

FINAL
OVERSIGHT AND EVALUATION
REPORT

Minnesota Onsite Review

April 16, 2014

Confidential



NATURAL RESOURCES CONSERVATION SERVICE
Oversight and Evaluation Team
Office of the Regional Conservationists

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Table of Contents

Purpose.....	01
Background.....	1
Objectives	1
Scope.....	1
Methodology.....	2
Results of the Study	2
Finding 1 – Job Approval Authority and Training	3
Finding 2 – General Wetland Determination Methods (including labels).....	7
Finding 3 – Onsite and Offsite Wetland Identification Methods.....	9
Finding 4 – Appeal Process	12
Finding 5 – Data & Final Determination	13
Considerations for the State Conservationist.....	14

Appendices

Appendix 1: Summary of Recommendations.....	17
Recommendations for Deputy Chief of Science and Technology.....	20
Appendix 2: NCWCI Level 2 & 3 – Measure Summary.....	22
Appendix 3: NCWCI Level 2 & 3 – NCWCI Checklist.....	26
Appendix 4: Employees Interview and Interview Summary.....	31
Appendix 5: Critical Preliminary Finding.....	36
Appendix 6: Briefing of Draft.....	39

Purpose

This report is a result of a quality assurance effort in association with the “North Central Wetlands Conservation Initiative (NCWCI) in the Prairie Pothole Region.” The oversight and evaluation is being conducted in a two-phased approach.

- Phase I - Has been completed and consisted of a quick response review which was conducted to analyze wetland determination procedures in the Prairie Pothole Region (final report was completed March 3, 2011).
- Phase II - Is being implemented and will include a series of reports such as this one, which outlines progress being made within the NCWCI.

Background

Policy: Based on recommendations from the National Wetland Team and the Soils Division, on September 11, 2009, Chief White signed a decision memorandum stating that NRCS staff will utilize the Corps of Engineers Wetland Delineation Methods rather than adopting streamlined methods developed by NRCS wetland experts across the U.S. for the exclusive use with Wetland Conservation Compliance determinations. This decision was “codified” in policy by the release of Circular 4 on December 23, 2009. Upon further legal considerations of the decision, Circular 4 was replaced on July 9, 2010 by Circular 5. Circular 5 provided an array of exemptions to the Corps methods (“Food Security Act (FSA) Exemptions”) based on legal differences between the Corps Methods and NRCS authorities provided by statute, regulation, and case law. Circular 5 was replaced by Circular 6 on December 1, 2010. Circular 6 included a table of contents and various minor edits. The direction of the authors of Circulars 5 and 6 was to make no considerations (FSA variances) regarding efficiency, but rather to limit the variances to legal mandates. Subsequent to the development of Circular 5, a training cadre developed a NEDC Course designed to teach the Corps Methods and the FSA Variances. The release of the NEDC Courses (Phases 1 and 2) coincided with the release of Circular 5. The concept of these courses were to replace the Corps Regulatory IV course and any state delivered course. This national strategy was implemented in an attempt to assure consistency in the wetland identification protocols and decisions. Circular 6 (NFSAM Part 527: FSA Wetland Identification Procedures) remains current NRCS policy on the procedures and protocols to be used by NRCS staff to identify wetlands for Food Security Act (WCC) purposes.

Quality Assurance Review (QAR): Phase II includes approximately 80 certified wetland reviews (two in each state/fiscal year). Each review will consist of 10 sites (samples) that will review both onsite and offsite procedures. Upon completion of each state review, a report is written and an exit conference conducted with the State Conservationist, the State point of contact (POC) and any additional staff the STC designates to attend.

Objectives

The objective of this effort is to achieve consistent application of national policy in rendering technical determinations (certified wetland determinations) within the initiative.

Scope

The scope of this project concentrates on the Prairie Pothole Region and includes portions of the following states: Iowa, Minnesota, North Dakota, and South Dakota.

Methodology

Each state-review consist of 10 sites that include offsite and onsite processes. A checklist consisting of 97 questions is used in the review of each site, with a state report following each review. At the end of the fiscal year, a combined report will be generated for the states within the NCWCI region that were reviewed. A conference call will be held with the State Conservationists, the Regional Conservationist, the Deputy of Science and Technology and POCs to review the overall report. A total of eight reviews and reports will be generated.

Upon completion of all 8 reviews (total of 80 sites) a final report will be generated for the initiative. This report will include two years' worth of combined reviews on the four-state area and will be titled Phase II – Consistency.

The long range plan is to have the states annually review each other (include writing a report with the Findings & Recommendations) with a team headed up by the National Wetland Conservation Compliance (WCC) and Highly Erodible Land Compliance (HELIC) Specialist, on the National Ecological Sciences staff under the Deputy of Science and Technology. The National WCC Specialist should then review a percentage of those wetland certifications reviewed by the States and write a report with Findings and Recommendations.

Results of the Study

Two teams conducted this review with a combination of the following team members: Jason Outlaw, Jim Gertsma, Lee Davis, and Paul Flynn. This second round of reviews for Minnesota included the counties of Watonwan, Meeker, Martin, Cottonwood, Lac Qui Parle, Brown, Blue Earth and Renville. Data were collected August 26 - 29, 2013.

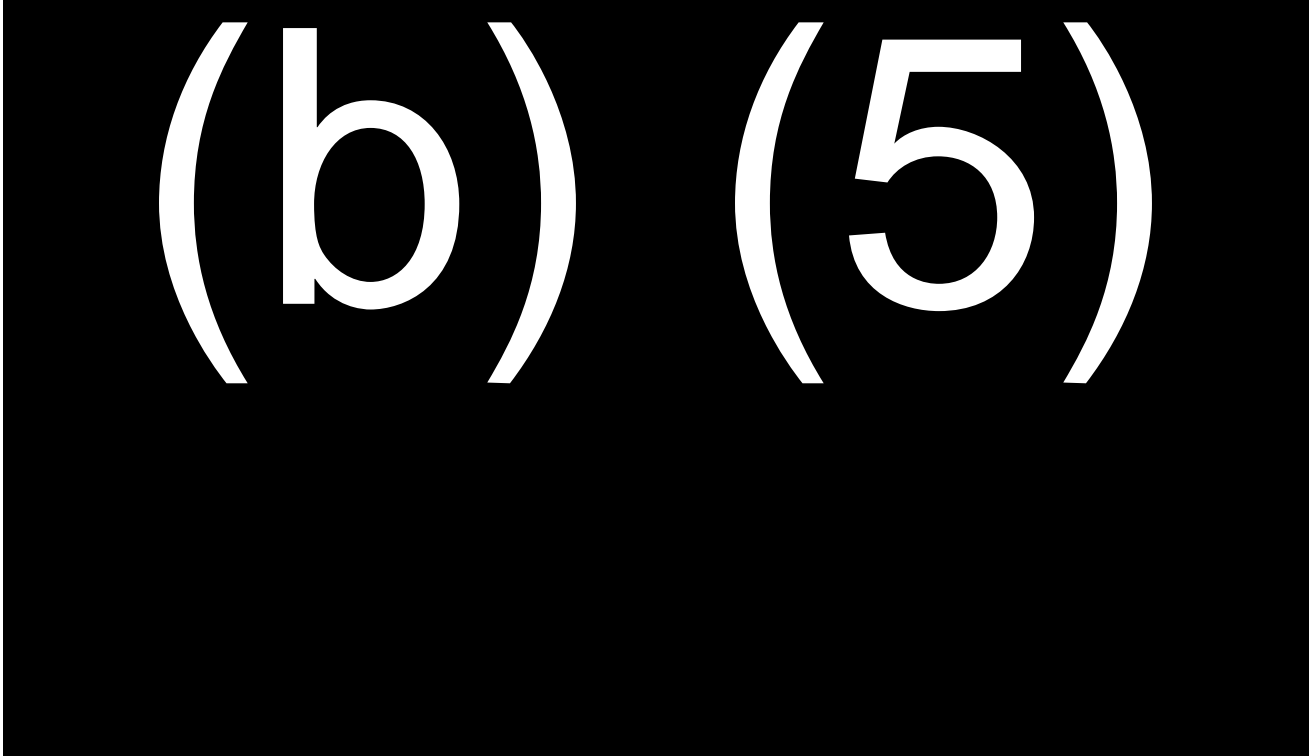
The samples (n=20) were selected from a list of determinations completed by 10 different Designated Conservationists. Samples were randomly selected from those that appeared to be viable determination requests. The results of the review are as follows:

Commendable:

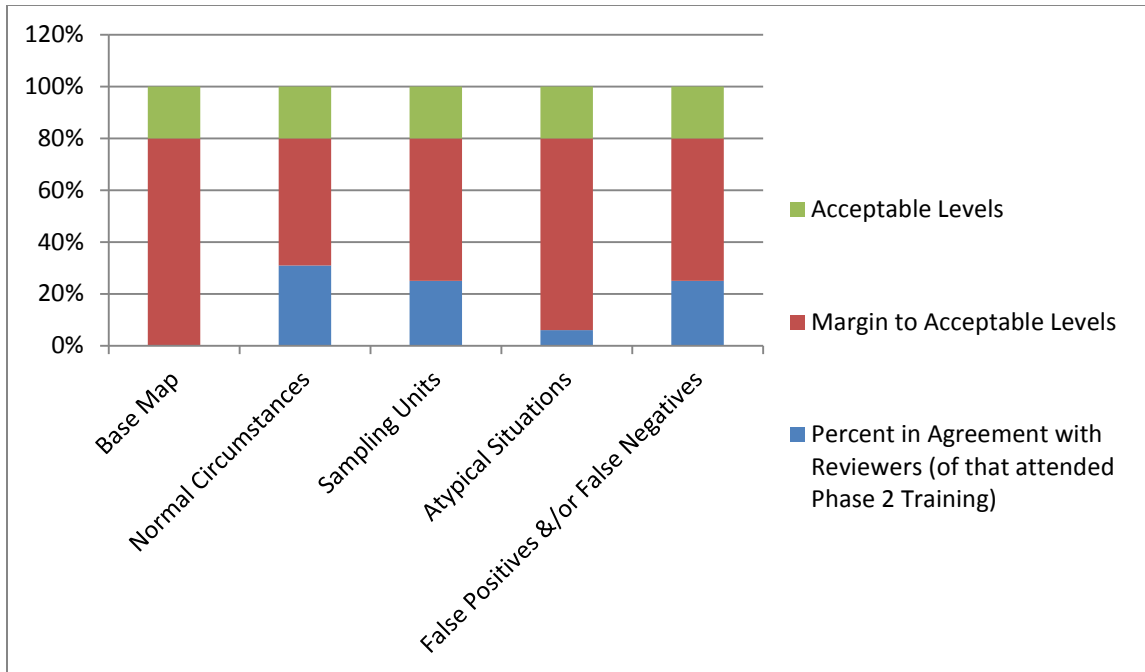
The Minnesota staff were polite, helpful and professional. Any request made by the review team was serviced promptly.

Finding 1 – Job Approval Authority and Training

Six of ten MN individuals with WCC Job Approval Authority had not attended the required NEDC Phase 2 course; and the four that had attended failed to apply the basic skills and procedures presented in the Phase 2 course. This resulted in both erroneous wetland identification decisions and erroneous wetland determination decisions.



Findings Specific to MN Agency Experts <u>Who Attended the Phase 2 Training Course</u>		
Wetland ID Requirement	Percent Applied Appropriately (key concepts)	Question number that applies to this concept
Proper development of a base map	0%	34, 35, 36
Proper consideration of normal circumstances	31%	38, 41, 43, 96
Establishment and identification of sampling units	25%	36, 66
Appropriate use of Section F: Atypical Situations	6%	68, 69, 70, 74
Proper consideration of false positives and/or false negatives	25%	83, 89



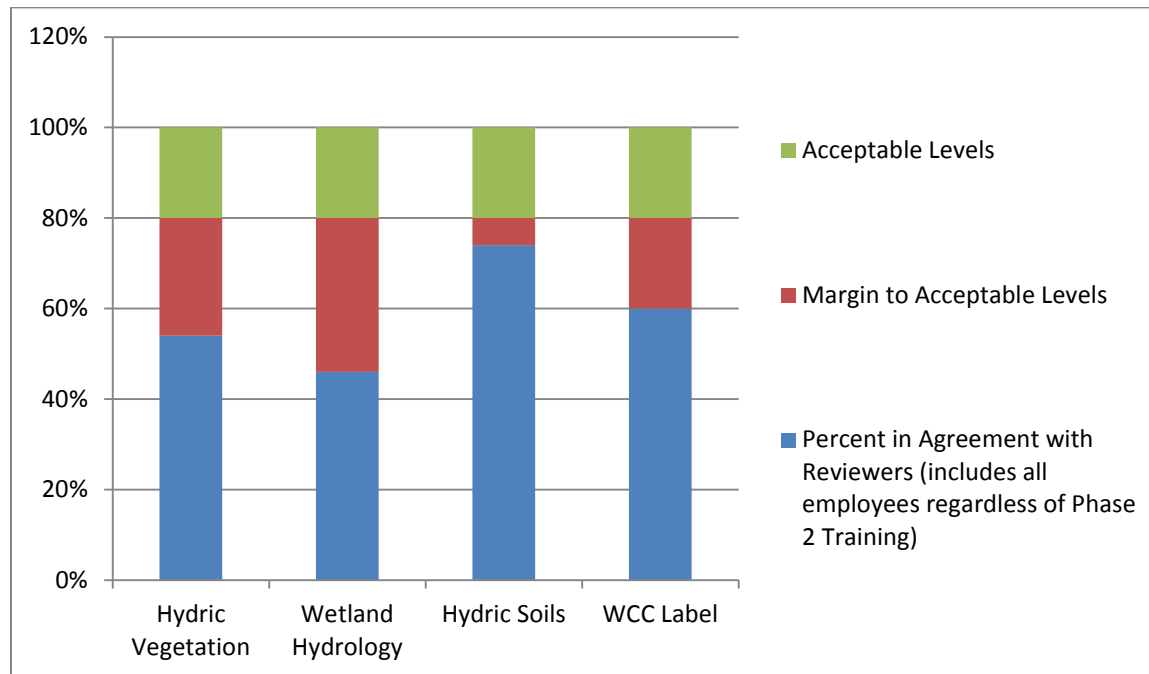
The review data indicate that the 10 MN agency experts who have attended the required training lack the necessary skills to meet the national requirement (NFSAM Part 514.1(B)(1)(iii)) necessary to render adverse decisions specific to the wetland conservation provisions. The review also indicates this lack of proficiency and training has resulted in both erroneous wetland identification decisions and erroneous wetland determination decisions. The QAR teams disagree with the decisions for hydrophytic vegetation and wetland hydrology in approximately 50% of the determinations reviewed. QAR Team members disagreed with the wetland conservation compliance label assigned by MN agency experts 40% of the time. Similar inadequacies in demonstrating proficiency were revealed specific to the technical determination of hydrophytic vegetation, wetland hydrology, hydric soil and administrative decisions regarding exemptions (WCC labels).

Combined Data from All MN Staff Reviewd, <u>Regardless of Training</u>		
Item Reviewed	Percent Agreement ¹	Question number that applies to this concept
Decision on hydrophytic vegetation	54%	54 and 84
Decision on wetland hydrology	46%	59 and 90
Decision on hydric soils	74% ²	57 and 95
Decision on WCC label	60%	14

¹ Percentage where the QAR team members agreed that the decision was supported by fact, per national procedures and policy.

² MN staff uses soils mapping almost exclusively to render a decision for hydric soils, which is an option by policy. A decision on hydric soils is much less complex than those for vegetation

and hydrology since normal circumstances, as it relates to disturbance (drainage), is not a consideration for hydric soils.



Job Approval Authority: National Policy (NFSAM Part 514 (B)(1)(i).) mandates that the State Conservationist provide job approval authority based on two criteria:

- a) Successful completion of NRCS sponsored wetland training, including updated courses, and
- b) The demonstration of proficiency in the application process.

Only after both criteria are met does the State Conservationist grant job approval authority. Training alone does not assure that decisions are being rendered accurately, fairly and in accordance to statute, regulation and policy.

During the interview process, MN staff indicated that they lacked training. Historically, each area in MN conducted training and provided guidance with very little state oversight or leadership. This approach has resulted in staff confusion and inconsistencies within the State. In 2008, the Deputy Chief of Programs (WCC was under Programs until 2010) made a decision that wetland determination training shall be conducted by the national training cadre, and not by state or area staff. This approach better assures that adverse decisions are being issued within USDA authorities in a fair and consistent manor.

The QAR data demonstrate that the MN State Conservationist has issued job approval authority to individuals who lack required training and/or proficiency. One hundred percent (100%) of all designated conservationists reviewed were on the state roster, but only 40% had attended the NEDC Phase 2 Course (Wetland ID for Food Security Act Purposes: Application of Principles). Without attending this course, staff cannot accurately and appropriately apply the needed technical and procedural processes. This is the foundation course for NRCS staff who render

adverse wetland compliance decisions. Within the scope of the 4-state NCWCI review, MN has the lowest percentage of designated conservationists who are adequately trained.

The second criterion for job approval authority is that after successful completion of training, staff will practice the application of those skills under the direction of experienced staff. Only after the individual has acquired the experience needed to properly and consistently apply the principles does national policy direct that job approval authority is granted. The data from the QAR indicates that many MN staff lack the expertise to properly administer the WCC provisions.

(b) (5)

(b) (5)

Finding 2 – General Wetland Determination Methods (including labels)

The general methods utilized for wetland determinations in MN (i.e. maps, numbering of sites/sampling points, appropriate precipitation data sources, evidence & documentation of pre-1985 drainage, slide review data sheet, and the three-level approach) failed to meet NRCS policy. This failure to meet policy results in erroneous and inconsistent adverse decisions and places the agency in an indefensible position in wetland appeals and lawsuits.

(b) (5)

(b) (5)

(b) (5)

Finding 3 – Onsite and Offsite Wetland Identification Methods

The State Offsite Methods (SOSM) or State Mapping Conventions (SMC) currently being used in MN do not meet NRCS policy as they fail to require the independent consideration of all three factors and also fail to adequately consider normal circumstances. A revised version of the SOSM has been drafted but has been withheld from distribution through an agreement with NRCS Chief Weller. The continued use of the existing State Mapping Conventions places the agency in an indefensible position in wetland certification disputes and appeals.

(b) (5)

(b) (5)

(b) (5)

(b) (5)

Finding 4 – Appeal Process

The appeals process is not being carried out according to policy. This risks putting the agency in an indefensible position in wetland certification disputes and appeals.

(b) (5)

(b) (5)

Finding 5 – Data & Final Determination (Reviewer Agreed with Determinations)

The review finds that the correct wetland identification decisions (vegetation, soils and hydrology) are not being rendered accurately and that proper wetland conservation labels are not being made according to policy. The inconsistencies fall outside of acceptable expectations.

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

APPENDIX 2

NCWCI LEVEL 2 & 3 – MEASURE SUMMARY

SECOND REVIEW		
Success Rate = 100% 99% -90% 89% -80% 79% -70% 69% -0%		
Measures (Expected Performance)	Minnesota	Comments
JAA and Training	86%	
Wetland Determination Request	97%	
Wetland Determination Methods	50%	
Offsite Methods- all Level 1 Determinations and Level 1 portion of Level 3 Determinations	17%	
Onsite Methods (inspection necessary) - Level 2-3 and Onsite Determination Required	64%	
Appeals	64%	
Reviewer Agreed with Determinations	54%	

NCWCI - MEASURE SUMMARY

SECOND REVIEW

Success Rate = 100% 99% -90% 89% -80% 79% -70% 69% -0% Not Applicable

		Minnesota	
Measures (Expected Performance)		Success Rate	Comments
JAA and Training		86%	
1	The Designated Conservationist attended the Phase 2 Wetland Delineation Training.	40%	
2	The individual completing the offsite determination work had the appropriate Job Approval Authority.	100%	
3	The individual completing the onsite determination work had the appropriate Job Approval Authority.	85%	SWCD Staff conducted offsite & not on JAA list
4	The individual completing the Certified Wetland Determination had the appropriate Job Approval Authority.	100%	
5	There was a State job-approval list.	100%	
12	The person assigning the label had job approval authority.	100%	
29	The 2nd tier staff had job approval authority on the state roster.	75%	
Wetland Determination Request (Admin)		97%	
6	If the request was on the AD-1026, box 10A, 10B or 10C was checked "yes".	90%	
7	There was a county log of AD-1026 request or an access database.	100%	
8	The request was entered on the county log or an access database.	100%	
Wetland Determination Methods (including labels)		50%	
32	A modification/justification of the standard wetland ID methods was made, per paragraph 23 of the Corps Manual and Section A – Introduction; Corps Manual as provided by NRCS policy the FSA Procedures (5-5).		
33	If yes, the purpose of the modification was explained as required in paragraph 23.		
34	A base map was developed for the determination.	0%	No base map
35	The base map was by Tract per regulations (either field per national policy or resulting from request for determination on 569).		
36	The numbering of sites and sampling points was appropriate. i.e. FSA Field Number/Sampling Unit Number (e.g. 1,S1,A)	11%	Not shown
37	The acres of the project area (entire project size) were placed on the base map per policy.	0%	No acres on base map
38	The FSA Variance (5-9) was followed (identify drainage prior to 1985 or post 1985 drainage).	32%	Not considered
39	An appropriate precipitation data source was used for the pre-1985 remote data source.		
40	The precipitation data source was noted and appropriate for the "current" remote data source.		
41	FSA Normal Circumstances, related to disturbance, were considered and documented as required in (5-5).	37%	MN doesn't understand NC
43	If 'yes', the drained conditions (considered the new normal circumstances) were considered in the wetland identification decision for each factor.	50%	Not considered

44	If drainage was noted after 1985, it was documented.	100%	
45	The data sources considered were consistent with what is provided in the Corps Manual (items a - j in paragraph 54) and if so were the items considered noted on the COE forms.	83%	No COE form
46	A remote source (slide review) data-sheet was included and complete.	94%	Not included &/or completed
47	The facts support the decision on data sources used.	37%	*Poor quality slides causing biased decisions *No soils or topo maps to support hydric inclusion *Dist employee documented 6 of 7 normal years w/wetland signatures AND still called PC/NW.
48	The FSA Variance (5-11) was followed.	100%	
49	The three-level approach was considered by the agency expert (Designated Conservationist).	53%	MN Offsite methods do not align with National Policy, so 3 level approach not considered
50	If 'yes' for Level 1 determination, each of the three wetland diagnostic factors were assessed independently and remote data sources for each factor were cited.	0%	One or more of the three diagnostic factors not assessed
51	If 'yes' for Level 1 determination, State Offsite Methods or State Mapping Conventions were used for one or more of the factors and they were applied appropriately.	100%	
42	Evidence of pre-1985 drainage was documented.	59%	Not documented
Offsite Methods- all Level 1 Determinations and Level 1 portion of Level 3 Determinations		17%	
52	The agency expert did document that he/she considered the unique definition of hydrophytic vegetation provided in the Food Security Act.	0%	Some verbage included in letter but not file documentation
53	If variance (5-18) related to the veg. reference site was used, it was cited on the data sheet.		
55	The agency expert documented that he/she considered the unique definition of hydric soils provided in the FSA.	0%	Some verbage included in letter but not file documentation
56	If the process provided for in 7 CFR 12.31 and repeated in the FSA Variance (5-18) was used, it was used correctly and cited.	24%	*Named component is non-hyrdic *Used but not cited or documented
58	The agency expert documented that he/she considered the unique definition of wetland hydrology provided in the FSA Procedures (no set days of inundation or saturation).	0%	Some verbage included in letter but not file documentation
60	The decisions were based on the data sources providing in the Corps Manual (Steps 4-8 of Section B – Preliminary Data Gathering and Synthesis) or SMC/SOSM.		
61	NRCS followed the 7-step procedures in paragraph 64, pg 46 of the COE Manual.		
62	This 7-step procedure was cited or supported by documentation.		
63	The field review did (quality assurance) support the decision for each of the three factors.		
64	The agency expert properly followed the three steps.	23%	No base map, no consideration of Section F & no consideration of sampling method
65	If the sampling unit was over 5-acres, this variance was used and cited.	0%	*No consideration given *Variance used but not cited
67	The decision was made at the diagnostic factor scale (using the 3-factor approach).	69%	Should have been atypical for vegetation
69	If an atypical situation was determined to occur for vegetation the methods were (par. 73; pages 74-77) applied appropriately and documented in the remarks section of COE form.	14%	*Soybeans listed, should have been a typical *DC was told to IGNORE ditching that was done after 1990 but before 1996
70	Chapter 5 was used appropriately (can only be used for one of the three factors).	20%	Area used was corn or soybeans, should have labled atypical and found a suitable site
71	The Normal Environmental Conditions (NEC) decision was made at the diagnostic factor scale.	42%	Staff don't understand NEC
73	If problem area methods (Section G of the Corps Manual) were used, they were applied appropriately.	0%	Not used appropriately

74	Chapter 5 of the supplements were also used appropriately.	14%	Not used appropriately
75	Were the representative observation point(s) identified on the base map.	0%	
77	This variance was possible and applied correctly.		
78	The sampling methods (Basal areas, height, percent cover...) from the Corps Manual (standard method) were used, and if so, applied properly.	50%	*Staff do not understand sampling methods from COE Manual *Inappropriate vegetation was used (corn, soybeans)
79	The plot size and shape from Chapter 2 of the appropriate supplement (pg 16) was used (alternative method) and the reason documented in the notes.	0%	Either not used or not documented
80	The plot size and shape was modified per the flexibility provisions in par. 23.	0%	Modified but not noted as required
81	The 50/20 rule was applied correctly.	17%	*No consideration of dominance test *Not applied
82	The indicator was applied correctly from Chapter 2.	17%	*Not used or not adequately completed *corn misappropriately used as indicator
83	The possibility of a false positive or false negative was considered in context with the unique FSA definition of hydrophytic vegetation and normal circumstances PRIOR to rendering a decision on this factor and documented.	0%	*Staff do not understand the false positive or false negative concept *Considered but not documented
85	This variance was used and applied correctly.		
86	The location of the hydrology indicator observed was different than the representative observation point & the location of the hydrology indicator identified on the base map.		
87	The Corps indicators were applied correctly from Regional Supplements Chapter 4.	36%	*COE forms not used *Aquatic plants listed but not found on the site
88	The flexibility provisions (par. 23) were utilized and documented as required.		
89	Prior to decision making for this factor, the possibility of a false positive or false negative was considered in context with the unique FSA definition of wetland hydrology and normal circumstances and documented in notes.	10%	Considered but not documented
91	The hydric soils factor was considered and followed according to policy.	42%	*Variance used but hydric soils map unit only has inclusions *Used but not documented
92	If atypical, methods were in the atypical situation for soil (par. 74 COE Manual; pg. 77 – 79) and/or Chapter 5 was used appropriately and cited.		
93	If a soil probe was used, par. 23 COE Manual was cited and the reason explained.		
94	If field indicators were used, they were applied correctly.		
96	The wetland identification decision was based on recent/current normal circumstances and not 1985 conditions?	40%	*No consideration given to normal circumstances
97	The adjacent wetland sampling units within the project were joined into a single wetland identification map based on the boundaries of the original sampling units identified on the base map.	0%	
Onsite Methods (inspection necessary) - Level 2-3 and Onsite Determination Required		64%	
9	The target date of 1985 was considered in the selection of the remote data sources.	26%	Normal Conditions not addressed or considered
10	The SOSM separated the wetland ID process (based on normal circumstances) from the determination of exemption (based on specific dates within 7CFR12.5(b)).	0%	Site was called FW with maintenance done over the years
11	The remote data sources used targeted the time period in question.	94%	
13	The SOSM/SOM were used in the assignment of the proper Wetland Conservation (WC) label.	65%	SMC provides not guidance as what is expected during the field review

15	The 026(e) was completed correctly and completely.	85%	No evidence of return receipt
16	The CPA-026(e) was signed by the Designated Conservationist.	85%	Signature typed (not signed)
17	A copy of 026(e) was provided to the producer/landowner.	100%	
18	A copy of the 026(e) was provided to Farm Sservice Agency.	85%	No copy to FSA
19	The size and location of each area was identified.	95%	Field split unnumbered so only portion of field completed
20	The identification on the project map was carried over to the certified wetland determination map.	0%	No base map found
Appeals		64%	
21	The "NFSAM FSA Wetland ID Procedures" was cited regarding wetland identification (step 1).	0%	Not cited
22	The 7 CFR 12.2 & 12.5(b) was cited regarding labels (step 2).	0%	7 CFR12.5 cited but not 7 CFR 12.2
23	The Clean Water Act (CWA) paragraph was included.	100%	
24	The appeal process followed 7 CFR 614.	60%	Producer appealed directly to State Office
25	The reconsideration visit was conducted in the field.	100%	
26	The reconsideration was conducted by the original decision-maker (designated conservationist that issued the original 026).	80%	Second level review was compelted correctly but the DC was asked to sign the 026
27	The adverse decision was elevated to the STC within 15 days of the site visit.	40%	Not elevated to STC within 15 days
28	The 2nd tier process (STC level) provided for an independent review (different NRCS staff decision maker).	100%	
30	Appeal rights to NAD or FSA were provided with the final determination.	100%	
31	If appealed to FSA, another site visit was conducted per 7CFR 614.		
Reviewer Agreed with Determinations		54%	
14	The reviewer agreed with the assigned Wetland Conservation (WC) label based on CFR 12.5(b) and the NFSAM.	60%	*On reconsideration FW was changed to AW without justification *No crop history prior to 1987 but tilled: 1982,1995 & 2012 *Two areas had 3 out of 6 years w/wetland signatures & were called PC or NW
54	Data collected during the review was consistent with the original data sheets.	57%	*Dominant species was ragweed & did not meet any indicator *No info on vegetation with onsite data sheet *Soybeans in field & no comparison site was used *Crops were used for vegetation
57	The facts supported the decision for hydric soils.	78%	No landform listed, reference soil survey
59	The facts supported the decision for wetland hydrology.	50%	*No documentation *Not all drainage was documented
66	The site visit associated with the QAR supports the numbers & locations of the sampling units used in the determination.	50%	*Needed 4 sampling units & only had 1 *No base map or sampling units *A comparison site should have been used
68	The facts support the decision to use or not use Atypical Situations.	50%	*Should have used atypical since field was in soybeans or corn *DC discussed a possible CW w/AO, who told DC to ignore CW
72	The facts support the decision to use or not use Problem Area methods.	30%	Determnation completed in late summer w/no hydrology or site observed during drought
76	The facts support the number and location of representative observation point(s) used in the determination.		
84	The reviewer agreed with the hydrophytic vegetation decision (reviewer must consider NC and the FSA definition of hydrophytic vegetation).	50%	*Staff rendered decision on vegetation located in ponded area not saturated area *Corn used for vegetation w/no comparison site utilized
90	The hydrophytic soils factor was considered and followed according to policy.	42%	*The site call was CWTE, in the past called PC with extensive ditching compelted later to convert to crops, instead PC label continued
95	The facts support the decision on hydric soil decision based on the FSA unique mandate of (1) a predominance and (2) the FSA definition of a hydric soil.	70%	No documentation

APPENDIX 3

NCWCI Level 2 & 3 – CHECK LIST

Review Number:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
State (Use two letter symbol):	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	MN	
County:	Watonwan	Meeker	Martin	Martin	Cottonwood	Lac Qui Parle	Brown	Brown	Meeker	Brown	Watonwan	Blue Earth	Blue Earth	Cottonwood	Meeker	Lac Qui Parle	Watonwan	Renville	Renville	Renville	
Tract Number:	438	10118	2491	1164	8920	2658	1454	12616	1663	12778	15918	14073	1661	2066	2632	1583	438	9608	2705	56793	
Date of Review:	08/26/13	08/28/13	08/29/13	08/29/13	08/29/13	08/26/13	08/27/13	08/27/13	08/28/13	08/27/13	08/26/13	08/28/13	08/28/13	08/28/13	08/29/13	08/26/13	08/26/13	08/26/13	08/27/13	08/27/13	08/27/13
Participant Name:	Kenneth Lewis	Shoutz	Marlin Manzke	Maynard Jagodzinske	Kristi Pfeiffer	S. Redepenning	Hoffmann	Richert	Hedtke	Hoffman	Stone Lake Farm Inc	Lantz Farms GP	Howard Guse	Edward Freking	Paul Schilling	D. Brandenberger	Kenneth Lewis	Bode Dairy	Ronald Danielson	JSF INC.	
Certified Determination made by:	Betsy Norland	Melaine Dickman	Levi Gibson	Reginald Liddell	Kelly Pfar	John Frie	Jennifer Hahn	Jennifer Hahn	Melina Dickman	Jennifer Hahn	Betsy Norland	Ryan Braulick	Ryan Braulick	Kelly Pfar	Melaine Dickman	Burt Hendrikson	Betsy Norland	Jeff Kjorness	Jeff Kjorness	Jeff Kjorness	
Certification Date:	10/15/12	07/19/13	11/05/12	09/27/12	09/15/12	10/06/12	10/14/12	11/04/12	09/22/13	10/26/12	10/15/12	10/28/12	10/29/12	07/24/12	07/19/13	03/29/13	10/15/12	10/10/12	10/02/12	10/02/12	
Reviewed by:	Davis	Davis	Davis	Davis	Gertsma	Gertsma	JO / PF	JO / PF	Davis	JO / PF	Davis	Gertsma	Gertsma	Gertsma	Davis	Gertsma	Davis	Gertsma	Gertsma	Gertsma	
Type:	Off-Site	Off-Site	Off-Site	Off-Site	Off-Site	Off-Site	Off-Site	Off-Site	On-Site	On-Site	On-Site	On-Site	On-Site	On-Site	On-Site	On-Site	On-Site	On-Site	On-Site	On-Site	

NCWCI Oversight and Evaluation

FOR OFFSITE REVIEW (LEVEL 1) ANSWER ONLY THE QUESTIONS IN GREEN

I.	ADMINISTRATIVE REVIEW																				
1	Did the Designated Conservationist attend the Phase 2 Wetland Delineation Training?	n	n	y	N	N	Y	Y	Y	n	y	n	N	N	N	n	N	n	Y	Y	Y
2	Did the individual completing the offsite determination work have the appropriate Job Approval Authority?	y	y	y	y	Y	Y	Y	x	y	x	Y	Y	Y	y	Y	x	Y	Y	Y	
3	Did the individual completing the onsite determination work have the appropriate Job Approval Authority?	x	x	x	x	X	Y	x	x	n	y	y	Y	Y	Y	n	Y	y	Y	Y	
4	Did the individual completing the Certified Wetland Determination have the appropriate Job Approval Authority?	y	y	y	x	Y	Y	Y	Y	y	y	Y	Y	Y	y	Y	y	Y	Y	Y	
5	Was there a State job-approval roster?	y	y	y	y	Y	Y	Y	Y	y	y	Y	Y	Y	y	Y	y	Y	Y	Y	
6	If the request was on the AD-1026, were any of the boxes (10A, 10B or 10C) checked "yes"?	y	y	y	y	Y	Y	Y	Y	n	y	Y	Y	Y	y	N	y	Y	Y	Y	
7	Was there a county log of AD-1026 request or access database?	y	y	y	y	Y	Y	Y	Y	y	y	Y	Y	Y	y	Y	y	Y	Y	Y	
8	Was the request entered on county log or access database?	y	y	y	y	Y	Y	Y	Y	y	y	Y	Y	Y	y	Y	y	Y	Y	Y	
9	Was the target date of 1985 considered in the selection of the remote data sources reflective of conditions prior to 1985?	n	n	n	n	N	Y	Y	Y	x	y	n	N	N	N	n	Y	n	N	N	
10	Did the SOSM (or offsite methods used) separate the wetland ID process (based on normal circumstances) from the determination of exemption (based on specific dates within 7CFR12.5(b)).	n	n	n	n	N	n	n	n	x	x	x	x	x	x	x	x	x	x	x	
Labels																					
11	Did the remote data sources used target the time period in question (for Normal Circumstances and a different data set for label assignments)?	y	y	y	y	Y	Y	Y	Y	x	y	n	Y	Y	Y	y	Y	x	Y	Y	
12	Did the person assigning the label have job approval authority?	y	y	y	y	Y	Y	Y	Y	y	y	y	Y	Y	Y	y	Y	y	Y	Y	
13	Were state off-site methods (or state mapping conventions) used in the assignment of the proper Wetland Conservation (WC) Label?	y	n	n	n	Y	Y	Y	x	y	x	Y	Y	Y	x	Y	y	N	N	N	
14	Does the reviewer agree with the assigned WC label based on CFR 12.5(b) and the NFSAM?	y	y	n	y	Y	Y	Y	n	n	y	y	N	Y	N	y	Y	Y	N	N	
CPA-026 & Transmittal Letter																					
15	Was the 026(e) completed correctly and completely?	y	y	y	y	Y	Y	Y	Y	y	y	Y	Y	Y	y	Y	y	N	N	N	
16	Was the CPA-026(e) signed by Designated Conservationist?	y	y	y	y	Y	Y	Y	Y	y	y	Y	Y	Y	y	Y	y	N	N	N	
17	Was a copy of 026(e) provided to the producer /landowner?	y	y	y	y	Y	Y	Y	Y	y	y	Y	Y	Y	y	Y	y	Y	Y	Y	
18	Was a copy of the 026(e) provided to FSA?	y	y	y	y	Y	Y	Y	Y	y	y	Y	Y	Y	y	Y	y	N	N	N	
19	Was the size and location of each area identified?	y	y	n	y	Y	Y	Y	Y	y	y	Y	Y	Y	y	Y	y	Y	Y	Y	

20	Was the identification on the base map carried over to the certified wetland determination map?	n	n	n	n	N	N	n	n	n	n	n	N	N	N	n	N	n	N	N	N
21	Was the "NFSAM FSA Wetland ID Procedures" cited in transmittal letter regarding wetland identification (step 1)?	n	n	n	n	N	N	n	n	n	n	n	N	N	N	n	N	n	N	N	N
22	Was 7 CFR 12.2 & 12.5(b) cited regarding labels (step 2)?	n	n	n	n	n	N	n	n	n	n	n	N	N	N	n	N	n	N	N	N
23	Was the Clean Water Act paragraph included?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Appeals																					
24	Did the appeal process follow 7 CFR 614?	x	x	y	x	X	N	y	y	x	x	x	X	X	N	x	X	x	X	X	X
25	Was the reconsideration visit conducted in the field?	x	x	y	x	X	Y	Y	Y	x	x	x	X	X	Y	x	X	x	X	X	X
26	Was the reconsideration conducted by the original decision-maker (designated conservatist that issued the original 026)?	x	x	y	x	X	N	y	y	x	x	x	X	X	Y	x	X	x	X	X	X
27	Was the adverse decision elevated to the STC within 15 days of the site visit.	x	x	n	x	X	Y	n	n	x	x	x	X	X	Y	x	X	x	X	X	X
28	Did the 2 nd tier process (STC level) provide for an independent review (different than the original NRCS staff decision maker)?	x	x	y	x	X	X	y	y	x	x	x	X	X	Y	x	X	x	X	X	X
29	Did the 2 nd tier staff have job approval authority on the state roster?	x	x	n	x	X	X	Y	Y	x	x	x	X	X	Y	x	X	x	X	X	X
30	Were appeal rights to NAD or FSA provided with the final determination letter?	x	x	y	x	X	X	Y	Y	x	x	x	X	X	Y	x	X	x	X	X	X
31	If appealed to FSA, was another site visit conducted per 7CFR 614?	x	x	x	x	X	X	x	x	x	x	x	X	X	X	x	X	x	X	X	X
WETLAND DETERMINATION METHODS																					
Section A - Introduction																					
32	Was a modification /justification of the standard wetland ID methods made, per paragraph 23 of the Corps Manual and Section A - Introduction; Corps Manual as is provided by NRCS policy the FSA Procedures (5-5)?	x	x	x	x	x	X	x	x	x	x	x	X	X	X	x	X	x	X	X	X
33	If yes, was the purpose of the modification explained as required in paragraph 23?	x	x	x	x	x	X	x	x	x	x	x	X	X	X	x	X	x	X	X	X
Section B - Preliminary Data Gathering and Synthesis																					
34	Was a base map developed for the determination?	n	n	n	n	N	N	n	n	n	n	n	N	N	N	n	N	n	N	N	N
35	Was the base map by the Tract per regulations either Field per national policy or resulting from request for determination on 569)?	x	x	x	x	X	X	x	x	x	x	x	X	X	X	x	X	x	x	x	x
36	Was the numbering of sites and sampling points appropriate? i.e. FSA Field Number/Sampling Unit Number (e.g. 1,51,A)	x	x	x	x	X	X	x	x	n	n	x	Y	N	X	n	X	n	N	N	N
37	Were the acres of the project area (entire project size) placed on the base map per policy?	n	n	n	n	n	n	n	n	n	n	n	N	N	n	n	n	n	N	N	N
38	Was the FSA Variance (5-9) followed? (Identify drainage prior to 1985 or post 1985 drainage)	n	n	n	n	N	Y	Y	Y	x	n	n	Y	Y	Y	n	Y	n	N	N	N
39	Was an appropriate precipitation data source used for the pre-1985 remote data source?	x	x	x	x	X	x	x	x	x	x	x	X	X	X	x	x	x	X	X	X
40	Was the precipitation data source noted and appropriate for the "current" remote data source?	x	x	x	x	X	x	x	x	x	x	x	X	X	X	x	x	x	X	X	X
41	Were FSA Normal Circumstances, related to disturbance, considered and documented as required in (3-1 thru 3-5)?	n	n	n	n	Y	Y	Y	n	x	n	n	Y	Y	Y	n	Y	n	N	N	N
42	Was the evidence of pre-1985 drainage documented?	y	x	y	y	N	Y	Y	n	x	n	n	Y	Y	Y	n	Y	n	N	Y	X
43	If 'yes', were the drained conditions (considered the new normal circumstances) considered in the wetland identification decision for each factor?	n	x	n	n	X	Y	Y	x	x	x	x	Y	Y	Y	x	X	x	X	N	N
44	If drainage was noted after 1985, was it documented?	x	x	x	x	X	X	x	x	x	x	x	X	Y	X	y	X	x	X	Y	X
45	Were the data sources considered consistent with what is provided in the Corps Manual (items a - j in paragraph 54) and if so were the items considered noted on the COE forms?	y	y	y	y	Y	Y	n	n	y	n	x	Y	Y	Y	y	Y	x	Y	Y	Y

46	Was a remote source (slide review) data-sheet included and completed?	Y	Y	n	Y	Y	Y	Y	Y	Y	Y	Y	x	Y	Y	Y	Y	Y	x	Y	Y	Y	
47	Do the facts support the decision on data sources used?	n	n	n	n	Y	Y	n	n	n	n	n	n	Y	Y	Y	Y	Y	Y	x	N	N	N
Section C: Selection of Method																							
48	Was the FSA Variance (5-11) followed?	x	x	x	x	x	X	x	x	x	Y	x	Y	Y	Y	x	Y	x	X	X	X		
49	Was the three-level approach considered by the agency expert (Designated Conservationist)?	n	x	n	n	x	X	x	x	n	Y	n	Y	Y	Y	n	Y	n	Y	Y	Y		
Section D - Routine Determinations																							
50	If this is a Level 1 determination, were each of the three wetland diagnostic factors assessed independently and remote data sources for each factor cited?	n	n	n	n	n	N	n	n	x	x	n	N	N	X	x	N	n	X	X	X		
51	If this is a Level 1 or Level 3 determination, were State Offsite Methods or State Mapping Conventions used for one or more of the factors and if so were they applied appropriately?	x	Y	Y	Y	Y	Y	Y	Y	Y	x	x	Y	Y	Y	x	Y	x	X	X	X		
For ALL Level 1 & Level 3 determinations and the Level 1 (offsite) portion of the Level 3 determinations:																							
Vegetation																							
52	Did the agency expert document that he/she considered the unique definition of hydrophytic vegetation provided in the Food Security Act?	n	n	n	n	N	N	Y	n	x	n	x	N	N	N	x	N	x	N	N	N		
53	If variance (5-41) related to the veg. reference site was used, was it cited on the data sheet?	x	x	x	x	X	X	x	x	x	x	x	X	X	X	x	X	x	X	X	X		
54	Are data that was collected during the review consistent with the original data sheets?	x	x	n	Y	Y	Y	x	n	x	Y	Y	N	Y	Y	x	Y	x	N	N	N		
Soils																							
55	Did the agency expert document that he/she considered the unique definition of hydric soils provided in the FSA?	n	n	n	n	N	N	Y	n	n	n	x	N	N	N	n	N	x	N	N	N		
56	If the process provided for in 7 CFR 12.31 and repeated in the FSA Variance (5-18) was used, was it correctly and cited?	n	Y	Y	Y	N	Y	n	n	n	n	x	N	N	X	n	N	x	N	N	N		
57	Do the facts support the decision for hydric soils?	n	Y	Y	Y	N	Y	Y	Y	Y	n	x	Y	Y	Y	Y	n	x	Y	Y	Y		
Hydrology																							
58	Did the agency expert document that he/she considered the unique definition of wetland hydrology provided in the FSA Procedures (no set days of inundation or saturation)?	n	n	n	n	N	N	Y	n	x	n	x	N	N	N	x	N	x	N	N	N		
59	Do the facts support the decision for wetland hydrology?	n	Y	n	Y	Y	Y	Y	n	x	n	x	n	Y	Y	x	Y	x	N	N	N		
If the Corps off-site methods were used for one or more of the factors, rather than NRCS state off-site methods:																							
60	Were the decisions based on the data sources providing in the Corps Manual (Steps 4-8 of Section B – Preliminary Data Gathering and Synthesis)?	x	x	x	x	X	X	x	x	x	x	x	X	X	X	x	X	x	X	X	X		
61	Did NRCS follow the 7-step procedures in paragraph 64, pg 46 of the COE Manual?	x	x	x	x	X	X	x	x	x	x	x	X	X	X	x	X	x	X	X	X		
62	Was this 7-step procedure cited or supported by documentation?	x	x	x	x	X	X	x	x	x	x	x	X	X	X	x	X	x	X	X	X		
63	Do the facts support the decision for each of the three factors?	x	x	x	x	X	X	x	x	x	x	x	X	X	X	x	X	x	X	X	X		
Subsection 2 – Onsite Inspection Necessary (Level 2 and Level 3 determinations) (Either all or part onsite)																							
64	Did the agency expert properly follow the three steps?	n	x	x	x	X	X	x	x	n	n	n	Y	Y	Y	n	N	n	N	N	N		
65	If the sampling unit is over 5-acres, was this variance used and cited?	x	x	x	x	X	X	x	x	n	x	x	N	X	X	x	X	x	X	N	X		
66	Did the site visit associated with the QAR support the numbers & locations of the sampling units?	x	x	x	x	X	X	x	x	n	Y	Y	N	Y	Y	Y	Y	n	N	N	N		
67	Was the decision made at the diagnostic factor scale?	n	x	x	x	X	X	x	x	Y	Y	n	N	Y	Y	Y	Y	n	Y	Y	Y		
68	Do the facts support the decision to use or not use Atypical Situations?	x	x	x	x	X	X	x	x	Y	Y	Y	N	N	N	Y	Y	Y	N	N	N		

		Vegetation																			
69	If an atypical situation was determined to occur for vegetation were the methods (par. 73; pages 74-77) applied appropriately and documented in the remarks section of COE form - Step 1 (Page 42 Wetland Delineation Manual)?	x	x	x	x	X	X	x	x	x	x	x	N	N	N	x	Y	x	N	N	N
70	Was Chapter 5 used appropriately (can only be used for one of the three factors).	x	x	x	x	X	X	x	x	x	x	x	N	N	X	x	Y	n	n	X	X
71	Was the Normal Environmental Conditions (NEC) decision made at the diagnostic factor scale?	x	x	x	x	X	X	x	x	n	y	n	Y	Y	N	y	Y	n	N	N	N
72	Do the facts support the decision to use or not use Problem Area methods?	x	x	x	x	X	X	x	x	x	y	n	N	N	X	y	Y	n	N	N	N
73	If problem area methods (Section G of the Corps Manual) were used, were they applied appropriately?	x	x	x	x	X	X	x	x	x	x	X	X	X	x	X	n	X	X	X	X
74	Was Chapter 5 of the supplements also used appropriately?	x	x	x	x	X	X	x	x	x	x	N	N	X	x	Y	n	N	N	N	N
75	Were the representative observation point(s) identified on the base map?	x	x	x	x	X	X	x	x	n	n	n	N	N	N	n	N	n	N	N	N
76	Do the facts support the number and location of representative observation point(s)?	x	x	x	x	X	X	x	x	x	x	x	X	X	x	x	X	x	x	x	x
77	If variance (5-48) was used, was it applied correctly?	x	x	x	x	X	X	x	x	x	x	X	X	X	x	X	x	X	X	X	X
78	Was the sampling methods for vegetation (Basal areas, height, percent cover...) from the Corps Manual (routine method) used, and if so, was it applied properly?	x	x	x	x	X	X	x	x	y	n	n	N	N	Y	y	Y	n	Y	N	Y
79	Was the plot size and shape from Chapter 2 of the appropriate supplement used (alternative method) and was the reason documented in the notes?	x	x	x	x	X	X	x	x	n	x	X	X	X	x	X	x	X	X	X	X
80	Was the plot size and shape modified per the flexibility provisions in par. 23?	x	x	x	x	X	X	x	x	x	x	X	X	X	x	X	x	X	N	X	X
81	Was the 50/20 rule applied correctly?	x	x	x	x	X	X	x	x	n	y	n	N	N	Y	n	N	n	N	N	N
82	Were the indicators applied correctly from Chapter 2?	x	x	x	x	X	X	x	x	y	n	n	N	N	N	n	Y	n	N	N	N
83	Was the possibility of a false positive or false negative considered in context with the unique FSA definition of hydrophytic vegetation and normal circumstances PRIOR to rendering a decision on this factor and was it documented?	x	x	n	x	X	X	x	x	n	n	n	Y	Y	N	n	N	n	N	N	N
84	Did the reviewer agree with the hydrophytic vegetation decision (reviewer must consider NC and the FSA definition of hydrophytic vegetation)?	x	x	x	x	X	X	x	x	n	y	y	N	N	Y	y	Y	y	N	N	N
		Wetland Hydrology																			
85	Was this variance (5-62) used and applied correctly?	x	x	x	x	X	X	x	x	x	x	X	X	X	x	X	x	X	X	X	X
86	If the location of the hydrology indicator observed is different than the representative observation point was the location of the hydrology indicator identified on the base map?	x	x	x	x	X	X	x	x	x	x	X	X	X	x	X	x	X	X	X	X
87	Were the Corps indicators applied correctly from Regional Supplements Chapter 4?	x	x	x	x	X	X	x	x	n	n	n	Y	Y	X	n	N	n	N	y	Y
88	Were the flexibility provisions (par. 23) utilized and if so was documentation provided as required?	x	x	x	x	X	X	x	x	x	x	X	X	X	x	X	x	X	X	X	X
89	Prior to decision making for the hydrology factor, was the possibility of a false positive or false negative considered in context with the unique FSA definition of wetland hydrology and normal circumstances documented in notes?	x	x	x	x	X	X	x	x	n	y	n	n	n	X	n	X	n	N	N	N
90	Do the facts support the decision on wetland hydrology (reviewer must consider NC and the FSA definition of wetland hydrology of hydrophytic vegetation)?	x	x	x	x	X	X	x	x	n	y	n	N	Y	Y	y	Y	n	N	N	N
		Hydric Soils																			
91	Was the hydric soils factor considered and followed according to policy?	x	x	x	x	X	X	x	x	y	n	n	Y	Y	Y	y	N	n	N	N	N
92	If atypical, were the methods in the atypical situation for soils (par. 74 COE Manual; pg. 77 - 79) and/or was Chapter 5 used appropriately and cited?	x	x	x	x	X	X	x	x	x	x	X	X	X	x	X	x	X	X	X	X
93	If a soil probe was used, was par. 23 COE Manual cited and the reason explained?	x	x	x	x	X	X	x	x	x	x	X	X	X	x	X	x	X	X	X	X

94	If field indicators were used, were they applied correctly?	x	x	x	x	X	X	x	x	x	x	x	X	X	X	x	X	x	X	x	x
95	Do the facts support the decision on hydric soil decision based on the FSA unique mandate of (1) a predominance and (2) the FSA definition of a hydric soil?	x	x	x	x	X	X	x	x	x	n	n	Y	Y	Y	x	Y	n	Y	Y	Y
96	Was the wetland identification decision based on normal circumstances and not 1985 conditions?	n	n	n	n	X	X	x	x	Y	Y	n	Y	Y	N	n	Y	n	X	N	Y
97	Were the adjacent wetland sampling units within the project joined into a single wetland identification map based on the boundaries of the original sampling units identified on the base map?	x	x	x	x	X	X	x	x	x	x	x	X	X	x	x	X	x	x	N	X

APPENDIX 4 – EMPLOYEES INTERVIEWED AND INTERVIEW SUMMARY

EMPLOYEES INTERVIEWED

APPENDIX – MN EMPLOYEES INTERVIEWED

EMPLOYEE & TITLE	Teleconference Date
Lewis Brockette – State Wetland Spec.	September 6
Jeff Kjorness - DC	September 6
Tim Wilson – AC	September 6
Ryan Galbreath - SRC	September 6
Reginald Liddell - DC	September 6
Levi Gibson – Area Bio	September 9
Burt Hendrickson - DC	September 9
Jennifer Hahn - DC	September 9
Betsy Norland - DC	September 10
Dale Johnson - DC	September 10
Kasey Taylor - AC	September 10
Kelly Pfarr - DC	September 11
Gary Watson - AC	September 11
Shannon Johnson – Area Bio	September 11
Ryan Braulick – DC	September 11

District Conservationist
State Office or Area Office

APPENDIX – INTERVIEW SUMMARY

General Information

All Minnesota staff were cooperative and appeared to be honest with their answers. Experience in making certified wetland determinations among the employees interviewed ranged from relatively new (a few years) to several years.

Wetlands Training

When asked about wetlands training, the amount of training each employee had received were all over the board. The following training had been taken by the employees interviewed (this includes DC's and Area Staff working with wetlands):

- Eight employees have not had either Phase II or the Advanced Course
- Three employees had Phase II Training but not the Advanced Course
- One employee has taken both Phase II and the Advanced Course

Information asked and received

This group of questions pertained to who the employees called for information and how they felt about the answers they received:

- Who do you call when you have wetland questions? The answers to this question varied from ARC's to Area or State Office staff, with the majority contacting the Area Biologist.
- Do you get a timely answer? Most answered "yes".
- Do you feel like the answers are based on laws, regulations and policy? These answers were split between yes, no, and not sure (interpretation/miscommunication); with most employees saying not sure.
- Do you feel answers given are consistent within the area/state? These answers were all over the board with answers like: yes, no, don't know. One employee stated each area was "doing it differently".

Quality Assurance

When asked questions pertaining to quality assurance, the answers were all over the board with the following summations:

- Most answered no QAR's, a few answered 1 or 2 times by Area Office. All said no QAR's were taking place from State Office.
- Only one office stated that they utilized an internal (within the field office) QAR process & had someone review their work. However, most answered that if they had any questions pertaining to wetlands they would ask someone.
- Some SWCD's are doing WC work. The DC said he reviewed their work but did not go to the field. The SWCD went to the field if needed. One DC said she overturned 3 determinations made by SWCD.
- One employee stated that all of his work was reviewed by the AO because he was new but that would slack off when he acquired more experience.
- One of the Area Offices said they review 1/3 of all offices but don't go to the site; one Area Office said they started 5-10% reviews this year, & one Area Office said they review 5% of field offices.

Appeals

Most employees seemed to have a basic understanding of the appeals process. The majority of the answers consisted of: if a producer requests a reconsideration they would meet them in the field to review the determination & give the producer an opportunity to provide any additional drainage documentation. If the determination remained adverse, they scanned to the share-point site or provided it to the AO. A few employees stated they had never had a reconsideration or an appeal.

Pressure to NOT render an adverse decision or expansion of wetland acreage

- Most employees said they felt no pressure to NOT render an adverse decision from the agency. One employee said they did feel pressure from their AO to NOT render an adverse decision and the pressure was state wide. They went on to say they felt as if the AO applying the pressure was in turn being pressured from the SO. Also, that these people were still working for NRCS. One employee stated there had been a culture change within the state over the past year but they still worried when they got to mediation that their determination might not be upheld.
- Most employees said they did not feel pressure to expand wetland acreage.

Wetland Determination Request Timeframes

Concerning the length of time it takes to complete a wetland request on an AD-1026, including with a backlog and without a backlog: Most said 2-3 weeks all the way up to 1-4 months with a backlog. Those going to AO {adverse determinations} for reviews are taking longer to get out. Most employees claimed a backlog of between 20-80 determinations. One employee stated that FSA doesn't send over unless THEY think it's a wetland.

State Office and Area Office reviews:

- No Quality Assurance Plan is provided from either the State Office or the Area Offices. There is currently no policy pertaining to this issue, however it is still a 'good idea' to have one for both State Office and Area Offices (i.e. who will be reviewed, when they will be reviewed, who will review them, etc.).
- Currently no QAR's being completed from the State Office.

(b) (5)

(b) (5)

(b) (5)

APPENDIX 5 – Critical Preliminary Finding

The following critical preliminary finding involves the administration from Minnesota NRCS of the Wetland Conservation Compliance (WCC) provisions of the Food Security Act of 1985 as amended, and the controlling

regulations to those provisions published in Title 7 of the Code of Federal Regulations Part 12 (7 CFR 12)– Highly Erodible Land and Wetland Conservation. Internal agency policy related to the WCC provision is provided in the National Food Security Act Manual (NFSAM).

Background:

By regulation, the Secretary grants NRCS the responsibility to apply WCC labels based on “conditions” provided in the regulations (7 CFR 12). The National Food Security Act Manual (NFSAM) provides supporting internal agency policy related to WCC labels.

It is the responsibility of the State Conservationist to issue job approval authority based on the demonstration of proficiency by staff. Quality assurance reviews verify such proficiency. It is the responsibility of staff granted such authority (“designated conservationists”) to issue certifications without prejudice. In issuance of a certified wetland determination, the Designated Conservationist must sign the certification under the statement on the form CPA-026 – Highly Erodible Land and Wetland Conservation Determination that *“I certify that the above determinations are correct and were conducted in accordance with regulations and procedures contained in 7CFR12 and the National Food Security Act Manual.”*

Finding:

Program Participants are being provided certified wetland determinations with WCC labels not supported by fact, are insufficiently documented, and are not conducted in accordance with regulations. By signing the CPA-026, NRCS staff in MN are certifying that the determination is correct and in accordance with the regulations when the data from the national QAR suggests otherwise. This places the agency at risk of the loss of confidence from the wetland conservation community, the Administration and Congress.

(b) (5)

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Regulatory Language Relative to the Issue:

In the controlling regulations (7 CFR 12.6 – Administration), the Secretary delegated responsibilities between the USDA Farm Services Agency and USDA Natural Resources Conservation Service. In section 12.6(c) *Administration by NRCS*, the regulations state

5. *An NRCS representative shall make the following determinations which are required to be made in accordance with this part;*
 - i. *Whether land is highly erodible or has a wetland type or a converted wetland identified in accordance with the provisions of this part;*

In 7 CFR 12.32 – *Converted wetland identification criteria*, the Secretary provides NRCS mandates on the criteria of rendering a decision that an area is a converted wetland. In 7 CFR 12.5(b) – *Wetland Exemptions*, the Secretary provides exemptions to a determination of ineligibility. In 7 CFR 12.4 – *Determination of Ineligibility*, the Secretary provided criteria for rendering a decision of ineligibility by USDA.

Issue: The NFSAM, Part 514.1 (B) provides requirements for Job-Approval Authority related to rendering decisions on WCC provisions.

(1) Certified wetland determinations must be completed by a qualified NRCS employee, as determined by the State Conservationist. Qualified employees (i.e., agency experts) must meet all of the following criteria:

- (i) Have completed all the required training, including update courses.*
- (ii) Have the appropriate job-approval authority.*
- (iii) Have demonstrated proficiency in making certified wetland determinations.*

(2) State Conservationists are responsible for maintaining a roster of agency experts, by training and experience, who have demonstrated the knowledge and skills necessary to conduct wetland determinations and delineations, scope and effect evaluations, functional assessments, minimal effects evaluations, mitigation planning, and mitigation easements. The roster will be filed in Section III of the FOTG, "Legislated Programs, Job Approval Authority." (Example shown in Exhibits)

(3) In accordance with Part 518 of this manual, State Conservationists will carry out appropriate quality control reviews of certified wetland determinations.

Part 514.1 provided a definition of a certified wetland determination as:

1) Certification of a wetland determination means that the wetland determination is of sufficient quality to make a determination of ineligibility for USDA program benefits. All wetland determinations made after July 3, 1996, are considered certified determinations (7 CFR Section 12.30(c)(1)). Determinations made prior to July 3, 1996, are considered certified if they met the procedural (appeal rights) and quality mandates as provided in 7 CFR Section 12.

(b) (5)

Appendix 6: Briefing of Draft

A briefing of the draft version of this report was completed on May 1, 2014.

Those present included:

Don Baloun, State Conservationist
Ryan Galbreath, State Resource Conservationist

Lee Davis, CNTSC Biologist
Paul Flynn, Prairie Pothole Wetland Project Manager
Jim Gertsma, Area Resource Soil Scientist, Iowa
Jason Outlaw, National Wetland Compliance Specialist
Teresa Stewart, O&E Staff