

THE NATURAL RESOURCE DAMAGE ASSESSMENT SETTLEMENT

## RESTORATION PLAN

KUMMER SANITARY LANDFILL SITE  
BELTRAMI COUNTY, MINNESOTA

*February 23, 1995*

*Department of the Interior  
U.S. Fish and Wildlife Service*

### **Introduction**

This restoration project is proposed by Region 3 of the U.S. Fish and Wildlife Service (Service) to compensate for similar natural resources injured (lost) during remedial response actions at the Kummer Sanitary Landfill site in Beltrami County, Minnesota. This project will be conducted by natural resource trustees under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and Executive Order 12580.

### **Project Background and History of the Landfill Site**

The Kummer Sanitary Landfill, located in Bemidji (Beltrami County), Minnesota, accepted municipal wastes from 1971 to 1984. The U.S. Environmental Protection Agency (EPA) listed the site on the National Priority List in 1984 due to documented contamination of monitoring wells by hazardous substances (chlorinated organic compounds) on the property, as well as in nearby residential wells (Attachment 1).

Acting as a trustee for natural resources under CERCLA §107, the Service first became involved as a trustee in 1991 when the U.S. Department of Justice (DOJ) informed the Department of the Interior (DOI) of negotiations between the EPA and the Potentially Responsible Parties for implementation of a Remedial Action (RA) at the site. DOJ also requested DOI to make a determination "regarding the existence of natural resource damages", and whether the Service, acting as the trustee for DOI, wished "to be involved in the negotiations regarding this site." (Attachment 2).

Through a series of discussions and reviews of the RA with DOJ, DOI, and EPA, the Service developed a claim for damages to natural resources (Attachments 3-11). The original Service claim totaled \$168,000 based on lost or diminished use values of migratory bird habitat associated with impacts to 70 acres of forested wetland adjacent to the site. The impacts (injuries) resulted, or would result, primarily from the selected remedial action

(remedy).

Service trust resources at the site were described as follows:

"The landfill site is within the breeding ranges of the federally threatened bald eagle (Haliaeetus leucocephalus) and gray wolf (Canis lupus). The forested, scrub-shrub wetland provides breeding habitat for American woodcock (Scolopax minor), sharp-shinned hawks (Accipiter striatus), and numerous songbirds. The more abundant songbird species utilizing tamarack/ash wetlands in northern Minnesota during the summer breeding season include the Nashville warbler (Vermifora ruficapilla), yellow-bellied flycatcher (Empidonax flaviventris), veery (Catharus fuscescens), hermit thrush (Catharus guttatus), red-eyed vireo (Vireo olivaceus), yellow-rumped warbler (Dendroica coronata), palm warbler (Dendroica palmarum), Connecticut warbler (Oporornis agilis), common yellowthroat (Geothlypis trichas), swamp sparrow (Melospiza georgiana), white-throated sparrow (Zonotrichia albicollis), and dark-eyed junco (Junco hyemalis). During a brief period in spring following snowmelt, standing water in the lower, more open areas of the wetland would serve as resting and feeding habitat for puddle ducks such as mallards (Anas platyrhynchos) and wood ducks (Aix sponsa). " (Attachment 4)

After clarifications and revisions to the proposed site remedy, the original claim was subsequently revised downward in 1992 to compensate for the loss of just 6.7 acres of forested wetland habitat associated with haul road construction. The loss of habitat was determined to be a compensable loss because it was a consequence of the remedial action.

The injured (lost) habitat could not be restored, and because direct "in-kind" replacement of this wetland type was not possible, a multiplier of two was used to calculate the acreage necessary to replace the lost ecological functions. The multiplier was determined to be appropriate and necessary because many years would elapse before the replacement habitat would match the functions of the lost habitat. Thus, the final claim was based on the cost to replace 13.4 acres of wetland ( $6.7 \text{ acres} \times 2 = 13.4 \text{ acres}$ ), plus administrative expenses.

The per-acre cost for wetland restoration by the Service was estimated to be \$1,400 ( $13.4 \text{ acres} \times \$1,400/\text{acre} = \$18,760$ ), with project administrative costs estimated at \$3,200. Therefore, the total claim recommended by the Service was \$21,960 ( $\$18,760 + \$3,200 = \$21,960$ ).

A covenant not to sue for natural resource damages was subsequently recommended by the Department of the Interior in exchange for \$22,000 as compensation for injuries to natural resources at the site. This was memorialized in a 1993 Consent Decree lodged by DOJ in the United States District Court for the District of Minnesota (Attachments 12 and 13). The settlement for natural resource damages was part of a broader global settlement for interests of the United States which included reimbursement for response costs.

The settlement funds (\$22,000) were then submitted by the responsible parties and deposited in the national NRDA revolving fund, and a "Department of the Interior Natural Resource Damage Assessment Settlement Form" was prepared (Attachment 14).

### **Restoration Project Administration**

The North American Waterfowl Management Plan was selected as the best alternative vehicle to conduct this habitat replacement (restoration) project because the Plan embodies habitat acquisition, restoration, and protection goals analogous to those of the natural resource damage assessment process. Therefore, the methods and administrative process available through the Plan were determined to be an efficient and expeditious method of achieving the goals of this project.

Five principal factors were considered in reaching the decision to utilize the institutional infrastructure available through the Plan:

- 1) Direct restoration of forested scrub-shrub wetland habitat lost at the landfill site was not possible and that alternate sites for equivalent replacement habitat must be located;
- 2) Since the amount of the settlement is relatively small (\$22,000), it is essential to minimize transaction costs;
- 3) Regional policy requires using existing arrangements to achieve efficiencies to the extent possible;
- 4) There is an urgency to demonstrate how the NRDA program can further the mission of the Service as CERCLA faces reauthorization.
- 5) A key component to the NRDA implementation strategy in Region 3 is to integrate this program as a tool to achieve the broader mission of the Service. Habitat restorations enabled by the NRDA process but conducted through existing institutional arrangements would be a prime demonstration of the utility of NRDA. This strategy is consistent with the Service's ecosystem approach to fish and wildlife management wherein restoration projects are conducted by inter-program teams.

This project will be part of the Implementation Plan for the Upper Mississippi River and Great Lakes Region (UMR/GLR) Joint Venture, a component of the North American Waterfowl Management Plan (Attachment 15). A principal objective of the UMR/GLR Joint Venture is to "increase populations of waterfowl and other wetland-dependent wildlife by protecting, restoring, creating and enhancing wetland and associated upland habitats" through acquisition and easements on public and private lands in the Upper Mississippi River and

Great Lakes region.

The NAWMP represents an existing Service framework which has a long-standing and proven successful record of effective wetland restoration in Region 3. This framework is widely recognized by internal and external Service partners and constituencies as an exemplary model of fish and wildlife conservation. This NRDA-enabled project will accrue the benefit of support from this widely favored conservation program.

### **Restoration Project Site**

The project will consist of restoration and enhancement of a palustrine emergent scrub-shrub wetland(s), a habitat type very similar to the wetland lost at the Kummer Landfill site. The restoration site(s) will be selected in proximity to forested wetlands, thus benefitting wildlife similar to those at the landfill site. Settlement funds are sufficient to restore and protect 13 to 20 wetland acres.

Because direct restoration of forested wetland at the site is not possible, this project will occur in a geographically proximate and similar area with restorable habitat similar to that lost at the landfill site. The restoration site will be protected and enhanced so that, over time, it will provide full analogous ecological function.

This project will occur in Clearwater County, Minnesota, immediately adjacent to Beltrami County (Figure 1). Both counties are located within the Upper Mississippi River/Tall Grass Prairie Ecosystem, one of the Service's designated national priority ecosystems. This area is one of the most ecologically diverse in Minnesota, containing pine, spruce-fir, and hardwood forests; coniferous bog communities, oak savanna, and tall grass prairie.

### **Wetland Restoration Process**

This project will involve the voluntary restoration of privately owned wetlands with perpetual easements offered to the landowner(s). Typically, previously drained wetlands are restored by either plugging drainage ditches or subsurface tiles. Both techniques have been proven successful and are acceptable means of restoration. Existing easements over suitable areas may be expanded.

The UMR/GLR Joint Venture Implementation Plan is organized by "priority focus areas" (Figure 1) and the project site will be part of the Headwaters Focus Area. Specific potential properties have not yet been identified; however, numerous landowners have expressed interest in acquiring wetland easements. Therefore, final site selection will proceed quickly following project plan approval and funding.

When the specific site is identified and the easement agreements are formulated, the project will be reviewed for NEPA compliance through the existing process in Region 3. The Regional Director will make a determination through an Environmental Action Memorandum. Numerous similar projects have been determined to be categorically exempt as provided by 516 DM 6 Appendix 1.

### **Project Coordination**

The Twin Cities Ecological Services Field Office (TCFO) is responsible for overall project coordination and support, and will work with the Regional Joint Venture Coordinator to ensure the project not only meets NRDA program requirements, but also directly contributes to fulfilling UMR/GLR Joint Venture objectives. TCFO will administer project funds according to the proposed budget and accountability will be maintained following the "Superfund Financial Management and Recordkeeping Guidance for Federal Agencies" (EPA publication EPA 220 M-89 00).

The Private Lands Program of the Tamarac National Wildlife Refuge will be responsible for identifying potential project sites, landowner contact, easement development, and any necessary wetland restoration procedures.

### **Schedule and Budget**

This project can be completed during FY 1995 if funds are made available prior to April 1995. Funds will be distributed as follows:

\$20,000 - easement purchase and wetland restoration; \$2,000 - administrative costs by Tamarac NWR and TCFO

### **Final Report**

At the completion of the project, a final report documenting the restoration will be prepared. Pictures of the site, before and after restoration, and key documents (e.g. - lease agreements; deeds; the Environmental Action Memorandum) will be included.

### **Project Contact**

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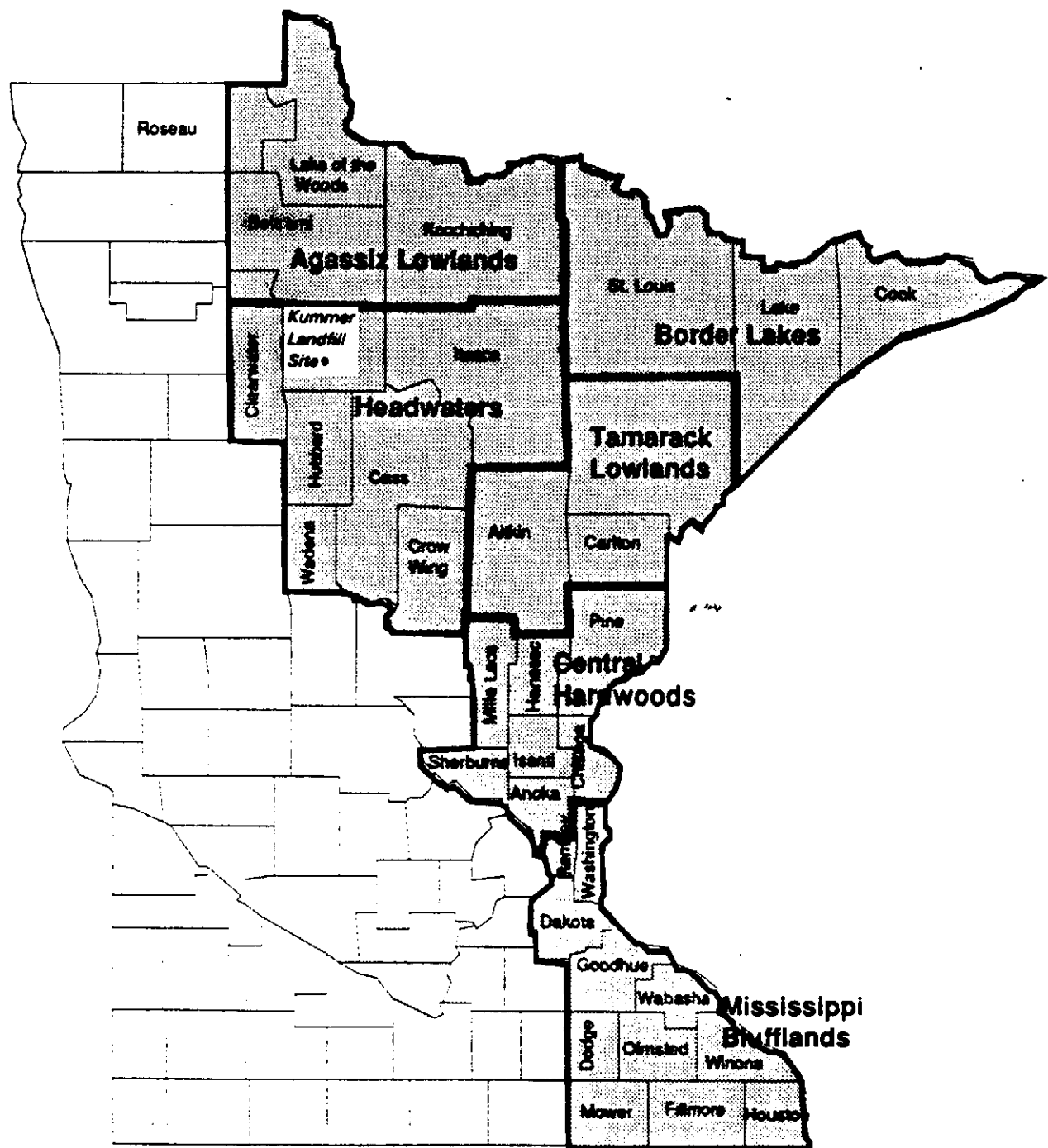


Figure 1. UMR/GLR Joint Venture Focus Areas in Minnesota