



**ECOLOGICAL AND WATER  
RESOURCES DISCRETIONARY  
ENVIRONMENTAL ASSESSMENT  
WORKSHEET ORDER #3**

Pursuant to Minnesota Statutes, Section 116D.04 and Minnesota Rules, part 4410.1000, subps. 3 and 4, the Commissioner of Natural Resources hereby vacates his order dated June 19, 2015 ordering the preparation of an Environmental Assessment Worksheet (EAW) to assess the potential for significant environmental effects associated with the R.D. Offutt (Offutt) Modified Project involving the conversion of approximately 2,000 acres of historic timber acreage overlying the Pineland Sands Aquifer in Hubbard, Wadena, Becker, and Cass Counties to irrigated cropland.

1. On February 5, 2015 the Commissioner of the Department of Natural Resources (DNR) issued an Order for a discretionary EAW to Offutt for a project that consisted of applications for twenty-one (21) groundwater appropriation permits and a request for thirty-three (33) preliminary well assessments. If granted, the permits would result in the conversion of approximately 7,000 acres of pine forest, historically managed for timber production, to irrigated agriculture (Project).

2. Offutt appealed the DNR's February 5, 2015 Order to the Minnesota Court Appeals and requested that the Court vacate the DNR's February 5, 2015 Order.

3. While the appeal was pending, Offutt submitted two letters to the DNR, dated April 7, 2015 and April 22, 2015, withdrawing all of the preliminary well assessments and some of the permit applications.

4. On May 12, 2015, the DNR filed a motion to dismiss Offutt's appeal as moot because Offutt's Project changes were substantial changes requiring the DNR to determine whether Offutt's Project, as modified, required the preparation of an EAW.

5. On June 2, 2015, the Minnesota Court of Appeals found Offutt's appeal to be moot because the Offutt had so modified its project that DNR was required to make a new determination on the need for an EAW. The Court of Appeals dismissed Offutt's appeal.

6. On June 19, 2015, DNR ordered the preparation of a discretionary EAW on the remaining eighteen (18) groundwater appropriation permit applications then pending before the DNR. These permits involve the conversion of approximately 2,000 acres of historic timber acreage to irrigated agriculture within the Pineland Sands Aquifer. These eighteen (18) groundwater appropriation permits represented potential groundwater appropriations totaling 13,000 gallons per minute (GPM) from the Pineland Sands Aquifer.

7. Offutt has since withdrawn fourteen (14) of the eighteen (18) groundwater appropriation permit applications subject to the June 19, 2015 order and has added one (1) application that was subject to the February 5, 2015 order but not covered by the June 19, 2015 order. Therefore, the remaining five (5) groundwater appropriation permit applications currently pending before the DNR are:

Permit Application No. 2014-0678  
Permit Application No. 2014-2074  
Permit Application No. 2014-2082  
Permit Application No. 2014-2089  
Permit Application No. 2014-1028

8. The five groundwater appropriations involve the conversion of 496 acres of land to irrigated agriculture and represent potential ground water appropriations of approximately 3,000 GPM from the Pineland Sands Aquifer.

9. The current Offutt project represented by the five (5) permits represents a reduction in the acres of land conversion from over 2,000 acres to 496 acres and the reduction in the proposed volume of water appropriation from 13,000 GPM to 3,000 GPM.

10. Offutt's modification of the proposed project constitutes a "substantial departure" from the project for which an EAW was ordered on June 19, 2015 and represents a new project making the DNR's June 19, 2015, EAW order moot. *Cedar-Riverside Env'tl. Def. Fund v. Hills*, 560 F.2d 377, 382 (8<sup>th</sup> Cir. 1977). *See also, No Power Line, Inc. v. Minn. Env'tl. Quality Council*, 262 NW.2d 312, 323 n. 28 (Minn. 1977)(noting Minnesota courts have looked to federal cases interpreting NEPA for guidance regarding the application of the state's environmental review program under the Minnesota Environmental Policy Act (MEPA)).

**Order:**

Based upon the forgoing and administrative record compiled by the DNR in this matter the Commissioner hereby orders that:

1. The June 19, 2015 Commissioner's Order ordering the preparation of a discretionary EAW for "Proposed Agricultural Operations in Becker, Case, Hubbard, and Wadena Counties" is hereby vacated.
2. This order shall take effect immediately upon execution.

**Dated:** September 10, 2015

**By:** Barb Naramore  
**BARB NARAMORE**  
ASSISTANT COMMISSIONER  
DEPARTMENT OF NATURAL RESOURCES