

Dispute Resolution Report  
October 26, 2011  
By: Travis Germundson

There are presently **15** appeals pending. All of the appeals involve WCA except File 10-10. There has been **1** new appeal filed since the last report (Board packet).

Format note: New appeals that have been filed since last report to the Board.  
~~Appeals that have been decided since last report to the Board.~~

File 11-8 (10-18-11) This is an appeal of a restoration order in Mille Lacs County. The appeal regards the unauthorized placement of fill along both sides of an existing driveway entrance for parking, resulting in approximately 1,785 sq. ft. of wetland impact. No decision has been made on the appeal.

~~File 11-7 (8-19-11) This is an appeal of a restoration order in Itasca County. The appeal regards the unauthorized placement of approximately 2,275 sq. ft. of fill in a wetland area adjacent to Little Turtle Lake. The Restoration Order was modified in part and affirmed in part.~~

~~File 11-5 (4-13-11) This is an appeal of a forestry exemption decision in Carlton County. This involves the same location and similar issues as File 10-16. The LGU under a remand reversed their previous decision and denied the after the fact forestry exemption application for the construction of a forest logging road. Now that denial is being appealed by the Minnesota Timber Producers Association on behalf of the landowner. The appeal has been settled by written agreement.~~

File 11-3 (2-11-11) This is an appeal of a restoration order in Waseca County. The appeal regards the draining and filling of approximately 8.3 acres of a Type 2 wetland. This involves the same location and similar issues as File 11-2. The appeal has been placed in abeyance and the restoration order stayed until there is a final decision on the appeal of the exemption and no loss determinations (File 11-2). The appeal has been combined with File 11-2 and will be processed as one decision. The DRC held a hearing on October 13, 2011 and voted on a decision to recommend to the full Board.

File 11-2 (1-24-11) This is an appeal of an exemption and no-loss determination in Waseca County. The appeal regards the denial of an exemption and no-loss application. A previous denial of the same exemption and no loss application had been appealed (File 8-4). The appeal was remanded for or further technical evaluation and a hearing, and now the current denial has been appealed. The appeal has been combined with File 11-3 and will be processed as one decision. The DRC held a hearing on October 13, 2011 and voted on a decision to recommend to the full Board.

File 11-1 (1-20-11) This is an appeal of a restoration order in Hennepin County. The appeal regards the filling of approximately 1.77 acres of wetland and 0.69 acres of excavation. The appeal has been placed in abeyance and the restoration order stayed until there is a final decision on an after-the-fact wetland application.

~~File 10-15 (11-29-10) This is an appeal of a restoration order in Mille Laes County. The appeal regards the filling of approximately 5,800 square feet of wetland for lakeshore access and to create a larger recreational area. The appeal has been placed in abeyance for submittal of technical analyses of the onsite drainage modifications. The appeal has been denied.~~

File 10-10 (6-10-10) This is an appeal filed under Minn. Stat. 103D.535 regarding an order of the managers of the Wild Rice Watershed District not to go forward with the Upper Becker Dam Enhancement Project as proposed. Appeals filed under 103D.535 require that the Board follow the Administrative Procedures Act. The Act requires that the hearing be conducted by an Administrative Laws Judge through the Office of Administrative Hearings. The appeal has been placed in abeyance pending settlement discussions. A verbal settlement agreement has been reached by the parties. (at the December 2010 Board meeting, Managers voted 6 to 1 to move forward with Option D)

File 10-7 (2-19-10) This is an appeal of a restoration order in Stearns County. The appeal regards draining and filling impacts to approximately 18.44 acres of Type2/3 wetland and 3.06 acres of Type 2 wetland. The appeal has been placed in abeyance and the restoration order stayed for submittal of “as built” or project information pertaining to a public drainage system.

File 10-3 (2-1-10) This is an appeal of a restoration order in Stearns County. The appeal regards the placement of agricultural drain tile and the straightening and rerouting of a county ditch that resulted in over 12 acres of wetland impacts. The appellant has granted BWSR additional time to make a decision on the appeal. No decision has been made on the appeal.

File 09-22 (10-02-09) This is an appeal of a restoration order in Carlton County. The appeal regards three separate investigation areas encompassing over 18 acres of wetland impacts from excavation, filling, and ditching. The replacement order has been stayed and the appeal has been placed in abeyance pending further technical work and for submittal of complete wetland replacement plan, exemption, or no-loss application.

File 09-13 (8-20-09) This is an appeal of an exemption decision in Otter Tail County. The appeal regard the denial of an exemption request for agricultural/drainage actives. A previous denial of the same exemption decision had been appealed (File 09-6). The appeal was remanded for further technical evaluation and a hearing, and now the current denial has been appealed. The appeal has been granted. A pre hearing conference convened on November 12, 2009. At which time parties agreed to hold off scheduling written briefs until the petition before NRCS is concluded. The appeal has been placed in

abeyance by mutual agreement until there is a final decision by the Department of Agriculture National Appeals Division.

File 09-10 (7-9-09) This is an appeal of a banking plan application in Aitkin County. The appeal regards the LGU's denial of a banking plan application to restore 427.5 acres of wetlands through the use of exceptional natural resource value. The appeal has been accepted and pre-hearing conferences convened on October 13 and 30, and December 14, 2009. Settlement discussions are on hold while the appellant addresses permitting issues with the Corps of Engineers. The appeal has been placed in abeyance by mutual agreement on determining the viability of a new wetland banking plan application.

File 09-3 (2-20-09) This is an appeal of a replacement plan decision in Anoka County. The appeal regards the approval of a wetland replacement plan for 11,919 square feet of impacts associated with a residential development. The appeal has been placed in abeyance and the replacement plan decision stayed for submittal of a revised replacement plan application. The three owners are also in the process of splitting up the property.

File 08-9. (03/06/08) This is an appeal of a replacement order in Pine County. The appeal regards impacts to approximately 11.26 acres of wetland. The replacement order has been stayed and the appeal has been placed in abeyance pending disposition with the U.S. Dept of Justice.

File 06-23. (05/19/06) This is an appeal of a replacement plan decision in Kanabec County. The LGU denied the wetland replacement plan application. A previous denial of the same replacement plan application had been appealed, the appeal was remanded for a hearing, and now the current denial has been appealed. The appeal has been placed in abeyance pending the outcome of a lawsuit between the landowner and the county. The lawsuit concerns the county's possible noncompliance with the 60-day rule. The county prevailed in district court; however the decision was appealed to the Court of Appeals where the county again prevailed. An appeal to the Minnesota Supreme Court was denied review.

File 06-17. (05/27/06) This is an appeal of a replacement plan decision in the City of Montgomery in LeSueur County. The LGU denied an after-the-fact wetland replacement plan application based on a lack of sufficient reasons why the restoration could not be completed. The appeal was been remanded for further processing at the local level. The City of Montgomery has gradually been working on removing the debris and restoring the wetland in accordance with MPCA requirements.

File 05-1. (01/13/05) This is an appeal of a replacement plan decision by the Rice Creek Watershed District. The District previously made a decision that was appealed which resulted in a remand for an expanded TEP. Now there is an appeal of the decision made under remand since the decision differed from the TEP report. At issue are wetland delineation and the Comprehensive Wetland Protection and Management Plan that BWSR approved. After a hearing before the DRC, the board remanded the matter for new wetland delineation and for submission on an updated, complete replacement plan

application. On 12-9-09 the District made a new wetland delineation decision. The applicant has not yet submitted an updated replacement plan application.

### Draft Summary Table

| Type of Decision                | Total for Calendar Year 2010 | Total for Calendar Year 2011 |
|---------------------------------|------------------------------|------------------------------|
| Order in favor of appellant     | 2                            |                              |
| Order not in favor of appellant | 6                            | 2                            |
| Order Modified                  |                              | 1                            |
| Order Remanded                  | 1                            |                              |
| Order Place Appeal in Abeyance  | 5                            | 3                            |
| Negotiated Settlement           | 1                            | 1                            |
| Withdrawn/Dismissed             | 4                            |                              |