

930588

REPORT ON IMPLEMENTATION
OF EXECUTIVE ORDER 91-3, "NO-NET-LOSS" OF WETLANDS
AND
OTHER STATE LAWS AND PROGRAMS RELATING TO
WETLANDS

INTRODUCTION

Executive Order 91-3, signed by Governor Carlson on January 17, 1991, requires state agencies to annually report to the Commissioner of Natural Resources on their efforts to comply with the Order. In turn, the Commissioner is to submit a composite report to the Governor and chairs of the Senate and House environment committees on the implementation of the Order and the status of the state's wetlands.

The Wetland Conservation Act of 1991 requires the Commissioner and the Board of Water and Soil Resources to jointly report to the Legislature on the status of implementation of state laws and programs relating to wetlands; the quantity, quality, acreage, types, and public value of wetlands in the state; and changes in the foregoing items.

Because the reporting requirements for the Executive Order and the Wetland Conservation Act are similar, the Department of Natural Resources (DNR) and the Board of Water and Soil Resources (BWSR) decided to combine the reports into a single document to be sent to the Governor and the Legislature. This is the first report prepared under the mandates of the Executive Order and the Wetland Conservation Act. Prior to the Executive Order, there was no requirement to keep accurate records of activities affecting wetlands. Consequently, specific procedures for monitoring and reporting such activities are not well developed in some areas and the information in this initial report should be considered somewhat incomplete. Efforts will be made to improve record keeping and reporting of wetland activities. Also, because of differences in reporting dates under the Executive Order and the Wetland Conservation Act, the information in this report reflects different time periods. The state agency wetland activities quantified in Table 1 occurred in state fiscal year 1992. That was the first full fiscal year in which the Executive Order was in effect. Information pertaining to the implementation of other state wetland laws and programs reflects activities up to the present.

IMPLEMENTATION OF EXECUTIVE ORDER 91-3

Executive Order 91-3 directs state agencies to:

"...protect, enhance, and restore Minnesota's wetlands to the fullest extent of their authority;

...operate under a strict "no-net-loss" of wetlands policy; and

...survey and categorize all wetlands on land acquired by or donated to the state and on public lands threatened by development activities."

State agency activities affect wetlands in a variety of ways. Wetlands may be directly filled, drained or otherwise degraded through development activities conducted by state agencies. Conversely, other state programs restore previously drained wetlands and protect wetlands through purchase of fee title or easements. State agencies indirectly affect wetlands through several regulatory programs and by state funded or sponsored development. As a result of this broad array of activities, state agencies have the potential to affect a significant amount of wetlands, and consequently, to contribute significantly to the conservation of the state's wetlands by fully implementing the Executive Order.

Reports from 11 state agencies and departments were submitted to the Commissioner, with several reporting no wetland activities (see attached list). Overall, state agency activities in fiscal year 1992 affected approximately 9,100¹ acres of wetlands. These activities are categorized in Table 1.

Based on the information reported, state agencies appear to be doing a good job of implementing the Order. Overall, state activities have apparently resulted in a net gain of wetland acreage. The lack of accurate record keeping in several areas that might reveal additional wetland impacts is a concern. It should also be kept in mind that the figures for compensatory mitigation may represent what has been planned or required and not necessarily what has been accomplished. It is recommended that more attention be devoted to follow-up and monitoring of mitigation projects to determine if they are adequately replacing both the quantity and quality of lost wetland values.

In the process of developing this first annual report, certain programs and activities were identified where effects on wetlands are not adequately documented. It is recommended that each agency establish procedures for accurately tracking wetland impacts and mitigation and for documenting wetlands acquired or disposed of through sale or exchange. A wetland

¹ This figure differs from the sum of the acreages listed in table 1 because certain activities in Table 1 may be listed in more than one category.

RECEIVED

NOV 22 1993

LEGISLATIVE REFERENCE LIBRARY
STATE CAPITOL
ST. PAUL, MN. 55155

activity reporting form was included in the Commissioner's memo on implementation of the Order dated October 1, 1991. In most cases, it should be possible to incorporate this documentation into existing record keeping procedures. Having accurate records on wetland activities not only helps in determining agency compliance with the Executive Order but more importantly provides basic data on wetlands which is valuable for devising state wetland management strategies.

Table 1. Effects of state agency activities on wetlands in state fiscal year 1992.

Category of Activities Affecting Wetlands	Gain (+) or Loss (-)	Acres Affected
Wetlands eliminated directly through agency activities (primarily highway construction)	(-)	94
Compensatory mitigation provided for above	(+)	100
Wetlands eliminated under state regulatory jurisdiction (excluding impacts listed above)	(-)	134
Compensatory mitigation required for above	(+)	170
Wetlands restored or created (other than for mitigation purposes)	(+)	1449
Net Impact from Activities Listed Above	(+)	1491
Wetlands acquired through purchase or exchange		5142
Wetlands no longer state-owned due to sale or exchange		406
Protective easements on wetlands secured		2203

IMPLEMENTATION OF OTHER STATE LAWS AND PROGRAMS RELATING TO WETLANDS

Wetland Conservation Act

The Minnesota Wetland Conservation Act (WCA) was enacted in 1991. In general, the Act regulates impacts to wetlands from draining or filling that are not already covered by other state and federal laws and programs. The goal of the Act is to promote no-net-loss of wetlands by requiring the replacement of wetlands that are unavoidably filled or drained. The program is administered by local units of government with oversight by the Board of Water and Soil Resources.

There has been considerable activity pertaining to the implementation of this law since its passage in 1991. The interim program of the WCA, which is administered by over 200 local government units, began in January, 1992. As of March 1993, over 3500 projects had been evaluated. Of those, approximately 40% resulted in complete avoidance of wetland impacts, while another 50% of the projects were exempt from WCA regulations. The estimated 10% of projects that required wetland replacement totaled about 250 acres (based on an average impact of 0.7 acres). The Board of Water and Soil Resources estimates that about 90% of this acreage has been replaced on an acre per acre basis and that monetary assurance to guarantee replacement of the remaining 10% has been received. Conservation Officers from the DNR- Division of Enforcement issued 22 cease and desist orders in 1992 for activities that violated the WCA. A significant number of additional violations were handled without the issuance of cease and desist orders.

Subsequent annual wetland reports should include considerably more accurate information on wetland loss and replacement under the WCA because of the notice and review procedures in the permanent program. The establishment of a statewide wetland banking system by BWSR will also facilitate the monitoring of wetland loss and replacement.

The WCA permanent rule adoption process has been completed. The Rule Working Committee, comprised of representatives from state and local agencies and various interest groups, and the Wetland Heritage Advisory Committee, established by the WCA, developed the permanent rules over the spring and summer of 1992. The Board of Water and Soil Resources provisionally adopted the rules in February 1992, pending submission of the rules to the Legislature, which was mandated by the act. Review of the rules in the Legislature led to the passage of a bill amending portions of the act. The bill was signed by the Governor on May 14, 1993. The Board finally adopted the permanent rule on May 26, 1993. The permanent program will be implemented on July 1, 1993, although local government units may elect to continue under the interim program until December 31, 1993.

The Permanent Wetland Preserve Program, established by the Wetland Conservation Act, began in August 1992 and has resulted in the acceptance of 92 applications for permanent conservation easements totaling 3,092 acres. Approximately one-third of the areas enrolled are wetland acres with the remainder consisting of adjacent upland.

The Board of Water and Soil Resources has added 12 new permanent staff members to implement the Wetland Conservation Act. The Department of Natural Resources added 3 new permanent staff to handle WCA responsibilities and will add 6 additional enforcement personnel in the near future.

The Board of Water and Soil Resources has sponsored several training sessions for local government agency staff to facilitate their administration of the WCA. Over 200 local

officials have received training in wetland delineation. The Board of Water and Soil Resources has applied to the U. S. Environmental Protection Agency for funds to establish a permanent training program for state and local personnel in wetland technical issues.

The Board of Water and Soil Resources, the Department of Natural Resources, the U.S. Army Corps of Engineers and the Soil Conservation Service collaborated on the development of a joint notification/application form for use by people planning projects that may impact wetlands. Applicants may use the form to simultaneously notify all agencies (local, state and federal) that potentially have regulatory authority over the proposed activity. Some of the agencies also accept the form as a permit application.

Department of Natural Resources Protected Waters Permit Program

The DNR Protected Waters Permit Program (M.S. 103G) regulates activities in designated Types 3, 4 and 5 wetlands that are 10 acres or larger in rural areas and 2.5 acres or larger in incorporated areas. The program is administered by the DNR Division of Waters. Permits were issued for 169 activities that permanently affected wetland acreage in FY 1992. The effects of these activities are included in Table 1.

As mentioned previously, the DNR participated in the development of a joint notification/application form for proposed wetland impacts. The DNR accepts the form as an application, thereby saving applicants an extra step if the wetland falls under DNR jurisdiction.

In cooperation with the U.S. Army Corps of Engineers, the DNR Division of Waters developed and published a brochure that explains wetland regulations in Minnesota and informs potential applicants who to contact for permit applications.

The DNR Division of Waters is in the process of digitizing National Wetland Inventory and Protected Water Inventory maps which will be available through the Land Management Information Center. The digitized inventory, which should be completed in late 1993, will permit a much more detailed analysis of the status of Minnesota's wetlands than was previously possible.

Other DNR Wetland Programs

In addition to the regulatory Protected Waters Permit Program, the DNR maintains a number of other programs pertaining to wetlands. Figures pertaining to some of the following programs are incorporated into Table 1; however, several of the programs are highly decentralized with no specific reporting requirements.

-
- ▶ The Division of Fish and Wildlife buys, restores and manages wetlands for fish and wildlife habitat as part of its statewide network of Wildlife Management Areas.
 - ▶ The Scientific and Natural Areas Program of the Division of Fish and Wildlife also buys and designates certain wetlands that contain rare or unique species or plant communities.
 - ▶ The Wildlife Lake Designation and Enhancement Program designates and enhances wetlands and lakes for wildlife habitat by developing and implementing management plans. Approximately 60 lakes are surveyed each year for habitat analysis purposes and 1 to 2 lakes per year receive official designation as wildlife lakes.
 - ▶ The Aquatic Plant Management Program protects wetlands by regulating the control of wetland vegetation by landowners.
 - ▶ DNR Area Wildlife Managers provide technical assistance to private landowners for wetland restoration and management under the Private Lands Program.
 - ▶ The Forestry Stewardship Program is a joint effort between the Division of Fish and Wildlife and the Division of Forestry to restore and improve wildlife habitat on wetlands in forested areas.
 - ▶ The Division of Forestry has initiated a task force to develop best management practices for timber harvesting in forested wetlands to ensure compliance with Wetland Conservation Act exemptions.
 - ▶ The DNR's Environmental Review Program protects wetlands by reviewing and participating in the planning of development projects subject to review under the Minnesota Environmental Policy Act, the National Environmental Policy Act, and various regulatory authorities. The Environmental Review Program reviewed 358 projects involving 1,437 acres of wetlands in FY 1992.

In addition to the programs highlighted above, the DNR is acting as the lead state agency in the development of a statewide comprehensive wetland conservation and management plan. Funding for development of the plan will be provided by the U.S. Environmental Protection Agency. The Minnesota Department of Transportation will fund a full-time, two year position within the DNR, Division of Fish and Wildlife to coordinate the development of the plan. The goal of the plan is to assess the current status of wetlands and wetland programs in the state, set goals and objectives for wetland protection, restoration and management, and establish a coordinated framework for achieving those goals that would be implemented at all levels of government and by private interest groups. Development of the plan will begin early in FY 1994.

Reinvest in Minnesota (RIM)

One of the many components of Reinvest in Minnesota, the RIM Reserve Wetland Restoration Program pays landowners to restore wetlands and place their land under perpetual easement. Administered by the Board of Water and Soil Resources and the Soil and Water Conservation Districts, this program secured 24 easements covering 816 acres in 1992. These easements included the design and management of projects that restored 26 wetland basins totalling 388 acres.

Water Quality Certification Program

The Water Quality Certification Program is a responsibility of the Minnesota Pollution Control Agency (PCA) under the federal Clean Water Act. Under this program, the PCA ensures that discharges to wetlands and other surface waters do not violate state water quality standards or that the impacts are adequately mitigated. The certifications are generally evaluated in conjunction with Corps of Engineers Section 404 permits or state National Pollutant Discharge Elimination System permits.

The PCA evaluated 56 individual water quality certification applications for activities in wetlands in the last half of fiscal year 1992, the period for which reporting was requested for Executive Order 91-3 compliance. The activities reviewed involved the permanent loss of 112 acres of wetlands for which 123 acres of compensatory mitigation was required. These figures are incorporated into Table 1.

The PCA has developed new water quality standards for wetlands which will be incorporated into Minn. Rules Ch. 7050. There were previously no explicit standards governing discharges to wetlands. The proposed rule changes are to be published for public comment and hearings under administrative rule making procedures in mid-1993.

In the past year the PCA negotiated new regional conditions on Clean Water Act Section 404 Nationwide Permits issued by the Corps of Engineers. The regional conditions limit the application of the nationwide permits to only those activities having minimal adverse impacts on wetlands in the state.

STATUS OF THE STATE'S WETLANDS

An analysis of the state's wetlands conducted by the DNR in 1990 indicated that approximately 7.5 million acres remain from an estimated pre-settlement acreage of 18 million. Other estimates of the current wetland acreage in Minnesota range from 5 million to

9 million. A precise count of the wetlands present today and the rate of loss is not currently possible. However, efforts are underway to address these deficiencies. As mentioned previously, the on-going digitization of the National Wetland Inventory maps for Minnesota should provide a fairly precise count and classification of the state's wetlands in the early to mid-1980's, when the aerial photography was done. This project should be completed by the end of 1993.

Previous efforts to monitor wetland loss and mitigation have been hampered by the fact that wetland management and regulatory programs are scattered among various agencies and by a lack of accurate record keeping. Talks are currently underway between state and federal agencies on ways to coordinate their documentation of wetland activities to allow a more accurate analysis of losses and gains.

CONCLUSIONS

The State of Minnesota presently has a broad array of laws, policies and programs pertaining to wetlands. Passage of the Wetlands Conservation Act and the issuance of the "No-Net-Loss" Executive Order in 1991 considerably strengthened the protection of wetlands in Minnesota from a state regulatory perspective. These actions filled some of the gaps in existing state and federal wetland regulations that allowed wetlands to be destroyed without replacement. If all state and federal wetland regulations are implemented properly, the rate of wetland loss in Minnesota, previously estimated at 5,000 acres per year, should be significantly diminished. Some wetland loss continues however, partially from small impacts allowed under regulatory exemptions and general permits, and other losses due to illegal activities. Certain wetland values are lost as the result of activities that are not clearly regulated, such as excavation or inundation of wetlands. On the other hand, a variety of programs are actively restoring wetlands throughout the state. A complete accounting of the gains and losses is not currently possible due to inadequate information on the current status of wetlands, scattered wetland responsibilities among federal, state and local authorities, incomplete recording and reporting of activities, and inadequate follow-up and monitoring of mitigation requirements. As discussed previously, several efforts are underway to enable a more accurate analysis of the wetland picture in Minnesota. The results of these efforts should be reflected in subsequent annual reports.

ATTACHMENT A

Agencies Reporting on Wetland Activities for Fiscal Year 1992

Board of Water and Soil Resources
Department of Administration
Department of Agriculture
Department of Corrections
Department of Labor and Industry
Department of Military Affairs
Department of Natural Resources
Department of Revenue
Department of Transportation
Housing Finance Agency
Pollution Control Agency