

## Michael Lewis

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**From:** Greg Graczyk [ggraczyk@co.carver.mn.us]  
**Sent:** Wednesday, April 01, 2009 3:43 PM  
**To:** David Weirens (BWSR)  
**Cc:** Brad Wozney (BWSR)  
**Subject:** RE: Wetland Conservation Act Rule - Notice of Hearing  
**Attachments:** Greg Graczyk.vcf

Dave,

Just had a couple of things in review of the latest draft rules. At times playing my best "devil's advocate" in what people may perceive as what is said and how that may be twisted to us out in the field (and possibly further up if a situation would escalate). I'll try to stay in order but have been jumping around between the general text and definitions as they may tie into the text so stick with me. Here we go...

Pg. 22, .0420 No-Loss Categories  
End of the first paragraph "The following qualify for a no-loss:"

- Does this mean if one of the following apply? Sounds like it to me but just wanted to clarify.

This brings me to A. and the definition on "Impact" on pg. 79 (which is not only used in this part but all throughout the draft). All the different comma's in there get somewhat confusing and maybe I'm reading it wrong but here's how I'm interpreting it.

"Impact" means a loss in the quantity, quality, or biological diversity of a wetland caused (this is the general/cover all statement) by draining (no comma) or filling of wetlands (no comma) wholly or partially(semi-colon); or by excavation in the permanently and semi-permanently flooded areas of etc. etc. etc.

Basically that there are potentially two different criteria that could be determined to be a loss of quantity, quality, or biological diversity. #1 the filling or draining of all wetland and #2 the excavation of the 3, 4, and 5's. Getting rid of some of the comma's makes it more clear that it's these two different "categories". Is this a correct interpretation? If so then who is the responsible party for determining if a project is going to have a loss in quantity, quality or biological diversity

.0430 Subp. 2 Ag. Activities pg. 24.

It would be difficult to come up with all the activities that encompass "Agricultural Activities" but I did go to the definitions to see and there is nothing listed. It appears now that new drainage, maintenance or repair systems as long as it's on "ag land" as defined could be run through the Ag. Exemption instead of Drainage. Which leads me to Drainage...

.430 Subp. 3 Drainage pg. 25

It is written that a "public drainage system" means...as defined in MN St. sec. 103E.005 subdiv. 12 and any ditch or tile lawfully connected to the drainage system. Well subdiv. 12 entails those drainage systems that are controlled/administered by the drainage authority. Basically those portions of the system that the drainage authority is responsible for maintenance, repair, etc. Well then the statement of "and any ditch or tile lawfully connected to the drainage system" follows this which makes one think that this includes private systems connected to the public system or anything that is assessed drainage benefits.

- (1) Talks about public drainage systems...
- (2) Talks about systems other than public drainage systems

Should the "and any ditch or tile lawfully connected to the drainage system be removed and just leave the def. of a public drainage system as the ...Subdiv. 12?

Now along with this (1) and (2) talk about wetlands that have been in existence for 25 years and nothing about any maintenance that has happened within 25 years. What about the situation that there is a ditch draining a type 3 (historically maybe a type 5) and now the landowner would like to clean the ditch out as over the years of the ditch filling in the water levels of the wetland have increased. The activity is deemed that it won't completely drain the wetland but allow for a quicker conveyance of water out of the wetland when it reaches a certain level hence possibly lowering the water levels back to what they once were. Well this probably would be obviously removing some water from the wetland as "drainage" is defined. What do we do there? What I'm saying is that there isn't any criteria to allow for continued maintenance on a ditch if it's can be documented as being ongoing (10 years ago we cleaned the ditch out as it was getting plugged so can we do it again). Not that I am a proponent for draining wetlands but it does seem a little unfair that a landowner couldn't maintain their ditch. The issue here lies in the situation where over time a wetland has gotten "wetter" and the goal is to just bring it back to its "historical" levels.

This brings me to the drain or drainage definition

Are we talking wholly or partially or both? What I'm saying is does "removing" or "diverting" mean completely? Also does it apply to maintenance or new drainage activities? Doesn't say.

There may be more but that's as far as I am right now and figures I should write while things are fresh in my head. It's probably going to be better if you (or Les or Brad) and I converse over the phone so that you don't get carpal tunnel like I probably have after writing this.

Thanks



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**From:** Felicia Brockoff  
**Sent:** Thursday, March 26, 2009 12:51 PM  
**To:** Greg Graczyk; Mike Wanous  
**Subject:** FW: Wetland Conservation Act Rule - Notice of Hearing

Just wanted to make sure you both got this.

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**From:** David Weirens (BWSR) [mailto:David.Weirens@state.mn.us]  
**Sent:** Thursday, March 26, 2009 12:48 PM  
**To:** David Weirens (BWSR)  
**Cc:** Les Lemm (BWSR)  
**Subject:** Wetland Conservation Act Rule - Notice of Hearing

The message is being sent to:

- WCA Permanent Rule Stakeholder Advisory Committee
- WCA Rule Technical Review Committee
- WCA Local Government Units (including state agency contacts)
- Soil and Water Conservation Districts
- Watershed Districts
- Water Management Organizations
- Local Water Planners

*Individuals who are on more than one BWSR contact list will receive this message more than once.*

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The Board of Water and Soil Resources (BWSR) has been developing amendments to the Wetland Conservation Act rule since fall 2007. This process has included working with several advisory committees and numerous presentations and meetings to discuss the rule process and issues during this time. The purposes of this rule amendment are to:

- Adopt permanent rules by August 5, 2009 as required by statute;
- Incorporate 2007 and 2008 statutory changes into the permanent rule;
- Increase state and federal regulatory coordination through incorporating provisions of the BWSR-U.S. Army Corps of Engineers Wetland Mitigation Memorandum of Understanding (<http://www.bwsr.state.mn.us/wetlands/BWSR-COEmemo.pdf>);
- Improve application of wetland replacement science to improve resource outcomes; and
- Make organizational/formatting changes to improve clarity and understanding.

The Notice of Hearing provides a brief summary of the proposed changes. In addition, significant additional information is available on the BWSR website regarding this rulemaking, at: <http://www.bwsr.state.mn.us/wetlands/wca/rulemaking.html>

BWSR will be publishing the Notice of Hearing and proposed rule in the State Register on Monday, March 30. The Notice of Hearing, Proposed Rule, and Statement of Need and Reasonableness (SONAR) are available on the BWSR website, as follows: <http://www.bwsr.state.mn.us/>

The public hearings will have a session at 1:00 p.m. and 6:00 p.m. and be held as follows:

- **Thursday, April 30, 2009: Blandin Foundation**, 100 North Pokegama Avenue, **Grand Rapids**, Minnesota 55744.
- **Friday, May 1, 2009: University of Minnesota-Crookston**, Youngquist Auditorium, 2900 University Avenue, **Crookston**, Minnesota 56716.
- **Monday, May 4, 2009: Kandi Entertainment Center**, 500 19<sup>th</sup> Avenue SE, **Willmar**, Minnesota 56201.
- **Tuesday, May 5, 2009: Minnesota Board of Water and Soil Resources**, Basement Level Boardroom, 520 Lafayette Road, **St. Paul**, Minnesota 55155.

Testimony is encouraged and welcome at these hearings, as are comments submitted prior to these hearing dates. Please refer to the Notice of Hearing for more information on the public hearing process and submission of comments.

Please contact myself or Les Lemm if you have any questions about the rule or the rule process.

Dave Weirens  
Land and Water Section Manager  
Minnesota Board of Water and Soil Resources

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5/6/2009

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