CHAPTER 103G
WATERS OF THE STATE

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GENERAL PROVISIONS

103G.001 EFFECT OF CHAPTER 103G ON WATER LAW.

Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G constitute the water law of this state and may be cited as the "Water Law."

History: *1990 c 391 art 7 s 1*

103G.005 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Abandon.** "Abandon" means to give up the use and maintenance of structures or improvements to realty and to surrender them to deterioration. Abandon does not refer to intent to surrender or relinquish title to or a possessory interest in the real property where the structures or improvements are located.

Subd. 2a. **Agricultural land.** "Agricultural land" means: land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; farm yards; associated building sites; and public and private drainage systems and field roads located on any of the foregoing.

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Subd. 3. **Altered natural watercourse.** "Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.

Subd. 4. **Appropriating.** "Appropriating" means withdrawal, removal, or transfer of water from its source regardless of how the water is used.

Subd. 5. **Artificial watercourse.** "Artificial watercourse" means a watercourse artificially constructed by human beings where a natural watercourse was not previously located.

Subd. 6. **Basin of origin.** "Basin of origin" means the drainage basin of the Great Lakes, the Red River of the North, the Mississippi River, or the Missouri River.

Subd. 6a. **Board.** "Board" means the Board of Water and Soil Resources.

Subd. 7. **Commissioner.** "Commissioner" means the commissioner of natural resources.

Subd. 8. **Consumptive use.** "Consumptive use" means water that is withdrawn from its source for immediate further use in the area of the source and is not directly returned to the source.

Subd. 9. **Director.** "Director" means the director of the Division of Ecological and Water Resources of the Department of Natural Resources.

Subd. 9a. **Division.** "Division" means the Division of Ecological and Water Resources of the Department of Natural Resources.

Subd. 9b. **Electronic transmission.** "Electronic transmission" means the transfer of data or information through an electronic data interchange system consisting of, but not limited to, computer modems and computer networks. Electronic transmission specifically means electronic mail, unless other means of electronic transmission are mutually agreed to by the sender and recipient.

Subd. 10. MS 2010 [Renumbered subd 9a]

Subd. 10a. MS 1994 [Renumbered subd 10e]

Subd. 10a. **50 to 80 percent area.** "50 to 80 percent area" means a county or watershed with at least 50 but less than 80 percent of the presettlement wetland acreage intact.

Subd. 10b. **Greater than 80 percent area.** "Greater than 80 percent area" means a county or watershed where 80 percent or more of the presettlement wetland acreage is intact and:

(1) ten percent or more of the current total land area is wetland; or

(2) 50 percent or more of the current total land area is state or federal land.

Subd. 10c. **Hayland.** "Hayland" means an area that was mechanically harvested or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes in six of the last ten years prior to January 1, 1991.

Subd. 10d. **Less than 50 percent area.** "Less than 50 percent area" means a county or watershed with less than 50 percent of the presettlement wetland acreage intact or any county or watershed not defined as a "greater than 80 percent area" or "50 to 80 percent area."

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Subd. 10e. **Local government unit.** "Local government unit" means:

(1) outside of the seven-county metropolitan area, a city council, county board of commissioners, or a soil and water conservation district or their delegate;

(2) in the seven-county metropolitan area, a city council, a town board under section 368.01, a watershed management organization under section 103B.211, or a soil and water conservation district or their delegate;

(3) on state land, the agency with administrative responsibility for the land; and

(4) for wetland banking projects established solely for replacing wetland impacts under a permit to mine under section 93.481, the commissioner of natural resources.

Subd. 10f. MS 2011 Supp [Renumbered subd 9b]

Subd. 11. **Meandered lake.** "Meandered lake" means a body of water except streams located within the meander lines shown on plats made by the United States General Land Office.

Subd. 11a. [Renumbered subd 15e]

Subd. 12. **Municipality.** "Municipality" means a home rule charter or statutory city.

Subd. 13. **Natural watercourse.** "Natural watercourse" means a natural channel that has definable beds and banks capable of conducting confined runoff from adjacent land.

Subd. 13a. **Once-through system.** "Once-through system" means a space heating, ventilating, air conditioning (HVAC), or refrigeration system used for any type of temperature or humidity control application, utilizing groundwater, that circulates through the system and is then discharged without reusing it for a higher priority purpose.

Subd. 14. **Ordinary high water level.** "Ordinary high water level" means the boundary of water basins, watercourses, public waters, and public waters wetlands, and:

(1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial;

(2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel; and

(3) for reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Subd. 14a. MS 1994 [Renumbered subd 14b]

Subd. 14a. **Pasture.** "Pasture" means an area that was grazed by domesticated livestock or that was planted with annually seeded crops in a crop rotation seeding of grasses or legumes in six of the last ten years prior to January 1, 1991.

Subd. 14b. **Political subdivision.** "Political subdivision" means a county, city, town, school district, or other local government jurisdiction to which the state provides state aids or on which the state imposes state mandates.

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Subd. 14c. **Presettlement wetland.** "Presettlement wetland" means a wetland or public waters wetland that existed in this state at the time of statehood in 1858.

Subd. 14d. **Project.** "Project" means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by the local government unit. As used in this chapter, a project may not be split into components or phases for the sole purpose of gaining additional exemptions.

Subd. 15. **Public waters.** (a) "Public waters" means:

(1) water basins assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221;

(2) waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;

(3) meandered lakes, excluding lakes that have been legally drained;

(4) water basins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;

(5) water basins designated as scientific and natural areas under section 84.033;

(6) water basins located within and totally surrounded by publicly owned lands;

(7) water basins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;

(8) water basins where there is a publicly owned and controlled access that is intended to provide for public access to the water basin;

(9) natural and altered watercourses with a total drainage area greater than two square miles;

(10) natural and altered watercourses designated by the commissioner as trout streams; and

(11) public waters wetlands, unless the statute expressly states otherwise.

(b) Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

Subd. 15a. **Public waters wetlands.** "Public waters wetlands" means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, that are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas.

Subd. 15b. MS 2010 [Renumbered subd 15f]

Subd. 15c. MS 2010 [Renumbered subd 15g]

Subd. 15d. MS 2010 [Renumbered subd 15h]

Subd. 15e. **Shallow lake.** "Shallow lake" means a body of water, excluding a stream, that is greater than or equal to 50 acres in size and less than or equal to 15 feet in maximum depth.

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Subd. 15f. **Shoreland wetland protection zone.** "Shoreland wetland protection zone" means:

(1) for local government units that have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone is:

(i) 1,000 feet from the ordinary high water level of a water basin that is a public water identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; or

(ii) 300 feet from the ordinary high water level of a watercourse identified in the shoreland management ordinance or the shoreland area approved by the commissioner as provided in the shoreland management rules adopted under section 103F.211, whichever is less; and

(2) for local government units that do not have a shoreland management ordinance approved under sections 103F.201 to 103F.221, the shoreland wetland protection zone is:

(i) 1,000 feet from the ordinary high water level of a water basin that is a public water that is at least ten acres in size within municipalities and at least 25 acres in size in unincorporated areas; or

(ii) 300 feet from the ordinary high water level of a watercourse identified by the public waters inventory under section 103G.201.

Subd. 15g. **Silviculture.** "Silviculture" means the management of forest trees.

Subd. 15h. **Utility.** "Utility" means a sanitary sewer, storm sewer, potable water distribution, and transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications.

Subd. 16. **Water basin.** "Water basin" means an enclosed natural depression with definable banks, capable of containing water, that may be partly filled with waters of the state and is discernible on aerial photographs.

Subd. 17. **Waters of the state.** "Waters of the state" means surface or underground waters, except surface waters that are not confined but are spread and diffused over the land. Waters of the state includes boundary and inland waters.

Subd. 17a. **Watershed.** "Watershed" means the 81 major watershed units delineated by the map, "State of Minnesota Watershed Boundaries - 1979."

Subd. 17b. **Wetland type.** "Wetland type" means a wetland type classified according to Wetlands of the United States, United States Fish and Wildlife Service Circular 39 (1971 edition), as summarized in this subdivision.

(1) "Type 1 wetlands" are seasonally flooded basins or flats in which soil is covered with water or is waterlogged during variable seasonal periods but usually is well-drained during much of the growing season. Type 1 wetlands are located in depressions and in overflow bottomlands along watercourses, and in which vegetation varies greatly according to season and duration of flooding and includes bottomland hardwoods as well as herbaceous growths.

(2) "Type 2 wetlands" are inland fresh meadows in which soil is usually without standing water during most of the growing season but is waterlogged within at least a few inches of surface. Vegetation includes

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grasses, sedges, rushes, and various broad-leafed plants. Meadows may fill shallow basins, sloughs, or farmland sags, or these meadows may border shallow marshes on the landward side.

(3) "Type 3 wetlands" are inland shallow fresh marshes in which soil is usually waterlogged early during a growing season and often covered with as much as six inches or more of water. Vegetation includes grasses, bulrushes, spikerushes, and various other marsh plants such as cattails, arrowheads, pickerelweed, and smartweeds. These marshes may nearly fill shallow lake basins or sloughs, or may border deep marshes on the landward side and are also common as seep areas on irrigated lands.

(4) "Type 4 wetlands" are inland deep fresh marshes in which soil is usually covered with six inches to three feet or more of water during the growing season. Vegetation includes cattails, reeds, bulrushes, spikerushes, and wild rice. In open areas, pondweeds, naiads, coontail, water milfoils, waterweeds, duckweeds, waterlilies, or spatterdocks may occur. These deep marshes may completely fill shallow lake basins, potholes, limestone sinks, and sloughs, or they may border open water in such depressions.

(5) "Type 5 wetlands" are inland open fresh water, shallow ponds, and reservoirs in which water is usually less than ten feet deep and is fringed by a border of emergent vegetation similar to open areas of type 4 wetland.

(6) "Type 6 wetlands" are shrub swamps in which soil is usually waterlogged during growing season and is often covered with as much as six inches of water. Vegetation includes alders, willows, buttonbush, dogwoods, and swamp-privet. This type occurs mostly along sluggish streams and occasionally on floodplains.

(7) "Type 7 wetlands" are wooded swamps in which soil is waterlogged at least to within a few inches of the surface during growing season and is often covered with as much as one foot of water. This type occurs mostly along sluggish streams, on floodplains, on flat uplands, and in shallow basins. Trees include tamarack, arborvitae, black spruce, balsam, red maple, and black ash. Northern evergreen swamps usually have a thick ground cover of mosses. Deciduous swamps frequently support beds of duckweeds and smartweeds.

(8) "Type 8 wetlands" are bogs in which soil is usually waterlogged and supports a spongy covering of mosses. This type occurs mostly in shallow basins, on flat uplands, and along sluggish streams. Vegetation is woody or herbaceous or both. Typical plants are heath shrubs, sphagnum moss, and sedges. In the north, leatherleaf, Labrador-tea, cranberries, carex, and cottongrass are often present. Scattered, often stunted, black spruce and tamarack may occur.

Subd. 18. MS 1994 [Renumbered subd 15a]

Subd. 19. **Wetlands.** (a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

(1) have a predominance of hydric soils;

(2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances support a prevalence of such vegetation.

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(b) For the purposes of regulation under this chapter, the term wetlands does not include public waters wetlands as defined in subdivision 15a.

History: *1990 c 391 art 7 s 2; 1990 c 597 s 62; 1991 c 354 art 6 s 1-6; art 10 s 4; 1994 c 643 s 49; 1995 c 218 s 3; 1996 c 462 s 10-22,43; 1997 c 2 s 8; 2000 c 382 s 1,2; 2003 c 128 art 1 s 111; 2011 c 107 s 63,64; 2012 c 277 art 1 s 79; 2014 c 248 s 11,12*

COMMISSIONER'S AUTHORITY

103G.101 WATER CONSERVATION PROGRAM.

Subdivision 1. **Development.** The commissioner shall develop a water resources conservation program for the state. The program must include conservation, allocation, and development of waters of the state for the best interests of the people.

Subd. 2. **Program to guide permit issuance and dams.** The commissioner must be guided by the program in issuing permits for the use and appropriation of the waters of the state and the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs, and other control structures.

History: *1990 c 391 art 7 s 3*

103G.105 COOPERATION WITH OTHER AGENCIES.

Subdivision 1. **Commissioner may cooperate with other states and federal government.** The commissioner may cooperate and enter into agreements with the United States government, a state department, or a state or country adjacent to this state to implement this chapter and chapter 103F. The commissioner may cooperate with departments of the government of the United States in the execution of surveys within the state.

Subd. 2. **State and local officials must cooperate in enforcement.** Personnel of the Pollution Control Agency, the Health Department, and county and municipal governments must cooperate with the commissioner in monitoring and enforcing water permits. County attorneys, sheriffs, and other peace officers and other officers having enforcement authority must take all action to the extent of their authority, respectively, that may be necessary or proper for the enforcement of the provisions, rules, standards, orders, or permits specified in this chapter and chapter 103F.

History: *1990 c 391 art 7 s 4; 1995 c 218 s 4*

103G.111 REPRESENTATION OF STATE IN WATER ISSUES.

Subdivision 1. **Commissioner to appear in federal water issues.** The commissioner may appear, represent, and act for the state in any matter relating to an application to be made to the federal government relating to waters of the state or their use and may act in a manner to protect the interests of the people of the state consistent with this chapter and chapter 103F.

Subd. 2. **Director to appear for state in water proceedings.** The director may appear for the state in any matter or proceeding affecting waters of the state to give hydrologic and hydraulic engineering advice and information in connection with the proceeding.

History: *1990 c 391 art 7 s 5; 1995 c 218 s 5*

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103G.115 ENJOINING WATER-FLOW INTERFERENCE OUTSIDE OF STATE.

If a person, firm, association, corporation, or a state or political subdivision, agency, or commission of a state disturbs, obstructs, or interferes with the natural flow or condition of public waters beyond the boundaries of this state in a manner that seriously affects the public welfare and interests of this state, the commissioner may institute proceedings in behalf of this state in a court having jurisdiction to abate or enjoin the continuance of the disturbance, obstruction, or interference.

History: *1990 c 391 art 7 s 6*

103G.121 COMMISSIONER'S AUTHORITY TO INVESTIGATE AND CONSTRUCT PROJECTS.

Subdivision 1. **Surveys and investigations.** The commissioner may conduct surveys, investigations, and studies, and prepare maps of the waters of the state and topography of the state to implement this chapter.

Subd. 2. **Acquisition of property including by eminent domain.** The commissioner may acquire title to private property for an authorized purpose by purchase or by eminent domain. The use of property for projects to implement this chapter is a public purpose. On request by the commissioner, the attorney general shall acquire title to private property for projects under this chapter as provided in chapter 117.

Subd. 3. **Contracts.** The commissioner may approve contracts for projects under this chapter and change the plans of the projects when necessary, and supervise, control, and accept the projects when complete. The commissioner may pay for projects and expenses incurred in connection with the projects from funds available to the commissioner.

History: *1990 c 391 art 7 s 7; 1995 c 218 s 6*

103G.125 DIRECTOR'S AUTHORITY.

Subdivision 1. **Cooperation with government agencies.** The director shall cooperate with agencies and departments of the state and federal government relating to projects affecting waters of the state and shall make recommendations to the agencies involved and to the governor about the desirability, feasibility, and practicability of the proposed projects.

Subd. 2. **Cooperative agreements.** The director, with approval of the commissioner, may make cooperative agreements with and cooperate with any person, corporation, or government authority to implement this chapter.

Subd. 3. **Standards for forms and maps.** The director may adopt rules to standardize forms and maps, sizes of maps, plats, drawings, and specifications in proceedings related to waters of the state.

History: *1990 c 391 art 7 s 8; 1993 c 186 s 16*

103G.127 PERMIT PROGRAM UNDER SECTION 404 OF FEDERAL CLEAN WATER ACT.

Notwithstanding any other law to the contrary, the commissioner, with the concurrence of the Board of Water and Soil Resources and the commissioner of agriculture, may adopt rules establishing a permit program for regulating the discharge of dredged and fill material into the waters of the state as necessary to obtain approval from the United States Environmental Protection Agency to administer the permit program under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344. The rules may

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not be more restrictive than the program under section 404, or state law, if it is more restrictive than the federal program.

History: *1991 c 354 art 9 s 1; 1996 c 462 s 23*

103G.131 VENUE OF CERTAIN ACTIONS.

Subdivision 1. **Water located in one county.** Notwithstanding any other law to the contrary, an action for declaratory judgment that is brought under chapter 555 by or against the commissioner must be venued in the county where the water, watercourse, or water basin is located, if the water, watercourse, or water basin is located in one county. This section applies to actions to determine the validity of the commissioner's final decision regarding:

(1) the classification of waters of the state as public waters; or

(2) the drainage of water basins or watercourses as provided in chapter 103E.

Subd. 2. **Water located in more than one county.** If the water, watercourse, or water basin is located in more than one county, then the venue is the judicial district where the majority of the water, watercourse, or water basin is located.

History: *1990 c 391 art 7 s 9*

103G.135 ENFORCEMENT OF COMMISSIONER'S ORDERS.

Upon application of the commissioner, the district court of a county where a project is entirely or partially located may by injunction enforce compliance with, or restrain the violation of, an order of the commissioner made under this chapter or chapter 103F, or restrain the violation of this chapter or chapter 103F.

History: *1990 c 391 art 7 s 10; 1995 c 218 s 7*

103G.141 PENALTIES.

Subdivision 1. **Misdemeanors.** Except as provided in subdivision 2, a person is guilty of a misdemeanor who:

(1) undertakes or procures another to undertake an alteration in the course, current, or cross section of public waters or appropriates waters of the state without previously obtaining a permit from the commissioner, regardless of whether the commissioner would have granted a permit had an application been filed;

(2) undertakes or procures another to undertake an alteration in the course, current, or cross section of public waters or appropriates waters of the state in violation of or in excess of authority granted under a permit issued by the commissioner, regardless of whether an application had been filed for permission to perform the act involved or whether the act involved would have been permitted had a proper application been filed;

(3) undertakes or procures another to undertake an alteration in the course, current, or cross section of public waters or appropriates waters of the state after a permit to undertake the project has been denied by the commissioner; or

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(4) violates a provision of this chapter.

Subd. 2. **Violation of section 404 permits.** (a) Whenever the commissioner finds that a person is in violation of a condition or limitation set forth in a permit issued under the rules adopted by the commissioner under section 103G.127, the commissioner shall issue an order requiring the person to comply with the condition or limitation, or the commissioner shall bring a civil action in accordance with paragraph (b).

(b) The commissioner may commence a civil action for appropriate relief in district court, including a permanent or temporary injunction, for a violation for which the commissioner is authorized to issue a compliance order under paragraph (a). The court may restrain the violation and require compliance.

(c) A person who violates a condition or limitation in a permit issued by the commissioner under section 103G.127, and a person who violates an order issued by the commissioner under paragraph (a), is subject to a civil penalty not to exceed $25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and other matters justice may require.

History: *1990 c 391 art 7 s 11; 1991 c 354 art 9 s 2*

103G.145 APPLICATION.

Nothing in this chapter supersedes or amends section 92.45.

History: *1990 c 391 art 7 s 12*

PUBLIC WATERS DESIGNATION AND USE

103G.201 PUBLIC WATERS INVENTORY.

(a) The commissioner shall maintain a public waters inventory map of each county that shows the waters of this state that are designated as public waters under the public waters inventory and classification procedures prescribed under Laws 1979, chapter 199, and shall provide access to a copy of the maps. As county public waters inventory maps are revised according to this section, the commissioner shall send a notification or a copy of the maps to the auditor of each affected county.

(b) The commissioner is authorized to revise the map of public waters established under Laws 1979, chapter 199, to reclassify those types 3, 4, and 5 wetlands previously identified as public waters wetlands under Laws 1979, chapter 199, as public waters or as wetlands under section 103G.005, subdivision 19. The commissioner may only reclassify public waters wetlands as public waters if:

(1) they are assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221;

(2) they are classified as lacustrine wetlands or deepwater habitats according to Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition); or

(3) the state or federal government has become titleholder to any of the beds or shores of the public waters wetlands, subsequent to the preparation of the public waters inventory map filed with the auditor of the county, pursuant to paragraph (a), and the responsible state or federal agency declares that the water is necessary for the purposes of the public ownership.

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(c) The commissioner must provide notice of the reclassification to the local government unit, the county board, the watershed district, if one exists for the area, and the soil and water conservation district. Within 60 days of receiving notice from the commissioner, a party required to receive the notice may provide a resolution stating objections to the reclassification. If the commissioner receives an objection from a party required to receive the notice, the reclassification is not effective. If the commissioner does not receive an objection from a party required to receive the notice, the reclassification of a wetland under paragraph (b) is effective 60 days after the notice is received by all of the parties.

(d) The commissioner shall give priority to the reclassification of public waters wetlands that are or have the potential to be affected by public works projects.

(e) The commissioner may revise the public waters inventory map of each county:

(1) to reflect the changes authorized in paragraph (b); and

(2) as needed, to:

(i) correct errors in the original inventory;

(ii) add or subtract trout stream tributaries within sections that contain a designated trout stream following written notice to the landowner;

(iii) add depleted quarries, and sand and gravel pits, when the body of water exceeds 50 acres and the shoreland has been zoned for residential development; and

(iv) add or subtract public waters that have been created or eliminated as a requirement of a permit authorized by the commissioner under section 103G.245.

History: *1990 c 391 art 7 s 13; 2000 c 382 s 3; 2001 c 7 s 24; 2001 c 146 s 5; 2005 c 138 s 1; 2009 c 176 art 1 s 45; 2010 c 361 art 4 s 51*

103G.205 EFFECT OF PUBLIC WATERS DESIGNATION.

The designation of waters of this state as public waters does not:

(1) grant the public additional or greater right of access to the waters;

(2) diminish the right of ownership or usage of the beds underlying the designated public waters;

(3) affect state law forbidding trespass on private lands; and

(4) require the commissioner to acquire access to the designated public waters under section 97A.141.

History: *1990 c 391 art 7 s 14*

103G.211 DRAINAGE OF PUBLIC WATERS GENERALLY PROHIBITED WITHOUT REPLACEMENT.

Except as provided in sections 103G.221 to 103G.235, public waters may not be drained, and a permit authorizing drainage of public waters may not be issued, unless the public waters to be drained are replaced by public waters that will have equal or greater public value.

History: *1990 c 391 art 7 s 15*

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103G.215 AGRICULTURAL USE OF PUBLIC WATERS DURING DROUGHT.

A property owner may use the bed of public waters for pasture or cropland during periods of drought if:

(1) dikes, ditches, tile lines, or buildings are not constructed; and

(2) the agricultural use does not result in the drainage of the public waters.

History: *1990 c 391 art 7 s 16*

103G.217 DRIFTLESS AREA WATER RESOURCES.

(a) Groundwater discharge from natural springs and seepage areas in the driftless area of Minnesota, corresponding to the area of the state contained within the boundaries of the Department of Natural Resources Paleozoic plateau ecological section, is vital to sustaining the coldwater aquatic ecosystems in the region, as well as the recreational, commercial, agricultural, environmental, aesthetic, and economic well-being of the region.

(b) Within the boundaries of the Department of Natural Resources Paleozoic plateau ecological section, no excavation or mining of silica sand, including, but not limited to, digging, excavating, mining, drilling, blasting, tunneling, dredging, stripping, or shafting, may occur within one mile of a designated trout stream as listed in Minnesota Rules unless a silica sand mining trout stream setback permit has been issued by the commissioner.

(c) Before issuing a permit under this section, the commissioner shall:

(1) require a project proposer to do a hydrogeological evaluation and collect any other information necessary to assess potential impacts to hydrogeological features, including private and public drinking water supply wells; and

(2) identify appropriate setbacks from designated trout streams, springs, and other hydrogeologic features and any other restrictions necessary to protect trout stream water quantity, quality, and habitat.

(d) The commissioner may assess the project proposer fees to cover the reasonable costs of duties performed under this section.

History: *2013 c 114 art 4 s 66*

WETLANDS

103G.221 DRAINAGE OF PUBLIC WATERS WETLANDS.

Subdivision 1. **Drainage of public waters wetlands generally prohibited without replacement.** Public waters wetlands may not be drained, and a permit authorizing drainage of public waters wetlands may not be issued, unless the public waters wetlands to be drained are replaced by wetlands that will have equal or greater public value.

Subd. 2. [Repealed, 1991 c 354 art 10 s 12]

Subd. 3. [Repealed, 1991 c 354 art 10 s 12]

History: *1990 c 391 art 7 s 17; 1999 c 86 art 1 s 19*

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103G.2212 CONTRACTOR'S RESPONSIBILITY WHEN WORK DRAINS OR FILLS WETLANDS.

Subdivision 1. **Conditions for employees and agents to drain or fill wetlands.** An agent or employee of another may not drain or fill a wetland, wholly or partially, unless the agent or employee has:

(1) obtained a signed statement from the property owner stating that the wetland replacement plan required for the work has been obtained or that a replacement plan is not required; and

(2) mailed or sent by electronic transmission a copy of the statement to the local government unit with jurisdiction over the wetland.

Subd. 2. **Violation is separate offense.** Violation of this section is a separate and independent offense from other violations of sections 103G.2212 to 103G.237.

Subd. 3. **Form for compliance with this section.** The board shall develop a form to be distributed to contractors' associations, local government units, and soil and water conservation districts to comply with this section. The form must include:

(1) a listing of the activities for which a replacement plan is required;

(2) a description of the penalties for violating sections 103G.2212 to 103G.237;

(3) the telephone number to call for information on the responsible local government unit;

(4) a statement that national wetland inventory maps are on file with the soil and water conservation district office; and

(5) spaces for a description of the work and the names, mailing addresses or other contact information, and telephone numbers of the person authorizing the work and the agent or employee proposing to undertake it.

History: *2000 c 382 s 4; 2011 c 107 s 65*

103G.222 REPLACEMENT OF WETLANDS.

Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under a replacement plan approved as provided in section 103G.2242, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2243, or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. For project-specific wetland replacement completed prior to wetland impacts authorized or conducted under a permit to mine within the Great Lakes and Rainy River watershed basins, those basins shall be considered a single watershed for purposes of determining wetland replacement ratios. Mining reclamation plans shall apply the same principles and standards for replacing wetlands by restoration or creation of wetland areas that are applicable to mitigation plans approved as provided in section 103G.2242. Public value must be determined in accordance with section 103B.3355 or a comprehensive wetland protection and management plan established under section 103G.2243. Sections 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands.

(b) Replacement must be guided by the following principles in descending order of priority:

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(1) avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;

(2) minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;

(3) rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;

(4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity;

(5) compensating for the impact by restoring a wetland; and

(6) compensating for the impact by replacing or providing substitute wetland resources or environments.

For a project involving the draining or filling of wetlands in an amount not exceeding 10,000 square feet more than the applicable amount in section 103G.2241, subdivision 9, paragraph (a), the local government unit may make an on-site sequencing determination without a written alternatives analysis from the applicant.

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that the altered wetland is not converted to a nonagricultural use for at least ten years.

(d) If a wetland is replaced under paragraph (c), or drained under section 103G.2241, subdivision 2, paragraph (b) or (e), the local government unit may require a deed restriction that prohibits nonagricultural use for at least ten years. The local government unit may require the deed restriction if it determines the wetland area drained is at risk of conversion to a nonagricultural use within ten years based on the zoning classification, proximity to a municipality or full service road, or other criteria as determined by the local government unit.

(e) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected and ponds that are created primarily to fulfill storm water management, and water quality treatment requirements may not be used to satisfy replacement requirements under this chapter unless the design includes pretreatment of runoff and the pond is functioning as a wetland.

(f) Except as provided in paragraph (g), for a wetland or public waters wetland located on nonagricultural land, replacement must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland.

(g) For a wetland or public waters wetland located on agricultural land or in a greater than 80 percent area, replacement must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland.

(h) Wetlands that are restored or created as a result of an approved replacement plan are subject to the provisions of this section for any subsequent drainage or filling.

(i) Except in a greater than 80 percent area, only wetlands that have been restored from previously drained or filled wetlands, wetlands created by excavation in nonwetlands, wetlands created by dikes or dams along public or private drainage ditches, or wetlands created by dikes or dams associated with the restoration of previously drained or filled wetlands may be used in a statewide banking program established

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in rules adopted under section 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

(j) The Technical Evaluation Panel established under section 103G.2242, subdivision 2, shall ensure that sufficient time has occurred for the wetland to develop wetland characteristics of soils, vegetation, and hydrology before recommending that the wetland be deposited in the statewide wetland bank. If the Technical Evaluation Panel has reason to believe that the wetland characteristics may change substantially, the panel shall postpone its recommendation until the wetland has stabilized.

(k) This section and sections 103G.223 to 103G.2242, 103G.2364, and 103G.2365 apply to the state and its departments and agencies.

(l) For projects involving draining or filling of wetlands associated with a new public transportation project, and for projects expanded solely for additional traffic capacity, public transportation authorities may purchase credits from the board at the cost to the board to establish credits. Proceeds from the sale of credits provided under this paragraph are appropriated to the board for the purposes of this paragraph. For the purposes of this paragraph, "transportation project" does not include an airport project.

(m) A replacement plan for wetlands is not required for individual projects that result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction, or replacement of a currently serviceable existing state, city, county, or town public road necessary, as determined by the public transportation authority, to meet state or federal design or safety standards or requirements, excluding new roads or roads expanded solely for additional traffic capacity lanes. This paragraph only applies to authorities for public transportation projects that:

(1) minimize the amount of wetland filling or draining associated with the project and consider mitigating important site-specific wetland functions on site;

(2) except as provided in clause (3), submit project-specific reports to the board, the Technical Evaluation Panel, the commissioner of natural resources, and members of the public requesting a copy at least 30 days prior to construction that indicate the location, amount, and type of wetlands to be filled or drained by the project or, alternatively, convene an annual meeting of the parties required to receive notice to review projects to be commenced during the upcoming year; and

(3) for minor and emergency maintenance work impacting less than 10,000 square feet, submit project-specific reports, within 30 days of commencing the activity, to the board that indicate the location, amount, and type of wetlands that have been filled or drained.

Those required to receive notice of public transportation projects may appeal minimization, delineation, and on-site mitigation decisions made by the public transportation authority to the board according to the provisions of section 103G.2242, subdivision 9. The Technical Evaluation Panel shall review minimization and delineation decisions made by the public transportation authority and provide recommendations regarding on-site mitigation if requested to do so by the local government unit, a contiguous landowner, or a member of the Technical Evaluation Panel.

Except for state public transportation projects, for which the state Department of Transportation is responsible, the board must replace the wetlands, and wetland areas of public waters if authorized by the commissioner or a delegated authority, drained or filled by public transportation projects on existing roads.

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Public transportation authorities at their discretion may deviate from federal and state design standards on existing road projects when practical and reasonable to avoid wetland filling or draining, provided that public safety is not unreasonably compromised. The local road authority and its officers and employees are exempt from liability for any tort claim for injury to persons or property arising from travel on the highway and related to the deviation from the design standards for construction or reconstruction under this paragraph. This paragraph does not preclude an action for damages arising from negligence in construction or maintenance on a highway.

(n) If a landowner seeks approval of a replacement plan after the proposed project has already affected the wetland, the local government unit may require the landowner to replace the affected wetland at a ratio not to exceed twice the replacement ratio otherwise required.

(o) A local government unit may request the board to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. After receipt of satisfactory documentation from the local government, the board shall change the classification of a county or watershed. If requested by the local government unit, the board must assist in developing the documentation. Within 30 days of its action to approve a change of wetland classifications, the board shall publish a notice of the change in the Environmental Quality Board Monitor.

(p) One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens shall provide satisfactory documentation to the local government unit. The local government unit shall consider the petition and forward the request to the board under paragraph (o) or provide a reason why the petition is denied.

Subd. 2. **Restoration project priorities.** The board shall give priority to restoration projects that:

(1) will encourage land use that leads to more compact development or redevelopment;

(2) will encourage public or private infrastructure investments which connect ecosystems and communities, attract private sector investment in commercial or residential properties adjacent to the public improvement; or

(3) are located in critical rural and urban watersheds.

Subd. 3. **Wetland replacement siting.** (a) Impacted wetlands in a 50 to 80 percent area must be replaced in a 50 to 80 percent area or in a less than 50 percent area. Impacted wetlands in a less than 50 percent area must be replaced in a less than 50 percent area. All wetland replacement must follow this priority order:

(1) on site or in the same minor watershed as the impacted wetland;

(2) in the same watershed as the impacted wetland;

(3) in the same county or wetland bank service area as the impacted wetland;

(4) in another wetland bank service area; and

(5) statewide for public transportation projects, except that wetlands impacted in less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands impacted in the seven-county metropolitan area must be replaced at a ratio of two to one in: (i) the affected county or, (ii) in another of the seven

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metropolitan counties, or (iii) in one of the major watersheds that are wholly or partially within the seven-county metropolitan area, but at least one to one must be replaced within the seven-county metropolitan area.

(b) The exception in paragraph (a), clause (5), does not apply to replacement completed using wetland banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996.

(c) When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in paragraph (a), the applicant may seek opportunities at the next level.

(d) For the purposes of this section, "reasonable, practicable, and environmentally beneficial replacement opportunities" are defined as opportunities that:

(1) take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration;

(2) have a high likelihood of becoming a functional wetland that will continue in perpetuity;

(3) do not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area; and

(4) are available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes.

(e) Applicants and local government units shall rely on board-approved comprehensive inventories of replacement opportunities and watershed conditions, including the Northeast Minnesota Wetland Mitigation Inventory and Assessment (January 2010), in determining whether reasonable, practicable, and environmentally beneficial replacement opportunities are available.

(f) Regulatory agencies, local government units, and other entities involved in wetland restoration shall collaborate to identify potential replacement opportunities within their jurisdictional areas.

History: *1991 c 354 art 6 s 8; 1993 c 175 s 2; 1994 c 627 s 3; 1996 c 462 s 24; 2000 c 382 s 5; 2003 c 128 art 1 s 112,113; 2004 c 255 s 44; 2007 c 57 art 1 s 120,121; 2008 c 179 s 33; 2011 c 107 s 66,67; 2012 c 272 s 41*

103G.223 CALCAREOUS FENS.

Calcareous fens, as identified by the commissioner by written order published in the State Register, may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner, under an approved management plan, decides some alteration is necessary. Identifications made by the commissioner are not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

History: *1991 c 354 art 6 s 9; 2004 c 221 s 43*

103G.2241 EXEMPTIONS.

Subdivision 1. **Agricultural activities.** A replacement plan for wetlands is not required for:

(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grass or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;

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(2) activities in a type 1 wetland on agricultural pasture land that remains in the same use, except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural pasture land that remains in the same use;

(3) activities in a wetland conducted as part of normal farming practices. For purposes of this clause, "normal farming practices" means farming, silvicultural, grazing, and ranching activities such as plowing, seeding, cultivating, and harvesting for the production of feed, food, and fiber products, but does not include activities that result in the draining of wetlands;

(4) soil and water conservation practices approved by the soil and water conservation district, after review by the Technical Evaluation Panel;

(5) aquaculture activities including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings;

(6) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344; or

(7) agricultural activities on agricultural land that is subject to the swampbuster provisions of the federal farm program restrictions consistent with a memorandum of understanding and related agreements between the board and the United States Department of Agriculture, Natural Resources Conservation Service.

Subd. 2. **Drainage.** (a) For the purposes of this subdivision, "public drainage system" means a drainage system as defined in section 103E.005, subdivision 12, and any ditch or tile lawfully connected to the drainage system.

(b) A replacement plan is not required for draining of type 1 wetlands, or up to five acres of type 2 or 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:

(1) during the 20-year period that ended January 1, 1992:

(i) there was an expenditure made from the drainage system account for the public drainage system;

(ii) the public drainage system was repaired or maintained as approved by the drainage authority; or

(iii) no repair or maintenance of the public drainage system was required under section 103E.705, subdivision 1, as determined by the public drainage authority; and

(2) the wetlands are not drained for conversion to:

(i) platted lots;

(ii) planned unit, commercial, or industrial developments; or

(iii) any development with more than one residential unit per 40 acres, except for parcels subject to local zoning standards that allow for family members to establish an additional residence on the same 40 acres.

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If wetlands drained under this paragraph are converted to uses prohibited under clause (2) during the ten-year period following drainage, the wetlands must be replaced under section 103G.222.

(c) A replacement plan is not required for draining or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing public drainage systems.

(d) A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems other than public drainage systems.

(e) A replacement plan is not required for draining agricultural land that: (1) was planted with annually seeded crops before July 5, except for crops that are normally planted after that date, in eight out of the ten most recent years prior to the impact; (2) was in a crop rotation seeding of pasture grass, cover crop, or legumes, or was fallow for a crop production purpose, in eight out of the ten most recent years prior to the impact; or (3) was enrolled in a state or federal land conservation program and met the requirements of clause (1) or (2) before enrollment.

(f) The public drainage authority may, as part of the repair, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent drainage of the wetland.

(g) Wetlands of all types that would be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve under section 103F.516. The board shall give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

Subd. 3. **Federal approvals.** A replacement plan for wetlands is not required for activities authorized under the federal Clean Water Act, section 404, or the Rivers and Harbors Act, section 10, regulations that meet minimum state standards under this chapter and sections 103A.202 and 103B.3355 and that have been approved by the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency.

Subd. 4. **Wetland restoration.** A replacement plan for wetlands is not required for:

(1) activities in a wetland restored or created for conservation purposes under a contract or easement providing the landowner with the right to drain the restored or created wetland; or

(2) activities in a wetland restored or created by a landowner without any assistance or financing from public agencies or private entities other than the landowner and the wetland has not been used for wetland replacement or deposited in the state wetland bank.

Subd. 5. **Incidental wetlands.** A replacement plan for wetlands is not required for activities in a wetland created solely as a result of:

(1) beaver dam construction;

(2) blockage of culverts through roadways maintained by a public or private entity;

(3) actions by public or private entities that were taken for a purpose other than creating the wetland; or

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(4) any combination of clauses (1) to (3).

Subd. 6. **Utilities; public works.** (a) A replacement plan for wetlands is not required for:

(1) new placement or maintenance, repair, enhancement, or replacement of existing utility or utility-type service, including pipelines, if:

(i) the direct and indirect impacts of the proposed project have been avoided and minimized to the extent possible; and

(ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;

(2) activities associated with operation, routine maintenance, or emergency repair of existing utilities and public work structures, including pipelines, provided the activities do not result in additional wetland intrusion or additional draining or filling of a wetland either wholly or partially; or

(3) repair and updating of existing subsurface sewage treatment systems necessary to comply with local, state, and federal regulations.

(b) For maintenance, repair, and replacement, the local government unit may issue a seasonal or annual exemption certification or the utility may proceed without local government unit certification if the utility is carrying out the work according to approved best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the local government unit after the emergency work has been completed.

Subd. 7. **Forestry.** A replacement plan for wetlands is not required for:

(1) temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activities do not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters; or

(2) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch, or tile line; filling is avoided wherever possible; and there is no drainage of the wetland or public waters.

Subd. 8. [Repealed, 2007 c 57 art 1 s 170]

Subd. 9. **De minimis.** (a) Except as provided in paragraphs (d), (e), (f), (g), (h), and (i), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project outside of the shoreland wetland protection zone:

(1) 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, in a greater than 80 percent area;

(2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, in a 50 to 80 percent area, except within the 11-county metropolitan area;

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(3) 2,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, in a less than 50 percent area, except within the 11-county metropolitan area; or

(4) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland.

(b) Except as provided in paragraphs (e), (f), (g), (h), and (i), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project within the shoreland wetland protection zone beyond the shoreland building setback zone:

(1) 400 square feet of type 1, 2, 6, or 7 wetland; or

(2) 100 square feet of type 3, 4, 5, or 8 wetland or white cedar and tamarack wetland.

In a greater than 80 percent area, the de minimis amount allowed under clause (1) may be increased up to 1,000 square feet if the wetland is isolated and is determined to have no direct surficial connection to the public water or if permanent water runoff retention or infiltration measures are established in proximity as approved by the shoreland management authority.

(c) Except as provided in paragraphs (e), (f), (g), (h), and (i), a replacement plan for wetlands is not required for draining or filling up to 20 square feet of wetland as part of a project within the shoreland building setback zone, as defined in the local shoreland management ordinance. The amount in this paragraph may be increased to 100 square feet if permanent water runoff retention or infiltration measures are established in proximity as approved by the shoreland management authority.

(d) Except as provided in paragraphs (b), (c), (e), (f), (g), (h), and (i), a replacement plan is not required for draining or filling amounts of wetlands as part of a project:

(1) 2,500 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area within the 11-county metropolitan area; or

(2) 1,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area within the 11-county metropolitan area.

For purposes of this subdivision, the 11-county metropolitan area consists of the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.

(e) The amounts listed in paragraphs (a), (b), and (c) may not be combined on a project.

(f) This exemption no longer applies to a landowner's portion of a wetland when the cumulative area drained or filled of the landowner's portion since January 1, 1992, is the greatest of:

(1) the applicable area listed in paragraph (a), (b), or (c), if the landowner owns the entire wetland;

(2) five percent of the landowner's portion of the wetland; or

(3) 400 square feet.

(g) This exemption may not be combined with another exemption in this section on a project.

(h) Property may not be divided to increase the amounts listed in paragraph (a).

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(i) If a local ordinance or similar local control is more restrictive than this subdivision, the local standard applies.

Subd. 10. **Wildlife habitat.** A replacement plan for wetlands is not required for:

(1) deposition of spoil resulting from excavation within a wetland for a wildlife habitat improvement project, if:

(i) the area of deposition does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded to prevent erosion;

(ii) the project does not have an adverse impact on any species designated as endangered or threatened under state or federal law; and

(iii) the project will provide wildlife habitat improvement as certified by the soil and water conservation district; or

(2) duck blinds.

Subd. 11. **Exemption conditions.** (a) A person conducting an activity in a wetland under an exemption in subdivisions 1 to 10 shall ensure that:

(1) appropriate erosion control measures are taken to prevent sedimentation of the water;

(2) the activity does not block fish passage in a watercourse; and

(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

(b) An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

(c) Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government unit's designee for advice on minimizing wetland impacts.

(d) The board shall develop rules that address the application and implementation of exemptions and that provide for estimates and reporting of exempt wetland impacts, including those in section 103G.2241, subdivisions 2, 6, and 9.

History: *1991 c 354 art 6 s 10; 1993 c 175 s 3; 1993 c 226 s 20; 1994 c 627 s 4; 1996 c 462 s 25; 2000 c 382 s 6-8; 2007 c 57 art 1 s 122-127; 2007 c 131 art 1 s 55; 2009 c 109 s 14; 2012 c 272 s 42,43*

103G.2242 WETLAND VALUE REPLACEMENT PLANS.

Subdivision 1. **Rules.** (a) The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section and public waters work permits affecting public waters wetlands under section 103G.245. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values; may address the state establishment and administration of a wetland banking program for public and private projects, which may include provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land;

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the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and include the planting of trees or shrubs.

(b) After the adoption of the rules, a replacement plan must be approved by a resolution of the governing body of the local government unit, consistent with the provisions of the rules or a comprehensive wetland protection and management plan approved under section 103G.2243.

(c) If the local government unit fails to apply the rules, or fails to implement a local comprehensive wetland protection and management plan established under section 103G.2243, the government unit is subject to penalty as determined by the board.

Subd. 2. **Evaluation.** (a) Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a Technical Evaluation Panel after an on-site inspection. The Technical Evaluation Panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, a technical professional with expertise in water resources management appointed by the local government unit, and a technical professional employee of the Department of Natural Resources for projects affecting public waters or wetlands adjacent to public waters. The panel shall use the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), including updates, supplementary guidance, and replacements, if any, "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (1979 edition). The panel shall provide the wetland determination and recommendations on other technical matters to the local government unit that must approve a replacement plan, wetland banking plan, exemption determination, no-loss determination, or wetland boundary or type determination and may recommend approval or denial of the plan. The authority must consider and include the decision of the Technical Evaluation Panel in their approval or denial of a plan or determination.

(b) Persons conducting wetland or public waters boundary delineations or type determinations are exempt from the requirements of chapter 326. The board may develop a professional wetland delineator certification program.

Subd. 2a. **Wetland boundary or type determination.** (a) A landowner may apply for a wetland boundary or type determination from the local government unit. The landowner applying for the determination is responsible for submitting proof necessary to make the determination, including, but not limited to, wetland delineation field data, observation well data, topographic mapping, survey mapping, and information regarding soils, vegetation, hydrology, and groundwater both within and outside of the proposed wetland boundary.

(b) A local government unit that receives an application under paragraph (a) may seek the advice of the Technical Evaluation Panel as described in subdivision 2, and, if necessary, expand the Technical Evaluation Panel. The local government unit may delegate the decision authority for wetland boundary or type determinations to designated staff, or establish other procedures it considers appropriate.

(c) The local government unit decision must be made in compliance with section 15.99. Within ten calendar days of the decision, the local government unit decision must be mailed or sent by electronic transmission to the landowner, members of the Technical Evaluation Panel, the watershed district or watershed management organization, if one exists, and individual members of the public who request a copy.

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(d) The local government unit decision is valid for five years unless the Technical Evaluation Panel determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have been sufficient to alter the wetland boundary or type.

Subd. 3. **Replacement completion.** Replacement of wetland values must be completed prior to or concurrent with the actual draining or filling of a wetland, unless an irrevocable bank letter of credit or other security acceptable to the local government unit or the board is given to the local government unit or the board to guarantee the successful completion of the replacement. The board may establish, sponsor, or administer a wetland banking program, which may include provisions allowing monetary payment to the wetland bank for impacts to wetlands on agricultural land, for impacts that occur in greater than 80 percent areas, and for public road projects. The board shall coordinate the establishment and operation of a wetland bank with the United States Army Corps of Engineers, the Natural Resources Conservation Service of the United States Department of Agriculture, and the commissioners of natural resources, agriculture, and the Pollution Control Agency.

Subd. 4. **Decision.** Upon receiving and considering all required data, the local government unit reviewing replacement plan applications, banking plan applications, and exemption or no-loss determination requests must act on all replacement plan applications, banking plan applications, and exemption or no-loss determination requests in compliance with section 15.99.

Subd. 5. **Processing fee.** The local government unit and soil and water conservation district may charge processing fees in amounts not greater than are necessary to cover the reasonable costs of implementing the rules adopted under subdivision 1 and for technical and administrative assistance to landowners in processing other applications for projects affecting wetlands.

Subd. 6. **Notice of application.** (a) Application for approval of a replacement plan under this section must be reviewed by the local government according to section 15.99, subdivision 3, paragraph (a). Copies of the complete application must be mailed or sent by electronic transmission to the members of the Technical Evaluation Panel, the managers of the watershed district if one exists, and the commissioner of natural resources. Individual members of the public who request a copy shall be provided information to identify the applicant and the location and scope of the project.

(b) For the purpose of this subdivision, "application" includes a revised application for replacement plan approval and an application for a revision to an approved replacement plan if:

(1) the wetland area to be drained or filled under the revised replacement plan is at least ten percent larger than the area to be drained or filled under the original replacement plan; or

(2) the wetland area to be drained or filled under the revised replacement is located more than 500 feet from the area to be drained or filled under the original replacement plan.

Subd. 7. **Notice of decision.** Within ten days of the approval or denial of a replacement plan under this section, notice of the decision must be mailed or sent by electronic transmission to members of the Technical Evaluation Panel, the applicant, individual members of the public who request a copy, the managers of the watershed district, if one exists, and the commissioner of natural resources.

Subd. 8. **Public comment period.** Except for activities impacting less than 10,000 square feet of wetland, before approval or denial of a replacement plan under this section, comments may be made by the public to the local government unit for a period of 15 days or more, as determined by the local government unit.

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Subd. 9. **Appeals to board.** (a) Appeal of a replacement plan, sequencing, exemption, wetland banking, wetland boundary or type determination, or no-loss decision may be obtained by mailing a petition and payment of a filing fee, which shall be retained by the board to defray administrative costs, to the board within 30 days after the postmarked date of the mailing or date of sending by electronic transmission specified in subdivision 7. If appeal is not sought within 30 days, the decision becomes final. If the petition for hearing is accepted, the amount posted must be returned to the petitioner. Appeal may be made by:

(1) the wetland owner;

(2) any of those to whom notice is required to be mailed or sent by electronic transmission under subdivision 7; or

(3) 100 residents of the county in which a majority of the wetland is located.

(b) Within 30 days after receiving a petition, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that:

(1) the appeal is without significant merit, trivial, or brought solely for the purposes of delay;

(2) the petitioner has not exhausted all local administrative remedies;

(3) expanded technical review is needed;

(4) the local government unit's record is not adequate; or

(5) the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit.

(c) In determining whether to grant the appeal, the board, executive director, or dispute resolution committee shall also consider the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or petitioner, and the consequences of the delay resulting from the appeal.

(d) If an appeal is granted, the appeal must be heard by the committee for dispute resolution of the board, and a decision must be made by the board within 60 days of filing the local government unit's record and the written briefs submitted for the appeal and the hearing. The decision must be served by mail or by electronic transmission to the parties to the appeal, and is not subject to the provisions of chapter 14. A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

(e) Notwithstanding section 16A.1283, the board shall establish a fee schedule to defray the administrative costs of appeals made to the board under this subdivision. Fees established under this authority shall not exceed $1,000. Establishment of the fee is not subject to the rulemaking process of chapter 14 and section 14.386 does not apply.

Subd. 9a. **Appeals of restoration or replacement orders.** A landowner or other responsible party may appeal the terms and conditions of a restoration or replacement order within 30 days of receipt of written notice of the order. The time frame for the appeal may be extended beyond 30 days by mutual agreement, in writing, between the landowner or responsible party, the local government unit, and the enforcement authority. If the written request is not submitted within 30 days, the order is final. The board's executive director must review the request and supporting evidence and render a decision within 60 days of receipt

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of a petition. A decision on an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

Subd. 10. **Local requirements.** The rules adopted under subdivision 1 shall allow for local government units to use their own notice and public comment procedures so long as the requirements of this section are satisfied.

Subd. 11. [Expired.]

Subd. 12. **Replacement credits.** (a) No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, and is completed prior to any draining or filling of the wetland.

(b) Paragraph (a) does not apply to a wetland whose owner has paid back with interest the individual or organization restoring, enhancing, or constructing the wetland.

(c) Notwithstanding section 103G.222, subdivision 1, paragraph (i), the following actions, and others established in rule, that are consistent with criteria in rules adopted by the board in conjunction with the commissioners of natural resources and agriculture, are eligible for replacement credit as determined by the local government unit, including enrollment in a statewide wetlands bank:

(1) reestablishment of permanent native, noninvasive vegetative cover on a wetland on agricultural land that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was in a land retirement program during the past ten years;

(2) buffer areas of permanent native, noninvasive vegetative cover established or preserved on upland adjacent to replacement wetlands;

(3) wetlands restored for conservation purposes under terminated easements or contracts; and

(4) water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies, provided that the water quality treatment ponds must be associated with an ongoing or proposed project that will impact a wetland and replacement credit for the treatment ponds is based on the replacement of wetland functions and on an approved storm water management plan for the local government.

(d) Notwithstanding section 103G.222, subdivision 1, paragraphs (f) and (g), the board may establish by rule different replacement ratios for restoration projects with exceptional natural resource value.

Subd. 13. [Repealed, 1996 c 462 s 44]

Subd. 14. **Fees established.** (a) Fees must be assessed for managing wetland bank accounts and transactions as follows:

(1) account maintenance annual fee: one percent of the value of credits not to exceed $500;

(2) account establishment, deposit, or transfer: 6.5 percent of the value of credits not to exceed $1,000 per establishment, deposit, or transfer; and

(3) withdrawal fee: 6.5 percent of the value of credits withdrawn.

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(b) The board may establish fees at or below the amounts in paragraph (a) for single-user or other dedicated wetland banking accounts.

(c) Fees for single-user or other dedicated wetland banking accounts established pursuant to section 103G.005, subdivision 10e, clause (4), are limited to establishment of a wetland banking account and are assessed at the rate of 6.5 percent of the value of the credits not to exceed $1,000.

Subd. 15. **Fees paid to board.** All fees established in subdivisions 9 and 14 must be paid to the Board of Water and Soil Resources and are annually appropriated to the board for the purpose of administration of the wetland bank and to process appeals under section 103G.2242, subdivision 9.

History: *1991 c 354 art 6 s 11; 1993 c 175 s 4,5; 1994 c 627 s 5-9; 1996 c 462 s 26-32; 1998 c 312 s 4; 2000 c 382 s 9-14; 2001 c 7 s 25; 2001 c 146 s 6,7; 2003 c 128 art 1 s 114,115; 2007 c 57 art 1 s 128-132; 2007 c 131 art 1 s 56; 2011 c 107 s 68-73; 2012 c 272 s 44*

103G.2243 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

Subdivision 1. **General requirements; notice and participation.** (a) As an alternative to the rules adopted under section 103G.2242, subdivision 1, and the public value criteria established or approved under section 103B.3355, a comprehensive wetland protection and management plan may be developed by a local government unit, or one or more local government units operating under a joint powers agreement, provided that:

(1) a notice is made at the beginning of the planning process to the board, the commissioner of natural resources, the Pollution Control Agency, the commissioner of agriculture, local government units, and local citizens to actively participate in the development of the plan; and

(2) the plan is implemented by ordinance as part of the local government's official controls under chapter 394, for a county; chapter 462, for a city; chapter 366, for a town; and by rules adopted under chapter 103D, for a watershed district; and chapter 103B, for a watershed management organization.

(b) An organization that is invited to participate in the development of the local plan, but declines to do so and fails to participate or to provide written comments during the local review process, waives the right during board review to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan.

Subd. 2. **Plan contents.** A comprehensive wetland protection and management plan may:

(1) provide for classification of wetlands in the plan area based on:

(i) an inventory of wetlands in the plan area;

(ii) an assessment of the wetland functions listed in section 103B.3355, using a methodology chosen by the Technical Evaluation Panel from one of the methodologies established or approved by the board under that section; and

(iii) the resulting public values;

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(2) vary application of the sequencing standards in section 103G.222, subdivision 1, paragraph (b), for projects based on the classification and criteria set forth in the plan;

(3) vary the replacement standards of section 103G.222, subdivision 1, paragraphs (f) and (g), based on the classification and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan, and so long as:

(i) in a 50 to 80 percent area, a minimum acreage requirement of one acre of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan; and

(ii) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan, except that replacement for the amount above a 1:1 ratio can be accomplished as described in section 103G.2242, subdivision 12; and

(4) in a greater than 80 percent area, allow replacement credit, based on the classification and criteria set forth in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres.

Subd. 3. **Board review and approval; mediation; judicial review.** (a) The plan is deemed approved 60 days after the local government submits the final plan to the board, unless the board disagrees with the plan as provided in paragraph (d).

(b) The board may not disapprove a plan if the board determines the plan meets the requirements of this section.

(c) In its review of a plan, the board shall advise the local government unit of those elements of the plan that are more restrictive than state law and rules for purposes of section 103G.237, subdivision 5.

(d) If the board disagrees with the plan or any elements of the plan, the board shall, in writing, notify the local government of the plan deficiencies and suggested changes. The board shall include in the response to the local government the scientific justification, if applicable, for the board's concerns with the plan. Upon receipt of the board's concerns with the plan, the local government has 60 days to revise the plan and resubmit the plan to the board for reconsideration, or the local government may request a hearing before the board. The board shall hold a hearing within the boundaries of the jurisdiction of the local government within 60 days of the request for hearing. After the hearing, the board shall, within 60 days, prepare a report of its decision and inform the local government.

(e) If, after the hearing, the board and local government disagree on the plan, the board shall, within 60 days, initiate mediation through a neutral party. If the board and local government unit agree in writing not to use mediation or the mediation does not result in a resolution of the differences between the parties, then the board may commence a declaratory judgment action in the district court of the county where the local government unit is located. If the board does not commence a declaratory judgment action within the applicable 60-day period, the plan is deemed approved.

(f) The declaratory judgment action must be commenced within 60 days after the date of the written agreement not to use mediation or 60 days after conclusion of the mediation. If the board commences a declaratory judgment action, the district court shall review the board's record of decision and the record of decision of the local government unit. The district court shall affirm the plan if it meets the requirements of this section.

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Subd. 4. **Effective date; replacement decisions.** (a) The plan becomes effective as provided in subdivision 3, paragraphs (d) to (f), and after adoption of the plan into the official controls of the local government.

(b) After the effective date of a plan, a local government unit shall make replacement decisions consistent with the plan.

Subd. 5. **Plan amendments.** Amendments to the plan become effective upon completion of the same process required for the original plan.

Subd. 6. **Water planning processes apply.** Except as otherwise provided for in this section, all other requirements relating to development of the plan must be consistent with the water plan processes under sections 103B.231 and 103B.311.

History: *1996 c 462 s 33; 1997 c 2 s 9; 1998 c 312 s 5; 2001 c 7 s 26; 2007 c 57 art 1 s 133*

103G.2244 WETLAND CREATION OR RESTORATION WITHIN PIPELINE EASEMENT.

A person proposing to create or restore a wetland within the easement of a pipeline as defined in section 299J.02, subdivision 11, shall first notify the easement holder and the director of the Office of Pipeline Safety in writing. The person may not create or restore the wetland if, within 90 days after receiving the required notice, the easement holder or the director of the Office of Pipeline Safety provides to the person a written notice of objection that includes the reasons for the objection.

History: *1996 c 462 s 34*

103G.225 STATE WETLANDS AND PUBLIC DRAINAGE SYSTEMS.

If the state owns public waters wetlands on or adjacent to existing public drainage systems, the state shall consider the use of the public waters wetlands as part of the drainage system. If the public waters wetlands interfere with or prevent the authorized functioning of the public drainage system, the state shall provide for necessary work to allow proper use and maintenance of the drainage system while still preserving the public waters wetlands.

History: *1990 c 391 art 7 s 18; 1991 c 354 art 6 s 12*

103G.2251 STATE CONSERVATION EASEMENTS; WETLAND BANK CREDIT.

In greater than 80 percent areas, preservation of wetlands protected by a permanent conservation easement as defined under section 84C.01 and held by the board may be eligible for wetland replacement or mitigation credits, according to rules adopted by the board. To be eligible for credit under this section, a conservation easement must be established after May 24, 2008, and approved by the board. Wetland areas on private lands preserved under this section are not eligible for replacement or mitigation credit if the area has been protected using public conservation funds.

History: *2008 c 357 s 26; 2008 c 368 art 1 s 14; 2011 c 107 s 74*

103G.231 PROPERTY OWNER'S USE OF PUBLIC WATERS WETLANDS.

Subdivision 1. **Agricultural use during drought.** A property owner may use the bed of public waters wetlands for pasture or cropland during periods of drought if:

(1) dikes, ditches, tile lines, or buildings are not constructed; and

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(2) the agricultural use does not result in the drainage of the public waters wetlands.

Subd. 2. **Filling public waters wetlands for irrigation booms.** A landowner may fill a public waters wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage.

Subd. 3. **Peat mining.** Peat mining, as defined in section 93.461, is permitted subject to the mine permit and reclamation requirements of sections 93.44 to 93.51, and the rules adopted under those restrictions, except as provided for in sections 84.035 and 84.036.

History: *1990 c 391 art 7 s 19; 1991 c 354 art 6 s 13; art 8 s 3*

103G.235 RESTRICTIONS ON ACCESS TO WETLANDS.

Subdivision 1. **Wetlands adjacent to roads.** To protect the public health or safety, local units of government may by ordinance restrict public access to public waters wetlands from municipality, county, or township roads that abut public waters wetlands.

Subd. 2. **Privately restored or created wetlands.** When a landowner creates a new wetland or restores a formerly existing wetland on private land that is adjacent to public land or a public road right-of-way, there is no public access to the created or restored wetland if posted by the landowner.

History: *1990 c 391 art 7 s 20; 1991 c 354 art 6 s 14; 2007 c 57 art 1 s 134*

103G.2364 PROPERTY OWNER'S USE OF WETLANDS.

(a) A property owner may use the bed of wetlands for pasture or cropland during periods of drought if:

(1) dikes, ditches, tile lines, or buildings are not constructed; and

(2) the agricultural use does not result in the drainage of the wetlands.

(b) A landowner may fill a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage.

History: *1991 c 354 art 6 s 15*

103G.2365 CONTROL OF NOXIOUS WEEDS.

Noxious weeds, as defined in section 18.77, subdivision 8, must be controlled on wetlands as required in section 18.78.

History: *1991 c 354 art 6 s 16; 1995 c 186 s 30*

103G.2369 [Repealed, 1991 354 art 7 s 2; 1993 c 175 s 7]

103G.237 COMPENSATION FOR LOSS OF PRIVATE USE.

Subdivision 1. **General.** A person whose replacement plan is not approved must be compensated as provided in this section. The person may drain or fill the wetland without an approved replacement plan if the person:

(1) is eligible for compensation under subdivision 2;

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(2) applies for compensation in accordance with subdivision 3; and

(3) does not receive the compensation required in subdivision 4 within 90 days after the application for compensation is received by the board.

Subd. 2. **Eligibility.** A person is eligible for compensation if:

(1) the person applies for replacement plan approval under section 103G.2242;

(2) the replacement plan is not approved or the plan conditions make the proposed use unworkable or not feasible;

(3) the person appeals the disapproval of the plan;

(4) the proposed use would otherwise be allowed under federal, state, and local laws, rules, ordinances, and other legal requirements;

(5) the person has suffered or will suffer damages;

(6) disallowing the proposed use will enhance the public value of the wetland; and

(7) the person applies to the board for compensation.

Subd. 3. **Application.** An application for compensation must be made on forms prescribed by the board and include:

(1) the location and public value of the wetland where the use was proposed;

(2) a description and reason for the proposed wetland use; and

(3) the objection to the replacement plan, if any.

Subd. 4. **Compensation.** (a) The board shall award compensation in an amount equal to the greater of:

(1) 50 percent of the value of the wetland, calculated by multiplying the acreage of the wetland by the greater of:

(i) the average equalized estimated market value of agricultural property in the township as established by the commissioner of revenue at the time application for compensation is made; or

(ii) the assessed value per acre of the parcel containing the wetland, based on the assessed value of the parcel as stated on the most recent tax statement; or

(2) $200 per acre of wetland subject to the replacement plan, increased or decreased by the percentage change of the assessed valuation of land in the township where the wetland is located from the 1995 valuation.

(b) A person who receives compensation under paragraph (a) shall convey to the board a permanent conservation easement as described in section 103F.515, subdivision 4. An easement conveyed under this paragraph is subject to correction and enforcement under section 103F.515, subdivisions 8 and 9.

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Subd. 5. **Compensation claims against local government units.** (a) At the request of a local government unit against which a compensation action is brought based at least in part on the local government unit's application of this section or section 103G.222, 103G.2241, 103G.2242, 103G.2243, or 103G.2372, or rules adopted by the board to implement these sections, the state, through the attorney general, shall intervene in the action on behalf of the local government unit and shall thereafter be considered a defendant in the action. A local government unit making a request under this paragraph shall provide the attorney general with a copy of the complaint as soon as possible after being served. If requested by the attorney general, the court shall grant additional time to file an answer equal to the time between service of the complaint on the local government unit and receipt of the complaint by the attorney general.

(b) The state is liable for costs, damages, fees, and compensation awarded in the action based on the local government unit's adoption or implementation of standards that are required by state law, as determined by the court. The local government unit is liable for costs, damages, fees, and compensation awarded in the action based on local standards that are more restrictive than state law and rules.

(c) For the purposes of this subdivision, "compensation action" means an action in which the plaintiff seeks compensation for a taking of private property under the state or federal Constitution.

History: *1991 c 354 art 6 s 17; 1994 c 627 s 10; 1996 c 462 s 35,36*

103G.2372 ENFORCEMENT.

Subdivision 1. **Commissioner of natural resources.** (a) The commissioner of natural resources, conservation officers, and peace officers shall enforce laws preserving and protecting groundwater quantity, wetlands, and public waters. The commissioner of natural resources, a conservation officer, or a peace officer may issue a cease and desist order to stop any illegal activity adversely affecting groundwater quantity, a wetland, or public waters.

(b) In the order, or by separate order, the commissioner, conservation officer, or peace officer may require restoration or replacement of the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters. Restoration or replacement orders may be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located by the commissioner of natural resources, conservation officers, or peace officers as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any document filed under this section.

Subd. 2. **Misdemeanor.** A violation of an order issued under subdivision 1 is a misdemeanor and must be prosecuted by the county attorney where the wetland or public waters are located or the illegal activity occurred.

Subd. 3. **Restitution.** The court may, as part of sentencing, require a person convicted under subdivision 2 to restore or replace the wetland or public waters, as determined by the local soil and water conservation district for wetlands and the commissioner of natural resources for public waters.

History: *1991 c 354 art 6 s 18; 2000 c 382 s 15; 2001 c 146 s 8; 2005 c 138 s 2*

103G.2373 [Repealed, 2002 c 220 art 8 s 16]

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103G.2374 ELECTRONIC TRANSMISSION.

For purposes of sections 103G.2212 to 103G.2372, notices and other documents may be sent by electronic transmission unless the recipient has provided a mailing address and specified that mailing is preferred.

History: *2011 c 107 s 75*

103G.2375 ASSUMPTION OF SECTION 404 OF FEDERAL CLEAN WATER ACT.

Notwithstanding any other law to the contrary, the Board of Water and Soil Resources, in consultation with the commissioners of natural resources, agriculture, and the Pollution Control Agency, may adopt or amend rules establishing a program for regulating the discharge of dredged and fill material into the waters of the state as necessary to obtain approval from the United States Environmental Protection Agency to administer, in whole or part, the permitting and wetland banking programs under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344. The rules may not be more restrictive than the program under section 404 or state law.

History: *2012 c 272 s 45*

WORK AFFECTING PUBLIC WATERS

103G.241 CONTRACTOR'S RESPONSIBILITY WHEN WORK AFFECTS PUBLIC WATERS.

Subdivision 1. **Conditions for employees and agents to affect public waters.** An agent or employee of another may not construct, reconstruct, remove, or make a change in a reservoir, dam, or waterway obstruction on a public water or in any manner change or diminish the course, current, or cross section of public waters unless the agent or employee has:

(1) obtained a signed statement from the property owner stating that the permits required for the work have been obtained or a permit is not required; and

(2) mailed a copy of the statement to the regional office of the Department of Natural Resources where the proposed work is located.

Subd. 2. **Violation is separate offense.** Violation of this section is a separate and independent offense from other violations of this chapter.

Subd. 3. **Form for compliance with this section.** The commissioner shall develop a form to be distributed to contractors' associations and county auditors to comply with this section. The form must include:

(1) a listing of the activities for which a permit is required;

(2) a description of the penalties for violating this chapter;

(3) the mailing addresses and telephone numbers of the regional offices of the Department of Natural Resources;

(4) a statement that water inventory maps completed according to section 103G.201 are on file with the auditors of the counties; and

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(5) spaces for a description of the work and the names, mailing addresses, and telephone numbers of the person authorizing the work and the agent or employee proposing to undertake it.

History: *1990 c 391 art 7 s 21*

103G.245 WORK IN PUBLIC WATERS.

Subdivision 1. **Permit requirement.** Except as provided in subdivisions 2, 11, and 12, the state, a political subdivision of the state, a public or private corporation, or a person must have a public waters work permit to:

(1) construct, reconstruct, remove, abandon, transfer ownership of, or make any change in a reservoir, dam, or waterway obstruction on public waters; or

(2) change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters.

Subd. 2. **Exceptions.** A public waters work permit is not required for:

(1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E; or

(2) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters.

Subd. 3. **Permit application.** Application for a public waters work permit must be in writing to the commissioner on forms prescribed by the commissioner. The commissioner may issue a state general permit to a governmental subdivision or to the general public under which more than one project may be conducted under a single permit.

Subd. 4. **Boathouses and boat storage structures.** (a) The following definitions apply to this subdivision:

(1) "boathouse" means a structure or watercraft that is moored by spuds, cables, ropes, anchors, or chains that may be intended for habitation and has walls, a roof, and either an open well for boats or a floor from wall to wall and does not include watercraft that are designed and operated as motorboats;

(2) "motorboat" means a watercraft that is designed for and is capable of navigation on the water and that has an adequately sized external or internal mechanical propulsion system for the type of watercraft; and

(3) "boat storage structure" means a structure that is used for storing boats or float planes.

(b) Boathouses and boat storage structures are prohibited on public waters of Minnesota, except as allowed by paragraphs (c) to (f).

(c) The commissioner may issue a public waters work permit for boathouses, when approved by the local governmental unit and:

(1) only in areas of historic use for the structures, as determined by the commissioner, and where the boathouse was in existence on public waters prior to January 1, 1997; or

(2) where the boathouse serves as a public service structure within a permitted commercial marina.

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(d) A boathouse in existence on public waters prior to January 1, 1997, may be repaired or replaced, provided that the repairs or replacement are consistent with the permit issued by the commissioner under paragraph (c).

(e) The commissioner may issue a public waters work permit for the repair or replacement of boat storage structures when:

(1) approved by the local governmental unit;

(2) the boat storage structure was in existence prior to 1979 and is currently used for boat storage;

(3) the boat storage structure is not habitable and is not connected to a sewage system;

(4) the local government unit has had the opportunity to review the boat storage structure application and has not provided written comments opposing the application;

(5) the total area of boat storage structures on the applicant's property and on public waters adjacent to the applicant's property is not increased;

(6) the height of boat storage structures is not increased more than one foot, unless boat storage structures are consolidated and the same pitch roof results in an increased height; and

(7) the public waters work permit with the specific dimensions and location of the boat storage structure is recorded in the real estate records of the office of the county recorder or registrar of titles in the county in which the applicant's property is located.

(f) A boat storage structure may be repaired, replaced, or consolidated, provided that the repairs, replacement, or consolidation are consistent with the permit issued by the commissioner under paragraph (e). The repair or replacement of a boat storage structure may include:

(1) the replacement of the foundation of the boat storage structure, provided that the material below the ordinary high-water mark is not toxic to aquatic life; and

(2) the consolidation of multiple boat storage structures.

(g) Notwithstanding sections 103F.201 to 103F.221, and rules adopted under those sections, the local zoning authority may approve a boat storage structure that is at or above the ordinary high water level to replace a boat storage structure that is at or below the ordinary high water level of a public water if the boat storage structure was in existence prior to 1979. The replacement boat storage structure may not exceed the total area of the boat storage structure being replaced. A boat storage structure that is replaced under this paragraph must be removed prior to building the replacement structure.

Subd. 5. **Delegation of permit authority to local units of government.** (a) The commissioner may delegate public waters work permit authority to the appropriate county or municipality or to watershed districts or watershed management organizations that have elected to assert local authority over protected waters. The public waters work permit authority must be delegated under guidelines of the commissioner and the delegation must be done by agreement with the involved county, municipality, watershed district, or water management organization and in compliance with section 103G.315.

(b) For projects affecting public waters wetlands and for wetland areas of public waters affected by a public transportation project as determined by the commissioner, the commissioner may waive the re-

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quirement for a public waters work permit if the local government unit makes a replacement, no-loss, or exemption determination in compliance with sections 103A.201, 103B.3355, and 103G.222 to 103G.2372, and rules adopted pursuant to these same sections.

(c) For projects affecting both public waters and wetlands, the local government unit may, by written agreement with the commissioner, waive the requirement for a replacement plan, no-loss, or exemption determination if a public waters work permit is required and the commissioner includes the provisions of sections 103A.201, 103B.3355, and 103G.222 to 103G.2372, and rules adopted pursuant to these same sections in the public waters work permit.

Subd. 6. **Conformance with water and related land resource management plans.** A public waters work permit may not be issued under this section if the project does not conform to state, regional, and local water and related land resources management plans.

Subd. 7. **Effect on environment and mitigation.** (a) A public waters work permit may be issued only if the project will involve a minimum encroachment, change, or damage to the environment, particularly the ecology of the waterway.

(b) If a major change in the resource is justified, public waters work permits must include provisions to compensate for the detrimental aspects of the change.

Subd. 8. **Excavation in public waters.** Public waters work permits for projects that involve excavation in the beds of public waters may be granted only if:

(1) the area where the excavation will take place is covered by a shoreland zoning ordinance approved by the commissioner;

(2) the work under the permit is consistent with the shoreland zoning ordinance; and

(3) the permit includes provisions for the deposition of excavated materials.

Subd. 9. **Project affecting floodwaters.** (a) A public waters work permit for a project affecting floodwaters may be granted only if:

(1) the area covered by the public waters work permit is governed by a floodplain management ordinance approved by the commissioner; and

(2) the conduct authorized by the public waters work permit is consistent with the floodplain management ordinance, if the commissioner has determined that enough information is available for the adoption of a floodplain ordinance.

(b) A public waters work permit involving the control of floodwaters by structural means, such as dams, dikes, levees, and channel improvements, may be granted only after the commissioner has considered all other flood damage reduction alternatives. In developing a policy on placing emergency levees along the banks of public waters under emergency flood conditions, the commissioner shall consult and cooperate with the office of emergency services.

Subd. 10. **Change of level of public waters.** (a) A public waters work permit that will change the level of public waters may not be issued unless:

(1) the shoreland adjacent to the waters to be changed is governed by a shoreland zoning ordinance approved by the commissioner; and

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(2) the change in water level is consistent with the shoreland zoning ordinance.

(b) Standards and procedures for use in deciding the level of public waters must ensure that the rights of all persons are protected when public water levels are changed and must provide for:

(1) technical advice to persons involved;

(2) establishing alternatives to help local agencies resolve water level conflicts; and

(3) mechanics necessary for local resolution of water problems within the state guidelines.

Subd. 11. **Emergency repairs.** (a) The owner of a dam, reservoir, control structure, or waterway obstruction may make repairs that are immediately necessary in case of emergency without a public waters work permit under subdivision 1. The owner must immediately notify the commissioner of the emergency and of the emergency repairs being made. The owner must apply for a public waters work permit for the emergency repairs and necessary permanent repairs as soon as practicable.

(b) This subdivision does not apply to routine maintenance not affecting the safety of the structures.

(c) If the commissioner declares there is an emergency and repairs or remedial action are immediately necessary to safeguard life and property, the repairs, remedial action, or both, must be started immediately by the owner.

Subd. 12. **Operation of structure prior to permit requirement.** The owner of a dam, reservoir, control structure, or waterway obstruction constructed before a public waters work permit was required by law must maintain and operate the dam, reservoir, control structure, or waterway obstruction in a manner approved and prescribed by rule by the commissioner.

History: *1990 c 391 art 7 s 22; 1995 c 218 s 8,9; 1996 c 443 s 1,2; 1997 c 247 s 1; 2000 c 382 s 17; 2001 c 146 s 9; 2003 c 2 art 1 s 14; 2005 c 138 s 3; 2006 c 180 s 1; 2012 c 272 s 46,47; 2014 c 289 s 54*

103G.251 INVESTIGATION OF ACTIVITIES AFFECTING WATERS OF THE STATE.

Subdivision 1. **Investigations.** If the commissioner determines that an investigation is in the public interest, the commissioner may investigate and monitor activities being conducted with or without a permit that may affect waters of the state.

Subd. 2. **Findings and order.** (a) With or without a public hearing, the commissioner may make findings and issue orders related to activities being conducted without a permit that affect waters of the state as otherwise authorized under this chapter.

(b) A copy of the findings and order must be served on the person to whom the order is issued.

(c) If the commissioner issues the findings and order without a hearing, the person to whom the order is issued may file a demand for a hearing with the commissioner. The demand for a hearing must be accompanied by the bond as provided in section 103G.311, subdivision 6, and the hearing must be held in the same manner and with the same requirements as a hearing held under section 103G.311, subdivision 5. The demand for a hearing and bond must be filed by 30 days after the person is served with a copy of the commissioner's order.

(d) The hearing must be conducted as a contested case hearing under chapter 14.

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(e) If the person to whom the order is addressed does not demand a hearing or demands a hearing but fails to file the required bond:

(1) the commissioner's order becomes final at the end of 30 days after the person is served with the order; and

(2) the person may not appeal the order.

(f) An order of the commissioner may be recorded or filed by the commissioner in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located as a deed restriction on the property that runs with the land and is binding on the owners, successors, and assigns until the conditions of the order are met or the order is rescinded.

History: *1990 c 391 art 7 s 23; 1993 c 186 s 16; 2005 c 138 s 4; 2014 c 312 art 13 s 19*

WATER DIVERSION AND APPROPRIATION

103G.255 ALLOCATION AND CONTROL OF WATERS OF THE STATE.

The commissioner shall administer:

(1) the use, allocation, and control of waters of the state;

(2) the establishment, maintenance, and control of lake levels and water storage reservoirs; and

(3) the determination of the ordinary high water level of waters of the state.

History: *1990 c 391 art 7 s 24; 1993 c 186 s 16*

103G.261 WATER ALLOCATION PRIORITIES.

(a) The commissioner shall adopt rules for allocation of waters based on the following priorities for the consumptive appropriation and use of water:

(1) first priority, domestic water supply, excluding industrial and commercial uses of municipal water supply, and use for power production that meets the contingency planning provisions of section 103G.285, subdivision 6;

(2) second priority, a use of water that involves consumption of less than 10,000 gallons of water per day;

(3) third priority, agricultural irrigation, and processing of agricultural products involving consumption in excess of 10,000 gallons per day;

(4) fourth priority, power production in excess of the use provided for in the contingency plan developed under section 103G.285, subdivision 6;

(5) fifth priority, uses, other than agricultural irrigation, processing of agricultural products, and power production, involving consumption in excess of 10,000 gallons per day; and

(6) sixth priority, nonessential uses.

(b) For the purposes of this section, "consumption" means water withdrawn from a supply that is lost for immediate further use in the area.

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(c) Appropriation and use of surface water from streams during periods of flood flows and high water levels must be encouraged subject to consideration of the purposes for use, quantities to be used, and the number of persons appropriating water.

(d) Appropriation and use of surface water from lakes of less than 500 acres in surface area must be discouraged.

(e) The treatment and reuse of water for nonconsumptive uses shall be encouraged.

History: *1989 c 326 art 4 s 1; 1990 c 391 art 7 s 25; 1990 c 426 art 1 s 13; 1993 c 186 s 1; 2012 c 272 s 48*

103G.265 WATER SUPPLY MANAGEMENT.

Subdivision 1. **Assurance of supply.** The commissioner shall develop and manage water resources to assure an adequate supply to meet long-range seasonal requirements for domestic, municipal, industrial, agricultural, fish and wildlife, recreational, power, navigation, and quality control purposes from waters of the state.

Subd. 2. **Diversion greater than 2,000,000 gallons per day.** A water use permit or a plan that requires a permit or the commissioner's approval, involving a diversion of waters of the state of more than 2,000,000 gallons per day average in a 30-day period, to a place outside of this state or from the basin of origin within this state may not be granted or approved until a determination is made by the commissioner that the water remaining in the basin of origin will be adequate to meet the basin's water resources needs during the specified life of the diversion project and, for groundwater, the diversion meets the applicable standards under section 103G.287, subdivision 5.

Subd. 2a. [Repealed, 2013 c 114 art 4 s 108]

Subd. 3. **Consumptive use of more than 2,000,000 gallons per day.** A water use permit or a plan that requires a permit or the commissioner's approval, involving a consumptive use of more than 2,000,000 gallons per day average in a 30-day period, may not be granted or approved until a determination is made by the commissioner that the water remaining in the basin of origin will be adequate to meet the basin's water resources needs during the specified life of the consumptive use and, for groundwater, the consumptive use meets the applicable standards under section 103G.287, subdivision 5.

Subd. 4. **Diversion or consumptive use from Great Lakes greater than 5,000,000 gallons per day.** (a) A water use permit or a plan that requires a permit or the commissioner's approval, involving a diversion or consumptive use of waters of the state from the Great Lakes water basin within this state where the diversion or consumptive use of waters would be more than 5,000,000 gallons per day average in a 30-day period, may not be granted or approved until:

(1) the commissioner has notified and solicited comments on the proposed diversion or consumptive use from the offices of the governors of the Great Lakes states and premiers of the Great Lakes provinces, the appropriate water management agencies of the Great Lakes states and provinces, and the international joint commission;

(2) the commissioner has considered the comments and concerns of the offices, agencies, and commission to which notice was given under clause (1); and

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(3) the diversion or consumptive use has been approved by the legislature.

(b) If an objection is made to the proposed diversion or consumptive use by an office, agency, or commission to which notice was given under paragraph (a), clause (1), the commissioner must convene a meeting with the affected office, agency, or commission to investigate and consider the issues involved, and to seek a mutually agreeable solution to be recommended to the commissioner. In making a final decision on the approval of a permit or plan subject to review under this subdivision, the commissioner shall consider the record of the meeting and the recommendation. The commissioner must send notification of the final decision to each office, agency, or commission to which notice was given under paragraph (a), clause (1).

History: *1990 c 391 art 7 s 26; 1990 c 406 s 1; 1993 c 186 s 2; 2012 c 272 s 49; 2013 c 114 art 4 s 67,68*

103G.27 WATER MANAGEMENT ACCOUNT.

Subdivision 1. **Account established; sources.** The water management account is created in the natural resources fund in the state treasury. Revenues collected from permit application fees, water use fees, field inspection fees, penalties, and other receipts according to sections 103G.271 and 103G.301 shall be deposited in the account. Interest earned on money in the account accrues to the account.

Subd. 2. **Purposes of account.** Money in the water management account may be spent only for the costs associated with administering this chapter.

History: *1Sp2011 c 2 art 4 s 13*

103G.271 APPROPRIATION AND USE OF WATERS.

Subdivision 1. **Permit required.** (a) Except as provided in paragraph (b), the state, a person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state may not appropriate or use waters of the state without a water use permit from the commissioner.

(b) This section does not apply to use for a water supply by less than 25 persons for domestic purposes, except as required by the commissioner under section 103G.287, subdivision 4, paragraph (b).

(c) The commissioner may issue a state general permit for appropriation of water to a governmental subdivision or to the general public. The general permit may authorize more than one project and the appropriation or use of more than one source of water. Water use permit processing fees and reports required under subdivision 6 and section 103G.281, subdivision 3, are required for each project or water source that is included under a general permit, except that no fee is required for uses totaling less than 15,000,000 gallons annually.

Subd. 2. **Permits must be consistent with state and local plans.** A water use permit may not be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans if the regional and local plans are consistent with statewide plans.

Subd. 3. **Permit restriction during summer months.** The commissioner must not modify or restrict the amount of appropriation from a groundwater source authorized in a water use permit issued to irrigate agricultural land between May 1 and October 1, unless the commissioner determines the authorized amount of appropriation endangers a domestic water supply.

Subd. 4. **Minimum use exemption and local approval of low use permits.** (a) Except for local permits under section 103B.211, subdivision 4, a water use permit is not required for the appropriation and use of

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less than 10,000 gallons per day and totaling no more than 1,000,000 gallons per year, except as required by the commissioner under section 103G.287, subdivision 4, paragraph (b).

(b) Water use permits for more than the minimum amount but less than an intermediate amount prescribed by rule must be processed and approved at the municipal, county, or regional level based on rules adopted by the commissioner.

(c) The rules must include provisions for reporting to the commissioner the amounts of water appropriated under local permits.

Subd. 4a. **Mt. Simon-Hinckley aquifer.** (a) The commissioner may not issue new water use permits that will appropriate water from the Mt. Simon-Hinckley aquifer in a metropolitan county, as defined in section 473.121, subdivision 4, unless the appropriation is for potable water use, there are no feasible or practical alternatives to this source, and a water conservation plan is incorporated with the permit.

(b) The commissioner shall terminate all permits authorizing appropriation and use of water from the Mt. Simon-Hinckley aquifer for once-through systems in a metropolitan county, as defined in section 473.121, subdivision 4, by December 31, 1992.

Subd. 5. **Prohibition on once-through water use permits.** (a) Except as provided in paragraph (c), the commissioner may not issue a water use permit to increase the volume of appropriation from a groundwater source for a once-through cooling system.

(b) Except as provided in paragraph (c), once-through system water use permits using in excess of 5,000,000 gallons annually must be terminated by the commissioner, unless the discharge is into a public water basin within a nature preserve approved by the commissioner and established prior to January 1, 2001. Existing once-through systems must not be expanded and are required to convert to water efficient alternatives within the design life of existing equipment.

(c) Notwithstanding paragraphs (a) and (b), the commissioner, with the approval of the commissioners of health and the Pollution Control Agency, may issue once-through system water use permits on an annual basis for aquifer storage and recovery systems that return all once-through system water to the source aquifer. Water use permit processing fees in subdivision 6, paragraph (a), apply to all water withdrawals under this paragraph, including any reuse of water returned to the source aquifer.

Subd. 5a. **Maintenance of surface water levels.** Except as provided in subdivision 5, paragraph (b), the commissioner shall, by January 31, 1994, revoke all existing permits, and may not issue new permits, for the appropriation or use of groundwater in excess of 10,000,000 gallons per year for the primary purpose of maintaining or increasing surface water levels in the seven-county metropolitan area and in other areas of concern as determined by the commissioner. This subdivision does not apply until January 1, 1998, to a municipality that, by January 1, 1994, submits a plan acceptable to the commissioner for maintaining or increasing surface water levels using sources other than groundwater.

Subd. 6. **Water use permit processing fee.** (a) Except as described in paragraphs (b) to (g), a water use permit processing fee must be prescribed by the commissioner in accordance with the schedule of fees in this subdivision for each water use permit in force at any time during the year. Fees collected under this paragraph are credited to the water management account in the natural resources fund. The schedule is as follows, with the stated fee in each clause applied to the total amount appropriated:

(1) $140 for amounts not exceeding 50,000,000 gallons per year;

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(2) $3.50 per 1,000,000 gallons for amounts greater than 50,000,000 gallons but less than 100,000,000 gallons per year;

(3) $4 per 1,000,000 gallons for amounts greater than 100,000,000 gallons but less than 150,000,000 gallons per year;

(4) $4.50 per 1,000,000 gallons for amounts greater than 150,000,000 gallons but less than 200,000,000 gallons per year;

(5) $5 per 1,000,000 gallons for amounts greater than 200,000,000 gallons but less than 250,000,000 gallons per year;

(6) $5.50 per 1,000,000 gallons for amounts greater than 250,000,000 gallons but less than 300,000,000 gallons per year;

(7) $6 per 1,000,000 gallons for amounts greater than 300,000,000 gallons but less than 350,000,000 gallons per year;

(8) $6.50 per 1,000,000 gallons for amounts greater than 350,000,000 gallons but less than 400,000,000 gallons per year;

(9) $7 per 1,000,000 gallons for amounts greater than 400,000,000 gallons but less than 450,000,000 gallons per year;

(10) $7.50 per 1,000,000 gallons for amounts greater than 450,000,000 gallons but less than 500,000,000 gallons per year; and

(11) $8 per 1,000,000 gallons for amounts greater than 500,000,000 gallons per year.

(b) For once-through cooling systems, a water use processing fee must be prescribed by the commissioner in accordance with the following schedule of fees for each water use permit in force at any time during the year:

(1) for nonprofit corporations and school districts, $200 per 1,000,000 gallons; and

(2) for all other users, $420 per 1,000,000 gallons.

(c) The fee is payable based on the amount of water appropriated during the year and, except as provided in paragraph (f), the minimum fee is $100.

(d) For water use processing fees other than once-through cooling systems:

(1) the fee for a city of the first class may not exceed $250,000 per year;

(2) the fee for other entities for any permitted use may not exceed:

(i) $60,000 per year for an entity holding three or fewer permits;

(ii) $90,000 per year for an entity holding four or five permits; or

(iii) $300,000 per year for an entity holding more than five permits;

(3) the fee for agricultural irrigation may not exceed $750 per year;

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(4) the fee for a municipality that furnishes electric service and cogenerates steam for home heating may not exceed $10,000 for its permit for water use related to the cogeneration of electricity and steam; and

(5) no fee is required for a project involving the appropriation of surface water to prevent flood damage or to remove flood waters during a period of flooding, as determined by the commissioner.

(e) Failure to pay the fee is sufficient cause for revoking a permit. A penalty of ten percent per month calculated from the original due date must be imposed on the unpaid balance of fees remaining 30 days after the sending of a second notice of fees due. A fee may not be imposed on an agency, as defined in section 16B.01, subdivision 2, or federal governmental agency holding a water appropriation permit.

(f) The minimum water use processing fee for a permit issued for irrigation of agricultural land is $20 for years in which:

(1) there is no appropriation of water under the permit; or

(2) the permit is suspended for more than seven consecutive days between May 1 and October 1.

(g) The commissioner shall waive the water use permit fee for installations and projects that use storm water runoff or where public entities are diverting water to treat a water quality issue and returning the water to its source without using the water for any other purpose, unless the commissioner determines that the proposed use adversely affects surface water or groundwater.

(h) A surcharge of $30 per million gallons in addition to the fee prescribed in paragraph (a) shall be applied to the volume of water used in each of the months of June, July, and August that exceeds the volume of water used in January for municipal water use, irrigation of golf courses, and landscape irrigation. The surcharge for municipalities with more than one permit shall be determined based on the total appropriations from all permits that supply a common distribution system.

Subd. 6a. **Payment of fees for past unpermitted appropriations.** An entity that appropriates water without a required permit under subdivision 1 must pay the applicable water use permit processing fee specified in subdivision 6 for the period during which the unpermitted appropriation occurred. The fees for unpermitted appropriations are required for the previous seven calendar years after being notified of the need for a permit. This fee is in addition to any other fee or penalty assessed.

Subd. 7. **Transfer of permit.** A water use permit may be transferred to a successive owner of real property if the permittee conveys the real property where the source of water is located. The new owner must notify the commissioner immediately after the conveyance and request transfer of the permit.

History: *1990 c 391 art 7 s 27; 1990 c 594 art 1 s 49; 1990 c 597 s 63-65; 1991 c 214 s 6; 1991 c 234 s 1; 1991 c 354 art 10 s 5; 1992 c 366 s 1; 1992 c 601 s 1; 1993 c 186 s 3-5; 1994 c 557 s 15; 1995 c 218 s 10; 1997 c 104 s 1; 1998 c 401 s 38; 1999 c 231 s 128; 2001 c 160 s 1-3; 2003 c 128 art 1 s 116,117; 2005 c 89 s 1; 1Sp2005 c 1 art 2 s 121; 2006 c 281 art 1 s 21; 2008 c 363 art 5 s 19; 2009 c 37 art 1 s 34; 2010 c 361 art 4 s 52; 1Sp2011 c 2 art 4 s 14; 2012 c 272 s 50; 2013 c 114 art 4 s 69,70; 2014 c 312 art 13 s 20,21*

103G.275 INSTALLATION FOR WATER USE.

Subdivision 1. **Permit required.** The owner of an installation for appropriating or using waters of the state may not increase the pumping capacity or make any major change in the installation without first applying in writing for, and obtaining, the written permit of the commissioner.

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Subd. 2. **Water use data statement.** The owner or person in charge of an installation for appropriating or using waters of the state, whether or not under use permit, must file a water use data statement with the commissioner. The statement must be filed at the time the commissioner determines necessary for the statewide water information system. The water use data statement must be on forms provided by the commissioner and identify the installation's location, its capacity, the purposes for which it is used, and additional information required by the commissioner.

Subd. 3. **Commissioner's examinations.** The commissioner may examine an installation that appropriates or uses surface water or groundwater. The owner of the installation must provide information required by the commissioner.

History: *1990 c 391 art 7 s 28; 1995 c 218 s 11*

103G.281 WATER USE PROHIBITED WITHOUT MEASURING QUANTITIES.

Subdivision 1. **Measuring and records required.** The state, a political subdivision of the state, a person, partnership, public or private corporation, or association may not appropriate or use waters of the state without measuring and keeping a record of the quantity of water used or appropriated as provided in section 103G.271 or 103G.275.

Subd. 2. **Measuring equipment required.** An installation for appropriating or using water must be equipped with a flow meter to measure the quantity of water appropriated within the degree of accuracy required by rule. The commissioner can determine other methods to be used for measuring water quantity based on the quantity of water appropriated or used, the source of water, the method of appropriating or using water, and any other facts supplied to the commissioner.

Subd. 3. **Report.** (a) Records of the amount of water appropriated or used must be kept for each installation. The readings and the total amount of water appropriated must be reported annually to the commissioner on or before February 15 of the following year on forms provided by the commissioner.

(b) The records must be submitted with the annual water use permit processing fee in section 103G.271.

Subd. 4. **Penalty for noncompliant reporting.** The commissioner may assess penalties for noncompliant reporting of water use information as provided in this section. The penalty is ten percent of the annual water use permit processing fee.

History: *1990 c 391 art 7 s 29; 1990 c 597 s 66; 2014 c 312 art 13 s 22*

103G.282 MONITORING TO EVALUATE IMPACTS FROM APPROPRIATIONS.

Subdivision 1. **Monitoring equipment.** The commissioner may require the installation and maintenance of monitoring equipment to evaluate water resource impacts from permitted appropriations and proposed projects that require a permit. Monitoring for water resources that supply more than one appropriator must be designed to minimize costs to individual appropriators. The cost of drilling additional monitoring wells must be shared proportionally by all permit holders that are directly affecting a particular water resources feature.

Subd. 2. **Measuring devices required.** Monitoring installations required under subdivision 1 must be equipped with automated measuring devices to measure water levels, flows, or conditions. The commissioner may determine the frequency of measurements and other measuring methods based on the quantity

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of water appropriated or used, the source of water, potential connections to other water resources, the method of appropriating or using water, seasonal and long-term changes in water levels, and any other facts supplied to the commissioner.

Subd. 3. **Reports and costs.** (a) Records of water measurements under subdivision 2 must be kept for each installation. The measurements must be reported annually to the commissioner on or before February 15 of the following year in a format or on forms prescribed by the commissioner.

(b) The owner or person in charge of an installation for appropriating or using waters of the state or a proposal that requires a permit is responsible for all costs related to establishing and maintaining monitoring installations and to measuring and reporting data. Monitoring costs for water resources that supply more than one appropriator may be distributed among all users within a monitoring area determined by the commissioner and assessed based on volumes of water appropriated and proximity to resources of concern.

History: *2010 c 361 art 4 s 53; 2012 c 272 s 51*

103G.285 SURFACE WATER APPROPRIATIONS.

Subdivision 1. **Waiver.** The commissioner may waive a limitation or requirement in subdivisions 2 to 6 for just cause.

Subd. 2. **Natural and altered natural watercourses.** If data are available, permits to appropriate water from natural and altered natural watercourses must be limited so that consumptive appropriations are not made from the watercourses during periods of specified low flows. The purpose of the limit is to safeguard water availability for in-stream uses and for downstream higher priority users located reasonably near the site of appropriation.

Subd. 3. **Water basins.** (a) Permits to appropriate water from water basins must be limited so that the collective annual withdrawals do not exceed a total volume of water amounting to one-half acre-foot per acre of water basin based on Minnesota Department of Conservation Bulletin No. 25, "An Inventory of Minnesota Lakes," published in 1968.

(b) As a condition to a surface water appropriation permit, the commissioner shall set a protective elevation for the water basin, below which an appropriation is not allowed. During the determination of the protective elevation, the commissioner shall consider:

(1) the elevation of important aquatic vegetation characteristics related to fish and wildlife habitat;

(2) existing uses of the water basin by the public and riparian landowners; and

(3) the total volume within the water basin and the slope of the littoral zone.

Subd. 4. **Water basins less than 500 acres.** As part of an application for appropriation of water from a water basin less than 500 acres in surface area, the applicant shall obtain a statement of support with as many signatures as the applicant can obtain from property owners with property riparian to the water basin. The statement of support must:

(1) state support for the proposed appropriation; and

(2) show the number of property owners whose signatures the applicant could not obtain.

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Subd. 5. **Trout streams.** Permits issued after June 3, 1977, to appropriate water from streams designated trout streams by the commissioner's orders under section 97C.005 must be limited to temporary appropriations.

Subd. 6. **Contingency planning.** An application for use of surface waters of the state is not complete until the applicant submits, as part of the application, a contingency plan that describes the alternatives the applicant will use if further appropriation is restricted due to the flow of the stream or the level of a water basin. A surface water appropriation may not be allowed unless the contingency plan is feasible or the permittee agrees to withstand the results of not being able to appropriate water.

History: *1990 c 391 art 7 s 30; 2010 c 361 art 4 s 54*

103G.287 GROUNDWATER APPROPRIATIONS.

Subdivision 1. **Applications for groundwater appropriations; preliminary well construction approval.** (a) Groundwater use permit applications are not complete until the applicant has supplied:

(1) a water well record as required by section 103I.205, subdivision 9, information on the subsurface geologic formations penetrated by the well and the formation or aquifer that will serve as the water source, and geologic information from test holes drilled to locate the site of the production well;

(2) the maximum daily, seasonal, and annual pumpage rates and volumes being requested;

(3) information on groundwater quality in terms of the measures of quality commonly specified for the proposed water use and details on water treatment necessary for the proposed use;

(4) an inventory of existing wells within 1-1/2 miles of the proposed production well or within the area of influence, as determined by the commissioner. The inventory must include information on well locations, depths, geologic formations, depth of the pump or intake, pumping and nonpumping water levels, and details of well construction;

(5) the results of an aquifer test completed according to specifications approved by the commissioner. The test must be conducted at the maximum pumping rate requested in the application and for a length of time adequate to assess or predict impacts to other wells and surface water and groundwater resources. The permit applicant is responsible for all costs related to the aquifer test, including the construction of groundwater and surface water monitoring installations, and water level readings before, during, and after the aquifer test; and

(6) the results of any assessments conducted by the commissioner under paragraph (c).

(b) The commissioner may waive an application requirement in this subdivision if the information provided with the application is adequate to determine whether the proposed appropriation and use of water is sustainable and will protect ecosystems, water quality, and the ability of future generations to meet their own needs.

(c) The commissioner shall provide an assessment of a proposed well needing a groundwater appropriation permit. The commissioner shall evaluate the information submitted as required under section 103I.205, subdivision 1, paragraph (f), and determine whether the anticipated appropriation request is likely to meet the applicable requirements of this chapter. If the appropriation request is likely to meet applicable requirements, the commissioner shall provide the person submitting the information with a letter providing preliminary approval to construct the well.

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Subd. 2. **Relationship to surface water resources.** Groundwater appropriations that will have negative impacts to surface waters are subject to applicable provisions in section 103G.285.

Subd. 3. **Protection of groundwater supplies.** The commissioner may establish water appropriation limits to protect groundwater resources. When establishing water appropriation limits to protect groundwater resources, the commissioner must consider the sustainability of the groundwater resource, including the current and projected water levels, water quality, whether the use protects ecosystems, and the ability of future generations to meet their own needs.

Subd. 4. **Groundwater management areas.** (a) The commissioner may designate groundwater management areas and limit total annual water appropriations and uses within a designated area to ensure sustainable use of groundwater that protects ecosystems, water quality, and the ability of future generations to meet their own needs. Water appropriations and uses within a designated management area must be consistent with a groundwater management area plan approved by the commissioner that addresses water conservation requirements and water allocation priorities established in section 103G.261. At least 30 days prior to implementing or modifying a groundwater management area plan under this subdivision, the commissioner shall consult with the advisory team established in paragraph (c).

(b) Notwithstanding section 103G.271, subdivision 1, paragraph (b), and Minnesota Rules, within designated groundwater management areas, the commissioner may require general permits as specified in section 103G.271, subdivision 1, paragraph (c), for water users using less than 10,000 gallons per day or 1,000,000 gallons per year and water suppliers serving less than 25 persons for domestic purposes. The commissioner may waive the requirements under section 103G.281 for general permits issued under this paragraph, and the fee specified in section 103G.301, subdivision 2, paragraph (c), does not apply to general permits issued under this paragraph.

(c) When designating a groundwater management area, the commissioner shall assemble an advisory team to assist in developing a groundwater management area plan for the area. The advisory team members shall be selected from public and private entities that have an interest in the water resources affected by the groundwater management area. A majority of the advisory team members shall be public and private entities that currently hold water use permits for water appropriations from the affected water resources. The commissioner shall consult with the League of Minnesota Cities, the Association of Minnesota Counties, the Minnesota Association of Watershed Districts, and the Minnesota Association of Townships in appointing the local government representatives to the advisory team. The advisory team may also include representatives from the University of Minnesota, the Minnesota State Colleges and Universities, other institutions of higher learning in Minnesota, political subdivisions with jurisdiction over water issues, nonprofits with expertise in water, and federal agencies.

Subd. 5. **Sustainability standard.** The commissioner may issue water use permits for appropriation from groundwater only if the commissioner determines that the groundwater use is sustainable to supply the needs of future generations and the proposed use will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supply and private domestic wells constructed according to Minnesota Rules, chapter 4725.

History: *2010 c 361 art 4 s 55; 2013 c 114 art 4 s 71-73; 2014 c 289 s 55,56*

103G.291 PUBLIC WATER SUPPLY PLANS; APPROPRIATION DURING DEFICIENCY.

Subdivision 1. **Declaration and conservation.** (a) If the governor determines and declares by executive order that there is a critical water deficiency, public water supply authorities appropriating water must adopt

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and enforce water conservation restrictions within their jurisdiction that are consistent with rules adopted by the commissioner.

(b) The restrictions must limit lawn sprinkling, vehicle washing, golf course and park irrigation, and other nonessential uses, and have appropriate penalties for failure to comply with the restrictions.

Subd. 2. **Modification of appropriation for noncompliance.** Disregard of critical water deficiency orders, even though total appropriation remains less than that permitted, is adequate grounds for immediate modification of a public water supply authority's water use permit.

Subd. 3. **Water supply plans; demand reduction.** (a) Every public water supplier serving more than 1,000 people must submit a water supply plan to the commissioner for approval by January 1, 1996. In accordance with guidelines developed by the commissioner, the plan must address projected demands, adequacy of the water supply system and planned improvements, existing and future water sources, natural resource impacts or limitations, emergency preparedness, water conservation, supply and demand reduction measures, and allocation priorities that are consistent with section 103G.261. Public water suppliers must update their plan and, upon notification, submit it to the commissioner for approval every ten years.

(b) The water supply plan in paragraph (a) is required for all communities in the metropolitan area, as defined in section 473.121, with a municipal water supply system and is a required element of the local comprehensive plan required under section 473.859. Water supply plans or updates submitted after December 31, 2008, must be consistent with the metropolitan area master water supply plan required under section 473.1565, subdivision 1, paragraph (a), clause (2).

(c) Public water suppliers serving more than 1,000 people must encourage water conservation by employing water use demand reduction measures, as defined in subdivision 4, paragraph (a), before requesting approval from the commissioner of health under section 144.383, paragraph (a), to construct a public water supply well or requesting an increase in the authorized volume of appropriation. The commissioner of natural resources and the water supplier shall use a collaborative process to achieve demand reduction measures as a part of a water supply plan review process.

(d) Public water suppliers serving more than 1,000 people must submit records that indicate the number of connections and amount of use by customer category and volume of water unaccounted for with the annual report of water use required under section 103G.281, subdivision 3.

(e) For the purposes of this section, "public water supplier" means an entity that owns, manages, or operates a public water supply, as defined in section 144.382, subdivision 4.

Subd. 4. **Demand reduction measures.** (a) For the purposes of this section, "demand reduction measures" means measures that reduce water demand, water losses, peak water demands, and nonessential water uses. Demand reduction measures must include a conservation rate structure, or a uniform rate structure with a conservation program that achieves demand reduction. A "conservation rate structure" means a rate structure that encourages conservation and may include increasing block rates, seasonal rates, time of use rates, individualized goal rates, or excess use rates. If a conservation rate is applied to multifamily dwellings, the rate structure must consider each residential unit as an individual user.

(b) To encourage conservation, a public water supplier serving more than 1,000 people must implement demand reduction measures by January 1, 2015.

History: *1990 c 391 art 7 s 31; 1993 c 186 s 6; 2007 c 131 art 1 s 57; 2008 c 363 art 5 s 20,21; 2012 c 150 art 1 s 2,3*

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103G.293 STATEWIDE DROUGHT PLAN.

The commissioner shall establish a plan to respond to drought-related emergencies and to prepare a statewide framework for drought response. The plan must consider metropolitan water supply plans of the Metropolitan Council prepared under section 473.1565. The plan must provide a framework for implementing drought response actions in a staged approach related to decreasing levels of flows. Permits issued under section 103G.271 must provide conditions on water appropriation consistent with the drought response plan established by this section.

History: *1990 c 391 art 10 s 3; 1990 c 434 s 1; 1993 c 13 art 1 s 23; 2006 c 212 art 3 s 7*

103G.295 [Repealed, 2010 c 361 art 4 s 83]

103G.297 DIVERSION OR DRAINAGE OF WATER FOR MINING.

Subdivision 1. **Authority to issue permits.** The commissioner may issue water use permits for the diversion, drainage, control, or use of waters of the state for mining iron ore, taconite, copper, copper-nickel, or nickel as provided in this section.

Subd. 2. **Application.** (a) An owner of the iron ore, taconite, copper, copper-nickel, or nickel deposits or the owner of the right to mine the deposits must apply to the commissioner for a permit in the form prescribed by the commissioner.

(b) Except as otherwise provided in this section, the application and the proceedings related to the application and to a permit issued are governed by the applicable provisions of this chapter.

Subd. 3. **Grant.** The permit may be granted only if the commissioner determines that:

(1) the proposed drainage, diversion, control, or use of waters will be necessary for the mining of substantial deposits of iron ore, taconite, copper, copper-nickel, or nickel, and that another feasible and economical method of mining is not reasonably available;

(2) the proposed drainage, diversion, control, or use of waters will not substantially impair the interests of the public in lands or waters or the substantial beneficial public use of lands or waters except as expressly authorized in the permit and will not endanger public health or safety; and

(3) the proposed mining operations will be in the public interest and the resulting public benefits warrant the proposed drainage, diversion, or control of waters.

Subd. 4. **Operation.** If the operations authorized by a permit may affect public or private property not owned by the permittee, before proceeding with the operations the permittee must:

(1) acquire all rights or easements necessary for the operation;

(2) pay or give security for the payment of damages to the property that may result from the operations; and

(3) give evidence of compliance with this subdivision as the commissioner may require.

Subd. 5. **Liability of state and its officials.** The state and its officers, agents, or employees do not incur liability on account of the issuance of a permit or on account of any act or omission of the permittee, or the permittee's agents or employees, under or in connection with the permit.

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Subd. 6. **Permit period.** (a) Notwithstanding other limitations prescribed by law, a permit must be granted for a term the commissioner finds reasonable and necessary for the completion of the proposed mining operations, and the commissioner may prescribe a time in the permit for the commencement or completion of operations or construction under the permit or the exercise of the rights granted by the permit.

(b) The commissioner may extend the original term of the permit or the time allowed for the performance of its conditions for good cause shown upon application of the permittee.

Subd. 7. **Permit conditions.** In a permit, the commissioner may prescribe conditions the commissioner finds necessary and practicable for restoring the waters to their former condition after completion of the mining operations or after expiration or cancellation of the permit. The commissioner may also prescribe other conditions necessary to protect the public health, safety, and welfare, and may require the permittee to furnish a bond to the state in an appropriate form and amount as security for compliance with the conditions of the permit and applicable law.

Subd. 8. **Modification and cancellation of permit.** (a) A permit issued under this section is irrevocable for the term of the permit and for any extension of the term except:

(1) the permit may be modified or canceled by the commissioner at the request or with the consent of the permittee upon conditions the commissioner finds necessary to protect the public interest;

(2) subject to appeal as provided for water use permits, the commissioner may modify or cancel a permit as provided in paragraph (b) if:

(i) the permittee or its employees or agents breach the permit's terms or conditions or violate pertinent law; or

(ii) the commissioner finds the modification or cancellation necessary to protect the public health or safety, or to protect the public interests in lands or waters against substantial injury resulting in any manner or to any extent not expressly authorized by the permit, or to prevent substantial injury to persons or property resulting in any manner or to any extent not so authorized; or

(3) the commissioner immediately suspends operations under a permit by written order to the permittee if necessary in an emergency, to protect the public health or safety or to protect public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against the danger, and may require the permittee to take any measures necessary to prevent or remedy the injury.

(b) The commissioner may modify or cancel the permit upon at least 30 days' written notice to the permittee, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard.

(c) An order under paragraph (a), clause (3), may not remain in effect for more than 30 days from the date of the order without giving the permittee at least ten days' written notice of the order and an opportunity to be heard relating to the order.

Subd. 9. **Effect on other law.** This section does not amend, supersede, or repeal any existing law, but is supplementary to it.

History: *1990 c 391 art 7 s 33*

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103G.298 LANDSCAPE IRRIGATION SYSTEMS.

All automatically operated landscape irrigation systems shall have furnished and installed technology that inhibits or interrupts operation of the landscape irrigation system during periods of sufficient moisture. The technology must be adjustable either by the end user or the professional practitioner of landscape irrigation services.

History: *2003 c 44 s 1*

103G.299 ADMINISTRATIVE PENALTIES.

Subdivision 1. **Authority to issue penalty orders.** (a) As provided in paragraph (b), the commissioner may issue an order requiring violations to be corrected and administratively assessing monetary penalties for violations of sections 103G.271 and 103G.275, and any rules adopted under those sections.

(b) An order under this section may be issued to a person for water appropriation activities without a required permit.

(c) The order must be issued as provided in this section and in accordance with the plan prepared under subdivision 12.

Subd. 2. **Amount of penalty; considerations.** (a) The commissioner may issue orders assessing administrative penalties based on potential for harm and deviation from compliance. For a violation that presents: (1) a minor potential for harm and deviation from compliance, the penalty will be no more than $1,000; (2) a moderate potential for harm and deviation from compliance, the penalty will be no more than $10,000; and (3) a severe potential for harm and deviation from compliance, the penalty will be no more than $20,000.

(b) In determining the amount of a penalty the commissioner may consider:

(1) the gravity of the violation, including potential for, or real, damage to the public interest or natural resources of the state;

(2) the history of past violations;

(3) the number of violations;

(4) the economic benefit gained by the person by allowing or committing the violation based on data from local or state bureaus or educational institutions; and

(5) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.

(c) For a violation after an initial violation, including a continuation of the initial violation, the commissioner must, in determining the amount of a penalty, consider the factors in paragraph (b) and the:

(1) similarity of the most recent previous violation and the violation to be penalized;

(2) time elapsed since the last violation;

(3) number of previous violations; and

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(4) response of the person to the most recent previous violation identified.

Subd. 3. **Contents of order.** An order assessing an administrative penalty under this section must include:

(1) a concise statement of the facts alleged to constitute a violation;

(2) a reference to the section of the statute, rule, order, or term or condition of a permit that has been violated;

(3) a statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and

(4) a statement of the person's right to review of the order.

Subd. 4. **Corrective order.** (a) The commissioner may issue an order assessing a penalty and requiring the violations cited in the order to be corrected within a time period specified by the commissioner.

(b) The person to whom the order was issued must provide information to the commissioner before the 31st day after the order was received demonstrating that the violation has been corrected or that appropriate steps toward correcting the violation have been taken.

(c) The commissioner must determine whether the violation has been corrected and notify the person subject to the order of the commissioner's determination.

Subd. 5. **Penalty.** (a) Unless the person requests review of the order under subdivision 6 or 7 before the penalty is due, the penalty in the order is due and payable:

(1) on the 31st day after the order was received, if the person subject to the order fails to provide information to the commissioner showing that the violation has been corrected or that appropriate steps have been taken toward correcting the violation; or

(2) on the 20th day after the person receives the commissioner's determination under subdivision 4, paragraph (c), if the person subject to the order has provided information to the commissioner that the commissioner determines is not sufficient to show that the violation has been corrected or that appropriate steps have been taken toward correcting the violation.

(b) The penalty is due by 31 days after the order was received, unless review of the order under subdivision 6 or 7 has been sought.

(c) Interest at the rate established in section 549.09 begins to accrue on penalties under this subdivision on the 31st day after the order with the penalty was received.

Subd. 6. **Expedited administrative hearing.** (a) Within 30 days after receiving an order or within 20 days after receiving notice that the commissioner has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may request an expedited hearing, using the procedures under Minnesota Rules, parts 1400.8510 to 1400.8612, to review the commissioner's determination. The hearing request must specifically state the reasons for seeking review of the order. The person to whom the order is directed and the commissioner are the parties to the expedited hearing. The commissioner must notify the person to whom the order is directed of the time and place of

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the hearing at least 20 days before the hearing. The expedited hearing must be held within 30 days after a request for hearing has been filed with the commissioner unless the parties agree to a later date.

(b) All written arguments must be submitted within ten days following the close of the hearing. The hearing must be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision.

(c) The administrative law judge must issue a report making recommendations about the commissioner's action to the commissioner within 30 days following the close of the record. The administrative law judge may not recommend a change in the amount of the proposed penalty unless the administrative law judge determines that, based on the factors in subdivision 2, the amount of the penalty is unreasonable.

(d) If the administrative law judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the commissioner may add to the amount of the penalty the costs charged to the department by the Office of Administrative Hearings for the hearing.

(e) If a hearing has been held, the commissioner may not issue a final order until at least five days after receipt of the report of the administrative law judge. The person to whom an order is issued may, within those five days, comment to the commissioner on the recommendations, and the commissioner must consider the comments. The final order may be appealed in the manner provided in sections 14.63 to 14.69.

(f) If a hearing has been held and a final order issued by the commissioner, the penalty must be paid by 30 days after the date the final order is received unless review of the final order is requested under sections 14.63 to 14.69. If review is not requested or the order is reviewed and upheld, the amount due is the penalty, together with interest accruing from 31 days after the original order was received at the rate established in section 549.09.

Subd. 7. **Mediation.** In addition to review under subdivision 6, the commissioner may enter into mediation concerning an order issued under this section if the commissioner and the person to whom the order is issued both agree to mediation.

Subd. 8. **Penalties due and payable.** The commissioner may enforce penalties that are due and payable under this section in any manner provided by law for the collection of debts.

Subd. 9. **Revocation and suspension of permit.** If a person fails to pay a penalty owed under this section, the commissioner has grounds to revoke a permit or to refuse to amend a permit or issue a new permit.

Subd. 10. **Cumulative remedy.** The authority of the commissioner to issue a corrective order assessing penalties is in addition to other remedies available under statutory or common law, except that the state may not seek civil penalties under any other provision of law for the violations covered by the administrative penalty order. The payment of a penalty does not preclude the use of other enforcement provisions, under which penalties are not assessed, in connection with the violation for which the penalty was assessed.

Subd. 11. **Deposit of fees.** Fees collected under this section must be credited to the water management account in the natural resources fund.

Subd. 12. **Plan for use of administrative penalties.** The commissioner must prepare a plan for using the administrative penalty authority in this section. The plan must include explanations for how the commissioner will determine whether violations are minor, moderate, or severe. The commissioner must provide

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a 30-day period for public comment on the plan. The plan must be finalized within six months after July 1, 2014.

History: *2014 c 312 art 13 s 23*

GENERAL PERMIT PROCEDURE

103G.301 GENERAL PERMIT APPLICATION PROCEDURES.

Subdivision 1. **Application documentation.** (a) An application for a permit must be accompanied by:

(1) maps, plans, and specifications describing the proposed appropriation and use of waters;

(2) the changes, additions, repairs, or abandonment proposed to be made;

(3) the waters of the state affected; and

(4) other data the commissioner may require.

(b) The commissioner may require a statement of the effect the actions proposed in the permit application will have on the environment, including:

(1) anticipated changes in water and related land resources;

(2) unavoidable but anticipated detrimental effects; and

(3) alternatives to the actions proposed in the permit application, including conservation measures to improve water use efficiencies and reduce water demand.

Subd. 2. **Permit application and notification fees.** (a) A fee to defray the costs of receiving, recording, and processing must be paid for a permit application authorized under this chapter, except for a general permit application, for each request to amend or transfer an existing permit, and for a notification to request authorization to conduct a project under a general permit. Fees established under this subdivision, unless specified in paragraph (c), shall be compliant with section 16A.1285.

(b) Proposed projects that require water in excess of 100 million gallons per year must be assessed fees to recover the costs incurred to evaluate the project and the costs incurred for environmental review. Fees collected under this paragraph must be credited to an account in the natural resources fund and are appropriated to the commissioner.

(c) The fee to apply for a permit to appropriate water, in addition to any fee under paragraph (b), and for a permit to construct or repair a dam that is subject to dam safety inspection is $150. The application fee for a permit to work in public waters or to divert waters for mining must be at least $150, but not more than $1,000. The fee for a notification to request authorization to conduct a project under a general permit is $100.

Subd. 3. **Field inspection fees.** (a) In addition to the application fee, the commissioner may charge a field inspection fee for:

(1) projects requiring a mandatory environmental assessment under chapter 116D;

(2) projects undertaken without a required permit or application; and

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(3) projects undertaken in excess of limitations established in an issued permit.

(b) The fee must be at least $100 but not more than actual inspection costs.

(c) The fee is to cover actual costs related to a permit applied for under this chapter or for a project undertaken without proper authorization.

(d) The commissioner shall establish a schedule of field inspection fees under section 16A.1285. The schedule must include actual costs related to field inspection, including investigations of the area affected by the proposed activity, analysis of the proposed activity, consultant services, and subsequent monitoring, if any, of the activity authorized by the permit. Fees collected under this subdivision must be credited to an account in the natural resources fund and are appropriated to the commissioner.

Subd. 4. **Refund of fees prohibited.** A permit application, general permit notification, or field inspection fee may not be refunded for any reason, even if the application or request is denied or withdrawn.

Subd. 5. **State and federal agencies exempt from fee.** A permit application, general permit notification, or field inspection fee may not be imposed on any state agency, as defined in section 16B.01, or federal governmental agency applying for a permit.

Subd. 5a. **Town fees limited.** Notwithstanding this section or any other law, no permit application, general permit notification, or field inspection fee charged to a town in connection with the construction or alteration of a town road, bridge, or culvert shall exceed $100.

Subd. 6. **Filing application.** An application for a permit must be filed with the commissioner and if the proposed activity for which the permit is requested is within a municipality, or is within or affects a watershed district or a soil and water conservation district, a copy of the application with maps, plans, and specifications must be served on the mayor of the municipality, the secretary of the board of managers of the watershed district, and the secretary of the board of supervisors of the soil and water conservation district.

Subd. 7. **Recommendation of local units of government.** (a) If the proposed activity for which the permit is requested is within a municipality, or is within or affects a watershed district or a soil and water conservation district, the commissioner may obtain a written recommendation of the managers of the district and the board of supervisors of the soil and water conservation district or the mayor of the municipality before issuing or denying the permit.

(b) The managers, supervisors, or mayor must file a recommendation within 30 days after receiving of a copy of the application for permit.

Subd. 8. **Deposit of fees.** Fees collected under this section must be credited to the water management account in the natural resources fund.

History: *1990 c 391 art 7 s 34; 1991 c 298 art 4 s 1; 1993 c 186 s 7; 1995 c 218 s 13; 1996 c 305 art 3 s 10,11; 1999 c 250 art 3 s 9; 2001 c 160 s 4; 2005 c 138 s 5; 1Sp2005 c 1 art 2 s 122; 2007 c 57 art 1 s 135; 2009 c 37 art 1 s 35,36; 2010 c 361 art 4 s 56; 1Sp2011 c 2 art 4 s 15; 2012 c 272 s 52-55*

103G.305 TIME LIMIT TO ACT ON WATER USE PERMIT APPLICATION.

Subdivision 1. **General 150-day limit.** (a) Except as provided in subdivision 2, the commissioner must act on a water use permit within 150 days after the completed application for the permit has been submitted.

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Within 30 business days of application for a water use permit, the commissioner shall notify the applicant, in writing, whether the application is complete or incomplete.

(b) The commissioner must direct a hearing to be held on a water use permit application or make an order issuing a permit or denying a permit.

Subd. 2. **Exception.** The requirements of subdivision 1 do not apply to applications for a water use permit for:

(1) appropriations for diversion from the basin of origin of more than 2,000,000 gallons per day average in a 30-day period; or

(2) appropriations with a consumptive use of more than 2,000,000 gallons per day average for a 30-day period.

History: *1990 c 391 art 7 s 35; 1993 c 186 s 16; 2010 c 361 art 4 s 57; 2014 c 289 s 57*

103G.311 PERMIT HEARING.

Subdivision 1. **Hearing requirement.** A hearing must be conducted as a contested case hearing under chapter 14.

Subd. 2. **Hearing notice.** (a) The hearing notice on an application must include:

(1) the date, place, and time fixed by the commissioner for the hearing;

(2) the waters affected, the water levels sought to be established, or control structures proposed; and

(3) the matters prescribed by sections 14.57 to 14.59 and rules adopted thereunder.

(b) A summary of the hearing notice must be published by the commissioner at the expense of the applicant or, if the proceeding is initiated by the commissioner in the absence of an applicant, at the expense of the commissioner.

(c) The summary of the hearing notice must be:

(1) published once a week for two successive weeks before the day of hearing in a legal newspaper published in the county where any part of the affected waters is located; and

(2) mailed by the commissioner to the county auditor, the mayor of a municipality, the watershed district, and the soil and water conservation district affected by the application.

Subd. 3. **Subpoena of witnesses and evidence.** (a) The commissioner may subpoena and compel the attendance of witnesses and the production of books and documents that are material to the purposes of the hearing.

(b) Disobedience of a subpoena is punishable in the same manner as a contempt of the district court. The commissioner must file a complaint of the disobedience of a subpoena with the district court of the county where the subpoena was disobeyed.

Subd. 4. **Waiver of hearing.** The commissioner may waive a hearing on an application and order the permit to be issued or deny the permit.

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Subd. 5. **Demand for hearing.** (a) If a hearing is waived and an order is made issuing or denying the permit, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the governing body of the municipality may file a demand for hearing on the application. The demand for a hearing must be filed within 30 days after mailed notice of the order with the bond required by subdivision 6.

(b) The commissioner must give notice as provided in subdivision 2, hold a hearing on the application, and make a determination on issuing or denying the permit as though the previous order had not been made.

(c) The order issuing or denying the permit becomes final at the end of 30 days after mailed notice of the order to the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the governing body of the municipality, and an appeal of the order may not be taken if:

(1) the commissioner waives a hearing and a demand for a hearing is not made; or

(2) a hearing is demanded but a bond is not filed as required by subdivision 6.

Subd. 6. **Bond for demanding public hearing.** (a) An applicant filing a demand for a public hearing must execute and file a corporate surety bond or equivalent security to the state of Minnesota, to be approved by the commissioner and in an amount and form determined by the commissioner. The bond or security must be conditioned to pay the costs of the hearing if the commissioner's order issuing or denying a permit is affirmed without material modification.

(b) A bond or security is not required of a public authority that demands a public hearing.

(c) The commissioner may waive the requirement for a bond or other security.

Subd. 7. **Hearing costs.** (a) Except as provided in paragraphs (b) and (c), the costs of a hearing must be paid as prescribed by chapter 14 and the chief administrative law judge.

(b) If a hearing is waived by the commissioner, but the applicant other than a public authority demands a hearing on the application and the commissioner's order is affirmed without material modification, the applicant must pay the following costs up to $750:

(1) costs of the stenographic record and transcript;

(2) rental costs, if any, of the place where the hearing is held; and

(3) costs of publication of orders made by the commissioner.

(c) If a hearing is waived by the commissioner, but a hearing is demanded by a public authority other than the applicant and the commissioner's order is affirmed without material modification, the public authority making the demand must pay:

(1) costs of the stenographic record and transcript;

(2) rental costs, if any, of the place where the hearing is held; and

(3) costs of publication of orders made by the commissioner.

History: *1990 c 391 art 7 s 36; 2007 c 131 art 1 s 58; 2011 c 107 s 76*

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103G.315 DENIAL AND ISSUANCE OF PERMITS.

Subdivision 1. **Commissioner's general authority.** The commissioner may deny issuing permits and issue permits with or without conditions.

Subd. 2. **Findings of fact.** The commissioner shall make findings of fact on issues necessary for determination of the applications considered. Orders made by the commissioner must be based upon findings of fact made on substantial evidence. The commissioner may have investigations made. The facts disclosed by investigation must be put in evidence at the hearing.

Subd. 3. **Issuance of permit.** If the commissioner concludes that the plans of the applicant are reasonable, practical, and will adequately protect public safety and promote the public welfare, the commissioner shall grant the permit.

Subd. 4. **Control levels.** If they are in issue, the commissioner shall also fix the control levels of public waters accordingly.

Subd. 5. **Denial; modifications.** Otherwise the commissioner shall reject the application or may require modification of the plan as the commissioner finds proper to protect the public interest.

Subd. 6. **Burden of proof; conditions.** (a) In permit applications, the applicant has the burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare.

(b) In granting a permit, the commissioner may include in it terms and reservations about the amount and manner of the use or appropriation or method of construction or operation of controls as appear reasonably necessary for the safety and welfare of the people of the state.

Subd. 7. **Restoring effects of unlawful activities.** (a) The commissioner may include in an order issuing or denying a permit a requirement for the applicant to take an action necessary to restore the public waters or their beds to the condition existing before unlawful activities, if any, were undertaken by the applicant. The restoration may include filling beds unlawfully dredged, removing fill unlawfully placed, or restoring water unlawfully appropriated.

(b) If a hearing on the application was not held, the applicant may contest the order within 30 days of receiving it and must be given a contested case hearing as prescribed by chapter 14.

Subd. 8. **Notice of permit order.** Notice of orders made after hearing must be given by publication of the order once a week for two successive weeks in a legal newspaper in the county where the hearing was held and by mailing copies of the order to parties who entered an appearance at the hearing.

Subd. 9. **Time for issuance of order.** The commissioner shall make an order within 60 days after the completion of the hearing.

Subd. 10. **Charges for excavation of minerals.** The commissioner must impose charges for the excavation of minerals from the beds of public waters, as provided in chapter 93.

Subd. 11. **Limitations on permits.** (a) Except as otherwise expressly provided by law, a permit issued by the commissioner under this chapter is subject to:

(1) cancellation by the commissioner at any time if necessary to protect the public interests;

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(2) further conditions on the term of the permit or its cancellation as the commissioner may prescribe and amend and reissue the permit; and

(3) applicable law existing before or after the issuance of the permit.

(b) Permits issued to irrigate agricultural land are subject to this subdivision and are subject to cancellation by the commissioner upon the recommendation of the supervisors of the soil and water conservation district where the land to be irrigated is located.

Subd. 12. **Permit not issued until fees are paid.** Except for field inspection fees related to monitoring, the commissioner may not issue a permit until all fees required by section 103G.301 relating to the issuance of a permit have been paid. The time limits prescribed by section 103G.305, subdivision 1, do not apply to an application for which the appropriate fee has not been paid. Field inspection fees relating to monitoring of an activity authorized by a permit may be charged and collected as necessary at any time after the issuance of the permit.

Subd. 13. **Period for activities under permit.** (a) The commissioner shall set the time period within which:

(1) construction authorized in the permit must be completed; or

(2) an appropriation or use of water must be made.

(b) The time must not exceed five years from the date of the permit.

(c) The time period may be extended by the commissioner after application and for good cause demonstrated by the permittee.

Subd. 14. **Irrevocability of certain permits related to mining.** (a) Permits granted in connection with the mining, transporting, concentration, or shipment of taconite as defined in section 93.20, subdivision 18, and permits granted in connection with the mining, production, or beneficiation of copper, copper-nickel, or nickel, are irrevocable for the term of the permits without the consent of the permittee, except for breach or nonperformance of any condition of the permit by the permittee.

(b) The commissioner may allow and prescribe in the permit any time the commissioner considers reasonable, notwithstanding the limitations under subdivision 13, limitations of time contained in this section for beginning or completing construction or operations under the permit, or exercising the rights granted under the permit.

(c) The commissioner may extend the time, for cause shown, upon the application of the permittee.

Subd. 15. **Rules for issuance and denial of permits.** The commissioner shall adopt rules prescribing standards and criteria for issuing and denying water use permits and public waters work permits.

History: *1990 c 391 art 7 s 37; 1995 c 218 s 14,15; 2010 c 361 art 4 s 58*

WATER LEVEL ESTABLISHMENT AND CONTROL

103G.401 APPLICATION FOR ESTABLISHMENT OF LAKE LEVELS.

(a) Applications for authority to establish and maintain levels of public waters and applications to establish the natural ordinary high water level of public waters may be made to the commissioner by a public body or authority or by a majority of the riparian owners on the public waters.

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(b) To conserve or utilize the water resources of the state, the commissioner may initiate proceedings to establish and maintain the level of public waters.

History: *1990 c 391 art 7 s 38*

103G.405 WATER LEVEL CONTROL FOR LANDLOCKED LAKES.

(a) Except as provided in paragraph (c), the commissioner must issue a water level control permit to establish a control elevation for a landlocked lake below the ordinary high water level for the lake if:

(1) the commissioner finds that:

(i) the control is necessary to prevent adverse impacts to the lake or adjoining property;

(ii) other reasonable or cost-effective alternatives are not available; and

(iii) natural resource or hydrologic conditions exist in the watershed that would limit the potential for continuous discharge of excess waters from the lake; and

(2) the outlet and discharge of excess waters is addressed in an approved water management plan under chapter 103B or 103D.

(b) In addition to the requirements in section 103G.301, subdivision 6, if the proposed control elevation is more than 1-1/2 feet below the ordinary high water level, the permit applicant shall serve a copy of the application on each county and municipality within which any portion of the lake is located and the lake improvement district, if one exists.

(c) The commissioner may not issue a permit to establish a control elevation more than 1-1/2 feet below the ordinary high water level of a lake if a county, municipality, watershed district, or lake improvement district required to be served under paragraph (b) or section 103G.301, subdivision 6, files a written objection to the issuance of the permit with the commissioner within 30 days after receiving a copy of the application.

History: *1990 c 391 art 7 s 39; 1996 c 407 s 45*

103G.407 WATER LEVEL CONTROLS FOR PUBLIC WATERS WITH AN OUTLET.

(a) The commissioner, upon due consideration of recommendations and objections as provided in paragraph (c), may issue a public waters work permit to establish a control elevation for a public water with an outlet that is different than any previously existing or established control level when:

(1) all of the property abutting the ordinary high-water mark of the public water is in public ownership or the public entity has obtained permanent flowage easements; and

(2) the commissioner finds that the proposed change in the control level is in the public interest and causes minimal adverse environmental impact.

(b) In addition to the requirements in section 103G.301, subdivision 6, if the proposed control elevation differs from any historical control level, the permit applicant shall serve a copy of the application on each county and municipality within which any portion of the lake is located and on the lake improvement district, if one exists.

(c) A county, municipality, watershed district, watershed management organization, or lake improvement district required to be served under paragraph (b) or section 103G.301, subdivision 6, may file

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a written recommendation for the issuance of the permit or an objection to the issuance of the permit with the commissioner within 30 days after receiving a copy of the application.

History: *2004 c 262 art 2 s 6*

103G.408 TEMPORARY DRAWDOWN OF PUBLIC WATERS.

(a) The commissioner, upon consideration of recommendations and objections as provided in clause (2), item (iii), and paragraph (c), may issue a public waters work permit for the temporary drawdown of a public water when:

(1) the public water is a shallow lake to be managed for fish, wildlife, or ecological purposes by the commissioner and the commissioner has conducted a public hearing presenting a comprehensive management plan outlining how and when temporary drawdowns under this section will be conducted; or

(2) the permit applicant is a public entity and:

(i) the commissioner deems the project to be beneficial and makes findings of fact that the drawdown is in the public interest;

(ii) the permit applicant has obtained permission from at least 75 percent of the riparian landowners; and

(iii) the permit applicant has conducted a public hearing according to paragraph (d).

(b) In addition to the requirements in section 103G.301, subdivision 6, the permit applicant shall serve a copy of the application on each county, municipality, and watershed management organization, if one exists, within which any portion of the public water is located and on the lake improvement district, if one exists.

(c) A county, municipality, watershed district, watershed management organization, or lake improvement district required to be served under paragraph (b) or section 103G.301, subdivision 6, may file a written recommendation for the issuance of a permit or an objection to the issuance of a permit with the commissioner within 30 days after receiving a copy of the application.

(d) The hearing notice for a public hearing under paragraph (a), clause (2), item (iii), must:

(1) include the date, place, and time for the hearing;

(2) include the waters affected and a description of the proposed project;

(3) be mailed to the director, the county auditor, the clerk or mayor of a municipality, the lake improvement district if one exists, the watershed district or water management organization, the soil and water conservation district, and all riparian owners of record affected by the application; and

(4) be published in a newspaper of general circulation in the affected area.

(e) Periodic temporary drawdowns conducted under paragraph (a) shall not be considered takings from riparian landowners.

(f) This section does not apply to public waters that have been designated for wildlife management under section 97A.101.

History: *2009 c 48 s 1; 2012 c 277 art 1 s 80*

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103G.411 STIPULATION OF LOW-WATER MARK.

If the state is a party in a civil action relating to the navigability or ownership of the bed of a body of water, river, or stream, the commissioner, in behalf of the state, with the approval of the attorney general, may agree by written stipulation with a riparian owner who is a party to the action on the location of the ordinary low-water mark on the riparian land of the party. After the stipulation is executed by all parties, it must be presented to the judge of the district court where the action is pending for approval. If the stipulation is approved, the judge shall make and enter an order providing that the final judgment when entered shall conform to the location of the ordinary, low-water mark as provided for in the stipulation as it relates to the parties to the stipulation.

History: *1990 c 391 art 7 s 40*

103G.412 STREAM GAUGE DATA.

The commissioner of natural resources shall provide an easily accessible link to the Department of Natural Resources' and the Pollution Control Agency's cooperative stream gauging data, including lake level information for existing stations, including White Bear Lake and Turtle Lake, on the department's Web site.

History: *2014 c 312 art 14 s 9*

BIG STONE LAKE

103G.415 BIG STONE LAKE, SEASONAL WATER LEVEL.

Subdivision 1. **Desirable water level elevation determined.** The most desirable and beneficial level for the waters of Big Stone Lake from May 1 to October 1 is elevation 967, project datum, and the director of game and fish of South Dakota and the commissioner of natural resources of Minnesota shall maintain and operate the Big Stone control dam in conformance with this elevation.

Subd. 2. **Regulation at levels less than desirable elevation.** When the water elevation of Big Stone Lake is 967 or less, project datum:

(1) stop logs must be kept in place and maintained in the outlet dam of Big Stone Lake; and

(2) the outflow from the outlet dam must be regulated not to exceed 100 cubic feet per second.

History: *1990 c 391 art 7 s 41*

MISSISSIPPI HEADWATER LAKES

103G.421 CONTROL OF MISSISSIPPI HEADWATER LAKES.

Subdivision 1. **Reason for control.** The legislature finds that the regulation, control, and utilization of waters in the headwater lakes in the Mississippi River, including Leech Lake, Winnibigoshish Lake, Pokegama Lake, Pine River, the Whitefish chain, Sandy Lake, and Gull Lake are of tremendous economic importance and value to the state and the utility of these lakes in aid of navigation has been very greatly diminished since the time of the establishment of the reservoirs, and that the economic values in utilization of these waters for state purposes has increased tremendously. These factors require the assertion on the part of the state of Minnesota of its rights to utilization and control of these water areas.

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Subd. 2. **Joint federal-state control.** The commissioner shall enter into cooperative agreements with the United States of America acting through the Department of the Army for the joint control and regulation of the Mississippi headwater reservoirs to control the water elevations and the water discharges from the Mississippi headwaters lakes in the interests of the state, subject only to:

(1) a paramount need of waters from these sources in aid of substantial navigation requirements; and

(2) a substantial requirement of providing necessary flood control storage capacity as determined by the United States Department of the Army Corps of Engineers.

Subd. 3. **Plan for dam operation.** (a) The commissioner must develop a plan for the operation of the dams controlling each of the Mississippi headwater reservoirs that:

(1) establishes the water elevation on each of the Mississippi headwater lakes at the most desirable height and stabilizes the stages at that point, as practicable, during the recreational use season;

(2) considers reasonable fluctuations when desirable for the production of wild rice in the wild rice producing areas of Mississippi headwater lakes;

(3) considers the elevations most desirable for the production and maintenance of wildlife resources;

(4) considers the needs of water for recreation, agriculture, forestry, game and fish, industry, municipal water supply and sewage disposal, power generation, and other purposes in the Mississippi River headwaters and downstream;

(5) establishes stages at which the water will be maintained, as practicable, but recognizing the following minimum stages in reference to present zeros on the respective government gauges:

(i) Leech Lake 0.0;

(ii) Winnibigoshish Lake 6.0;

(iii) Pokegama Lake 6.0;

(iv) Sandy Lake 7.0;

(v) Pine River 9.0;

(vi) Gull Lake 5.0;

(6) prescribes maximum discharges when the elevations fall below the stages; and

(7) prescribes maximum elevations and amounts of discharge from each lake to stabilize and effectuate the desired stages and, as practicable, does not allow the elevation to exceed the following maximum lake stages:

(i) Leech Lake 3.5;

(ii) Winnibigoshish Lake 12.0;

(iii) Pokegama Lake 12.0;

(iv) Sandy Lake 11.0;

(v) Pine River 14.0;

(vi) Gull Lake ..... 7.0.

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(b) The plan developed by the commissioner must consider the following conditions:

(1) the necessity for changing discharges to meet emergencies resulting from unexpected or abnormal inflows;

(2) the possibility of overriding requirements of the federal government for substantial discharges to meet reasonable and substantial navigation requirements; and

(3) the overriding authority and needs as prescribed by the United States Department of the Army Corps of Engineers in discharging their functions of requiring additional storage capacity for flood control purposes.

Subd. 4. **Notice of plan.** Before the plan of operation for a headwater lake is effective, the commissioner must publish a notice of hearing on the plan of operation for two weeks in a newspaper in each county where the affected waters are located.

Subd. 5. **Hearing on plan.** (a) The hearing must be conducted by the commissioner or an appointed referee. The hearing will not be governed by legal rules of evidence, but the findings of fact and orders, to be made and formulated by the commissioner, must be predicated only on relevant, material, and competent evidence.

(b) Interested parties must have an opportunity to be heard, under oath, and are subject to cross-examination by adverse parties and by the attorney general or the attorney general's representative who shall represent the commissioner at the hearing.

(c) The findings of fact and orders incorporating the plan determined by the commissioner must be published for two weeks in the same manner as the notice of hearing.

Subd. 6. **Appeal.** A riparian owner or water user aggrieved by the commissioner's findings has the right to appeal by 30 days after completion of publication of the findings and order to the district court of a county where the regulated water is located. The appeal shall be determined by the court on the record made before the commissioner. Issues on the appeal are limited to the legal rights of the parties and whether the findings of the commissioner are reasonably supported by the evidence at the hearing.

Subd. 7. **Modifications.** (a) After a plan has been put into effect, the commissioner is authorized to modify the stages sought to be maintained by modifying the plan with respect to any of the lakes involved to the extent of one foot in elevation according to the zeros of the present government gauges without holding additional hearings, except a departure from the elevation target may not be made to reduce proposed stages below the minimums prescribed by subdivision 3, paragraph (a), clause (5), during the recreational season.

(b) A modification of the established plan that departs by more than one foot in elevation may be placed into effect only after a hearing is held in the same manner as the hearing establishing the plan as provided under subdivisions 4 and 5.

History: *1990 c 391 art 7 s 42*

DAM CONSTRUCTION AND MAINTENANCE

103G.501 CONSTRUCTION OF PRIVATE DAMS ON NONNAVIGABLE WATERS.

Subdivision 1. **Procedure to acquire flowage rights.** If a person desires to raise and extend or erect and maintain a dam on the person's property across a stream or other watercourse that is not navigable to create

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or improve a waterpower for milling or manufacturing purposes and property owned by other persons will be overflowed or otherwise damaged, the person desiring to erect or extend or raise the dam may acquire the right to do so by petitioning the court and having damages ascertained and paid as prescribed in chapter 117.

Subd. 2. **Dam may not damage previous waterpower.** A dam may not be erected, raised, or maintained under this section that damages a waterpower previously developed.

Subd. 3. **Project and repair completion times.** If the right to erect, raise, or extend a dam is acquired under subdivision 1, the project must be started within one year, completed, and the waterpower applied to the purpose stated in the petition within three years after the right to erect, raise, or extend the dam is acquired. If a dam or the machinery connected with the dam is destroyed, the rebuilding of the dam or machinery must be started and completed within the same periods after the destruction.

Subd. 4. **Forfeiture.** Failure to comply with subdivision 3 or failure to operate a mill or machinery for one consecutive year after it is erected forfeits the rights acquired under subdivision 1 unless the owner is an infant, or is otherwise legally disabled, in which case the periods under this section begin after the disability is removed.

History: *1990 c 391 art 7 s 43*

103G.505 DAM CONSTRUCTION AND MAINTENANCE BY STATE.

Subdivision 1. **Authorization.** The commissioner may construct, maintain, and operate dikes, dams, and other structures necessary to maintain uniform water levels established under this chapter to improve navigation, protect and improve domestic water supply, protect and preserve fish and other wildlife, protect the public interest in the shore and shorelines of public waters, and promote public health.

Subd. 2. **Authority to acquire land.** The commissioner may acquire lands or any necessary interest in lands by purchase, gift, or condemnation.

Subd. 3. **Operation of dams on state property.** Dams owned by the state or built on property owned or controlled by the state must be maintained under the direction of the commissioner and operated under the commissioner's direction and control.

Subd. 4. **Acceptance of local funding.** The commissioner may accept funds from local governmental and civic agencies or persons to acquire property for or to construct, maintain, or operate dams and control structures.

History: *1990 c 391 art 7 s 44*

103G.511 PUBLICLY OWNED DAM REPAIR.

Subdivision 1. **Authorization.** The commissioner may:

(1) repair or reconstruct state-owned dams;

(2) make engineering evaluations related to the repair or reconstruction of dams owned by political subdivisions; and

(3) grant aid to political subdivisions to repair or reconstruct dams owned by political subdivisions.

Subd. 2. **Engineering evaluations.** The engineering evaluations may include studies of the feasibility, practicality, and environmental effects of using dams for hydroelectric power generation.

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Subd. 3. **Funding.** (a) Except as provided in this section, a grant to a political subdivision may not exceed the amount contributed to the project by the political subdivision from local funds.

(b) Federal general revenue sharing money may be counted as local funds, but other federal grants or loans must be used to reduce equally the state share and the local share of project costs.

(c) A grant to study the feasibility, practicality, and environmental effects of using a dam for hydroelectric power generation may be for an amount up to 90 percent of the costs of the study.

Subd. 4. **Investigation.** The commissioner may repair or reconstruct a state-owned dam or make a grant to a political subdivision only after making an investigation of the dam.

Subd. 5. **Application.** A political subdivision desiring a grant for the repair or reconstruction of a dam may apply for the grant on forms supplied by the commissioner.

Subd. 6. **Determination of grant.** The commissioner shall consider all relevant factors in determining whether to repair or reconstruct a state-owned dam or to make a grant to a political subdivision including:

(1) the age and type of construction of the dam;

(2) the use of the dam for water supply, flood control, navigation, hydroelectric power generation, recreation, wildlife management, scenic value, or other purposes related to public health, safety, and welfare;

(3) the consequences of abandonment, removal, or alteration of the dam;

(4) prospective future uses of the dam; and

(5) the relative importance of the dam to the statewide water resource program.

Subd. 7. **Hearing.** The commissioner may hold a public hearing under section 103G.311 on the proposed repair or reconstruction after giving notice. If the hearing is held at the request of a political subdivision, the costs of publishing notice and of taking and preparing the stenographic record must be paid by the political subdivision.

Subd. 8. **Operation agreement.** To receive a grant, the political subdivision must enter into an agreement with the commissioner giving assurance that the government unit will operate and maintain the dam in a safe condition for the benefit of the public and must agree to other conditions the commissioner considers reasonable.

Subd. 9. **Limitations.** (a) If the cost of repair or reconstruction of a state-owned dam or a grant to a political subdivision is less than $250,000, the commissioner may direct that the state-owned dam be repaired or reconstructed or that a grant be made to repair or reconstruct a dam owned by a political subdivision.

(b) If the cost of repair or reconstruction of a state-owned claim or grant to a political subdivision is $250,000 or more, the commissioner may recommend the project to the legislature for its consideration and action, except in an emergency under paragraph (c).

(c) The commissioner, with the approval of the commissioner of management and budget after consulting with the legislative advisory commission, may direct that a state-owned dam be repaired or reconstructed or a grant be made to a political subdivision if the commissioner determines that an emergency exists and:

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(1) there is danger that life will be lost; or

(2) that substantial property losses will be suffered if action is not promptly taken.

Subd. 10. **Loans for local share of project costs.** (a) If the commissioner decides to recommend a dam repair or reconstruction grant for a political subdivision to the legislature, the commissioner must notify the political subdivision and the commissioner of management and budget of the decision. After being notified by the commissioner of natural resources, the political subdivision may apply to the commissioner of management and budget on forms supplied by the commissioner of management and budget for a loan up to 90 percent of the local share of the project costs.

(b) The loan is repayable over a period not longer than 20 years, with interest at a rate sufficient to cover the cost to the state of borrowing the money.

(c) A political subdivision receiving a dam safety loan must levy for the loan payment in the year the loan proceeds were received and each later year, until the loan is paid. The levy must be for:

(1) the amount of the annual loan payment; or

(2) the amount of the loan payment less the amount the political subdivision certifies is available from other sources for the loan payment.

(d) Upon approval of the project grant by the legislature, the commissioner of management and budget shall make the loan in an amount and on terms that are appropriate. Loans made under this subdivision do not require approval by the electors of the political subdivision as provided in section 475.58.

(e) Principal and interest payments received by the commissioner of management and budget in repayment of these loans are appropriated to the state bond fund.

Subd. 11. **Commissioner's order to repair or reconstruct a dam.** (a) If a political subdivision fails to comply with a commissioner's order to repair or remove a dam under section 103G.515, the commissioner may repair or remove the dam as provided in this subdivision.

(b) The commissioner must hold a hearing under section 103G.311 on the failure of the political subdivision to repair or remove the dam. After the hearing, the commissioner must make findings specifying the failure of the political subdivision to act and shall, by order, assume the powers of the legislative authority of the political subdivision in regard to the repair or removal of dams.

(c) After issuing the order, the commissioner has the same powers, insofar as applicable to the repair or removal of dams, as the commissioners of administration and the Pollution Control Agency have in the construction, installation, maintenance, or operation of a municipal disposal system, or part of a system, or issuing bonds and levying taxes under section 115.48.

Subd. 12. **Priority list of dams needing repair.** After reviewing examinations of dams owned by the state and political subdivisions, the commissioner shall prioritize the state and political subdivision dams in need of repair, reconstruction, or removal and report by June 1 of each odd-numbered year to the legislature. The commissioner must prioritize projects considering danger to life, damage to property, and the factors listed in subdivision 6.

History: *1990 c 391 art 7 s 45; 1994 c 643 s 50; 1995 c 218 s 16; 2009 c 101 art 2 s 109*

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103G.515 EXAMINATION AND REPAIR OF DAMS AND RESERVOIRS.

Subdivision 1. **Examination of structure.** The commissioner may examine a reservoir, dam, control structure, or waterway obstruction after receiving a complaint or determining an examination is needed. The commissioner, or an authorized agent, must be granted access at any reasonable time to examine the reservoir, dam, control structure, or waterway obstruction.

Subd. 2. **Additional engineering investigations.** (a) After making an examination, if the commissioner determines that additional engineering investigations are necessary to determine the safety of a dam, reservoir, control structure, or waterway obstruction and the nature and extent of the necessary repairs or alterations, the commissioner must notify the owner to have investigations made at the owner's expense.

(b) The result of the investigation must be filed with the commissioner for use in determining the condition of the structures and the need for their repair, alteration, or removal.

Subd. 3. **Repair, alteration, or removal required.** (a) If the commissioner determines that the reservoir, dam, control structure, or waterway obstruction is unsafe or needs repair or alteration, the commissioner shall notify the owner of the structure with an order to repair, alter, or remove the structure. The order must be issued in the same manner as if the owner had applied for a permit for the repairs, alterations, or removal.

(b) The engineering investigations or the work of repair, alteration, or removal must begin and be completed within a reasonable time prescribed by the commissioner.

Subd. 4. **Dam inspection fee.** (a) The commissioner shall adopt rules which must include a fee schedule to cover the cost of dam inspection and must classify structures to adequately define risks and hazards involved in relation to public health, safety, and welfare.

(b) The rules may not impose a field inspection fee on any state agency, political subdivision of the state, or federal governmental agency.

Subd. 5. **Removal of hazardous dams.** Notwithstanding any provision of this section or of section 103G.511 relating to cost sharing or apportionment, the commissioner, within the limits of legislative appropriation, may assume or pay the entire cost of removal of a privately or publicly owned dam upon determining removal provides the lowest cost solution and:

(1) that continued existence of the structure presents a significant public safety hazard, or prevents restoration of an important fisheries resource; or

(2) that public or private property is being damaged due to partial failure of the structure.

History: *1990 c 391 art 7 s 46; 1995 c 218 s 17; 2010 c 361 art 4 s 59*

103G.521 TRANSFER OF AUTHORITY OVER STATE DAMS.

Subdivision 1. **Application for transfer.** (a) Upon application by resolution of the governing body of a political subdivision authorized to maintain and operate dams or other control structures affecting public waters, the commissioner, with the approval of the Executive Council, may transfer to the political subdivision the custody of a dam or other control structures owned by the state and under the supervision or control of the commissioner if the commissioner determines that the transfer will promote the best interests

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of the public. The transfer must be made by order of the commissioner on the terms and conditions the commissioner sets for maintenance and operation of the project.

(b) In connection with the transfer, the commissioner may convey land, easements, or other state property pertaining to the project to the transferee by deed or another appropriate instrument in the name of the state, subject to conditions and reservations prescribed by the commissioner. A duplicate of each order, conveyance, or other instrument executed by the commissioner in connection with a transfer must be filed with the commissioner of management and budget.

Subd. 2. **Payment for transfer.** A transfer may be made with or without payment of money to the state, as agreed upon between the commissioner and the transferee. If a payment is received as part of the transfer, the amount must be deposited into the state treasury and credited to the general fund.

History: *1990 c 391 art 7 s 47; 1994 c 643 s 51; 2009 c 101 art 2 s 109*

103G.525 LIMITATIONS ON TRANSFERS OF OWNERSHIP OF DAMS.

The state, a state department or agency, a county, municipality, town, or other governmental entity may not purchase or accept as a gift a privately owned dam subject to permit requirements until:

(1) the commissioner has examined the dam;

(2) the commissioner has prepared a report of the examination;

(3) the report has been filed with the legislature; and

(4) the legislature has had an opportunity to consider the report and has not prohibited the purchase or gift during the legislative session in which the report is filed or, if the report is filed when the legislature is not in session, the legislature has not prohibited the gift or purchase at the next session.

History: *1990 c 391 art 7 s 48*

103G.531 DAM PERMIT EXCEPTIONS.

Subdivision 1. **Permit not required for original construction of structures before July 1, 1937.** This chapter does not authorize the commissioner to require a permit for the original construction of dams, reservoirs, or control works in existence on and before July 1, 1937.

Subd. 2. **Minor dam exclusion.** The commissioner shall adopt rules that exclude minor dams such as those less than six feet in height or that impound less than 50 acre-feet of water storage at maximum storage elevations from permit requirements. The rules do not apply to a barrier six feet or less in height, regardless of storage capacity, or to a barrier creating a storage capacity at maximum water storage elevation of 15 acre-feet or less, regardless of height.

History: *1990 c 391 art 7 s 49*

103G.535 HYDROPOWER GENERATION.

Subdivision 1. **Public purpose.** The legislature finds that:

(1) the public health, safety, and welfare of the state is also promoted by the use of state waters to produce hydroelectric or hydromechanical power in a manner consistent with laws relating to dam construction, reconstruction, repair, and maintenance; and

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(2) the leasing of existing dams and potential dam sites primarily for power generation is a valid public purpose.

Subd. 2. **Authority for lease of sites.** A political subdivision, or the commissioner with the approval of the state executive council for state-owned dams, may provide by a lease or development agreement for the development and operation of dams, dam sites, and hydroelectric or hydromechanical power generation plants by an individual, a corporation, an organization, or other legal entity on terms and conditions in subdivision 5.

Subd. 3. **Installations less than 15,000 kilowatts unused on January 1, 1984.** If an installation of 15,000 kilowatts or less at a dam site and reservoir was unused on January 1, 1984, in connection with the production of hydroelectric or hydromechanical power, the lease or development agreement negotiated by the political subdivision and the developer constitutes full payment by the lessee and may be in lieu of all real or personal property taxes that might otherwise be due to a political subdivision.

Subd. 4. **Municipality or town approval.** If the dam, dam site, or power generation plant is located in or contiguous to a municipality or town, other than the lessor political subdivision, the lease or agreement is not effective unless it is approved by the governing body of the municipality or town.

Subd. 5. **Contents of development agreement.** (a) An agreement for the development or redevelopment of a hydropower site must contain provisions to assure the maximum financial return to the political subdivision or the commissioner.

(b) An agreement may contain:

(1) the period of the development agreement up to 99 years, subject to negotiations between the parties, and conditions for extension, modification, or termination;

(2) provisions for a performance bond on the developer or certification that the equipment and its installation have a design life at least as long as the lease; and

(3) provisions to assure adequate maintenance and safety in impoundment structures and access to recreational sites.

History: *1990 c 391 art 7 s 50; 1994 c 643 s 52*

103G.541 MUNICIPAL DAMS ON RED RIVER OF THE NORTH.

Subdivision 1. **Authority to construct dam.** A municipality owning or permanently controlling property where a proposed dam is to be constructed may:

(1) construct a dam on the property and across that portion of the Red River of the North that forms a part of the boundary common to this state and the state of North Dakota to conserve water for municipal, commercial, and domestic use; and

(2) construct, in connection with the dam structures, fishways, raceways, sluiceways, and wasteways necessary or convenient for the proper construction and utility of the dam and as may be required by law.

Subd. 2. **Consent of the United States and North Dakota.** If required by law or treaty, the municipality must first obtain the consent of the United States and of the state of North Dakota for the construction.

History: *1990 c 391 art 7 s 51*

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103G.545 DAMS AND WATER LEVEL CONTROL IN COOK, LAKE, AND ST. LOUIS COUNTIES.

Subdivision 1. **Purpose.** The purpose of this section is to preserve shorelines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature.

Subd. 2. **Legislative approval required for control structures and water levels.** Except as provided in this section, specific authority must be given by law after consideration by the legislature with regard to control structures or water levels within or bordering on the area of Cook, Lake, and St. Louis Counties designated in the Act of Congress of July 10, 1930, United States Code, title 16, section 577, before:

(1) dams or additions to existing dams may be constructed in or across public waters;

(2) alteration of the natural water level or volume of flowage of public waters may be made; or

(3) an easement for flooding or overflowing or otherwise affecting state property adjacent to public waters may be granted.

Subd. 3. **Recreational and logging dams.** With the written approval of the commissioner and the signed authority of the Executive Council, dams for public recreational uses or dams essential for logging or for logging reservoirs that do not exceed 100 acres in size may be constructed to temporarily maintain water levels up to but not higher than the normal high-water marks. The approval is subject to fees recommended by the commissioner, time limitation, and other conditions designed fully to protect the public interest and purpose of this section.

Subd. 4. **Exception and requirement for certain waterpower sites.** (a) This section does not apply to the portion of a proposed development for waterpower purposes that was actually occupied and maintained by an applicant for a license to make the development under the terms of the federal waterpower act if the application for the license was pending on or before January 1, 1928.

(b) The occupant may occupy and use the state lands and waters occupied on January 1, 1928, and used up to an elevation not exceeding two feet above the lowest crest of the spillway or overflow dam of the occupant as constructed on January 1, 1928, for as long as the land and water is needed for waterpower purposes. Water control structures may not be used higher than the structures used before January 1, 1928.

(c) The occupant shall pay to the state annual compensation determined by the commissioner after investigation for the use of the state lands affected. The occupant must promptly pay the state reasonable compensation for any further damage to state lands or timber caused by waterpower development, other than is covered by the compensation paid for the use of the lands.

Subd. 5. **Penalty.** Any person who willfully or knowingly violates a provision of this section or of an order made by the commissioner under this section is guilty of a gross misdemeanor.

History: *1990 c 391 art 7 s 52; 1991 c 199 art 1 s 18*

103G.551 DAMS USED ONLY FOR WATER LEVEL REGULATION.

Subdivision 1. **Applicability.** This section and section 103G.555 apply to public waters if:

(1) a dam constructed or maintained in any manner has existed in the outlet of the lake affecting the water level of the lake for a continuous period of at least 15 years;

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(2) the lake has been used by the public for navigation, fishing, hunting, or other beneficial public purposes continuously throughout the 15-year period when allowed by natural conditions;

(3) the use of the dam for a purpose other than regulating, controlling, or maintaining the water level of the lake in aid of navigation, propagation of fish or waterfowl, or other beneficial public purposes has been discontinued;

(4) continued regulation, control, or maintenance of the water levels of the lake by the dam in the same manner as during the 15-year period would be desirable and in the public interests in navigation, propagation of fish or waterfowl, or other beneficial public uses of the lake; and

(5) discontinuance of regulation of water levels through deterioration or removal of the dam would be detrimental to public interests in navigation, propagation of fish and waterfowl, or other beneficial public uses.

Subd. 2. **Dedication of perpetual flowage easement.** (a) Owners of property and interests in property bordering on a lake or connecting waters affected by a dam are considered to have dedicated to the state for the use and benefit of the public a perpetual flowage easement on the property for all overflow and other effects of water on their property resulting from the existence, maintenance, or operation of the dam during the 15-year period.

(b) The perpetual flowage easement has the extent and effect as if the state had:

(1) owned and controlled the dam;

(2) regulated, controlled, and maintained the water levels of the lake and connecting waters affected by the dam for public use and benefit under the conditions existing during the 15-year period; and

(3) acquired the flowage easement by prescription.

Subd. 3. **Conveyance of flowage easement to commissioner authorized.** The commissioner may accept a conveyance or release of a property or an interest in property that grants the state a flowage easement on the property for overflow or other effects of water resulting from the existence, maintenance, or operation of a dam, or reconstruction or improvement of a dam, or construction of a dam in the outlet of a lake to regulate, control, or maintain the water level of the lake in aid of navigation, propagation of fish or waterfowl, or other beneficial public purposes.

Subd. 4. **Determination of easement rights.** (a) An action may be brought in the name of the state in the district court of the county where affected property is located to determine:

(1) the extent and effect of a flowage easement obtained by the state;

(2) the title and rights of the state under the flowage easement;

(3) adverse claims to the flowage easement; and

(4) the rights of all parties interested in or affected by the flowage easement.

(b) The action may be brought by the attorney general upon the attorney general's own initiative or on request of the commissioner. On request of the attorney general, the county attorney of the county where the property affected by the flowage easement is located shall assist in bringing the action.

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(c) Part or all of the property affected by the flowage easement that is bordering on one lake and the connecting waters of the lake and located in one county may be included in one action. The parties interested in the affected property may be joined as defendants in the action.

(d) Except as otherwise provided in this section and section 103G.555, the law relating to actions for the determination of title to real estate in the district court governs the action.

(e) The cost of the action may be paid from money appropriated for the maintenance, operation, and control of the dam involved, or may be paid by the county where the lake and connecting waters are located.

Subd. 5. **Higher ordinary high water levels.** (a) If the water levels maintained by a dam that has existed as provided in subdivision 1 have established an ordinary high water level above the natural ordinary high water level, the ordinary high water level reestablishes the natural ordinary high water level of the waters. Property owners and the owners of an interest in property affected by the reestablished natural ordinary high water level are presumed to have consented to the reestablished natural ordinary high water level and to have dedicated their property to the state for the use and benefit of the public.

(b) The commissioner may determine the reestablished natural ordinary high water level in the same manner as provided by law for the determination of natural ordinary high water levels. The determination is prima facie evidence of the level and has the same effect as a determination of natural ordinary high water level by the commissioner.

Subd. 6. **Easements, appurtenant to dam.** A flowage easement obtained by the state under this section attaches and is appurtenant to a dam that is acquired or taken over and maintained or controlled in aid of public navigation, propagation of fish or waterfowl, or other beneficial public purposes by the commissioner or another agency of the state, a county, a political subdivision, or a combination authorized by law. The flowage easement attaches and is appurtenant to the reconstruction or improvement of the dam and to a new dam constructed in the outlet of the lake that is taken over and maintained or controlled by the commissioner, a state agency, a county, a political subdivision, or a combination authorized by law.

Subd. 7. **State control of abandoned dams.** (a) If a dam not owned or controlled by the state or a public agency is not used or maintained by or under the authority of the owner of the dam for a lawful purpose for a continuous period of at least 15 years, the dam and the dam site are presumed to be abandoned by the owner and dedicated to the state with flowage easements appurtenant for the use and benefit of the public. The commissioner:

(1) shall take possession of the dam and the dam site and the flowage easements on behalf of the state and use, maintain, operate, and control the dam, dam site, and flowage easements for public purposes; or

(2) may dispose of the dam, dam site, or flowage easements for public purposes as provided in paragraph (b) or as otherwise authorized by law.

(b) The commissioner may dispose of a dam, dam site, or flowage easement after:

(1) publishing notice of a hearing on disposing of the dam, dam site, or flowage easement in a legal newspaper in the county where the dam is situated;

(2) holding a hearing; and

(3) determining that it is not in the public interest for the state to use, maintain, operate, and control the dam.

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(c) The commissioner may construct other or additional control works to supplement or supplant the dam under other provisions of law.

(d) The title of the state to a dam, dam site, or flowage easement acquired under this subdivision may be established and determined by action in the district court as provided by law for actions for the determination of title to real estate.

(e) Before taking possession of an abandoned dam, dam site, or flowage easement, the commissioner must file a written certificate executed by the commissioner stating the dam is abandoned and is acquired by the state, in the office of the county recorder of the county where the dam is situated. The responsibility for a dam, dam site, or flowage easement is not on the state until the certificate is recorded or a judgment entered in an appropriate action establishing the state's title to the dam, dam site, and flowage easement. If a county or other political subdivision of the state or combination desires to take over an abandoned dam, dam site, and flowage easement and maintain, operate, control, or dispose of the dam, dam site, and flowage easement for public purposes, the commissioner may convey the dam, dam site, and flowage easement from the state to the county or other political subdivision or combination.

History: *1990 c 391 art 7 s 53*

103G.555 STATUTE OF LIMITATIONS FOR ACTIONS AGAINST PUBLIC OFFICIALS.

An action or proceeding against the state, the commissioner, a county, or political subdivision or their officers or agents, relating to the taking over, construction, reconstruction, repair, improvement, maintenance, operation, or control of a dam subject to section 103G.551 and this section or the effects of water levels regulated, controlled, or maintained by a dam is barred unless the action is started within one year after the taking over or after the completion of the construction, reconstruction, repair, or improvement.

History: *1990 c 391 art 7 s 54*

103G.561 STATUTE OF LIMITATIONS FOR ACTIONS ON FLOWAGE EASEMENTS AND ORDINARY HIGH WATER LEVELS.

An action or proceeding that affects or seeks to adversely affect a perpetual flowage easement dedicated to the state for the use and benefit of the public as provided in section 103G.551, subdivision 2, or the maintaining or the right to maintain a reestablished natural ordinary high water level above the natural ordinary high water level of waters for which the state holds a perpetual flowage easement is barred unless the action or proceeding is commenced within one year from the date of the order of the commissioner determining the ordinary high water level of the waters under section 103G.551, subdivision 5.

History: *1990 c 391 art 7 s 55*

FLOWAGE EASEMENTS

103G.565 RIGHT TO OVERFLOW, OBSTRUCT, OR IMPAIR HIGHWAYS GRANTED BY GOVERNING BODY.

Subdivision 1. **Authority.** The governing body of a town or municipality may allow the overflow, obstruction, or impairment of a public street or other highway, or the digging of a raceway in a public street or highway if it is necessary for creating, improving, or operating a waterpower.

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Subd. 2. **Procedure.** (a) The waterpower must petition the governing body of the town or municipality where the street or highway is located for approval.

(b) The governing body of the town or municipality must post notice of the time, location, and purpose of the meeting on the petition for ten days. At the meeting, testimony may be taken. The governing body must make an order specifying the terms and conditions of the approval.

(c) The expenses of the meeting must be paid by the petitioner, whether the petition is granted or refused.

History: *1990 c 391 art 7 s 56*

103G.571 BANK REPAIR ON PROPERTY WHERE OVERFLOW RIGHTS ARE ACQUIRED.

Subdivision 1. **Right to repair.** If the right to overflow the property of another by means of a dam is acquired by condemnation or contract and afterwards the waters of the stream are diverted because the banks of the property overflowed break away, the owner of the dam may enter the property of the person where the right to overflow is acquired and repair the banks to restore the previous flow of the stream.

Subd. 2. **Damages of entry and repair.** The damages caused by entry and repair under subdivision 1 must be paid by the owner of the dam.

History: *1990 c 391 art 7 s 57*

103G.575 GRANT OF FLOWAGE EASEMENTS IN UPPER RED LAKE REGION.

The commissioner, on behalf of the state and with the approval of the governor, may grant flowage easements on state-owned land or tax-forfeited land in the region of Upper Red Lake upon the terms and conditions prescribed by the commissioner.

History: *1990 c 391 art 7 s 58*

WATER AERATION AND DEICING

103G.601 ICE-CUTTING FENCES AND GUARDS.

Subdivision 1. **Fence and guard requirement.** A person cutting ice in or on waters entirely or partly in the state to remove ice must surround the cuttings and openings with fences or guards sufficient to warn persons of the cutting before the cutting is started. The fence or guard must be maintained until the ice has formed in the openings to the thickness of at least six inches.

Subd. 2. **Penalty.** A person who fails to comply with this section is guilty of a misdemeanor.

History: *1990 c 391 art 7 s 59*

103G.605 DEICING WATER BODIES.

A county board, lake improvement district, or governing body of a municipality under section 459.20 may regulate the construction and use of mechanical and chemical means of deicing the body of water in a manner consistent with rules of the commissioner.

History: *1990 c 391 art 7 s 60*

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103G.611 WATER AERATION SAFETY.

Subdivision 1. **Requirements.** (a) The fee for a permit to operate an aeration system on public waters during periods of ice cover is $250. The commissioner may waive the fee for aeration systems that are assisting efforts to maintain angling opportunities through the prevention of winterkill. To be eligible for the fee waiver, the lake being aerated must have public access and aeration must be identified as a desirable management tool in a plan approved by the commissioner. Operation of the aeration system in a manner not consistent with the approved plan represents justification for rescinding the fee waiver. The fee may not be charged to the state or a federal governmental agency applying for a permit. The money received for permits under this subdivision must be deposited in the treasury and credited to the game and fish fund.

(b) A person operating an aeration system on public waters under a water aeration permit must comply with the sign posting requirements of this section and applicable rules of the commissioner.

Subd. 1a. **General permits.** The commissioner may issue a general permit to a governmental subdivision or to the general public to conduct one or more projects described in subdivision 1. A fee of $100 may be charged for each aeration system used under a general permit.

Subd. 2. **Posting.** (a) If an aeration system is used on the ice of public waters, signs must be posted by the water aeration permittee at a height of from four to six feet in a rectangular pattern at each corner of the open water, and additional signs between the corner signs so that a sign is posted at least every 100 feet.

(b) Additional signs must be posted by the permittee on the shoreline of the public waters at each public access point and other areas commonly used by the public for access to the lake.

(c) The signs must comply with the applicable rules of the commissioner.

Subd. 3. **Publication of notice.** Advance public notice of the commencement of any aeration system, authorized by a water aeration permit from the commissioner during periods of ice cover on public waters, must be given by the permittee. Minimum notice consists of publication of the location and date of commencement of the aeration system in a newspaper of general circulation in the area where the system is proposed to be operated at least two times between five and 60 days before aeration is started.

Subd. 4. **Evidence.** In an action for negligence arising out of the conduct of aeration operations authorized by a water aeration permit from the commissioner during periods of ice cover on public waters, evidence of compliance with the posting and publication requirements of this section and applicable rules and permit provisions of the commissioner are prima facie evidence of the exercise of due care by the permittee.

Subd. 5. **Water aeration rules.** The commissioner shall adopt rules relating to the issuance of permits for aeration, bubbler, water circulation, and similar systems used to increase dissolved oxygen or to maintain open water on the surface of public waters.

Subd. 6. [Repealed, 2006 c 281 art 1 s 24]

Subd. 7. **Public waters without access.** A person who receives a permit to operate an aeration system on a public water without a public access and who owns all of the riparian land or all of the possessory rights to the riparian land around that water is not subject to the provisions of subdivisions 2, paragraph (b), and 3.

History: *1990 c 391 art 7 s 61; 1995 c 218 s 18; 2003 c 128 art 1 s 118; 2006 c 281 art 1 s 22; 2012 c 272 s 56*

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HARVEST AND CONTROL OF AQUATIC PLANTS

103G.615 PERMITS TO HARVEST OR DESTROY AQUATIC PLANTS.

Subdivision 1. **Issuance; validity.** (a) The commissioner may issue a state general permit to a governmental subdivision or to the general public to conduct one or more projects described in this subdivision. The commissioner may issue permits, with or without a fee, to:

(1) gather or harvest aquatic plants, or plant parts, other than wild rice from public waters;

(2) transplant aquatic plants into public waters;

(3) destroy harmful or undesirable aquatic vegetation or organisms in public waters under prescribed conditions to protect the waters, desirable species of fish, vegetation, other forms of aquatic life, and the public.

(b) Application for a permit and a notification to request authorization to conduct a project under a general permit must be accompanied by a fee, if required.

(c) An aquatic plant management permit is valid for one growing season and expires on December 31 of the year it is issued unless the commissioner stipulates a different expiration date in rule or in the permit.

(d) A general permit may authorize a project for more than one growing season.

Subd. 2. **Fees.** (a) The commissioner shall establish a fee schedule for permits to control or harvest aquatic plants other than wild rice. The fees must be set by rule, and section 16A.1283 does not apply, but the rule must not take effect until 45 legislative days after it has been reported to the legislature. The fees shall not exceed $2,500 per permit and shall be based upon the cost of receiving, processing, analyzing, and issuing the permit, and additional costs incurred after the application to inspect and monitor the activities authorized by the permit, and enforce aquatic plant management rules and permit requirements.

(b) A fee for a permit for the control of rooted aquatic vegetation for each contiguous parcel of shoreline owned by an owner may be charged. This fee may not be charged for permits issued in connection with purple loosestrife control or lakewide Eurasian water milfoil control programs.

(c) A fee may not be charged to the state or a federal governmental agency applying for a permit.

(d) A fee for a permit for the control of rooted aquatic vegetation in a public water basin that is 20 acres or less in size shall be one-half of the fee established under paragraph (a).

(e) The money received for the permits under this subdivision shall be deposited in the treasury and credited to the water recreation account.

(f) The fee for processing a notification to request authorization for work under a general permit is $30, until the commissioner establishes a fee by rule as provided under this subdivision.

Subd. 3. **Permit standards.** The commissioner shall, by rule, prescribe standards to issue and deny permits under this section. The standards must ensure that aquatic plant control is consistent with shoreland conservation ordinances, lake management plans and programs, and wild and scenic river plans.

Subd. 3a. **Invasive aquatic plant management permit.** (a) "Invasive aquatic plant management permit" means an aquatic plant management permit as defined in rules of the Department of Natural

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Resources that authorizes the selective control of invasive aquatic plants to cause a significant reduction in the abundance of the invasive aquatic plant.

(b) The commissioner may waive the dated signature of approval requirement in rules of the Department of Natural Resources for invasive aquatic plant management permits if obtaining signatures would create an undue burden on the permittee or if the commissioner determines that aquatic plant control is necessary to protect natural resources.

(c) If the signature requirement is waived under paragraph (b) because obtaining signatures would create an undue burden on the permittee, the commissioner shall require an alternate form of landowner notification, including news releases or public notices in a local newspaper, a public meeting, or a mailing to the most recent permanent address of affected landowners. The notification must be given annually and must include: the proposed date of treatment, the target species, the method of control or product being used, and instructions on how the landowner may request that control not occur adjacent to the landowner's property.

(d) The commissioner may allow dated signatures of approval obtained for an invasive aquatic plant management permit to satisfy rules of the Department of Natural Resources to remain valid for three years if property ownership remains unchanged.

Subd. 4. **Enforcement authority and restoration requirements.** (a) The commissioner may make findings and issue an order to a person to stop the illegal gathering, harvesting, planting or transplanting, or destroying of aquatic vegetation or organisms in public waters.

(b) In the same or a separate findings and order, the commissioner may require restoration or replacement of any emergent or floating leaf aquatic vegetation lost as a result of the illegal activities, to the condition existing before the illegal activities were undertaken. An order for restoration or replacement must state with specificity the work that is necessary to comply with the order and must specify a date by which the work must be completed.

(c) The person or entity to whom the order is issued may request a review of the order by the commissioner within 30 days of receipt of written notice by filing a written request for review. If the written request is not submitted within 30 days, the restoration or replacement order becomes final. The commissioner shall review the request and supporting evidence and render a decision within 60 days of the request for review.

(d) If the person or entity wishes to appeal the decision of the commissioner after review under paragraph (c), a written request must be filed with the commissioner within 30 days for a contested case hearing under chapter 14. A bond, as provided in subdivision 5, must accompany the demand for a hearing. The bond and demand for hearing must be filed 30 days after the person is served with a copy of the decision of the commissioner on review.

(e) If the person or entity to whom the decision of the commissioner on review is addressed does not demand a contested case hearing under chapter 14 or demands a hearing but fails to file the required bond:

(1) the commissioner's order becomes final at the end of 30 days after the person is served with the decision of the commissioner on review; and

(2) the person may not appeal the order.

Subd. 5. **Bond for demanding public hearing.** (a) A person or entity filing a demand for a public hearing, under subdivision 4, must execute and file a corporate surety bond or equivalent security to the

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state of Minnesota, to be approved by the commissioner and in an amount and form determined by the commissioner. The bond or security must be conditioned to pay the costs of the hearing to the extent described in subdivision 6 if the commissioner's findings and order are affirmed without material modification.

(b) A bond or security is not required of a public authority that demands a public hearing.

(c) The commissioner may waive the requirement for a bond or other security.

Subd. 6. **Hearing costs.** (a) Except as provided in paragraph (b), the costs of a hearing must be paid as prescribed by chapter 14 and the chief administrative law judge.

(b) If the commissioner's order is affirmed without material modification, the appellant must pay the following costs, up to $750:

(1) costs of the stenographic record and transcript; and

(2) rental costs, if any, of the place where the hearing is held.

Subd. 7. **Misdemeanor.** A violation of an order issued under this section is a misdemeanor.

History: *1990 c 391 art 7 s 62; 1992 c 462 s 18; 1993 c 235 s 4; 2002 c 351 s 25-28; 2003 c 128 art 1 s 119; 2004 c 255 s 42; 1Sp2005 c 1 art 2 s 123; 2008 c 363 art 5 s 22; 2010 c 361 art 4 s 60; 2011 c 107 s 77,78; 1Sp2011 c 2 art 4 s 16; 2012 c 272 s 57,58; 2014 c 289 s 58*

103G.617 [Repealed, 1996 c 385 art 2 s 8]

103G.621 COUNTY WEED AND ALGAE DESTRUCTION AND REMOVAL.

A county board, lake improvement district, or governing body of a municipality under section 459.20 may regulate the mechanical and chemical means of removal of weeds and algae from the body of water in a manner consistent with the rules of the commissioner.

History: *1990 c 391 art 7 s 64*

103G.625 MUNICIPAL CONTROL OF AQUATIC VEGETATION AND ORGANISMS.

Subdivision 1. **Authority.** The governing body of a municipality or town may expend funds for the control or destruction of harmful or undesirable aquatic vegetation or organisms in public waters and may cooperate with other governing bodies and landowners in the control or destruction.

Subd. 2. **Permit required.** The control or destruction of the aquatic vegetation or organisms may not be started unless a permit has been obtained from the commissioner under section 103G.615 and the work is done in accordance with the terms and conditions of the permit.

Subd. 3. **Funding.** (a) The governing body of a municipality or town may use any available funds and may levy a tax on all taxable property in the municipality or town to implement this section.

(b) To provide funds in advance of collection of the tax levies, the governing body may, at any time after the tax has been levied and certified to the county auditor for collection, issue certificates of indebtedness in anticipation of the collection and payment of the tax. The total amount of the certificates, including principal and interest, may not exceed 90 percent of the amount of the levy and must become payable from

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the proceeds of the levy not later than two years from the date of issuance. The certificates shall be issued on terms and conditions as the governing body may determine and sold as provided in section 475.60.

(c) If the governing body determines that an emergency exists, it may make appropriations from the proceeds of the certificates for authorized purposes without complying with statutory or charter provisions requiring that expenditures be based on a prior budget authorization or other budgeting requirement.

(d) The proceeds of a tax levied or an issue of certificates of indebtedness must be deposited in a separate fund and expended only for purposes authorized by this section. If a disbursement is not made from the fund for a period of five years, money remaining in the fund may be transferred to the general fund.

History: *1990 c 391 art 7 s 65; 1994 c 505 art 3 s 3*

SUNKEN LOG RECOVERY

103G.650 [Repealed, 2010 c 361 art 4 s 83]

103G.651 REMOVING SUNKEN LOGS FROM PUBLIC WATERS.

The commissioner of natural resources must not issue leases to remove sunken logs or issue permits for the removal of sunken logs from public waters.

History: *2010 c 361 art 4 s 61*

STREAMS

103G.701 STREAM MAINTENANCE PROGRAM.

Subdivision 1. **Establishment.** The commissioner shall establish a stream maintenance program. The program must include grants-in-aid to participating counties.

Subd. 2. **Application.** A county desiring to participate in the stream maintenance program must submit an application for the proposed work to the commissioner on forms provided by the commissioner. Unless waived by the commissioner, the county must submit the following information with its application:

(1) a map of the county showing the stream and the specific reaches of the stream to be maintained;

(2) photographs showing the nature and extent of the maintenance problem; and

(3) a resolution by the county board of commissioners asking to participate in the program and agreeing to provide at least 25 percent of the cost of the maintenance project.

Subd. 3. **Contract.** After approving a stream maintenance project, the commissioner shall contract with the county for performance of work necessary to do the project. The contract may provide that the county share of the cost of the project is paid in the form of services provided by the county.

Subd. 4. **Eligible projects.** The commissioner may grant money for:

(1) cutting and removal of brush and dead or downed trees; and

(2) removal of large rocks and other debris such as concrete, asphalt, or scrap material.

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Subd. 5. **Grants.** (a) The commissioner must apportion grant money according to the relative severity of the maintenance problem, the date of application for the grant, and the availability of funds.

(b) A grant may not exceed 75 percent of the total cost of a stream maintenance project.

(c) Money may not be disbursed for excavation, filling, or for work performed until an application for the project is filed with the commissioner.

(d) The stream maintenance work must be performed by the county or under county supervision.

Subd. 6. **County matching funds.** A county may appropriate from its general revenue fund sufficient funds to match the grants-in-aid authorized in this section.

History: *1990 c 391 art 7 s 66*

103G.705 Subdivision 1. [Repealed, 2012 c 272 s 98]

Subd. 2. [Repealed, 2010 c 215 art 3 s 8; 2012 c 272 s 98]

103G.711 STATE'S OWNERSHIP OF BED OF NAVIGABLE RIVER.

The ownership of the bed and the land under the waters of all rivers in the state that are navigable for commercial purposes are in the state in fee simple, subject only to the regulations made by the United States with regard to the public navigation and commerce and the lawful use by the public while on the waters.

History: *1990 c 391 art 7 s 67*

GREAT LAKES COMPACT

103G.801 GREAT LAKES -- ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT.

The Great Lakes -- St. Lawrence River Basin Water Resources Compact is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

ARTICLE 1

SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION

Section 1.1. Short title.

This act shall be known and may be cited as the "Great Lakes -- St. Lawrence River Basin Water Resources Compact."

Section 1.2. Definitions.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

"Adaptive management" means a water resources management system that provides a systematic process for evaluation, monitoring and learning from the outcomes of operational programs and adjustment of policies, plans and programs based on experience and the evolution of scientific knowledge concerning water resources and water dependent natural resources.

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"Agreement" means the Great Lakes -- St. Lawrence River Basin Sustainable Water Resources Agreement.

"Applicant" means a person who is required to submit a proposal that is subject to management and regulation under this compact. "Application" has a corresponding meaning.

"Basin" or "Great Lakes -- St. Lawrence River basin" means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec within the jurisdiction of the parties.

"Basin ecosystem" or "Great Lakes -- St. Lawrence River basin ecosystem" means the interacting components of air, land, water and living organisms, including humankind, within the basin.

"Community within a straddling county" means any incorporated city, town or the equivalent thereof, that is located outside the basin but wholly within a county that lies partly within the basin and that is not a straddling community.

"Compact" means this compact.

"Consumptive use" means that portion of the water withdrawn or withheld from the basin that is lost or otherwise not returned to the basin due to evaporation, incorporation into products, or other processes.

"Council" means the Great Lakes -- St. Lawrence River Basin Water Resources Council, created by this compact.

"Council review" means the collective review by the council members as described in Article 4 of this compact.

"County" means the largest territorial division for local government in a state. The county boundaries shall be defined as those boundaries that exist as of December 13, 2005.

"Cumulative impacts" mean the impact on the basin ecosystem that results from incremental effects of all aspects of a withdrawal, diversion or consumptive use in addition to other past, present, and reasonably foreseeable future withdrawals, diversions and consumptive uses regardless of who undertakes the other withdrawals, diversions and consumptive uses. Cumulative impacts can result from individually minor but collectively significant withdrawals, diversions and consumptive uses taking place over a period of time.

"Decision-making standard" means the decision-making standard established by Section 4.11 for proposals subject to management and regulation in Section 4.10.

"Diversion" means a transfer of water from the basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck or rail tanker but does not apply to water that is used in the basin or a Great Lake watershed to manufacture or produce a product that is then transferred out of the basin or watershed. "Divert" has a corresponding meaning.

"Environmentally sound and economically feasible water conservation measures" mean those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use or diversion that (i) are environmentally sound, (ii) reflect best practices applicable to the water use sector, (iii) are technically feasible and available, (iv) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and

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environmental costs and (v) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.

"Exception" means a transfer of water that is excepted under Section 4.9 from the prohibition against diversions in Section 4.8.

"Exception standard" means the standard for exceptions established in Section 4.9.4.

"Intra-basin transfer" means the transfer of water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

"Measures" means any legislation, law, regulation, directive, requirement, guideline, program, policy, administrative practice or other procedure.

"New or increased diversion" means a new diversion, an increase in an existing diversion, or the alteration of an existing withdrawal so that it becomes a diversion.

"New or increased withdrawal or consumptive use" means a new withdrawal or consumptive use or an increase in an existing withdrawal or consumptive use.

"Originating party" means the party within whose jurisdiction an application or registration is made or required.

"Party" means a state party to this compact.

"Person" means a human being or a legal person, including a government or a non-governmental organization, including any scientific, professional, business, non-profit, or public interest organization or association that is neither affiliated with, nor under the direction of a government.

"Product" means something produced in the basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial or other processes or intended for intermediate or end use consumers. (i) Water used as part of the packaging of a product shall be considered to be part of the product. (ii) Other than water used as part of the packaging of a product, water that is used primarily to transport materials in or out of the basin is not a product or part of a product. (iii) Except as provided in (i) above, water which is transferred as part of a public or private supply is not a product or part of a product. (iv) Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a product.

"Proposal" means a withdrawal, diversion or consumptive use of water that is subject to this compact.

"Province" means Ontario or Quebec.

"Public water supply purposes" means water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water withdrawn directly from the basin and not through such a system shall not be considered to be used for public water supply purposes.

"Regional body" means the members of the council and the premiers of Ontario and Quebec or their designee as established by the agreement.

"Regional review" means the collective review by the regional body as described in Article 4 of this compact.

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"Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the source watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was withdrawn.

"Standard of review and decision" means the exception standard, decision-making standard and reviews as outlined in Article 4 of this compact.

"State" means one of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio or Wisconsin or the Commonwealth of Pennsylvania.

"Straddling community" means any incorporated city, town or the equivalent thereof, wholly within any county that lies partly or completely within the basin, whose corporate boundary existing as of the effective date of this compact, is partly within the basin or partly within two Great Lakes watersheds.

"Technical review" means a detailed review conducted to determine whether or not a proposal that requires regional review under this compact meets the standard of review and decision following procedures and guidelines as set out in this compact.

"Water" means ground or surface water contained within the basin.

"Water dependent natural resources" means the interacting components of land, water and living organisms affected by the waters of the basin.

"Waters of the basin" or "basin water" means the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the basin.

"Withdrawal" means the taking of water from surface water or groundwater. "Withdraw" has a corresponding meaning.

Section 1.3. Findings and purposes.

The legislative bodies of the respective parties hereby find and declare:

1. Findings:

a. the waters of the basin are precious public natural resources shared and held in trust by the states;

b. the waters of the basin are interconnected and part of a single hydrologic system;

c. the waters of the basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;

d. future diversions and consumptive uses of basin water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes -- St. Lawrence River region;

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e. continued sustainable, accessible and adequate water supplies for the people and economy of the basin are of vital importance; and

f. the parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite waters of the basin for the use, benefit and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving and managing the basin waters is through the joint pursuit of unified and cooperative principles, policies and programs mutually agreed upon, enacted and adhered to by all parties.

2. Purposes:

a. to act together to protect, conserve, restore, improve and effectively manage the waters and water dependent natural resources of the basin under appropriate arrangements for intergovernmental cooperation and consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the basin ecosystem;

b. to remove causes of present and future controversies;

c. to provide for cooperative planning and action by the parties with respect to such water resources;

d. to facilitate consistent approaches to water management across the basin while retaining state management authority over water management decisions within the basin;

e. to facilitate the exchange of data, strengthen the scientific information base upon which decisions are made and engage in consultation on the potential effects of proposed withdrawals and losses on the waters and water dependent natural resources of the basin;

f. to prevent significant adverse impacts of withdrawals and losses on the basin's ecosystems and watersheds;

g. to promote interstate and state-provincial comity; and

h. to promote an adaptive management approach to the conservation and management of basin water resources, which recognizes, considers and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the basin's waters and water dependent natural resources.

Section 1.4. Science.

1. The parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound water management decision making under this compact.

2. The strategy shall guide the collection and application of scientific information to support:

a. an improved understanding of the individual and cumulative impacts of withdrawals from various locations and water sources on the basin ecosystem and to develop a mechanism by which impacts of withdrawals may be assessed;

b. the periodic assessment of cumulative impacts of withdrawals, diversions and consumptive uses on a Great Lake and St. Lawrence River watershed basis;

c. improved scientific understanding of the waters of the basin;

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d. improved understanding of the role of groundwater in basin water resources management; and

e. the development, transfer and application of science and research related to water conservation and water use efficiency.

ARTICLE 2

ORGANIZATION

Section 2.1. Council created.

The Great Lakes -- St. Lawrence River Basin Water Resources Council is hereby created as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective parties.

Section 2.2. Council membership.

The council shall consist of the governors of the parties, ex officio.

Section 2.3. Alternates.

Each member of the council shall appoint at least one alternate who may act in his or her place and stead, with authority to attend all meetings of the council and with power to vote in the absence of the member. Unless otherwise provided by law of the party for which he or she is appointed, each alternate shall serve during the term of the member appointing him or her, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

Section 2.4. Voting.

1. Each member is entitled to one vote on all matters that may come before the council.

2. Unless otherwise stated, the rule of decision shall be by a simple majority.

3. The council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the parties by unanimous vote of the council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective parties.

4. The participation of council members from a majority of the parties shall constitute a quorum for the transaction of business at any meeting of the council.

Section 2.5. Organization and procedure.

The council shall provide for its own organization and procedure, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review and consideration of proposals that come before the council for its review and action. The council shall organize, annually, by the election of a chair and vice chair from among its members. Each member may appoint an advisor, who may attend all meetings of the council and its committees, but shall not have voting power. The council may employ or appoint professional and administrative personnel, including an executive director, as it may deem advisable, to carry out the purposes of this compact.

Section 2.6. Use of existing offices and agencies.

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It is the policy of the parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent consistent with this compact. Further, the council shall promote and aid the coordination of the activities and programs of the parties concerned with water resources management in the basin. To this end, but without limitation, the council may:

1. advise, consult, contract, assist or otherwise cooperate with any and all such agencies;

2. employ any other agency or instrumentality of any of the parties for any purpose; and

3. develop and adopt plans consistent with the water resources plans of the parties.

Section 2.7. Jurisdiction.

The council shall have, exercise and discharge its functions, powers and duties within the limits of the basin. Outside the basin, it may act in its discretion, but only to the extent such action may be necessary or convenient to effectuate or implement its powers or responsibilities within the basin and subject to the consent of the jurisdiction wherein it proposes to act.

Section 2.8. Status, immunities and privileges.

1. The council, its members and personnel in their official capacity and when engaged directly in the affairs of the council, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by the parties, except to the extent that the council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

2. The property and assets of the council, wherever located and by whomsoever held, shall be considered public property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

3. The council, its property and its assets, income and the operations it carries out pursuant to this compact shall be immune from all taxation by or under the authority of any of the parties or any political subdivision thereof; provided, however, that in lieu of property taxes the council may make reasonable payments to local taxing districts in annual amounts which shall approximate the taxes lawfully assessed upon similar property.

Section 2.9. Advisory committees.

The council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, state, tribal, county and local governments, water resources agencies, water-using industries and sectors, water-interest groups and academic experts in related fields.

ARTICLE 3

GENERAL POWERS AND DUTIES

Section 3.1. General.

The waters and water dependent natural resources of the basin are subject to the sovereign right and responsibilities of the parties, and it is the purpose of this compact to provide for joint exercise of such powers of sovereignty by the council in the common interests of the people of the region, in the manner and to the extent provided in this compact. The council and the parties shall use the standard of review and

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decision and procedures contained in or adopted pursuant to this compact as the means to exercise their authority under this compact.

The council may revise the standard of review and decision, after consultation with the provinces and upon unanimous vote of all council members, by regulation duly adopted in accordance with Section 3.3 of this compact and in accordance with each party's respective statutory authorities and applicable procedures.

The council shall identify priorities and develop plans and policies relating to basin water resources. It shall adopt and promote uniform and coordinated policies for water resources conservation and management in the basin.

Section 3.2. Council powers.

The council may: plan; conduct research and collect, compile, analyze, interpret, report and disseminate data on water resources and uses; forecast water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell and convey real and personal property and any interest therein as it may deem necessary, useful or convenient to carry out the purposes of this compact; make contracts; receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any party or by any other public or private agency, corporation or individual; and, exercise such other and different powers as may be delegated to it by this compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

Section 3.3. Rules and regulations.

1. The council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this compact. The council may adopt by regulation, after public notice and public hearing, reasonable application fees with respect to those proposals for exceptions that are subject to council review under Section 4.9. Any rule or regulation of the council, other than one which deals solely with the internal management of the council or its property, shall be adopted only after public notice and hearing.

2. Each party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce this compact and the programs adopted by such party to carry out the management programs contemplated by this compact.

Section 3.4. Program review and findings.

1. Each party shall submit a report to the council and the regional body detailing its water management and conservation and efficiency programs that implement this compact. The report shall set out the manner in which water withdrawals are managed by sector, water source, quantity or any other means, and how the provisions of the standard of review and decision and conservation and efficiency programs are implemented. The first report shall be provided by each party one year from the effective date of this compact and thereafter every five years.

2. The council, in cooperation with the provinces, shall review its water management and conservation and efficiency programs and those of the parties that are established in this compact and make findings on whether the water management program provisions in this compact are being met, and if not, recommend options to assist the parties in meeting the provisions of this compact. Such review shall take place:

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a. 30 days after the first report is submitted by all parties; and

b. every five years after the effective date of this compact; and

c. at any other time at the request of one of the parties.

3. As one of its duties and responsibilities, the council may recommend a range of approaches to the parties with respect to the development, enhancement and application of water management and conservation and efficiency programs to implement the standard of review and decision reflecting improved scientific understanding of the waters of the basin, including groundwater, and the impacts of withdrawals on the basin ecosystem.

ARTICLE 4

WATER MANAGEMENT AND REGULATION

Section 4.1. Water resources inventory, registration and reporting.

1. Within five years of the effective date of this compact, each party shall develop and maintain a water resources inventory for the collection, interpretation, storage, retrieval exchange, and dissemination of information concerning the water resources of the party, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of withdrawals, diversions and consumptive uses. To the extent feasible, the water resources inventory shall be developed in cooperation with local, state, federal, tribal and other private agencies and entities, as well as the council. Each party's agencies shall cooperate with that party in the development and maintenance of the inventory.

2. The council shall assist each party to develop a common base of data regarding the management of the water resources of the basin and to establish systematic arrangements for the exchange of those data with other states and provinces.

3. To develop and maintain a compatible base of water use information, within five years of the effective date of this compact any person who withdraws water in an amount of 100,000 gallons per day or greater average in any 30-day period (including consumptive uses) from all sources, or diverts water of any amount, shall register the withdrawal or diversion by a date set by the council unless the person has previously registered in accordance with an existing state program. The person shall register the withdrawal or diversion with the originating party using a form prescribed by the originating party that shall include, at a minimum and without limitation: the name and address of the registrant and date of registration; the locations and sources of the withdrawal or diversion; the capacity of the withdrawal or diversion per day and the amount withdrawn or diverted from each source; the uses made of the water; places of use and places of discharge; and, such other information as the originating party may require. All registrations shall include an estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period.

4. All registrants shall annually report the monthly volumes of the withdrawal, consumptive use and diversion in gallons to the originating party and any other information requested by the originating party.

5. Each party shall annually report the information gathered pursuant to this section to a Great Lakes -- St. Lawrence River water use database repository and aggregated information shall be made publicly available, consistent with the confidentiality requirements in Section 8.3.

6. Information gathered by the parties pursuant to this section shall be used to improve the sources and applications of scientific information regarding the waters of the basin and the impacts of the withdrawals

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and diversions from various locations and water sources on the basin ecosystem, and to better understand the role of groundwater in the basin. The council and the parties shall coordinate the collection and application of scientific information to further develop a mechanism by which individual and cumulative impacts of withdrawals, consumptive uses and diversions shall be assessed.

Section 4.2. Water conservation and efficiency programs.

1. The council commits to identify, in cooperation with the provinces, basin-wide water conservation and efficiency objectives to assist the parties in developing their water conservation and efficiency program. These objectives are based on the goals of:

a. ensuring improvement of the waters and water dependent natural resources;

b. protecting and restoring the hydrologic and ecosystem integrity of the basin;

c. retaining the quantity of surface water and groundwater in the basin;

d. ensuring sustainable use of waters of the basin; and

e. promoting the efficiency of use and reducing losses and waste of water.

2. Within two years of the effective date of this compact, each party shall develop its own water conservation and efficiency goals and objectives consistent with the basin-wide goals and objectives, and shall develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the party's goals and objectives. Each party shall annually assess its programs in meeting the party's goals and objectives, report to the council and the regional body and make this annual assessment available to the public.

3. Beginning five years after the effective date of this compact, and every five years thereafter, the council, in cooperation with the provinces, shall review and modify as appropriate the basin-wide objectives, and the parties shall have regard for any such modifications in implementing their programs. This assessment will be based on examining new technologies, new patterns of water use, new resource demands and threats, and cumulative impact assessment under Section 4.15.

4. Within two years of the effective date of this compact, the parties commit to promote environmentally sound and economically feasible water conservation measures such as:

a. measures that promote efficient use of water;

b. identification and sharing of best management practices and state of the art conservation and efficiency technologies;

c. application of sound planning principles;

d. demand-side and supply-side measures or incentives; and

e. development, transfer and application of science and research.

5. Each party shall implement in accordance with paragraph 2 above a voluntary or mandatory water conservation program for all, including existing, basin water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate.

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Section 4.3. Party powers and duties.

1. Each party, within its jurisdiction, shall manage and regulate new or increased withdrawals, consumptive uses and diversions, including exceptions, in accordance with this compact.

2. Each party shall require an applicant to submit an application in such manner and with such accompanying information as the party shall prescribe.

3. No party may approve a proposal if the party determines that the proposal is inconsistent with this compact or the standard of review and decision or any implementing rules or regulations promulgated thereunder. The party may approve, approve with modifications or disapprove any proposal depending on the proposal's consistency with this compact and the standard of review and decision.

4. Each party shall monitor the implementation of any approved proposal to ensure consistency with the approval and may take all necessary enforcement actions.

5. No party shall approve a proposal subject to council or regional review, or both, pursuant to this compact unless it shall have been first submitted to and reviewed by either the council or regional body, or both, and approved by the council, as applicable. Sufficient opportunity shall be provided for comment on the proposal's consistency with this compact and the standard of review and decision. All such comments shall become part of the party's formal record of decision, and the party shall take into consideration any such comments received.

Section 4.4. Requirement for originating party approval.

No proposal subject to management and regulation under this compact shall hereafter be undertaken by any person unless it shall have been approved by the originating party.

Section 4.5. Regional review.

1. General.

a. It is the intention of the parties to participate in regional review of proposals with the provinces, as described in this compact and the agreement.

b. Unless the applicant or the originating party otherwise requests, it shall be the goal of the regional body to conclude its review no later than 90 days after notice under Section 4.5.2 of such proposal is received from the originating party.

c. Proposals for exceptions subject to regional review shall be submitted by the originating party to the regional body for regional review, and where applicable, to the council for concurrent review.

d. The parties agree that the protection of the integrity of the Great Lakes -- St. Lawrence River basin ecosystem shall be the overarching principle for reviewing proposals subject to regional review, recognizing uncertainties with respect to demands that may be placed on basin water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data and the extent to which diversions may harm the integrity of the basin ecosystem.

e. The originating party shall have lead responsibility for coordinating information for resolution of issues related to evaluation of a proposal, and shall consult with the applicant throughout the regional review process.

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f. A majority of the members of the regional body may request regional review of a regionally significant or potentially precedent setting proposal. Such regional review must be conducted, to the extent possible, within the time frames set forth in this section. Any such regional review shall be undertaken only after consulting the applicant.

2. Notice from originating party to the regional body.

a. The originating party shall determine if a proposal is subject to regional review. If so, the originating party shall provide timely notice to the regional body and the public.

b. Such notice shall not be given unless and until all information, documents and the originating party's technical review needed to evaluate whether the proposal meets the standard of review and decision have been provided.

c. An originating party may:

i. provide notice to the regional body of an application, even if notification is not required; or

ii. request regional review of an application, even if regional review is not required. Any such regional review shall be undertaken only after consulting the applicant.

d. An originating party may provide preliminary notice of a potential proposal.

3. Public participation.

a. To ensure adequate public participation, the regional body shall adopt procedures for the review of proposals that are subject to regional review in accordance with this article.

b. The regional body shall provide notice to the public of a proposal undergoing regional review. Such notice shall indicate that the public has an opportunity to comment in writing to the regional body on whether the proposal meets the standard of review and decision.

c. The regional body shall hold a public meeting in the state or province of the originating party in order to receive public comment on the issue of whether the proposal under consideration meets the standard of review and decision.

d. The regional body shall consider the comments received before issuing a declaration of finding.

e. The regional body shall forward the comments it receives to the originating party.

4. Technical review.

a. The originating party shall provide the regional body with its technical review of the proposal under consideration.

b. The originating party's technical review shall thoroughly analyze the proposal and provide an evaluation of the proposal sufficient for a determination of whether the proposal meets the standard of review and decision.

c. Any member of the regional body may conduct their own technical review of any proposal subject to regional review.

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d. At the request of the majority of its members, the regional body shall make such arrangements as it considers appropriate for an independent technical review of a proposal.

e. All parties shall exercise their best efforts to ensure that a technical review undertaken under Sections 4.5.4.c and 4.5.4.d does not unnecessarily delay the decision by the originating party on the application. Unless the applicant or the originating party otherwise requests, all technical reviews shall be completed no later than 60 days after the date the notice of the proposal was given to the regional body.

5. Declaration of finding.

a. The regional body shall meet to consider a proposal. The applicant shall be provided with an opportunity to present the proposal to the regional body at such time.

b. The regional body, having considered the notice, the originating party's technical review, any other independent technical review that is made, any comments or objections including the analysis of comments made by the public, first nations and federally recognized tribes, and any other information that is provided under this compact shall issue a declaration of finding that the proposal under consideration:

i. meets the standard of review and decision;

ii. does not meet the standard of review and decision; or

iii. would meet the standard of review and decision if certain conditions were met.

c. An originating party may decline to participate in a declaration of finding made by the regional body.

d. The parties recognize and affirm that it is preferable for all members of the regional body to agree whether the proposal meets the standard of review and decision.

e. If the members of the regional body who participate in the declaration of finding all agree, they shall issue a written declaration of finding with consensus.

f. In the event that the members cannot agree, the regional body shall make every reasonable effort to achieve consensus within 25 days.

g. Should consensus not be achieved, the regional body may issue a declaration of finding that presents different points of view and indicates each party's conclusions.

h. The regional body shall release the declarations of finding to the public.

i. The originating party and the council shall consider the declaration of finding before making a decision on the proposal.

Section 4.6. Proposals subject to prior notice.

1. Beginning no later than five years of the effective date of this compact, the originating party shall provide all parties and the provinces with detailed and timely notice and an opportunity to comment within 90 days on any proposal for a new or increased consumptive use of five million gallons per day or greater average in any 90-day period. Comments shall address whether or not the proposal is consistent with the standard of review and decision. The originating party shall provide a response to any such comment received from another party.

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2. A party may provide notice, an opportunity to comment and a response to comments even if this is not required under paragraph 1 of this section. Any provision of such notice and opportunity to comment shall be undertaken only after consulting the applicant.

Section 4.7. Council actions.

1. Proposals for exceptions subject to council review shall be submitted by the originating party to the council for council review, and where applicable, to the regional body for concurrent review.

2. The council shall review and take action on proposals in accordance with this compact and the standard of review and decision. The council shall not take action on a proposal subject to regional review pursuant to this compact unless the proposal shall have been first submitted to and reviewed by the regional body. The council shall consider any findings resulting from such review.

Section 4.8. Prohibition of new or increased diversions.

All new or increased diversions are prohibited, except as provided for in this article.

Section 4.9. Exceptions to the prohibition of diversions.

1. Straddling communities. A proposal to transfer water to an area within a straddling community but outside the basin or outside the source Great Lake watershed shall be excepted from the prohibition against diversions and be managed and regulated by the originating party provided that, regardless of the volume of water transferred, all the water so transferred shall be used solely for public water supply purposes within the straddling community, and:

a. all water withdrawn from the basin shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use. No surface water or groundwater from outside the basin may be used to satisfy any portion of this criterion except if it:

i. is part of a water supply or wastewater treatment system that combines water from inside and outside of the basin;

ii. is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the basin;

iii. maximizes the portion of water returned to the source watershed as basin water and minimizes the surface water or groundwater from outside the basin;

b. if the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period, the proposal shall also meet the exception standard;

c. if the proposal results in a new or increased consumptive use of five million gallons per day or greater average over any 90-day period, the proposal shall also undergo regional review.

2. Intra-basin transfer. A proposal for an intra-basin transfer that would be considered a diversion under this compact, and not already excepted pursuant to paragraph 1 of this section, shall be excepted from the prohibition against diversions, provided that:

a. If the proposal results from a new or increased withdrawal less than 100,000 gallons per day average over any 90-day period, the proposal shall be subject to management and regulation at the discretion of the originating party.

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b. If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period and if the consumptive use resulting from the withdrawal is less than five million gallons per day average over any 90-day period:

i. the proposal shall meet the exception standard and be subject to management and regulation by the originating party, except that the water may be returned to another Great Lake watershed rather than the source watershed;

ii. the applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies; and

iii. the originating party shall provide notice to the other parties prior to making any decision with respect to the proposal.

c. If the proposal results in a new or increased consumptive use of five million gallons per day or greater average over any 90-day period:

i. the proposal shall be subject to management and regulation by the originating party and shall meet the exception standard, ensuring that water withdrawn shall be returned to the source watershed;

ii. the applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies;

iii. the proposal undergoes regional review; and

iv. the proposal is approved by the council. Council approval shall be given unless one or more council members vote to disapprove.

3. Straddling counties. A proposal to transfer water to a community within a straddling county that would be considered a diversion under this compact shall be excepted from the prohibition against diversions, provided that it satisfies all of the following conditions:

a. the water shall be used solely for the public water supply purposes of the community within a straddling county that is without adequate supplies of potable water;

b. the proposal meets the exception standard, maximizing the portion of water returned to the source watershed as basin water and minimizing the surface water or groundwater from outside the basin;

c. the proposal shall be subject to management and regulation by the originating party, regardless of its size;

d. there is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies;

e. caution shall be used in determining whether or not the proposal meets the conditions for this exception. This exception should not be authorized unless it can be shown that it will not endanger the integrity of the basin ecosystem;

f. the proposal undergoes regional review; and

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g. the proposal is approved by the council. Council approval shall be given unless one or more council members vote to disapprove.

A proposal must satisfy all of the conditions listed above. Further, substantive consideration will also be given to whether or not the proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the basin.

4. Exception standard. Proposals subject to management and regulation in this section shall be declared to meet this exception standard and may be approved as appropriate only when the following criteria are met:

a. the need for all or part of the proposed exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

b. the exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed;

c. all water withdrawn shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use. No surface water or groundwater from outside the basin may be used to satisfy any portion of this criterion except if it:

i. is part of a water supply or wastewater treatment system that combines water from inside and outside of the basin;

ii. is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the basin;

d. the exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources of the basin with consideration given to the potential cumulative impacts of any precedent-setting consequences associated with the proposal;

e. the exception will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures to minimize water withdrawals or consumptive use;

f. the exception will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and

g. all other applicable criteria in Section 4.9 have also been met.

Section 4.10. Management and regulation of new or increased withdrawals and consumptive uses.

1. Within five years of the effective date of this compact, each party shall create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard. Each party, through a considered process, shall set and may modify threshold levels for the regulation of new or increased withdrawals in order to assure an effective and efficient water management program that will ensure that uses overall are reasonable, that withdrawals overall will not result in significant impacts to the waters and water dependent natural resources of the basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of source watersheds, and that all other objectives of the compact are achieved. Each

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party may determine the scope and thresholds of its program, including which new or increased withdrawals and consumptive uses will be subject to the program.

2. Any party that fails to set threshold levels that comply with Section 4.10.1 any time before ten years after the effective date of this compact shall apply a threshold level for management and regulation of all new or increased withdrawals of 100,000 gallons per day or greater average in any 90-day period.

3. The parties intend programs for new or increased withdrawals and consumptive uses to evolve as may be necessary to protect basin waters. Pursuant to Section 3.4, the council, in cooperation with the provinces, shall periodically assess the water management programs of the parties. Such assessments may produce recommendations for the strengthening of the programs, including without limitation, establishing lower thresholds for management and regulation in accordance with the decision-making standard.

Section 4.11. Decision-making standard.

Proposals subject to management and regulation in Section 4.10 shall be declared to meet this decision-making standard and may be approved as appropriate only when the following criteria are met:

1. all water withdrawn shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use;

2. the withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources and the applicable source watershed;

3. the withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures;

4. the withdrawal or consumptive use will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909;

5. the proposed use is reasonable, based upon a consideration of the following factors:

a. whether the proposed withdrawal or consumptive use is planned in a fashion that provides for efficient use of the water, and will avoid or minimize the waste of water;

b. if the proposal is for an increased withdrawal or consumptive use, whether efficient use is made of existing water supplies;

c. the balance between economic development, social development, and environmental protection of the proposed withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;

d. the supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;

e. the probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use under foreseeable conditions, to other lawful consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and water dependent natural resources of the basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and

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f. if a proposal includes restoration of hydrologic conditions and functions of the source watershed, the party may consider that.

Section 4.12. Applicability.

1. Minimum standard. This standard of review and decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard for withdrawals under their authority. It is also acknowledged that although a proposal meets the standard of review and decision it may not be approved under the laws of the originating party that has implemented more restrictive measures.

2. Baseline.

a. To establish a baseline for determining a new or increased diversion, consumptive use or withdrawal, each party shall develop either or both of the following lists for their jurisdiction:

i. a list of existing withdrawal approvals as of the effective date of the compact;

ii. a list of the capacity of existing systems as of the effective date of this compact. The capacity of the existing systems should be presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.

b. For all purposes of this compact, volumes of diversions, consumptive uses, or withdrawals of water set forth in the list(s) prepared by each party in accordance with this section, shall constitute the baseline volume.

c. The list(s) shall be furnished to the regional body and the council within one year of the effective date of this compact.

3. Timing of additional applications. Applications for new or increased withdrawals, consumptive uses or exceptions shall be considered cumulatively within ten years of any application.

4. Change of ownership. Unless a new owner proposes a project that shall result in a proposal for a new or increased diversion or consumptive use subject to regional review or council approval, the change of ownership in and of itself shall not require regional review or council approval.

5. Groundwater. The basin surface water divide shall be used for the purpose of managing and regulating new or increased diversions, consumptive uses or withdrawals of surface water and groundwater.

6. Withdrawal systems. The total volume of surface water and groundwater resources that supply a common distribution system shall determine the volume of a withdrawal, consumptive use or diversion.

7. Connecting channels. The watershed of each Great Lake shall include its upstream and downstream connecting channels.

8. Transmission in water lines. Transmission of water within a line that extends outside the basin as it conveys water from one point to another within the basin shall not be considered a diversion if none of the water is used outside the basin.

9. Hydrologic units. The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

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10. Bulk water transfer. A proposal to withdraw water and to remove it from the basin in any container greater than 5.7 gallons shall be treated under this compact in the same manner as a proposal for a diversion. Each party shall have the discretion, within its jurisdiction, to determine the treatment of proposals to withdraw water and to remove it from the basin in any container of 5.7 gallons or less.

Section 4.13. Exemptions.

Withdrawals from the basin for the following purposes are exempt from the requirements of Article 4.

1. To supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

2. To use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

Section 4.14. U. S. Supreme Court decree: Wisconsin et al. v. Illinois et al.

1. Notwithstanding any terms of this compact to the contrary, with the exception of paragraph 5 of this section, current, new, or increased withdrawals, consumptive uses, and diversions of basin water by the state of Illinois shall be governed by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. and shall not be subject to the terms of this compact nor any rules or regulations promulgated pursuant to this compact. This means that, with the exception of paragraph 5 of this section, for purposes of this compact, current, new, or increased withdrawals, consumptive uses, and diversions of basin water within the state of Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al.

2. The parties acknowledge that the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. shall continue in full force and effect, that this compact shall not modify any terms thereof, and that this compact shall grant the parties no additional rights, obligations, remedies, or defenses thereto. The parties specifically acknowledge that this compact shall not prohibit or limit the state of Illinois in any manner from seeking additional basin water as allowed under the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al., any other party from objecting to any request by the state of Illinois for additional basin water under the terms of said decree, or any party from seeking any other type of modification to said decree. If an application is made by any party to the Supreme Court of the United States to modify said decree, the parties to this compact who are also parties to the decree shall seek formal input from the Canadian provinces of Ontario and Quebec, with respect to the proposed modification, use best efforts to facilitate the appropriate participation of said provinces in the proceedings to modify the decree, and shall not unreasonably impede or restrict such participation.

3. With the exception of paragraph 5 of this section, because current, new, or increased withdrawals, consumptive uses, and diversions of basin water by the state of Illinois are not subject to the terms of this compact, the state of Illinois is prohibited from using any term of this compact, including Section 4.9, to seek new or increased withdrawals, consumptive uses, or diversions of basin water.

4. With the exception of paragraph 5 of this section, because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 (paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this compact all relate to current, new, or increased withdrawals, consumptive uses, and diversions of basin waters, said provisions do not apply to the state of Illinois. All other provisions of this compact not listed in the preceding sentence shall apply to the state of Illinois, including the water conservation programs provision of Section 4.2.

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5. In the event of a proposal for a diversion of basin water for use outside the territorial boundaries of the parties to this compact, decisions by the state of Illinois regarding such a proposal would be subject to all terms of this compact, except paragraphs 1, 3 and 4 of this section.

6. For purposes of the state of Illinois' participation in this compact, the entirety of this Section 4.14 is necessary for the continued implementation of this compact and, if severed, this compact shall no longer be binding on or enforceable by or against the state of Illinois.

Section 4.15. Assessment of cumulative impacts.

1. The parties in cooperation with the provinces shall collectively conduct within the basin, on a lake watershed and St. Lawrence River basin basis, a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from the waters of the basin, every five years or each time the incremental basin water losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the parties. The assessment shall form the basis for a review of the standard of review and decision, council and party regulations and their application. This assessment shall:

a. utilize the most current and appropriate guidelines for such a review, which may include but not be limited to Council on Environmental Quality and Environment Canada guidelines;

b. give substantive consideration to climate change or other significant threats to basin waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate measures to exercise caution in cases of uncertainty if serious damage may result; and

c. consider adaptive management principles and approaches, recognizing, considering, and providing adjustments for the uncertainties in, and evolution of, science concerning the basin's water resources, watersheds and ecosystems, including potential changes to basin-wide processes, such as lake level cycles and climate.

2. The parties have the responsibility of conducting this cumulative impact assessment. Applicants are not required to participate in this assessment.

3. Unless required by other statutes, applicants are not required to conduct a separate cumulative impact assessment in connection with an application but shall submit information about the potential impacts of a proposal to the quantity or quality of the waters and water dependent natural resources of the applicable source watershed. An applicant may, however, provide an analysis of how their proposal meets the no significant adverse cumulative impact provision of the standard of review and decision.

ARTICLE 5

TRIBAL CONSULTATION

Section 5.1. Consultation with tribes.

1. In addition to all other opportunities to comment pursuant to Section 6.2, appropriate consultations shall occur with federally recognized tribes in the originating party for all proposals subject to council or regional review pursuant to this compact. Such consultations shall be organized in the manner suitable to the individual proposal and the laws and policies of the originating party.

2. All federally recognized tribes within the basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the council or the regional body, or both, and other relevant

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organizations on whether the proposal meets the requirements of the standard of review and decision when a proposal is subject to regional review or council approval. Any notice from the council shall inform the tribes of any meeting or hearing that is to be held under Section 6.2 and invite them to attend. The parties and the council shall consider the comments received under this section before approving, approving with modifications, or disapproving any proposal subject to council or regional review.

3. In addition to the specific consultation mechanisms described above, the council shall seek to establish mutually agreed-upon mechanisms or processes to facilitate dialogue with, and input from, federally recognized tribes on matters to be dealt with by the council; and, the council shall seek to establish mechanisms and processes with federally recognized tribes designed to facilitate ongoing scientific and technical interaction and data exchange regarding matters falling within the scope of this compact. This may include participation of tribal representatives on advisory committees established under this compact or such other processes that are mutually agreed upon with federally recognized tribes individually or through duly-authorized intertribal agencies or bodies.

ARTICLE 6

PUBLIC PARTICIPATION

Section 6.1. Meetings, public hearings and records.

1. The parties recognize the importance and necessity of public participation in promoting management of the water resources of the basin. Consequently, all meetings of the council shall be open to the public, except with respect to issues of personnel.

2. The minutes of the council shall be a public record open to inspection at its offices during regular business hours.

Section 6.2. Public participation.

It is the intent of the council to conduct public participation processes concurrently and jointly with processes undertaken by the parties and through regional review. To ensure adequate public participation, each party or the council shall ensure procedures for the review of proposals subject to the standard of review and decision consistent with the following requirements:

1. Provide public notification of receipt of all applications and a reasonable opportunity for the public to submit comments before applications are acted upon.

2. Assure public accessibility to all documents relevant to an application, including public comment received.

3. Provide guidance on standards for determining whether to conduct a public meeting or hearing for an application, time and place of such a meeting(s) or hearing(s), and procedures for conducting of the same.

4. Provide the record of decision for public inspection including comments, objections, responses and approvals, approvals with conditions, and disapprovals.

ARTICLE 7

DISPUTE RESOLUTION AND ENFORCEMENT

Section 7.1. Good faith implementation.

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Each of the parties pledges to support implementation of all provisions of this compact, and covenants that its officers and agencies shall not hinder, impair, or prevent any other party carrying out any provision of this compact.

Section 7.2. Alternative dispute resolution.

1. Desiring that this compact be carried out in full, the parties agree that disputes between the parties regarding interpretation, application, and implementation of this compact shall be settled by alternative dispute resolution.

2. The council, in consultation with the provinces, shall provide by rule procedures for the resolution of disputes pursuant to this section.

Section 7.3. Enforcement.

1. Any person aggrieved by any action taken by the council pursuant to the authorities contained in this compact shall be entitled to a hearing before the council. Any person aggrieved by a party action shall be entitled to a hearing pursuant to the relevant party's administrative procedures and laws. After exhaustion of such administrative remedies, (i) any aggrieved person shall have the right to judicial review of a council action in the United States District Courts for the District of Columbia or the district court in which the council maintains offices, provided such action is commenced within 90 days; and (ii) any aggrieved person shall have the right to judicial review of a party's action in the relevant party's court of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the party's law. For purposes of this paragraph, a state or province is deemed to be an aggrieved person with respect to any party action pursuant to this compact.

2. a. Any party or the council may initiate actions to compel compliance with the provisions of this compact, and the rules and regulations promulgated hereunder by the council. Jurisdiction over such actions is granted to the court of the relevant party, as well as the United States District Courts for the District of Columbia and the district court in which the council maintains offices. The remedies available to any such court shall include, but not be limited to, equitable relief and civil penalties.

b. Each party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by this compact in accordance with the provisions of the laws adopted in each party's jurisdiction.

3. Any aggrieved person, party or the council may commence a civil action in the relevant party's courts and administrative systems to compel any person to comply with this compact should any such person, without approval having been given, undertake a new or increased withdrawal, consumptive use or diversion that is prohibited or subject to approval pursuant to this compact.

a. No action under this subsection may be commenced if:

i. the originating party or council approval for the new or increased withdrawal, consumptive use, or diversion has been granted; or

ii. the originating party or council has found that the new or increased withdrawal, consumptive use, or diversion is not subject to approval pursuant to this compact.

b. No action under this subsection may be commenced unless:

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i. a person commencing such action has first given 60 days prior notice to the originating party, the council and person alleged to be in noncompliance; and

ii. neither the originating party nor the council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this compact.

The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

4. Each of the parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this compact.

ARTICLE 8

ADDITIONAL PROVISIONS

Section 8.1. Effect on existing rights.

1. Nothing in this compact shall be construed to affect, limit, diminish or impair any rights validly established and existing as of the effective date of this compact under state or federal law governing the withdrawal of waters of the basin.

2. Nothing contained in this compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective parties relating to common law water rights.

3. Nothing in this compact is intended to abrogate or derogate from treaty rights or rights held by any tribe recognized by the federal government of the United States based upon its status as a tribe recognized by the federal government of the United States.

4. An approval by a party or the council under this compact does not give any property rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to or over any land belonging to or held in trust by a party; neither does it authorize any injury to private property or invasion of private rights, nor infringement of federal, state, or local laws or regulations; nor does it obviate the necessity of obtaining federal assent when necessary.

Section 8.2. Relationship to agreements concluded by the United States of America.

1. Nothing in this compact is intended to provide nor shall be construed to provide, directly or indirectly, to any person any right, claim, or remedy under any treaty or international agreement, nor is it intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

2. Nothing in this compact is intended to infringe nor shall be construed to infringe upon the treaty power of the United States of America, nor shall any term hereof be construed to alter or amend any treaty or term thereof that has been or may hereafter be executed by the United States of America.

3. Nothing in this compact is intended to affect nor shall be construed to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this compact.

Section 8.3. Confidentiality.

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1. Nothing in this compact requires a party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information.

2. A party may take measures, including, but not limited to, deletion and redaction, deemed necessary to protect any confidential, proprietary, or commercially sensitive information when distributing information to other parties. The party shall summarize or paraphrase any such information in a manner sufficient for the council to exercise its authorities contained in this compact.

Section 8.4. Additional laws.

Nothing in this compact shall be construed to repeal, modify, or qualify the authority of any party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of waters within its jurisdiction.

Section 8.5. Amendments and supplements.

The provisions of this compact shall remain in full force and effect until amended by action of the governing bodies of the parties and consented to and approved by any other necessary authority in the same manner as this compact is required to be ratified to become effective.

Section 8.6. Severability.

Should a court of competent jurisdiction hold any part of this compact to be void or unenforceable, it shall be considered severable from those portions of the compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect.

Section 8.7. Duration of compact and termination.

Once effective, the compact shall continue in force and remain binding upon each and every party unless terminated.

This compact may be terminated at any time by a majority vote of the parties. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE 9

EFFECTUATION

Section 9.1. Repealer.

All acts and parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed.

Section 9.2. Effectuation by chief executive.

The governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the compact and the initial organization and operation thereunder.

Section 9.3. Entire agreement.

The parties consider this compact to be complete and an integral whole. Each provision of this compact is considered material to the entire compact, and failure to implement or adhere to any provision may be

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considered a material breach. Unless otherwise noted in this compact, any change or amendment made to the compact by any party in its implementing legislation or by the United States Congress when giving its consent to this compact is not considered effective unless concurred in by all parties.

Section 9.4. Effective date and execution.

This compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania and consented to by the Congress of the United States. This compact shall be signed and sealed in nine identical original copies by the respective chief executives of the signatory parties. One such copy shall be filed with the secretary of state of each of the signatory parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the council upon its organization. The signatures shall be affixed and attested under the following form:

In witness whereof, and in evidence of the adoption and enactment into law of this compact by the legislatures of the signatory parties and consent by the Congress of the United States, the respective governors do hereby, in accordance with the authority conferred by law, sign this compact in nine duplicate original copies, attested by the respective secretaries of state, and have caused the seals of the respective states to be hereunto affixed this ..... day of (month), (year).

History: *2007 c 2 s 1*

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