

# **FINANCING STATE WETLANDS PROGRAMS**

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*Prepared for:*

**OFFICE OF WETLANDS PROTECTION  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

*Prepared by:*



**APOGEE RESEARCH, INC.**

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EPA believes that a truly effective program to protect our nation's wetlands depends on a concerted effort by all levels of government, private industry, developers, farmers, conservation organizations, the scientific community, and others. In recognition of the importance of our nation's wetlands, EPA's Office of Wetlands Protection (OWP) was created to expand efforts and emphasize wetlands protection goals. OWP is involved in regulatory actions, the development of strategies to protect wetlands, the coordination of wetlands policies among several federal agencies, assisting states to develop wetlands protection programs, public outreach work, and scientific program development.



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## 1. INTRODUCTION

Widespread recognition of the environmental and economic benefits of wetlands is relatively recent. Wetlands once were perceived as wastelands that could be useful only if converted to other uses. Many now realize that wetlands have great value in their natural state because they perform many functions in natural systems (see Exhibit 1). At the same time, property containing wetlands continues to have value for other purposes and wetland alterations continue to occur. Continued loss of valuable wetlands resources will deprive the nation of the substantial environmental and economic benefits they provide.

In response to continuing wetlands losses, federal, state, and local governments, as well as nonprofit organizations have begun to broaden their efforts to protect these valuable resources. One of the primary challenges they face is obtaining the funding necessary to support wetlands protection programs. Moreover, wetlands protection activities must compete with other environmental goals for funding at a time when all levels of government are facing tight budget constraints.

Financing wetlands protection presents special problems, because it is often difficult to assess who benefits from wetlands protection (and therefore, who might be willing to pay for it) or who is causing damages to wetlands (and therefore, who is a logical target for mandated payments for damages). It is difficult or costly to identify and recover costs from the beneficiaries of wetlands protection, because many of the benefits of wetlands protection (such as those described in Exhibit 1) accrue to the general public rather than wetland owners. Furthermore, it is difficult to exclude those beneficiaries who are unwilling to pay from enjoying the benefits of wetlands protection and restoration activities. Recovering costs from harmful activities presents problems because it is difficult to identify off-site sources of degradation or quantify adverse effects to wetlands.

Traditionally, governments have relied on general revenues to support environmental programs such as wetlands protection. Other, more innovative financing mechanisms include fees, taxes, or fines and penalties. Fees, such as permit and inspection fees, can provide revenues to support regulatory programs. Taxes applicable to financing wetlands protection activities include property transfer taxes, severance taxes, and waterfowl stamps. While fines and penalties generally are designed to modify behavior, they can also be a source of funding for government wetlands programs. Establishing dedicated funds to manage revenues from these financing mechanisms is an effective means to tie those revenues directly to wetlands protection programs.

This guidebook reviews a number of alternative financing mechanisms that are being used to finance state wetlands programs. It focuses on financing state regulatory programs, but examples of financing for nonregulatory programs also are included since they may be applicable to regulatory programs as well. Case studies profile how states have used a variety of these mechanisms, ranging from permit fees to property transfer taxes to habitat stamps.

The guidebook is organized to provide information on what states are doing to protect wetlands, how to pay for these activities using alternative financing mechanisms, and how to evaluate which alternative financing mechanisms are most appropriate. Chapter 2 provides an

## Exhibit 1. Wetlands Functions

*Flood conveyance* -- Riverine wetlands and adjacent floodplain lands often form natural floodways that convey flood waters upstream to downstream points.

*Barriers to waves and erosion* -- Coastal wetlands and those inland wetlands adjoining larger lakes and rivers reduce the impact of storm tides and waves before they reach upland areas.

*Flood storage* -- Inland wetlands may store water during floods and slowly release it to downstream areas, lowering flood peaks.

*Sediment control* -- Wetlands reduce flood flows and the velocity of flood waters, reducing erosion and causing flood waters to release sediment.

*Fish and shellfish* -- Wetlands are important spawning and nursery areas and provide sources of nutrients for commercial and recreational fin and shellfish industries, particularly in coastal areas.

*Habitat for waterfowl and other wildlife* -- Both coastal and inland wetlands provide essential breeding, nesting, feeding, and predator escape habitats for many forms of waterfowl, other birds, mammals, and reptiles.

*Habitat for rare and endangered species* -- Almost 35 percent of all rare and endangered species are either located in wetland areas or are dependent on them, although wetlands constitute only about 5 percent of the nation's lands.

*Recreation* -- Wetlands serve as recreation sites for fishing, hunting, and observing wildlife.

*Water supply* -- Wetlands are increasingly important as a source of ground and surface water with the growth of urban centers and dwindling ground and surface water supplies.

*Food production* -- Because of their high natural productivity, both tidal and inland wetlands have unrealized food production potential for harvesting of marsh vegetation and aquaculture.

*Timber production* -- Under proper management, forested wetlands are an important source of timber, despite the physical problems of timber removal.

*Historic, archaeological values* -- Some wetlands are of archaeological interest. Indian settlements were located in coastal and inland wetlands, which served as sources of fish and shellfish.

*Education and research* -- Tidal, coastal, and inland wetlands provide educational opportunities for nature observation and scientific study.

*Open space and aesthetic values* -- Both tidal and inland wetlands are areas of great diversity and beauty and provide open space for recreational and visual enjoyment.

*Water quality* -- Wetlands contribute to improving water quality by removing excess nutrients and many chemical contaminants. They are sometimes used in tertiary treatment of wastewater.

Source: National Wetlands Policy Forum, 1988

overview of state wetlands protection activities, including both regulatory and nonregulatory programs. Chapter 3 provides general descriptions of the major alternative financing mechanisms, that is, fees, taxes, fines and penalties, and bond financing, as well as other miscellaneous mechanisms. Chapter 4 presents a number of considerations that can help evaluate when a particular financing mechanism will work for you. Finally, Chapter 5 presents case studies of how alternative financing mechanisms are being used to support wetlands protection activities in different states.

- To help states implement alternative financing mechanisms and foster communication on financing issues, you will find a list of EPA's wetlands regional program contacts in Appendix B. Also, each case study provides a contact for further information on the alternative financing mechanisms included as examples in this guidebook. The Office of Wetlands Protection is interested in working with states to identify successful mechanisms for financing wetlands programs. If you have any comments on this guidebook or other suggestions, contact:

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## 2. OVERVIEW OF STATE WETLANDS PROTECTION ACTIVITIES

States protect wetlands through both regulatory and nonregulatory programs. Regulatory programs may be specific to wetlands protection or incorporate wetlands protection as a component of broader regulatory efforts. Nonregulatory programs include acquisition programs, public land management, and public programs providing incentives or technical assistance for private land management to promote wetlands functions. Other state program activities supporting both regulatory and nonregulatory activities include wetlands research, wetlands inventory, mapping, and public education to increase awareness of the values of wetlands. The sections below provide an overview of the major regulatory and nonregulatory state wetlands protection activities.

### **Regulatory Programs**

All three levels of government -- federal, state, and local -- regulate alterations to wetlands. The federal government regulates wetlands primarily under section 404 of the Clean Water Act. Both state and local governments have a role in reviewing applications for federal permits under section 404. In addition to participating in the section 404 program, many states have established their own wetlands regulatory programs. The degree of wetlands regulation under state programs varies widely. Some state regulatory programs require permits for alterations to wetlands, such as dredge or fill, construction, or drainage activities. Other states use broader regulatory programs covering water quality, land use, or wildlife protection, to prevent wetlands alterations. Local governments utilize land use controls to protect wetlands and in some states, they are responsible for implementing state wetlands regulations.

### ***Section 404 permit program***

The section 404 program is administered jointly by the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA), with other federal and state agencies having review responsibilities. The section 404 program requires a federal permit for discharges of dredged or fill material into the nation's waters, including most wetlands. The Corps of Engineers also administers a regulatory program under section 10 of the Rivers and Harbors Act of 1899. The Corps usually combines section 10 and section 404 review if a permit application is covered by both laws. Section 10 requires a federal permit for dredging or the placement of fill or structures in navigable waters of the United States. Because it only covers navigable waters, section 10 is more limited in scope of geographic jurisdiction than section 404.

Under the section 404 permit program, states can review and comment on section 404 permit requests. In some states, the Corps and the state have agreements for joint processing of section 404 permit applications and those of related state permits. If a state permit is denied within 30 days after the Corps has issued public notice of the federal permit application, the Corps usually will deny a federal section 404 permit. While the Clean Water Act includes provisions for state assumption of the section 404 program, Michigan is the only state to have assumed operation of the program.



### ***State regulatory programs***

State laws regulating activities in wetlands usually differentiate between coastal and inland wetlands. Historically, coastal wetlands have received more protection under state regulatory programs, often in conjunction with coastal zone management programs. All of the coastal states have laws regulating activities in their tidal wetlands. Many coastal states have specific coastal wetlands regulations requiring permits for alterations to coastal wetlands, while other states protect wetlands under broader coastal land management regulations. Massachusetts was the first state to regulate activities in wetlands by passing a law in 1963 requiring permits for dredge and fill activities in coastal wetlands.

State regulatory efforts have provided less protection for inland or nontidal wetlands. Currently, 14 states have laws regulating activities in nontidal wetlands. Some states, such as Massachusetts, Florida, and Oregon, have laws that apply to both tidal and nontidal wetlands. Only a few states have specific laws to regulate activities in nontidal wetlands. New York and New Jersey regulate activities in nontidal wetlands under a state permit program. Other states, such as Connecticut, Massachusetts, and Wisconsin, establish state regulations that are implemented at the local level. Finally, some states protect nontidal wetlands under broader state water or land use regulations.

### ***State water quality certification***

Section 401 of the Clean Water Act grants authority to the states to review proposed activities affecting state waters, and grant, deny, or place conditions on any federal license or permit authorizing such activities. If a state denies water quality certification, the federal agency is prohibited from issuing a permit or license. States have used their water quality certification authority to grant conditionally or deny Corps of Engineers section 404 permits and Federal Energy Regulatory Commission licenses to construct hydropower dams.

State water quality standards, adopted pursuant to section 303 of the Clean Water Act, are an important component of water quality certification. States may deny certification for proposed projects that do not comply with their water quality standards or place any conditions on certification necessary to assure compliance with state water quality standards. While all states have some form of water quality standards, not all states have standards which can easily be applied to wetlands. Those states with water quality standards encompassing wetlands can use the water quality certification process to control projects requiring a federal license or permit, occurring in or affecting wetlands.

### ***Nonregulatory Programs***

Nonregulatory programs play a significant role in state wetlands protection efforts by promoting public and private stewardship to protect and manage wetlands resources. Nonregulatory programs include acquisition programs, public land management, and government programs providing incentives or technical assistance for private land management to promote wetlands functions.

### ***Acquisition programs***

Many states protect wetlands through acquisition programs; indeed, some states have more than one acquisition program that protects wetlands. Many of these programs, however, are not designed specifically to acquire wetlands. Wetlands often are acquired for more specific wetlands functions, such as waterfowl habitat, watershed protection, or open space. Acquisition programs often are under the jurisdiction of a different state agency than the one that administers wetlands regulatory programs.

States acquire full ownership through *fee simple* acquisition or partial property rights through an *easement*. With easements, the private landowner retains basic ownership and use rights, but conveys the right to develop or alter the land. In most cases, states acquire property only from willing sellers. Local governments, however, may be reluctant to support state acquisition of wetlands, if the state does not make payments to compensate local governments for lost property tax revenues. Such compensation programs for state-owned property present additional administrative costs.

In some states, wetlands acquisition by private, nonprofit organizations is an important component of overall acquisition efforts in the state to protect significant wetlands. These private initiatives can effectively complement state acquisition programs and reduce the financial burden of achieving wetlands protection goals.

### ***Public land management***

After wetlands are in public ownership, they must be adequately managed to protect their natural functions. In some cases, wetlands may be managed for specific purposes, such as waterfowl habitat or recreation. Like acquisition, management of state-owned wetlands often comes under the jurisdiction of a different state agency than the one that administers wetlands regulatory programs.

### ***Private land management***

Government programs promoting private land management for wetland functions are among the most innovative wetlands protection activities. Recognizing that a large proportion of wetlands are in private ownership, this approach attempts to ensure wetlands protection through education and economic incentives. Although economic incentives are used to protect wetlands, they are not revenue-raising mechanisms. State governments must identify a source of funding to support operating costs and any direct public expenditures required by incentive programs.

Some incentive programs offer tax advantages to individuals who protect wetlands. These advantages can include a reduction in property tax, income tax, gift or inheritance tax, or capital gains tax. The success of tax incentive programs for wetland protection depends on providing adequate compensation to the property owner. Income tax credits or property tax reductions for granting easements or undertaking specific land management activities must adequately compensate landowners for income lost due to restrictions on use of the property. Property tax

incentive programs receive greater support from local governments if the state makes payments to reimburse local governments for a reduction in the tax base.

Subsidies offering incentives for wetlands protection are available primarily through federal programs administered by the U.S. Department of Agriculture. Not all federal farm programs contribute to wetlands protection, but some do by encouraging farmers to set aside certain lands or use beneficial land management practices. States also can provide subsidies, such as payments to farmers to keep wetlands out of crop production or cost sharing for beneficial land management practices.

Through public education and outreach programs, states inform the public and landowners about the functions and values of wetlands and options available to protect and manage wetlands. Dissemination of such information can encourage private land management decisions to protect wetlands functions and values. Other state programs provide technical assistance to landowners or local governments on wetlands management or restoration activities. In addition, these public education and outreach efforts often help create public support for regulatory programs.

### 3. ALTERNATIVE FINANCING MECHANISMS FOR STATE WETLANDS PROGRAMS

The majority of state wetlands protection activities are supported by general revenues. *General revenues* derive from a variety of state taxes (for example, corporate and/or personal income taxes, or sales taxes) and are appropriated by the state legislature to various programs on an annual or biennial basis. The mix of taxes that comprise general revenues reflects the general taxing philosophy of an individual state, and the amount of funds appropriated to particular programs reflects the spending priorities of the state. Because of this political accountability, and to the extent that all businesses and residents of the state benefit equally from wetlands protection activities, general revenues may be the most appropriate funding source. General revenues, however, are subject to fluctuation as a result of shifting public priorities or changes in state fiscal conditions.

Increasingly, states are turning to dedicated fees and taxes to fund specific components of their environmental programs. Such fees and taxes are two major categories of *alternative financing mechanisms* (any source of revenue other than general tax revenues) that states may use to support wetlands programs. Revenues from dedicated fees or taxes may be tied directly to a program when deposited in a special account or trust fund used to pay for specific program activities. Alternatively, revenues may be deposited in the state's general fund, with the understanding that a corresponding amount will be appropriated for the specified program activities.

There are both advantages and drawbacks to the use of dedicated fees and taxes to support state wetlands programs. Three primary factors argue for the use of dedicated funding. First, dedicated fees and taxes often tap "new" sources of revenues, that is, they do not overlap with sources of general revenues. Second, the availability of dedicated revenues removes wetlands programs from the fluctuations of the appropriations process, where they must compete with other public programs for limited funds. Third, when dedicated revenues are predictable, program managers are afforded greater continuity and, therefore, flexibility in program management because of the certainty of funding from year to year.

The major drawback to dedicated fees and taxes is the potential loss of general revenues as a source of program funds. In exchange for establishing dedicated fees or taxes, the state legislature may cut back appropriations of general revenues, under the assumption that the new funds from fees or taxes could replace funds previously provided by general revenues. Furthermore, the potential exists for program activities to be limited by the capacity of the dedicated financing mechanism, if it is the only funding source and revenues tend to fluctuate from year to year. If revenues from dedicated fees or taxes fall short of program needs, activities would have to be postponed or eliminated. Under these circumstances, dedicated fees or taxes may be more appropriate for supplementing general revenues rather than an independent source of funding.

#### **Alternative Financing Mechanisms**

This section presents a variety of alternative financing mechanisms that could be used to support, in whole or in part, state wetlands protection programs. The alternative financing

mechanisms presented below can be grouped into four general categories -- fees, taxes, fines and penalties, and bond financing. Fees are typically levied for a particular service, whereas taxes are often more generally applied to income, property, or consumption of various commodities. Fines and penalties differ from the other financing mechanisms because they typically are designed to modify behavior, not to provide a steady stream of revenues for program operations. Bonds are distinct because they are not strictly a source of revenues, as bonds must be repaid. A fifth group of miscellaneous mechanisms includes alternatives such as voluntary contributions and lottery revenues.

### ***Fees***

A fee is generally a charge for a particular activity or service. Fees for public services are intended to establish a direct link between the demand for services and the cost of providing them. Indeed, the validity of a fee often rests on the relationship between the fee itself (who pays and how much) and the service provided in return for paying the fee. Fees also are used to help finance pollution control activities by charging polluters the costs imposed upon society by their activities.

There is a growing public acceptance of the use of fees, where the "user" pays for the "service" or "benefit" derived from a particular activity. If properly structured, a fee can require program beneficiaries to pay program costs or assess the costs of remedial measures on the parties responsible for the environmental degradation. Exhibit 2 lists a number of different types of fees used to support activities conducted as part of environmental programs.

*Structuring a Fee.* Two considerations important for structuring a fee are: (1) the link between the fee and the service provided, and (2) the revenue expectations. A well-structured fee has a clear relationship between the demand for services and the cost of providing them, to equitably match program costs with those responsible for environmental degradation or those benefiting from program activities. Where fees provide the primary source of funds for a program, they should be set to recover the full cost of the service for which they are being collected. Typically, states and localities have charged only nominal fees and used the receipts to supplement general revenues. Permit fees were found to be the most widely used type of fee for wetlands programs (see Exhibit 3 for a summary of case studies on fees). Permit fees are, for the most part, being used to supplement general revenues, and at the rates currently being charged, are not generating sufficient revenues to pay the entire program costs.

When structuring a fee, it is necessary to consider both the base (who pays) and rate (how much). The *base* is the number of parties or the number of activities per party subject to the fee. Fees can generate substantial revenues at relatively low rates where the base is fairly large. Even when few parties are subject to a fee, substantial revenues can be generated through higher rates, as long as there is a direct relationship between the fee rate and the service provided.

Fees can be set at either a flat-rate or a variable-rate schedule. Under a *flat-rate fee*, all parties pay the same amount. Flat-rate fees typically are used where there is a comparable activity or service provided by the state and where the cost of those services is roughly equal for each party.

## Exhibit 2. Types of Fees

- **Permit Application and Processing Fees** -- charge for permits issued by the state.
- **Certification Fees** -- charge for certifying a facility or activity.
- **Determination Fees** -- charge for determining if a proposed activity is covered under state regulations.
- **Monitoring and Inspection Fees** -- charge for monitoring or inspecting an activity or facility.
- **Plan Review Fees** -- charge for the review of construction plans.
- **License Fees** -- charge for a right or license to conduct an activity.
- **Discharge and Disposal Fees** -- charge for the discharge or disposal of materials (for example, wastewaters, industrial wastes).
- **Installation Fees** -- charge for the installation of equipment (for example, a well or discharge pipe).
- **Facility Fees** -- charge for the use or enjoyment of publicly-owned facilities or natural areas.
- **User Fees** -- charges made on a continuous basis for publicly-provided services.
- **Impact Fees** -- charge for the incremental burden (or "impact") placed on public services by new development.
- **Mitigation Fees** -- charge for mitigation of unavoidable adverse effects of development on wetlands.

A *variable-rate fee* is used where the cost of services or resulting impact differs among parties. The fee paid by an individual party may be based on a simple rate schedule that considers only broad differences among activities. Alternatively, the fee can be based on a more complex indicator of impacts such as the volume of material discharged. The intent of a variable-rate fee schedule is to charge each user based on the cost of services they require or the environmental impact associated with their activities.

Variable-rate fees can be structured in a number of ways, but the two basic forms are increasing or declining rate schedules. An increasing rate schedule would be used where the incremental cost associated with each additional unit (for example, an operating unit or a discharge) is more than the preceding unit. A declining rate schedule would be used where the incremental cost associated with each additional unit is less than the preceding unit.

### Exhibit 3. Summary of Case Studies on Fees

CASE STUDY	FEE RATE	TYPE OF SCHEDULE	FUNDS MANAGEMENT
Michigan Permit Application Fee	\$25	flat fee	general fund
New York State Permit Application Fees	\$10 - \$900	variable fee according to type and size of project	general fund and dedicated account
New Jersey Freshwater Wetlands Permit Fees	\$100 and up	variable fees set according to actual cost of service provided	special fund for wetlands management program
Wisconsin Permit Fee	\$15 - \$75	flat base fee + variable fee according to estimated project cost	general fund
Oregon Removal-Fill Permit Fees	\$50 - \$375 (maximum \$600)	variable base fee (private, public, or commercial) + volume fee	Common School Fund
North Carolina Coastal Development Permit Fee	\$25 and \$100	variable fee according to size of project	general fund
Maine Wetlands Permit Fees	\$50 - \$750 for processing fee \$25 - \$250 for license fee	variable fee according to type of project	Maine Environmental Protection Fund
New Hampshire Permit Application Fee	\$50 and up	variable fee according to size of project	Wetlands Board Review Fund
Pennsylvania Water Obstruction and Encroachment Permit Fee	\$50 - \$100 (maximum \$600)	variable fee according to type of structure or activity	general fund
Louisiana Coastal Use Permit Fees	\$20 and up	flat fee + variable fee according to size of project	Coastal Resources Trust Fund
Ohio Water Quality Certification Fee	\$15 - \$200	variable fee according to size of project	general fund
California Water Quality Certification Fee	\$500 - \$10,000	variable fee according to size of project	State Water Resources Control Board general fund
Louisiana Water Quality Certification Fee	\$25 and \$265	variable fee according to type of project	Environmental Trust Fund
Maryland Tidal Wetlands Compensation Fees	three separate fees	variable fee according to type and size of project	Tidal Wetlands Compensation Fund



**Timing of Fees.** The continuity of revenues from fees varies depending on whether the fee is one-time or periodic (for example, monthly, annually, upon renewal of a permit). A *one-time fee* is charged for services that are required only once. A *periodic fee* is charged where there are continuing operations that require periodic review by the state (for example, inspection for compliance with permit conditions). Revenues may be sporadic for one-time or infrequent activities, whereas with continuous activities, revenues would be fairly steady.

## **Taxes**

Taxes are generally a charge against one of three bases -- sales, income, or property. Income, sales, and personal property taxes comprise the principal source of revenue for most state governments. Ad valorem property taxes are primarily the domain of local governments. Taxes are most suited to activities where benefits are widely distributed and difficult to apportion among individuals or groups of users. Because taxes have a potentially high revenue yield, they typically are used when program funding needs are large. Revenues from state taxes related to wetlands protection activities primarily support acquisition programs (see Exhibit 4 for a summary of case studies on taxes).

**Exhibit 4. Summary of Case Studies on Taxes**

<b>CASE STUDY</b>	<b>TAX RATE</b>	<b>BASE</b>	<b>FUNDS MANAGEMENT</b>
Tennessee Property Transfer Tax	4¢ per \$100 of value	all property transfers in the state	Wetlands Acquisition Fund
Florida Documentary Stamp Tax	55¢ per \$100 of value	all property transfers in the state	CARL and Water Management Lands Trust Funds
Missouri Dedicated Sales Tax	0.125% surcharge on sales tax	all items subject to state general sales tax	Conservation Department Fund
Nebraska Habitat Stamp	\$7.50 habitat stamp	sold with hunting, trapping, and combination hunting-fishing license	Nebraska Habitat Fund
Iowa Habitat Stamp and Waterfowl Stamp	\$5.00 habitat stamp \$5.00 waterfowl stamp	sold with hunting license  sold with license for waterfowl hunting only	Fish and Wildlife Trust and Fund
New Jersey Waterfowl Stamp	\$2.50 for residents \$5.00 for nonresidents	sold with hunting license if hunting waterfowl	Duck Stamps Account within the Hunters and Anglers Fund

Taxes are calculated using different formulas, or tax rates, on different bases. There are two general types of rate structures -- *fixed rates* for each unit of tax base (for example, a gasoline tax of 5¢ per gallon), and *ad valorem rates* on the value of the tax base (for example, a property tax of \$1.20 for each \$100 of assessed property value). Where the tax base is broad, a tax at even a low rate can generate substantial revenues.

Taxes may be collected from all taxpayers or from only a portion of a state's taxpayers. A tax could be targeted, for example, to a class of beneficiaries of wetlands protection (for example, a tax on hunting equipment). Revenues from such a tax could be earmarked for specific wetlands programs. Unlike fees, however, a tax does not necessarily need to have as direct a relationship between its base and the use to which revenues are dedicated.

*Excise taxes* apply to the sale or exchange of certain goods (commodities) or services. Excise taxes are compulsory and are applied throughout a government's jurisdiction. Examples of these targeted taxes include property transfer taxes; tobacco, liquor, and other "sin" taxes; taxes on hunting or fishing equipment; taxes on automotive or marine fuels; taxes on restaurant or hotel income; and severance taxes on minerals.

The *property transfer tax* or *documentary stamp tax* is a form of excise tax often used for financing acquisition programs. These taxes are based on the value of the property transferred, for example, a tax of a few cents assessed per every \$100 valuation. Revenues from *severance taxes* on mineral, oil, or gas extraction are dedicated to land acquisition in some states. The state of Louisiana currently is implementing a new wetlands restoration program to be financed, in part, by severance tax revenues. The Louisiana state legislature passed a bill in July 1989 establishing the Wetlands Conservation and Restoration Fund and allocating between \$5 and \$40 million a year of the state's oil, gas, and mineral revenues from severance taxes, royalty payments, and other sources to this fund, effective July 1, 1990. In October 1989, Louisiana voters approved a constitutional amendment making it a permanent fund to finance restoration of coastal wetlands in Louisiana.

*Waterfowl or habitat stamps* are taxes required with the purchase of a hunting license in many states, with revenues used for public acquisition or management of wildlife habitat. Because there is an identifiable class of beneficiaries, these taxes have a direct relationship between the tax base and the use of the revenues.

Virtually every state imposes some form of "sin" tax on commodities such as cigarettes and alcoholic beverages. Such taxes are becoming an increasingly popular source of additional revenues as states attempt to meet growing demands for funds. The state of Washington, for example, levies a cigarette tax to finance water quality protection activities. These "sin" taxes are effective generators of revenue because consumer demand for these products is often inelastic, that is, demand for these commodities does not fall significantly when prices are marginally increased. The relationship between "sin" taxes and the benefits of environmental programs is tenuous, at best, and such taxes may be difficult to justify beyond the fact that they raise needed program funds.

Taxes dedicated to environmental programs are less common than dedicated fees. This reflects a reluctance on the part of state legislatures (who must approve the imposition of most

taxes) to dedicate tax revenues from a particular source to a single program (the major exception is gasoline taxes, which are often dedicated to highway trust funds). Revenues from a dedicated tax often are collected by the state's fiscal agency and then credited to the appropriate account or fund. While this removes an administrative burden from the program office, the agency responsible for collecting state taxes may oppose collection of such taxes because of the additional administrative requirements imposed on the fiscal agency. In some cases, the distinction between a fee and a tax is blurred, and the program office may be responsible for collecting tax revenues.

### ***Fines and Penalties***

Fines and penalties are imposed primarily for *violations* of state regulations. Fines and penalties may be imposed for civil or criminal offenses, and may be levied administratively or judicially. For example, a fine imposed for illegal alterations to wetlands could be authorized administratively by state regulations or judicially by a court settlement.

Because revenues from fines and penalties typically are sporadic, they are not suitable as a steady source of funding for program operations. In fact, reliance on revenues from fines and penalties could provide perverse incentives to state agencies to allow degradation of wetlands in order to collect considerable revenues. Over the long run, achieving wetlands protection goals would necessitate eliminating fines and penalties altogether.

More often, fines and penalties are used to create incentives to modify behavior or encourage compliance within the regulated community. The effectiveness of fines and penalties as an incentive mechanism is dependent on a number of factors, including the ability of the state to detect potential violations and the size of the resulting fine. If violations routinely go undetected, or if the fine or penalty is too low, there may be little incentive for the regulated community to avoid the risk of fines or penalties.

Fines and penalties usually are deposited in a state's general fund and are not directed to specific programs. Revenues from fines and penalties could be dedicated to special funds to be used by state agencies for wetlands protection activities (see case study of New Hampshire Fines and Penalties). When fines or penalties result from illegal alterations to wetlands, and no other compensation is provided for, dedication of such revenues to wetlands acquisition and restoration could serve to offset wetlands losses.

### ***Bonds***

Bonds are used to provide up-front capital for major investments, including land acquisition and capital facilities. Governments can borrow funds from investors by issuing debt in the form of bonds. The issuer of a bond receives funds up-front and then repays the bond over time through "debt service," which includes interest expense plus repayment of principal. Debt service can be paid from general revenues, from project revenues, or from special taxes or fees. Because bonds must be repaid, they are not an independent source of revenue. Generally, bonds are most appropriate for projects that have large initial capital costs, but whose benefits extend into the future. Bonds are not suited to fund operating costs.

Long-term bonds usually match the term of financing with the useful life of the project when financing capital facilities, or typically a 20- to 30-year period in the case of land acquisition. Three major categories of long-term bonds are general obligation (G.O.) bonds, revenue bonds, and special tax bonds. G.O. bonds are paid out of general revenues and are backed by the "full faith and credit" of the issuing entity. This means that the issuing state or local government pledges to use all of its taxing and other revenue-raising powers to repay bond holders. G.O. bonds require voter approval in many states and are limited by ceilings on the total amount of general obligation debt that can be issued by a government entity.

A revenue bond is repaid from revenues generated by the facility constructed with the bond proceeds. Revenue bonds are backed strictly by the expected future stream of revenues from the facility. Special tax bonds are repaid only with funds raised by a special tax, such as highway bonds that are repaid only from a gasoline tax. These two types of bond financing are not always subject to voter approval or a government's debt ceiling. Because a secure revenue stream must be pledged for repayment of the debt, they are better suited to financing capital facilities than land acquisition.

### ***Other Alternative Financing Mechanisms***

In addition to the financing mechanisms described above, there are several other potential sources of funds for state wetlands programs. Two such mechanisms are lottery revenues and voluntary contributions. Like fees or taxes, they are most useful when all or a portion of the revenues are dedicated to specific programs, rather than those revenues going to the state's general fund.

***Lottery Revenues.*** As more and more states establish lotteries, they become a potential source of revenues for environmental programs. The acceptability of a lottery by voters and state legislatures may be improved if all or a portion of the revenues are earmarked to specific programs. A major criticism of lotteries is that they are a "regressive" source of revenues (that is, lower-income individuals, as a group, typically bear a greater proportion of the financing burden than higher-income groups).

The state of Kansas uses a portion of its lottery revenues to help finance its water resource management programs, including wetlands protection activities. Kansas created a State Water Plan Fund in 1989 to provide a permanent, dedicated source of funding for implementation of its State Water Plan. Half of the revenues for the State Water Plan Fund are derived from required transfers of \$6 million annually from the state general fund and \$2 million annually from state lottery funds. The other half of the fund's revenues are to be derived from a system of fees on municipal water use, industrial water use, stockwater use, pesticides, fertilizer, and pollution fines and penalties. Projects financed by the State Water Plan Fund must be related to implementation of the State Water Plan, developed annually by the Kansas Water Office. Wetlands projects are eligible because wetlands protection is an approved activity under the plan. In FY 1990, \$1,640,000 was set aside from the State Water Plan Fund for research and construction activities to maintain water supply to the Cheyenne Bottoms Wildlife Area, a major wetland area in the state and nation.

In Minnesota, voters recently approved state constitutional amendments establishing an Environmental and Natural Resources Trust Fund and a state lottery to finance the fund. As stipulated by the amendments, 50% of the proceeds from each of the first five years of the lottery will be dedicated to the fund. After this period, the state legislature may allocate from 0 to 50% of lottery proceeds to the fund. The Environmental and Natural Resources Trust Fund is devoted strictly to improving the natural resources and environment of the state. The Reinvest In Minnesota (RIM) Program may receive permanent funding from this trust fund. RIM consists of a variety of activities to increase public and private investment in the state's natural resources. The RIM Reserve Program, which pays landowners to restore previously drained wetlands, is one of these activities (see case study of Minnesota RIM Reserve Wetlands Restoration Program).

*Voluntary Contributions.* Voluntary contributions are another source of revenues, but sometimes come with strings attached. Sources of voluntary contributions that have been used to support wetlands protection activities are income tax checkoffs and matching funds for acquisition or land management programs.

Contributions can be solicited in conjunction with the collection of state income taxes. With state taxes collected annually, taxpayers may get into the habit of making contributions through *income tax checkoffs*, providing a steady stream of revenues to a specific state program. In practice, however, revenues from voluntary income tax checkoffs typically are highest in the first few years and level off thereafter.

Thirty-two states have voluntary checkoffs on their income tax forms principally for nongame wildlife. These programs allow taxpayers to donate a portion of their state income tax refund to specific state programs. Several states, such as Virginia and Ohio, have increased the potential to raise revenue from their income tax checkoffs by allowing taxpayers not receiving refunds to contribute by direct payments. In Ohio, the Natural Areas and Preserves Special Account was created to receive contributions from the Ohio Natural Areas and Wildlife checkoff and also direct contributions. These revenues are dedicated to supporting a program administered by the Ohio Department of Natural Resources to identify and protect unique natural areas in Ohio, including wetlands.

New York has raised substantial revenues from the Return a Gift to Wildlife checkoff on its state income tax form. Since 1982, revenues from income tax checkoff contributions have remained fairly steady at approximately \$1.7 million per year. These revenues are supplemented by direct contributions, which vary yearly, and recently by receipts from the sale of a book about inland fish in New York. Revenues are deposited in a special account in the state's Conservation Fund. The New York State Department of Environmental Conservation can use Return a Gift to Wildlife funds for projects that cannot be supported through its annual budget. New York's program differs from many other state income tax checkoffs in that it covers a broader range of activities than the typical nongame wildlife programs. Return a Gift to Wildlife provides funds for fish and wildlife habitat programs, public education programs, and research programs, as well as programs to protect endangered and threatened species.

*Matching funds* for wetlands protection often can be raised from sportsmen interested in promoting greater hunting and fishing opportunities through acquisition and development of wildlife habitat. Ducks Unlimited is one of many nonprofit organizations that contribute

matching funds. The Matching Aid to Restore States Habitat (MARSH) program of Ducks Unlimited, for example, provides money to state wildlife agencies based on the amount that volunteers in the state can raise. Funds are provided as grants or to match state funds for acquisition, development, and enhancement of wildlife habitat.

Minnesota operates an innovative Critical Habitat Private Match to protect or improve critical habitat for fish, wildlife, and rare and significant plant and animal species, as one of the activities under the state's Reinvest in Minnesota Program. Wetlands are considered an important critical wildlife habitat. Administered by the Minnesota Department of Natural Resources, the Critical Habitat Private Match uses state funds appropriated to the Critical Habitat Matching Account to match dollar-for-dollar contributions from private individuals or organizations. Contributions can be made in cash, land, easements, or as a pledge for a specific qualifying project. All contributions are tax deductible. Land donations are accepted if they meet the criteria of critical habitat and the value of such donations is the land's appraised market value. If the land does not meet the criteria of critical habitat, it will be sold and the proceeds deposited in the Critical Habitat Matching Account. Since 1986, \$4.7 million in private donations and pledges has been received through the Critical Habitat Private Match.

### **Funds Management**

Equally important to raising revenues is managing them effectively. Funds management mechanisms provide a means to allocate revenues from funding sources to program activities. The most common mechanism is the *general fund*. The general fund is the commingled "pot" of a state's general revenues, primarily taxes. Monies from the general fund are allocated to various state programs by the state legislature through the appropriations process. Relying on legislative appropriations, however, can create funding uncertainty.

Dedicating, or earmarking, revenues from a particular funding source to specified program activities can partly insulate a program from the vagaries of the appropriations process. When state laws dedicate revenues generated by a specific fee or tax to a particular program or activity, a *special account or trust fund* can be established to receive and disburse the dedicated revenues. Special accounts or trust funds are an effective mechanism to both manage funds and ensure that dedicated revenues are used for the intended purpose only. Trust funds also are suitable for accumulating funds for capital intensive uses, such as land acquisition. Some special accounts or trust funds receive the proceeds from a single dedicated revenue source, while others employ multiple revenue sources.

There are two ways that states earmark revenues for handling in trust funds -- constitutionally or legislatively. Most constitutionally earmarked funds require no legislative appropriation to release trust fund deposits. Deposits accrue to the trust fund automatically and are generally available only for the purpose named in the state constitution. In other cases, the state legislature dedicates revenues from a funding source and creates a trust fund to manage them. Legislative appropriations may or may not be required to release these statutorily earmarked funds. The advantage of statutory earmarking is that legislatures have more flexibility to collect funds and make annual appropriations. On the other hand, constitutional dedication, though more difficult to enact, secures funds with less threat of political interference. Some

states permit transfers of surplus earmarked funds to unrelated purposes regardless of the means by which they were dedicated.

The major advantage of trust funds, and the primary reason for using them, is to ensure that dedicated revenues are used only for specific purposes. Trust funds also increase the flexibility program managers have over the use of program revenues. Where dedicated revenues are predictable (for example, from fees or taxes on a well-defined base), trust funds provide greater certainty of the amount of revenues available for program activities than appropriations from general revenues.

The major drawback of trust funds is the administrative burden of establishing and maintaining an independent fund. It may only be cost-effective to establish an independent fund when there is a steady and substantial stream of dedicated revenues. In addition, there may be both legislative and administrative opposition to creating a separate fund -- the legislature may object to the loss of control over the disbursement of funds and the administrative agency (for example, a state fiscal office) may object to the additional administrative requirements. Finally, funds may provide only an illusion of security for program revenues. In many states, interfund transfers from one account to another to meet a priority need are common and can be made at the discretion of the administration or legislature. A fund that continually maintains a large unused balance may be particularly susceptible to such "borrowing" on a temporary or permanent basis. In these cases, constitutional or legislative changes may be needed to ensure that fund revenues are not diverted to other purposes.



#### 4. CONSIDERATIONS IN SELECTING FINANCING MECHANISMS

When considering the use of an alternative financing mechanism, such as those described in Chapter 3, there are several important factors to keep in mind. Generally, managers select among financing mechanisms for wetlands protection (and for many other environmental protection programs as well) by considering the following questions:

- Who should pay for wetlands protection activities?
- Is the financing mechanism politically and publicly acceptable?
- Is the financing mechanism financially feasible?
- What are the administrative requirements of the financing mechanism?
- What are the impacts of the financing mechanism?

Each of these questions encompasses several different factors, as described below. The answers to these questions are dependent on the legal, economic, and political characteristics of the state or locality in which the financing mechanism will be used.

##### Who Should Pay for Wetlands Protection Activities?

The question of who should pay for wetlands protection activities embodies the concept of equity. *Equity* is reflected by the fairness of the distribution of the funding burden among individuals or classes of individuals. In environmental programs, equity can be approached from two directions -- those who create or contribute to environmental problems should bear the funding burden (the "polluter pays") or those who benefit from program activities should bear the funding burden (the "beneficiary pays"). In practice, many programs rely on a combination of these two principles when selecting financing mechanisms.

Within this issue there are two additional considerations, as defined below:

*Intergenerational equity* relates to the distribution of benefits over time. To be fair, a financing mechanism should not permit those who pay to be separated in time from those who benefit. Placing the entire funding burden on today's developers, for example, to acquire or restore wetlands that will be enjoyed for many years to come, could be considered inequitable. In contrast, the use of bond proceeds to purchase wetlands would spread the funding burden over many years, consistent with the long-term public benefits of the purchase.

*Progressivity* reflects the relationship between the relative financing burden and wealth or income. Overall, regressive financing mechanisms -- those that affect low-income groups disproportionately -- are less acceptable than progressive financing mechanisms.

## **Is the Financing Mechanism Politically and Publicly Acceptable?**

A financing mechanism must enjoy both political and public acceptability in order to be viable in today's fiscal environment. The acceptability of a financing mechanism depends in part on the equity of the mechanism as well as other factors, as described below:

*Legislative acceptability* reflects the political attractiveness of a financing mechanism. There are unique legislative predispositions in each state that often influence the choice of a financing mechanism. The acceptability of a new financing mechanism may be enhanced where there is a precedent for its use (in other programs or in other states) and where the performance of the mechanism (primarily the ability to generate revenues) has been demonstrated. The willingness of a state legislature to dedicate revenues from a particular financing mechanism to a specific program area will be influenced by whether there are competing demands from other programs for those revenues.

*Public acceptability* reflects the willingness of those subject to a fee or tax to pay, or the willingness of the public to make a particular sector pay. While industry may initially resist the imposition of additional fees and taxes, they may drop their opposition if they are convinced of the benefit to them of state program activities. Likewise, general taxpayers may object to the imposition of fees or taxes for services that were once provided free of charge. Demonstrating the full cost of public services to the beneficiaries of those services is necessary to increase the acceptability of new charges sufficient to cover program costs.

In addition to the issues of public and political acceptability, there are also questions concerning the legality of a financing mechanism. *Feasibility* relates to the legal authority to impose a fee or tax as well as to factors that affect the workability of a financing mechanism. State legislatures must approve fees directly, or authorize state agencies to levy fees for the services they provide. The imposition of taxes is solely a legislative responsibility. New fees and taxes may necessitate new partnerships between state wetlands protection programs and state financial agencies which will take time and effort to establish.

Finally, the acceptability of a financing mechanism is influenced by concerns for *accountability*. Different financing mechanisms are subject to varying degrees of public and legislative control, and imply different levels of accountability by the administering body. For example, dedicated fees and taxes provide greater certainty that revenues from a particular source go to their intended purposes. At the same time, they remove funding decisions from the budget process and may reduce accountability for funding decisions.

## Is the Financing Mechanism Financially Feasible?

The financial feasibility of a financing mechanism is determined by the mechanism's revenue potential, timing of funds, the stability and predictability of revenues, and the security of the mechanism. These factors are described below:

*Revenue potential* is measured by the amount of money that can be raised with a particular financing mechanism. Revenue potential is affected by two factors -- the size of the base against which a tax or fee is applied, and the tax or fee rate.

*Timing of funds* reflects whether a financing mechanism provides one-time or continuing revenues. For example, permit fees represent a one-time source of revenues unless the permit must be renewed periodically. The time pattern of revenues should match the time pattern of program costs.

The *stability and predictability of revenues* can have a significant impact on the effectiveness of a program. Most taxes and fees are derived from steady tax or fee bases. However, some tax or fee bases are sensitive to a downturn in general economic conditions. Other revenue sources, such as fines and penalties, vary significantly from year to year and cannot be predicted. The resulting funding shortfalls can result in interruption of a program and the loss of its benefits.

*Funding certainty* refers to the risk that revenues will be diverted to unrelated purposes. For instance, appropriations are risky; even though the revenue sources for a program may be stable, a budget crisis may force the legislative body to apply the revenues elsewhere. The potential interruption of funds may be avoided by securing tax or fee revenues dedicated to a program, by establishing a trust fund, or by establishing a distinct institution with its own revenue-raising and implementation powers.

While the adequacy of revenues to support program costs is a key consideration, often the financial feasibility of a particular financing mechanism is limited where it also is designed to incorporate other considerations described in this chapter. For example, programs requiring compensatory mitigation for wetlands losses (the "polluter pays") may not offer revenue-raising potential (see case study of Oregon Wetlands Mitigation Bank Revolving Fund Account).

## What are the Administrative Requirements of the Financing Mechanism?

*Administrative requirements* relate to the effort needed to implement an alternative financing mechanism, including start-up costs and on-going collection and management of funds. While states routinely collect revenues from a variety of sources, such functions are often left to tax or financial staff, not program staff. To the extent possible, state wetlands programs should utilize existing agencies and resources for collecting and managing funds. Resistance to alternative financing mechanisms, however, may come from state fiscal offices, who are not interested in collecting relatively small fees, particularly where the revenues are dedicated to specific program activities. As a result, many state environmental programs are finding themselves in a position of having to collect fees directly from affected parties.

In addition to administrative questions, there is also the issue of whether the financing mechanism provides flexibility to program managers. *Flexibility* reflects the ability to use revenues from alternative financing mechanisms as needed for a variety of program activities. Because some alternative financing mechanisms collect revenues from a narrowly defined group of parties, the authorized uses of those revenues may also be limited to activities that directly benefit those same parties. Where those parties provide a significant share of program costs, their interests or demands could shape program actions.

### **What are the Impacts of the Financing Mechanism?**

*Impacts* relate to whether a financing mechanism creates incentives for desirable (or possibly undesirable) behavior, and whether it places an undue financial burden on industry or general taxpayers. Some financing mechanisms can be designed to encourage desired behavior. In doing so, however, they may work at cross-purposes with the objective of raising revenues. For example, if a fee is set high enough to discourage alterations, wetlands will be protected, but program revenues will fall.

Economic impacts are the effects of a revenue source on economic decisions, apart from decisions that directly affect wetlands. The number of individuals who must pay a proposed fee or tax, and the amount of revenue that must be raised by the fee or tax, are two important considerations in assessing economic impacts. A large tax base is generally desirable to distribute the burden of raising a substantial amount of revenue. Collecting a large amount of revenue from just a few taxpayers could economically affect those taxpayers in an adverse manner that might be perceived as unreasonable and unfair. States that do not have many fees or large fees fear that the economic impact created by a fee or tax could also affect business viability or location decisions.

### **How Can These Criteria Be Used in the Decision-making Process?**

In general, no single financing mechanism will completely satisfy the above criteria. Equity considerations, for example, may be qualified by concerns over administrative costs, economic impacts, and incentive effects. Taken together, however, these criteria will form the basis for selecting an appropriate financing mechanism for a specific program activity. The purpose of such an evaluation is two-fold -- first, to determine when an option is, in fact, applicable to a particular program (based on equity, acceptability, and revenue potential) and second, to determine how the option should be designed and implemented (based on feasibility, flexibility, administrative requirements, and impacts). The individual case studies presented in Chapter 5 illustrate how different states have elected to raise revenues for wetlands protection programs. Those decisions were based on explicit, or more often implicit, evaluation of the factors presented above.

## **5. SELECTED CASE STUDIES**

## **MICHIGAN PERMIT APPLICATION FEE**

### ***BACKGROUND***

In August 1984, the state of Michigan received approval to administer the section 404 permit program for the state's inland waters. Initial authorization of the Michigan section 404 program relied upon the existence of state legislation that regulated the discharge of dredge and fill materials into state waters. The Michigan Department of Natural Resources (DNR) currently reviews proposed projects under a consolidated permit process that includes nine state statutes and four federal statutes. When the state receives an application, it then determines which statutes apply.

A 1983 Memorandum of Agreement (MOA) between the Michigan DNR and the U.S. Environmental Protection Agency (EPA) enables the DNR to carry out the policies, regulations, and procedures necessary to administer the section 404 permit program. The Clean Water Act does not allow state assumption of section 404 authority in waters traditionally used for interstate or foreign commerce. In Michigan, the section 404 program for these waters (including Great Lakes coastal areas, connecting waters, and major tributaries to the Great Lakes upstream to the limit of federal navigability) is still administered by the U.S. Army Corps of Engineers.

### ***FINANCING MECHANISM***

Michigan's DNR assesses a \$25 application fee for each wetland permit application, as authorized under the state's Goemaere-Anderson Wetland Protection Act. Fees are paid at the time of filing an application.

Only one \$25 fee is assessed if an application comes under more than one of the state laws included within the consolidated permit process. Also, if an applicant already has a permit for a particular activity under certain state laws (such as a permit for filling, dredging, or constructing a permanent structure in or within 500 feet of an inland stream or lake under the state's Inland Lakes and Streams Act), they do not pay another \$25 fee for a wetland permit application.

### ***FUNDS MANAGEMENT***

The one-time, non-reimbursable application fee is collected at the time of application by the DNR. Revenues generated from this fee are deposited in the state's general fund.

### ***IMPLEMENTATION***

The 1983 MOA gave Michigan the legal authority to administer the section 404 permit program for the state's inland waters. The MOA outlines the roles and responsibilities of both the DNR and EPA for administering and enforcing the state section 404 program. The MOA also outlines reporting procedures whereby DNR provides periodic reports to EPA regarding state section 404 program activities. Permit review under its section 404 authority is part of the Michigan DNR's consolidated permit process.

The DNR was authorized to collect a \$25 permit fee under the state's Inland Lakes and Streams Act of 1972 (Public Act 346, Section 281.955). The state's 1979 Goemaere-Anderson Wetland Protection Act (Public Act 203) requires a permit for dredge, fill, drainage, or construction in wetlands. Use of a \$25 permit fee for wetland permit applications was authorized under section 281.707 of the Goemaere-Anderson Act.

A wetland permit application is not reviewed until the application is complete, including payment of the permit fee.

### ***REVENUE EXPERIENCE***

The administration of section 404 requires a major commitment of state staff and agency resources. The \$25 permit fee does not pay the administrative cost associated with each application. The cost to review permits is supplemented by general revenues. In 1989, the cost of administering the state section 404 program was approximately \$1.3 million, or one-half of the DNR's land/water regulatory budget. Michigan does not receive financial assistance from EPA or from other federal agencies to administer this program.

### ***LESSONS LEARNED***

There currently is a proposal to significantly raise the fee to more adequately cover permit review costs.

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## NEW YORK STATE PERMIT APPLICATION FEES

### BACKGROUND

The New York State Department of Environmental Conservation (DEC) issues separate permits for projects in or affecting tidal or freshwater wetlands. Such projects include dredging, excavating, filling, erecting any structure, polluting, or any activity that impairs natural functions in a wetland or its adjacent area. DEC also issues a permit for dredging or fill in navigable waters, covering any excavation or placing of fill in navigable waters of the state or their adjacent wetlands. Permit application fees are assessed to partially defray the cost of processing permit applications.

### FINANCING MECHANISM

Applicants for permits to undertake certain projects in or affecting wetlands are required to pay a permit application fee. Application fees vary depending upon the type and size of project. Separate fee schedules exist for freshwater wetlands permits, tidal wetlands permits, and dredging or fill in navigable waters permits, as specified below:

#### Freshwater Wetlands Permit Fees

Major projects	\$50
Minor projects	10

#### Tidal Wetlands Permit Fees

##### Major projects

Dredging affecting 5,000 square feet or less	\$400
Filling of 100 cubic yards or less	400
All other major projects	900

##### Minor projects

Minor projects requiring a variance of 10% or less from development restriction standards	\$400
Minor projects requiring a variance of greater than 10% from development restriction standards	900
Installation of two or less pilings per currently existing principal building	100
All accessory structures less than 100 square feet in area, adjacent to a regulated tidal wetland	100
All other minor projects	200

### Dredging or Fill in Navigable Waters Permit Fees

Major projects	\$50
Minor projects	10

### *FUNDS MANAGEMENT*

DEC's Division of Regulatory Affairs administers the permitting process and collects permit application fees. Tidal wetlands permit fee revenues are deposited in a dedicated account. Revenues from all other DEC permit application fees, including the freshwater wetlands and dredging or fill in navigable waters permit fees, are deposited in the state's general fund.

Permit application fees are paid at the time an application is submitted to the appropriate regional permit administrator (there are 9 regions). If an application is withdrawn before DEC makes its initial assessment (a determination as to the completeness of the application), the permit fee may be refunded. After that determination, the fee will not be refunded even if the application is denied. The modification of a permit application, either in response to a Notice of Incomplete Application by DEC or at the applicant's initiative, can require payment of a new fee in certain cases where substantially increased permit processing effort is required by DEC.

### *IMPLEMENTATION*

The authority to assess permit application fees to partially defray the costs of review and processing of applications is provided by Article 70 of the Environmental Conservation Law of 1970. DEC's permit application fees are specified in the Uniform Procedures Regulations, Part 621, Chapter 6, New York Code of Rules and Regulations.

Under the Uniform Procedures Regulations, a minor project is one that, by its nature and with respect to its location, will not have a significant effect on the environment. A major project is one that is not specifically defined as minor. Applicants can determine whether a project is major or minor by referring to the specific permit program in section 621.4 of the Uniform Procedures Regulations.

### *LESSONS LEARNED*

The actual cost of processing permit applications is much higher than the amount of the fee. The minimum cost for processing an application is estimated to be about \$200 for a minor project and about \$2,000 for a small major project. These estimated costs do not include several other costs of evaluating permit applications, such as those costs associated with impact assessments.

A bill currently before the state legislature would change the state's wetlands regulations to substantially increase freshwater wetlands permit application fees. Application fees for freshwater wetlands projects would become \$200 for minor projects and \$2,000 for major projects. The proposed fees would still pay for only a percentage of the costs to review and

process applications. If the proposed increases become law, permit fees, combined with higher civil and criminal penalties, are expected to raise approximately \$2.5 million annually.

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## **NEW JERSEY FRESHWATER WETLANDS PERMIT FEES**

### **BACKGROUND**

New Jersey requires a permit for any project involving excavation, dredging, drainage, fill, construction, or destruction of plant life in a freshwater wetland. The designation of wetlands depends on a three parameter approach involving hydrology, soils, and vegetation. The Division of Coastal Resources, New Jersey Department of Environmental Protection (NJDEP) administers the permit program.

### **FINANCING MECHANISM**

Freshwater wetlands fees are collected at the time of application. Rates in the freshwater wetlands fee schedule are set according to the actual cost of the service provided. The fee schedule can be adjusted by administrative rule, when needed, to cover the cost of supporting NJDEP's wetlands management program. Such adjustments are necessary because the wetlands management program is a fee-supported program.

Current NJDEP regulations charge the following fees for review of freshwater wetlands permit applications, letters of interpretation, and certain exemption requests:

#### **Letter of Interpretation Fees**

To determine if wetlands are present or absent	\$100
For verification or delineation of a wetland boundary line on a parcel of land less than one acre	\$100
For verification of a proposed wetland boundary line on a parcel of more than one acre (for parcels greater than one acre, boundaries must be delineated by the applicant and the state will verify proposed boundaries)	\$250 + \$20 per acre

#### **Individual Freshwater Wetlands Permit Application Fees**

To review an application to drive pilings	\$500
To review an application for any other regulated activity	\$1,000 + \$100 per one-tenth acre of freshwater wetlands to be altered

#### **Open Water Fill Permit Application Fee**

\$1,000 +  
\$100 per one-tenth  
acre of state open  
water to be affected

### Statewide General Permit Fees

To review a proposed activity covered by a general permit application	\$100
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If more than one general permit is required	\$100 per permit
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<u>Exemption Letter Request Fee</u>	\$100
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### Transition Area Waiver Application Fees

If the application is accompanied by a Letter of Interpretation	
-- For a property less than one acre	\$100
-- For a property greater than one acre	\$200 + \$20 per acre

If no Letter of Interpretation accompanies the application	
-- For a property less than one acre	\$200
-- For a property greater than one acre	\$450 + \$25 per acre

If the Letter of Interpretation accompanying the application does not delineate the wetland boundary	
-- For a property less than one acre	\$100
-- For a property greater than one acre	\$450 + \$25 per acre

### **FUNDS MANAGEMENT**

Fees are paid to the state treasurer and payments must be marked to identify the nature of the submittal and the name of the applicant. Fees are sent to the Division of Coastal Resources for recording before being deposited in the state's special fund to support the wetlands management program. There are no provisions to reimburse fees for applications that are denied.

For every permit granted, the permittee must take measures to mitigate damage to on-site wetlands. If wetlands are to be permanently damaged, the permittee must do off-site creation of wetlands to compensate for wetlands losses. If off-site options are not feasible, the permittee must make a monetary donation to the Wetlands Mitigation Bank, created by New Jersey's 1987 Freshwater Wetlands Protection Act. The mitigation bank works to restore damaged wetlands as well as to purchase new land for the creation of wetlands.

Permits last for a maximum duration of five years. No extensions are allowed. For projects lasting longer than five years, a new application must be sought when the original permit expires.

## ***IMPLEMENTATION***

Fees are collected under the guidelines set by the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B). The Division of Coastal Resources was created to satisfy a legislative mandate to streamline the regulation of wetlands. New Jersey now has one set of criteria to use in reviewing wetlands permit applications. Prior to the 1987 Freshwater Wetlands Protection Act, at least five acts regulated various aspects of wetlands protection. The Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) establish procedures for implementing the act, including the setting of fees and penalties.

The state permit program became effective July 1, 1988. State regulation of transition or buffer areas adjacent to wetlands became effective July 1, 1989. Since the wetlands management program became fully operational, NJDEP has focused on enforcement by identifying and prosecuting violators of the act.

## ***LESSONS LEARNED***

By requiring that applicants with project sites of one acre or more in size delineate the wetland boundaries themselves, the cost of such evaluation is pushed onto the applicant. The Division of Coastal Resources needs only to verify the proposed boundary rather than conduct its own investigation, decreasing the program's costs for the state. In addition, the mitigation rules place the burden of restoring wetlands ecosystems on those causing wetlands degradation. This "no-net-loss" approach also allows the state to pursue its goal of wetlands protection at a reduced cost to the taxpayers.

In general, the program has the effect of forcing developers to consider wetlands issues before beginning projects. There has been an increase in the use of land purchase contracts which are contingent upon a satisfactory environmental evaluation. Developers are also using project designs which anticipate the need for buffers adjacent to wetlands.

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## WISCONSIN PERMIT FEE

### *BACKGROUND*

The Wisconsin Department of Natural Resources (DNR) charges a fee for projects requiring its water regulation permits, issued pursuant to Chapter 30 (sections 30.10 to 30.27) or Chapter 31 (sections 31.02 to 31.38) of the Wisconsin State Statutes. These sections regulate physical alterations to the state's navigable waters.

Under Chapter 30, separate permits are required for constructing or maintaining structures in or over navigable waters, depositing any material in navigable waters, removing any material from the beds of navigable waters, constructing or dredging waterways that connect to navigable waters, and other activities affecting the state's navigable waters. Permits issued under Chapter 30 can be used to protect wetlands, but the state's regulations for dredge and fill activities are less comprehensive than those under section 404 of the Clean Water Act. Chapter 31 requires permits to build or remove dams, but this activity rarely impacts wetlands. The DNR's Bureau of Water Regulation and Zoning administers the water regulation permit program.

### *FINANCING MECHANISM*

The fee is based on the number of permit applications filed and the estimated project cost. The DNR charges a basic fee of \$10 per permit and a supplemental fee based upon the estimated project cost. Most projects require only one permit. If more than one permit is required, the \$10 basic fee is assessed for each additional permit.

Permit applicants must calculate the supplemental fee based on an estimate of the project costs related to the regulated activity. Applicants must certify an itemized list of estimated project costs on a DNR form. However, the itemized list need not be submitted if the applicant certifies that the project costs exceed \$10,000. Applicants must include all construction and design costs, such as, but not limited to, technical costs, material costs, labor costs, construction equipment rental or fees, monitoring costs required by the permit, and landscaping costs required to prevent or minimize erosion. If the project requires more than one permit, the estimated project cost is the total cost for all regulated activities. The amount of the supplemental fee based on estimated project cost is determined by the following schedule:

<u>Estimated Project Cost</u>	<u>Supplemental Fee</u>
\$1 to \$500	\$5
\$501 to \$2,000	10
\$2,001 to \$5,000	20
\$5,001 to \$10,000	50
Greater than \$10,000	65



No fee is required for any project funded in whole or in part by any federal agency, state agency, county, city, village, town, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district, soil and water conservation district, or federally recognized Native American tribal governing body.

### *FUNDS MANAGEMENT*

The Bureau of Water Regulation and Zoning collects permit fees and forwards them to the state treasurer. Permit fees are deposited in the state's general fund and are not credited to the Bureau of Water Regulation and Zoning accounts. The fee must be refunded to the applicant if a permit is denied or if an application is withdrawn by the applicant for any reason.

Permits usually are issued with a time limit of three years, although the DNR can specify a time limit of less than three years at its discretion. Permits can be extended for no longer than two years, provided that an extension is requested prior to expiration of the initial time limit.

### *IMPLEMENTATION*

Sections 30.28 and 31.39 of the Wisconsin State Statutes require the DNR to charge a fee, based on estimated project cost, for each permit application. Chapter NR 300 of the Wisconsin Administrative Code specifies the procedures for assessing the fees.

The DNR evaluates the estimated project cost after receipt of an application and can revise the fee if it was incorrectly calculated by the applicant. The DNR does not begin processing an application until an acceptable fee has been established and paid.

The DNR entered into a general permit with the U.S. Army Corps of Engineers covering certain waters where both the state and federal government have jurisdiction. Under the general permit, the DNR reviews permit applications and the state permit decision is accepted by the Corps as the federal permit decision. This avoids duplication of administration by state and federal agencies with respect to those navigable waters over which the state and federal government have concurrent jurisdiction.

### *REVENUE EXPERIENCE*

Fee revenues do not come close to covering the costs of administering the permit program. Because the permit fees are deposited in the state's general fund, the Bureau of Water Regulation and Zoning does not have direct access to its fee revenues. The DNR has considered the option of dedicated fee revenues, but is concerned that dedicating fee revenues to its programs may lead to reduced appropriations from the state legislature.

The DNR also sells wetlands inventory maps. Currently, these maps are sold at cost and do not raise revenue to support DNR programs.

## *LESSONS LEARNED*

Reimbursing permit fees when permits are denied or applications are withdrawn is costly, because it creates an additional administrative burden for the DNR. Furthermore, processing costs for denied permits are not recovered because the fee is refunded.

## *CONTACT*

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## OREGON REMOVAL-FILL PERMIT FEES

### *BACKGROUND*

The Removal-Fill Permit Program is administered by the Oregon Division of State Lands (DSL). Permits are required for removal, filling, or alteration of more than 50 cubic yards of material in waters of the state, including wetlands. DSL reviews removal-fill permit applications and determines whether to issue with conditions or deny a permit. In its review, DSL obtains the views of affected property owners, government agencies, and public interest groups. DSL also is responsible for enforcing the permit program. A permit fee is charged to cover part of the administrative costs of the Removal-Fill Permit Program.

### *FINANCING MECHANISM*

Each first-time applicant is assessed both a base fee and volume fee based on the volume of material removed or filled. Permits must be renewed annually and the permit holder is re-assessed the base fee each year.

The 1989 Oregon Legislative Assembly set a new fee schedule for removal-fill permit applications. The new schedule is the first increase in removal-fill permit application fees since 1973. Fees differ for removal versus fill applications. However, applications that involve both removal and filling are assessed the higher of the two fees. The total maximum fee is \$600. Fees are not refunded if the permit is denied.

The following fees became effective in October 1989 under Oregon Revised Statutes 196.815:

Fee for new applications = base fee + volume fee (if project is >500 cubic yards)

Fee for permit renewals = base fee

#### Base Fee Amounts

##### Removal Applications and Renewals

Private	\$50
Public	150
Commercial	150

##### Fill Applications and Renewals

Private	\$150
Public	375
Commercial	375

### Volume Fee Amounts

#### Removal Applications

<500 cubic yards	no volume fee
500 to 4,999	\$75
5,000 to 50,000	150
over 50,000	225

#### Fill Applications

<500 cubic yards	no volume fee
500 to 2,999	\$75
3,000 to 10,000	150
Over 10,000	225

There are a number of exemptions from the removal-fill permit program. DSL does not charge an application or renewal fee for erosion-flood repair projects. Filling or removal within the beds and banks along non-navigable waterways in forest lands is exempt from regulation when the activity is for forest management practices in accordance with the Oregon Forest Management Act. A removal-fill permit is not required for projects involving the construction, operation, or maintenance of dams, or other diversions for which permits or certificates are issued under other Oregon statutes. Removal-fill permits do not apply to the federal government when it acts to service navigation.

### ***FUNDS MANAGEMENT***

Revenues received from the Removal-Fill Permit Program are credited to the Common School Fund. DSL covers permit program costs from interest earnings of the Common School Fund, with the limitation that permit program expenses cannot exceed income from permit application fees as well as leasing and royalty revenues from state-owned submerged and submersible lands.

### ***IMPLEMENTATION***

The 1967 Oregon Removal-Fill Law, as amended, regulates the removal and filling of material in state waters. Oregon Administrative Rules (OAR 141-85-005 to OAR 141-85-090) define the procedures for administering and enforcing the Removal-Fill Permit Program. DSL received authority to collect permit fees under Oregon Revised Statutes 196.815. Fees were established by the state legislature to pay for the review of removal-fill permit applications.

Both civil and criminal proceedings are available to enforce the Removal-Fill Law. Removal or filling without a permit or contrary to the conditions of a permit is a criminal misdemeanor punishable by a fine of up to \$2,500. Violations are also subject to a civil penalty of up to \$10,000 per day of violation.

An application for a state removal-fill permit also serves as an application for a U.S. Army Corps of Engineers section 404 permit. This joint application process avoids duplication of effort for applicants and streamlines the permit review process for both the state and federal programs.

### ***REVENUE EXPERIENCE***

Application fees received by the Removal-Fill Program cover approximately 40% of the costs of processing permits, program enforcement, and wetlands planning. The remaining 60% comes from state-owned submerged and submersible land leasing and royalty revenues.

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## **NORTH CAROLINA COASTAL DEVELOPMENT PERMIT FEE**

### ***BACKGROUND***

North Carolina's Coastal Area Management Act (CAMA) directs the Coastal Resources Commission (CRC) to identify and designate "areas of environmental concern" (AECs) in which uncontrolled development might cause irreversible damage to property, public health, and the natural environment. CRC adopted standards regarding what types of development activities can take place within AECs without threatening public safety or the continued productivity and value of important natural areas. Based on CRC's standards, the Division of Coastal Management (DCM), North Carolina Department of Natural Resources and Community Development, administers a permit program to guide development within AECs. A permit fee is assessed to cover the administrative costs of processing the permit applications.

CAMA applies only to the 20 counties located along the state's tidal rivers, sounds, and the Atlantic Ocean. CAMA permits are required only for developments in or affecting AECs and CRC has designated coastal wetlands as an AEC. As such, CAMA covers North Carolina's coastal wetlands only. CAMA's definition of development includes activities in AECs involving construction, excavation, dredging, filling, and other alterations of land and/or water.

### ***FINANCING MECHANISM***

The CAMA permit program involves two main categories of permits: one for "major" developments and another for "minor" developments. Major development permits, which involve large projects that are of concern to the state as a whole, are administered directly by DCM and CRC. Minor development permits are administered by the local government of jurisdiction. Certain development activities having minimal environmental impact are authorized under general permits.

The permit application fee is \$100 for major development permits and \$25 for minor development permits. There is no application fee for general permits. CAMA grants CRC the authority to assess permit fees.

### ***FUNDS MANAGEMENT***

Major development permit application fees are paid directly to DCM. Fee revenues are deposited in the state's general fund. Because minor development permit applications are reviewed by local government permit officers, minor development permit application fees are paid directly to the local government of jurisdiction.

## ***IMPLEMENTATION***

The major development permit application form constitutes a joint application for U.S. Army Corps of Engineers section 404 and section 10 permits. Under a general permit issued by the Corps to the State of North Carolina, DCM reviews applications, does the public notice, and then sends a state response to the Corps. DCM has another joint processing arrangement with the Division of Environmental Management (DEM), North Carolina Department of Natural Resources and Community Development, to issue a joint public notice for CAMA permits and state water quality certifications in the coastal zone. DEM conducts state water quality certifications, but the joint public notice is funded by DCM. Both joint processing arrangements streamlined the permit process for the applicant, but increased DCM's costs.

Local governments administer the minor development permit program under authority granted by CAMA and using standards adopted by CRC. Local permit officers are local government employees trained by DCM to review applications for consistency with CRC standards, issue minor development permits, and advise applicants on how to design their projects.

## ***REVENUE EXPERIENCE***

Revenues from CAMA permits vary from year to year, as the number of permit applications depends on development activity in North Carolina's coastal counties. The current application fee does not cover the entire processing cost for major or minor development permits.

## ***LESSONS LEARNED***

Legislation passed in 1990 allows increases in CAMA permit fees to more adequately cover DCM's permit processing costs. Under the new legislation, DCM can assess a major development permit fee up to a maximum of \$400. DCM will determine the actual fee schedule. Currently, DCM is proposing increased fees for both major and minor development permits to CRC.

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## MAINE WETLANDS PERMIT FEES

### BACKGROUND

The Maine Department of Environmental Protection (DEP) assesses fees for its licensing and permitting programs, including fees for wetlands permits. DEP regulations establish a fee schedule to charge applicants for costs incurred in reviewing license and permit applications. Revenues from DEP fees are deposited in the Maine Environmental Protection Fund.

### FINANCING MECHANISM

DEP assesses different fees for each type of license, permit, certification, or notification listed in its fee schedule. Fees are paid at the time of filing an application.

DEP assesses both a processing fee and license fee for wetlands permits. Processing fees are assessed for costs incurred by DEP in determining the acceptability of applications for processing and in processing applications to determine if they meet statutory and regulatory criteria. License fees are assessed for direct costs incurred in monitoring, inspecting, and sampling to assure compliance. Agencies of the state of Maine are not assessed these fees.

Current DEP regulations charge the following fees for freshwater wetlands and coastal wetlands permits:

<u>Type of Wetland Permit</u>	<u>Processing Fee</u>	<u>License Fee</u>
Freshwater wetlands	\$100	\$25
Coastal wetlands		
Projects involving fill below the normal high water line or structures in excess of 1,000 square feet below the normal high water line	750	250
Shoreline stabilization with no fill except riprap below the normal high water line	50	25
All others	150	50

DEP also charges fees for minor revisions, amendments, and renewals. A \$50 processing fee is charged for minor revisions. Amendments are assessed one-half the processing fee of the



initial application and no license fee. Renewals are assessed the same license fee as the initial application and one-half the processing fee of the initial application.

If DEP determines that an application is likely to require significantly higher costs than covered by the fee schedule, such applications can be charged special fees. The special fee charged for any large or complex project reflects DEP's actual costs for processing the application and cannot exceed \$40,000.

### *FUNDS MANAGEMENT*

Both the processing fee and license fee must be paid in full when a permit application is filed. DEP does not refund processing fees if applications are denied. Processing fees are refunded, however, if the application is withdrawn by the applicant within 30 days of the start of processing. License fees are refunded if DEP denies an application or if an application is withdrawn by the applicant.

The Maine Environmental Protection Fund was established as a nonlapsing fund to support DEP licensing and permitting programs. All DEP fees are deposited in the fund. DEP expenses directly related to administering these programs are charged to the fund. The state legislature approves allocations from the fund to DEP based on estimates of DEP's actual costs for administering its licensing and permitting programs.

### *IMPLEMENTATION*

The 1987 Natural Resources Protection Act consolidated several earlier state laws affecting wetlands along with other state environmental legislation. DEP's license and permit fees are authorized by Title 38, section 352 of the Maine Revised Statutes. Chapter 50 of DEP's rules establish the fee schedule listing the actual fee to be charged for each type of license or permit.

At first, DEP employees kept records of time and money spent on reviewing applications. These records were used to establish that fees were set appropriately to cover actual costs incurred by DEP in reviewing each type of application. The costs included, but were not limited to, personnel costs, travel, supplies, legal and computer services. Since the commissioner approved the fees, DEP no longer keeps records for this purpose.

DEP ensures that fees are paid by requiring that applications be returned to the applicant if the processing and license fee are not paid at the time of filing the application. If DEP determines that an application is unacceptable for processing, it will be returned to the applicant and can be resubmitted within 60 days of the date the application was returned. If the application is resubmitted after the 60-day period, it is considered a new application and the appropriate fees are assessed.

## *REVENUE EXPERIENCE*

Fees received by DEP do not sufficiently support its permit processing and compliance activities. Since it was established, the Maine Environmental Protection Fund has not had sufficient funds to meet the allocations approved by the state legislature. Consequently, DEP has submitted several legislative proposals for fee increases.

Because lack of funding restricts its ability to meet its mandates, DEP submitted a proposal to the state legislature in 1990 requesting significant changes in its fees to more adequately cover departmental costs for permit processing and compliance activities. A \$200 processing fee and \$100 license fee were proposed for freshwater wetlands permits. For coastal wetlands permits, a \$3,500 processing fee and \$1,550 license fee were proposed. As this bill did not pass, DEP plans to submit a new proposal in the next legislative session.

## *LESSONS LEARNED*

In Maine, the state legislature sets maximum fees by statute and DEP has established actual fees through the rulemaking process. DEP charges the maximum fee in many cases. Because maximum fees are determined by the legislature, DEP has limited flexibility in establishing appropriate fees. In 1990, the legislature changed these procedures to allow the commissioner to set the actual fees. DEP will no longer have to go through the rulemaking process to set fees. However, DEP still must go back to the legislature and work through the legislative process for changes to the maximum fees.

## *CONTACT*

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## **NEW HAMPSHIRE PERMIT APPLICATION FEE**

### ***BACKGROUND***

New Hampshire requires a permit for any project involving dredging, fill, excavation, or construction of any structure "in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state." Such permits apply to freshwater and coastal wetlands as well as other state waters.

The permit program is administered by the New Hampshire Wetlands Board. The Board assesses permit application fees, which are deposited in the Wetlands Board Review Fund. Preservation of salt marshes and tidal wetlands is given highest priority by the Board.

### ***FINANCING MECHANISM***

A permit application fee is paid at the time of filing the permit application. The amount of the fee depends on the size of the project. A "major project" is of such size and scope to create a potentially significant impact on wetlands. A "minor project" is of small size and scope with a minor potential impact upon wetlands. "Minimum impact projects" are those minor projects likely to have a negligible impact and may represent ordinary rights of property owners.

The permit application fee is \$50 for minimum impact projects. For minor and major projects, the fee is based on the area of dredge or fill proposed, and the number of boat slips requested. The rate is 2.5¢ per square foot of dredge or fill proposed and \$100 per boat slip. Permit applications are not complete unless accompanied by the permit application fee.

Permits have a duration of two years starting at the date of approval and can be extended upon written request for another two years. Additional extensions are allowed up to a limit of six years. If the project is not completed within six years, the Wetlands Board requires a new permit application and charges another fee for processing this application as a new permit.

### ***FUNDS MANAGEMENT***

Permit application fees are collected by the Wetlands Board. Fee revenues are deposited in the Wetlands Board Review Fund, a nonlapsing fund in the state treasury. Funds are appropriated to the Wetlands Board for its expenses in reviewing permit applications, conducting field investigations, and holding public hearings. New Hampshire's rules have no provision to reimburse a permit application fee when permits are denied or permit applications withdrawn.

### ***IMPLEMENTATION***

The permit program, permit application fees, and Wetlands Board are authorized by Chapter 482-A of the New Hampshire Revised Statutes. The rules of the Wetlands Board are Chapters Wt 100 to Wt 800 of the New Hampshire Code of Administrative Rules.

The Wetlands Board consists of eleven members. Three members of the public are appointed by the governor for three-year terms. Eight state officials from specified departments are members. The Wetlands Board is administered under the state's Department of Environmental Services. Permit actions by the Wetlands Board can include reviewing applications, reviewing all correspondence received, conducting field inspections, holding public hearings on the proposed permit action, and approving, denying, or placing conditions on permits.

At the time of filing with the Wetlands Board, three copies of the permit application must be filed with the town or city clerk, who may charge an administrative fee not to exceed \$2. Copies of the permit application must be made available for public review. The municipal conservation commission or planning board, if any, can conduct a local investigation of the proposed project.

### ***REVENUE EXPERIENCE***

Activities of the Wetlands Board are financed by a combination of fee revenues and general revenues. Permit application fees are used primarily to cover the salaries of technical and clerical staff directly involved in the permitting process. General revenues cover fixed costs and salaries for a core staff. The Wetlands Board also is authorized to solicit and receive gifts, grants, or donations, which it can administer and disperse to support its activities.

To increase its funding through fee revenues, the Wetlands Board increased its fees in February 1990. For the first six months since fees were increased, average monthly fee revenues were a little over \$17,000 and the average number of new permit applications has been a little over 200 per month.

### ***LESSONS LEARNED***

New Hampshire structured its current fee schedule to encourage developers to spend more time locating and avoiding wetlands early in their planning process. Previously, permit applications were assessed a flat fee of \$100 (\$300 from July 1989 to February 1990). With the flat fee, some applicants would file permit applications to fill 10 to 20 acres of wetland, attempting to get the Wetlands Board to define what it would allow. Even simple denials of such applications often cost more to process than the flat fee and applicants used the Board's findings supporting the denial to develop new permit applications until they found a proposal that the Wetlands Board would approve.

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## **PENNSYLVANIA WATER OBSTRUCTION AND ENCROACHMENT PERMIT FEE**

### ***BACKGROUND***

The Pennsylvania Department of Environmental Resources (DER) is responsible for the environmental and engineering review of all permit applications for dams, water obstructions, and encroachments. Through an agreement between DER and the U.S. Army Corps of Engineers, applicants are able to simultaneously apply for the state permit, required under the authority of the Dam Safety and Encroachments Act of 1978, as well as federal permits required under section 404 of the Clean Water Act or section 10 of the Rivers and Harbors Act.

The Pennsylvania DER assesses a permit application fee for each state permit. The Corps of Engineers assesses its permit fee separately from the Pennsylvania DER.

### ***FINANCING MECHANISM***

The Pennsylvania DER assesses an application fee for each water obstruction and encroachment permit, according to the following fee schedule:

<u>Type of Structure or Activity</u>	<u>Application Fee</u>
Bridges over 15 foot span	\$100
Stream enclosures	100
Channel changes	100
Commercial dredging	100
All other water obstructions/encroachments	50

Permit applications submitted by federal, state, county, or municipal agencies are exempt from the state fee.

A single application may be submitted and a single permit may be issued for multiple structures and activities, which are part of a single project or facility or part of related projects and facilities, located in a single county, constructed, operated, or maintained by the same person or persons. When an application covers multiple structures or activities, the permit application fee shall be the sum of appropriate fees up to a maximum of \$600.

### ***FUNDS MANAGEMENT***

Revenues collected from permit application fees are deposited in the state's general fund. All fines and civil penalties collected under the provisions of the Dam Safety and Encroachments Act are deposited in a special fund known as the Dam and Encroachments Fund. This fund is administered by DER to support activities protecting the citizens of the Commonwealth from hazards to life, property, and the environment resulting from unsafe dams, water obstructions, and encroachments.

## *IMPLEMENTATION*

DER regulates wetlands encroachments under the rules and regulations found at Title 25, Pennsylvania Code Chapter 105, Dam Safety and Waterway Management, developed pursuant to the 1978 Dam Safety and Encroachments Act. The act provides for the comprehensive engineering and environmental review of water-related activities to protect the health, safety, and property of the people and to conserve the natural resources of the Commonwealth. DER is authorized to collect permit fees under section 105.13 of Pennsylvania Code Chapter 105.

Using a joint permit application form, applicants simultaneously apply for a DER water obstruction and encroachment permit and for a Corps of Engineers section 404 or section 10 permit. Such applications also are considered a request for state water quality certification under section 401 of the Clean Water Act.

## *REVENUE EXPERIENCE*

Fees, fines, and civil penalties received by DER do not sufficiently support permit processing and compliance activities in accordance with the Dam Safety and Encroachments Act.

## *LESSONS LEARNED*

DER has adopted an action plan that is intended to clarify and further define DER's role in wetlands protection. Major components of the plan include: an increase in review and enforcement staff, the creation of an education and technical assistance program, and the amendment of Chapter 105 to improve wetland regulations and increase permit fees.

## *CONTACT*

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## LOUISIANA COASTAL USE PERMIT FEES

### *BACKGROUND*

The Coastal Management Division (CMD) of the Louisiana Department of Natural Resources assesses fees for its Coastal Use Permits (CUPs). CUPs are part of the Louisiana Coastal Resources Program, which regulates development in Louisiana's coastal zone. A permit application fee and a processing fee are collected for CUP applications. Only the application fee is assessed for Requests for Determination (RFD), that is, a request for CMD to determine whether a CUP is required for a project in the Louisiana coastal zone.

CUPs are required for dredge or fill activities, including, but not limited to, construction of boat slips; dredge or fill associated with construction of bulkheads, piers, or wharves; canal construction; trenching of pipelines; prop-washing; mitigation activities such as construction of levees, water control structures, or plugs; maintenance dredging; and dredging of water bottoms in bays and lakes for shell.

### *FINANCING MECHANISM*

Each CUP and RFD is assessed a \$20 non-refundable application fee, which must accompany the application. The non-refundable application fee is charged to all users of the coastal zone, including private citizens, commercial entities, nonprofit organizations, state and local agencies, and municipalities. If the application fee is not included with a CUP application, the application is considered incomplete and returned to the applicant.

In addition, a permit processing fee is assessed for all CUP applications according to the total volume of material disturbed (material dredged or used for fill). Projects involving less than 125 cubic yards of dredge or fill material are not assessed the processing fee. Projects involving from 125 to 50,000 cubic yards of dredge or fill material are assessed the fee at a rate of 4¢ per cubic yard. Projects involving more than 50,000 cubic yards of dredge or fill material are assessed the maximum processing fee of \$2,000. CMD calculates the permit processing fee using information supplied with the CUP application and bills the applicant when sending out the draft CUP permit. Public agencies receiving permits for drainage improvement projects and private citizens receiving permits for wetland restoration projects are exempt from the permit processing fee.

### *FUNDS MANAGEMENT*

Fees are paid to CMD and deposited in the Coastal Resources Trust Fund, a CMD account which comprises its state match to the federal Coastal Zone Management section 306 program.

## *IMPLEMENTATION*

Under the State and Local Coastal Resources Management Act of 1978 (Louisiana Revised Statutes 49:213.11) and pursuant to a Notice of Intent published on March 20th, 1985, the DNR's rules and procedures for CUPs were amended to establish the fee system for CUP applications and RFDs. The fee system became effective May 20, 1985.

CMD cannot issue a permit until all fees are paid. If a permittee wishes to revise an activity for which a CUP has already been received, a new application must be submitted along with a \$20 application fee. Also, if a CUP application that was returned to the applicant by CMD or withdrawn by the applicant is subsequently resubmitted, it is subject to new fees.

The permit processing fee is based on a sliding scale of cubic yards disturbed because, as a general rule, the time devoted to processing an application increases directly with the volume of material disturbed. The fee schedule, therefore, is designed to collect fees proportional to the processing cost of each application.

If the proposed project is located in a parish with an approved local Coastal Management Program, the parish may process the CUP application if the project is of local concern according to the State and Local Coastal Resources Management Act. Parishes also may charge a fee to cover their CUP application processing costs. If the project is of state concern, CMD will process the CUP application.

## *REVENUE EXPERIENCE*

CMD collects about \$260,000 annually through fees.

## *LESSONS LEARNED*

CUPs issued by CMD are separate from U.S. Army Corps of Engineers section 404 permits. However, the Corps and CMD have an agreement for a joint public notice process. Because the Corps funds most of the public notice process, the joint public notice has been very useful to reduce the administrative and financial burden for the state permit program.

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## OHIO WATER QUALITY CERTIFICATION FEE

### *BACKGROUND*

In Ohio, the main regulatory mechanism for protecting wetlands is the state water quality certification rules. These rules establish procedures whereby Ohio can deny or place conditions on federal permits authorizing discharge of dredged or fill material into state waters. Wetlands are designated as "state resource waters" in Ohio's Antidegradation Policy (Ohio Administrative Code 3745-1-05(C)).

The Ohio Environmental Protection Agency (EPA) administers the water quality certification program. Ohio EPA's Division of Water Quality Planning and Assessment (DWQPA) evaluates the water quality impacts of dredging or fill activity in wetlands. When DWQPA grants water quality certification, a certification fee is assessed to cover processing costs.

### *FINANCING MECHANISM*

Certification fees are assessed after DWQPA makes a decision to grant a water quality certification. Because fees are assessed only when certifications are granted, the number of applicants charged a certification fee is less than the total number of applicants.

Ohio EPA receives applications for state water quality certification indirectly through applications for federal permits issued by the U.S. Army Corps of Engineers or by direct application to Ohio EPA. Filing an application with the Corps of Engineers for a permit pursuant to section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act constitutes an application to Ohio EPA for state water quality certification. Ohio EPA accepts these applications through Corps of Engineers public notices. Persons filing an application for any other federal permit or license to conduct an activity which may result in a discharge to state waters must file an application for state water quality certification directly with Ohio EPA.

Federal and state agencies are required to apply for state water quality certification, but they are exempt from paying the fee. Other exemptions from the fee include projects authorized under a Corps of Engineers general permit or nationwide permit, or discharge of dredged or fill material as part of certain construction projects by federal agencies. In addition, the definition of dredged or fill material in Ohio's regulations exempts material resulting from "normal farming, silviculture, and ranching activities."

Ohio EPA requires different certification fees for different categories of projects. Dredge or fill projects, which are the two categories involving wetlands, are assessed certification fees according to cubic yards of dredged or fill material, as follows:

<u>Cubic yards of dredged or fill material</u>	<u>Fee</u>
Less than 500	\$15
500 - 5,000	25
5,001 - 15,000	50
15,001 - 30,000	75
30,001 - 50,000	100
More than 50,000	200

Other certification fees assessed by Ohio EPA are a \$15 fee on certifications pursuant to section 10 of the Rivers and Harbors Act, a \$100 fee on certifications for bulk commodity facilities, and 50¢ per linear foot or a minimum \$15 fee on certifications for breakwater placements.

The maximum fee for residential use projects is \$100, unless the total discharge of dredged or fill material exceeds 50,000 cubic yards, then the maximum fee is \$200. The maximum fee for any other project is \$200.

### ***FUNDS MANAGEMENT***

After DWQPA makes a decision to grant a water quality certification, the Permit Processing Section of Ohio EPA's Division of Water Pollution Control (DWPC) issues a certification letter and fee statement. Certifications are not effective until all fees are paid. Certification fee revenues are deposited in the state's general fund.

### ***IMPLEMENTATION***

The state of Ohio adopted its water quality certification rules in July 1982 as Chapter 3745-32 of the Ohio Administrative Code. These rules became effective in September 1982. Ohio's water quality certification rules used existing authority granted to states under section 401 of the Clean Water Act to review proposed activities affecting state waters, and deny or place conditions on federal permits or licenses authorizing such activities.

Ohio's water quality certification review procedures require DWQPA to evaluate wetland functions and deny certification for high quality wetlands. In certain instances, DWQPA issues certifications permitting limited degradation if the applicant follows steps to avoid and minimize impacts, and agrees to mitigate for destruction of wetland habitat. Such mitigation is required as a condition of certification, resulting in private expenditures for wetlands creation and/or restoration.

Ohio EPA can revoke a state water quality certification at any time if applicable laws or regulations are violated.

## *REVENUE EXPERIENCE*

Revenues from water quality certification fees depend on the number of certifications granted and the size of those projects. Only a part of Ohio's revenues from water quality certification fees are from projects involving wetlands. Ohio frequently denies certification for projects affecting wetlands and collects no fee when certification is denied. As such, Ohio's water quality certification fees have limited revenue-raising potential. Because certification fees cover only part of its water quality certification processing costs, Ohio EPA also relies on federal Chapter 106 grants and state general revenues.

## *LESSONS LEARNED*

Ohio EPA plans to increase its water quality certification fees in a few years to cover a greater share of its state water quality certification processing costs.

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## **CALIFORNIA WATER QUALITY CERTIFICATION FEE**

### ***BACKGROUND***

California's state water quality certification program is administered by nine Regional Water Quality Control Boards. The Regional Boards assess a water quality certification filing fee on each application for a state water quality certification. Because wetlands are considered waters of the state, California can use state water quality certification to deny or place conditions on federal permits authorizing discharge of dredged or fill material into wetlands.

### ***FINANCING MECHANISM***

The water quality certification filing fee must be paid with each application for a water quality certification. The amount of the fee is determined by the Filing Fee Schedule for the State Water Resources Control Board (section 2200 of Chapter 9, Division 3, Title 23, California Code of Regulations).

In the fee schedule, fees for dredging projects with spoils disposal are based on the quantity of material to be dredged. A \$500 fee is assessed for projects with under 25,000 cubic yards to be dredged. For projects involving 25,000-500,000 cubic yards, the fee is \$20 for each thousand cubic yards of material to be dredged. Dredging projects involving over 500,000 cubic yards are assessed a \$10,000 fee.

The fee schedule also specifies filing fees for other activities, including municipal and industrial wastewater discharges. The water quality certification filing fee for an activity not specified in the Filing Fee Schedule is \$200.

### ***FUNDS MANAGEMENT***

The Regional Boards collect water quality certification filing fees when certification applications are filed. If the state does not act on a water quality certification application, the certification filing fee is refunded.

Fee revenues are deposited in the general fund of the State Water Resources Control Board. Each of the nine Regional Boards has its own budget for water quality certification reviews and can recover part of its fee revenues through budget requests. The State Water Resources Control Board reserves part of the fee revenues to cover the costs of appeals.

### ***IMPLEMENTATION***

The Regional Boards are authorized to collect filing fees with water quality certification applications by section 3833, Chapter 17, Title 23, of the California Code of Regulations. Chapter 17 also establishes procedures for the Regional Boards to act on water quality certifications and provides for appeals to the State Water Resources Control Board if an application is denied by a Regional Board. California's water quality certification regulations use existing authority granted to states under section 401 of the Clean Water Act to review

proposed activities affecting state waters, and deny or place conditions on federal permits or licenses authorizing such activities.

### ***REVENUE EXPERIENCE***

Revenues from water quality certification filing fees are not sufficient to support the state water quality certification program.

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## **LOUISIANA WATER QUALITY CERTIFICATION FEE**

### ***BACKGROUND***

In Louisiana, the state water quality certification program is administered by the Office of Water Resources, Water Pollution Control Division, Louisiana Department of Environmental Quality (DEQ). DEQ reviews and can grant conditionally or deny certification for projects that require a federal permit for discharge of dredged or fill material into state waters (using state authorities granted under section 401 of the Clean Water Act). From 60-70% of water quality certification applications in Louisiana involve inland or coastal wetlands.

### ***FINANCING MECHANISM***

A one-time processing fee is assessed with each application for water quality certification. A \$25 fee is charged to process water quality certifications for noncommercial activities. A \$265 fee is charged for processing water quality certifications for commercial activities. Fees are paid at the time of application. Applications are not considered complete without the appropriate fee.

### ***FUNDS MANAGEMENT***

Fee revenues are deposited in Louisiana's Environmental Trust Fund for DEQ. Revenues collected from water quality certification fees do not go directly back to the water quality certification program.

### ***IMPLEMENTATION***

DEQ's water quality certification processing fees, authorized by the Louisiana Administrative Code, became effective in 1984. Fees have not increased since 1984 and DEQ has no plans to revise its water quality certification fees.

### ***REVENUE EXPERIENCE***

Currently, the annual revenue from water quality certification fees is approximately \$150,000 per year. Because many applications are related to oil and gas activity and such activities have slowed in recent years, fee revenues have dropped slightly from the previous \$160,000 to \$170,000 per year. Fee revenues are sufficient to cover the costs of administering the water quality certification program in Louisiana.

### ***LESSONS LEARNED***

In Louisiana, some applicants for water quality certification have attempted to use the program's noncommercial category for commercial projects. When different fees are assessed for commercial versus noncommercial activities, it is important to narrowly define the characteristics separating commercial activities from noncommercial activities.

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## MARYLAND TIDAL WETLANDS COMPENSATION FEES

### *BACKGROUND*

The Department of Natural Resources (DNR) administers Maryland's wetlands protection programs. The DNR currently does not assess any fees for processing wetlands permit or license applications. These activities are supported entirely from general revenues.

However, there exists a legislatively established special fund as part of Maryland's wetlands protection programs. The Tidal Wetlands Compensation Fund was created to finance acquisition of valuable wetland areas for preservation. Compensation fees may be assessed by the State Board of Public Works (SBPW) for certain projects impacting wetlands as a condition to issuance of a state wetlands license by SBPW. Fee revenues are deposited in the Tidal Wetlands Compensation Fund and are dedicated to state acquisition of wetland areas.

### *FINANCING MECHANISM*

Compensation fees are assessed by SBPW according to its policies and procedures. SBPW policy outlines three compensation fees, as follows:

Compensation for Dredging in Navigable Waterways. A fee of \$1.00 per cubic yard may be assessed for fill material dredged from the bottom of navigable waterways when the material is intended for private commercial use, sale, or to make fastland.

Compensation for the Creation of Fastland by Filling. A compensation payment equivalent to one-third of either the full or fair market value of fastland created, may be assessed when fill projects impact wetlands. The public benefit to be derived from the project determines which value is used.

Compensation for Submarine Cables and Pipelines. A one-time \$500 fee may be assessed when tidal wetlands are impacted by installation of submarine cables and pipelines. In addition, SBPW assesses an annual fee of 25¢ per linear foot during the first 5-year period. At the end of the first 5-year period and every five years thereafter, the amount of the annual fee is adjusted according to the Consumer Price Index.

### *FUNDS MANAGEMENT*

Compensation fees are deposited in the Tidal Wetlands Compensation Fund. This fund, established by Natural Resources Article section 9-204, is legislatively dedicated to financing state acquisition of wetlands. The fund is administered through the state's Open Space Program, which purchases other lands from other revenue sources to add to the inventory of state protected areas.



## *REVENUE EXPERIENCE*

Revenues from compensation fees vary from year to year. Over the last three fiscal years, the following amounts have been deposited in the fund: \$24,782 in FY 1987, \$17,455 in FY 1988, and \$48,135 in FY 1989. In FY 1990, the state estimates it will receive approximately \$235,000 from compensation fees. As much as \$1 million has been received in a single year from compensation fees.

Expenditures from the Tidal Wetlands Compensation Fund for wetlands acquisition also vary from year to year. Often, funds accumulate for several years and are then expended in a single purchase. Over the past three fiscal years, \$325,000 has been spent, leaving a current balance in the fund of \$90,000.

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## TENNESSEE PROPERTY TRANSFER TAX

### *BACKGROUND*

Tennessee maintains a dedicated fund for the acquisition of wetlands and bottomland hardwood forests financed through a portion of the state's property transfer tax. The program, administered by the Tennessee Wildlife Resources Agency (TWRA), had purchased over 8,700 acres of these lands for approximately \$6.2 million as of early May 1990. Requests to acquire another 12,700 acres have been submitted for approval by TWRA. TWRA expects to purchase these lands shortly for approximately \$7 million. An additional 20,000 acres have been evaluated by TWRA, but not appraised, and will likely be purchased as funds become available.

### *FINANCING MECHANISM*

A property transfer tax of 4¢ per \$100 of value provides the funding for TWRA's wetlands acquisition program. This represents a portion of the state's full 28¢ per \$100 of value property transfer tax.

### *FUNDS MANAGEMENT*

The property transfer tax is assessed by the counties on all transfers of property in the state. The revenues are then transferred to the state's Finance and Administration Department and deposited monthly in the Wetlands Acquisition Fund.

### *IMPLEMENTATION*

TWRA's wetlands acquisition program was established by the 1986 amendments to Tennessee's Natural Areas Preservation Act. Under the 1986 amendments, TWRA is charged with acquiring wetlands and bottomland hardwood forests from willing sellers. Another amendment in 1989 allows acquisition of upland areas and buffer zones tied to purchases of wetlands and bottomland hardwood forests. The 1986 amendments contained a provision to repeal the entire program in 1996. Because of strong support in the legislature for the program, it is increasingly likely that it will be extended.

The 28¢ property transfer tax, the 4¢ portion dedicated to wetlands acquisition, and the Wetlands Acquisition Fund are authorized by Tennessee Code Annotated section 67-4-409.

Lands offered for sale to the state are evaluated and ranked by TWRA and appraised by licensed appraisers. The appraisal process is overseen by the Finance and Administration Department. The Director of TWRA and the state's Commissioner of Agriculture must approve each acquisition.

The state has had no difficulty in finding willing sellers of suitable lands. However, since most wetlands are in the western half of the state while the tax is levied statewide, there were concerns that eastern Tennessee was paying for a program primarily benefiting western Tennessee. These concerns were addressed by the legislature by mandating that a particular tract of upland area be purchased in eastern Tennessee with money from the Wetlands Acquisition Fund.

Wetlands and bottomland hardwood forests acquired by the state are exempt from all state and local property taxes as required by the 1986 Natural Areas Preservation Act amendments. To alleviate the program's fiscal burden on local governments, the 1986 amendments also established a separate Compensation Fund. The first \$300,000 deposited in the Wetlands Acquisition Fund was transferred and credited to the Compensation Fund. Using this fund, the state treasurer annually reimburses affected cities and counties for lost property tax revenues from such tax-exempt property.

### ***REVENUE EXPERIENCE***

The Wetlands Acquisition Fund receives around \$340,000 per month or about \$4 million per year on average. The amount of revenue coming into the fund fluctuates according to activity in the real estate market. As such, revenues vary considerably on a monthly basis, but the yearly amounts have been fairly stable. Currently, funds are not adequate to purchase all suitable wetlands being offered to the state.

The 4¢ portion of the state's property transfer tax finances only the appraisal, survey, and purchase of wetlands. With the exception of funds to manage acquired lands, all other program costs (for example, salaries and administrative expenses) come from TWRA's budget. The funds to manage acquired lands have been provided only recently. The Natural Areas Preservation Act was amended to allow the interest earned on funds that have been obligated but not yet spent (that is, funds set aside for the purchase of property that has been identified but has not received final approval) to be set aside for that purpose. Whether this arrangement will provide sufficient funds for management is not yet determined.

### ***LESSONS LEARNED***

Political opposition may arise from perceived geographic inequities. It is important to address such considerations when establishing similar funding mechanisms.

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## **FLORIDA DOCUMENTARY STAMP TAX**

### ***BACKGROUND***

Through various acquisition programs, the state of Florida has been purchasing environmentally sensitive lands, archaeologically significant lands, and lands suitable for recreation since 1963. The two major Florida land acquisition programs are the Conservation and Recreation Lands (CARL) program and the Save Our Rivers Program. Both are funded primarily by the state's documentary stamp tax, a 55¢ tax on each \$100 in value of property sold in the state.

The CARL program acquires environmentally, geologically, archaeologically, or historically valuable lands, and land for state parks. Under CARL, approximately 190,000 acres of land have been acquired since 1979. When CARL land acquisitions are combined with those of CARL's predecessor program, the Environmentally Endangered Lands (EEL) program which began in 1972, total land acquired exceeds 550,000 acres.

The Save Our Rivers program was created to fund acquisition of lands by the Florida Water Management Districts (WMDs) to address water resource problems through basin management. Lands acquired are those necessary for water supply, conservation and protection activities, and flood control. Since its inception in 1981, the Save Our Rivers program has acquired approximately 385,000 acres of land for approximately \$275 million.

### ***FINANCING MECHANISM***

The documentary stamp tax is a 55¢ tax on each \$100 in value of property sold in the state of Florida. Both CARL and Save Our Rivers receive most of their funding from a dedicated portion of the state documentary stamp tax.

Both programs also receive funding from a 32¢ tax on each \$100 in value on financial documents (including stock certificates, bonds, debentures, and promissory notes). The state's tax on financial documents was increased from 15¢ to 32¢ in 1990. In addition to these funds, CARL also receives \$10 million annually from a severance tax on mining.

### ***FUNDS MANAGEMENT***

Of the total revenues collected from Florida's documentary stamp tax, 9.2% has been dedicated to the Conservation and Recreation Lands Trust Fund for the CARL program and another 9.2% to the Water Management Lands Trust Fund for the Save Our Rivers program. Because increased revenues are expected from the recently increased state tax on financial documents, the dedicated portion of documentary stamp tax revenues for both programs is now 6.9%, effective July 1, 1990.

The documentary stamp tax is collected by counties when property is sold. The funds are then transferred to the state and the appropriate percentages are deposited in the CARL and Water Management Lands trust funds monthly.

The CARL Fund pays for the purchase of lands and for activities related to land acquisition such as appraisal and boundary surveys. In addition, CARL supports an inventory of natural areas in Florida. Up to 10% of CARL funds may be used for land management. All other program costs (for example, salaries and overhead) are funded through the Florida Department of Natural Resources budget.

Under Save Our Rivers, each WMD receives an allotted portion of the Water Management Lands Trust Fund. WMDs have spent these funds primarily for land acquisition, according to their 5-year acquisition plans. Staff salaries and other costs incurred by WMDs for Save Our Rivers activities can be charged to their allotments from the fund. In general, the WMDs are not recouping these costs from the fund. However, increasing costs associated with land management activities, in particular, may soon force WMDs to charge certain operating costs to their allotments from the fund.

### ***IMPLEMENTATION***

When CARL was created in 1979 by the Florida legislature, it incorporated and expanded the state's EEL program that had been in existence since 1972. The administrative functions of the CARL program are divided among three public entities. The Land Acquisition Advisory Council identifies properties to be acquired, the Division of State Lands of Florida's Department of Natural Resources negotiates acquisitions, and the Board of Trustees of the Internal Improvement Trust Fund oversees activities and allocates money from the CARL Trust Fund. The Division of State Lands provides primary staff support to the CARL program.

The Water Management Lands Trust Fund was created by the Florida legislature in 1981 for land acquisition by WMDs under the Save Our Rivers program. Although Save Our Rivers is coordinated by the Florida Department of Environmental Regulation, the WMDs conduct the selection, purchase, and management of lands.

The WMDs are public corporations established by the Florida legislature to undertake all facets of water management for the major river basins in the state. Each WMD establishes its own criteria for selecting lands to acquire based on the relative benefit of those lands to water management, water supply, water resource conservation and protection, and project implementation. Parcels of land given highest priority are those with outstanding environmental features; with a high value for recreation, archaeologic, or historic preservation, enhancing economic development, or providing urban greenspace; or lands endangered by conversion to an incompatible use.

### ***REVENUE EXPERIENCE***

CARL and Save Our Rivers have received steadily increasing revenues from their portion of the documentary stamp tax revenues. Much of the increase is attributable to occasional increases in the documentary stamp tax rate. Even if the rate had remained constant, revenues would have increased in conjunction with growth in the Florida real estate market over the same time period. There is no cap on revenues received by the trust funds from the documentary stamp tax.

## **LESSONS LEARNED**

For both programs, there is a substantial backlog of lands which could be acquired if enough money were available. Recognizing the increasing rate of loss of wetlands and other environmentally sensitive lands, the 1990 state legislature passed the Florida Preservation 2000 Act (Public Law 90-217). The act creates the Florida Preservation 2000 Trust Fund to receive the anticipated \$3 billion in bond proceeds to be generated over the next decade. The bonds are backed by the projected increase in documentary stamp tax revenues, estimated between \$300 million and \$343 million from 1990 to 2000.

By Florida law, the state legislature must designate the revenue or tax source to be used for repayment of the bonds and must specifically appropriate the first year's debt service before any bonds may be issued. The bonds issued each fiscal year must be authorized in the act implementing the state's General Appropriations Act. Money will be transferred from the general revenue portion of total documentary stamp tax revenues in amounts not to exceed \$30 million in FY 1991-92, \$60 million in FY 1992-93, \$90 million in FY 1993-94, and continuing each subsequent fiscal year in \$30 million increments to reach a maximum transfer of \$270 million by FY 1999-2000, and thereafter for the purpose of paying debt service on the bonds.

## **CONTACTS**

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## **MISSOURI DEDICATED SALES TAX**

### ***BACKGROUND***

In 1976, the citizens of Missouri passed a constitutional amendment adding one-eighth of one percent (0.125%) to the state's general sales tax and dedicating those revenues to the Missouri Department of Conservation (MDC). One of the major programs undertaken as a result of these additional funds has been the acquisition of lands for fish and wildlife habitat. Initially, the goal was to acquire 300,000 acres of such habitat. Approximately 270,000 acres have been acquired to date, including a substantial amount of wetland acreage.

### ***FINANCING MECHANISM***

One-eighth of one percent (0.125%) was added to the state's general sales tax, with those revenues dedicated to MDC.

### ***FUNDS MANAGEMENT***

The state sales tax is collected by the Missouri Department of Revenue and 0.125% is credited daily to the Conservation Department Fund. The fund is managed by the state treasurer.

### ***IMPLEMENTATION***

Unlike most state agencies, MDC is constitutionally mandated, not legislatively created. The 0.125% addition to the state sales tax is also mandated by a constitutional amendment. As a result, the state legislature is unable to alter or modify this funding source or its use.

In September 1989, MDC adopted its Missouri Wetland Management Plan (MWMP). The 0.125% addition to the state sales tax will support implementation of MWMP. MWMP is a plan to guide the protection, restoration, and management of wetlands in Missouri to the year 2000. It also implements portions of the North American Waterfowl Management Plan. MWMP recommends acquisition of new wetland areas, along with expansion and development of existing wetland areas to improve the amount and distribution of wetland habitat in Missouri.

### ***REVENUE EXPERIENCE***

Revenues from the 0.125% addition to the state sales tax have steadily increased from around \$24 million in 1978 to \$52 million in 1989, and comprise 65% of MDC's budget. Between \$12 and \$28 million has been budgeted yearly for the acquisition and management of lands and the development of public access facilities. As MDC approaches its original goal of acquiring 300,000 acres, more of the available funds will be spent on land management and development, although land will continue to be acquired.

## *LESSONS LEARNED*

In Missouri, the dedicated sales tax has provided a unique source of secure revenues for fish and wildlife habitat programs, including wetlands acquisition. It also provides a unique opportunity to dramatically affect the status of wetland resources in Missouri by supporting implementation of the new MWMP.

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## NEBRASKA HABITAT STAMP

### *BACKGROUND*

The state legislature created Nebraska's wildlife habitat program in 1976. The Nebraska Game and Parks Commission developed a Wildlife Habitat Plan and administers the wildlife habitat program according to the plan. The program includes state acquisition of privately-owned lands, financial incentives to improve existing wildlife habitat on private lands, and intensified habitat management of Nebraska Game and Parks Commission and other public lands. Under the first 10-year Habitat Plan approved in 1977, the wildlife habitat program was oriented toward all wildlife habitat. Wetlands are a high priority under the state's new Habitat Land Acquisition Plan approved in August 1989.

### *FINANCING MECHANISM*

The Nebraska Game and Parks Commission issues a non-transferable \$7.50 habitat stamp in addition to every hunting, trapping, or combination fishing-hunting license sold. The \$7.50 charge applies to both resident and nonresident licenses. The habitat stamp expires on December 31st of the year it was issued.

In addition to the state's habitat stamp, other funding sources for the wildlife habitat program include federal assistance, private donations, and contributions from nonprofit organizations. Nebraska receives federal funding from the Pittman-Robertson and Dingell-Johnson funds. The Ducks Unlimited program in Nebraska contributes MARSH money for acquisition and management of wildlife habitat.

### *FUNDS MANAGEMENT*

The Game and Parks Commission deposits the habitat stamp revenues with the state treasurer. Habitat stamp revenues are then placed in the Nebraska Habitat Fund. For the period from January 1, 1977 through June 30, 1989, habitat stamp revenues represented 57% of Habitat Fund income, with federal aid representing 38%, and interest and gifts representing 5% of Habitat Fund income.

Expenditures from the Nebraska Habitat Fund are made according to a 10-year Habitat Plan developed by the Game and Parks Commission and approved by the state legislature. The Nebraska Habitat Fund can be used only by the Game and Parks Commission for wildlife habitat acquisition on a willing-seller willing-buyer basis, for leasing or easements, and for development, management, and enhancement of wildlife lands. As specified in the Habitat Plan, approximately one-third of the funds must be expended for state wildlife land acquisition, one-third for habitat improvement and management on existing Commission lands and other public lands, and one-third for habitat protection and improvement on private lands.

From July 1, 1977 through June 30, 1989, 34% of expenditures from the Habitat Fund were for state wildlife land acquisition. During this period, \$7.7 million was spent to purchase 18,479 acres of public hunting and fishing land, including 3,352 acres of wetlands.

## *IMPLEMENTATION*

Recognizing a critical habitat shortage, the Nebraska state legislature created the wildlife habitat program in 1976 with Legislative Bill 861. The Nebraska Game and Parks Commission is authorized to sell the habitat stamp under Nebraska Revised Statutes sections 37-216.01 through 37-216.09. The Nebraska Habitat Fund was created for the deposit of habitat stamp revenues under Nebraska Revised Statutes section 37-216.07.

Under Nebraska Revised Statutes section 37-110, the Game and Parks Commission is required to make in lieu of tax payments on lands acquired through the state's wildlife habitat program. The Commission makes in lieu of tax payments annually to the counties. For each parcel acquired, such payments are equivalent to the taxes paid on the land by the private landowner for the year prior to state acquisition of the land.

The private lands portion of Nebraska's Habitat Plan is designed to create new habitat and enhance existing wildlife habitat through contracts with landowners in participating Natural Resource Districts (NRDs). Nebraska is divided into 23 NRDs by watershed, with 20 currently participating in the private landowner program. In participating NRDs, costs for this program are shared by the NRD and the Nebraska Game and Parks Commission. The state pays 75% of the costs using funds raised through habitat stamp sales and the NRD pays 25% using funds generated by local property taxes. For the three NRDs not participating in the program, the Game and Parks Commission administers the program directly with landowners.

## *REVENUE EXPERIENCE*

The average annual income from habitat stamp sales was \$1,135,000 over the 13-year period from January 1, 1977 to December 31, 1989. Total income from habitat stamp sales was \$13,960,000 during the period from January 1, 1977 through June 30, 1989.

## *LESSONS LEARNED*

All regions of the state receive due consideration for wildlife habitat acquisition, so citizens in all regions of the state benefit from available public hunting and fishing lands.

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## **IOWA HABITAT AND WATERFOWL STAMPS**

### ***BACKGROUND***

The Iowa Department of Natural Resources (DNR) uses a variety of funding sources for acquisition of wildlife habitat, including wetlands. State funding sources used by the DNR for wetlands acquisition are a state habitat and waterfowl stamp, donated funds, and monies from Iowa's Resource Enhancement and Protection (REAP) Fund.

An important program affecting wetlands in Iowa is the Prairie Pothole Joint Venture (PPJV), a cooperative effort among the Iowa DNR, the U.S. Fish and Wildlife Service, county conservation boards, and nonprofit organizations. PPJV's mission is to purchase wetlands and uplands, and to restore privately-owned wetlands in Iowa for wildlife habitat. PPJV is financed through the sale of state habitat and waterfowl stamps, Iowa's REAP Fund, U.S. Fish and Wildlife Service funds, and donations from nonprofit organizations.

### ***FINANCING MECHANISM***

Anyone required to have an Iowa hunting license must also purchase a \$5.00 state habitat stamp. The \$5.00 state waterfowl stamp is purchased with licenses for waterfowl hunting only. In each case, both residents and nonresidents of the state pay the same \$5.00 charge.

### ***FUNDS MANAGEMENT***

All revenues collected from the sale of habitat and waterfowl stamps are deposited in the Fish and Wildlife Trust Fund. Habitat stamp revenues are earmarked for wildlife habitat acquisition and waterfowl stamp revenues are earmarked for waterfowl habitat acquisition.

Iowa's REAP Fund was created by the Resource Enhancement and Protection Act of 1989, which established a long-term program to protect the state's natural resources. In fiscal years 1989 and 1990, \$15 million was set aside for REAP. A standing appropriation of \$20 million a year has been signed into law for fiscal years 1991-2000. The act requires that 28% of REAP program allocations be deposited in the REAP Fund's Open Spaces Account to finance state acquisition and development of lands and waters.

### ***IMPLEMENTATION***

The state may be required to pay property taxes to counties on lands acquired, depending on the source of funds. Lands acquired with state habitat stamp revenues and matched federal funds are subject to the full levy of property taxes (110.3, 1987 Code of Iowa). Iowa's Land Acquisition Bureau has a computerized record of all state lands acquired with habitat stamp funds. Using habitat stamp revenues, the state makes annual payments to individual counties for property taxes on lands acquired with habitat stamp funds.

The state is not required to reimburse counties for lost property tax revenues on lands acquired with state waterfowl stamp revenues. Legislation creating the waterfowl stamp program passed in the early 1970s and contains no provision for reimbursing counties for lost tax revenues. Also, the state does not reimburse counties for lost property tax revenues on lands acquired with donated funds.

For open space property acquired by the DNR on or after January 1, 1987, the state is required to pay property taxes to the counties in accordance with Section 111E.4, HF 620, 1987 Iowa General Assembly. This provision affects open space property acquired with monies from the REAP Fund, as required under the Resource Enhancement and Protection Act of 1989. All open space acquisitions, including wetlands, financed by the REAP Fund are subject to the full levy of property taxes. Payments to reimburse counties for lost property tax revenues are made from the Open Spaces Account in the REAP Fund.

### *LESSONS LEARNED*

Reimbursing counties for lost property tax revenues after land is acquired by the state is an important part of the Iowa DNR's land acquisition programs. The reimbursement provisions alleviated concerns among Iowa's county governments regarding the local fiscal impacts of state land acquisition. Local cooperation with state land acquisition efforts improved as a result.

### *CONTACT*

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## **NEW JERSEY WATERFOWL STAMP**

### ***BACKGROUND***

The New Jersey Department of Environmental Protection (DEP) administers three land acquisition programs involving wetlands. The New Jersey Waterfowl Stamp and Print program is a small part of the state's land acquisition efforts, but it is most directly related to wetlands. Funds for this program are collected through the sale of waterfowl stamps and prints to hunters and collectors.

New Jersey's Green Acres Program began in 1961 and represents the largest part of the state's land acquisition efforts. Under the Green Acres Program, the state issues bonds for state acquisition of open space land or to assist with local acquisition of such lands. New Jersey's 1979 Pinelands Protection Act permits DEP to acquire environmentally sensitive lands in the Pinelands National Reserve, including inland wetlands. In addition, local ordinances permit the sale of land development credits in the Pinelands.

### ***FINANCING MECHANISM***

Anyone hunting waterfowl in New Jersey is required to purchase a state waterfowl stamp in addition to the state hunting license. New Jersey's waterfowl stamp is \$2.50 for residents and \$5.00 for nonresidents. The waterfowl stamp is valid from July 1 to June 30th of the following year.

Waterfowl stamps can also be purchased with an accompanying print, which is a signed, limited edition, numbered print. Most of the prints are purchased by collectors and their value later increases according to the market among collectors.

### ***FUNDS MANAGEMENT***

Revenues collected from the sale of waterfowl stamps and prints are deposited in the Duck Stamps Account within the Hunters and Anglers Fund. The Duck Stamps Account is a dedicated account for the purchase and enhancement of wetlands and other waterfowl habitat. The Hunters and Anglers Fund receives all revenues from state fish and game licenses, fines, and permits.

### ***IMPLEMENTATION***

New Jersey Revised Statute S23:3-76 et. seq. authorizes DEP's Division of Fish, Game and Wildlife to collect revenues from the sale of waterfowl stamps and prints. Since 1984, the Division has purchased 5,500 acres using waterfowl stamp and print revenues.

The Green Acres Program has been extended since its inception in 1961 with six Green Acres Bond Issue Acts. In 1983, the state of New Jersey issued \$135 million of Green Acres bonds, including \$83 million to assist local governments with open space acquisition and \$52 million for state open space acquisition. The 1987 bond issue provided \$35 million for

assistance to local governments. Since 1961, the Green Acres Program has acquired over 100,000 acres for the Division of Fish, Game and Wildlife alone, with many more acres purchased for parks and other open space needs.

DEP was granted authority to acquire environmentally sensitive lands, including inland wetlands, in the Pinelands under New Jersey Revised Statute S13:18-A-1 et. seq. State funding for this acquisition program is derived from general revenues. Local governments must develop a Pineland Development Program that permits landowners in preservation areas to sell development rights to developers elsewhere.

### *REVENUE EXPERIENCE*

New Jersey's first waterfowl stamp and print issue in 1984 raised more than \$717,000 in less than two years. Revenues from the 1988 waterfowl stamp and print issue totalled \$215,645. For the 1988 issue, New Jersey collected \$50,142.50 from sales of resident waterfowl stamps (20,057 sold) and \$30,295 from sales of nonresident waterfowl stamps (6,059 sold). In addition, \$11,357.50 was collected from sales to residents of waterfowl stamps accompanying the print (4,543 sold) and \$21,880 was collected from sales to nonresidents of waterfowl stamps accompanying the print (4,376 sold). Finally, New Jersey collected \$101,970 from print sales in 1988. New Jersey's 1989 waterfowl stamp and print is still being sold to collectors only.

### *LESSONS LEARNED*

The demand for first offering stamps and prints is immense. With subsequent issues, however, the demand and revenues decrease.

Because the Duck Stamps Account is a dedicated account for the Division of Fish, Game and Wildlife, revenues from waterfowl stamps and prints go directly back to the Division and cannot be diverted to other purposes.

### *CONTACT*

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## NEW HAMPSHIRE FINES AND PENALTIES

### BACKGROUND

The New Hampshire Wetlands Board administers a permit program for dredge and fill in freshwater and coastal wetlands (see case study of New Hampshire Permit Application Fee). The Wetlands Board is authorized to impose an administrative fine of up to \$2,000 for each offense upon any person violating provisions of the state wetlands statutes or rules of the Wetlands Board. The Board must provide notice and conduct an administrative fine hearing before taking action to impose an administrative fine.

### FINANCING MECHANISM

As specified in the rules of the Wetlands Board, the amount of the fine depends on the size of the project and type of violation. When the violation involves continuing work after receiving a notice of violation, or failure to remove fill or conduct wetlands restoration as ordered by the Board, the fine imposed for all minimum impact, minor, or major violations is \$2,000. Administrative fines for other types of violations are assessed as follows:

	Conducted Unauthorized Work Prior to or After <u>Receiving a Permit</u>	Conducted Unauthorized Work After Being <u>Denied a Permit</u>
Minimum Impact Project Violations	\$200	\$400
Minor Project Violations		
Class I	600	800
Class II	900	1,200
Major Project Violations	2,000	2,000

The Wetlands Board also can refer violations to the state Attorney General for legal action. Civil penalties, not to exceed \$10,000 per day for each violation, can be levied by the state court for violations of the state wetlands statutes or rules of the Wetlands Board.

### FUNDS MANAGEMENT

Proceeds of administrative fines and civil penalties are placed in a nonlapsing fund in the state treasury and can be spent by the Wetlands Board for restoration, research, investigation, and enforcement relative to wetlands. To date, revenues from administrative fines have been used primarily for capital improvements, such as development of an improved computer system.

## *IMPLEMENTATION*

The administrative fines, nonlapsing fund, and civil penalties are authorized by Chapter 482-A of the New Hampshire Revised Statutes. Procedures for imposing administrative fines are specified in the rules of the Wetlands Board (Chapters Wt 100 to Wt 800 of the New Hampshire Code of Administrative Rules).

## *LESSONS LEARNED*

In New Hampshire's experience, the publicity associated with imposing a fine on violators can be more significant than the dollar amount. Most of the administrative fines imposed in New Hampshire are relatively low, around \$200. Even so, the desire to avoid negative publicity from a fine is often sufficient to assure compliance. In addition, the fines have increased awareness of state wetlands laws and have greatly reduced the number of unreported violations.

## *CONTACT*

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## NEW YORK STATE LAND ACQUISITION PROGRAM

### *BACKGROUND*

The New York State Department of Environmental Conservation (DEC) has been acquiring lands for natural resources protection and restoration, preservation of scenic beauty, provision of public access, or additions to state park lands since the turn of the century. Funding for the purchase of such lands has been provided primarily through bond revenues -- although a portion of the funds have come from other sources, such as proceeds from the federal Land and Water Conservation Fund and federal Pittman-Robertson funds.

### *FINANCING MECHANISM*

The state of New York issued general obligation bonds in 1960, 1962, 1972, and 1986, to finance a wide range of environmental programs, including funds for land acquisition programs. These bonds are sold only after legislation authorizing their issue is passed by the state legislature, signed by the Governor, and approved by the voters of the state. The state legislature recently approved another bond act which will be put to a referendum vote in November 1990.

The 1972 Environmental Quality Bond Act provided \$103 million for land acquisition. The 1986 Environmental Quality Bond Act provided a total of \$250 million for land acquisition, historic preservation, municipal parks, and urban cultural parks, to both DEC and the Office of Parks, Recreation and Historical Preservation (OPRHP). Appropriations to DEC from the 1986 bond revenues were exclusively for land acquisition. The proposed "21st-Century Environmental Quality Bond Act" for 1990 would provide \$800 million for land acquisition, available to both DEC and OPRHP.

### *FUNDS MANAGEMENT*

Revenues from bond issues are appropriated annually by the state legislature to various state agencies and programs.

### *REVENUE EXPERIENCE*

Revenues from the bond issues earmarked for land acquisition programs are available only for the purchase of land as well as activities, such as surveys and appraisals, that are directly related to the purchase of land. All other program costs are paid from the operating budgets of DEC and OPRHP. Following the 1986 Environmental Quality Bond Act, a special general fund appropriation was made for hiring the additional DEC staff required to administer the expanded land acquisition program. Similar appropriations may be made if the voters approve the "21st-Century Environmental Quality Bond Act."

Annual appropriations of revenues from the 1986 Environmental Quality Bond Act to DEC and OPRHP have fluctuated yearly. In the initial two years, as the two programs were becoming established, appropriations were approximately \$30 million for each agency.

Because most of the available funds from the 1986 bond act have been utilized, the backlog of desirable lands continues to grow. The amount available to DEC in 1990 from the remaining 1986 funds is a little less than half of the 1989 appropriation. The proposed "21st-Century Environmental Quality Bond Act" is needed to maintain DEC's acquisition effort beyond 1990.

#### *LESSONS LEARNED*

A major concern of DEC is funding to meet the costs of managing the lands acquired. In the past, bond revenues have not been provided for that purpose. The proposed "21st-Century Environmental Quality Bond Act" would provide \$201 million for land management, but this amount is inadequate to meet the needs of DEC.

Both the irregular nature of the bond issues and the variations in annual appropriations contribute to fluctuations in the funding levels for land acquisition.

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## **CALIFORNIA STATE COASTAL CONSERVANCY**

### ***BACKGROUND***

The California State Coastal Conservancy was created to preserve and restore California's coastal resources and to address land use problems along the coast and in San Francisco Bay. The Conservancy is authorized to acquire land, and to design and implement programs for wetlands and watershed enhancement as well as for restoration of coastal land and urban waterfronts. In most cases, however, the Conservancy provides funds and technical assistance to local governments and nonprofit organizations for those purposes. Depending upon project costs and the availability of funds, the other party is often responsible for a portion of project financing. The Conservancy does not hold lands nor does it provide funding to others for long-term land management.

### ***FINANCING MECHANISM***

Funding for the Conservancy is included periodically in general obligation bonds issued by the state to fund several state agencies and programs. These bond acts can be initiated by the state legislature or, as they have been recently, by citizens. State bond acts including funding for the Conservancy have been approved every four years since the Conservancy was created in 1976. The acts often contain language specifying the programs or projects to receive funding.

The California Wildlife, Coastal and Park Land Conservation Act passed by initiative in June 1988. This \$776 million general obligation bond act made a total of \$58 million available for expenditure by the Conservancy. Of that amount, \$34 million is available for such purposes as acquisition, enhancement, and restoration of natural lands (including wetlands), development of public access, and preservation of agricultural lands. The remaining funds are reserved for specific projects or geographic areas. Some of the reserved funds will be used for wetland acquisition and enhancement.

The California Wildlife Protection Act of 1990 passed by initiative in June 1990. This initiative established the Habitat Conservation Fund, which will receive \$30 million from existing revenue sources, including the state's general fund, cigarette tax revenues, environmental license plate fund revenues, bond funds authorized after July 1, 1990, and other funds created by the legislature or the people for purposes consistent with the act. Under the 1990 act, the Conservancy is to be allocated \$4 million annually for 30 years. These funds are not earmarked for specific projects, but are to be used for general purposes, including acquisition of deer and mountain lion habitat, rare and endangered species habitat, wetlands, riparian and aquatic habitat, and open space.

### ***FUNDS MANAGEMENT***

Proceeds of the bond issues are placed in the state's general fund. Portions are appropriated annually by the legislature for Conservancy activities.

## *REVENUE EXPERIENCE*

Recent bond acts contained funding only for certain programs or projects and placed constructive limits on operating costs. Even though bonds including funding for Conservancy activities have been easily approved on a regular basis since 1976, Conservancy funding remains subject to the vagaries of the political process.

While the 1990 act should have provided a reliable source of funding for the first time, the Conservancy did not receive its \$4 million from the Habitat Conservation Fund for FY 1990-1991. Given the state's current budget crisis, the legislature would not appropriate any money from the state's general fund. Instead, in the final hours of the legislative session, the legislature designated funds already proposed for appropriation to the Conservancy from the 1984 and 1988 bond acts.

## *LESSONS LEARNED*

Voters in California have proven quite willing to approve bond issues including funding for Conservancy activities. However, because these funds often are earmarked for specific projects, not all projects receive consistent funding.

A significant portion of the Conservancy's funding is earmarked for grants to local governments. Yet, the Conservancy has a difficult time spending those funds because local governments often are unwilling or unable to undertake the projects suggested by the Conservancy. Long-term land management costs discourage local government participation and the Conservancy does not provide such funding. Nonprofit organizations work closely with the Conservancy to develop projects and have become active participants in Conservancy acquisition efforts.

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## MINNESOTA STATE WATER BANK PROGRAM

### *BACKGROUND*

The Division of Waters of the Minnesota Department of Natural Resources (DNR) administers a State Water Bank Program designed to compensate landowners for not converting wetlands to cropland. Under this program, the state purchases wetlands or makes easement payments to landowners to preserve privately-owned wetlands. To qualify for State Water Bank Program payments, the area must be a "protected wetland" or otherwise deemed eligible by the DNR. Water Bank Program easements restrict agricultural use of the area and require the landowner to keep the wetland in its natural state.

### *FINANCING MECHANISM*

The State Water Bank Program is primarily funded through allocations from state bond revenues, supplemented by appropriations from the state's general fund.

### *IMPLEMENTATION*

To be eligible for compensation under the State Water Bank Program, the area must be classified as a "protected wetland" under Minnesota Statutes Chapter 105, or if not so classified, can be designated eligible at the discretion of the DNR. For "protected wetlands," the DNR must have denied the landowner a permit to drain the wetland under the state protected waters permit program, and the landowner must demonstrate that the proposed drainage is not restricted by property agreements, would be profitable, and that drainage of the area would create high quality cropland. For unprotected wetlands, landowners must demonstrate that drainage is not restricted by property agreements.

For eligible "protected wetlands," the DNR must offer the landowner the following three types of compensation payments within 60 days of receiving a complete drainage permit application:

**Fee Purchase.** A purchase payment is based on a certified appraisal of the property, obtained by the DNR. The DNR may acquire land if the landowner can provide public access and obtain a county board resolution authorizing the sale of land to the state. The land will be established as a State Wildlife Management Area for public use and hunting.

**Permanent Easement.** A permanent easement payment is based on 50% of the average estimated market value of cropland in the township at the time of the permit application.

**Limited Duration Easement.** A limited duration easement payment is a one-time payment based on 65% of the value of a permanent easement payment at the time of the permit application. These easements are acquired for a duration of not less than 20 years.

If the DNR does not offer the landowner all of the above compensation offers within 60 days, the DNR cannot oppose drainage of a "protected wetland." However, the DNR can still prohibit drainage of a "protected wetland" if the landowner refuses to accept any of the compensation offers or if the DNR determines that the wetland is not eligible for compensation.

For unprotected wetlands, landowners are offered one or more of the compensation offers, based on availability of funds. The first significant program activity with unprotected wetlands occurred in 1988 through an open enrollment period, during which voluntary applications for enrolling unprotected wetlands were accepted.

The State Water Bank Program was established by the state legislature in 1985. Two amendments to the legislation, in 1987 and 1989, refined the compensation offers and the procedures for calculating easement payments. To date, the State Water Bank Program has completed 168 projects, involving a total of 8,010 acres, at a total cost of \$3.5 million.

### *LESSONS LEARNED*

Under the current State Water Bank Program eligibility rules, the DNR's financial offer to landowners is tied to state water permit applications. Consequently, the DNR can only protect wetlands proposed for drainage under the permit program. This limits the DNR's ability to acquire and protect the state's highest quality wetlands, as it could if wetlands were considered on a case-by-case basis.

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## **MINNESOTA RIM RESERVE WETLANDS RESTORATION PROGRAM**

### ***BACKGROUND***

The Reinvest in Minnesota (RIM) Reserve Wetlands Restoration Program pays landowners to restore previously drained wetlands. It is one component of Minnesota's comprehensive RIM program, which includes private land programs (under the RIM Reserve Program) along with public land programs (under the Minnesota Department of Natural Resources). The Minnesota Board of Water and Soil Resources (BWSR) coordinates administration of the RIM Reserve Program through the state's 91 soil and water conservation districts (SWCDs). Drained wetlands are enrolled in RIM Reserve through perpetual easements restricting agricultural use and requiring the landowner to establish permanent vegetative cover.

### ***FINANCING MECHANISM***

To date, the RIM Reserve Program has been funded primarily by revenues from general obligation bonds. Bond funds support acquisition of easements and wetland restoration activities. BWSR requests funding every two years from the state legislature. BWSR submitted a request to the 1990 state legislature for \$12 million in bond funds for the 1991-1992 fiscal years. The administrative costs of BWSR coordination and local SWCD implementation activities are supported by appropriations from the state's general fund. Program costs also are augmented by other state and federal agencies as well as conservation groups.

It is anticipated that Minnesota's newly established Environmental and Natural Resources Trust Fund will provide permanent funding for the RIM Reserve Program in the future. The state lottery is expected to be the primary funding source for the new trust fund.

### ***IMPLEMENTATION***

The Reinvest in Minnesota Act of 1986 established the RIM Reserve Program to retire certain fragile private lands from agricultural use and convert them to permanent vegetative cover for enhanced wildlife habitat. In 1987, the state legislature amended the RIM Reserve Program to allow drained wetlands to be eligible for enrollment in the program. Wetlands currently are a top priority among the six types of land eligible under the RIM Reserve Program.

To be eligible, a wetland must be a minimum of one acre, privately-owned, and restorable. In addition, up to 4 acres of upland may be enrolled for each acre of wetland. Landowners apply through their local SWCD. The state grants funds to the local SWCDs for administering the program.

For enrolling a drained wetland in the RIM Reserve Program, a landowner receives a one-time, lump-sum payment for conveying a perpetual easement to the state. The perpetual easement restricts cropping and grazing, and requires establishing a permanent vegetative cover beneficial to wildlife. Easement payments are related to the estimated market value of land in the township. After the state acquires a perpetual easement, the RIM Reserve Program provides 100% of the cost (up to \$300 per acre from the state) for wetland restoration.

Since 1986, BWSR has received applications through local SWCDs to restore 1,000 wetlands, totaling 1,900 acres of wetland and 3,400 acres of adjacent upland. Approximately 35% of these projects have been completed.

### ***LESSONS LEARNED***

The RIM Reserve Wetlands Restoration Program is successful because it is structured to include local conservation groups (for example, Pheasants Forever, Ducks Unlimited, and Rod and Gun Clubs). Allowing local conservation groups to apply local contributions directly to local projects creates a sense of local ownership of the program. Local participation also facilitates landowner compliance as local conservation groups will monitor RIM Reserve lands.

Although the state can offer landowners up to \$300 per acre for wetland restoration under RIM Reserve, this usually will not cover the entire costs of wetland restoration. Local chapters of conservation groups can participate in selecting landowner applications at the local SWCDs and they also can contribute money to a landowner for wetland restoration on RIM Reserve lands. When contributions are made by local conservation groups, they will sign the restoration plan in addition to the state and the landowner.

Landowners continue to pay property taxes and any other assessments on RIM Reserve easement lands. Because some counties continue to assess these acres as cropland, landowners in these counties are reluctant to enroll their land in the RIM Reserve Program.

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## **OREGON WETLANDS MITIGATION BANK REVOLVING FUND ACCOUNT**

The Oregon Division of State Lands (DSL) can finance certain wetlands activities using funds from the Oregon Wetlands Mitigation Bank Revolving Fund Account. This account was established by the Oregon Wetlands Mitigation Bank Act of 1987 (Oregon Revised Statutes 196.600 to 196.655). The account is separate and distinct from the state's general fund and was initially capitalized through a federal Coastal Zone Management grant.

According to the act, funds paid into the account can include state appropriations to the account; money awarded through grants under the federal Emergency Wetlands Resources Act of 1986 or the federal Coastal Zone Management Act of 1972; money obtained by gift, bequest, donation, or grant from any other public or private source; fees for purchase of mitigation bank credits; and interest earned on the account. Funds from the account are appropriated by the state legislature to DSL for its wetlands mitigation bank activities.

Mitigation is required as a condition of a state removal-fill permit to compensate for any unavoidable adverse impacts due to removal or fill activities otherwise complying with the requirements of the Removal-Fill Permit Program (see case study of Oregon Removal-Fill Permit Fees). A mitigation bank is a publicly-owned and operated wetland site that has been created, restored, or enhanced by DSL to compensate for unavoidable adverse impacts. Mitigation banks provide an option for off-site mitigation when such mitigation is required as a condition of a removal-fill permit. For each mitigation bank, DSL establishes credits based on numerical values representing its wetland resource functions and values. A mitigation bank credit can be withdrawn for a permit action only after all on-site mitigation methods have been examined and found to be impracticable. DSL is authorized to charge a fee for purchase of credits in a mitigation bank.

Although a mitigation bank has been established, no mitigation activities have occurred because no development projects have occurred in the areas covered by the mitigation bank. As a result, no funds are being paid into the Wetlands Mitigation Bank Revolving Fund Account. Even so, lack of funding has not resulted in lack of wetlands protection, because wetlands alterations have not occurred.

### **CONTACT**

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**APPENDIX A**  
**GLOSSARY OF FINANCIAL TERMS**

## GLOSSARY OF FINANCIAL TERMS

**Ad Valorem Tax.** A tax based on the assessed value of real property.

**Appropriation.** The allotment of funds to a purpose for a particular fiscal period, as specified in a law or ordinance.

**Assessed Valuation.** The value placed on real property for purposes of taxation.

**Base.** The number of parties or number of activities per party subject to a fee or tax.

**Bond.** A written promise to repay a debt at a specific date or maturity, with periodic payments of interest.

**Credit Risk.** The risk of default.

**Debt Ceiling.** A limit, set by constitution or law, on the amount of outstanding debt.

**Debt Service.** Periodic repayment of interest and principal on an outstanding loan or bond.

**Dedication.** The assignment of a particular revenue stream to specific government projects or programs, sometimes without need for an appropriation. Also called earmarking.

**Default.** Failure to pay in full and on time.

**Earmarking.** Statutory or constitutional dedication of revenues to specific government projects or programs.

**Excise Tax.** A tax levied against the sale or exchange of a specific good or service.

**Fee.** A charge for a particular activity or service.

**Financial Advisor.** A consultant to a unit of government who provides advice on financial management concerns.

**Financial Plan.** An approach to financing capital improvements which optimizes the sponsor's funding sources and uses of capital from the standpoints of cost, risk, and protection of future choices.

**General Fund.** The "pot" of commingled revenues from all sources.

**General Obligation Bond.** A bond secured by the pledge of the issuer's full faith, credit, and taxing power.

**Permit Fee.** A fee assessed against a permittee to recover the costs of permit processing.

**Public Good.** A good or service from which no potential beneficiary can feasibly be excluded

**Rate.** The amount of fee or tax charged for a specified service or activity.

**Real Estate Transfer Tax.** A tax on real estate transactions.

**Revenue Bond.** A bond secured solely by the pledge of project or system revenues, without recourse to any tax support.

**Severance Tax.** A tax on mineral, oil, gas, or other natural resource extraction.

**Special Tax Bond.** A bond secured by the pledge of the revenues from a particular tax source.

**Tax-exempt Bond.** A bond, the interest payments of which are exempt from federal income taxation under the federal revenue code and may also be exempt from state income taxes.

**Trust Fund.** An account from which funds may be withdrawn only for purposes specified by law.

**APPENDIX B**  
**WETLANDS REGIONAL PROGRAM CONTACTS**

## **WETLANDS REGIONAL PROGRAM CONTACTS**

### **Region I -- CT, MA, ME, NH, RI, VT**

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### **Region II -- NJ, NY**

Mr. Dan Montello, Chief  
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### **Region III -- DE, MD, PA, VA, WV**

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### **Region IV -- AL, FL, GA, KY, MS, NC, SC, TN**

Ms. Gail Vanderhoogt, Chief  
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**Region V -- IN, IL, MI, MN, OH, WI**

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**Region VI -- AR, LA, NM, OK, TX**

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**Region VII -- IA, KS, MO, NE**

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**Region VIII -- CO, MT, ND, SD, UT, WY**

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**Region IX -- AZ, CA, HI, NV**

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**Region X -- AK, ID, OR, WA**

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