

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF NATURAL RESOURCES

In the Matter of the Ordinary High Water  
Level of Public Waters Wetland No.  
70-325W

FINDINGS OF FACT,  
CONCLUSIONS,  
AND RECOMMENDATION

This matter came on for hearing before Administrative Law Judge Beverly Jones Heydinger on August 16 and 17, 2005, at the Shakopee Police Station, 475 Gorman Street, Shakopee, MN. Dulcie M. Brand, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101-2127, appeared on behalf of the Department of Natural Resources ("Department"). Steven J. Weintraut and Mark Thieroff, Siegel, Brill, Greupner, Duffy & Foster, P.A., 1300 Washington Square, 100 Washington Avenue South, Minneapolis, MN 55401, appeared on behalf of R & F Properties and Barsness Construction & Excavating ("Petitioners").

The hearing was conducted pursuant to a Notice and Order for Hearing dated July 5, 2005. The parties submitted post-hearing memoranda. The final submission, a letter from the Department, was received on September 1, 2005, and the hearing record closed at that time.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Natural Resources will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Gene Merriam, Commissioner, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### STATEMENT OF ISSUES

1. Did the Department correctly set the Ordinary High Water Level (“OHWL”) of Public Waters Wetland No. 70-325W at 1126.4 feet?

2. Did the Petitioners continuously maintain a drain tile with an inlet of 1122.4 feet that was constructed prior to the regulation of the wetland?

The Administrative Law Judge recommends that the Commissioner affirm the Department’s determination of the OHWL and find that the drain tile was constructed prior to the regulation of the wetland but has not been continuously maintained. Thus, the Petitioners have no existing rights to maintain the drain tile at a level below the OHWL.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

1. Public Waters Wetland No. 70-325W (“Wetland 325”) is located in the West half of Section 27, Township 113, Range 21 in the City of Elko in Scott County.<sup>[1]</sup> Wetland 325 is identified in *Bulletin No. 25, An Inventory of Minnesota Lakes*, Division of Waters, Soils, and Minerals, Minnesota Conservation Department (1968) as part of basin 70-6.<sup>[2]</sup> Wetland 325 is listed in the 1979 public waters inventory as a Type 4 public waters wetland, approximately 25 acres in size.<sup>[3]</sup>

2. The depth of the wetland basin varies from about 1122.2 feet to 1126 feet in elevation.<sup>[4]</sup> The soil under the basin and much of the neighboring area is hydric due to frequent inundation of water.<sup>[5]</sup> Hydric soil has depleted oxygen, and although the soil can become reoxygenated, the evidence of hydric soil remains a long time.<sup>[6]</sup>

3. The property identified on Exhibit A as “Elko Speedway R & F Properties LLC” and “Barsness Properties LLC” is about 190 acres, and Wetland 325 lies within this property. Joseph Chlan owned the property from 1941 until about 1960. A drain tile was installed on the property prior to his purchase. Throughout Mr. Chlan’s ownership, the 190 acres was always wet, but was periodically dry enough for cattle pasturing and cutting hay. At some time during the 1940’s, Mr. Chlan used dynamite to create an L-shaped ditch to improve drainage on the property.<sup>[7]</sup> Some of the aerial photographs show the location of that ditch.<sup>[8]</sup> Mr. Chlan’s son, James, recalls that the drain tile was definitely functioning into the 1950’s. However, an aerial photograph taken in 1951 clearly shows standing water on the north end and along the east side of the wetland, and the wetland’s outline.<sup>[9]</sup>

4. In 1959, James Chlan's father gave him the land immediately south of the 190 acres, identified on Exhibit A as the Evelyn Chlan property to the west of County Road 91, and Miscellaneous Small Tracts on the east of the county road. James Chlan owned the western parcel until 2000 and the eastern parcel until 2002.<sup>[10]</sup>

5. Joseph Chlan sold the 190 acres that include Wetland 325 in 1960. John Ostdiek owned the property from 1977 to 1991. At the time he took ownership, there was a certain amount of water on the property, and he understood that the prior owners, the Wilsons, had plugged the drain tile in the mid 1970's to create a duck pond.<sup>[11]</sup> The rising water created occasional problems on James Chlan's property and at times, the Elko Speedway parking lot was spongy.<sup>[12]</sup> Around 1983 or 1984, in an attempt to address Mr. Chlan's complaints about water on his property, Mr. Chlan and Mr. Ostdiek hired a backhoe and dug a ditch to the north of the racetrack. In so doing, they found what seemed to be the west end of the drain tile, replaced some tile and cleared out a ditch.<sup>[13]</sup> The land began to drain, although swamp grass remained in the wetland.<sup>[14]</sup> At that time, a representative of the Department inquired about Mr. Ostdiek's efforts, and was informed that he was repairing the drain tile.<sup>[15]</sup>

6. Aerial photographs taken each year by the Scott County Farm Service Agency, called "crop photos" or "crop shots," show the margins of the wetland in 1979 and standing water beyond the boundaries of the wetland as defined by the Department in each year from 1979-1984.<sup>[16]</sup>

7. In the aerial photographs for 1985 and 1986, the area is clearly drier, but there is evidence of aquatic vegetation such as reeds, canary grass and cattails.<sup>[17]</sup> The aerial photo showing the property at its driest was taken in 1987, a year of drought in Minnesota.<sup>[18]</sup>

8. Aerial photographs taken from 1988 through 1991 show that the wetland remained somewhat dry throughout these years, although the outline of the wetland is plainly visible on the photographs.<sup>[19]</sup>

9. Robert Frederickson purchased the 190 acres from Mr. Ostdiek in 1991. At that time, there was some standing water in the ditches and at the south end of the property to the west of the Speedway parking lot. Mr. Frederickson was able to drive over most of the property with a tractor, and considered completing work on a drag strip that had been started on the west side of the property.<sup>[20]</sup> In 1992, the water began to back up on the property, and is visible on the aerial photograph.<sup>[21]</sup>

10. The aerial photographs from the early 1990's indicate the existence of some trees along the southwestern edge of the basin near the area that may have served as a drag strip. The trees became inundated as the water level rose in 1993 and were no longer standing in 2001.<sup>[22]</sup> There was no evidence of the tree type or the elevation of the area where the trees appear on the photographs, or whether the trees existed during the 1970's and 1980's when the drain tile was not maintained.

11. The spring and summer of 1993 was one of the wettest periods in Minnesota's recorded climate history, with unusually heavy rain.<sup>[23]</sup> Aerial photographs show open water in the wetland from 1993 through 2001.<sup>[24]</sup>

12. Mr. Frederickson unsuccessfully attempted to open the drain tile in 1994 and 1995, but made no further effort prior to his sale of the property in 1997.<sup>[25]</sup>

13. In 1997 Mr. Frederickson sold off the northwest 10 acres of the property to Warren and Wayne Barsness, and Mr. Frederickson's former wife owned the balance of the property until 2000 when she entered into a partnership with Thomas Ryan.<sup>[26]</sup> In 2000, R & F Properties, LLC ("R & F") acquired the property, as identified on Exhibit A, and is the current owner of the property.<sup>[27]</sup>

14. At the time R & F acquired the property in 2000, the wetland was covered with water.<sup>[28]</sup> Mr. Ryan acknowledged that the water level was a concern at the time of his purchase, and that there were other unrelated problems, including problems with water and sewer, at the Elko Speedway because of deferred maintenance.<sup>[29]</sup>

15. In the Spring of 2001, R & F began work to connect the Speedway to city water and sewer. During construction, work crews hit the drain tile in two places, about 2 to 4 feet below ground. A dotted line on Exhibit A shows the likely location of the drain tile. R & F hit the tile at a point near the dashed end of the line drawn on Exhibit A, and at a point about 150 feet east of that point. The workers did not find the far west end of the drain tile, but installed a standpipe to mark the western-most identified point, estimated to be at an elevation of about 1126 feet.<sup>[30]</sup>

16. On September 6, 2001, the Department issued R & F a cease and desist order, prohibiting further drainage or repair.<sup>[31]</sup>

17. On November 6, 2001, Department staff, including John Scherek, the Survey Crew Supervisor, conducted a field survey and established that the ordinary high water level (OHWL) of Wetland 325 was 1126.4 feet.<sup>[32]</sup> At the time, the water level in Wetland 325 was 1124.7.<sup>[33]</sup> On January 22, 2002, the Department issued a restoration order to R & F, directing the removal of the standpipe and disabling of the drain tile system.<sup>[34]</sup>

18. The Department staff set an elevation that delineates "the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominately aquatic to predominately terrestrial."<sup>[35]</sup> Its protocol for setting the OHWL is set forth in Minnesota Department of Natural Resources Waters Division Guidelines for Ordinary High Water Level (OHWL) Determination, written in 1993.<sup>[36]</sup>

19. According to the protocol, the Department staff evaluate vegetation, beachlines, debris lines, washlines, toes of banks, ice ridges and stainlines on natural and artificial structures. The best method of determining the OHWL is through a site investigation to look at the tree evidence, water-formed evidence and other vegetative evidence. The average reduced elevation is calculated for the trees, based on the tree

type and diameter. Because trees are the most permanent expression of vegetation and their pattern of growth around a basin is influenced by fluctuating water levels, the OHWL is based on tree evidence whenever possible. Other physical evidence and past recorded water levels are also important supporting evidence.<sup>[37]</sup>

20. When evaluating tree evidence, the staff consider the species, slope of the ground, elevation to other trees, proximity to the lake basin, evidence of water action near the tree base and signs of stress in trunk shape, branch configuration, or dead or dying trees affected by root saturation. The best indicator trees are least water tolerant and located on a flat or gently sloping shoreline, and are typically found growing at a consistent elevation relative to each other, and with respect to any available supporting evidence.<sup>[38]</sup>

21. In conducting his investigation of the OHWL at Wetland 325, Mr. Scherek used seven trees, two live ash and five dead ash, with an average reduced elevation of 1126.4 feet.<sup>[39]</sup> In addition, Mr. Scherek observed a distinct washline around the basin at an elevation of 1126.5 feet. Stainlines on tree stumps and boulders ranged from 1126.9 to 1127.1, with faint stainlines on two dead trees somewhat higher, but not considered reliable. Mr. Scherek also considered the actual water level of the basin of 1124.70 on November 6, 2001. Based on all of the evidence, Mr. Scherek concluded in 2001 that the OHWL was 1126.4 feet, and his opinion was not altered by subsequent visits to the site.<sup>[40]</sup>

22. Following review of the OHWL, the Department accepted a public waters permit application from R & F to establish a surface drop-inlet structure with a control elevation of 1124.9, and granted the permit.<sup>[41]</sup> The inlet elevation of the permitted structure was 18 inches lower than the OHWL.<sup>[42]</sup>

23. R & F received two extensions for construction of the outlet structure; it was installed in March 2005.<sup>[43]</sup>

24. Recently, Mr. Chlan has seen no evidence of water spreading on to the property he formerly owned.<sup>[44]</sup>

25. Department staff were on site on July 19, 2004, and the water level in Wetland 325 was 1126.9 feet. Staff were on site again on June 21, 2005, and the water level was 1124.57 feet.<sup>[45]</sup>

26. In 2004, R & F commissioned I & S Engineers & Architects, Inc. (I & S), to conduct a drainage study of Wetland 325. The study was completed in August 2005. I & S started from the premise that the drain tile was located at the bottom of the wetland basin with an invert elevation of approximately 1122.14 feet. As that study acknowledged, at times the drain tile had not functioned. I & S was also aware that the photographs revealed "a lower water regime" at times in the past, with evidence of a drag race track, fence lines through the basin, a visible ditch system, and potential off-highway vehicle tracks.<sup>[46]</sup>

27. I & S developed a computer model to examine the flow and water surface elevations assuming that the 9-inch drain tile system was functioning with 80 percent capacity, with some additional reduction for age, potential offset joints, and sediment in the clay tile. Based on these assumptions, the model considered a number of possible rain events ranging from 2-year to 100-year events. The model calculated peak surface elevations of 1123.0 to 1125.3, with the draw down time to 1122.14 of 17.8 to 50.0 days.<sup>[47]</sup>

28. I & S did not look for evidence on the landscape that would correspond with its peak surface level findings, and it did not attempt to identify the point where the natural vegetation changed from predominantly aquatic to predominantly terrestrial. Instead, it based its determination solely on the modeling, and its understanding that the Department frequently set the OHWL at approximately 18 inches above the outlet elevation for the basin. In this case, if the outlet was calculated to be at the invert elevation of the drain tile, 1122.14, I & S asserted that the highest OHWL that the basin could have had with a functioning drain tile would be 18 inches higher, at 1123.7. Based on its modeling, this figure corresponded with a 10-year, 24-hour rain event, about 3.68 inches of rainfall.<sup>[48]</sup>

29. At times the drain tile was working and Wetland 325 was relatively dry. However, the drain tile system was not consistently maintained and that the water level regularly exceeded the levels calculated in the I & S model.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Commissioner of Natural Resources has the authority to set the OHWL of a wetland pursuant to Minn. Stat. §§ 103G.255 and 103G.401. The Commissioner and the administrative law judge have jurisdiction to conduct this hearing pursuant to those sections and Minn. Stat. § 14.50.

2. The OHWL is the jurisdictional boundary of public waters wetlands in Minnesota.<sup>[49]</sup> The OHWL is defined as:

An elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.<sup>[50]</sup>

3. All public waters and wetlands are subject to the control of the State. Wetland No. 70-325W is a public water wetland.

4. The Department has the authority to set the OHWL for Wetland No. 70-325W.<sup>[51]</sup> The Department has demonstrated that the OHWL for Wetland No. 70-325W was correctly set at 1126.4 feet.

5. R & F has the right to continue to operate a drain tile if it existed prior to State regulation, so long as it has been continuously used and maintained.<sup>[52]</sup>

6. The drain tile system in Wetland No. 70-325W was in place prior to the public waters inventory. It was not consistently maintained and for several years it did not function properly. R & F has failed to show that it had a protected non-conforming use that would allow the drain tile system to be fully restored and the water level maintained below the OHWL set by the Department.

Based upon the foregoing Conclusions, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

### RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Department's determination of the Ordinary High Water Level of Wetland No. 70-325W be AFFIRMED.

Dated this 30th day of September, 2005

/s/ Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Tape recorded (twelve tapes)

### MEMORANDUM

For many years it has been recognized by the State of Minnesota that wetlands of the state provide public value by "conserving surface waters, maintaining and improving water quality, preserving wildlife habitat, providing recreational opportunities, reducing runoff, providing for floodwater retention, reducing stream sedimentation, contributing to improved subsurface moisture, helping moderate climate change, and enhancing the natural beauty of the landscape, and are important to comprehensive water management...."<sup>[53]</sup> In support of that policy, the Department controls and supervises activity that "will change the course, current, or cross section of public waters, including the construction, reconstruction, repair, removal, abandonment, alteration, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions...."<sup>[54]</sup> In order to protect the State's wetlands, the Department conducted a public waters inventory, listing all of the wetlands of a certain size throughout the State, and Wetland 325 was listed as a category 4 wetland in the Scott County inventory.

Although the date that the Department began to regulate wetlands was not established, the Department did not dispute that a drain tile was in place prior to the time that the property was purchased by Joseph Chlan in 1941 which was prior to the Department's regulation.<sup>[55]</sup>

The Department also has authority to determine the OHWL.<sup>[56]</sup> In 2001, the Department followed an established protocol to set the OHWL at 1124.6, the first time the OHWL was set for this wetland. Although in its posthearing memorandum R & F claimed that the tree evidence relied upon by the Department actually supported a lower OHWL, R & F's witness, Mr. Losee, conceded that the Department had correctly set the OHWL based on the physical evidence available in 2001.

The Department established the OHWL in the manner set forth in statute, "the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominately aquatic to predominately terrestrial."<sup>[57]</sup> The Department's protocol is designed to set the OHWL in compliance with the statutory definition and the Department followed that protocol in this case. R & F offered no physical evidence in support of the lower high water level that it believes is appropriate. Rather than relying on physical evidence, it used computer modeling that assumes that the drain tile was functioning throughout the years of regulation. One of its witnesses hypothesized that there may have been trees at some time in the 1980's that would support a lower OHWL, based on what appeared on some of the aerial photographs at that time. That was the only physical evidence that R & F offered. However, that evidence was outweighed by the Department's evidence in support of its determination of the OHWL. In addition, the aerial photographs for all the years available, beginning in 1951, show the outline of the wetland to be well above the level proposed by R & F. Thus, even if the drain tile was providing drainage at times, the physical evidence amply supports the Department's OHWL. Conversely, if the drain tile had been working consistently, then, according to the I & S model, other physical evidence should have been visible that was consistent with its model.

The ditch Joseph Chlan created in the 1940's may have also affected the drainage. On Exhibit 33, an aerial photograph taken in 1951, it appears that the land above the ditch is quite wet while the land below it is much drier. R & F did not claim that the ditch pre-dated the Department's regulation or that it was consistently maintained.

R & F argues that the Department's OHWL should not limit its use of the drain tile because the drain tile was consistently operated and maintained throughout the period of wetland regulation. However, the evidence does not support this claim.

In *In the Matter of the Application of Christenson*, the Minnesota Supreme Court recognized that a landowner may maintain and continue using a private drainage system that predated regulation of the wetland.<sup>[58]</sup> It relied in part upon the language of Minn. Stat. § 15.38(1): "*Subject to existing rights* all public waters and wetlands are subject to the control of the state."<sup>[59]</sup> However, the Supreme Court concluded in that case that the landowner had not consistently maintained the drain tile throughout the years. Further, it concluded that the land had never been used in a manner that was inconsistent with its characterization as a wetland.

The Supreme Court's analysis is apt here. There is evidence in this case that the drain tile was maintained from time to time, but the evidence shows that for two periods of several years, in the 1970's and the 1990's, and for some years during the 1980's, the drain tile was not maintained. In fact, at one time, the drain tile was intentionally plugged in order to create a pond. The aerial photographs are consistent with the testimony of the witnesses. Thus, although R & F has correctly stated the law, it does not have facts to support the conclusion that the drain tile was consistently maintained throughout the years. In addition, there was no evidence that the land had been used in any way that is inconsistent with its designation as a Class 4 wetland. Mr. Chlan testified that while his father owned the land it was always wet, and was used from time to time for grazing or hay, but never for row crops. As the Supreme Court stated in *Christenson*, that use is consistent with a wetland.<sup>[60]</sup> Thus, there is no non-conforming use that must be protected beyond preventing the state from requiring the landowner to either destroy or fill in the remainder of the drainage system.<sup>[61]</sup>

R & F argues that the Department has conceded that there was a drain tile in place and in use. It is correct that the Department has recognized the drain tile's presence, and has taken it into account in granting a permit to allow R & F to drain the property to a level 18 inches below the OHWL. However, its acknowledgement that the drain tile existed does not amount to a concession that the drain tile was operated and maintained consistently and thus qualifies as a pre-existing use. Although there was a great deal of dispute at the hearing about whether the Department typically sets the OHWL at 18 inches above the basin's outlet, that is not relevant in this case because R & F failed to show that the drain tile was in fact operated and maintained continuously throughout the years.

If there is no right to maintain the drain tile, there is also no basis for using it as the starting point to determine the OHWL. The Department's OHWL was properly determined and should be affirmed.

**B.J.H.**

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<sup>[1]</sup> Ex. 32, pp. 1, 2.

<sup>[2]</sup> Ex. 5; Testimony ("T.") of John Scherek.

<sup>[3]</sup> T. Patrick Lynch, Area Hydrologist.

<sup>[4]</sup> Ex. 32, p. 35 (prepared by Probe Engineering Co., Inc., April 2004).

<sup>[5]</sup> Ex. 6; T. Lynch.

<sup>[6]</sup> T. Lynch.

<sup>[7]</sup> T. James Chlan.

<sup>[8]</sup> Exs. L7, L8, L9.

<sup>[9]</sup> Ex. 33.

<sup>[10]</sup> T. Chlan.

<sup>[11]</sup> T. John Ostdiek.

<sup>[12]</sup> T. Ostdiek.

<sup>[13]</sup> T. Chlan; T. Ostdiek.

<sup>[14]</sup> T. Ostdiek.

<sup>[15]</sup> T. Ostdiek.

- [16] Exs. 7-12; Exs. L3-L6; Ex. M2.
- [17] Exs. 13-14; Ex. L7-L8; T. Lynch.
- [18] T. Lynch; T. Chlan; T. Jim Solstad.
- [19] Exs. 16-18; Exs. L10-L12; Ex. M5.
- [20] T. Robert Frederickson; Ex. 18; Ex. M5.
- [21] Ex. 19; Ex. L13.
- [22] Exs. L11-L20.
- [23] Ex. I; T. Solstad.
- [24] Exs. 20-27; Exs. L14-L21; Ex. M6.
- [25] T. Frederickson.
- [26] T. Frederickson.
- [27] T. Thomas Ryan.
- [28] T. Ryan; Ex. L20.
- [29] T. Ryan.
- [30] T. Ryan.
- [31] Ex. 28.
- [32] Ex. 32; T. John Scherek.
- [33] *Id.*
- [34] Ex. 29.
- [35] Minn. Stat. § 103G.005, subd. 14.
- [36] Ex. 32, pp. 15-24.
- [37] Ex. 32, pp. 6; 18-19; T. Scherek.
- [38] Ex. 32, p. 6; T. Scherek.
- [39] Ex. 32, pp. 7-8.
- [40] Ex. 32, pp. 26-27, 28 and 29; T. Scherek.
- [41] Exs. 30, 31; T. Lynch.
- [42] Ex. 32, pp. 31-33.
- [43] Ex. 32, p. 4.
- [44] T. Chlan.
- [45] T. Scherek; Ex. 32, pp. 7, 28, 29.
- [46] Ex. K, pp. 1-2.
- [47] Ex. K, pp. 2-3.
- [48] Ex. K, pp. 3-4.
- [49] Minn. Stat. § 103G.005, subd. 14.
- [50] *Id.*
- [51] Minn. Stat. § 103G.255.
- [52] *In the Matter of the Application of Christenson*, 417 N.W.2d 607, 613 (Minn. 1987).
- [53] Minn. Stat. § 103A.201, subd. 2; *see also* Minn. Stat. § 103A.202 (“wetland policy”).
- [54] Minn. Stat. § 103A.201, subd. 1.
- [55] *Compare* 1937 Minn. Laws, c. 468 § 1 (defining public waters as “all waters in streams and lakes..., whether meandered or nonmeandered which are navigable in fact”) *with* 1947 Minn. Laws, c. 142 § 2 (amending definition of public waters to include “all waters in streams and lakes...which are capable of substantial beneficial public use”).
- [56] Minn. Stat. § 103G.255.
- [57] Minn. Stat. § 103G.005, subd. 14.
- [58] *In the Matter of the Application of Christenson*, 417 N.W.2d 607, 614 (Minn. 1987).
- [59] Emphasis added. Repealed Minn. Laws 1990, ch. 391, art. 10, § 4, and recodified at Minn. Stat. §103A.201.
- [60] It is also conceded that the designation of Wetland 325 as a Class 4 wetland was not appealed at the time that it was designated.
- [61] *In the Matter of the Application of Christenson*, 417 N.W. 2d at 615.