

February 2009 Newsletter www.mnwetlandprofessionals.org

Volume 14, Number 1



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President's Address by Rich Davis, 2009 WPA President

Hello and a good New Year to the membership. With the conclusion of 2008 there was a changing of the guards within the association. We say good bye and thank you to four outgoing Board Members; Allyz Kramer, Andi Moffat, Mark Perry, and Peter Miller. With the departing of these individuals we will welcome the involvement of four new members on the Board; Ben Carlson, Ben Hodapp, Matt Vollbrecht, and Ken Powell. The officers for 2009 include Rich Davis, President; Scott Milburn, Vice President; Barbara Walther, Treasurer; and Natasha DeVoe, Secretary. Ken Powell will remain on as the WPA Newsletter editor, and Scott Milburn will continue to be our Webpage Coordinator.



Greg Larson receiving WPA Leadership Award at the 2nd Annual MN Wetlands Conference on January 21, 2009.

Thanks again to our outgoing Board Members: Allyz Kramer our out-going President for her time and effort representing the WPA on the WCA Permanent Rule Making Advisory Committee, which involved numerous hours of meetings and the additional work that goes with such a task. Andi Moffat out-going Vice President for her time and effort representing the WPA on the WCA Permanent Rule Making Advisory Committee when called upon, WPA forum coordination, and coordinating Board Member elections. Mark Perry for his time and involvement with the 1st and 2nd Minnesota Wetland Conferences. Peter Miller for his coordination and planning of the 2008 WPA Field Trip.

As we move into 2009 I hope you will find time to join us for our March and April forums at REI in Bloomington, and the 2009 WPA Field Trip this coming spring or summer. I would also like to invite you to provide forum input to myself and the rest of the Board as we are always looking to schedule speakers and topics that are a best fit for membership's needs. I wish everyone a healthy and safe new year and look forward to seeing you at our upcoming forums, the WPA field trip, or out in the field.

Wetland Training In Minnesota Gets Organized

For the first time, the Wetland Delineators Certification Program (WDCP) and the MN Board of Water & Soil Resources (BWSR) have developed a comprehensive, statewide training schedule for administrative and technical wetland training courses. The new schedule and course listing can be found on the BWSR website (www.bwsr.state.mn.us). BWSR is sponsoring the administrative/regulatory courses related to the Wetland Conservation Act (WCA) while WDCP is offering the technical courses related to wetland delineation.

A concerted effort has been made to distribute courses throughout the State. Basic and advanced WCA courses are being offered as well as basic and advanced wetland delineation courses. Check out the BWSR and WDCP websites (www.mnwetlands.umn.edu/cert/) for more information and take advantage of these opportunities.

2nd Annual MN Wetlands Conference: A Summary of Success

by Matt Vollbrecht

I want to thank everyone who attended the Minnesota Wetlands Conference on January 21, 2009. The conference was a great success. A big thanks to everyone at the WPA and WDCP that worked to make it great. A special thanks to our speakers and to Mark Perry for moderating the conference and keeping it flowing. The weather even decided to cooperate this year, as we were definitely warmer than last year. There were again over 200 conference attendees and it was nice to see people from all over the State.

Ed Nater, Department Head of the U of M Soil, Water and Climate and Rich Davis, our new WPA president, both welcomed all to the conference. The first presenters were Carol Strojny and Karli Swenson, both with BWSR. Their discussion on the status of the Wetland Bank Program in Minnesota was very informative. It was good to hear that we have had 255 wetland banks covering 10,550 acres since 1991. It was also interesting to hear what problems seem to be the most common across the state.

Joe Schaffer, Minnesota Native Landscapes finished up the early morning session with a review of the contractor's part in the mitigation process. Joe offered some good insight into the construction end of mitigation and problems that consultants and regulators may not consider. He made some excellent points about how important good communication is between all parties on mitigation projects. Joe also stressed how important it is to ensure that projects are well thought out and feasible. Joe had some excellent photographs of projects in process, but the milkweed fluff picture was my favorite, maybe he should start selling milkweed fluff pillows as an ecologically friendly product?

The mid-morning session was kicked off by Sarah Stai of Westwood Professional Services with an interesting study on how buffer strip width affects sediment and phosphorous removal. This was a great example of a real life study with practical applicability to our field. It is good to know that these buffers we are planning and implementing may be making a difference on water quality. I hope we see more similar studies in the future. The next presenter was Dr. Susan Galatowitsch, Professor of Restoration Ecology, University of Minnesota. Dr. Galatowitsch did a great job of getting 20 years of monitoring data in before lunch! Some of her most interesting results were on competition and control of reed canary grass. I was really interested in some of her findings on pre-stratification of seeds, eliminating cover crops, changes to seed rates and using sawdust to control and establish natives ahead of reed canary grass.

Dr. Joy Zedler, Professor of Botany at UW Madison kicked off the afternoon with an excellent discussion on "No Net Loss of Function". Dr. Zedler's talk was very informative and covered the concepts of wetland functions, values, and wetland services. She also discussed reed canary grass and had some ideas on its control. She finished up with an interesting study on stormwater that involved rough-vs-smooth plantings and diverse vs monoclonal plantings.

After a break, the WPA leadership award was presented to Greg Larson who recently retired from his position as State soil scientist at BWSR. Congratulations Greg! After Greg's award it was back to the business of controlling reed canary grass with Dr. Chev Kellogg from the Minnesota DNR. Dr. Kellogg presented his findings on reed canary grass management. It was interesting to see his results with barnyard grass and rice cutgrass having the potential to outcompete reed canary grass in restorations. Dr. Kellogg also offered some good insight on the manipulation of nutrients for reed canary grass control.

The last presentation of the day was from Ryan Boe and Linda Fischer, both attorneys at Larkin, Hoffman, Daly and Lindgren, Ltd. They were very informative and presented a side of wetland mitigation most of us consultant/scientists never think about. Their information on easements, transfer of credits and liabilities really made one think about how mitigation needs to be a team process. Ryan had some great stories about when things go wrong. I want to thank Linda for giving me a new word, I can now say proudly I work for the "Permitted" community. After Ryan and Linda, the conference finished up with a panel discussion and question and answer session.

Thanks to Les Lemm, BWSR, Mark Gernes, MPCA, Doug Norris, DNR and Steve Eggers, US Army Corps of Engineers for volunteering for the panel. All four had some great comments on the conference and answered some good and thoughtful questions from the audience. In summary, there is no way I can properly summarize the great job all the speakers did at the 2009 Minnesota Wetlands Conference. Thanks to all! I also want to thank everyone who attended the conference. I would also like to invite all WPA members to the 2010 conference. Be sure to watch the newsletter and website for more information.

Renowned botanist **Robert Mohlenbrock** will once again be offering a plant identification course in Minnesota this year. The **June 23-26** course will focus on sedges, grasses, & rushes. Go to www.mnrinc.us for more information.

A Word from the Outgoing WPA President by Allyz Kramer

My grandmother always spoke of how "time flies" and she was right. As I pause to consider my last four years on the WPA Board, I'm surprised at how this time really has flown by. In the last four years a number of changes occurred in our Association, which I think have been mostly for the better. The Boards serving during 2005-2006 spent numerous meetings and special work sessions evaluating just "who" and "what" constitutes our Association. Our name change from the Wetland Delineators Association (WDA) to the Wetland Professionals Association (WPA) likely embodies the most significant change in the Association since inception in 1995. Although delineation is what brought us together so many years ago, we recognized that ten years later, our collective skills made us more than just "delineators." In 2006 the Association voted in near unanimity to change our name to the Wetland Professionals Association. The Board persevered through numerous clerical issues with the name change. The positive result is that being known as the Wetland Professionals Association more accurately reflects our diversity, broad educational backgrounds, and breadth of experience. Two iterations of Bylaw changes occurred in 2006 to accompany the name change, and then again in 2008 to reflect the current operations of the Association and duties of the Board and its Executive Officers.

More changes for the WPA came as the 2007 Board dug in their heels and got busy coordinating the 1st Annual Minnesota Wetlands Conference. I'm proud to say that the 2nd Annual Conference was also successful thanks to the planning efforts of the 2008 Board and some dedicated members of the Association serving on the Conference Committee. I hope this annual conference, along with WPA's commitment to monthly forums and an annual field trip, continue to provide current and relevant educational opportunities for our members.

I hope that my tenure on the Board, along with those talented and dedicated Board members serving from 2005-2008, has made a positive influence on the Association. My sincerest gratitude goes to each Board member serving over the last four years for your honesty, support, and commitment in making WPA what it is today. Furthermore, I say thank you to the members of WPA for your trust in electing me and all other Board members to serve this excellent Association. I hope that you, as a member of our Association, will consider how you might give back to the WPA by becoming a Board member, serving on a committee, or helping coordinate a field trip or forum. As a volunteer organization, our vitality and success is dependent upon active membership. I am confident in the dedication and wisdom of the 2009 Board and wish them the best in carrying on the mission of the WPA.

An Update on the 87 Manual Supplements in Minnesota by Ken Powell

The Great Plains and Midwest Regional Supplements to the 1987 Corps of Engineers Wetland Delineation Manual are in effect for those conducting wetland delineations in the southern and western portions of the State. The Northcentral/Northeast supplement is scheduled for release this summer. Upon its release and a subsequent joint public notice from BWSR and the St. Paul District COE, the entire State of Minnesota will be covered by a regional supplement. All wetland delineations must be conducted utilizing the new methods and data forms associated with these new supplements.

In an effort to educate and familiarize those conducting and reviewing wetland delineations in the State, a series of 1-day courses are being offered by the Wetland Delineators Certification Program (WDCP) starting February 20th. Instructors from BWSR, Corps, and the U. of M. will be providing instruction on the changes brought about by the supplements. Go to the WDCP website (www.mnwetlands.umn.edu/cert/) to register for a course. All of the supplements are very similar, so attendance at one course and a little extra reading will sufficiently prepare you for utilizing all of the supplements.



Scenes from the 2nd Annual MN Wetlands Conference



Jurisdictional Determinations: What they are and Why do they take so long?

By Barbara Walther

The intent of this article is to provide a basic understanding of the process that the St. Paul District Army Corps of Engineers (COE) uses to make a Jurisdictional Determination (JD) in light of regulations and recent court decisions, and how consultants can assist clients/applicants in successfully negotiating the process. It does not get into the details of the Supreme Court decisions that prescribe the regulatory authority of the COE. In other words, it does not answer the question "**When** does the COE have jurisdiction over a wetland?" As with many things in life, the answer to this question is "It depends." For further background on COE regulatory jurisdiction and recent U.S. Supreme Court decisions, go to http://www.usace.army.mil/CECW/Pages/cwa_guide.aspx.

Congress enacted the Clean Water Act (CWA) to restore and maintain the chemical, physical and biological integrity of the Nation's waters. Therefore, if it's a water of the U.S., the COE regulates discharge of fill to ensure the goal of the CWA. But, not all waters/wetlands are waters of the U.S., and this is where JDs come in.

As each of the Supreme Court rulings were made, a new layer of complexity was added to the review of project applications, adding to an already large regulatory workload. COE Project Managers (PM) were faced with new review requirements to apply with each application that came across their desk. A new approach always creates a learning curve, and this is true for the Agency, the District, and the individual PM.

Following issuance of Rapanos guidance in June 2007, JDs completed at the local PM level required internal agency review by a JD team in the St. Paul office, prior to the coordination with the EPA and COE HQ. This meant that the JD team in St. Paul was reviewing every JD from all offices in Minnesota and Wisconsin, sometimes requesting clarifying information from the PM to assist in further review. When taken into consideration with the rest of the workload of the agency, this internal review could result in a months-long completion of any given JD. Once this internal review was complete, a JD for isolated wetlands or involving a significant nexus analysis was sent to EPA/COE HQ for the then-required 30-day interagency coordination. The overall intent to protect the ecological integrity of waters of the U.S. became bogged down in the bureaucracy of implementation.

The agencies (COE and EPA) gained valuable experience and received helpful public input over the past couple of years concerning the JD process. Completion of an Approved JD no longer requires the internal agency JD team review in the St. Paul office. PMs are able to make a JD call following a double-check by a supervisor for isolated calls (isn't it always a good idea to have at least one person check your work?). Furthermore, interagency coordination now only involves EPA (i.e., COE HQ no longer involved) when a wetland is determined to be isolated or regulated by way of a significant nexus.

What is it that COE PMs do to make the determinations? Using Guidance developed by EPA/COE (revised December 2, 2008), PMs look at all sources available to make the determination about whether the water/wetland has an ecological interconnection with a water of the U.S. This ecological interconnectivity cannot be speculative or insubstantial. GIS capabilities these days make it a very easy and a fairly straight-forward process. USGS topo maps, aerial photography, soil surveys, NWI mapping, hydrologic flow data and many other data layers are reviewed to establish landscape setting and any obvious connections.

Where jurisdiction is clear (for example wetlands abutting Minnehaha Creek which flows directly into the Mississippi River), an Approved JD would be issued stating that waters of the U.S. ARE present in the project review area. These easier/clearer calls don't necessarily require a site visit to determine COE jurisdiction, though a site visit may occur during review for concurrence of the wetland delineation. An Approved JD in this case does not require coordination with EPA and can be issued upon completion by the PM.

What if an obvious connection is not clear with a desk-top review? This would trigger the need for a site visit and may involve the deeper review of establishing a significant nexus. Data sources mentioned above provide the first level of review to determine if there is the potential for a surficial or shallow subsurface connection to a water of the U.S. During the field visit, all potential connections are literally followed from the wetland in question to any downstream water of the U.S., the PM collecting photographic documentation along the way. The bottom line is to determine whether there is a more than speculative potential for a pollutant placed in the subject wetland to have an impact on the chemical, physical or biological integrity of the downstream water of the U.S. An obvious connection may be found in the field and an Approved JD can be issued as described above. However, if connection is established through a significant nexus analysis, the JD is coordinated through a 14-day review by EPA. Hearing no objection from EPA within this time, an Approved JD is issued by the COE PM stating there ARE waters of the U.S. in the project review area.

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Jurisdictional Determinations (Continued from Page 4)

What about isolated wetlands - those depressions on the landscape with no potential for connection to a water of the U.S.? These are clearly non-jurisdictional as far as the COE is concerned, right? Well, usually... Under the SWANCC decision in 2001, if an isolated water body does not support a link to interstate or foreign commerce, etc. (check the background info), it is not a water of the U.S. However, if they are navigable (even if they are isolated), they may be a water of the U.S. and therefore subject to Corps regulation. When a PM determines that a wetland is isolated, the JD is coordinated through a 21-day review by EPA. Hearing no objection from EPA within this time, an Approved JD is issued stating that there either ARE or ARE NO waters of the U.S. in the project review area.

All of the above discussion relates to an Approved JD, an eight-page form that provides the official COE determination that there either ARE or ARE NO waters of the U.S. in the review area. Only an Approved JD can be used to assert that an isolated wetland in a project area is NOT a water of the U.S. and therefore not subject to Corps regulation. An Approved JD may be appealed through the COE administrative appeal process.

There is a more "speedy" approach to making a jurisdictional call that the COE and St. Paul District recently implemented. A Preliminary JD is a one-page form that can be issued which states there "may be" waters of the U.S. in the project review area. By signing a Preliminary JD, an applicant accepts that the COE has jurisdiction over any wetlands or waters in the project review area, regardless of any connection, significant nexus, etc. The Preliminary JD does not require interagency coordination and is a non-binding decision. However, an applicant may request an Approved JD if they are not satisfied with the Preliminary JD.

To facilitate the JD review process, the St. Paul District developed the "Request for Corps of Engineers Wetland Delineation Review" for consultants to submit with wetland delineation reports. Consultants can request a copy of this form from the PM; it will soon be posted on the St. Paul District web page with updated guidance. When requesting a JD, consultants should also follow the "Guidelines for Submitting Jurisdictional Determination (JD) Requests to the St. Paul District Corps of Engineers, March 2008" (www.mvp.usace.army.mil/docs/regulatory/special%20notices/publicJDguidanceSN.pdf). If a delineation is the starting point for JD review, the PM needs to concur with the wetland delineation. Any problems with the delineation, such as missing information or incorrectly completed data sheets, will halt the JD review process until the delineation issues are worked out. Accurate completion of delineations and JD requests that include complete background information, including USGS topos and aerials where available, will help the JD review to move along as quickly and smoothly as current workload will allow.

Contact Barbara Walther, Senior Ecologist with the St. Paul District COE at 651-290-5469 or barbara.l.walther@usace.army.mil with any questions regarding the information provided in this article.

WPA Announcements are Politically Charged by Mike Graham

I am concerned with what I consider to be political items that are sometimes attached to the WPA e-mail announcements. In one e-mail announcement I identified 2 of the 5 or 6 items as "politically-charged" pieces on global warming. Do we really need this from the WPA? I don't think this type of political material belongs in WPA announcements. Can't we just stick to wetland science and policy? There are plenty of other places to get your news and express your views - whatever they are. We are divided enough politically in so many other parts of our lives. We don't need it in the WPA. Maybe I'm just a voice in the wilderness on this and most don't care. If that is the case, then I will have to forget about it or reassess my association with the WPA.



Stiff Goldenrod. Photo by J. Thatcher

The Main Event: Stormwater Ponds versus Wetlands

By Ken Powell

The Wetland Conservation Act (WCA) can be very perplexing to the typical civil engineer designing projects in Minnesota. It's not the mechanics of it I am talking about, but rather the rationale and justification behind it for restricting or requiring replacement for certain activities in wetlands. This is particularly true when engineers are designing projects to manage stormwater and protect and enhance downstream water quality. When these projects are proposed in wetlands it becomes a battle of sorts between the value of the wetland and the value of the water quality project. This article discusses that "battle" and makes a plug for the underdog—the wetland.

Engineers design and build things. That's what they do, and they do it well. And when they design and build things, they make sure they can quantify (measure) their benefits. Makes sense when you need to justify the cost of a project. Stormwater ponds and other types of water quality treatment systems are examples of how engineers have taken water quality requirements imposed by regulatory agencies and solved them by designing treatment systems that efficiently meet the standards that are imposed. This includes measurable standards such as volume, rate control, bounce, suspended solids removal, etc. Tell an engineer the standard he/she has to meet, they design a system that meets that standard, submit the supporting calculations, and we're off.

The problem comes when the treatment system is proposed in a wetland. Of course, before the WCA, no worries. Now WCA says (in many instances), justify why it needs to go in the wetland and by the way, give me 2:1 wetland replacement (or more). Most of us have heard the arguments that ensue. "This project will make the water quality better than it is now." "This project is self-mitigating because of its public benefit for water quality." "This project provides way more functional benefit than that degraded wetland." And they go on and on. Then the hard data comes out such as the HydroCad analysis, the pre and post runoff conditions, etc.

It's not that the engineers may not be correct in some instances, but rather it's the fact that wetlands don't "fit" into this measurable/quantifiable comparison of functions, especially when viewed from a larger landscape perspective. Try as we might, we just can't measure the complex and often synergistic benefits of wetlands in a meaningful way. Comparing the functions of an open water storm pond to a wetland is like comparing apples to oranges. One thing we have learned over the years is that wetlands (and natural systems in general) are so complex and interrelated that measuring one variable in the context of say one wetland, does not come close to knowing what the real benefit of that wetland is in the natural system. We chip away at these wetlands little by little and eventually look back and start realizing all the benefits that we have lost in a greater context. Back in the 19th century we believed that draining wetlands around the Mississippi River could be replaced by just channelizing river. Now we are just beginning to understand the non-measurable benefits those wetlands provided.

The benefits of that vegetated wetland (degraded or not) that is proposed to be replaced with a stormwater pond goes beyond simple volume and rate control measurements, particularly when viewed in the context of the watershed as a whole. I don't buy the defacto argument that a degraded wetland replaced with a stormwater pond is a win-win for the resource. Maybe it is and maybe it isn't. We don't know enough to know. So, the fact that WCA makes us avoid, minimize, and finally replace wetlands impacted by these type of projects is a good thing in my mind. In the end, I think we need to strike a balance between wetland preservation and constructed stormwater basins. We need to do this so that the lopsided battle between stormwater ponds and wetlands does not always come out with the stormwater ponds as the victor.

Don't forget the 2009 Society of Wetland Scientists Conference to be held this year in nearby Madison, Wisconsin! The conference is scheduled for June 22-26. Go to www.sws.org/2009_meeting/ to register.



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CODE of ETHICS

Each member, in striving to meet the objectives of the WPA, pledges to:

- 1) subscribe to the highest standards of integrity and conduct;
- 2) recognize research and scientific methodology of wetland science;
- 3) disseminate information to promote the understanding of and appreciation for wetland science;
- 4) strive to increase knowledge and skills to advance the practice of wetland science;
- 5) promote confidence in the field of wetland science by supporting high standards of education, employment, and performance;
- 6) encourage the use of scientific information in regulatory decisions; and
- 7) support fair and uniform standards of employment and treatment of those professionally engaged in the practice of wetland science

MEMBERSHIP RENEWALS

If you haven't renewed your membership, please do it now. Members enjoy free admission to monthly forums, reduced admission to the annual conference & field trip, listing on the web site for consultants (if relevant), e-mail updates/notifications of wetland news, and the WPA newsletter. Send renewal forms (available at www.mnwetlandprofessionals.org) and checks to: Wetland Professionals Association, P.O. Box 131282, Roseville, MN 55113-0011