

CHAPTER 6115
DEPARTMENT OF NATURAL RESOURCES
PUBLIC WATER RESOURCES

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6115.1500 PURPOSE.

The purpose of parts 6115 1500 to 6115.1550 is to establish criteria and procedures for determining drainage benefits to state-owned lands in consolidated conservation (con-con) areas administered under Minnesota Statutes, chapter 84A. Con-con areas are found in parts of Aitkin, Beltrami, Koochiching, Lake of the Woods, Mahanomen, Marshall, and Roseau Counties.

Statutory Authority: *MS s 84A 55*

History: *32 SR 1697*

6115.1510 DEFINITIONS.

Subpart 1 **Scope.** The terms used in parts 6115 1500 to 6115.1550 have the meanings given in this part.

Subp 2 **Commissioner.** "Commissioner" means the commissioner of natural resources or the commissioner's designated representative.

Subp 3 **Department.** "Department" means the Department of Natural Resources.

Subp 4 **Drainage.** "Drainage" means any method for removing or diverting waters from wetlands. The methods include, but are not limited to, excavating an open ditch, installing subsurface drainage tile, filling, diking, or pumping.

Subp. 5 **Drainage authority.** "Drainage authority" has the meaning given under Minnesota Statutes, section 103E 005, subdivision 9.

Subp. 6 **Drainage project.** "Drainage project" means a new drainage system, an improvement of a drainage system, an improvement of an outlet, a lateral, a repair, or a redetermination of benefits involving state-owned lands in consolidated conservation areas administered under Minnesota Statutes, chapter 84A, where

A. the drainage authority will make assessments to state-owned lands; or

B. the commissioner will be asked or must consider whether to participate in the project through assessments or a lump sum, by joining the petition, by consent, or by approval.

Subp 7 **Drainage system.** "Drainage system" has the meaning given under Minnesota Statutes, section 103E 005, subdivision 12.

Subp 8 **Improvement.** "Improvement" means the tiling, enlarging, extending, straightening, or deepening of an established and constructed drainage system, including construction of ditches to reline or replace tile and construction of tile to replace a ditch.

Subp. 9 **Lateral.** "Lateral" has the meaning given under Minnesota Statutes, section 103E 005, subdivision 15.

Subp. 10 **Public waters.** "Public waters" has the meaning given in Minnesota Statutes, section 103G 005, subdivision 15.

Subp 11 **Public waters wetlands.** "Public waters wetlands" has the meaning given in Minnesota Statutes, section 103G 005, subdivision 15a.

Subp 12 **Repair.** "Repair" means to restore all or a part of a drainage system as nearly as practicable to the same condition as originally constructed and subsequently improved,

including resloping of ditches and leveling waste banks if necessary to prevent further deterioration, realignment to original construction if necessary to restore the effectiveness of the drainage system, and routine operations that may be required to remove obstructions and maintain the efficiency of the drainage system "Repair" also includes

A incidental straightening of a tile system resulting from the tile-laying technology used to replace tiles; and

B replacement of tiles with the next larger size that is readily available, if the original size is not readily available.

Statutory Authority: *MS s 84A 55*

History: *32 SR 1697*

6115.1520 DRAINAGE PROJECTS.

Subpart 1 Notification and documentation. For the commissioner to consider participating in a drainage project that would have assessments within a consolidated conservation area, the drainage authority must follow the procedures described in this subpart. The drainage authority must notify the commissioner, in writing and as soon as practicable, with specifics about the proposed project. The specifics must describe the purpose of the project and what kind of project it is. The drainage authority must show the extent of the project on a map. The drainage authority must provide the commissioner with copies of all written documents, including any petition and engineer's report that have been filed or used in connection with the drainage project proceedings, as they are available.

Subp. 2 Investigation. After receiving notification and all documentation required under subpart 1, the commissioner must complete an investigation to determine whether the proposed drainage project benefits state-owned lands for the purposes for which they were established. In the investigation, the commissioner must.

A determine, which, if any, state-owned lands are positively impacted by the proposed drainage project according to subpart 3, and

B determine which, if any, state-owned lands are negatively impacted by the proposed drainage project according to subpart 4.

Subp. 3 Positive impacts. Positive impacts to state-owned lands occur when a proposed drainage project allows the department or department's lessee to continue to use or enhances its ability to use drainage to achieve management purposes as provided in Minnesota Statutes, section 84A 55. The following criteria are evidence that the department uses drainage to achieve a management purpose.

A the department utilizes a drainage system to outlet water into a public ditch from agricultural cropland it manages,

B the department leases the land for commercial purposes such as agriculture, agro-forestry, aquaculture, wild rice paddies, peat mining, or mineral extraction, and the lessee utilizes a drainage system to outlet water into a public ditch from the leased lands,

C the department petitions for a drainage project,

D the department outlets water from state-owned lands into a public ditch from an impoundment that is designed and used exclusively for wildlife management purposes,

E timber production is improved by the project, or

F wildlife habitat is improved by the project.

Subp. 4 Negative impacts. Negative impacts to state-owned lands occur when a drainage project adversely affects the management of the land for its intended purposes. The following criteria are evidence that a drainage project negatively impacts state-owned lands. The drainage project

A degrades public waters, public waters wetlands, or wetlands on state-owned lands,

B. causes direct physical disturbance to rare species or significant natural communities through project activities such as, but not limited to, ditching and depositing soils,

C. causes an alteration of the hydrology that disturbs rare species, natural communities, or peatland features,

D. causes an alteration of the hydrology that degrades designated peatland scientific and natural areas,

E. restricts management options for state-owned lands, or

F. results in the reduction or elimination of access to state-owned lands

Statutory Authority: *MS s 84A 55*

History: *32 SR 1697*

6115.1530 DETERMINING BENEFIT AND PARTICIPATION.

Subpart 1. **Commissioner's determination.** Following the investigation under part 6115.1520, for all drainage projects except those classified as repairs, the commissioner must determine whether the drainage project benefits state-owned lands and whether to participate in the project. In making the determination, the commissioner shall evaluate state-owned lands, on a parcel-by-parcel basis, with each parcel consisting of no more than 40 acres. A drainage project benefits a parcel of state-owned land only when the investigation shows that the positive impacts outweigh the negative impacts to that parcel of state-owned land. Where the commissioner determines that the project results in a net benefit to state-owned lands, the commissioner shall participate in the project. Having determined to participate, the commissioner shall authorize the imposition of assessments for the project on the lands in any amounts the commissioner determines or may make lump sum contributions to the county or other public funds established for the payment of the cost of the project. The commissioner may also set conditions to modify the project before approving or joining a petition. Before cooperating in a project by joining in the petition or consenting to or approving it, the commissioner may identify conditions that must be satisfied or modifications that must be made in the proposed project if such conditions or modifications are necessary to ensure that the project will benefit state-owned lands in con-con areas.

Subp. 1a **Commissioner's determination for repairs.** Following the investigation under part 6115.1520, for drainage projects considered repairs, the commissioner must determine whether the repair project benefits state-owned lands and whether to participate in the project. In making the determination, the commissioner, following consultation with drainage authorities, shall develop a table that identifies the benefits for each 40-acre parcel. A repair project benefits a parcel of state-owned land only when the investigation shows that the positive impacts outweigh the negative impacts to that parcel of state-owned land. Where the commissioner determines the project results in a net benefit to state-owned lands, the commissioner shall participate in the project. Having determined to participate, the commissioner shall authorize the imposition of assessments for the projects on the lands in any amounts the commissioner determines or may make lump sum contributions to the county or other public funds established for the payment of the cost of the project. The commissioner may also set conditions to modify the project before approving or joining the petition. Before cooperating in a project by joining in the petition or consenting to or approving it, the commissioner may identify conditions that must be satisfied or modifications that must be made in the proposed project if such conditions or modifications are necessary to ensure that the project will benefit state-owned lands in con-con areas.

Subp. 2. **Routine repair exception.** If a drainage authority's notification and documentation made under part 6115.1520, subpart 1, shows that the total cost of a proposed drainage repair under Minnesota Statutes, section 103E.705, is less than \$20,000 and the commissioner has previously determined the benefits to the state-owned lands within that drainage system, the commissioner may, without investigation, authorize the imposition of assessments for the proposed repair proportionate to the overall benefits to the state-owned

lands as previously determined by the commissioner. If the commissioner authorizes assessments under this subpart, the commissioner need not issue the findings and report required under part 6115.1540. Where the commissioner does not authorize an assessment for a repair under this subpart, the commissioner shall issue the findings and report as set forth in part 6115.1540.

Statutory Authority: *MS s 84A.55*

History: *32 SR 1697*

6115.1540 FINDINGS AND REPORT.

Upon completion of the table described in part 6115.1530, subpart 1a, for repairs and following the investigation under part 6115.1520, the commissioner must provide the drainage authority with findings within 60 days after the commissioner has received all notifications and documentation required under part 6115.1520, subpart 1. For repairs over \$20,000, and upon completion of the table described in part 6115.1530, subpart 1a, the commissioner must provide the drainage authority with findings within 60 days. The findings must convey the results of the investigation, state whether the commissioner will participate in the project, and state the reasons for the commissioner's decisions. The findings must identify which state-owned lands are benefited and which are not and set forth any conditions the commissioner attaches to the project and the amount of the contribution if the commissioner will participate.

Statutory Authority: *MS s 84A.55*

History: *32 SR 1697*

6115.1550 APPEAL.

The findings and report of the commissioner under part 6115.1540 may be reviewed by a declaratory judgment action in the district court of the county wherein the proposed project, or any part thereof, would be undertaken. Judicial review under this part must be initiated within 60 days after receipt of the findings by the drainage authority.

Statutory Authority: *MS s 84A.55*

History: *32 SR 1697*