board which shall make a recommendation to the full board.

G. Noncompliance with or impacts to, wetland banking projects are subject to enforcement under part 8420.0290.

8420.1010 PURPOSE.

The purpose of parts 8420.1010 to ~~8420.1060~~ 8420.1070 is to provide minimum standards and criteria for the identification, protection, and management of calcareous fens as authorized by *Minnesota Statutes*, section 103G.223. Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the commissioner.

Part 8420.0122 does not apply to calcareous fens.

8420.1070 ENFORCEMENT PROCEDURES.

Enforcement procedures for calcareous fens shall be conducted consistent with *Minnesota Statutes*, sections 103G.141 and 103G.2372, except that necessary restoration or replacement activities, if required, will be determined by the commissioner, in consultation with the local soil and water conservation district.

REPEALER. *Minnesota Rules*, parts 8420.0110, subpart 44; 8420.0235; and 8420.0250, subpart 5; 8420.0550, subpart 3; 8420.0650, subparts 5 and 6; 8420.0720, subpart 9; and 8420.0730, subpart 3, are repealed.

EFFECTIVE DATE. This chapter is effective July 31, 2002.

RENUMBERER. The rule parts in column A are renumbered as the rule parts in column B.

A	B
<u>8420.0540, subp 2, item D</u>	<u>8420.0541, subp 1</u>
<u>8420.0540, subp 2, item D, subitem (2)</u>	<u>8420.0541, subp 6</u>
<u>8420.0540, subp 2, item D, subitem (3)</u>	<u>8420.0541, subp 7</u>
<u>8420.0540, subp 3</u>	<u>8420.0542</u>
<u>8420.0540, subp 4</u>	<u>8420.0543</u>
<u>8420.0540, subp 5</u>	<u>8420.0544</u>
<u>8420.0540, subp 5a</u>	<u>8420.0545</u>
<u>8420.0540, subp 6</u>	<u>8420.0546</u>
<u>8420.0540, subp 7</u>	<u>8420.0547, subp 1</u>
<u>8420.0540, subp 8</u>	<u>8420.0547, subp 2</u>
<u>8420.0540, subp 9</u>	<u>8420.0548, subp 1</u>
<u>8420.0540, subp 9, item A</u>	<u>8420.0548, subp 2</u>
<u>8420.0540, subp 9, item B</u>	<u>8420.0548, subp 3</u>
<u>8420.0540, subp 9, item C</u>	<u>8420.0548, subp 4</u>
<u>8420.0540, subp 9, item D</u>	<u>8420.0548, subp 5</u>
<u>8420.0540, subp 9, item E</u>	<u>8420.0548, subp 6</u>
<u>8420.0540, subp 9, item F</u>	<u>8420.0548, subp 7</u>
<u>8420.0540, subp 9, item G</u>	<u>8420.0548, subp 8</u>
<u>8420.0540, subp 9, item H</u>	<u>8420.0548, subp 9</u>
<u>8420.0540, subp 9, item I</u>	<u>8420.0548, subp 10</u>
<u>8420.0540, subp 10, item A</u>	<u>8420.0549, subp 1</u>
<u>8420.0540, subp 10, item B</u>	<u>8420.0549, subp 2</u>
<u>8420.0540, subp 10, item C</u>	<u>8420.0549, subp 3</u>
<u>8420.0540, subp 10, item D</u>	<u>8420.0549, subp 4</u>
<u>8420.0540, subp 10, item E</u>	<u>8420.0549, subp 5</u>
<u>8420.0540, subp 10, item G</u>	<u>8420.0549, subp 6</u>
<u>8420.0540, subp 10, item H</u>	<u>8420.0549, subp 7</u>
<u>8420.0540, subp 10, item I</u>	<u>8420.0549, subp 8</u>