

A Brief Historical Background on Wetland Issues and a Chronology of State Laws Since 1858¹

A.1 Wetlands have been a major issue throughout Minnesota's history.

The debate over the value of wetlands, and their resulting drainage, has been the paramount water issue since Minnesota gained statehood in 1858. Early water management in Minnesota consisted mainly of manipulating surface waters--mostly wetlands and small lake areas--attempting to make more land suitable for farming.

Surface water was viewed as a "common enemy" and wide scale drainage was the order of the day early in the twentieth century. Wetlands were considered "undesirable wastelands."

Governor Alexander Ramsey, in an 1861 speech to the legislature, said: "From their nature and situation they [wetlands] are capable of easy reclamation. In a climate so dry as ours, we may naturally expect that lands of this class will eventually be the most valuable in the state."

As settlement increased, especially along the state's rivers, floods and property damage often occurred and wetlands in floodplain areas came to be valued as storage basins.

The drought cycle has greatly influenced lawmakers on drainage and wetlands issues over the years. A series of wet summers would affect the need for more drainage. In recent years, summer drought patterns have increased public concern for wetland preservation.

A.2 A Brief Chronology of State Laws on Wetlands

- 1858** Chapter 73 allowed private corporations to be formed for the purpose of draining lands and creating water privileges.
- 1883** Chapter 108 allowed county commissioners to authorize the construction of ditches or water courses within the county, including the drainage of "shallow, grassy, meandered lakes under four feet in depth."
- 1897** Chapter 257 created a state drainage commission to "have care, custody, control and supervision of all drainage ditches in the state." It also provided the first statutory definitions of public and private waters. This law and the powers of the drainage commission were expanded by statutory amendments through 1917.

¹ The chronology does not cover judicial case laws. *(Note: This brief represents an historical perspective prepared by John Helland, Legislative Analyst, as a House Research Information Brief with updates provided by John Jaschke, Minnesota Board of Water and Soil Resources. Changes in the Wetland Conservation Act since the brief was written in March, 1996 have also been incorporated. A paper entitled "History of Water Management and Protection in Minnesota" by Tom Lewanski, Office of Planning, Department of Natural Resources, provided material for this historical information brief.)*

- 1919** Chapter 65 abolished the state drainage commission and the Department of Drainage and Waters, under the control of a commissioner, was established.
- 1931** The Department of Conservation was created and Drainage and Waters became a division within the new department. During the 1930s, the Depression and periods of drought, along with increased conservation concerns, halted wide-scale drainage efforts.
- 1947** Chapter 142 declared "all waters providing substantial public use and that are navigable in fact" to be public waters. Drainage of public waters could occur only if they were deemed "non-public," or permission was acquired from the Commissioner of Conservation.
- 1951** The "Save the Wetlands" program was enacted, which used federal funds (Pittman-Robertson) to acquire wetlands for state wildlife management areas.
- 1955** Chapter 681 brought conservation into the drainage code; it required that in determining the benefit of a proposed drainage system, the conservation of soil, water, forests, wild animals and related natural resources must be considered.
- 1961** Chapter 754 created state policy that, where practicable, all state agencies shall conserve precipitated water in areas where it falls.
- 1973** Chapters 315 and 479 were enacted that (1) expanded the definition of public waters to include "all waters which serve a beneficial public purpose, thereby including wetlands; and (2) required new elements, including environmental concerns, that need to be considered before establishing or improving drainage systems.
- 1976** Chapter 83 established a program to inventory and specify public waters once and for all, including wetlands. The state water bank program was created, where easements could compensate landowners who agreed to preserve their wetlands.
- 1979-** The public waters inventory was begun in 1979 to identify all public waters, and final
1984 publication of county inventory maps was finished in 1984.
- 1991** Chapter 354, the Wetland Conservation Act, created a "no net loss policy;" provided for mitigation of drained or filled wetlands; allowed local units of government administrative authority; and authorized the Board of Water and Soil Resources (BWSR) to adopt rules and acquire permanent easements for Type 1 to 3 wetlands.
- 1993** Chapter 175 allowed counties or watersheds that had 80 percent or more of their presettlement wetlands remaining to mitigate for draining or filling on a one to one acre basis. Created a de minimis exemption of up to 400 square feet of wetland area. Rules under the 1991 Wetland Conservation Act were adopted by BWSR.

- 1994** Chapter 627 allowed local governments some flexibility in adopting a comprehensive wetland management plan that could substitute for parts of the BWSR rule on wetlands. It also allows existing roadways to be upgraded to current construction and safety standards, if wetland impacts are minimized and less than one-half acre is impacted.
- 1996** Chapter 462 amended the Wetland Conservation Act to provide a more streamlined notification process. Exemptions were also reformatted for easier interpretation, with expansion of exemptions covering agricultural land, individual sewage treatment systems, wildlife habitat improvement projects, drainage and de minimis. The 1996 amendments provided that local governmental units may develop Local Comprehensive Wetland Protection and Management Plans as an alternative to the Rules, with flexibility in the application of sequencing standards, replacement standards and certain exemptions. 1996 changes also amended the requirements for public road project replacement, including the provision that the BWSR will replace wetlands drained or filled from the repair, reconstruction or rehabilitation for existing local government public roads.
- 2000** Chapter 382 amended the Wetland Conservation Act and Public Waters Law to provide greater consistency and coordination between the state's two water/wetland regulations. The changes allowed DNR to waive permit jurisdiction to local governments for projects affecting public waters wetlands and allowed DNR to make updates and corrections to the Public Waters Inventory with local government concurrence.

A.3 Recent Federal Legislation

Historically, federal policy on wetland regulation parallels regulation by individual states. The early federal "swampland acts" of 1850 and 1860 transferred 65 million acres of wetlands to fifteen states, including Minnesota. The acts required that proceeds from the sale of wetlands to individuals had to be used to convert wetland to farmland.

The federal government began acquiring wetland easements through programs of the Fish and Wildlife Service in 1958 and the U.S. Department of Agriculture in 1972. In 1977, President Carter issued executive orders which established the protection of wetlands and riparian flood plain systems as an official policy for each agency in the federal government.

- 1972** The Federal Water Pollution Control Act regulates the discharge of dredge and fill material into navigable waterways, including wetlands, under the section 404 permit program administered by the U.S. Army Corps of Engineers. Clean Water Act, 33 U.S.C. § 1344
- 1985** The Food Security Act created the "swampbuster" provision, which denies USDA farm program benefits to farmers who plant annual crops on wetlands converted after 1985. 16 U.S.C. § 3821 to 3824
- 1990** The Food, Agriculture, Conservation and Trade Act created the Wetlands Reserve Program to restore and permanently protect wetlands, with a goal of enrolling one million

acres of farmed wetlands, prior-converted wetlands, and adjacent upland by the year 2000. 16 U.S.C. § 3821 to 3824

- 1996** The Federal Agriculture Improvement and Reform Act of 1996 continued the initiatives of the 1985 and 1990 legislation but removed some of the crop production limitations and established a seven year phaseout for federal agricultural program benefits.