



Minnesota Board of Water and Soil Resources.
Minutes.

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(FOR BOARD ACTION)

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

May 28, 2003 BWSR Board Agenda Item

**POPE COUNTY
COMPREHENSIVE LOCAL WATER PLAN**

Pope County has a Comprehensive Local Water Plan (Plan) approved by the Minnesota Board of Water and Soil Resources (BWSR) on January 24, 1996. Pope County submitted a written request for a two-year extension of its Plan on March 22, 2000. BWSR approved the Plan extension on April 26, 2000. Pope County submitted its third generation Plan to the BWSR on January 22, 2003. The ninety-day state agency final review process began on January 22, 2003.

Pope County is located in West Central Minnesota, approximately 100 miles west of the Minneapolis-St Paul metropolitan area. There are 20 townships and 9 cities within the county. The largest city, Glenwood, is the county seat. Pope County contains 460,800 acres, the majority of which is rural with agricultural use. Pope County has nearly one-third of the Chippewa River Watershed (eighty-five percent of Pope County is within the Chippewa River Watershed), which is part of the Minnesota River Basin. Traditional agriculture is giving way to rural non-agricultural use. The county's abundant surface water resources are experiencing lake related development.

The third generation Plan reflects current conditions and trends within the county. Major trends include population growth and development pressures, agricultural production, and the overall increasing concern for water quality and quantity. To address these issues, Pope County has developed a ten-year plan with a five-year implementation strategy to address the following priority issues: Storm Water, Reducing Priority Pollutants, Sanitary Service Areas (Districts), Water/Drainage Management, Groundwater Protection and Water-Based Recreation

On April 10, 2003, the BWSR Water Plan Review Committee met in the City of Montevideo with BWSR staff and representatives from Pope County to review and discuss the third generation, ten-year Comprehensive Local Water Plan and the five-year Implementation Strategy.

BWSR staff has reviewed the Pope County Plan and find that all relevant requirements of law and rule have been fulfilled and it is in conformance with the requirements of Minnesota Statutes 1990, 103B and Minnesota Rules Chapter 9300. BWSR staff recommends approval of the Pope County ten-year Comprehensive Local Water Plan (2003-2013) and the five-year (2003-2008) Implementation Plan.

The BWSR Water Plan Review Committee, chaired by Jerome Deal, will make its approval recommendation to the full BWSR Board at its May 28, 2003, meeting.

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

In the Matter of Reviewing the Comprehensive Water Plan Update
for Pope 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 Pope County Board of Commissioners adopted its second generation Comprehensive Water Plan (Plan) on September 12, 1996, under authority of M.S. 1990, Section 103B.301, which was approved by the Minnesota Board of Water and Soil Resources (Board), January 24, 1996, respectively pursuant to M.S. 1990, Section 103B.315, Subd. 5, and

Whereas, the Plan provided for updating in 2001 pursuant to M.S. 1990, Section 103B.311, Subd. 4, and

Whereas, the Pope County Board of Commissioners submitted a Comprehensive Water Plan Update (Plan Update) to the Board on January 22, 2003, 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 March 22, 2000, Pope County requested an extension of their Comprehensive Local Water Plan.
3. On April 26, 2000, the Board of Water and Soil Resources approved the extension of the Pope Comprehensive Water Plan until December 31, 2002.
4. On November 11, 2001, Pope County passed a resolution to develop a Comprehensive Water Plan Update to meet the Plan update requirements.
5. Pope County completed a preliminary draft Plan Update on September 16, 2002, and submitted it to affected local units of government for review and comment pursuant to Section 103B.315, Subd. 1.
6. On September 16, 2002, Pope County submitted a draft Plan Update to all affected local units of government including the Departments of Agriculture, Health, and Natural Resources, the Pollution Control Agency, Minnesota Planning Environmental Quality Board and the Minnesota Geological Survey for preliminary review and comment.
7. On November 20, 2002, Pope 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.

8. On January 22, 2003, Pope County submitted its Final 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.
9. On April 10, 2003, an executive summary, Board Conservationist findings, and goals and objectives of the Pope County Plan Update were presented to the Board Ad Hoc committee for their information and review.
10. Minnesota Department of Agriculture (MDA) Review: In the preliminary review, MDA provided no comments. On February 6, 2003, MDA commended Pope County on the development of their third generation plan. MDA suggested the Central Sands Ground Water Monitoring Network, BMP Loan Program, and feedlot information be included and that the Plan Update should be closely integrated with the County's Comprehensive Land Use Plan. Noted within the plan were several areas where MDA may be able to coordinate with efforts identified, including agricultural drainage, low interest loans for on-site septic systems, agricultural chemical storage issues, and best management practices for agricultural operations.
11. Minnesota Department of Health (MDH) Review: MDH began providing information and assistance early and continued throughout the updating process. For the preliminary review, MDH provided no written comments.
12. In the final comment period, MDH stated the plan properly addresses public water suppliers requirement to conduct wellhead protection, identified the county's willingness to assist in development of wellhead protection plans, and supports county's abandoned well sealing. MDH suggested revisions to discussions on Community Public Water Suppliers, Health Risk Limits, and use of "transient non-community public water supply". On November 1, 2002, MDH stated that they found no inconsistency with state law. MDH commends the county for consideration of MDH's comments and support approval of the Plan.
13. Minnesota Department of Natural Resources (DNR) Review: In the preliminary review, DNR provided no written comments. DNR is an active member of the water planning taskforce and has contributed throughout the water plan update process.
14. In the final comment period, DNR provided no written comments. DNR is an active member of the water planning taskforce and has contributed throughout the water plan update process. On March 21, 2003, after the final comment period the DNR, made a number of suggestions, thanked the county for their efforts, recognized the challenges of bringing diverse perspectives together when formulating a plan of action, and looks forward to further opportunities to work with the county. No inconsistency with state law was identified.
15. Minnesota Pollution Control Agency (MPCA) review: In the preliminary review, MPCA provided no written comments. MPCA is an active member of the water planning taskforce and has contributed throughout the water plan update process.
16. In the final comment period, MPCA provided no written comments. MPCA is an active member of the water planning taskforce and has contributed throughout the water plan update process. During the final comment period the MPCA, stated they found no inconsistency with state law and recommended approval.
17. Minnesota State Planning Agency/Environmental Quality Board (EQB) Review: Provided no comments.
18. Minnesota Geological Survey (MGS) Preliminary Review: MGS provided no preliminary comments.
19. Minnesota Board of Water and Soil Resources: On November 14, 2002, the Board provided preliminary

written editing comments and high priority wetland preservation areas were not identified in the Plan Update. Otherwise, the plan was found to contain relevant data, assessments and implementation strategies.

20. In the final comment period, BWSR reviewed the final draft and found the County's six priority issues Storm Water, Reducing Priority Pollutants, Sanitary Service Areas (Districts), Water/Drainage Management, Groundwater Protection and Water-Based Recreation appropriate.

21. Pope County responded to all comments received after discussion at the regularly scheduled taskforce meetings. Pope County willingly agreed to incorporate DNR's March 21, 2003 comments into final plan prior to final BWSR Action

22. The Board Water Plan Review Committee met on April 10, 2003 in Montevideo with Board staff and a Pope County representative to review and discuss the Plan Update. Those in attendance were Ad Hoc Committee Chair Jerome Deal, Char Kahler, Vic Ormsby, Dan Wilson and Becky Back of the Board; Jeff Nielsen, David Sill and Pete Waller of the BWSR Regional staff; Dean Beck, DNR-Fisheries of Glenwood; Pope County Water Plan Coordinator, Steve Lawrence; and Matthew Johnson, Midwest Community Planning. 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.

23. On May 28, 2003, the BWSR water plan review committee recommended that the Board of Water and Soil Resources approve the Pope 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 Pope County pursuant to Minnesota Statutes 1990, 103B.315, Subd. 5, and Minnesota Rules, 9300.0170, Subp. 4.
2. The Pope 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 Pope County with a required update to the Implementation section (Goals, Objectives and Action Steps) by May 28, 2008. Dated at St Paul, Minnesota, this Twenty-Eighth day of May 2003.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: *Lee Coe*, Chair

CHAPTER ONE: COUNTY PROFILE AND EXECUTIVE SUMMARY



The Mill at Terrace, 1907

Chapter One Contains...

Chapter One provides an introduction to Pope County and its Comprehensive Local Water Plan. This Chapter includes the following information:

- ✓ The role of the County Board, Water Planning Committee and Citizen Participation
- ✓ Pope County's Population and Location
- ✓ Previous Pope County Water Plan Accomplishments
- ✓ Clean Water Partnerships/Watershed Projects
- ✓ Watershed Districts

The role of the County Board, Water Planning Committee and Citizen Participation

In January 2002, the Minnesota River Headwaters Joint Powers Board (consisting of Big Stone, Chippewa, Lac qui Parle, Pope and Swift Counties) cooperatively agreed to update the member counties' Comprehensive Local Water Plans. After reviewing a number of proposals, the Joint Powers Board entered into a contract with the local Regional Development Commission, the Upper Minnesota Valley Regional Development Commission (UMVRDC), to coordinate the development of the five individual water plans. The UMVRDC thereafter subcontracted with Midwest Community Planning, LLC, to assist with the planning, facilitation and writing portion of the contract (the UMVRDC remaining responsibilities included mapping and various data collection). Midwest Community Planning, LLC, then assisted the individual counties with developing the specific contents of this Water Plan.

The water planning process for Pope County started with a Public Informational Meeting, held on March 25, 2002. The primary purpose of the meeting was to invite the public, local governmental units and various governmental agencies to identify and discuss local water planning issues. The issues identified were then discussed during regular meetings (an average of one per month) with a Local Water Plan Committee, created by the Pope County Board of Commissioners. The Committee included the following participants:

Water Plan Committee Members:

David Strand, Township Representative
Dick Oeltjen, Lakeshore Representative
Jim White, Lakeshore Representative
Barry Bouwman, Ag. Representative
Sandy Nelson, Glenwood Representative
Dean Peterson, Lakeshore Representative
Bruce Brown, Pope County COLA
Ryan Kessler, DNR-Fisheries
Tim James, MPCA
Steve Lawrence, Environmental Services
Larry Kittelson, County Board

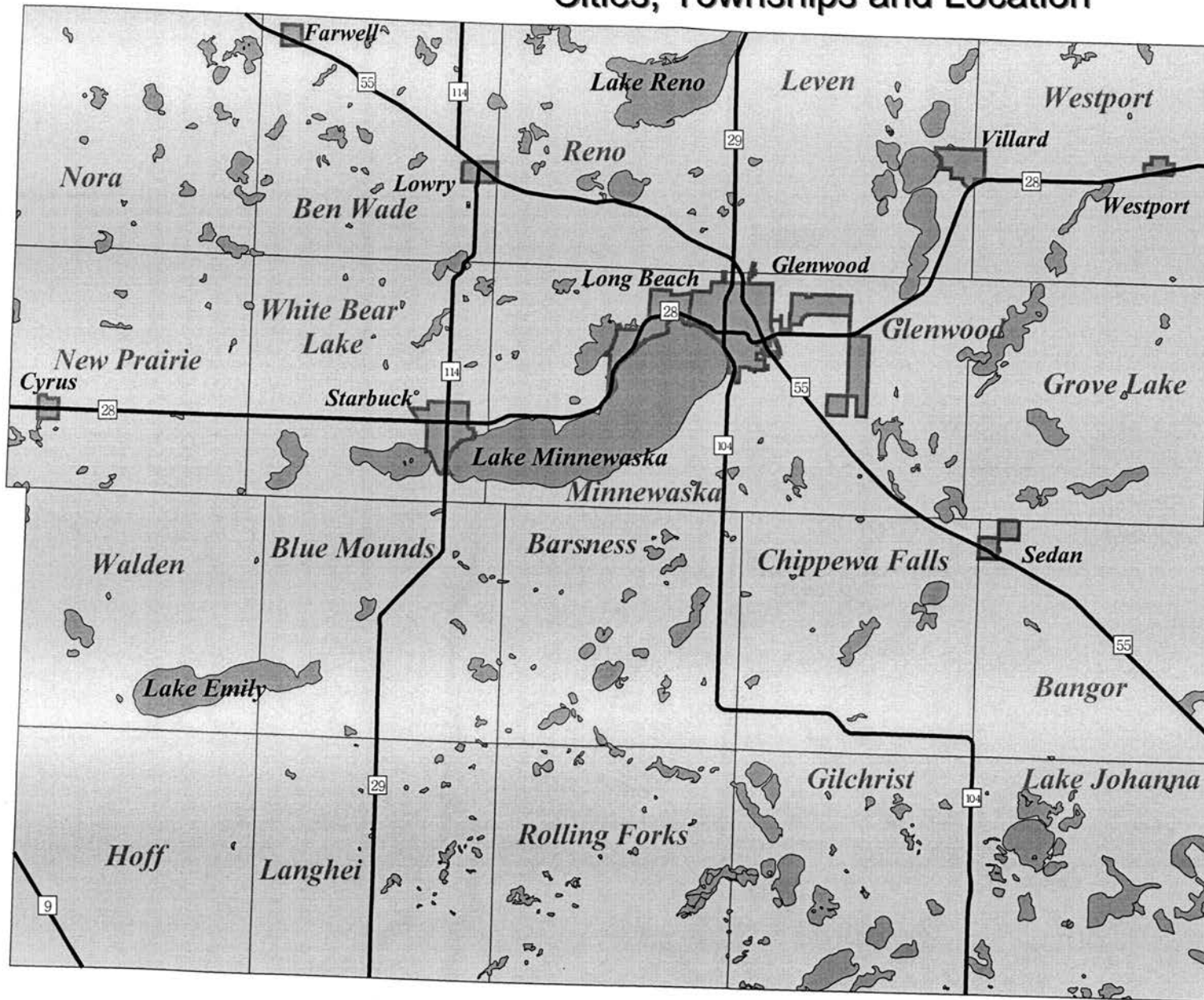
Bob Stommes, County Extension Office
Sharon Braaten, County Public Health
Todd Appel, Douglas/Pope Co. Health
Julie Aadland, DNR
Craig Bower, NRCS
Kim Krueger, SWCD
Allan Kuseske, N. Fork Crow R. Watershed
Brian Noetzelman, Highway Department
Dean Beck, DNR-Fisheries
Pete Waller, BWSR

The first draft of the Comprehensive Local Water Plan went out for public review on September 20, 2002. This review process included the general public, local governmental units (i.e., cities and townships) and governmental agencies. A public hearing was held with the County Board on November 2, 2002, to solicit public comment and to discuss all of the written comments received during the public review period. The Water Planning Committee then met one more time to incorporate the public and governmental comments into the final draft water plan. On January 10, 2002, the final draft was submitted to the Board of Water and Soil Resources for final state agency 90-day review. The final Pope Comprehensive Local Water Plan was approved on April 2, 2003.

Pope County's Population and Location

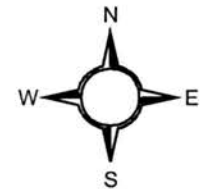
According to the 2000 Census, Pope County had approximately 11,236 residents living in 4,513 households. The City of Glenwood is the County's largest City, with approximately 2,594 residents (Appendix A contains Pope County's complete demographic profiles, including the following: General Demographic Profile, Selected Social Characteristics Profile, Selected Economic Characteristics Profile and Selected Housing Characteristics Profile). The County is located in West Central Minnesota, approximately 100 miles west of the Minneapolis-St. Paul metropolitan area and 40 miles west of the City of St. Cloud. Map 1A shows the location of Pope County's cities and townships, along with the County's location in the State. The County shares borders with Douglas County to the north, Stearns County to the east, Kandiyohi County to the southeast, Swift County to the south and Stevens County to the west.

Map 1A: Pope County's Cities, Townships and Location



Legend

- Major Roads
- Cities
- Lakes
- Townships



Previous Pope County Water Planning Accomplishments

General Water Planning Accomplishments

- To ensure that the provisions of the water plan are implemented and that new, beneficial programs are adopted, three positions were created: a half-time position for implementing water-planning activities; a full-time position to administer the state feedlot permit program and to assist with planning activities; and a summer intern position to assist with various water plan projects.
- Environmental Services facilitated the development of the Coalition Of Lakes Associations (COLA) from several individual lake associations. The Coalition assists with water monitoring, educating the community about water plan elements, and other water planning activities.
- The water plan coordinator served as a member of, or a consultant to, the following groups: MLA's Non-Point Pollution Committee, Water Plan Task Force, MRH Joint Powers Board, WRAP, Minnesota River Basin Technical Committee, Pope County COLA, Chippewa River Watershed Project, and Sauk River Watershed Project.
- Numerous provisions related to water quality preservation have been incorporated into the Pope County Land Use Controls Ordinance. These include restrictions on feedlots with respect to animal density in shoreland and general residential districts, on impervious surface cover, and salvage yards.. The ordinance also limits the application of pesticides and nutrients, and includes a stringent policy on the application of phosphorus within 100 feet of shoreline. Additionally, provisions regarding well head protection, waste disposal, construction site erosion control, aggregate mining, and storm water management are delineated in the Ordinance. Finally, the ordinance provides for the establishment of Special Environmental Protection Districts to protect fragile or vulnerable environments, species, etc. from inappropriate development.

Inventories, Monitoring and Research Accomplishments

- Environmental Services supported five Lake Assessment Project (LAP) studies of Lakes Pelican, Linka, Gilchrist, Emily and Minnewaska.
- Environmental Services facilitated the organization of COLA's Trophic State Index monitoring on Lakes Amelia, Emily, Gilchrist, Grove, Leven, Linka, Malmedahl, Maple, Minnewaska, Pelican, Reno, Scandinavian, Strandness, and Villard. Related to this ongoing study is the collection of Secchi depth and turbidity-tube data for the above-mentioned lakes.
- A diagnostic study was conducted for Trapper's Run Watershed. The study examined the physical, chemical and biological characteristics of the watershed. Additionally, as a part of this study, inventories were taken of septic systems, tiles and open ditches, feedlots, and restorable wetlands in the watershed. The study yielded an exhaustive report and ideas for rehabilitation and protection of the watershed. To expand upon this work and further the

understanding of the dynamics of Trapper's Run Watershed, a water-chemistry monitoring program has been established and will continue through 2010. To expedite the implementation of this program, some hydrographic monitoring equipment has been purchased, including a Hydrolab and a portable flow meter.

- A land-use study was conducted to determine potential 'problem' subwatersheds within the Trapper's Run Watershed. This study yielded the Land Use County Atlas. A digitized soils map was also created for the same purpose.
- In addition to the inventories conducted as a part of the Trapper's Run Watershed diagnostic study, road salt storage and public drainage ditch inventories were also completed. The drainage ditch inventory was funded by a \$20,000.00 grant from Board of Water and Soil Resources (BWSR).
- To determine which areas might be of particular concern regarding management, a sensitive areas report was conducted for lands on priority surface waters.
- Environmental Services contributed \$54,000.00 to a \$750,000.00 project with the Minnesota Geologic Survey yielding the Pope County Geologic Atlas.

Education

- Contributed to COLA's Eurasian Watermilfoil Program and 'Burma Shave' signage educating the public about this invasive species.
- Supported septic and feedlot upgrades and Best Management Practice (BMP) implementation in a variety of forums.
- Supported various lake association newsletters.
- Contributed to the development of plans for an environmental education site and recreational trail system with Glacial Lakes Trail Association (GLTA) and Minnewaska Area High School (MAHS).
- Environmental Services manages a booth at public events such as the County Fair and home shows that promotes public understanding of water quality issues. Related to these are the free nitrate testing clinics and the free water testing kits made available at these events.
- Participated in a variety of local educational programs such as Envirothon with Soil and Water Conservation District (SWCD) and Environmental Education/Earth Day with MAHS.
- Informed the public about water planning activities via a variety of media announcements, including public service announcements on local radio and segments on local television programs.

Funding

- Established a State Revolving Fund (SRF) loan program through the Minnesota Department of Agriculture. The program has made \$319,686 available in 47 low-interest loans for the

purpose of septic system and feedlot upgrades, the implementation of BMPs, and the purchase of conservation tillage equipment.

- Developed a cost-share program for abandoned/unused well sealing. Since its inception in 1993, 140 wells have been sealed utilizing this resource.
- Three funds—the Water Management Fund, Storm Water Treatment Fund, and the Pope County Water Management Trust Fund—have been established to provide financial backing for various water plan projects as they arise.
- Received Clean Water Partnership (CWP) grant from Minnesota Pollution Control Agency (MPCA) for further study of Trapper's Run Watershed. This grant is funding ongoing research to further describe the characteristics of the watershed and to determine problem areas and potential solutions.
- Received a \$50,000.00 grant from University of Minnesota to conduct a manure and soil management study.
- Received a \$20,000.00 grant to fund the Trapper's Run Watershed Feedlot Manure Management Plan Project.

Completed Projects, Ongoing Programs

- Wetland restoration near West Lake Ellen.
- Grove Lake restoration activities including the development of a sediment basin, septic upgrades, feedlot upgrades, drained wetland restoration, drainage system repair, Grove Lake Dam replacement and water testing.
- Numerous septic and feedlot upgrades.
- Pesticide/pesticide container collection programs offered every two years.
- Ongoing recycling program with Douglas County.
- Prevention of inappropriate subdivisions along fragile shoreland, such as that of Lake Linka.
- Placement of a rough fish barrier (carp dam) to protect Trapper's Run from the negative impact on water quality associated with these fish.
- Established a permitted demolition waste landfill.
- Numerous projects including application of buffer strips, fences to exclude livestock from water, and lakescaping to preserve fragile shoreline.
- Following the 1997 flood, inspected wells for contamination.
- Gave presentation on strategies for reclaiming aggregate mining sites. Currently, Environmental Services is working with local landowners on developing reclamation plans.
- Applied rip-rap along Pelican Lake to prevent erosion near roadways.
- The Pope County Soil and Water Conservation District has been very aggressive and successful with the Minnesota River CREP Program.

- The Pope County Soil and Water Conservation District has worked with the SWCDs from Douglas, Swift and Chippewa Counties to accelerate the implementation of Best Management Practices with Minnesota River Cost-Share funds in the Chippewa River Watershed.
- A wetland restoration easement (300 acre restoration and 500 acre easement), at the beginning of the a public drainage system, should continue to play a part in the restoration activities of Grove Lake.

Pope County Clean Water Partnerships/Watershed Projects

(see Data Item 6 in Chapter Two for a profile of Pope County's watersheds)

The Clean Water Partnership (CWP) Program was created in 1987 to address pollution problems associated with runoff from agricultural and urban areas. The program is funded by the Minnesota Pollution Control Agency (MPCA) and provides local governments with resources to protect and improve lakes, streams and groundwater.

CWP projects begin with a desire by a local government to improve a water resource that has been polluted by land-use-related activities. Local leadership and expertise, combined with technical and financial resources from the State, create an effective program for controlling pollution and restoring water quality.

Funding for CWPs is awarded in two phases. In the first, or resource investigation phase, a diagnostic study and implementation plan are completed. As part of the diagnostic study, local sponsors work with the MPCA to collect data and information on the water resource and its watershed. This information is used to identify pollution problems and their causes and define water quality goals and objectives. The final step of the resource investigation phase is the development of an implementation plan that identifies the combination of education, management practices and other activities needed to protect or restore water quality.

The second phase of a CWP, called project implementation, involves the implementation of best management practices (BMPs) identified in the first phase. BMPs may include sedimentation ponds, manure management, conservation tillage, terraces, new ordinances, wetland restoration, fertilizer management, education or other methods designed to reduce nonpoint-source pollution.

Projects may be completed either partially or completely through the CWP program. To be eligible for CWP funding, the entire project must meet program requirements. This means that if the project sponsor intends to seek CWP funding for later phases, the MPCA must first approve a diagnostic study and an implementation plan.

The financial assistance available through the program falls into two categories: grants and low-interest loans. Grants are available for up to 50 percent of project costs. Loans can only be used for the project implementation phase and can cover the entire cost of implementation or supplement a grant. Local governments can also use loans to set up their own programs to provide pass-through loans to private parties. Local governments with the authority to generate cash revenues and adopt and enforce official controls are eligible to sponsor CWP projects and receive grant funding. To be

eligible for a loan, a local government must also be able to secure the loan with a general obligation promissory note. In addition, the water of concern must be addressed in an approved local water plan.

According to the MPCA, there have been two CWP funded projects in Pope County. The following provides a brief description of each of the projects.

- Chippewa River Watershed Project. Phase II CWP. Start date: February 13, 2001. End date: February 13, 2004. Grant amount: \$469,372. MPCA project manager: Wade Gillingham, Phone # (507) 537-7163.
- Trappers Run BMP Cost-Share Project. Phase II CWP of Minnewaska, Pelican and Strandness Lakes. MPCA project manager: Tim James, Phone # (218) 846-0749.

Chippewa River Watershed Project

629 North 11th Street
Montevideo, MN 56265
(320) 269-2139

The Chippewa River Watershed Project (CRWP) is a cooperative effort of over 25 organizations, from County, State and Federal agencies, to non-profit organizations, lake associations, citizens and landowners throughout the 1.3 million acre watershed. Counties involved in the project include parts of Kandiyohi, Chippewa, Douglas, Grant, Ottertail, Pope, Stevens and Swift. The CRWP began in March 1998, when the Minnesota Pollution Control Agency (MPCA) awarded the project a Clean Water Partnership grant to conduct a three-year Phase I Diagnostic Study of the watershed. Extensive water quality monitoring and land use assessment was conducted from 1998 through 2001. The data collected was used in the development of an Implementation Plan for the watershed. The project received funding in the spring of 2001 for the first three years of implementation through the MPCA's Clean Water Partnership grant program.

Through the Diagnostic Study, it was found that the Chippewa River carries high levels of sediment, nutrient (phosphorus and nitrogen) and bacteria pollutants, derived from rainfall-driven polluted runoff that occurs throughout most of the watershed. The usefulness and aesthetic qualities of the river are impaired and conditions are unlikely to improve unless changes are made in land use and water management practices within the watershed. Change can be accomplished through an implementation plan that reflects real problems occurring on the landscape and clearly identified solutions to those problems, while developing and organizing sufficient resources to attain meaningful and effective solutions.

In setting goals and objectives, consideration is given to four important watershed characteristics. First, agriculture is the predominant land use in the watershed and improvements to water quality will require changes in agricultural practices, which requires education and presenting solutions that are economically viable to the agricultural community. Second, pollutant transport in the watershed is primarily affected by uncontrolled runoff through the many hydrologic pathways present (i.e. the extensive drainage system). Third, the Chippewa River holds enormous potential for being a

recreational resource, but past and present conditions prevent it from being used to its full potential. And fourth, watershed residents, through their involvement and actions, hold the key to protecting and enhancing the Chippewa River. To achieve each of these goals, continued and increased education of urban and rural watershed residents needs to be done through an intense outreach campaign.

The ten-year goals of the CRWP are:

1. To achieve the highest water quality attainable for ecoregion streams;
2. To increase the number of watershed residents taking an active role in enhancing and protecting the Chippewa River;
3. To continue to have the watershed community of agencies and organizations bonded together (across county boundaries) as a group working toward the common goal of improved water quality in the Chippewa River Watershed;
4. To develop the Chippewa River as a major recreational resource within the Minnesota River Basin.

The long-term goal of the CRWP is to improve the water quality and flooding problems in the watershed, while also promoting a healthy agricultural, industrial and recreation-based economy for the region. The best management practices (BMPs) to be utilized include nutrient management, residue management, wetland restoration, buffer strips, water and sediment control basins, livestock waste management, individual sewage treatment systems, grassed waterways, streambank restoration, terraces, contour farming, grade control structures, pasture management, alternative tile inlets, RIM, CRP and shoreline naturalization. Urban practices to be promoted include recycling, directing downspouts to lawns, phosphorus free fertilizer for lawn care, construction site erosion control and storm water management. Implementation of these practices on the landscape will be accomplished through the work of the cooperating partners and through grant applications for funds targeted for specific sub-basins of the watershed.

Because the Chippewa River is so large, it is necessary to prioritize sub-basins for the development of the Implementation Plan. The major tributaries of the Chippewa River create natural sub-basins making this delineation possible. Water quality monitoring data, watershed assessments and judgments about reasonable expectations for rivers and streams in this area of the State were used in ranking the sub-basins. Due to the high levels of nutrients (phosphorus and nitrogen), sediment and fecal coliform bacteria, the Shakopee Creek Headwaters (SCH) area has been ranked as the Chippewa's first priority sub-basin. The Shakopee Creek Headwaters Project is discussed in more detail later in this document. Other sub-basins of the Chippewa River include: East Branch Chippewa River, Lower Main Stem, Little Chippewa River, Dry Weather Creek, Spring Creek, Lines Creek, Cottonwood Creek and the Upper Main Stem.

The monitoring program established in the watershed during the Diagnostic Study will continue throughout the Implementation Phase. Water quality monitoring plays a key role in identifying priority areas and documenting changes, as well as gaining a greater understanding of the

complexities of a watershed. In addition, a bio-monitoring program has been developed to engage high school students throughout the watershed.

The outreach and education program of the CRWP is based on the concept of “connecting people through their river”. The Citizen Monitoring Network of the CRWP engages landowners in watershed activities. Other education efforts include a newsletter, annual meeting, monthly meetings, bus tours, seminars, workshops and creating new partnerships. Education efforts revolve around urban and rural BMPs to enhance water quality and water quantity issues, hydrology, watershed concepts and the connection of land use to the river.

Watershed Districts

North Fork of the Crow River Watershed District

The North Fork of the Crow River (NFCR) Watershed District was formed in 1985. The boundary of the NFCR Watershed District is based upon the hydrological boundary of the North Fork Crow River. The District covers a total of 348 square miles within Kandiyohi, Meeker, Pope and Stearns counties.

The mission of the District is to “improve and enhance water quality, to control water flow, to reduce erosion and sediment, to promote wise public, private and natural use of water, while maintaining, enhancing and preserving public and private drainage for present and future residents”.

A Phase I equivalent study of the North Fork of the Crow River Watershed District is being conducted in 2001-2002. The purpose of the study is to determine the sources of point and nonpoint pollution that degrade water quality within the District. In addition, the Watershed District has been involved with the following activities:

- ✓ Grove Lake Phase I Diagnostic Study
- ✓ Grove Lake Phase II Implementation Project
- ✓ Water Monitoring Program, which includes Grove Lake and 23 other sites in the District
- ✓ Middle Watershed Implementation Project
- ✓ Rice and Koronis Phase I Diagnostic Study
- ✓ Rice and Koronis Phase II Implementation Project
- ✓ Rice and Koronis Phase II Part II Implementation Project
- ✓ Grove Lake Dam maintenance
- ✓ Ditch Authority for Judicial Ditch (JD) 1, JD-2, County Ditch (CD) 3, CD-5, CD-7, CD 7A, CD-8, CD-21, CD-29, CD-32 and CD-37
- ✓ Rain Gauge Network throughout the District
- ✓ Mud and Rice Drained Lake Restoration RIM

Sauk River Watershed District

The Sauk River Watershed District (SRWD) was established in 1986. The primary purpose of the District is to protect and enhance the quality and quantity of surface and groundwater within its boundaries. Since the formation of the SRWD, there has been a significant reduction (approximately 50 percent) of phosphorus loading to the Sauk River. Through grants, State Revolving Loan Funds, as well as special assessments, the SRWD has spent nearly \$3 million in water quality projects. This does not include the technical and financial assistance from the local, State and Federal agencies (Planning and Zoning offices, Soil and Water Conservation Districts, Natural Resource Conservation Service, Board of Soil and Water Resources, Minnesota Department of Natural Resources, etc.) which exceeds several million dollars in the past 14 years. The SRWD has developed a strong partnership with the local, State and Federal agencies.

In 2000, the Minnesota Pollution Control Agency established a list of impaired waters. Numerous segments of streams and lakes within the Sauk River Watershed have been included on this list. To address this issue, the SRWD has formed a partnership with local, State and Federal agencies to develop a plan of action. The SRWD has also submitted grant applications to the State to obtain implementation funding. Local residents have also shown support of the efforts of the SRWD. In 2000, the District received over \$20,000 in cash pledges to clean up Sauk Lake and its tributaries and to purchase electronic monitoring equipment needed for water quality data collection. The SRWD is confident that these waters of concern will be improved with the help of local partners and residents.

The following are examples of projects that the SRWD has been involved with since its creation in 1986.

- Horseshoe Chain of Lakes, Big Sauk Lake, Osakis Lake and Big Fish Lake 314 & 319 Phase I Diagnostic Studies
- Big Birch Lake Phase I Diagnostic Study
- Big Birch Lake CWP Phase II A & B Implementation Projects
- Osakis Lake/Judicial Ditch 314 Phase II Implementation Project
- Osakis Lake CWP Phase II A & B Implementation Projects
- Big Sauk Lake 319 Phase II Implementation Project
- Sauk River Chain of Lakes CWP Phase II A & B and 319 Phase II Implementation Projects
- Ashely & Hoboken Creek 319 Phase II
- Grand Lake Preliminary Study
- Sauk Lake Dam, Phase I and II

- Kranz Lake Dam
- Birch Lake Dam
- County Ditch 6, Judicial Ditch 1 and County Ditch 11 Maintenance
- Sauk Lake Weed Harvester

Lake Associations

A lake association is an organized group of people who have come together because of their common interest in a specific lake. Lake associations serve as an organized voice of their members to township and county government and are often a watchdog for enforcement of local ordinances. An association may monitor the condition of a lake, develop a lake management plan, educate shoreland property owners about individual and collective actions to protect a lake and provide volunteers to assist in lake and watershed projects. They may also work with the Department of Natural Resources (DNR) to improve fish habitat or fish stocking, get permits for aquatic plant removal, or maintain a lake access. An important issue to Pope County is the need for the various lake associations to continue working with the DNR to restore stream banks and lakeshores with native vegetation.

Table 1A lists the 10 lake associations in Pope County that are members of the Minnesota Lakes Association. A contact person for each association has been provided for additional information.

**Table 1A:
Pope County Lake Associations**

Association	Contact	Phone #
Amelia/Villard/Levin Lakes Association	Carol Carlson	(320) 554-2117
Emily Lake Association	Stanley Erdman	(320) 392-5978
Gilchrist Lake Association	Bruce Mulvaney	(320) 278-3763
Grove Lake Association	Mary Lou Hemstad	(320) 268-3342
Lake Linka Yacht Club	Walt Larson	(320) 278-3795
Minnewaska Lake Association	Mike Warner	(320) 239-4390
Pelican Lake Association	Joan Wolf	(320) 634-3890
Pope County COLA	Richard Heimkes	(320) 278-3518
Reno Lake Association	Lowell Doebbert	(320) 634-3411
Scandinavian Lake Association	Rod Bjorlin	(320) 278-3211

Overview: Thirty Lakes Watershed District
Revised Overall Plan Review
April 2003

Thirty Lakes Watershed District (District) is located in Crow Wing County in north-central Minnesota. The District was established in 1971, and has a board of five members. The district is unusual since it is located entirely within one county. The district also has a unique hydrologic setting. Part of the watershed drains southwest to the Gull River system, while the northeastern part of the watershed drains east into the Pine River. The District covers 70 square miles and includes 55 lakes instead of the 30 referred to in its name. 60% of the district is covered by either lakes or wetlands.

During the past twenty years the District's lakes have helped fuel a growth boom that has resulted in population growth of 28%. The district's focus relates to the potential impacts of growth on lake water quality. Stormwater and wastewater are two of the major water resources issues.

Plan Review

In 2001, the District took advantage of a \$15,600 BWSR planning grant to help update their plan. During 2001 and 2002, Phil Belfiori and Dan Steward met with the managers and staff to discuss priorities for the Plan. The draft Plan was completed in September 2002. On October 8, 2002, BWSR staff, the managers and county board members met to discuss the draft Plan, the district's general direction, and priorities. One of the items discussed at the meeting was the districts intent to develop a stormwater utility. No review comments on the Plan were received from the DNR. BWSR published notice of the Plan review and solicited comments on the Plan in February. No comments were received, and no requests for a BWSR hearing on the Plan were received.

Following are a list of key issues and projects the district will be working on over the course of the next ten years.

- Probably the strongest element in the Plan is that it sets the groundwork for establishing stormwater utilities in the future. With stormwater concerns rising with the intensity of development, a stormwater utility is a good fit for the District. The District has already begun work on establishing the utility.
- Member of Joint Powers Board with Crow Wing County Board developing recommendations for wastewater issues in the Brainerd Lakes Area. Options include establishment of a regional wastewater district.
- Local Water Planning Challenge Grant Project to determine current and future stormwater loading to the fifty-five lakes in the District, based on current land use, and loading generated from projected zoning. (\$20,500).
- Implementation Plans developed for each of the 55 lakes in the District.

- Extensive lake water quality monitoring program.
- District Permitting Program focuses on stormwater permits. The program includes a quality assurance element that results in most projects not getting a permanent stormwater permit for three to five years until the practices have been demonstrated to be effective.

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

**In the Matter of prescribing a Revised
Watershed Management Plan for the
Thirty Lakes Watershed District pursuant
to Minnesota Statutes Section 103D.405**

**ORDER
PRESCRIBING
WATERSHED MANAGEMENT
PLAN**

Whereas, the Board of Managers of the Thirty Lakes Watershed District (TLWD) filed a proposed Revised Watershed Management Plan (Plan) dated November 4, 2002, with the Minnesota Board of Water and Soil Resources (Board) pursuant to Minnesota Statutes Section 103D.405, and;

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

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

FINDINGS OF FACT

1. **District Establishment.** The TLWD was established by the Minnesota Water Resources Board on May 18, 1971.
2. **Requirement to Plan.** The Plan includes an executive summary, an inventory of water resources information, updates of hydrological information, specific implementation projects and programs, a description of problems, a description of strategies for meeting the problems, a summary of the district's rules program, and a summary of the financial tools available to the district. The Plan also includes a brief lake management plan for each lake in the district. The district's leading issue is protecting or improving water quality in the districts lakes and streams. This issue is made more complex by the major growth occurring in the area. The District's mission is "to apply our unique abilities and authorities in ways that protect and enhance our watershed's resources for today and tomorrow."
3. **Nature of the Watershed.** The TLWD is approximately 70 square miles in size and is located in central Minnesota. The district occupies part of Crow Wing County. The TLWD straddles a major watershed divide with part of the District draining east through the Pine River, and the southern part of the District draining south and west into the Gull and Crow Wing Rivers.

4. **Local Review.** The TLWD sent a copy of the draft Plan to local units of government for their review pursuant to Minnesota Statutes Section 103D.405.
5. **Department of Natural Resources Review.** A copy of the Plan was mailed to the Department for their review. No review comments were received.
6. **Crow Wing County Review.** On October 8, 2002, the managers, members of the Crow Wing County Board of Commissioners, and Board staff met to discuss the draft Plan. Discussion focused on the District's priorities and general direction. One of the items discussed was the District's intent to develop a stormwater utility. No written comments were provided by the County.
7. **Board Review.** Board staff met several times with TLWD staff and their consultant to assist with development of the Plan. As a result, Board staff comments were provided while the Plan was being developed, instead of formal written comments. Informal staff comments were focused on the fiscal tools the TLWD could use to implement stormwater management standards.
8. **Highlights of the Plan.** Critical elements in the Plan include:
 - a. Focus on financial tools.
 - b. Lake management plans.
 - c. Plan review meeting with the County Board.
 - d. Stormwater utility provisions.
9. **Publish Notice of Filing.** Pursuant to Minnesota Statutes Section 103D.105, Subd. 2, legal notice of filing of the Plan was published in the Brainerd Daily Dispatch on February 2, 2003, and in the Lake Country Echo on February 6, 2003. The notice solicited comments on the Revised Plan, and stated that requests for hearing must be received within 30 days of the last publication of the notice. No comments or requests for hearing were received during the specified period of time and no hearing was held. In addition, legal notice was sent on January 31, 2003 to the DNR, and to the auditor, Soil and Water Conservation District, and cities within the TLWD.
10. **Board Staff Report.** Board staff recommend the Plan be approved.
11. **North Region Water Plan Review Committee.** The committee met on Friday, May 2, 2003 and, based on the entire record, the committee decided unanimously to recommend approval of the Thirty Lakes Watershed District Revised Watershed Management Plan to the full Board.

CONCLUSIONS

1. All relevant, substantive and procedural requirements of law and rule have been fulfilled.
2. The Board has proper jurisdiction in the matter of approving a Revised Watershed Management Plan for the Thirty Lakes Watershed District pursuant to Minnesota Statutes Section 103D.405.
3. The Thirty Lakes Watershed District Revised Watershed Management Plan attached to this Order defines water-related problems within the TLWD boundaries, possible solutions thereto, and an implementation program.
4. The attached Plan is in conformance with the requirements of Minnesota Statutes Section 103D, BWSR guidelines for Watershed District Plan content and is consistent with the affected county comprehensive water plan.

ORDER

The Board hereby prescribes the attached Plan as the Revised Watershed Management Plan for the Thirty Lakes Watershed District.

Dated at Saint Paul, Minnesota this 28th day of May, 2003.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Leland G. Coe, Chair

RED RIVER VALLEY WATERSHED PLANNING

After 8 months of consensus-based, mediated negotiations, a framework for a collaborative approach to flood-damage reduction and natural resource protection in the Minnesota Red River Basin has been agreed upon. Key to the approach is comprehensive watershed planning by the basin's nine watershed districts.

The following flood-damage reduction goals will be used to define the magnitude and scope of the watershed plans over the next five years:

- **Prevent** loss of human life;
- **Prevent** damage to farm structures, homes, and communities;
- **Reduce** damage to farmland;
- **Reduce** damage to transportation;
- **Reduce** damage to water quality, including direct and chronic impacts from floodwaters coming into contact with potential contaminants;
- **Reduce** environmental damage caused by flood-control projects;
- **Reduce** social and economic damage; and
- **Reduce** damage to natural resource systems caused by flooding.

In addition, nine model goals were developed for watershed districts to use when setting natural resource management goals.

The purposes of comprehensive watershed planning are to:

- Achieve a high level of public involvement;
- Get up-front participation from all parties interested in watershed management;
- Develop a hydrologic-hydraulic model for the watershed;
- Inventory the water and land resources of the watershed;



- Identify human and non-human issues, problems, and opportunities within the watershed along with possible solutions;
- Develop long-term goals, objectives and desired outcomes (desired future conditions) for both human and natural resource needs in the watershed;
- Set forth a 5- to 10-year implementation plan and associated measurable actions for priority plan objectives;
- Define the roles and responsibilities for state and federal agencies, counties, soil and water conservation districts, cities, citizens, and interest groups; and
- Describe a way to measure the success of the plan and how information about the plan and its implementation will be disseminated.

Each watershed district plan will:

- Have broad-based support;
- Be science-based;
- Clearly identify flood-damage reduction and natural resource goals and objectives;
- Have agreement as to which implementation activities are high priority;
- Expedite state and federal permit processes; and
- Be collaborative.

The Red River Basin Flood Reduction Drainage Workgroup includes representatives from:

Minnesota Board of Water and Soil Resources
National Audubon Society
Minnesota Department of Natural Resources
3 Local Residents
Red River Watershed Management Board
U.S. Army Corps of Engineers
Minnesota Center for Environmental Advocacy
U.S. Fish and Wildlife Service
Minnesota Pollution Control Agency

OVERVIEW

Bois De Sioux Watershed District Revised Watershed Management Plan

Background

At the March 20, 2003 watershed management public hearing the BWSR North Region Water Plan Review Committee heard testimony from Bois de Sioux Watershed District (BDSWD) Board of Managers and BWSR Staff in support of Plan approval. Following incorporation of comments received, the BDSWD presented their Plan to the North Region Water Plan Review Committee on May 2, 2003. After receiving the testimony the Committee recommended approval of the BDSWD Revised Watershed Management Plan to the BWSR Board.

Summary of Plan Review Process and Plan Strengths

The BDSWD was established in 1988 with the mission "To provide coordinated water resource management over the entire hydrologic basin of the Bois de Sioux River lying within the State of Minnesota" with a focus on drainage and flooding issues within the District. The revised Plan builds upon the success of the original Plan and moves the District into programs and projects that promote flood damage reduction and natural resource enhancements in cooperation with local, state, and federal agencies.

This is the first planning effort done following the "Red River Basin Flood Damage Reduction Work Group Agreement of December 1998" (Mediation Agreement). BWSR staff Brian Dwight, Pete Waller and Phil Belfiori worked closely with Watershed District staff, consultants, and the meeting facilitator to assure that the intent of the Mediation Agreement was incorporated into the Plan. Plan strengths include: 1) Incorporates the principles of the "Mediation Agreement", 2) Comprehensive resource inventory/assessment, 3) Aggressive public/agency - issue/solution identification process, 4) Development of a hydrologic model, and 5) Balanced flood damage reduction and natural resources enhancement goals.

The overall outcome of the Plan is to guide implementation of watershed projects and policies. The Plan is aimed at identifying and addressing problems such as flooding of agricultural land, flood damages to public and private property, erosion and sedimentation, water quality impairment, loss of fish and wildlife habitat, and limited recreational opportunities on a subwatershed basis.

Location and Size

The BDSWD is located in west central Minnesota with the Bois de Sioux River and its source, Lake Traverse, forming the boundary between Minnesota, South Dakota and North Dakota. The District office is located in Wheaton and serves the Counties of Traverse, Grant, Wilkin, Stevens, Big Stone, and Otter Tail. The area of the BDSWD is about 1,412 square miles. Major subwatersheds in the BDSWD are the Bois de Sioux River, Mustika River and Rabbit River. The river flows north from Lake Traverse to Breckenridge where it joins with the Otter Tail River to form the Red River of the North.

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

In the Matter of prescribing a Revised
Watershed Management Plan for the
Bois De Sioux Watershed District pursuant
to Minnesota Statutes Section 103D.405

**ORDER
PRESCRIBING
WATERSHED MANAGEMENT
PLAN**

Whereas, the Board of Managers of the Bois De Sioux Watershed District (BDSWD) filed a proposed Revised Watershed Management Plan (Plan) dated January 6, 2003 with the Minnesota Board of Water and Soil Resources (Board) pursuant to Minnesota Statutes Section 103D.405, and;

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

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

FINDINGS OF FACT

1. **District Establishment.** The Minnesota Board of Water and Soil Resources, by order, established the BDSWD on May 11, 1988.
2. **Requirement to Plan.** The Plan includes an executive summary, a physical description of the District, an updated hydrologic model, identifies the flood damage reduction (FDR) and natural resource enhancement (NRE) issues within the District, sets overall watershed and sub-watershed goals for FDR and NRE, identifies alternative projects and programs and the utilization of project work teams to accomplish these goals, recognizes other planning efforts and the need to coordinate efforts, and the rules and policies of the District. Challenges facing the District are; flooding of agricultural land, flood damages to public and private property, erosion and sedimentation, water quality impairments, loss of fish and wildlife habitat; and limited recreational opportunities. The BDSWD Plan was developed and will be implemented following the principals and process identified in the "Red River Basin Flood Damage Reduction Work Group Mediation Agreement". The District's mission is "to provide coordinated water resource management over the entire hydrologic basin of the Bois de Sioux River lying within the State of Minnesota"
3. **Nature of the Watershed.** The BDSWD is approximately 1,412 square miles in size and is located in west central Minnesota. The District includes the watersheds of the Mustinka River and the Minnesota portion of the Bios De Sioux River, which

provides a portion of the headwaters of the Red River of the North. The Bios De Sioux River and its source, Lake Traverse from the boundary between Minnesota and South and North Dakota. The district occupies parts of Traverse, Grant, Wilkin, Stevens, Big Stone, and Ottertail Counties. 93% is in agricultural production.

4. **Local Review.** The BDSWD sent a copy of the draft Plan to units of government for their review pursuant to Minnesota Statutes Section 103D.405. In addition, copies were sent to the Red River Basin Commission, Flood Damage Reduction Work Group additional local units of governments, and numerous non-governmental organizations.
5. **Department of Natural Resources Review.** In a letter dated July 29, 2002, the DNR commented on the SRWD's sound watershed based approach to managing water resources. The Department noted in particular the formation of ten sub-watershed management districts within the overall Sauk River watershed.

The Department also provided detailed comments on each of the Plan's three main sections. Several of the comments related to detailed hydrologic information. Other comments referred to groundwater quantity, buffer strips on ditches, and providing training to the advisory committee. The Department closed their comments by noting that the Plan is well thought out and is embarking the District on an ambitious ten-year effort.

6. **Pollution Control Agency Review.** In letters dated August 2, 2002, and August 5, 2002, the MPCA provided comments on the Plan. The August 2, 2002 letter from Jim Hodgson, commented from the perspective of the Upper Mississippi Basin Planning Process, and how to include the bulk of the Plan in the Basin Plan. The MPCA also recommended identifying any specific projects that the District is considering for funding over the next five to ten years. The letter also commented on existing Clean Water Partnership Projects within the district and specific water quality goals for phosphorus reduction.

In a separate letter dated August 5, 2002, Lisa Kraemer of MPCA provided comments on the Plan. The comments focused on encouraging the District to identify specific projects in order to not restrict future funding opportunities. The comments also noted that in general, the Plan looks very good.

7. **Stearns County Review.** In its comments dated June 6, 2002, the county commented on municipal stormwater ponds, a comprehensive wetland management plan and low cost options for feedlot runoff problems.
8. **BDSWD Staff Review.** On August 2, 2002, the BDSWD administrator provided written comments on the Plan. The comments related to the role the District would play in implementation of various projects or programs, lake management plans, various education related comments and expanding the citizens lake-monitoring program.

9. **Board Review.** Board staff met numerous times with BDSWD staff and the Plan consultant to assist with development of the Plan. As a result, Board staff comments were provided while the Plan was being developed and Board staff did not develop formal written comments. Informal staff comments were focused on the fiscal tools the BDSWD could use to implement the Plan.
10. **Highlights of the Plan.** Critical elements in the Plan include:
1. Incorporates the principles of the "Red River Flood Damage Reduction Work Group Mediation Agreement"
 2. Strong citizen input process,
 3. Enhanced citizen advisory committee involvement,
 4. Comprehensive water quantity and related natural resource inventory,
 5. Detailed resource assessment,
 6. Focused FDR and NRE goals on an overall watershed basis as well as 10 sub-watershed units.
 - i. Flood Damage Reduction (6 goals): Example; "Reduce flood flows within and downstream of the watershed to reduce damages to public property, private property, municipal services and agricultural land." Major objective is to provide 150,000 acre-feet of storage through out the watershed, which is further identified in the sub-watershed plans.
 - ii. Water Quality (4 goals): Example; "Assist the MPCA and participating local units of government in the preparation and implementation of TMDL diagnostic studies and implementation strategies."
 - iii. Erosion and Sedimentation (1 goal): "Achieve 30 percent reduction in sedimentation to the district's water bodies due to soil erosion". BMP targets are identified and further detailed in sub-watershed plans.
 - iv. Fish, Wildlife and other Natural Resources (12 goals): Example: "Restore grassland and enroll it in perpetual protection programs". Objective; Provide partnership for implementation of the U.S. Fish and Wildlife Service habitat and population advisory committee for the restoration of native grasslands, prairies and wetlands.
 - v. Water Based Recreational Activities (1 goal): "Increase and promote outdoor recreational activities related to fish, wildlife, and other natural resources in the watershed". Sub-watershed plans identify opportunities that exist.
11. **Publish Notice of Public Hearing.** Legal notice of public hearing was published in the Wheaton Gazette on March 4, 2003, in the Fergus Falls Daily Journal on March 6, 2003, in the Grant County Herald on March 5, 2003, in the Daily News (Wahpeton) on March 5, 2003, in the Chokio Review on March 6, 2003, in the Herman Review on March 6, 2003 and the Northern Star on March 6, 2003. In addition, legal notice was sent on March 3, 2003 to the county auditors of each county in the BDSWD, Soil and Water Conservation Districts within the BDSWD, all cities in the BDSWD, DNR and the FDR WG, and others.

12. **Public Hearing.** On March 20, 2003 two members of the Board's Northern Region Water Planning Subcommittee presided over a public hearing on the Plan. The hearing panel heard testimony from the BDSWD Board of Managers in support of Plan approval.
13. **Board Staff Report.** Board staff recommend the Plan be approved.
14. **North Region Water Plan Review Committee.** The committee met on Friday, May 2, 2003 and, based on the oral and written testimony on the Plan, and based on the entire record, the committee decided to recommend approval of the Bois De Sioux Watershed District Revised Watershed Management Plan to the full Board.

CONCLUSIONS

1. All relevant, substantive and procedural requirements of law and rule have been fulfilled.
2. The Board has proper jurisdiction in the matter of prescribing a Revised Watershed Management Plan for the Bois de Sioux Watershed District pursuant to Minnesota Statutes Section 103D.405.
3. The Bois De Sioux Watershed District Revised Watershed Management Plan attached to this Order defines water-related problems within the BDSWD boundaries, possible solutions thereto, and an implementation program.
4. The attached Plan is in conformance with the requirements of Minnesota Statutes Section 103D, BWSR guidelines for Watershed District Plan content, the "Red River Basin Flood Damage Reduction Mediation Agreement" and is consistent with the affected county comprehensive water plans.

ORDER

The Board hereby prescribes the attached Plan as the Revised Watershed Management Plan for the Bois de Sioux Watershed District.

Dated at Saint Paul, Minnesota this 28th day of May, 2003.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Leland G. Coe, Chair

OVERVIEW

Wild Rice Watershed District Revised Watershed Management Plan

Background

At the February 27, 2003 watershed management public hearing the BWSR North Region Water Plan Review Committee heard testimony from Wild Rice Watershed District (WRWD) Board of Managers, BWSR staff and watershed residents in support of Plan approval. Following incorporation of comments received, the WRWD presented their Plan to the North Region Water Plan Review Committee on May 2, 2003. After receiving the testimony, the Committee recommended approval of the WRWD Revised Watershed Management Plan to the BWSR Board.

Summary of Plan Review Process and Plan Strengths

The WRWD was initially established as a Drainage and Conservancy District in 1949. In 1969 the Minnesota Water Resources Board approved the WRWD as a Watershed District. In the past, the main focus of the District had been focused on drainage and flood damage reduction issues. The overall goals of the WRWD include reducing flood damages, improving water quality, enhancing natural resources, improving governmental relations, and educating the public.

The revised Plan is a synergy of two recently completed planning efforts, "The Wild Rice/Marsh River Basin Water Quality Plan" and "The Systems Approach Planning Process". The revised Plan expands the District's interest into water quality and natural resource enhancement issues. The BWSR staff worked extensively with the WRWD to bring together the two previously developed documents into one revised Plan.

The revised Plan meets and exceeds the principals of the "Red River Basin Flood Damage Reduction Work Group Mediation Agreement". Grants were received from BWSR, Flood Damage Reduction Work Group, Red River Water Management Board and DNR to fund the Plan Development processes. Plan strengths include: 1) Incorporates the principles of the "Red River Basin Flood Damage Reduction Work Group Mediation Agreement", 2) Open public/agency input process in identifying issues and solutions, 3) Comprehensive resources inventory/assessment, 4) Updating of the District's hydrologic model, 5) Balanced flood damage reduction and natural enhancement goals, 6) Identification and agreement of agency roles and responsibilities of plan implementation.

Location and Size:

The WRWD encompasses an area of approximately 2080 square miles. It includes the drainage basin of the Wild Rice River and South Branch, which is a direct tributary to the Red River of the North in Northwest Minnesota. The District also includes the watershed of the Marsh River and other small contiguous areas directly tributary to the Red River of the North. The District office is located in Ada and serves the counties of Norman, Mahnomen, Clay, Clearwater, Becker, and Polk.

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

**In the Matter of prescribing a Revised
Watershed Management Plan for the
Wild Rice Watershed District pursuant
to Minnesota Statutes Section 103D.405**

**ORDER
PRESCRIBING
WATERSHED MANAGEMENT
PLAN**

Whereas, the Board of Managers of the Wild Rice Watershed District (WRWD) filed a proposed Revised Watershed Management Plan (Plan) dated April 2003 with the Minnesota Board of Water and Soil Resources (Board) pursuant to Minnesota Statutes Section 103D.405, and;

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

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

FINDINGS OF FACT

1. **District Establishment.** The WRWD was initially established as a Drainage and Conservancy District in 1949. In August of 1969 the Minnesota Water Resources Board approved the WRWD as a Watershed District.
2. **Requirement to Plan.** The Plan is the synergy of two recently completed planning efforts, "The Wild Rice/Marsh River Basin Water Quality Plan" and "The Systems Approach Planning Process." The Plan includes an executive summary, watershed setting, summary of completed studies, updates of hydrological information, existing water and water related problems, goals of the District (water quantity, water quality, and natural resources,) and proposed actions of the District (procedures, regulations, strategies, and financing). The WRWD focus is on reducing flood damages throughout the watershed with emphasis on the Lower Wild Rice River. These flood damage reduction efforts will be done in concert with natural resource enhancement efforts as agreed to in the "Red River Basin Flood Damage Reduction Work Group Mediation Agreement of 1998." The goals of the WRWD include (1) reducing flood damages, (2) improving water quality, (3) enhancing natural resources, (4) improving governmental relations, (5) educating the public.
3. **Nature of the Watershed.** The WRWD encompasses an area of approximately 2,080 square miles in west-central Minnesota. The WRWD encompasses parts of the following counties; Norman, Polk, Mahnomen, Clearwater, Clay, and Becker. The District includes the drainage basin of the Wild Rice River and its South Branch,

which is a direct tributary to the Red River of the North. The District also includes the watershed of the Marsh River and other small contiguous areas directly tributary to the Red River of the North. Approximately 66% of the District is under cultivation (western half of the District), 18% in forest (most eastern reaches of District), 7.5% in grassland/brush, and 7% in wetlands and open water (eastern half of District).

4. **Local Review.** In addition to the units of government identified in Minnesota Statutes Section 103D.405, the WRWD submitted the draft Plan for review to the following: Headwaters and Northwest Regional Development Commissions, Red River Basin Commission, Flood Damage Reduction Work Group, The White Earth Indian Reservation, Natural Resources Conservation Service, and selected non-governmental organizations.
5. **Department of Natural Resources Review.** On February 25, 2003, a comment review letter was received from the DNR. The DNR in their comments requested that the Watershed District emphasize the following points in the appropriate sections of the plan:
 - The entire watershed has good, or has the potential to be restored to good, habitat for a variety of fish and wildlife species – not just the eastern two thirds of the District.
 - Increased runoff from land use practices (such as ditching and wetland drainage) and stream channelization has caused channel instability problems, stream flow problems, and enhanced flooding.
 - Groundwater supplies in the Red River Basin are in limited supply and need to be protected.
6. **Minnesota Pollution Control Agency Review.** On March 11, 2003, the PCA submitted a comment review letter. The comments submitted reflect the PCA's desire to have Watershed Management Plan goals align with the water quality goals and priorities of the Agency and the "Minnesota Red River Basin Water Quality Plan." They suggested the Watershed District identify specific water quality targets for such items as suspended sediments. The Watershed District felt that it might be premature to identify specific targets at this time because they are pursuing a sediment study through the NRCS.

PCA also asked the Watershed District to consider goals addressing feedlots, storm water rules, conversion of agricultural lands from pasture to row crops, and potential for subsurface tile drainage. The Watershed District felt that feedlots were covered under the goals set in the "Wild Rice/Marsh River Basin Water Quality Management Plan", which is part of this plan. Also, more knowledge is needed on the other items before the WRWD felt comfortable in setting goals to address them.
7. **United States Fish and Wildlife Service.** On February 19, 2003 the USFWS submitted a comment review letter. Their comments reflect USFWS's responsibilities and priorities for land, water, and other resource management activities and form the

foundation for future detailed review of specific projects that would be proposed by the District. Their comments were in the following areas:

Drainage: The District is encouraged to incorporate into its planning the intrinsic values of wetlands and should design and promote projects that decrease water delivery to downstream receiving waters.

Water control structures: To enhance the ecological value of artificial impoundments, future management consideration must focus on reducing the depth and duration of waters held after a flooding event and downstream releases that emulate the pulse of natural hydro periods.

River and streams: Channelization of rivers and streams typically increase capacity leading to increased flooding downstream and accelerated stream bed and bank erosion.

The USFWS also states "The Wild Rice Watershed District is to be commended for their efforts in this water management plan. The plan reflects understanding of the holistic nature of water management and articulates a comprehensive approach to water management. Substantial compliance with the spirit and intent of the Mediation Agreement is apparent throughout this document."

8. **Natural Resources Conservation Service Review.** On February 24, 2003 a comment review letter was received from the NRCS. The NRCS had numerous minor comments that were correction and clarification in nature. The District incorporated all of the NRCS's comments.
9. **Citizen Comment.** On January 30, 2003, a review comment letter was submitted. Concern was expressed on prioritizing flood-prone areas. It was felt all flooded areas should have equal consideration. The District incorporated the clarification statements and felt the priority area identification was agreed upon by the local steering committee (LSC) and must remain identified as is.
10. **Board of Water and Soil Resources.** On March 10, 2003, the Board submitted a review comment letter. Board staff had numerous comments, most of which were corrective or clarification in nature. Board staff had a few comments for the District to consider which they felt would make a more comprehensive plan:
 - Develop a goal or strategy to address intergovernmental coordination and cooperation. This was identified as a severe problem.
 - Develop a goal and related strategy to address public relations and educational activities of the District.
 - Section 5 and 6 was confusing in its use of the terms goals and policies.

The District incorporated all comments submitted by Board staff and is working on the terminology issue in section 5 and 6.

11. Highlights of the Plan.

- a. Aggressive public input process
- b. Utilization of a citizens advisory committee for prioritization of issues.
- c. Utilization of a technical advisory committee for alternative solution development.
- d. Comprehensive resource inventory/assessment
- e. Focused flood damage reduction and natural resource enhancement goals.
 - i. Flood Damage Reduction (high priority):
 - 1. Frequent flooding within the Lower Wild Rice River
 - 2. Flood damages to communities, rural residents, and public infrastructure.
 - 3. Channel instability and reoccurring breakout flows on the Wild Rice River main stem and South Branch particularly in the "ACOE upper reaches Project"
 - 4. "Highway No. 75 back up problem"
 - ii. Natural Resource enhancement (high priority):
 - 1. District Wide;
 - a. Altered flow regime
 - b. Erosion from land
 - c. Bank erosion from channel
 - 2. Glacial Lake Plan
 - a. Altered Flow regime
 - b. Lack of buffer strips along drainage systems
 - c. Sedimentation to waterways
 - 3. Beach Ridge
 - a. Altered flow regime
 - b. Bank erosion from channel
 - c. Lack of Wetlands (and diversity)
 - 4. Glacial Moraine
 - a. Lack of wetlands (and diversity)
 - b. Lake water quality
 - c. River and stream water quality
- f. Identification and agreement on agency roles and responsibilities of plan implementation: A matrix was developed which identified the lead and supporting agencies to accomplish the identified tasks. In general the Watershed District was identified as the lead in flood damage reduction activities and other local agencies (SWCD) and state agencies were identified as lead in natural resource enhancement activities

12. **Publish Notice of Public Hearing.** Legal notice of public hearing was published in the Norman County Index on February 11, 2003, in the Farmers Independent on February 12, 2003, in the Mahnomon Pioneer on February 13, 2003, in the Twin Valley Times on February 11, 2003, in the Becker County Recorder on February 12, 2003, in the Clay County Union on February 12, 2003, and in the Valley Journal on February 10, 2003. Legal notice was also mailed to the auditors of each county in the WRWD, each SWCD in the WRWD, all cities in the WRWD, DNR, FDR WG and others.

13. **Public Hearing.** On February 27, 2003, two members of the Northern Region Water Planning Subcommittee presided over a public hearing at the Twin Valley Community Center in Twin Valley, Minnesota. The hearing panel heard testimony from the WRWD Board of Managers in support of Plan approval.
14. **Board Staff Report.** Board staff recommend the Plan be approved.
15. **North Region Water Plan Review Committee.** The committee met on Friday, May 2, 2003 and, based on the oral and written testimony on the Plan, and based on the entire record, the committee decided to recommend approval of the Wild Rice Watershed District Revised Watershed Management Plan to the full Board.

CONCLUSIONS

1. All relevant, substantive and procedural requirements of law and rule have been fulfilled.
2. The Board has proper jurisdiction in the matter of prescribing a Revised Watershed Management Plan for the Wild Rice Watershed District pursuant to Minnesota Statutes Section 103D.405.
3. The Wild Rice Watershed District Revised Watershed Management Plan attached to this Order defines water-related problems within the WRWD boundaries, possible solutions thereto, and an implementation program.
4. The attached Plan is in conformance with the requirements of Minnesota Statutes Section 103D, BWSR guidelines for Watershed District Plan content, the "Red River Basin Flood Damage Work Group Mediation Agreement" and is consistent with the affected county comprehensive water plan.

ORDER

The Board hereby prescribes the attached Plan as the Revised Watershed Management Plan for the Wild Rice Watershed District.

Dated at Saint Paul, Minnesota this 28th day of May, 2003.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Leland G. Coe, Chair

STAFF ADVISORY REPORT

on the

ESTABLISHMENT PETITION

for the

SHELL ROCK RIVER WATERSHED DISTRICT

May 8, 2003

CITIZEN PETITION

A citizen petition (See Attachment A) was filed March 9, 2000 to establish the Shell Rock River Watershed District. The requirement for the establishment petition to have at least 50 citizen signatures was met with 755 citizens having signed the petition to form a watershed district. The Shell Rock River watershed extends from Minnesota into Iowa. All of the Shell Rock River watershed that is in Minnesota lies within Freeborn County. The proposed district would be about 320 square miles in size according to the petition. The establishment petition specified that the new watershed district have seven managers. The establishment petition stated the watershed district was necessary to improve water quality, reduce erosion and sedimentation, and for the implementation of best management practices.

The establishment petition listed contemplated improvements, as follows:

- a. Establish buffer zones and best management practices along tile and tile outlets, ditches and streams in the watershed.
- b. Educational programs to improve water quality throughout the watershed area.
- c. Possible replacement of current restrictions within the water outlet system on the Shell Rock River.
- d. Possible restoration of aquatic vegetation.
- e. Possible lake level management practices that best serve the needs of watershed district lakes.

- f. Improved quality of shoreland practices and management to ensure that development is responsibly done.
- g. Possible removal of sediment in areas that have lead to the degradation of the water body.
- h. Ongoing testing for water quality and water clarity to measure results of improvement.
- i. All other actions that have a positive impact on the many varied uses of the water resources within the Watershed District.

PUBLIC HEARING

The BWSR board adopted an order at its regular meeting on April 26, 2000, that determined the watershed district establishment petition was valid and ordered a public hearing to be held on the establishment petition. Following legal notice, a public hearing was held on June 5, 2000 at the Albert Lea Senior High School Auditorium.

Several people testified at the public hearing and 18 exhibits were entered into the record. The hearing record remained open for three weeks after the hearing closed for receipt of written comments. Many written comments were received during the comment period after the public hearing. Oral testimony and exhibits were both in favor of, and in opposition to, establishment of a watershed district.

The public hearing record consists of a total of 106 exhibits. See Attachment B for the list of exhibits contained in the July 26, 2000 BWSR board order that placed the establishment proceedings in abeyance. The attached list of exhibits summarizes the written comments that were received as part of the public hearing.

Generally, many citizens in favor of establishing a watershed district cited the need for upland water management controls, improvement of water quality in the lakes, and the lack of emphasis by the Freeborn County Board in addressing the water resource issues in the Shell Rock River watershed. Conversely, many citizens opposed to watershed district establishment cited the domination of the process by the Lake Restoration Committee, another layer of government being formed, and taxation without representation since the watershed district board members would be appointed by the county board instead of being elected.

FIRST AGREEMENT FOR ABEYANCE OF PROCEEDINGS

The Freeborn County Board of Commissioners requested, by resolution dated June 21, 2000 (See Attachment C), that the watershed district establishment proceedings be held in abeyance for one year. The BWSR hearing panel met on June 29, 2000 and, based on consideration of all the information in the record, recommended that the BWSR board place the establishment proceedings in abeyance for up to one year if an agreement were entered into between Freeborn County, Freeborn SWCD, Albert Lea and BWSR. Further, the agreement would need to include certain measurable outcomes. The BWSR board adopted an order dated July 26, 2000 (See Attachment B) that placed the establishment proceedings in abeyance per the recommendation of the hearing panel. See Attachment D for the executed agreement.

SECOND AGREEMENT FOR ABEYANCE OF PROCEEDINGS

On September 26, 2001, the BWSR board adopted an order that placed the watershed district establishment proceedings in abeyance up to February 1, 2003, subject to the successful and timely completion of an agreement between Freeborn County and BWSR (See Attachment E). Findings of fact in the order stated the county had substantially completed the previous agreement, but pointed to funding as a possible issue. In the agreement contained in the September 26, 2001 order, the county agreed to develop and adopt an Albert Lea Lake Management Plan, integrate the Shell Rock River Watershed Plan into the County Comprehensive Water Plan, and allocate budget monies and start implementation of five of the highest priority activities identified in the Shell Rock River Watershed Plan.

STAFF ANALYSIS

Staff find that Freeborn County has substantially complied with the first agreement, although funding remained an issue. It is noted that the special taxing district established in response to the first agreement has not been utilized to date. Also, the county board failed to adopt a Shell Rock River Watershed Plan as specified in the first agreement. However, the county board adopted a resolution before the end of the first agreement accepting the advisory committee's recommendations and adopted the plan before the end of the second agreement, but never took action to formally amend the County Comprehensive Water Plan.

It is the opinion of staff that Freeborn County has fallen short of substantial compliance with the second agreement. The county board failed to amend or revise the Freeborn County Comprehensive Water Plan to include the Shell Rock River Watershed Plan as

specified in the second agreement. Although the county board did adopt a resolution on January 21, 2003 (See Attachment F) to integrate the Shell Rock River Watershed Plan and the Albert Lea Lake Management Plan into the County Comprehensive Water Plan, the process was never formally completed. This fact is brought forward in light of the Freeborn County Board resolution adopted on July 10, 2001 (See Attachment G), which stated that a revised county comprehensive water plan would be adopted by the county board by February, 2003. The process has been stalled over the past nine months since the Shell Rock River Watershed Plan and the Albert Lea Lake Management Plan were completed by August, 2002. According to county staff, there are presently no plans to amend or revise the County Comprehensive Water Plan before it expires in 2007.

Budget information provided by Freeborn County dated January 6, 2003 shows \$308,492 (including \$20,000 in federal grant money) was allocated to water planning efforts in the Shell Rock River Watershed in 2002, however, only \$105,457 was expended, thus a surplus of \$203,035 remained. The Shell Rock River Watershed Budget for 2003 is \$209,192 (including \$20,000 in federal grant money), which appears to be merely a transfer of the surplus funds from the 2002 budget. The 2003 budget for comprehensive water planning throughout the entire county includes a miscellaneous amount of \$100,000. Detailed information from the county on planned budget expenditures for the Shell Rock River Watershed and the miscellaneous comprehensive water plan account in FY 2003 is not available.

The 2002 expenditures of \$105,457 included \$36,000 going to the SWCD for a staffing position, installation of rock inlets, acquisition of water quality testing equipment, education, and salaries. When asked why the 2002 expenditures were far less than the amount budgeted, Freeborn County staff stated in correspondence dated February 14, 2002:

“We (Freeborn County) and this office are prudent in financial decisions. In light of recent pre-allotment and post-allotment budget challenges, we made the right FY 2002 budget decisions for all of Freeborn County’s Water Quality issues.”

The Comprehensive Plan for the Shell Rock River Watershed and the Albert Lea Lake Management Plan state various goals and objectives associated with action items, list who will do the implementation, and list possible funding sources, however, the plans lack an implementation schedule and costs for many of the action items. This may result from the fact that a majority of the funding emphasis relies on the possibility of outside funds instead of using the benefits of the special taxing district that the county board established.

A condition of the second agreement pertained to allocating budget money and beginning implementation of five of the highest priority activities in the Shell Rock River Watershed Plan. Information from Freeborn County dated February, 2003 (See Attachment H) shows the five highest priority goals. It is noted that some of these goals were being done by the county before the establishment petition was filed.

STAFF CONCLUSIONS AND RECOMMENDATION

It is important to remember that the two agreements were not designed to halt the establishment of a watershed district. Rather, the two agreements held the watershed district establishment proceedings in abeyance. Substantial completion of the agreements was necessary to hold the decision of whether or not to establish a watershed district in a pending status. That is simply all the two agreements accomplished. If the agreements were completed, a watershed district could still be established. Certainly if the agreements were not substantially completed a decision would have been made sooner and that decision would likely have been to establish a watershed district.

The two agreements were intended to guide the county to the level of activity normally associated with a watershed district. Although the county made progress required by the agreements, it is the opinion of staff that Freeborn County did not fully complete the work required by the two agreements. Further, the funds expended to date, and likely budgeted in the future, are insufficient to implement much of the action items contained in the plans. It is for these reasons that staff feel the majority of the work detailed in the Shell Rock River Watershed Plan and the Albert Lea Lake Management Plan will not be undertaken within a reasonable time by Freeborn County.

Further, as evidence of the Freeborn County Board's lack of commitment to aggressively addressing the objectives of the Shell Rock River Watershed Plan and the Albert Lea Lake Management Plan, a resolution was adopted on May 6, 2003, that opposed the establishment of a watershed district yet made no commitments to implementation timeframes or funding allocations, as follows:

“Moved, that the Freeborn County Board of Commissioners opposes the formation of a Shell Rock River Watershed District”

In conclusion, the establishment of the proposed Shell Rock River Watershed District would meet the goals and objectives of the petitioners and therefore would benefit the public welfare and public interest, and would advance the purpose of the watershed law in Minnesota Statutes Chapter 103D.

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

In the Matter of the Establishment Petition for
the Shell Rock River Watershed District in
Freeborn County pursuant to Minnesota Statutes
Sections 103D.205 to 103D.225.

**ORDER TO PROCEED
WITH WATERSHED DISTRICT
ESTABLISHMENT PROCESS**

Whereas, more than fifty (50) resident owners residing in the proposed Shell Rock River Watershed District in Freeborn County filed a Petition dated March 8, 2000, with the Board of Water and Soil Resources (Board) on March 9, 2000, to establish a watershed district pursuant to Minn. Stat. § 103D.205, and;

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

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

FINDINGS OF FACT

1. **Establishment Petition.** The Petition (Exhibit 1) to establish the Shell Rock River Watershed District dated March 8, 2000, was filed with the Board March 9, 2000. The Petition was signed by more than fifty (50) resident owners in the proposed watershed district pursuant to Minn. Stat. § 103D.205, Subd. 3 (4). On March 14, 2000, Dennis A. Distad, Freeborn County Auditor, pursuant to Minn. Stat. § 103D.211, certified that more than fifty (50) petitioners were resident owners within the proposed watershed district. (Exhibit 3) The proposed watershed district lies within Freeborn County. Filed with the Petition were the required proofs of service on the Freeborn County Auditor, the Commissioner of the Department of Natural Resources, and the Director of the Division of Waters of the Department of Natural Resources. (Exhibit 2)
2. **Property Description.** The territory to be included in the watershed district is depicted in Exhibit A of the Petition and is the area in the Shell Rock River Watershed that is in Freeborn County, approximately 319 square miles in several communities, which includes land in the Cities of Albert Lea, Clarks Grove, Glenville, Hayward, Manchester, and Twin

Lakes, and the Towns of Albert Lea, Alden, Bancroft, Bath, Carlston, Freeman, Hartland, Hayward, Manchester, Nunda, Oakland, Pickerel Lake, Riceland, and Shell Rock.

3. **District Name.** The name of the proposed district is the Shell Rock River Watershed District.
4. **Number of Managers.** The Petition specifies the proposed number of managers as seven (7).
5. **Necessity for Watershed District.** The Petition lists degradation of water quality since the 1920's, erosion, sedimentation and best management practice issues.
6. **Contemplated Improvements.** The Petition lists the following:
 - a. Establish buffer zones and best management practices along tile and tile outlets, ditches and streams in the watershed.
 - b. Educational programs to improve water quality throughout the watershed area.
 - c. Possible replacement of current restrictions within the water outlet system on the Shell Rock River.
 - d. Possible restoration of aquatic vegetation.
 - e. Possible lake level management practices that best serve the needs of watershed district lakes.
 - f. Improved quality of shoreland practices and management to ensure the development is responsibly done.
 - g. Possible removal of sediment in areas that have lead to the degradation of the water body.
 - h. Ongoing testing for water quality and water clarity to measure results of improvement.
 - i. All other actions that have a positive impact on the many varied uses of the water resources within the Watershed District.
7. **Hearing Order.** At its regular meeting on April 26, 2000, the Board determined that the Petition met the requirements of Minn. Stat. § 103D.221, Subd. 1, and consequently ordered a public hearing to be held on the Petition for the Shell Rock River Watershed District. (Exhibit 4)

8. **Hearing Notice.** Legal notice of the public hearing on the proposed watershed district establishment, pursuant to Minn. Stat. § 103D.221, Subd. 2, was published in the Albert Lea Tribune on May 19 and 25, 2000. (Exhibit 6) Further, a copy of the hearing notice was mailed to approximately 30 addressees including the Freeborn County Board of Commissioners, Freeborn County Auditor, Freeborn County Administrator, legal counsel for the petitioners, all of the cities in the proposed watershed district, all of the towns in the proposed watershed district, the SWCD, and the DNR. (Exhibit 5)
9. **Director's Report.** The Director of the Division of Waters of the Department of Natural Resources filed a written report pursuant to Minn. Stat. §103D.215 on June 5, 2000, (Exhibit 8) and a clarification on June 20, 2000. (Exhibit 106)
10. **Public Hearing.** A public hearing was held on the establishment of the Shell Rock River Watershed District on June 5, 2000, at the Albert Lea Senior High School "Cap" Auditorium, 109 West Avenue, Albert Lea, Minnesota. The proceedings were tape recorded. The hearing panel consisted of Board members Ginny Imholte, Char Kahler, Allan Oehlke, and Jim Dahlvang as chair. Eighteen exhibits were entered into the record at the hearing. After all people present at the public hearing were given an opportunity to speak, the hearing record was left open for three weeks until 4:30 PM on June 26, 2000, for receipt of written comments. 88 additional exhibits were received while the record was open.
11. **Proceedings held in Abeyance.** The Board adopted orders on June 26, 2000 and September 26, 2001 to place the watershed district establishment proceedings in abeyance contingent on certain agreements with local units of government. The second agreement expired on February 1, 2003.
12. **Board Committee.** On May 13, 2003, a committee of the Board convened in Albert Lea. The committee consisted of Ginny Imholte, Becky Balk, Victor Ormsby, and Char Kahler, Chair. The committee heard testimony from Freeborn SWCD, Freeborn County, the City of Albert Lea, the Chamber of Commerce Lake Committee, the Petitioners, and some citizens. Based on the entire record in the matter the committee voted three to one to recommend the watershed district be established.

CONCLUSIONS

1. The Petition for establishment of the Shell Rock River Watershed District is valid in accordance with Minn. Stat. § 103D.205.
2. Proper notice of hearing was given and the public hearing was held in accordance with applicable laws.
3. All relevant substantive and procedural requirements of law and rule have been fulfilled.
4. The Board has proper jurisdiction in the matter of ordering a watershed district establishment.
5. The process to establish the Shell Rock River Watershed District should be continued by the committee and staff so a complete establishment order that includes the selection of managers and other necessary items can be brought to the full Board.

ORDER

The Board hereby orders that the process to establish the Shell Rock River Watershed District should be continued by the committee and staff so a complete order for the establishment of the Shell Rock River Watershed District, that includes the selection of managers and other necessary items, can be brought to the full Board.

Dated at Saint Paul, Minnesota this 28th day of May, 2003.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

By: _____
Leland G. Coe, Chair

May 14, 2003

TO: Board Members

THRU: Kevin Lines, Easement Section Administrator

FR: Tim Fredbo, Conservation Easement Specialist

RE: Alteration of Conservation Easement 86-23-86-01 and 86-03-88-01,
David Sand, Wright County

BACKGROUND:

David Sand has requested the state to remove 14.6 acres from a 43.5 acre marginal cropland perpetual RIM Reserve conservation easement (86-23-86-01). The easement is located in Section 22 of Stockholm Township, Wright County. The landowner is proposing to replace it with 19.6 acres of land surrounding his 21.2 acre wetland restoration easement (86-03-88-01) in Section 32 of Stockholm Township.

The landowner is requesting this change to gain a site to build his retirement home with access off the township road in Section 22. The landowner initiated his discussions with the Wright SWCD about this release in August of 1999. The exchange was agreed to by the DNR, Area Wildlife Manager, in June of 2000. The Wright SWCD Board approved of the request at their November 4, 2002 meeting. The BWSR received the information required as per RIM rules section 8400.3610 – Alterations of Conservation Easements, on April 4, 2003.

SUMMARY OF INFORMATION PROVIDED TO SUPPORT REQUEST:

Section 8400.3610 of the RIM Reserve rules requires the following items to be submitted for the Board to consider an alteration or release of a conservation easement: 1) A letter from the landowner explaining the request and how the change is in the public's best interest. 2) A letter from the DNR Area Wildlife Manager with recommendations on the proposed change. 3) A letter or meeting minutes from the local SWCD Board either approving or denying the proposed change. All three of these required items have been received and are attached for your review. Also attached are two photos showing the easements with proposed release and addition areas identified.

FINDINGS:

The landowner has proposed adding an additional 5 acres to the replacement easement area in Section 32, at no cost to the state. Acreage proposed for release is 14.6 and proposed addition is 19.6 acres. As a condition for release the Wright SWCD has stipulated that the replacement acres must be seeded to a five species native grass mix.

The replacement acres will add significant upland native grass cover to better buffer the 21.2 acre restored wetland and provide needed wildlife habitat on the Section 32 site. The loss of easement area in Section 22 will be adequately mitigated with the proposed replacement acres. There will still be significant wildlife habitat in and around Section 22 as explained by the landowner in his letter.

This landowner has been a good steward of his land over the years. He enrolled his land in Section 22 into the RIM Reserve program in the very first year of the program. We have had no problems with the landowner complying with the terms and conditions of the two easements he has granted to the State.

Both the Wright SWCD and the DNR wildlife manager are in favor of the proposed release and replacement plan.

OPTIONS AND STAFF RECOMMENDATION:

1. Approve of the exchange on the two easements. **RECOMMENDED.** This proposed exchange would have a positive impact on overall wildlife habitat conditions in the area. The wetland that was restored on the site would be adequately buffered from surrounding land uses and provide adjacent upland cover. Upland grass cover near wetlands is very important for nesting waterfowl and upland bird species production. The landowner will be increasing total acres under perpetual easement by 5 acres. No easement payment or practice payments will be made to the landowner if the exchange is approved so cost to the state will be minimal. I would also recommend that the planting of a 5 species native grass mix on the replacement site also be a condition of Board approval.
2. Deny the request to exchange. **NOT RECOMMENDED.** This is a reasonable request proposed by the landowner. This program needs to be flexible when the effects to the resources our easements are protecting are negligible or benefits are increased.

January 30, 2003

APR 04 2003

Board of Soil and Water Resources
State of Minnesota

How the public interest and general welfare are better served by the proposed land exchange should be considered on the whole of my fifteen year participation in the RIM program and forty year involvement in soil conservation programs.

The terms public interest and general welfare are so widely used that their meanings become vague. Webster mentions "pertaining to and can be known by all the community" and interest as "a concern for one's own welfare" which is "a state of being healthy, happy or free from want...or an organized work to promote this state." In regard to public programs such as RIM, they should be considered in regard to the goals and objectives of the program. An action that affects or benefits these goals in a positive way should be considered a good public interest and a beneficial general welfare, irregardless as to how much better or as stated in RIM rules and regulations 8400.3610, "The board reserves the right to require special provisions to ensure at least equal resource value as a condition for approving the request." It later states in regard to alternation, release or termination of easement, "The board may alter, release or terminate an easement....only if the board determines the public interest and general welfare are BETTER served by the alternation, release or termination."

The pamphlet guide to the activities and benefits of the RIM program states it's goals, "The primary goal of RIM is to increase the public and private investment in the states fish, wildlife, water, soil and other natural resources.for the program to succeed it needs to remain flexible...and private landowners are critical to RIM's success."

To make an exchange other information needs to be provided: A letter from the District Board recommending the exchange should be forthcoming as they have already approved it. The wildlife manager of the Department of Natural Resources, Fred Bengston has approved the recommended exchange with the provision that I grant an additional 5 acres to the 14.6 acre exchange (this I have agreed to) and finally a letter from the landowner justifying the exchange. I trust the information I here provide will identify how the public interest and general welfare will be better served.

The proposed exchange is 14.6 acres of land from a 43.5 RIM easement in Sec. 22 for a 19.6 (14.6 + 5) acres of HEL land adjoining and surrounding 21.2 acres of low lying, water impounded RIM land in Sec. 32. Specifically this action will provide a better balance of vegetation and wildlife cover for the created wetland. It will establish permanent grass cover for the HEL land adjoining the wetland to enhance water quality. It will create straight boundary lines for easier future identification. It will double the size to 41 acres of RIM area in Sec. 32. It will comply with the stated priority to find eligible replacement land and finally it will increase the land enrolled in RIM by 5 acres at zero cost to the public.

The release of 14.6 acres from 43.5 acres of RIM land in Sec. 22 would be negligible for a number of reasons. More than 10 years ago, I impounded 6-7 acres of water next to it that is not in RIM. Back in the seventies I diked to preserve from drainage another 50 plus acre slew on the north side of this RIM. Within a square mile of this RIM is more than 200 acres of permanent woods and slews owned by neighbors and myself.

The reduction of 14 acres in an area of so much habitat is minimal for the general welfare compared to the more than doubling in size and vegetative cover in Sec. 32, which has little other habitat or erosion control measures.

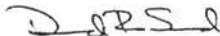
Conservation is really a question of balance within competing systems. One complete county of RIM land would not have the same environmental effect and benefit as the same amount of RIM land dispersed throughout all the counties.

In summary, this letter relative to the public interest and general welfare is only a small part of the larger and older picture. I started farming this home farm in the sixties with the hope of making a living farming, a love of the land and wildlife and a goal of improving the environment and beauty of the area.

I was attracted to the RIM program when it arrived because it shared my goals and afforded some financial assistance as an incentive to take HEL problem farming land out of production to enhance wildlife, water and soil erosion stewardship while beautifying the area I hoped to live and retire on. I signed on to the RIM program, taking at face value its rules and regulations, the requirements and responsibilities. I have honored my commitment and trust that the BWSR will honor and adhere to the alternation rules and regulations, which should approve this exchange, which is clearly in the public interest for the betterment of the general welfare.

In closing, I thank you for your commitment to a program such as RIM, which I support and believe in and for your time in consideration of this request. I will be available to answer any questions or to provide further information for your consideration.

Yours truly,



David R. Sand
8979 Peyton Ave SW
Cokato, MN 55321
320-286-5615



Minnesota Department of Natural Resources
Section of Wildlife
940 Industrial Drive S., Suite 102, Sauk Rapids, MN 56379
320/255-4279

APR 04 2003

June 21, 2000

Greg Bengtson
Wright County SWCD
306C Brighton Ave
Buffalo MN 55313

Dear Greg:

Earlier this spring David Sand requested a change in his RIM Reserve Easement. He proposed a trade of almost equal land areas (see maps) on two RIM easements.

At that time I inspected the two areas and determined that the natural resource values were not equal and recommended 10 additional acres enrolled in Section 32 to satisfy the land trade proposal. David Sand rejected that and we met on 6/7/00 with David Sand to again evaluate this request.

After that meeting, I compromised the additional 10 acres down (see maps for location) to five (5) acres. This is as far as I feel I can go to justify this proposed trade.

Your maps that you send me on 6/16/00 agree with my recommendation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred Bengtson".

Fred Bengtson
Interim Area Wildlife Manager

hh

c: David Sand

APR 04 2003

PART I – DECISION/POLICY MAKING:

ADMINISTRATION: The Annual Meeting for the Minnesota Association of Soil and Water Conservation Districts (MASWCD) is December 8, 9, & 10, 2002. These dates include the date for the regularly scheduled Wright District Board meeting – second Monday, December 09, 2002. In a motion by McNamara, seconded by Uecker, the Wright Board meeting was rescheduled to Monday, December 16, 2002 beginning at 4:30 p.m. in the Buffalo Ag Service Center.

Affirmative: Borrell, Dahlman, McAlpine, McNamara and Uecker.
Opposed: None.

COOPERATING AGENCIES AND ASSOCIATIONS:

Natural Resource Conservation Service (NRCS) – George Morris, District Conservationist, presented a report that included the following items:

- A Certified Wetland Determination Appeal is pending in Middleville Township, Section 19. The Area Office staff will conduct a site review this week.
- Drainage and wetland determinations requests continue.
- Personnel – The Soil Conservation Technician position for the Buffalo Field Office will open November 19 and close December 03, 2002. It is anticipated this position will be filled by January 27, 2003.

PERSONNEL: A meeting of the District Personnel Committee (Members: Borrell and Dahlman) held for purpose of the annual interviewing of District personnel and review of salary schedules is usually scheduled before the December District Board meeting. This year, the District Personnel Committee meeting was scheduled for November 27, 2002 beginning at 11:30 a.m.

REINVEST IN MINNESOTA (R.I.M.): Refer to July 08 and October 15, 2002 District Board meeting minutes for recent Board discussions. Office Manager Saxton gave the Board a detailed synopsis which included: Sand has two (2) R.I.M. contracts: Stockholm Township, Section 22 - 43.5 acres and Stockholm Township, Section 32 - 21.2 acres. August 18, 1999, David Sand initiated a request to exchange R.I.M. acreage so that he might build a retirement home in the future adjoining some of the R.I.M. acreage. After initially being denied, in June, 2002, DNR accepted an exchange of 14.6 acres from Stockholm, Section 22 for 20.1 acres in Stockholm, Section 32 (an additional 5.5 acres exceeding the original contract). On July 08, 2002 District Board meeting, at which Sand was not present, the District Board denied Sand's request for the R.I.M. land exchange. Sand attended the October Board meeting to personally appeal his land exchange before the Board and request reconsideration of its prior action. The decision at the October Board was to withhold further action on this request until more Supervisors would be in attendance offering more votes to determine an affirmative or opposition action. The Board's basic question was, "Is anything being gained by doing this other than strictly trading acres? Is the quality of the R.I.M. acreage being improved?" After discussion the "Favorable" and "Against" were listed as follow:

Against

- Precedent setting
- R.I.M. is well established on current acreage. New acreage would take many years to catch up
- R.I.M. contracts are perpetual in nature
- Unknown if the environment would actually be gaining or losing if the land exchange took place – also would the exchange and resulting land use be detrimental to the remaining contract

Favorable

- Expanded acreage would include upland for varied habitat on the Stockholm Township, Section 32 site
- Good for landowner who seems to be a good steward of the land
- Straighten out the very crooked current R.I.M. boundaries
- Wildlife would gain an additional 5 acres

REINVEST IN MINNESOTA (R.I.M.) (Continued):

Extended Board discussion concerned:

Cost associated with the possible land exchange - changing easements (legalities), reseeding, title insurance, etc.

Possible intensive development on the R.I.M. acreage versus the one (1) building lot requested as the reason for the exchange

If the possible land exchange were authorized, an upgrade of the required seeding from the current cool season grasses/brome would possibly be required.

In a motion by Borrell, seconded by Uecker, the Board authorized that the Wright District Board approve the exchange of R.I.M. acreage based upon the prior DNR approval. McNamara offered a "Friendly Amendment" to require an upgrade of the seeding to a seeding of a five (5) specie mix of tall grass prairie cover. The vote on the amendment was:

Affirmative: Borrell, Dahlman, McNamara and Uecker.

Opposed: McAlpine.

Motion carried.

The vote on the original motion plus the added seeding amendment:

Affirmative: Borrell, McNamara and Uecker.

Opposed: Dahlman and McAlpine.

Motion carried.

STATE COST-SHARE PROGRAM:

2001 and 2002 Program Years

Wanous, Larry (FY01-05) (FY02-02) – In a motion by McNamara, seconded by Dahlman, Larry Wanous was granted a time extension for his state cost-share project due to the wet construction season and inclement weather of summer and fall, 2002. The start date of November 2002 and the completion date of May, 2003 were amended to a start date of May, 2003 and a completion date of December, 2003.

Affirmative: Borrell, Dahlman, McAlpine, McNamara and Uecker.

Opposed: None.

Motion carried.

WETLAND CONSERVATION ACT (WCA):

Activities –

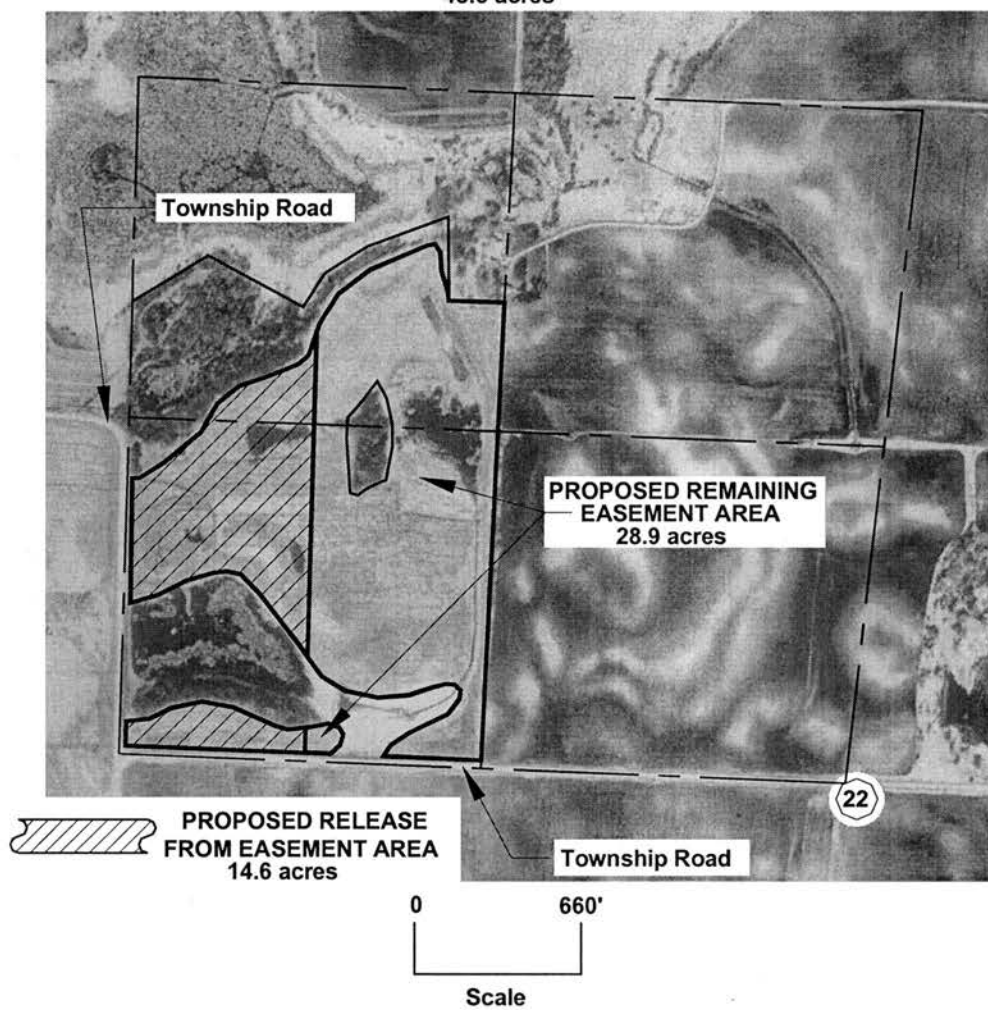
None.

PART II – MEETING REPORTS:

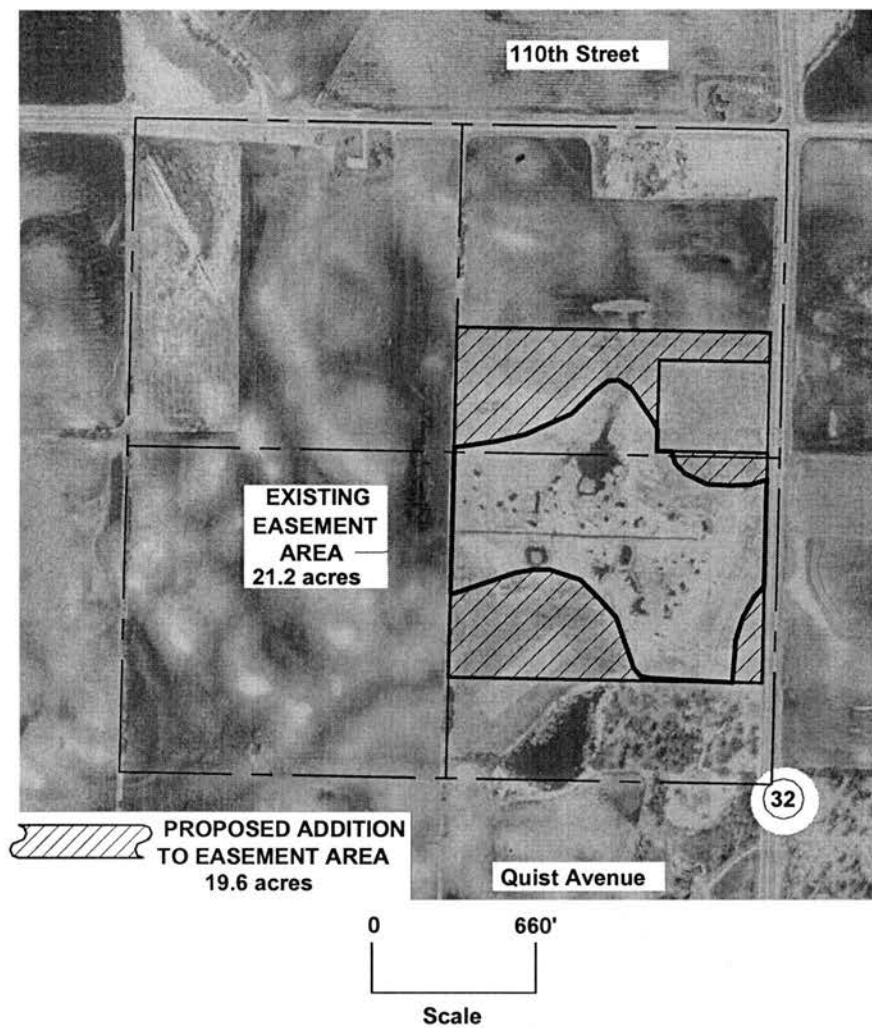
None.

Section 22 T. 118 N., R. 28 W., Wright County

EXISTING
EASEMENT AREA
43.5 acres



Section 32 T. 118 N., R. 28 W., Wright County



16-May-03

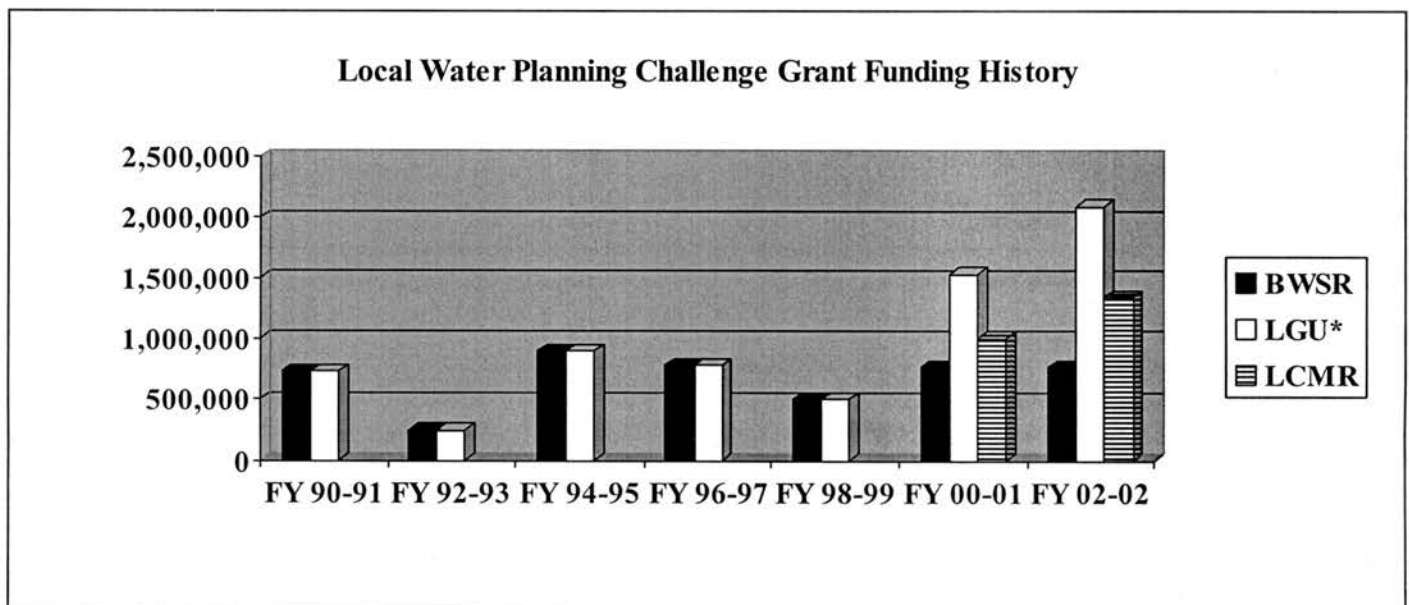
TO: Board Members
C: Senior Management Team
FROM: Marybeth Block, Water Mgt. Specialist
RE: 2004-2005 Local Water Mgt. Planning Challenge Grants

BACKGROUND: The BWSR submitted a proposal to LCMR approximately one year ago to accelerate implementing local water management plans via challenge grants, and to develop some guidance material to assist local governments to develop local water plans. LCMR proposed funding the project at \$860,000, however they had to revise their recommendations after it became apparent that the Future Resources Fund would be diverted to the general fund to offset the budget shortfall. In it's final recommendation to the Legislature the LCMR has proposed \$500,000 for the grants. Staff is requesting the Board pass a resolution to solicit applications for this grant according to the guidelines on the next page.

LWP(M) CHALLENGE GRANT FUNDING HISTORY

Local water planning assesses local water conditions and utilizes an advisory committee of elected officials, citizens and resource managers to identify high priority local water issues, and how those issues will be addressed. LWP Challenge (competitive) Grants have traditionally been the main funds available to carry out those activities. During the last LWP Challenge Grant funding cycle local governments submitted 101 applications for projects totaling \$7,666,470. Money available for the 2002/03 LWP Challenge grants included \$750,000 from BWSR and \$1,340,000 from LCMR. Sixty-six projects were funded from the \$2.09 million available.

Funding history of challenge grants is displayed in the table below.



**PROPOSED GUIDELINES FOR APPLICATIONS FOR FY 2004/05 LOCAL WATER MGT.
PLANNING CHALLENGE GRANTS:**

Grant maximums and match: Solicit projects to implement actions in local water plans. Grants will not exceed \$25,000 per LGU or \$75,000 per project where 3 or more LGUs are involved in implementing a project. All grants must be matched one-to-one with cash or in kind contributions.

Eligible projects: Proposed projects must implement priority action items in an approved local water management plan. Eligible projects include:

1. land and water treatment (i.e., install erosion or water quality improvement practices);
2. inventories (e.g., inventory public and private drainage systems)
3. water quality monitoring; or
4. education activities.

Special consideration will be given to projects that:

1. develop, implement or complement plans for lakes, rivers or drainage management systems;
2. improve, develop, guide, or complement the development of environmental ordinances (e.g., develop comprehensive wetland protection standards, develop models or other tools to guide in drafting ordinances, etc.)

Ineligible projects include: installation of ISTS's; updating local water plans; Clean Water Partnership Phase 1 diagnostic studies; federal and state combined cost-share that exceeds 75% of the cost of the project; additional state money for BWSR easement payments (RIM, CREP, WRP, road replacement) or admin/tech services associated with the easement acquisition; and digitizing soil surveys not be done to USDA-NRCS standards.

Eligible Local Units of Government includes counties, watershed districts and watershed management organizations. SWCDs may apply if the county has delegated the local water management planning responsibilities to them per 103B.311, subd. 2.

Application content, format and timeline: Applications from eligible LGUs will be solicited using eLINK and e-mail distribution lists on or near June 2nd and the application period will be closed on or near June 20th, 2003. Eligible LGU's Applications will include a project purpose statement, desired outcomes, a short list of actions to be taken and brief budget (already set up in eLINK).

APPLICATION REVIEW: Agency Local Water Mgt liaisons will be invited to review and rank the applications, along with the BWSR board conservationists on the Grants Team and myself. The list of projects proposed for funding will be presented to the board for consideration and approval in July.

GRANT RECIPIENTS: Upon passage of the appropriation language, and within 30 days upon receipt of an approved workplan, a grant agreement will be mailed to successful applicants. Project managers will be required to submit progress reports 30 days before a BWSR quarterly report is due to the LCMR.

Board Resolution # _____

FY 2004/05 Local Water Mgt. Planning Grants Application Procedures

WHEREAS the Board of Water and Soil Resources submitted a Request for a Proposal to the Legislative Commission on Minnesota Resources for funds to eligible local units of government to implement high priority actions identified in current, state-approved local water management plans through competitive grants known as Local Water Mgt. Planning Challenge Grants; and

WHEREAS the Legislative Commission on Minnesota Resources has recommended the Legislature appropriate \$500,000 for Local Water Mgt. Planning Challenge Grants; and

WHEREAS the Board of Water and Soil Resources anticipates that the 2003 Legislature will approve the Legislative Commission on Minnesota Resources funding recommendation.

NOW, THEREFORE BE IT RESOLVED THAT, the Minnesota Board of Water and Soil Resources will solicit for 2004/05 Local Water Mgt. Planning Challenge Grants according to the guidelines attached and the agencies represented on the board will be invited to participate in the review and ranking of applications received, which will be completed by July 21, 2003.

Lee Coe
Chair, Minnesota Board of Water and Soil Resources

Date

NATURAL RESOURCES BLOCK GRANT ADMINISTRATIVE POLICY

BACKGROUND

The Natural Resources Block Grant (NRBG) is a base grant composite for Local Water Planning, Wetland Conservation Act, DNR Shoreland, and MPCA County Feedlot Permit programs. Each program has unique reporting requirements, and some have unique application requirements, as well.

The NRBG has been administered on a Calendar Year basis. BWSR receives legislative appropriations after the beginning of the fiscal year. NRBGs are executed six to nine months later.

ISSUES

- 1) A large paperwork exchange between agencies and LGUs has been needed to complete the application and reporting processes. LARS helped with managing a database for reporting, but it does not bridge the gap between application and reporting.
- 2) LGUs begin their annual budgeting process in early summer, based on estimates of expected NRBG revenues six months later.
- 3) To maximize budgeting flexibility, appropriations for grant programs should be promptly distributed.

RECOMMENDATION

Staff recommends an immediate transition to administering the NRBG on a fiscal year basis beginning with the FY 04 NRBG and the immediate authorization of eLINK as the sole format for NRBG application and reporting, beginning with the Fiscal Year 2004 NRBG, according to the attached resolution.

NATURAL RESOURCES BLOCK GRANT MEMORANDUM

May 28, 2003

The following is a summary of the reporting and application processes for the Natural Resources Block Grant as we **transition** to eLINK.

CALENDAR YEAR 2002 REPORTING

Complete the Natural Resources Block Grant report in LARS or by using the Alternative paper reporting forms. Complete the annual program reports for WCA, Feedlot, ISTS, and Shoreland. All reports were due to board conservationists by March 15, 2003.

Calendar Year 2003 Reporting

All reporting for calendar year 2003 (January 1, 2003 – December 31, 2003) will be done via eLINK by February 1, 2004. Final details are still being worked out. Training for BWSR staff and LGUs will begin in June 2003.

NRBG APPLICATIONS (The FY 03 NRBG is a transitional process.)

FY 03

Sequence of events: Grant Funds Distributed → Application → Reporting

Grant Agreements for the FY 03 NRBG have been sent out and are being paid. The FY 03 NRBG work plan and budget and financial report will be completed by LGUs using eLINK, which will replace all of the required paper forms used during the FY 02-03 application period (e.g. work plan, budget and financial report, allocation contribution summary statement.) The FY03 grant application must be completed in eLINK prior to submitting the FY04 application. Training will be provided to BWSR staff and LGUs later this spring.

FY 04

Sequence of events: Application → Grant Funds Distributed → Reporting

The Board will be requested to authorize the FY 04 NRBG in June, 2003. The FY 04 NRBG "Application" will be done by LGUs via eLINK right after the 03 Application, or when we are reasonably certain of the appropriations and LGU allocations. No deadline has been set for completing the eLINK Application. Grant Agreements are planned to be sent out in July, 2003.

(Note: A 2003 legislative special session could delay the distribution of FY 04 allocations.)

NRBG TRANSITIONS:

Process/Sequence	Was	Will Be (FY04)
Grant Reporting	Calendar Year	Calendar Year
Grant Application	Calendar Year	Fiscal Year
Grant Reporting	LARS/Paper Forms	eLINK

Board Resolution # _____

Natural Resources Block Grant Administrative Policy

WHEREAS, the Natural Resources Block Grant (NRBG), administered by the Board of Water and Soil Resources (Board), has historically been authorized and executed on a calendar year basis; and,

WHEREAS, county application and reporting procedures have historically been performed via a variety of paper and electronic formats, as prescribed by the Board; and,

WHEREAS, authorization and execution of the NRBG on a fiscal year basis will increase the efficiency of legislative appropriations and enhance Local Governmental Unit (LGU) budgeting by distributing state revenue amounts as soon as they are made available; and,

WHEREAS, the implementation of eLINK, an electronic data management and communication tool, will standardize all application and reporting formats while providing an electronic database and instant communication, significantly reducing the exchange of paper forms.

NOW THEREFORE, the Board hereby authorizes the implementation of eLINK as the sole format for NRBG application and reporting, beginning with the Fiscal Year 2004 NRBG.

AND, the Board authorizes the transition to administering the NRBG on a fiscal year basis, beginning with the Fiscal Year 2004 NRBG.

Leland Coe, Chair
Board of Water and Soil Resources

Date: _____

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

In the Matter of submission of a PL566
Application by the Two Rivers Watershed District
to the Board of Water and Soil Resources for
approval and assignment of a priority ranking.

**ORDER FOR APPROVAL
PUBLIC LAW 566 APPLICATION
AND ASSIGNING STATE
PRIORITY RANKING**

Whereas, in accordance with provisions of the United States Department of Agriculture Small Watershed Protection Act (Public Law 566 or PL566), the Two Rivers Watershed District filed an application for PL566 planning and financial assistance to the Board of Water and Soil Resources (Board) for its approval and submission to the Minnesota Natural Resources Conservation Service (NRCS), and;

Whereas, the Board must assign a priority ranking to the watershed, and;

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

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

FINDINGS OF FACT

1. On April 25, 2003, the Board received the Federal Small Watershed Protection Act (PL566) application for assistance for Springbrook Township in Kittson County, Minnesota, from the Two Rivers Watershed District.
2. The application was submitted with resolutions of support and sponsorship from the Kittson SWCD, the City of Karlstad, and Springbrook Township.
3. The unnamed watercourse located between Kittson County Ditch Number 10 and Judicial Ditch Number 10 in Kittson County has sustained severe and repeated damages. The watercourse is essential to provide a means for water to drain from adjacent farmlands and from upstream flows associated with the City of Karlstad.

CONCLUSIONS

1. The application has been completed and properly submitted to the Board pursuant to Part 503.24 of the USDA National Watershed Manual.
2. All relevant substantive and procedural requirements have been fulfilled.
3. The Board has proper jurisdiction in the matter of making a decision on the submission of a Federal Small Watershed Protection Act application for assistance.

ORDER

The Board hereby approves the Federal Small Watershed Protection Act (PL566) application for assistance for the Two Rivers Watershed District and assigns it a high priority ranking.

Dated at Saint Paul, Minnesota this 28th day of May, 2003.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

By: _____
Leland G. Coe, Chair

RESOLUTION FOR CHANGE OF HEADQUARTERS

Be it resolved by the Chisago Soil and Water Conservation District supervisors that the headquarters of the district be changed from 38694 Tanger Drive, North Branch to 38814 3rd Avenue Main Street Commons, North Branch, Minnesota.

State of Minnesota)
)
County of Chisago)

I, Roland Cleveland, Chair of the Chisago Soil and Water Conservation District, do hereby certify that the above resolution relating to the change of the location of the principal office of the supervisors of the Chisago Soil and Water Conservation District was adopted by the said district supervisors at a regular meeting thereof held on February 13, 2003, that I have compared it with the original resolution as set forth in the minutes of the said meeting, and that said copy is a true and correct copy of and transcript from said original and the whole thereof. I further certify that said meeting of the Board was duly called and held, that a quorum of the members of said Board was present thereat, and that said resolution was duly adopted thereat by a majority vote of the members present.

Signed: , Chair

Chisago Soil and Water Conservation District

Dated: February 13, 2003

FOR YOUR INFORMATION

(May 28, 2003)

- BWSR "Update"
- Minnesota Statutes 2002, Chapter 103E and 103G
- Memo from MASWCD regarding Farm Security and Rural Investment Act of 2002 (Farm Bill)
- EPA Headquarters Press Release regarding "EPA Announces \$15 Million for the Nation's Watersheds"
- Letter from Governor Pawlenty to Ann Veneman, Secretary, U.S. Department of Agriculture, regarding CRP sign-up
- Board Calendar



Board of Water and Soil Resources

U P D A T E

A publication of the Minnesota Board of Water and Soil Resources

May 2003

NORTH

Water Management

Dan Steward met with Cass County folks in Walker regarding their upland suitability model. The upland model is a complement to the county's wetland model and is intended to help local governments evaluate development proposals. The model consists of a number of layers, each of which is a variable related to "proper" development. Examples include steepness, coarse soils, distance from existing roads, and the existing wetland model scores.

Another important tool, Itasca County's Lake Vulnerability Model being developed by Itasca SWCD (funded by a BWSR challenge grant), would greatly enhance the ability of local governments to evaluate projects. This can complement the upland model being developed by Cass County by giving a reading on how a proposal can affect the receiving water, which is often a lake. For example, a project could be proposed for a site with minor upland site limitations, and when the project impacts are extended down to the lake, it may be that the large and deep lake is relatively invulnerable to development impacts. The opposite may also be true. In either case, the local unit of government has another tool to more fully evaluate impacts and defend decisions whether to protect, develop, or attach conditions. These are two examples of how water-planning funds have affected the ability of local governments to make sound resource decisions.

WCA

On April 30, Dan Steward attended the first scheduled monthly Technical Advisory Committee meeting related to the Wetland Conservation Act in Itasca County. The county's WCA workload is quite heavy. Represented at the meeting were BWSR, DNR Waters, DNR Enforcement, DNR Ecological Services, and Itasca Planning and Zoning. The monthly TAC meetings have accelerated progress in cleaning up some complicated violations.

The planning commission for the city of Hermantown will now review all TEP recommendations and then forward approved replacement plans to the city council. Mark Nelson reports that Hermantown has refined its WCA procedure as a result of good faith negotiating on the part of BWSR, the city, and other interested parties.

All of Keith Grow's counties now have regularly scheduled TEP meetings. State and federal agencies are attending, and it is providing valuable input early in the WCA review process. John Overland, wetland specialist, has been doing a great job assisting when called upon. Workload continues to be heavy in Keith's area.

Keith says that Aitkin County is in the ordinance phase of their Wetland Management Plan. They are now doing an inventory of drained or partially drained wetlands for future banking or replacement.

Mark Nelson reports that 50 BWSR clientele attended the pre-test for the Plant I.D. course to be held throughout the growing season. While the course is tailored to northeastern Minnesota, it should still be useful statewide. See the BWSR web site: Wetlands/Coastal Plant Identification Course.

MECA

Mark Nelson represented BWSR at the Minnesota Erosion Control Conference. As current president of the organization, Mark represented BWSR in supporting erosion control training opportunities for BWSR clientele. Erosion control will gain additional focus with MPCA's Phase II program implementation this fall.

-Submitted by Ron Shelito

'Hobby' of filling wetlands over for Otter Tail County man

An Otter Tail County man has been ordered to pay \$123,000 in restitution within 30 days, \$6,000 in fines and serve a 180-day jail sentence for violating Minnesota's Wetland Conservation Act.

Board of Water and Soil Resources Update, Page 2

Arnold Vernon Ruther, 47, Perham, was found guilty last March for a series of wetlands violations dating back to 1998. Sentencing was handed down on April 21, 2003, by Otter Tail County Judge Galen J. Vaa who said he found it unusual for a defendant to stand before a jury and claim filling wetlands was his hobby. Vaa likened the blatant disregard for the law to driving while intoxicated as a hobby.

In 1993, Ruther was convicted of ignoring a wetlands restoration order by a DNR Conservation Officer. He was also guilty of wetlands violations in 1994 and 1996, and continued to fill in wetlands from 1998 through 2001.

In 2001, the DNR and Board of Soil and Water Resources approached the Otter Tail County Attorney to charge Ruther with violating a number of cease and desist orders. He was eventually charged with failure to comply with a 1998 restoration order, seven counts of failure to comply with a 2000-2001 cease and desist order and four counts of failure to comply with a 2001 restoration order. Ruther opted for a jury trial. On March 5, 2003, after a day and a half of testimony, he was found guilty on all 12 charges. Sentencing was set for April 21.

During sentencing, Judge Vaa expressed his concern for Ruther's blatant disregard for the Wetlands Conservation Act. Vaa stated the sentencing served four purposes: punishment, serve as example for others, restoration and public safety. At the conclusion, the judge told Ruther his "hobby of filling wetlands was over."

State officials say they have remained vigilant about enforcing wetlands preservation.

BWSR's Dale Krystosek called the decision a major victory for wetland protection in Minnesota. "This decision should serve as a reminder that the appropriate local, state and federal permits should always be obtained before filling in wetlands or other sensitive ecosystems," he said.

SOUTH

Three Rivers RC&D receives EPA watershed grant

The Three Rivers Resource Conservation and Development Council (RC&D), a group committed to protecting the Greater Blue Earth River watershed in Minnesota and

Iowa, was recently named an Environmental Protection Agency (EPA) Watershed Initiative grant recipient.

The Three Rivers RC&D will use the grant funds for several projects in the Greater Blue Earth River watershed. The group will restore five wetlands, organize crop insurance for farmers, cost-share with landowners for installation of riparian buffers, organize educational awareness projects, and promote existing agricultural conservation programs.

"This initiative will provide Three Rivers Resource Conservation and Development and project partners in both Minnesota and Iowa with a great opportunity to get practices on the land to improve water quality," said Denny Cole, Three Rivers RC&D Council chairperson.

The Watershed Initiative is sponsored by the Environmental Protection Agency (EPA) to encourage successful community-based approaches to restore, preserve, and protect the nation's watersheds. The competitive grant program received 176 proposals including projects from all 50 states, Puerto Rico, and the Virgin Islands. Regional and national experts reviewed and evaluated the nominations.

On May 15, EPA Region 5 Administrator Tom Skinner presented a check to Cole of Faribault at a ceremony held in Sibley Park on the bank of the Blue Earth River.

"The Three Rivers Council was chosen to receive this grant because they demonstrated the ability to achieve on-the-ground environmental results in a short time," Skinner said in a published report. "They showed that they are innovative, and that they can cultivate productive partnerships."

LAND & WATER

BWSR has recently established a shared position with DNR

Ecological Services to comple-

ment and supplement the agency's existing capacity to carry out Wetland Conservation Act program responsibilities. Doug Norris will serve as a half-time BWSR WCA program coordinator while also managing similar responsibilities within DNR.

Norris will be an integral part of a team of BWSR staff that will lead Wetland Conservation Act program administration. He will remain a DNR-E.S. employee

Board of Water and Soil Resources Update, Page 3

working on a contract for BWSR. This agreement took effect April 9, 2003, and will be fully implemented beginning July 1, 2003, for two years.

His responsibilities will include Wetland Conservation Act responsibilities primarily related to inter-agency coordination at the state and federal level and overall program development. Some examples of this work include: administrative guidance, general permits, database development and management, memorandums of agreement, rules, historical documentation and archiving of previous legislation and rules, administrative training, and EPA grant administration.

Norris has a long history of involvement in Wetland Conservation Act program development and implementation and has demonstrated his skills both technically and administratively in a variety of ways.

ENGINEERING

Implementation of the 2002 Farm Bill continues to take shape and has recently been

picking up some momentum, as new federal program rules are being finalized. SWCDs and BWSR are particularly interested in the Environmental Quality Incentives Program (EQIP), the Conservation Reserve Program (CRP), and the Technical Service Provider (TSP) program.

The 26th general CRP sign-up began in early May and was to finish on May 30. However, quite a number of letters, including one from Governor Pawlenty, were sent to the USDA requesting an extension. USDA has granted an extension of the current sign-up until June 13. It's not yet clear to what extent SWCDs could, or will, be involved in providing technical assistance for CRP.

Of the \$695 million national EQIP appropriation for federal FY 2003 (which ends September 30, 2003), Minnesota will receive about \$15 million. The NRCS intends to allocate 50 percent of EQIP via Local Work Groups that are facilitated by SWCDs, and 50 percent at the NRCS Area level. NRCS and MASWCD are providing Local Work Group facilitation training for SWCDs in late May and early June. EQIP allocations are to consider national priorities defined in the EQIP rule and environmental benefits of practices, as well as local and state level priorities. Recall that 60 percent of EQIP

funding must go toward improving environmental quality related to livestock operations. The current schedule is for FY 2003 EQIP funding to be obligated in August, with September 30 as the deadline.

The Technical Service Provider (TSP) Program still has a number of implementation steps yet to be finalized. The interim final rule was amended in March and reportedly may be amended again soon. Although we've been told there's a federal priority for NRCS to develop private TSPers, local and state government TSPers are expected to also be able to participate via Contribution Agreements, which require a 50 percent cash or in-kind match, but are not competitive. The latest word from NRCS indicates that SWCD staff may not be required to be certified under "TechReg," but are encouraged to register if qualified. It sounds like the Technical Approval Authority (TAA) system may remain the primary technical certification system for SWCDs. We've also heard that the "not to exceed" TSP rates are to be available by around the first of June. Rates for private and public TSPers may be different. Stay tuned.

The recommendations of the Ad Hoc SWCD Technical Assistance Committee will be a topic of discussion at most or all of the SWCD Area meetings in June. Al Kean and John Jaschke prepared a PowerPoint presentation that provides a summary of the work and recommendations of the Ad Hoc Committee to help share this information and facilitate discussion. The presentation can be used electronically or in hard copy. John or Al will participate in Area meetings, as requested. Al will also email the PowerPoint presentation and additional explanation to all of the Nonpoint Engineering Assistance (NPEA) Program staff, which are very concerned about the future of their positions.

On May 8, Doug Thomas, Al Kean, and Ron Shelito met with Jim Ayres and Kevin Daw, NRCS Area II and III Conservationists, to discuss the alternative Area boundaries proposed by the Ad Hoc Committee. Jim and Kevin identified several associated issues they expected NRCS would need to consider. It's anticipated that NRCS will have internal discussion about this topic before providing an official response. The next Minnesota NRCS leadership meeting is scheduled in late June.

Board of Water and Soil Resources Update, Page 4

The Red River Basin Technical and Scientific Advisory Committee (TSAC) was provided funding in late April by the FDR Work Group to conduct two meetings with Project Teams in the Red River Basin. The purpose of these meetings is for the TSAC and Project Teams to have focused discussions about the 13 technical papers developed by the TSAC since the beginning of the mediation process, and associated project implementation issues. It's anticipated that two discussion sessions will be held in late July or August of this year, one each in the northern and southern parts of the Red River Basin.

At the Red River International Water Conference in late April, TSAC members met with representatives of the Red River Basin Institute (RRBI) and Flood Damage Reduction Work Group to discuss the potential for future partnering between the TSAC and RRBI. Although the future of the TSAC is dependent on the future of the Work Group, the meeting participants liked the idea of partnering the practitioner expertise of the TSAC with the research capabilities of the RRBI, which involves a consortium of colleges in the River Basin. No definitive future plans were made, but future possibilities were identified.

-Submitted by Al Kean

BRIEFS

Benilde-St. Margaret's team wins State Envirothon

A team of students from Benilde-St. Margaret's (St. Louis Park) took first place out of 27 teams competing at the Minnesota State Envirothon held Wednesday, May 21, at the Minnesota Zoo in Apple Valley, Minn. This is the first time that this school has won the outdoor environmental learning event.

Students representing Benilde-St. Margaret's include: Peter Bangasser, Joseph McShane, Kaitlyn Rainbow, Kerry Lefebvre, and Pehr Hovey. Advisors are Keith Leiseth and Patty Leiseth.

Second place went to a team from Mankato East High School. Team members include: Chase Feldbrugge, Devin Reed, Zane Shi, Nic Schaub, and Aaron Danberry. Advisor is Sue Pickus.

Third place went to Rushford-Peterson High School. Team members include: Tessa Hovland, Kristin Washburn, James Colbenson, Adam Norton, and Andy Wolter. Advisor is Jo Anne Agrimson.

The State Envirothon is the culminating event of regional Envirothons, which are organized by the state's Soil and Water Conservation Districts. The top three teams from regional competitions are invited to attend the state event. Teams of students take exams on various aspects of the environment as well as give an oral presentation at the Envirothon. This was the 10th anniversary of the event, which is open to students in grades 9 through 12.

Sponsors for the State Envirothon included Minnesota Board of Water and Soil Resources, Great River Energy, Minnesota Pollution Control Agency, the Minnesota Association of Soil and Water Conservation Districts Auxiliary, Minnesota Soybean Growers Association, Mille Lacs Band of Ojibwe, Wal-Mart Foundation, Shakopee Mdewakanton Sioux Community, the Minnesota Association of Conservation Districts Employees, and Canon USA. Food donations were received from EcoWater, Woodbury; McDonald's, Apple Valley; Caribou Coffee, Cottage Grove; Krispy Kreme Doughnuts, Bloomington; Frito Lay, Bloomington; Woulet's Bakery, Edina; and Subway.

The state winner will compete in the Canon National Envirothon, which will be held July 26-31 at Mount St. Mary's College, Emmitsburg, Maryland.

*Deadline for next edition:
June 18*

DRAINAGE

103E.005	Definitions.
103E.011	Drainage authority powers.
103E.015	Considerations before drainage work is done.
103E.021	Ditches must be planted with permanent grass.
103E.025	Procedure for drainage project that affects state land or water area used for conservation.
103E.031	Connection with drains in adjoining states.
103E.035	Defective notice.
103E.041	Personal service in lieu of other methods of notice.
103E.043	Informal meetings.
103E.045	Failure of drainage authority to attend hearings.
103E.051	Defective proceedings.
103E.055	Reimbursement of cost of former surveys when used later.
103E.061	Right of entry.
103E.065	Drainage inspectors.
103E.071	County attorney.
103E.075	Obstruction of drainage system.
103E.081	Crimes related to drainage systems; penalties.
103E.085	Enforcement.
103E.091	Appeals.
103E.095	Appeal from orders dismissing or establishing drainage systems.
103E.097	Payment of attorney fees on appeal.
103E.101	Drainage proceeding and construction records.
103E.105	Advice about drainage questions.
103E.111	Field surveys and investigations by director.
103E.115	Hydrological and drainage information.
103E.121	Drain tile manufacturing studies.
103E.202	Petitions.
103E.212	New drainage system projects.
103E.215	Improvement of drainage system.
103E.221	Improvement of outlets.
103E.225	Laterals.
103E.227	Impounding and diversion of drainage system waters.
103E.231	Dismissal or delay of proceedings by petitioners.
103E.235	Drainage system in two or more counties.
103E.238	County attorney review of petition and bond.
103E.241	Engineer.
103E.245	Preliminary survey and preliminary survey report.
103E.251	Filing preliminary survey report.
103E.255	Commissioner's preliminary advisory report.
103E.261	Preliminary hearing.

103E.265	Order for detailed survey and detailed survey report.
103E.271	Detailed survey.
103E.275	Engineer's variance from drainage authority order.
103E.281	Soil survey.
103E.285	Detailed survey report.
103E.291	Filing detailed survey report.
103E.295	Revision of engineer's detailed survey report after acceptance.
103E.301	Commissioner's final advisory report.
103E.305	Viewers' appointment and qualification.
103E.311	Viewers' duties.
103E.315	Assessment of drainage benefits and damages.
103E.321	Viewers' report.
103E.323	Property owners' report.
103E.325	Final hearing notice.
103E.331	Jurisdiction of property by drainage authority.
103E.335	Proceedings at the final hearing.
103E.341	Drainage authority final order.
103E.345	Apportionment of cost for joint county drainage systems.
103E.351	Redetermination of benefits and damages.
103E.401	Use of drainage system as an outlet.
103E.405	Outlets in adjoining states.
103E.411	Drainage system as outlet for municipality.
103E.501	Contract and bond.
103E.505	Awarding the construction contract.
103E.511	Procedure if contract is not awarded due to bids or costs.
103E.515	Damages, payment.
103E.521	Supervision of construction.
103E.525	Construction and maintenance of bridges and culverts.
103E.526	Construction of road instead of bridge or culvert.
103E.53	Rules to standardize forms.
103E.531	Inspection of drainage construction and partial payments.
103E.535	Partial payment of retained contract amounts.
103E.541	Extension of time on contracts.
103E.545	Reduction of contractor's bond.
103E.551	Contractor's default.
103E.555	Acceptance of contract.
103E.601	Drainage lien statement.
103E.605	Effect of filed drainage lien.
103E.611	Payment of drainage liens and interest.
103E.615	Enforcement of assessments.
103E.621	Satisfaction of liens.
103E.625	Subdivision by platting must have liens apportioned.
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Minnesota Statutes 2002, Chapter 103E.

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==103E.005

103E.005 Definitions.

Subdivision 1. Applicability. The definitions in this section apply to this chapter.

Subd. 2. Affected. "Affected" means benefited or damaged by a drainage system or project.

Subd. 3. Auditor. "Auditor" means the auditor of the county where the petition for a drainage project was properly filed.

Subd. 4. Board. "Board" means the board of commissioners of the county where the drainage system or project is located.

Subd. 5. Commissioner. "Commissioner" means the commissioner of natural resources.

Subd. 6. Director. "Director" means the director of the division of waters in the department of natural resources.

Subd. 7. Dismissal of proceedings. "Dismissal of proceedings" means that the petition and proceedings related to the petition are dismissed.

Subd. 8. Ditch. "Ditch" means an open channel to conduct the flow of water.

Subd. 9. Drainage authority. "Drainage authority" means the board or joint county drainage authority having jurisdiction over a drainage system or project.

Subd. 10. Drainage lien. "Drainage lien" means a lien recorded on property for the costs of drainage proceedings and construction and interest on the lien, as provided under this chapter.

Subd. 11. Drainage project. "Drainage project" means a new drainage system, an improvement of a drainage system, an improvement of an outlet, or a lateral.

Subd. 12. Drainage system. "Drainage system" means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority. "Drainage system" includes the improvement of a natural waterway used in the construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system.

Subd. 13. Engineer. "Engineer" means the engineer for a drainage project appointed by the drainage authority under section 103E.241, subdivision 1.

Subd. 14. Established. "Established" means the drainage authority has made the order to construct the drainage project.

Subd. 15. Lateral. "Lateral" means any drainage construction by branch or extension, or a system of branches and extensions, or a drain that connects or provides an outlet to property with an established drainage system.

Subd. 16. Municipality. "Municipality" means a statutory or home rule charter city or a town having urban powers under section 368.01, subdivision 1 or 1a. For purposes of sections 103E.315, 103E.611, and 103E.615, municipality includes a water management authority to which a portion of a drainage system is transferred under section 103E.812.

Subd. 17. Notice by mail. "Notice by mail" means a notice mailed and addressed to each person entitled to receive the notice, if the address is known to the auditor or can be determined by the county treasurer of the county where the affected property is located.

Subd. 18. Owner. "Owner" means an owner of property or a buyer of property under a contract for deed.

Subd. 19. Passes over. "Passes over" means in reference to property that has a drainage project or system, the 40-acre tracts or government lots or property that is bordered by, touched by, or underneath the path of the proposed drainage project.

Subd. 20. Person. "Person" means an individual, firm, partnership, association, or private corporation.

Subd. 21. Political subdivisions. "Political subdivisions" means statutory and home rule charter cities, counties, towns, school districts, and other political subdivisions.

Subd. 22. Proceeding. "Proceeding" means a procedure under this chapter for or related to drainage that begins with filing a petition and ends by dismissal or establishment of a drainage project.

Subd. 23. Property. "Property" means real property.

Subd. 24. Publication. "Publication" means a notice published at least once a week for three successive weeks in a legal newspaper in general circulation in each county affected by the notice.

Subd. 25. Public health. "Public health" includes an act or thing that tends to improve the general sanitary condition of the community by drainage, relieving low wetland or stagnant and unhealthful conditions, or preventing the overflow of any property that produces or tends to produce unhealthful conditions.

Subd. 26. Public waters. "Public waters" has the meaning given in section 103G.005, subdivision 15.

Subd. 27. Public welfare or public benefit. "Public welfare" or "public benefit" includes an act or thing that tends to improve or benefit the general public, either as a whole or as to any particular community or part, including works contemplated by this chapter, that drain or protect roads from overflow, protect property from overflow, or reclaim and render property suitable for cultivation that is normally wet and needing drainage or subject to overflow.

Subd. 28. Road. "Road" means any road used by the public for transportation purposes.

Subd. 29. Water management authority. "Water management authority" means a county or municipality, watershed district, watershed management organization, storm water management district, lake improvement district, subordinate service district, joint powers organization or other special district organized and formed according to law for the purpose of managing storm, surface, and flood waters, or with the authority to manage storm, surface, and flood waters.

HIST: 1990 c 391 art 5 s 1; 2002 c 327 s 1, 2

==103E.011

103E.011 Drainage authority powers.

Subdivision 1. Generally. The drainage authority may make orders to:

- (1) construct and maintain drainage systems;
- (2) deepen, widen, straighten, or change the channel or bed of a natural waterway that is part of the drainage system or is located at the outlet of a drainage system;
- (3) extend a drainage system into or through a municipality for a suitable outlet; and
- (4) construct necessary dikes, dams, and control structures and power appliances, pumps, and pumping machinery as provided by law.

Subd. 2. Drainage of waterbasins and watercourses. A drainage authority may not drain a water body or begin work or activity regulated by the public waters work permit requirement under section 103G.245 in a watercourse until the commissioner determines that the water body or watercourse is not public waters. If a water body or watercourse is determined to be public waters, the drainage proceedings are subject to section 103G.215 relating to replacing public waters and the water bank program.

Subd. 3. Permission of commissioner for work in public waters; application.

(a) The drainage authority must receive permission from the commissioner to:

- (1) remove, construct, or alter a dam affecting public waters;
- (2) establish, raise, or lower the level of public waters; or
- (3) drain any portion of a public water.

(b) The petitioners for a proposed drainage project or the drainage authority may apply to the commissioner for permission to do work in public waters or for the determination of public waters status of a water body or watercourse.

Subd. 4. Flood control. The drainage authority may construct necessary dams, structures, and improvements and maintain them to impound and release flood water to prevent damage. The dams, structures, and improvements may be constructed with or without a drainage project. For a water body or watercourse that is not public waters the drainage authority may:

- (1) lower or establish the level of water in the water body or watercourse to control flood waters;

- (2) build structures and improvements to maintain a water body or watercourse for flood control or other public purposes; and
- (3) construct dikes or dams in a water body to maintain water at the level designated by the drainage authority and to drain part of the water body.

Subd. 5. Use of external sources of funding. Notwithstanding other provisions of this chapter, a drainage authority may accept and use funds from sources other than, or in addition to, those derived from assessments based on the benefits of the drainage system for the purposes of wetland preservation or restoration or creation of water quality improvements or flood control. The sources of funding authorized under this subdivision may also be used outside the benefited area but must be within the watershed of the drainage system.

HIST: 1990 c 391 art 5 s 2; 2000 c 488 art 3 s 27

==103E.015

103E.015 Considerations before drainage work is done.

Subdivision 1. Environmental and land use criteria. Before establishing a drainage project the drainage authority must consider:

- (1) private and public benefits and costs of the proposed drainage project;
- (2) the present and anticipated agricultural land acreage availability and use in the drainage project or system;
- (3) the present and anticipated land use within the drainage project or system;
- (4) flooding characteristics of property in the drainage project or system and downstream for 5-, 10-, 25-, and 50-year flood events;
- (5) the waters to be drained and alternative measures to conserve, allocate, and use the waters including storage and retention of drainage waters;
- (6) the effect on water quality of constructing the proposed drainage project;
- (7) fish and wildlife resources affected by the proposed drainage project;
- (8) shallow groundwater availability, distribution, and use in the drainage project or system; and
- (9) the overall environmental impact of all the above criteria.

Subd. 2. Determining public utility, benefit, or welfare. In any proceeding to establish a drainage project, or in the construction of or other work affecting a public drainage system under any law, the drainage authority or other authority having jurisdiction over the proceeding must give proper consideration to conservation of soil, water, forests, wild animals, and related natural resources, and to other public interests affected, together with other material matters as provided by law in determining whether the project will be of public utility, benefit, or welfare.

HIST: 1990 c 391 art 5 s 3

==103E.021

103E.021 Ditches must be planted with permanent grass.

Subdivision 1. Spoil banks must be spread and grass planted. In any proceeding to establish, construct, improve, or do any work affecting a public drainage system under any law that appoints viewers to assess benefits and damages, the authority having jurisdiction over the proceeding shall order spoil banks to be spread consistent with the plan and function of the drainage system. The authority shall order that permanent grass, other than a noxious weed, be planted on the banks and on a strip 16-1/2 feet in width or to the crown of the leveled spoil bank, whichever is the greater, on each side of the top edge of the channel of the ditch. The acreage and additional property required for the planting must be acquired by the authority having jurisdiction.

Subd. 2. Reseeding and harvesting grass. The authority having jurisdiction over the repair and maintenance of the drainage system shall supervise all necessary reseeded. The permanent grass must be maintained in the same manner as other drainage system repairs. Harvest of the grass from the grass strip in a manner not harmful to the grass or the drainage system is the privilege of the fee owner or assigns. The county drainage inspector shall establish rules for the fee owner and assigns to harvest the grass.

Subd. 3. Agricultural practices prohibited. Agricultural practices, other than those required for the maintenance of a permanent growth of grass, are not permitted on any portion of the property acquired for planting.

Subd. 4. Compliance work by drainage authority. If a property owner does not bring an area into compliance with this section as provided in the compliance notice, the inspection committee or drainage inspector must notify the drainage authority. If a property owner does not bring an area into compliance after being notified under section 103E.705, subdivision 2, the drainage

authority must issue an order to have the work performed to bring the property into compliance. After the work is completed, the drainage authority must send a statement of the expenses incurred to bring the property into compliance to the auditor of the county where the property is located and to the property owner.

Subd. 5. Collection of compliance expenses.

(a) The amount of the expenses to bring an area into compliance with this section is a lien in favor of the drainage authority against the property where the expenses were incurred. The auditor must certify the expenses and enter the amount in the same manner as other drainage liens on the tax list for the following year. The amount must be collected in the same manner as real estate taxes for the property. The provisions of law relating to the collection of real estate taxes shall be used to enforce payment of amounts due under this section. The auditor must include a notice of collection of compliance expenses with the tax statement.

(b) The amounts collected under this subdivision must be deposited in the drainage system account.

HIST: 1990 c 391 art 5 s 4

==103E.025

103E.025 Procedure for drainage project that affects state land or water area used for conservation.

Subdivision 1. Areas subject to this section. If a land or water area owned by the state and held or used to protect or propagate wild animals, provide hunting or fishing for the public, or for any other purpose relating to the conservation, development, or use of soil, water, forests, wild animals, or related natural resources will be affected by any public project or proceeding for drainage under any law, all procedures relating to the project or proceeding are subject to this section, if applicable.

Subd. 2. Conditions to take or damage state land and water areas.

(a) Any part of the state land or water area may be taken or damaged for a public project after payment of just compensation as provided by law and under the provisions of this subdivision.

(b) The authority having jurisdiction of the drainage project or proceeding shall first find and determine that there is public necessity for the taking or damage that is greater than the public interest in the purposes for which the affected land and water areas are held or used by the state.

(c) In determining the compensation to be paid for the taking or damage, the authority must give proper consideration to the value of the land and water area for the purposes it is held or used by the state and other material elements of value.

(d) Public waters may not be taken, damaged, or impaired except as otherwise expressly authorized by law, and a provision of any other law for the protection or conservation of public waters may not be abridged or superseded by this subdivision.

Subd. 3. Considerations in determining benefits. In determining benefits to the state land or water area in any proceeding to levy assessments or offset benefits against damages, proper consideration must be given to the value of the area for the purpose it is held or used by the state, with other material elements of value.

Subd. 4. Amounts paid to state. Any amounts paid to the state for taking or damaging the state land or water area in a proceeding must be credited to the proper account for acquisition, development, or maintenance of the areas, and the amount is appropriated to the commissioner for those purposes to remain available until expended.

Subd. 5. Money to pay assessments. Assessments for benefits made against the state land or water area in a proceeding must be paid out of money appropriated and available to pay assessments as provided by law.

HIST: 1990 c 391 art 5 s 5

==103E.031

103E.031 Connection with drains in adjoining states.

Subdivision 1. Procedure. If it is necessary to construct a drainage project at or near the boundary between this state and another state or country and the work cannot be done in a proper manner without extending the drainage project into the adjoining state or country, the drainage authority may join with the board or tribunal of the adjoining state or country having jurisdiction to plan and construct public drainage systems. The drainage authority in this state may enter into contracts or arrangements with the board or tribunal of the adjoining state or country to construct the drainage project. The proceeding and construction related to property in this state and, as applicable, the drainage authority in relation to the joint drainage work, are governed by this chapter.

Subd. 2. Payment of costs. The adjoining county or district in another state or country must pay its proper share of the necessary costs of the construction of any drainage work including damages. If the benefits to property in the adjoining state or

country are not sufficient to pay all the costs of construction of the drainage project in that state or country, including damages, the drainage authority may authorize or direct the affected counties to contribute sufficient funds to complete the construction of the drainage project in the adjoining state or country, if the construction will be of sufficient benefit to the affected property in this state to warrant the contribution.

HIST: 1990 c 391 art 5 s 6

==103E.035

103E.035 Defective notice.

If notice is required under this chapter and proper notice has been given to some parties but the notice is defective or not given to other parties, the drainage authority has jurisdiction of all parties that received proper notice. The proceedings may be continued by order of the drainage authority for the time necessary to publish, post, or mail a new notice. The new notice needs only be given to those not properly notified by the first notice.

HIST: 1990 c 391 art 5 s 7

==103E.041

103E.041 Personal service in lieu of other methods of notice.

If notice is to be given under this chapter, personal service at least ten days before the date of hearing may be given in lieu of the manner provided. The notice must be served in the manner provided for the service of summons in a civil action in district court.

HIST: 1990 c 391 art 5 s 8

==103E.043

103E.043 Informal meetings.

A drainage authority may hold informal meetings in addition to the meetings and hearings required in this chapter to inform persons affected by the drainage system about the drainage proceedings and provide a forum for informal discussions.

HIST: 1990 c 391 art 5 s 9

==103E.045

103E.045 Failure of drainage authority to attend hearings.

If an order has been made and notice for a hearing given under this chapter, and the drainage authority does not appear at the time and place specified for any reason, the auditor shall continue the hearing to a date set by the auditor. The auditor shall notify the drainage authority of the continuance and the date of hearing. The jurisdiction is continued until the date set by the auditor.

HIST: 1990 c 391 art 5 s 10

==103E.051

103E.051 Defective proceedings.

(a) A party may not take advantage of an error in a drainage proceeding or an informality, error, or defect appearing in the record of the proceeding or construction, unless the party complaining is directly affected. The modification of the benefits or damages to any property, or the enjoining of collection of any assessment, does not affect any other property or the collection of any assessment on other property.

(b) If a drainage project has been established and a contract awarded in good faith, without collusion, and at a reasonable price:

(1) a defect or lack of notice in awarding, making, or executing the contract does not affect the enforcement of an assessment; and

(2) if the contract is performed in good faith in whole or in part, a defect does not invalidate the contract.

HIST: 1990 c 391 art 5 s 11

==103E.055

103E.055 Reimbursement of cost of former surveys when used later.

If after a proceeding has begun a survey has been made and a proceeding to establish a drainage project has been dismissed or the drainage project has not been established, and if all or a part of the former survey is used by the engineer for a drainage proceeding in the same area, the amount saved in the subsequent proceedings must be paid to the proper parties according to this section. If the parties who paid the expense of the former survey make a petition, the drainage authority shall:

- (1) determine the amount of benefit that was derived by the subsequent proceedings from the former survey;
- (2) order the amount of the benefit to be paid to the proper parties; and
- (3) charge the amount paid as a cost of the subsequent drainage proceeding.

HIST: 1990 c 391 art 5 s 12

==103E.061

103E.061 Right of entry.

In proceedings under this chapter, the engineer, the engineer's assistants, the viewers, and the viewers' assistants may enter any property to make a survey, locate a drain, examine the property, or estimate the benefits and damages.

HIST: 1990 c 391 art 5 s 13

==103E.065

103E.065 Drainage inspectors.

In counties where constructed drainage systems have an aggregate cost of more than \$50,000, the board shall appoint a competent person as county drainage inspector. The inspector may be the county highway engineer. The inspector shall examine the drainage systems designated by the board. The board shall specify the appointment period and compensation.

HIST: 1990 c 391 art 5 s 14

==103E.071

103E.071 County attorney.

The county attorney shall represent the county in all drainage proceedings and related matters without special compensation. A county attorney, the county attorney's assistant, or any attorney associated with the county attorney in business, may not otherwise appear in any drainage proceeding for any interested person.

HIST: 1990 c 391 art 5 s 15

==103E.075

103E.075 Obstruction of drainage system.

Subdivision 1. Notification to responsible party. If the board determines that a drainage system has been obstructed, including by the installation of bridges or culverts of insufficient hydraulic capacity, the board shall notify the person or public authority responsible for the obstruction as soon as possible and direct the responsible party to remove the obstruction or show the board why the obstruction should not be removed. The board must set a time and location in the notice for the responsible person to appear before the board.

Subd. 2. Obstruction on private property. If the obstruction is on private property, the owner is responsible for the obstruction unless the owner proves otherwise. The owner must be notified by certified mail at least ten days before the hearing.

Subd. 3. Obstruction hearing. The board shall hear all interested parties and if the board determines that the drainage system has been obstructed by a person or public authority, the board shall order the obstruction removed by the responsible party within a reasonable time set in the order. If the obstruction is not removed by the prescribed time, the board shall have the obstruction removed and the auditor shall make a statement of the removal cost. The statement must be filed in the county recorder's office as a lien on the property where the obstruction is located or against the responsible party. The lien must be enforced and collected as liens for drainage repairs under this chapter, except that a lien may not be filed against private property if the board determines

that the owner of the property is not responsible for the obstruction. The lien may be enforced against the responsible party by civil action.

HIST: 1990 c 391 art 5 s 16

==103E.081

103E.081 Crimes related to drainage systems; penalties.

Subdivision 1. Unauthorized drain outletting into drainage system. A person may not cause or construct a drain that outlets into a lawfully constructed drainage system except as provided in this chapter.

Subd. 2. Obstruction or damage of a drainage system. A person may not willfully obstruct or damage a drainage project or system.

Subd. 3. Altering engineer's marking of stakes. A person may not willfully change the location or alter markings of stakes set by the engineer in a drainage project or system.

Subd. 4. Penalty. Violation of this section is a misdemeanor.

HIST: 1990 c 391 art 5 s 17

==103E.085

103E.085 Enforcement.

Subdivision 1. Warrants and arrests. An enforcement officer, as defined in section 97A.015, subdivision 18, may execute and serve warrants, and arrest persons detected in actual violation of sections 103E.005 to 103E.811 as provided in sections 97A.205 and 97A.211.

Subd. 2. Prosecution. The county attorney shall prosecute all criminal actions arising under this chapter.

HIST: 1990 c 391 art 5 s 18

==103E.091

103E.091 Appeals.

Subdivision 1. Grounds for appeal. A party may appeal to the district court from a recorded order of a drainage authority made in a drainage proceeding that determines:

- (1) the amount of benefits;
- (2) the amount of damages;
- (3) fees or expenses allowed; or
- (4) whether the environmental and land use requirements and criteria of section 103E.015, subdivision 1, are met.

Subd. 2. Procedure for appeals related to benefits and damages.

- (a) A person who appeals the amount of benefits or damages may include benefits and damages affecting property not owned by the appellant. Notice of the appeal must be served to the auditor and to the owner or occupant of property included in the appeal or to the attorney representing the property owner in the proceedings.
- (b) The appellant must file a notice of appeal with the auditor within 30 days after the order to be appealed is filed. The notice must state the particular benefits or damages appealed and the basis for the appeal. Within 30 days after the notice is filed, the auditor must file the original notice with the court administrator of the district court.

Subd. 3. Procedure for appeal related to allowance of fees or expenses. An appeal related to the allowance of fees or expenses may be to the district court of any county where the affected property is located. The appeal must be made within 30 days after the order allowing or disallowing the claim and is governed as applicable by the provisions of subdivision 4.

Subd. 4. Appeal trial.

- (a) The issues in the appeal are entitled to a trial by a jury in the district court of the county where the drainage proceeding was pending.

(b) At the request of the appellant, the trial must be held at the district court of the county where the affected property is located. The court administrator of the district court where the appeal is first filed shall make, certify, and file with the court administrator of the district court of the county where the trial is transferred, a transcript of the papers and documents on file in the court administrator's office in the proceedings related to the matters of the appeal. After the final determination of the appeal, the court administrator of the district court that tried the appeal shall certify and return the verdict to the district court of the county where the drainage proceedings were filed.

(c) The appeal shall take precedence over all other civil court matters. If there is more than one appeal to be tried in one county, the court may, on its own motion or the motion of an interested party, consolidate two or more appeals and try them together, but the rights of the appellants must be determined separately. If the appellant does not prevail, the cost of the trial must be paid by the appellant.

(d) The court administrator of the district court where the appeal is filed shall file a certified copy of the final determination of the appeal with the auditor of the affected counties.

Subd. 5. Effect of determination. For all appeals, the amount awarded by the jury as a determination of the issue appealed shall replace the amount that was appealed.

HIST: 1990 c 391 art 5 s 19

==103E.095

103E.095 Appeal from orders dismissing or establishing drainage systems.

Subdivision 1. Notice of appeal. A party may appeal an order made by the board that dismisses drainage proceedings or establishes or refuses to establish a drainage project to the district court of the county where the drainage proceedings are pending. The appellant must serve notice of the appeal to the auditor within 30 days after the order is filed. After notice of the appeal is served, the appeal may be brought to trial by the appellant or the drainage authority after notifying the other party at least ten days before the trial date.

Subd. 2. Trial. The appeal must be tried by the court without a jury. The court shall examine the entire drainage proceeding and related matters and receive evidence to determine whether the findings made by the board can be sustained. At the trial the findings made by the board are prima facie evidence of the matters stated in the findings, and the board's order is prima facie reasonable. If the court finds that the order appealed is lawful and reasonable, it shall be affirmed. If the court finds that the order appealed is arbitrary, unlawful, or not supported by the evidence, it shall make an order, justified by the court record, to take the place of the appealed order, or remand the order to the board for further proceedings. After the appeal has been determined by the court, the board shall proceed in conformity with the court order.

Subd. 3. Determination of benefits and damages after court order. If the order establishing a drainage project is appealed, the trial of appeals related to benefits or damages in the drainage proceeding must be stayed until the establishment appeal is determined. If the order establishing the drainage project is affirmed, appeals related to benefits and damages must then be tried.

Subd. 4. Procedure if appeal order establishes drainage project. If an order refusing to establish a drainage project is appealed, and the court, by order, establishes the drainage project, the auditor shall give notice by publication of the filed order. The notice is sufficient if it refers to the drainage project or system by number or other descriptive designation, states the meaning of the order, and states the date the court order was filed. A person may appeal the establishment order to the district court as provided in this section.

Subd. 5. Appeal of appellate order. A party aggrieved by a final order or judgment rendered on appeal to the district court may appeal as in other civil cases. The appeal must be made and perfected within 30 days after the filing of the order or entry of judgment.

HIST: 1990 c 391 art 5 s 20

==103E.097

103E.097 Payment of attorney fees on appeal.

If the commissioner of natural resources is a party making an appeal under section 103E.091 or 103E.095 and the commissioner does not prevail on the issues appealed, the court may award attorney fees to the party prevailing on the appeal. If more than one issue is appealed and the commissioner prevails on some issues and does not prevail on others, the court shall determine the amount of the attorney fee to be awarded.

HIST: 1990 c 391 art 5 s 21

==103E.101

103E.101 Drainage proceeding and construction records.

Subdivision 1. Documents are public records. All maps, plats, charts, drawings, plans, specifications, and other documents that have been filed, received in evidence, or used in connection with a drainage proceeding or construction are subject to the provisions on public records in section 15.17.

Subd. 2. Record requirements. All maps, plats, profiles, plans, and specifications prepared and used in relation to a proceeding must:

- (1) be uniform;
- (2) have each sheet bound and marked to identify the proceeding by the drainage project and system number;
- (3) show the name of the person preparing the sheet;
- (4) show the date the sheet was prepared; and
- (5) conform to rules and standards prescribed by the director of the division of waters.

Subd. 3. Index of proceedings and records. The auditor shall keep all orders, exhibits, maps, charts, profiles, plats, plans, specifications, and records of the proceedings. These records may not be removed except when the board makes a written order to remove them. The auditor shall keep an accurate index of the proceedings and related documents in a bound book.

Subd. 4. Engineer's documents. All original plats, profiles, records, and field books made by the engineer during the proceedings or the construction of a drainage project are public records and the property of the drainage authority. These public records must be filed with the auditor under the direction of the drainage authority when construction is completed or when the engineer stops acting for the drainage project, whichever is earlier.

Subd. 5. Filing and storage facilities. County boards shall provide the auditor with necessary filing and storage facilities to protect the files and records of all proceedings. The county boards may provide for the copying and filing of the documents and records of proceedings by photographic devices as provided for public records under section 15.17. In the event of loss of the originals, the photographic copies are originals after authentication by the auditor.

Subd. 6. Records are prima facie evidence. The record of proceedings under this chapter and of orders made by the drainage authority or the district court in the proceedings, or a certified copy of a record or order, is prima facie evidence of the facts stated in the record or order and of the regularity of all proceedings prior to the making of the order.

HIST: 1990 c 391 art 5 s 22

==103E.105

103E.105 Advice about drainage questions.

The director shall provide advice to a drainage authority or engineer, upon request, about engineering questions or problems in connection with a drainage project or drainage system.

HIST: 1990 c 391 art 5 s 23

==103E.111

103E.111 Field surveys and investigations by director.

Subdivision 1. Authorization. If a field survey or investigation of a drainage project or drainage system is determined to be necessary by the director or is requested in writing by the drainage authority, the director may conduct the survey or investigation.

Subd. 2. Costs if requested by drainage authority. If the field survey or investigation is made at the request of a drainage authority, the cost must be reported to the drainage authority and paid by the drainage authority as a drainage project or drainage system expense.

HIST: 1990 c 391 art 5 s 24

==103E.115

103E.115 Hydrological and drainage information.

- (a) The director may prepare and publish: (1) runoff data; (2) information about the capacity of drain tile and ditches; (3) specifications for drain tile, ditches, and ditch construction; and (4) standard procedural forms for public ditch proceedings.
- (b) The director may furnish the information to engineers and drainage authorities for their advice and information.

HIST: 1990 c 391 art 5 s 25

==103E.121

103E.121 Drain tile manufacturing studies.

Subdivision 1. Drain tile investigations. The director may:

- (1) investigate the methods used in the manufacture of drain tile;
- (2) determine the causes of drain tile failure; and
- (3) conduct research and experimentation to improve the quality of drain tile.

Subd. 2. Manufacturing investigations and tests. The director may make inspections and tests of manufacturing processes and materials used and the resultant product of a manufacturing plant in the state where drain tile is made and sold to drainage authorities or the general public. The director, or an authorized agent of the director, must have free access to manufacturing plants of drain tile sold in this state for inspections and tests.

Subd. 3. Distribution of information. The results of inspections and tests must be made public for drainage authorities, engineers, tile manufacturers, and others interested in the use of drain tile.

HIST: 1990 c 391 art 5 s 26

==103E.202

103E.202 Petitions.

Subdivision 1. Applicability. This section applies to a petition for a drainage project and a petition for repair.

Subd. 2. Signatures on petition.

- (a) A petition must be signed by a requisite number of owners of 40-acre tracts or government lots and property that the drainage project described in the petition passes over, or by the property owners of the required percentage of the property area determined by the total and percentage of area of 40-acre tracts or government lots that the proposed drainage project passes over, excluding areas in and holders of easements for utilities and roads. A petition may be signed by the commissioner of transportation or by a political subdivision if the property is in their jurisdiction and is passed over by the proposed drainage project.
- (b) Each separate parcel of property counts as one signature but the petition must be signed by all owners of the parcel to count as a signature. The signature of each entity regardless of the number of parcels of property owned counts as one signature on the petition.
- (c) Paragraph (a) does not apply to a petition for an improvement of an outlet.

Subd. 3. Withdrawal of a petitioner. After a petition has been filed, a petitioner may not withdraw from the petition except with the written consent of all other petitioners on the filed petition.

Subd. 4. Filing petition and bond. A petition for a drainage project and a bond must be filed with the auditor. If a drainage system is within two or more counties, the petition must be filed with the auditor of the county with the greatest area of property that the proposed drainage project passes over.

Subd. 5. Petitioners' bond. One or more petitioners must file a bond with the petition for at least \$10,000 that is payable to the county where the petition is filed, or for a petition for a proposed joint county drainage system or a petition for a drainage project affecting a joint county drainage system, the bond must be payable to all of the counties named in the petition. The bond must have adequate surety and be approved by the county attorney where the petition is filed. The bond must be conditioned to pay the costs incurred if the proceedings are dismissed or a contract is not awarded to construct the drainage system proposed in the petition.

Subd. 6. Expenses not to exceed bond. The costs incurred before the proposed drainage project is established may not exceed the amount of the petitioners' bond. A claim for expenses greater than the amount of the bond may not be paid unless an additional bond is filed. If the drainage authority determines that the cost of the proceeding will be greater than the petitioners' bond before the proposed drainage project is established, the drainage authority must require an additional bond to cover all costs

to be filed within a prescribed time. The proceeding must be stopped until the additional bond prescribed by the drainage authority is filed. If the additional bond is not filed within the time prescribed, the proceeding must be dismissed.

HIST: 1990 c 391 art 5 s 27

==103E.212

103E.212 New drainage system projects.

Subdivision 1. Procedure. To establish a new drainage system under this chapter, the petitioners and drainage authority must proceed according to this section and the provisions applicable to establishment of drainage projects.

Subd. 2. Signatures on petition. The petition for a new drainage system must be signed by a majority of the owners of the property that the proposed drainage system described in the petition passes over, or by the property owners of at least 60 percent of the area that the proposed new drainage system passes over.

Subd. 3. Petition requirements. The petition must:

- (1) describe the 40-acre tracts or government lots and property where the proposed new drainage system passes over, including names and addresses of the property owners from records in the county assessor's office;
- (2) describe the starting point, the general course, and the terminus of the proposed drainage system;
- (3) state why the proposed drainage system is necessary;
- (4) state that the proposed drainage system will benefit and be useful to the public and will promote public health; and
- (5) state that the petitioners will pay all costs of the proceedings if the proceedings are dismissed or the contract for the construction of the proposed drainage system is not awarded.

HIST: 1990 c 391 art 5 s 28

==103E.215

103E.215 Improvement of drainage system.

Subdivision 1. Procedure. The procedure in this section must be used to improve an established and constructed drainage system.

Subd. 2. Definition. In this section "improvement" means the tiling, enlarging, extending, straightening, or deepening of an established and constructed drainage system including construction of ditches to reline or replace tile and construction of tile to replace a ditch.

Subd. 3. Limit of extension. An improvement may only extend a drainage system downstream to a more adequate outlet and the extension may not exceed one mile.

Subd. 4. Petition.

(a) A petition must be signed by:

- (1) at least 26 percent of the owners of the property affected by the proposed improvement;
- (2) at least 26 percent of the owners of property that the proposed improvement passes over;
- (3) the owners of at least 26 percent of the property area affected by the proposed improvement; or
- (4) the owners of at least 26 percent of the property area that the proposed improvement passes over.

(b) The petition must be filed with the auditor or, for a drainage system in more than one county, with the auditor of the county having the largest area of property the improvement would be located on.

(c) The petition must:

- (1) designate the drainage system proposed to be improved by number or another description that identifies the drainage system;
- (2) state that the drainage system has insufficient capacity or needs enlarging or extending to furnish sufficient capacity or a better outlet;
- (3) describe the starting point, general course, and terminus of any extension;
- (4) describe the improvement, including the names and addresses of owners of the 40-acre tracts or government lots and property that the improvement passes over;
- (5) state that the proposed improvement will be of public utility and promote the public health; and
- (6) contain an agreement by the petitioners that they will pay all costs and expenses that may be incurred if the improvement proceedings are dismissed.

Subd. 5. Subsequent proceedings. When a petition and the bond required by section 103E.202 are filed, the auditor shall present the petition to the board at its next meeting or, for a joint county drainage system, to the joint county drainage authority within ten days after the petition is filed. The drainage authority shall appoint an engineer to examine the drainage system and make an improvement report. The improvement proceedings must be conducted under this chapter as provided for the original proceedings for the establishment of a drainage project. The benefits and damages determined must be as a result of the proposed improvement. Assessments for the repair of the improvement must be based on the benefits determined for the improvement.

Subd. 6. Petition for separable part of the drainage system needing repair.

(a) If the existing drainage system needs repair and the petition for the improvement is for a separable part only of the existing drainage system, the engineer may include in the detailed survey report a statement showing the proportionate estimated cost of the proposed improvement required to repair the separable part of the existing system and the estimated proportionate cost of the added work required for the improvement. The notice of hearing on the detailed survey report must be given by publication and mailing to all persons owning property affected by the existing drainage system. The hearing may be held at the same time and location as the establishment hearing for the improvement.

(b) At the hearing, if the drainage authority determines that only a separable portion of the existing drainage system will be improved and that the portion needs repair, the drainage authority shall determine and assess, by order, the proportionate cost of the improvement that would be required to repair the separable portion of the drainage system to be improved. The order must direct that:

(1) the repair portion is allocated as repairs and assessed against all property benefited by the entire drainage system, as provided by section 103E.731; and

(2) the balance of the cost of the improvement is assessed in addition to the repair assessment against the property benefited by the improvement.

HIST: 1990 c 391 art 5 s 29

==103E.221

103E.221 Improvement of outlets.

Subdivision 1. Conditions for improvement of outlets.

If a public or private proposed drainage project or existing drainage system has waters draining into an existing drainage system, watercourse, or body of water, and the construction or proposed construction of the drainage project causes an overflow of the existing drainage system, watercourse, or body of water on adjoining property, an affected county or the owners of the overflowed property may start outlet improvement proceedings under this section.

Subd. 2. Petition.

(a) A petition must be signed by the board of an affected county, by at least 26 percent of the owners of adjoining overflowed property, or by the owners of at least 26 percent of the area of the overflowed property. The petition must:

(1) describe the property that has been or is likely to be overflowed including the names and addresses of the property owners from records in the county assessor's office;

(2) state in general terms by number or otherwise the drainage systems that have caused or are likely to cause the overflow;

(3) describe the location of the overflowed drainage system, watercourse, or body of water and the outlet;

(4) show the necessity of the improvement by enlarging the system or controlling the waters by off-take ditches, additional outlets, or otherwise;

(5) show that the outlet improvement will protect the adjoining property from overflow;

(6) state that the improvement will be of public benefit and utility and improve the public health; and

(7) state that the petitioners will pay all costs incurred if the proceedings are dismissed or a contract for construction of the outlet improvement is not awarded.

(b) The petitioners, except for a petition made by the board, shall give the required bond.

Subd. 3. Filing of petition. The petition shall be filed with the county auditor. If the board makes the petition, it must be addressed to the drainage authority and filed with the auditor. If part of the improvement or the overflowed property is located in more than one county, the petition must be filed with the auditor of the county with the greatest affected area.

Subd. 4. Jurisdiction of drainage authority. After the petition is filed, the board or joint county drainage authority where the petition is filed has jurisdiction of the petition, the improvement, the affected property, and all proceedings for the establishment and construction of the outlet improvement and the assessment of property benefited by the outlet improvement, as provided for establishment and construction of a drainage project under this chapter.

Subd. 5. Preliminary survey report requirements. In the preliminary survey report, the engineer shall show the existing or proposed drainage projects or systems that cause the overflow, the property drained or to be drained by the drainage project, and the names of affected property owners.

Subd. 6. Benefited property to be determined by viewers. If, after the preliminary survey report hearing, a detailed survey is ordered and viewers are appointed, the viewers shall determine and report the benefits to all property from the outlet improvement including property drained or to be drained by the existing drainage system and proposed drainage project.

HIST: 1990 c 391 art 5 s 30

==103E.225

103E.225 Laterals.

Subdivision 1. Petition.

(a) Persons that own property in the vicinity of an existing drainage system may petition for a lateral that connects their property with the drainage system. The petition must be signed by at least 26 percent of the owners of the property or by the owners of at least 26 percent of the area of the property that the lateral passes over. The petition must be filed with the auditor, or for property in more than one county, the petition must be filed with the auditor of the county with the largest property area to be passed over by the lateral. The petition must:

- (1) describe in general terms the starting point, general course, and terminus of the proposed lateral;
- (2) describe the property traversed by the lateral including the names and addresses of the property owners from records in the county assessor's office;
- (3) state the necessity to construct the lateral;
- (4) state that, if constructed, the lateral will be of public benefit and utility and promote the public health;
- (5) request that the lateral be constructed and connected with the drainage system; and
- (6) provide that the petitioners will pay all costs incurred if the proceedings are dismissed or if a contract for the construction of the lateral is not awarded.

(b) The petitioners shall give the bond required by section 103E.202, subdivision 5.

Subd. 2. Establishment procedure. After the petition is filed, the procedure to establish and construct the lateral is the same as that provided in this chapter to establish a drainage project.

Subd. 3. Authority necessary for property not assessed. A lateral may not be constructed to drain property that is not assessed benefits for the existing drainage system until express authority for the use of the existing drainage system as an outlet for the lateral has been obtained under section 103E.401.

HIST: 1990 c 391 art 5 s 31

==103E.227

103E.227 Impounding and diversion of drainage system waters.

Subdivision 1. Petition.

(a) To conserve and make more adequate use of our water resources, a person, public or municipal corporation, governmental subdivision, the state or a department or agency of the state, the commissioner of natural resources, and the United States or any of its agencies, may petition for the installation of dams or other control works in drainage ditch systems to impound or divert waters for beneficial use. The petition must be directed to the drainage authority where the drainage system is located.

(b) The petition must contain the location of the installation, plans, and specifications for the proposed structure and a map of the areas likely to be affected by the impoundment or diversion.

(c) The petitioner shall agree to be responsible for the cost of installation and construction of the structure.

(d) The petition must also be accompanied by a public waters work permit or a water use permit from the commissioner of natural resources if required under chapter 103G.

Subd. 2. Bond.

(a) Upon filing the petition, the petitioners shall file a bond as provided in section 103E.202.

(b) A bond is not required if the petition is filed by the state, a state agency or department, the commissioner of natural resources, the United States or any of its agencies, or a municipality.

Subd. 3. Procedure to establish project.

- (a) After receiving the petition, bond, and permit, if required, the drainage authority must appoint an engineer to investigate the effect of the proposed installation and file a report of findings.
- (b) After filing of the engineer's report, notice must be given and a public hearing held as provided in section 103E.261.
- (c) If from the hearing it appears from the engineer's report and other evidence presented that the installation will be of a public or private benefit and that it will not impair the utility of the ditch or deprive affected land owners of its benefit, the drainage authority shall make an order modifying the drainage system and issue a permit authorizing its installation.

Subd. 4. Flowage easements required. Before installing or constructing an impoundment or diversion, the petitioner shall obtain rights-of-way and flowage easements from owners of land to be affected by it.

Subd. 5. Assessment of maintenance and repair costs. The order of the drainage authority modifying the drainage system must provide that construction and later maintenance and repairs of the drainage system modification and installation must be done by the petitioner without assessment of the cost to the property owners previously within the drainage system.

HIST: 1990 c 391 art 5 s 32

==103E.231

103E.231 Dismissal or delay of proceedings by petitioners.

Subdivision 1. Dismissal.

- (a) A proceeding under this chapter may be dismissed by a majority of the petitioners if they own at least 60 percent of the area owned by all of the petitioners as described in the petition.
- (b) The proceeding may be dismissed at any time before the proposed drainage project is established after payment of the cost of the proceeding. If the costs cannot be collected, each and all petitioners are liable for unpaid assessments. The drainage authority shall determine and assess the cost of the proceeding against the persons liable. After the proceeding is dismissed any other action on the proposed drainage project must begin with a new petition.

Subd. 2. Delay. The drainage authority may delay drainage proceedings and drainage project construction under this chapter if a majority of the petitioners petition for a delay and the drainage authority holds a hearing on the petition. The delay may be for a period determined by the drainage authority. The drainage authority shall determine the cost of the proceedings up to the time the proceedings are delayed and when the costs are to be paid. The costs may include interest on the costs due.

HIST: 1990 c 391 art 5 s 33

==103E.235

103E.235 Drainage system in two or more counties.

Subdivision 1. Designation. A petition for a proposed drainage project in two or more counties must be designated as a joint county drainage system with a number assigned by the auditor of the county with the largest area of property in the drainage system.

Subd. 2. Joint county drainage authority. The board where a petition for a proposed joint county drainage project is filed shall notify the board of each county where property is affected by the drainage system and request the boards to meet jointly and consider the petition. The boards shall select five of their members at the meeting to be the drainage authority. At least one member must be from each board. The drainage authority shall be known as the joint county drainage authority with a joint county drainage project or system number. A vacancy in the membership of the joint county drainage authority must be filled by joint action of the boards.

Subd. 3. Transfer of drainage systems to watershed districts not affected. This section does not affect the transfer of a drainage system to the board of managers of a watershed district under chapter 103D.

HIST: 1990 c 391 art 5 s 34

==103E.238

103E.238 County attorney review of petition and bond.

The county attorney must review each petition and bond filed with the county to determine if it meets the requirement of the proceedings for which it is intended. The county attorney must review the petition and bond within 30 days after it is filed. The county attorney must:

- (1) refer the petition and bond back to the petitioners if it does not meet the requirements, with the county attorney's opinion describing the deficiencies of the petition; or
- (2) refer the petition to the drainage authority.

HIST: 1990 c 391 art 5 s 35

==103E.241

103E.241 Engineer.

Subdivision 1. Appointment. Within 30 days after receiving a petition and bond from the county attorney, the drainage authority shall, by order, appoint an engineer to make a preliminary survey within a prescribed time. The engineer must be the county highway engineer of a county where the affected property is located or a professional engineer registered under state law. The engineer is the engineer for the drainage project throughout the proceeding and construction unless otherwise ordered. Each appointed engineer must file an oath and bond. The engineer may be removed by the drainage authority at any time. If the engineer position is vacant, the drainage authority shall appoint another engineer as soon as possible.

Subd. 2. Oath; bond. An appointed engineer must subscribe to an oath to faithfully perform the assigned duties in the best manner possible and file a bond with the auditor. Within ten days after being appointed, the drainage authority shall set an amount of at least \$5,000 for the bond. The bond must have adequate surety and be payable to the county where the petition is filed, or for a proposed joint county drainage project to all counties in the petition. The bond must be conditioned to pay any person or the drainage authority for damages and injuries resulting from negligence of the engineer while the engineer is acting in the proceedings or construction and provide that the engineer will diligently and honestly perform the engineer's duties. The bond is subject to approval by the auditor. The aggregate liability of the surety for all damages may not exceed the amount of the bond.

Subd. 3. Assistants; compensation. The engineer may appoint assistant engineers and hire help necessary to complete the engineer's duties. The engineer is responsible for the assistant engineers and may remove them. The compensation of the engineer, assistant engineers, and other employees is provided by section 103E.645.

Subd. 4. Engineer's reports. The engineer shall make an expense report every two weeks after the beginning of the engineer's work until the construction contract is awarded. The report must show costs incurred by the engineer and expenses incurred under the engineer's direction relating to the proceeding, and include the names of the engineer, engineer assistants, and employees and the time each was employed, and every item of expense incurred by the engineer. The engineer must file this report with the auditor as soon as possible and may not incur expenses for the proceeding greater than the petitioners' bond.

Subd. 5. Consulting engineer. After the engineer is appointed and before construction of the drainage project is finished, the drainage authority may employ an engineer as a consulting engineer for the proceeding and construction. A consulting engineer shall advise the engineer and drainage authority on engineering matters and problems that may arise related to the proceeding and construction of the drainage project. The drainage authority shall determine the compensation for the consulting engineer.

HIST: 1990 c 391 art 5 s 36

==103E.245

103E.245 Preliminary survey and preliminary survey report.

Subdivision 1. Survey. The engineer shall proceed promptly to:

- (1) examine the petition and order;
- (2) make a preliminary survey of the area likely to be affected by the proposed drainage project to enable the engineer to determine whether the proposed drainage project is necessary and feasible with reference to the environmental and land use criteria in section 103E.015, subdivision 1;
- (3) examine and gather information related to determining whether the proposed drainage project substantially affects areas that are public waters; and
- (4) if the proposed drainage project requires construction of an open channel, examine the nature and capacity of the outlet and any necessary extension.

Subd. 2. Limitation of survey. The engineer shall restrict the preliminary survey to the drainage area described in the petition, except that to secure an outlet the engineer may run levels necessary to determine the distance for the proper fall of the water. The preliminary survey must consider the impact of the proposed drainage project on the environmental and land use criteria in section 103E.015, subdivision 1. The drainage authority may have other areas surveyed after:

- (1) giving notice by mail of a hearing to survey additional areas, to be held at least ten days after the notice is mailed, to the petitioners and persons liable on the petitioners' bond;
- (2) holding the hearing;
- (3) obtaining consent of the persons liable on the petitioners' bond; and
- (4) ordering the additional area surveyed by the engineer.

Subd. 3. Adoption of federal project. The engineer may approve and include as a part of the report, a project of the United States relating to drainage or flood control that is within the proposed drainage project area, and may accept data, plats, plans, or information relating to the project furnished by United States engineers. The engineer does not need to make the preliminary survey if the material furnished by the United States is sufficient for the engineer to make the preliminary survey report.

Subd. 4. Preliminary survey report. The engineer shall report the proposed drainage project plan or recommend a different practical plan. The report must give sufficient information, in detail, to inform the drainage authority on issues related to feasibility, and show changes necessary to make the proposed plan practicable and feasible including extensions, laterals, and other work. If the engineer finds the proposed drainage project in the petition is feasible and complies with the environmental and land use criteria in section 103E.015, subdivision 1, the engineer shall include in the preliminary survey report a preliminary plan of the drainage project showing the proposed ditches, tile, laterals, and other improvements, the outlet of the project, the watershed of the drainage project or system, and the property likely to be affected and its known owners. The plan must show:

- (1) the elevation of the outlet and the controlling elevations of the property likely to be affected referenced to standard sea level datum, if practical;
- (2) the probable size and character of the ditches and laterals necessary to make the plan practicable and feasible;
- (3) the character of the outlet and whether it is sufficient;
- (4) the probable cost of the drains and improvements shown on the plan;
- (5) all other information and data necessary to disclose the practicability, necessity, and feasibility of the proposed drainage project;
- (6) consideration of the drainage project under the environmental and land use criteria in section 103E.015, subdivision 1; and
- (7) other information as ordered by the drainage authority.

HIST: 1990 c 391 art 5 s 37

==103E.251

103E.251 Filing preliminary survey report.

The engineer shall file the completed preliminary survey report in duplicate with the auditor. The auditor shall send one copy of the report to the director. If the proposed drainage project involves a joint county drainage project or system, a copy of the report must be filed with the auditor of each affected county.

HIST: 1990 c 391 art 5 s 38

==103E.255

103E.255 Commissioner's preliminary advisory report.

The commissioner shall make a preliminary advisory report to the drainage authority with an opinion about the adequacy of the preliminary survey report. The commissioner shall state any additional investigation and evaluation that should be done relating to public waters that may be affected and environmental and land use criteria in section 103E.015, subdivision 1, and cite specific portions of the preliminary survey report that are determined inadequate. The commissioner shall file an initial preliminary advisory report with the auditor before the date of the preliminary hearing. The commissioner may request additional time for review and evaluation of the preliminary survey report if additional time is necessary for proper evaluation. A request for additional time for filing the commissioner's preliminary advisory report may not be made more than five days after the date of the notice by the auditor that a date is to be set for the preliminary hearing. An extension of time may not exceed two weeks after the date of the request.

HIST: 1990 c 391 art 5 s 39

==103E.261

103E.261 Preliminary hearing.

Subdivision 1. Notice. When the preliminary survey report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall set a time, by order, not more than 30 days after the date of the order, for a hearing on the preliminary survey report. At least ten days before the hearing, the drainage authority after consulting with the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the proposed drainage project in the preliminary survey report.

Subd. 2. Hearing. The engineer shall attend the preliminary hearing and provide necessary information. The petitioners and all other interested parties may appear and be heard. The commissioner's advisory report on the preliminary plan must be publicly read and included in the record of proceedings.

Subd. 3. Sufficiency of petition.

- (a) The drainage authority shall first examine the petition and determine if it meets the legal requirements.
- (b) If the petition does not meet the legal requirements of this chapter, the hearing shall be adjourned until a specified date by which the petitioners must resubmit the petition. The petition must be referred back to the petitioners who, by unanimous action, may amend the petition. The petitioners may obtain signatures of additional property owners as added petitioners.
- (c) When the hearing is reconvened, if the petition is not resubmitted or does not meet the legal requirements, the proceedings must be dismissed.

Subd. 4. Dismissal.

- (a) The drainage authority shall dismiss the proceedings if it determines that:
 - (1) the proposed drainage project is not feasible;
 - (2) the adverse environmental impact is greater than the public benefit and utility after considering the environmental and land use criteria in section 103E.015, subdivision 1, and the engineer has not reported a plan to make the proposed drainage project feasible and acceptable;
 - (3) the proposed drainage project is not of public benefit or utility; or
 - (4) the outlet is not adequate.
- (b) If the proceedings are dismissed, any other action on the proposed drainage project must begin with a new petition.

Subd. 5. Findings and order.

- (a) The drainage authority shall state, by order, its findings and any changes that must be made in the proposed drainage project from those outlined in the petition, including changes necessary to minimize or mitigate adverse impact on the environment, if it determines that:
 - (1) the proposed drainage project outlined in the petition, or modified and recommended by the engineer, is feasible;
 - (2) there is necessity for the proposed drainage project;
 - (3) the proposed drainage project will be of public benefit and promote the public health, after considering the environmental and land use criteria in section 103E.015, subdivision 1; and
 - (4) the outlet is adequate.
- (b) Changes may be stated by describing them in general terms or filing a map that outlines the changes in the proposed drainage project with the order. The order and accompanying documents must be filed with the auditor.

Subd. 6. Outlet is existing drainage system. If the outlet is an existing drainage system, the drainage authority may determine that the outlet is adequate and obtain permission to use the existing drainage system as an outlet. The drainage authority shall assign a number to the proposed drainage project and proceed under section 103E.401 to act in behalf of the proposed drainage project.

Subd. 7. Effect of findings.

- (a) For all further proceedings, the order modifies the petition and the order must be considered with the petition.
- (b) The findings and order of the drainage authority at the preliminary hearing are conclusive only for the signatures and legal requirements of the petition, the nature and extent of the proposed plan, and the need for a detailed survey, and only for the persons or parties shown by the preliminary survey report as likely to be affected by the proposed drainage project. All questions related to the practicability and necessity of the proposed drainage project are subject to additional investigation and consideration at the final hearing.

HIST: 1990 c 391 art 5 s 40

==103E.265

103E.265 Order for detailed survey and detailed survey report.

Subdivision 1. Order. When the preliminary hearing order is filed with the auditor, the drainage authority shall order the engineer to make a detailed survey with plans and specifications for the proposed drainage project and submit a detailed survey report to the drainage authority as soon as possible.

Subd. 2. Waiver. The drainage authority may waive the detailed survey order and the detailed survey if it determines that adequate data, plans, and specifications have been furnished by a United States engineer.

HIST: 1990 c 391 art 5 s 41

==103E.271

103E.271 Detailed survey.

Subdivision 1. Survey and examination. When an order for a detailed survey is filed, the engineer shall proceed to survey the lines of the proposed drainage project in the preliminary hearing order, and survey and examine affected property.

Subd. 2. Survey requirements. All drainage lines must be surveyed in 100-foot stations and elevations must be based on standard sea level datum, if practical. Bench marks must be established on permanent objects along the drainage line, not more than one mile apart. Field notes made by the engineer must be entered in bound field books and preserved by the engineer until they are filed with the auditor.

HIST: 1990 c 391 art 5 s 42

==103E.275

103E.275 Engineer's variance from drainage authority order.

(a) In planning a proposed drainage project, the engineer may vary from the starting point and the line and plan described by the preliminary hearing order if necessary to drain the property likely to be assessed in the proposed drainage project.

(b) The engineer may:

(1) survey and recommend the location of additional necessary ditches and tile;

(2) where better results will be accomplished and more desirable outlets secured, provide for the extension of the outlet; and

(3) provide for different parts of the drainage to flow in different directions with more than one outlet.

(c) The open ditches do not have to connect if they drain the area to be affected in the petition. The variance must be reported with similar information in the detailed survey report.

HIST: 1990 c 391 art 5 s 43

==103E.281

103E.281 Soil survey.

The engineer shall make a soil survey if: (1) the drainage authority orders a soil survey; (2) the commissioner requests a soil survey; or (3) the engineer determines a soil survey is necessary. The soil survey must show the nature and character of the soil in the proposed drainage project area and include the engineer's findings from the soil survey. The report on the soil survey must be included in the detailed survey report or reported and filed separately before the final hearing.

HIST: 1990 c 391 art 5 s 44

==103E.285

103E.285 Detailed survey report.

Subdivision 1. Report and information required. The engineer shall prepare a detailed survey report that includes the data and information in this section.

Subd. 2. Map. A complete map of the proposed drainage project and drainage system must be drawn to scale, showing:

(1) the terminus and course of each drain and whether it is ditch or tile, and the location of other proposed drainage works;

- (2) the location and situation of the outlet;
- (3) the watershed of the proposed drainage project and the subwatershed of main branches, if any, with the location of existing highway bridges and culverts;
- (4) all property affected, with the names of the known owners;
- (5) public roads and railways affected;
- (6) the outline of any lake basin, wetland, or public water body affected;
- (7) other physical characteristics of the watershed necessary to understand the proposed drainage project and the affected drainage system; and
- (8) the area to be acquired to maintain a grass strip under section 103E.021.

Subd. 3. Profile of drainage lines. A profile of all proposed drainage lines must be presented showing, graphically, the elevation of the ground and gradient at each 100-foot station, and the station number at each section line and at each property line. The profile must show information necessary to understand it, including, in the case of an open ditch, the bottom width and side slope and, in the case of a tiled ditch, the size of tile.

Subd. 4. Bridge and culvert plans. Plans for private bridges and culverts to be constructed by and as a part of the proposed drainage project and plans for other works to be constructed for the proposed drainage project must be presented. A list must be made that shows the required minimum hydraulic capacity of bridges and culverts at railways and highways that cross ditches, and at other prospective ditch crossings where bridges and culverts are not specified to be constructed as part of the proposed drainage project. Plans and estimates of the cost of highway bridges and culverts must be prepared for the viewers to determine benefits and damages.

Subd. 5. Tabular statement of excavation, construction, and cost. A tabular statement must be prepared showing:

- (1) the number of cubic yards of excavation, linear feet of tile, and average depth on each tile line;
- (2) the bridges, culverts, and works to be constructed under the plans for the drainage project; and
- (3) the estimated unit cost of each item, a summary of the total cost, and an estimate of the total cost of completing the proposed drainage project that includes supervision and other costs.

Subd. 6. Right-of-way acreage. The acreage must be shown that will be taken for ditch right-of-way on each government lot, 40-acre tract, or fraction of a lot or tract under separate ownership. The ditch right-of-way must include the area to be taken to maintain a grass strip under section 103E.021.

Subd. 7. Drain tile specifications. Specifications for drain tile must be given that comply with the requirements of the American Society for Testing Materials standard specifications for drain tile, except where the engineer requires tile of a special, higher quality for certain tile depths or soil conditions.

Subd. 8. Soil survey report. If required under section 103E.281, the report on the soil survey must be included in the detailed survey report or submitted and filed separately before the final hearing.

Subd. 9. Recommendation for division of work. If construction of the proposed drainage project would be more economical, the engineer may recommend:

- (1) that the work be divided into sections and contracted separately;
- (2) that the ditch and tile work or tile and labor on the project be contracted separately; or
- (3) the time and manner for the work to be completed.

Subd. 10. Other information on practicability and necessity of drainage project. Other data and information to inform the drainage authority of the practicability and necessity of the proposed drainage project must be made available including a comprehensive examination and the recommendation by the engineer regarding the environmental and land use criteria in section 103E.015, subdivision 1.

Subd. 11. Outlet in another state. If an outlet is only practical in an adjoining state, the engineer shall describe the right-of-way needed and the cost of obtaining the right-of-way and constructing the outlet.

Subd. 12. Completion. The engineer shall prepare the detailed survey and complete the detailed survey report, in duplicate, as specified in this section.

HIST: 1990 c 391 art 5 s 45

==103E.291

103E.291 Filing detailed survey report.

The engineer must file the detailed survey report with the auditor where the proceedings are pending and the auditor must deliver a copy of the detailed survey report to the commissioner. The engineer must also file copies of the detailed survey report with the auditors of any affected counties.

HIST: 1990 c 391 art 5 s 46

==103E.295

103E.295 Revision of engineer's detailed survey report after acceptance.

After the final acceptance of the proposed drainage project, the engineer shall revise the plan, profiles, and designs of structures to show the drainage project as actually constructed on the original tracings. The engineer shall file the revised detailed survey report with the auditor. The auditor shall forward the original or a copy to the director as a permanent record.

HIST: 1990 c 391 art 5 s 47

==103E.301

103E.301 Commissioner's final advisory report.

(a) The commissioner shall examine the detailed survey report and within 30 days of receipt make a final advisory report to the drainage authority. The final advisory report must state whether the commissioner:

- (1) finds the detailed survey report is incomplete and not in accordance with the provisions of this chapter, specifying the incomplete or nonconforming provisions;
- (2) approves the detailed survey report as an acceptable plan to drain the property affected;
- (3) does not approve the plan and recommendations for changes;
- (4) finds the proposed drainage project is not of public benefit or utility under the environmental and land use criteria in section 103E.015, subdivision 1, specifying the facts and evidence supporting the findings; or
- (5) finds a soil survey is needed, and, if it is, makes a request to the engineer to make a soil survey.

(b) The commissioner shall direct the final advisory report to the drainage authority and file it with the auditor.

HIST: 1990 c 391 art 5 s 48

==103E.305

103E.305 Viewers' appointment and qualification.

Subdivision 1. Appointment. When the order for a detailed survey is made, the drainage authority shall, by order, appoint viewers consisting of three disinterested residents of the state qualified to assess benefits and damages. The drainage authority may establish qualifications for viewers.

Subd. 2. Auditor's order for first meeting. Within five days after the detailed survey report is filed, the auditor shall, by order, designate the time and location for the first meeting of the viewers and issue a copy to the viewers of the auditor's order and a certified copy of the order appointing the viewers.

Subd. 3. First meeting. At the first meeting and before beginning their duties, the viewers shall subscribe to an oath to faithfully perform their duties. If an appointed viewer does not qualify for any reason, the auditor shall designate another qualified person to take the disqualified viewer's place.

HIST: 1990 c 391 art 5 s 49

==103E.311

103E.311 Viewers' duties.

The viewers, with or without the engineer, shall determine the benefits and damages to all property affected by the proposed drainage project and make a viewers' report.

HIST: 1990 c 391 art 5 s 50

==103E.315

103E.315 Assessment of drainage benefits and damages.

Subdivision 1. State land. Property owned by the state must have benefits and damages reported in the same manner as taxable lands subject to the provisions relating to conservation areas in section 103E.025.

Subd. 2. Government property. The viewers shall report the benefits and damages to the state, counties, and municipalities from the proposed drainage project. The property within the jurisdiction of a municipality, whether owned by the municipality or by private parties, may be assessed as benefits and damages to the municipality.

Subd. 3. Public roads. If a public road or street is benefited or damaged, the state, county, or political subdivision that is the governmental unit with the legal duty of maintaining the road or street, must be assessed benefits or damages to the road or street, except that benefits and damages for bridges and culverts must be assessed to the governmental unit that has the legal duty to construct and maintain the bridge or culvert under section 103E.525.

Subd. 4. Railway and other utilities. The viewers shall report the benefits and damages to railways and other utilities, including benefits and damages to property used for railway or other utility purposes.

Subd. 5. Extent and basis of benefits.

(a) The viewers shall determine the amount of benefits to all property within the watershed, whether the property is benefited immediately by the construction of the proposed drainage project or the proposed drainage project can become an outlet for drainage, makes an outlet more accessible, or otherwise directly benefits the property. The benefits may be based on:

- (1) an increase in the current market value of property as a result of constructing the project;
- (2) an increase in the potential for agricultural production as a result of constructing the project; or
- (3) an increased value of the property as a result of a potential different land use.

(b) Benefits and damages may be assessed only against the property benefited or damaged or an easement interest in property for the exclusive use of the surface of the property.

Subd. 6. Benefits for proposed drainage project as outlet.

(a) If the proposed drainage project furnishes an outlet to an existing drainage system and benefits the property drained by the existing system, the viewers shall equitably determine and assess:

- (1) the benefits of the proposed drainage project to each tract or lot drained by the existing drainage system;
- (2) a single amount as an outlet benefit to the existing drainage system; or
- (3) benefits on a watershed acre basis.

(b) Assessments that conform with the provisions in this subdivision are valid. If a single sum is assessed as an outlet benefit, the lien for the assessment must be prorated on all property benefited by the existing drainage system in proportion to the benefits determined for the existing drainage system.

(c) Within the watershed that drains to the area where a project is located, the viewers may assess outlet benefits on:

- (1) property that is responsible for increased sedimentation in downstream areas of the watershed; and
- (2) property that is responsible for increased drainage system maintenance or increased drainage system capacity because the natural drainage on the property has been altered or modified to accelerate the drainage of water from the property.

Subd. 7. Benefits for project that increases drainage capacity. If part of a drainage project increases drainage capacity and the increased capacity is necessary due to increased drainage in the project watershed rather than increased drainage in a specific area, the viewers may assess benefits on property in the project watershed on a pro rata basis.

Subd. 8. Extent of damages. Damages to be paid may include:

- (1) the fair market value of the property required for the channel of an open ditch and the permanent grass strip under section 103E.021;
- (2) the diminished value of a farm due to severing a field by an open ditch;
- (3) loss of crop production during drainage project construction; and
- (4) the diminished productivity or land value from increased overflow.

HIST: 1990 c 391 art 5 s 51

==103E.321

103E.321 Viewers' report.

Subdivision 1. Requirements. The viewers' report must show, in tabular form, for each lot, 40-acre tract, and fraction of a lot or tract under separate ownership that is benefited or damaged:

- (1) a description of the lot or tract, under separate ownership, that is benefited or damaged;
- (2) the names of the owners as they appear on the current tax records of the county and their addresses;
- (3) the number of acres in each tract or lot;
- (4) the number and value of acres added to a tract or lot by the proposed drainage of public waters;
- (5) the damage, if any, to riparian rights;
- (6) the damages paid for the permanent grass strip under section 103E.021.
- (7) the total number and value of acres added to a tract or lot by the proposed drainage of public waters, wetlands, and other areas not currently being cultivated;
- (8) the number of acres and amount of benefits being assessed for drainage of areas which before the drainage benefits could be realized would require a public waters work permit to work in public waters under section 103G.245 to excavate or fill a navigable water body under United States Code, title 33, section 403, or a permit to discharge into waters of the United States under United States Code, title 33, section 1344;
- (9) the number of acres and amount of benefits being assessed for drainage of areas that would be considered conversion of a wetland under United States Code, title 16, section 3821, if the area was placed in agricultural production;
- (10) the amount of right-of-way acreage required; and
- (11) the amount that each tract or lot will be benefited or damaged.

Subd. 2. Benefits and damages statement.

- (a) The viewers' report must include a benefits and damages statement that shows for each property owner how the benefits or damages for similar tracts or lots were determined. For similar tracts or lots the report must describe:
 - (1) the existing land use, property value, and economic productivity;
 - (2) the potential land use, property value, and economic productivity after the drainage project is constructed; and
 - (3) the benefits or damages from the proposed drainage project.
- (b) The soil and water conservation districts and county assessors shall cooperate with viewers to provide information required under paragraph (a).

Subd. 3. Disagreement of viewers. If the viewers are unable to agree, each viewer shall separately state findings on the disputed issue. A majority of the viewers may perform the required duties under this chapter.

Subd. 4. Filing. When the viewers complete their duties, they shall file the viewers' report with the auditor of each affected county. A detailed statement must be filed with the viewers' report showing the actual time the viewers were engaged and the costs incurred. The viewers shall perform their duties and complete the viewers' report as soon as possible after their first meeting.

HIST: 1990 c 391 art 5 s 52

==103E.323

103E.323 Property owners' report.

Subdivision 1. Report. Within 30 days after the viewers' report is filed, the auditor must make a property owners' report from the information in the viewers' report showing for each property owner benefited or damaged by the proposed drainage project:

- (1) the name and address of the property owner;
- (2) each lot or tract and its area that is benefited or damaged;
- (3) the total number and value of acres added to a tract or lot by the proposed drainage of public waters, wetlands, and other areas not currently being cultivated;
- (4) the number of acres and amount of benefits being assessed for drainage of areas which before the drainage benefits could be realized would require a public waters work permit to work in public waters under section 103G.245 to excavate or fill a navigable water body under United States Code, title 33, section 403, or a permit to discharge into waters of the United States under United States Code, title 33, section 1344;
- (5) the number of acres and amount of benefits being assessed for drainage of areas that would be considered conversion of a wetland under United States Code, title 16, section 3821, if the area was placed in agricultural production;
- (6) the damage, if any, to riparian rights;
- (7) the amount of right-of-way acreage required;
- (8) the amount that each tract or lot will be benefited or damaged;
- (9) the net damages or benefits to each property owner;
- (10) the estimated cost to be assessed to the property owner based on the cost of the drainage project in the engineer's detailed survey report; and

(11) a copy of the benefits and damages statement under section 103E.321, subdivision 2, paragraph (a), relating to the property owner.

Subd. 2. Mailing. The auditor must mail a copy of the property owners' report to each owner of property affected by the proposed drainage project, and may prepare and file an affidavit of mailing.

HIST: 1990 c 391 art 5 s 53

==103E.325

103E.325 Final hearing notice.

Subdivision 1. Time. Promptly after the filing of the viewers' report and the commissioner's final advisory report, the drainage authority after consulting with the auditor shall set a time and location for the final hearing on the petition, the detailed survey report, and the viewers' report. The hearing must be set 25 to 50 days after the date of the final hearing notice.

Subd. 2. Notice.

(a) The final hearing notice must state:

- (1) that the petition is pending;
- (2) that the detailed survey report is filed;
- (3) that the viewers' report is filed;
- (4) the time and place set for the final hearing;
- (5) a brief description of the proposed drainage project and affected drainage system, giving in general terms the starting point, terminus, and general course of the main ditch and branches;
- (6) a description of property benefited and damaged, and the names of the owners of the property; and
- (7) the municipal and other corporations affected by the proposed drainage project as shown by the detailed survey report and viewers' report.

(b) Names may be listed in a narrative form and property affected may be separately listed in narrative form by governmental sections or otherwise.

(c) For a joint county proceeding, separate notice may be prepared for each county affected, showing the portion of the proposed drainage project and the names and descriptions of affected property in the county.

Subd. 3. Method of notice. The auditor shall notify the drainage authority, auditors of affected counties, and all interested persons of the time and location of the final hearing by publication, posting, and mail. A printed copy of the final hearing notice for each affected county must be posted at least three weeks before the date of the final hearing at the front door of the courthouse in each county. Within one week after the first publication of the notice, the auditor shall give notice by mail of the time and location of the final hearing to the commissioner, all property owners, and others affected by the proposed drainage project and listed in the detailed survey report and the viewers' report.

Subd. 4. Defective notice. If the final hearing notice is not given or is not legally given, the auditor shall properly publish, post, and mail the notice or provide the notice under the provisions to cure defective notice in section 103E.035.

HIST: 1990 c 391 art 5 s 54

==103E.331

103E.331 Jurisdiction of property by drainage authority.

After the final hearing notice is given, the drainage authority has jurisdiction of all property described in the detailed survey report and viewers' report, of the persons and municipalities named in the reports, and of persons having an interest in a mortgage, lien, or encumbrance against property described in the reports.

HIST: 1990 c 391 art 5 s 55

==103E.335

103E.335 Proceedings at the final hearing.

Subdivision 1. Consideration of petition and reports.

At the time and location for the final hearing specified in the notice, or after the hearing adjourns, the drainage authority shall consider the petition for the drainage project, with all matters pertaining to the detailed survey report, the viewers' report, and the commissioner's final advisory report. The drainage authority shall hear and consider the testimony presented by all interested parties. The engineer or the engineer's assistant and at least one viewer shall be present. The director may appear and be heard. If the director does not appear personally, the final advisory report shall be read during the hearing. The final hearing may be adjourned and reconvened as is necessary.

Subd. 2. Changes in drainage plan. If the drainage authority determines that the general plan reported by the engineer may be improved by changes, or that the viewers have made an inequitable assessment of benefits or damages to any property, the drainage authority may amend the detailed survey report or the viewers' report, and make necessary and proper findings in relation to the reports. The drainage authority may resubmit matters to the engineer or to the viewers for immediate consideration. The engineer or viewers shall proceed promptly to reconsider the resubmitted matters and shall make and file the amended findings and reports. The amended reports are a part of the original reports.

Subd. 3. Reexamination. If the drainage authority determines that property not included in the notice should be included and assessed or that the engineer or viewers, or both, should reexamine the proposed drainage project or the property benefited or damaged by the system, the drainage authority may resubmit the reports to the engineer and viewers. If a report is resubmitted, the final hearing may be continued as is necessary to make the reexamination and reexamination report. If the reexamination report includes property not included in the original report, the drainage authority may, by order, adjourn the hearing and direct the auditor to serve or publish, post, and mail a final hearing notice with reference to all property not included in the previous notice. The jurisdiction of the drainage authority continues in the property given proper notice, and new or additional notice is not required for that property.

HIST: 1990 c 391 art 5 s 56

==103E.341

103E.341 Drainage authority final order.

Subdivision 1. Dismissal of proceedings. The drainage authority must dismiss the proceedings and petition, by order, if it determines that:

- (1) the benefits of the proposed drainage project are less than the total cost, including damages awarded;
- (2) the proposed drainage project will not be of public benefit and utility; or
- (3) the proposed drainage project is not practicable after considering the environmental and land use criteria in section 103E.015, subdivision 1.

Subd. 2. Establishment of proposed drainage project.

- (a) The drainage authority shall establish, by order, a proposed drainage project if it determines that:
 - (1) the detailed survey report and viewers' report have been made and other proceedings have been completed under this chapter;
 - (2) the reports made or amended are complete and correct;
 - (3) the damages and benefits have been properly determined;
 - (4) the estimated benefits are greater than the total estimated cost, including damages;
 - (5) the proposed drainage project will be of public utility and benefit, and will promote the public health; and
 - (6) the proposed drainage project is practicable.
- (b) The order must contain the drainage authority's findings, adopt and confirm the viewers' report as made or amended, and establish the proposed drainage project as reported and amended.

HIST: 1990 c 391 art 5 s 57

==103E.345

103E.345 Apportionment of cost for joint county drainage systems.

For joint county proceedings, the auditor where the petition is filed shall file a certified copy of the viewers' report with the auditor of each affected county within 20 days after the date of the final order establishing the system. When the final order to establish the drainage project is made, the drainage authority shall determine and order the percentage of the cost of the drainage project to be paid by each affected county. The cost shall be in proportion to the benefits received, unless there is a contrary reason. An auditor of an affected county may petition the drainage authority after the final order is made to determine and order the percentage of costs to be paid by the affected counties. The drainage authority shall hold a hearing five days after giving written notice to the auditor of each affected county. After giving the notice to the auditors of the affected counties, the drainage

authority may, at any time that it is necessary, modify an order or make an additional order to allocate the cost among the affected counties.

HIST: 1990 c 391 art 5 s 58

==103E.351

103E.351 Redetermination of benefits and damages.

Subdivision 1. Conditions to redetermine benefits and damages; appointment of viewers. If the drainage authority determines that the original benefits or damages determined in a drainage proceeding do not reflect reasonable present day land values or that the benefited or damaged areas have changed, or if more than 50 percent of the owners of property benefited or damaged by a drainage system petition for correction of an error that was made at the time of the proceedings that established the drainage system, the drainage authority may appoint three viewers to redetermine and report the benefits and damages and the benefited and damaged areas.

Subd. 2. Hearing and procedure.

(a) The redetermination of benefits and damages shall proceed as provided for viewers and the viewers' report in sections 103E.311 to 103E.321.

(b) The auditor must prepare a property owners' report from the viewers' report. A copy of the property owners' report must be mailed to each owner of property affected by the drainage system.

(c) The drainage authority shall hold a final hearing on the report and confirm the benefits and damages and benefited and damaged areas. The final hearing shall proceed as provided under sections 103E.325, 103E.335, and 103E.341, except that the hearing shall be held within 30 days after the property owners' report is mailed.

Subd. 3. Redetermined benefits and damages replace original benefits and damages. The redetermined benefits and damages and benefited and damaged areas must be used in place of the original benefits and damages and benefited and damaged areas in all subsequent proceedings relating to the drainage system.

Subd. 4. Appeal. A person aggrieved by the redetermination of benefits and damages and benefited and damaged areas may appeal from the order confirming the benefits and damages and benefited and damaged areas under section 103E.091.

HIST: 1990 c 391 art 5 s 59

==103E.401

103E.401 Use of drainage system as an outlet.

Subdivision 1. Commissioner must recognize drainage outlet proceedings when purchasing wetlands. If the commissioner purchases wetlands under section 97A.145, the commissioner must recognize that when a majority of landowners or owners of a majority of the land in the watershed petition for a drainage outlet, the state should not interfere with or unnecessarily delay the drainage proceedings if the proceedings are conducted according to this chapter.

Subd. 2. Express authority necessary. After the construction of a drainage project, a public or private drainage system that drains property not assessed for benefits for the established drainage system may not be constructed to use the established drainage system as an outlet without obtaining express authority from the drainage authority having jurisdiction over the drainage system proposed to be used as the outlet. This section is applicable to the construction of a public or private drainage system that outlets water into an established drainage system regardless of the actual physical connection.

Subd. 3. Petition. A person seeking authority to use an established drainage system as an outlet must petition the drainage authority. When the petition is filed, the drainage authority in consultation with the auditor shall set a time and location for a hearing on the petition and shall give notice by mail and notice by publication of the hearing. The auditor must be paid a fee of \$5 plus 30 cents for each notice mailed in excess of ten.

Subd. 4. Hearing. At the hearing the drainage authority shall consider the capacity of the outlet drainage system. If express authority is given to use the drainage system as an outlet, the drainage authority shall state, by order, the terms and conditions for use of the established drainage system as an outlet and shall set the amount to be paid as an outlet fee. The order must describe the property to be benefited by the drainage system and must state the amount of benefits to the property for the outlet. The property benefited is liable for assessments levied after that time in the drainage system, on the basis of the benefits as if the benefits had been determined in the order establishing the drainage system.

Subd. 5. Private drainage system may not be constructed without payment of outlet fee. A private drainage system may not be constructed to use the established drainage system as an outlet until the outlet fee, set by order, is paid by the petitioner to the county treasurer where the petitioner's property is located.

Subd. 6. Payment of outlet fee. The outlet fee for a proposed drainage project is a part of the cost of the proposed drainage project and is to be paid by assessment against the property benefited by the proposed drainage project, under section 103E.601, and credited to the established drainage system account.

Subd. 7. Unauthorized outlet into drainage system.

(a) The drainage authority must notify an owner of property where an unauthorized outlet into a drainage system is located and direct the property owner to block the outlet or otherwise make the outlet ineffective by a specified time. The outlet must be blocked and remain ineffective until:

(1) an outlet fee is paid, which is determined by the drainage authority based on the benefits received by the property for the period the unauthorized outlet was operational; and

(2) the drainage authority approves a petition for the outlet and establishes the outlet fee.

(b) If a property owner does not block or make the outlet ineffective after being notified, the drainage authority must issue an order to have the work performed to bring the outlet into compliance. After the work is completed, the drainage authority must send a statement to the auditor of the county where the property is located and to the property owner where the unauthorized outlet is located, containing the expenses incurred to bring the outlet into compliance and the outlet fee based on the benefits received by the property during the period the unauthorized outlet was operational.

Subd. 8. Collection of unauthorized outlet compliance expenses.

(a) The amount of the expenses and outlet fee is a lien in favor of the drainage authority against the property where the unauthorized outlet is located. The auditor must certify the expenses and outlet fee and enter the amount in the same manner as other drainage liens on the tax list for the following year. The amount must be collected in the same manner as real estate taxes for the property. The provisions of law relating to the collection of real estate taxes shall be used to enforce payment of amounts due under this section. The auditor must include a notice of collection of unauthorized outlet compliance expenses with the tax statement.

(b) The amounts collected under this subdivision must be deposited in the drainage system account.

HIST: 1990 c 391 art 5 s 60

==103E.405

103E.405 Outlets in adjoining states.

In any drainage proceeding, at the hearing on the detailed survey report and viewers' report, if the drainage authority determines that a proper outlet for the drainage system does not exist except through property in an adjoining state, the drainage authority may adjourn the hearing. If the hearing is adjourned the drainage authority shall require the auditor or, for a joint county drainage system, the auditors of affected counties to procure an option to acquire the needed right-of-way at an expense not exceeding the estimated cost specified in the detailed survey report. The order establishing the drainage project may not be made until the option is procured. If the option is procured and the drainage project established, the option shall be exercised and the cost of the right-of-way shall be paid as a part of the cost of the drainage project.

HIST: 1990 c 391 art 5 s 61

==103E.411

103E.411 Drainage system as outlet for municipality.

Subdivision 1. Petition. A municipality may use a drainage system as an outlet for its municipal drainage system or the overflow from the system under the provisions of this section. The municipality must petition to the drainage authority to use the drainage system. The petition must:

(1) show the necessity for the use of the drainage system as an outlet;

(2) show that the use of the drainage system will be of public benefit and utility and promote the public health;

(3) be accompanied by a plat showing the location of the drainage system and the location of the municipal drainage system; and

(4) be accompanied by specifications showing the plan of connection from the municipal drainage system to the drainage system.

Subd. 2. Approval by pollution control agency. The plan for connecting the municipal drainage system to the drainage system must be approved by the pollution control agency.

Subd. 3. Filing; notice.

- (a) If proceedings to establish the drainage project to be used as an outlet are pending, the petition must be filed with the auditor. The municipal drainage system petition must be presented to the drainage authority at the final hearing to consider the detailed survey report and viewers' report. Notice of the municipal drainage system petition must be included in the final hearing notice.
- (b) If the drainage system to be used as an outlet is established, the municipal drainage system petition must be filed with the auditor. When the petition is filed, the drainage authority in consultation with the auditor shall, by order, set a time and place for hearing on the petition. Notice of the hearing must be given by publication and by mailed notice to the auditor of each affected county.

Subd. 4. Hearing and order.

- (a) At the hearing the drainage authority may receive all evidence of interested parties for or against the granting of the petition. The drainage authority, by order, may authorize the municipality to use the drainage system as an outlet, subject to the conditions that are necessary and proper to protect the rights of the parties and safeguard the interests of the general public, if the drainage authority determines:
 - (1) that a necessity exists for the use of the drainage system as an outlet for the municipal drainage system or the overflow from the system;
 - (2) that use of the drainage system will be of public utility and promote the public health; and
 - (3) that the proposed connection conforms to the requirements of the pollution control agency and provides for the construction and use of proper disposal works.
- (b) The drainage authority must, by order, make the municipality a party to the drainage proceedings and determine the benefits from using the drainage project or system as an outlet.

Subd. 5. Benefits and assessments if drainage system is established. If the drainage system is established, the drainage authority must determine the amount the municipality must pay for the privilege of using the drainage system as an outlet. The amount must be paid to the affected counties and credited to the account of the drainage system used as an outlet. The municipality is liable for all subsequent liens and assessments for the repair and maintenance of the drainage system in proportion to the benefits, as though the benefits were determined in the order establishing the drainage system.

HIST: 1990 c 391 art 5 s 62

==103E.501

103E.501 Contract and bond.

Subdivision 1. Preparation. The county attorney, the engineer, and the attorney for the petitioners shall prepare the contract and bond. The contract and bond must include the provisions required by this chapter and section 574.26 for bonds given by contractors for public works and must be conditioned as provided by section 574.26 for the better security of the contracting counties and parties performing labor and furnishing material in performance of the contract. The prepared contract and bond must be attached and provided to the contractor for execution.

Subd. 2. Contractor's bond. The contractor shall file a bond with the auditor for an amount not less than 75 percent of the contract price of the work. The bond must have adequate surety and be approved by the auditor. The bond must provide that the surety for the bond is liable for all damages resulting from a failure to perform work under the contract, whether the work is resold or not, and that any person or political subdivision showing damages from the failure to perform work under the contract may maintain an action against the bond in their own names. Actions may be successive in favor of all persons injured, but the aggregate liability of the surety for all the damages may not exceed the amount of the bond. The surety is liable for the tile work guaranteed by the contractor. The contractor is considered a public officer and the bond an official bond within the meaning of section 574.24 construing the official bonds of public officers as security to all persons and providing for actions on the bonds by a party that is damaged.

Subd. 3. Contract. The contract must contain a specific description of the work to be done, either expressly or by reference to the plans and specifications, and must provide that the work must be done and completed as provided in the plans and specifications and subject to the inspection and approval of the engineer. The contract must provide that time is of the essence of the contract, and that if there is a failure to perform the work according to the terms of the contract within the time given in the original contract or as extended, the contractors shall forfeit and pay the affected counties an amount stated in the contract as liquidated damages. The amount must be fixed by the auditor for each day that the failure of performance continues.

Subd. 4. Contract provisions for changes during construction. The contract must give the engineer the right, with the consent of the drainage authority, to modify the detailed survey report, plans, and specifications as the work proceeds and as circumstances require. The contract must provide that the increased cost resulting from the changes will be paid by the drainage authority to the contractor at a rate not greater than the amount for similar work in the contract. A change may not be made that will substantially impair the usefulness of any part of the drainage project or system, substantially alter its original character, or increase its total cost by more than ten percent of the total original contract price. A change may not be made that will cause the cost to exceed the total estimated benefits found by the drainage authority or that will cause any detrimental effects to the public interest under section 103E.015, subdivision 1.

Subd. 5. Contract with federal unit. If any portion of the work is to be done by the United States or an agency of the United States, a bond or contract is not necessary for that portion of the work, except that a contract must be made if the United States or its agencies require a contract with the local governmental units. The contract must contain the terms, conditions, provisions, and guaranties required by the United States or its agencies to proceed with the work.

Subd. 6. Guaranty of tile work. If tile is used to construct any part of the drainage project, a majority of the persons affected may file a written request with the auditor to contract the tile work separately. The request must be filed before advertising for the sale of the work has begun. If the request is properly made, the tile work must be contracted separately. The contractor must guarantee the tile work under the contract for three years after its completion against any fault or negligence on the part of the contractor. The advertisement for bids must include this requirement.

Subd. 7. Modification of contract by agreement. This chapter does not prevent the persons with property affected by the construction of a drainage project from uniting in a written agreement with the contractor and the surety of the contractor's bond to modify the contract as to the manner or time when any portion of the drainage project is constructed, if the modification is recommended, in writing, by the engineer and approved by the drainage authority.

HIST: 1990 c 391 art 5 s 63

==103E.505

103E.505 Awarding the construction contract.

Subdivision 1. Auditors and drainage authority to proceed. Thirty days after the order establishing a drainage project is filed, the auditor and the drainage authority or, for a joint county drainage project, a majority of the auditors of the affected counties shall proceed to award the contract to construct the drainage project.

Subd. 2. Pending appeal of benefits and damages. If an appeal regarding the determination of benefits and damages is made within 30 days after the order establishing the drainage project has been filed, a contract may not be awarded until the appeal has been determined, unless the drainage authority orders the contract awarded. The auditor of an affected county or an interested person may request the drainage authority to make the order. If the request is not made by an affected auditor, the auditors of affected counties must be given notice five days before the hearing on the request.

Subd. 3. Notice of contract awarding. The auditor of an affected county shall give notice of the awarding of the contract by publication in a newspaper in the county. The notice must state the time and location for awarding the contract. For a joint county drainage project the auditors shall award the contract at the office of the auditor where the proceedings are pending. If the estimated cost of construction is more than \$3,000, the auditor must also place a notice in a drainage construction trade newspaper. The trade newspaper notice must state:

- (1) the time and location for awarding the contract;
- (2) the approximate amount of work and its estimated cost;
- (3) that bids may be for the work as one job, or in sections, or separately, for bridges, ditches and open work, tile, or tile construction work, if required or advisable;
- (4) that each bid must be accompanied by a certified check or a bond furnished by an approved surety corporation payable to the auditors of affected counties for ten percent of the bid, as security that the bidder will enter into a contract and give a bond as required by section 103E.501; and
- (5) that the drainage authority reserves the right to reject any and all bids.

Subd. 4. Engineer shall attend awarding of contract. The engineer shall attend the meeting to award the contract. A bid may not be accepted without the engineer's approval of the bidder's compliance with plans and specifications.

Subd. 5. How contract may be awarded. The contract may be awarded in one job, in sections, or separately for labor and material and must be let to the lowest responsible bidder.

Subd. 6. Bids exceeding 130 percent of estimated cost not accepted. Bids that in the aggregate exceed the total estimated cost of construction by more than 30 percent may not be accepted.

Subd. 7. Affected counties contract through auditor. The chair of the drainage authority and the auditor of each affected county shall contract, in the names of their respective counties, to construct the drainage project in the time and manner and according to the plans and specifications and the contract provisions in this chapter.

Subd. 8. Work done by federal government. If any of the drainage work is to be done by the United States or its agencies, a notice of awarding that contract does not need to be published and a contract for that construction is not necessary. Affected municipalities may contract or arrange with the United States or its agencies for cooperation or assistance in constructing, maintaining, and operating the drainage project and system, for control of waters in the district, or for making a survey and investigation or reports on the drainage project or system. The municipalities may provide required guaranty and protection to the United States or its agencies.

HIST: 1990 c 391 art 5 s 64

==103E.511

103E.511 Procedure if contract is not awarded due to bids or costs.

Subdivision 1. Conditions to use procedure in this section. The procedure in this section may be used if, after a drainage system is established:

- (1) the only bids received are for more than 30 percent in excess of the engineer's estimated cost, or in excess of the benefits, less damages and other costs; or
- (2) a contract is awarded, but due to unavoidable delays not caused by the contractor, the contract cannot be completed for an amount equal to or less than the benefits, less damages and other costs.

Subd. 2. Petition after cost estimate error or change to lower cost. A person interested in the drainage project may petition the drainage authority if the person determines that the engineer made an error in the estimate of the drainage project cost or that the plans and specifications could be changed in a manner materially affecting the cost of the drainage system without interfering with efficiency. The petition must state the person's determinations and request that the detailed survey report and viewers' report be referred back to the engineer and to the viewers for additional consideration.

Subd. 3. Petition after excessive cost due to inflation.

- (a) A person interested in the drainage project may petition the drainage authority for an order to reconsider the detailed survey report and viewers' report if the person determines:
 - (1) that bids were received only for a price more than 30 percent in excess of the detailed survey report estimate because inflation increased the construction cost between the time of the detailed survey cost estimate and the time of awarding the contract; or
 - (2) that after the contract was awarded there was unavoidable delay not caused by the contractor, and between the time of awarding the contract and completion of construction inflation increased construction costs resulting in the contract not being completed for an amount equal to or less than the assessed benefits.
- (b) The person may request in the petition that the drainage authority reconsider the original cost estimate in the detailed survey report and viewers' report and adjust the cost estimate consistent with the increased construction cost.

Subd. 4. Hearing ordered after receipt of petition. After receiving a petition, the drainage authority shall order a hearing. The order must designate the time and place of the hearing and direct the auditor to give notice by publication.

Subd. 5. Hearing on cost petition.

- (a) At the hearing the drainage authority shall consider the petition and hear all interested parties.
- (b) The drainage authority may, by order, authorize the engineer to amend the detailed survey report, if the drainage authority determines that:
 - (1) the detailed survey report cost estimate was erroneous and should be corrected;
 - (2) the plans and specifications could be changed in a manner materially affecting the cost of the drainage project without interfering with efficiency; and
 - (3) with the correction or modification a contract could be awarded within the 30 percent limitation and equal to or less than benefits.
- (c) If the drainage authority determines that the amended changes affect the amount of benefits or damages to any property or that the benefits should be reexamined because of inflated land values or inflated construction costs, it shall refer the viewers' report to the viewers to reexamine the benefits and damages.

(d) The drainage authority may, by order, direct the engineer and viewers to amend their detailed survey report and viewers' report to consider the inflationary cost increases if the drainage authority determines that:

(1) bids were not received; or

(2) because of inflationary construction cost increases, construction under the awarded contract cannot be completed for 30 percent or less over the detailed survey cost estimate or in excess of the benefits, less damages and other costs.

(e) The drainage authority may continue the hearing to give the engineer or viewers additional time to amend the reports. The jurisdiction of the drainage authority continues at the adjourned hearing.

(f) The drainage authority has full authority to consider the amended reports and make findings and orders. A party may appeal to the district court under section 103E.091, subdivision 1.

HIST: 1990 c 391 art 5 s 65

==103E.515

103E.515 Damages, payment.

The board of each county where the damaged property is located must order the awarded damages to be paid, less any assessment against the property, before the property is entered for construction of the drainage project. If a county or a municipality that is awarded damages requests it, the assessment may not be deducted. If there is an appeal, the damages may not be paid until the final determination. If it is not clear who is entitled to the damages, the board may pay the damages to the court administrator of the district court of the county. The court shall direct the court administrator, by order, to pay the parties entitled to the damages.

HIST: 1990 c 391 art 5 s 66

==103E.521

103E.521 Supervision of construction.

The drainage authority shall require the engineer to supervise and inspect the construction under contract. The drainage authority shall cause the contracts under this chapter to be performed properly.

HIST: 1990 c 391 art 5 s 67

==103E.525

103E.525 Construction and maintenance of bridges and culverts.

Subdivision 1. Hydraulic capacity. A public or private bridge or culvert may not be constructed or maintained across or in a drainage system with less hydraulic capacity than specified in the detailed survey report, except with the written approval of the director of the division of waters. If the detailed survey report does not specify the hydraulic capacity, a public or private bridge or culvert in or across a drainage system ditch may not be constructed without the director's approval of the hydraulic capacity.

Subd. 2. Road authority responsible for construction. Bridges and culverts on public roads required by the construction or improvement of a drainage project or system must be constructed and maintained by the road authority responsible for keeping the road in repair, except as provided in this section.

Subd. 3. Notice; charging cost. The auditor shall notify the state and each railroad company, corporation, or political subdivision that they are to construct a required bridge or culvert on a road or right-of-way under their jurisdiction, within a reasonable time as stated in the notice. If the work is not done within the prescribed time, the drainage authority may order the bridge or culvert constructed as part of the drainage project construction. The cost must be deducted from the damages awarded to the corporation or collected from it as an assessment for benefits. If the detailed survey report or viewers' report shows that the construction of the bridge or culvert is necessary, the drainage authority may, by order, retain an amount to secure the construction of the bridge or culvert from amounts to be paid to a railroad, corporation, or political subdivision.

Subd. 4. Construction on line between two cities paid equally. The costs of constructing a bridge or culvert that is required by construction of a drainage project on a public road that is not a state trunk highway on the line between two statutory or home rule charter cities, whether in the same county or not, must be paid jointly, in equal shares, by the cities. The cities shall pay jointly, in equal shares, for the cost of maintaining the bridge or culvert.

Subd. 5. Construction on town and county lines. The cost of constructing and maintaining bridges and culverts on a town or county road across a drainage system ditch constructed along the boundary line between towns or counties, with excavated

material deposited on the boundary line or within 33 feet of the line, must be paid equally by the town or county where the bridge or culvert is located and the other town or county adjoining the boundary.

HIST: 1990 c 391 art 5 s 68

==103E.526

103E.526 Construction of road instead of bridge or culvert.

If the drainage authority finds that constructing a private road would be more cost-effective or practical than constructing a bridge or culvert, the drainage authority may order that a private road be constructed. The private road must be constructed and maintained in the same manner as a bridge or culvert. The private road must be constructed in a manner suitable for farm vehicles but may not have a right-of-way wider than 33 feet. The drainage authority has jurisdiction over the land required for the private road and the road is part of the drainage system.

HIST: 1990 c 391 art 5 s 69

==103E.53

103E.53 Rules to standardize forms.

The director may adopt rules to standardize the forms and sizes of maps, plats, drawings, and specifications in drainage proceedings. The director must require the permanent grass strips acquired under section 103E.021 to be shown on the maps and maintain an inventory of all permanent grass strips acquired by drainage authorities.

HIST: 1990 c 391 art 5 s 70

==103E.531

103E.531 Inspection of drainage construction and partial payments.

Subdivision 1. Inspection and report. The engineer shall inspect and require the work as it is being completed to be done in accordance with the plans, specifications, and contract for construction. Each month during the work, the engineer shall report to the drainage authority, in writing, showing the work completed since the previous report and all materials furnished under the contract.

Subd. 2. Preliminary certificate. The engineer shall issue with the monthly report a preliminary certificate for work done and approved or materials delivered. The certificate must contain the station numbers of the work covered by the certificate and the total value of all work done and the materials furnished according to the contract. For each ditch section, the certificate must show the actual volume, in cubic yards, of the excavation completed. For joint county drainage systems the certificate must also show the percentage of the total value to be paid by each county in the proportion fixed by the drainage authority order. Each certificate must show that a loss will not occur as a result of a partial payment. A duplicate of the certificate must be delivered to the auditor of each affected county.

Subd. 3. Partial payment. The affected counties must pay the contractor, based on the certificate, 90 percent of the total value of work done and approved and 90 percent of the total value of material furnished and delivered. The materials may only be delivered as required in the course of construction and authorized by the engineer.

HIST: 1990 c 391 art 5 s 71

==103E.535

103E.535 Partial payment of retained contract amounts.

Subdivision 1. Petition for partial payment of retained value. If a single contract exceeds \$50,000, and the contract, exclusive of materials furnished and not installed, is one-half or more complete and the contractor is not in default, the contractor may file a verified petition with the auditor stating these facts and requesting that an order be made to pay 40 percent of the retained value of work and material.

Subd. 2. Notice of hearing. When the petition is filed, the auditor shall set a time and location for a hearing on the petition before the drainage authority. At least five days before the date of hearing, the auditor shall give notice by mail of the date and

location of hearing to the engineer, the attorney for the petitioners, the surety of the contractor's bond, and auditors of the affected counties.

Subd. 3. Hearing. At the hearing the drainage authority shall hear all parties interested. If the drainage authority determines that the facts in the petition are correct, the work has been performed in a satisfactory manner, and a portion of the retained percentage may be released without endangering the interests of affected counties, the drainage authority shall state the findings and may order not more than 40 percent of the retained value of work and material to be paid.

HIST: 1990 c 391 art 5 s 72

==103E.541

103E.541 Extension of time on contracts.

The auditors of affected counties may extend the time for the performance of a contract as provided in this section. The contractor may apply, in writing, for an extension of the contract. Notice of the application must be given to: (1) the engineer and the attorney for the petitioners; and (2) for a joint county drainage project, to the auditors of the affected counties. The auditors may grant an extension if sufficient reasons are shown. The extension does not affect a claim for liquidated damages that may arise after the original time expires and before an extension or a claim that may arise after the time for the extension expires.

HIST: 1990 c 391 art 5 s 73

==103E.545

103E.545 Reduction of contractor's bond.

Subdivision 1. Application to drainage authority. The contractor, at the end of each season's work and before the contract is completed, may make a verified application to the drainage authority to reduce the contractor's bond and file the application with the auditor. The application must state:

- (1) the work certified as completed by the engineer;
- (2) the value of the certified work;
- (3) the amount of money received by the contractor and the amount retained by the drainage authority;
- (4) the amount unpaid by the contractor for labor or material furnished on the contract; and
- (5) a request for an order to reduce the amount of the contractor's bond.

The application must be filed with the auditor.

Subd. 2. Notice of hearing. When an application is filed, the auditor, by order, shall set the time and location for a hearing on the application. Ten days before the hearing, notice of the hearing must be published in each affected county and notice by mail given to the engineer, the attorney for the petitioners, and the auditor of each affected county. The contractor must pay the cost of publishing the hearing notice.

Subd. 3. Hearing; reduction of bond. The drainage authority may, by order, reduce the contractor's bond if it determines that the contractor is not in default and that a loss will not result from reducing the bond. The bond may be reduced to an amount sufficient to protect the affected counties from loss and damage, but the reduction:

- (1) may not be more than 35 percent of the amount already paid to the contractor;
- (2) may not affect the remaining amount of the bond;
- (3) does not affect liability incurred on the bond before the reduction; and
- (4) does not affect a provision for a three-year guaranty of tile work.

HIST: 1990 c 391 art 5 s 74

==103E.551

103E.551 Contractor's default.

Subdivision 1. Notice. If a contractor defaults in the performance of the contract, the auditor shall mail a notice of the default to the contractor, the surety of the contractor's bond, the engineer, and the auditors of the affected counties. The notice must specify the default and state that if the default is not promptly removed and the contract completed, the unfinished portion of the contract will be awarded to another contractor.

Subd. 2. Completion of contract by surety. If the surety of the contractor's bond promptly proceeds with the completion of the contract, the affected auditors may grant an extension of time. If the contract is completed by the surety, the balance due on the contract must be paid to the surety, less damages incurred by the affected counties from the default.

Subd. 3. Awarding of contract; recovery on bond. If the surety of the contractor's bond does not undertake the completion of the contract or does not complete the contract within the time specified or extended, auditors of the affected counties shall advertise for bids to complete the contract in the manner provided in the original awarding of contracts. The drainage authority may recover the increased amounts paid to a subsequent contractor after reselling the work, and damages incurred by affected counties, from the first contractor's bond.

HIST: 1990 c 391 art 5 s 75

==103E.555

103E.555 Acceptance of contract.

Subdivision 1. Engineer's report and notice. When a contract is completed, the engineer shall make a report to the drainage authority showing the contract price, the amount paid on certificates, the unpaid balance, and the work that is completed under the contract. When the report is filed, the auditor shall set a time and location for a hearing on the report. The auditor shall give notice of the hearing by publication or notice by mail at least ten days before the hearing to the owners of affected property. The notice must state that the report is filed, the time and location for the hearing, and that a party objecting to the acceptance of the contract may appear and be heard.

Subd. 2. Hearing. At the hearing the drainage authority may, by order, direct payment of the balance due if it determines that the contract has been completed in accordance with the plans and specifications. If good cause is shown, the drainage authority may waive any part of the liquidated damages accruing under the contract. When the order is filed, the auditor shall draw a warrant on the treasurer of the county for the balance due on the contract. For a joint county drainage project or system the auditor shall make an order to the auditors of the affected counties to pay for their proportionate shares of the balance due on the contract. After receiving the order, the auditor of each affected county shall draw a warrant on the treasurer of the county for the amount specified in the order.

HIST: 1990 c 391 art 5 s 76

==103E.601

103E.601 Drainage lien statement.

Subdivision 1. Determination of property liability. When the contract for the construction of a drainage project is awarded, the auditor of an affected county shall make a statement showing the total cost of the drainage project with the estimated cost of all items required to complete the work. The cost must be prorated to each tract of property affected in direct proportion to the benefits. The cost, less any damages, is the amount of liability for each tract for the drainage project. The property liability must be shown in the tabular statement as provided in subdivision 2, opposite the property owner's name and description of each tract of property. The amount of liability on a tract of property for establishment and construction of a drainage project may not exceed the benefits determined in the proceedings that accrue to the tract.

Subd. 2. Drainage lien statement. The auditor of each affected county shall make a lien statement in tabular form showing:

- (1) the names of the property owners, corporate entities, or political subdivisions of the county benefited or damaged by the construction of the drainage project in the viewers' report as approved by the final order for establishment;
- (2) the description of the property in the viewers' report, and the total number of acres in each tract according to the county tax lists;
- (3) the number of acres benefited or damaged in each tract shown in the viewers' report;
- (4) the amount of benefits and damages to each tract of property as stated in the viewers' report and confirmed by the final order that established the drainage project unless the order is appealed and a different amount is set; and
- (5) the amount each tract of property will be liable for and must pay to the county for the establishment and construction of the drainage project.

Subd. 3. Supplemental drainage lien statement. If any items of the cost of the drainage project have been omitted from the original drainage lien statement, a supplemental drainage lien statement with the omitted items must be made and recorded in the same manner provided for a drainage lien statement. The total amount of the original drainage lien and any supplemental drainage liens may not exceed the benefits.

Subd. 4. Recording drainage lien statement. The lien against property in the drainage lien statement and supplemental drainage lien statements must be certified by the auditor and recorded on each tract by the county recorder of the county where the tract is located. The county recorder's fees for recording must be paid if allowed by the board. The drainage lien statement and any supplemental drainage lien statements, after recording, must be returned and preserved by the auditor.

HIST: 1990 c 391 art 5 s 77

==103E.605

103E.605 Effect of filed drainage lien.

The amount recorded from the drainage lien statement and supplemental drainage lien statement that each tract of property will be liable for, and the interest allowed on that amount, is a drainage lien on the property. The drainage lien is a first and paramount lien until fully paid, and has priority over all mortgages, charges, encumbrances, and other liens, unless the board subordinates the drainage lien to liens of record. The recording of the drainage lien, drainage lien statement, or a supplemental drainage lien statement is notice to all parties of the existence of the drainage lien.

HIST: 1990 c 391 art 5 s 78

==103E.611

103E.611 Payment of drainage liens and interest.

Subdivision 1. Payment of drainage lien principal.

- (a) Drainage liens against property benefited under this chapter are payable to the treasurer of the county in 20 or less equal annual installments. The first installment of the principal is due on or before November 1 after the drainage lien statement is recorded, and each subsequent installment is due on or before November 1 of each year afterwards until the principal is paid.
- (b) The drainage authority may, by order, direct the drainage lien to be paid by 1/15 of the principal on or before five years from November 1 after the lien statement is recorded, and 1/15 on or before November 1 of each year afterwards until the principal is paid.
- (c) The drainage authority may order that the drainage lien must be paid by one or two installments, notwithstanding paragraphs (a) and (b), if the principal amount of a lien against a lot or tract of property or against a county or municipality is less than \$50.

Subd. 2. Interest.

- (a) Interest is an additional drainage lien on all property until paid. The interest rate on the drainage lien principal from the date the drainage lien statement is recorded must be set by the board but may not exceed the rate determined by the state court administrator for judgments under section 549.09.
- (b) Before the tax lists for the year are given to the county treasurer, the auditor shall compute the interest on the unpaid balance of the drainage lien at the rate set by the board. The amount of interest must be computed on the entire unpaid principal from the date the drainage lien was recorded to August 15 of the next calendar year, and afterwards from August 15 to August 15 of each year.
- (c) Interest is due and payable after November 1 of each year the drainage lien principal or interest is due and unpaid.

Subd. 3. Collection of payments. Interest and any installment due must be entered on the tax lists for the year. The installment and interest must be collected in the same manner as real estate taxes for that year by collecting one-half of the total of the installment and interest with and as a part of the real estate taxes.

Subd. 4. Prepayment of interest. Interest may be paid at any time, computed to the date of payment, except that after the interest is entered on the tax lists for the year, it is due as entered, without a reduction for prepayment.

Subd. 5. Payment of drainage liens with bonds. The board may direct the county treasurer to accept any outstanding bond that is a legal obligation of the county under this chapter issued on account of a drainage lien in payment of drainage liens under the provisions of this chapter. The bonds must be accepted at their par value plus accrued interest.

Subd. 6. Drainage lien record. The auditor shall keep a drainage lien record for each drainage project and system showing the amount of the drainage lien remaining unpaid against each tract of property.

Subd. 7. Collection and enforcement of drainage liens. The enforcement, collection, penalty, and interest provisions relating to real estate taxes apply to the payment of drainage liens.

HIST: 1990 c 391 art 5 s 79; 1996 c 471 art 3 s 1

==103E.615

103E.615 Enforcement of assessments.

Subdivision 1. Municipalities. Assessments filed for benefits to a municipality are a liability of the municipality and are due and payable with interest in installments on November 1 of each year as provided in section 103E.611. If the installments and interest are not paid on or before November 1, the amount due with interest added as provided in section 103E.611 must be extended by the county auditor against all property in the municipality that is liable to taxation. A levy must be made and the amount due must be paid and collected in the same manner and time as other taxes.

Subd. 2. County or state-aid road. If a public road benefited is a county or state-aid road, the assessment filed is against the county and must be paid out of the road and bridge fund of the county.

Subd. 3. State trunk highway. An assessment against the state for benefits to trunk highways is chargeable to and payable out of the trunk highway fund. The commissioner of transportation shall pay assessments from the trunk highway fund after receipt of a certified copy of the assessment against the state for benefits to a trunk highway.

Subd. 4. Assessment for vacated town roads. If a town is assessed for benefits to a town road in a drainage project proceeding under this chapter and the town road is later vacated by the town board under section 164.07, the town board may petition the drainage authority to cancel the assessment. The drainage authority may cancel the assessment if it finds that the town road for which benefits are assessed has been vacated under section 164.07.

Subd. 5. State property. State property, including rural credit property, is assessable for benefits received. The assessment must be paid by the state from funds appropriated and available for drainage assessments after the state officer having jurisdiction over the assessed property certifies the assessment to the commissioner of finance.

Subd. 6. Repealed, 1994 c 561 s 28

Subd. 7. Railroad and utility property. Property owned by a railroad or other utility corporation benefited by a drainage project is liable for the assessments of benefits on the property as other taxable property. From the date the drainage lien is recorded, the amount of the assessment with interest is a lien against all property of the corporation within the county. Upon default the assessment may be collected by civil action or the drainage lien may be foreclosed by action in the same manner as provided by law for the foreclosure of mortgage liens. The county where the drainage lien is filed has the right of action against the corporation to enforce and collect the assessment.

HIST: 1990 c 391 art 5 s 80

==103E.621

103E.621 Satisfaction of liens.

When a drainage lien with the accumulated interest is fully paid, the auditor shall issue a certificate of payment with the auditor's official seal and record the certificate with the county recorder. The recorded certificate releases and discharges the drainage lien. The auditor may collect 25 cents for each description in the certificate. The auditor's fee and the fee of the county recorder must be paid from the account for the drainage system.

HIST: 1990 c 391 art 5 s 81

==103E.625

103E.625 Subdivision by platting must have liens apportioned.

A tract of property with a drainage lien that is subdivided by platting is not complete and the plat may not be recorded until the drainage liens against the tracts are apportioned and the apportionment is filed with the county recorder of the county where the tract is located.

HIST: 1990 c 391 art 5 s 82

==103E.631

103E.631 Apportionment of liens.

Subdivision 1. Petition. A person who has an interest in property that has a drainage lien attached to it may petition the drainage authority to apportion the lien among specified portions of the tract if the payments of principal and interest on the property are not in default.

Subd. 2. Notice. When the petition is filed, the drainage authority shall, by order, set a time and location for a hearing on the petition. The drainage authority shall give notice of the hearing by personal service to the auditor, the occupants of the tract, and all parties having an interest in the tract as shown by the records in the county recorder's office. The service must be made at least ten days before the hearing. If personal service cannot be made to all interested persons, notice may be given by publication. The petitioner shall pay the costs for service or publication.

Subd. 3. Hearing. The drainage authority shall hear all related evidence and, by order, apportion the lien. A certified copy of the order must be recorded in the county recorder's office and filed with the auditor.

HIST: 1990 c 391 art 5 s 83

==103E.635

103E.635 Drainage bond issues.

Subdivision 1. Authority. After the contract for the construction of a drainage project is awarded, the board of an affected county may issue the bonds of the county in an amount necessary to pay the cost of establishing and constructing the drainage project.

Subd. 2. Single issue for two or more drainage systems. The board may include two or more drainage systems in a single drainage bond issue. The total amount of the drainage bond issue may not exceed the total cost, including expenses, to be assessed to pay for the drainage systems. The total cost to be assessed must be determined or estimated by the board when the drainage bonds are issued.

Subd. 3. Security and source of payment. The drainage bonds must be issued in accordance with chapter 475 and must pledge the full faith, credit, and resources of the county for the prompt payment of the principal and interest of the drainage bonds. The drainage bonds are primarily payable from the funds of the drainage systems financed by the bonds or from the common drainage bond redemption fund of the county. The common drainage bond redemption fund may be created by resolution of the county board as a debt redemption fund for the payment of drainage bonds issued under this chapter.

Subd. 4. Payment period and interest on drainage bonds.

(a) The board shall determine, by resolution:

- (1) the time of payment for the drainage bonds, not to exceed 23 years from their date of issue;
- (2) the rates of interest for the drainage bonds, with the net average rate of interest over the term of the bonds not to exceed the rate established under section 475.55; and
- (3) whether the drainage bonds are payable annually or semiannually.

(b) The board shall determine the years and amounts of principal maturities that are necessary by the anticipated collections of the drainage systems assessments, without regard to any limitations on the maturities imposed by section 475.54.

Subd. 5. Temporary drainage bonds maturing in two years or less. The board may issue and sell temporary drainage bonds under this subdivision maturing not more than two years after their date of issue, instead of bonds as provided under subdivision 4. The county shall issue and sell definitive drainage bonds before the maturity of bonds issued under this subdivision and use the proceeds to pay for the temporary drainage bonds and interest to the extent that the temporary bonds are not paid for by assessments collected or other available funds. The holders of temporary drainage bonds and the taxpayers of the county have and may enforce by mandamus or other appropriate proceedings:

- (1) all rights respecting the levy and collection of assessments sufficient to pay the cost of drainage proceedings and construction financed by the temporary drainage bonds that are granted by law to holders of other drainage bonds, except the right to require levies to be collected before the temporary drainage bonds mature; and
- (2) the right to require the offering of definitive drainage bonds for sale, or to require the issuance of definitive drainage bonds in exchange for the temporary drainage bonds, on a par for par basis, bearing interest at the rate established under section 475.55 if the definitive drainage bonds have not been sold and delivered before the maturity of the temporary drainage bonds.

Subd. 6. Definitive drainage bonds. The definitive drainage bonds issued in exchange for an issue of temporary drainage bonds must be numbered and mature serially at times and in amounts to allow the principal and interest to be paid when due by the collection of assessments levied for the drainage systems financed by the temporary bond issue. The definitive bonds are subject to redemption and prepayment on any interest payment date when the county notifies the definitive bondholders who have

registered their names and addresses with the county treasurer. The bondholders must be notified by mail 30 days before the interest payment date. The definitive bonds must be delivered in order of their serial numbers, lowest numbers first, to the holders of the temporary drainage bonds in order of the serial numbers of the bonds held by them.

Subd. 7. Sale of definitive drainage bonds. The board must sell and negotiate the definitive drainage bonds for at least their par value. The definitive bonds must be sold in accordance with section 475.60.

Subd. 8. County investment, purchase, and selling of temporary drainage bonds.

(a) Funds of the issuing county may be invested in temporary drainage bonds under section 118A.04, except that the temporary drainage bonds may be:

- (1) purchased by the county when the temporary drainage bonds are initially issued;
- (2) purchased only out of funds that the board determines will not be required for other purposes before the temporary drainage bonds mature; and
- (3) resold before the temporary drainage bonds mature only if there is an unforeseen emergency.

(b) If a temporary drainage bond purchase is made from money held in a sinking fund for other bonds of the county, the holders of the other bonds may enforce the county's obligation to sell definitive bonds at or before the maturity of the temporary drainage bonds, or exchange the other bonds, in the same manner as holders of the temporary drainage bonds.

Subd. 9. Delivery of bonds as drainage work proceeds. The board may provide in the contract for the sale of drainage bonds, temporary drainage bonds, and definitive drainage bonds, that the bonds are delivered as the drainage work proceeds and the money is needed, and that interest is paid only from the date of delivery.

Subd. 10. Bond recital. Each drainage bond, temporary drainage bond, and definitive drainage bond must contain a recital that it is issued by authority of and in strict accordance with this chapter. The recital is conclusive in favor of the holders of the bonds as against the county, that the drainage project has been properly established, that property within the county is subject to assessment for benefits in an amount not less than the amount of the bonds, and that all proceedings and construction relative to the drainage systems financed by the bonds have been or will be made according to law.

Subd. 11. How bonds may be paid. The board may pay drainage bonds, temporary drainage bonds, and definitive drainage bonds issued under this chapter from any available funds in the county treasury if the money in the common drainage bond redemption fund or in the drainage fund for the issued bonds is insufficient. The county treasury funds that money is transferred from must be reimbursed, with interest at a rate of seven percent per year for the time the money is actually needed, from assessments on the drainage systems or from the sale of drainage funding bonds.

HIST: 1990 c 391 art 5 s 84; 1996 c 399 art 2 s 1

==103E.641

103E.641 Drainage funding bonds.

Subdivision 1. Authority. The board may issue drainage funding bonds under the conditions and terms in this section.

Subd. 2. Conditions for issuance. Drainage funding bonds may be issued if:

- (1) money in a drainage system account or in the common drainage bond redemption fund will not be sufficient to pay the principal and interest of the drainage bonds payable from the funds and becoming due within one year afterwards; or
- (2) the county has paid any of the principal or interest on any of its drainage bonds from county funds other than the fund from which the bonds are payable, or by the issuance of county warrants issued and outstanding.

Subd. 3. Auditor's certificate.

(a) Before drainage funding bonds are authorized or issued under this section, the county auditor shall first sign and seal a certificate and present the certificate to the board. The board shall enter the certificate in its records. The certificate must state in detail, for each of the several drainage systems:

- (1) the amount that will be required to pay an existing shortage under subdivision 2; and
- (2) the probable amount that will be required to pay the principal and interest of the county's outstanding drainage bonds that become due within one year afterwards.

(b) The certificate is conclusive evidence that the county has authority to issue bonds under the provisions of this section in an amount that does not exceed the aggregate amount specified in the auditor's certificate.

Subd. 4. Issuance of bonds. When the auditor's certificate is entered in the board's records, the board may issue and sell, from time to time, county drainage funding bonds for the same drainage purposes as the funds listed in the certificate were used. The bonds must be designated drainage funding bonds. The board shall authorize issuance of the drainage funding bonds by

resolution. The drainage funding bonds must be sold, issued, bear interest, and obligate the county as provided in section 103E.635 for drainage bonds. The drainage funding bonds must mature serially in annual installments that are payable within 15 years.

Subd. 5. Application of bond proceeds. The proceeds of drainage funding bonds that are paid into the treasury must be applied to the purpose for which they are issued.

Subd. 6. County bond obligation. Drainage funding bonds are general obligations of the county but are not included in determining the county's net indebtedness under any law.

HIST: 1990 c 391 art 5 s 85

==103E.645

103E.645 Allowance and payment of fees and expenses.

Subdivision 1. Fees and expenses. The fees and expenses in this section are allowed and must be paid for services provided under this chapter.

Subd. 2. Engineer, engineer's assistants, and other employees. The compensation of the engineer, the engineer's assistants, and other employees is on a per diem basis and must be set by order of the drainage authority. The order setting compensation must provide for payment of the actual and necessary expenses of the engineer, the engineer's assistants, and other employees, including the cost of the engineer's bond.

Subd. 3. Viewers. Each viewer may be paid for every necessary day the viewer is engaged on a per diem basis and for the viewer's actual and necessary expenses. The compensation must be set by the drainage authority.

Subd. 4. Board members. Each member of the board may be paid a per diem under section 375.055, subdivision 1, and actual and necessary expenses incurred while actually employed in drainage proceedings or construction, or in the inspection of any drainage system if the board member is appointed to a committee for that purpose.

Subd. 5. Auditor, attorney for the petitioners, and other county officials. The county auditor and the attorney for the petitioners must each be paid reasonable compensation for services actually provided as determined by the drainage authority. The fees and compensation of all county officials in drainage proceedings and construction are in addition to other fees and compensation allowed by law.

Subd. 6. Petitioners' bond. The cost of the petitioners' bond must be allowed and paid.

Subd. 7. Payment. The fees and expenses provided for in this chapter for a drainage project or system in one county must be audited, allowed, and paid by order of the board or for a drainage project or system in more than one county must be audited, allowed, and paid by order of the drainage authority after ten days' written notice to each affected county. The notice must be given by the auditor to the auditors of affected counties. The notice must state the time and location of the hearing and that all bills on file with the auditor at the date of the notice must be presented for hearing and allowance.

HIST: 1990 c 391 art 5 s 86

==103E.651

103E.651 Drainage system account.

Subdivision 1. Funds for drainage system costs. The board shall provide funds to pay the costs of drainage projects and systems.

Subd. 2. Drainage system account. The auditor shall keep a separate account for each drainage system. The account must be credited with all money from the sale of bonds and bond premiums and all money received from interest, liens, assessments, and other sources for the drainage system. The account must be debited with every item of expense made for the drainage system.

Subd. 3. Investment of surplus funds. If a drainage system account or the common drainage bond redemption fund has a surplus over the amount required for payment of obligations presently due and payable from the account or fund, the board may invest any part of the surplus in bonds or certificates of indebtedness of the United States or of the state.

Subd. 4. Dormant drainage system account transferred to general revenue fund. If a surplus has existed in a drainage system account for a period of 20 years or more and there have not been any expenditures from the account during the period, the board, by a unanimous resolution, may transfer the surplus remaining in the drainage system account to the general revenue fund of the county.

HIST: 1990 c 391 art 5 s 87

==103E.655

103E.655 Payment of drainage system costs.

Subdivision 1. Payment made from drainage system account. The costs for a drainage project proceeding and construction must be paid from the drainage system account by drawing on the account.

Subd. 2. Insufficient funds; transfer from other accounts. If money is not available in the drainage system account on which the warrant is drawn, the board may, by unanimous resolution, transfer funds from any other drainage system account under its jurisdiction or from the county general revenue fund to the drainage system account. If the board transfers money from another account or fund to a drainage system account, the money plus interest must be reimbursed from the proceeds of the drainage system that received the transfer. The interest must be computed for the time the money is actually needed at the same rate per year charged on drainage liens and assessments.

Subd. 3. Warrant on account with insufficient funds; interest on warrant. If a warrant is issued by the auditor under this chapter and there is not enough money in the drainage system account to pay the warrant when it is presented, the county treasurer shall endorse the warrant "Not paid for want of funds" with the date and treasurer's signature. Interest on the warrant must be at the rate of six percent per year and paid annually from available funds until the warrant is called in and paid by the treasurer. Interest may not be paid on a warrant after money is available to the treasurer to pay the warrants. The warrant is a general obligation of the county issuing the warrant.

HIST: 1990 c 391 art 5 s 88

==103E.661

103E.661 Examination and establishment of drainage system accounts by state auditor.

Subdivision 1. State auditor must examine accounts upon application. A county may apply, by resolution, to the state auditor to examine the accounts and records of any or all drainage systems in the county.

Subd. 2. Establishment of accounts. The auditor must establish a system of accounts for each drainage system applied for in the county.

Subd. 3. Payment of expenses. The compensation and travel and hotel expenses of the examining accountant must be audited, allowed, and paid into the state treasury by the board. The money must be credited to the general fund. The county auditor shall apportion the expenses among the drainage systems in the county.

HIST: 1990 c 391 art 5 s 89

==103E.701

103E.701 Repairs.

Subdivision 1. Definition. The term "repair," as used in this section, means to restore all or a part of a drainage system as nearly as practicable to the same condition as originally constructed and subsequently improved, including resloping of ditches and leveling of waste banks if necessary to prevent further deterioration, realignment to original construction if necessary to restore the effectiveness of the drainage system, and routine operations that may be required to remove obstructions and maintain the efficiency of the drainage system. "Repair" also includes:

- (1) incidental straightening of a tile system resulting from the tile-laying technology used to replace tiles; and
- (2) replacement of tiles with the next larger size that is readily available, if the original size is not readily available.

Subd. 2. Repairs affecting public waters. Before a repair is ordered, the drainage authority must notify the commissioner if the repair may affect public waters. If the commissioner disagrees with the repair depth, the engineer, a representative appointed by the director, and a soil and water conservation district technician must jointly determine the repair depth using soil borings, field

surveys, and other available data or appropriate methods. Costs for determining the repair depth beyond the initial meeting must be shared equally by the drainage system and the commissioner. The determined repair depth must be recommended to the drainage authority. The drainage authority may accept the joint recommendation and proceed with the repair.

Subd. 3. Repair of town ditches. The town board has the power of a drainage authority to repair a town drainage system located within the town.

Subd. 4. Bridges and culverts.

- (a) Highway bridges and culverts constructed on a drainage system established on or after March 25, 1947, must be maintained by the road authority charged with the duty of maintenance under section 103E.525.
- (b) Private bridges or culverts constructed as a part of a drainage system established by proceedings that began on or after March 25, 1947, must be maintained by the drainage authority as part of the drainage system. Private bridges or culverts constructed as a part of a drainage system established by proceedings that began before March 25, 1947, may be maintained, repaired, or rebuilt and any portion paid for as part of the drainage system by the drainage authority.
- (c) For a repair of a drainage system that has had redetermination of benefits under section 103E.351, the drainage authority may repair or rebuild existing bridges or culverts on town and home rule charter and statutory city roads constructed as part of the drainage system and any portion of the cost may be paid by the drainage system.

Subd. 5. Construction of road instead of bridge or culvert. In a repair proceeding under sections 103E.701 to 103E.745, if the drainage authority finds that constructing a private road is more cost-effective or practical than constructing a bridge or culvert, a drainage authority may order a private road to be constructed under section 103E.526, instead of a bridge or culvert.

Subd. 6. Wetland restoration and mitigation. Repair of a drainage system may include the preservation, restoration, or enhancement of wetlands; wetland replacement under section 103G.222; and the realignment of a drainage system to prevent drainage of a wetland.

HIST: 1990 c 391 art 5 s 90; 1991 c 354 art 10 s 2; 1993 c 175 s 1; 1996 c 462 s 4

==103E.705

103E.705 Repair procedure.

Subdivision 1. Inspection. After the construction of a drainage system has been completed, the drainage authority shall maintain the drainage system that is located in its jurisdiction including grass strips under section 103E.021 and provide the repairs necessary to make the drainage system efficient. The drainage authority shall have the drainage system inspected on a regular basis by an inspection committee of the drainage authority or a drainage inspector appointed by the drainage authority.

Subd. 2. Grass strip inspection and compliance notice.

- (a) The drainage authority having jurisdiction over a drainage system must inspect the drainage system for violations of section 103E.021. If an inspection committee of the drainage authority or a drainage inspector determines that permanent grass strips are not being maintained in compliance with section 103E.021, a compliance notice must be sent to the property owner.
- (b) The notice must state:
 - (1) the date the ditch was inspected;
 - (2) the persons making the inspection;
 - (3) that spoil banks are to be spread in a manner consistent with the plan and function of the drainage system and the drainage system has acquired a grass strip 16-1/2 feet in width or to the crown of the spoil bank, whichever is greater;
 - (4) the violations of section 103E.021;
 - (5) the measures that must be taken by the property owner to comply with section 103E.021 and the date when the property must be in compliance; and
 - (6) that if the property owner does not comply by the date specified, the drainage authority will perform the work necessary to bring the area into compliance with section 103E.021 and charge the cost of the work to the property owner.
- (c) If a property owner does not bring an area into compliance with section 103E.021 as provided in the compliance notice, the inspection committee or drainage inspector must notify the drainage authority.
- (d) This subdivision applies to property acquired under section 103E.021.

Subd. 3. Drainage inspection report. For each drainage system that the board designates and requires the drainage inspector to examine, the drainage inspector shall make a drainage inspection report in writing to the board after examining a drainage system, designating portions that need repair or maintenance of grass strips and the location and nature of the repair or maintenance. The board shall consider the drainage inspection report at its next meeting and may repair all or any part of the drainage system as provided under this chapter. The grass strips must be maintained in compliance with section 103E.021.

Subd. 4. Inspection report to drainage authority. If the inspection committee or drainage inspector reports, in writing, to the drainage authority that maintenance of grass strips or repairs are necessary on a drainage system and the report is approved by the drainage authority, the maintenance or repairs must be made under this section.

Subd. 5. Repairs less than \$50,000. If the drainage authority finds that the estimated cost of repairs and maintenance of one drainage system for one year will be less than the greater of \$50,000 or \$1,000 per mile of open ditch in the ditch system, it may have the repair work done by hired labor and equipment without advertising for bids or entering into a contract for the repair work.

Subd. 6. Annual repair assessment levy limits. The drainage authority may give notice of and hold a hearing on the repair levy before ordering the levy of an assessment for repairs. In one calendar year the drainage authority may not levy an assessment for repairs or maintenance on one drainage system for more than 20 percent of the benefits of the drainage system, \$1,000 per mile of open ditch in the ditch system, or \$50,000, whichever is greater, except for a repair made after a disaster as provided under subdivision 7 or under the petition procedure.

Subd. 7. Repair and construction after disaster. The drainage authority may repair and reconstruct the drainage system without advertising for bids and without regard to the \$1,000 per mile of open ditch or \$50,000 limitation if:

- (1) a drainage system is destroyed or impaired by floods, natural disaster, or unforeseen circumstances;
- (2) the area where the drainage system is located has been declared a disaster area by the President of the United States and federal funds are available for repair or reconstruction; and
- (3) the public interests would be damaged by repair or reconstruction being delayed.

HIST: 1990 c 391 art 5 s 91

==103E.711

103E.711 Cost apportionment for joint county drainage systems.

Subdivision 1. Repair cost statement. For a joint county drainage system the auditor of a county that has made repairs may present a repair cost statement at the end of each year, or other convenient period after completion, to each affected county. The repair cost statement must show the nature and cost of the repairs to the drainage system and must be based on the original apportionment of cost following the establishment of the drainage system. If a board approves the repair costs, the amount of the statement must be paid to the county submitting the statement.

Subd. 2. Repair cost statement not paid.

(a) If a county does not pay the amount of the repair cost statement, the board of an affected county may petition the joint county drainage authority. The petition must:

- (1) show the nature and necessity of the repairs made to the drainage system in the county during the period;
- (2) show the cost of the repairs; and
- (3) request the drainage authority to apportion the costs, by order, among the affected counties.

(b) When the petition is filed, the drainage authority shall, by order, set a time and location for a hearing to apportion the costs, and direct the auditor to give notice of the hearing to each affected county by publication and notice by mail to its auditor. At or before the hearing, the auditor of each affected county, except the petitioner, shall file with the drainage authority a statement showing:

- (1) all repairs made to the drainage system in that county, not previously reimbursed;
- (2) the nature and necessity of the repairs; and
- (3) the cost of the repairs.

(c) The drainage authority has jurisdiction over the affected counties and shall hear all interested parties. The drainage authority shall determine which repairs were necessary and reasonable and proper costs. For the allowed repairs the drainage authority shall balance the accounts among the affected counties, by charging each county with its proportionate share of the cost of all repairs made and crediting each county with the amount paid for the repairs. The drainage authority shall order a just reimbursement among the affected counties. A certified copy of the order must be filed by the auditor with the auditors of affected counties, and the boards shall make the required reimbursement.

HIST: 1990 c 391 art 5 s 92

==103E.715

103E.715 Procedure for repair by petition.

Subdivision 1. Repair petition. An individual or an entity interested in or affected by a drainage system may file a petition to repair the drainage system. The petition must state that the drainage system needs repair. The auditor shall present the petition to the board at its next meeting or, for a joint county drainage system, to the drainage authority within ten days after the petition is filed.

Subd. 2. Engineer's repair report. If the drainage authority determines that the drainage system needs repair, the drainage authority shall appoint an engineer to examine the drainage system and make a repair report. The report must show the necessary repairs, the estimated cost of the repairs, and all details, plans, and specifications necessary to prepare and award a contract for the repairs. The drainage authority may give notice and order a hearing on the petition before appointing the engineer.

Subd. 3. Notice of hearing. When the repair report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall set a time, by order, not more than 30 days after the date of the order for a hearing on the repair report. At least ten days before the hearing, the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the repair in the repair report.

Subd. 4. Hearing on repair report.

(a) The drainage authority shall make findings and order the repair to be made if:

- (1) the drainage authority determines from the repair report and the evidence presented that the repairs recommended are necessary for the best interests of the affected property owners; or
- (2) the repair petition is signed by the owners of at least 26 percent of the property area affected by and assessed for the original construction of the drainage system, and the drainage authority determines that the drainage system is in need of repair so that it no longer serves its original purpose and the cost of the repair will not exceed the total benefits determined in the original drainage system proceeding.

(b) The order must direct the auditor and the chair of the board or, for a joint county drainage system, the auditors of the affected counties to proceed and prepare and award a contract for the repair of the drainage system. The contract must be for the repair described in the repair report and as determined necessary by the drainage authority, and be prepared in the manner provided in this chapter for the original drainage system construction.

Subd. 5. Apportionment of repair cost for joint county drainage system. For the repair of a joint county drainage system, the drainage authority shall, by order, apportion the repair cost among affected counties in the same manner required in the original construction of the drainage system.

Subd. 6. Repair by resloping ditches, leveling waste banks, installing erosion control, and removing trees.

(a) For a drainage system that is to be repaired by resloping ditches, leveling waste banks, installing erosion control measures, or removing trees, before ordering the repair, the drainage authority must appoint viewers to assess and report on damages and benefits if it determines that:

- (1) the resloping, leveling, installing erosion control measures, or tree removal will require the taking of any property not contemplated and included in the original proceeding for the establishment of the drainage system;
- (2) any waste bank leveling will directly benefit property where the bank leveling is specified; and
- (3) the installation of erosion control measures will aid the long-term efficiency of the drainage system.

(b) The viewers shall assess and report damages and benefits as provided by sections 103E.315 and 103E.321. The drainage authority shall hear and determine the damages and benefits as provided in sections 103E.325, 103E.335, and 103E.341. The hearing shall be held within 30 days after the property owners' report is mailed. Damages must be paid as provided by section 103E.315 as a part of the cost of the repair, and benefits must be added to the benefits previously determined as the basis for the pro rata assessment for the repair of the drainage system for the repair proceeding only.

HIST: 1990 c 391 art 5 s 93

==103E.721

103E.721 Replacement and hydraulic capacity of bridges and culverts.

Subdivision 1. Report on hydraulic capacity. If the engineer determines in a drainage system repair proceeding that because of added property under section 103E.741 or otherwise, a bridge constructed or replaced or culvert installed or replaced as a part of a drainage system provides inadequate hydraulic capacity for the efficient operation of the drainage system to serve its original purpose, the engineer shall make a hydraulic capacity report to the drainage authority. The hydraulic capacity report must include plans and specifications for the recommended replacement of bridges and culverts, the necessary details to make and award a contract, and the estimated cost.

Subd. 2. Notice. When the hydraulic capacity report is filed, the auditor shall promptly notify the drainage authority. The drainage authority in consultation with the auditor shall, by order, set a time not more than 30 days after the date of the order, for

a hearing on the report. At least ten days before the hearing, the auditor shall give notice by mail of the time and location of the hearing to the petitioners, owners of property, and political subdivisions likely to be affected by the repair proposed in the repair report. The notice may be given in conjunction with and as a part of the repair report notice, but the notice must specifically state that increasing the hydraulic capacity will be considered by the drainage authority at the hearing.

Subd. 3. Report hearing. At the hearing on the hydraulic capacity report, the drainage authority shall hear all interested parties. If the drainage authority finds that existing bridges and culverts provide insufficient hydraulic capacity for the efficient operation of the drainage system as originally constructed or subsequently improved, the drainage authority shall make findings accordingly, and may order that the hydraulic capacity be increased by constructing bridges or installing culverts of a sufficient capacity. The drainage authority shall determine and include in the order the type and plans for the replacement bridges or culverts. The order must direct the state, political subdivision, railroad company, or other entity to construct bridges or culverts required by the order for its road or right-of-way within a reasonable time stated in the order. The auditor shall notify the state, political subdivision, railroad company, or other entity to construct the bridges and culverts in accordance with the order.

Subd. 4. Construction not completed within specified time. If the work is not done within the time specified, the drainage authority may order the bridges and culverts built and the cost collected as an assessment for benefits.

Subd. 5. Request for culvert or bridge to be installed as part of repair. If a political subdivision, railroad company, or other entity, at the hearing or when notified to construct a bridge or install a culvert, requests that the bridge or culvert be installed as part of the repair of the drainage system, the drainage authority may, by order, direct the cost of the construction and installation be assessed and collected from the political subdivision, railroad company, or other entity in the manner provided by section 103E.731.

HIST: 1990 c 391 art 5 s 94

==103E.725

103E.725 Cost of repair.

All fees and costs incurred for proceedings relating to the repair of a drainage system, including inspections, engineering, viewing, and publications, are costs of the repair and must be assessed against the property and entities benefited.

HIST: 1990 c 391 art 5 s 95

==103E.728

103E.728 Apportionment of repair costs.

Subdivision 1. Generally. The cost of repairing a drainage system shall be apportioned pro rata on all property and entities that have been assessed benefits for the drainage system except as provided in this section.

Subd. 2. Additional assessment for agricultural practices on grass strip.

(a) The drainage authority may, after notice and hearing, charge an additional assessment on property that has agricultural practices on or otherwise violates provisions related to the permanent grass strip acquired under section 103E.021.

(b) The drainage authority may determine the cost of the repair per mile of open ditch on the ditch system. Property that is in violation of the grass requirement shall be assessed a cost of 20 percent of the repair cost per open ditch mile multiplied by the length of open ditch in miles on the property in violation.

(c) After the amount of the additional assessment is determined and applied to the repair cost, the balance of the repair cost may be apportioned pro rata as provided in subdivision 1.

Subd. 3. Soil loss violations. The drainage authority after notice and hearing may make special assessments on property that is in violation of a county soil loss ordinance.

HIST: 1990 c 391 art 5 s 96

==103E.731

103E.731 Assessment; bonds.

Subdivision 1. Repair cost of assessments. If there is not enough money in the drainage system account to make a repair, the board shall assess the costs of the repairs on all property and entities that have been assessed benefits for the drainage system.

Subd. 2. Number of installments. The assessments may be paid in annual installments specified in the assessment order. If the assessments are not more than 50 percent of the original cost of the drainage system, the installments may not exceed ten. If the assessments are greater than 50 percent of the original cost of the drainage system, the board may order the assessments to be paid in 15 or less installments.

Subd. 3. Interest on assessments. If the order provides for payment in installments, interest on unpaid assessments from the date of the order for assessments must be set by the board in the order. The interest rate may not exceed seven percent per year and must be collected with each installment.

Subd. 4. Collection of assessments. If the assessment is not payable in installments, a lien does not need to be filed, and the assessment, plus interest from the date of the order to August 15 of the next calendar year, must be entered on the tax lists for the year. The assessment and interest are due and payable with and as a part of the real estate taxes for the year. If an assessment is levied and payable in installments, the auditor shall file for the record in the county recorder's office an additional tabular statement in substance as provided in section 103E.601, and all the provisions of sections 103E.605, 103E.611, and 103E.615 relating to collection and payment must apply to the assessment. Upon the filing of the tabular statement, the installment and interest are due and payable and must be entered on the tax lists and collected in the same manner as the original lien.

Subd. 5. Conditions to sell bonds for repair. If a contract for drainage system repair has been entered into under this chapter or the repair has been ordered to be constructed by hired labor and equipment, and the board has ordered the assessments to be paid in installments, the board may issue and sell bonds, as provided by section 103E.635.

Subd. 6. Repair of state drainage system when no benefits were assessed. For the repair of a drainage system established by the state where benefits were not assessed to the property, the drainage authority shall proceed to appoint viewers to determine the benefits resulting from the repair and collect assessments for the repair as provided in this chapter.

HIST: 1990 c 391 art 5 s 97

==103E.735

103E.735 Drainage system repair fund.

Subdivision 1. Authority and limits of fund. To create a repair fund for a drainage system to be used only for repairs, the drainage authority may apportion and assess an amount against all property and entities assessed for benefits in proceedings for establishment of the drainage system, including property not originally assessed and subsequently found to be benefited according to law. The fund may not exceed 20 percent of the assessed benefits of the drainage system or \$40,000, whichever is greater. If the account in a fund for a drainage system exceeds the larger of 20 percent of the assessed benefits of the drainage system or \$40,000, assessments for the fund may not be made until the account is less than the larger of 20 percent of the assessed benefits or \$40,000. Assessments must be made pro rata according to the determined benefits. Assessments may be made payable, by order, in equal annual installments. The auditor shall file a tabular statement as provided in section 103E.731, subdivision 4, with the county recorder. Assessments must be collected as provided in section 103E.731.

Subd. 2. Transfer of drainage system. If a drainage system within the county has been taken over by a watershed district, or if responsibility for repair and maintenance of the drainage system has been assumed by any other governing body, the board may transfer any remaining surplus of the drainage system repair fund to the repair fund of the watershed district or to the appropriate fund of any existing governing body having responsibility for repair and maintenance of the drainage system.

HIST: 1990 c 391 art 5 s 98

==103E.741

103E.741 Inclusion of property that has not been assessed benefits.

Subdivision 1. Consideration by engineer. In a proceeding to repair a drainage system, if the engineer determines or is made aware that property that was not assessed for benefits for construction of the drainage system has been drained into the drainage system or has otherwise benefited from the drainage system, the engineer shall submit a map with the repair report. The map must show all public and private main ditches and drains that drain into the drainage system, all property affected or otherwise benefited by the drainage system, and the names of the property owners to the extent practicable. The property owners must be notified of the hearing on the repair report at least ten days before the hearing. The auditor must give notice of the time and location of the hearing by mail.

Subd. 2. Appointment of viewers. At the hearing on the repair report, if the drainage authority determines that property not assessed for benefits for the construction of the drainage system has been benefited by the drainage system, the drainage authority shall appoint viewers as provided by section 103E.305 before the repair contract is awarded. The viewers shall determine the benefits to all property and entities benefited by the original construction of the drainage system and not assessed for benefits arising from its construction. The viewers shall make a viewers' repair report to the drainage authority as provided by section 103E.315. When the viewers' repair report is filed, the auditor shall give notice of a hearing as required by section 103E.325 and the drainage authority has jurisdiction of each tract of property described in the viewers' report as provided in section 103E.331.

Subd. 3. Viewers' repair report hearing. At the hearing on the viewers' repair report, the drainage authority shall hear all interested parties and determine the benefits to property and entities benefited by the original construction of the drainage system and not assessed for benefits.

Subd. 4. Appeal of assessment order. A person may appeal from the order determining the assessments as provided by section 103E.091.

Subd. 5. Property benefited in hearing order included in future proceedings. For the repair of the drainage system under this section that included the property that was not assessed and in all future proceedings relating to repairing, cleaning, improving, or altering the drainage system, the property benefited in the viewers' report hearing is part of the property benefited by the drainage system and must be assessed, in the same manner provided for the assessment of the property originally assessed for and included in the drainage system.

HIST: 1990 c 391 art 5 s 99

==103E.745

103E.745 Cost of repair exceeding benefits in Anoka county.

If the cost of the repair of a drainage system exceeds the benefits determined in the original proceedings for the establishment of the drainage system, the requirements of section 103E.215 for improvements of drainage systems apply if:

- (1) the repair will result in the drainage of 100 or more acres of public waters in Anoka county;
- (2) the public waters have existed for 15 or more years;
- (3) the drainage system has not been substantially repaired for more than 25 years; and
- (4) the physical repair was not started before July 1, 1980.

HIST: 1990 c 391 art 5 s 100

==103E.801

103E.801 Consolidation or division of drainage systems.

Subdivision 1. Authority to consolidate or divide. After the benefited area of a drainage system has been redetermined by the drainage authority under section 103E.351 or in connection with drainage proceedings, the drainage authority may divide one system into two or more separate systems, consolidate two or more systems, transfer part of one system to another, or attach a part of a system that has been abandoned as provided in section 103E.805 or 103E.811 to another system to provide for the efficient administration of the system consistent with the redetermination of the benefited area.

Subd. 2. Initiation of action. The consolidation or division may be initiated by the drainage authority on its own motion or by any party interested in or affected by the drainage system filing a petition. If the system is under the jurisdiction of a drainage authority, the petition must be filed with the auditor. If the system is under the jurisdiction of a watershed board, the petition must be filed with the secretary of the board.

Subd. 3. Hearing.

(a) When a drainage authority or watershed board directs by resolution or a petition is filed, the drainage authority in consultation with the auditor or secretary shall set a time and location for a hearing. The auditor or secretary shall give notice by publication to all persons interested in the drainage system. The drainage authority may consolidate or divide drainage systems, by order, if it determines that the division of one system into two or more separate systems, the consolidation of two or more systems, the transfer of part of one system to another, or the attachment of a previously abandoned part of a system to another system:

- (1) is consistent with the redetermination of the benefited areas of the drainage system;
- (2) would provide for the efficient administration of the drainage system; and
- (3) would be fair and equitable.

(b) An order to consolidate or divide drainage systems does not release property from a drainage lien or assessment filed for costs incurred on account of a drainage system before the date of the order.

HIST: 1990 c 391 art 5 s 101

==103E.805

103E.805 Removal of property from and partial abandonment of a drainage system.

Subdivision 1. Petition. After the construction of a drainage system, the owner of benefited property may petition the drainage authority to remove property from the drainage system or abandon any part of the drainage system that is not of public benefit and utility and does not serve a substantial useful purpose to property remaining in the system if:

- (1) waters are diverted from property assessed for benefits so that the drainage from the property does not use or affect the drainage system; or
- (2) a dam authorized by law is constructed in the drainage system so that the property above the dam cannot use or receive benefits from the drainage system.

Subd. 2. Filing. If the drainage system is under the jurisdiction of a drainage authority, the petition must be filed with the auditor. If the system is under the jurisdiction of a watershed district, the petition must be filed with the secretary of the district.

Subd. 3. Hearing.

(a) When the petition is filed, the drainage authority in consultation with the auditor or the secretary shall set a time and location for a hearing on the partial abandonment petition and shall give notice by publication of the hearing to all persons interested in the drainage system.

(b) At the hearing, the drainage authority shall make findings and shall direct, by order, that the petitioners' property be removed from the drainage system if the drainage authority determines:

- (1) that the waters from the petitioners' property have been diverted from the drainage system, or that a dam has been lawfully constructed and the property cannot use the drainage system;
- (2) that the property is not benefited by the drainage system and does not use or affect the drainage system; and
- (3) that removing the property from the drainage system will not prejudice the property owners and property remaining in the system.

(c) The drainage authority shall make findings and direct, by order, that part of the drainage system be abandoned if the drainage authority determines that part of the drainage system does not serve a substantial useful purpose to any property remaining in the system and is not of a substantial public benefit and utility.

Subd. 4. Effect of removing property from drainage system. The property that has been removed from the drainage system is not affected by the drainage system at any later proceeding for the repair or improvement of the drainage system and a drainage lien or assessment for repairs or improvements may not be made against the property that has been removed on or after the date of the order.

Subd. 5. Liens and assessments on property removed or abandoned. An order under this section does not release the property from a drainage lien filed on account of the drainage system before the date of the order. An order under this section does not release the property from any assessment or a drainage lien filed on or after the date of the order for costs incurred on account of the drainage system before the date of the order.

HIST: 1990 c 391 art 5 s 102

==103E.811

103E.811 Abandonment of drainage system.

Subdivision 1. Drainage lien payment period must expire. After the period originally fixed or subsequently extended to pay the assessment of the drainage liens expires, a drainage system may be abandoned as provided in this section.

Subd. 2. Petitioners. A petition must be signed by at least 51 percent of the property owners assessed for the construction of the drainage system or by the owners of not less than 51 percent of the area of the property assessed for the drainage system. For the purpose of the petition, the county is the resident owner of all tax-forfeited property held by the state and assessed benefits for the drainage system, and the board may execute the petition for the county as an owner.

Subd. 3. Petition. The petition must designate the drainage system proposed to be abandoned and show that the drainage system is not of public benefit and utility because the agricultural property that used the drainage system has been generally abandoned or because the drainage system has ceased to function and its restoration is not practical.

Subd. 4. Filing petition; jurisdiction. If all property assessed for benefits in the drainage system is in one county, the petition must be filed with the auditor unless the petition is signed by the board, in which case the petition must be made to the district court of the county and filed with the court administrator. If property assessed for benefits is in two or more counties, the petition must be filed with the auditor. When the petition is filed, the drainage authority in consultation with the auditor, or the court administrator with the approval of the court, shall set a time and location for a hearing on the petition. The auditor or court administrator shall give notice by publication of the time and location of the abandonment hearing to all persons interested. The drainage authority or the district court where the petition is properly filed has jurisdiction of the petition.

Subd. 5. Abandonment hearing.

(a) At the hearing, the drainage authority or court shall examine the petition and determine whether it is sufficient and shall hear all interested parties.

(b) If a property owner assessed benefits for the drainage system appears and makes a written objection to the abandonment of the drainage system, the drainage authority or court shall appoint three disinterested persons as viewers to examine the property and report to the drainage authority or court. The hearing must be adjourned to make the examination and report and a date must be set to reconvene. The viewers, if appointed, shall proceed to examine the property of the objecting owner and report as soon as possible to the drainage authority or court with the description and situation of the property and whether the drainage system drains or otherwise affects the property.

(c) When the hearing is reconvened, the drainage authority or court shall consider the viewers' report and all evidence offered, and:

(1) if the drainage authority determines that the drainage system serves any useful purpose to any property or the general public, the petition for abandonment must be denied; or

(2) if the drainage authority determines that the drainage system does not serve any useful purpose to any affected property and is not of public benefit and utility, the drainage authority or court shall make findings and shall, by order, abandon the drainage system.

Subd. 6. Effect of abandonment. After abandonment of a drainage system, a repair petition for the drainage system may not be accepted and the responsibility of the drainage authority for the maintenance of the drainage system ends.

HIST: 1990 c 391 art 5 s 103

==103E.812

103E.812 Transfer of all or part of drainage system.

Subdivision 1. Drainage lien payment period must expire. After the period originally fixed or subsequently extended to pay the assessment of the drainage lien expires, all or part of a drainage system may be transferred from the jurisdiction of the drainage authority to a water management authority as provided in this section.

Subd. 2. Petitioners.

(a) For drainage systems outside of the seven-county metropolitan area, and outside of the municipal boundaries of a statutory or home rule charter city, a petition must be signed by at least 51 percent of the owners of property assessed for the construction of the drainage system, or portion of the drainage system proposed to be transferred, or by the owners of not less than 51 percent of the area of the property assessed for the drainage system, or portion of the drainage system sought to be transferred. The water management authority to which the drainage system is to be transferred must join the petition.

(b) For drainage systems wholly or partially within the municipal boundaries of a statutory or home rule charter city, the city may petition for transfer if the drainage system or portion of the drainage system proposed to be transferred lies within the boundaries of the city. The water management authority to which the drainage system is to be transferred must join the petition.

(c) For drainage systems within the seven-county metropolitan area and within the jurisdictional boundaries of an existing water management authority, the water management authority may petition for transfer if the drainage system or portion of the drainage system proposed to be transferred lies within the boundaries of the water management authority.

(d) For the purpose of the petition, the county is the resident owner of all tax-forfeited property held by the state, under chapter 282, and assessed benefits for the drainage system, and the board may execute the petition for the county as an owner. This paragraph does not apply to lands acquired by the state under chapter 84A.

Subd. 3. Petition.

- (a) The petition must designate the drainage system, or portion thereof, proposed to be transferred and show that the transfer is necessary for the orderly management of storm, surface, or flood waters, including management for water quality purposes.
- (b) The petition must indicate the impact, if any, that the transfer will have on properties utilizing the drainage system for an outlet or otherwise benefiting from the existence of the drainage system.
- (c) The petition must include an engineering report, prepared by the transferee water management authority, establishing, for the record, the nature and extent of the drainage easement occupied by the drainage system, and the as-constructed, or subsequently improved, depth, grade, and hydraulic capacity of the drainage system.

Subd. 4. Filing petition; jurisdiction.

- (a) If the drainage system is administered by a county or joint county drainage authority and if all property assessed for benefits in the drainage system is in one county, the petition must be filed with the auditor unless the petition is signed by the board, in which case the petition must be made to the district court of the county where the drainage system is located and filed with the court administrator. If the board, acting as the drainage authority, is also the petitioning water management authority, the petition must be made to the district court of the county where the drainage system is located and filed with the court administrator. If property assessed for benefits is in two or more counties, the petition must be filed with the auditor or court administrator of either (1) the county where the portion of the drainage system sought to be transferred exists; (2) the county not petitioning for the transfer; or (3) the county where the majority of the drainage system sought to be transferred exists.
- (b) If the drainage system is administered by the board of managers of a watershed district, the petition must be filed with the secretary of the watershed district. If the watershed district is also the petitioning water management authority, the petition must be filed with the court administrator consistent with the criteria in paragraph (a), clauses (1) to (3).
- (c) When the petition is filed, the drainage authority in consultation with the auditor or secretary, or the court administrator with the approval of the court, shall set a time and location for a hearing on the petition. The auditor, secretary, or court administrator shall give notice by mail and publication of the time and location of the transfer hearing to all persons interested. The notice shall include a description of the property owner's right to object under subdivision 5. The drainage authority or the district court where the petition is properly filed has jurisdiction of the petition.

Subd. 5. Transfer hearing.

- (a) At the hearing, the drainage authority or court shall examine the petition and determine whether it is sufficient and shall hear all interested parties.
- (b) If a property owner assessed benefits for the drainage system appears and makes a written objection to the transfer of the drainage system, the drainage authority or court shall appoint a technical panel to examine the drainage system, the property, and the proposed transfer and report to the drainage authority or court. The hearing must be adjourned to make the examination and report and a date must be set to reconvene. The technical panel shall consist, at a minimum, of a representative of the drainage authority, a representative of the commissioner, a representative of the soil and water conservation district, a representative of the board of water and soil resources, and a viewer. The technical panel shall proceed to examine the drainage system, the property, and the property owner's objections to the proposed transfer of the system and report as soon as possible to the drainage authority or court with the merits of the objections. The technical panel shall also determine the extent to which the transfer of the drainage system will damage or take property. Nongovernment employee members of the technical panel must be compensated in the same manner as viewers under section 103E.645, subdivision 3.
- (c) The board of water and soil resources and the commissioner, if requested by the drainage authority or court, shall provide any technical assistance, including engineering, surveys, hydrologic analyses, or water quality studies as requested by the drainage authority or court.
- (d) When the hearing is reconvened, the drainage authority or court shall consider the technical panel's report and all evidence offered. If the drainage authority or court determines that storm, surface, or flood waters along the drainage system or within the benefited area of the drainage system, could be better managed by a water management authority, it shall authorize the transfer of the drainage system.

Subd. 6. Costs related to transfer and transfer proceedings. Costs, including engineering and attorney's fees, related to the proceedings to transfer a drainage system must be paid by the proposed transferee water management authority. If the drainage authority or court orders that the drainage authority should not be transferred, the drainage authority shall reimburse the water management authority from the drainage system account for the reasonable value of engineering work conducted as part of the transfer proceedings.

Subd. 7. Guarantee of outlet; no compromise of existing rights.

- (a) Any proceeding to transfer all or part of a drainage system to a water management authority must guarantee that all rights to an outlet are preserved for property assessed for benefits on the transferred drainage system of at least equal hydraulic efficiency as the rights to an outlet that existed on the date of transfer.
- (b) The transfer of a drainage system to a water management authority is not a compromise of any property right held by an owner of assessed property on the transferred drainage system.

(c) A water management authority shall compensate any owner of property assessed for benefits on the transferred drainage system for the loss or impairment of any drainage rights occurring after transfer of the drainage system.

Subd. 8. Effect of transfer.

- (a) Except as provided in this section, after transfer of a drainage system, or any part thereof, to a water management authority, the drainage system ceases to be subject to regulation under this chapter except that if only a portion of a drainage system is transferred, the water management authority may be assessed for improvements under section 103E.215 or repairs under sections 103E.701 to 103E.711 in the manner provided under sections 103E.315 and 103E.601 to 103E.615. The water management authority may manage water within its jurisdictional boundaries according to whatever law controls the function of the water management authority. The transferred drainage system shall become a work and a responsibility of the transferee water management authority. All responsibility of the drainage authority for the transferred drainage system ends.
- (b) Activities conducted in the transferred drainage system must continue to be eligible for all exemptions and exceptions available for activities conducted in public drainage systems under sections 103G.2241 and 103G.245.

Subd. 9. Effect on other law. This section does not amend, supersede, or repeal any existing law providing for the transfer of a drainage system under this chapter, chapter 103D, or other law, but is supplementary to those laws.

HIST: 2002 c 327 s 3

WATERS OF THE STATE

Repealed, Renumbered, etc. Sections within Chapter 103G

103G.001	Effect of chapter 103G on Water Law.
103G.005	Definitions.
103G.101	Water conservation program.
103G.105	Cooperation with other agencies.
103G.111	Representation of state in water issues.
103G.115	Enjoining waterflow interference outside of state.
103G.121	Commissioner's authority to investigate and construct projects.
103G.125	Director's authority.
103G.127	Permit program under section 404 of the federal Clean Water Act.
103G.131	Venue of certain actions.
103G.135	Enforcement of commissioner's orders.
103G.141	Penalties.
103G.145	Application.
103G.201	Public waters inventory.
103G.205	Effect of public waters designation.
103G.211	Drainage of public waters generally prohibited without replacement.
103G.215	Agricultural use of public waters during drought.
103G.221	Drainage of public waters wetlands.
103G.2212	Contractor's responsibility when work drains or fills wetlands.
103G.222	Replacement of wetlands.
103G.223	Calcareous fens.
103G.2241	Exemptions.
103G.2242	Wetland value replacement plans.
103G.2243	Local comprehensive wetland protection and management plans.
103G.2244	Wetland creation or restoration within pipeline easement.
103G.225	State wetlands and public drainage systems.
103G.231	Property owner's use of public waters wetlands.
103G.235	Restrictions on access to public waters wetlands.
103G.2364	Property owner's use of wetlands.
103G.2365	Control of noxious weeds.
103G.2369	Repealed, 1991 354 art 7 s 2; 1993 c 175 s 7
103G.237	Compensation for loss of private use.
103G.2372	Enforcement.
103G.2373	Repealed, 2002 c 220 art 8 s 16
103G.241	Contractor's responsibility when work affects public waters.
103G.245	Work in public waters.
103G.251	Investigation of activities without permit.
103G.255	Allocation and control of waters of the state.
103G.261	Water allocation priorities.
103G.265	Water supply management.

103G.271	Appropriation and use of waters.
103G.275	Installation for water use.
103G.281	Water use prohibited without measuring quantities.
103G.285	Surface water appropriations.
103G.291	Public water supply appropriation during deficiency.
103G.293	Statewide drought plan.
103G.295	Irrigation of agricultural land.
103G.297	Diversion or drainage of water for mining.
103G.301	General permit application procedures.
103G.305	Time limit to act on water use permit application.
103G.311	Permit hearing.
103G.315	Denial and issuance of permits.
103G.401	Application for establishment of lake levels.
103G.405	Water level control for landlocked lakes.
103G.411	Stipulation of low-water mark.
103G.415	Big Stone Lake, seasonal water level.
103G.421	Control of Mississippi headwater lakes.
103G.501	Construction of private dams on nonnavigable waters.
103G.505	Dam construction and maintenance by state.
103G.511	Publicly owned dam repair.
103G.515	Examination and repair of dams and reservoirs.
103G.521	Transfer of authority over state dams.
103G.525	Limitations on transfers of ownership of dams.
103G.531	Dam permit exceptions.
103G.535	Hydropower generation.
103G.541	Municipal dams on Red River of the North.
103G.545	Dams and water level control in Cook, Lake, and St. Louis counties.
103G.551	Dams used only for water level regulation.
103G.555	Statute of limitations for actions against public officials.
103G.561	Statute of limitations for actions on flowage easements and ordinary high water levels.
103G.565	Right to overflow, obstruct, or impair highways granted by governing body.
103G.571	Bank repair on property where overflow rights are acquired.
103G.575	Grant of flowage easements in Upper Red Lake region.
103G.601	Ice-cutting fences and guards.
103G.605	Deicing water bodies.
103G.611	Water aeration safety.
103G.615	Permits to harvest or destroy aquatic plants.
103G.617	Repealed, 1996 c 385 art 2 s 8
103G.621	County weed and algae destruction and removal.
103G.625	Municipal control of aquatic vegetation and organisms.
103G.650	Recovering sunken logs on inland waters.
103G.701	Stream maintenance program.
103G.705	Stream protection and improvement loan program.
103G.711	State's ownership of bed of navigable river.

Minnesota Statutes 2002, Chapter 103G

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== 103A.201

103A.201 Regulatory policy.

Subdivision 1. Policy. To conserve and use water resources of the state in the best interests of its people, and to promote the public health, safety, and welfare, it is the policy of the state that:

- (1) subject to existing rights, public waters are subject to the control of the state;
- (2) the state, to the extent provided by law, shall control the appropriation and use of waters of the state; and
- (3) the state shall control and supervise activity that changes or will change the course, current, or cross section of public waters, including the construction, reconstruction, repair, removal, abandonment, alteration, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in public waters.

Subd. 2. Wetlands findings; public interest.

(a) Wetlands identified in the state under section 103G.005, subdivision 19, do not:

- (1) grant the public additional or greater right of access to the wetlands;
- (2) diminish the right of ownership or usage of the beds underlying the wetlands, except as otherwise provided by law;
- (3) affect state law forbidding trespass on private lands; and
- (4) require the commissioner to acquire access to the wetlands.

(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.

HIST: 1990 c 391 art 1 s 2; 1991 c 354 art 1 s 2

== 103A.202

103A.202 Wetland policy.

The legislature finds that it is in the public interest to preserve the wetlands of the state to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved subsurface moisture, enhance the natural beauty of the landscape, and promote comprehensive and total water management planning.

HIST: 1990 c 391 art 1 s 3

== 103B.3355

103B.3355 Wetland functions for determining public values.

(a) The public values of wetlands must be determined based upon the functions of wetlands for:

- (1) water quality, including filtering of pollutants to surface and groundwater, utilization of nutrients that would otherwise pollute public waters, trapping of sediments, shoreline protection, and utilization of the wetland as a recharge area for groundwater;
- (2) floodwater and stormwater retention, including the potential for flooding in the watershed, the value of property subject to flooding, and the reduction in potential flooding by the wetland;
- (3) public recreation and education, including hunting and fishing areas, wildlife viewing areas, and nature areas;
- (4) commercial uses, including wild rice and cranberry growing and harvesting and aquaculture;
- (5) fish, wildlife, native plant habitats;
- (6) low-flow augmentation; and
- (7) other public uses.

(b) The board of water and soil resources, in consultation with the commissioners of natural resources and agriculture and local government units, shall adopt rules establishing:

- (1) scientific methodologies for determining the functions of wetlands; and

(2) criteria for determining the resulting public values of wetlands.

(c) The methodologies and criteria established under this section or other methodologies and criteria that include the functions in paragraph (a) and are approved by the board, in consultation with the commissioners of natural resources and agriculture and local government units, must be used to determine the functions and resulting public values of wetlands in the state. The functions listed in paragraph (a) are not listed in order of priority.

(d) Public value criteria established or approved by the board under this section do not apply in areas subject to local comprehensive wetland protection and management plans established under section 103G.2243.

(e) The board of water and soil resources, in consultation with the commissioners of natural resources and agriculture and local government units, may identify regions of the state where preservation, enhancement, restoration, and establishment of wetlands would have high public value. The board, in consultation with the commissioners, may identify high priority wetland regions using available information relating to the factors listed in paragraph (a). The board shall notify local units of government with water planning authority of these high priority regions.

HIST: 1991 c 354 art 2 s 4; 1996 c 462 s 3

== 103G.005

103G.005 Definitions.

Subdivision 1. Applicability. The definitions in this section apply to this chapter.

Subd. 2. Abandon. "Abandon" means to give up the use and maintenance of structures or improvements to realty and to surrender them to deterioration. Abandon does not refer to intent to surrender or relinquish title to or a possessory interest in the real property where the structures or improvements are located.

Subd. 2a. Agricultural land. "Agricultural land" means: land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; farm yards; associated building sites; and public and private drainage systems and field roads located on any of the foregoing.

Subd. 3. Altered natural watercourse. "Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.

Subd. 4. Appropriating. "Appropriating" means withdrawal, removal, or transfer of water from its source regardless of how the water is used.

Subd. 5. Artificial watercourse. "Artificial watercourse" means a watercourse artificially constructed by human beings where a natural watercourse was not previously located.

Subd. 6. Basin of origin. "Basin of origin" means the drainage basin of the Great Lakes, the Red River of the North, the Mississippi River, or the Missouri River.

Subd. 6a. Board. "Board" means the board of water and soil resources.

Subd. 7. Commissioner. "Commissioner" means the commissioner of natural resources.

Subd. 8. Consumptive use. "Consumptive use" means water that is withdrawn from its source for immediate further use in the area of the source and is not directly returned to the source.

Subd. 9. Director. "Director" means the director of the division of waters of the department of natural resources.

Subd. 10. Division. "Division" means the division of waters of the department of natural resources.

Subd. 10a. MS 1994 Renumbered subd. 10e.

Subd. 10a. 50 to 80 percent area. "50 to 80 percent area" means a county or watershed with at least 50 but less than 80 percent of the presettlement wetland acreage intact.

Subd. 10b. Greater than 80 percent area. "Greater than 80 percent area" means a county or watershed where 80 percent or more of the presettlement wetland acreage is intact and:

- (1) ten percent or more of the current total land area is wetland; or
- (2) 50 percent or more of the current total land area is state or federal land.

Subd. 10c. Hayland. "Hayland" means an area that was mechanically harvested or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes in six of the last ten years prior to January 1, 1991.

Subd. 10d. Less than 50 percent area. "Less than 50 percent area" means a county or watershed with less than 50 percent of the presettlement wetland acreage intact or any county or watershed not defined as a "greater than 80 percent area" or "50 to 80 percent area."

Subd. 10e. Local government unit. "Local government unit" means:

- (1) outside of the seven-county metropolitan area, a city council or county board of commissioners or their delegate;
- (2) in the seven-county metropolitan area, a city council, a town board under section 368.01, or a watershed management organization under section 103B.211, or their delegate; and
- (3) on state land, the agency with administrative responsibility for the land.

Subd. 11. Meandered lake. "Meandered lake" means a body of water except streams located within the meander lines shown on plats made by the United States General Land Office.

Subd. 12. Municipality. "Municipality" means a home rule charter or statutory city.

Subd. 13. Natural watercourse. "Natural watercourse" means a natural channel that has definable beds and banks capable of conducting confined runoff from adjacent land.

Subd. 13a. Once-through system. "Once-through system" means a space heating, ventilating, air conditioning (HVAC), or refrigeration system used for any type of temperature or humidity control application, utilizing groundwater, that circulates through the system and is then discharged without reusing it for a higher priority purpose.

Subd. 14. Ordinary high water level. "Ordinary high water level" means the boundary of waterbasins, watercourses, public waters, and public waters wetlands, and:

- (1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;
- (2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel; and
- (3) for reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Subd. 14a. MS 1994 Renumbered subd. 14b.

Subd. 14a. Pasture. "Pasture" means an area that was grazed by domesticated livestock or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes in six of the last ten years prior to January 1, 1991.

Subd. 14b. Political subdivision. "Political subdivision" means a county, city, town, school district, or other local government jurisdiction to which the state provides state aids or on which the state imposes state mandates.

Subd. 14c. Presettlement wetland. "Presettlement wetland" means a wetland or public waters wetland that existed in this state at the time of statehood in 1858.

Subd. 14d. Project. "Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the local government unit. As used in this chapter, a project may not be split into components or phases for the sole purpose of gaining additional exemptions.

Subd. 15. Public waters.

(a) "Public waters" means:

- (1) waterbasins assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221;
- (2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;
- (3) meandered lakes, excluding lakes that have been legally drained;
- (4) waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;
- (5) waterbasins designated as scientific and natural areas under section 84.033;
- (6) waterbasins located within and totally surrounded by publicly owned lands;
- (7) waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;
- (8) waterbasins where there is a publicly owned and controlled access that is intended to provide for public access to the waterbasin;
- (9) natural and altered watercourses with a total drainage area greater than two square miles;
- (10) natural and altered watercourses designated by the commissioner as trout streams; and
- (11) public waters wetlands, unless the statute expressly states otherwise.

(b) Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

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

Subd. 15b. Shoreland wetland protection zone. "Shoreland wetland protection zone" means:

(1) for local government units that have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone is:

(i) 1,000 feet from the ordinary high water level of a waterbasin that is a public water identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; or

(ii) 300 feet from the ordinary high water level of a watercourse identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; and

(2) for local government units that do not have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone is:

(i) 1,000 feet from the ordinary high water level of a waterbasin that is a public water that is at least ten acres in size within municipalities and at least 25 acres in size in unincorporated areas; or

(ii) 300 feet from the ordinary high water level of a watercourse identified by the public waters inventory under section 103G.201.

Subd. 15c. Silviculture. "Silviculture" means the management of forest trees.

Subd. 15d. Utility. "Utility" means a sanitary sewer, storm sewer, potable water distribution, and transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications.

Subd. 16. Waterbasin. "Waterbasin" means an enclosed natural depression with definable banks, capable of containing water, that may be partly filled with waters of the state and is discernible on aerial photographs.

Subd. 17. Waters of the state. "Waters of the state" means surface or underground waters, except surface waters that are not confined but are spread and diffused over the land. Waters of the state includes boundary and inland waters.

Subd. 17a. Watershed. "Watershed" means the 81 major watershed units delineated by the map, "State of Minnesota Watershed Boundaries - 1979."

Subd. 17b. Wetland type. "Wetland type" means a wetland type classified according to Wetlands of the United States, U.S. Fish and Wildlife Service Circular 39 (1971 edition), as summarized in this subdivision.

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

(2) "Type 2 wetlands" are inland fresh meadows in which soil is usually without standing water during most of the growing season but is waterlogged within at least a few inches of surface. Vegetation includes grasses, sedges, rushes, and various broad-leaved plants. Meadows may fill shallow basins, sloughs, or farmland sags, or these meadows may border shallow marshes on the landward side.

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

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

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

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

(7) "Type 7 wetlands" are wooded swamps in which soil is waterlogged at least to within a few inches of the surface during growing season and is often covered with as much as one foot of water. This type occurs mostly along sluggish streams, on floodplains, on flat uplands, and in shallow basins. Trees include tamarack, arborvitae, black spruce, balsam, red maple, and black ash. Northern

evergreen swamps usually have a thick ground cover of mosses. Deciduous swamps frequently support beds of duckweeds and smartweeds.

(8) "Type 8 wetlands" are bogs in which soil is usually waterlogged and supports a spongy covering of mosses. This type occurs mostly in shallow basins, on flat uplands, and along sluggish streams. Vegetation is woody or herbaceous or both. Typical plants are heath shrubs, sphagnum moss, and sedges. In the north, leatherleaf, Labrador-tea, cranberries, carex, and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

Subd. 18. Renumbered subd. 15a.

Subd. 19. Wetlands.

(a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

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

(b) For the purposes of regulation under this chapter, the term wetlands does not include public waters wetlands as defined in subdivision 15a.

HIST: 1990 c 391 art 7 s 2; 1990 c 597 s 62; 1991 c 354 art 6 s 1-6; art 10 s 4; 1994 c 643 s 49; 1995 c 218 s 3; 1996 c 462 s 10-22, 43; 1997 c 2 s 8; 2000 c 382 s 1,2

== 103G.222

103G.222 Replacement of wetlands.

Subdivision 1. Requirements.

(a) Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under a replacement plan approved as provided in section 103G.2242, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2243, or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. Mining reclamation plans shall apply the same principles and standards for replacing wetlands by restoration or creation of wetland areas that are applicable to mitigation plans approved as provided in section 103G.2242. Public value must be determined in accordance with section 103B.3355 or a comprehensive wetland protection and management plan established under section 103G.2243. Sections 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands.

(b) Replacement must be guided by the following principles in descending order of priority:

- (1) avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;
- (2) minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;
- (3) rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;
- (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity;
- (5) compensating for the impact by restoring a wetland; and
- (6) compensating for the impact by replacing or providing substitute wetland resources or environments.

For a project involving the draining or filling of wetlands in an amount not exceeding 10,000 square feet more than the applicable amount in section 103G.2241, subdivision 9, paragraph (a), the local government unit may make an on-site sequencing determination without a written alternatives analysis from the applicant.

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that a deed restriction is placed on the altered wetland prohibiting nonagricultural use for at least ten years.

(d) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected.

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

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

(g) Wetlands that are restored or created as a result of an approved replacement plan are subject to the provisions of this section for any subsequent drainage or filling.

(h) Except in a greater than 80 percent area, only wetlands that have been restored from previously drained or filled wetlands, wetlands created by excavation in nonwetlands, wetlands created by dikes or dams along public or private drainage ditches, or wetlands created by dikes or dams associated with the restoration of previously drained or filled wetlands may be used in a statewide banking program established in rules adopted under section 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

(i) The technical evaluation panel established under section 103G.2242, subdivision 2, shall ensure that sufficient time has occurred for the wetland to develop wetland characteristics of soils, vegetation, and hydrology before recommending that the wetland be

deposited in the statewide wetland bank. If the technical evaluation panel has reason to believe that the wetland characteristics may change substantially, the panel shall postpone its recommendation until the wetland has stabilized.

(j) This section and sections 103G.223 to 103G.2242, 103G.2364, and 103G.2365 apply to the state and its departments and agencies.

(k) For projects involving draining or filling of wetlands associated with a new public transportation project in a greater than 80 percent area, public transportation authorities, other than the state department of transportation, may purchase credits from the state wetland bank established with proceeds from Laws 1994, chapter 643, section 26, subdivision 3, paragraph (c). Wetland banking credits may be purchased at the least of the following, but in no case shall the purchase price be less than \$400 per acre: (1) the cost to the state to establish the credits; (2) the average estimated market value of agricultural land in the township where the road project is located, as determined by the commissioner of revenue; or (3) the average value of the land in the immediate vicinity of the road project as determined by the county assessor. Public transportation authorities in a less than 80 percent area may purchase credits from the state at the cost to the state to establish credits.

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

- (1) minimize the amount of wetland filling or draining associated with the project and consider mitigating important site-specific wetland functions on-site;
- (2) except as provided in clause (3), submit project-specific reports to the board, the technical evaluation panel, the commissioner of natural resources, and members of the public requesting a copy at least 30 days prior to construction that indicate the location, amount, and type of wetlands to be filled or drained by the project or, alternatively, convene an annual meeting of the parties required to receive notice to review projects to be commenced during the upcoming year; and
- (3) for minor and emergency maintenance work impacting less than 10,000 square feet, submit project-specific reports, within 30 days of commencing the activity, to the board that indicate the location, amount, and type of wetlands that have been filled or drained.

Those required to receive notice of public transportation projects may appeal minimization, delineation, and on-site mitigation decisions made by the public transportation authority to the board according to the provisions of section 103G.2242, subdivision 9. The technical evaluation panel shall review minimization and delineation decisions made by the public transportation authority and provide recommendations regarding on-site mitigation if requested to do so by the local government unit, a contiguous landowner, or a member of the technical evaluation panel.

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

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

(m) If a landowner seeks approval of a replacement plan after the proposed project has already affected the wetland, the local government unit may require the landowner to replace the affected wetland at a ratio not to exceed twice the replacement ratio otherwise required.

(n) A local government unit may request the board to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. After receipt of satisfactory documentation from the local government, the board shall change the classification of a county or watershed. If requested by the local government unit, the board must assist in developing the documentation. Within 30 days of its action to approve a change of wetland classifications, the board shall publish a notice of the change in the Environmental Quality Board Monitor.

(o) One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens shall provide satisfactory documentation to the local government unit. The local government unit shall consider the petition and forward the request to the board under paragraph (n) or provide a reason why the petition is denied.

Subd. 2. Road credit funding. The board shall give priority to restoration projects that:

- (1) will encourage land use that leads to more compact development or redevelopment;
- (2) will encourage public or private infrastructure investments which connect ecosystems and communities, attract private sector investment in commercial or residential properties adjacent to the public improvement; or
- (3) are located in critical rural and urban watersheds.

Subd. 3. Wetland replacement siting.

- (a) Siting wetland replacement must follow this priority order:
 - (1) on site or in the same minor watershed as the affected wetland;
 - (2) in the same watershed as the affected wetland;
 - (3) in the same county as the affected wetland;
 - (4) in an adjacent watershed or county to the affected wetland; and
 - (5) statewide, only for wetlands affected in greater than 80 percent areas and for public transportation projects, except that wetlands affected in less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands affected in the seven-county metropolitan area must be replaced in the affected county or, if no restoration opportunities exist in the county, in another seven-county metropolitan area county.
- (b) The exception in paragraph (a), clause (5), does not apply to replacement completed using wetland banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996.
- (c) When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in paragraph (a), the applicant may seek opportunities at the next level.
- (d) For the purposes of this section, "reasonable, practicable, and environmentally beneficial replacement opportunities" are defined as opportunities that:
 - (1) take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration;
 - (2) have a high likelihood of becoming a functional wetland that will continue in perpetuity;
 - (3) do not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area; and
 - (4) are available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes.
- (e) Regulatory agencies, local government units, and other entities involved in wetland restoration shall collaborate to identify potential replacement opportunities within their jurisdictional areas.

HIST: 1991 c 354 art 6 s 8; 1993 c 175 s 2; 1994 c 627 s 3; 1996 c 462 s 24; 2000 c 382 s 5

== 103G.2241

103G.2241 Exemptions.

Subdivision 1. Agricultural activities.

- (a) A replacement plan for wetlands is not required for:
 - (1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grass or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;
 - (2) activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States Code, title 16, section 3831, that:
 - (i) was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and
 - (ii) has not been restored with assistance from a public or private wetland restoration program;
 - (3) activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county agricultural stabilization and conservation service office prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985;
 - (4) activities in a type 1 wetland on agricultural land, except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural land;
 - (5) aquaculture activities including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings;
 - (6) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344;
 - (7) normal agricultural practices to control noxious or secondary weeds as defined by rule of the commissioner of agriculture, in accordance with applicable requirements under state and federal law, including established best management practices; and
 - (8) agricultural activities in a wetland that is on agricultural land:
 - (i) annually enrolled in the federal Agriculture Improvement and Reform Act of 1996 and is subject to United States Code, title 16, sections 3821 to 3823, in effect on January 1, 2000; or
 - (ii) subject to subsequent federal farm program restrictions that meet minimum state standards under this chapter and sections 103A.202 and 103B.3355 and that have been approved by the board of water and soil resources, the commissioners of natural resources and agriculture, and the pollution control agency.
- (b) Land enrolled in a federal farm program under paragraph (a), clause (8), is eligible for easement participation for those acres not already compensated under a federal program.

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

Subd. 2. Drainage.

(a) For the purposes of this subdivision, "public drainage system" means a drainage system as defined in section 103E.005, subdivision 12, and any ditch or tile lawfully connected to the drainage system.

(b) A replacement plan is not required for draining of type 1 wetlands, or up to five acres of type 2 or 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:

(1) during the 20-year period that ended January 1, 1992:

- (i) there was an expenditure made from the drainage system account for the public drainage system;
- (ii) the public drainage system was repaired or maintained as approved by the drainage authority; or
- (iii) no repair or maintenance of the public drainage system was required under section 103E.705, subdivision 1, as determined by the public drainage authority; and

(2) the wetlands are not drained for conversion to:

- (i) platted lots;
- (ii) planned unit, commercial, or industrial developments; or
- (iii) any development with more than one residential unit per 40 acres.

If wetlands drained under this paragraph are converted to uses prohibited under clause (2) during the ten-year period following drainage, the wetlands must be replaced under section 103G.222.

(c) A replacement plan is not required for draining or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing public drainage systems.

(d) A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems other than public drainage systems.

(e) A replacement plan is not required for draining or filling of wetlands resulting from activities conducted as part of a public drainage system improvement project that received final approval from the drainage authority before July 1, 1991, and after July 1, 1986, if:

- (1) the approval remains valid;
- (2) the project remains active; and
- (3) no additional drainage will occur beyond that originally approved.

(f) The public drainage authority may, as part of the repair, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent drainage of the wetland.

(g) Wetlands of all types that would be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve under section 103F.516. The board shall give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

Subd. 3. Federal approvals. A replacement plan for wetlands is not required for:

- (1) activities exempted from federal regulation under United States Code, title 33, section 1344(f), as in effect on January 1, 1991;
- (2) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clauses (14), limited to when a new road crosses a wetland, and (26), as in effect on January 1, 1991; or
- (3) activities authorized under the federal Clean Water Act, section 404, or the Rivers and Harbors Act, section 10, regulations that meet minimum state standards under this chapter and sections 103A.202 and 103B.3355 and that have been approved by the board of water and soil resources, the commissioners of natural resources and agriculture, and the pollution control agency.

Subd. 4. Wetland restoration. A replacement plan for wetlands is not required for activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland.

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

- (1) beaver dam construction;
- (2) blockage of culverts through roadways maintained by a public or private entity;
- (3) actions by public or private entities that were taken for a purpose other than creating the wetland; or
- (4) any combination of clauses (1) to (3).

Subd. 6. Utilities; public works. A replacement plan for wetlands is not required for:

- (1) placement, maintenance, repair, enhancement, or replacement of utility or utility-type service if:
 - (i) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and
 - (ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;
- (2) activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;

- (3) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing or acquired interstate pipeline rights-of-way;
- (4) emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and does not result in the draining or filling, wholly or partially, of a wetland;
- (5) normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland; or
- (6) repair and updating of existing individual sewage treatment systems as necessary to comply with local, state, and federal regulations.

Subd. 7. Forestry. A replacement plan for wetlands is not required for:

- (1) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters; or
- (2) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch, or tile line; filling is avoided wherever possible; and there is no drainage of the wetland or public waters.

Subd. 8. Approved development. A replacement plan for wetlands is not required for development projects and ditch improvement projects in the state that have received preliminary or final plat approval or have infrastructure that has been installed or has local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. As used in this subdivision, "infrastructure" means public water facilities, storm water and sanitary sewer piping, outfalls, inlets, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement to a parcel within the context of an approved development plan.

Subd. 9. De minimis.

(a) Except as provided in paragraphs (b) and (c), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project:

- (1) 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a greater than 80 percent area;
- (2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area;
- (3) 2,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area;
- (4) 400 square feet of wetland types not listed in clauses (1) to (3) outside of shoreland wetland protection zones in all counties; or
- (5) 400 square feet of type 1, 2, 3, 4, 5, 6, 7, or 8 wetland, in the shoreland wetland protection zone, except that in a greater than 80 percent area, the local government unit may increase the de minimis amount up to 1,000 square feet in the shoreland protection zone in areas beyond the building setback surficial connection to the public water. To the extent that a local shoreland management ordinance is more restrictive than this provision, the local shoreland ordinance applies.

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

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

- (1) the applicable area listed in paragraph (a), if the landowner owns the entire wetland;
- (2) five percent of the landowner's portion of the wetland; or
- (3) 400 square feet.

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

Subd. 10. Wildlife habitat. A replacement plan for wetlands is not required for:

- (1) deposition of spoil resulting from excavation within a wetland for a wildlife habitat improvement project, if:
 - (i) the area of deposition does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion;
 - (ii) the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and
 - (iii) the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or
- (2) duck blinds.

Subd. 11. Exemption conditions.

(a) A person conducting an activity in a wetland under an exemption in subdivisions 1 to 10 shall ensure that:

- (1) appropriate erosion control measures are taken to prevent sedimentation of the water;
- (2) the activity does not block fish passage in a watercourse; and
- (3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

(b) An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

(c) Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government unit's designee for advice on minimizing wetland impacts.

HIST: 1991 c 354 art 6 s 10; 1993 c 175 s 3; 1993 c 226 s 20; 1994 c 627 s 4; 1996 c 462 s 25; 2000 c 382 s 6-8

== 103G.2242

103G.2242 Wetland value replacement plans.

Subdivision 1. Rules.

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

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

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

Subd. 2. Evaluation.

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

(b) Persons conducting wetland or public waters boundary delineations or type determinations are exempt from the requirements of chapter 326. By January 15, 2001, the board, in consultation with the Minnesota Association of Professional Soil Scientists, the University of Minnesota, and the Wetland Delineators' Association, shall submit a plan for a professional wetland delineator certification program to the legislature.

Subd. 2a. Wetland boundary or type determination.

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

(b) A local government unit that receives an application under paragraph (a) may seek the advice of the technical evaluation panel as described in subdivision 2, and, if necessary, expand the technical evaluation panel. The local government unit may delegate the decision authority for wetland boundary or type determinations with the zoning administrator, or establish other procedures it considers appropriate.

(c) The local government unit decision must be made in compliance with section 15.99. Within ten calendar days of the decision, the local government unit decision must be mailed to the landowner, members of the technical evaluation panel, the watershed district or watershed management organization, if one exists, and individual members of the public who request a copy.

(d) The local government unit decision is valid for three years unless the technical evaluation panel determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have been sufficient to alter the wetland boundary or type.

Subd. 3. Replacement completion. Replacement of wetland values must be completed prior to or concurrent with the actual draining or filling of a wetland, or an irrevocable bank letter of credit or other security acceptable to the local government unit must be given to the local government unit to guarantee the successful completion of the replacement.

Subd. 4. Decision. Upon receiving and considering all required data, the local government unit reviewing replacement plan applications, banking plan applications, and exemption or no-loss determination requests must act on all replacement plan applications, banking plan applications, and exemption or no-loss determination requests in compliance with section 15.99.

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

Subd. 6. Notice of application.

(a) Except as provided in paragraph (b), within ten days of receiving an application for approval of a replacement plan under this section, copies of the complete application must be mailed to the members of the technical evaluation panel, the managers of the watershed district if one exists, and the commissioner of natural resources. Individual members of the public who request a copy shall be provided information to identify the applicant and the location and scope of the project.

(b) Within ten days of receiving an application for approval of a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the application must be mailed to the members of the technical evaluation panel, individual members of the public who request a copy, and the commissioner of natural resources.

(c) For the purpose of this subdivision, "application" includes a revised application for replacement plan approval and an application for a revision to an approved replacement plan if:

- (1) the wetland area to be drained or filled under the revised replacement plan is at least ten percent larger than the area to be drained or filled under the original replacement plan; or
- (2) the wetland area to be drained or filled under the revised replacement is located more than 500 feet from the area to be drained or filled under the original replacement plan.

Subd. 7. Notice of decision. Within ten days of the approval or denial of a replacement plan under this section, a summary of the approval or denial must be mailed to members of the technical evaluation panel, the applicant, individual members of the public who request a copy, the managers of the watershed district, if one exists, and the commissioner of natural resources.

Subd. 8. Public comment period. Except for activities impacting less than 10,000 square feet of wetland, before approval or denial of a replacement plan under this section, comments may be made by the public to the local government unit for a period of 15 days or more, as determined by the local government unit.

Subd. 9. Appeal.

(a) Appeal of a replacement plan, exemption, wetland banking, wetland boundary or type determination, or no-loss decision may be obtained by mailing a petition and payment of a filing fee of \$200, which shall be retained by the board to defray administrative costs, to the board within 30 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 30 days, the decision becomes final. The local government unit may require the petitioner to post a letter of credit, cashier's check, or cash in an amount not to exceed \$500. If the petition for hearing is accepted, the amount posted must be returned to the petitioner. Appeal may be made by:

- (1) the wetland owner;
- (2) any of those to whom notice is required to be mailed under subdivision 7; or
- (3) 100 residents of the county in which a majority of the wetland is located.

(b) Within 30 days after receiving a petition, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that:

- (1) the appeal is meritless, trivial, or brought solely for the purposes of delay;
- (2) the petitioner has not exhausted all local administrative remedies;
- (3) expanded technical review is needed;
- (4) the local government unit's record is not adequate; or
- (5) the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit.

(c) In determining whether to grant the appeal, the board shall also consider the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or petitioner, and the consequences of the delay resulting from the appeal.

(d) All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of filing the local government unit's record and the written briefs submitted for the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of chapter 14. A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

Subd. 10. Local requirements. The rules adopted under subdivision 1 shall allow for local government units to use their own notice and public comment procedures so long as the requirements of this section are satisfied.

Subd. 11. Expired.

Subd. 12. Replacement credits.

- (a) No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, and is completed prior to any draining or filling of the wetland.
- (b) Paragraph (a) does not apply to a wetland whose owner has paid back with interest the individual or organization restoring, enhancing, or constructing the wetland.
- (c) Notwithstanding section 103G.222, subdivision 1, paragraph (h), the following actions, and others established in rule, that are consistent with criteria in rules adopted by the board in conjunction with the commissioners of natural resources and agriculture, are eligible for replacement credit as determined by the local government unit, including enrollment in a statewide wetlands bank:
 - (1) reestablishment of permanent native, noninvasive vegetative cover on a wetland on agricultural land that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was in a land retirement program during the past ten years;
 - (2) buffer areas of permanent native, noninvasive vegetative cover established or preserved on upland adjacent to replacement wetlands;
 - (3) wetlands restored for conservation purposes under terminated easements or contracts; and
 - (4) water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies, provided that the water quality treatment ponds must be associated with an ongoing or proposed project that will impact a wetland and replacement credit for the treatment ponds is based on the replacement of wetland functions and on an approved stormwater management plan for the local government.
- (d) Notwithstanding section 103G.222, subdivision 1, paragraphs (e) and (f), the board may establish by rule different replacement ratios for restoration projects with exceptional natural resource value.

Subd. 13. Repealed, 1996 c 462 s 44

HIST: 1991 c 354 art 6 s 11; 1993 c 175 s 4,5; 1994 c 627 s 5-9; 1996 c 462 s 26-32; 1998 c 312 s 4; 2000 c 382 s 9-14; 2001 c 7 s 25; 2001 c 146 s 6, 7

== 103G.2243

103G.2243 Local comprehensive wetland protection and management plans.

Subdivision 1. General requirements; notice and participation.

- (a) As an alternative to the rules adopted under section 103G.2242, subdivision 1, and the public value criteria established or approved under section 103B.3355, a comprehensive wetland protection and management plan may be developed by a local government unit, or one or more local government units operating under a joint powers agreement, provided that:
 - (1) a notice is made at the beginning of the planning process to the board, the commissioner of natural resources, the pollution control agency, the commissioner of agriculture, local government units, and local citizens to actively participate in the development of the plan; and
 - (2) the plan is implemented by ordinance as part of the local government's official controls under chapter 394, for a county; chapter 462, for a city; chapter 366, for a town; and by rules adopted under chapter 103D, for a watershed district; and chapter 103B, for a watershed management organization.
- (b) An organization that is invited to participate in the development of the local plan, but declines to do so and fails to participate or to provide written comments during the local review process, waives the right during board review to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan.

Subd. 2. Plan contents. A comprehensive wetland protection and management plan may:

- (1) provide for classification of wetlands in the plan area based on:
 - (i) an inventory of wetlands in the plan area;
 - (ii) an assessment of the wetland functions listed in section 103B.3355, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board under that section; and
 - (iii) the resulting public values;
- (2) vary application of the sequencing standards in section 103G.222, subdivision 1, paragraph (b), for projects based on the classification and criteria set forth in the plan;
- (3) vary the replacement standards of section 103G.222, subdivision 1, paragraphs (e) and (f), based on the classification and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan, and so long as:
 - (i) in a 50 to 80 percent area, a minimum acreage requirement of one acre of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan; and
 - (ii) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan, except that replacement for the amount above a 1:1 ratio can be accomplished as described in section 103G.2242, subdivision 12;
- (4) in a greater than 80 percent area, allow replacement credit, based on the classification and criteria set forth in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres; and

(5) in a greater than 80 percent area, based on the classification and criteria set forth in the plan, expand the application of the exemptions in section 103G.2241, subdivision 1, paragraph (a), clause (4), to also include nonagricultural land, provided there is no net loss of wetland values.

Subd. 3. Board review and approval; mediation; judicial review.

(a) The plan is deemed approved 60 days after the local government submits the final plan to the board, unless the board disagrees with the plan as provided in paragraph (d).

(b) The board may not disapprove a plan if the board determines the plan meets the requirements of this section.

(c) In its review of a plan, the board shall advise the local government unit of those elements of the plan that are more restrictive than state law and rules for purposes of section 103G.237, subdivision 5.

(d) If the board disagrees with the plan or any elements of the plan, the board shall, in writing, notify the local government of the plan deficiencies and suggested changes. The board shall include in the response to the local government the scientific justification, if applicable, for the board's concerns with the plan. Upon receipt of the board's concerns with the plan, the local government has 60 days to revise the plan and resubmit the plan to the board for reconsideration, or the local government may request a hearing before the board. The board shall hold a hearing within the boundaries of the jurisdiction of the local government within 60 days of the request for hearing. After the hearing, the board shall, within 60 days, prepare a report of its decision and inform the local government.

(e) If, after the hearing, the board and local government disagree on the plan, the board shall, within 60 days, initiate mediation through a neutral party. If the board and local government unit agree in writing not to use mediation or the mediation does not result in a resolution of the differences between the parties, then the board may commence a declaratory judgment action in the district court of the county where the local government unit is located. If the board does not commence a declaratory judgment action within the applicable 60-day period, the plan is deemed approved.

(f) The declaratory judgment action must be commenced within 60 days after the date of the written agreement not to use mediation or 60 days after conclusion of the mediation. If the board commences a declaratory judgment action, the district court shall review the board's record of decision and the record of decision of the local government unit. The district court shall affirm the plan if it meets the requirements of this section.

Subd. 4. Effective date; replacement decisions.

(a) The plan becomes effective as provided in subdivision 3, paragraphs (d) to (f), and after adoption of the plan into the official controls of the local government.

(b) After the effective date of a plan, a local government unit shall make replacement decisions consistent with the plan.

Subd. 5. Plan amendments. Amendments to the plan become effective upon completion of the same process required for the original plan.

Subd. 6. Water planning processes apply. Except as otherwise provided for in this section, all other requirements relating to development of the plan must be consistent with the water plan processes under sections 103B.231 and 103B.311.

HIST: 1996 c 462 s 33; 1997 c 2 s 9; 1998 c 312 s 5; 2001 c 7 s 26

== 103G.2372

103G.2372 Enforcement.

Subdivision 1. Commissioner of natural resources. The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting wetlands and public waters. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting a wetland or public waters. In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters. Restoration or replacement orders may be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located by the commissioner of natural resources, conservation officers, or peace officers as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any document filed under this section.

Subd. 2. Misdemeanor. A violation of an order issued under subdivision 1 is a misdemeanor and must be prosecuted by the county attorney where the wetland or public waters are located or the illegal activity occurred.

Subd. 3. Restitution. The court may, as part of sentencing, require a person convicted under subdivision 2 to restore or replace the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters.

HIST: 1991 c 354 art 6 s 18; 2000 c 382 s 15; 2001 c 146 s 8

== 103G.2212

103G.2212 Contractor's responsibility when work drains or fills wetlands.

Subdivision 1. Conditions for employees and agents to drain or fill wetlands. An agent or employee of another may not drain or fill a wetland, wholly or partially, unless the agent or employee has:

- (1) obtained a signed statement from the property owner stating that the wetland replacement plan required for the work has been obtained or that a replacement plan is not required; and
- (2) mailed a copy of the statement to the local government unit with jurisdiction over the wetland.

Subd. 2. Violation is separate offense. Violation of this section is a separate and independent offense from other violations of sections 103G.2212 to 103G.237.

Subd. 3. Form for compliance with this section. The board shall develop a form to be distributed to contractors' associations, local government units, and soil and water conservation districts to comply with this section. The form must include:

- (1) a listing of the activities for which a replacement plan is required;
- (2) a description of the penalties for violating sections 103G.2212 to 103G.237;
- (3) the telephone number to call for information on the responsible local government unit;
- (4) a statement that national wetland inventory maps are on file with the soil and water conservation district office; and
- (5) spaces for a description of the work and the names, mailing addresses, and telephone numbers of the person authorizing the work and the agent or employee proposing to undertake it.

HIST: 2000 c 382 s 4



MASWCD

Board Packet

APR 30 2003

FVI

Minnesota Association of Soil and Water Conservation Districts

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April 24, 2002

To: Soil and Water Conservation Districts
From: Scott Hoese, MASWCD President
Bill Hunt, NRCS State Conservationist
Owen Knutson, NACD Board Director

The passage of the Farm Security and Rural Investment act of 2002 (Farm Bill) represents the single most significant commitment of resources toward conservation on private lands in the nation's history. Congress passed legislation that includes a strong emphasis on the conservation of working lands. The 2002 Farm Bill reinstates and also changes existing programs while at the same time authorizes the creation of additional conservation programs.

As these new changes and programs are implemented, rules need to be finalized, funding needs to be allocated, landowners need to be informed of the various programs and technical assistance needs to be available to implement the practices.

As implementation of the 2002 Farm Bill starts to take shape, Districts will want to start the following initiatives:

- **Plan to facilitate Local Work Group Meetings for the implementation of EQIP funds**
- **Enter into Contribution Agreements with NRCS**
- **SWCD technical staff register online for the Tech Reg certification process. This needs to be done prior to entering into any contribution agreements.**

The following lists the specific information on the various programs:

Environmental Quality Incentives Program (EQIP)

At the national level, Congress has funded the Environmental Quality Incentive Program (EQIP) at \$695 million for FY'03. Indications include a larger EQIP appropriation than previous farm bill allocations for Minnesota. Once allocations to the States have been appropriated, funds will need to be obligated to landowners for conservation practices prior to the end of the federal fiscal year (September 31, 2003). NRCS field offices and SWCDs will need to work together to conduct local work groups and identify local priorities. EQIP provides cost-share payments, incentive payments and technical assistance to producers to protect soil, water, air

and related natural resources. The 2002 Farm Bill requires that 60% of the funds nationwide address livestock water quality concerns. Enclosed is the 2003 EQIP timeline prepared by the Minnesota NRCS State Office.

Local Work Groups

Soil and Water Conservation Districts will convene a Local Work Group to facilitate locally led conservation and provide advice to NRCS concerning the implementation of conservation programs including local EQIP allocations (please see attached for additional information). One-day informational workshops will be held during the end of May, 2003 and the first part of June, 2003. Workshop information will be sent to the SWCD and NRCS field offices.

CRP

For CRP General Sign-up 26, the roles and responsibilities for USDA agencies have changed. FSA is the lead agency for CRP and no longer is required to obtain NRCS concurrence on CRP policy issues. CRP is administered by FSA through their state and local FSA committees with technical assistance provided by NRCS, Technical Service Providers and other cooperating agencies. As negotiated at the national level FSA and NRCS developed a reimbursement schedule for the work items assigned to NRCS. At the regional and state levels NRCS has been assigned to assist FSA in the development of a soils database for the Environmental Benefits Index.

CRP at the County Level

FSA is solely responsible for the entire participant application process, which includes:

- Determining producer eligibility and land eligibility;
- Determining acreage for each area/field offered;
- Determining the 3 predominate soils and their acreage for each offer;
- Coaching applicants on how to enhance their offer;
- Inputting offers into USDA software;
- Transmitting completed offers; and
- Conducting quality control on all offers.

NRCS is responsible for all technical assistance necessary to develop individual conservation plans and establish approved CRP cover on **accepted offers**. These activities can also be conducted by a TSP who has been registered in Tech Reg and certified by USDA/NRCS in the appropriate TSP category.

Technical Service Providers (TSP)

The new farm bill provisions have included options for landowners to use outside parties or contractors who will help NRCS handle increased conservation workloads. Individuals may be interested in becoming a Technical Service Provider (TSP). TSP's are individuals, entities, or public agencies certified by NRCS and placed on the approved list to provide technical service to program participants or the USDA. Employees of public agencies (including SWCDs) can provide TSP services under the negotiated arrangements of a "contribution agreement". To qualify, public agencies must have a least one individual certified through TechReg to participate.

TechReg

TechReg is the technical service provider registry that will allow interested individuals and organizations to apply and request certification on the Internet. Users of TechReg will be able to list their services, credentials, accomplishments and progress. In addition, farmers and ranchers will be able to locate and choose technical service providers authorized to provide services in their area. The web site is: **TechReg.usda.gov**. As a starting point, SWCD employees may want to consider pursuing certification in the "Buffer" and "Vegetative Land Stabilization" categories on TechReg. Certification in these categories will qualify them to provide TSP services in the CRP, Continuous CRP and any new CREP agreements. Individuals certified on TechReg can always add to or modify their certification agreement.

Contribution Agreements

District employees and other public agencies can provide and be reimbursed for Technical Service Provider services via a contribution agreement. **Each SWCD that enters into a Contribution Agreement must have at least one employee certified through TechReg.** A contribution agreement allows NRCS to work with public and private entities and agencies to expand technical assistance (TA) to landowners. The cooperating agencies/groups would offer 50% of their resources to be added to 50% of USDA resources to jointly expand TA. Since these are a 50/50 agreements, they can be done non-competitively. Please contact your NRCS Area Conservationist for additional information.

At this time, the Minnesota USDA NRCS office has not received the budget for the various programs. It is anticipated that the NRCS allocations will be received by May 1, 2003

Enclosed is additional information prepared by the National Association of Conservation Districts. This information highlights the implementation of the 2002 Farm Bill Conservation Title and selected programs of the Forestry and Energy Titles.

The 2002 Farm Bill builds upon past conservation programs and provides opportunities to implement conservation on working lands. Together, the conservation partnership will implement cost share and technical assistance to landowners and cooperators to address the conservation needs in Minnesota.

Enclosures.

Cc: Roger Mussetter, NRCS
Tim Koehler, NRCS
Paul Flynn, NRCS
Ron Harnack, BWSR
Doug Thomas, BWSR



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Transmitted via e-mail

March 31, 2003

MINNESOTA BULLETIN NO. 300-3-13

SUBJECT: LTP – Technical Service Providers (TSP)

Purpose. To distribute additional information on the Technical Service Provider process.

Expiration Date. September 30, 2003

Please remember that all information relayed on TSP is still considered draft until the final policy documents are published.

TECHNICAL SERVICE PROVIDERS FREQUENTLY ASKED QUESTIONS

Question: Are NRCS staff expected to have the same certification requirements as listed in TechReg for TSPs?

Answer: No – NRCS will maintain our existing internal certification process, which includes the use of designating Technical Approval Authority (TAA). We're not completely certain what we will do with existing TAA developed for partners who will become TSPs. There appears to be little reason for partners to have both TAA and be certified through TechReg.

Question: Who are technical service providers?

Answer: Technical service providers are individuals, entities, or public agencies certified by NRCS and placed on the approved list to provide technical service to program participants or the Department. Employees of public agencies will provide TSP services under the negotiated arrangements of a "Contribution Agreement". To qualify public agencies must have at least one individual certified through TechReg to participate.

Question: Who will train technical service provider?

Answer: Technical service providers may use a variety of training opportunities including recommending organizations and Universities. Field staff are NOT expected and will not be available to provide TSPs training on demand. We anticipate that several TSP sessions will be held on specific practices or certification categories. TSP training will most likely also cover program policy and procedure. In most cases private sector TSPs are expected reach a level of performance where they will function independently of NRCS field staff.

Question: Do SWCD employees need to certify on TechReg?

Answer: Yes, employees of public agencies can provide and be reimbursed for TSP services via a "Contribution Agreement". Each SWCD that enters into a Contribution Agreement must have at least one employee certified through TechReg. As a starting point SWCD employees may want to consider pursuing certification in the "Buffer" and "Vegetative Land Stabilization" categories on TechReg. Certification in these categories will qualify them to provide TSP services in the CRP, Continuous CRP and any new CREP agreements. Individuals certified on TechReg can always add to or modify their certification agreement.

Question: How will the quality of technical service provider's work be checked?

Answer: Quality assurance of completed conservation practices and services will be carried out annually in accordance with USDA quality assurance policy.

Question: When technical service providers are used by a conservation program participant who is responsible for maintaining the practice, follow-up, and status reviews for the duration of the contract?

Answer: The participant is responsible for maintaining the practice. The participant may use technical service providers for follow-up. NRCS is responsible for the status reviews for the duration of the contract, however, TSPs may be used to provide this service in some programs.

Question: What happens if a technical service provider declares bankruptcy or terminates technical service before a contract is completed for a conservation program participant?

Answer: The participant may utilize the services of another technical service provider or request NRCS to provide those services. Private sector TSPs are reimbursed directly by the program participant that hired them (or via an assignment of payment) and payment is not issued until after the full completion of the scheduled practice(s).

Question: How will technical service providers become certified?

Answer: TechReg, USDA's online certification system will be used to certify technical service providers. The applicant certifies that they have all required licenses in the states where they are seeking certification and that they are knowledgeable of state regulations, etc. The Certification Agreement in TechReg itemizes the responsibilities of the technical service provider. The credentials and profile information provided by TSPs in TechReg will also be checked during the Quality Assurance process.

Question: How will USDA's civil rights responsibilities be addressed with technical service providers?

Answer: Technical service providers sign the certification agreement which contains a clause stating they are aware of their civil rights responsibilities. Civil rights information sources will be hot-linked to the TechReg site.

Question: Can TSPs provide assistance on existing (FY2002 and prior year) program contracts?

Answer: In limited cases technical service providers could provide assistance on existing contracts, if requested by the participant and if sufficient program funds exist. In these cases a contract modification is required to insert the revised T/A component into the contract. However, TSPs will not be paid for services provided prior to the participant's request.

Question: When can technical service providers begin to provide technical services to conservation program participants and receive payment from USDA?

Answer: When States have conservation program funds for financial and technical service providers available and the conservation program participant has received approval through their program contract. For employees of public agencies a completed Contribution Agreement is also necessary.

Direct questions on this information to Paul Flynn, State Resource Conservationist.

WILLIAM HUNT
State Conservationist

AC
FO
SO/ECS

EQIP 2003 TIMELINE

Date	Action	Responsible	Comments
4/18	EQIP status email to AO's with info about Allocations, Scoring, Docket, LWG input	SO	Provides heads-up to AO's, FO's and SWCD's to begin early planning. AO's need to consider how to distribute their allocations and area scoring/ranking if needed. FO's/SWCD's may also want to start planning for local scoring system and obtaining input through LWG process.
5/1	Final Draft* material sent to AO & FO and posted on MN EQIP web site: Docket, Allocations, Scoring worksheet	SO	*Draft material may change depending on EQIP final rule and manual.
5/27-6/5	Conduct 7, 1 day training sessions for SWCD & DC on facilitating and leading local EQIP.	MASWCD, EXTENSION, NRCS SO	SWCD's will need to publicize and invite local participation to the input sessions to be held after the training sessions.
6/1-15	SWCD's hold local input sessions, hold LWG meeting, recommend local priorities and scoring system to DC	local SWCD, NRCS DC	Based on input, other local resource plans, resource concerns, etc. LWG recommends a local EQIP program to DC.
6/16	Local EQIP program approved by DC and submitted to SO: including scoring system and any other local guidelines.	DC	
6/20	All EQIP scoring systems, dockets, and related material provided to NHQ.	SO	NHQ must indicate approval of any scoring system before it can be used to rank applications.
7/1	All MN EQIP program material posted on national web site.	NHQ	No contracts can be approved or signed until each local/area scoring system and docket are approved and posted on the web.
8/1	Cut-off for scoring at local level. DC ranks, approves and obligates funds for contract development not to exceed local allocation funds.	DC	Statewide cutoff date for scoring and ranking of applications. Applications after 8/1/03 will be held until the next evaluation cutoff date.
	Per AO instructions, DC provides unfunded requests to AO	DC	
8/15-9/1	AO scoring/ranking/funding as determined by each Area	ASTC	
9/1	Goal to have all AO EQIP funds initially obligated.	ASTC	
9/1	All MN EQIP funds obligated with contracts signed. Any slippage funds returned to SO	DC, ASTC	



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Implementation of the 2002 Farm Bill Conservation Title and Selected Programs of the Forestry and Energy Titles (April 22, 2003)

For program details see *Summary of New Farm Bill Conservation Programs*

Program	Purpose	FY '03 Funding	Status
Income Limits (CCC, Title I Section 1603 .	Provides that individuals or entities with adjusted gross incomes of more than \$2.5 million, averaged over the prior three years, are ineligible to receive commodity payments, loans or conservation payments unless they derive at least 75 percent of their income from farming, ranching or forestry.	N/A	Proposed rule published October 28. . "Comment period closed November 2 2002.
Commodity Credit Corporation (FSA and NRCS)	Provides mandatory funding for CSP, CRP, WRP, EQIP, WHIP, FPP, GRP, SWRP technical and financial assistance.	See individual programs.	Technical assistance fully funded in each program account except for CRP and WRP. No funds from the NRCS Conservation Operations Account may be used for Farm Bill technical assistance.
Conservation Security Program (NRCS)	Provides payments to producers for implementing and maintaining new or maintaining existing conservation	None	The period for comments on the "Advance Notice of Proposed Rulemaking" has closed. Click here to view NACD's comments.

	practices on working lands.		
Conservation Reserve Program (FSA)	Provides rental payments to producers who plant sensitive lands to long-term cover. Acreage capped at 39.2 million.	\$2 billion	A revised rule is expected in May. April 17, 2003, FSA issued Notice CRP-429 titled "Preparing for CRP General Signup 26." Dates for signup have not been announced.
Wetlands Reserve Program (NRCS)	Provides payments to producers through easements or cost-share restoration agreements to restore cropped wetlands and associated uplands. Acreage capped at 2.275 million.	244,000 acres	Revised rule issued July 12, 2002.
Environmental Quality Incentives Program (NRCS)	Provides cost-share payments, incentive payments and technical and educational assistance to producers to protect soil, water, air, and related natural resources. 60% of funds to address livestock water quality concerns.	\$695 million	30-day comment period on proposed EQIP rule closed March 12, 2003 (click here for NACD comments on rule)
• Innovation Grants • Water Conservation	• Not specified • \$25 million nationally; • \$50 million for Klamath Basin	• N/A • \$45 million • \$ 8 million	• New rule being developed. • New rule being developed.

Grassland Reserve Program (Not assigned yet.)	Uses rental agreements and long-term and permanent easements for the purpose of restoring and conserving two million acres of grassland, rangeland, and pastureland.	\$72.250 million.	Authorized 2003-2007; proposed rule under development
Wildlife Habitat Incentive Program (NRCS)	Uses 5-15 year cost-share agreements to protect and restore plant and animal habitat.	\$30 million	Authorized 2002-2007. Final rule published July 24, 2002 to add the newly authorized option of 15 year agreements in return for additional co share.
Farmland and Ranch Protection Program (NRCS)	Provides cost sharing with states for purchasing conservation easements to protect agricultural land from conversion to other uses.	\$100 million	Final rule not yet published. Request for Proposals was published in the Federal Register on April 3, 2003. Proposals must be received in the NRCS State Office within May 19, 2003
Conservation of Private Grazing Land (NRCS)	Provides technical assistance to manage and improve private grazing lands.	\$23.5 million	November 12, 2002, <u>final CPGL rule</u> published.
Great Lakes Basin Program for Soil Erosion and Sediment Control	Authorizes the Secretary, in cooperation with EPA and the Corps of Engineers, to provide project demonstration grants, technical assistance, information and education assistance in the	\$5 million authorized; \$0 appropriated	A new rule and appropriation is needed

	Great Lakes Basin for soil erosion and sediment control to improve water quality in the basin.		
Partnerships and Cooperation (USDA)	Secretary to enter into agreements to carry out special projects to enhance technical and financial assistance under any USDA conservation program.	Up to five percent of program funds may be used.	Proposed rule under development.
Technical Service Providers	Secretary, at producer's option, provide payments to producers for procuring technical assistance from a non-USDA certified provider.	NRCS	Comments on an amendment to the <u>Technical Service Provider Assistance Interim Final Rule</u> for establishing payment rates must be received by Jun 30, 2003. The comment period on the <u>Technical Service Provider Assistance – Interim Final Rule</u> has been extended. Comments are now due April 30, 200 (NACD's comments.) The policy, handbook, and amendment to the rule are available on the NRCS website at http://techreg.usda.gov/WhatsNew.asp Click here for information on Tech. Providers Registry.
Resource Conservation and Development (NRCS)	Provides permanent authorization for the RC&D Program with number of areas capped at 450.	Authorizes such sums as are necessary.	Farm Bill codified many program rules. RC&D will not go through rule making process. Since they were technical in nature, policy changes were issued through the RC&D manual.
Small Watershed Rehabilitation Program (NRCS)	Purpose is to rehabilitate aging small watershed	\$30 million appropriated; \$45 million	No rule change needed.

	structures that need to be repaired, upgraded or de-commissioning.	mandatory	
Agriculture Management Assistance	Provides financial and technical assistance to producers in 15 states with traditionally low participation in USDA programs.	\$20 million	Final rule published April 9, 2003. Contact: Dave Mason, Program Manager, at 202-720-1873.
Forest Land Enhancement Program (Forest Service)	Provides financial, technical and educational assistance to help private forest landowners address watershed-based forestry objectives.	Annual number not specified; \$100 million total through FY 07.	Proposed rule expected to be published in 2003 with 60 day comment period.
Renewable Energy Systems and Energy Efficiency Improvements Program (DoE, USDA)	Provides loans and loan guarantees and grants to producers and rural small businesses to purchase renewable energy systems and make energy efficiency improvements	\$23 million	New rule under development.

*Board Packet
FYI*

From: Jim Cox <jwcox@crosslink.net>
To: <jwcox@crosslink.net>
Date: 5/5/03 1:56PM
Subject: FYI - EPA Announces \$15 Million for the Nation's Watersheds

>EPA Headquarters Press Release, Washington, DC

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> For Release 05/02/2003

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> EPA Announces \$15 Million for the Nation's Watersheds

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> May 2, 2003

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> To support community-driven initiatives that protect habitat, improve water

> quality, and enhance outdoor recreation, EPA Administrator Christie Whitman

> today announced nearly \$15 million in grants to 20 watershed organizations

> selected as part of a new Watershed Initiative.

>

>

> "This national competition for these Watershed Initiative grants generated an

> outpouring of outstanding proposals, each with the enthusiastic support of

> their respective governors and Tribal leaders," said Administrator Whitman.

> "EPA is very excited to commit significant federal dollars to support these top

> watershed efforts, all of which will serve as national models for other

- > communities to follow. The organizations selected today stand ready to achieve
- > on-the-ground water quality improvements. Two years from now, I am confident
- > that we will see cleaner water and measurable environmental change ? such as
- > the return of native bass and trout fisheries and increased recreational
- > opportunities."
- >
- >
- > "The Watershed Initiative builds on the energy, commitment, in-depth knowledge
- > of local problems, and enthusiasm of citizen-driven efforts," said EPA's
- > Assistant Administrator for Water, G. Tracy Mehan, III. "These Watershed
- > Initiative grants will help tackle some of the nation's most pernicious water
- > quality problems ? problems such as habitat loss and alteration, nutrient
- > enrichment, pathogens, and invasive species, all of which continue to harm
- > watersheds nationwide."
- >
- >
- > During last year's State of the Union Address, President George W. Bush asked
- > the nation's governors and tribal leaders to nominate proposals to support
- > community-based approaches to clean up the nation's watersheds. This year,
- > Congress appropriated \$15 million of the President's original \$20 million
- > dollar funding request.
- >
- >
- > The winning watersheds cover more than 90,000 square miles of the nation's
- > lakes, rivers and streams. They represent our country's unique and varied
- > landscape ? from the forests of Maine to the tropics of Hawaii. These
- > watersheds reside in urban and rural areas, encompass agricultural land, and
- > are often threatened by suburban sprawl. Funds will go toward restoration

and

- > protection projects, such as stream stabilization and habitat enhancement,
- > implementing agricultural best management practices, and working with local
- > governments and homeowners to promote sustainable practices and strategies. The
- > grants range from \$300,000 to \$1 million. For more information log on to
- > <http://www.epa.gov/owow/watershed/initiative>.

>

>

- > Regional and national experts selected the winners from a highly competitive
- > field of more than 176 nominations. Today's winners were chosen because they
- > best demonstrated the ability to achieve on-the-ground environmental results in
- > a short time frame. Each of these watershed organizations exhibited strong
- > partnerships with a wide variety of support, showed innovation, and
- > demonstrated compatibility with existing governmental programs.

>

>

- > The 20 winning watersheds include:
- > ? Meduxnekeag River, Maine
- > ? Narragansett Bay, R.I., Mass.
- > ? Charles River, Mass.
- > ? Raritan River, N.J.
- > ? Susquehanna Headwaters, N.Y., Pa.
- > ? Christina River, Pa., Del.
- > ? Dunkard Creek, Pa., W.Va.
- > ? Upper Tennessee River, Va., Tenn., N.C.
- > ? Cumberland River, Tenn., Ky.
- > ? Great Miami River, Ohio
- > ? Greater Blue Earth Watershed, Minn., Iowa
- > ? Manistee River, Mich.

> ? Rio Puerco Watershed, N.M.

> ? Bayou Bartholomew, Ark.

> ? Rathbun Lake, Iowa

> ? Upper White Watershed, Ark., Mo.

> ? Clark Fork-Pend Oreille, Mont., Idaho, Wash.

> ? Upper South Platte, Colo.

> ? Hanalei Bay, Hawaii

> ? Lower Columbia River Ore., Wash.

>

>

> Whitman announced the grants at the Stony Brook-Millstone Watershed

> Association's Watershed Nature Reserve in Pennington, N.J. and presented
a \$15

> million check to the nation's watersheds. She applauded the Stony

> Brook-Millstone Watershed Association and the other organizations working
on

> behalf of clean water and a healthy environment.

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STATE OF MINNESOTA

Office of Governor Tim Pawlenty

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

MAY 20 2003

May 16, 2003

The Honorable Ann M. Veneman
Secretary, U.S. Department of Agriculture
14th Street and Independence Ave., SW
Washington, DC 20250

Dear Secretary Veneman:

The State of Minnesota respectfully requests you offer additional time for America's farmers and landowners to give consideration to participating in the ongoing sign-up for the Conservation Reserve Program (CRP). We thank-you for the announcement moving forward with a CRP sign-up, however we urge additional time is necessary in order to conduct a successful sign-up of this nation's most successful voluntary incentive-based conservation program.

We believe additional time is warranted for the following reasons. With little time between the announcement and start date of May 5th, insufficient time has existed for analysis of the just recently made available CRP rule (published May 8, 2003 after start of the sign-up), and for review of the CRP handbook (revision 4 to 2CRP). We understand that in many counties both the handbook and software necessary to conduct the sign-up were not available until late last week, and as a result many producers were told to come back at a later time, effectively eliminating the first week of the sign-up. We are concerned about conducting a successful sign-up at the height of the planting season in many parts of the country. This may limit a producer's ability to participate. The final week of the announced sign-up contains a major holiday, further limiting the effectiveness of the announced sign-up period.

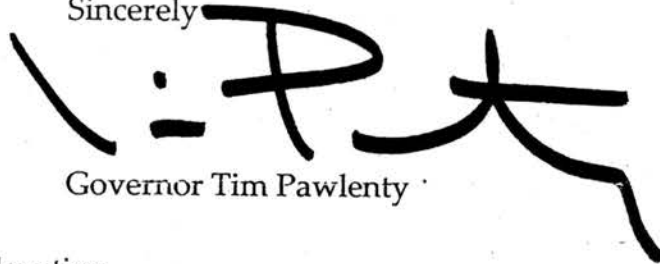
The efforts of Minnesota's state/local/private partnerships groups that promote the benefits for the CRP sign-up will not be as effective due to the short time frame. Additionally, the notice that only one other general sign-up will be conducted through 2007 makes it appropriate that adequate time be given for

May 16, 2003

Page Two

farmers and landowners to consider submitting bids now. We respectfully request your consideration of adding at least four weeks to the 26th general CRP sign-up. Thank you for your consideration of our views.

Sincerely

A large, stylized handwritten signature in black ink, appearing to be 'T. Pawlenty', written over the word 'Sincerely' and the printed name below.

Governor Tim Pawlenty

cc: Minnesota Congressional Delegation

Commissioner Gene Hugoson
Minnesota Department of Agriculture

Commissioner Gene Merriam
Minnesota Department of Natural Resources

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

Commissioner Sheryl Corrigan
Minnesota Pollution Control Agency



CALENDAR/ISSUES TRACKER

July

General

- State fiscal year begins
- Cost-Share grant agreements sent
- Feedlot Cost-Share grant agreements sent
- General Services grant agreements sent
- RIM Services grant agreements sent
- NPEA grant agreements sent
- NRBG work plan and budget due to BCs
- NACD North Central Regional Meeting
- MASWCD resolutions due
- Deadline for candidates to file for MASWCD supervisor elections (election years)

August

Board action required on:

- 04 Local Water Management Challenge Grant allocations (every two years)

General

- Local Water Management Challenge Grants grant agreements sent (every 2 years)
- 2003 Summer Board Tour
- Agency biennial budget info due at Finance (even years)
- MAWD resolutions due
- AMC resolutions due

September

General

- End of federal fiscal year

October

General

- Start of federal fiscal year
- End of wetland delineation field work
- Register for annual meetings (AMC, MASWCD, MAWD)

November

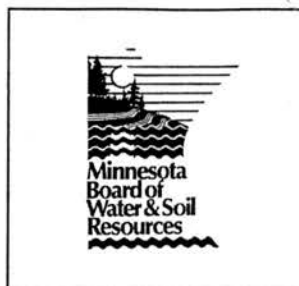
General

- Election day
- BWSR Board meeting deferred to early December

December

General

- Associations annual meetings
- Watershed district certified final levies to counties



CALENDAR/ISSUES TRACKER

January

General

- Governor's capital bonding recommendations (even years)
- Legislature begins (budget years/odd years)

February

General

- Governor's biennial budget recommendations (odd years)
- Legislature begins (bonding years/even years)
- MASWCD and MAWD days at the Capitol (or early March)
- NACD National Convention
- LCMR proposals due (even years)

March

Due to BWSR:

- NRBG/LARS Annual Report
- SWCD Annual Report
- SWCD Annual Financial Report
- SWCD Annual Work Plan

General

- Local government audits due
- Red River Water Management Board Annual Meeting

April

General

- Area Envirothons (and early May)
- Wetland delineation field work begins
- Metro area watershed annual reports due

May

Board action required on:

- 04 RIM Reserve allocation policy
- 04 Local Water Management Challenge Grant authorization

General

- State Envirothon
- Agency bonding proposals planning (odd years)
- Local government budgeting workshops begin

June

Board action required on:

- 04 Cost-Share Base Grants allocations
- 04 Feedlot Water Quality Management Cost-Share Grant allocations
- 04 RIM Services allocations
- 04 SWCD General Services allocations
- 04 NRBG allocations
- NPEA grant allocations

General

- Agency planning for biennial budget (even years)
- Agency bonding proposals due to Finance (odd years)
- End of state fiscal year
- MN Association of Cons. District Employees Conference
- MAWD summer tour