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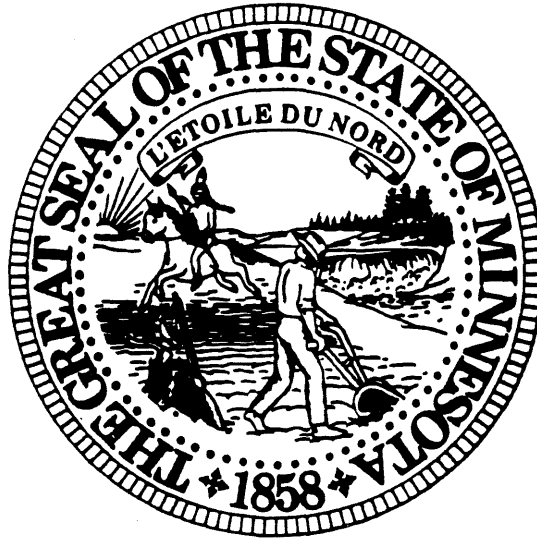


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**STATE OF MINNESOTA**  
**WETLAND LAW CONSOLIDATION REPORT**  
(Pursuant to Laws of Minnesota, 1998, Chapter 312, Sec. 7.)



**MINNESOTA DEPARTMENT OF NATURAL RESOURCES**  
**DIVISION OF WATERS**

**IN CONJUNCTION WITH THE**  
**BOARD OF WATER AND SOIL RESOURCES**

March 1, 1999

### **Acknowledgment**

In 1998, the Minnesota Legislature mandated the Department of Natural Resources to complete a wetland law consolidation report concerning the consolidation of public waters wetland laws with the Wetland Conservation Act. This report was completed by the Department of Natural Resources, Division of Waters, in conjunction with the Minnesota Board of Water and Soil Resources, in cooperation with the Minnesota Department of Agriculture, the Minnesota Pollution Control Agency, the Minnesota Department of Transportation, the Minnesota Association of Watershed Districts, the Association of Minnesota Counties, the League of Minnesota Cities, the Minnesota Association of Townships, the United States Fish and Wildlife Service, the Natural Resources Conservation Service and the United States Army Corps of Engineers.

## Executive Summary and Recommendation

This Wetland Law Simplification Report, produced by the Department of Natural Resources (DNR), in conjunction with the Board of Water and Soil Resources (BWSR), involved the input of selected interest groups. No evidence of significant problems was identified through this process that warrants massive program changes. Still, there are opportunities for program improvement.

The DNR and the BWSR recommend that simplification Option C (below) presents the greatest opportunity for integrated wetland resource management and protection within Minnesota. These changes, if enacted, will make maximum use of the existing Public Waters Work Permit and Wetland Conservation Act (WCA) Programs and existing DNR, BWSR, and Local Government Unit (LGU) staff.

### Wetland Simplification Options:

<u>Options</u>	<u>Impact</u>	<u>Legislation Needed</u>	<u>Report Page Reference</u>
A. Protected Waters Wetlands (PWW) to WCA	More exemptions for PWWs Adds protection from public ditching repair and maintenance May add workload to LGUs Federal permit delegation less likely	Yes	12
B. WCA to PWW	Increased protection on WCA wetlands Significant workload increase for DNR Less LGU workload Federal permit delegation more likely Eliminates protection from public ditch repair and maintenance	Yes	13
C. Simplification			
Revise PWI Lists	Establishes a process to verify PWWs as either Protected Waters or PWWs	Yes	14
Uniform Wetland Mitigation Replacement Ratios	Provides for consistent mitigation standards between WCA and DNR	Yes	15

<u>Options</u>	<u>Impact</u>	<u>Legislation Needed</u>	<u>Report Page Reference</u>
Road Project Banking	Increases program uniformity and aides local road authorities	Yes	15
Enforcement Changes	Increases program uniformity WCA provided contractor liability clarification like DNR DNR provided cease and desist authority like WCA	Yes	16
Soil Science Licensure	Addresses an issue related to wetland delineation	Yes	17
Joint Rule Making	Establishes a process for continued program integration	No	19
Apply WCA standards for public ditch projects to DNR	Increase program uniformity and protection	Yes	19
Apply 1987 Delineation Manual to determine jurisdiction on PWWs	Achieves uniform boundary determination	Yes	20
DNR to use an amended DNR rule process on PWWs	Retains stricter standards over entire PWW with added flexibility under amended rules	Yes	20

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## **I. Introduction**

Legislation enacted in the 1998 legislative session included a provision for a wetland law consolidation report. The language that passed is:

### **Chapter 312, Sec. 7. WETLAND LAW CONSOLIDATION REPORT**

“By March 1, 1999, the commissioner of natural resources, in conjunction with the executive director of the board of water and soil resources, shall submit a report to the house and senate environment and natural resource committees regarding the simplification of wetland law by consolidating public waters wetlands laws with the wetlands conservation act. The report shall include a discussion of the problems and benefits of a consolidation.”

This required report will first present an overview of the Public Waters Work Permit Program and the Wetland Conservation Act (WCA), identify problems and issues affecting these programs and then examine several alternative approaches to current program implementation. Several appendices are attached to this report that address the numbers and types of activities impacting type 3, 4 and 5 wetlands subject to the Department of Natural Resources (DNR) administered Public Waters Work Permit Program and the same types of wetlands subject to provisions of the WCA .

## **II. Brief History of Wetland Regulation**

The State of Minnesota currently regulates activities impacting wetlands through implementation of the Minnesota Public Waters Work Permit Program by the DNR and the Wetland Conservation Act implemented by local units of government (LGUs) with administrative oversight by the Board of Water and Soil Resources (BWSR). These programs are complementary by regulating activities on different, but often adjacent wetland areas. There is no regulatory overlap.

### **Minnesota's Wetland Resources**

The wetland resource area of Minnesota that is covered by the Public Waters Work Permit Program and the Wetland Conservation Act is best represented by the United State Fish and Wildlife Service's National Wetland Inventory. This inventory indicates that the state is covered by 10.1 million acres of wetlands, or 18.8% of the state. An additional 3.0 million acres or 5.6% of the state is covered with lakes (deepwater habitat).

Refer to Appendix A for additional information regarding the distribution and categories of Minnesota's wetland resources.

### **Wetland Resources and Activities Regulated by the DNR**

Wetland resources regulated directly by the DNR are those subject to the provisions of the

Minnesota Public Waters Work Permit Program, initially passed in 1937. Water bodies initially regulated by the state were primarily large lakes and watercourses. The late 1960's and early 1970's saw the enactment of state legislation that regulated development in shoreland and floodplain areas and introduced the concepts of "beneficial public purpose" and "beneficial public use" to define the water bodies subject to state regulatory control. Rapidly increasing agricultural land values in the 1970's led to increased wetland drainage and numerous DNR initiated legal proceedings to protect the state's interest in these wetland resources. These actions led to passage in 1976 and 1979 of legislation to inventory and designate the state's lakes, wetlands, and watercourses using a public process, with hearing and appeals provisions, to specifically identify the waters regulated by the state through the DNR's Public Waters Work Permit Program. Current program jurisdiction is based on the 1979 amendments.

When the inventory was finally completed in 1984, 9,803 public waters wetlands comprising 274,888 acres were identified and designated. An additional 11,800 public waters (3.3 million acres) and 6,500 watercourses were also mapped and designated as subject to the Minnesota Public Waters Work Permit Program. The public waters wetlands comprise 0.5% of the state and 2.7% of the state's wetlands.

The public inventory, designation and appeal process resulted in a series of county maps and lists specifically identifying those waters subject to state permit program jurisdiction. Rules promulgated to address permit review procedures were initially developed in 1978, with amendments adopted in 1981 (see Minnesota Rules, chapter 6115). Fill for private upland development and drainage for private purposes is prohibited by these rules. The rules allow for fill for public road projects when the no-build alternative is ruled out and for temporary or partial drainage projects having a public purpose.

Any activities that would change the course, current or cross-section of the mapped water bodies are subject to the provisions of the Public Waters Work Permit Program. Certain types of activities, such as temporary docks, beach sand blankets and natural rock riprap, have been deregulated by rule and do not require a permit application if constructed within specific design standards. Projects that have not been deregulated by rule are subject to a permit application and review process. Program rule language specifically identifies prohibited activities and the factors to be addressed for permissible projects. Mitigation/replacement requirements for permitted activities are determined on a case-by-case basis.

The DNR receives about 800 Public Waters Work Permit applications per year, of which about 80 applications are for activities in public waters wetlands, impacting about 30 acres of wetlands per year, based on 1998 data. The largest category of permit applications impacting public waters wetlands are public road projects (41%), followed by water level control structures (16%). Refer to Appendix B for additional information on the Public Waters Work Permit Program and deregulated activities.

#### Wetland Resources and Activities Regulated by the Wetland Conservation Act

The WCA regulates the draining and filling of the 9.5 million acres of Minnesota wetlands and deepwater habitats that are not regulated by the Public Waters Work Permit Program. The WCA

was initially passed in 1991, and amended in 1993, 1994, and 1996. Administrative rules to implement the WCA were adopted in 1993 and amended in 1996 (see Minnesota Rules, chapter 8420).

The WCA is administered at the local level by over 400 local government units (LGUs), which can be counties, cities, towns, or watershed management organizations (WMOs). Wetland draining or filling activities proposed by landowners are reviewed by the LGU. If the project is not exempt, a wetland replacement plan must be prepared that addresses the wetland sequencing steps of avoidance of wetland impacts, minimization of wetland impacts, and replacement of unavoidable wetland impacts either through wetland restoration or creation at minimum ratios prescribed by law.

BWSR estimates that generally there are between 300 and 400 wetland replacement plans approved each year, as well as numerous exemption and no-loss determinations and an average of 35 wetland banking projects initiated annually. Data from LGUs provided to BWSR for 1995 and 1996 WCA activities averages 318 wetland replacement plans impacting 395 wetland acres with replacement by 454 acres of restored or created wetland.

Refer to Appendix C for additional information on the WCA program.

### **III. Study Process**

The DNR and the BWSR formed a work group to prepare this study and to seek input from outside groups, with oversight and approval by the Commissioner and the BWSR Board. Initial discussions between the DNR and BWSR on the schedule and format of this study were initiated on August 27, 1998 at BWSR and on September 3, 1998 at DNR. The first draft report was distributed to the work group on December 3, 1998 and was mailed out to organizations and interest groups on December 8, 1998. The second draft was developed and mailed to the same groups and organizations on December 31, 1998. DNR and BWSR staff reconvened in January to reassess the draft report format and convened an interest group review session on February 11, 1999. Comments received from this session were presented to the BWSR Wetland Subcommittee on February 22, 1999 and the BWSR Board on February 24, 1999. Final action on the report was taken by BWSR and DNR on February 26, 1999.

### **IV. Analysis/Comparison of Programs**

The following list identifies key components of both the Public Waters Permit Program administered by the DNR and Wetland Conservation Act administered by LGUs with oversight from BWSR:

<u>Components</u>	<u>Protected Waters Wetlands</u>	<u>Wetland Conservation Act</u>
Program Enactment	Public Waters Permit Program enacted in 1937; wetlands included in early 1970's, specifically in 1976.	Wetland Conservation Act enacted in 1991.
Program Administration	DNR.	Local government units (counties, cities, towns, water management organizations), with oversight from BWSR.
Regulated Wetland Types	Types 3, 4, and 5, as identified on Protected Water Inventory maps.	Types 1 through 8, exclusive of those identified on Protected Water Inventory maps.
Regulated Acreage	274,888 acres.	9.5 million acres.
Jurisdiction/Boundary Determination	PWWs identified by the Protected Water Inventory, per M.S. 103G.201, and delineated using Ordinary High Water Level, per M.S. 103G.005, subd. 14.	United States Corps of Engineers Wetland Delineation Manual (1987) used to identify wetlands not on Protected Water Inventory.
Minimum Wetland Size	10 acres in unincorporated areas; 2.5 acres in incorporated areas.	No size minimum. De minimus exemption varies by location and wetland type from 400 to 10,000 square feet.
Resource Characteristics	Inventoried areas chosen based on presence of significant amounts of surface water subject to the exercising of riparian rights established by courts of law; often of national and international significance for migratory waterfowl; important habitat for many species of fish and wildlife.	Wetlands based on presence of hydrology, hydric soils, and hydrophytic vegetation; some of international significance (large peatlands); important habitat for many species of fish and wildlife.

<u>Components</u>	<u>Protected Waters Wetlands</u>	<u>Wetland Conservation Act</u>
Program Regionalization	Statute and rules apply uniformly statewide.	Statute and rule divide state into 3 areas based on percentage of presettlement wetlands remaining (less than 50%, 50-80%, greater than 80%).
Maps	Protected Waters Inventory Maps, per M.S. 103G.201.	No specific inventory maps. National Wetland Inventory maps are used as a guide, along with soil maps and aerial photos.
Scope of Allowable Projects	Water dependent projects necessary for riparian landowners to reasonably exercise their riparian rights, balanced by public trust principles in the protection of public waters.	Projects are allowed, based on sequencing steps of wetland avoidance, minimizing impacts and replacing unavoidable wetland impacts.
Regulated Activities	Activities that change the "course, current or cross-section" of protected water wetlands; e.g. filling, excavation, structures, water level controls, bridges and culverts, intakes and outfalls, drainage and mining.	Wetland draining or filling, directly or indirectly.
Project Application Form	Local - State- Federal Water Resource Project Notification / Application Form utilized, plus any required plans or maps.	Local - State - Federal Water Resource Project Notification / Application Form can be utilized, plus any required wetland replacement plans or maps.
Applications/Year	About 80.	About 320.
Wetland Acreage Impacted/Year	About 30 acres.	About 400 acres.
Fees	Range from \$75 to \$500, per M.S. 103G.301 and rule, chapter 6115.	LGUs may assess fees necessary to process WCA determinations.

<u>Components</u>	<u>Protected Waters Wetlands</u>	<u>Wetland Conservation Act</u>
Notice/Public Comments	30 days. Specified by statute and agreement to city, county, SWCD, Watershed Districts, DNR, Corps of Engineers and MPCA. Same parties receive notice of permit decisions.	Project proposals are sent out for a 15 day review to a mandatory list of parties (DNR, SWCD, BWSR, Watershed District) and any one requesting a notice. Same parties receive notice of decisions.
Decision Timeframe	30 days after receipt of required information.	Subject to M.S. 15.99, generally within 60 days.
Exemptions/Deregulated	14 types of projects identified in rule, chapter 6115 and listed in Appendix B, including public ditch repairs.	10 categories of exemptions identified in rule, chapter 8420 and listed in Appendix C. Public ditch repairs subject to wetland replacement if wetland over 25 years.
Permit Review Standards	Based on riparian rights of landowner to the access and use of public waters, as addressed in rules, chapter 6115 with listing of deregulated activities, prohibited activities, and the remaining water dependent activities requiring permits after being limited to the minimum needed for the activity.	Sequencing is required as part of an approved wetland replacement plan, i.e. first avoid then minimize unavoidable wetland impacts, and to replace unavoidable wetland impacts.
Private Drainage Standards	Complete drainage prohibited. Partial drainage subject to permit rules and can be allowed if drainage improves navigation or recreation, improves or restores fish and wildlife habitat, or alleviates flooding caused by upstream or downstream conditions.	Private drainage subject to wetland replacement if wetland over 25 years.
Compensatory Mitigation	Provisions to compensate for the detrimental aspects of change allowed by permit on a case-by-basis, per M.S. 103G.245, subd. 7.	Required at predetermined minimum ratios as part of approved wetland replacement plan, by either wetland restoration or creation.

<u>Components</u>	<u>Protected Waters Wetlands</u>	<u>Wetland Conservation Act</u>
Wetland Banking	DNR can consider wetland replacement using appropriate credits in the state wetland bank.	Landowners may replace unavoidable wetland impacts using the state wetland bank.
Enforcement	DNR Conservation Officers issue criminal citations to landowners and contractors. DNR Waters handles civil restoration with Attorney General Office assistance. Injunctive relief may be sought through the Attorney General's Office.	DNR Conservation Officers and other peace officers issue Cease and Desist orders to landowners to stop illegal activities. Restoration orders are used to correct violations.
Violation Penalties	Violations are punishable as a misdemeanor with fines up to \$700 and/or 90 days in jail.	Violations of Orders are punishable as a misdemeanor with fines up to \$700 and/or 90 days in jail.
Appeals	Applicant, watershed district, SWCD, and city can demand a Chapter 15 hearing before an Administrative Law Judge, who recommends the decision to the Commissioner. Decision may be appealed to Court of Appeals.	LGU decision may be appealed to BWSR Board by the landowner and those required to receive notice of decision. Board decisions may be appealed to Court of Appeals.
Administration -- Technical	Hydrologist job qualifications include a college degree in resource management, with classwork in hydrology and hydraulics. Wetland delineation training offered to all field staff.	Job qualifications set by LGUs and SWCDs. TEP panel (LGU, SWCD, BWSR) provided for by statute to address technical issues requires 2 of 3 members to be trained in the use of the 1987 Delineation Manual, the classification of wetlands, and evaluation of wetland functions and values.
-- Legal	Attorneys in the Office of the State Attorney General	LGUs retain own legal advice. BWSR utilizes attorneys from the Office of the State Attorney General.

<u>Components</u>	<u>Protected Waters Wetlands</u>	<u>Wetland Conservation Act</u>
-- Funding	DNR Waters allocates \$0.8M per year to the PW Permit Program, with about \$80,000 of this to public waters wetlands.	BWSR allocates \$1.8M/year to LGUs through the Natural Resources Block Program. BWSR costs are about \$0.5M/year.
Taxes	PWW exempt for real estate taxation purposes (M.S. 272.02, subd. 10(i)).	Types 3, 4, 5 wetlands may be exempted from real estate taxes if drainage is legal, feasible and practical (M.S. 272.02, subd. 10(ii)). Wetlands in a wetland preservation area under M.S. 103F.612 -.616 are also tax exempt.
Ordinance Relationships	Aquatic plant management, aeration programs and utility license crossing permits apply on PWW.	The WCA has a de minimis of 400 square feet in a shoreland zoning area. LGUs may develop local comprehensive wetland plans and implement through ordinance adoption.
Landowner Compensation	PWW not eligible for Permanent Wetland Preserve program. Prior to 1991, qualifying owners of PWWs were eligible for State Water Bank Program contracts, easements or purchase. No compensation is currently available to landowners denied PWW permits.	Permanent Wetland Preserve easements available to qualifying owners of types 1, 2, 3, and 6 wetlands. Landowners denied wetland plan approval by the LGU and BWSR may apply for compensation under M S 103G.237.
Simplification -- Delegation	DNR has authority to delegate permit authority to LGUs.	LGUs can delegate WCA administration to another LGU willing to accept administration.

<u>Components</u>	<u>Protected Waters Wetlands</u>	<u>Wetland Conservation Act</u>
-- General Permits		
-- State	DNR has authority to issue general permits for projects having minor environmental impact.	LGUs can use the WCA and other local controls as the basis for implementing state general permits.
-- Federal	Corps GP-01-MN covers DNR authorized projects except those over 3 acres, dams subject to dam safety specs., or over 500 feet of channelization.	WCA forms the basis of part of the proposed Corps LOP/ GP to replace Nationwide Permits, where WCA approval can be used to secure Corps approval.
Public Roads	Crossings and fill subject to permits and project-specific mitigation by the road authority. General permits have been developed for crossings.	Fill subject to WCA reporting procedures for upgrading existing roads for safety or design reasons, with replacement funded by the state.

## V. Problem Identification

Existing state water policy direction is found in Minnesota Statutes as follows:

M.S. 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 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 rights 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.

As indicated in the Part IV., there are a number of significant differences between the Protected Waters Work Permit Program and the Wetlands Conservation Act. Reported problems arising from the administration of these programs are infrequent. However, on occasions when a single project affects wetlands (in some cases, a single wetland) that fall under both WCA and DNR jurisdictions, the applicant is faced with multiple agency jurisdiction and review standards, including different jurisdictional boundary determination methods. In addition, there are important differences in how each program handles public transportation projects and ditch maintenance and repair. These differences are discussed further below.

#### A. Multiple Agency Jurisdiction and Review Standards

The Public Waters Work Permit Program and the WCA differ in their approach to projects allowed under the respective programs.

The Public Waters program is based on the right of riparian landowners to reasonable access and use the water adjacent to or overlying the property they own. The State of Minnesota, through the Public Waters Work Permit Program, balances the public interest in protecting public waters and their associated natural resource values with the riparian rights of landowners on an individual water basin, wetland or watercourse basis.

The WCA is based on a no net loss of wetland acreage and wetland function concept. Projects are evaluated on their ability to avoid and minimize wetland impacts. Unavoidable wetland impacts must be replaced by wetland restoration or creation. These differences are noted in the Section IV, Analysis/Comparison of Programs, in particular, in the sections on sequencing, riparian rights/sequencing, and mitigation.

Linear projects or projects adjacent to recreational lakes often have the potential to cause impacts to both public waters and public waters wetlands regulated by the DNR and wetlands regulated under the WCA. These situations of multiple wetland program jurisdictions are often difficult for property owners to understand.

#### B. Different Jurisdictional Boundary Determination Methods

The Public Waters Work Permit Program and the WCA use different procedures to determine the

boundary of regulatory jurisdiction. These procedures were developed or adopted for different purposes.

The DNR utilizes the "ordinary high water level" (OHWL) for locating the jurisdictional boundary of public waters wetlands. The procedure for identifying the ordinary high water level was developed to identify the boundary of the state's interest in protecting the basin or bed of public waters, public waters wetlands, reservoirs and watercourses. The methodology is based primarily on tree and watermark evidence left on the landscape from the prolonged duration of surface water inundation on the site, and was initially developed on large lakes and watercourses.

This definition was used when the Protected Waters Inventory maps were developed in the late 1970's and early 1980's. Substantial questions regarding the standard of review used to develop the Protected Waters Inventory and equity arguments may be raised if the DNR were to consider changes in this methodology.

The Wetland Conservation Act determines wetland boundaries according to the United States Army Corps of Engineers Wetland Delineation Manual (January 1987). This method is used by the Army Corps of Engineers and the Minnesota Pollution Control Agency in carrying out provisions of the Federal Clean Water Act wetland regulations in Minnesota. It is based on an analysis of hydrology, soils and vegetation. Under most circumstances, the wetland boundary established using the 1987 Federal Manual will encompass a larger jurisdictional area than that established by the DNR OHWL.

Refer to Appendix D for additional information on regulatory boundary determination procedures.

#### **C. Road Project Discrepancies**

Wetland impacts associated with public road maintenance and repair projects have been identified as an area where the two programs can achieve greater consistency. Wetlands subject to provisions of the WCA can currently have these impacts replaced through use of a reporting system and use of the state funded state wetland bank administered by the BWSR. This option does not exist for similar projects impacting protected waters wetlands.

#### **D. Different Ditch Project Procedures**

An important discrepancy exists between the WCA and the Protected Waters Work Permit Program concerning wetland losses associated with public ditch maintenance and repair projects. Under the WCA, Types 3,4 and 5 wetlands that have existed for more than 25 years and that are drained by a legal drainage repair or maintenance project must be replaced. Conversely, there is no requirement to compensate for similar Protected Waters Wetlands impacts.

### **VI. Evaluation of Program Options and Outcomes**

A wide variety of options could be implemented to address the issues identified above. These

alternatives, along with the potential consequences of implementation are identified below:

### Options

#### A. Transfer Protected Waters Wetlands to the Wetland Conservation Act

Problems identified with this transfer include 1) changing the basis of regulation from that associated with balancing the right of landowners to exercise their riparian rights with the public interest in protecting public waters to that of a no-net-loss of wetland acreage and functions; 2) a reduction in acreage of tax exempt wetlands; 3) a reduction in the scope of the use of the successful Corps of Engineers GP-01-MN general permit; and 4) adverse impacts to other DNR programs tied to the Protected Waters Program.

Program statute and rule language prohibit the DNR from issuing permits for the filling of public waters wetland for private upland development purposes, such as residential or industrial building sites, and prohibit the complete drainage of public waters wetlands, except for public ditch maintenance and repair. No such prohibitions exist under provisions of the Wetland Conservation Act statute and rules. Sequencing of wetland impacts is a part of the wetland replacement plan process, but LGUs, if satisfied that sequencing has been achieved, can allow for the complete filling or drainage of wetlands. In recognition of the importance of the state protection of public waters wetlands, changes were enacted in the property tax law that has exempted these areas from real estate taxes assessed since 1980.

Transfer of public waters wetlands from DNR jurisdiction would also reduce the scope of the successful Corps of Engineers - DNR MOA initially signed in 1984 that has formed the basis for the Corps issuing their programmatic general permit GP-01-MN. This general permit provides Federal Clean Water Act authorization for certain projects authorized by DNR Public Waters Work Permits, thus eliminating the need to apply for a separate Federal permit.

The transfer of regulatory jurisdiction of public waters wetlands from the DNR to the LGUs administering the WCA could affect other DNR programs such as shoreland zoning standards implemented at the city or county level. DNR data indicates that 1766 public water wetlands larger than 25 acres in unincorporated areas and 10 acres in size in incorporated areas are currently subject to shoreland zoning standards. Additionally, the DNR's aquatic plant management program and water aeration permit programs are tied to the Protected Waters Inventory.

#### Impact:

Simplified wetland regulatory environment.

Prohibition of private upland development on PWW is removed.

Wetlands identified by a public process as having statewide significance, with appeal rights, would now be available for development.

Water dependency basis for private development permits would no longer apply.

1766 wetlands would not be subject to mandatory city or county shoreland ordinances, aquatic plant management or aeration permits.

Opportunities for state assumption of Federal Clean Water Act authority are reduced.  
Redistribution of administrative costs from DNR to LGUs.

#### B. Transfer Wetland Conservation Act Wetlands to Protected Waters Wetlands

A different approach to consolidation of wetland laws would be to transfer regulatory administration of wetlands currently subject to the WCA to the DNR. This approach was considered by the Legislature prior to the initial enactment of the WCA in 1991. This alternative would also result in program simplification.

This option would also allow for regulatory simplification alternatives that are not currently feasible, including federal program assumption, or the more likely development of a statewide Section 404 programmatic general permit. There would be cost implications if such an approach were to be considered, and local wetland expertise that has been developed in the formation of local Technical Evaluation Panels as provided for by the WCA and incorporation of local resource management concerns would also need to be recognized.

#### Impact:

Simplified wetland regulatory environment.  
Federal permit program assumption possible.  
Federal programmatic general permit probable ("one stop shopping")  
Redistribution of administrative costs from LGUs to DNR  
Stricter standards on private wetland development may apply to additional wetlands  
Prohibition of private upland development on PWW is retained.

#### C. Simplification

A simplification option developed by the DNR and the BWSR contains nine elements as follows:

- \* Revise Protected Waters Inventory Lists
- \* Uniform Wetland Mitigation Replacement Ratios Used by DNR and BWSR
- \* Road Project Banking
- \* Enforcement Changes
- \* Soil Science Licensure
- \* Joint Rule Making by BWSR and DNR
- \* Apply WCA Standards for Public Ditch Projects to DNR
- \* Apply 1987 Delineation Manual to determine jurisdiction on PWWs
- \* DNR to use an amended DNR rule process on PWWs

The DNR and the BWSR are continuing discussions on the appropriate approach to revising the Protected Water Inventory in relation to the WCA and how the DNR program rules would address components of the WCA rule while maintaining protection levels on areas identified in the Protected Water Inventory.

### **\* Revise Protected Waters Inventory Lists**

DNR would establish a process to review and verify the Protected Waters Inventory maps, lists and data, verify which public water wetlands should be identified and regulated as public waters, and then issue revised Protected Water Inventory lists.

The current public waters wetlands that would be identified and reclassified as public waters by the Commissioner would include the lakes assigned a shoreland management classification, and lacustrine system wetlands as defined by Cowardin, et al<sup>1</sup>.

Jurisdictional boundaries of public waters wetlands remaining on the lists would be determined using the same procedure used by the WCA.

This would require a legislative amendment to M.S. 103G.201 such as:

103G.201 Public waters inventory. The commissioner shall prepare a public waters inventory map of each county that shows the waters of this state that are designated as public waters under the public waters inventory and classification procedures prescribed under Laws 1979, chapter 199. The public waters inventory map for each county must be filed with the auditor of the county. The commissioner is authorized to revise the list of public waters prescribed under Laws 1979, chapter 199 to reclassify those type 3, 4 and 5 wetlands previously identified as public waters wetlands under Laws 1979, chapter 199 as public waters if: (1) they are assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221; or (2) if they are classified as lacustrine wetlands according to Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition) and to identify the remaining public waters wetlands by use of the United States Army Corps of Engineers Wetland Delineation Manual (January 1987). The commissioner shall file a copy of these changes with the auditor of the county and the local government unit.

Impact:

Remaining public waters wetlands boundaries would be identified using the same procedure used by the WCA.

<sup>1</sup> Cowardin, L.M., V. Carter, F. Goulet, and E. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. FWS/OBS-79/31. 131 pp.

“Lacustrine wetlands includes wetlands and deepwater habitats with all of the following characteristics: (1) situated in a topographic depression or a dammed river channel; (2) lacking trees, shrubs, persistent emergents, emergent mosses or lichens with greater than 30% areal coverage; and (3) total area exceeds 8 ha (20 acres). Similar wetland and deepwater habitats totaling less than 8 ha are also included in the lacustrine system if an active wave-formed shoreline or bedrock shoreline feature makes up all or part of the boundary, or if the water depth in the deepest part of the basin exceeds 2 m (6.6 feet) at low water. Lacustrine waters may be tidal or nontidal, but ocean-derived salinity is always less than 0.5%.”

Activities impacting the verified remaining public waters wetlands would be subject to the existing DNR permit rules and administrative process.

**\* Uniform Wetland Mitigation Replacement Ratios Used by DNR and BWSR**

Current WCA procedures are very specific in specifying the required wetland replacement needed in a wetland replacement plan, while the current procedures for identifying mitigation required by the Public Waters Work Permit Program for public waters wetland impacts are less specific.

It is proposed to make these program aspects uniform similar by amending M.S. 103G.245 such as:

Subd. 7. Effect on environment and mitigation. (a) A public waters work permit may be issued only if the project will involve a minimum encroachment, change, or damage to the environment, particularly the ecology of the waterway.

(b) If a major change in the resource is justified, public waters work permits must include provisions to compensate for the detrimental aspects of the change. Replacement of impacts to public waters wetlands allowed by permit must be consistent with the rules adopted pursuant to 103G.2242.

Impact:

Public waters wetland replacement requirements would be specified.

Wetland replacement requirements for projects impacting public waters wetlands would be same as the requirements for similar wetlands subject to the WCA.

**\* Road Project Banking**

The WCA gives public road authorities a mechanism to report changes made to roads to address design or safety improvements and to have the project's wetland replacement needs provided for by state funded wetland replacement. This authority does not exist for similar projects impacting public waters wetlands and extending this authority to uniformly across both the WCA and DNR programs is proposed. The suggested language might read as follows:

Section 1. Minnesota Statutes, 1998, section 103G.245, is amended by adding a subdivision to read:

Subd. 13. [EXISTING PUBLIC ROAD PROJECTS IN PUBLIC WATERS WETLANDS.] When a public waters work permit is authorized by the commissioner for a road project that results in the filling or draining of public waters 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, the permittee may replace the impacts according to section 103G.222, subdivision 1, paragraph (m).

Sec. 2. Minnesota Statutes 1998, section 103G.245, is amended by adding a subdivision to read:

Subd. 14. [NEW PUBLIC ROAD PROJECTS IN PUBLIC WATERS WETLANDS.] A public road authority may replace the permitted public waters wetland fill or drainage area according to section 103G.222, subdivision 1, paragraph (1), when a public road project involves the filling or draining of public waters wetlands associated with a new transportation project as authorized by the commissioner in a public waters work permit.

Impact:

Wetland replacement for public transportation impacts in WCA and Public Waters Wetlands would be uniform.

**\* Enforcement Changes**

DNR Enforcement Officers are charged with enforcement of both the Wetland Conservation Act and the Public Waters Work Permit Program.

The WCA (M.S. 103G.2372) gives enforcement officers in the authority to issue a cease and desist order, stopping activity in a wetland, and giving the LGU the opportunity to sort out the appropriate course of action. This authority does not exist for projects taking place within waters subject to the DNR's Public Waters Work Permit Program.

The Public Waters Work Permit Program in M.S. 103G.241 gives DNR Enforcement Officers the authority to charge contractors performing unauthorized work in public waters and public waters wetlands with a misdemeanor, in addition to the authority to charge the landowner, and establishes a procedure contractors can utilize to release themselves by obtaining landowner signature and mailing this to the DNR. This authority does not exist for projects taking place within wetlands subject to the WCA.

Extending the above authority for cease and desist orders and contractor liability across both the WCA and DNR programs is proposed to make enforcement procedures uniform. The suggested language might read as:

Amend M.S. 103G.141 to add a new subdivision as follows:

Subdivision 3. Enforcement. (1) Commissioner of natural resources. The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting 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 public water. In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland, as determined by the commissioner.

(2) Misdemeanor. A violation of an order issued under part 1 is a misdemeanor and must be

prosecuted by the county attorney where the public water is located or the illegal activity occurred.

(3) Restitution. The court may, as part of sentencing, require a person convicted under subdivision 2 to restore or replace the public water, as determined by commissioner.

Amend 103G.2372 by adding a new subdivision 4 as follows:

Subd. 4. Contractor's responsibility when work affects wetlands.

(1) Conditions for employees and agents to affect wetlands. An agent or employee of another may not drain or fill wetlands, wholly or partially, unless the agent or employee has:

(a) obtained a signed statement from the property owner stating that the wetland replacement plan or no loss determination required for the work has been obtained or is not required; and

(b) mailed a copy of the statement to the local government unit where the proposed work is located.

(2) Violation is separate offense. Violation of this section is a separate and independent offense from other violations of this chapter.

(3) Form for compliance with this section. The board shall develop a form to be distributed to contractors' associations and local government units and county auditors to comply with this section. The form must include:

(a) a listing of the activities for which local government unit permission is required;

(b) a description of the penalties for violating this chapter;

(c) the telephone number to determine the responsible local government unit;

(d) a statement that national wetland inventory maps are on file with the soil and water conservation district office; and

(e) 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.

Impact:

Enforcement of the WCA and Public Waters Work Permit Program would be uniform.

#### **\* Soil Science Licensure**

An issue that has recently arisen related to Wetland Conservation Act (WCA) administration is the requirement enacted in 1995 that persons practicing professional soil science be licensed

under M.S. Section 326.02. This statute is administered by the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (AELSLAGID). This licensure requirement has the potential to negatively affect the timeliness of technical work associated with wetland projects.

The problem facing local governments, state agencies, project sponsors and their consultants is that the soil science licensure requirement means that anyone interpreting soil information in the field or in the office as part of a wetland project review is likely in violation of M.S. 326.02 unless they are a licensed soil scientist. Although some projects are exempt from licensure (see M.S. 326.02 to 326.15 and MN Rule 1800 and 1805), the consequences of this situation are that many private and public works projects could be delayed and also be more expensive for landowners, local governments and state agencies as the vast majority of the currently trained and experienced wetland delineators will be unable to do work required of them by state law.

The requirement that soil science be practiced by licensed professionals can add value and protect public health, safety and welfare in other areas of environmental planning and remediation. However, the licensure requirements of M.S. 326.05 are not similarly relevant to wetland delineation as the practice of wetland delineation involves a three parameter approach (vegetation, soils and hydrology) and all three parameters must be present for a wetland to exist. This well-tested concept is already mandated in statute (M.S. 103G.2242, Subd. 2), through adoption of the "Corps of Engineers Wetland Delineation Manual" - January 1987 (hereafter, "1987 Manual"). The Army Corps procedure has been used by federal, state and local officials and consultants for many years and there are approximately 500 local and state staff in Minnesota trained in the 1987 Manual procedures. Hundreds of acceptable delineations are done annually throughout Minnesota by trained delineators. Hydrologists and plant taxonomists are not licensed in Minnesota and similarly, soil science licensure is *not* necessary for the proper application of 1987 Manual procedures.

This issue has been discussed at some length with the Board of AELSLAGID and the primary interest groups in an attempt to reach a solution. However, M.S. 326.02 does not afford the latitude to interpret the licensure requirement for soil science to the degree needed to continue wetland delineations as practiced prior to 1995. Thus, despite the fact that over 500 local and state staff (as well as additional private sector practitioners) have been trained in the three parameter procedure of the 1987 Manual, few of them would be legally authorized to continue to delineate wetlands in many situations.

Therefore, in order to continue the delineation methods currently in use and maintain the gains made legislatively regarding the expediency and cost of wetland project review, the following amendment is proposed:

In Minnesota Statute 103G.2242 insert at the end of subdivision 2 the following language Wetland Boundary determinations done according to the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), or its equivalent, are exempt from the requirements of Sections 326.02. to 326.15.

Impact:

Wetland delineators identifying wetlands using the 3 parameter approach contained in the Army Corps of Engineers Delineation Manual would not be violating any state licensure laws.

**\* Joint Rule Making by BWSR and DNR**

BWSR and DNR will consider joint program rule development, notification, and hearings, as a means to more closely align respective program components, in an effort to bring about greater program consistency.

Impact:

Implementation of both programs will be more closely coordinated, leading to regulatory simplification.

Affected LGUs, landowners, project developers, and environmental interest groups will be able to provide input in a coordinated program format.

**\* Apply WCA Standards for Public Ditch Projects to DNR**

The Public Waters Work Permit Program should be amended to address public drainage activities taking place in wetlands and public waters consistent with the procedures incorporated in the WCA. This amendment would add a provision to the Public Waters Work Permit Program that would require replacement for the draining of public waters and public waters wetlands that have been in existence for more than 25 years along public ditch systems.

Amend M.S. 103G.245 as follows:

Subd. 2. Exceptions. A public waters work permit is not required for:

(1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E and does not result in the draining or filling of public waters or public waters wetlands that have been in existence for more than 25 years; or

(2) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters or result in the draining or filling of public waters or public waters wetlands that have been in existence for more than 25 years.

Impact:

Increased public review and regulation of public ditch projects.

Public ditch projects would be subject to additional wetland replacement procedures.

Public ditch projects resulting in the draining or filling of waters that have been in existence for more than 25 years and currently exempt from provisions of the

Public Waters Work Permit Program would now be subject to permit.

**\* Apply 1987 Delineation Manual to Determine Jurisdiction on PWWs**

The DNR would seek legislation to use the 1987 Delineation Manual to determine the jurisdictional boundary of the revised list of Public Waters Wetlands. This would eliminate the occurrence of WCA jurisdiction being adjacent to DNR public waters wetlands and would reduce the number of contacts and permissions a landowner would need in order to construct or otherwise install projects in public waters wetlands. The suggested legislation needed to achieve this simplification would be to amend M.S. 103G.005, Subd. 14 as follows:

Subd. 14. Ordinary high water level. "Ordinary high water level" means the boundary of waterbasins, watercourses, public waters, and public waters wetlands, and:

(1) for public waters, 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; and

(4) for public waters wetlands, the ordinary high water level is the location of the wetland boundary determined according to the United States Army Corps of Engineers Wetland Delineation Manual (January 1987).

Impact:

Consistent wetland boundary determinations for wetlands subject to the WCA and public waters wetlands subject to DNR Public Waters Work Permit Program.

**\* DNR to Use an Amended DNR Rule Process on PWWs**

The DNR will include language in a joint rule making to include the concepts of sequencing currently incorporated in the WCA. Discussions are continuing with BWSR on the appropriate approach to revising the DNR program rules to address components of the WCA rule while maintaining protection levels on areas identified on the Protected Water Inventory.

Impact:

Sequencing procedures utilized by the DNR and the LGUs will be consistent.

The DNR would have more flexibility to permit activities in PWWs if there is no other feasible and practical alternative to the project that would have less environmental impact.

DNR would continue to regulate public waters wetlands and "lakes" using existing DNR rules.

Wetlands not on DNR inventory would continue to be regulated by the LGU.

DNR could continue to seek out, train and guide local governments interested in developing general permits or delegation agreements.

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## Appendix A - Minnesota's Wetland and Surface Water Resources

The wetland and surface water resource area of Minnesota is best represented by the United State Fish and Wildlife Service's National Wetland Inventory of wetland and deepwater habitats. This estimate can be characterized into the following major categories:

<u>Wetland Type</u>	<u>Acres</u>	<u>% of State Land Area</u>
Emergent	2,930,000	5.4
Scrub-shrub	2,840,000	5.3
Forested	4,351,000	8.1
Deepwater (lakes)	2,506,000	4.7
Shallow water (lakes)	<u>493,000</u>	<u>0.9</u>
	13,113,000	24.4

Within these broad wetland categories, eight wetland types are recognized by legislation. These types are classified according to *Wetlands of the United States*, U.S. Fish and Wildlife Service Circular 39 (1971 edition), as follows:

"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.

"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-leafed plants. Meadows may fill shallow basins, sloughs, or farmland sags, or these meadows may border shallow marshes on the landward side.

"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.

"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.

"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

to open areas of type 4 wetland.

"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.

"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.

"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.

Table 1 uses National Wetland Inventory data to identify Minnesota's wetland acreage, by county and major wetland types.

Table 2 uses National Wetland Inventory data to identify Minnesota's type 3-5 wetland acreage, by county, identified as Public Waters Wetlands subject to the Protected Waters Permit Program and the Wetland Conservation Act.

The data used to develop Table 1 have been provided to all Soil and Water Conservation Districts, all Watershed Districts, Watershed Management Organizations, county water planning coordinators, wetland enforcement officers, and DNR and BWSR field offices, in the form of a 4 CD-ROM set of NWI data, and as depicted on a *Minnesota Wetlands and Surface Water Resources* poster.

Table 2. Acreage of DNR regulated Public Waters Wetlands (PWI) and estimated Wetland Conservation Act Wetlands (WCA) for Minnesota counties. The total of PWI and WCA areas approximates the National Wetland Inventory (NWI) totals per county. These data are for Shallow Marsh (Type 3), Deep Marsh (Type 4), and Shallow Open Water (Type 5) wetlands. Data sources are the DNR Waters Permit\_DB and the USF&WS National Wetland Inventory (NWI) databases.

<u>ID</u>	<u>COUNTY</u>	<u>TYPE 3, 4, 5 PWI-W</u>	<u>TYPE 3, 4, 5 WCA</u>	<u>TOTAL TYPE 3, 4, 5 WETLANDS (NWI)</u>
1	Aitkin	2,205	29,564	31,769
2	Anoka	9,382	37,607	46,989
3	Becker	15,177	62,170	77,347
4	Beltrami	15,255	29,087	44,342
5	Benton	700	15,133	15,833
6	Big Stone	5,769	18,328	24,097
7	Blue Earth	1,806	11,881	13,687
8	Brown	498	8,062	8,560
9	Carlton	965	5,754	6,719
10	Carver	2,657	22,109	24,766
11	Cass	4,996	94,104	99,100
12	Chippewa	681	6,532	7,213
13	Chisago	2,417	7,058	9,475
14	Clay	2,598	14,676	17,274
15	Clearwater	12,721	11,068	23,789
16	Cook	532	18,520	19,052
17	Cottonwood	287	8,305	8,592
18	Crow Wing	5,515	34,749	40,264
19	Dakota	3,191	11,291	14,482
20	Dodge	0	1,840	1,840
21	Douglas	5,326	45,156	50,482
22	Faribault	922	4,681	5,603
23	Fillmore	0	1,403	1,403
24	Freeborn	702	8,674	9,376
25	Goodhue	343	7,576	7,919
26	Grant	3,327	16,768	20,095
27	Hennepin	12,213	26,719	38,932
28	Houston	242	8,936	9,178
29	Hubbard	9,322	14,587	23,909
30	Isanti	4,379	12,849	17,228
31	Itasca	5,065	47,801	52,866
32	Jackson	366	16,916	17,282
33	Kanabec	1,749	8,914	10,663
34	Kandiyohi	6,954	37,222	44,176
35	Kittson	330	5,802	6,132
36	Koochiching	144	34,263	34,407
37	Lac Qui Parle	1,554	16,226	17,780
38	Lake	712	15,519	16,231
39	Lake of the Woods	34	28,741	28,775
40	Le Sueur	3,007	19,483	22,490
41	Lincoln	384	13,587	13,971
42	Lyon	502	11,456	11,958
43	McLeod	1,051	20,678	21,729
44	Mahnomen	5,995	19,123	25,118
45	Marshall	4,444	44,597	49,041

46	Martin	1,019	9,100	10,119
47	Meeker	5,880	37,154	43,034
48	Mille Lacs	604	18,526	19,130
49	Morrison	4,412	65,859	70,271
50	Mower	0	2,004	2,004
51	Murray	975	12,422	13,397
52	Nicollet	718	14,023	14,741
53	Nobles	297	5,858	6,155
54	Norman	742	6,332	7,074
55	Olmsted	40	1,804	1,844
56	Otter Tail	15,416	103,484	118,900
57	Pennington	1,408	2,446	3,854
58	Pine	2,500	37,560	40,060
59	Pipestone	60	3,398	3,458
60	Polk	11,479	18,040	29,519
61	Pope	8,193	42,416	50,609
62	Ramsey	2,556	4,688	7,244
63	Red Lake	1,128	1,093	2,221
64	Redwood	229	5,595	5,824
65	Renville	427	8,240	8,667
66	Rice	2,079	16,856	18,935
67	Rock	0	2,537	2,537
68	Roseau	1,579	7,067	8,646
69	St. Louis	4,359	80,824	85,183
70	Scott	4,480	16,712	21,192
71	Sherburne	4,834	19,856	24,690
72	Sibley	617	14,827	15,444
73	Stearns	8,621	78,531	87,152
74	Steele	407	4,783	5,190
75	Stevens	2,103	13,501	15,604
76	Swift	6,760	11,767	18,527
77	Todd	4,913	61,124	66,037
78	Traverse	932	6,639	7,571
79	Wabasha	66	5,575	5,641
80	Wadena	907	28,496	29,403
81	Waseca	1,088	10,752	11,840
82	Washington	6,176	1,658	7,834
83	Watonwan	640	4,982	5,622
84	Wilkin	148	4,330	4,478
85	Winona	107	2,415	2,522
86	Wright	8,177	39,436	47,613
87	<u>Yellow Medicine</u>	<u>1,393</u>	<u>8,290</u>	<u>9,683</u>
<b>STATE-WIDE TOTALS</b>		<b>274,888</b>	<b>1,768,731</b>	<b>2,043,619</b>

Table 1. County areal estimates (acres) of Minnesota's eight wetland types (Circular 39) plus riverine wetlands, industrial/municipal wetlands, total wetlands, total deep water, total upland, and total county area. Data are derived from National Wetland Inventory (NWI) habitat classification polygon data (Cowardin *et al.* 1979) and approximated to U.S. Fish & Wildlife Service Circular 39 wetland types (Shaw and Fredine 1956, reprinted 1971). Circular 39 types 1 (T1) through 8 (T8) are consistent with the classification method; Riverine wetlands are between-bank wetland habitats; and Industrial/municipal habitats are often dike-related impoundments (Cowardin *et al.* 1979). Total Wetlands is the sum of wetland types T1 through T8 plus Riverine plus Industrial/Municipal habitats. Deep Water habitats, greater than 2-m deep, were assumed to be all NWI polygons labeled as L1, PUBG, and PUBH. Total Wetlands plus Total Deep Water plus Total Upland equals the Total County Area. Values may vary somewhat based upon county separations of the NWI data.

ID	County	CIRCULAR 39 WETLAND TYPES (Shaw and Fredine 1956)								Riverine	Industrial/ Municipal	Total Wetlands	Total Deep Water	Total Upland	Total County Area
		T1	T2	T3	T4	T5	T6	T7	T8						
1	Aitkin	906	72,854	22,974	3,194	5,601	164,923	67,136	212,523	28	3,015	553,154	99,707	623,021	1,275,882
2	Anoka	1,797	5,302	42,886	1,052	3,051	12,744	9,846	1,696	23	1,034	79,431	8,866	197,069	285,366
3	Becker	2,207	10,564	60,004	3,642	13,701	26,904	8,304	23,026	60	261	148,673	66,843	709,508	925,024
4	Beltrami	4,335	138,584	37,805	3,546	2,991	262,147	168,592	323,791	2,734	825	945,350	347,737	661,764	1,954,851
5	Benton	1,306	16,405	14,878	386	569	6,013	904	149	37	580	41,227	2,116	220,726	264,069
6	Big Stone	2,647	1,745	20,892	997	2,208	425	1,772	0	80	52	30,818	12,926	294,109	337,853
7	Blue Earth	5,302	153	12,733	262	692	520	1,574	0	8	2,756	24,000	6,006	459,838	489,844
8	Brown	6,261	325	7,472	267	821	551	1,721	0	148	1,484	19,050	2,895	373,804	395,749
9	Carlton	508	6,805	5,661	510	548	66,349	24,055	86,592	529	1,164	192,721	7,124	359,824	559,669
10	Cass	8,694	230	21,542	324	2,900	850	1929	0	45	607	37,121	8,210	195,220	240,551
11	Chippewa	4,691	13,331	82,128	6,680	10,292	115,119	21,354	109,241	1,435	2,427	366,698	234,456	942,892	1,544,046
12	Chisago	1,160	971	6,777	278	158	507	1,731	3	1	891	12,477	2,700	361,009	376,186
13	Columbia	929	18,910	5,309	355	3,811	11,909	8,920	5,054	98	1,334	56,629	11,554	214,630	282,813
14	Clay	2,037	7,913	15,800	571	903	3,517	1,355	54	235	979	33,364	4,636	636,320	674,320
15	Clearwater	532	56,962	17,847	3,984	1,958	47,894	7,113	21,220	7,238	465	165,213	18,977	474,833	659,023
16	Cook	47	3,588	12,486	3,225	3,341	25,535	4,993	106,487	1,319	1,197	162,218	88,978	776,675	1,027,871
17	Cottonwood	747	64	6,600	121	1,871	75	559	0	108	506	10,651	3,396	401,213	415,260
18	Crow Wing	473	10,521	30,075	1,976	8,213	58,315	22,671	27,671	249	2,301	162,465	90,628	486,598	739,691
19	Dakota	5,995	551	12,491	778	1,213	1,188	1,859	0	52	374	24,501	9,872	340,534	374,907
20	Dodge	2,059	1,125	1,698	22	4	200	186	21	7	9	5,331	117	275,657	281,105
21	Douglas	2,946	253	41,766	1,973	6,743	3,658	3,994	18	44	203	61,598	47,042	351,973	460,613
22	Faribault	762	12	5,207	121	275	212	420	0	146	805	7,960	3,280	450,257	461,497
23	Fillmore	2,929	953	580	98	0	351	88	0	83	1,259	6,341	724	544,315	551,380
24	Freeborn	765	246	8,797	216	363	278	68	0	0	193	10,926	8,695	442,472	462,093
25	Goodhue	5,275	1,740	4,979	107	2,833	811	4,592	19	12	442	20,810	10,569	467,617	498,996
26	Grant	3,958	201	15,229	972	3,894	334	616	0	53	97	25,354	13,561	329,383	368,298
27	Hennepin	2,293	949	34,450	1,571	2,911	3,564	6,482	115	47	1,109	53,491	27,018	307,264	387,773

28	Houston	2,567	924	4,088	985	4,105	556	7,357	14	1	650	21,247	3,962	338,599	363,808
29	Hubbard	805	3,750	18,713	2,403	2,793	32,011	2,667	16,469	25	552	80,188	44,957	514,256	639,401
30	Isanti	3,524	16,035	15,101	630	1,497	23,455	5,640	5,756	10	839	72,487	6,908	209,566	288,961
31	Itasca	6,831	24,190	38,937	9,423	4,506	142,712	52,571	286,374	4,969	3,720	574,233	154,776	1,142,180	1,871,189
32	Jackson	1,903	0	9,748	226	7,308	177	477	0	101	719	20,659	2,672	402,500	425,831
33	Kanabec	2,287	27,939	8,815	593	1,255	21,819	7,799	4,593	5	1,009	76,114	4,749	260,151	341,014
34	Kandiyohi	4,028	2,899	37,813	2,169	4,194	4,790	3,829	48	68	57	59,895	34,065	457,552	551,512
35	Kittson	2,938	42,356	5,112	827	193	17,505	2,290	211	83	1,141	72,656	1,176	632,830	706,662
36	Koochiching	6,088	30,806	26,858	3,782	3,767	171,344	96,320	999,520	57	7,692	1,346,234	22,935	647,349	2,016,518
37	Lac Qui Parle	778	2,535	14,463	642	2,675	871	2,706	33	5	571	25,279	4,706	434,536	464,521
38	Lake	63	2,991	8,659	4,704	2,868	51,081	19,188	271,008	48	1,903	362,513	109,682	989,992	1,462,187
39	Lake of the Woods	1,877	51,676	7,966	2,152	18,657	197,111	154,217	272,761	129	1,764	708,310	219,346	144,713	1,072,369
40	Le Sueur	9,027	327	19,852	177	2,461	702	562	0	226	640	33,974	11,993	257,074	303,041
41	Lincoln	2,725	351	11,290	471	2,210	108	179	2	66	3	17,405	4,356	329,530	351,291
42	Lyon	2,072	389	10,229	743	986	196	439	0	64	11	15,129	3,434	443,345	461,908
43	McLeod	9,964	150	20,528	184	1,017	445	1,021	0	28	50	33,387	6,786	283,255	323,428
44	Mahnomen	2,039	7,595	23,954	296	868	8,716	2,545	4,334	35	474	50,856	14,961	307,374	373,191
45	Marshall	5,319	52,328	41,201	5,244	2,596	56,192	22,985	8,446	501	1,073	195,885	7,858	957,219	1,160,962
46	Martin	3,677	72	6,764	211	3,144	164	1,168	0	25	24	15,249	8,257	443,193	466,699
47	Meeker	5,659	1,277	38,380	1,134	3,520	4,921	4,400	127	15	416	59,849	17,517	335,272	412,638
48	Mille Lacs	1,518	38,146	17,499	350	1,281	27,264	10,841	7,621	82	1,004	105,606	67,091	263,224	435,921
49	Morrison	4,232	27,690	68,754	1,308	209	48,966	11,355	6,402	21	2,788	171,725	15,606	550,328	737,659
50	Mower	4,971	1,347	1,510	74	143	354	188	5	77	307	8,976	277	445,861	455,114
51	Murray	1,521	115	11,719	450	1,228	299	423	0	80	9	15,844	7,673	437,142	460,659
52	Nicollet	5,030	160	12,841	904	996	418	1,294	0	13	1,374	23,030	3,626	272,012	298,668
53	Nobles	1,563	61	5,406	174	575	49	34	0	154	47	8,063	3,620	450,679	462,362
54	Norman	2,275	4,032	6,857	217	0	1,921	2,932	216	94	1,291	19,835	612	524,117	544,564
55	Olmsted	3,823	2,823	1,575	80	189	549	207	72	35	338	9,691	958	407,896	418,545
56	Otter Tail	3,676	10,220	100,587	4,338	13,975	31,227	18,367	18,284	180	1,133	201,987	141,524	1,080,746	1,424,257
57	Pennington	1,726	15,299	3,778	76	0	6,059	1,861	276	1,012	1,255	31,342	374	364,175	395,891
58	Pine	4,646	43,255	38,729	447	884	85,005	34,992	60,262	141	2,853	271,214	11,930	634,138	917,282
59	Pipestone	1,264	44	3,221	177	60	35	18	0	29	88	4,936	260	293,380	298,576
60	Polk	3,763	27,237	26,617	440	2,462	14,800	7,228	1,437	4,272	2,600	90,856	15,449	1,173,238	1,279,543
61	Pope	3,258	1,102	38,893	2,308	9,408	5,702	4,300	0	6	55	65,032	20,593	369,625	455,250
62	Ramsey	184	270	5,409	384	1,451	1,579	1,219	44	20	63	10,623	8,023	90,144	108,790
63	Red Lake	1,187	5,106	2,156	65	0	2,202	1,903	259	40	1,450	14,368	250	262,314	276,932
64	Redwood	2,948	335	5,205	407	212	253	339	0	72	642	10,413	374	553,176	563,963

65	Renville	8,327	330	7,401	254	1,012	153	798	0	150	815	19,240	1,491	610,925	631,656
66	Rice	4,573	552	16,377	138	2,420	803	266	0	0	578	25,707	8,579	295,754	330,040
67	Rock	561	54	1,815	239	0	10	29	0	83	847	3,638	482	305,157	309,277
68	Roseau	8,235	119,160	4,149	2,815	1,682	100,511	69,323	49,251	139	634	355,899	1,331	717,003	1,074,233
69	St. Louis	2,934	30,887	43,521	9,975	31,687	274,204	74,891	822,817	24,825	9,951	1,325,692	253,420	2,727,861	4,306,973
70	Scott	9,384	391	20,036	492	664	975	3,006	0	136	1,019	36,103	6,260	193,323	235,686
71	Sherburne	2,405	7,466	22,499	1,123	1,068	11,475	5,002	1,054	131	2,270	54,493	6,480	227,436	288,409
72	Sibley	8,263	76	13,851	103	1,490	179	1,697	0	80	491	26,230	4,263	353,537	384,030
73	Stearns	8,344	2,802	81,058	2,495	3,599	15,555	10,348	1,262	225	1,416	127,104	25,024	737,014	889,142
74	Steele	963	256	4,409	103	678	417	322	0	0	99	7,247	419	268,682	276,348
75	Stevens	6,150	216	13,447	588	1,569	371	773	0	110	304	23,528	5,520	332,715	361,763
76	Swift	494	2,778	16,606	500	1,421	1,508	3,487	0	0	452	27,246	3,464	450,914	481,624
77	Todd	2,765	289	62,649	1,609	1,779	42,972	8,024	1,978	127	731	122,923	20,164	483,494	626,581
78	Traverse	4,369	0	6,320	814	437	86	558	0	0	168	12,752	6,650	352,495	371,897
79	Wabasha	7,327	9	3,281	366	1,994	661	2,543	0	7	1,319	17,507	12,670	321,360	351,537
80	Wadena	1,960	4,334	28,499	123	781	36,639	5,971	5,661	26	1,725	85,719	2,119	259,583	347,421
81	Waseca	2,645	352	9,763	48	2,029	237	616	0	21	9	15,720	2,783	258,273	276,776
82	Washington	1,003	7,660	4,612	218	3,004	1,655	2,613	677	5	0	21,447	17,954	110,194	149,595
83	Watsonwan	924	86	4,356	111	1,155	161	1,079	0	54	103	8,029	1,176	272,214	281,419
84	Wilkin	1,870	4,134	4,273	205	0	512	346	3	101	1,021	12,465	253	454,678	467,396
85	Winona	2,200	670	2,203	252	67	682	4,812	0	70	211	11,167	9,991	389,061	410,219
86	Wright	7,092	1,066	43,107	1,937	2,569	7,945	7,773	191	48	2,383	74,111	29,193	353,577	456,881
87	Yellow Medicine	1,642	538	8,635	677	371	156	674	0	43	625	13,361	1,360	474,058	488,779
<b>STATE-WIDE TOTALS</b>		<b>287,747</b>	<b>1,001,195</b>	<b>1,691,160</b>	<b>111,608</b>	<b>247,034</b>	<b>2,274,318</b>	<b>1,063,646</b>	<b>3,765,148</b>	<b>94,145</b>	<b>53,989</b>	<b>10,589,990</b>	<b>2,543,015</b>	<b>40,550,514</b>	<b>53,683,519</b>

## **Appendix B- Activities and Resources Regulated by the DNR**

Activities regulated directly by the State are those subject to the provisions of the Minnesota Public Waters Work Permit Program. Current program jurisdiction is based on legislation that was enacted in 1979 that established the Protected Waters Inventory. This public inventory and designation process identified those waters subject to the Public Waters Work Permit Program and resulted in a series of county maps and lists specifically identifying those waters to state permit program jurisdiction. Settlement of a lawsuit brought regarding the mapping of trout stream tributaries resulted in revisions being made to the mapped trout streams in 53 of Minnesota's 87 counties in 1996.

The Public Waters Work Permit Program was initially established in 1937 to conserve and utilize the protected water resources of the state in the best interest of its people. Program rules authorized by statute have established orderly and consistent procedures to administer the water resource permit program. Proposed developments must also be consistent with the goals and objectives of applicable federal, state, and local water management and environmental quality programs and policies.

The Public Waters Work Permit Program addresses proposed projects by examining applications for consistency with identified goals, a determination of whether the activity is prohibited or can be allowed without permit if undertaken under prescribed conditions and for conformance to general and specific permit standards. Implicit in the Public Waters Work Permit Program is the concept that the activities impacting public waters are water dependent or cannot feasibly and practically avoid the crossing. Rules promulgated to address permit review procedures were initially developed in 1978, with amendments being adopted in 1981.

### **Department of Natural Resources Public Waters and Public Waters Wetlands**

DNR public waters and public waters wetlands are identified on DNR Protected Waters Inventory maps, available on a county basis. If there is any question whether or a particular lake, wetland, or stream is a public waters or public waters wetland, copies of the DNR Protected Waters maps are available for public inspection at all DNR regional and area offices, local Soil and Water Conservation District offices, the County Auditor's office and are available from Minnesota's Bookstore, Ford Building, 117 University Avenue, St. Paul, MN 55155, 651-297-3000 or 800-657-3757.

Water bodies identified on the Protected Waters Inventory Maps as Public waters and Public waters Wetlands are identified by statute as public waters and public waters wetlands in MS 103G.005 as follows:

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

(1) waterbasins assigned a shoreland management classification by the commissioner of sections 103F.201 to 103F.221, except wetlands less than 80 acres in size that are classified as natural environment lakes;

(2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;

(3) meandered lakes, excluding lakes that have been legally drained;

(4) waterbasins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;

(5) waterbasins designated as scientific and natural areas under section 84.033;

(6) waterbasins located within and totally surrounded by publicly owned lands;

(7) waterbasins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;

(8) waterbasins where there is a publicly owned and controlled access that is intended to provide for public access to the waterbasin;

(9) natural and altered watercourses with a total drainage area greater than two square miles;

(10) natural and altered watercourses designated by the commissioner as trout streams; and

(11) public waters wetlands, unless the statute expressly states otherwise.

(b) Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

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

The water bodies meeting the statutory requirements listed above were inventoried by the DNR starting in 1979 and finishing in 1984. The inventory was conducted on a county by county basis using procedures identified in M.S. 103G.201 and took about one year to complete, not counting any appeals taken to district court or the court of appeals, as applicable.

Table 2 identifies the acres of type 3, 4 and 5 Public Waters Wetlands by county.

#### When a DNR Permit is Needed

Activities that require a DNR permit are identified by M.S. 103G.245:

Subdivision 1. Permit requirement. Except as provided in subdivisions 2, 11, and 12, the state, a political subdivision of the state, a public or private corporation, or a person must have a public waters work permit to:

(1) construct, reconstruct, remove, abandon, transfer ownership of, or make any change in a reservoir, dam, or waterway obstruction on public waters; or

(2) change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters.

Subd. 2. Exceptions. A public waters work permit is not required for:

(1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E; or

(2) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters.

Subd. 3. Permit application. Application for a public waters work permit must be in writing to the commissioner on forms prescribed by the commissioner. The commissioner may issue a state general permit to a governmental subdivision or to the general public for classes of activities having minimal impact upon public waters under which more than one project may be conducted under a single permit.

#### DNR Water Permit Jurisdiction

DNR Public Waters Work Permit jurisdiction is defined in Minnesota Statutes, section 103G.005, subdivision 14 as the ordinary high water level:

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.

### Work that can be done without a Public Waters Work Permit

The work within public waters that can be done without a permit is identified in Minnesota rules, part 6115.0150 to 6115.0280, along with the procedures to evaluate permit applications. However, local units of government and other agencies, such as the U.S. Army Corps of Engineers, may still require permits for these projects. Projects within the beds of public waters and public waters wetlands not listed here require permits from the Department of Natural Resources.

The following describes work that can be done waterward of (below) the ordinary high water level without a public waters work permit. However, any work done landward of (above) the ordinary high water level is subject to approval from the local unit of government, most often the zoning authority. Contact the zoning authority for the requirements for projects done landward of the ordinary high water level. Any work exceeding the above conditions and/or any work in public waters or public waters wetlands without a permit is a violation constituting a misdemeanor and is punishable by imposition of fines up to \$700 and/or 90 days in jail.

These projects will not require permits from the DNR, provided all listed conditions are met:

#### **Beach Sand Blankets**

- \* Clean, inorganic sand or gravel, free of pollutants and nutrients.
- \* No more than 6 inches thick, 50 feet wide along the shore, or one-half the lot width (whichever is less), and 10 feet waterward of the Ordinary High Water Level.
- \* Local watershed district and zoning office given at least 7 days prior notice.
- \* Site is not a posted fish spawning area.
- \* Installation of sand or gravel may only be repeated once at same location, not exceeding same amount and dimensions of the original sand blanket.

#### **Rock Riprap (for shore protection)**

- \* Natural rock only, at least 12 inches diameter or larger.
- \* No more than 5 feet waterward of the Ordinary High Water Level.
- \* Conforms to natural alignment of shore and does not obstruct flow of water.
- \* Minimum finished slope no steeper than 3:1 (horizontal to vertical).
- \* Site is not a posted fish spawning area, designated trout stream, nor along the shores of Lake Superior.

#### **Streams with a Watershed Less Than 5 Square Miles (3,200 Acres)**

- \* No permit is required to construct a bridge or culvert, or to fill or excavate the bed of a protected watercourse having a total drainage area, at its mouth, of 5 square miles or less, provided:
  - County zoning officials and local Soil and Water Conservation District are given at least 7 days prior notice
  - The project will not divert the water to a different watershed.
  - The project will not impound water by damming the watercourse.
  - The watercourse is not an officially designated trout stream.

### Debris Removal

- \* No permit is required to remove debris, such as trees, logs, stumps, and trash as long as the original alignment, slope or cross-section of the lake, wetland or stream bed is not altered.

### Repair of Public Drainage Systems

- \* No permit is required to repair a lawfully established public drainage system (Judicial Ditch, County Ditch, etc.) provided:
  - The repair complies with the definition set forth in Minnesota Statutes, 103E.701, Subdivision 1 (Public Ditch Law)
  - The repair does not affect significant fish and wildlife habitat or protected vegetation (such as state or federal wildlife management areas, designated scientific and natural areas, etc.)

### Seasonal Docks and Floating Structures

- \* Removed from water on a seasonal basis (before winter freeze-up).
- \* All components removable from lake or stream by non-mechanical means.
- \* Will not be a hazard to navigation or endanger public health and safety.
- \* Site is not a posted fish spawning area.
- \* Will not include fuel handling or sewage facilities.
- \* Is not used or intended to be used for human habitation, as a boathouse or as a marina.
- \* Allows for free flow of water beneath it.

### Permanent Docks (on lakes only)

- \* Dock is a single linear structure not more than 6 feet wide.
- \* Does not exceed 50 feet in length, or extend into water that is more than 4 feet deep, whichever is less.
- \* No more than one dock per waterfront lot.
- \* Will not obstruct navigation or create a water safety hazard.
- \* Site is not a posted fish spawning area.
- \* Will not include fuel handling or sewage facilities.
- \* Is not used or intended to be used for human habitation, as a boathouse, or as a marina.
- \* Allows for free flow of water beneath it.
- \* Lake must be 500 acres or larger if dock is built on wood pilings.
- \* Lake must be 2,500 acres or larger, and site must preclude the use of a dock on wood pilings if dock is built on rock cribs.

### Boat Ramps

- \* Privately owned ramps:
  - Site can support ramp without pilings, dredging, or other special site preparations.
  - Constructed only of gravel, natural rock, concrete, steel matting, or other durable inorganic material.
  - No more than 6 inches thick, 12 feet wide along shore, and 10 feet waterward of the Ordinary High Water Level or into water depth of 4 feet, whichever is less
  - No more than 5 cubic yards of excavation and 5 cubic yards of fill allowed for a stable base.

- Site is not a posted fish spawning area.
- \* Publicly owned ramps:
  - Same as above, except ramp can be up to 24 feet wide and 20 feet waterward of the shoreline or into water depth of 4 feet, whichever is less, with up to 30 cubic yards of fill and 60 cubic yards of excavation.

#### Removal of Existing Structures

- \* The original lake, wetland or stream bed is restored.
- \* All parts of the structure, including footings or pilings, are removed.
- \* The structure is not a water level control device and is not on an officially designated trout stream.

#### Water Level Control Structures (on streams only)

- \* Contributing watershed area above the structure is 300 acres or less.
- \* Structure is not considered a "dam" under State Dam Safety rules.
- \* Structure is not on an officially designated trout stream.

#### Low Water Ford Crossings (on streams only)

- \* No special site preparation necessary.
- \* Normal summer flow does not exceed 2 feet in depth.
- \* Normal low flow is not restricted or reduced.
- \* Crossing conforms to the shape of the natural stream channel.
- \* Original stream bank no higher than 4 feet.
- \* Constructed only of gravel, natural rock, concrete, steel matting or other durable, inorganic material not more than 1 foot thick.
- \* Graded finished slope no steeper than 5:1 (horizontal to vertical).
- \* Graded banks must be seeded or mulched.
- \* Site is not an officially designated trout stream, wild, scenic or recreational river or officially designated canoe or boating route.

#### Temporary Bridges (on streams only)

- \* Stream bank can support bridge without pilings, foundations, culverts, excavation, or other special site preparations.
- \* Nothing is placed in the bed of the stream.
- \* Capable of removal for maintenance and flood damage prevention.
- \* Bridge is firmly anchored at one end and can swing away during flooding.
- \* Minimum 3 feet of clearance between lowest portion of bridge and normal summer stream flow.
- \* Consistent with floodplain, shoreland,, and wild and scenic or recreational river ordinances.

#### Maintenance of Storm Sewers, Agricultural Drain Tile and Ditch Outlets

- \* Outlet must have been maintained and functioning within the last 5 years.
- \* Maintenance work does not alter the original course, current or cross-section of the lake wetland or stream bed.

#### Installation of Agricultural Drain Tile Outlets

- \* Outlet involves no construction of an open ditch and is not intended to drain a protected water or protected water wetland.
- \* Bank is restored to the natural slope.
- \* Installation does not require channelization, dredge or filling.
- \* Except for the tile, no permanent structure is placed in the lake, wetland, or stream bed.

#### Activities taking place in Public Waters Wetlands

Activities taking place in public waters wetlands from 1993 to 1998 are identified in Table 3 by water permit use code, description and numbers, for an average permit rate of 59/year. The most recent permit figures indicate an application rate of about 80 permit applications per year in public waters wetlands.

Activities taking place in Public Waters Wetlands from 1993 to 1998 are identified by county and numbers of permits in Table 4.

#### Discussion

Data developed from analysis of activities subject to DNR Protected Water Permits within public waters wetlands indicate that the single largest category of project applicant is public road authorities for permit project types indicated fill for public road development. The next largest category was private landowners making permit applications for shore protection (riprap) or beach development (beach sanding) projects.

Table 3. Listing of Public Waters Wetlands permit holders from 1993 to August 1998 by water permit use code. Of the 417 total permit numbers, 172 are road related (41%) while 66 are related to water control structures (16%).

Water Permit Use Code	Description	Permit Numbers
111	Culvert Construction/Modification	84
112	Bridge Construction/Modification	7
113	Trail/Footbridge/Boardwalk	9
114	Culvert/Bridge Removal	4
116	Line Crossing	2
122	Fish/Wildlife Enhancement	9
130	Water Control Structure	43
131	Dam/Weir Construction	12
132	Dam/Weir Modification	11
134	Containment Dikes	3
135	Erosion/Flood Water Structure	7
140	Marina	3
141	Dock/Pier/Wharf	6
144	Intake/Outfall Structure	28
145	Pilings/Anchors/Buoys	2
146	Breakwater	1
147	Heat Pump Pipeline	1
148	Dry Hydrant	7
151	Sand Blanket w/ Excavation	2
152	Sand Blanket w/o Excavation	3
153	Erosion Control/Restoration	8
154	Development Fills	6
155	Roadway (Permanent)	77
156	Protection Levee	2
157	Access Fill Strip	5
160	Area Excavation	5
161	Debris/Snag/Vegetation Removal	4
163	Harbors	1
165	Removal of Soil Materials	28
166	Mining	1
171	Natural Rock Riprap	9
173	Seawall/Revetment	1
174	Retaining Wall	5
180	Channel Excavation	3
182	Inland Navigation Channel	3
183	Cleaning/Restoration	7
184	Channelization	2
185	Wetland Drainage	4
255	Pollution Containment	1
		417

Table 4. Number of DNR Waters permits issued for activities on Public Waters / Wetlands Inventory Wetlands (PWI-W) in counties from 1993 through August 1998. Data are summarized from the DNR Waters Permit\_DB database.

<u>ID</u>	<u>County</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>Total</u>
0	(unidentified)	10	4	6	3	8	10	41
1	Aitkin		2					2
2	Anoka	2			4	6		12
3	Becker	6		1		2		9
4	Beltrami			2		3		5
5	Benton							0
6	Big Stone				2	4	2	8
7	Blue Earth	2						2
8	Brown	1						1
9	Carlton	1						1
10	Carver		1		3	1		5
11	Cass				2		1	3
12	Chippewa							0
13	Chisago	5		2	2	1		10
14	Clay						1	1
15	Clearwater			1		4		5
16	Cook							0
17	Cottonwood							0
18	Crow Wing		3	1	1		1	6
19	Dakota	2		3	1		2	8
20	Dodge							0
21	Douglas	1	4	1				6
22	Faribault							0
23	Fillmore							0
24	Freeborn							0
25	Goodhue				1	1		2
26	Grant	2						2
27	Hennepin	4	2	12	7	21	8	54
28	Houston							0
29	Hubbard	3	3	1			4	11
30	Isanti			2		2	1	5
31	Itasca			1				1
32	Jackson	1			1	1		3
33	Kanabec			1			1	2
34	Kandiyohi	5	6	1	1	1	1	15
35	Kittson					1		1
36	Koochiching							0
37	Lac Qui Parle	1						1
38	Lake							0
39	Lake of the Woods							0
40	Le Sueur							0
41	Lincoln	1						1
42	Lyon					1		1
43	McLeod		1		1			2
44	Mahnomen	2			1			3
45	Marshall	1						2

46	Martin		1		1	8		10
47	Meeker	4	1	1	2	1		9
48	Mille Lacs							0
49	Morrison				2			2
50	Mower							0
51	Murray		4		1	1		6
52	Nicollet		2	1		1		4
53	Nobles			1	1			2
54	Norman							0
55	Olmsted		1					1
56	Otter Tail	2	3		1	5	1	12
57	Pennington							0
58	Pine	2	1				1	4
59	Pipestone							0
60	Polk			2	1	14		17
61	Pope	1		2	1		1	5
62	Ramsey	1	2	3	2	5	3	16
63	Red Lake							0
64	Redwood							0
65	Renville						1	1
66	Rice	1	1		1		2	5
67	Rock							0
68	Roseau			3				3
69	St. Louis	1		2	2	2		7
70	Scott		1		14			15
71	Sherburne	1				1		2
72	Sibley					1		1
73	Stearns	3		5	2	4		14
74	Steele				1	1		2
75	Stevens		3					3
76	Swift	1		2	2			5
77	Todd							0
78	Traverse						1	1
79	Wabasha							0
80	Wadena							0
81	Waseca				2			2
82	Washington	5	3	5	4	12	1	30
83	Watsonwan						1	1
84	Wilkin							0
85	Winona							0
86	Wright	3	2				1	6
87	Yellow Medicine							0
STATE-WIDE TOTALS		75	51	63	70	113	45	417

## **Appendix C - Activities and Resources Regulated by the Wetland Conservation Act**

Regulation of draining and filling activities outside of the Public waters is guided by the provisions of the Wetland Conservation Act, initially passed in 1991, with amendments being enacted in 1993, 1994, and 1996. Administrative rules to implement the WCA were adopted in 1993 and amended in 1998.

Wetland types subject to provisions of the Wetland Conservation Act have been previously defined in the section outlining Minnesota's wetland resources. The following tables identify these wetland types by their watershed location, and more specifically by types 3, 4 and 5 wetlands.

Table 5 identifies the acreage by major wetland type identified by the NWI for wetlands subject to provisions of the WCA.

### **Work that can be done without an approved Wetland Replacement Plan**

The Wetland Conservation Act is set up with provisions for nine groups of exemptions and one group of de minimis standards as contained in Minnesota rules, 8421.0122 as follows:

#### **8420.0122 EXEMPTION STANDARDS.**

Subpart 1. Agricultural activities. A replacement plan for wetlands is not required for:

A. activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grass or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991. Documentation, such as aerial photographs, United States Department of Agriculture records, or affidavit of landowner must be required by the local government unit to show and use as evidence for this exemption. Set aside land used for this exemption must be wetland types 1 and 2;

B. 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:

(1) 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

(2) has not been restored with assistance from a public or private wetland restoration program. Federal documentation that the wetland is or has been enrolled in the federal Conservation Reserve Program may be used as evidence for this exemption. The landowner must also meet the same requirements of item A, except that the years required are at least six of the ten years preceding the year of enrollment in the federal Conservation Reserve Program. The landowner must also state in writing that the wetland was not restored with assistance from a public or private wetland restoration fund, or that the restoration was done under a contract or easement providing the landowner with the right to drain the restored wetland;

C. 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 USDA office prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined drainage of the wetland had been commenced prior to December 23, 1985. The landowner

provide United States Department of Agriculture documents confirming that the county USDA office determined before September 19, 1988, that drainage had begun before December 23, 1985, and that the determination has not been overturned by subsequent appeal or review and is not currently under administrative review;

D. (1) 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;

(2) this exemption 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;

(3) the exemption in subitem (2) is subject to the size limits included in subitem (1);

E. 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;

F. 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;

G. 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

H. agricultural activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program. The federal Food, Agricultural, Conservation, and Trade Act of 1990 has been replaced with the federal Agriculture Improvement and Reform Act of 1996. This exemption may be applied to agricultural land annually enrolled in the federal Agriculture Improvement and Reform Act as long as wetlands are not drained or filled beyond what would have been allowed under the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3281, subsection (a), clauses (1) to (3), as amended, subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991. Documentation from the United States Department of Agriculture may be used as evidence to support this exemption. If the activity would result in loss of eligibility, the landowner cannot qualify for the exemption by withdrawing from the program.

## **Subp. 2. Drainage.**

A. For the purposes of this subpart, "public drainage system" means a drainage system as defined in Minnesota Statutes, 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 type 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:

(a) there was an expenditure made from the drainage system account for the public drainage system;

(b) the public drainage system was repaired or maintained as approved by the drainage authority; or

(c) no repair or maintenance of the public drainage system was required under Minnesota Statutes, section 103E.705, subdivision 1, as determined by the public drainage authority; and

(2) the wetlands are not drained for conversion to:

(a) platted lots;

(b) planned unit, commercial, or industrial developments; or

(c) any development with more than one residential unit per 40 acres.

If wetlands drained under this item are converted to uses prohibited under subitem (2) during the ten-year period following drainage, the wetlands must be replaced under Minnesota Statutes, 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.

For items C and D, the landowner must provide documentation that the wetlands which will be partially or completely drained by the maintenance have not existed for more than 25 years. Documentation may include, but is not limited to: aerial photographs, climatological records, soil borings, vegetative analysis, elevation surveys, or sworn affidavits.

E. A replacement plan is not required for draining 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 Minnesota Statutes, section 103F.516. The board shall give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

Subp. 3. Federal approvals. A replacement plan for wetlands is not required for:

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

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

This exemption does not apply to a project with the purpose of converting a wetland to a

nonwetland, either immediately or gradually, or converting the wetland to another use, or when the fill will result in significant discernible change to the flow or circulation of water in the wetland, or partly draining it, or reducing the wetland area;

B. activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clauses (14), limited to when a new road crosses a wetland, and (26), as in effect on January 1, 1991.

This exemption is for the following nationwide permits as they existed on January 1, 1991, and includes the associated regional conditions: 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 25, issued under Code of Federal Regulations, title 33, section 330.5. The local government unit may certify such an exemption only if the applicant furnishes proof of qualification for one of these nationwide permits from the United States Army Corps of Engineers. Nationwide permit 14 for a new road does not qualify for this exemption, nor do nationwide permits under numbers not listed in this exemption.

To qualify for a nationwide permit, the applicant for a United States Army Corps of Engineers permit must meet any regional conditions imposed by the United States Army Corps of Engineers, and must obtain from the Minnesota Pollution Control Agency an individual section 401 certification when required.

**Subp. 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.

The landowner must provide a contract or easement conveyance or affidavit demonstrating that the landowner or a predecessor restored the wetland for conservation purposes but retained the right to subsequently drain the restored wetland.

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

- A. beaver dam construction;
- B. blockage of culverts through roadways maintained by a public or private entity;
- C. actions by public or private entities that were taken for a purpose other than creating the wetland; or
- D. any combination of items A to C.

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

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

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

Subp. 6. Utilities; public works. A replacement plan for wetlands is not required for:

A. placement, maintenance, repair, enhancement, or replacement of utility or utility-type service if:

(1) 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

(2) the proposed project significantly modifies or alters less than one-half acre of wetlands;

B. activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland;

C. 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;

D. 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;

E. 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

F. repair and updating of existing individual sewage treatment systems as necessary to comply with local, state, and federal regulations.

For new placement and enhancement of existing facilities, the utility must demonstrate that the character and extent of the impacts of the proposed project on the wetlands have been minimized.

For maintenance, repair, and replacement, the local government unit may issue a seasonal or annual exemption certification or the utility may proceed without local government unit certification if it is carrying out the work according to best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the local government unit after the emergency work has been completed.

Subp. 7. Forestry. A replacement plan for wetlands is not required for:

A. 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 activity does 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

B. permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch, or tile line; filling is avoided wherever possible; and there is no drainage of the wetland or public waters.

This exemption is for roads constructed for the primary purpose of providing access for the conduct of silvicultural activities.

Subp. 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 subpart, "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.

Subdividers who obtained preliminary plat approval in the specified time period, and other project developers with one of the listed approvals timely obtained, provided approval has not expired and the project remains active, may drain and fill wetlands, to the extent documented by the approval, without replacement. Those elements of the project that can be carried out without changing the approved plan and without draining or filling must be done in that manner. If wetlands can be avoided within the terms of the approved plan, they must be avoided.

For county, joint county, and watershed district ditch projects, this exemption applies to projects that received final approval in the specified time period.

**Subp. 9. De minimis.**

A. Except as provided in items B to D, a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project, regardless of the total amount of wetlands filled as part of a project:

- (1) 10,000 square feet of type 1, 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 subitems (1) to (3) outside of shoreland wetland protection zones in all counties; or
- (5) 400 square feet of type 1, 2, 3, 4, 5, 6, 7, or 8 wetland, in the shoreland wetland protection zone, except that in a greater than 80 percent area, the local government unit may increase the de minimis amount up to 1,000 square feet in the shoreland wetland protection zone in areas beyond the building setback if the wetland is isolated and is determined to have no direct surficial connection to the public water. To the extent that a local shoreland management ordinance is more restrictive than this subitem, the local shoreland ordinance applies.

B. The amounts listed in item A may not be combined on a project.

C. This exemption no longer applies to a landowner's portion of a wetland when the cumulative area of the landowner's portion drained or filled since January 1, 1992, is the greater of:

- (1) the applicable area listed in item A, if the landowner owns the entire wetland;
- (2) five percent of the landowner's portion of the wetland; or
- (3) 400 square feet.

D. Persons proposing to conduct an activity under this subpart shall contact the board at a toll-free telephone number to be provided for information on minimizing wetland impacts. Failure of the person to call does not constitute a violation of this subpart.

E. This exemption may not be combined with another exemption on a project in this part.

**Subp. 10. Wildlife habitat. A replacement plan for wetlands is not required for:**

A. deposition of spoil resulting from excavation within a wetland for a wildlife habitat improvement project, if:

(1) 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;

(2) the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and

(3) the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or

B. duck blinds.

#### Replacement Plan activities

Wetland replacement plans as required by Minnesota rule 8420.500 to 8420.0650 are required for activities not exempted or subject to the de minimis provisions noted above. These wetland replacement plans are acted upon by the LGU specified by the WCA, usually the city or county where the project is located, but with provisions for the city council or county board of commissioners to delegate this within their jurisdiction, and within the seven county metropolitan area, a city council, town board, or water management organization serves as the LGU. State agencies, like DNR, or MnDOT, serve as the LGU for projects occurring on state land.

Wetland replacement plan information collected by the BWSR for projects occurring since July 1, 1993, the date of permanent program rule implementation has been collected and analyzed to determine the number, type and amount of acreage impacted by wetland replacement plans approved for projects taking place in type 3, 4 and 5 wetlands.

Table 6 identifies activities subject to Wetland Conservation Act reports provided to BWSR by local units of government for 1996 by county, activity types and impacted wetland acreage.

#### Discussion

Data developed from analysis of activities subject to approved wetland replacement plans indicate that the single largest category of project applicant is public road authorities for fill for public road development. The next largest category was private landowners making application for fill for development projects.

# 1996 Wetland Conservation Act Data Reported by Local Government Units

	No. of Landowner Contacts	Estimated or Known	No. of contacts to avoid wetlands	No. of wetland acres avoided	No. of contacts which minimized impacts	No. of acres minimized	No. of replacement projects	No. of Acres drained/filled under WCA	Acres replaced	Sum of acres avoided, minimized and replaced	No. of exemptions approved	Est. wetland acres impacted via exemption approvals *	No. of TEP Determinations	Wetland types generating biggest workload	Proposed projects 0 to 2 acres in size	Proposed no. of projects 2 to 5 acres in size	Proposed no. of projects 5 to 1 acre in size	Proposed no. of projects 1 to 3 acres in size	Proposed no. of projects 3 to 5 acres in size	No. of TEP Determinations	No. of CWRB and DWRB Orders	No. of Restoration Orders	County's Allocation of WCA Funds (\$)	County's Match for WCA Funds (\$)	Carryover of WCA funds from previous year (\$)	Total administrative expenses for WCA in 1996 (\$)	
Atkin	150 e	100	100	40	20	8	4	4	124	8	2	0	2,8	2,8	40	100	10			10	6	6	19,200	19,200	0	38,400	Atkin
Anoka	1000 k/e	142	73	88	62	25	27.63	56	37	1.5	2,3								3	9	9	40,500	60,884		101,384	Anoka	
Becker	16	6	4.88		4	4	0.45	35.74	40.63	4	3.15	3		6	11	3	1	2		5			24,200	24,200		24,200	Becker
Beltrami	388 e	110	23	112	17.25	3	0.45	0.45	40.7	10	4	25	2,882.66	2,882.66	65	10	2	4	1	11	2	2	36,000	41,365		77,365	Beltrami
Benton	457 k	148	38	83	18	3	1.48	2.88	81	23	17.5	0	1,288	1,288	182	108	7	2	1	8	1	0	36,000	36,000	15,145	72,000	Benton
Big Stone	25 e	1	1.5	1	2.6				4	2	1	1		2		2							10,000	10,000	9,754	6,758	Big Stone
Blue Earth	91 e	56	120.8	7	21.1	1	2.8	6.2	147.1	8	1.78	3	18.2		3		1	1	2	7	1	1	18,200	18,200		18,200	Blue Earth
Brown	11 k	2	0.75						0.75				1	18.2			1			1			10,000	10,000		20,000	Brown
Carlton	100 e	86	7	4	1	2	1,200	1,200	8	4	0.388	15	288			1		1		2			19,200	18,700		38,400	Carlton
Carver	418	213	118	11	6.2	5	1.3	2.6	125.8	8	1.6	1	1,2,3		3	2	1		2	10	7	2	36,000	16,849	16,799	34,678	Carver
Cass	187 k	132	29	24	8.6	11	6.88	6.88	44.6	12	13.5	4	2888.7	2,888.7	151	9	7			2	1	1	51,000	51,000	6,355	114,711	Cass
Chippewa	5	4	4	0	0	0	0	0	4	1	0.3	0		2	1	2	1	1	0	0	0	0	10,000	10,000	0	20,000	Chippewa
Chicago	450 e	380	25	330	15	5	1.2	3.8	43.8	25	2.16		18,288	18,288	30	9	1			4	4	3	28,700	64,640		74,840	Chicago
Clay	6 e	2	1			1	3.58	7.16	8.16	1	0.2	2	1,2,3		1				1	1			5,000	5,000	4,116	780	Clay
Clearwater	36 k	3	1	6	0.5	1	0.25	0.25	2	14	6.5	4	2,3		13	7	1	1	1	8	1		14,101	14,101	5,099	33,246	Clearwater
Cook	385 e	25	10	10	1				11	2	3.68	165	647.88	647.88	2							1	7,200	7,200		25,000	Cook
Cottonwood	1					1	1	1	1					2			1			1			10,000	10,000	0	10,000	Cottonwood
Crow Wing	644 k	579	25	62	3	3	1.44	1.4	29.4	54	1.24	3	288		59		1	1	1	6	1		36,000	36,000	11,531	37,419	Crow Wing
Dakota	75 e	12	5	25	5	9	6.38	11.47	16.47	20	3	6		2	4	2	2		1	6			41,000	41,000		43,155	Dakota
Dodge	15 k	2	1.75						1.75	3	1	1		3		1	1			2			16,700	16,700		8,590	Dodge
Douglas	175 e	150	30	10	7	3	0.94	1.9	41.9	10	7.91	27	18.2		27	32	15	4		5		3	19,200	19,200		32,674	Douglas
Faribault	54 k	50	50						50	4	10		18.2				1		1	1			10,000	10,000		20,000	Faribault
Fillmore	4	1	22			1	13.8	13.8	35.6	1	13.9			1	1				3				10,000	10,000		20,000	Fillmore
Freeborn	40 e	32	8	3	6	2			14				2,3				6	8	2	4			5,000	5,000		4,200	Freeborn
Goodhue	38 e/k	5	20	15	10	2	2.57	5.14	35.14	3	3	12		2	10	1	1	2		4	1	1	16,700	16,700		45,033	Goodhue
Grant	35 e	20	5	1	0.082				0.082					3					4	2			13,980	16,381	3,980	26,381	Grant
Hennepin	1553 e	150	71	108	30.2	24	14.81	29.41	131.18	30	8.57	6		2	8	5	1	5		26	4	2	36,000	36,000		72,000	Hennepin
Houston	19	1							5		1			1	18		1						12,200	12,200	14,679	20,779	Houston
Hubbard	300 k	123	100	12	21.8	3	0.3	0.3	122	8	0.8		3848.783.6	3,848.783.6	207	42	15	15	33	4	6	3	26,700	26,700		60,854	Hubbard
Isanti	110 e	110	10	40	8				18	50			40		6	30				3	2		27,500	27,500		27,500	Isanti
Itasca	140 k/e	20	5	20	1	2	2	2	8	10	2			7		1		1					36,010	36,010		72,020	Itasca

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\*\*\*Based on BWSR policy established in 1993, a county can choose to spend its Natural Resources Block Grant monies and the required match in any proportion amongst the different programs (WCA Local Water Planning, Feedlots and Shoreland Zoning) although it must first carry out its responsibilities to the particulars of each program.

	No. of Landowner Contacts	Estimated or Known	No. of contacts to avoid wetlands	No. of wetland acres avoided	No. of contacts which minimized impacts	No. of acres minimized	No. of replacement projects	No. of Acres drained/filled under WCA	Acres replaced via replacement plans	Sum of - acres avoided, minimized and replaced	No. of exemptions approved	Est. wetland acres impacted via exemption approvals*	No. of no-net-loss determinations	Wetland types generating biggest workload	Proposed projects 0 to .2 acres in size	Proposed no. of projects .2 to .5 acres in size	Proposed no. of projects .5 to 1 acre in size	Proposed no. of projects 1 to 3 acres in size	Proposed no. of projects > 3.0 acres in size	No. of TEP Determinations	No. of "Class" and "Design" Orders	No. of Restoration Orders	County's Allocation of WCA Funds (\$)	County's Match for WCA Funds (\$)	Carryover of WCA funds from previous year (\$)	Total administrative expenses for WCA in 1995 (\$), ***			
Jackson	4		2	40 01						40 01	2	0.5	2		2	2	1	0	0	2	2	2	10,000	10,000		20,000	Jackson		
Kanabec	6		0	0	0	0	0	0	0	0	4	0.24	2		3	5	1	1	0	2	2	2	0	0	11,878	11,878	Kanabec		
Kandiyohi	190	e	124	550		3.8		10		553.8	12	21	40	1,2,3		24	40	60	20	15	4		19,200	19,200	1,551	18,715	Kandiyohi		
Kittson	13	k	1	3						3	2	4	286			1	1	3		1			16,700	16,700	11,044	11,222	Kittson		
Koochiching*	255																						5,000	8,775	104	13,879	Koochiching*		
Lac Qui Parle	623	k	1	3						3				182		35			1			1	19,000	10,000	22,639		Lac Qui Parle		
Lake	150	e	25	5	25	10				15			8								3		11,700	11,700		23,700	Lake		
Lake of the Woods	50	e	15	30	20	4	2	217	2.7	36.67	1	4	10	2,6,7						1		1	26,700	25,700		42,530	Lake of the Woods		
Le Sueur	50	e	30	60	4	19.4	1	1.2	2.4	81.8	6	7	0	182		1	10	10	10	10			16,700	19,526		36,226	Le Sueur		
Lincoln	40	e	4	18						19				1,3			1		3				10,000	11,563	194	10,194	Lincoln		
Lyon	8		1		1	0.52	2	3	1	1.52	3		2		3	4	1	1	2	3	1	1	10,000	10,000		20,000	Lyon		
McLeod	120	e	8	18	4	3.5	1	4	4.5	27	11	20	3	182		2	5	3	1	3	19	3	16,700	16,700	2,016	35,334	McLeod		
Mahnomen	50	e	20	10	1	0.25	1	0.23	0.89	10.94		10	1	283						1	1	1	12,200	12,200		30,000	Mahnomen		
Marshall*	280	k	41	12	10	2							42	1,2 & 6									14,200	14,200		29,164	Marshall*		
Martin	250		83	15			1	0.8		15					2	1		1		1	1	1	10,000	10,000	0	20,000	Martin		
Meeker	46		37	92	7	7	2	3		99	3	2	39	283			2		2	3			19,200	26,700		21,531	Meeker		
Mille Lacs	70	e	26	5	10	5	10	5	3	13	18			2,6		8	2	2		1		6	19,200	19,200			Mille Lacs		
Morrison	264	k	64	160	41	23	1	0.09	2.3		31		20	286		40	25	10	5	2	4	3	26,700	20,000		46,700	Morrison		
Mower	60		60	37	5						3	0.75			2						1	1	12,200	12,200		19,782	Mower		
Murray	31	k	4	3	9		2	0.83	11.61	15.51	25	1.11	25		2	25	2	3	1	2			10,000	10,000	659	20,659	Murray		
Nicollet	55	e	4	17						17			2	1	182		2	1			1		16,700	16,700	4,815	37,340	Nicollet		
Nobles	340	e	3	1	0	0	0	0	0	0	0	0	0	182		0	0	0	0	0	0	0	10,000	10,000		20,000	Nobles		
Norman	89	k	67	90						90	2	0.3	67	182						4			12,200	12,200	595	31,805	Norman		
Olmsted	44		5	163	1	4.66	5	4.1	7.2	13.49	25	0.14	14	182		33	3	7	1	6	3	1	26,700	28,861	8,288	57,723	Olmsted		
Ottertail	131	e	35		15			2.6	2.6		18	1.06		2,3		30	10			3	3	3	33,200	33,200			Ottertail		
Pennington	27	k	28	12			1	0		22				1,2,6						2			6,200		4,610	4,605	Pennington		
Pine	273	k	200	300			1	0.14	0.14	300.14	31	7.2	4	286		12	5			2	1		36,700	36,700	2,268	70,132	Pine		
Pipestone	30	e	7	5						5	1	1	1	182			3	3	1				10,000	10,000		7,000	Pipestone		
Polk	120	e	10	5	1	0.2	2	3.27	0.2	5.4	4	1.2	5	2,3,4		2		1	2	1			16,700	16,700		35,449	Polk		
Pope	400	e	7	9	1	0.25	1	0.23	0.46	9.7				283		1	4	1	1	2	5		15,200	15,200		30,438	Pope		
Ramsey	155	e	27	12	5	36	13	8	2.71	5.73	31	23	12	1	80	182		5	3		1	10	3	3	26,700	26,700	12,765	54,064	Ramsey

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\*\*\*Based on BWSR policy established in 1993, a county can choose to spend its Natural Resources Block Grant monies and the required match in any proportion amongst the different programs (WCA Local Water Planning, Feedlots and Shoreland Zoning) although it must first carry out its responsibilities to the particulars of each program.

	No. of Landowner Contacts	Estimated or Known	No. of contacts to avoid wetlands	No. of wetland acres avoided	No. of contacts which minimized impacts	No. of acres minimized	No. of replacement projects	No. of Acres drained/filled under WCA	Acres replaced via replacement plans	Sum of acres avoided, minimized and replaced	No. of easements approved	Est. wetland acres impacted via exemption approvals *	No. of no-acts determinations	Wetland types generating biggest workload	Proposed projects 0 to .2 acres in size	Proposed no. of projects .2 to .5 acres in size	Proposed no. of projects .5 to 1 acre in size	Proposed no. of projects 1 to 3 acres in size	Proposed no. of projects > 3.0 acres in size	No. of TEP Determinations	No. of Cases and Determinations	No. of Restoration Orders	County's Allocation of WCA Funds (\$)	County's Match for WCA Funds (\$)	Carryover of WCA funds from previous year (\$)	Total administrative expenses for WCA in 1995 (\$)	
Redwood	30	30	78.4							78.4					3	6	2	4	12	7			10,000	10,000	0	20,000	Redwood
Red Lake	15	2	3					0.36	3.36				13	1&2	13	1		1					12,200	12,200	1,743	17,106	Red Lake
Renville	50	46	1.8				4	25.23	25.23	43.23				2&3			1	1	2	4			10,000	10,000		20,000	Renville
Rice	48	22	65	2	2.6					67.6	8	1.6	16	2,3	9	16	9	4	2	3	7	5	19,200	19,200		19,200	Rice
Rock	8	6	123	2	86	1	3.8	11.5	219.5				2		1		1			9			10,000	10,000		20,000	Rock
Roseau	50	5	10	25						10	1	2.5	1	2&6									5,000	12,190		12,190	Roseau
St. Louis	2000	207	35	77	17	8	8	4.5	56.5	124	25	25	1,6,7		18	46	12	7	1	78	5	5	36,700	88,000		88,000	St. Louis
Scott	380	185	50	58	10	5	6	13	73	40	15	2	1&2		15	25	19	1	1	10	4	4	36,000	36,000		78,800	Scott
Sherburne	283	182	65	37	10.6	3	0.33	0.68	62.16	1	4.78	24	2&6		19	1	1	1	2	7	1	1	36,000	51,757	15,757	87,757	Sherburne
Sibley	781	300	150							150				1&2					1	1			12,200	12,200		24,000	Sibley
Stearns	285	235	235	235	235	23	8	15	685	11		137			250	5	5	5	1	37	10		51,500	51,500		103,000	Stearns
Steele	58	17	31	5	8					38	8	0.74		1&2	8	10	4	6	4	3			12,200	489		12,689	Steele
Stevens	12	2	10							10	3	7	2	1,2,3				3	2	2			10,000	10,000		10,000	Stevens
Swift	55	7	10	4	3					13	3	25		1,2,3		2		1	3				12,200	12,200	24,400	30,370	Swift
Todd	262	13	117	2	30	6	11.2	10	7	117	(E)2281**	7	2,3		69	17	8	11	40	6			19,200	9,600	0	18,940	Todd
Traverse	25	0	0	0	0	0	0	0	0	0	25									0	0		10,000	10,000	15,000		Traverse
Wabasha	2	0	0	0	0	0	0	0	0	0		0	0		1	0	0	0	0	0	0		12,200		6,953	6,953	Wabasha
Wadena	42	10	6	6	2					8	26	4	6	6&7	32		10						21,700	21,700	1,668	32,680	Wadena
Waseca	87	19	23	1						23	1			13	1&2		11	4	2				12,200	12,200		25,500	Waseca
Washington	175	16	5	525	8	0.138	10	2.82	6.169	11,832	8	0.207	4	2&3	11	2		1		8	6	5	36,000	36,000		72,000	Washington
Watsonwan	87	46	42.7	1	0.52	1	4.08	4.08	47.28				19	1&2	0	2	0	0	0				10,000	10,000	5,443	11,340	Watsonwan
Wilkin	1	1	1							1													10,000	10,000			Wilkin
Winona	9	2	0.5			2	2	14	14	14.5	4		3		2	6	1		2	3	1		12,200	12,200	0	27,807	Winona
Wright	106	14	3	42	0	0	16	117.88	186.52	189.94	37	48	83	19	2	81	15	3	3	7	20	13	36,000	40,374		76,374	Wright
Yellow Medicine	460	12	16.5							16.5	17	5		2&3			4	4	3	1	3		10,000	10,000	4,241	11,169	Yellow Medicine
<b>TOTALS</b>	<b>18,363</b>	<b>5,002</b>	<b>3,547</b>	<b>1,855</b>	<b>781</b>	<b>240</b>	<b>555</b>	<b>526</b>	<b>4,426</b>	<b>1004</b>	<b>358</b>	<b>976</b>			<b>1,587</b>	<b>585</b>	<b>250</b>	<b>202</b>	<b>175</b>	<b>411</b>	<b>131</b>	<b>93</b>	<b>1,630,691</b>	<b>1,738,364</b>	<b>223,449</b>	<b>2,827,747</b>	<b>TOTALS</b>

\*Exempt activities do not require local government unit approval unless a determination is requested by the landowner. Thus, the numbers listed here are very incomplete. In particular, the exemption that allows agricultural activities which are on land enrolled in the federal farm program (Federal Agriculture Improvement and Reform Act of 1996) are not tracked by local government units.

\*\*this large amount was reported by the Todd County U.S. Department of Agriculture office. Since such records are not available or were not provided in other counties it is not included in the total.

\*\*\*Based on BWSR policy established in 1993, a county can choose to spend its Natural Resources Block Grant monies and the required match in any proportion amongst the different programs (WCA Local Water Planning, Feedlots and Shoreland Zoning) although it must first carry out its responsibilities to the particulars of each program.

\*Indicates counties which did not feel that this portion of the reporting applied to them.

n/a indicates counties which did not receive WCA funding

## **Appendix D - Regulatory Boundary Determination**

The Public Waters Work Permit Program and the WCA use different procedures to determine the location of regulatory jurisdiction..

The DNR utilizes the "ordinary high water level" for locating the edge of public waters for purposes of the Public Waters Work Permit Program.

M.S. 103G.005, 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.

For the most part, the use of this boundary will result in the state having less jurisdiction on a particular waterbody than if the technique specified in the WCA were to be utilized.

The WCA definition of a wetland in M.S. 103G.005, subd. 19 is:

Subd. 19. Wetlands. (a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

(1) have a predominance of hydric soils;

(2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances support a prevalence of such vegetation.

(b) Wetlands does not include public waters wetlands as defined in subdivision 15a.

The WCA rules specify in part 8420.0110, subp. 52. D. the procedure used to determine the boundary as follows:

D. The wetland size is the area within its boundary. The boundary must be determined according to the United States Army Corps of Engineers Wetland Delineation Manual (J:

1987). The wetland type must be determined according to United States Fish and Wildlife Service Circular No. 39 (1971 edition). The local government unit may seek the advice of the technical evaluation panel as to the wetland size and type.

## **Additional References**

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Guidelines for Ordinary High Water Level (OHWL) Determinations, June, 1993, Technical Paper No. 11, Minnesota Department of Natural Resources, Division of Waters.

Minnesota Wetland Mitigation Banking Study, March 1998, addendum to: Minnesota Wetlands Conservation Plan, Version 1.0, 1997 and in fulfillment of Minnesota Laws 1996, Chapter 462, Section 40.

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