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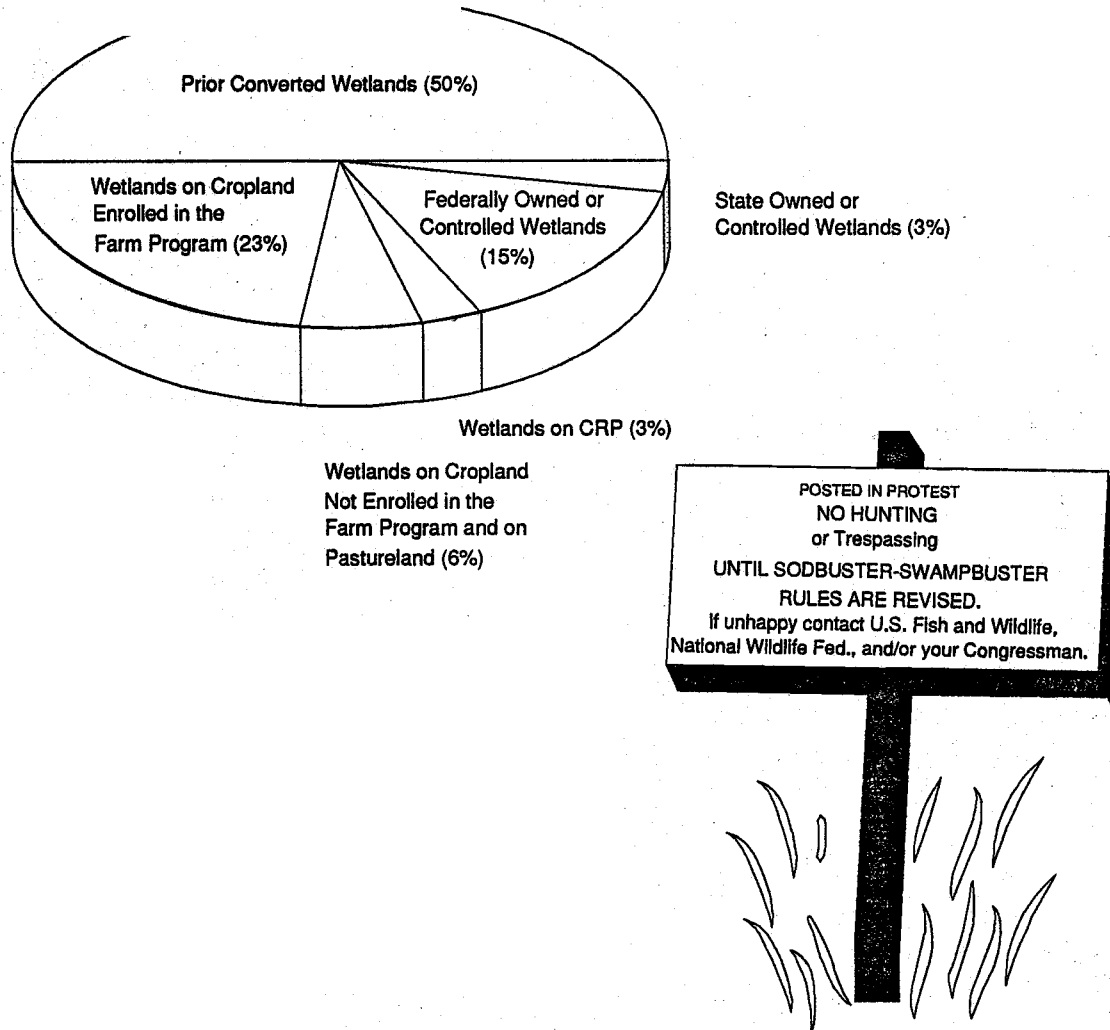
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STATUS OF WETLANDS IN NORTH DAKOTA IN 1990



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Highlights

The purpose of this study was to assess the status of North Dakota wetlands by examining the extent of protected and threatened wetlands in the state. The study outlined current federal and state legislation influencing wetland use and discussed their impacts on the status of North Dakota wetlands. Public attitudes toward wetlands were described and the potential for wetland restoration and enhancement in the state was examined.

Nearly 12 percent of remaining wetlands in Eddy County had a low degree of protection. Wetlands on privately owned cropland acres not enrolled in farm programs and rangeland had the greatest conversion potential. However, only a slight threat of wetland conversion existed on these lands given current agricultural commodity prices and existing federal and state legislation. Over 50 percent of the county's remaining wetlands had a medium degree of protection. Federal legislation protected wetlands on privately owned cropland acres enrolled in farm programs and CRP land. Nearly 40 percent of the county's wetlands had a high degree of protection since they were on federal or state owned or managed lands.

Swampbuster provisions of the Food Security Act of 1985 and Food, Agriuculture, Conservation, and Trade Act of 1990 were the primary federal legislation protecting North Dakota wetlands. Swampbuster protects wetlands on cropland enrolled in farm programs by eliminating or reducing benefits to producers (i.e., target prices, loan rates, and federal crop insurance) who convert wetlands on participating cropland acres. Swampbuster provides considerable deterrence to wetland drainage since over 90 percent of the cropland acres in the state were enrolled in farm programs in 1989.

"No-net-loss" was the primary state legislation protecting North Dakota wetlands. "No-net-loss" protects all wetlands in the state since it requires acre for acre replacement of each wetland drained. The law protects threatened wetlands on privately owned cropland not enrolled in farm programs and rangeland, but only wetlands with watersheds greater than 80 acres.

The threat to wetland acres in North Dakota will remain low as long as

- agricultural commodity prices are low,
- federal and state wetland protection legislation is maintained,
and
- wetland restoration programs are competitive with private market incentives to drain.

Changes in any of these directly affects the status of North Dakota wetlands. However, returns available through agricultural production remain the dominant force affecting drainage decisions.

STATUS OF WETLANDS IN NORTH DAKOTA IN 1990

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Editorial Comment

Persons holding opposing views on wetlands seem to be spending too much time debating, when so few wetlands are threatened with conversion at the margin. More effort should be devoted to identifying wetlands that are threatened and mechanisms, such as easements, to protect them. Wetland owners are usually receptive to alternatives that maintain or enhance their financial situation. And, wetland preservation proponents (such as North American Waterfowl Management Plan) would have sufficient resources to compensate landowners to protect those few endangered wetlands. The wetland wars have gone on too long for no apparent reason other than spite and use as political pawns.

Introduction

Use and allocation of wetlands continues to be a hotly debated issue in North Dakota, nationally, and internationally (Figure 1) (Olson 1990). Some people regard wetlands as resources with high social values in their natural state. Others believe wetlands are more beneficial if converted to agriculture and industry. Both federal and state governments have added to the controversy through legislative actions. Before the 1985 Farm Bill, some legislation encouraged wetland drainage through economic subsidies (Leitch and Danielson 1979). Examples included the Agricultural Conservation Program (provided cost sharing for drainage ditches) and government commodity price support programs (provided financial incentives to bring more land into production).

Recent legislation has eliminated some incentives encouraging wetland drainage. The U.S. Congress included the Swampbuster provision in the Food Security Act of 1985 penalizing landowners who converted wetlands to cropland. The 1986 Tax Reform Act eliminated drainage cost expensing (before 1986 drainage expenses were tax deductible). The Emergency Wetland Resources Act of 1986 noted that wetlands were significant national resources. (The act promoted the conservation of wetlands in order to maintain the public benefits they provide.) The North Dakota State Legislature passed the "no-net-loss" of wetlands bill (N.D.C.C. 61-32) requiring landowners to apply for a drainage permit and limiting wetland losses in the state. President George Bush has called for a federal "no-net-wetland-loss" policy (Carey et al. 1990). Federal and state legislative actions were designed to restrict landowners' options regarding the use of wetland resources and represented growing public concern over wetlands and their use.

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THE SWAMPBUSTER SWINDLE (OUTDOOR LIFE, JANUARY 1990)

SWAMPBUSTER SNAGS FARMER'S EFFORTS TO CREATE WILDLIFE AREA (THE FORUM, MARCH 11, 1990)

SWAMPBUSTER: BIG NIGHTMARE FOR N.D. FARMER (THE FORUM, MARCH 25, 1990)

WETLANDS DEBATE: HOW FAR CAN UNCLE SAM PUSH? (AGWEEK, APRIL 30, 1990)

WETLAND COOPERATION EFFORT DEEMED SUCCESSFUL (THE OXBOW, AUGUST 1990)

OVER 98,000 ACRES OF WETLAND UNDER CRP (NETWORK, OCTOBER 1990)

WETLANDS 'COMPROMISE' IS NO COMPROMISE AT ALL (THE FORUM, OCTOBER 1988)

FARMERS IRATE WITH 'PICKY' SWAMPBUSTER RULES (FARM AND RANCH GUIDE, OCTOBER 21, 1988)

SQUARING OFF ON SWAMPBUSTER (FARM JOURNAL, JANUARY 1990)

A DOUBLE STANDARD ON WETLANDS (THE FORUM, FEBRUARY 9, 1990)

'NORTH DAKOTA EAST' WANTS HELP AGAINST FWS (THE FORUM, FEBRUARY 1, 1989)

Figure 1. A Sampling of Recent Headlines Related to North Dakota's Wetland Controversy.

Property Rights

The history of federal and state wetland legislation indicates little recognition of "property rights" to drain wetlands (Leitch and Grosz 1988). Legislation in the mid-1800s gave wetlands to states to encourage drainage, implying the property right to drain went with the land (Table 1). The Migratory Bird Hunting Stamp Act of 1934 collected fees from duck hunters to pay landowners to preserve wetlands, suggesting property rights belonged to landowners. Farm programs of the 1960s assisted farmers with on-farm drainage and paid them to preserve wetlands, signaling that drainage rights went with land ownership. Section 404 of the Federal Water Pollution Control Act amendments prohibits certain activities in waters of the United States, providing the first notion that society has some wetland property rights. President Jimmy Carter's Executive Order 11990 recognized society's interests in wetlands by asking federal agencies to avoid damaging wetland resources.

TABLE 1. FEDERAL AND STATE LEGISLATION AFFECTING WETLANDS AND THEIR USE, 1849-1989

Year	Legislation	Effect
1849, 1850, 1860	Swampland Act	Federal Government granted 64.9 million acres to 15 states on the condition that the proceeds for their sale be used to convert wetlands to farmland.
1899	River and Harbor Act	Established U.S. Army Corps of Engineers' authority for the Nation's navigable waters.
1902	Reclamation Act	Established a drainage specialist position and staff in USDA to investigate methods and problems involved in agricultural drainage.
1934	Migratory Bird Hunting Stamp Act	Collected fees from duck stamp sales to pay landowners for wetland preservation.
1944	Flood Control Act	Authorized the U.S. Army Corps of Engineers to construct major drainage outlets for draining agricultural lands.
1957	North Dakota Wetlands Act	Requires landowners to obtain a permit for wetland drainage.
1958	Small Wetlands Acquisition Program (SWAP)	Protected wetlands through permanent easements and purchases administered by the U.S. Department of the Interior.
1972	Federal Water Pollution Control Act Amendments	Regulated the discharge of dredge and fill material into navigable waters under the Section 404 permit program, defined to include wetlands. Normal agricultural practices are exempted.
1972	Water Bank Program	Protected wetland and adjacent upland acreage in the Prairie Pothole region through a system of 10-year renewable contracts. Administered by the U.S. Department of Agriculture.
1977	Executive Order 11990	Established wetland protection as official U.S. Government Policy. Ended all direct Federal assistance for wetland conversion.
1985	Food Security Act	Swampbuster provision eliminated farm program benefits for farmers who plant annual crops on wetland converted after 1985. Violators are denied price support payments, farm storage facility loans, crop insurance, disaster payments, and certain kinds of operating loans. Cropped wetlands are also eligible for enrollment in the Conservation Reserve Program.
1986	Tax Reform Act	Abolished preferential capital gains tax rates and removed other incentives to convert wetlands to farmland through drainage.
1986	Emergency Wetlands Acquisition Act	Established the National Wetland Priority Conservation Plan aimed at fulfilling U.S. obligations under the 1986 North American Waterfowl Management Plan (NAWMP).
1987	"No-Net-Loss" Act	Created a wetland bank which can not carry a deficit exceeding 2,500 wetland acres.
1989	North American Wetlands Conservation Act and Coastal Wetlands Conservation and Restoration Act	These laws, enacted jointly, created a wetland trust fund to finance coastal wetland programs and wetland acquisition under NAWMP.

SOURCE: Carey et al. 1990.

The Food Security Act of 1985 turned the corner on drainage rights by telling landowners there would be a penalty (lost farm program benefits) if wetlands were drained on cropland enrolled in the program, implying social property right or interest in undrained wetlands. "No-net-loss" wetland legislation protects certain wetlands in North Dakota, further expanding society's property rights claim to wetlands.

Landowners have assumed ownership of drainage rights through 100 years of government signals about wetland property rights (Leitch 1988). While landowners know they cannot drain if it causes direct damage to others, indirect damages to society have not been considered in the decision making. However, recent legislation has given some wetland property rights to society. Changes in drainage property rights will take time to be accepted by rural landowners who have traditionally had drainage rights.

Purpose

The purpose of this study was to assess the status of North Dakota wetlands by examining the extent of protected and threatened wetlands in the state. Specific objectives included:

- outlining federal and state legislation influencing wetland use,
- describing public attitudes toward wetlands,
- estimating the status of North Dakota wetlands relative to degree and extent of protection,
- discussing impacts of federal and state legislation on the status of North Dakota wetlands, and
- examining potential wetland restoration within North Dakota.

Results will aid decision makers, public and private, to evaluate proposed allocation alternatives regarding state wetlands. A case study is used to make generalizations concerning the extent of wetland protection. Results will provide a foundation for efficient, proactive (rather than reactive) decision making on wetland usage issues.

Study Area

Wetlands cover over 2 million acres (6 percent) of North Dakota's 45 million surface acres (U.S. Soil Conservation Service 1980). The majority of these wetlands are in the Prairie Pothole Region (PPR) which covers approximately 227,000 square miles in North America with one-fourth of this area in the United States (Figure 2). About 1.5 million acres (75 percent) of North Dakota wetlands are in the PPR (Nelson et al. 1984).

A major reason for continued controversy is disagreement over what is and is not wetland. Although the federal resource agencies have recently agreed on a uniform definition using a soil-water-plant scheme (Interagency Cooperative Publication 1989), ending a long standing interagency squabble, not all others, especially those being regulated, agree. Thus, trying to quantify what remains of the original wetland base is difficult when everyone does not identify wetlands the same way.

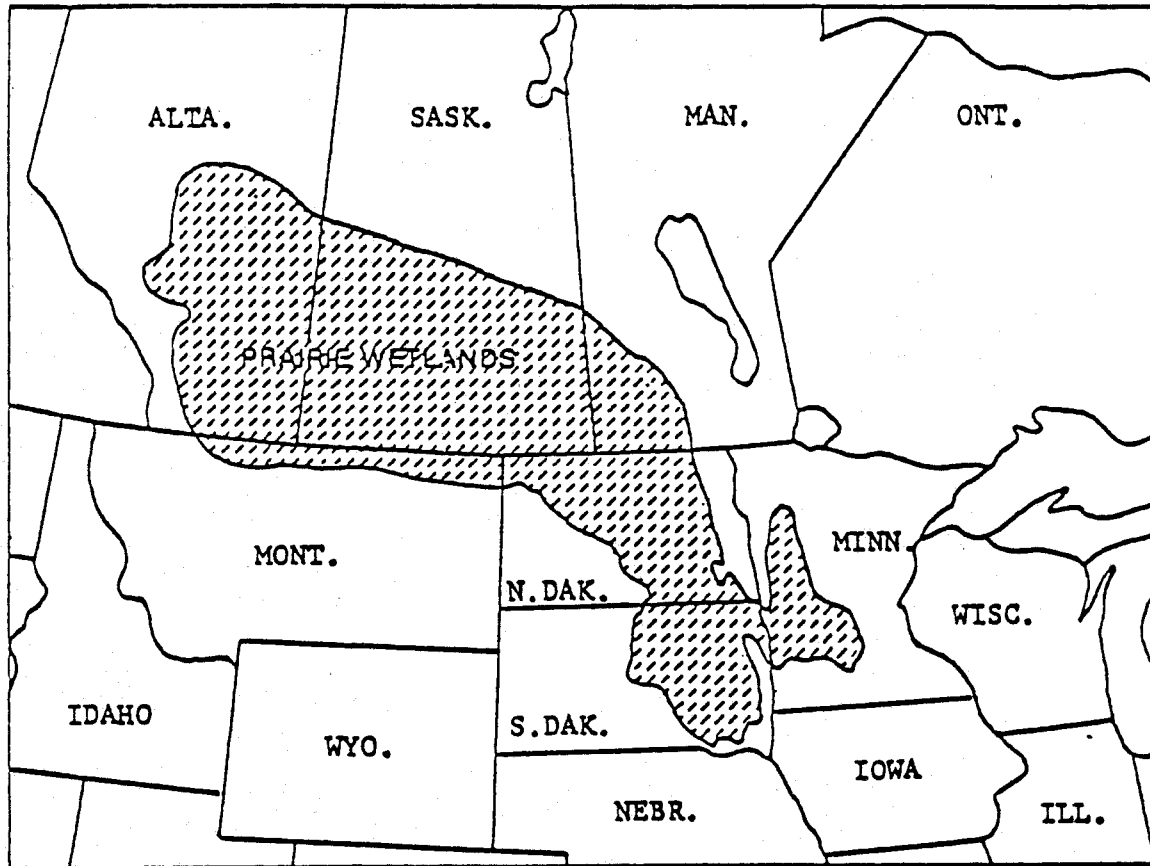


Figure 2. Prairie Pothole Region.

Source: Nelson et al. 1984.

North Dakota Prairie Potholes

Five million acres of wetlands existed in North Dakota before European settlement (Tiner 1984 and Dahl 1990). By 1984, approximately 2 million acres remained. The majority of the wetlands which were lost were converted to agriculture, irrigation, and flood control projects. Some wetlands have been converted for road construction, urban development, and surface mining. Wetlands are being converted at about 20,000 acres per year (Luoma 1985). Heimlich and Langer (1986) estimated that 200,000 to 300,000 wetlands acres in North Dakota, or about 10 percent of those remaining, have a medium to high cropland potential.

Wetlands provide two types of social benefits -- direct and indirect (Leitch 1981). Direct benefits are dollar market values associated with furbearer pelts, bait sales, native hay harvest, and meat of wildlife harvested. Indirect benefits to society include:

- flood control,
- erosion control,
- waste assimilation,
- nutrient recycling,
- firebreaks,
- historical value,
- forestry,
- primary productivity,
- education,
- scientific,
- water supply,
- groundwater recharge,
- wildlife habitat,
- endangered species habitat,
- shoreline protection,
- aesthetics,
- recreation,
- global nitrogen and sulfur cycle, and
- ecological diversity.

Landowners are not compensated monetarily for many direct and none of the indirect social benefits of wetlands on their property. Free market drainage incentives dominate preservation forces as evidenced by continued conversion of wetlands in the state (Baltezare et al. 1987).

Wetland conversions have been and continue to be the result of the economic-technological situation of agriculture (Nelson et al. 1984). Specific reasons cited for continued drainage are:

- opportunity to gain relatively low cost productive cropland by draining wetlands,
- elimination of the nuisance and cost of avoiding potholes existing within cropland,
- change in farming from a diversified crop-livestock combination to increasing reliance on row crop and small grain production,
- rapid increase in tractor horsepower and implement sizes which increases avoidance costs and facilitates drainage of potholes by providing power to operate drainage equipment,
- growing use of center-pivot irrigation systems which are incompatible with potholes,
- variable short-term climatic conditions which increase nuisance and cost factors in a wet year while providing low cost drainage in a dry year,
- short-term farm income variability providing investment capital for drainage during high income periods and increased incentives to expand cropland, and
- absence of private returns from wetland preservation without government programs.

Incentives for wetland drainage have been curtailed as society realizes social values of wetlands. Expanding legislation at both the federal and state levels governing wetland use is evidence of society's increasing awareness of wetland values. Legislation is aimed at redefining wetland property rights.

Current Legislation¹

The environmental movement of the late sixties and early seventies generated considerable interest in developing a consistent protection policy for wetland resources. However, not until the middle eighties did stated federal policies toward wetlands approach consistency. State governments also became more environmentally concerned, adopting legislation of their own to address wetland issues. Specific federal and state legislation affecting North Dakota wetlands include:

- Emergency Wetlands Acquisition Act of 1986,
- Section 404 of the Clean Water Act,
- Food Security Act of 1985,
- Title IV of the Tax Reform Act of 1986,
- Garrison Diversion Unit Reformation Act of 1986,
- Food, Agriculture, Conservation, and Trade Act of 1990
- North Dakota S.B. 1035 (no-net-loss), and
- enhancement programs.

The general tone of this legislation is wetland preservation and enhancement. However, the degree and extent of wetland protection varies.

Emergency Wetland Acquisition Act

The stated purpose of the Emergency Wetlands Acquisition Act (P.L. 99-645) was "to promote . . . conservation of the Nation's wetlands in order to maintain the public benefits they provide" The act recommends provisions for increased wetland acquisition and protection. Specifically, the act:

- extended the Wetlands Loan Act through fiscal year 1988 and abolished repayment of advances to the Migratory Bird Conservation (Duck Stamp) Fund,
- raised additional revenues for deposit in the Duck Stamp Fund by increasing stamp prices and charging entrance fees at designated national wildlife refuges,
- allowed use of Land and Water Conservation Funds (LWCF) for wetland acquisition by both state and federal agencies, and
- required study and inventory of the nation's wetlands (which is currently being conducted by the U.S. Fish and Wildlife Service).

The Emergency Wetlands Acquisition Act requires all 50 states to address wetlands as an outdoor recreation resource or include a wetlands priority plan in their state comprehensive outdoor recreation plans (SCORP) to continue

¹We only identify and briefly describe legislation affecting wetlands in North Dakota. See the original legislation or references for additional details.

receiving LWCF monies. Wetland priority plans identify wetlands for acquisition consideration by state and federal agencies. The plans examine wetland numbers at the time of European settlement, number of remaining wetlands, current conversion rates, and future conversion treats. North Dakota completed a priority plan after consultation with various federal, state, and private agencies (Grosz and Leitch 1987).

The act differed from past legislation by recognizing that wetlands were not all alike. Wetlands were identified by type, e.g., bottomland hardwoods and prairie potholes, suggesting different incentives face developers across regions. While it may have been desirable to appear consistent across the country in past legislation, consistency may be less efficient and effective than tailoring analyses and programs by wetland type (Leitch 1984).

The Emergency Wetland Acquisition Act provides additional resources to acquire, protect, and restore North Dakota wetlands. In addition, the act encourages the state to identify priority wetlands that should be protected through acquisition. Prioritizing wetland acquisitions enables the state to protect wetlands with the highest social values for better management of existing wetland resources.

Section 404 of the Clean Water Act

The Clean Water Act (CWA) regulates activities involving disposal of dredged or fill material in waters of the United States, including many wetlands. (CWA has been described many times, i.e., Davidson 1986, Parish and Morgan 1982, or Reppert et al. 1979.) The act specifically gave the U.S Army Corps of Engineers authority to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Persons seeking to discharge dredged and fill materials into "waters of the United States" must apply for a permit from the Corps of Engineers.

The Corps evaluates impacts of proposed development projects on wetlands based on reviews and comments from the Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and the states. If a project's impact on the environment is substantial, a permit application could be denied, the project could be modified to minimize impacts, or applicants could purchase or restore wetlands as mitigation for project impacts. The 404 program provides the primary avenue for federal involvement in regulating wetland use.

The major effect of Section 404 is reduced wetland conversions through permit denials, modifications (limiting wetland acres affected), and conditions (lessening the impact of activities on wetlands). Also, new wetlands can be created and degraded wetlands can be restored or enhanced because of Section 404. Permittees may create or restore wetland acreage to compensate or mitigate acreage degraded or converted. Entities that have altered wetlands under Corps jurisdiction without a permit or violated permit conditions must mitigate impacts through wetland creation or restoration.

Annual drainage of U.S. wetlands was estimated at 300,000 acres per year (Office of Technology Assessment 1984). Approximately 250,000 acres were the

result of unregulated conversion of inland wetlands for agricultural use. Section 404 regulated drainage on the remaining 50,000 acres. During 1980-81, the Corps authorized projects that converted about 50 percent of wetland acreage applied for. Each year, about 5,000 acres of vegetated wetlands are created or restored for mitigation from coordinating Section 404 permits.

Section 404 has three major limitations in terms of comprehensive wetland management (Office of Technology Assessment 1984). First, the program only has jurisdiction over the discharge of dredged or fill material into wetlands. Projects requiring excavation, drainage, clearing, and flooding of wetlands are not explicitly covered by Section 404. Second, the Corps does not have adequate resources to regulate activities in all U.S. waters. Instead of case-by-case reviews, the Corps uses general permits for isolated waters and headwater areas. Generally, the Corps has limited control over these areas since there are few applications or reporting requirements for activities within areas covered by general permits. Third, administrative problems limit Section 404's effectiveness because of differences in the way districts implement program provisions, a lack of coordination between districts and federal and state agencies, inadequate public awareness, and the low priority given to monitoring and enforcement.

Many Corps district offices do not seek out Section 404 violators (Land Letter 1988). The Corps does not always conduct follow-up investigations of suspected violators brought to their attention. Only a few permits of known violators are revoked or suspended. The Corps favors voluntary correction of violations.

Section 404 has never been a major factor affecting drainage in North Dakota. Issuance of nationwide permits (authorization to proceed without further Corps consideration) has resulted in virtually no protection of wetlands smaller than 1 acre in size and placed only minor reporting requirements on activities affecting wetlands between 1 and 10 acres (Nelson et al. 1984). Over 36 percent of all prairie wetlands range from 1 to 10 acres (U.S. Department of the Interior 1988). Unless the Corps makes a fundamental change in management practices, small prairie potholes will remain virtually unprotected under Section 404 of the CWA.

Food Security Act of 1985

The majority of wetland losses in the Prairie Pothole Region have been the direct result of conversion to cropland. The primary force encouraging wetland drainage has been federal farm programs (U.S. Dept. of Interior 1988). Past federal farm programs have not balanced income support for farm operators with public views on the environment. This paradox was partially rectified with enactment of the Food Security Act of 1985.

The Food Security Act contained several wetland conservation provisions. The most important of these was Swampbuster, which discouraged conversion of any and all wetlands for agricultural purposes (Robinson 1987). (However, the threat of passing Swampbuster legislation probably caused more wetlands to be drained in 1985/86 than would have been drained without Swampbuster.) Producers draining wetlands after December 23, 1985, to grow agricultural

commodities were not eligible for farm program benefits (i.e., target prices, loan rates, and federal crop insurance). Loss of benefits applied not only to crops grown on converted wetlands, but on all land the farm operator managed. Swampbuster contained four exemptions including:

- drainage projects initiated before December 23, 1985,
- artificial wetlands,
- wetlands that become dry through natural conditions, and
- wetlands where the local Soil Conservation Service determines conversion will have "minimal" effect on wetland values.

Before Swampbuster, farm operators could include converted wetlands as part of their base acreage creating a wetland conversion subsidy. However, the threat of ineligibility for USDA farm programs, given relatively low market prices for agricultural commodities, made Swampbuster effective in limiting wetland drainage (Baltezare et al. 1987). Swampbuster loses its effectiveness to protect wetlands from agricultural use as commodity prices rise and provides no wetland protection in areas where farmers do not rely on government subsidies (Carey et al. 1990).

In some instances, Swampbuster has been virtually ignored (Conservation 1989). The U.S. Fish and Wildlife Service reported almost 350 "potential" violations in North Dakota, South Dakota, and Minnesota during 1987 and 1988, yet only three farm operators lost agricultural subsidies. County committees of the Agricultural Stabilization and Conservation Service (ASCS) are responsible for enforcement. Most committee members have little or no experience in recognizing wetlands and are resident farmers in the county they serve.

If enforced, Swampbuster could effectively control wetland drainage in North Dakota. Swampbuster's ability to restrict drainage is due to farm operators' 90 percent participation in the farm program in the state (Agricultural Stabilization and Conservation Service 1989). Of the 17.8 million total base acres (cropland eligible for enrollment in the farm program) in the state, approximately 15.8 million (89 percent) were enrolled in the farm program in 1989.

Much of the political controversy surrounding Swampbuster is centered on the divergent interests among federal, state, and local governments, environmental groups, and private landowners (Appendix A includes several examples from the media). The federal government is experiencing increased pressure from environmental groups to protect and enhance wetlands. Adopting an overall national wetlands protection and enhancement policy may be in the best national interest. However, federal policy-makers must be sensitive to the socioeconomic effects such a policy has at both the state and local levels.

Title IV Tax Reform Act of 1986

Title IV of P.L. 99-514 reinforced Swampbuster by eliminating tax expensing (reducing tax liability through deduction of drainage expenses) of wetland drainage costs not in compliance with Swampbuster. The act treated

gains on the sale of converted wetlands as ordinary income rather than as capital gains, which is taxed at a lower rate. The act also eliminated long-term capital losses. These provisions increased landowners' drainage costs since expenses could not be transferred to federal and state governments. Congress, through the Internal Revenue Service, implemented regulations designed to reduce drainage incentives emphasizing wetlands as a national resource.

This legislation created additional disincentives to convert wetlands and protected North Dakota wetlands. Farm operators must bear the entire cost of wetland conversion rather than transferring drainage costs to federal and state governments. The cost of draining North Dakota's remaining wetlands will be considerable if most of the low cost, easy to drain wetlands are already converted. Higher drainage costs for physical conversion and for reduced tax advantages should reduce the amount of wetland drainage.

Garrison Diversion Unit Reformulation Act of 1986

The Garrison Reformulation Act (P.L. 99-294), although not intended to be a general statement of federal policy, describes mitigation procedures to replace wetlands converted by project construction. The act sets aside project monies in a wetland trust to be used for the preservation, enhancement, restoration, and management of wetlands not included as mitigated acres. Provisions of the Reformulation Act represent Congress' recognition that it must embrace environmental interests to garner support for projects deleterious to wetlands.

The act implemented recommendations of the Garrison Diversion Unit Commission as outlined in the commission's final report (Garrison Diversion Unit Commission 1984). Specifically, mitigation for impacts on fish and wildlife will be on an acre-for-acre basis concurrent with project construction. Replacement lands will be ecologically equivalent to those destroyed. Mitigation will be based on total acres of wetlands destroyed and 50 percent of the wetlands adversely affected. Mitigation priorities will be:

1. restoration of drained wetlands,
2. creation of new wetlands, then
3. acquisition of existing wetlands.

The Bureau of Reclamation (1988) anticipates 80 percent of the purchased wetland acreage can be restorable wetlands at a ratio of 25 percent wetlands to 75 percent uplands. Type 2 wetlands (Shaw and Fredine 1971) are classified with grassland, and each acre will be mitigated 0.5 acre grassland and 0.5 acre existing or restorable wetland.

The commission authorized enhancement acreage in addition to full compensation for mitigation acreage. Enhancement acreage is used to reestablish damaged wildlife habitat, develop recreation sites, or create or improve fisheries. Approximately 112,300 acres are needed -- 53,000 acres to offset project losses (mitigation) and 59,300 acres for wildlife enhancement.

The act established a wetlands "trust" to preserve, enhance, restore, and manage wetlands and associated wildlife and their habitat in North Dakota. Monies allocated to the trust are from Garrison Diversion appropriations and a 10 percent cost-share from the state. Two million dollars were allocated to the trust in 1986 and \$500,000 in both 1987 and 1988. Only interest earned from appropriated funds may be used. Interest earnings were \$145,000 in 1986 and 1987 and \$200,000 in 1988. The total federal contribution will not exceed \$12 million with interest accrued available for wetland enhancement.

A six-member board of directors governs the trust (Appendix B). The board has authority to use trust funds to acquire land and water rights for wetland preservation, enhancement, restoration, and management and/or wetland habitat programs. The board decided trust monies will be used to acquire wetland tracts with an emphasis on unique areas for the first three years (Lohman 1987). The board may purchase Denbigh Bog in McHenry County. Denbigh Bog is an 800-acre riparian wetland containing rare plant and animal species and is listed as a North Dakota Natural Areas Registry Site (McEnroe 1988). The board is reviewing other unique areas suggested by North Dakota Parks and Recreation Department and North Dakota Game and Fish Department.

The trust may not affect many wetland acres initially. However, once fully funded (\$12 million), the trust's impact could be substantial, with close to \$1 million dollars per year available to purchase and restore wetlands. Trust monies used to purchase wetlands are not added as mitigation wetland acres for the Garrison Diversion Unit. There is potential for substantial wetlands protection without mitigation trade-offs. The trust is contingent on continued funding of the Garrison Diversion project. Any cut-back in project funding would directly affect trust functions and the amount of wetland acres purchased in the future.

As of July 1, 1989, the trust contained \$250,000. Up to \$122,000 of the trust money was to be donated to the Chase Lake Project (part of the North American Waterfowl Plan) to assist in purchasing 7,200 acres located near Chase Lake in Stutsman County (McEnroe 1989). Trust money was used to purchase a 480-acre tract of land in Ramsey County. The trust leased 1,400 surface acres of wetlands in Bottineau County. Landowners on 1,140 acres received \$10 per acre to maintain wetlands until April 15, 1989. Landowners on an additional 260 acres received \$40 per acre to maintain water in the wetland until July 15, 1989, at which time they could release water from the wetland. The lease period covered one year.

Food, Agriculture, Conservation, and Trade Act of 1990

Title XIV (Subtitle B) of the 1990 Farm Bill modifies some of the Swampbuster provisions set forth in the Food Security Act of 1985. The timing of a Swampbuster violation has been changed from the actual planting of a crop to whenever a farmer in the program drains a wetland making crop production possible (Moyer 1991). New Swampbuster provisions allow the USDA secretary to impose graduated sanctions on Swampbuster violators for some situations. The secretary may penalize violators from \$750 to \$10,000 (depending on the severity of the violation) if it is determined that the violator was acting in good faith, had not violated Swampbuster more than once in the past 10 years,

and was willing to restore the same wetland converted according to a restoration plan approved by SCS and FWS officials. Although these penalties may not seem as severe as those in the original Swampbuster, the new Swampbuster should be similar in its wetlands drainage deterrence.

North Dakota S.B. 2035 (No-net-loss)

The 1987 North Dakota legislature passed Senate Bill No. 2035 or no-net-loss (Appendix C). One intent of the bill was to garner support from environmental groups to ease Swampbuster restrictions. Efforts to reduce restrictions or eliminate Swampbuster were not successful. Many thought the 1989 Legislature would repeal SB 2035, but efforts to repeal the bill failed.

Provisions of the bill included (Leitch 1987 and Leitch et al. 1987):

- requiring a permit to drain any wetland having a watershed greater than 80 acres, and
- granting a permit only if
 - the individual wishing to drain pays at least 10 percent of the cost of restoring an equivalent wetland, AND
 - other entities (e.g., state or federal government, private organizations) pay the remaining cost of restoration/replacement, AND
 - someone is willing to restore wetlands on their property OR the wetland bank has a balance less than 2,500 acres.

The state engineer and the state game and fish commissioner grant permits based on state water resource policy, effect on downstream lands, and wetlands acres available in the wetlands bank. The wetlands bank was designed to monitor created, restored, and drained wetlands. Wetlands are broadly defined as "a natural depressional area capable of holding shallow temporary, intermittent, or permanent water" (Leitch et al. 1987).

The bill encouraged wetland, wildlife, water, and agricultural interests to cooperate on rational wetland allocation. Persons proposing to drain a wetland for which a permit is required must pay 10 percent of the acquisition costs, easement, lease, or construction costs of replacement wetlands. Either federal, state, or private interests or any combination thereof paid the remaining 90 percent. Federal, state, and private wildlife and water entities must cooperate with the landowner to make contacts with other landowners, do appraisals, and perform other tasks necessary to lease, purchase, or other acquisition necessary to meet replacement requirements. Replacement wetlands must maintain 50 percent of the wetland acres drained within the county or contiguous counties where drainage occurred. The remaining replacement wetland acres can be anywhere in the state.

No-net-loss also requires the state treasury to create a special revolving wetland replacement fund. The fund will contain monies donated by private or public sources for wetland replacement. The game and fish commissioner must work with the governor, U.S. Fish and Wildlife Service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop additional funding.

Estimating the impact of no-net-loss on North Dakota wetlands is difficult since the number and type of wetland acres affected is unknown. From a conceptual standpoint, no-net-loss should maintain overall wetland acres with watersheds exceeding 80 acres. However, many of the prairie pothole wetlands may not fall under no-net-loss provisions, providing no protection for many wetlands in the state.

Wetland Enhancement Programs

Many federal and state government agencies along with private organizations have in the past and currently are attempting to influence wetland use. Some programs enhance and protect wetlands by encouraging wetland restoration and wildlife habitat development. Other programs protect wetlands through long-term leases with landowners or provide financial support for wetland acquisition.

Federal Programs

Federal programs available for wetland restoration and protection and wildlife habitat include (Messmer 1989):

- Wetland Reserve Program (WRP)
- Environmental Easement Program (EEP)
- Conservation Reserve Practices,
- Agricultural Conservation Practices (ACP),
- Conservation Reserve Program (CRP),
- Federal Water Bank Program,
- Long-Term Agreements,
- Great Plains Conservation Program,
- Wetland Habitat Office Extension Program,
- Small Wetland Acquisition Program,
- Wetland Easement Programs,
- Piggyback Lease Program, and
- North American Waterfowl Management Plan (NAWMP).

The **Wetland Reserve Program** (S. 2830, sponsored by USDA) establishes a goal of restoring and protecting 1 million (200,000 annually) wetland acres through easements by 1995. Eligible land includes farmed and converted wetlands (excluding those converted after December 23, 1985). Some land that is "functionally" dependent on such wetlands may also be enrolled. Restoration efforts must be approved by SCS and FWS. Cost-sharing is available to compensate land owners for restoration expenses. Wetland easements will be 30 years, permanent, or maximum duration allowed under state laws. Wetland acres will be enrolled into the program using a bid system. Payments are limited to \$50,000 annually for 30-year easements paid over 5 to 20 years. There is no payment limit on permanent easements which can be made in one lump sum. Payments are exempt from overall farm program limitations.

The **Environmental Easement Program** (S. 2830, sponsored by USDA) is designed to ensure the continued long-term protection of environmentally sensitive lands. Eligible lands include riparian corridors, CRP and Water

Bank land coming out of retirement, and critical wildlife habitat for threatened or endangered species. Lands are protected using permanent or maximum duration easements. Terms of the easement must include a natural resource conservation management plan. Cost-sharing up to 100 percent is available to compensate landowners for plan expenses. Payments up to \$250,000 (\$50,000 annually) over 10 years are possible and are exempt from overall program limitations.

Under **Conservation Reserve Practices** (P.L. 99-198, sponsored by ASCS), water is considered an acceptable cover on qualifying CRP acres. As a result, potential exists to restore previously drained wetlands on CRP acres since the entire cost of restoring wetlands may be paid for by ASCS (50 percent), N.D. Game and Fish (35 percent), and the U.S. Fish and Wildlife Service (15 percent) under the program. In some instances, restoring wetlands may be less expensive than establishing and maintaining a seeded cover crop. Participants receive a rental payment for a 10-year contract as compensation.

Agricultural Conservation Practices (P.L. 99-198, sponsored by ASCS) provides incentives to restore drained wetlands for wildlife use. The ASCS (75 percent) and the N.D. Game and Fish Department (25 percent) pay restoration costs. While no annual rental payments are provided, areas restored may qualify under CRP and Agricultural Conservation Reserve (ACR) acres which are eligible for rental payments.

Wetlands can be enrolled in the **Conservation Reserve Program (CRP)** (P.L. 99-198, sponsored by ASCS) as of January 10, 1989. Landowners may place wetlands and surrounding cropland in CRP according to the following guidelines (Messmer 1989):

- wetlands must have been cropped for two years during the period 1981 through 1985,
- cropland must contain at least one wetland of any size and cropland is nine acres or less in size, at least a third of the field contains wetlands, and the density of wetlands is at least one wetland per six acres, and
- wetland and upland vegetation natural to the wetland area must be reestablished on enrolled acres.

Fifty percent of the establishment costs can be cost-shared with ASCS. Landowners receive an annual payment for the 10-year contract period. Over 111,600 acres of North Dakota wetlands were enrolled in CRP as of the ninth sign-up (Osborn 1990). These lands will be encouraged to transfer into the WRP under provisions outlined in the 1990 Farm Bill. Additional wetland acres will not be allowed into the CRP until such time as it is determined that the WRP cannot meet its enrollment goals.

The **Federal Water Bank Program** (P.L. 91-559, sponsored by ASCS) is designed to preserve and improve wildlife habitat. Owners of wetlands and uplands enrolled receive an annual rental payment for 10 years. The program is available in North Dakota counties east of the Missouri River. As of July 31, 1989, 1,128 agreements had been signed covering 51,900 (32 percent) wetland and 108,500 (68 percent) upland acres (Kaldus 1989).

Long Term Agreements (LTAs) (sponsored by ASCS) allow landowners in eastern North Dakota counties identified as non-Great Plains counties to enter into management agreements for up to 10 years. LTAs can include wetland development, management, or restoration. Cost-sharing is available through ASCS and the N.D. Game and Fish Department. The ASCS and N.D. Game and Fish Department pay rent to landowners.

Great Plains Conservation Program (sponsored by SCS) contracts provide financial assistance for implementation of conservation practices. Contracts must encompass the entire operation and extend for 3 to 10 years. Landowners who restore or enhance wetlands can receive cost-sharing from the Soil Conservation Service (SCS), N.D. Game and Fish Department, and USFWS. Agreements are available in western North Dakota counties that are not eligible for LTAs.

The **Wetland Habitat Office Extension Program** (P.L. 99-198, sponsored by USFWS) provides cost-sharing with ASCS, SCS, and N.D. Game and Fish Department for wetland development and restoration under ACP or CRP. Landowners can receive direct payments independent of a particular program. Landowners with qualifying restored or developed wetlands may be eligible for perpetual USFWS easements.

The **Small Wetland Acquisition Program** (P.L. 89-669, sponsored by USFWS) authorizes USFWS to use duck stamp dollars to buy land for waterfowl production. Wetland areas with adjacent uplands are required. Restored wetlands may qualify. Acquired land is open to hunting and is managed as Waterfowl Production Areas (WPA). Acquisition costs are based on the market value of comparable land in the local area. Nearly 229,000 acres of wetlands (40 percent) and uplands (60 percent) in North Dakota were enrolled in the program as of September 1, 1989 (McEnroe 1989).

Wetland Easement Program (P.L. 89-669, sponsored by ASCS) uses fees collected from duck stamp sales to establish perpetual easements protecting wetlands from burning, draining, or filling. Landowners receive a one-time lump sum payment. Wetland easement programs have created considerable controversy between the USFWS and the state (Sagsveen 1984). Much of the dispute is the result of:

- USFWS policy to use blanket easements without identifying location and acreage of wetlands,
- enactment of gubernatorial consent provisions,
- enactment of the National Wildlife Refuge System Administration Act of 1966, and
- the success of the easement acquisition program within the state.

Over 777,500 wetland acres in North Dakota were enrolled in the program as of September 1, 1989 (McEnroe 1989).

Piggyback Lease Program (P.L. 99-198, sponsored by USFWS) involves land enrolled in CRP and covered by a USFWS wetland easement. Landowners may receive a \$5 per CRP acre payment for allowing the USFWS to conduct limited wildlife management on the land enrolled in CRP.

The **North American Waterfowl Management Plan (NAWMP)** represents a joint agreement between Canada and the United States in an attempt to restore waterfowl populations to 1970 levels. Specific waterfowl population objectives for ducks are 62 million breeders and a fall flight of 100 million birds (Patterson and Nelson 1988). The NAWMP is designed to reverse deterioration of critical waterfowl habitat. The plan calls for joint ventures between government agencies and private organizations in planning, funding, and implementing habitat enhancement projects.

NAWMP identifies priority waterfowl breeding, staging, and wintering areas and recommends increased conservation and management. The Prairie Pothole Region was identified in the NAWMP as a priority habitat area. The plan objective for habitat enhancement and protection in the Prairie Pothole Region includes 1.1 million acres for production habitat in the north central states (Patterson and Nelson 1988). An estimated \$500 million will be spent on wetland restoration and enhancement projects within the continental United States.

State Programs

State programs available for wetland restoration and wildlife enhancement include:

- Habitat Stamp and Interest Money Programs,
- Wetland Tax Exemption,
- State Water Bank,
- Land Acquisition Program, and
- Land and Water Conservation Fund.

The **Habitat Stamp and Interest Money Programs** (NDCC 20.1-02-05, sponsored by N.D. Game and Fish Department) provide cost-sharing for wetlands restored or developed under ACP (25 percent) or CRP (35 percent). A maximum cost-sharing limit of \$3,500 per landowner is available unless prior approval is obtained. Over 15,400 acres of wetlands and uplands have been restored or enhanced through this program in North Dakota (Hare 1989).

The **Wetland Tax Exemption** (NDCC 57-02-08.4, administered by N.D. Tax Department) provides property tax relief on restored, developed, or existing wetlands. Landowners apply directly to their county tax assessor. The state general fund reimburses counties for lost tax revenue. Currently, this program remains unfunded by the state.

The **State Water Bank Program** (NDCC 23-20.2-05, sponsored by N.D. Department of Agriculture) is similar to the federal Water Bank program. A landowner may restore wetlands and enroll them, along with adjacent uplands, into the program. Three acres of uplands can be enrolled for each acre of wetland. Agreements last from 5 to 10 years. Program funding is limited and consists primarily of private donations. Current annual funding for the program is approximately \$36,000. As of September 1, 1989, 40 acres (30 upland and 10 wetland) in Wells County had been enrolled in the program with 160 additional acres under review (Carlson 1989).

The **Land Acquisition Program** (NDCC 20.1-02-17.1, sponsored by N.D. Game and Fish Department) is designed to acquire key habitat areas for resident game. Areas acquired are open for hunting and are designated State Wildlife Management Areas. Waterfowl habitat may also be purchased under the program.

The **Land and Water Conservation Fund (LWCF)** (P.L. 88-578, administered by N.D. Parks and Recreation Department) provides grants to state agencies and local political subdivisions for outdoor recreation projects including habitat conservation. Requests are made to the N.D. Parks and Recreation Department through a state agency or local political subdivision and must be matched on a one-to-one basis. The LWCF has not been used to restore or purchase wetlands in the state.

Private Programs

Private programs promoting wetland restoration and acquisition include:

- Youth for Wildlife Habitat,
- Hides for Habitat,
- Private Waterfowl Production and Refuge Program,
- Game and Fish Foundation,
- Sanctuary Program, and
- Ducks Unlimited.

The **Youth for Wildlife Habitat** is a contest for youth in grades K-12 to compete for cash prizes in developing wildlife habitat. **Hides for Habitat** raises funds from the collection and sale of deer hides to promote development of wildlife habitat on private lands. Funds may be used to restore wetlands on private lands. The Dakota Wildlife Trust sponsors these programs.

The **Private Waterfowl Production and Refuge Program** is funded by an individual with a desire to enhance waterfowl production. This individual has acquired tracts of waterfowl production habitat with large numbers of wetlands or potentially restorable wetlands across the state. Areas are closed to hunting.

The **Game and Fish Foundation** is controlled by a private board of directors who solicit funds used to purchase land to be managed as wildlife habitat. This is a relatively new program with little activity to date.

The **Sanctuary Program** is sponsored by the National Audubon Society. The program is geared toward acquiring wildlife areas threatened with destruction.

Ducks Unlimited is a national organization dedicated to enhancing waterfowl production through habitat enhancement and research. Nearly 100 restoration and enhancement projects have influenced wildlife production on 45,000 acres of wetlands and surrounding uplands in North Dakota (Bennett 1990). Nearly all projects were completed on publicly-owned lands, but future plans include increasing the number of projects on private lands such as CRP wetlands.

Status of North Dakota Wetlands

North Dakota has 45 million land surface acres. About 51 percent, or 23 million acres, is in the Prairie Pothole Region. More wetlands (albeit artificial) are in the Missouri Plateau region now than previously because of stockdams and other artificial impoundments (Figure 3). Most wetlands in the Red River Valley have been drained. Wetland conversion concerns center around activities in the Missouri Coteau and Drift Prairie areas of the state.

Effects of wetland legislation at federal and state government levels are difficult to estimate since exact numbers, sizes, and locations of individual wetlands in the state are unknown. Only a small portion of the state's wetlands have been inventoried (Nelson et al. 1984), although the National Wetlands Inventory (NWI) is underway (Figure 4). Additionally, wetland ownership or control remains largely unknown in the aggregate. Wetland ownership is important because it identifies the degree and extent of wetland protection. Until a definitive inventory is completed (wetland type and ownership), wetland acres affected by legislative actions cannot be estimated nor their consequences determined.

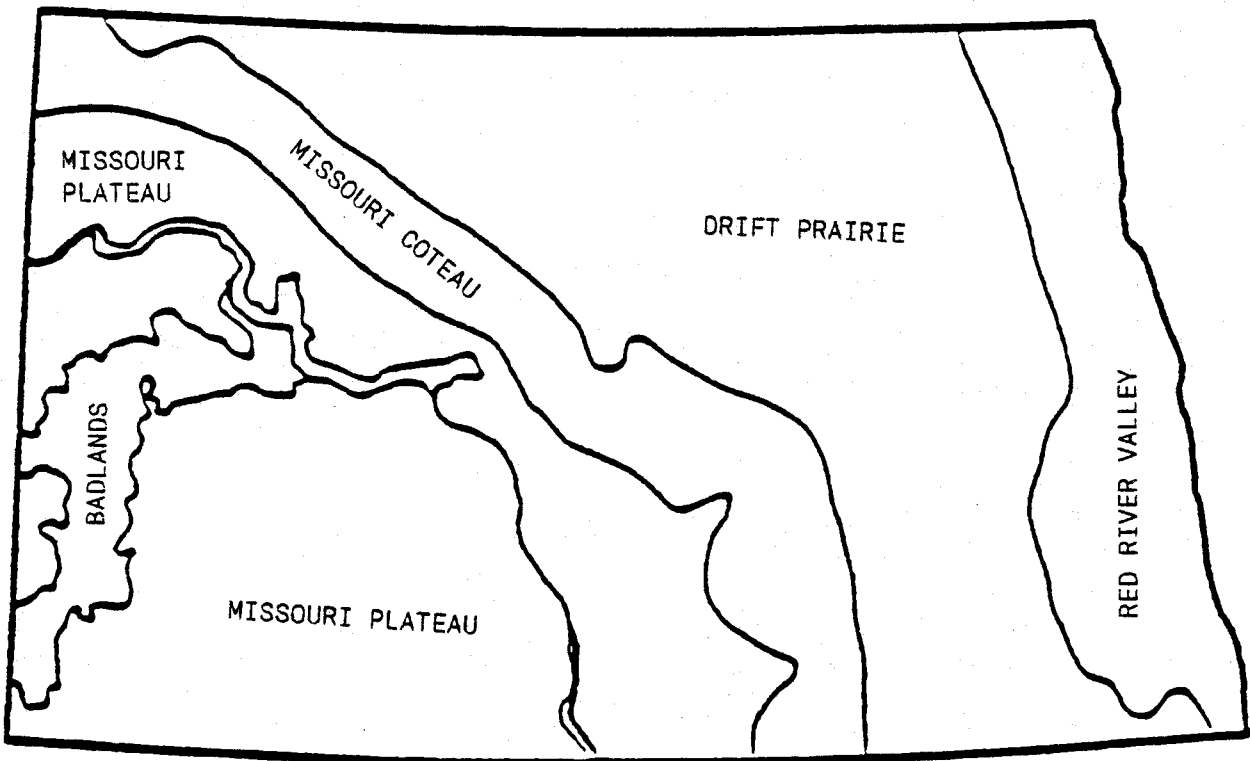


Figure 3. Major Physiographic Subdivisions of North Dakota.

1	1	1	1	1	3	1
WILLISTON		MINOT		DEVILS LAKE		THREE R
5	5	5	5	5	5	1
WATFORD CITY	5	5	5	5	1	1
		McCLUSKY		NEW ROCKFORD		GRAND
		8	8	6	6	1
DICKINSON			8	8	5	5
		BISHOP		JAMESTOWN		FARGO
			8	6	5	6
						1

- 1 Photography Under Contract
- 3 Photography in Regional Office for QC
- 5 Draft Maps in Regional Office and Field for Review
- 6 Draft Maps in St. Petersburg for Final Map Production
- 8 Final Maps Digitized

Figure 4. Status of National Wetland Inventory in North Dakota, 1989.

Wetland Ownership and Protection

Wetland ownership dictates the degree of, and mechanism for, wetland protection. Wetland protection can be divided into three groups--high, medium, and low--based on ownership, extent of protection, and duration of protection. Wetlands with a high degree of protection include wetlands on:

- National Wildlife Refuges,
- Waterfowl Production Areas,
- FWS easements,
- State Game Management Areas,
- National Forests,
- National Grasslands,
- Corps of Engineers land,
- Bureau of Reclamation land,
- Bureau of Land Management land,
- National Forest Service land,
- State Park lands,
- State School lands,
- State Forest lands, and
- land where it is extremely expensive or unfeasible to convert wetlands to alternative uses.

Wetlands on public lands have little threat of being drained. Given the tone of recent federal legislation, it is doubtful that drainage will occur on federal or state owned or controlled land. The U.S. Forest Service manages the majority of federal land in North Dakota (Table 2). The U.S. Fish and Wildlife Service manages nearly 290,000 acres of wildlife refuges. Over 710,000 acres in the state are state school land. The U.S. Fish and Wildlife Service has enrolled over 225,000 acres in Waterfowl Production Areas in North Dakota. The N.D. Game and Fish Department has 140,000 acres in Waterfowl Management Areas.

Wetlands on private lands that are very costly to drain have a high degree of protection since little economic incentive exists to convert these wetlands to agriculture. In general, these wetlands have little potential for conversion in the near- or long-term. Hemlich and Langer (1986) estimated over 70 percent of the remaining wetlands in the Prairie Pothole Region have a high degree of protection.

TABLE 2. FEDERAL AND STATE OWNED OR LEASED LAND, ACREAGE BY SELECTED AGENCIES, NORTH DAKOTA

Agency	Acres
Federal:	
U.S. Forest Service	1,105,599
Army Corps of Engineers	505,880
U.S. Fish and Wildlife Service	
Wildlife Refuges	289,791
Waterfowl Production Areas	225,355
Easements ^a	777,500
Water Bank	160,427
National Park Service	71,057
Bureau of Land Management	67,650
Bureau of Reclamation	10,089
State:	
State School Land	712,456
North Dakota Game and Fish Dept.	
Waterfowl Management Areas	140,856
State Park Service Land	17,089
State Forest Service Land	14,378

^aThe total area under easement is greater than the actual wetland area, since many easements were taken on a legal description rather than wetland basis (Sagsveen 1984).

SOURCE: Bureau of Business and Economics Research. 1989.

Wetlands with a **medium degree of protection** include wetlands on:

- waterbanks,
- wetlands on cropland acres enrolled in the Conservation Reserve Program (CRP), and
- land where it is expensive to convert wetlands to agricultural production.

Many of these programs represent agreements between private landowners and federal or state agencies. Contracts are signed between landowners and agencies whereby landowners relinquish some control of the land or agree to adhere to specific guidelines restricting land use for a specified time. Once contracts expire, landowners can determine land use. Some of the programs are perpetual or allow land to be re-enrolled.

Wetlands under these agreements have a medium degree of protection since wetland drainage is possible once landowners satisfy program requirements. However, agreements generally last for at least 10 years, limiting potential wetland drainage in the near-term. For example, CRP has idled over 3 million acres of North Dakota cropland for 10 years (Osborn 1990). Long-term protection depends on future economic conditions in the agricultural sector.

Wetlands expensive to convert in the near term have a medium degree of protection. These wetlands are protected as long as agricultural prices remain low. As commodity prices rise, degree of wetland protection falls. Heimlich and Langer (1986) estimated that 22 percent of the remaining wetlands in the Prairie Pothole Region have a medium degree of protection.

Wetlands with a **low degree of protection** include:

- wetlands in or near urban areas,
- wetlands on privately owned cropland acres enrolled in the farm program,
- wetlands on privately owned cropland acres not in the farm program, and
- wetlands on rangeland.

Generally, wetlands on privately owned land have the greatest potential for wetland drainage. Heimlich and Langer (1986) estimated that 5 percent of the remaining wetlands in the Prairie Pothole Region have a low degree of protection. State law allows landowners to drain wetlands with watersheds less than 80 acres. However, they may be enticed to forego wetland drainage through various economic incentive programs encouraging wetland enhancement.

Wetlands on privately owned cropland acres enrolled in the farm program are protected from drainage as long as farm operators find economic benefit in farm program participation. The Swampbuster provision of the 1985 Farm Bill restricts farm operators from draining wetlands since conversion implied loss of eligibility for various farm programs. Low market prices for agricultural commodities combined with few economically feasible alternative land uses ensure Swampbuster's effectiveness in stemming potential wetland drainage on cropland. However, as market prices for agricultural commodities increase,

Swampbuster loses its effectiveness to control wetland drainage on cropland (Baltezare et al. 1987).

Wetlands on cropland not enrolled in the farm program and on rangeland have the highest potential for conversion. Landowners are unrestricted in their wetland usage, except for the state's 80-acre watershed rule. Potential wetland drainage on privately owned rangeland is relatively low in the short-term since wetlands provide positive economic benefits such as water and forage. In addition, drainage costs associated with these wetlands generally exceeded benefits from crop production (Baltezare et al. 1987). Long-term potential for wetland drainage depends on agricultural commodity prices.

Wetlands on privately owned cropland and on rangeland are protected by "no-net-loss," which protects wetlands with an 80-acre watershed ensuring total number of wetlands with watersheds 80-acres or larger in the state will remain virtually unchanged (within 2,500 acres allowable in the "bank"). However, many smaller wetlands with watersheds less than 80 acres in the Prairie Pothole Region remain unprotected.

Case Study

Since aggregate wetland acreage and ownership are largely unknown, a case study was carried out to assess the status of North Dakota wetlands. Results provided information on wetland acreage and ownership for a specific region of the state. The case study outlined a procedure to identify wetland acres and ownership for the entire state once U.S. Fish and Wildlife wetland inventory maps are completed.

Eddy county was chosen for the case study because:

- it is in the Prairie Pothole Region, and
- national wetland inventory draft maps were available.

The USFWS provided draft maps of the national wetlands inventory. Inventory maps represented only the western half of Eddy County. Two townships, Gates and Grandfield, were chosen from those included in the national wetlands inventory (Figure 5).

The USFWS provided a map detailing land ownership. Wetland ownership/easement categories included:

- | | |
|--------------------------------|-----------------------------------|
| -- National Wildlife Refuge, | -- National Grasslands, |
| -- Easement Refuge, | -- Waterbank Easment, |
| -- Waterfowl Production Area, | -- State School Land, |
| -- FWS Easement, | -- Water Bank, |
| -- State Easement Refuge, | -- Garrison Diversion Unit |
| -- State Game Management Area, | Mitigation, |
| -- Conservation Organization, | -- Corps of Engineers, |
| -- National Forest, | -- Bureau of Reclamation, |
| -- Crops of Engineers, | -- Bureau of Land Management, and |
| -- State Park, | -- State Forest. |

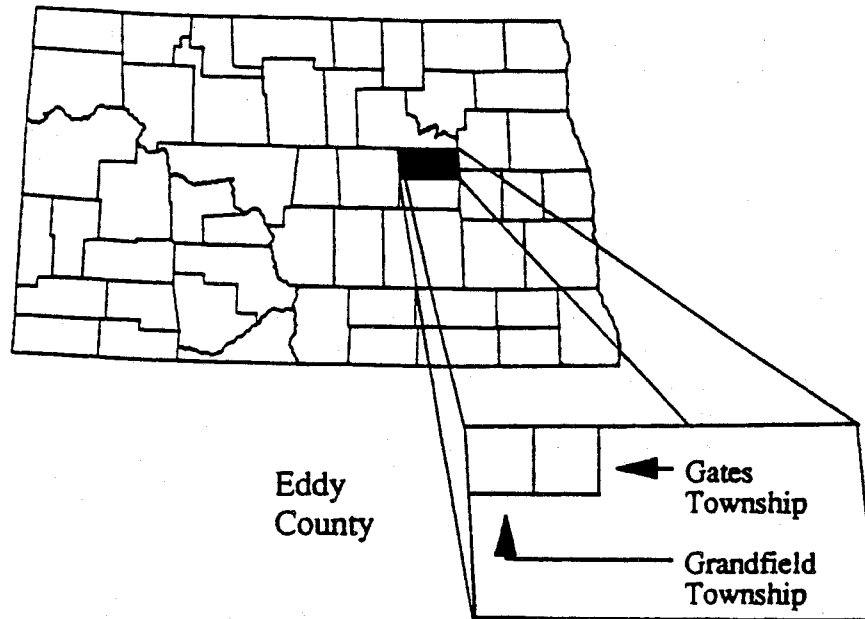


Figure 5. Location of Gates and Grandfield Townships in Eddy County, North Dakota

Wetlands not included in categories presented above were assumed to be privately owned wetlands. The wetland ownership map was overlaid on the national wetlands inventory map to identify wetlands by ownership. Wetland acres were measured with a planimeter and aggregated by ownership category.

Privately owned wetlands were separated into three groups including:

- wetland acres on cropland enrolled in the farm program,
- wetland acres on cropland enrolled in the Conservation Reserve Program (CRP), and
- wetland acres on rangeland and on cropland not enrolled in the farm program.

Estimates of wetland acres on cropland enrolled in the farm program and in CRP were collected from Form SCS-CPA-026 in the county SCS Office (Appendix D). The form contained total wetland acres on cropland under control of the farm operator. Wetland acres on cropland not enrolled in the farm program and rangeland were estimated by subtracting wetland acres on cropland enrolled in the farm program and in CRP from total wetlands acres owned privately.

Over half the wetlands in Gates Township were privately owned (Table 3). The majority of privately owned wetlands were on cropland enrolled in the farm program. Federal agencies controlled over 40 percent of the wetlands in the township. Less than 5 percent of the wetlands in the township were state owned.

Most (75 percent) wetlands in Grandfield Township were owned privately (Table 3). The majority of privately owned wetlands were on cropland enrolled in the farm program. Federal agencies controlled 20 percent of the wetlands, with most under FWS easement. Only 5 percent of the wetlands were state owned.

Aggregating data from both townships showed over 60 percent of the wetlands were owned privately (Table 3). Most privately owned wetlands were on cropland acres enrolled in the farm program. Thirty percent of the wetlands were under federal control. Most federally controlled wetlands were under FWS easements. Only 5 percent of the wetlands were state owned.

TABLE 3. WETLAND ACRES, BY OWNERSHIP, GATES AND GRANDFIELD TOWNSHIPS, EDDY COUNTY, NORTH DAKOTA, 1989

Ownership by Type and Category	Township					
	Gates		Grandfield		Total	
	Acres	%	Acres	%	Acres	%
Private:						
Wetlands on cropland enrolled in farm programs	564	39	743	52	1,307	46
Wetlands on cropland in CRP	60	4	140	10	200	7
Wetlands on cropland not enrolled in farm programs and on rangeland	<u>141</u>	<u>10</u>	<u>186</u>	<u>13</u>	<u>327</u>	<u>12</u>
Total	765	53	1,069	75	1,834	65
Federal:						
Easements	329	23	254	18	583	20
Waterbank	13	1	23	2	36	1
Waterfowl Production Areas	<u>266</u>	<u>19</u>	<u>0</u>	<u>0</u>	<u>266</u>	<u>9</u>
Total	608	43	277	20	885	30
State:						
School Lands	<u>57</u>	<u>4</u>	<u>84</u>	<u>5</u>	<u>141</u>	<u>5</u>
Total Wetlands	1,430	100	1,430	100	2,860	100

Status of Wetlands in Eddy County

Summarizing the status of wetlands in Eddy County showed 50 percent of the wetlands existing before European settlement have been converted (Figure 6) (Tiner 1984). Of the 50 percent remaining, 64 percent are privately owned. Most privately owned wetlands are on land owned by farm operators participating in federally sponsored farm programs. Only 12 percent of the county's wetlands are controlled by landowners not participating in the farm program or on rangeland. Federal and state agencies own or control 36 percent of the wetlands.

Only a small percentage (12 percent) of the wetlands remaining in Eddy County have a low degree of protection. Threatened wetlands consist primarily of those on private land not in the farm program or on rangeland. In general, the potential for draining these wetlands is slight, given current economic conditions. Relatively low commodity prices, high conversion costs, few alternative land uses, and state and federal legislation protecting wetlands provide considerable conversion deterrence.

Over 50 percent of the wetlands remaining in Eddy County have a medium degree of protection. Wetlands with a medium degree of protection are wetlands on CRP lands and wetlands on cropland acres enrolled in farm programs. These wetlands are protected given current farm legislation and programs. However, short-term changes in farm programs, federal and state legislation, and commodity prices make long-term protection uncertain.

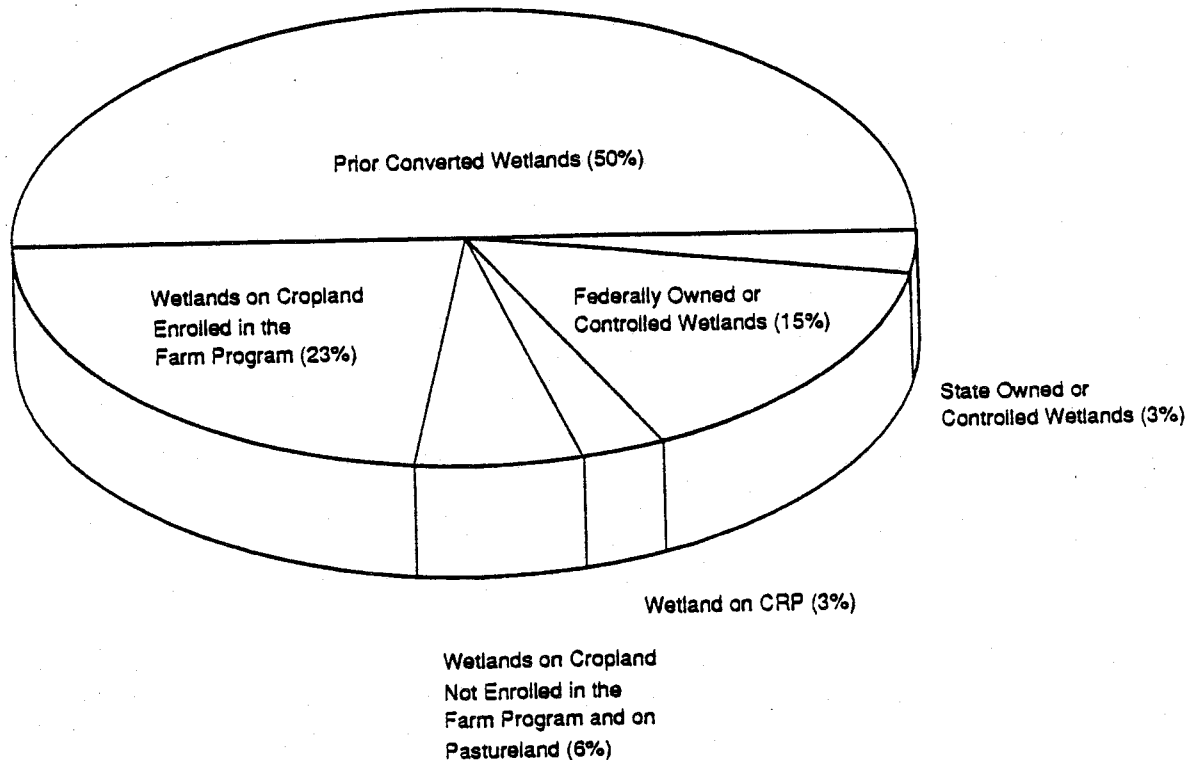


Figure 6. Status of Wetlands in Two Eddy county Townships, North Dakota, 1989

Over 35 percent of the wetlands in Eddy County have a high degree of protection. Wetlands with a high degree of protection include federal and state owned or controlled wetlands. These wetlands remain protected as long as federal government policies echo public support for protecting and enhancing the environment.

Attitudes Toward Wetlands

Wetland preservation has been a highly debated issue in North Dakota for several years (Sidle and Harmon 1987). Debates represent the struggle to influence attitudes toward one side of the wetlands issue. Four surveys assessing landowner and household attitudes towards wetland preservation, drainage, and value were published in North Dakota during the 1980s.

Sayler et al. (1984) surveyed North Dakota farmers in the Prairie Pothole Region (PPR) to assess their attitudes toward wetland drainage if they received a tax credit for wetland preservation. Young farmers who had large farms, owned a greater portion of wetlands, and planned future wetland drainage were not as willing as other farm operators to participate in a tax credit program. Farmers' attitudes were biased toward wetland drainage due to environmental issues on the Garrison Diversion Unit project and a variety of economic forces, social pressures, and technological changes in North Dakota.

Smutko et al. (1984) assessed attitudes of landowners in North Dakota's Prairie Pothole Region toward wetland preservation and wetland preservation programs, particularly the Small Wetlands Acquisition Program (SWAP). Landowners supported wetland preservation to store runoff water and provide wildlife habitat. Reasons for not supporting wetland preservation were that they created weed problems and presented a farming nuisance. Landowners were not willing to participate in USFWS easement programs due to easement length; land transfer carryover; and burning, draining, and filling restrictions. Other reasons for nonparticipation in the program were the USFWS lack of weed control, number of upland acres required, and inability to hay or graze land sold. Landowners also reported a lack of information about preservation programs as another reason for nonparticipation. Authors concluded drainage or preservation attitudes formed over a landowner's lifetime cannot be easily changed. Wetland preservation efforts could be improved by:

- providing more information about preservation programs,
- increasing the amount paid to preserve wetlands,
- improving attitudes toward government-owned land through proper management of government-acquired wetlands, and
- concentrating efforts in propreservation areas.

Grosz and Leitch (1987) surveyed North Dakota households in conjunction with writing a wetlands priority plan evaluating attitudes toward wetland acquisition and values. Respondents rated water quality, flood control, and education as the most important wetland values. Respondents were willing to fund wetland acquisition even though their knowledge about the status of wetlands in North Dakota was low.

Respondents to a survey conducted by the North Dakota Chapter of the Wildlife Society (1988) believed wetlands were important for wildlife habitat and recreation, flood control, water recharge, and water quality. Results indicated wetland drainage should be controlled through payments to landowners for wetland preservation.

Findings of the previous surveys indicate wetlands were important to North Dakota residents and landowners. However, more information was needed to change attitudes formed over one's lifetime. It appeared that to preserve wetlands, landowners must receive monetary compensation for land taken out of agricultural production.

Restoration

Monetary incentives offered by various federal, state, and private agencies and programs continue to influence the potential for wetland restoration in the state. Without economic incentives, potential wetland restoration is limited. However, programs are available which provide monetary incentives to landowners encouraging wetland restoration and habitat conservation.

Conservation Reserve Program

The Conservation Reserve Program (CRP) was authorized by the Food Security Act of 1985. The program's main objective is to take highly erodible land out of production. Specific objectives are to:

- reduce wind and water erosion,
- protect long-term food-producing capability,
- reduce sedimentation,
- improve water quality,
- create wildlife habitat,
- curb excess production, and
- provide income support for farmers.

Participating landowners must implement a conservation plan establishing permanent cover on enrolled land for 10 years. Water is an acceptable cover on qualifying CRP acres. Landowners may restore wetlands at little or no cost via cost-sharing with ASCS, N.D. Game and Fish Department, and USFWS. The federal government in turn provides landowners annual payments. Land in the program must be "highly erodible" (determined by the SCS) and no more than 25 percent of any county's total cropland may be entered.

CRP had an objective of retiring 45 million acres of erodible land by 1990. Nationally, the program reached nearly 34 million acres as of the ninth sign-up period (August 1989) (Osborn 1990). North Dakota ranked second among states with 3.1 million contracted acres. Nearly 1,300 acres of trees have been planted and 111,600 acres of wetlands have been restored or created through CRP in North Dakota.

A survey of North Dakota CRP participants (Mortensen et al. 1988) revealed nearly 50 percent of the respondents planned to convert CRP land into cropland after contracts expire. However, over 25 percent thought they would use the land for pasture. Another 16 percent planned to leave land in permanent cover. Nearly 5 percent intended to lease land for recreation.

CRP offers considerable economic incentives to landowners to create, restore, and maintain wetlands. Using water as a cover on qualifying CRP acres could be less expensive than establishing and maintaining a seeded cover crop, since wetlands restoration costs may be paid by various federal and state agencies. Also, effective January 10, 1989, wetlands and surrounding cropland were eligible for enrollment in CRP.

Enhancing and restoring wetlands on cropland acres implies removing agricultural land from production. Converting cropland (as well as rangeland) reduces the local property tax base since wetlands are generally considered wastelands contributing little or nothing to the property tax base (Leitch 1989). Cropland conversion also reduces demand for agricultural inputs (i.e., fuel, fertilizer, machinery, etc.) lowering agricultural sector economic activity in the area (Mortensen et al. 1989). These aspects must be considered by political decision makers when developing national wetland policies.

North Dakota Wildlife Extension Program

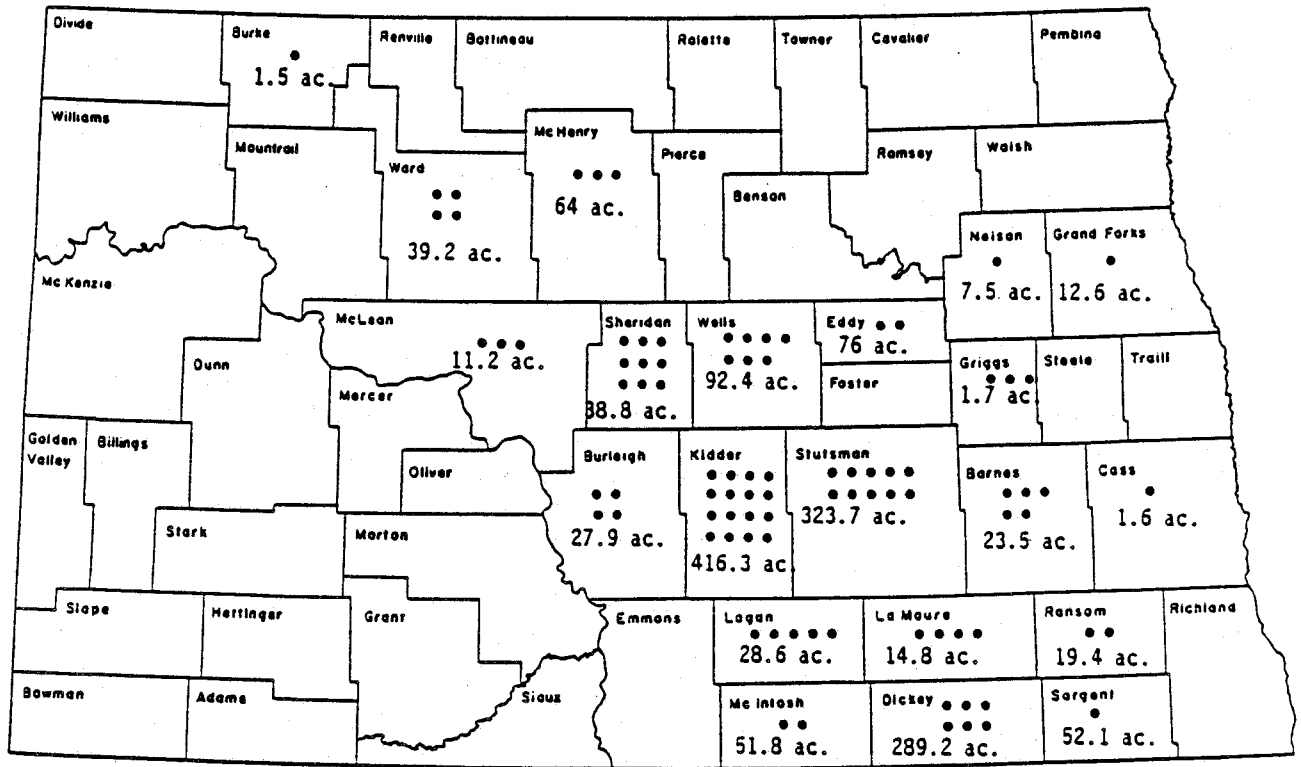
The Extension Program was a pilot program designed to enhance waterfowl production on private lands through Wildlife Management Agreements (Messmer 1989). The program was sponsored by the U.S. Fish and Wildlife Service and represented the first time the agency had developed a strategy to improve waterfowl production through wetland restoration on private land (Stromstad and Donovan 1989). Benefits of the program included cost-share wetland restoration on CRP lands and direct wetland restoration payments on other private lands. Agreements were for 10 years (Appendix E). One-time cash payments of \$10 per acre restored to wetland were paid to participants in addition to CRP payments.

As of June 1989, over 90 landowners in 21 counties had signed agreements to participate in the program (Figure 7). Contracts represented nearly 1,600 acres of wetland restoration and creation projects on lands adjacent to CRP lands. Restoration costs averaged \$107 per acre and ranged from \$75 to \$400 per acre. Most wetlands were restored through ditch plugging. Studies have shown plant and animal communities similar to unaltered wetlands could be restored by removing or blocking tile lines (LaGrange and Dinsmore 1989).

Other Federal and State Restoration Programs

Additional federal programs available to restore wetlands included:

- Federal Water Bank Program,
- Long Term Agreements, and
- Great Plains Conservation Program.



Note: • = one participant

Figure 7. Number of Participants and Acres Enrolled in Wildlife Extension Program, June, 1989.

The Federal Water Bank and Long-Term Agreement programs provide economic incentives to landowners through annual rental payments given in the terms of the contract agreement. The Great Plains Conservation Program provides only cost-sharing benefits for wetland restorations.

State programs include:

- Wetland Tax Exemption Program,
- State Waterbank Program,
- Habitat Stamp Program,
- Interest Program, and
- Wetland Trust Fund.

Many state-sponsored wetland restoration programs are limited due to the state's recent economic recessions. Consequently, the Wetland Tax Exemption and the State Water Bank Programs have limited financial support to conduct restoration. The Habitat Stamp Program and Interest Program provide money for cost-sharing. The potential for wetland restoration under these programs are slight without added economic incentives to landowners. The Wetland Trust Fund offers the state a unique opportunity to enhance wetlands with potentially \$1 million potentially available for restoration. Funds from the trust have purchased 480 acres of wetlands and one-time annual leases on 1,400 wetland acres in 1989.

Conclusions

Examining the status of wetlands in Eddy County revealed about 12 percent of remaining wetlands were in real danger of being converted given current federal and state legislation and free market opportunities. These wetlands were privately owned on cropland not enrolled in the farm program and rangeland. However, given current economic conditions and legislation, there was little threat of these wetlands being drained in the near-term. Over 50 percent of the wetlands remaining in the county had a medium degree of protection. Wetlands on CRP lands and cropland acres enrolled in the farm program were generally protected in the near-term. Changes in farm programs, federal and state legislation, and commodity prices made long-term protection uncertain. More than 35 percent of the county's wetlands had a high degree of protection. Wetlands on federal or state land generally had long-term protection.

The major federal legislation protecting North Dakota wetlands was Swampbuster provisions in the 1985 and 1990 Farm Bills. Swampbuster protected wetlands on cropland enrolled in the farm program by financially penalizing participants if they converted wetlands to cropland. Swampbuster effectively controls wetland drainage in the state since almost 90 percent of the cropland eligible for participation in the farm program was enrolled in 1989. Swampbuster controls wetland drainage as long as participation in the farm program was economically superior to non-participation. Relatively low market prices for agricultural commodities ensure high participation rates. However, as commodity prices increase, Swampbuster loses its ability to control wetland drainage.

The major state legislation governing North Dakota wetlands is "no-net-loss." "No-net-loss" requires acre for acre replacement for each wetland acre drained protecting the absolute number of wetland acres in the state. This provides protection to threatened wetlands on privately owned cropland not enrolled in the farm program and rangeland in North Dakota. "No-net-loss" controls wetland drainage in the state even if Swampbuster provisions are relaxed. However, "no-net-loss" only covers those wetlands with watersheds exceeding 80 acres.

Increased public awareness of wetland values combined with additional economic incentive programs has expanded wetland restoration efforts in the state. The Conservation Reserve Program, North Dakota Wildlife Extension Program, and the Wetlands Trust Fund each have the potential to maintain and

enhance wetland acres in the state. The ability of these programs to create and restore wetlands depends heavily upon how well they compete against returns from agricultural production. Low agricultural commodity prices provide increased potential for wetland creation and restoration. However, if commodity prices rise, the opportunity cost of participating in wetland enhancement programs increases. Economic incentives available through these programs must reflect opportunity costs obtainable through agricultural production or other free market alternatives for them to be effective.

Sufficient federal and state legislation exists to protect wetlands if necessary resources are available to agencies responsible for enforcement and agencies actively enforce the intent of enacted legislation. The quantity and quality of federal and state legislation at first glance provides adequate wetland protection. However, without active enforcement by controlling agencies, legislation merely represents an attempt by politicians to develop a token wetland protection policy to satisfy demands of the environmental movement.

North Dakota contains about 2 million acres of wetlands. Seventy percent or 1.46 million acres have a high degree of protection, about 25 percent or 440,000 acres have a medium degree of protection, and at least 5 percent or 100,000 acres have a low degree of protection or potential of being converted to other uses.

The amount of threatened wetland acres in North Dakota remains low provided:

- agricultural commodity prices are relatively low,
- federal and state legislation continue a wetland protection philosophy, and
- wetland creation and restoration programs provide sufficient economic incentives to effectively compete against returns from alternative land uses.

Changes in agricultural prices, federal and state legislation, and financial support for restoration and creation programs have a direct impact on wetlands in the state. However, the dominant force affecting the decision to drain wetlands in the past and continuing into the future is financial opportunities available through agricultural production and other free market alternatives.

Recommendations

More time and effort should be spent identifying and categorizing the threatened wetlands in the state, with less effort on the large proportion with a high degree of protection. The technology exists for a thorough inventory that would identify wetlands by location rather than generic soil-water-plant characteristics.

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No one knows how much wetlands is left

Or how fast we might be losing them

41

By Mikkel Pates

STAFF WRITER

No one really knows how many wetlands North Dakota has or how fast we might be losing them.

The U.S. Interior Department's Fish and Wildlife Service since 1980 has been in the process of counting all wetlands in the state, a process to be completed by 1992.

The U.S. Department of Agriculture's Soil Conservation Service is in the process of counting wetlands found in the state's cropland. They've been at it since January 1987 and expect to be finished by May 1.

Lloyd Jones, North Dakota FWS supervisor of wetland habitat, says the state was losing about 20,000 acres of wetlands a year through the late 1970s. Now he guesses we're losing 5,000 acres a year.

Swampbuster seems to be stopping new drainage.

The State Engineer's office reports there were only 30 drainage permits in 1988, one-seventh of the annual rate during the past 12 years.

Pendulum problem

While Swampbuster has effectively stopped drainage, the wildlife groups still want a no-net loss bill.

Swampbuster is part of the five-year farm bill that expires in 1990, but it is a permanent part. It would expire only if Congress votes to eliminate it. Few feel Congress will do that.

Nevertheless, wildlife advocates see no-net loss as a backstop in case the "pendulum swings" back toward more liberal wetland drainage. Plus, no-net loss affects non-cropland wetlands.

After all, the only "teeth" in Swampbuster are the potential losses of farm program benefits. A period of high farm prices might induce farmers to stay out of farm programs and thus be free to drain wetlands without penalty.

Swampbuster would have less impact if farmers were free of farm programs.

Ironically, some in the Legislature say they were sold on the no-net loss concept as a more palatable substitute for the federal Swampbuster law.

Mike McKenna, natural resources coordinator for the North Dakota Game and Fish Department in Bismarck, is one who says no-

net loss law will help some farmers qualify to drain wetlands under a "minimal effects" provision in Swampbuster. It will provide them with a mechanism to swap drained wetlands for restored ones, he says.

Swamp swapping

The whole premise of no-net loss is that wetlands can be drained, but only if new wetlands replace them. The "bank" can never run a deficit of more than 2,500 acres.

Wildlife officials say the momentum is on the side of wetlands restoration — not drainage, and that it won't be hard to build a bank with a positive balance.

That remains to be seen.

The State Engineer's office is busy counting the debits and credits that have accumulated since Jan. 1, 1987.

As of Friday, the "bank account" was running a positive balance of 323 acres.

On the credit side, eight projects accounted for 554 acres.

On the debit side, 13 projects accounted for 231 acres.

Another 18 projects were studied but didn't qualify under either category.

"We do have 176 additional projects to review," says Cary Backstrand, of the State Engineer's office. "That seems like a lot, but we tried to tackle some of the harder ones first."

Once the process is established, it will run more smoothly, they say.

McKenna and others say several cases are being studied in the state to show how no-net loss can help farmers with Swampbuster. Rodger Berntson is one example.

He farms about 2,000 Barnes County acres at Sanborn, 17 miles southwest of Valley City.

Berntson asked Soil Conservation Service for permission to drain 13.1 acres in one field and put the water on an adjacent pasture, to create a new 15-acre wetland.

The "wetland" Berntson wants to drain is about three miles from his farmstead. He wants to relocate the wetland as a matter of convenience.

"It holds 1 to 3 inches (of water) in the spring so you can't work it all at once," Berntson says of his wetland. His answer to the problem: Drain the water onto the adjacent pasture to improve the

quarter-section for farming and create an equal wetland. Relocating the wetland means he'll make one less trip with his machinery during spring planting season.

But will it work?

The SCS is responsible for determining minimal effect exemptions. The Fish and Wildlife Service has veto power on minimal effects exemptions where wetlands swapping is involved, the only area in the 1985 Food Security Act where they do have that authority.

Norman Kempf, SCS assistant state conservationist in Bismarck, says Berntson's is one of three situations where his agency is testing the state's no-net loss law.

Technically, Kempf says, Berntson already qualifies for a minimal effect exemption under Swampbuster because he's restoring a wetland on his own farm.

"We would not give a minimal effect determination for an off-farm restoration without no-net loss," Kempf said.

The test cases are simply to determine whether the state can truly identify and protect the restored wetlands in a bank.

And that might not be easy.

For example, the FWS has restored about 2,000 acres of wetlands, which are part of Conservation Reserve Program contracts. These are counted as credits in the bank.

The problem is that CRP-restored wetlands are temporary.

When the CRP contracts end, and when the contract holder wants to destroy the restored wetland, then what becomes of the credit?

Said Kempf: "If we made a number of minimal effect determinations, and they were all on CRP lands, it could create a problem when those contracts expire. Fish and Wildlife (Service) has seen no problem; they say we could build a bank and absorb the CRP loss. If they have the bank available to do that, then of course we have no problem."

Actual Swampbuster exemptions will be rare and carefully controlled, Kempf said.

"No-net loss does not replace Swampbuster," Kempf said. "You're going to have two companion laws on the books, and the landowners are going to have to comply with both."

'No-net loss' becomes wetlands buzz phrase

By Mikkel Pates
STAFF WRITER

"No-net loss."

It's the buzz phrase that describes a new state law that prevents further destruction of wetlands in North Dakota.

Proponents bill it as a three-way compromise among farm, water and wildlife groups.

Opponents say it's a strict state law that won't live up to its promise of softening Swampbuster — a controversial federal farm law designed to withhold farm program payments from people who drain and plant on wetlands.

The no-net loss law (S.B. 2035) was passed during the 1987 session of the North Dakota Legislature. But certain elements won't go into effect until July.

To take effect, it must survive repeal efforts in the 1989 Legislature.

The bill does two things:

First, it creates a "wetlands bank" in the state, a list of new or restored wetlands.

Second, it requires that anyone draining a wetland ensure that a wetland of the same size is created elsewhere in the state. The equal wetland must either be available in the "bank," created by another individual, or created somewhere by the person who wants to drain or fill the existing wetland.

The major bill in the 1989 Legislature to repeal no net loss (H.B. 1309) will be heard at 10 a.m. Thursday in the large hearing room at the Capitol.

Troubled wetlands

Farm and wildlife interests have been battling over North Dakota's dwindling wetlands for years.

• Wildlife: People say the United States has drained most of its wetlands in other states, and the bulk of the remaining wetlands are here in North Dakota.

They say if we don't save wetlands ourselves, the federal government will do it for us.

The state had 5 million acres of wetlands in the 1880s. Draining has reduced them to about 2.2 million acres, about half of which are tied up with either permanent or temporary preservation contracts.

□ Wetland

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Continued from A1

That leaves 1 million acres exposed to potential drainage.

• Farmers — at least some of them — say enough wetlands are preserved.

They say no-net loss is just another limit on how a farmer can develop the land. They say lost draining rights mean lost potential wealth — both for an individual and the state.

It's an emotional issue.

"No farmer wants to have complete drainage, but he's got to be able to manage his own land," says Rep. Gordon Berg, D-Devils Lake, a foe of no-net loss.

• Water developers who promote the Garrison Diversion project in particular, say no-net loss was a key element in an agreement between Gov. George Sinner and national environmental groups to secure continued financing for the multimillion-dollar water project.

Repeal it, says C. Emerson Murry, Conservancy District manager,

and wildlife groups will mothball Garrison, which also eliminates future water development for cities like Fargo, Moorhead and Grand Forks.

• Other entwined elements are Swampbuster and the national frenzy over the no-net loss concept.

Swampbuster is a controversial 1985 federal law prohibiting a farmer from draining a wetland, farming it, and then receiving federal price supports and other USDA program benefits.

Water and wildlife groups suggest no-net loss be used to make Swampbuster more palatable. It allows farmers to drain some wetlands and swap them for other restored wetlands, they say.

President George Bush favors the concept.

The Environmental Protection Agency this month said it will institute "no-net loss" rules to require restoration of some wetlands on projects where the EPA has veto power.

Forum editorials

ASCS hears the wetlands message

The strong wetlands preservation message enunciated by President George Bush a few weeks ago apparently has filtered down to the U.S. Department of Agriculture, specifically the Agricultural Stabilization and Conservation Service.

ASCS is charged with implementing Swampbuster provisions of the Food Security Act of 1985. Swampbuster requires farmers who participate in farm support and subsidy programs to refrain from draining certain wetlands. It's not a popular program in North Dakota.

In fact, it's so unpopular, some county ASCS committees are suspected of not enforcing the rules. So the Dacotah Chapter of the Sierra Club decided to use the Freedom of Information Act to get a look at county documents regarding the disposition of alleged Swampbuster violations. That's when the stonewalling began.

First, several of the counties said the Sierra Club would have to pay for the time and office work required to comply with the FOIA request. The individual county fees weren't much, but taken together added up to quite a

large sum.

The Sierra Club said the fees should be waived because the club is a non-profit citizens' group and because other environmental and conservation groups had been granted such waivers for other FOIA requests.

After a spate of fruitless communications between state ASCS Executive Director Robert Christman and the club, ASCS Administrator Keith Bjerke granted the fee waivers for 26 North Dakota counties.

Bjerke, a Northwood, N.D. farmer, apparently was listening to his boss, the president, when Bush said wetland preservation would be a priority of the new administration.

Christman, however, still had not gotten the message.

The Sierra Club asked to include two more counties (not on the original list of 26) in the FOIA request. Christman balked, saying Bjerke's directive applied only to the 26. The club cried foul, suggesting Christman was "trying to obstruct public access ... by making (the club) appeal fees for every document requested."

There is room for debate about that charge. Christman could very well have been "going

by the book." We tend to suspect, however, he was making things difficult for Sierra Club representatives. Bjerke's intent in waiving fees for the the initial 26 county requests could not have been clearer. Christman's been around government long enough to know what the administrator meant.

Indeed, within hours after the club objected to the state office's obstructionism, Christman changed his tune and waived the fees for the two additional counties. Bjerke apparently made his intent even clearer to the state office.

Lost in all the bureaucratic shenanigans is Sierra Club's purpose in examining the county documents: To determine if violations of Swampbuster are being winked at by local ASCS committees. If they are, the conservation group will have evidence state and county ASCS officials are ignoring the intent of Congress.

And if a pattern of unreported violations emerges, it will tell Administrator Bjerke — a man who understands the long-standing conflict between farmers and wetland advocates — that ASCS is doing a lousy job implementing the provisions of Swampbuster.

Forum once again ignores facts of the wetlands issue

There you go again. The Feb. 5 Forum article on wetlands by Mikkel Pates once more illustrates Forum editors and writers will ignore the facts, quote people who cannot back up preposterous claims, and ignore the property rights and legitimate complaints of those affected by this legislation.

The U.S. Fish and Wildlife Service and so-called environmental groups such as the National Wildlife Federation were given two years to keep two promises in return for passage of SB 2035. These promises were (1) to work in Congress to fund a Minn. Dakota Reservoir for Garrison Diversion and (2) to work in Congress to ease the Swampbuster provisions of the 1985 Farm Bill. The facts are that neither promise has been kept. Reason enough alone to repeal SB 2035 and pass HB 1309.

I will never understand how proponents of SB 2035 can expect the North Dakota public to believe the preposterous notion that state legislation can circumvent federal legislation (Swampbuster).

The FWS and the so-called environmentalists have been claiming for years that 20,000 acres are being drained annually in North Dakota. At the Sept. 30, 1988, meeting of the Interim Water Resource Committee in Bismarck, N.D., I asked Lloyd Jones of FWS if he could document that. He stated he could and would send me the documentation. Needless to say, I am still waiting.

Lately these same people have been claiming that 3 million acres have been drained in North Dakota since statehood. Since there was little drainage prior to World War II, that would be about 70,000 acres annually since 1946, or an area the size of three townships. Absurd! Preposterous! A figure inflated about 70 times in my opinion — after checking with the State Water Commission, Soil Conservation Service and county water boards.

Come on, FWS — send me your data. I have a bachelor of science degree in engineering from North Dakota State University, so I can analyze the

technical data. Please, Forum staffers, ask them for either the facts or an apology. Unfortunately I have seen these figures quoted in national publications such as Sports Afield, Ducks Unlimited, etc.

The Forum did not mention that property and management rights of the farmers affected are being diminished and their property is being devalued. Neither did they mention that FWS has done nothing about blackbird damage in these areas — a responsibility that is theirs under the 1918 Migratory Bird Act.

Come on, Forum staffers, let's stick to the facts, and let's question the credibility of those who make claims, but fail to provide the facts. I would not want to see The Forum's credibility fall to zero also. Let's separate facts from opinions, myths and outright lies.

Michael M. Mahoney
Grand Forks, N.D.

Swampbuster rules upset N.D. farmers

By Randy Bradbury
STAFF WRITER

BISMARCK, N.D. — North Dakota farmers say swampbuster has turned into a swampmonster.

About 100 farmers and farm group and farm commodity representatives turned up Friday in Bismarck to plead with Rep. Byron Dorgan, D-N.D., to make changes in federal legislation intended to preserve wetlands.

Dorgan pledged to work for changes, and said after the meeting that he will try to form a coalition of farm belt representatives to pass amending legislation.

He said, though, it probably will take at least until next spring to push new legislation through Congress.

"We can't change the law by wishing it would change," he said. "And until it gets changed, they're (farmers) going to have to comply" with swampbuster regulations.

Dorgan had intended to hold a relatively small working meeting between farm group leaders and federal agency administrators to define specific problems with the legislation and outline possible solutions.

But the unexpected turnout forced an impromptu march across the street from the Bismarck federal building to a larger meeting room.

Even so, the meeting room was

Continued from Page A1

full, the temperature warm and the farmers hot.

"You damn well better believe we're concerned," North Dakota Farm Bureau president Monty Burke told Dorgan. Federal regulations, he said, "are making it impossible for farmers to go out and do anything and know it's the right thing."

He and spokesmen for the North Dakota Farmers Union and the National Farmers Organization said there has been more concern among farmers about swampbuster than about any other issue in recent years.

"Swampbuster" refers to provisions of the 1985 federal farm bill, approved by Congress Dec. 23, 1985, that threaten to withhold all federal farm benefits from any farmer who drains wetlands for conversion to croplands.

Final swampbuster regulations weren't published until this September, Bob Christman of the state Agricultural Stabilization and Conservation Service said, and he added, "I would be the first to admit that there was confusion and, later, frustration" among farmers.

Dorgan said the legislation slipped through Congress without attracting much attention either from farm state legislators or from lobbyists for the major farm organizations.

He agreed with farmers at the meeting who said national environmental organizations had worked quietly — one said "shrewdly" — to insert the provision, then influenced the writing of the regulations.

"There seemed to be a kind of hand-in-glove relationship" between United States Department of Agriculture officials and environmental organizations on the issue, Dorgan said.

"It appears to me that they're (the USDA) deaf" to complaints about the regulations.

Dorgan said the program as it is being administered bears little resemblance to the idea he had of the program when it was being discussed in Congress.

If the regulations had been presented to Congress in 1985, he said, they wouldn't have gotten five votes from the farm belt.

Several farmers said their biggest problem is that they don't know what they can or can't do.

And, they said, if they make a mistake now they're worried it

could come back to haunt them to the tune of thousands of dollars in lost federal subsidy payments and other benefits, such as federal crop insurance.

Nearly any state farmer, faced with such a loss, would be put out of business, they said.

David Dewald, a Soil Conservation Service biologist, explained the program as it is being administered now.

Under the new regulations, he said, the definition of "wetland" includes any area capable of producing "hydrophytic" vegetation; in other words, plants that will grow in standing water.

That definition includes perhaps as much as one-fifth of the state's total land surface, and does include much of the Red River Valley.

It includes much land that has been farmed, even land that may have been regularly cropped for decades.

Dewald said farmers enrolled in government programs will be receiving maps of their land marked with a "W," a "FC," or a "CW."

"W" means wetlands and indicates the farmer should not take any action to reduce the size or water level of that area to below what it was in December 1985, when the farm bill was approved.

"FC" means "prior converted" and indicates a wetland that the government has determined was drained prior to December 1985. "That's yours," he said, to do with as the farmer pleases.

"CW" means the farmer may have a problem, he said. That stands for "converted wetland" and indicates the government believes the wetland was drained after December 1985.

Dewald and Christman said, however, that swampbuster does not prevent farmers from draining wetlands. It does prevent them from using drained wetlands for cropland.

So, if a farmer has mistakenly drained a wetland, they said, that farmer could avoid the stiff penalty simply by not planting anything on the wetland parcel, or by planting grass on that parcel.

However, they acknowledged special problems in the Red River Valley.

Typical valley field drains, Dewald said, may leave tiny areas of standing water in between drainages.

While no one would argue that such a spot is a valuable wetland,

if water was standing in that spot before December 1985, it would fit the definition in the regulations.

That problem, he said, needs to be cleared up.

Dorgan said, though, that the whole swampbuster concept should be reworked.

He said the original idea was to preserve large swampy areas in southern parts of the U.S.

But Dorgan defended the general goal of swampbuster, which he said is to preserve significant wetlands.

Wetland drainage destroys wildlife habitat, causes increased flooding downstream, removes recharge areas for underground aquifers which, in turn, supply much of the state's domestic water, and causes increased water pollution because pollutants run downstream instead of being filtered through the soil, Dewald said.

"My own feeling is that this is going beyond what was anticipated" by Congress, Dorgan said. "I don't want it and I don't think farmers want it. If it's not reasonable, it's not going to make it."

Several farmers in the room said the whole thing should be repealed, and Dorgan said that's probably what will happen if there aren't changes to make the legislation more acceptable to farmers.

There were a number of comments about possible backlash from swampbuster making conservation programs that much more difficult to administer.

And Lloyd Jones, with the U.S. Fish and Wildlife Service, was greeted with something less than open arms when he tried to explain that the FWS is only peripherally involved with swampbuster.

Burke of the NFO said farmers now are talking about ways to destroy wildlife habitat, rather than working to increase it.

Bismarck water engineer Steve Hoetier said he's seen more drainage activity across the state this year than any year in the past 20.

Another farmer said the issue is even pitting farmers against farmer in the state, as neighbors report neighbors for possible illegal drainage.

Dorgan closed the three-hour meeting by promising several additional hearings on the subject in various parts of the state.

Officials meet to iron out rules for Swampbuster

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By Mikkel Pates
STAFF WRITER

Top officials of three key federal agencies administering the so-called Swampbuster provisions of the 1985 farm bill met in Fargo on Thursday to iron out problems.

Swampbuster is designed to stop federal farm program payments for farmers who freshly drain wetlands.

Don Thompson, northwest area director for the Agricultural Stabilization and Conservation Service from Washington, sat down with about 20 officials from North Dakota, Minnesota and South Dakota to "make sure the three states are operating the same way with conservation measures."

Officials of the ASCS, the Soil Conservation Service and the U.S. Fish and Wildlife Service were involved in the meeting.

Farmers in the Red River Valley have complained because the SCS — which decides what land is wetlands under the law — is being too stringent in North Dakota, compared to South Dakota and Minnesota.

Gus Dornbusch, SCS state conservationist from Bismarck, N.D., said North Dakotans have been most concerned because of uncertainty about whether certain routine draining practices on their land will be considered "converting a wetland" to economic crops under the law and make them ineligible for government price support and loan programs.

"There's a need for determinations to be made, to determine which are still viable wetlands and what were converted prior to the act" and therefore exempt, Dornbusch said.

Dornbusch expected to send a plan to Washington today to ask for a dozen experienced SCS people to come into six Red River Valley counties on the North Dakota side to handle a large volume of determinations.

Dornbusch said adding that many people would allow the SCS to complete its determinations by Feb. 1. "That way landowners will know where they stand," Dornbusch said.

Although the state SCS has been criticized for going through a paper blizzard to prove that 98 percent of the Red River Valley is drained, and is therefore exempt from its wetland provisions, Dornbusch said the determinations are required by law.

He said there is no provision in the law for exempting large blocks of land from scrutiny over wetlands.

Assistant State Conservationist Norman Kempf said highly erodible land, for example, is deter-

N.D. SCS official accepts new post

Today is the last day on the job for Gus Dornbusch, North Dakota's state conservationist with the Soil Conservation Service.

Dornbusch will be transferred to Lincoln, Neb., where he will be director of the SCS's Midwest National Technical Center.

Dornbusch will direct a staff of about 135 people who provide technical and engineering direction for a 12-state Midwest region, including North Dakota and Minnesota.

Center personnel oversee quality of SCS work on the Food Security Act of 1985. They also oversee the nation's soil survey and operate a national soils testing laboratory.

Dornbusch, 51, has been with the SCS for 30 years in five states.

Charles Mumma, assistant state conservationist for operations, will serve as acting state conservationist until a new state conservationist can be named, likely in mid-February, Dornbusch said.

Dornbusch praised the "dedicated kind of conservation people" he had to work with in North Dakota, and the leadership the soil and water conservation districts have shown over his tenure.

mined by whether more than one-third of a parcel is highly erodible. On Swampbuster, however, the SCS is required to look for wetlands on a parcel-by-parcel basis.

Dornbusch and Kempf said that besides the extra people, they expect to speed North Dakota's determination process by shifting to Minnesota's method of using maps, photography and wetland inventory maps that can be reviewed in the office, instead of on-site inspections.

"I don't think everyone has been clear on how we'll interpret these procedures ... otherwise we wouldn't be out here," said Thompson.

Thompson said there will "continue to be more interpretation" until all states are in agreement on administering the program.

Thompson said there will always be problems making technical farm programs equitable among farmers across state lines. He suggested that farmers who really want to know the facts on what they are allowed to do on their farms should consult their local ASCS or SCS officials, and should not become alarmed about rumors.

Campaign against swampbuster has been filled with distortions

By Ann Y. Robinson

The wetlands conservation program known as swampbuster will help preserve our remaining wetlands and in so doing, will be good for wildlife, groundwater, flood control, the taxpayer's pocketbook and commodity prices. These benefits, however, will only be realized if the program's implementation is not thwarted by emotionalism and misinformation.

In 1985, Congress passed swampbuster as part of the Food Security Act to slow the pace of wetland drainage. This country has lost almost half of its original wetlands, and many Midwestern states have lost 90 percent or more. Most wetlands are drained for agriculture, and many marshes that have been spared outright destruction are slowly being filled in by farm runoff.

Even small wetland area can be important, partly because we have already lost so many of them. Shallow, temporary wetlands provide an important source of food and habitat for migratory waterfowl in early spring. Many can still be cropped when they dry out naturally, allowing use by both farmers and wildlife.

Historically, many wetlands have been farmed so that the land can qualify for a farmer's crop "base," expanding the acreage that qualifies for federally supported commodity programs. This drives up the cost of farm programs, nor about \$26 billion annually, and increases crop surpluses, which drive down market prices for farm products. The ludicrous result has been that taxpayers suffer a double-whammy. They often help subsidize drainage through tax breaks and cost sharing, and then, they support prices for additional crops that are grown on what was once wetlands.

The main arguments against swampbuster simply don't hold up to scrutiny. First of all, some opponents have been loudly claiming that the legislation was not meant to apply to small, Midwestern wetlands. This point of view has little basis according to private and governmental sources involved in passage of the bill.

Second, to this time, not one North Dakota farmer has been denied any farm program benefits for swampbusting. The responsible agricultural agencies have made less than one-tenth the number of wetland "determinations" in North Dakota than in neighboring Minnesota where farmers are adjusting to the law. Though a number of areas have been "determined" to be wetlands under the guidelines, there have been few farmer appeals, apparently because appeals have just not been necessary.

It is very unlikely that a situation cited as one of the chief complaints would even exist — that this

provision will actually turn farm land, that has been planted regularly, back to swamp. To be protected under swampbuster, a piece of land must have hydric, or wet, soils and a prevalence of hydrophytic, or water loving, vegetation. "Prevalence" is the key word. Though it does not take long for this type of vegetation to reestablish during wet conditions, it does not just spring up overnight either. If a field has really been planted every year, as the farmers and their legislators claim, the water-loving plants would not have a chance to take over.

Finally, under swampbuster, persons can still farm areas as they did prior to December 1985, and remain eligible for program benefits; however, no further actions can be taken to increase effects on the water regime of the areas unless a minimal effects exemption is granted. The rules also make clear that maintenance and improvement of existing drainage systems is fine, as long as more wetlands are not converted and brought into commodity production.

Some of the anti-swampbuster harangue has undoubtedly been fueled by uncertainties related to the lengthy time it took to get the regulations finalized. Until September of this year, agencies were operating under interim, or draft, rules. The final rules changed little from the draft regulations, but they did clear up some procedural uncertainties. The agencies involved have now held regional meetings to help ensure that the final rules will be understood by officials and that they will be handled consistently.

The irony is that farmers do not have that much to gain economically from draining these small pockets. If it would have been so profitable to farm them, the potholes would have been drained several years ago when commodity prices were higher.

Despite rhetoric to the contrary, the current rage against swampbuster is not about problems with interpretation, but is a disagreement about philosophy. Swampbuster breaks with past agricultural policy. It acknowledges society's interest in protecting remaining wetlands by saying that if farmers drain new wetland areas, they can pay their own bills. Opponents want to continue reaping subsidies without any restraints on farming practices. Their strategy is to distort the perception of the regulations so that swampbuster can be weakened or eliminated without the public knowing what has been lost.

(Ann Y. Robinson is a soil conservation coordinator with the Izaak Walton League of America, Minneapolis. She grew up on a farm in Missouri and has a Master's Degree in agricultural journalism.)

SCS takes firm action on 'buster

It's no surprise the Soil Conservation Service is planning a major campaign to defuse the furor caused by swampbuster rules. Probably no other set of federal farm regulations has caused as much consternation and anger as the wetlands protection provision of the 1985 Food Security Act.

Under the provision in the farm bill, a farmer who grows crops on drained, dredged or filled wetlands would be denied Federal farm program benefits. Farmers in the Red River Valley and in the prairie pothole region of North Dakota are livid about the regulations, which they say go much further than was the original intent of swampbuster.

An SCS special team of biologists will concentrate its efforts in six North Dakota counties in the valley, where swampbuster has caused an extraordinary uproar because the entire valley meets soil type requirements to be classified as wetland. The team will meet with local SCS officials to determine which areas indeed are wetlands and which are not.

We think it's ridiculous to classify the valley as a wetland because it was covered by a lake in prehistoric times. Farmer anger over such an unreasonable interpretation is justified. Apparently SCS, farm state congressional delegations and even environmental groups accept the need to refine wetlands definitions.

The SCS decision to send in a special crew of experts underscores the contention by farmers and farm groups that current swampbuster regulations are either woefully unclear or unworkable. Clarifications and compromises are absolutely necessary if the intent of the rules — to protect and preserve wetlands — is to be realized.

There is no question that swampbuster — in some form — will be the law of the land. National priorities demand that wetlands be protected and preserved. That's a worthy goal.

But in order for swampbuster to succeed over time, it must be restructured so landowners can live with it. That means compromise on both sides: Farmers will have to accept changes in their traditional operations, and environmentalists must temper their views of the needs of agriculture.

The special team coming to the valley in January is a step in the right direction.

Conrad says he may have won Swampbuster support

Grand Forks, N.D. (AP)

Sen. Kent Conrad, D-N.D., sided with environmental groups in a failed attempt to block oil leasing in an Alaskan wildlife refuge, but may have won their support for easing controversial Swampbuster regulations.

Conrad had boasted he had the swing vote on an amendment to allow the leasing, and that he would use his position to force modifications in the swampbuster program, which is supported by environmental groups.

The amendment passed Wednesday despite Conrad's opposition. However, representatives of the Sierra Club and National Wildlife Federation told Conrad before the vote they would support "reasonable changes" in the regulations to make them more palatable to farmers, he said.

Under the program, farmers can be denied federal farm benefits for draining certain wetlands. Farmers claim the definition of wetlands is

too broad and the penalties for draining them too severe.

Among the changes the environmental groups would support would be a definition of what "nuisance spots" farmers could drain without penalty, and a stipulation that penalties for wetlands drainage must fit the violation, Conrad said.

The Swampbuster program has the strong support of many of the same wildlife and conservation groups that are lobbying hard against oil development on the Arctic refuge.

Conrad did not have the swing vote on the oil-leasing amendment Wednesday, because Sen. Mark Hatfield, R-Ore., changed his position on the measure.

Hatfield joined the majority in approving by a 10-9 vote the amendment sponsored by Sen. James McClure, R-Idaho, that calls

for a 15-month study of alternate energy sources and anticipated needs, followed by a six-month period for congressional review.

The amendment would allow oil leasing in the Arctic National Wildlife Refuge at the end of that period unless forbidden by Congress.

Conrad supported a different amendment that called for a one-year study on alternate energy sources, but would not have permitted oil leasing in the Alaskan refuge unless Congress approved.

"I voted against the McClure position because I felt we should do a study, do an analysis on our energy options before giving a final answer," Conrad said.

The Agriculture Committee, of which Conrad is a member, will discuss changes in the Swampbuster program in March, the senator said.

Congress' interest in wetlands on the rise

More spending is proposed

Mike Wagner
Newhouse News Service

Washington, D.C.

Duck hunters in Congress have taken aim at wetlands preservation as a way of ensuring the future of waterfowling.

Led by Reps. Robert Davis and John Dingell of Michigan, hunting advocates are pushing legislation to require that the federal government spend at least \$25 million more each year on wetlands.

They say the loss of wetlands in North America is a primary reason the duck population has dropped nearly 50 percent in recent years, to about 64 million birds.

"The key factor in the alarming decline in our continent's waterfowl population is the continuing destruction of wetlands," said Davis, whose northern Michigan district is a haven for hunters.

Drought, pollution and illegal hunting also have contributed to the decline of waterfowl, but experts say the draining, filling and development of wetlands has been a major factor.

Wetlands, used by many migratory birds and other species for nesting and feeding, are being destroyed at a rate of nearly 500,000 acres per year, according to the U.S. Fish and Wildlife Service.

The agency estimates that more than half the 200 million acres of wetlands that existed when European settlers first came to North America have been lost.

The United States and Canada acknowledged the problem in 1986 by signing a Waterfowl Management Plan that calls for restoration of 5.6 million acres of wetlands by the year 2000.

Key areas targeted for wetlands projects include the lower Great Lakes and St. Lawrence River basin, the "prairie-pothole region" of the Great Plains, the lower Mississippi River region, the Atlantic Coast from Maine to South Carolina, the central valley of California, portions of five eastern Canadian provinces and the "prairie-parkland" provinces of Canada.

The plan estimates that it will cost at least \$1 billion to meet the wetlands goal, and it says 75 percent of the money should come from the United States, where 75 percent of the annual duck harvest takes place.

The Fish and Wildlife Service spends about \$30 million a year to purchase and enhance wetlands, using money from the Migratory Bird Conservation Fund.

That money comes from federal duck-stamp revenues.

Congress also has provided anywhere from \$2 million to \$10 million in recent years for wetlands purchases, and the money often is matched by private groups and states.

For instance, Congress gave \$2 million this year to the National Fish and Wildlife Foundation; 11 states added \$3 million, and Ducks Unlimited, a 600,000-member hunting organization, provided \$4 million.

Bills introduced by Davis and Dingell, a member of the federal government's Migratory Bird Commission, would supplement that funding.

Davis' legislation would provide about \$26 million per year — including about \$11 million from interest earned on excise taxes and fines paid by hunters — for wetlands projects.

The money would be distributed by a nine-member commission to groups that matched the grants with non-federal funds.

Another bill, sponsored by Dingell and Rep. Silvio Conte, R-Mass., also would provide about \$26 million a year for wetlands, but the money would be distributed by the Migratory Bird Commission, not a new commission as proposed by Davis.

Because wetlands are important for more than just waterfowl, environmental groups have lined up behind both the Davis and Dingell bills.

"Whether interest in wetlands protection arises from recreation, a need for flood protection or clean and abundant water, or simply a view of our place in the universe, we all have reason to support a common goal — to maintain wetlands in the short term and to increase their quality and quantity in the long term," said Janice Goldman-Carter, counsel for the National Wildlife Federation.

State SCD's Seek Changes in Swampbuster Rules

"Changes are needed in the Food Security Act of 1985 to allow some flexibility in the management of the soil, water and wildlife resources on our farms" said Wallace Jacobs, president of the ND Association of Soil Conservation Districts (NDASCD).

The group, which completed its annual meeting recently, adopted a resolution calling for the specific exclusion of Type I Wetlands from the wetland definition of the swampbuster provision of the Food Security Act.

According to Jacobs, "an exemption such as this would alleviate a lot of fears on the part of farmers. Nobody wants to be found in violation of the swampbuster provision for fear of losing all eligible USDA farm program benefits."

"It seems unreasonable to consider it swampbusting when a farmer removes small areas of shallow water on land that has been cropped for decades," Jacobs said. These lands are best used as cropland and farmers should be allowed to manage that land as cropland. And, maintaining an existing drainage system on cropland is causing one of the biggest concerns to farmers.

Those concerns need to be addressed before the next growing season because a farmer may be out of compliance by planting an annual crop on drained wetlands. Wetlands, in many areas of North Dakota, have caused a rise in the water table level and this in turn has caused an increase in salinity problems in surrounding agricultural land.

Generally, farmers will voluntarily retain natural wetlands on

their farms if there is adequate compensation from programs such as the Federal or State Water Bank Programs, but the Federal Water Bank Program is not adequately funded and the State Water Bank program has never been funded.

Rather than consulting with only the US Fish and Wildlife Service, USDA agencies also need to consult with agriculture and water interests in applying the lists of hydric soils and plant species to matters concerning wetlands and converted wetlands.

Consultation should also be made with agriculture and water interests on wetland determinations of exemptions on converted and minimal impacted wetlands. Agriculture and water interests need to be elevated to reach a better balance.

The NDASCD is recommending landowners and operators may want to regulate migratory waterfowl hunting on their land until the laws and regulations are resolved to permit farming to be fulfilled in a reasonable husbandlike manner.

USDA clarifies requirements of swampbuster provisions

BY NORMAN KEMPF

Norman Kempf is the Assistant State Conservationist (Programs) - Soil Conservation Service, Bismarck, North Dakota

The U.S. Department of Agriculture (USDA) published the final rules for highly erodible land and wetlands on September 17, 1987. The rules clarify the requirements of the conservation provisions of the Food Security Act of 1985 (FSA 1985). The swampbuster provision is intended to discourage the conversion of wetlands for the purpose of growing annually planted crops. Anyone who converts a wetland and seeds an annually planted crop may lose eligibility for USDA program benefits.

Wetlands are defined as lands which have a predominance of hydric soils which are flooded or saturated by surface or ground water often enough to grow a prevalence of hydrophytic vegetation under natural conditions. Hydrophytic vegetation is adapted to saturated soil conditions. Natural conditions are defined as conditions where there is no tilling or planting of crops. As a general rule, areas which are wet enough to delay cultivation in the spring unless the farmer drains, will be identified as wetlands.



The Soil Conservation Service (SCS) is responsible for wetlands identification which can be completed through the use of maps showing wetlands or through field visits.

Swampbuster became effective December 23, 1985, the date the Food Security Act was signed. With some exceptions, if a wetland area is converted to cropland, eligibility may be lost for certain USDA program benefits—not just on the converted wetland area, but on all the land farmed.

The following USDA farm program benefits are affected:

- Price and income supports.
- Crop insurance.
- Farmers Home Administration loans.
- Commodity Credit Corporation storage payments.
- Other programs under which USDA makes commodity-related payments.

When a person applies for any of the USDA farm programs listed above, he must certify that he is not producing crops on land that has been converted from wetlands since December 23, 1985.

A person is not subject to the swampbuster provision if he:

- began the conversion of wetlands before December 23, 1985, and has received a commenced determination from the Agricultural Stabilization and

Conservation Service (ASCS);

- converted wetlands that had been artificially created; for example, through irrigation;
- produced crops on wetlands that became dry through natural conditions such as drought (other restrictions may apply);
- converted wetlands where SCS has determined that the conversion has minimal effect on wetland values.

In any year that a person produces an agricultural commodity on a converted wetland, he is ineligible for USDA farm program benefits. To regain eligibility in any year, he must not produce crops on the converted wetland area.

For more information on swampbuster or for conservation planning assistance, contact the local office of the SCS or ASCS. SCS conservationists can help identify wetlands or highly erodible fields and help prepare conservation plans. Local conservation districts approve all plans. The ASCS can provide information about the effects of swampbuster and other provisions of USDA farm assistance programs. □

Appendix B

Trust Board of Directors

Russ Dushinske - Garrison Conservancy District

Cliff Isenford - (Chairman) Bottineau County Water Management District

Norm Rudel - Wells County Water Management District

Scott Reed - Audubon Society

John Van DerWalker - National Wildlife Federation

Mike McEnroe - North Dakota Chapter of the Wildlife Society

Appendix C

CHAPTER 61-32

WETLANDS

Section	Section
61-32-01. Legislative policy and intent.	61-32-07. Closing a noncomplying drain — Notice and hearing — Appeal — Injunction.
61-32-02. Definitions.	61-32-08. Appeal of board decisions — State engineer review — Closing of noncomplying drains.
61-32-03. Permit to drain waters required — Replacement of wetlands — Downstream impacts — Pen- alty.	61-32-09. Wetlands replacement fund — Continuing appropriation.
61-32-04. Administration — Rulemaking au- thority — Guidelines.	61-32-10. Exemption.
61-32-05. Wetlands bank.	61-32-11. Application of prior law.
61-32-06. Uniform wetlands classification.	

Source: S.L. 1987, ch. 642, § 2.

Effective Date.

The act which added this chapter became effective July 21, 1987.

DECISIONS UNDER PRIOR LAW

Effect on Fish and Wildlife.

Where the state engineer found that there were many wetlands in the assessment area in addition to type IV wetlands, and determined that harm to wildlife and consequently, recreation, would be small, thus, the state engineer sufficiently considered how the project would affect fish and wildlife values, since he was not required to make separate findings regarding each distinct category of wetlands and the resultant effects of their drainage on fish and wildlife values. *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

The greater weight of evidence showed that drainage project would not cause a significant decrease in water quality, where the state conservationist made a detailed study of relevant reports, there was evidence that any decrease in water quality would not continue for more than a few years after the beginning of wetland drainage, and the state engineer determined that several features of the drainage project for which permits were sought

would protect against undue degradation of water quality during that time. *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

The state engineer's interpretation of "overriding circumstances" justifying drainage of certain wetlands was not contrary to law, where the state engineer determined that the drainage project under consideration would not be effective unless the drain traveled along five type IV wetlands, and that the remaining ten of the wetlands were underlain by "prime farmland." *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

There was no violation of public trust responsibilities by the state engineer, where the permits for and possible consequences of the improvements and drain had been studied and debated by opponents and proponents for nearly a decade, the state engineer's decision contained a detailed analysis of the evidence, discussed the potential impacts of the project, and concluded that the drain should be permitted subject to various conditions, some wetlands in the drainage area must be retained at their natural level while others could be drained, and the project and operation plan were subject to future modifications or conditions by the state engineer to protect the public interest. *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

61-32-01. Legislative policy and intent. It is the policy of the legislative assembly that water is one of North Dakota's most important natural resources, and the protection, development, and management of North Dakota's water resources is essential for the long-term public health, safety, general welfare, and economic security of North Dakota and its citizens.

The legislative assembly finds that agriculture is the most important industry in North Dakota and that agricultural concerns must be accommodated in the protection of wetlands. Wetlands can be a hindrance to farming practices. Even though property taxes are generally paid on such lands, wetlands provide limited economic return to the landowner. Wetland policies can obstruct water development and water management projects, and can affect other developments.

The legislative assembly finds that the primary reason wetlands are considered important is because wetlands provide the habitat base for the production and maintenance of waterfowl. The legislative assembly also finds that wetlands can moderate the water flow and have value as natural flood control mechanisms, can aid in water purification by trapping filtering, and storing sediment and other pollutants and by recycling nutrients, and can serve as ground water recharge and discharge areas. Wetlands also function as nursery areas for numerous aquatic animal species and are habitat for a wide variety of plant and animal species, and provide vital habitat for resident wildlife. Wetlands also can provide scientific, aesthetic, and recreational benefits. The legislative assembly therefore concludes that wetlands should be protected and preserved.

In view of the legislative findings and conclusions of the importance of wetlands, water development and management, and agriculture in North Dakota, it is hereby declared to be the wetlands policy of this state that

1. Water development and wetland preservation activities should be balanced to protect and accommodate agriculture, water, and wetland interests and objectives.
2. Programs protecting and preserving wetlands shall provide adequate compensation to the landowner and must provide periodic reevaluation of compensation to the landowner. Annual payments are encouraged as an option for landowners.
3. Land, wetland, or water acquisition for waterfowl production areas, wildlife refuges, or other wildlife, waterfowl, or wetland protection purposes may not be acquired through the exercise of the right of eminent domain.
4. When land is removed from the tax base to protect wetlands, replacement payments must be made by the entity which purchases the land so that the amount of money that would otherwise be received in taxes if such land was not removed from the tax base is not diminished.

61-32-02. Definitions. In sections 61-32-01 through 61-32-11, unless the context or subject matter otherwise provides:

1. "Commission" means the state water commission.
2. "Commissioner" means the commissioner of the game and fish department.
3. "Department" means the game and fish department.
4. "District" means a water resource district.
5. "Manmade wetland" means new or expanded water areas, or any portion thereof, created by excavation, diking, damming, or diversion, and determined by the state engineer and the game and fish commissioner to have material wildlife values.
6. "Person" means any person, firm, partnership, association, corporation, agency, or any other private or governmental organization which includes, but is not limited to, any agency of the United States, a state agency, or any political subdivision of the state.
7. "Replacement wetland" means either restoration of previously drained natural wetland or manmade wetlands which are not used for mitigation for any other project.
8. "Sheetwater" means shallow water from any source that floods land
9. "State engineer" means the state engineer appointed by the state water commission pursuant to section 61-03-01.
10. "Water resource board" means the water resource district's board of managers.
11. "Wetland" means a natural depressional area that is capable of holding shallow, temporary, intermittent, or permanent water. It shall not include sheetwater.

Source: S.L. 1987, ch. 642, § 3.

61-32-03. Permit to drain waters required — Replacement of wetlands — Downstream impacts — Penalty. Any person, before draining water from a wetland, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application must be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the wetland for consideration and approval, but the state engineer may require that applications proposing drainage statewide or interdistrict significance be returned to the state engineer for final approval. A permit may not be granted until the state water resource policy has been considered and an investigation discloses that the water

which will be drained from the wetland, or any series thereof, will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream land owners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the register of deeds of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. In addition to the above requirements of this section, the state engineer and the commissioner must jointly find that the wetland acres proposed to be drained will be replaced by an equal acreage of replacement wetlands, or through debits to the wetland bank as provided in section 61-32-05, before any permit for drainage can be approved by the state engineer or water resource board. The provisions of this section do not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, determined by the state engineer, for which mitigation is required as part of such project.

Any person draining, or causing to be drained, water of a wetland, any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, is liable for all damage sustained by any person caused by the draining, is guilty of an infraction, and shall be required

through 61-32-11. The state engineer may adopt rules for temporary permits for emergency drainage.

Source: S.L. 1987, ch. 642, § 4.

Note.

Section 14 of chapter 642, S.L. 1987, provides: "The replacement of wetlands requirement in sections 61-32-03 and 61-32-04 does not take effect until July 1, 1989. Until July 1, 1989, the drainage of type IV and V wetlands, as defined in U.S. fish and wildlife service circular 39 (1971 edition) is not permitted, except for permit applications submitted prior to January 1, 1987, or unless replaced in accordance with the provisions of sections 61-32-01 through 61-32-11."

DECISIONS UNDER PRIOR LAW

Cumulative Impact.

Neither the statutes nor the regulations specify that the state engineer must consider the cumulative impact of a current project and possible future projects, since requiring the state engineer to study and evaluate all possible contingencies, however remote, would not be feasible or practical. *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

The state engineer's relationship with water resource boards, the state engineer's deviation from the hearing officer's recommendation, and the "tone and tenor" of the cross examination of witnesses by the state engineer's legal counsel during the hearing did not reveal a bias against drainage opponents which precluded fair and impartial consideration of drainage applications. *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

The state engineer's interpretation of "overriding circumstances" justifying drainage of certain wetlands was not contrary to law, where the state engineer determined that the drainage project under consideration would not be effective unless the drain traveled along five type IV wetlands, and that the remaining ten of the wetlands were underlain by "prime farmland." *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

The state engineer's analysis of the burden

of proof was not a fatal procedural error regardless of whether he properly placed the beginning burden of going forward with evidence on drainage project opponents, since both opponents and proponents submitted evidence about the effect of the project on water quality, and the state engineer did not place the ultimate burden of persuasion upon opponents, but placed it upon the proponents. *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

Whether a particular pronouncement is a finding of fact or a conclusion of law will be determined by the reviewing court, and labels are not conclusive, therefore, the state engineer's "conclusion" about the project's impact on water quality was a finding of fact and was amply supported by evidence. *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

The wildlife society's constitutional rights to a fair hearing on its opposition to the issuance of a permit for a drainage project were not disregarded merely because the state engineer performed differing functions during the course of the drainage application process. *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

There was no violation of public trust responsibilities by the state engineer, where the permits for and possible consequences of the improvements and drain had been studied and debated by opponents and proponents for nearly a decade, the state engineer's decision contained a detailed analysis of the evidence, discussed the potential impacts of the project, and concluded that the drain should be permitted subject to various conditions, some wetlands in the drainage area must be retained at their natural level while others could be drained, and the project and operation plan were subject to future modifications or conditions by the state engineer to protect the public interest. *Bottineau County Water Resource Dist. v. North Dakota Wildlife Soc'y* (1988) 424 NW 2d 894.

61-32-04. Administration — Rulemaking authority — Guidelines. The state engineer and, where specified, the commissioner shall promulgate rules for procedure. The rules must be consistent with the following guidelines and the other provisions of sections 61-32-01 through 61-32-11 including

1. The requirement that wetlands proposed to be drained must be replaced by an equal acreage of replacement wetlands is not applicable to sheetwater, regardless of the area covered by sheetwater.
2. Purchase, easement, lease, or other acquisition that is necessary to comply with sections 61-32-01 through 61-32-11 shall be limited to willing sellers. When land is removed from the tax base to protect wetlands, replacement payments shall be made by the entity which purchases the land so that the amount of money that would otherwise be received in taxes if such land was not removed from the tax base is not diminished.
3. The state engineer and the commissioner shall jointly determine whether the number of replacement wetland acres comply with the replacement requirements of sections 61-32-01 through 61-32-11. The area of a wetland must be jointly determined by the norm:

- water level. It is not necessary to replace wetlands proposed to be drained with restored wetlands of the same type or classification.
4. Any person who proposes to drain a wetland for which a permit is required shall pay ten percent of the cost of acquisition, easement, lease, and construction of replacement wetlands. The other ninety percent must be paid by either federal, state, or private interests, or any combination thereof. Any person may pay more than ten percent if that person desires. The cost of acquisition for replacement wetland acres must be determined by average costs of wetland acres placed in the wetlands bank, as prescribed by the state engineer and the commissioner. Federal, state, and private wildlife and water entities shall cooperate and work together to locate, make contacts with landowners, do appraisals, and perform other tasks necessary to meet the replacement requirements of sections 61-32-01 through 61-32-11.
5. In order to satisfy the replacement of wetlands requirement, made wetlands with material wildlife values, or any portion thereof as determined by the state engineer and the commissioner, are eligible along with restoration of drained natural wetlands to comply with the replacement of wetlands requirement.
6. The replacement of wetlands requirement for each drainage proposal or project must be accomplished with approximately fifty percent of the replacement wetlands being located in the county or contiguous counties in which the proposed drainage is located, with the other approximately fifty percent of replacement wetlands being located anywhere in this state. If the state engineer and commissioner jointly find that replacement wetland acres are available in the county or contiguous counties where the proposed drainage is located, replacement wetlands may be obtained in the same biotic area.
7. Any purchase, easement, lease, or other acquisition under sections 61-32-01 through 61-32-11 may not obstruct the natural or existing flow of water of any natural watercourse or artificial channel to the detriment of any upstream or downstream landowner.

Source: S.L. 1987, ch. 642, § 5.

Note.

Section 14 of chapter 642, S.L. 1987, provides: "The replacement of wetlands requirement in sections 61-32-03 and 61-32-04 does not take effect until July 1, 1989. Until July

1, 1989, the drainage of type IV and V wetlands, as defined in U.S. fish and wildlife service circular 39 (1971 edition) is not permitted, except for permit applications submitted prior to January 1, 1987, or unless replaced in accordance with the provisions of sections 61-32-01 through 61-32-11."

61-32-05. Wetlands bank. The state engineer and the commissioner shall jointly establish a wetlands bank. The records of acreages of replacement wetlands debited from and credited to such bank must be maintained by the state engineer. The acreages of all replacement wetlands constructed after January 1, 1987, must be carried as a credit in such bank. However, any unauthorized drainage constructed after July 1, 1975, which is closed or restored as a result of final enforcement action pursuant to section 61-32-07, may not be credited to the wetlands bank. The acreages of all wetlands drained after January 1, 1987, except those projects for which permits were applied for prior to January 1, 1987, must be charged as a debit against acreage credit balances. No more than two thousand five hundred acres may be carried as a debit balance to the wetlands bank, except for drainage of wetlands for which a permit is not required. Wetlands drained during surface coal mining operations may not be charged as a debt against acreage credit balances.

Source: S.L. 1987, ch. 642, § 6.

61-32-06. Uniform wetlands classification. The state engineer and the commissioner shall establish a uniform classification system of wetlands. All federal, state, and local entities shall follow this classification system when referring to wetlands in this state.

Source: S.L. 1987, ch. 642, § 7.

61-32-07. Closing a noncomplying drain — Notice and hearing — Appeal — Injunction. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. A complaint must be filed on a form made available by the state engineer. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain,

lateral drain, or ditch is not closed or filled within such reasonable time as the board shall determine, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the

notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Any assessments levied under the provisions of this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to such an appeal.

Source: S.L. 1987, ch. 642, § 8; 1989, ch. 83, § 35.

61-32-08. Appeal of board decisions — State engineer review — Closing of noncomplying drains. The board shall make the decision required by section 61-32-07 within a reasonable time, but not to exceed one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. The board's decision may be appealed to the state engineer by any aggrieved party. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer which must specifically set forth the reason why the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to the nonappealing party. Upon receipt of this notice the board, if it has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the drain, lateral drain, or ditch. The state engineer shall handle the appeal by conducting an independent investiga-

engineer may enter property affected by the complaint for the purpose of investigating the complaint.

If the board fails to investigate and make a determination concerning the complaint within a reasonable time, but not to exceed one hundred twenty days, the person filing the complaint may file such complaint with the state engineer. The state engineer shall, without reference to chapter 28-32, cause the investigation and determination to be made, either by action against the board, or by personally conducting the investigation and personally making the determination.

If the state engineer determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of three actions:

1. Notify the landowner by registered mail at the landowner's post-office address of record;
2. Return the matter to the jurisdiction of the board along with the investigation report; or
3. Forward the drainage complaint and investigation report to the state's attorney.

If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within such reasonable time as the state engineer shall determine, but not less than thirty days, the state engineer shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, against the property of the landowner responsible. The notice from the state engineer must state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying drain, lateral drain, or ditch is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other taxes are collected and paid. Assessments collected must be deposited with the state treasurer and are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court in accordance with chapter 28-32. A hearing by the state engineer as provided for in this section shall be a prerequisite to such an appeal.

If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of

the investigation report shall be forwarded to the board and it shall include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction the board shall carry out the state engineer's decision in accordance with the terms of this section.

If the state engineer, after completing the investigation required under this section, decides to forward the drainage complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint in accordance with the statutory responsibilities prescribed in chapter 11-16.

In addition to the penalty imposed by the court in the event of conviction under this statute, the court shall order the drain, lateral drain, or ditch closed or filled within such reasonable time period as the court determines, but not less than thirty days. If the drain, lateral drain, or ditch is not closed or filled within the time prescribed by the court, the court shall procure the closing or filling of the drain, lateral drain, or ditch, and assess the cost thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

The authority granted in this section may only be exercised for drain age constructed after January 1, 1987.

Source: S.L. 1987, ch. 642, § 9.

61-32-09. Wetlands replacement fund — Continuing appropriation. There is hereby created a special revolving wetlands replacement fund in the state treasury to which funds received by the commissioner pursuant to sections 61-32-01 through 61-32-11 must be deposited. The commissioner is authorized to receive funds for the wetlands replacement fund from any private or public source. The commissioner shall work with the governor, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop additional funding to implement sections 61-32-01 through 61-32-11. All funds received from any source, not including state revenues, are hereby appropriated to the commissioner, and may be expended for the purpose of implementing sections 61-32-01 through 61-32-11 including acquisition, easement, lease, and construction of replacement wetlands.

Source: S.L. 1987, ch. 642, § 10.

61-32-10. Exemption. The wetland replacement requirements of sections 61-32-01 through 61-32-11 do not apply to surface coal mining operations until reclamation of the wetland area begins pursuant to chapter 38-14.1.

Source: S.L. 1987, ch. 642, § 11.

61-32-11. Application of prior law. Sections 61-32-01 through 61-32-11 do not apply to drainage applications submitted, or to drainage violations committed, prior to January 1, 1987. Procedures for and prosecutions of such activities are governed by prior law which is continued in effect for that purpose.

Source: S.L. 1987, ch. 642, § 12.

Appendix D

HIGHLY ERODIBLE LAND AND WETLAND
CONSERVATION DETERMINATION

Rt. 1 Box 55
Erie, N.D. 58059

4-22-8
3. County
Cass

4. Name of USDA Agency or Person Requesting Determination
ASCS

5. Farm No. and Tract No.
3138

SECTION I - HIGHLY ERODIBLE LAND

5. Is soil survey now available for making a highly erodible land determination?	Yes	No	Field No.(s)	Total Acres
	X			
7. Are there highly erodible soil map units on this farm?	X			
8. List highly erodible fields that, according to ASCS records, were used to produce an agricultural commodity in any crop year during 1981-1985.			T746-F-1 T728-F-1	12.9 114.6 127.5
9. List highly erodible fields that have been or will be converted for the production of agricultural commodities and, according to ASCS records, were not used for this purpose in any crop year during 1981-1985; and were not enrolled in a USDA set-aside or diversion program.			-	

10. This Highly Erodible Land determination was completed in the: Office Field

NOTE: If you have highly erodible cropland fields, you may need to have a conservation plan developed for these fields. For further information, contact the local office of the Soil Conservation Service.

SECTION II - WETLAND

11. Are there hydric soils on this farm?	Yes	No	Field No.(s)	Total Wetland Acres
	X			
List field numbers and acres, where appropriate, for the following EXEMPTED WETLANDS:				
12. Wetlands (W), including abandoned wetlands, or Farmed Wetlands (FW). Wetlands may be farmed under natural conditions. Farmed Wetlands may be farmed and maintained in the same manner as they were prior to December 23, 1985, as long as they are not abandoned.			T746-F-142 T728-F-1	15.0 7.9 22.90
13. Prior Converted Wetlands (PC) - The use, management, drainage, and alteration of prior converted wetlands (PC) are not subject to FSA unless the area reverts to wetland as a result of abandonment. You should inform SCS of any area to be used to produce an agricultural commodity that has not been cropped, managed, or maintained for 5 years or more.			All Fields	
14. Artificial Wetlands (AW) - Artificial Wetlands Includes Irrigation Induced wetlands. These Wetlands are not subject to FSA.				
15. Minimal Effect Wetlands (MW) - Those wetlands are to be farmed according to the minimal effect agreement signed at the time the minimal effect determination was made.				

16. NON-EXEMPTED WETLANDS:

6. Converted Wetlands (CW) - In any year that an agricultural commodity is planted on these Converted Wetlands, you will be ineligible for USDA benefits. If you believe that the conversion was commenced before December 23, 1985, or that the conversion was caused by a third party, contact the ASCS office to request a commenced or third party determination.

7. The planned alteration measures on wetlands in fields _____ are considered maintenance and are in compliance with FSA.

8. The planned alteration measures on wetlands in fields _____ are not considered to be maintenance and if installed will cause the area to become a Converted Wetland (CW). See item 16 for information on CW.

9. This wetland determination was completed in the: Office Field

10. This determination was: Delivered Mailed To the Person on Date: **6-24-88**

NOTE: If you do not agree with this determination, you may request a reconsideration from the person that signed this form in Block 22 below. The reconsideration is a prerequisite for any further appeal. The request for the reconsideration must be in writing and must state your reasons for the request. The request must be mailed or delivered within 15 days after this determination is mailed to or otherwise made available to you. Please see reverse side of the producer's copy of this form for more information on appeals procedure.

NOTE: If you intend to convert additional land to cropland, or alter any wetlands you must initiate another Form AD-1026 at the local office of ASCS. Abandonment is where land has not been cropped, managed, or maintained for 5 years or more. You should inform SCS if you plan to produce an agricultural commodity on abandoned wetlands.

11. Remarks
HEL NE 1/4 - 21-142-56, Minnie Lake, Barnes Co.
NW 1/4 - 28-142-53, Erie Twp. Will need Cons Plan by Jan 1, 1989
N/HEL

12. Signature of SCS District Conservationist
RW *J. O'Leary*

23. Date
6-6-88

Appendix E

WE AGREEMENT NO.
ND-62510-88-202

WILDLIFE EXTENSION AGREEMENT

THIS AGREEMENT DATED April 25, 1988 BETWEEN _____
WILDLIFE COOPERATOR(S), AND THE U.S. FISH AND WILDLIFE SERVICE (FWS) IS ENTERED INTO PURSUANT TO
AUTHORITY CONTAINED IN SECTION 1 OF THE FISH AND WILDLIFE COORDINATION ACT, 16 U.S.C. 661 AND SECTION
7 OF THE FISH AND WILDLIFE ACT OF 1956, 16 U.S.C. 742(a)(4).

Woodworth, North Dakota 58496

HEREBY AGREE TO OR PARTICIPATE WITH THE FWS IN CONDUCTING CERTAIN WILDLIFE MANAGEMENT PRACTICES
ON LANDS OWNED BY THEM IN Stutsman COUNTY, STATE OF ND DESCRIBED AS FOLLOWS:

T141N R67W, NE Section 8

THE WILDLIFE COOPERATORS IN SIGNING THIS AGREEMENT JOIN AS PARTICIPANTS IN A WILDLIFE MANAGEMENT
PROGRAM AND GRANT TO THE FWS THE AUTHORITY TO COMPLETE WILDLIFE HABITAT DEVELOPMENT, OR TO
PERSONALLY CARRY OUT WILDLIFE MANAGEMENT ACTIVITIES WITH FINANCIAL OR MATERIAL SUPPORT, AS
DESCRIBED IN THE ATTACHED SPECIAL PROVISIONS (EXHIBIT A). ANY DONATION OF SUPPLIES OR EQUIPMENT, OR
DIRECT PAYMENT FROM THE FWS TO THE WILDLIFE COOPERATORS FOR CARRYING OUT THE WILDLIFE HABITAT
DEVELOPMENTS, ARE ALSO INCLUDED IN THE ATTACHED SPECIAL PROVISIONS (EXHIBIT A).

THE TERMS OF THIS AGREEMENT WILL BE FOR 10 YEARS BEGINNING April 25, 1988, AND ENDING
Sept. 30, 1997. PAYMENT AS APPROPRIATE WILL BE MADE AS DESCRIBED AND AGREED TO IN EXHIBIT A.

THIS AGREEMENT MAY BE MODIFIED AT ANY TIME BY MUTUAL WRITTEN CONSENT. IT MAY ALSO BE TERMINATED IN
WRITING BY EITHER PARTY THIRTY (30) DAYS IN ADVANCE. IF TERMINATED BY THE COOPERATOR, COOPERATOR
WILL REIMBURSE FWS FOR THE COST OF THE WILDLIFE HABITAT DEVELOPMENTS. IF THIS AGREEMENT IS
TERMINATED IN WRITING BY THE FWS, THEN FWS MAY AT ITS OPTION REMOVE ANY WILDLIFE DEVELOPMENTS
PLACED ON THE LAND.

AT THE END OF THE TERM, THE WILDLIFE HABITAT DEVELOPMENT WILL BECOME THE PROPERTY OF THE WILDLIFE
COOPERATOR.

THE FWS DOES NOT ASSUME JURISDICTION OVER THE PREMISES BY THIS AGREEMENT. THE WILDLIFE COOPERATOR
RETAINS ALL RIGHTS TO CONTROL TRESPASS AND RETAINS ALL RESPONSIBILITY FOR TAXES, ASSESSMENTS, AND
DAMAGE CLAIMS.

THE FWS, ITS AGENTS, OR ASSIGNEES RESERVE THE RIGHT TO ENTER THE LAND AT REASONABLE TIMES FOR
WILDLIFE HABITAT DEVELOPMENT AND MANAGEMENT PURPOSES AND TO INSPECT COMPLETED WORK.

THE SERVICE ASSUMES NO LIABILITY FOR DAMAGE OR INJURY OTHER THAN THAT CAUSED BY ITS OWN
NEGLIGENCE, ON THE ABOVE ACREAGE.

SPECIFIC WORK COMPLETED WILL BE DOCUMENTED ON EXHIBIT A.

A CHANGE IN OWNERSHIP SHALL NOT CHANGE THE TERMS OF THIS AGREEMENT. THE AGREEMENT AND TERMS
SHALL BE IN EFFECT ON THE DESCRIBED LAND FOR THE PERIOD OF THE AGREEMENT. THE WILDLIFE COOPERATOR
WILL NOTIFY THE FWS OF PLANNED OR PENDING CHANGES IN OWNERSHIP.

THE COOPERATOR AGREES NOT TO ALLOW ANY AGRICULTURAL USE OF THE TRACT SUCH AS LIVESTOCK GRAZING
OR HAYING, UNLESS INCLUDED AS PART OF THIS OR AN AMENDED AGREEMENT.

EXHIBIT A
SPECIAL PROVISIONS

The wildlife habitat developments described below are agreed to by _____ and the FWS
in a Wildlife Management Agreement dated April 25, 1988.

Planned work The cooperator agrees to allow the Fish and Wildlife Service or its designees to enter the property for the purposes of placing ditch plugs in wetland drainage ditches (see attached map). The purpose of the ditch plugs is to restore the wetlands to their original condition while the land is enrolled in the Conservation Reserve Program. The cooperator agrees to allow the Service access to inspect the work and track the success of the wetland restorations. At the end of the term of this agreement, the landowner is free to remove the ditch plugs at his expense. The landowner shall receive a one-time, lump sum bonus payment in return for the wetland restoration work. The landowner agrees to request the Soil Conservation Service to amend the Conservation Reserve Program Conservation Plan (CP) to allow wetland restoration. No ditch plug construction will proceed without the CP being amended. The cooperator agrees, with assistance from the Service, to request approval from the State Engineer for any ditch plugs that will impound greater than 12½ acre feet of water, as required by State Law.

Itemized costs of payments, materials, supplies, completed work, and schedule of payments.

Ditch plug construction: 3 ditch plugs @ \$75 ea.	\$225.00
Bonus payment (\$10/wetland acre restored, or minimum of \$50/wetland):	
Wetland No. 1: 2.8 acres (minimum rate applies)	\$50.00
Wetland No. 2: 1.6 acres (minimum rate applies)	\$50.00
Wetland No. 3: 1.2 acres (minimum rate applies)	<u>\$50.00</u>
Grand Total	\$375.00

Note: Bonus payment is available to cooperator upon receipt of invoice after wetland restoration is completed.

Note: Bonus payment is available to cooperator upon receipt of invoice after the wetland restoration is completed.

Completed work (as modified by mutual agreement)

Special Note

This agreement does not supercede any local, state or federal regulations that would apply to the removal of any ditch plugs at the termination of this contract.

AT THE END OF THIS AGREEMENT, THE COOPERATOR ASSUMES FULL AND COMPLETE RESPONSIBILITY FOR ALL WILDLIFE HABITAT DEVELOPMENTS MADE DURING THIS AGREEMENT ON THE PROJECT TRACT. THERE SHALL BE NO OBLIGATION TO ANY OF THE AGENCIES OF THE AGREEMENT AFTER THE TERM OF THE AGREEMENT HAS EXPIRED.

THE LANDOWNER WILL BE RESPONSIBLE FOR SECURING ANY NECESSARY PERMITS. TECHNICAL ADVICE AND SUPPORT WILL BE PROVIDED BY PARTICIPATING AGENCIES IN THE APPLICATION FOR THE PERMIT.

THE FWS IS PROHIBITED BY LAW FROM MAKING OBLIGATIONS THAT EXCEED AVAILABLE FUNDS AND, THEREFORE, THE FWS CAN DO ONLY THAT WORK WHICH IS FUNDED. IN THE EVENT FUNDS ARE NOT AVAILABLE TO DO THE WILDLIFE HABITAT DEVELOPMENT WORK WITHIN THE PERIOD OF TIME OR IN THE MANNER PRESCRIBED IN THE SPECIAL PROVISIONS, THE FWS WILL ADVISE THE WILDLIFE COOPERATOR OF THAT FACT.

WILDLIFE COOPERATOR GUARANTEES OWNERSHIP OF THE ABOVE-DESCRIBED LAND AND WARRANTS THAT THERE ARE NO OUTSTANDING RIGHTS WHICH INTERFERE WITH THE WILDLIFE MANAGEMENT AGREEMENT.

_____ ⁴⁻²⁵⁻⁸⁸ _____
WILDLIFE COOPERATOR SOCIAL SECURITY NUMBER*

Robert J. Johnson
FWS, REFUGE MANAGER

Robert B. Howard
FWS, ASSISTANT REGIONAL DIRECTOR,
REFUGES AND WILDLIFE

* **PRIVACY ACT NOTICE:** THE FWS IS REQUIRED TO OBTAIN THIS INFORMATION TO PROCESS ANY PAYMENT(S) TO THE WILDLIFE COOPERATOR AS A RESULT OF THIS AGREEMENT. THIS INFORMATION WILL BE FURNISHED TO THE INTERNAL REVENUE SERVICE AS REQUIRED BY THE TAX REFORM ACT OF 1986 AND MAY BE SHARED WITH THE DEPARTMENT OF JUSTICE FOR CRIMINAL OR CIVIL LITIGATION. FURNISHING A SOCIAL SECURITY NUMBER IS VOLUNTARY, BUT FAILURE TO DO SO MAY RESULT IN DISQUALIFICATION FROM THIS PROGRAM.