



# Saint Louis County

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February 15, 2013

## **MEMORANDUM**

**TO:** County Commissioners

**FROM:** Chris Dahlberg  
County Board Chair

Kevin Z. Gray  
County Administrator

**RE: County Board Workshop – February 19, 2013**

A County Board Workshop has been scheduled for **Tuesday, February 19, 2013, beginning at 9:30 A.M. in the Public Works Administration Building Conference Room, 4787 Midway Road, Duluth, MN.** The agenda for the meeting is as follows:

- 9:30 A.M. 2012 Year in Review - Administration
- 10:00 A.M. 2012 Jail Study – Ken Schoen, Chair, ARC Advisory Board
- 11:30 A.M. Lunch
- 1:00 P.M. Public Works Wetlands/Permitting Issue – Jim Foldesi, Public Works

**NOTE:** County Board Workshops will not be assigned an adjournment time, but rather will continue until Commissioners are satisfied with the completed policy discussion on the topics presented the day of the workshop.

# A Study of the St. Louis County Jail

Why it is overcrowded while other Minnesota county jails are not.

Kenneth F. Schoen  
Chair  
Arrowhead Regional Corrections Advisory Board  
Duluth, Minnesota  
October 2012

## Executive Summary

Over the past ten years, the population of the St Louis County jail exceeded its capacity every year. The overage grew from 10% ten years ago to 50% in 2011. More than 11 million dollars was spent to accommodate the excess population in jails of other counties. In contrast, most counties in the state have had significant unused capacity. The obvious question is why. That's the purpose of this study.

### POTENTIAL REASONS:

#### Increasing crime and jail admissions (bookings)

Crime rates in St Louis County declined during the past decade as it did for the state as a whole. Bookings increased during the period 2001 to 2006 but then declined while jail population consistently rose. Together, the two statistics do not explain the problem of increasing jail census.

#### Insufficient capacity

The capacity of St Louis County to house pretrial and sentenced inmates was compared with seven Minnesota counties of similar size all of which are well within capacity or at capacity (Stearns) at year-end. The seven were compared with St. Louis for jail beds in use to their population of 18 to 64 year olds, to the amount of serious crime, and to the number of serious crimes court filings. On all three factors, St. Louis fell somewhere in the middle indicating that the lack of capacity is not a reason.

#### The size of St. Louis County

St. Louis is by far the largest county in the state, raising the question of size being an impediment to case processing and a reason behind the build up of its jail population.

Adjacent to St. Louis County is Carlton County - about one eighth the size of St Louis. It is the only other county in the state experiencing the same problem. Clearly its jail crowding cannot be attributed to encumbrances related to size. An assessment of the 2011 jail population of Carlton County found the same condition as St Louis County - as described in the next section - a small number of inmates (164 of 1774) consumed the entire capacity of the jail. In addition, Carlton and St. Louis have in common the 6<sup>th</sup> District Court, the public defender office and

Arrowhead Regional Corrections. Rather than size being a factor in overcrowding, the St. Louis problem is more likely related to practices within the criminal justice system.

### The most likely reason

Like Carlton, the lopsided use of jail capacity was extreme. During 2011, the jail housed 4848 inmates. 4291 inmates of the 4848 consumed about 50% of the facility's capacity. However, the remaining 587 ate up its entire capacity. While most admissions stay for a short time - 51% of the 4633 released in 2011 were out within three days - it is the long stay inmate that is creating the overcrowding problem

### Who are the 587 inmates?

The 587 long stay residents averaged stays of 106 days - about 3 ½ months. 248 (42%) of the 587 were on pretrial status and 337 (58%) were sentenced. These durations are the length of jail stay for those released during 2011 and the length of stay, as of December 31, for those in jail at year end. While "sentenced" is a larger group, a considerable portion of their time in jail was as a pre trial inmate. (That data is inaccessible but needs to be obtained.)

### The 248 pretrial inmates

For the long stay pretrial inmate, two factors are the primary reason for their extended stay - hearings, continuances and large gaps between hearings. On the latter, over 100 day hiatuses between hearings were not uncommon. Regarding the number of hearings to bring a case to conclusion, during 2011 St. Louis County courts averaged 5.1 hearings per case. Olmsted County courts achieved disposition with one less hearing for an average of 4.1 hearings per case. If St. Louis were to lower its average by one, not only would cases move faster but also 2,742 hearings would have been eliminated. (These figures includes both in and out of custody cases.) These "slowing" characteristics, of course, extend to all in custody cases, meaning that it isn't just the 248 that need to move closer to a "speedy trial" condition.

### The 337 sentenced inmates

As stated above, factors at play elongating disposition of pretrial inmates apply to this group as well in that a sizable amount of this group's total time served was on pretrial status. Second, as described next, the jail ought to get out of the business of housing sentenced inmates. That should be the function of NERCC (Northeastern Regional Correctional Center).

## NERCC as a component of the solution

While the county is housing inmates in jails of other counties, this sentenced facility has been operating at less than capacity over the last year and a half. - sometimes at two thirds capacity. That condition appears to be a product of a faulty screening tool coupled to institutional policies that return a sizable number to the jail (10% of those accepted in 2011).

The courts “screen” the serious offenders who are bound for state prison. The residual group serving “local time,” return to the community within a relatively short period. By definition they are not a major threat to the community. With some upgrading of the facility and diversification of program, NERCC could have the capacity to hold all sentenced inmates. St Louis County currently supports NERCC in an amount that is the equivalent of 118 beds. That is approximately the number of sentenced inmates now at NERCC and in the jail.

*By implementing these two measures - moving in-custody cases through the courts at a faster pace and NERCC serving as the sentenced facility - the overcrowding problem would have high probability of being remedied.*

## Other Factors

### Probation Violators

27.4% of admissions to the jail were for violation of probation (1280). Not known is the portion of that group that were not involved in a new crime but were “technical” violations. If the percentage was the same as the failure rate that research for NERCC found, about a third (427) are technical violators. Understanding impact on the jail of the violator of probation is important. Assuming the 427 number is close, not known is how long they were jailed - an essential fact in determining their impact on the jail. And also not known, is how many technical violators were punished with stays of sentence being revoked - another factor that can drive the jail census. The recently initialed test program for technical violators in Hibbing holds promise for reducing jail commitments.

### Jail Recidivists

44% of admissions were repeats in 2011 ranging from two bookings to 11. No analysis has been made of these folks - merely short stay nuisances? largely probation violators? And what might be done to reduce the number.

### Bail as a diversion from jail

Only 772 of the 4633 released from the jail in 2011 were discharged on bond. The Justice Improvement Project issued a report earlier this year detailing who is offered bail but describing who make bail is yet to come. This route to release is meager in use, and should have potential for increased use.

### Electronic Monitoring

This lightly used option for pretrial and sentenced offenders has great likelihood for taking a load off the jail. Current policy of requiring the offender to pay for the service is counter productive.

### Encouraging and Maintaining Change

The primary way to prod change and once achieved, maintain gains, is through a regularly circulated "report card" to criminal justice personnel - probably monthly. The report would illuminate case processing, related glitches, census data and trends. This has to be done by the Sheriff. He has the data in his system - length of stays, gaps between hearings, number of hearings to disposition, who makes bail, number of technical violations - listing only a few.

# The Study

## Background to the Study.

St Louis County spends over a million and half dollars annually housing inmates whose numbers exceed the capacity of the jail, confined in jails of several Minnesota counties and one in Wisconsin. The excess is occasionally in the realm of 50% beyond the jail's operating capacity of 170. Over the past decade the cost of this measure exceeded 11 million dollars. Moreover, the trend is upward with an increasing average daily population and related cost.

In contrast, counties across the state have excess capacity created by overbuilding and a dropping crime rate. In June of last year 3000 jail cells sat empty as reported by the Minneapolis Star Tribune. The obvious questions are - is the St. Louis County jail undersized or is its use in excess of need?

At a September 2011 Arrowhead Regional Corrections Advisory Board meeting, Sheriff Ross Litman brought the issue to the Board's attention. The difference between St. Louis County's crowded jail and most counties in the state having large vacancies - except adjoining Carlton County - peaked my interest. I offered to undertake a study to explore why this county is near singular in experiencing the condition and identify remedies. My offer was gratis with only related expenses to be reimbursed. The Sheriff accepted the offer.

Over the months of this study - interrupted by vacations, personal obligations and limited by a one person operation - a lot of time was spent identifying the intervening factors affecting the jail census and gathering information to assess their impact. So much information, that the element of error is a concern and probably exists - hopefully small. Much of the data analysis required manual manipulation - a slow process.

## The Approach of the Study

The study is based on information obtained from data bases maintained by St Louis County jail, Minnesota Court Information Systems (MNCIS), Minnesota Department of Corrections and Arrowhead Regional Corrections. Interviews were held with judges, court administrators, prosecutors, defense attorneys, corrections officials, county administrators, county commissioners, and officers at the jail as well as the Sheriff himself. Many visits were made to the jail, two to NERCC (North East Regional Correctional Center) and one to Carlton County - the adjacent county experiencing overcrowding to a similar extent as St Louis - meeting with the jail administrator and sheriff.

To compare operations with a county of similar size, a visit was made to Olmsted County (Rochester) interviewing criminal justice officials including the Sheriff, Jail Administrator, judges, court administration and the Corrections Chief. Another visit to Stearns County, one of similar size, was contemplated but abandoned due to lack of time. However, some comparisons to it and as well as Olmsted are included in this study.

The level of cooperation with the study by all parties has been outstanding. Jail personnel have been particularly helpful providing a huge amount data from its data base and operational information. And provided promptly.

### The St. Louis County Jail

The jail, built and opened 17 years ago in 1995, is designed as a high security facility, indeed, to the level of an Oak Park Heights - the state's most secure prison. Among other features, security is achieved through a direct supervision model with several relatively small units, facilitating visual oversight and containment. Its design capacity is 200 with an operating capacity of 170. The size is reduced by the need to separate different types of inmates. The facility is in excellent condition and a well run operation by competent personnel.

Beyond the jail itself, a feat for sheriff's office personnel is successfully managing the transport of inmates between the jail and the County's three courts in diverse locations and timely moving of inmates to and from distant county jails.

### Efforts to Respond to the Problem

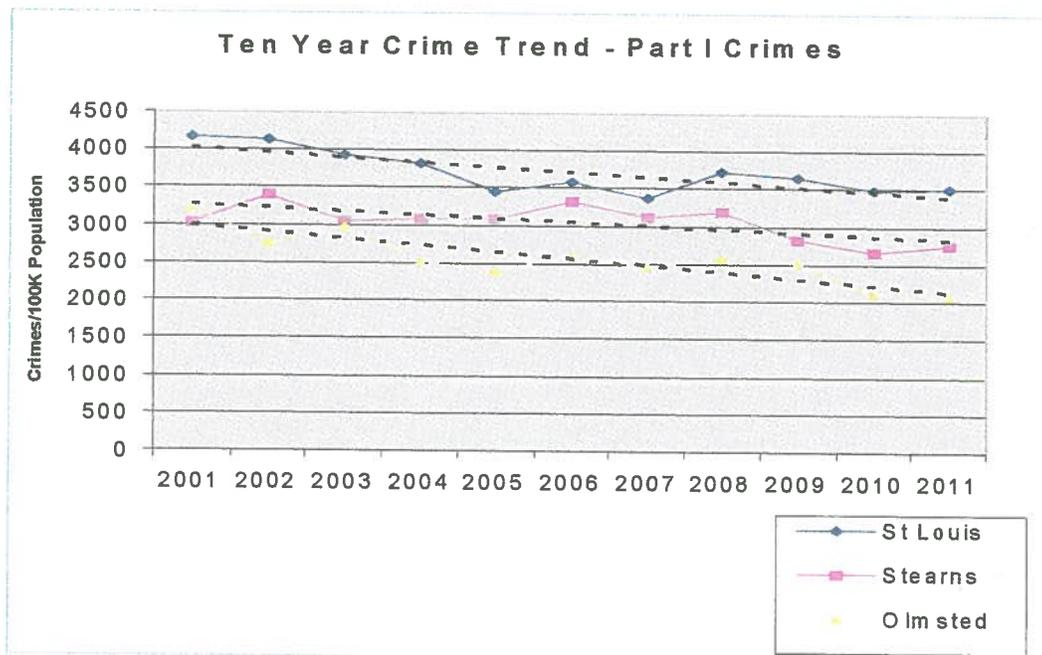
The population of the jail is driven by a host of factors that can be difficult to identify and assess for their impact. It is this complexity that has stymied a jail overcrowding committee organized over a decade ago to address the jail problem and continues to meet regularly as the renamed Criminal Justice Coordinating Committee. While the jail data base is a rich resource of information, it is structured to provide jail operation information rather than data for analysis. Without evaluative data, little progress toward identifying crowding solutions is possible.

Likewise a study of the jail by the National Institute of Corrections (NIC) in November 2007 gained no traction at solving the overcrowding problem. Brought in by Sheriff Litman, over the course of three days, NIC consultants met with local officials and produced a report with

observations and recommendations. While good information was supplied, again without an analysis of underlying factors that drive the size of the jail population, the prospect for the study to make a difference was circumscribed.

### Crime Rates as a Factor Driving Jail Population

Over the past decade serious crime in Minnesota and in St Louis County has declined. Using FBI Uniform Crime Part I data (serious crimes including murder, rape burglary, arson, etc.) trends are displayed in the chart below for Part 1 crime - the type of crimes that are more likely to involve jail usage - for the three counties being compared. It presents a downward trend in crime rate over a ten year period. Rather than being a factor for increasing jail census, the crime trend should mitigate for less need of jail space.



### Insufficient Jail Capacity?

The opinion is held by some that the St. Louis County jail was undersized from the outset when it was built in 1995. There are no published guidelines to gauge needed capacity. The National Institute of Corrections provides a list of factors that affect jail census and guidelines for jail planning but no formula, when applied, produces the answer to the number of required beds.

For this study, judging adequate capacity is addressed by comparing St Louis with seven Minnesota counties of comparative size and make-up, having both metropolitan and rural areas. The objective was to learn how these counties, whose jail populations are within or lower than capacity, stack up against St. Louis. The two large counties - Hennepin and Ramsey were ruled

out as being too different. The counties were compared on three elements considered to be drivers of need: (Carlton is included for an analysis occurring later in this paper)

The ratio of jail capacity to:

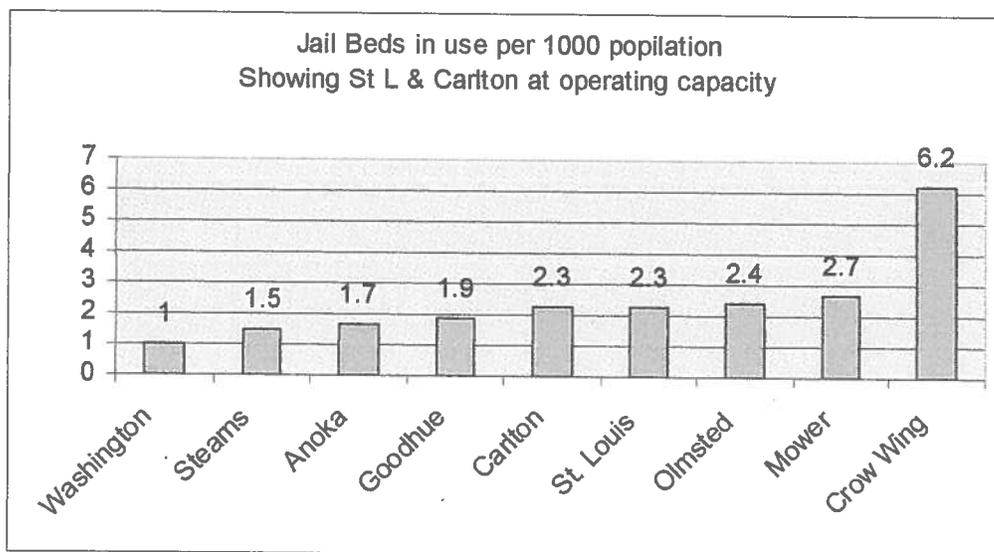
1. Population “at-risk” - meaning the number of county residents over 17 and under 65.
2. The number of Part One crimes
3. The number of serious crime filings with the courts.

Capacity is defined as beds-in-use (the number occupied) on January 1, 2012. The rationale for using this statistic is that occupancy is a better indicator of need thus taking into account the fact that most counties have excess capacity.

When comparing counties, ancillary facilities are included. For St Louis County operational capacity totals 301 including the jail at 170 beds, Range jails at 11, NERCC at 120 beds. NERCC is an adjunct to the jail housing sentenced inmates. Similarly, ancillary units in Olmsted and Anoka counties are included in their data.

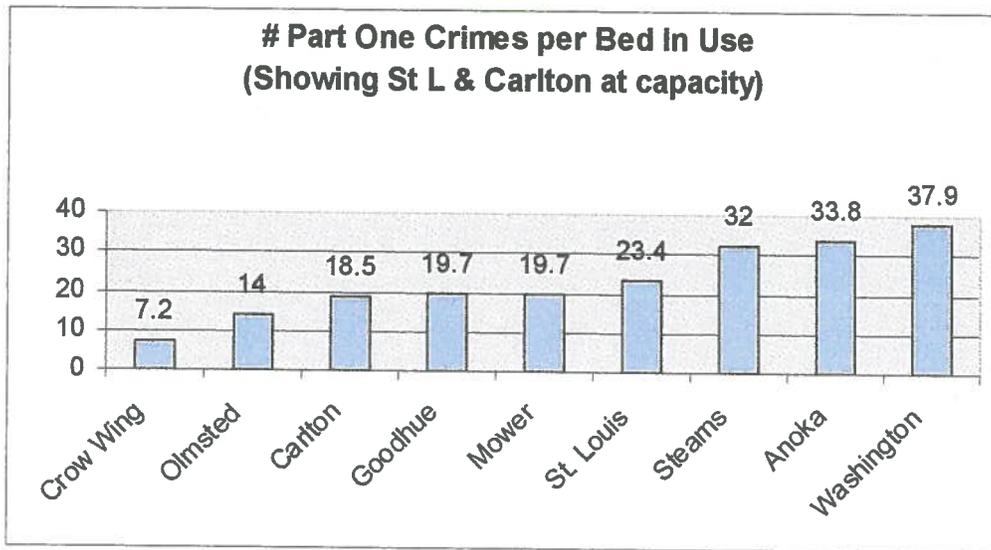
#### Jail Beds as a Ratio to Population ages 18-64

The chart below shows St. Louis County is exceeded in the number of beds per 1000 population only by Olmsted, Mower and Crow Wing counties.



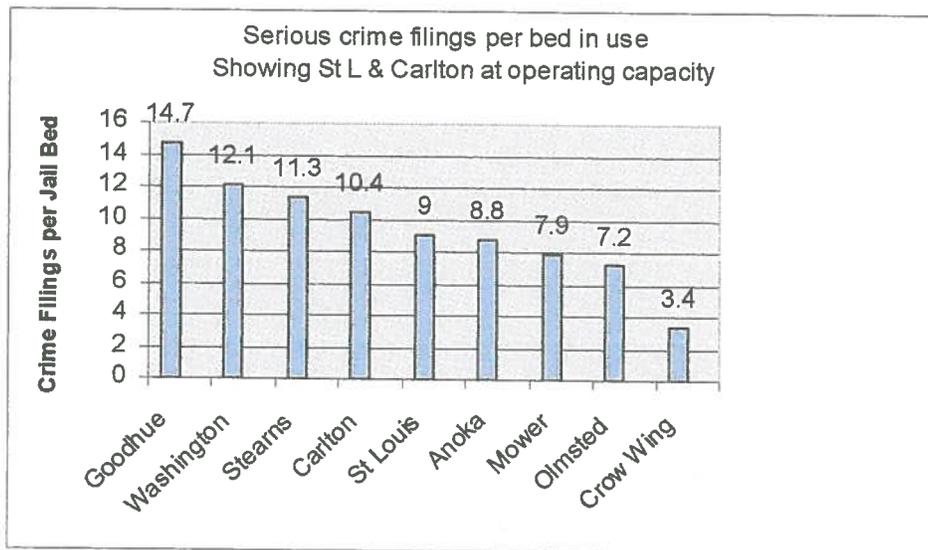
Ratio of serious crime to jail beds.

The next chart shows the number of Part One crimes to a jail bed in use with St Louis and Carlton shown at capacity. St Louis falls in fourth place - about mid group. (If St Louis was shown at bed filled - including rental beds - it would be 21 crimes per bed.) Again, the conclusion is that St. Louis had adequate capacity. When comparisons are made combining Part One and Part Two crimes, relationships are identical except Mower moves between St. Louis and Stearns.



Ratio of Serious Crime Filings to Beds in Use

Again, St Louis falls in the middle of the comparative with 9 filings per bed.

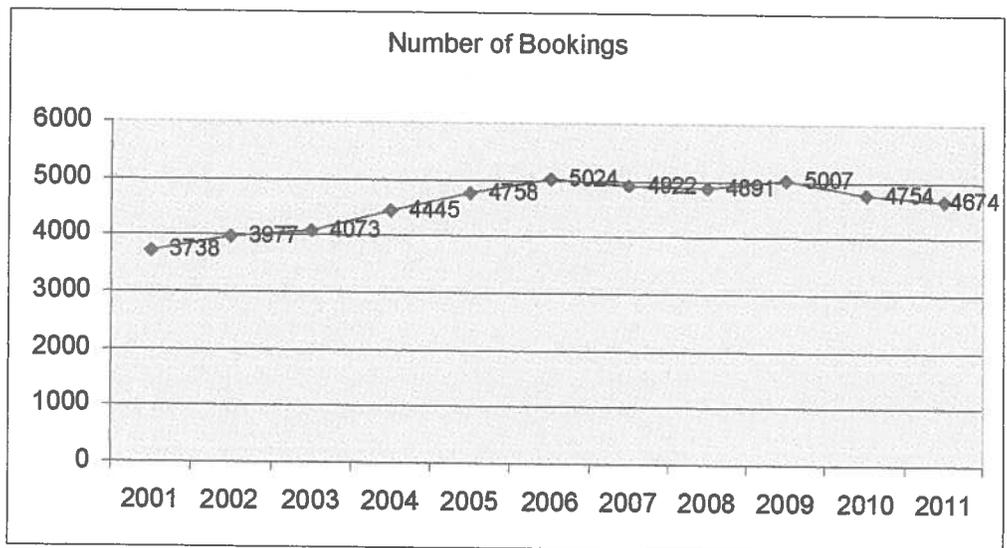


Conclusion: When comparing the capacity of St Louis County with seven similar counties for housing pre-trial and sentenced inmates, on all three measurements St Louis fares well - falling approximately in the middle statistic, indicating adequate capacity.

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The jail is a busy place

Over the past decade bookings peaked at mid decade rising by 35% to 5024 - up more than 1000 from 3738 in 2001 and then trending somewhat downward. This past year, 2011, 4,674 admissions (bookings) occurred. (4,633 inmates released during the year - 41 fewer releases than admissions.) With inmates already in jail on Jan. 1, 2011, 4,878 inmates occupied a jail bed during the year.



Bookings include many repeats

44% of admissions in 2011 were repeats - that is, had more than one booking during the year ranging from two to 11 bookings.

# of admissions	Number of inmates
11	1
9	1
8	1
7	1
6	8
5	19
4	52
3	174
2	593
1	2690

Three inmates were incarcerated for the entire year and remained in jail at year-end. 14 inmates were released during the year who occupied a bed for over a year ranging in stays from 392 days to 1325 days.

### Makeup of the Population

On a given day the population consists primarily of three categories

Sentenced	21%
Pretrial	74%
Hold	5%

These numbers vary a bit but not much.

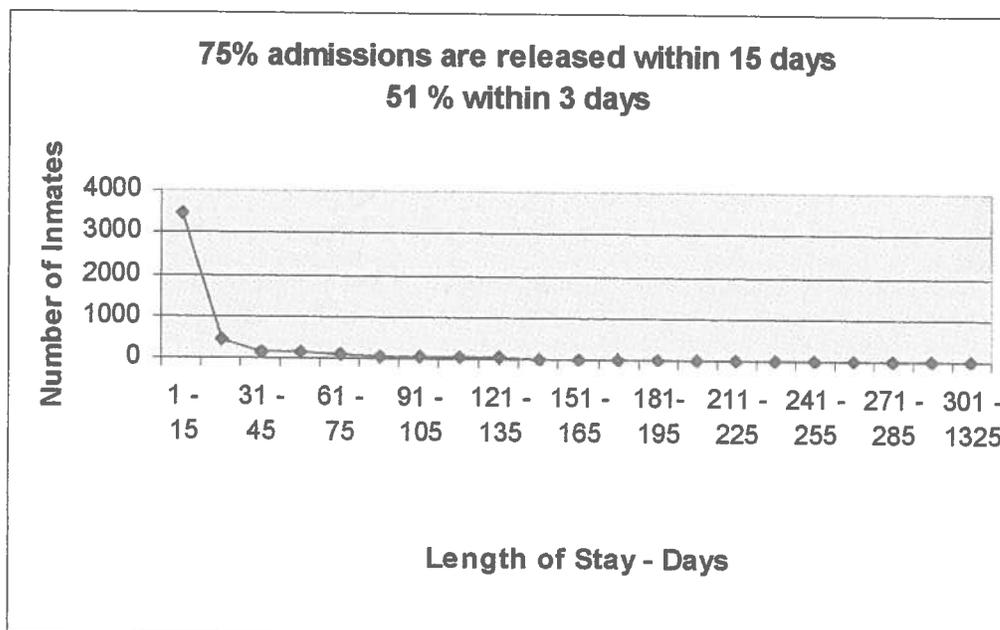
### Overall Average Length of Stay

For those released during the year, the average number of jail days each inmate was confined during the year was 19.4 days. (The actual average length of stay of an inmate may be longer because some stays transcend prior and subsequent years) This computation reflects those booked and released the same day as a zero length of stay. The jail counts that as one day and therefore their average length of stay is one day longer.

The 19.4 days LOS (length of stay) exceeds the jail capacity by about 6 ½ days and thus the overage. With 4674 admissions, the average LOS must be no more than 13.3 days to remain within capacity.

### Rate of Release

The bulk of bookings are released within a few days - 75% within 15 days and half within three days.



## The Culprit - the Long Stay Inmate

However, it is the long stay inmate that consumes much of the jail space. In 2011, 587 inmates use the entire capacity of the jail - only 12% of the 4,878 inmates who occupied a bed during the year. With stays, during the year, between 49 and 365 days, the 587 eat up the jail's capacity. It is this group of inmates that need to be better understood.

The table on the next page displays all 2011 occupants by length of stay (LOS), the number of inmates for each length of stay and the amount of capacity each LOS used, measured in bed days. At operating capacity the jail has 62,050 bed days.

## Implications

The line separating the 587 long-timers from the remaining 4291 inmates is obviously numerically derived - rather than by policy. However, for crafting a strategy to remedy jail overcrowding, it provides instructive information.

a) Given the fact that the 587 long-timers consume entire jail capacity, unless that condition is altered, overcrowding will remain untouched

b) The impact on the jail census by the 4291 inmates is comparatively small in spite of its large numbers - consuming 86 beds - half of jail capacity. Indeed, they could disappear and the jail would remain full.

c) Substituting alternatives for jailing diminish in their effect the farther they occur from the demarcation line on the shorter stay side of the continuum. Said otherwise, the fewer the number of days now served in the jail, the less impact alternatives will have. Conversely, the farther from the line on the longer stay side, the greater the impact. However, also the farther from the line in the direction of longer stay, the less likely an alternative is appropriate.

## From which courts do the 587 inmates derive

Bases upon the number of cases heard<sup>1</sup> by each court in 2011 (Duluth 1572, Virginia 521, Hibbing 465) the distribution between the courts of the 587 long-timers is pretty even, tilting slightly toward the Range. Duluth with 61% of total cases heard, had 59% of the 587 inmates; Virginia with 20% of total cases heard, had 22% of these inmates; Hibbing with 18% of cases heard, had 17% on the inmates. These percentages assume that among the three courts, "cases heard" are a similar proportion of in-custody cases.

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<sup>1</sup> Serious Felony, Felony DWI, Other Felony, Gross Misdemeanor DWI, Other Gross Misdemeanor

## Distribution of Use of Jail Capacity 2011

los	# Inmates	Bed Days
0	758	0
1	944	944
2	486	972
3	289	867
4	185	740
5	132	660
6	120	720
7	102	714
8	74	592
9	114	1026
10	61	610
11	36	396
12	71	852
13	73	949
14	67	938

**4291 Inmates  
86 Beds**

18	63	1134
19	77	1463
20	36	720
21	22	462
22	24	528
23	18	414
24	27	648
25	24	600
26	22	572
27	29	783
28	20	560
29	26	754
30	17	510
31	12	372
32	21	672
33	9	297
34	19	646
35	12	420
36	14	504
37	11	407
38	13	494
39	18	702
40	13	520
41	12	492
42	11	462
43	7	301
44	10	440
45	7	315
46	7	322
47	12	564
48	16	768

los	# Inmates	Bed Days
49	10	490
50	14	700
51	5	255
52	14	728
53	6	318
54	16	864
55	10	550
56	6	336
57	14	798
58	12	696
59	21	1239
60	7	420
61	8	488
62	10	620
63	6	378
64	7	448
65	7	455
66	14	924
67	2	134
68	9	612
69	5	345
70	8	560
71	7	497
72	8	576
73	7	511
74	7	518
75	7	525
76	6	456
77	6	462
78	6	468
79	7	553
80	5	400
81	1	81
82	2	164
83	5	415
84	5	420
85	1	85
86	3	258
87	3	261
88	8	704
89	3	267
90	3	270
91	6	546
92	2	184
93	4	372
94	3	282
95	1	95
96	3	288
97	8	776
98	1	98
99	5	495
100	1	100
101	4	404
103	5	515
104	6	624
105	5	525
106	1	106
107	2	214
108	5	540
109	4	436
110	4	440
111	4	444
112	7	784

**587 Inmates  
170 Beds  
Entire Capacity**

113	1	113
114	1	114
115	5	575
116	3	348
117	6	702
118	6	708
119	4	476
120	7	840
121	2	242
122	1	122
123	2	246
124	3	372
125	3	375
126	3	378
127	4	508
129	5	645
135	1	135
136	1	136
137	2	274
138	6	828
139	1	139
140	2	280
141	2	282
142	1	142
143	2	286
145	2	290
146	1	146
147	1	147
148	1	148
149	1	149
150	1	150
151	1	151
152	1	152
153	2	306
154	2	308
155	2	310
156	2	312
157	1	157
158	3	474
160	3	480
164	2	328
166	3	498
167	2	334
168	2	336
171	2	342
172	2	344
173	1	173
175	2	350
176	1	176
177	1	177
178	4	712
179	1	179
180	1	180
181	3	543
183	1	183
184	1	184
185	1	185
186	2	372

los	# Inmates	Bed Days
187	1	187
188	2	376
193	1	193
194	2	388
195	1	195
196	1	196
197	1	197
198	3	594
199	1	199
200	1	200
203	1	203
206	1	206
209	1	209
210	1	210
211	2	422
214	1	214
218	1	218
220	1	220
222	1	222
227	1	227
229	1	229
230	2	460
232	2	464
237	2	474
238	4	952
239	1	239
242	2	484
243	1	243
251	1	251
255	1	255
260	1	260
265	1	265
272	1	272
283	1	283
289	1	289
298	1	298
301	1	301
304	1	304
308	1	308
318	1	318
333	1	333
354	1	354
365	3	1095

**ENTIRE GROUP  
4848 INMATES  
93,141 Bed Days  
255 Beds**

The Make-Up of the Group of 587

The chart below indicates the status of an inmate when released and status of those in custody at year-end.

	#	Average Beds LOS Used 2011		% of beds used
<b>Remand/Pre Trial</b>				
Released to another authority	127	116.6	40.6	24% See chart below
By Court on Supervised release or ROR	39	86	9	5%
Remained in custody at year end	67	140	25.7	15% 3 jailed for entire yea
<b>TOTAL</b>	<b>106</b>		<b>34.7</b>	<b>20%</b>
<b>Sentenced</b>				
Released to another authority	114	91	28.5	17% See chart below
Sentence Completed	140	98.4	37.7	22% Time credited unknow
By Court on Supervised release or ROR	40	78.3	17.8	10%
Remained in custody at year end	40	130	14.3	8%
Bail Supplied	3	78	0.6	0%
<b>TOTAL</b>	<b>83</b>		<b>32.7</b>	<b>19%</b>
Other	15	75	3	2%

Two of the above groups - *Remand/Released to Another Authority* and *Sentenced/Released to Another Authority* - reveal the amount of processing time from admission to disposition. That is, the length time spent as pretrial is the amount of time served in jail prior to transfer to another authority. In contrast, those who were sentenced and completed their sentence in jail (the 140 above), the portion of their time served as pretrial cannot be distinguished.

1. Remand/Released to Another Authority

This group of 127 is primarily sentenced to the Commissioner of Corrections. Again, their length of time in jail was as pretrial inmates.

The chart below lists 31 long-stay inmates from the group of 127 plus a few from the 67 who were in custody year-end as pre-trial. The notable figures are the number of hearings to disposition and the lengthy gaps between hearings. These factors contribute significantly to long pretrial stays.

Case	Total Days in jail	Days in Jail during 2011	Court	# Hearings	Longest Gap Between Hearings (days)	Disposition
1	1533	365	Hibbing	24	853	Prison
2	766	365	Hibbing	11	286	St. Cloud
3	509	365	Duluth	14	105	Supervised Release
4	811	318	Duluth	27	204	Prison
5	308	308	Duluth	10	173	Prison
6	453	283	Duluth	6	179	St Cloud
7	265	265	Hibbing	9	138	Prison
8	260	260	Hibbing	9	56	Prison
9	239	239	Duluth	8	82	release to Carlton

Case	Total Days in jail	Days in Jail during 2011	Court	# Hearings	Longest Gap Between Hearings (days)	Disposition
11	237	237	Hibbing	10	42	St Peter
12	263	227	Duluth	9	77	NERCC
13	218	218	Duluth	11	116	St Cloud
14	199	199	Duluth	10	49	Prison
15	198	198	Duluth	12	81	Teen Challenge
16	185	185	Duluth	9	66	Feds
17	351	164	Duluth	9	97	Prison
18	156	156	Duluth	4	68	Bethel
19	143	143	Duluth	5	45	Prison
20	141	141	Duluth	2	139	Miller Dwan
21	140	140	Hibbing	6	35	Teen Challenge
22	139	139	Hibbing	4	59	St Peter
23	138	138	Duluth	7	43	St Cloud
24	423	124	Duluth	7	161	St Cloud
25	1325	117	Virginia	16	269	Prison
26	104	104	Duluth	5	60	Port Rehab
27	359	103	Duluth	7	136	Prison
28	608	75	Duluth	12	179	Prison
29	293	66	Duluth	7	212	St Cloud
30	603	24	Hibbing	14	159	Prison
31	107	19	Duluth	4	54	Feds
		5923 days			10% of jail capacity	

## 2. Sentenced/Released to Another Authority

This group of 114 - presumably convicted of lesser crimes than the above group - is sentenced to a sanction other than the jail with NERCC being the major recipient for males. As with the first group, their period in jail reveals pretrial length. The group consists of 91 males and 23 females. The chart below displays the processing of 16 males showing several things. Again time between hearings can be long - for these 16, as much as three months. 11 of the sixteen were in jail for longer time than they ended up spending at NERCC - a complaint often heard by NERCC officials. Unexplained is the sometimes long gap between disposition and arrival at NERCC.

Case	Days in jail	Court	# Hearings	Longest Gap Between Hearings (days)	Days from Crt to NERCC	Days at NERCC	Jail time exceeded NERCC
1	188	Duluth	7	69	1	241	
2	147	Virginia	7	45	2	41	*
3	147	Duluth	7	72	6	236	
4	132	Virginia	8	14	70	40	*
5	130	Duluth	5	63	2	111	*
6	130	Hibbing	5	58	12	107	*
7	126	Hibbing	3	35	77	53	*
8	120	Hibbing	3	35	55	90	*
9	112	Duluth	4	49	1	63	*
10	110	Duluth	9	29	16	10	*
11	110	Duluth	5	40	6	118	
12	109	Hibbing	4	34	5	132	

Case	Days in jail	Court	# Hearings	Longest Gap Between Hearings (days)	Days from Crt to NERCC	Days at NERCC	Jail time exceeded NERCC
14	105	Duluth	4	42	3	130	
15	104	Virginia	3	91	8	50	*
16	101	Duluth	3	62	7	20	0

For both groups above, bringing a case to disposition took about 100 days each on average.

### 3. The Sentenced Inmate

Beyond the above two categories- *Sentenced/Sentence Completed* - within this group the largest subgroup are the 140 doing a local sentence. Stated again, the amount of time spent in jail prior to sentencing is not available (It could and should). The pretrial period probably constitutes a major portion of time spent in jail. The implication being, if options other than jail are available for inmates serving a local sentence, given the large credit for good time, other options would offer little relief.

4. The 39 and 40 released by the court on supervised release or ROR. It's hard to know what happened to move the court to release these 79 after being the jail for long periods - approximately three months on average.

5. Finally, the balance of the 587 remaining in custody at year-end (67 and 40) were in jail a long time. .

### Number of Hearings and Continuances as a Factor Driving Overcrowding

It is not rare to hear the opinion expressed that there are too many continuances in the St. Louis County courts. A 2008 report by the National Center for State Courts (*Staff Efficiency and Court Calendars For the District Court in Duluth, Minnesota*) stated:

*Many perceive that there are too many continuances - every day, all the time. Continuing a case to next week means it must be heard by another judge, as well as causing more staff work. Criminal cases often have redundant settings. Probation says that judges must run a tighter ship, with fewer continuances and more insistence that attorneys be on time. Constant resetting of criminal cases costs the sheriff's office a great deal.*

The MNCIS data base reports continuances. However, with obvious inconsistencies, the decision was not to use continuance data because of unreliability.

Its summary report of *hearings held* is regarded as accurate which includes continuances. It reports total number of cases, total pre-disposition hearings and average pre-disposition hearings per case are reported. The same information is provided for post-disposition cases.

The data is presented by court and crimes as follows:

- Felony DWI
- Gross Misdemeanor DWI
- Other Felony
- Other Gross Misdemeanor
- Serious Felony

In 2011 the St. Louis County Courts processed 2,558 cases through 13,230 hearings with an average of 5.1 hearings per case. Considerable variance exists between the three courts. Duluth had an average of 4.7 hearings per case (1572 cases/7456 hearings); Hibbing 6.6 hearings per case (465 cases/3070 hearings); Virginia 5.2 hearings per case (521 cases/2704 hearings).

In contrast, Olmsted County processes its cases at an average 4.1 hearings per case. Applying that average to St. Louis's 2,558 cases results in 10,488 hearings, 2,742 fewer hearings. There is no reason to suggest that Olmsted provides a special standard to emulate. However, it can be said that the Olmsted courts dispose of cases with fewer hearings than St. Louis courts.<sup>2</sup> And Duluth courts dispose of cases with fewer hearings than Hibbing or Virginia. These differences beg the question of why. Probably, if not certainly, disparity is due to the frequency of continuances. Continuances or not, more hearings contribute to processing delay while inmates remain in jail. These processing numbers apply to all cases heard not just in-custody cases.

As an important aside, offenders who were pretty clearly destined for prison from the outset but didn't get there during the months and even years of court hearings, are credited for their time spent in jail plus good time. This shortens their stay in a state institution and St. Louis County therefore in effect, subsidizes the state for time in jail that a quicker processing would avoid. Last year 293 offenders were sent to state institutions from St. Louis County. Some were parole violators whose return to prison was prompt.

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<sup>2</sup> Olmsted has the "luxury" of a lower crime rate with fewer crimes and fewer bookings per jail bed, but that is topic separate from the operation of the courts.

## The Sentenced Inmate Doing a "Local" Sentence

Beyond those sentenced to the Commissioner of Corrections, in 2011 some 600 inmates were sentenced to a local sentence and released from the jail after their sentence was completed using about 74 jail and rented beds. Another group of 475 sentenced offenders were released from NERCC to the community with another 50 returned to the jail prior to the expiration of their sentenced.

On an average day about 21% of the jail population - 45 to 50 inmates are sentenced and another 80 to 85 are at NERCC. The NERCC group's stay is entirely as sentenced whereas the in-jail sentenced inmate spent some portion of their stay as pretrial. Together the sentenced inmate represents about 40% of the overall population.

Again, looking at Olmsted County, there the sentenced inmate is housed outside the jail in their work release center across the street from the jail - a facility that at best is somewhat more secure than a fully open facility. If that arrangement was the case for St. Louis, the crowding problem would be largely solved.

## NERCC

The Northeast Regional Correctional Center, NERCC, is a tired, males only, poorly located facility and in recent months, operating almost one-third below capacity.

Located some 20 miles north of Duluth, the facility was established 80 years ago as the St. Louis County Workfarm. As the name indicates, farming was its program. Sitting on 3200 acres of property with 500 under cultivation, farming continues as a central activity, tending fields, growing produce along with raising pigs, chickens, turkeys - hardly a vocational activity to prepare its urban residents for future employment. Prison/jail farming was a common feature of penal institutions across the country in years past but now is almost entirely abandoned felled by cost effectiveness analyses. It is cheaper to buy directly from food wholesalers who deliver to the door. That plus the cyclical/seasonal nature of the activity complicates providing a consistent program for inmates.

The facility is a scattering of buildings situated in a fairly concentrated area of the huge property that are in various states of repair with some abandoned. The physical arrangement of the facility presents a management problem. The road into the facility ends up in a diffusion of buildings. In a sense it is facility without entrance - that is, an entrance that guides those arriving to a receiving office or location. With that, the legitimate first time arriver becomes confused and illegitimate "visitor" bringing, for example, a stash of drugs, can operate largely unfettered.

During week days residents attend school and treatment programs using up-to-date rehabilitative techniques. Its remote location precludes work release, day reporting, weekend sentences - programs that relate to the community for its soon-to-return residents. A 2006 recidivism study found 62% of those released three years earlier (484 residents) failed. However, the lion's share of the recidivism (36%) was for violation of probation and half of those were for non crime behavior - technical violations. The good news was that felony violations were cut in half from a 2003 study. These figures are tempered by screening admissions initially and expelling non-adjusters during the course of their stay.

The low population condition developed along with implementation of a classification system on January 1, 2011. The change was motivated by the requirement of the Department of Corrections for a screening tool to be applied for accepting inmates appropriate to a minimum security facility. The screening tool was developed by NERCC personnel. Normally the primary criterion for placement in a minimum security facility is to avoid inmates who pose a danger to the community if they were to escape. Being able to adjust to an open facility is a secondary criteria. In this case the primary criteria was to cull management problems. During 2011, of the 597 screened 19% (118) were deemed not eligible. Of the 472 accepted, 10% (49) were expelled during the course of their stay in 2011.

The low population drives up the per diem cost from \$98 a day at capacity of 150 inmates to a greater number with a reduced population (127 in August - 110 in October). Its below capacity condition compounds cost to the county. St Louis County pays for the equivalent of 118.4 beds<sup>3</sup> at NERCC via a contract that divides operating costs among the five counties owning the facility (St Louis pays 85.64%). When not getting use of its subsidized portion of beds at NERCC, the county pays for overflow inmates housed in other counties - in effect, paying for two beds for one inmate

To alleviate crowding at the jail, a program was created to house pre-sentence inmates at NERCC rather than the jail (the period from finding of guilt to sentencing). From January though August of this year (2012), 54 inmates were transferred from jail to NERCC for periods of one to 31 days at a charge of \$50 a day to the jail for the service. For the eight months \$36,600, was transferred to NERCC from the jail budget. This billing arrangement appears incongruous by a fully funded county organization charging a sister organization with whom inmates are transferred back and forth regularly without charge. Perhaps said tongue-in-cheek, to be consistent, the jail should invoice NERCC when its residents are sent

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<sup>3</sup> Based on a rather complicated formula, each county is assessed annually based on its usage of the facility.

back to the jail. But more important, the scheme has little chance of making much of a dent in the jail population because, as described earlier in this report, the closer on the continuum from long stay to short stay intervention occurs, the less the impact. Projecting to year-end, based on the first eight months, the program will have served 81 inmates, recovering the same amount of space consumed by just three inmates in jail for the entire 2011 year. Moreover, if preparation time for presentence investigations is shortened, the impact of this program will further shrink .

This program raises the question of - if these 54 individuals can operate successfully in an open facility, why couldn't they be released while awaiting sentencing? This approach may also have the benefit of encouraging quicker pleas.

### The Future of NERCC

In the ideal world, the facility would be abandoned and replaced with facilities located in Duluth, Hibbing and Virginia following the Rochester model. That would enable programs focused on providing the inmate as smooth and potentially more successful transition to the community while operating closer to "home". There is the flaw of the other counties not being as well served by this plan. The bigger flaw with this plan is cost, time to implement and the fact that the facility if not solely owned by St. Louis County but by the coalition of ARC counties.

However, a realistic and doable option is to upgrade NERCC's capacity to accept all sentenced offenders serving local time. This requires changes in the physical facility at some cost (remember there is already million and a half dollars spent annually on excess inmates), upgrading staff skills and programs offered.

This approach has two major benefits:

1. It brings the jail close to being within capacity.
2. Just as important, increasing ability to do what corrections is supposed to do - correct. It is a direct thrust at troubling current practices and condition including:
  - a) Some 600 inmates are released from the jail to the streets with little to no transition guidance or assistance.
  - b) The inmates who fail at NERCC or are not admitted in the first place, are more in need of robust interventions, by virtue of their inability to adjust, than those who graduate from NERCC. Merely giving up and diverting them to a jail cell for the duration of their sentence, is hardly a recipe for a successful return to the community.

Beyond the urgent need to deal with excessive jail population, the timing for launching a study to develop the model to upgrade the capacity of NERCC is ideal. Within the next few months the search for

a superintendent to replace the incumbent, who is retiring Feb 2013, will occur. The criteria for selecting the replacement would emphasize the ability to manage the new NERCC that provides a “full service” facility for all sentenced inmates.

Consultant(s)<sup>4</sup> engaged to undertake the study of NERCC would be directed to produce a plan to safely house the sentenced inmate, provide education and treatment programs aimed at preparing the inmate to return to the community and accomplish this at the lowest cost. The feasibility of including the sentenced female inmate should be studied. To be avoided is major security hardening of the facility. Some upgrade will be needed. However, in the final analysis it is to be recognized that the entire sentenced inmate population is, in reality, a minimum security group by virtue of the fact that they will all be returning to the community within a short period. The additional security need will be for managing the occasional obstreperous inmate. And, of course, the jail remains available as the occasional “backstop.”

The observations and recommendations above are not an indictment of NERCC’s current leadership and staff. They inherited and manage a facility and program with serious shortcomings. Indeed, they have added modern “best practices” treatment interventions.

#### Violation of probation (VOP) as a factor in jail crowding

Of the 4674 bookings in 2011, 27.4% (1280) were for violation probation making VOP a major feeder of jail census. No data is kept distinguishing technical violations (violations of rules rather than violations of law). Judging from the NERCC follow up study above, the percentage is significant.

A better understanding of the nature of these violations is needed - especially the technical violations. One judge interviewed complained that probation officers too often react in a reflexive manner to technical violations, recommending the stay of sentence imposed earlier (if one existed), be vacated. If this is a common occurrence and judges comply (as this judge said he does) technical violations could be a significant contributor to the jail population.

Probation officials launched a trial program in the Hibbing Court earlier this year called Range Alternatives Sanctions Program (RASP) authorized by Minnesota State Statute in 1993 for diverting technical violators from jail through the use of Sanction Conferences. The program involves the

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<sup>4</sup>There is talent within the state to produce such a study. Two names come to mind. Jay Lindgren who was the director of juvenile services for the state of Texas and the director of human services for the state of Rhode Island. Dennis Benson who was MN DOC deputy commissioner for institutions and the executive director of the MN sex offender program.

probation officer and the probationer working out a response with sanctions to a technical violation and implemented with confirmation by the judge. Initial reports are favorable with data that is encouraging. Indeed, the program already claims 2590 jail days saved - freeing seven beds with its 25 clients.

### The Role of the Probation Officer

The probation officer plays a key role in determining the fate of the offender. They prepare pre-trial assessments and pre-sentence reports for the court, oversee the probationer during the period of probation and make recommendation to court at key points in the course of the probationary period. Together his/her role is probably the most important in determining how the system responds to the offender in the community.

While the judge is vested with the authority to make the determining decisions, it is the probation officer who recommends. The recommendation carries enormous weight because the officer is in the best position to know the individual, his/her family and friends, the facts surrounding the case, etc. In addition, the judge is elected while the officer is a civil servant. That is no small detail because if the judge chooses to ignore the PO's recommendation and result is poor, it can create a political problem for the judge if the media gets involved.

The judges interviewed for this study gave the probation department high grades.

Probation Officers as Technocrats The role of the PO has increasingly taken on a function unknown when the concept of probation was initiated as a link to community for the offender with the goal of a crime free reintegration. Today employing technical tools to predict future behavior has become a significant feature of the job of probation. In 2010 ARC completed over 1300 Pre-Trial Release and Pre Trial Release Bail assessments including 333 for misdemeanors. In addition, hundreds of pre-sentence reports are prepared every year.

The objective, of course, is to sharpen decision making and thereby improve the public's safety - a worthy goal to be sure. However, it is important to assess the value added (and accuracy) of the extent of use of these techniques alongside applying the resource to direct services for the offender. It is encouraging to talk with the RASP probation officer who works directly with technical violators from the Hibbing court who otherwise are headed back to jail - providing services and encouragement to her clientele. It is reassuring to sit in a session of the DWI court offering a chance to sobriety (and public safety) with a tough regiment of services and sanctions.

## Carlton County

The size of St Louis County is a reason advanced for its jail problem with long distances to travel that severely slows the process. The adjoining county, Carlton, is the other county in the state experiencing jail overcrowding to a similar extent as St Louis. Yet it is tiny in comparison, having 875 square miles to St. Louis' 6,860 - being almost one eighth in size. So the question is - are there other factors behind Carlton's problem because size isn't. It has in common with St. Louis - the 6<sup>th</sup> Judicial District, the public defender and the ARC.

It turns out that the cause of their problem appears to be similar. Getting to this conclusion used the same analyses applied to St. Louis. It has adequate jail space when compared to seven other counties on ratio of jail beds to population, to part one crime, and to major crime filings. Its jail capacity is determined by adding its operating capacity - set by the MN Dept of Corrections - and 13 beds at NERCC - the number equal to size of the County's annual support of NERCC.

When assessing the use of jail capacity by the 1474 inmates who occupied a bed during 2011, again it was a small number - 164 inmates - who ate up the entire capacity of the jail. The remaining group - 1310 - were in excess and the space needed to house them was purchased from other jails. Again, said otherwise, the 1310 could disappear and the jail would remain filled. See chart at back of this report.

Not done is comparing the number of hearings per case with Olmsted County because MNCIS had not yet provided that information.

The Resource Stretched Defense Attorney Lack of capacity of the office of Public Defender is frequently sighted as reason for cases moving slower to disposition than desired. However, if the number of hearings is reduced by, let's say, two thousand, it follows that defender time in court is reduced and available for other needs. Fewer hearings should help abate this problem

## **Diversions from Jail**

Every booking diverted from the jail by one of the methods below obviously opens a bed. As discussed above, the amount of jail space saved depends on how long the diverted individual would have been in jail. For example, if bail is posted for someone who would have remained in jail over the course of several weeks, savings may be significant.

Misdemeanor Release At booking the jail releases “probable cause misdemeanor bailable arrests” with some restrictions particularly for behavior related to domestic abuse or failing a risk assessment. This is a potent measure.

For Pretrial Offenders:

Release on Own Recognizance (ROR) &

Supervised Release - (under supervision in the community by a probation office)

Together (the jail data does not distinguish) 1850 of the 4764 (38.8%) bookings were released under these methods. Their length of stay averaged 7.4 days. Because of the size of this group, cutting that time in half would recover about 38 beds - a significant gain.

Bail - 772 admissions were released on bail - 15.4% of bookings

The *Racial Justice Improvement Project*<sup>5</sup> reported for the years 2009 and 2010 that 53.1% of the felony filings had bail set. But the study does not report the number released on bail. That’s coming later. It’s a leap to apply that percentage to 2011 bookings but applying it anyway, 2482 inmates would have been eligible with only 772 released on bail. A far superior method to monitor bail practice would be to use information from the jail data base for identifying who had bail set and who made it. But, for now, that information is not readily accessible. Currently, it can be said that bail plays a relatively small role in reducing jail population.

**Sentencing Alternatives to jail** are by definition a jail bed-saving measure. When, how and to what extent they are used has to be assessed to determine their value.. This report will not attempt an assessment.

Alternatives to jail for sentenced inmates.

Electronic monitoring - in 2011 199 probationers (4100 - total probationers) were on electronic monitoring as a post-sentence condition of probation. This lightly used option requires the cost to be born by the probationer, with few exceptions. This policy needs reconsideration for cost-effectiveness. And considered for use as a diversion from jail at the pretrial stage.

Specialty Courts - Three type courts are in operation in St Louis County; drug, DWI and mental health. For a small investment these judge guided programs provide excellent rehabilitative services.

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<sup>5</sup>Research by Robert Weidner of the University of MN, Duluth, August 2011

STS (Sentenced to Service) ARC has a contract with MN Dept. of Corrections for 10 offenders (probationers) to participate in a work program at 40 hours a week.

From the DOC:

*STS is a sentencing alternative for courts that puts carefully selected, nonviolent offenders to work on community improvement projects. Supervised STS crews work in parks and other public areas, frequently in combination with jail time.*

Olmsted County makes extensive use of this type of program for in-custody sentenced inmates and operating seven days a week.

Work Release - in little use. Available only if probationer pays for it. This is a long-time-tested program and used extensively and successfully by Olmsted County.

**What should be done** - measures that together have the greatest likelihood of successfully responding to the overcrowding problem.

#### Courts

1. Give priority to in-custody cases. For example, during a hearing when another hearing is to be scheduled, place the in-custody case ahead of the line rather than being put in the same que as the "in-community" case.

2. Review, revise as necessary, and then enforce the *Duluth Continuance Policy*. However this should be a district wide policy signed by all judges and enforced by all judges.

3. Create the capacity by court administration to monitor the length of time between hearings on in-custody cases and bring notice to long gaps.

Of secondary value:

4. Release selected inmates at conviction to return for sentencing.

#### Arrowhead Regional Corrections (ARC)

1. Upgrade NERCC to the facility for all sentenced offenders.

2. Establish a data base to monitor violations of probation - reasons and outcomes of subsequent interventions.

3. Expand RASP to all courts. This program could have a major impact on the jail usage. Experience thus far shows promise.

4. Work with the courts to shorten preparation time of the presentence report, their complexity and in some cases their elimination.

## Sheriff's Office- Jail

During the course of this study it was learned of the private contractor, knowledgeable of jail's data system, being engaged by the Sheriff's Office to provide technical assistance and training. This individual can be of substantial value for extracting information and reports to guide and stimulate remedial policies and practices for the elements of the system that impact the jail.

Suggested reports include:

1. Create and circulate reports to illuminate delay in processing
  - a) List pretrial inmates, by court, in jail longer than 100 days
  - b) List pretrial inmates, by court, in jail who have not had a hearing in two weeks.
  - c) List sentence-completed inmates with the jail time as pretrial and jail time as sentenced.
2. Create and circulate report showing - bail set, bail made, by amount, by court, by race, by gender, by severity of crime.
3. Record VOPs by technical violations and new crimes.
- 4) Study the 44% repeat offender - those booked several times into the jail within the same year looking to understand why, which could lead to an antidote.

An example of a one page report, at the end of this study lists 22 inmates who on October 17 this year were heavy users of jail space. The objective of regularly circulating this type of report would be to alert decision makers of cases where an alteration would go along long way toward reducing the jail census.

St. Louis County Criminal System Leadership Finally, it is important to state, that in the opinion of this investigator, the individuals who are at the helm of the St. Louis County Criminal Justice System are of the highest quality. Bear in mind, the so called criminal justice system is not really a system but a confederation of players, some of whom are elected, some appointed and others civil servants. It is the successful interaction of these elements that deliver justice and safety with efficiency. There is no czar. To solve the jail problem, some changes in how these components interact is needed. There is little doubt that this system has the caliber of leadership capable of accomplishing the task.

## Distribution of Carlton County Jail Usage 2011

LOS	# of Inmates	Bed Days
1	336	336
2	244	488
3	172	516
4	113	452
5	34	170
6	36	216
7	24	168
8	20	160
9	25	225
10	130	130
11	77	77
12	108	108
13	17	221
14	19	266
15	13	195
16	9	144
17	11	187
18	12	216
19	9	171
20	33	660
21	7	147
22	8	176
23	10	230
24	7	168
25	10	250
26	5	130
27	9	243
28	8	224
29	9	261
30	8	240
31	5	155
32	4	128
33	10	330
34	5	170
35	7	245
36	2	72
37	4	148
38	6	228
39	8	312
40	11	440
41	3	123
42	4	168
43	4	172

1310 Inmates  
27 Beds

LOS	# of Inmates	Bed Days
44	3	132
45	2	90
46	4	184
47	7	329
48	1	48
49	8	392
50	4	200
51	3	153
52	3	153
53	1	53
54	5	170
55	1	55
56	7	392
57	4	228
58	5	290
59	2	118
60	7	420
61	2	122
62	5	310
63	1	63
64	2	128
67	3	201
68	1	68
69	3	207
70	3	210
71	3	213
72	1	72
74	2	148
75	2	150
76	2	152
77	1	77
80	3	240
82	2	164
83	2	166
84	1	84
85	3	255
86	1	86
87	2	174
88	3	264
89	1	89
90	1	90
92	1	92
93	1	93
94	1	94
96	1	96
100	1	100
101	3	303
103	1	103
104	1	104
106	2	212
108	1	108
110	2	220
112	2	224

164 Inmates  
39 Beds  
Entire Capacity

LOS	#	Bed Days
117	1	117
119	1	119
120	4	480
122	1	122
125	1	125
127	1	127
129	3	387
133	2	266
134	1	134
140	1	140
150	1	150
164	1	164
165	1	165
166	1	166
169	1	169
174	1	174
181	1	181
194	1	194
212	1	212
264	1	264
278	1	278
304	1	304
305	2	610

ENTIRE GROUP  
1474 INMATES  
66 Beds

Inmates in Jail on October 17, 2012

Inmate	Status	Court	Days in Jail	Number of Hearings	Greatest gap between hearings	Days since last hearing	If sentenced, days prior to last hearing
CURTIS, EDWIN THOMAS	S & RMD	Duluth	591	15	166	47	25
KOSANOVICH, COREY THOMAS	S & RMD	Duluth	500	11	84	170	84
WELLE, PAUL JOSEPH	RMD	Duluth	342	14	116	21	
MANSKA, CHRISTOPHER LEE	RMD	Virginia	335	23	30	22	
WILLIS, MATTHEW JACOB	RMD	Virginia	266	5	126	37	
BOYKIN, JERRY NMN	RMD	Duluth	256	4	173	36	
WOLFFE, BECKY LYNN	Sentenced	Duluth	227	9	98	37	21
OPIACHA, LEON ONYANGO	Sentenced	Duluth	222	7	47	70	23
SUTHERLAND, RODNEY ALAN	RMD	Duluth	209	5	51	63	
MARTIN, MICHAEL JAMES	Sentenced	Hibbing	197	3	42	148	42
JOHNSON, JAMES RICHARD	RMD/Hold	Virginia	195	5	35	72	
DERRICOTTE, DONALD FRANKLIN, JR	RMD	Hibbing	194	7	35	27	
LOHMAN, MICHAEL LEE	RMD	Duluth	188	5	58	30	
BUSSE, JARED RICHARD	S & RMD	Duluth	186	6	90	56	90
POLITANO, JEFFREY LANE	RMD	Hibbing	169	2	154	6	
HAYDEN, JOHN GUY, JR	RMD/Hold	Virginia	167	8	77	2	
PAPE, JOHN CARL	RMD	Virginia	161	7	56	9	
AGBATOR, NATHANIEL OTAIGBE	RMD Hold	Virginia	161	4	63	37	
LITTLEWOLF, JOSHUA LEE	RMD	Duluth	155	5	71	5	
SHAW, DEOLOW JACQUEZ	RMD	Duluth	141	4	42	21	
JOHNSON, JAMES DORAN	RMD	Hibbing	134	6	35	27	
GREENE, WENDELL ANTHONY	RMD	Duluth	126	5	35	35	

Resume

KENNETH F. SCHOEN

PROFESSIONAL EMPLOYMENT - Corrections Related

- November 1996 to December 1999      *Director, Institute on Criminal Justice*  
University of Minnesota Law School  
Established in November 1996, the Institute engages in research, education and technical assistance to criminal justice agencies and governmental agencies. It concentrated on issues related to sentencing, corrections and juvenile justice.
- August 1982 - September 2000      *Special Master* for the Federal District Court overseeing compliance with a broad condition of confinement consent decree directing the New York City Department of Corrections to meet specified management practices and policies.
- December 1978 to October, 1996      *Director, Justice Program*  
August 1979 - October, 1996  
The Edna McConnell Clark Foundation  
New York, New York  
  
Administered the distribution of \$68 million in grants directed at improving the criminal justice system by upgrading prison and jail conditions, and reducing unnecessary incarceration. This was to be accomplished through sentencing alternatives and improved sentencing policies and statutes.  
  
December, 1978 - August, 1979  
(On loan from the Clark Foundation to New York City)  
*Director, Rikers Island Planning Project*  
Office of the Deputy Mayor for Criminal Justice  
  
This project developed plans for a major revision of the New York City's jail system.
- January, 1973 to December 1978      *Commissioner, Department of Corrections, State of Minnesota*  
  
The Department operated correctional facilities and community programs for adults and juveniles. It supervised locally operated, state-subsidized programs and set standards for those programs as well as jails, detention centers and local correctional facilities.
- April, 1972 to January, 1973      *Deputy Commissioner of Corrections*  
Director of Community Services, State of Minnesota  
This division had responsibility for the probation and parole services, community-based programming, volunteer services and jail and detention inspection.

- September, 1969 to April, 1972      *Executive Director, P.O.R.T. (Probation Offender Rehabilitation and Training), Rochester, Minnesota*  
 PORT was an experimental community-based correctional program serving all age groups from the Rochester area who would otherwise be committed to a correctional institution. It was the basis for the development of the country's first community corrections act.
- June 1965 to September 1969      *Superintendent, Minnesota Home School*  
 State Department of Corrections, Sauk Centre, Minnesota  
 This correctional institution served 170 delinquent adolescents, females and males aged 13 to 21, with a staff of 135.
- January 1960 to September 1964      *Superintendent, Youth Vocational Center - A 60 bed facility for adjudicated delinquent boys, ages 13-18, with emphasis on vocational education.*
- October 1957 to December 1959      *Field Parole Agent, Department of Corrections, Youth Div.*  
 The job entailed the supervision of a group of 120 adolescent boys and youthful offenders in the Twin City area under parole and probation.

**Other - Corrections and Criminal Justice Related**

- November - December, 1992      *Transition Team Leader for the incoming President Bill Clinton administration, critiquing issues related to the Bureau of Prisons, the U.S. Parole Board, The Sentencing Commission, The Pardons Attorney and The National Institute of Corrections.*
- January, 1983 to 1985      Member of National Crime Prevention Council  
 Board of Directors, Washington, DC
- June, 1978 to 1982      Member of the National Advisory Committee to the Office of Juvenile Justice and Delinquency Prevention. A presidential appointment.
- October, 1978 to April, 1979      Member of Correctional Research Panel  
 National Academy of Sciences, Washington, DC
- January, 1978      Member of Advisory Committee  
 Employment and Crime Study  
 Vera Institute of Justice, New York
- 1976      Member, National Advisory Committee  
 Correctional Education Project  
 Educational Commission of the States, Denver, Colorado

1975

General Chairman  
22nd National Institute on Crime and Delinquency  
Minneapolis, Minnesota

**TEACHING POSITIONS**

Fall, 1985 to 1996

Adjunct Professor  
John Jay School of Criminal Justice, Graduate School  
New York

April, 1983

Lecturer  
United Nations Asia and Far East Institute for the Prevention of  
Crime, Tokyo, Japan

September, 1978 to April, 1979

Adjunct Professor  
University of Minnesota  
Department of Criminal Justice Studies

1973 to 1978

Adjunct Instructor  
The Higher Education Consortium for Urban Affairs  
St. Thomas College, St Paul, Minnesota

1970 to 1972

Adjunct Sociology Instructor  
Rochester State Junior College, Rochester, Minnesota

**Expert Witness**

January, 1985

Expert Witness  
Black v. Ricketts, U.S. District Court, Phoenix, Arizona  
Re: Body cavity searches

January, 1982 to June, 1982

Expert Witness and Fact Finder  
U.S. Department of Justice  
In preparation for invoking the provisions of the U.S.  
Institutionalized Persons Act.

1980 to June 1982

Monitor - Alabama Prison System  
Fact finder in Pugh v. Locke

September, 1981

Expert Witness  
Boudin v. Bureau of Prisons, U.S. District Court, New York

February, 1984

Expert Witness  
Ruiz v. Estelle, U.S. District Court, Houston, Texas

June 15, 1981

Cited by U.S. Supreme Court  
Rhodes v. Chapman, 452 U.S. 337 (1981)



# Saint Louis County

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**Public Works Department** • Richard H. Hansen Transportation and Public Works Complex  
4787 Midway Road, Duluth, MN 55811 • Phone: (218) 625-3830 • [www.stlouiscountymn.gov](http://www.stlouiscountymn.gov)

**James T. Foldesi, P.E.**  
Public Works Director/  
Highway Engineer

February 19, 2013

**TO:** St. Louis County Board  
St. Louis County Administration  
St. Louis County Attorney

**FROM:** James T. Foldesi, P.E.  
Inga Foster, Environmental Project Manager

**RE:** February 19<sup>th</sup> Board Workshop  
Opportunities for Improvements to the Minnesota Water Permits Process for  
Local Transportation Projects

## Executive Summary:

There is renewed legislative and political interest in water permits for transportation projects in the State of Minnesota. For transportation projects, two Executive Orders<sup>1</sup> and a state bill<sup>2</sup> have compelled the Minnesota Department of Transportation (Mn/DOT), the Minnesota Department of Natural Resources (DNR), the Minnesota Pollution Control Agency (MPCA), and the Minnesota Board of Water and Soil Resources (BWSR) to address issues related to timeliness of permit issuance, the status of wetlands in the state, and potential process streamlining opportunities. In addition to these state water permitting agencies, the US Army Corps of Engineers St. Paul District (Corps) administers the federal Section 404 program with jurisdiction over Waters of the US in Minnesota, including wetlands and watercourses.

Public Works has been closely involved in these state-mandated reviews, and appreciates the time and effort that local and state agency staff have devoted to the development of new processes<sup>3</sup>, recommendations, and reports<sup>4</sup>. Although much work has been done to describe and document the component parts of the state's water and wetland permitting programs for transportation projects, these reports and summaries do not clearly identify time lines for implementation of recommendations and action items.

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<sup>1</sup> Minnesota Executive Order 11-04, Minnesota Executive Order 12-04

<sup>2</sup> Laws of Minnesota 2012, Chapter 287, Article 3, Section 63

<sup>3</sup> MPARS, Minnesota DNR Permitting and Reporting System

<sup>4</sup> Legislative Report on Water Permit Streamlining for Transportation Projects, January 2013; Executive Order 12-04, Minnesota Board of Water and Soil Resources, Final Report to the Office of Governor Mark Dayton, December 2012.

Independent of these state-mandated permit reviews, Public Works, Mn/DOT District 1 and District 2 State Aid Engineers, and District 1<sup>5</sup> and District 2<sup>6</sup> counties have also engaged the Corps in several discussions related to: a) timeliness of permit issuance; b) lack of parallel review processes; c) attainable permit conditions; and, d) the 2010 changes in St. Paul District administrative policies. Like the reviews conducted by state agencies, these conversations with the Corps have led to recommendations and action items, but there are no time lines or end dates on results.

Minnesota has a unique confluence of state and federal water permits, laws, rules, and regulatory programs. For example, the state Wetland Conservation Act (WCA) and the federal Clean Water Act Section 404 regulations have much in common and both regulate impacts to wetlands in Minnesota. As there is significant duplication between state agencies and state and federal programs which regulate water and wetland impacts in the state, there is also a unique opportunity to make real, substantive improvement in transportation permit streamlining via programmatic agreements and/or legislative updates.

In the interest of streamlining wetland regulation for transportation projects in Minnesota, Public Works has requested that BWSR formally explore state assumption of the federal 404 permit program to reduce the redundancy between WCA and Section 404. This recommendation has been formalized in two state reports<sup>7</sup>. Public Works recognizes that there are significant challenges inherent to a state agency assuming a federal regulatory program.

To facilitate a similar, streamlined result, the Corps, BWSR, and/or Mn/DOT could develop a programmatic agreement to address the significant duplication between the 404 and WCA regulatory programs in place of this assumption of regulatory responsibility. Programmatic agreements are needed between state and federal agencies in Minnesota because of regulatory duplication, particularly related to water and wetland impacts for public infrastructure projects. More information and duplicate information needed for the agencies to make permitting decisions does not result in greater environmental protection or reduce impacts. These programmatic agreements must formally recognize the regulatory sufficiency of existing state regulatory programs.

Lack of programmatic agreements between the agencies has resulted in an untenable situation where project applicants must negotiate between the agencies and their programs to resolve issues including impact mitigation, agency jurisdiction, and management of the different agency definitions of complete applications versus complete information to make permit decisions. These negotiations and the lack of a predictable, transparent permit review and issuance process or time lines results in project delays, and increased project costs.

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<sup>5</sup> Koochiching, Itasca, Aitkin, Carlton, St. Louis, Lake, and Cook Counties

<sup>6</sup> Kittson, Roseau, Lake of the Woods, Marshall, Beltrami, Polk, Pennington, Red Lake, Clearwater, Norman, and Hubbard Counties

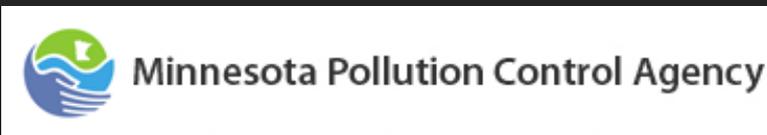
<sup>7</sup> Legislative Report on Water Permit Streamlining for Transportation Projects, January 2013; Executive Order 12-04, Minnesota Board of Water and Soil Resources, Final Report to the Office of Governor Mark Dayton, December 2012.

State/state and state/federal programmatic agreements could be supplemented with legislative revisions to ensure that these regulations continue to protect the state's vital water resources. A combination of state/federal agreements and legislative updates coordinated with transportation stakeholders will facilitate real change and improvement in the timeliness of permit issuance and project delivery. Currently, state and federal water regulatory agencies are in silos with little interaction between the programs. Programmatic agreements and/or legislative updates made with input and guidance from transportation stakeholders and the agencies will ensure redundant and duplicative regulations are streamlined in such a way that ensures that environmental protections aren't compromised.

The Public Works Department is asking the St. Louis County Board to consider formally adopting a position requesting that Mn/DOT, BWSR, the MPCA, the DNR, and the Corps resolve regulatory duplication between their respective programs via programmatic agreements and legislative revisions and to support legislation that accomplishes this goal. Without agreements, the regulatory streams run parallel, but never cross. The first priority is for BWSR and the Corps to address the duplication between WCA and Section 404. Public Works proposes that this effort should be completed on or before January 2014, and should allow for stakeholder input. The close second priority is for the joint application form and all participating agencies to move entirely to an online permitting system for transportation projects, on or before March 2014. Results on these two priority issues will move projects toward a transportation permitting system that is transparent, consistent, and predictable.

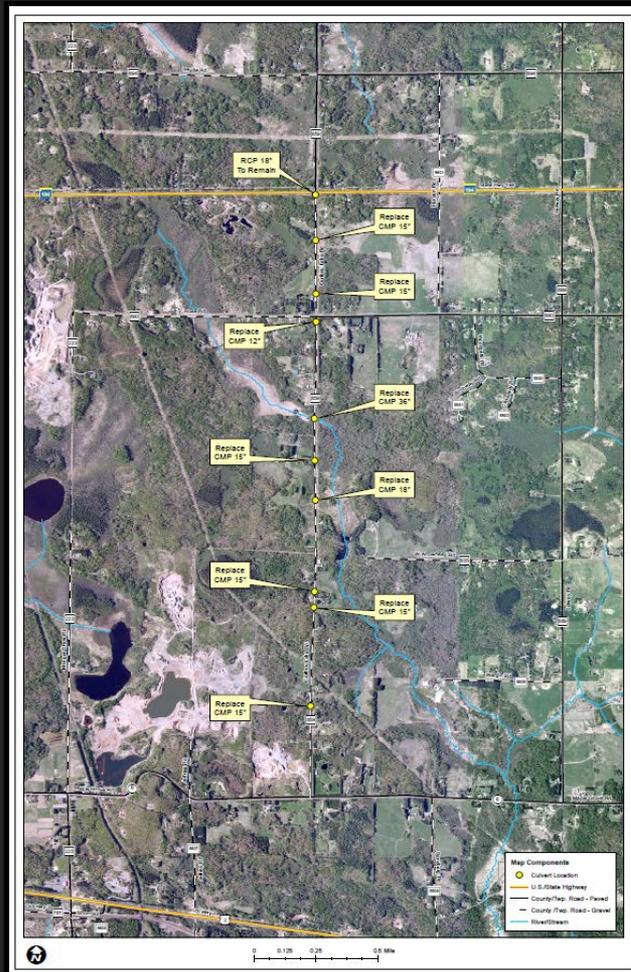
# Environmental Permits and Regulations

Agencies and rules that regulate  
Public Works projects



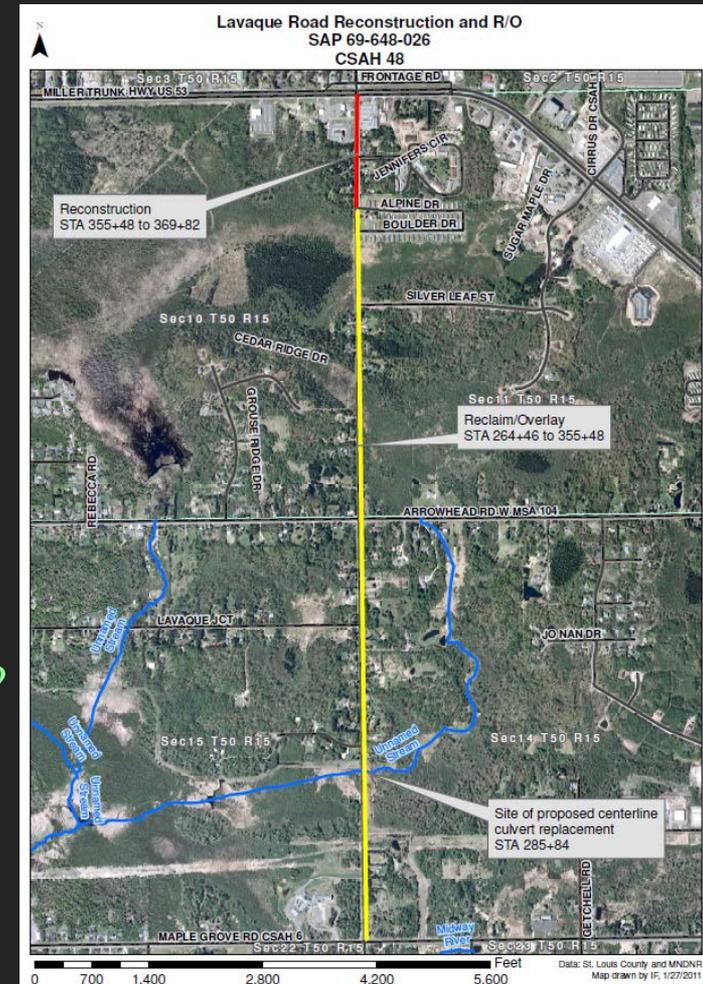
# Permit Scoping and Planning

Permit time lines are difficult to predict.



Caribou Lake Road GRIP (CR 859)

- What's the project?
- Where is it?
- What are the resources?
- What are the impacts?
- Stream survey?
- Site visit?
- Site visit with regulators?



Lavaque Road (CSAH 48)

# Permit Scoping and Planning

Nearly all project impact Waters of the State,  
Public Waters, and/or Waters and of US  
Gateway to permits: Joint Application Form,  
concept versus practice

## Time line:

depends on impacts, resources  
no firm time lines  
can be shorter, or **much longer**

Agency policies **subject to change**

Permits are **subject to change**

## Constraints include:

Work restriction dates

trout stream 9/15-6/30

non-trout stream 4/1-6/30

Growing season and wetland delineations



# Regulating Agencies

## Agencies and their jurisdictions

- Mn/DOT
  - Federal funding = Project Memorandum
  - PM includes waters, wetlands, rare species, and cultural/historic/archaeological resources
  - Delegated authority from Federal Highway Administration (FHWA)
  - No federal funding, no Mn/DOT review

The screenshot displays the Minnesota Department of Transportation website. The header includes the state seal, the department name, and a search bar. The main content area is titled "State Aid for Local Transportation" and lists various resources and links. A navigation bar at the top right contains links for "MnDOT A to Z", "General Contacts", "Simple Search", and "Advanced Search". Below the main title, there is a navigation bar with links for "Home", "SA Admin", "CSAH", "MSAS", "SA Programs", "SA Traffic Safety", "SA Project Delivery", "SA Construction", "SA Bridge", "SA Finance", and "Contact us". The main content is organized into several columns:

- Get Help for SALT Website or Applications**
- Hot Topics**
  - [Water Permits Facilitator](#)
  - [Project Tracking Mapping](#)
  - [MDSS Reference Guide](#)
  - [LRIP Project List](#)
  - [State Aid Flood and Disaster Relief Information](#)
  - [Best Value Procurement](#)
  - [Design Build for Locals](#)
- Important Information**
  - [County Roadway Safety Plans](#)
  - [Curb Ramp Guidelines Memo](#)
  - [Mission Study](#)
  - [Pavement Design Information](#)
  - [Partners and Resources](#)
  - [Resource Links](#)
  - [State Aid Manual](#)
  - [State Aid Scene](#)
- Project Documents**
  - [Project Memo \(doc\)](#)
  - [PM Non-Infrastructure \(doc\)](#)
  - [PM for permanent emergency work \(doc\)](#)
  - [Environmental Documentation for Federal Projects with Minor Impacts \(doc\)](#)
  - [PM Addendum for Design Exception \(doc\)](#)
  - [PM Addendum \(doc\)](#)
  - [SEE Checklist \(doc\)](#)
  - [EA \(doc\)](#)
  - [EA Worksheet](#)
  - [EA Update \(doc\)](#)
  - [Design Memo \(doc\)](#)
  - [Design Exception Request \(doc\)](#)
  - [PM for Emergency Relief Projects \(doc\)](#)
- Historic and Environmental Resources**
  - [Historic Archeological Review Request \(doc\)](#)
  - [Threatened Endangered Species Review Request \(doc\)](#)
  - [Federal Threatened and Endangered Species List by County \(xlsx\)](#)
  - [Section 4 \(f\) De Minimis Determination Process \(doc\)](#)
  - [De Minimis Preliminary Determination Request \(doc\)](#)
  - [De Minimis Public Notice \(doc\)](#)
  - [De Minimis Write-Up for PM or EA \(doc\)](#)
  - [De Minimis Request for Concurrence Letter to OWJ \(doc\)](#)
- Floodplain and Risk Assessment**
  - [Floodplain Assessment \(doc\)](#)
  - [Hydraulic Flood Analysis \(doc\)](#)
  - [Risk Assessment for Encroachment Design \(doc\)](#)
  - [Railroad Highway Grade Crossing Data Sheet \(doc\)](#)
  - [Section 4f Evaluation \(doc\)](#)
  - [Wetland Assessment \(doc\)](#)
- Important State Aid Information**
  - [Bridge Info \\* Needs Citrix Client and Password](#)
  - [Bridge Grant Agreement Template](#)
  - [Bridge Grant Agreement Instructions](#)
  - [Comprehensive Highway Safety Plan](#)
  - [EAdvert](#)
  - [Electronic Communications](#)
  - [Finance Forms](#)
  - [FWD Project Files](#)
  - [Metro State Aid](#)
  - [Org Chart](#)
  - [Roundabout List](#)
  - [Safe Routes to School](#)
  - [Sample Bond Fund Resolution](#)
  - [SA Applications](#)
  - [On-Road Bike Path Rules](#)
  - [SA Bicycle Path Design](#)
  - [SA Manual](#)
  - [Salt PMWriter](#)
  - [SA Rules](#)
  - [SA Scene](#)
  - [SA Tech Memos](#)
  - [Section 404 & Section 10 Permit Reference Guide](#)
  - [STIP](#)
  - [Underwater Bridge Inspection](#)
  - [Variance Information](#)

# Regulating Agencies



Minnesota Pollution Control Agency

- **MPCA**
  - Greater than or equal to 1 acre of disturbance = Construction Stormwater Permit (NPDES)
  - 401 Water Quality Cert., triggered by Corps permit
  - MS4 NPDES, DUA
- **DNR**
  - Public Waters, including trout streams, streams, rivers, lakes, and (some) wetlands



Minnesota  
Department of Natural Resources

# Regulating Agencies

- Board of Water and Soil Resources (BWSR)

- Wetland Conservation Act, Minn Rule 8420
- Local Government Road Wetland Replacement Program (Road Bank)
- All primary wetland impacts



- US Army Corps of Engineers, St. Paul District (USACE)

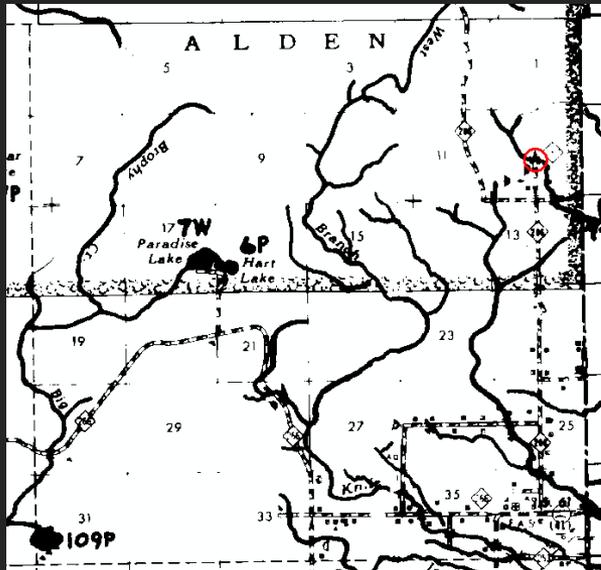
- Waters of the US, including wetlands and watercourses, Section 404
- Permits driven by impact thresholds, size of impact



# DNR



Bridge 849 over McCarthy Creek, CR 266



- Administers Public Waters Work Permit General Permit #1996-2091
  - 25-50 permits per year
  - Must comply with permit conditions to receive authorization
  - Lakes, rivers, streams, trout streams, wetlands
  - GP renewed through 2017
  - May be replaced by regional/statewide permit or renewed as-is
  - Mandatory online application 7/1/2013, EO 11-04, Trans. Streamlining Bill
  - Annual meeting with DNR/PW staff, list of projects on Public Waters
  - Survey bankfull width and longitudinal profiles, per permit

# BWSR

- Administers Wetland Conservation Act
  - Technical Evaluation Panel (TEP) is consortium of BWSR state agency, local governmental units, and SLC SWCDs
  - TEP and 10,000 ft<sup>2</sup> permanent wetland impact threshold
  - Wetland sequencing: AVOID, MINIMIZE, MITIGATE
  - Wetland Contractor Form
- Gatekeeper for Road Bank
  - Wetland mitigation credits for permanent impact
  - Close coordination with **USACE** for wetland mitigation


  
 DEPARTMENT OF THE ARMY  
 ST. PAUL DISTRICT, CORPS OF ENGINEERS  
 180 FIFTH STREET EAST, SUITE 700  
 ST. PAUL, MINNESOTA 55101-1675

ATTENTION OF  
 Operations Regulatory (2010-04879-LED)

February 16, 2011

Ms. Inga Foster  
 St. Louis County Public Works  
 4787 Midway Road  
 Duluth, Minnesota 55811

Dear Ms. Foster:

We have reviewed information about a St. Louis County Public Works permit application to replace the existing degraded County Bridge 699 and reconstruct a 1850-linear foot portion of UT 8180 (North Airport Road) for the bridge approaches. The existing 60.7-foot-long pony truss bridge would be replaced with a 100.42-foot-long concrete beam span bridge. The project will result in the discharge of dredged and fill material in 3,285 square feet of Bearskin River and 12,135 square feet of its abutting wetlands. The project site is in NW ¼, NW ¼, Sec. 32, T. 62N., R. 21W., St. Louis County, Minnesota.

Department of the Army Regional General Permit-03-MN (RGP-03-MN) provides authorization under section 404 of the Clean Water Act for certain categories of activities involving the discharge of dredged or fill material into waters of the U.S. We have determined that the described work, as shown in 2010-04879-LED, Drawings 1 of 10 through 10 of 10, is authorized by (RGP-03-MN-A), provided the attached Standard Conditions and the following special conditions are followed:

1. Prior to any land disturbance at the site, the wetland areas that are to remain undisturbed shall be clearly marked in the field so that boundaries are visible to equipment operators. Acceptable forms of marking include orange construction fencing or flagging at eye level at intervals no greater than 25 feet along the wetland boundary. Pin flags or other markings at ground level are not acceptable methods.
2. The permittee is authorized to impact the Bearskin River and its abutting wetlands according to the construction plan proposed in the permittee's application. The reconstruction of UT 8180 would involve the permanent discharge of fill materials into 5,250 square feet of floodplain forest (Type 7) and shrub-carr (Type 6) wetlands and the discharge of dredged material for the excavation and reshaping of existing ditches in 1,185 square feet of floodplain forest (Type 7) and shrub-carr (Type 6) wetlands. The project would include the discharge of riprap in 3,285 square feet of the Bearskin River for shoreline stabilization purposes.
3. The permittee is authorized to temporary discharge fill materials into 5,700 square feet of floodplain forest (Type 7) wetlands for this project for the purpose of staging areas for large equipment.


  
 Date --February 24, 2011

To --Leslie Day-U.S.-Army-Corps-Duluth

The wetland mitigation request for the public road project identified below has been accepted into the BWSR Local Government Road Wetland Replacement Program.

Corps Regulatory No. --2010-04879-LED

BWSR Road Replacement Program No. --6463M

Country --St. Louis

Watershed --St. Louis (3)

Bank service area --1

Location --NW ¼ NW ¼ Section 32 in T 62N, R 21W

Applicant --St. Louis County Public Works

Project ID --Airport Road, Bridge 699, Bearskin River

Amount and type of impact requiring replacement at a 1:1 ratio

Amount of fill	Wetland classification	Wetland Type-C:39G
0.11 acres	Forest & Floodplain	6C
0.040	Fresh Meadow	7C

Amount of replacement	Wetland classification	Wetland Type-C:39G
0.130	TE Do	TE Do

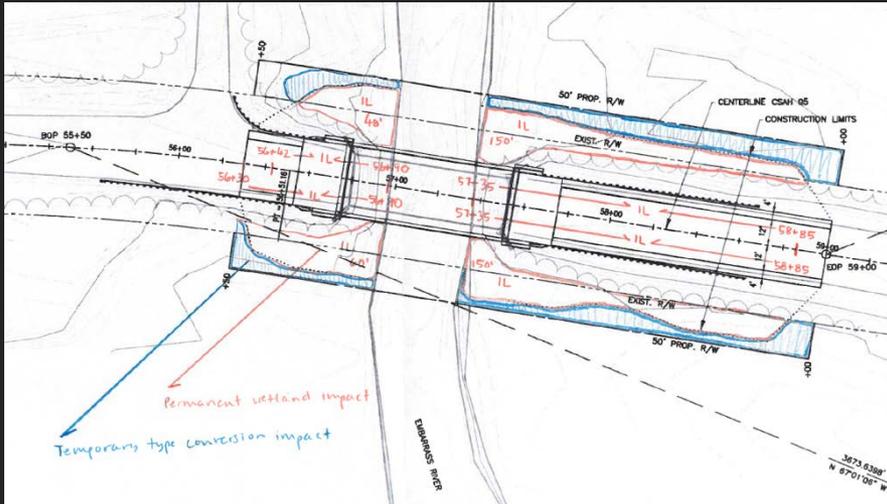
Date application received --December 09, 2010

Entered by --SIS



Bridge 699 over Bearskin River (UT 8180)

# USACE



Bridge 465 over Embarrass River (CSAH 95)



- Permitting authority for waters and wetlands, Clean Water Act Section 404, Waters of the US
- Permit determined by total project impacts to waters and wetlands
  - **Permanent** = Cut/Fill
  - **Temporary** = Staging, clear vegetation w/o soil disturbance
  - **Type Conversion** = long-term change in wetland vegetation, clearing and grubbing
- Close coordination with **BWSR**, may coordinate with DNR
- Wetland Impacts
  - **AVOID, MINIMIZE, MITIGATE**

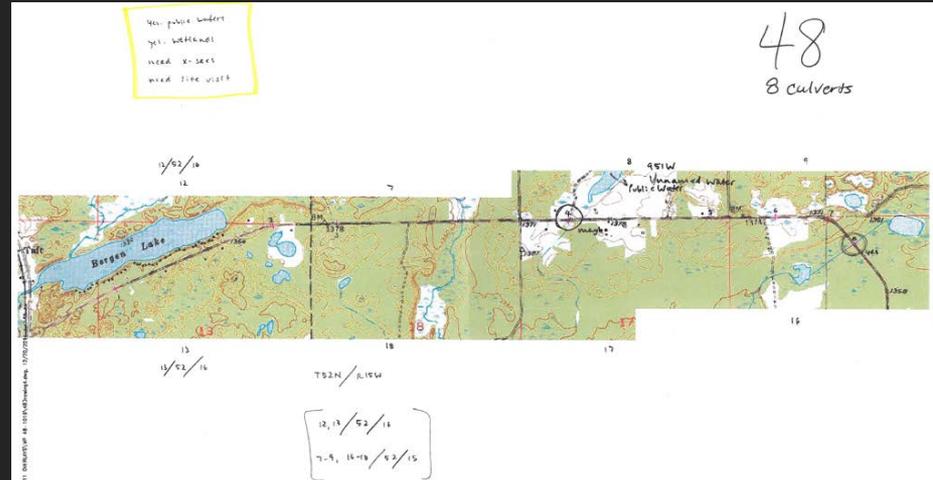
# USACE

- USACE Permit and Domino Effect for Other Reviews
  - Waters of the US, including wetlands
  - Permit thresholds: RGP-003-MN, LOP-005-MN, IP
  - Federal permit triggers multiple reviews by other agencies
  - These consultations can add permit conditions, take additional time
    - Corps coordinates National Environmental Protection Act (NEPA) compliance, can utilize existing NEPA documents
    - Section 106: State Historic Preservation Office (SHPO), cultural and historic and archaeological resources
    - Section 7: Endangered Species Act administered by Fish and Wildlife Service
    - 401 Water Quality Certification: Environmental Protection Agency (EPA) delegated to MPCA

# Redundant Agency Jurisdiction

## Regulatory Overlap

- USACE, MPCA, DNR regulate stream, river, lake impacts
- USACE, MPCA, DNR regulate water quality
- USACE, MPCA, DNR, BWSR, regulate wetlands
- USACE, BWSR, MPCA regulate wetland mitigation



WCA Process for the Three Categories of Linear Public Transportation Projects (non-linear projects must follow the Replacement Plan process)

	Standard Individual Permit	Letter of Permission	General Permit
Parallel Corps permit category	I-----SIP-----LOP-----GP-----I		GP
<b>WCA Category</b>	<b>Replacement Plan</b>	<b>Project Notification</b>	<b>Project Notification</b>
<b>Level of project</b>	New road/solely capacity increase	Existing road	Existing road minor/emergency
<b>Threshold of wetland impact</b>	any amount	≥ to 10,000 sq ft	less than 10,000 sq ft
<b>Typical duration of process</b>	Long	Short	Shortest
<b>Early coordination w/ TEP &amp; Corps</b>	Strongly recommended	Encouraged	Optional
<b>Transportation form to use</b>	Standard (long) form	Standard (long) form	Short form
<b>WCA process</b>	Replacement Plan Application	Project Notification	Project Notification
<b>length of review time</b>	15 – 60 day public review	must notify 30 days prior	must notify 30 days after start
<b>LGU involvement</b>	coordinate TEP/public review LGU makes WCA decision	coordinate TEP review No LGU WCA decision	coordinate TEP review as requested No LGU WCA decision
<b>TEP involvement</b>	review/approve application provide input to LGU	review notification approve use of Road Program	review notification no approval required
<b>Responsibility for replacement</b>	Road authority	BWSR Road Program	BWSR Road Program

# Transportation Permit Streamlining



Dunka Road reconstruction (CSAH 70)

**Effort:** 150 Day Goal for Permit Decisions: EO 11-04, Laws of MN 2012, Chapter 150; Laws of MN 2011, Chapter 4

**Result:** DNR's new online permit 7/1/2013, no joint application form

**Effort:** State of Wetlands: EO 12-04

**Result:** No current plans to meet with stakeholders or pursue Section 404 assumption



Bridge 518 reconstruction, Salo Road (CR 615)

**Effort:** Mn/DOT Legislative Report on Water Permit Streamlining for Transportation Projects: Laws of MN 2012, Regular Session Chapter 287, Article 3, Section 63

**Result:** Mn/DOT State Aid Water Permit Facilitator. The regulated community is in the best position to ID problems, inconsistencies, conflicts, redundancies.

**Effort:** Section 404 and Section 10 Permit Reference Guide

**Result:** Reference Guide does not address need for clear process, start of clock, or parallel process

# Transportation Permit Streamlining

Public Works strives for compliance with all applicable environmental rules and regulations.

Public Works invests significant time and monies in staff training, and self-inspects for compliance.

We need a clock to start, and know when the clock starts.

Duplicate jurisdiction does not reduce impact, or improve protection.



Bridge 808 reconstruction, CSAH 7

Permits required: USACE Section 404 RGP-MN-003, WCA TEP Signatures pursuant to Minn. Rules 8420.0544 Part D, MPCA Construction Stormwater NPDES, DNR Public Waters Work General Permit 96-2091

We are looking for:

**Transparency**

**Consistency**

**Predictability**

from the regulatory agencies and their programs.

Public Works actively:

**Comments**

**Requests additional information**

**Participates as a stakeholder**

as an agency and on behalf of other road authorities.

# MPCA Issues and Solutions

## **Draft general permit for Construction Stormwater on public notice February 4 - March 20, 2013**

The MPCA invites comments on the draft Construction Stormwater General Permit from February 4 - March 20, 2013. Comments, which must be writing, are due by 4:30 p.m. March 20, 2013 to Larry Zdon, permit writer, at [Lawrence.zdon@state.mn.us](mailto:Lawrence.zdon@state.mn.us) or 520 Lafayette Road N. St. Paul, MN 55155-4194.

The MPCA has revised the permit to comply with changes in federal rules and make other improvements to better protect Minnesota waters from stormwater running off at construction sites. Details available on the [draft Construction Stormwater General Permit webpage](#).



Emerson Road reconstruction (CSAH 43)

- Administers Stormwater permits on behalf of EPA
  - Draft Construction Stormwater Permit on public notice, comments due 3/20/2013
  - Current draft exceeds federal requirements, modify to include only the federal requirements under the 2009 Construction and Development Rule
  - Remove Minimum Impact Design (MIDS) runoff thresholds, or exempt linear projects from the 1” runoff treatment requirement

# DNR Issues and Solutions

- **MPARS: Mandatory online permitting system 7/1/2013**
  - Better tracking and transparency, but only for DNR permits
  - Proposed online portal is a loss of streamlining from the current off-line joint application form
  - Engage stakeholders March/April 2013 in the review and development of the online system
  - Compel other agencies to use this system

## Minnesota DNR Permitting and Reporting System

### *A new online system for Water Appropriation Permits and Public Waters Works Permits*

The DNR is happy to announce that work is underway to transition from a paper-based system to an online system for water use reporting, permit applications and permit change requests. The first stage of this new system will be available in July of 2013, with additional features being added in future years. The Minnesota DNR Permitting and Reporting System (MPARS) is being designed to benefit DNR's permit holders and applicants with a simple, convenient and easy-to-use system.



### **Permits Supported by MPARS**

MPARS has been designed to support both the Water Appropriation and Public Waters Works Permits.



# BWSR Issues and Solutions

- Local Governmental Road Wetland Replacement Program (Road Bank)
  - Meet with stakeholders to ensure that administrative policy is in line with the intent of the Rule, and the needs of stakeholders, EO 12-04
  - Administrative policy must acknowledge safety improvements and engineering judgment
  - Explore state assumption of Section 404 regs or develop **programmatic agreement** with the Corps to address overlap in WCA/404 regulation
  - Transparent wetland debiting/notification process, release state credits for sale to local road authorities

## Executive Order 12-04

Supporting and Strengthening  
Implementation of the  
State's Wetland Policy



Final Report to the  
Office of Governor Mark Dayton



Minnesota Board of Water and Soil Resources

520 Lafayette Road North  
St. Paul, MN 55155  
651-296-3767  
[www.bwsr.state.mn.us](http://www.bwsr.state.mn.us)

December 14, 2012

# USACE Issues and Solutions



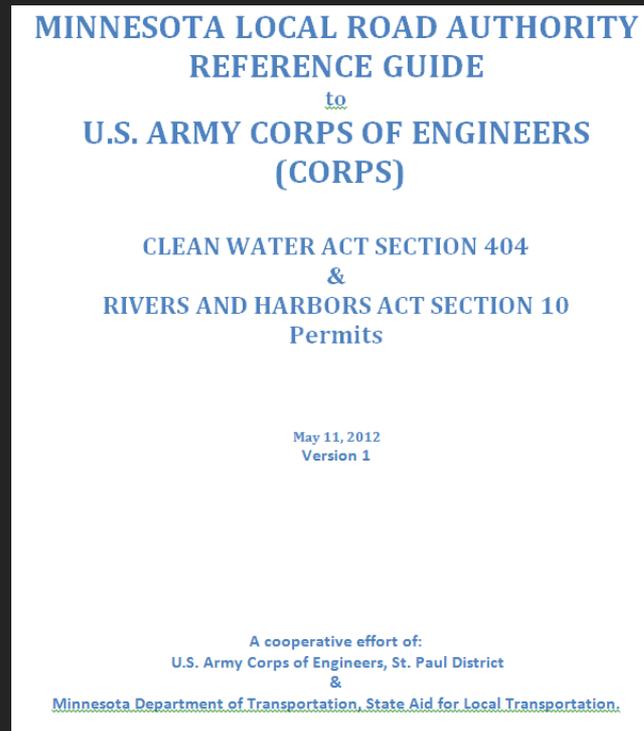
☐ Q. I already obtained local and state permits, do I still need a Corps' permit?

A. If the activity is regulated by the Corps under Section 10 or Section 404, the answer is yes. However, the St. Paul District has implemented abbreviated permitting procedures for many activities that also require state permits. But unless the activity is authorized under a Corps' non-reporting general permit, you still need to apply to and receive written authorization from the Corps.

- Section 404 program
  - Explore BWSR assumption of Section 404 regs
  - Develop **programmatic agreement** with Mn/DOT and/or BWSR to address overlap in WCA/404 regulation
  - Transparent permit review time lines, parallel process
  - Clear standards for **complete information to make a permit decision** versus **complete application**
  - Engage stakeholders in development of transportation-specific GP
  - Engage stakeholders prior to future policy changes
  - Expedite approval of BWSR Road Bank credits

# Overall Issues and Solutions

- Fluid time lines on permit review and issuance
  - 150 days? 90 days? Need consistent state timelines and federal timelines
  - A predictable process will help Public Works plan for projects. We know what permits are needed, but not how long it will take to get them.
- Agencies are in silos
  - Develop programmatic agreements (Fed-State and State-State) to formally recognize sufficiency of existing state programs
  - State and federal programmatic agreements are needed in MN due to unique state wetland regulations (FHWA, Corps, Mn/DOT, BWSR, MPCA, and DNR) and/or legislative change
  - Real change and real agency coordination is needed to ensure that public projects are delivered in a timely manner
- Agency policies are subject to change
  - Engage stakeholders EARLY
  - The unintended consequence of policy change is a reduction in permit efficiency



# Questions



Stoney Point Drive (CR 222)