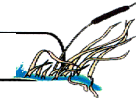




Wetland Professionals Association

PO Box 131282, Roseville, MN 55113-0011



January 2008 Newsletter www.mnwetlandprofessionals.org

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Volume 12, Number 3



Shoreline; Photo by J. Thatcher

WPA President's Address by Allyz Kramer

Happy New Year! Not only is this a time for resolutions, but a time for reflection on what matters most in our daily life. As my family rang in the new year by enjoying a candle light walk through the woods and wetlands of Fort Snelling State Park, I realized again how important wetlands are to me. Being outside on a cold winter evening, crunching through the cattails and thinking about the dormant life below the snow gave me renewed energy for that moment, but also further solidified my professional commitment to wetlands. As I begin my 4th year on the WPA Board, I have been thinking of the importance of WPA in offering its members wetland-related educational opportunities, and how we can keep up this trend.

In my tenure on the Board, many WPA members have asked for more educational opportunities in the form of all day events. Your WPA Board worked hard in 2007 to get this to happen by co-sponsoring the 1st Annual Minnesota Wetlands Conference planned for January 30, 2008. In addition, planning for the 2008 WPA Annual Field Trip is already underway. Read more in this Newsletter about both of these important, all-day events sponsored by WPA. We look forward to your participation in these events, and yes, WPA will offer Professional Development Hours for your Wetland Delineation Certification Program requirements.

As many of you have noticed, the WPA has been asked to be involved in a variety of wetland-related committees including the WCA Stakeholders Group and Advisory Committee. begins its work starting January 22, 2008. I will serve as WPA's primary delegate on the WCA Permanent Rulemaking Advi-

sory committee, with Vice President Andi Moffatt serving as a secondary delegate. Read more about WCA Permanent Rule-Making inside this issue of the Newsletter and (as always) contact me or any other Board member with your input. On the national scene, several WPA Board members have submitted resumes to participate in a peer review group of the 87 Manual Regional supplement. WPA is anxiously awaiting to hear who will be selected from Minnesota, and hopes it will be someone with close ties to the WPA. Stay tuned!

We've come a long way from being an organization of "delineators" to being recognized for our much broader skill set as wetland professionals. I see a bright future for WPA in its current role of promoting wetland education in the state, but also its role in shaping how wetlands are regulated locally, statewide, and nationally. As we forge ahead into 2008, I welcome your ideas for how WPA can continue to serve its members and be the "go-to" organization for the latest information on wetland-related issues. Have a great year and see you soon at a WPA sponsored event!

WPA Conference 2008

The 1st Annual Minnesota Wetlands Conference,

hosted by the MN Wetland Professionals Association and the MN Wetland Delineator Certification Program, will be held on January 30, 2008 at the Continuing Education and Conference Center on the University of Minnesota's St. Paul Campus. This conference will present pioneering and practical information relevant to wetlands in and around Minnesota. This conference will be an excellent opportunity for professionals to come together and share their knowledge of wetlands in Minnesota and surrounding regions. On-line registration is available through the following link:

www.mnwetlandprofessionals.org/2008_conference)
Registration Deadline is January 25.

WCA Permanent Rulemaking Plan Update

Information provided by Dave Weirens, MN Board of Water & Soil Resources

The Minnesota Wetland Conservation Act (WCA) is currently operating under rules that were enacted via rulemaking that was exempt from the standard permanent rulemaking process. The permanent rulemaking process is now being undertaken to adopt permanent rules. The following is a draft plan and schedule for this process current as of December 27, 2007, but subject to change.

Scope

1. Changes included in the exempt rule.
2. Statutory changes not included in the exempt rule: exemption noticing.
3. Changes identified in the WCA Assessment and Wetland Mitigation MOU not included in the exempt rule.
4. Other changes identified by BWSR staff and Stakeholders.
5. Organizational/formatting changes intended to improve clarity and understanding.

Rulemaking Goals

- ✦ Consistent with the purpose of WCA.
- ✦ Simplify.
- ✦ Implementable.
- ✦ Clarify.
- ✦ Tangible Result.
- ✦ Improve Accountability

Other considerations of proposed rule changes are:

- ✦ LGU workload.
- ✦ Limit unintended consequences.
- ✦ Balance public costs and benefits.
- ✦ Stakeholder Support

Overall Schedule

August 6, 2007	Publish request for comments in State Register
September 20, 2007	Comment period closes
Oct.-Nov. 2007	Informational/input meetings with stakeholder organizations
January 2008	Permanent Rule Advisory Committee begins meeting
October 2008	Permanent Rule Advisory Committee ends rule participation
November 2008	Wetland Committee reviews rule and SONAR, makes recommendation to Board (meets periodically throughout process)
December 2008	Board reviews and adopts rule and SONAR
December 2008	Rule submitted to Office of the Revisor of Statutes
January 2009	Submit request to Office of Administrative Hearings to schedule a rule hearing(s)
January 2009	Publish notice of hearing, notify Legislature and interested persons
February/March 2009	Hearing(s)
March 2009	Comment period closes
April 2009	Administrative law judge (ALJ) completes report on the proposed adoption of the rules
May 2009	BWSR reviews ALJ report, consider and/or makes changes based on comments and/or ALJ report
June 2009	Submit rules to chief ALJ
July 2009	Office of Administrative Hearings files approved rules with Secretary of State
July 2009	Revisor of Statutes prepares a notice of adoption
July 2009	Submit notice of adoption to State Register
August 2009	Rule published in the State Register

WCA Permanent Rulemaking—What is the WPA's Role?

By Allyz Kramer

With the 2008 Legislative Session beginning just around the corner, it is time for the WCA Permanent Rule-making process to begin. BWSR is leading this effort by organizing several different committees and teams of professionals to analyze the Exempt Rules and develop the Permanent Rules. WPA's direct involvement will be with the **WCA Permanent Rule Advisory Committee**. This will be a forum for stakeholders to provide input and advice on proposed changes to the WCA Rules. Each participating organization will be allowed one member and one alternate to participate in the development of the WCA Permanent Rule. The meetings are open to the public; however, participation will be limited to the member delegate, or alternate delegate in the absence of the member. The first of these meetings will be January 22, 2008, with the last meetings occurring in October 2008. WPA's primary delegate is Allyz Kramer. Andi Moffatt will serve as WPA's secondary delegate for the committee.

Although not directly representing the interests of WPA, there are several other members of our organization that will be participating in the Permanent Rule Making activities by participating in either the **WCA Permanent Rule Advisory Committee**, **WCA Technical Review Committee**, or **BWSR Staff Rule Team**. (The "Technical Review Committee" will evaluate the administrative, scientific, and ecological aspects of the proposed rule change. The "BWSR Staff Rule Team" is responsible for developing rule amendments, and presenting and interacting with the Technical Review Committee and Permanent Rule Advisory Committee on assigned sections of the rule.) WPA invites any of its members participating in these committees/teams to share their thoughts with WPA throughout this process.

WPA will be soliciting comments from its members throughout the process. If at any time you'd like more information, please contact Allyz Kramer or Andi Moffatt directly.

March and April WPA Forums

On the heels of our 1st Annual Wetlands Conference in January, the traditional-format wetland forums will resume on **March 5th, 2008**, at the WSB Minneapolis office. The topic of the March forum is "**Updates on the Midwest Regionalization Supplement to 1987 Manual**", presented by Steve Eggers of the Army Corps of Engineers. Hear first-hand how the 1987 Manual delineation data collection and field indicators are being updated for the Midwest.

The topic of the April Forum is "**Floristic Quality Assessment and the Floristic Quality Index**", presented by Michael Bourdaghs, Scott Milburn, and Jason Husveth. The tool will be explained and serve as the background for our June field trip, during which we will field test the methods. Don't miss your chance to hear the kick-off presentation by the authors of this important document. The April forum will be on **April 2nd, 2008** at the WSB Minneapolis office.

Both forums run from 2:30 to 4:00pm (2:00 to 2:30 for sign-in, coffee/cookies, and conversation). A map and directions to the WSB Minneapolis office can be found at <http://www.wsbeng.com/contact.html>.



Membership Renewals!!!!

Just a reminder to send in your renewal fee and membership form for the 2008 season right away. Memberships received after October 1st, 2007 are good through December 31st, 2008. The printable membership/renewal form can be found on our website: www.mnwetlandprofessionals.org/membership_form.html. Just fill it out and send in with a check payable to our new mailing address: P.O. Box 131282, Roseville, MN 55113-0011.

FQA Field Practicum & Plant ID May 30, 2008 in Cloquet

The WPA will be taking our spring field trip on the road north to the University of Minnesota Cloquet Forestry Center. We will be looking at native plant communities and performing Floristic Quality Assessments. The authors of the recently published *Floristic Quality Assessment for Minnesota Wetlands* will be leading the group through the field methodology for using this assessment tool. In addition to learning how to use the FQA, time will be spent exploring the diverse wetlands of the center and identifying native plants. So whether you are a plant identification guru who wants to learn how to use the FQA or a novice who just wants to learn to identify plants, there will be something interesting for all. Please save the date of **Friday, May 30, 2008** for the WPA Spring Field Trip. Six Professional Development Hours can be accrued for attending this trip. The Forestry Center has cabins/bunk rooms available if you want to plan ahead and stay onsite the night before or after. More details to follow in upcoming WPA e-mail updates.

A Response to "Wetland Regulations Run Amuck - Part 2"

By Steve Eggers

(The views expressed in this article are the personal views of the author and do not necessarily represent the views of the U.S. Army Corps of Engineers or the Department of Defense)

As a regulator working with the wetland regulatory programs in Minnesota for more years than I care to admit, I would like to respond to comments made in the September 2007 WPA newsletter by my colleague and fellow bird dog enthusiast, Mark Kjolhaug. Mark was critical of the St. Paul District of the Corps and the Minnesota Board of Water and Soil Resources given his perception of the overall direction of the wetland regulatory programs in Minnesota. Changes bringing a frustrating level of complexity to both programs were a primary concern of his as well as a perception that there was insufficient input and consideration of the comments provided during public notice/public meetings. Mark was also critical of hydrology performance standards used by the St. Paul District.

Evolution of the Regulatory Programs Brings Complexity

It is telling that the Section 404 regulatory program and Wetland Conservation Act are following the same type of evolution. Simplistic and minimalist approaches have proven to be inadequate (e.g., best guess for hydrology, steep and deep ponds, inadequate upland buffer, vague or non-existent performance standards, no financial assurances, no banking instrument, no as built plans). Changes to correct problems, adopt advancements in wetland science, and respond to court decisions, have indeed made the wetland regulatory process in Minnesota more complicated. My point is that this evolution is both necessary (e.g., to incorporate advances in wetland science) and unavoidable (e.g., court decisions). For wetland professionals, it comes with the job.

Specific to the 404 program, the greatest changes in complexity have not been things that the Corps wanted to implement. Rather, they were changes imposed on the Corps by court decisions. Congress first included Section 404 in the Federal Water Pollution Control Act of 1972. Initially, the Corps applied Section 404 to waters that were generally already regulated under Section 10 of the Rivers and Harbors Act of 1899. A 1975 court decision (NRDC v. Callaway) ordered the Corps to apply Section 404 to all "waters of the United States." Fast forward to 2001 (SWANCC) and 2006 (Rapanos), and the U.S. Supreme Court ruled the other way in finding that the Corps went too far in asserting Section 404 jurisdiction. Recent Corps/EPA guidance on Rapanos has created a most challenging time for both Corps regulators and the regulated public. So, yes the 404 program has become more complicated during its 35 years of implementation, but it is a product of Congress, the courts and the federal agencies with public input through Federal Register comment periods. In other words, the 404 program is the product of a democratic process.

Additional changes since 2001 (this time changes the Corps is choosing to adopt along with the other Federal agencies involved with wetlands) have been primarily due to a desire to implement the National Academy of Sciences, National Research Council recommendations in, "Compensating for Wetland Losses Under the Clean Water Act" (NRC 2001)¹. The NRC panel, chaired by Dr. Joy Zedler, evaluated problems with achieving successful compensatory mitigation that were nearly universal across the country and developed specific recommendations to address those problems. Corps Headquarters issued Regulatory Guidance Letter (RGL) 02-2 and required all Corps Districts to public notice their compensatory mitigation policy including incorporation of 10 primary recommendations by NRC (2001). Those recommendations were included in the St. Paul District's public notice of its draft mitigation policy for Minnesota. In sum, advances in wetland science and restoration ecology prompted changes to achieve a higher degree of success in compensating for lost wetland functions.

Public Input Regarding MOU and Corps Draft Policy

Two related, but separate documents were being prepared by the St. Paul District and BWSR in March-April-May 2007: (1) the "Draft St. Paul District Wetland Compensatory Mitigation Policy for Minnesota" (Policy); and (2) a "Memorandum of Understanding on Wetland Mitigation Guidelines between the St. Paul District and BWSR" (MOU). The draft Policy was public noticed for comments in March-April. It is important to note that the Policy is not a rule or regulation; rather, it is guidance for St. Paul District staff.

Both the St. Paul District and BWSR placed a priority on completing the MOU prior to WCA rule-making or Section 404 policy development. Therefore, the St. Paul District put the draft Policy on hold and worked with BWSR to finalize the MOU, which was accomplished in May 2007. The MOU was publicly released, but this caused understandable confusion as people were not aware that the MOU and St. Paul District Policy were related, but different documents. It is important to note that the MOU set a broad policy framework, while the St. Paul District Policy would address

many of the details (e.g., the proposed 5-acre minimum size limit for bank sites). The Policy remained a draft and the St. Paul District was still reviewing and addressing comments received from the public notice comment period. Finalization of the Policy has since been put on hold pending release of the final National Mitigation Rule by Corps and EPA Headquarters. That release is expected shortly.

Mark was concerned that the MOU had been “rammed through” without adequate public input. I respectfully disagree. The St. Paul District and BWSR ran a multitude of iterations of both the draft Policy and MOU through a 2.5-year review process including substantial input from Minnesota’s Interagency Wetlands Group (IWG). The IWG included agency staff and local units of government staff as well as representatives from the wetland banking, highway, mining, and agricultural interests. Some of those participants were also WPA members (IWG meetings are open to the public and additional WPA members are always welcome to join in and share their expertise). Important issues were vigorously debated by the IWG. In addition, public meetings associated with the WCA Assessment on proposed WCA changes were held by BWSR so those who did not participate on the IWG had a voice in proposed changes. Based on public comments, BWSR withdrew some of the MOU changes proposed for inclusion in the emergency rule and scheduled them for more review before inclusion in permanent rule amendments. It is difficult to envision a more open forum for addressing issues involving compensatory mitigation in the state.

Mark also noted that nobody “liked” the changes in the MOU except those who wrote them. Resisting change is a common reaction. Before rejecting the proposed changes, I suggest taking a hard look at how fully implementing the MOU would result in both WCA and 404 using the same debiting ratios, crediting ratios, timelines, definitions of key terms, etc. Here is a chance to simplify things instead of the usual circumstance where changes make things more complex.

Compensation Ratio Changes

From about 1985 to 2005, the St. Paul District applied a base replacement (debiting) ratio of 1:1. This longevity had the effect of setting the ratio in stone in spite of increasing evidence that it was wholly inadequate. First, the old 1:1 ratio failed to account for the temporal loss of wetland functions that occurred with concurrent compensation. Second, concurrent compensation had a higher risk of partial or complete failure due to a myriad of unforeseen things that can go wrong (e.g., wash out of control structures, invasive species, and incompatible uses). Third, it failed to account for when the compensation was out-of-kind. Fourth, it failed to account for compensation that was in a different watershed. Fifth, studies from around the country and St. Paul District’s own follow-up review of compensation sites showed a dominant trend of cattail/stormwater/carp/ponds that failed to offset the loss of functions of natural wetlands (unless the impacted wetlands were highly degraded). *The proposed change is not so much raising the compensation ratio required during years past; rather, it is requiring adequate compensation from this point on.*

A change to a base replacement ratio of 2:1 would have a higher probability of replacing lost functions along with increasing incentives for in-advance, in-kind and in-place. It would also be largely consistent with WCA for less than 80 percent counties. The replacement ratio would be capped at 2.5:1 as shown in both the MOU (page 9) and draft Policy (page 18). Mark was concerned that the replacement ratio could go to 3:1 or higher but that is not correct. Note that the Corps has an administrative appeal process (33 CFR § 331) whereby a prospective permittee does not have to go to Federal Court to challenge what they consider excessive compensatory mitigation.

It is disturbing that, while Mark does not recommend this approach, he has heard that others have handled 404 by, “...just blow it off and hope you don’t get nailed.” One hopes these individuals are not members of WPA. Carrying out or advocating violation of the Clean Water Act would, at the least, violate WPA’s code of ethics, i.e., “subscribe to the highest standards of integrity and conduct.” Complying with WCA but not 404 is like paying your state income taxes but not paying your Federal income taxes.

Upland Buffer

Probably the most debated item the past 2.5 years was upland buffer credit. Mark was correct that the St. Paul District Policy would give 25 percent credit for upland buffer (in native vegetation, not manicured and protected by covenants). But it is *wetland* credit. Upland buffers are considered so important in enhancing wetland functions that they are given wetland credit. Clearly, a high quality upland buffer does not enhance or increase wetland functions by 75 percent or 50 percent. However, 25 percent credit is proposed if the upland buffer meets the above qualifications. If the upland buffer is in non-native vegetation and/or manicured, it is proposed to be given 10 percent *wetland* credit. This is actually a simpler approach than WCA. WCA has to track two columns of numbers (PVC² and NWC³) and bankers have had trouble selling upland buffer PVC. The 404 method, which is used around the country, applies a single column to show wetland credits. Bankers should like this approach because there is no separate upland buffer to sell – everything is wetland credits. A grandfather provision is needed to give equitable credit to bank-

ers with remaining PVC upland buffer established under the old process.

If you are opposed to the MOU's intent to replace PVC/NWC with "wetland credits," be advised that you are thereby choosing to calculate and track three columns of numbers for compensation credit: NWC, PVC and 404 wetland credits.

Performance Standards

A permit condition or bank site plan that states, "the compensation site shall be dominated by hydrophytes" sounds good at first, but 100 percent areal cover by purple loosestrife would meet this standard, as would a site with 49 percent areal cover by upland vegetation and 51 percent areal cover by hybrid cattail. We have learned this the hard way.

In 1992, I prepared a technical report on follow-up inspections of 30 wetland compensation sites in Minnesota and Wisconsin. A conclusion was that, "Lack of specific requirements for measuring the success of compensatory mitigation was one of the most notable deficiencies of past permits." In 1999, Dr. Bill Streever, then at the U.S. Army Engineer Research and Development Center (ERDC), prepared a technical paper on performance standards for wetland restoration and creation. Examples of performance standards used in 13 states, and by 8 Corps Districts (including St. Paul), were given. Performance standards were defined by Streever (1999) as, "observable or measurable attributes that can be used to determine if a compensatory mitigation project meets its objectives." In 2001, the NRC reinforced the use of performance standards:

"Mitigation goals must be clear and those goals carefully specified in terms of measurable performance standards in order to improve mitigation effectiveness. Performance standards in permits should reflect mitigation goals and written in such a way that ecological viability can be measured and the impacted functions replaced."

In 2002, RGL 02-2 cited performance standards as an essential component of compensatory mitigation plans. During 2003-2005, the interagency National Mitigation Action Plan developed extensive guidance on performance standards. Included was, "A Review of the Science for Compensatory Mitigation Performance Standards," which summarized the status of peer-reviewed literature on selected biological indicators, functional assessments and development of success criteria⁴. The direction from the National Academy of Sciences, Corps Headquarters, EPA Headquarters, ERDC, and federal and state wetland experts, is clear. Observable, measurable and enforceable performance standards are integral to improving the success of compensatory mitigation.

About 6 years ago, the St. Paul District began using vegetation performance standards in conjunction with the development of specific seed mixes and site preparation techniques by the late Bob Jacobson. Bob developed successful seed mixes for everything from dry prairie to shallow marsh communities, as well as planting plans for establishing forested wetlands. The Corps performance standards measured the success of the plantings and included survival rates/species richness/cover of native species as well as presence/cover by non-native and/or invasive species. Given that the seed mixes are \$250/acre to \$1,000/acre just for seed (site preparation, mulch, herbicide treatment, labor, are extra), it is also in the permittee's or bank sponsor's interests to match target vegetation with target hydrology.

While specific vegetation performance standards by plant community type were implemented by St. Paul District, the typical performance standard for hydrology was only that, "the compensation site shall meet the 1987 Manual hydrology criterion." Anything from a permanent pool 6 feet deep, to saturated soils at the surface for 8 consecutive days every other growing season, would meet this standard. These extremes are unworkable for purposes of designing and evaluating compensation sites. It makes no sense to apply a \$1,000/acre seed mix with only a vague reference to the target hydrology necessary to support that seed mix. For example, if the target vegetation is a sedge/wet meadow community, reoccurring inundation by 6 or more inches of water for a few weeks or longer during the growing season would drown out most species in the mix and shift the site to cattail marsh. Conversely, if the hydrology is too dry, it would promote intense competition by invasive FACU species (e.g., Canada thistle, sweet clover, quack grass) and the site may even shift to non-wetland. Why not just state that, "the site shall have hydrology appropriate for a sedge/wet meadow community?" Because it is too vague – what does "appropriate" mean in terms of frequency, duration and depth? How would you measure "appropriate?" A performance standard, by definition, employs a measurable attribute(s).

Draft guidance for St. Paul District staff on performance standards for target hydrology by plant community type was developed in 2005. The draft was provided to the IWG for comment. I also presented the concept to WDA/WPA members attending the December 2005 forum. My presentation was summarized in our newsletter, "Specific hydroperiod guidelines were presented for the various wetland communities found in Minnesota that should be followed in mitigation planning along with the need for more detailed monitoring to confirm the establishment of the target

hydrology." (My e-mail records show that eight WDA/WPA members subsequently requested a copy of the draft, or wished to discuss the standards in more detail). My point is that the hydrology standards have been kicked around for two years and should not be a surprise to IWG or WDA/WPA members.

What then is the optimum target hydrology for supporting specific plant community types? True to the NRC (2001) and ERDC (1999) definitions for performance standards (measurable, observable, enforceable), the St. Paul District hydrology standards specify depth, duration and frequency of inundation/saturation for each plant community. They are applicable at two points in the compensation process: (1) to provide a guide for designing compensation sites so that target plant communities are matched with the appropriate target hydrology; and (2) to provide measurable/observable measures of success after construction of the compensation site. Perhaps the word "shall" makes the hydrology performance standards seem too rigid. However, it is also necessary to make the standards enforceable. Flexibility is built in by exempting the specified hydrology standard during drier than normal years (i.e., 30 percent of the years based on most recent 30-year period using the same WETS tables as that for wetland determinations/delineations). These hydrology performance standards are *goals*, not *absolutes*. It is recognized that wetland restoration/creation have many variables and actual hydrology may be different than the target hydrology. If a compensation site develops a somewhat drier or wetter regime than the target hydrology, but supports a diversity of native hydrophytes and is functioning to replace wetland functions lost due to authorized activities, it is considered a success!

Frequency of Monitoring Hydrology

After all of the regulatory paperwork, meetings, site visits, costs, delays, aggravations and controversies, the on-the-ground result to the wetland resource consists of: (1) wetlands that were avoided; and (2) wetlands and upland buffers established as compensatory mitigation. Hydrology drives wetland systems; therefore, it is crucial to establish the hydrology necessary to meet the objectives of the compensation site. Monitoring of hydrology at compensation sites is essential to determine if the site is on the right trajectory for success.

What is the minimum monitoring frequency that would provide adequate information on meeting hydrology performance standards? Starting in 1992, St. Paul District guidance to staff recommended a permit condition of monitoring hydrology twice a month during April through October of each year (14 readings a year). The 2005 hydrology performance standards by plant community type require nearly the same minimum number of hydrology readings (about 15) but they would be once a week for the first 10 weeks of the growing season, and then once monthly to the end of the growing season (or dataloggers could be used). Mark was concerned that this would be excessive monitoring. But if the hydrology is going wrong it is important to know sooner rather than later, particularly when thousands of dollars are invested in seed mixes and site preparation. Once the hydrology of the compensation site is established and the range of seasonal variations is known, further monitoring can be terminated. For example, two growing seasons in years with normal precipitation would typically be sufficient to confirm shallow marsh hydrology. In the overall costs of the permitting process and compensatory mitigation, monitoring hydrology once a week for 10 weeks and then once monthly to the end of the growing season does not rise to the level of unreasonableness, in my opinion. I suggest that this degree of monitoring apply to larger acreage and/or more complex compensation projects but not small "mom and pop" projects.

Mark was concerned that overworked Corps project managers would not have time to review monitoring reports. Yes, there are the overworked project managers with stacks of reports on their desks, but other Corps regulatory staff are not processing permits; rather, they are assigned to duties such as review, approval and monitoring of compensatory mitigation. St. Paul District has also funded interagency personnel agreements for DNR and BWSR staff, as well as summer hires, to do inspections of compensatory mitigation sites. Another example is a survey I participated in that involved field inspections of nearly 100 randomly selected compensation sites in Minnesota and Wisconsin. Monitoring reports, for those sites that had them, were invaluable for these follow-up surveys of compensatory mitigation.

An increase in St. Paul District regulatory staff from 40 FTEs to 55 FTEs, with a plan to go to 60 FTEs (a 50 percent increase from a few years ago), has occurred in conjunction with the increasing workload.

Regulatory Simplification

In Minnesota's wetland regulatory arena, the number one complaint has been confusion and frustration caused by the use of different terms, timelines, numbers and ratios by 404 and WCA. One success has been the combined application form. Is there any hope for further regulatory simplification in Minnesota? There are two principal options: (1) state assumption of 404; or (2) full implementation of the St. Paul District/BWSR MOU.

In my view, full implementation of the St. Paul District/BWSR MOU on mitigation is the best course of action for regulatory simplification. St. Paul District adopted some WCA provisions and BWSR adopted some 404 provisions so that both 404 and WCA would use the same terms/numbers/timelines for: (1) debiting ratios; (2) crediting ratios; (3) in-place, in-kind and in-advance; (4) preservation; (5) mitigation for stream credit; and (6) in-lieu fee. Further, St. Paul District would adopt special provisions requiring less compensatory mitigation for impacts in the greater than 80 percent counties (as has WCA). This is no small accomplishment. The MOU represents a milestone in simplifying the wetland regulatory process in the state. Of course, it would not resolve everything, but the MOU does address the major issues and greatly reduces the use of different terms, numbers and timelines. Would changes prompted by the MOU mean using some new terms/techniques/procedures (e.g., "wetland credit" instead of NWC/PVC)? Yes, but those changes would satisfy *both* WCA and 404 requirements. The end result would be simplification.

State assumption of 404 is the only way to establish a state-wide wetland regulatory program that uses one set of terms, numbers, ratios, policies, etc., across the board. Only two states have done so for very good reasons (e.g., assumption comes with no funding). State assumption does not mean dropping Corps involvement and just doing WCA; rather, it means full assumption of the Section 404 provisions of the Clean Water Act with all of its complexities, problems and additional costs. In order for Minnesota to assume the 404 program, WCA would need legislative changes to make it more like 404. If you advocate state assumption of 404, then you should also support full implementation of the MOU because it is a major step in the right direction for eventual state assumption.

¹ <http://www.nap.edu/openbook.php?isbn=0309074320>

² Public value credit, see the definition in Minnesota's Wetland Conservation Act (WCA)

³ New wetland credit, see the definition in WCA

⁴ <http://www.mitigationactionplan.gov/actionitem.html>

WPA Election Results

By Andi Moffatt, WPA Vice-President

As another year comes to a close, the WPA says goodbye to some outgoing board members and hello to some new ones. We would like to thank Ken Powell, Mike DeRuyter, Janell Miersch, Mark Jacobson, and Gen Bolling for serving on the WPA Board these past few years. Their ideas, leadership, and hard work have served the Board and the membership well and they will be missed. (Ken has graciously agreed to continue to edit the newsletter, so we will still be seeing him around).

The good news is that the WPA elected five new Board members this past month. We had an excellent and deep slate of candidates this year and want to thank those who threw their hat in the ring to run for the Board. The winners of our election to be on the Board for 2008-2010 are Natasha DeVoe, Scott Milburn, Rich Davis, Barbara Walther, and Jyneen Thatcher. The existing Board members, who will remain on the Board for another year are Mark Perry, Peter Miller, Allyz Kramer, and Andi Moffatt. Officers were subsequently chosen at the January 9 Board meeting and are as follows:

President - Allyz Kramer

Vice President - Andi Moffatt

Treasurer - Barbara Walther

Secretary - Natasha DeVoe

The new webpage coordinator is Scott Milburn.

MN Board of Water & Soil Resources Staff Updates

Julie Klocker has been announced as a new Assistant Director for the BWSR (**Steve Woods** is the other Assistant Director). Julie replaces **Doug Thomas** who is now the Administrator of the Rice Creek Watershed District. Julie has been the Administrator of the Middle Fork Crow River Watershed District since September 2006. She was Administrator of the Sauk River Watershed District from 2002-2006. She also worked for U. of MN Extension Service as a Water Quality Educator in Central Minnesota from 1997-2002.

Les Lemm has assumed the new position of WCA Coordinator. Les was most recently a Board Conservationist (BC) in the Metro Region. **Jim Haertel** has accepted the position of Metro Region Supervisor. Jim joined BWSR as a BC in 1992. Prior to that, he worked at River Forecast Centers in New Orleans and Anchorage and as a DNR area hydrologist in SE Minnesota. Jim will continue to handle WCA appeals until his replacement is hired. **Ken Powell** is the new Senior WCA Specialist for the 9-County Metro Region. **Marcey Westrick** is the new Metro Clean Water Legacy Specialist responsible for TMDL integration with local gov't. A new Metro BC will be hired to replace Les while **Lynda Peterson** and **Brad Wozney** continue to serve as the BC's for the Metro Region.

Messing with Mother Nature

By Mark Perry

I just finished reading an interesting article in the Nov/Dec issue of **Land and Water**. The article was titled "Salvation on the Sandbars: Invasive Vegetation Destroys Habitat." A catchy title that grabbed my attention enough to read the article. Based on the title, my first thought was that natural sandbars on the river need to be saved from invasive species. However, the article seemed to attribute the problem of lost habitat for certain shore birds as much to water controls as it did to invasive species. "*Regulated flows allow natural vegetative succession to occur on the sandbars, changing the habitat from ephemeral barren sand to something resembling a semi-permanent riparian upland habitat.*" Now,...this statement sounds like a good thing! – **Natural** succession,... changing **barren** sand to semi-permanent **riparian habitat**. Doesn't that sound as if all is as it should be?

The article did state that several invasive species would sprout up and make it harder for the shore birds to see predators. So, the article was supposed to be about loss of habitat for certain shore birds, but I had a difficult time getting that out of it. What I read, based upon what I know (or think I know) was that certain manipulation for human benefit has led to creation of good habitat, (habitat that we are trying to restore and/or protect in many parts of the state) but detrimentally impacts a few species of shore birds.

Construction of Dams on the Missouri River was done largely to control flooding. This flood control was to benefit farmers and residents who are typically impacted by flooding. Now, the Army Corps is manipulating the sandbars so that they can continue to exist as sandbars. This raises the question – what habitat will be altered or destroyed due to the Corps' current efforts to restore and maintain the sandbar habitat? How often have we witnessed or heard of an activity that was good for one thing but turned out to be detrimental to something else? Buckthorn, Rabbits, river Channeling to reduce flooding, etc. All of these things were introduced in an effort to improve something and in each case, adverse impacts have occurred from loss of habitat to loss of human life.

When do we stop trying to manipulate our surroundings? When do we start trying to coexist with our surroundings? Don't get me wrong. I'm not a wild eyed "tree hugger." I believe that there is a time and place for manipulation/altering or whatever you want to call the activity. But, I also believe that we need to realize that what is good for one life form is probably not going to be good for another life form, no matter what we do.

So, my closing question is this; when do we stop manipulating our manipulations and accept the results of the original manipulation? What will be the last domino?

Northcentral/Northeast Supplement to The Corps 1987 Wetlands Delineation Manual

Information is from St Paul District Corps Public Notice dated 11/20/07

The U.S. Army Corps of Engineers (Corps) is developing regional supplements to the Corps 1987 Wetlands Delineation Manual, used in the Clean Water Act Section 404 program. Currently, a supplement is being drafted for the Northcentral and Northeast region. This regional supplement covers all or parts of Michigan, Wisconsin, **Minnesota**, Pennsylvania, New York, Connecticut, Rhode Island, Vermont, New Hampshire, Maine, Illinois, Indiana and Ohio. The National Advisory Team that oversees development of the supplements consists of representatives from the Corps, the Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the Natural Resources Conservation Service. The advisory team will be forming a peer-review committee. The committee will be responsible for evaluating the reliability and scientific validity of the draft supplement for the Northcentral and Northeast supplement. The peer-review committee will draft a single report with original committee member comments without interpretation. The peer-review committee will have 60 days from receipt of the draft document to submit their report to Corps headquarters (Washington, DC) following receipt of the draft supplement.

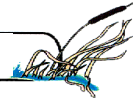
This peer-review process must be transparent. The final peer-review report and regional work group response will be made available to the public and will become part of the administrative record for any related actions by the Corps.



Photo by J. Thatcher



Wetland Professionals Association



PO Box 131282, Roseville, MN 55113-0011

THE BOARD

Allyz Kramer, President

SEH, Inc.
3535 Vadnais Center drive
St. Paul, MN 55110
(651) 490-2162
akramer@sehinc.com

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WSB & Associates, Inc.,
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(763) 287-7196
email: amoffatt@wsbeng.com

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SRF Consulting Group, Inc.
One Carlson Parkway, Suite 150
Minneapolis, MN 55447
(763) 475-0010 x 6896
bwalther@srfconsulting.com

Natasha DeVoe, Secretary

BWSR
520 Lafayette Rd. N.
St. Paul, MN 55155
(651) 205-4664
Natasha.devoe@bwsr.state.mn.us

Peter Miller, Member-at-Large

Wenck Associates
1800 Pioneer Creek Center
P.O. Box 249
Maple Plain, Minnesota 55359
(763)-479-5121
pmiller@wenck.com

Mark Perry, Member at Large

Bolton & Menk
2638 Shadow Lane, Ste 200
Chaska, MN 55318
(952) 448-8838
markpe@bolton-menk.com

Jyneen Thatcher, Member-at-Large

Washington Conservation District
1380 W. Frontage Rd; Hwy 36
Stillwater, MN 55082
651-275-1136 X 25
jyneen.thatcher@mnwcd.org

Scott Milburn, Member-at-Large/Webpage Coord.

Midwest Natural Resources, Inc.
744 James Ave.
St. Paul, MN 55102
Scott.milburn@mnrinc.us

Rich Davis, Member-at-Large

I&S Engineers & Architects
1409 N. Riverfront Drive
Mankato, MN 56001
(507) 387-6651
rdavis@is-ea.com

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- 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

Welcome to 18 new members of the WPA. As of the end of the year 2007, we have received annual dues for 48 new or renewing members. Please remember that past memberships end on December 31, 2007, so if you haven't renewed your membership, please do it now. Members enjoy free admission to monthly forums, reduced admission to the new conference, listing on the web site for consultants (if relevant), and the WPA newsletter. Send renewal forms (available on our web site <http://www.mnwetlandprofessionals.org>) and checks to: Wetland Professionals Association, P.O. Box 131282, Roseville, MN