

# Wetland Conservation Act Assessment

February 22, 2005

# Who regulates wetlands?

## *State:*

- MN Dept. of Natural Resources
- Minnesota Wetland Conservation Act
- Pollution Control Agency

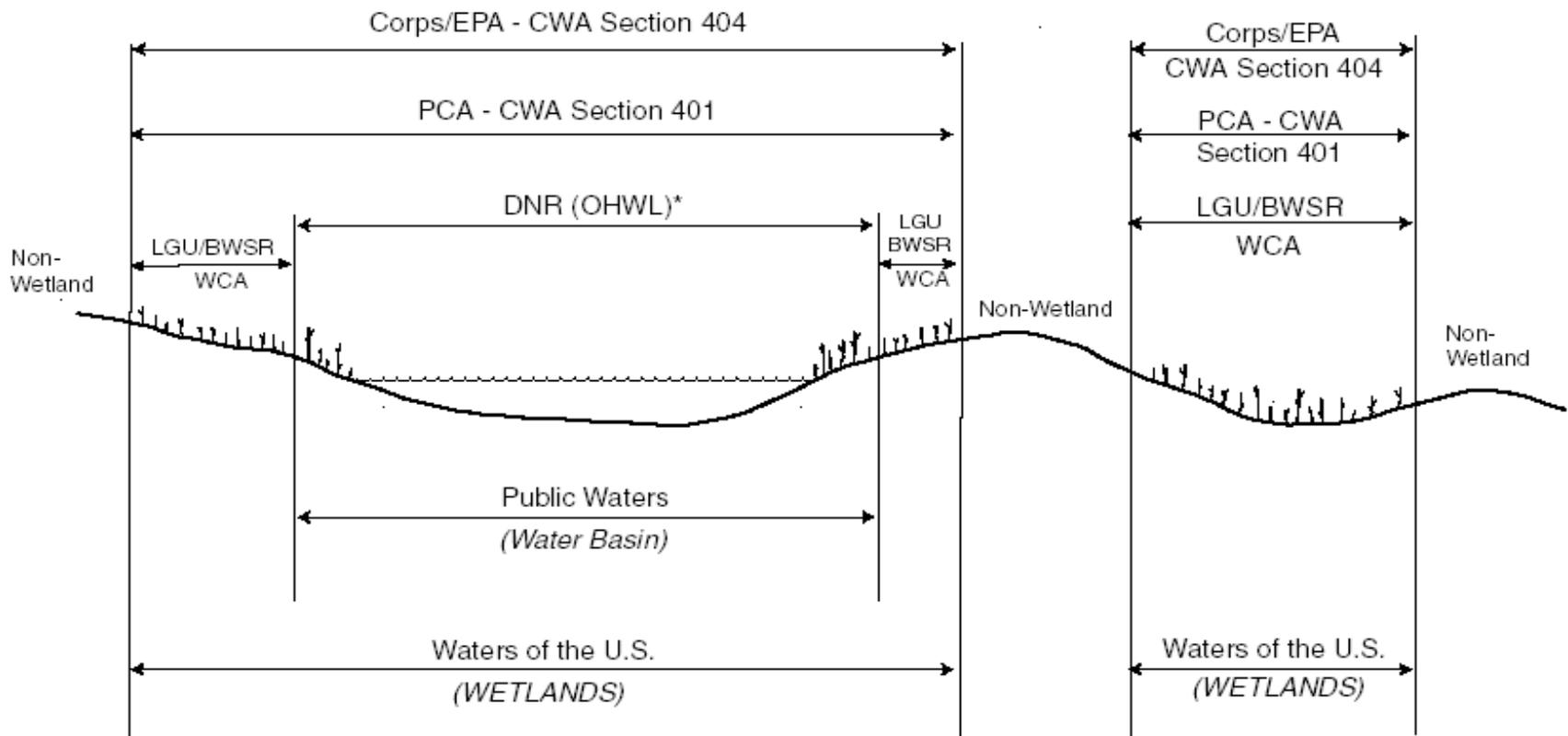
## *Federal:*

- U.S. Army Corps of Engineers
- USDA

# MINNESOTA

## STATE and FEDERAL JURISDICTION over "WATERS"

### PUBLIC WATERS: WATER BASIN



# WCA Administration

- The Minnesota Board of Water and Soil Resources administers the act statewide, provides technical assistance, training, and an administrative appeal mechanism
- Actual administration is by local government units

# WCA Administration

- The Department of Natural Resources , Enforcement Division provides law enforcement for both WCA and DNR waters programs.

# Benefits:

- The WCA recognizes a number of wetland benefits, including:
- Water quality
- Floodwater and storm water retention
- Public recreation and education
- Commercial benefits
- Fish and wildlife benefits
- Low-flow augmentation during times of drought.

# WCA Overview

The purpose of the WCA is to:

- Achieve no net loss in quantity, quality and biological diversity;
- Increase quantity, quality and biological diversity;
- Avoid direct or indirect impacts;
- Replace wetland values where avoidance of activity is not feasible and prudent.

# WCA Overview

The Wetland Conservation Act achieves its purpose by requiring persons proposing to impact a wetland by draining, excavating, or filling to:

- First, attempt to avoid the impact;
- Second, attempt to minimize the impact; and
- Finally, replace any impacted area with another wetland of at least equal function and value.

**Table 2**

<b>REPORTED WETLANDS AVOIDED, MITIGATED, RESTORED, &amp; IMPACTED FROM WCA REGULATION 2001-2003</b>				
<b>WCA Activity</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>Totals</b>
Number of Landowner Contacts to LGUs	17,086	18,507	17,561	53,145
Avoided/Minimized (in acres)	3,943	3,052	3,150	10,145
Impacted (in acres)	(273)	(330)	(383)	(986)
Replacement (in acres)	535	347	584*	1,466 <sup>1</sup>
Exempt (in acres)	(610)	(619)	(479)	(1,708)
Impact + Exempt	(883)	(949)	(862)	(2,694)
<b>Impact + Exempt - Replacement = Net Loss</b>	<b>(348)</b>	<b>(602)</b>	<b>(417)</b>	<b>(1,367)</b>

Source: BWSR

<sup>1</sup>Does not include a net balance of 464 acres of wetlands in the wetland bank during 2001-2003

\*Total includes 139 acres of upland public value credits

**Table 3**

<b>NUMBER OF WCA IMPACTS BY SIZE</b>						
	<b>0-0.2 ac.</b>	<b>0.21-0.5 ac.</b>	<b>0.51-1.0 ac.</b>	<b>1.1-3.0 ac.</b>	<b>&gt;3.0 ac.</b>	<b>Annual Totals</b>
2001	1,632 (60.7%)	501 (18.6%)	270 (10.0%)	140 (5.2%)	145 (5.4%)	2,688
2002	1,573 (58.2%)	555 (20.5%)	259 (9.4%)	170 (6.3%)	144 (5.3%)	2,701
2003	1,450 (51.7%)	744 (26.5%)	257 (9.2%)	212 (7.6%)	142 (5.1%)	2,805
Totals	4,655 (57.2%)	1,800 (22.0%)	786 (9.6%)	522 (6.4%)	431 (5.3%)	8,194

# Minnesota Statute 15.99

All WCA determinations and decisions must be made in compliance with Minnesota Statutes, section 15.99.

<http://www.revisor.leg.state.mn.us/stats/15/99.html>

# Minnesota Statute 15.99

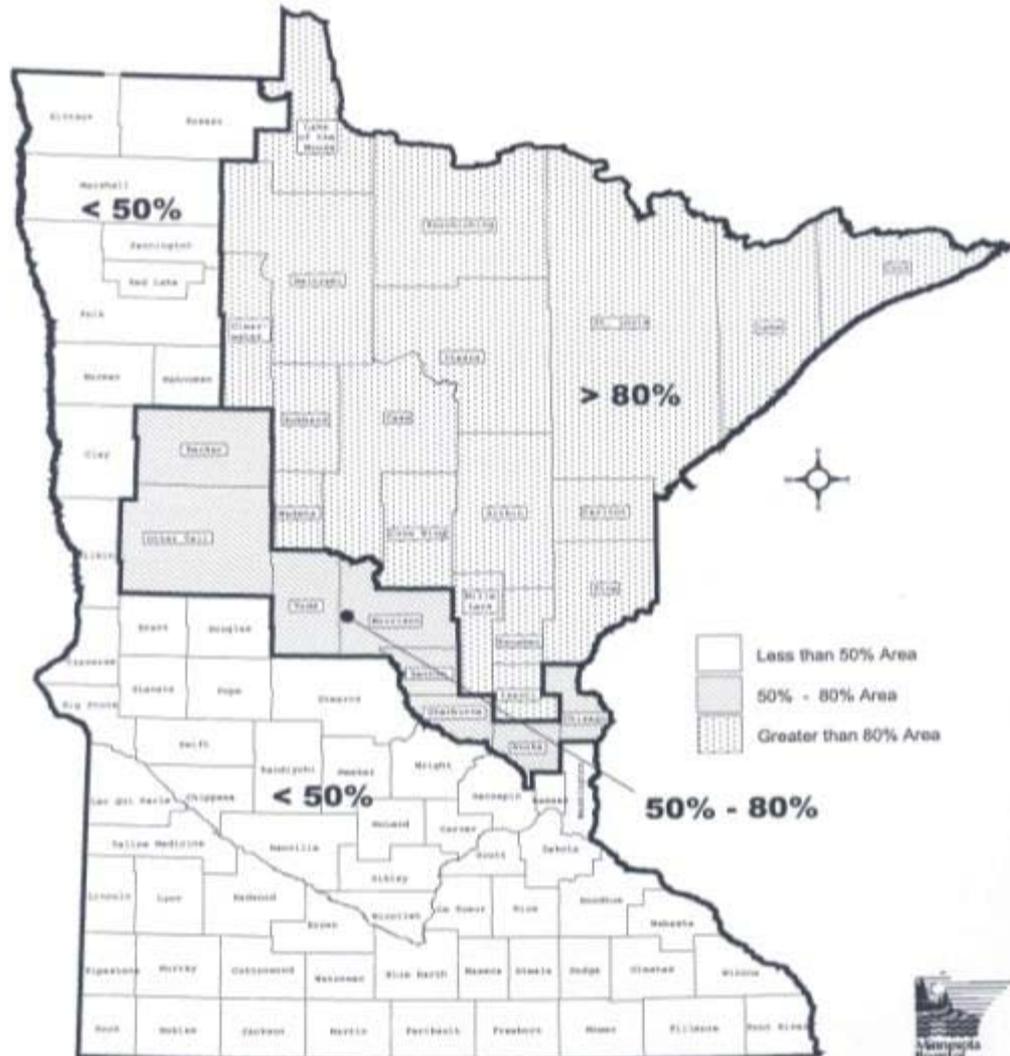
In general, M.S. 15.99 requires the following:

- Agency must act on application within 60 days of receipt;
- Failure to deny a request within 60 days constitutes an approval by default;
- An incomplete application returned within 15 working days that identifies what information is missing will “stop the clock”;
- The initial 60 day period may be extended an additional 60 days if the agency provides written notice of the extension to the applicant and reasons for the extension.

# Three Types of Areas in Minnesota

- Less than 50 percent area
- 50 percent to 80 percent area
- Greater than 80 percent area

# Minnesota Wetland Conservation Act Pre - Statehood Wetland Areas

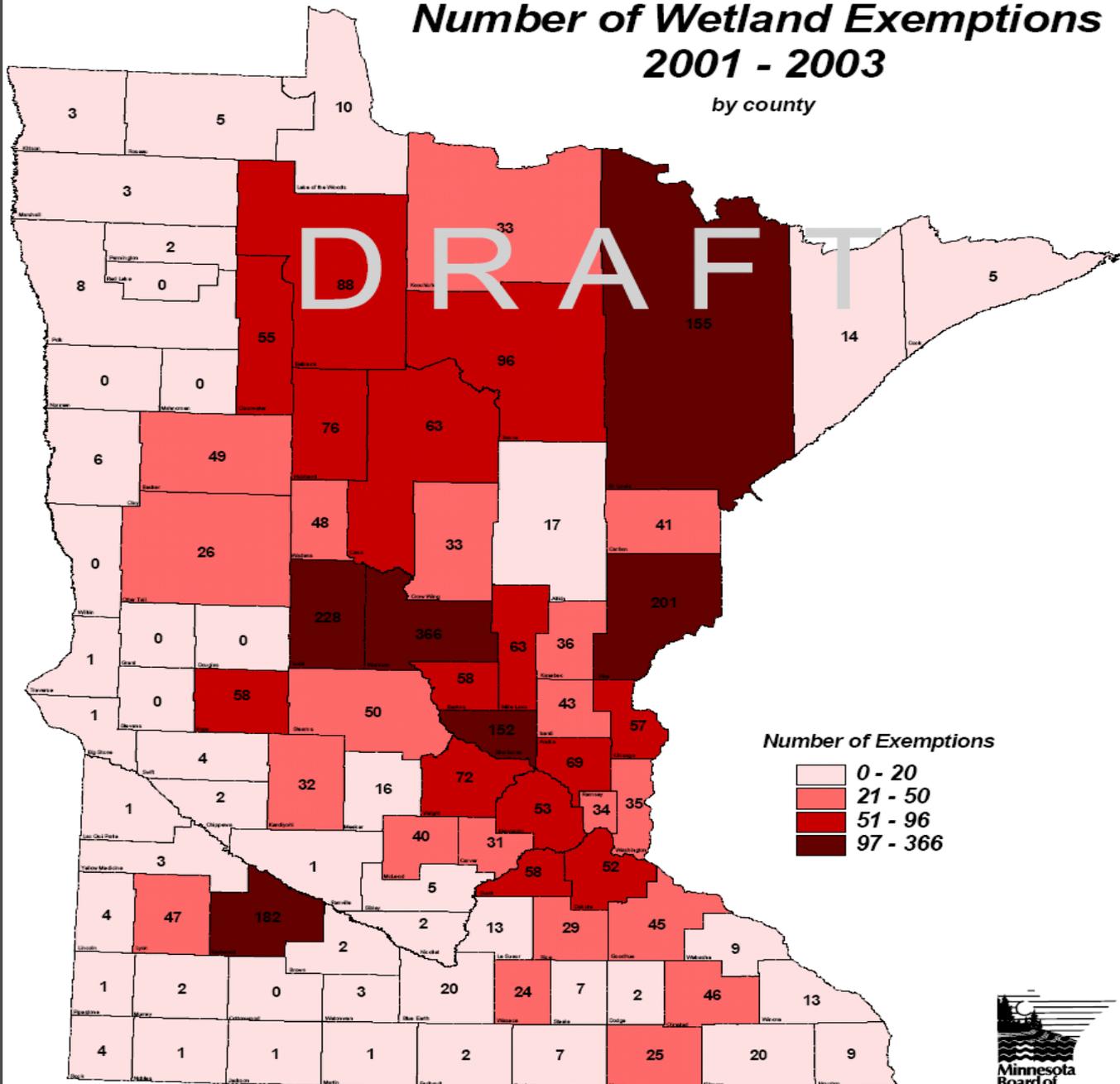


# Exemption Overview

- Agricultural Activities
- Drainage
- Federal Approvals
- Wetland Restoration
- Incidental Wetlands
- Utilities; Public Works
- Forestry
- Approved Development
- De Minimis
- Wildlife Habitat

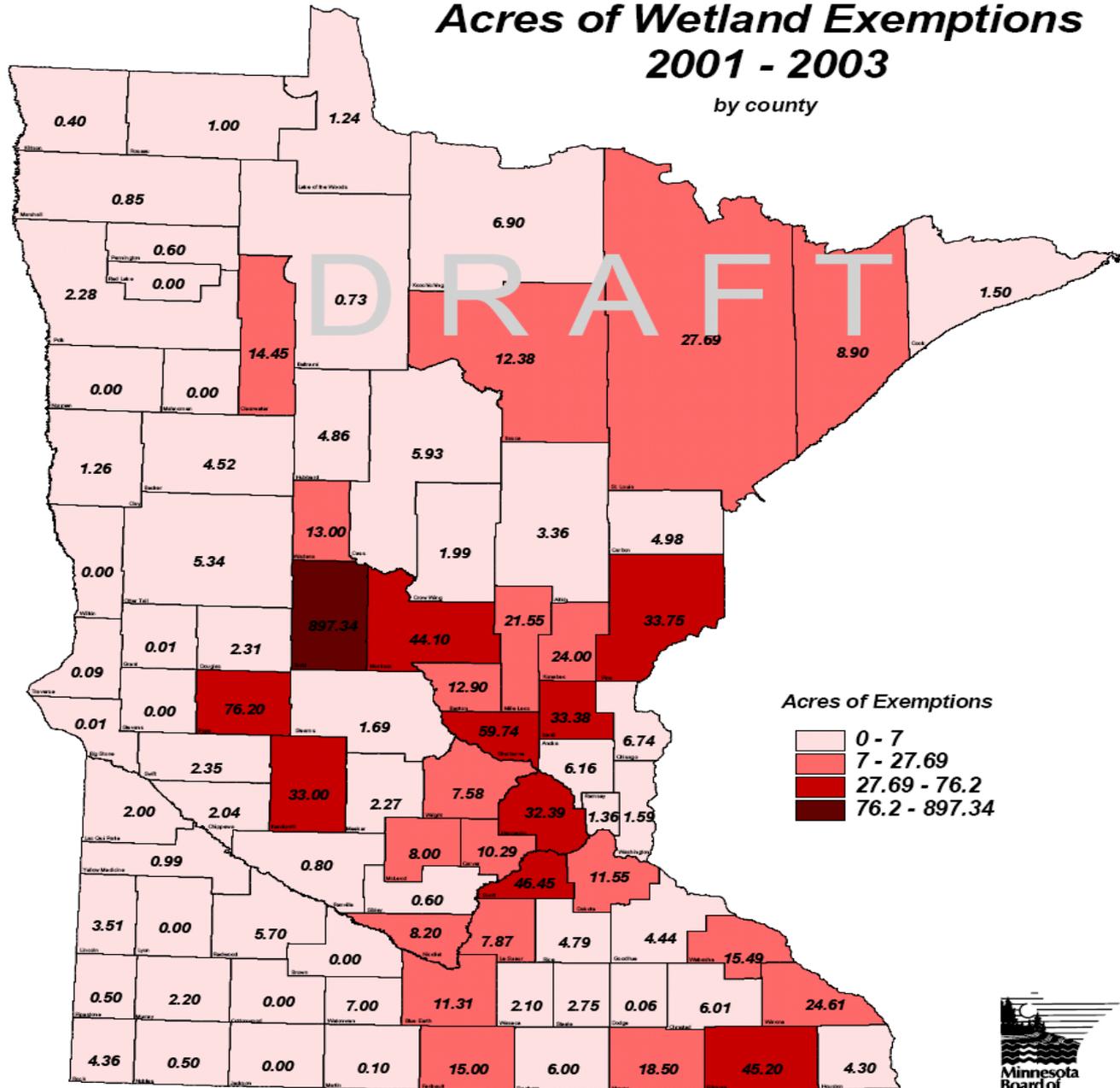
# Number of Wetland Exemptions 2001 - 2003

by county



# Acres of Wetland Exemptions 2001 - 2003

by county



# Replacement Plan Overview

- Anyone intending to impact a wetland, that does not qualify for an exemption or no-loss, must obtain approval of a replacement plan before initiating the impact.
- Anyone who does not get approval prior to impacting a wetland is subject to the enforcement provisions of the WCA.

# Replacement Plan Overview

WCA sequencing standards, in descending order of priority:

- Avoids direct and indirect impacts to wetland;
- Minimizes the impact to the wetland;
- Rectifies temporary impacts;
- Reduces or eliminates impacts over time; and
- Replaces unavoidable impacts to wetland with areas of equal or greater public value.

# Replacement Plan Overview

- Wetland replacement must be completed concurrent with, or prior to, the wetland being impacted.
- An exception to this requirement can be made if an irrevocable bank letter of credit, or other security, is submitted to guarantee successful completion of the replacement.

# Replacement Plan Overview

Wetland replacement siting must follow the following priority order:

- On-site, or in the same minor watershed;
- Same major watershed;
- Same county;
- Adjacent major watershed or county; then
- **Statewide**. (*only for impacts in >80% areas and public transportation projects outside metro*)

# Replacement Plan Overview

Replacement wetland size is determined by what is sufficient to ensure equal or greater function and value.

Minimum standards are as follows:

- 1:1 replacement ratio in >80% areas and for agricultural impacts.
- 2:1 ratio in all other areas of the State.

# Public Transportation Overview

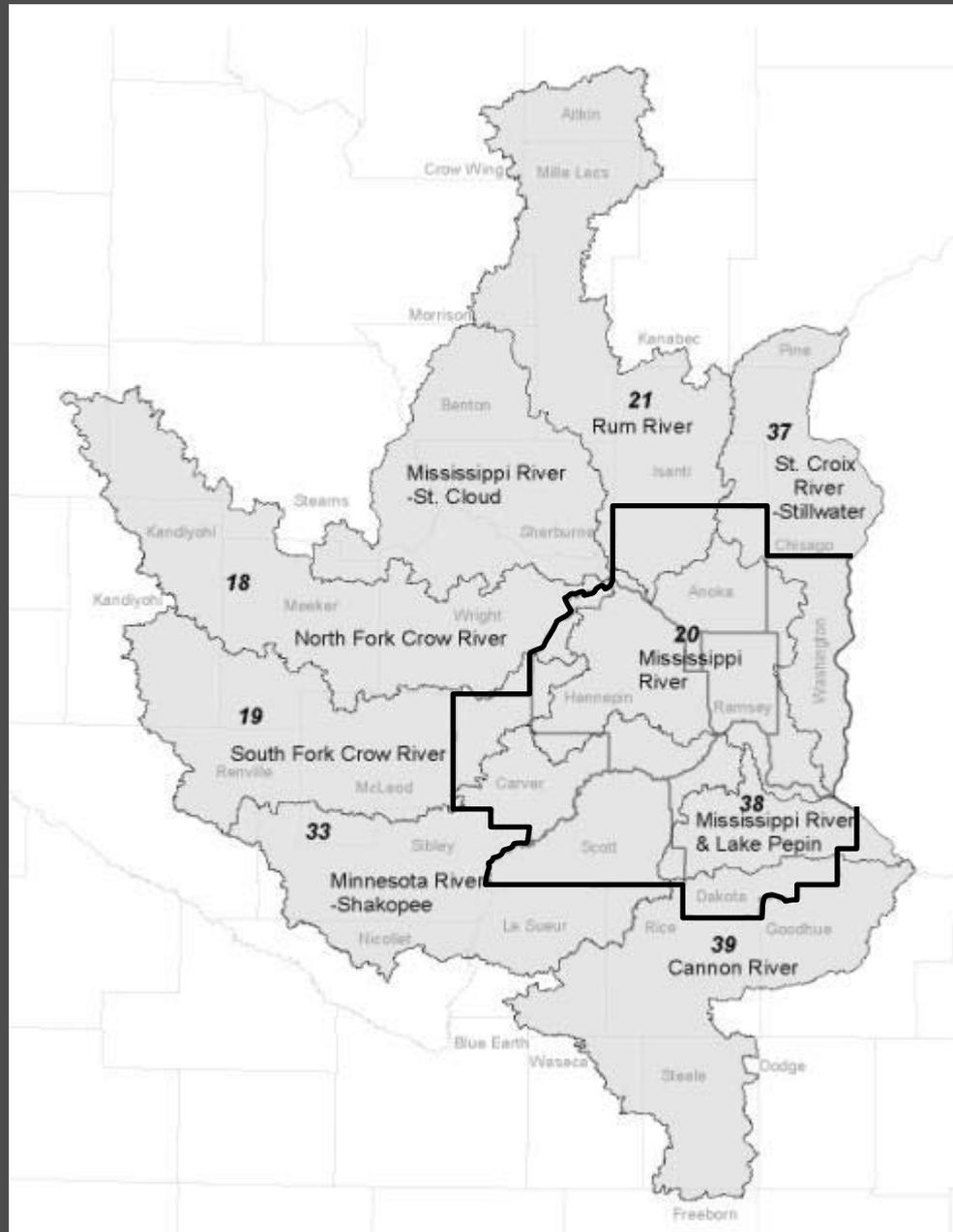
## Definition:

- A public transportation project means a project conducted by a public agency involving transportation facilities open to the public.
- The “Public Transportation” definition includes all public transportation projects, including public roads.

# Public Transportation Overview

Wetland replacement for public transportation projects may occur state-wide, except:

- Wetland impacts in a <50% county must be replaced in a <50% county;
- Wetland impacts in the 7-county metro area must be replaced:
  - In the same county;
  - In another 7-county metro county; or
  - Replacement above 1:1 may be accomplished in one of the major watersheds that are wholly or partially within the 7-county metro area.



# Public Transportation Overview

New public transportation projects, and those expanded solely for additional capacity, may purchase wetland credits from BWSR at the cost expended to establish them.

# Public Road Projects

For currently serviceable existing state, city, county, or township roads, a replacement plan is not required for:

- Repair;
- Rehabilitation;
- Reconstruction;
- Replacement/Realignment.

# Public Road Projects

A replacement plan is not required provided the road authority:

- Minimizes impacts to wetlands;
- Considers replacing important site-specific functions on-site; and
- Submits a project-specific report to TEP members, the Commissioner of DNR, Corps of Engineers, and interested members of the public at least 30 days prior to construction.

# Enforcement

- DNR conservation officers and other peace officers may issue cease and desist and restoration or replacement orders
- Rescinded if landowner obtains a no-loss, exemption, or replacement plan determination
- Violation a misdemeanor

# Appeals Overview

Two main categories of appeals:

- Appeals of LGU determinations.
  - Approval;
  - Approval with conditions; or
  - Denial.
- Appeals of replacement and restoration orders.

# Appeals of LGU determinations

## LGU Determinations that may be appealed:

- Replacement plan;
- Banking plans;
- Public road project notice;
- Exemption;
- No-loss; and
- Wetland boundary or type requests.

# Appeals of LGU determinations

Appeals may be made by:

- The landowner (*with \$200.00 filing fee*);
- Those required to receive notice of decision (*no fee for TEP members or State agencies*);
- 100 residents of the county where the impact is (*with \$200.00 filing fee*).

# Appeals of LGU determinations

An appeal shall be granted unless it is determined that:

- The appeal is meritless, trivial, or brought solely for the purpose of delay;
- All local administrative remedies have not been exhausted; or
- A letter of credit, cashier's check, or cash, required by the LGU, has not been posted.

# Appeals of LGU determinations

Based on the record, the BWSR may:

- Affirm the LGU decision;
- Amend the decision;
- Remand the decision with instructions for further proceedings; or
- Reverse the decision.

# Appeals of LGU determinations

Generally, the BWSR will affirm an LGU decision unless:

- The LGU's findings are clearly erroneous;
- The LGU incorrectly applied the law to the facts; or
- The LGU made procedural errors **prejudicial** to a party.

# Wetland Mitigation Banking in Minnesota

- Banking of wetland credits in Minnesota is allowed by both federal and state regulatory programs.

# What is the bank?

- A state-managed (BWSR) bank of already-established wetland replacement credits for mitigation projects. There are currently over 120 accounts with 2600+ credits available in the BWSR bank system,
- Minnesota's is probably the biggest system in the U.S. in terms of number of accounts

# Credits

- Credits can be bought and sold just like real estate in MN, once credits are used to mitigate for a wetland impact (debiting) they disappear from the system. Credits within an account are identified down to wetland type, as new wetland credits or public value credits, and as Corps-approved or not.