

EXHIBIT A

## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
 FEDERAL BUILDING, FORT SNYDER  
 TWIN CITIES, MINNESOTA 55401



IN REPLY REFER TO

FWS ABE-555

MAR 3 1988

## Memorandum

To: Director (ERC/BSP)  
 From: <sup>Asst Dir</sup> Regional Director, Region 3  
 Subject: Fish and Wildlife Service Responsibility in  
 Swampbuster Implementation

Swampbuster, however conceived and legislated in Washington, has had minimal success in Region 3 in preserving wetlands on private lands involved in Department of Agriculture commodity programs. Service field personnel will tell you these wetlands are disappearing at an alarming rate.

The following is in response to the questions posed in your memorandum of February 23, 1988:

1. The Soil Conservation Service and the Agricultural Stabilization and Conservation Service have transformed wetlands into non-wetlands through lax interpretations of the regulations, thereby making "consultation" moot. Consultation only occurs when Soil Conservation Service and Agricultural Stabilization and Conservation Service interpretations leave an issue unresolved by their standards. In most cases the Service is not consulted.

**Example:** In Minnesota 70 percent of the prairie potholes or seasonally flooded or ponded areas (all meeting technical wetland definitions) are interpreted to be non-wetlands.

**Potholes** - Past history of drainage leaves the wetland a non-wetland.

**Seasonally flooded or ponded areas** - Past history of woody vegetation removal in the 1970's makes large expanses of wetland parks in the northern tier of counties non-wetlands.

Consequently, the Service is not consulted.

2.

2. Drainage was at an all time high last year in Minnesota and other states with remaining wetlands. The general consensus in the Service and Soil Conservation Service is that Swampbuster stimulated drainage rather than slowing it. The Soil Conservation Service state office tells us 30,000 drainage cases occurred in Minnesota in 1987, of which 15,000 went unreported on the AD-1026 form. They estimate 3,000 of these are Swampbuster violations but admit they are not being investigated.
3. To date several hundred potential violations have been observed and reported by Service personnel in Region 3, most in Minnesota where more wetlands remain. However, the Agricultural Stabilization and Conservation Service does not generally concur with the Service's view as to what constitutes a violation.

**Example:** Recently our Swampbuster Coordinator in the Morris Wetland Management District in western Minnesota reported he had consulted on eleven "commenced" determinations with Agricultural Stabilization and Conservation Service. Using Agricultural Stabilization and Conservation Service interpretations, he agreed six cases had commenced. However, the remaining five cases were contested. The county committee's response was that the Service's interpretation was incorrect in four of the five cases. The result, ten of eleven wetlands were non-wetlands.

4. The impact of exempting Type 1 wetlands from Swampbuster protection would be to formally rescind protection for an estimated one-third of the wetlands that, in theory, are protected at this time. Lost wetland values include the critically important spring pairing habitat for ducks.
5. If a categorical minimal effect exemption were approved by interagency agreement for wetlands of less than one-quarter acre, the result would be a tremendous decrease in the number of wetlands smaller than this threshold size. In the midwest, many of the Type 1 potholes are this size. These are the critical wetlands needed for duck pairing activity in the early spring.

Our recommendation is to protect the prairie pothole, plays, and seasonally flooded and ponded wetland values that existed as of December 23, 1985. We believe the Final Rule clearly gives these wetland values special protections. Interpretations other than this appear to be aimed at circumventing the original intent of the legislation - wetland preservation.

We are strong and enthusiastic supporters of the Farm Bill. We have excellent interagency cooperation with the Soil Conservation Service and Agricultural Stabilization and Conservation Service on wetland restoration activities. Their cooperation on Farmers Home Administration lands is also

