

**FILLMORE COUNTY  
BOARD OF COMMISSIONERS  
MEETING AGENDA  
May 7, 2019**

Fillmore County Courthouse, 101 Fillmore Street West - Preston, MN

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Mitch Lentz - First District

Vacant - Third District

Randy Dahl - Second District

Duane Bakke - Fourth District

Marc Prestby - Fifth District

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Pledge of Allegiance

- 9:00 a.m.     Approve agenda  
                 Approve Consent Agenda:  
                 1. April 23, 2019 County Board minutes
- Approve Commissioners' Warrants  
                 Review Auditor's Warrants
- 9:05 a.m.     Todd Froberg & Michelle Carstensen, Department of Natural Resources (DNR)  
                 1. Presentation and update on the Chronic Wasting Disease (CWD) efforts
- 9:20 a.m.     Brett Corson, County Attorney  
                 1. Update on status of Amish Subsurface Sewage Treatment Systems (SSTS) case  
                 2. Discussion with possible action regarding the Preston Oil Products Site
- 9:30 a.m.     Citizen's Input
- 9:35 a.m.     Wong Nystrom, Enterprise Fleet Management, and John DeGeorge, Sheriff  
                 1. Discussion with possible action regarding Sheriff vehicles
- 9:50 a.m.     Ron Gregg, Highway Engineer  
                 1. Request the Fillmore Board of Commissioners reject all bids for the reconstruction of  
                     Grosbeak Road from TH16 to the Lanesboro Fish Hatchery, Project SAP 23-600-006  
                 2. Consider awarding the 2019 Aggregate Rock Contracts for County Roads 102, 112, and 117  
                     and County State Aid Roads 7, 11, 15, 22, 29, and 30  
                 3. Consider awarding the Project to replacement Bridge No. 449 on CSAH 12, Project number  
                     SP 23-612-041
- 10:00 a.m.     Kristina Kohn, Human Resources  
                 1. Resignation of Danae Murphy, GIS Coordinator, effective May 22, 2019
- 10:10 a.m.     Bobbie Vickerman, County Coordinator  
                 1. Discussion with possible action regarding Electronic Document Management Software  
                 2. Discussion with possible action regarding contract for County Assessor role  
                 3. Consider appointment of Cindy Blagsvedt as County Assessor  
                 4. Discussion with possible action regarding Canvassing Board members for Primary and  
                     Special Election  
                 5. Update with possible action regarding Taxpayer Services

# FILLMORE COUNTY BOARD OF COMMISSIONERS

May 7, 2019 Meeting Agenda

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10:20 a.m. Heidi Jones, Auditor/Treasurer

1. Consider resolution to approve sponsorship of the Bluff Valley Riders, Mabel-Canton Trail Busters, Hiawatha I & II and Tri-County Trailblazers snowmobile clubs for the 2019/2020 season and authorize signature of the same by Auditor/Treasurer

Calendar review, announcements and committee reports

## MEETINGS: (Conference Room 102U, Fillmore County Courthouse unless otherwise indicated)

Tuesday, May 7	7:30 a.m.	Law Library Annual Meeting	<i>Bakke</i>
	9:00 a.m.	County Board - Special Meeting, Commissioners' Boardroom, Courthouse, Preston	
	Noon - 5:00 p.m.	Household Hazardous Waste Collection, Resource Recovery Building, Preston	
		Community Services (following Board meeting)	<i>Dahl/Lentz</i>
Thursday, May 9	8:00 a.m.	Southeastern MN Emergency Medical Services, Rochester	
		<i>Lentz</i>	
	10:00 a.m.	Workforce Development, Inc. Joint Powers, Rochester	<i>Lentz</i>
	12:00 p.m.	Fillmore County Community Corrections Taskforce	
		<i>Bakke</i>	
Monday, May 13	5:00 p.m.	Winneshiek County Solid Waste Agency Joint Powers Board, Winneshiek County Recycling Center, Decorah	
	6:00 p.m.	Development Achievement Center, Preston	<i>Lentz</i>
	6:30 p.m.	Semcac, St. Charles	<i>Dahl</i>

## FILLMORE COUNTY COMMISSIONERS' MINUTES

April 23, 2019

This is a preliminary draft of the April 23, 2019 minutes as interpreted by the Clerk of the Board for use in preparing the official minutes. It is expected that there will be corrections, additions, and/or omissions before the final minutes are reviewed and officially approved by the County Board.

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The Board of County Commissioners of Fillmore County, Minnesota met in special session this 23<sup>rd</sup> day of April, 2019 at 9:00 a.m. in the Commissioners' Board Room, Fillmore County Courthouse, in the City of Preston.

The following members were present: Commissioners Duane Bakke, Marc Prestby and Randy Dahl. Mitch Lentz was absent. Also present were: Bobbie Vickerman, Coordinator/Clerk; Kristina Kohn, Human Resources Officer; Lynn Mensink, Semcac Outreach Services Case Manager; Jim Wolter, Semcac Transportation Director; Michael Frauenkron, Feedlot Officer; Cristal Adkins, Zoning Administrator; Ron Gregg, Highway Engineer; John DeGeorge, Sheriff; Bonita Underbakke; Jordan Fontenello; Samantha Keasling, Deputy and LELS Union Representative; Daniel Dornink, Deputy and LELS Union Steward; Jesse Grabau, Investigator and LELS Union Steward; Gretchen Mensink, Republican Leader; and Karen Reisner, Fillmore County Journal.

The Pledge of Allegiance was recited.

On motion by Prestby and seconded by Dahl, the Board unanimously approved the agenda.

On motion by Dahl and seconded by Prestby, the Board unanimously approved the following Consent Agenda:

1. April 9, 2019 County Board minutes as presented.
2. Closing of one block of Main Street, (Fillmore County 21) in front of the bank in the City of Canton from 8:00 am to 6:00 pm on August 17, 2019 for Canton Day Off as approved by Sheriff DeGeorge and Highway Engineer Gregg.
3. Renewal of Liquor, Wine & 3.2% license for Bre-Dun DBA Old Barn Resort and Golf Course for the period of May 1, 2019 through May 1, 2020 as approved by Sheriff DeGeorge and County Attorney Corson.
4. Renewal of Consumption and Display Liquor License for Eagle Bluff ELC for the period of May 1, 2019 through May 1, 2020 as approved by Sheriff DeGeorge and County Attorney Corson.
5. Tobacco license for Gurek, Inc of Chatfield for the period of April 30, 2019 through September 30, 2019.
6. Gambling permit for Preston Area Chamber of Commerce for a raffle on May 19, 2019.
7. Approve the following street closures for 2019 Preston Trout Days as approved by Sheriff DeGeorge, Building Maintenance Supervisor Schultz and Highway Engineer Gregg:
  - a. CSAH #12 from Houston Street to St. Anthony St. from 6:00 am – 8:00 pm on Saturday, May 18 (Family activities)
  - b. CSAH #17 from Hwy 52 to River St. from 3:30 pm - 5:30 pm on Saturday, May 18 (Grand Parade)
  - c. CSAH #17 from Main St. to River St. from 9:00 am Saturday, May 18 - 2:00 am Sunday, May 19 (Street Dance)
  - d. The use of both east and west courthouse parking lots from 6:00 am – 8:00 pm Saturday, May 18 (Family activities)
8. Successful completion of probation for Gretchen Schwichtenberg, Office Support Specialist, effective April 23, 2019 as recommended by the Social Services Manager.
9. Step increase for Gretchen Schwichtenberg to Grade 5/Step 2 effective April 23, 2019.

On motion by Prestby, seconded by Dahl, the Board unanimously approved payment of the following Commissioner warrants:

### WARRANTS

The Auditor's warrants were reviewed.

## **FILLMORE COUNTY COMMISSIONERS' MINUTES**

**April 23, 2019**

Lynn Mensink, Semcac Outreach Services Case Manager, and Jim Wolter, Semcac Transportation Director, were present.

Mensink & Wolter presented Semcac's County Impact Report for Fillmore County. Wolter reviewed the services provided as well as transit, food shelf, housing and crisis dollars.

Chair Bakke noted that the use of the food shelf and energy assistance is alarming.

The Citizen's Input portion of the meeting was opened and closed at 9:42 a.m. as no one was present to speak.

Michael Frauenkron, Feedlot Officer, was present and reviewed the 2018 County Feedlot Officer Annual Report, noting shoreland requirements allow 10 animal units or more in Shoreland and 50 or more outside of shoreland.

Frauenkron noted that he received the 2019 Tina Rosentein Award at the Annual Feedlot Officer banquet. This award is in appreciation of demonstrated leadership, dedicated service and commitment to Minnesota livestock producers, the general public and the Minnesota Association of Counties Feedlot Officers. The Board congratulated Feedlot Officer, Frauenkron on receiving this award.

On motion by Dahl, seconded by Prestby, the Board unanimously approved to sign the 2018 County Feedlot Officer Annual Report.

Cristal Adkins, Zoning Administrator, was present.

On motion by Dahl and seconded by Prestby, the Board unanimously approved an access permit for a driveway for Joseph Mitchell, Section 32, of Fountain Township.

Ron Gregg, Highway Engineer, was present.

On motion by Prestby, seconded by Dahl, the Board unanimously approved to award the surface reconditioning project LOST-115P-1 on County Road 115 between TH 52 and CSAH 21 to Rochester Sand and Gravel with the lone bid of \$1,139,564.74.

Until project funds can be secured, the Board requested the proposal for Project SAP 23-600-006 of Grosbeak Road from TH16 to the Lanesboro Fish Hatchery be brought back to the Board for consideration. Bakke asked how long the bids are good for, Gregg felt that the bids should be good until the next board meeting.

It was noted that Project number SP 23-612-041, replacement Bridge No. 449 on CSAH 12, will also have to be brought back to the next Board meeting as it is waiting for State permission.

Prestby and Bakke gave the Highway Committee report: Discussed the projects in progress, still working on designing some projects, Carimona Township culvert replacement project waiting for approval from Department of Natural Resources (DNR) due to trail next to project, and lined up projects.

Kristina Kohn, Human Resource Officer, was present.

On motion by Dahl and seconded by Prestby, the Board unanimously approved to hire Colten Kraling for the temporary summer position in the Highway Department effective May 13, 2019 at Grade 3/Step 1, \$12.67/hour, as requested by the Highway Engineer and recommended by the Personnel Committee.



On motion by Prestby, seconded by Dahl, the Board unanimously approved to hire David Enright as Property Appraiser at Grade 9/Step 1, \$22.48/hour effective May 1, 2019 as requested by the Land Records Director and recommended by the Hiring Committee.

On motion by Dahl and seconded by Prestby, the Board unanimously approved the request for retirement under Early Retirement Incentive Program for Audrey Inglett, Office Support Specialist, Sr., effective July 25, 2019. The Board thanked her for 17 years of dedicated service and wished her well.

On motion by Prestby, seconded by Dahl, the Board unanimously approved the request for retirement under Early Retirement Incentive Program for Kevin Beck effective April 4, 2019. The Board thanked him for his 23 years of dedicated service.

On motion by Prestby, seconded by Dahl, the Board unanimously approved the request to hire Jordan Heyer, as replacement full time Deputy Sheriff effective May 3, 2019 at \$22.86/hour, the Law Enforcement Labor Services, Inc. (LELS) step (0-12 months) as requested by the Sheriff and recommended by the Hiring Committee.

On motion by Dahl and seconded by Prestby, the Board unanimously approved the request to promote Gretchen Schwichtenberg, Merit Office Support Specialist, to the position of Merit Office Support Specialist, Sr. effective May 3, 2019 at Grade 6/Step 1, \$19.79/hour as requested by the Social Services Manager and recommended by the personnel committee.

On motion by Prestby, seconded by Dahl, the Board unanimously approved the request for a phased retirement option for Deborah Jeffers, Paralegal, effective June 1, 2019 pending Public Employees Retirement Association (PERA) approval as requested by the County Attorney and recommended by the Personnel Committee with the understanding that she would move from 1.0 FTE to 0.5 FTE, no longer be eligible for County benefits, would not accrue PTO or receive any further step increases. This would be a one (1) year agreement to be reviewed annually.

On motion by Dahl and seconded by Prestby, the Board unanimously approved Coordinator Vickerman and Land Records Director Hoff to seek all options for the Accredited Minnesota Assessor (AMA) certification contract and to approve a lowest cost option until an AMA certified staff member can be in place with verification from Personnel committee.

On motion by Dahl and seconded by Prestby, the following resolution was unanimously adopted:  
**RESOLUTION 2019-020:** Terminate the Southeast Minnesota Water Resources Board Joint Powers Board Agreement.

The Chair recessed the meeting at 10:55 a.m. and resumed back in session at 11:03 a.m.

Dahl asked about the federal funding for elections cyber security. Vickerman explained that at this point Minnesota is the only state that has not accepted the funds.

Law Enforcement Labor Services (LELS) Union negotiations were held. It was decided to schedule a meeting on June 18<sup>th</sup> to continue negotiations.

The Board members noted that they attended the following committees:

Prestby - Solid Waste

Bakke - Department Head, Soil & Water, Historical Society, and Extension

On motion by Prestby and seconded by Dahl, the Chair adjourned the meeting at 12:18 p.m.

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5/2/19 2:47PM

1 County Revenue Fund

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Audit List for Board COMMISSIONER'S VOUCHERS ENTRIE

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	<u>Vendor Name</u>	<u>Rpt</u>	<u>Warrant Description</u>	<u>Invoice #</u>	<u>Account/Formula Descripti</u>	<u>1099</u>
	<u>No. Account/Formula</u>	<u>Accr</u>	<u>Amount</u>	<u>Service Dates</u>	<u>Paid On Bhf #</u>	<u>On Behalf of Name</u>
65	4928 1 Source 01-603-000-0000-6408		987.00	feedlot grant 04/25/2019 04/25/2019 1 Transactions	238640-0	Other Office Supplies Y
	4928 1 Source		987.00			
37	6081 AMC/MCHRMA 01-441-000-0000-6447		300.00	LPHA Legislative Conf 2019 02/14/2019 02/14/2019 1 Transactions	52538	LPHA Grant Expenses N
	6081 AMC/MCHRMA		300.00			
54	5683 Axon Enterprise Inc 01-202-000-0000-6455		64.00	taser holster 04/23/2019 04/23/2019 1 Transactions	SI-1587984	Law Enforcement Supplies N
	5683 Axon Enterprise Inc		64.00			
49	3804 Bakke/Duane 01-003-000-0000-6335		220.98	April Mileage 04/01/2019 04/23/2019		Employee Automobile Allowance N
67	01-003-000-0000-6335		450.00	Per Diem 04/01/2019 04/23/2019 2 Transactions		Employee Automobile Allowance N
	3804 Bakke/Duane		670.98			
19	7384 Charm-Tex, Inc 01-251-000-0000-6455		209.07	inmate supplies 04/11/2019 04/11/2019 1 Transactions	188305	Law Enforcement Supplies N
	7384 Charm-Tex, Inc		209.07			
56	404 City of Spring Valley 01-202-000-0000-6455		411.30	CPR pads for squad cars 01/30/2019 01/30/2019 1 Transactions		Law Enforcement Supplies N
	404 City of Spring Valley		411.30			
32	3747 Control Solutions, Inc 01-441-000-0000-6449		104.00	PHEP Calibration 04/24/2019 04/24/2019 1 Transactions	CS69305	Preparedness Grant N
	3747 Control Solutions, Inc		104.00			
23	5887 Dahl/Randy 01-003-000-0000-6335		180.00	Per Diem 04/07/2019 04/23/2019		Employee Automobile Allowance N

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	Vendor	Name	Rpt		Warrant Description	Invoice #	Account/Formula Descripti	1099
	No.	Account/Formula	Accr	Amount	Service Dates	Paid On Bhf #	On Behalf of Name	
24		01-003-000-0000-6335		106.14	Mileage Reimbursement		Employee Automobile Allowance	N
	5887	Dahl/Randy		286.14	04/07/2019 04/23/2019 2 Transactions			
14	82133	Fillmore Co Auditor-Treasurer		2,370.45	March Fuel - Sheriff		Gasoline Diesel And Other Fuels	N
		01-202-000-0000-6561			03/01/2019 03/31/2019 1 Transactions			
	82133	Fillmore Co Auditor-Treasurer		2,370.45				
12	82132	Fillmore Co Journal		7.50	4/2/19 Board Minutes	99308	Publications	N
		01-003-000-0000-6233			04/15/2019 04/15/2019 1 Transactions			
	82132	Fillmore Co Journal		7.50				
40	106	Fillmore Co Treasurer		19.05	Surveyor fuel reissue #59258		Gasoline Diesel And Other Fuels	N
		01-102-000-0000-6561			02/11/2019 02/11/2019			
13		01-103-000-0000-6561		9.61	Fuel - Brian - Assesor		Gasoline Diesel And Other Fuels	N
					03/01/2019 03/01/2019 2 Transactions			
	106	Fillmore Co Treasurer		28.66				
50	3569	Galls,LLC- DBA Uniforms Unlimited Inc		104.58	New hire uniforms	12485863	Uniform Allowance	N
		01-202-000-0000-6173			04/15/2019 04/15/2019 1 Transactions			
	3569	Galls,LLC- DBA Uniforms Unlimited Inc		104.58				
52	6782	Itl Patch Company Inc		233.95	shoulder patches	50425	Uniform Allowance	N
		01-202-000-0000-6173			04/25/2019 04/25/2019 1 Transactions			
	6782	Itl Patch Company Inc		233.95				
29	83550	Kelly Printing & Signs LLC		44.00	Brett Business Cards	33083	Other Office Supplies	N
		01-091-000-0000-6408			04/09/2019 04/09/2019			
55		01-202-000-0000-6241		170.00	Jr Deputy stickers	33235	Advertising	N
					04/23/2019 04/23/2019 2 Transactions			
	83550	Kelly Printing & Signs LLC		214.00				
31	6529	Larson Vagts Law		225.00	Professional Services		Court Appointed Attorneys	Y
		01-011-000-0000-6261						

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Audit List for Board COMMISSIONER'S VOUCHERS ENTRIES

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Vendor No.	Name Account/Formula	Rpt Accr	Amount	Warrant Description Service Dates	Invoice # Paid On Bhf #	Account/Formula Descripti On Behalf of Name	1099
	6529 Larson Vagts Law		225.00	02/12/2019 03/26/2019 1 Transactions			
48	5550 Larson/Christopher J 01-111-000-0000-6335		8.12	April Mileage 04/02/2019 04/25/2019 1 Transactions		Employee Automobile Allowance	N
	5550 Larson/Christopher J		8.12				
2	2545 Marco,Inc 01-060-000-0000-6639		2,550.90	computer systems 04/18/2019 04/18/2019 1 Transactions	6266375	Asset Inventory	N
	2545 Marco,Inc		2,550.90				
38	3315 Melver/Paula 01-443-000-0000-6335		206.89	March 2019 Mileage 03/01/2019 03/31/2019 1 Transactions		Employee Automobile Allowance	N
	3315 Melver/Paula		206.89				
51	9403 Menards Rochester South 01-251-000-0000-6416		38.30	jail supplies 04/19/2019 04/19/2019 1 Transactions	95694	Misc Supplies	N
	9403 Menards Rochester South		38.30				
53	2613 Olmsted Co Sheriff's Office 01-202-000-0000-6357		150.00	Training 04/25/2019 04/25/2019 1 Transactions	19EB-01	Peace Officer Training Expense	N
	2613 Olmsted Co Sheriff's Office		150.00				
66	7003 Olmsted County 01-105-000-0000-6459		54.60	H2O kits 04/16/2019 04/16/2019 1 Transactions	921837	Water Kits	N
	7003 Olmsted County		54.60				
39	25315 Pierce/Kayla 01-103-000-0000-6335		132.82	Mileage to conference 04/28/2019 04/29/2019 1 Transactions		Employee Automobile Allowance	N
	25315 Pierce/Kayla		132.82				
21	1152 Prestby/Marc 01-003-000-0000-6335		69.60	Mileage Reimbursement		Employee Automobile Allowance	N

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Vendor No.	Name Account/Formula	Rpt Accr	Amount	Warrant Description Service Dates	Invoice # Paid On Bhf #	Account/Formula Descripti On Behalf of Name	1099
22	01-003-000-0000-6335		180.00	04/02/2019 04/23/2019 Per Diem		Employee Automobile Allowance	N
1152	Prestby/Marc		249.60	04/02/2019 04/23/2019 2 Transactions			
1	5988 Preston Auto Parts 01-111-000-0000-6580		14.94	04/18/2019 04/18/2019 paint roller covers land rec	584127	Other Repair And Maintenance Supp	N
27	01-111-000-0000-6580		3.99	04/18/2019 04/18/2019 oil for lawnmower	584975	Other Repair And Maintenance Supp	N
5988	Preston Auto Parts		18.93	04/25/2019 04/25/2019 2 Transactions			
30	81511 Preston Foods 01-111-000-0000-6411		24.10	04/08/2019 04/25/2019 kitchen towels and weed killer		Custodial Supplies	N
81511	Preston Foods		24.10	04/08/2019 04/25/2019 1 Transactions			
35	6592 RCM Headsets 01-441-000-0000-6447		129.00	03/07/2019 03/07/2019 LPH Headset	0319078	LPHA Grant Expenses	N
36	01-441-000-0000-6448		291.00	03/07/2019 03/07/2019 Ship Headset	0319078	Ship Grant Expenses	N
6592	RCM Headsets		420.00	03/07/2019 03/07/2019 2 Transactions			
34	4841 ROCHESTER CITY LINES 01-443-000-0000-6433		234.00	04/29/2019 04/29/2019 Waiver Reimburse client #3455	148190419	Waiver Reimbursables	N
4841	ROCHESTER CITY LINES		234.00	04/29/2019 04/29/2019 1 Transactions			
26	5124 Root River Trail Towns 01-149-000-0000-6802		2,000.00	04/17/2019 04/17/2019 2019 Appropriation	88	Appropriations	N
5124	Root River Trail Towns		2,000.00	04/17/2019 04/17/2019 1 Transactions			
25	26012 Schultz/Terry 01-111-000-0000-6335		62.64	03/12/2019 04/17/2019 Mileage Reimbursement		Employee Automobile Allowance	N
26012	Schultz/Terry		62.64	03/12/2019 04/17/2019 1 Transactions			
26085	Semcac						

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Vendor	Name	Rpt	Warrant Description	Invoice #	Account/Formula Descripti	1099
No.	Account/Formula	Accr	Amount	Service Dates	Paid On Bhf # On Behalf of Name	
60	01-149-000-0000-6802		3,500.00	2019 Appropriation	1935 Appropriations	N
	26085 Semcac		3,500.00	04/23/2019 04/23/2019 1 Transactions		
33	86085 Semcac Transportation 01-443-000-0000-6433		121.76	Waiver Reimburse client #0759	3448 Waiver Reimbursables	N
	86085 Semcac Transportation		121.76	03/08/2019 03/29/2019 1 Transactions		
20	4998 SOUTHLAND AUTO 01-205-000-0000-6382		173.00	DUI vehicle forfeiture	177 Vehicle Forfeiture Exp Ms169A.63	N
	4998 SOUTHLAND AUTO		173.00	04/12/2019 04/12/2019 1 Transactions		
17	355 Streicher's Inc. 01-202-000-0000-6173		202.00	uniforms	1363284 Uniform Allowance	N
				04/17/2019 04/17/2019		
18	01-202-000-0000-6173		60.00	badges	1363368 Uniform Allowance	N
				04/17/2019 04/17/2019		
16	01-202-000-0000-6173		19.98	badges	1363450 Uniform Allowance	N
				04/18/2019 04/18/2019		
15	01-202-000-0000-6173		140.00	uniforms	1363461 Uniform Allowance	N
				04/18/2019 04/18/2019		
	355 Streicher's Inc.		421.98	4 Transactions		
64	437 Thomson Reuters-West Payment Center 01-014-000-0000-6451		456.00	Discount Plan Charges	840121088 Reference Materials	N
				03/05/2019 04/04/2019		
	437 Thomson Reuters-West Payment Center		456.00	1 Transactions		
28	5050 Tufte/Blaine 01-111-000-0000-6335		17.40	Mileage to post office, fcob	Employee Automobile Allowance	N
				04/01/2019 04/30/2019		
	5050 Tufte/Blaine		17.40	1 Transactions		
47	9206 Winona Heating & Ventilating Co, Inc. 01-111-000-0000-6317		2,171.13	work done on fc-7 courthouse	17801 Building Maintenance	N
				04/16/2019 04/16/2019		
	9206 Winona Heating & Ventilating Co, Inc.		2,171.13	1 Transactions		

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1 County Revenue Fund

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<u>Vendor</u>	<u>Name</u>	<u>Rpt</u>	<u>Warrant Description</u>	<u>Invoice #</u>	<u>Account/Formula Descripti</u>	<u>1099</u>
<u>No.</u>	<u>Account/Formula</u>	<u>Accr</u>	<u>Amount</u>	<u>Service Dates</u>	<u>Paid On Bhf #</u>	<u>On Behalf of Name</u>
1 Fund Total:			19,228.80	County Revenue Fund	36 Vendors	46 Transactions

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	<u>Vendor Name</u>	<u>Rpt</u>		<u>Warrant Description</u>	<u>Invoice #</u>	<u>Account/Formula Descripti</u>	<u>1099</u>
	<u>No. Account/Formula</u>	<u>Accr</u>	<u>Amount</u>	<u>Service Dates</u>	<u>Paid On Bhf #</u>	<u>On Behalf of Name</u>	
11	6150 Cintas Corporation No.2 14-390-000-0000-6377		17.70	uniforms 04/18/2019 04/18/2019 1 Transactions	4020368211	Fees And Service Charges	N
	6150 Cintas Corporation No.2		17.70				
42	9375 Green Lights Recycling, Inc 14-391-000-0000-6861		927.10	light bulb recycling 04/25/2019 04/25/2019 1 Transactions	19-1987	Recycling Operation Expense	N
	9375 Green Lights Recycling, Inc		927.10				
41	6593 Harmony Enterprises Inc 14-390-000-0000-6311		3,067.64	compactor repair and maint 04/22/2019 04/22/2019 1 Transactions	54324	Miscellaneous Repairs And Mainten	N
	6593 Harmony Enterprises Inc		3,067.64				
43	5504 HARTER'S TRASH & RECYCLING INC 14-390-000-0000-6374		6,832.85	March Landfill 03/01/2019 03/31/2019	361185	Landfill Tipping Fees	N
44	14-391-000-0000-6861		15,577.25	March Recycling 03/01/2019 03/31/2019 2 Transactions	361185	Recycling Operation Expense	N
	5504 HARTER'S TRASH & RECYCLING INC		22,410.10				
46	303 Preston Equipment Company 14-390-000-0000-6311		69.25	Mower Repair 04/24/2019 04/24/2019	01-70852	Miscellaneous Repairs And Mainten	N
45	14-390-000-0000-6311		0.75	mower repair 04/26/2019 04/26/2019 2 Transactions	01-70995	Miscellaneous Repairs And Mainten	N
	303 Preston Equipment Company		70.00				
14 Fund Total:			26,492.54	Sanitation Fund	5 Vendors	7 Transactions	



kapenhorst

5/2/19 2:47PM

23 County Airport Fund

# \*\*\* Fillmore County \*\*\*



Audit List for Board COMMISSIONER'S VOUCHERS ENTRIE

Page 9

Vendor	Name	Rpt	Warrant Description	Invoice #	Account/Formula Descripti	1099
No.	Account/Formula	Accr	Amount	Service Dates	Paid On Bhf #	On Behalf of Name
59	6496 7 Rivers Surplus 23-350-000-0000-6378		80.00	RW LED Lights 03/20/2019 03/20/2019 1 Transactions	13761	Airside Expenses N
	6496 7 Rivers Surplus		80.00			
61	5763 Bolton & Menk Inc. 23-350-000-0000-6626		301.51	#21 MstrPln/ALP St 5% 03/29/2019 03/29/2019		Mn Improvement Const/Grant N
62	23-350-000-0000-6628		5,427.24	#21 MstrPln/ALP Fed 90% 03/29/2019 03/29/2019		Fed Improvement Const/Grant N
63	23-350-000-0000-6630		301.51	#21 MstrPln/ALP Cnty 5% 03/29/2019 03/29/2019 3 Transactions		County Share Construction/Improv N
	5763 Bolton & Menk Inc.		6,030.26			
58	110 Fillmore Co Treasurer 23-350-000-0000-6316		1,745.00	'18 grounds maintenance 03/15/2018 08/23/2018 1 Transactions		Grounds Maintenance N
	110 Fillmore Co Treasurer		1,745.00			
57	1054 Rochester Petroleum Equip Inc 23-351-000-0000-6321		24.96	fuel filter 04/25/2019 04/25/2019 1 Transactions	128534	Other Repair And Maintenance N
	1054 Rochester Petroleum Equip Inc		24.96			
23 Fund Total:			7,880.22	County Airport Fund	4 Vendors	6 Transactions

kapenhorst  
5/2/19 2:47PM  
91 Economic Development Au

# \*\*\* Fillmore County \*\*\*



Audit List for Board COMMISSIONER'S VOUCHERS ENTRIE

Page 10

Vendor No.	Name Account/Formula	Rpt Accr	Amount	Warrant Description Service Dates	Invoice # Paid On Bhf #	Account/Formula Descripti On Behalf of Name	1099
9	5226 Brown/Michael 91-705-000-0000-6104		45.00	Travel EDA Meeting 04/18/2019 04/18/2019		Per Diem	N
10	91-705-000-0000-6335		9.28	EDA Meeting mileage 04/18/2019 04/18/2019		Employee Automobile Allowance	N
	5226 Brown/Michael		54.28	2 Transactions			
7	6324 Martin Walsh 91-705-000-0000-6335		47.56	EDA Bluff County School Grp 04/18/2019 04/18/2019		Employee Automobile Allowance	N
8	91-705-000-0000-6335		28.42	EDA Mabel Canton visit 04/18/2019 04/18/2019		Employee Automobile Allowance	N
	6324 Martin Walsh		75.98	2 Transactions			
3	1870 Reisner/Karen 91-705-000-0000-6104		45.00	travel - EDA - per diem 04/18/2019 04/18/2019		Per Diem	N
4	91-705-000-0000-6335		11.02	travel EDA - mileage 04/18/2019 04/18/2019		Employee Automobile Allowance	N
	1870 Reisner/Karen		56.02	2 Transactions			
5	7653 Underbakke/Bonita A 91-705-000-0000-6104		45.00	travel EDA meeting 04/18/2019 04/18/2019		Per Diem	N
6	91-705-000-0000-6335		11.60	EDA meeting mileage 04/18/2019 04/18/2019		Employee Automobile Allowance	N
	7653 Underbakke/Bonita A		56.60	2 Transactions			
91 Fund Total:			242.88	Economic Development Authori	4 Vendors	8 Transactions	
Final Total:			53,844.44	49 Vendors	67 Transactions		

# \*\*\* Fillmore County \*\*\*



Audit List for Board COMMISSIONER'S VOUCHERS ENTRIE\$

Recap by Fund	<u>Fund</u>	<u>AMOUNT</u>	<u>Name</u>	
	1	19,228.80	County Revenue Fund	
	14	26,492.54	Sanitation Fund	
	23	7,880.22	County Airport Fund	
	91	242.88	Economic Development Authori	
	All Funds	53,844.44	Total	Approved by, .....
				.....
				.....

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5/2/19 2:47PM

13 County Road & Bridge

# \*\*\* Fillmore County \*\*\*



Audit List for Board COMMISSIONER'S VOUCHERS ENTRIE

Page 2

	<u>Vendor</u>	<u>Name</u>	<u>Rpt</u>		<u>Warrant Description</u>	<u>Invoice #</u>	<u>Account/Formula Descripti</u>	<u>1099</u>
	<u>No.</u>	<u>Account/Formula</u>	<u>Accr</u>	<u>Amount</u>	<u>Service Dates</u>	<u>Paid On Bhf #</u>	<u>On Behalf of Name</u>	
1	1891	Bruening Rock Products, Inc.						
		13-310-000-0000-6505		6,275.89	rock	119174	Aggregate	N
2		13-310-000-0000-6505		877.23	rock	120479	Aggregate	N
3		13-310-000-0000-6505		891.56	rock	121730	Aggregate	N
	1891	Bruening Rock Products, Inc.		8,044.68	3 Transactions			
4	5005	Cintas Corporation- First Aid & Safety						
		13-330-000-0000-6576		119.46	supplies	5013523128	Shop Supplies & Tools	N
	5005	Cintas Corporation- First Aid & Safety		119.46	1 Transactions			
23	396	City of Ostrander						
		13-320-000-0000-6265		9,874.12	603-004 Eng.	14-2019	Consulting	N
24		13-320-000-0000-6265		18,337.66	601-035 Eng.	14-2019	Consulting	N
	396	City of Ostrander		28,211.78	2 Transactions			
5	1982	Dunn Blacktop Co Inc						
		13-310-000-0000-6528		2,864.46	cold mix	440060	Bituminous Materials	N
	1982	Dunn Blacktop Co Inc		2,864.46	1 Transactions			
7	82132	Fillmore Co Journal						
		13-300-000-0000-6241		4.00	ads: aggregate	99310	Advertising	N
	82132	Fillmore Co Journal		4.00	1 Transactions			
6	6588	Freeborn County Highway Department						
		13-310-000-0000-6530		15,308.50	SP 070-003 Strpg Grant County		Striping Paint	N
	6588	Freeborn County Highway Department		15,308.50	1 Transactions			
8	3714	Hovey Oil Co Inc						
		13-330-000-0000-6561		659.10	#2 diesel	100581	Gasoline Diesel And Other Fuels	N
9		13-330-000-0000-6561		695.70	gas	100581	Gasoline Diesel And Other Fuels	N
10		13-330-000-0000-6561		2,182.00	#2 diesel	100597	Gasoline Diesel And Other Fuels	N
	3714	Hovey Oil Co Inc		3,536.80	3 Transactions			
11	83550	Kelly Printing & Signs LLC						
		13-330-000-0000-6575		12.00	parts	32879	Machinery Parts	N
12		13-330-000-0000-6575		78.00	parts	32925	Machinery Parts	N
13		13-330-000-0000-6575		12.00	parts	32966	Machinery Parts	N
	83550	Kelly Printing & Signs LLC		102.00	3 Transactions			
	256	M-R Sign Co Inc						

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5/2/19 2:47PM

13 County Road & Bridge

# \*\*\* Fillmore County \*\*\*



Audit List for Board COMMISSIONER'S VOUCHERS ENTRIE

Page 3

Vendor	Name	Rpt	Warrant Description	Invoice #	Account/Formula Descripti	1099	
No.	Account/Formula	Accr	Amount	Service Dates	Paid On Bhf #	On Behalf of Name	
14	13-310-000-0000-6515		760.00	barricades	203760	Traffic Signs	N
	256 M-R Sign Co Inc		760.00	1 Transactions			
15	4884 Mac Queen Equipment Inc		399.39	parts	P19103	Machinery Parts	N
	4884 Mac Queen Equipment Inc		399.39	1 Transactions			
16	253 Morem Electric Inc		66.61	bldg maint-lightning strike	40903	Building Maintenance	N
	253 Morem Electric Inc		66.61	1 Transactions			
17	272 Newman Signs		44.10-	credit	ending 282	Traffic Signs	N
18	13-310-000-0000-6515		97.95	signs	TRFINV010500	Traffic Signs	N
19	13-310-000-0000-6515		91.00	signs	TRFINV010502	Traffic Signs	N
20	13-310-000-0000-6515		698.78	posts	TRFINV010829	Traffic Signs	N
21	13-310-000-0000-6515		668.00	signs	TRFINV010829	Traffic Signs	N
	272 Newman Signs		1,511.63	5 Transactions			
22	6737 Northern Wood Products Inc		490.02	lath	32276	Engineering And Surveying Supplies	N
	6737 Northern Wood Products Inc		490.02	1 Transactions			
25	303 Preston Equipment Company		9.80	parts	01-70261	Machinery Parts	N
26	13-330-000-0000-6575		11.85	parts	01-70770	Machinery Parts	N
	303 Preston Equipment Company		21.65	2 Transactions			
27	1054 Rochester Petroleum Equip Inc		61.26	bldg maint	128453	Building Maintenance	N
	1054 Rochester Petroleum Equip Inc		61.26	1 Transactions			
28	3879 Schmitt/Darrell		30.49	meals		Other Travel Expense	N
	3879 Schmitt/Darrell		30.49	1 Transactions			
29	3634 Spring Valley Overhead Door Company Ir		510.00	bldg maint	45979	Building Maintenance	N
	3634 Spring Valley Overhead Door Company Ir		510.00	1 Transactions			

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5/2/19 2:47PM

13 County Road & Bridge

\*\*\* Fillmore County \*\*\*



Audit List for Board COMMISSIONER'S VOUCHERS ENTRIE

Page 4

Vendor	<u>Name</u>	<u>Rpt</u>	<u>Warrant Description</u>	<u>Invoice #</u>	<u>Account/Formula Descripti</u>	<u>1099</u>	
	<u>No.</u>	<u>Account/Formula</u>	<u>Accr</u>	<u>Amount</u>	<u>Service Dates</u>	<u>Paid On Bhf #</u>	<u>On Behalf of Name</u>
30	3933	Thorson/Jim					
		13-310-000-0000-6466		177.99	safety shoes		Safety Materials
	3933	Thorson/Jim		177.99	1 Transactions		
31	2421	Vis Plumbing & Heating Inc					
		13-330-000-0000-6317		211.50	bldg maint	105685	Building Maintenance
	2421	Vis Plumbing & Heating Inc		211.50	1 Transactions		
13 Fund Total:				62,432.22	County Road & Bridge	19 Vendors	31 Transactions
Final Total:				62,432.22	19 Vendors	31 Transactions	

# \*\*\* Fillmore County \*\*\*



Audit List for Board COMMISSIONER'S VOUCHERS ENTRIES

Recap by Fund	<u>Fund</u>	<u>AMOUNT</u>	<u>Name</u>	
	13	62,432.22	County Road & Bridge	
	All Funds	62,432.22	Total	Approved by, .....
				.....
				.....

kfranzen  
4/25/19 1:06PM  
1 County Revenue Fund

# \*\*\* Fillmore County \*\*\*



## Audit List for Board AUDITOR'S VOUCHERS ENTRIES

Page 2

Vendor	Name	Rpt		Warrant Description	Invoice #	Account/Formula Descripti	1099
No.	Account/Formula	Accr	Amount	Service Dates	Paid On Bhf #	On Behalf of Name	
3370	Haakenson Electric, Inc 01-001-000-0000-6350		55.00	Remove power pole in office 04/22/2019 04/22/2019	4635	Unallocated Operating Expenses	N
3370	Haakenson Electric, Inc		55.00	1 Transactions			
2545	Marco,Inc 01-060-000-0000-6639		456.15	Monitor,Keyboard, mouse, case 04/19/2019 04/19/2019	INV6272434	Asset Inventory	N
	01-060-000-0000-6639		183.16	Monitor 04/23/2019 04/23/2019	inv6279646	Asset Inventory	N
2545	Marco,Inc		639.31	2 Transactions			
5397	MN Office Of Enterprise Technology 01-149-000-0000-6203		14.85	March 2019 Voice Services 03/31/2019 04/17/2019	W19030464	Telephone	N
5397	MN Office Of Enterprise Technology		14.85	1 Transactions			
1 Fund Total:			709.16	County Revenue Fund	3 Vendors	4 Transactions	



kfranzen  
4/25/19 1:06PM  
14 Sanitation Fund

\*\*\* Fillmore County \*\*\*



Audit List for Board AUDITOR'S VOUCHERS ENTRIES

Page 3

Vendor	Name	Rpt	Warrant Description	Invoice #	Account/Formula Descripti	1099
No.	Account/Formula	Accr	Amount	Service Dates	Paid On Bhf #	On Behalf of Name
5882	Winneshiek County Landfill					
	14-390-000-0000-6374		3,732.90	Tipping fees	23157	Landfill Tipping Fees
				04/10/2019	04/15/2019	
				1 Transactions		
5882	Winneshiek County Landfill		3,732.90			
14 Fund Total:			3,732.90	Sanitation Fund	1 Vendors	1 Transactions

kfranzen  
4/25/19 1:06PM  
73 Greenleafon Septic Projec

\*\*\* Fillmore County \*\*\*



Audit List for Board AUDITOR'S VOUCHERS ENTRIES

Page 4

Vendor	Name							
No.	Account/Formula	Accr	Rpt	Amount	Warrant Description	Invoice #	Account/Formula Descripti	1099
					Service Dates	Paid On Bhf #	On Behalf of Name	
5536	MiEnergy Cooperative							
	73-611-000-0000-6251			358.47	Greenleafon Treatment Plant	302875001	Electricity	N
					03/01/2019 04/01/2019			
	73-611-000-0000-6251			58.23	Greenleafon Plant Grinder	302875002	Electricity	N
					03/01/2019 04/01/2019			
5536	MiEnergy Cooperative			416.70	2 Transactions			
73 Fund Total:				416.70	Greenleafon Septic Project	1 Vendors	2 Transactions	

kfranz  
4/25/19 1:06PM  
76 Trust And Agency Fund

\*\*\* Fillmore County \*\*\*



Audit List for Board AUDITOR'S VOUCHERS ENTRIES

Page 5

Vendor	Name		Rpt	Warrant Description	Invoice #	Account/Formula Descripti	1099
No.	Account/Formula	Accr	Amount	Service Dates	Paid On Bhf #	On Behalf of Name	
110	Fillmore Co Treasurer						
	76-000-000-0000-2006		918.00	RRC Sales Tax & Use Tax		Commercial Sw Mgmt Tax	N
				04/18/2019 04/18/2019			
	76-000-000-0000-2007		97.00	041,101 &602 Sales & Use Tax		Sales Tax Collected	N
				04/18/2019 04/18/2019			
110	Fillmore Co Treasurer		1,015.00	2 Transactions			
76 Fund Total:			1,015.00	Trust And Agency Fund	1 Vendors	2 Transactions	

kfranzen  
 4/25/19 1:06PM  
 87 State Revenue And School

# \*\*\* Fillmore County \*\*\*



## Audit List for Board AUDITOR'S VOUCHERS ENTRIES

Page 6

Vendor	Name		Rpt		Warrant Description	Invoice #	Account/Formula Descripti	1099
No.	Account/Formula	Accr		Amount	Service Dates	Paid On Bhf #	On Behalf of Name	
110	Fillmore Co Treasurer							
	87-000-000-0000-2470			15,323.08	March 2019 St. mtg tax		Mortgage Reg Tax-State	N
					03/01/2019 03/31/2019			
	87-000-000-0000-2471			32,569.19	March 2019 State Deed tax		State Deed Tax-State	N
					03/01/2019 03/31/2019			
110	Fillmore Co Treasurer			47,892.27	2 Transactions			
87 Fund Total:				47,892.27	State Revenue And School Fund	1 Vendors	2 Transactions	
Final Total:				53,766.03	7 Vendors	11 Transactions		

# \*\*\* Fillmore County \*\*\*



Audit List for Board AUDITOR'S VOUCHERS ENTRIES

Recap by Fund	<u>Fund</u>	<u>AMOUNT</u>	<u>Name</u>	
	1	709.16	County Revenue Fund	
	14	3,732.90	Sanitation Fund	
	73	416.70	Greenleafon Septic Project	
	76	1,015.00	Trust And Agency Fund	
	87	47,892.27	State Revenue And School Fund	
	All Funds	53,766.03	Total	Approved by, .....
				.....
				.....

kfranzen  
5/2/19 12:47PM  
1 County Revenue Fund

# \*\*\* Fillmore County \*\*\*



## Audit List for Board AUDITOR'S VOUCHERS ENTRIES

Page 2

Vendor	Name	Rpt		Warrant Description	Invoice #	Account/Formula Descripti	1099
No.	Account/Formula	Accr	Amount	Service Dates	Paid On Bhf #	On Behalf of Name	
7617	Bluff Valley Riders 01-001-000-0000-6876		6,827.83	Benchmark 3 04/29/2019	04/29/2019	Snowmobile Trail Payments	N
7617	Bluff Valley Riders		6,827.83	1 Transactions			
3219	Centurylink 01-251-000-0000-6203		28.14	Sheriff office phones 03/24/2019	1467029190	Telephone	N
3219	Centurylink		28.14	1 Transactions			
5660	De Lage Landen Financial Services 01-149-000-0000-6288		1,534.15	Copy Machine lease 02/12/2019	62304321	Copy Machine - Lease	N
	01-149-000-0000-6288		1,534.15	Copy Machine lease 05/12/2019	63399971	Copy Machine - Lease	N
5660	De Lage Landen Financial Services		3,068.30	2 Transactions			
5166	Hiawatha Sno Seekers 01-001-000-0000-6876		8,450.21	Benchmark 3 05/01/2019	05/01/2019	Snowmobile Trail Payments	N
5166	Hiawatha Sno Seekers		8,450.21	1 Transactions			
6094	MN Energy Resources Corporation 01-251-000-0000-6255		506.40	Jail natural gas 03/27/2019	04/24/2019	Gas	N
6094	MN Energy Resources Corporation		506.40	1 Transactions			
7369	Tri-County Trailblazers 01-001-000-0000-6876		5,197.76	Benchmark 3 04/29/2019	04/29/2019	Snowmobile Trail Payments	N
7369	Tri-County Trailblazers		5,197.76	1 Transactions			
1 Fund Total:			24,078.64	County Revenue Fund	6 Vendors	7 Transactions	

kfranz  
5/2/19 12:47PM  
13 County Road & Bridge

\*\*\* Fillmore County \*\*\*



Audit List for Board AUDITOR'S VOUCHERS ENTRIES

Vendor	Name	Rpt		Warrant Description	Invoice #	Account/Formula Descripti	1099
No.	Account/Formula	Accr	Amount	Service Dates	Paid On Bhf #	On Behalf of Name	
4369	AcenTek						
	13-300-000-0000-6203		109.61	telephone	11278752	Telephone	N
	13-300-000-0000-6203		173.22	telephone	11279720	Telephone	N
4369	AcenTek		282.83	2 Transactions			
3219	Centurylink						
	13-300-000-0000-6203		26.14	telephone	1467029919	Telephone	N
3219	Centurylink		26.14	1 Transactions			
288	City Of Peterson						
	13-330-000-0000-6251		169.90	utilities	108A	Electricity	N
288	City Of Peterson		169.90	1 Transactions			
7542	Fillmore Co Treasurer						
	13-330-000-0000-6561		2,151.18	March fuel tax		Gasoline Diesel And Other Fuels	N
7542	Fillmore Co Treasurer		2,151.18	1 Transactions			
1829	Frontier Communications						
	13-300-000-0000-6203		73.68	telephone	5079373211	Telephone	N
1829	Frontier Communications		73.68	1 Transactions			
6094	MN Energy Resources Corporation						
	13-330-000-0000-6255		50.96	natural gas	0502458275	Gas	N
	13-330-000-0000-6255		322.31	natural gas	0502625354	Gas	N
	13-330-000-0000-6255		155.88	natural gas	0505303491	Gas	N
	13-330-000-0000-6255		303.44	natural gas	0506251865	Gas	N
	13-330-000-0000-6255		369.26	natural gas	0507313281	Gas	N
	13-330-000-0000-6255		273.10	natural gas	0507351562	Gas	N
6094	MN Energy Resources Corporation		1,474.95	6 Transactions			
343	Spring Valley Public Utilities						
	13-330-000-0000-6251		287.09	utilities	1124	Electricity	N
343	Spring Valley Public Utilities		287.09	1 Transactions			
13 Fund Total:			4,465.77	County Road & Bridge	7 Vendors	13 Transactions	

kfranzen  
 5/2/19 12:47PM  
 14 Sanitation Fund

\*\*\* Fillmore County \*\*\*



Audit List for Board AUDITOR'S VOUCHERS ENTRIES

Vendor	Name		Rpt		Warrant Description	Invoice #	Account/Formula Descripti	1099
No.	Account/Formula	Accr		Amount	Service Dates	Paid On Bhf #	On Behalf of Name	
5882	Winneshiek County Landfill 14-390-000-0000-6374			3,724.62	tipping fees	23172	Landfill Tipping Fees	N
					04/17/2019 04/22/2019			
5882	Winneshiek County Landfill			3,724.62	1 Transactions			
14 Fund Total:				3,724.62	Sanitation Fund	1 Vendors	1 Transactions	
Final Total:				32,269.03	14 Vendors	21 Transactions		



\*\*\* Fillmore County \*\*\*

Audit List for Board AUDITOR'S VOUCHERS ENTRIES



Recap by Fund	<u>Fund</u>	<u>AMOUNT</u>	<u>Name</u>	
	1	24,078.64	County Revenue Fund	
	13	4,465.77	County Road & Bridge	
	14	3,724.62	Sanitation Fund	
	All Funds	32,269.03	Total	Approved by, .....
				.....
				.....



# Update on CWD Surveillance & Management in SE MN

**Dr. Michelle Carstensen**

**Wildlife Health Program**

**5/1/2019**

# Chronic Wasting Disease: What is it?

- CWD is a slowly progressive, brain disease of deer, elk, moose, and reindeer
- CWD belongs to the family of diseases known as transmissible spongiform encephalopathies (TSE) or prion diseases
- Not caused by a virus, fungus, or bacteria – mis-shapen protein
- Spread animal-to-animal, mostly through saliva, feces, urine



Photo by J. Skukrud

## Both Deer are CWD-Positive

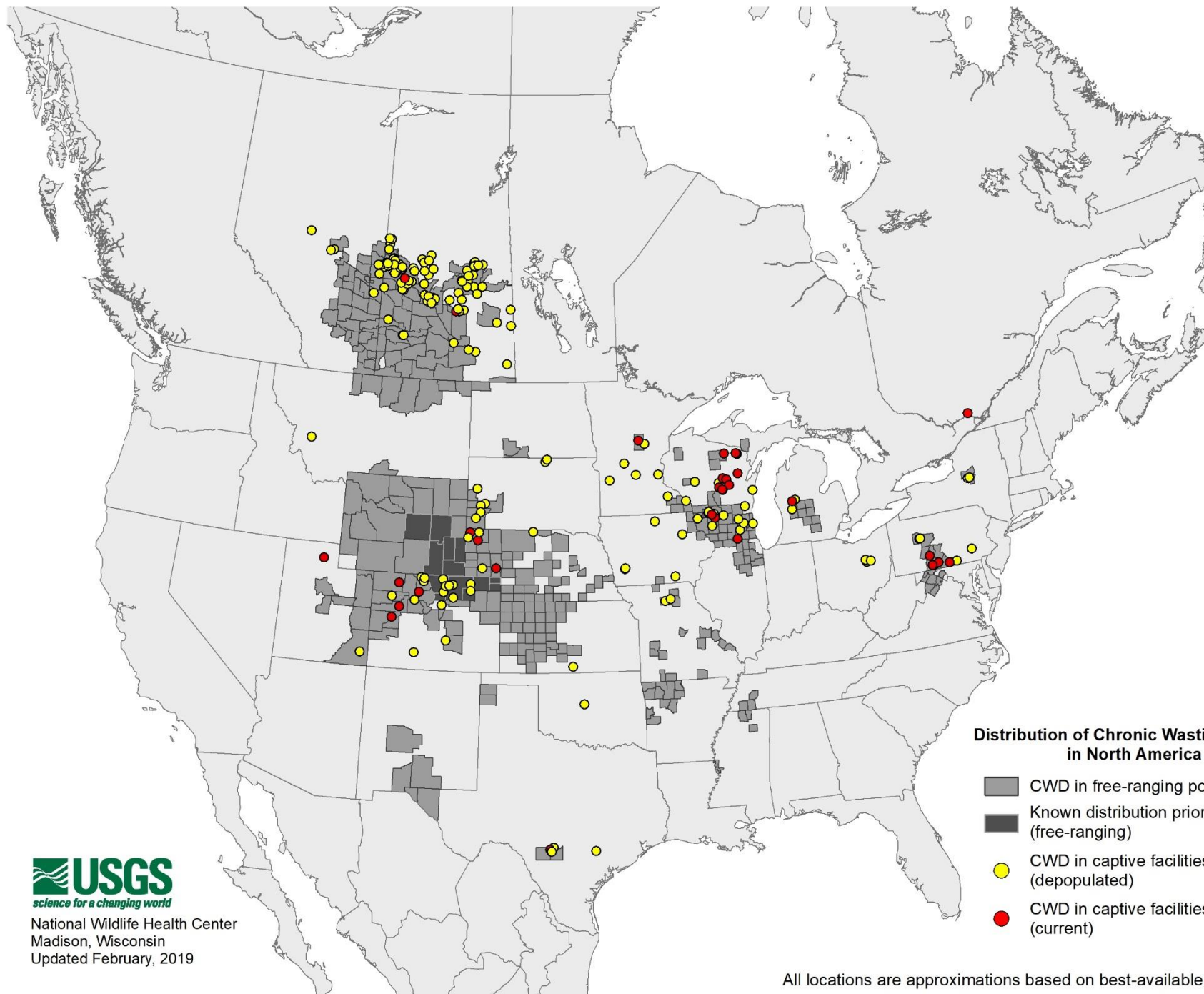
Top Photo: Pre-clinical disease

Bottom Photo: Clinical disease



Photo by Terry Kreeger





National Wildlife Health Center  
Madison, Wisconsin  
Updated February, 2019

All locations are approximations based on best-available information



- Norway found CWD in reindeer, moose, and a red deer
- Finland found 1<sup>st</sup> case in 2018 in a moose, and Sweden in 2019

# Things are NOT OK in areas with CWD

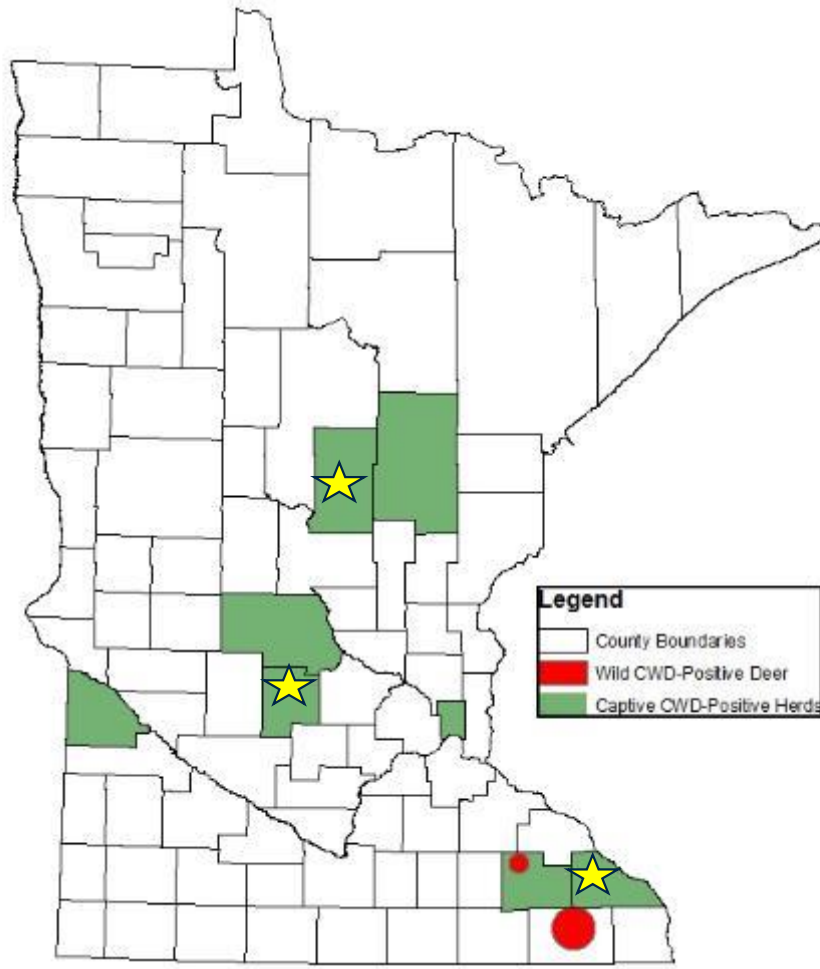
What we know ...

- Disease is 100% fatal
- Deer that are infected (but not symptomatic) have higher mortality rates than uninfected deer
- Bucks are 3x more likely to have the disease
- Yearling males are CWD delivery systems
- The percentage of infected deer increases annually, in addition to a larger geographic area
- The disease is having a negative effect on long-term deer densities in other states



# MNDNR's CWD Surveillance-Focus on Risk

## CWD-positive cervid farms in MN (n = 8)



★ 2017 CWD+ Game Farms

## Risk-Based Surveillance

Since 2005, sampling triggers include:

1. **Suspect deer-** deer exhibiting CWD symptoms
2. **New infection found in adjacent state-** sampled several times for WI infections and northeast Iowa
3. **Association with positive captive cervid farm** - surveillance around areas known to have CWD (n = 8)
  - 3 elk, 4 white-tailed deer, and 1 red deer farm

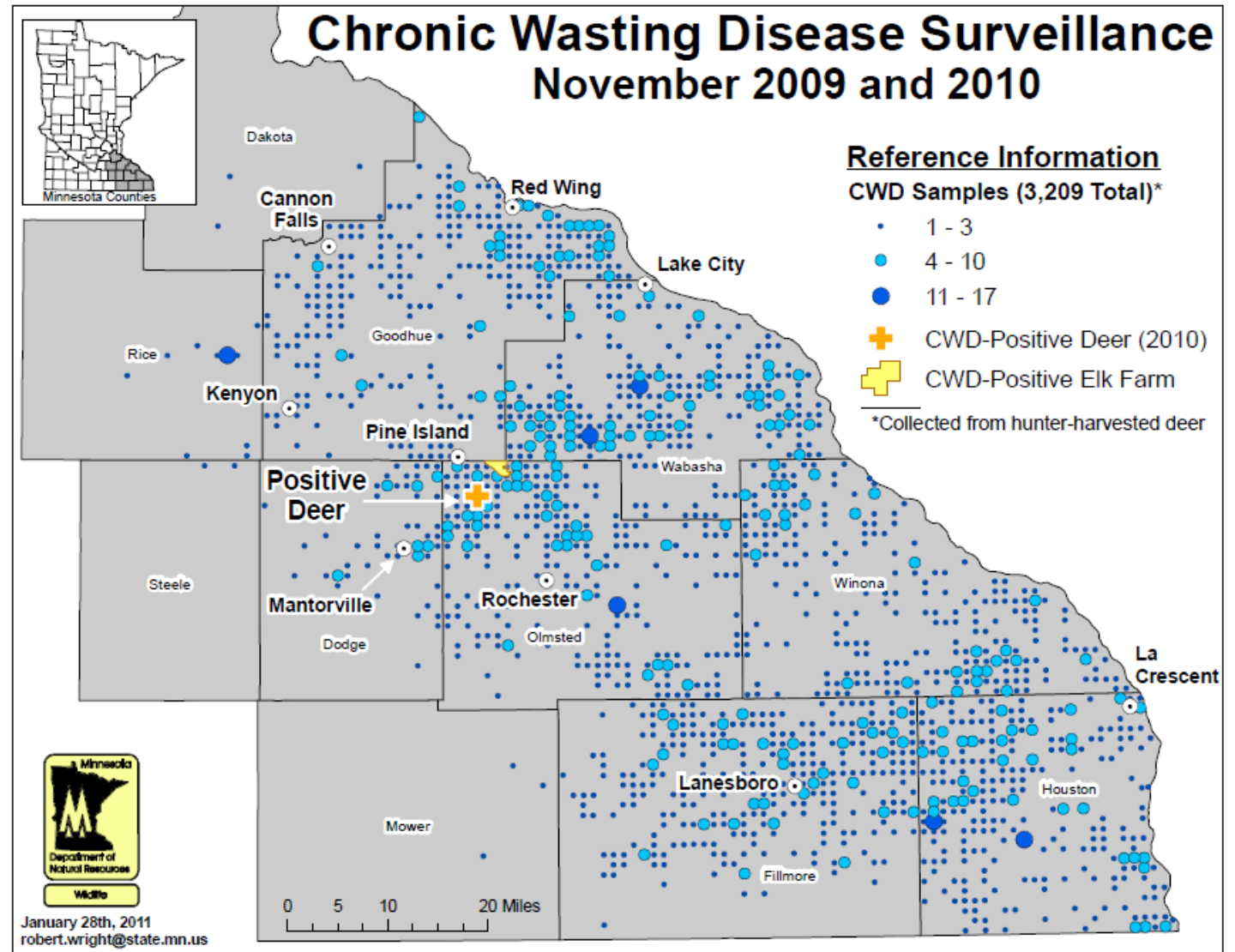




# History of CWD Surveillance in SE MN (2002 – 2014)

- From 2002 to 2008, 3,460 samples were collected in Zone 3
- Efforts increased in 2009-2010 in response to CWD in a captive farm near Pine Island, 3,209 samples; 1 deer positive
- 5,743 more samples collected, 2011 to 2013
- 411 samples from Fillmore and Houston counties in 2014

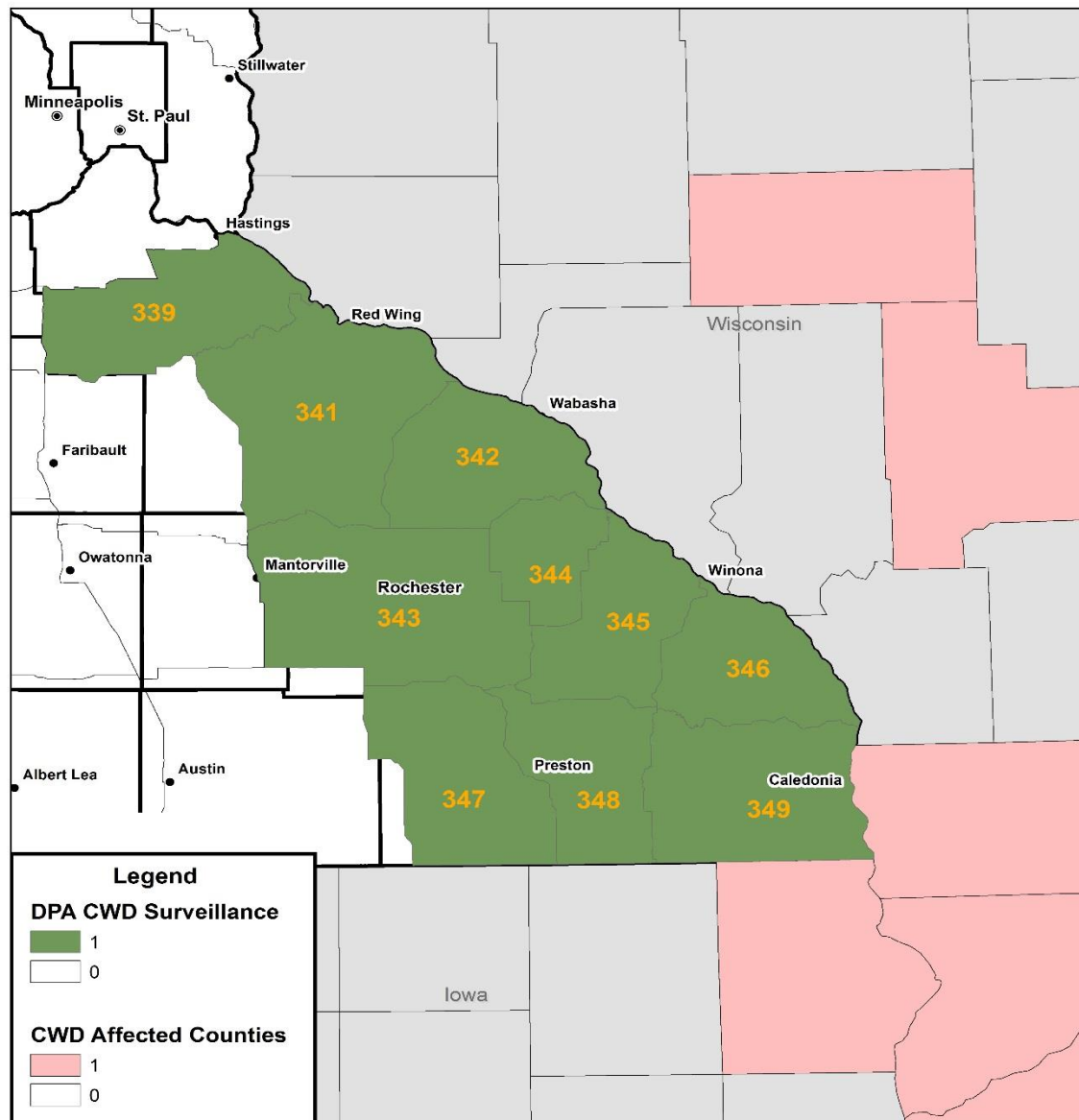
**TOTAL = 12,823**





## What prompted CWD surveillance in SE MN in 2016?

- Agency has taken a proactive stance where possible
- More CWD affected counties closer to our border in WI
- More infected wild deer found in Allamakee County, northeast Iowa
- Revisit Pine Island area in response to CWD deer from 2011



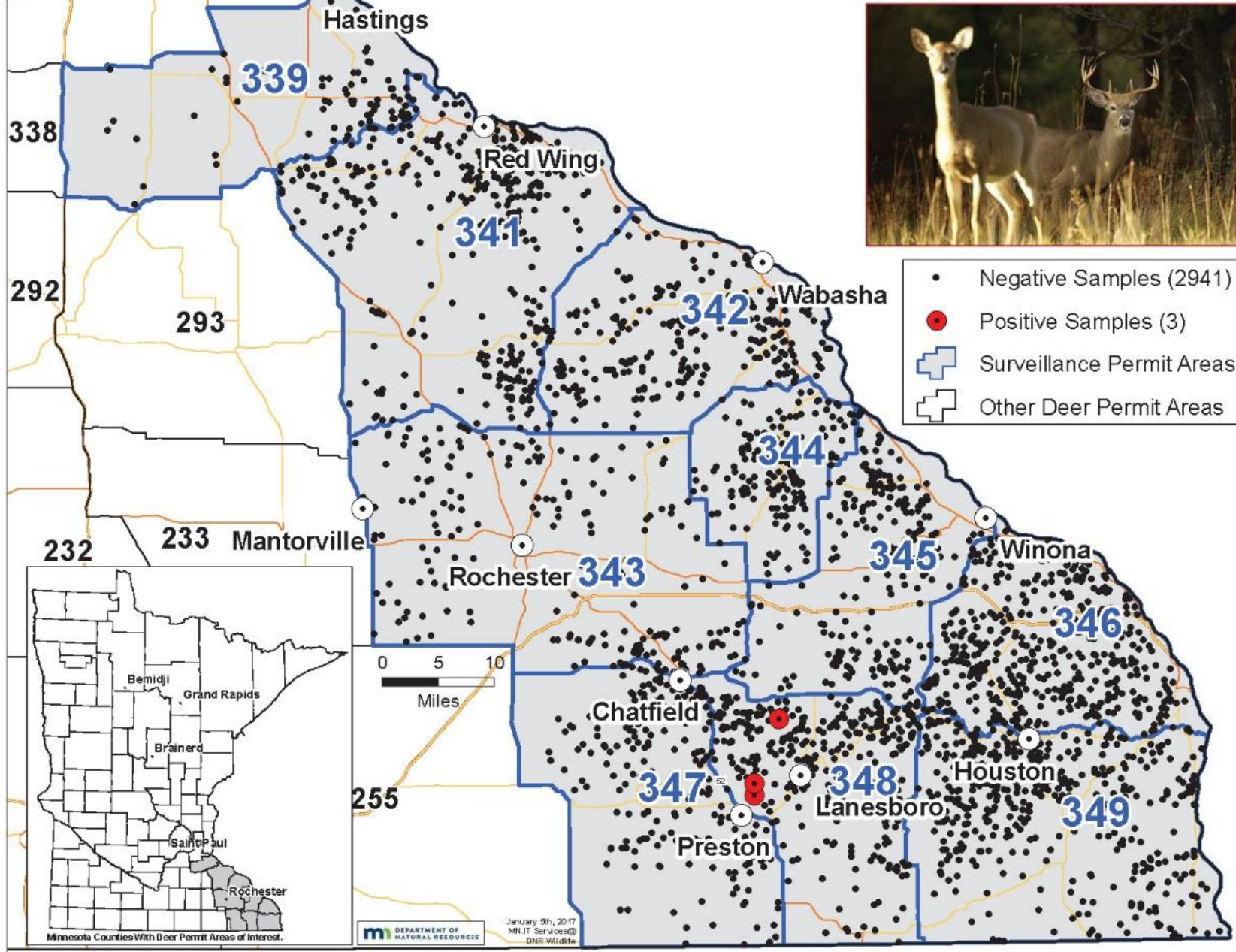
Date: 9/27/2016

0 5 10 20 30 40 Miles



# Chronic Wasting Disease Surveillance In Southeast Minnesota

## As of December 31st, 2016



## Fall 2016 Sampling

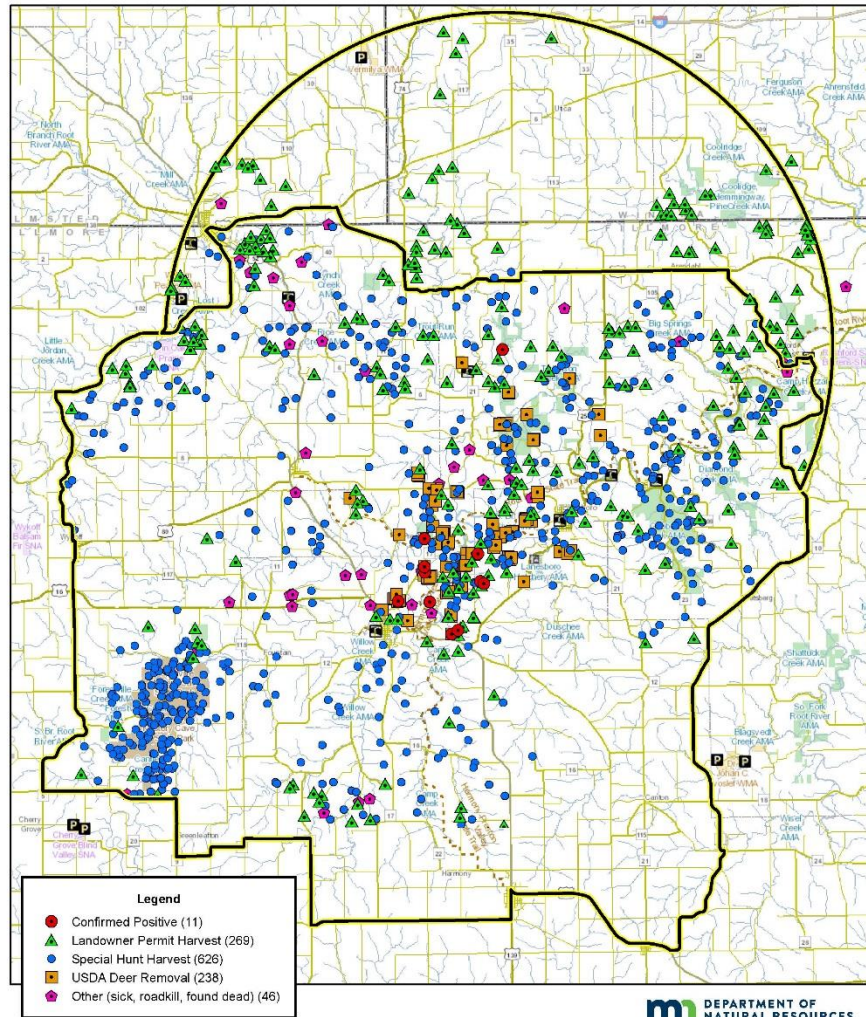
- Tested ~3,000 deer
- Initially found 2 positives from voluntary fall sampling
- Added 3<sup>rd</sup> from our taxidermist network





# Test results from the Special Hunt, Landowner Shooting Permits, and USDA Wildlife Services Deer Removal Phases, Winter 2017

Special Hunt/Landowner Shooting Permit/USDA Deer Removal  
Deer Harvest Update Mar 20, 2017



## Cumulative test results from Dec. 31, 2016 to March 31, 2017

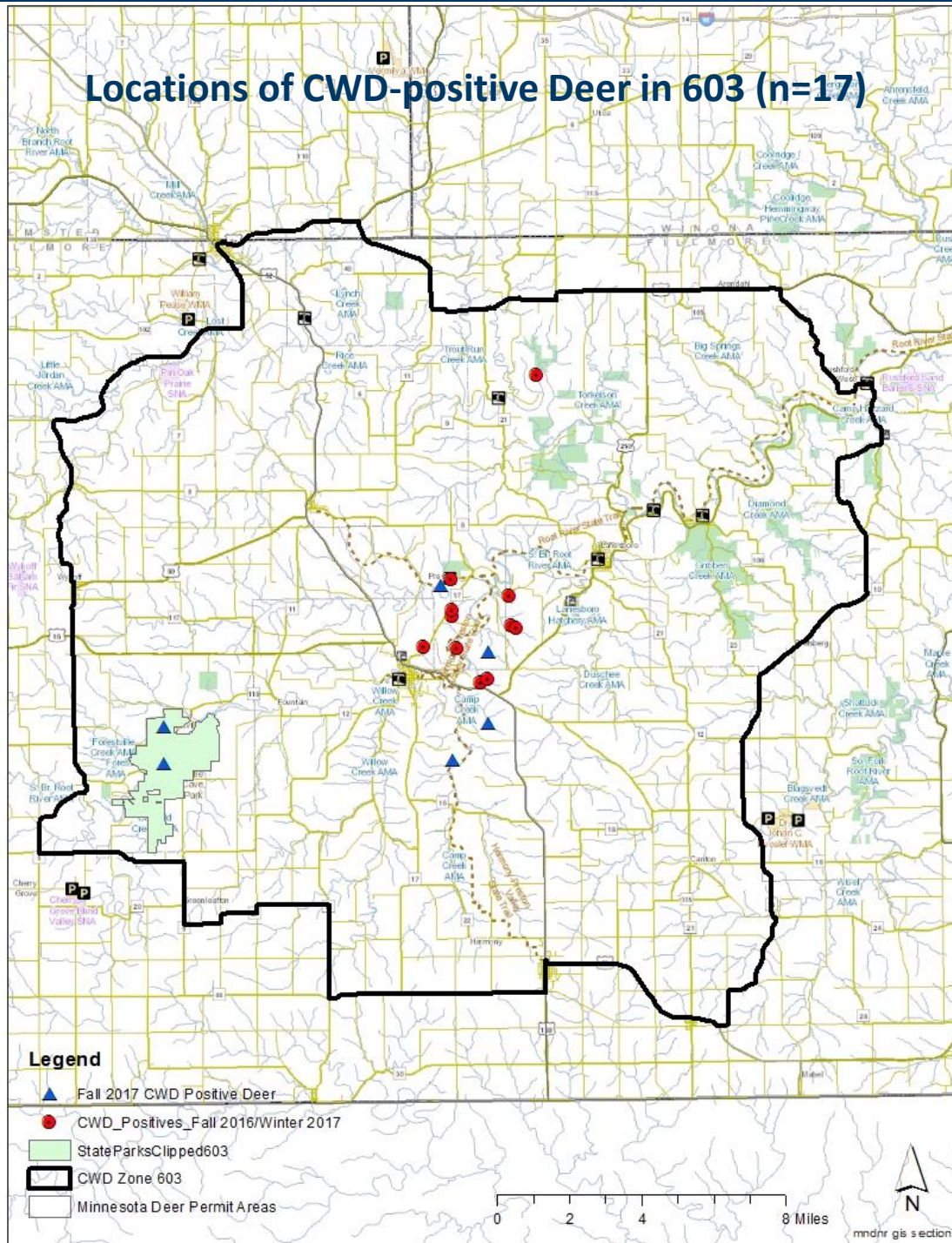
Sample Type	Samples Collected	CWD-Negative	Confirmed CWD-Positive
Landowner Shooting Permit Zone	269	267	2
Special Late Hunt, Zone 603	626	623	3
USDA Deer Removal	238	236	2
Road kill	30	30	0
Found dead	13	12	1
Sick/injured/euthanized	3	3	0
Totals	1179	1171	8 (plus 3 from fall 2016)

**\*\* Additionally 252 and 105 fawns were harvested during the special hunt and by landowners, respectively. Fawns were not tested. Grand Total: 1,536 deer.**

**\*\*2016 apparent CWD prevalence estimate: 11/1,679 or 0.65%.**



## Locations of CWD-positive Deer in 603 (n=17)



# Results of Fall 2017 Sampling: 603

- Zone 603: 1,183: 6 new CWD detections
  - 4 adult males shot in main CWD core area (14/18 or 82% of positives have been found here)
  - 2 adult males shot in Forestville State Park, westward expansion of disease or a sink?
  - Late Hunt (Jan 6-14, 2018): 275 additional samples, no CWD detections
  - **2017 CWD prevalence estimate:  $6/1,458 = 0.4\%$**
- Taxidermist Network contributed 481 samples in all CWD surveillance zones combined; 33 were from DPA 603
- Fall 2017 Surveillance price tag was \$984,321 (this also includes the Late Hunt)



# Southeast MN, Fall 2018

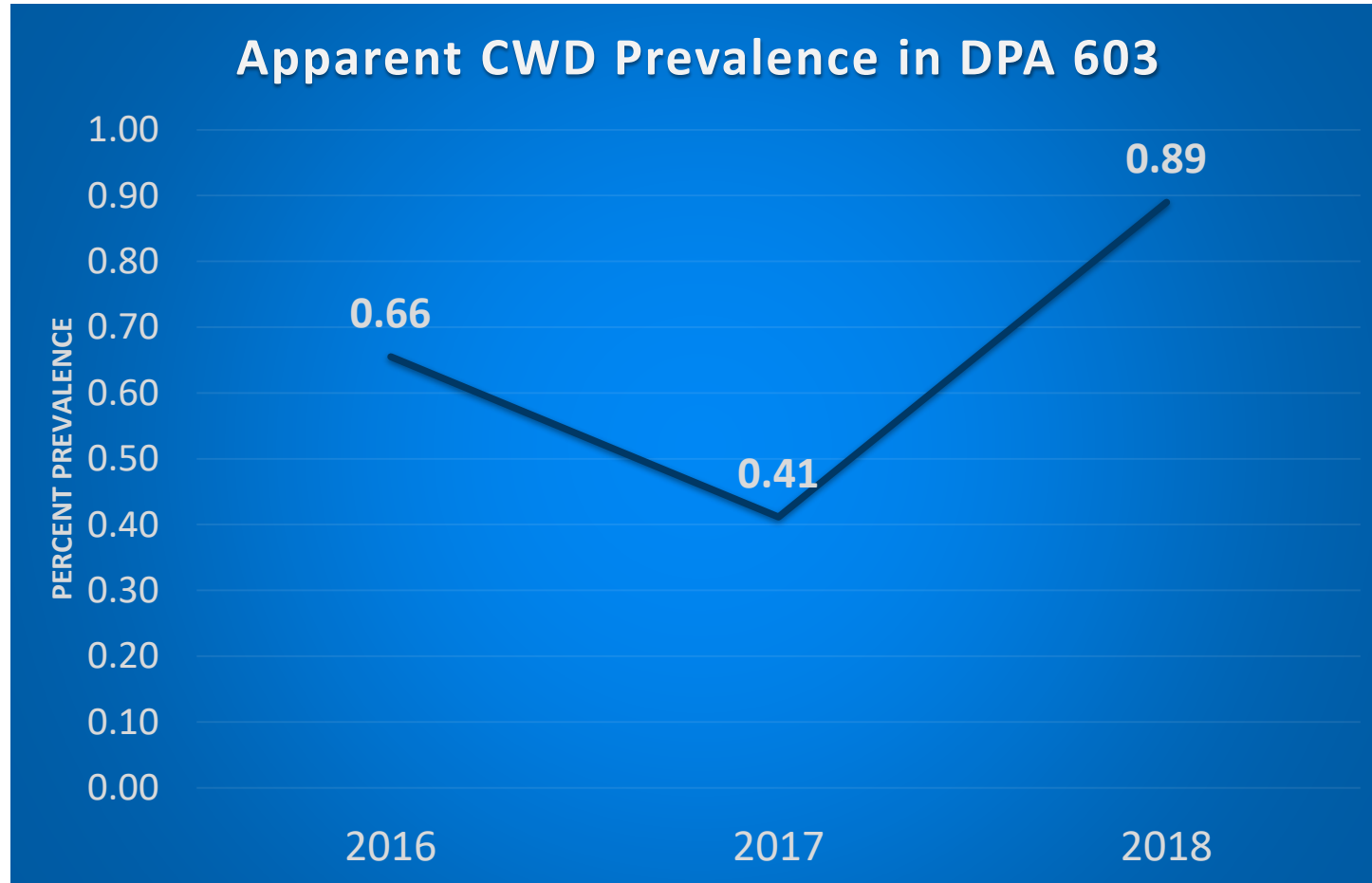
## Southeast CWD Surveillance Zone Hunter Harvested Sampling Locations Fall 2018

### Legend

- SE (non-603) Fall 2018 Hunter Harvested; n=3,123\*  
\*Samples are displayed randomly within each section
- 603 Fall 2018 Hunter Harvest Samples; n=1,250\*  
\*Samples are displayed randomly within each section
- ★ Positive Deer Farm
- Fall 2018 Positives, n=14

- Mandatory testing for deer >1 year of age
- We collected 3,123 samples outside our CWD Management Zone (DPA 603); 3 new CWD positives
- We collected 1,250 inside DPA 603; 11 new CWD positives

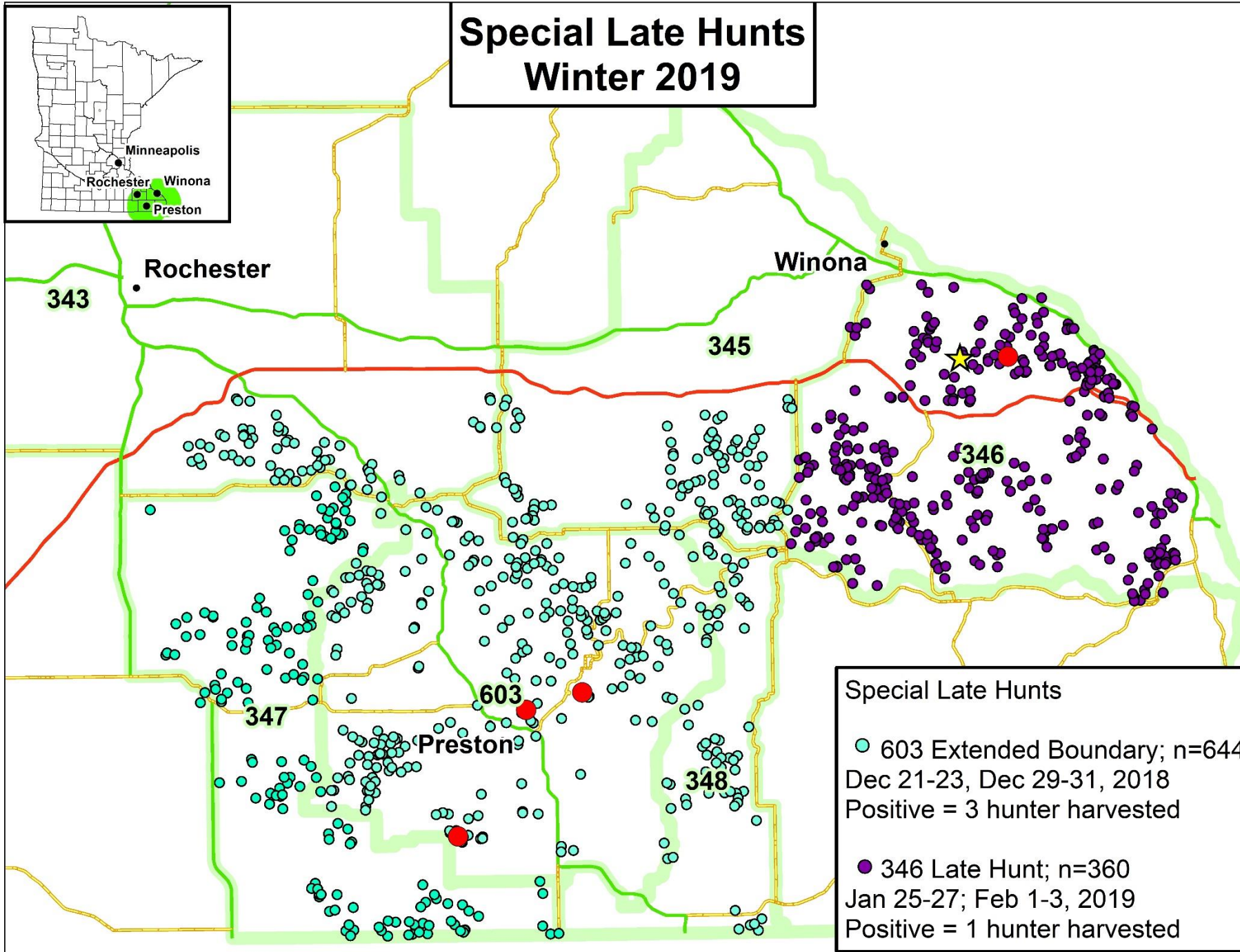
# CWD Prevalence in DPA 603 from Fall Hunter-harvested Sampling



- CWD prevalence is still low in DPA 603; however, increased from 2017 to 2018
- This infection appears to be persisting in the Preston-Lanesboro area and spreading outward

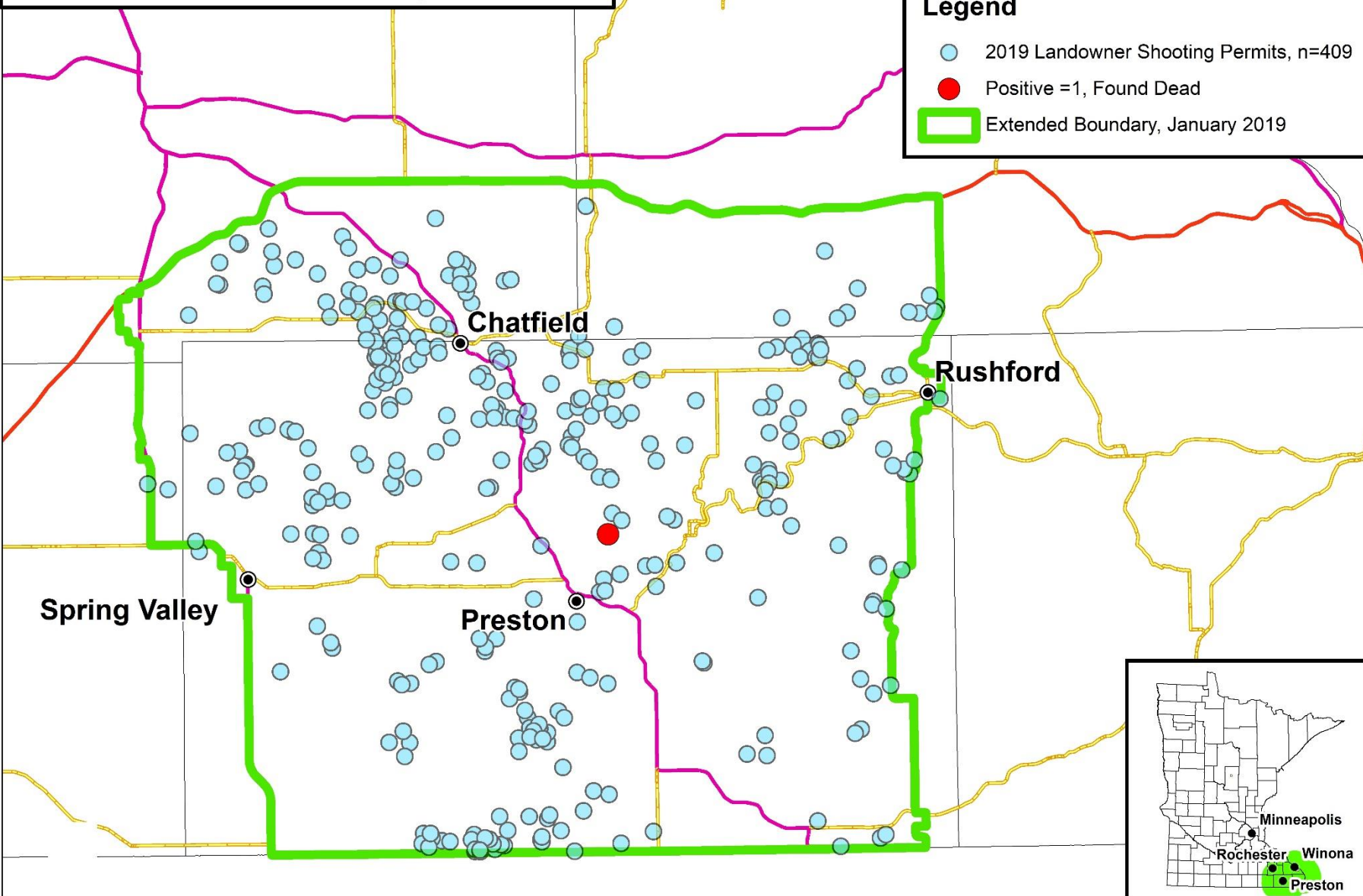


# Special Hunts Zone 603 & 346



- Two late hunts were held in December in 603 and Jan/Feb in 346 to help reduce deer densities in this area and remove additional CWD-positives
- 644 deer shot in 603; 3 additional CWD+ deer
- 360 deer shot in 346; 1 additional CWD+ deer

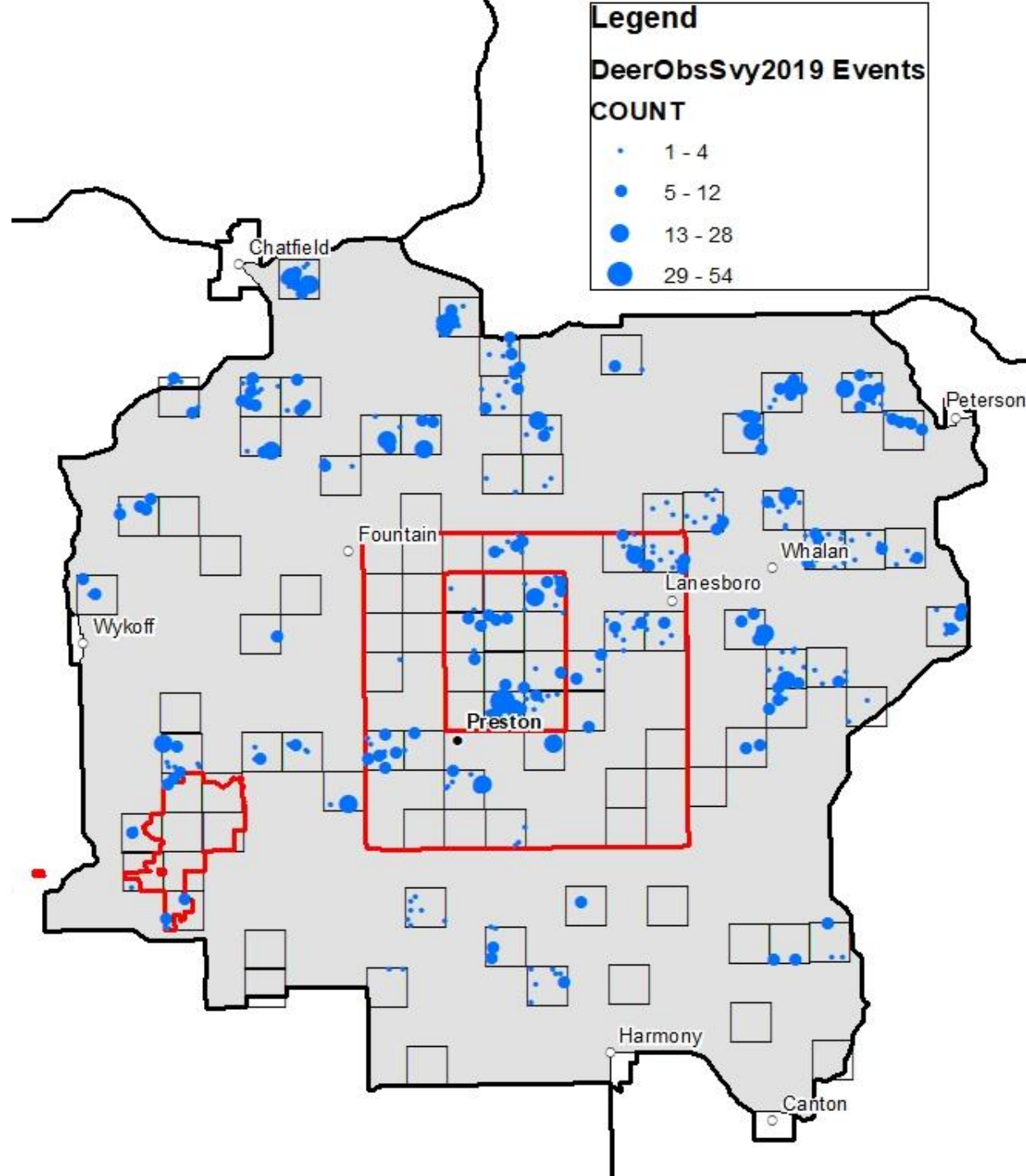
## Winter 2019 Efforts DPA 603/Extended Boundary Landowner Shooting Permits



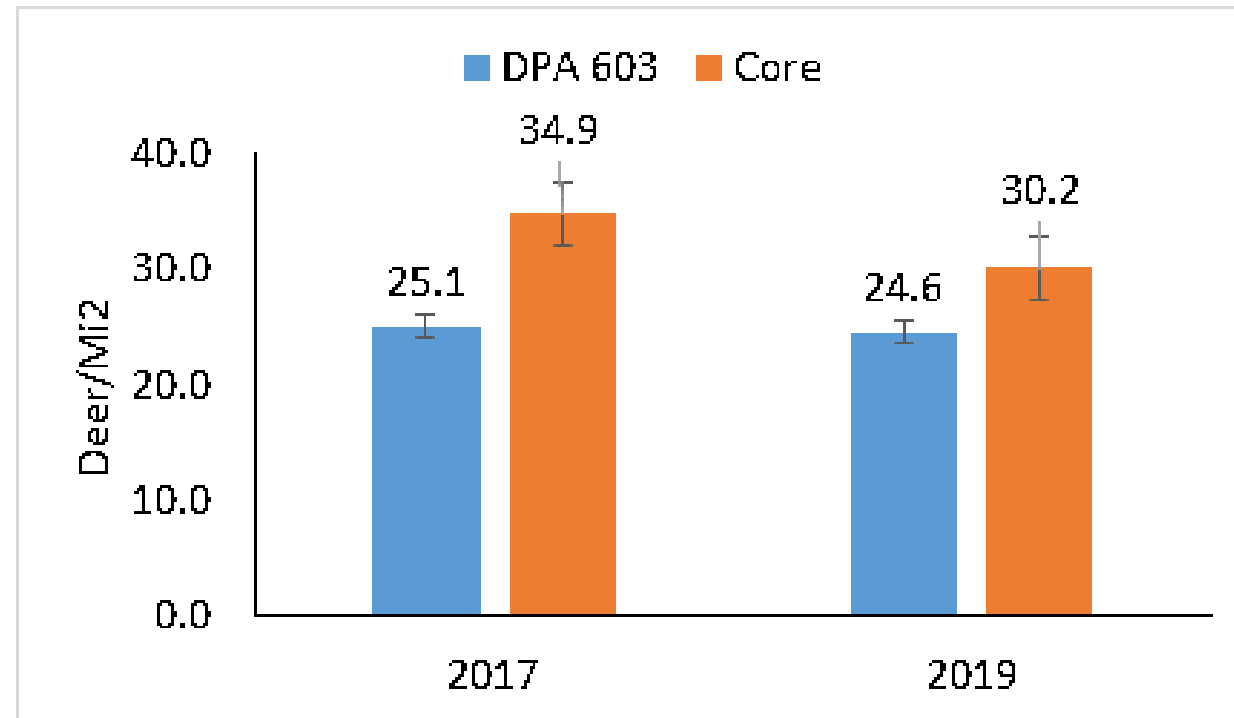
## Landowner Shooting Permits

- Shooting permits were mailed to landowners with >20 acres; 3,500 permits issued
- 409 deer harvested
- One additional CWD+ deer found through this effort, but it was found dead by a landowner



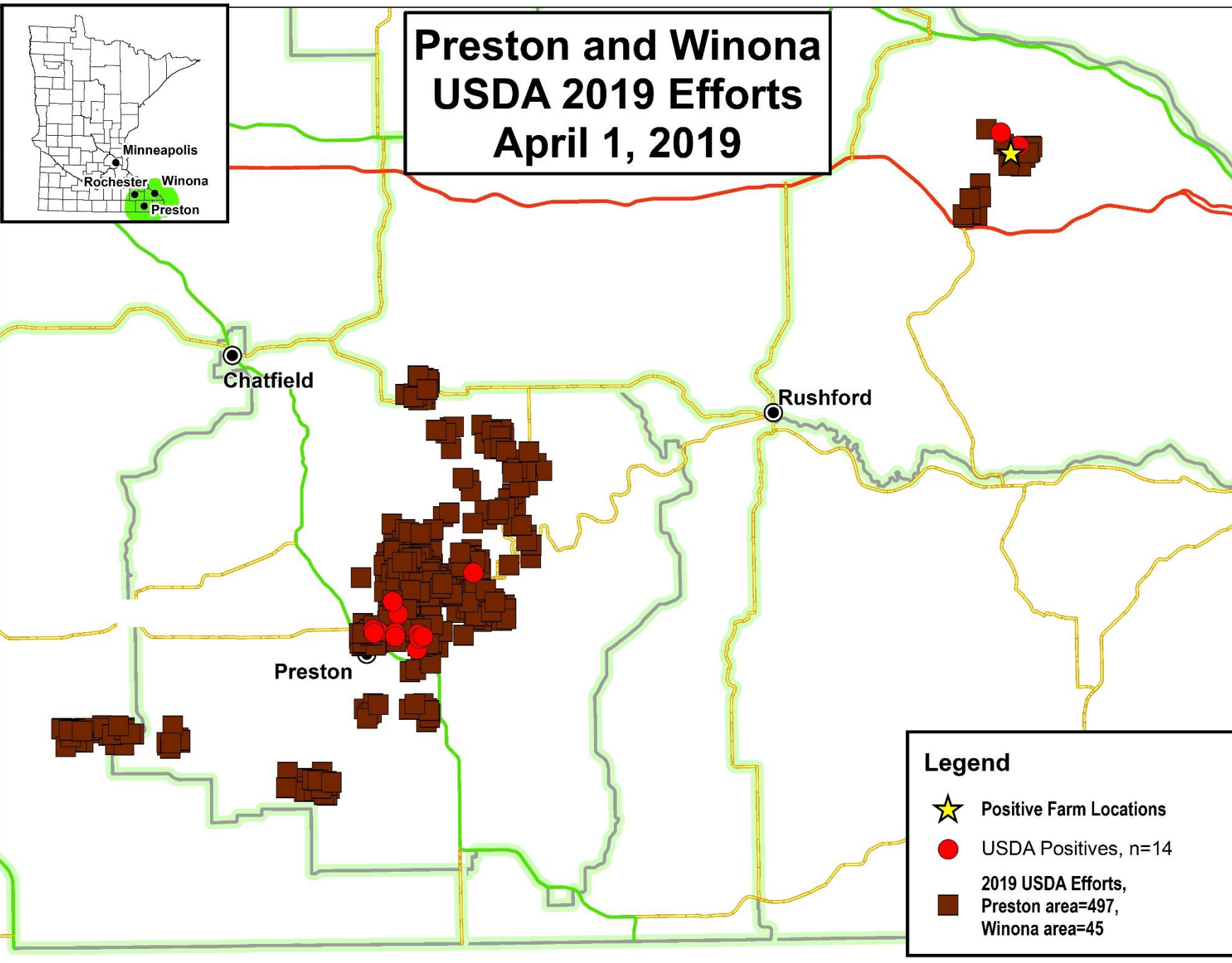


## Aerial Deer Survey of DPA 603



# USDA-WS Targeted Culling Operation

## Preston and Winona USDA 2019 Efforts April 1, 2019



### Legend

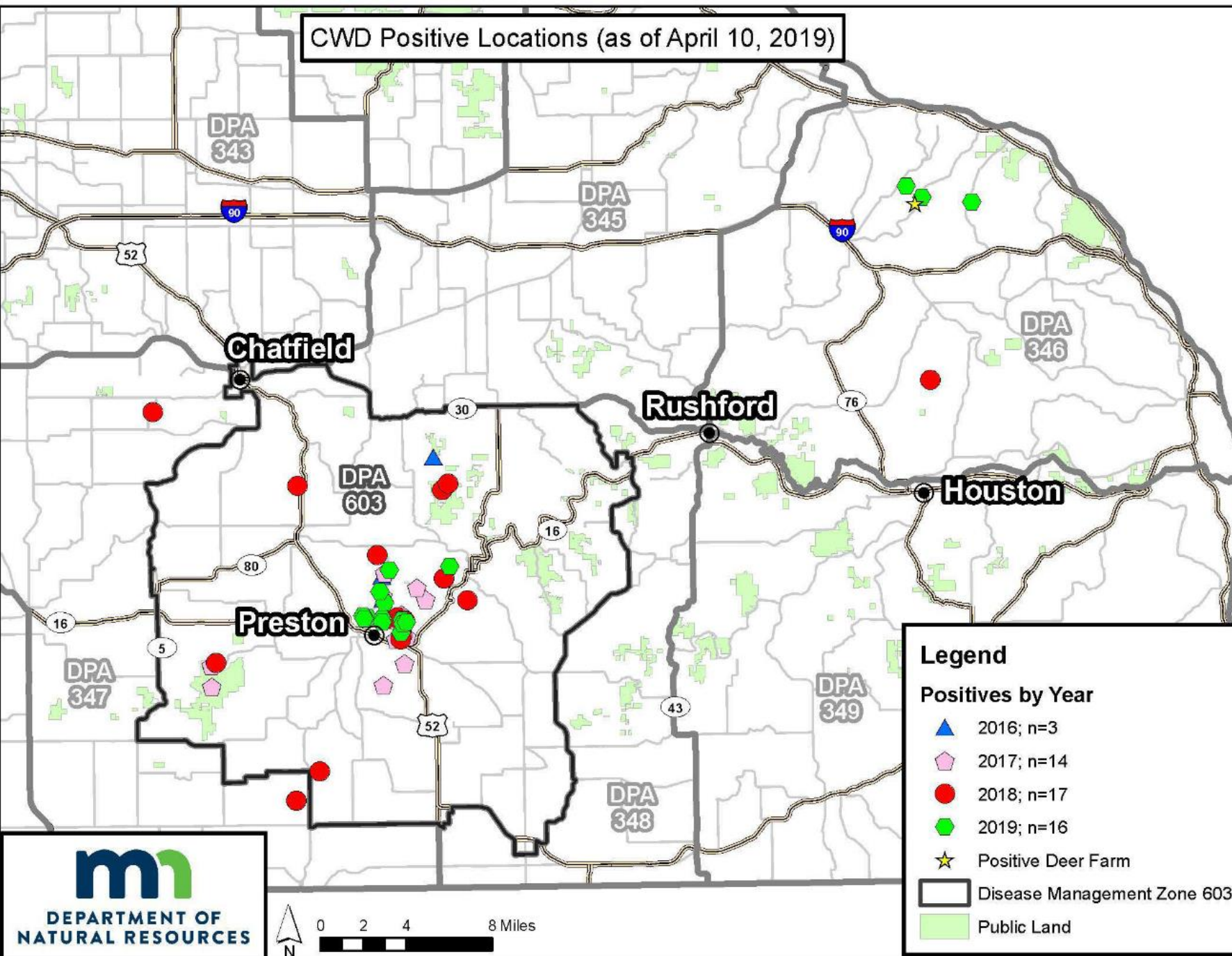
- ★ Positive Farm Locations
- USDA Positives, n=14
- 2019 USDA Efforts,  
Preston area=497,  
Winona area=45

- Work began in January, concluded 29-March
- Focused efforts on areas where known CWD+ were harvested
- 542 deer taken
  - 7 deer were removed on Fillmore Cty Land (2 male fawns, 1 male yearling, and 4 adult females); 1 adult female was positive
- 14 CWD+ deer removed from the landscape
- ~\$300,000 price tag

# Current Distribution of CWD-Positives in SE MN

- Fillmore County Area: total of 46 CWD-positive wild deer since 2016
  - 28 males, 18 females
  - Collection Method: Fall Hunting (n=20); Special Hunts (N=6), Landowner Shooting Permits (n=2); USDA Culling (n=14), Found Dead (n=2)
- Winona County Area: total of 4 CWD-positive wild deer since 2018
  - 3 males, 1 female
  - Collection Method: Fall Hunting (n=1); Special Hunts (N=1); USDA Culling (n=2)

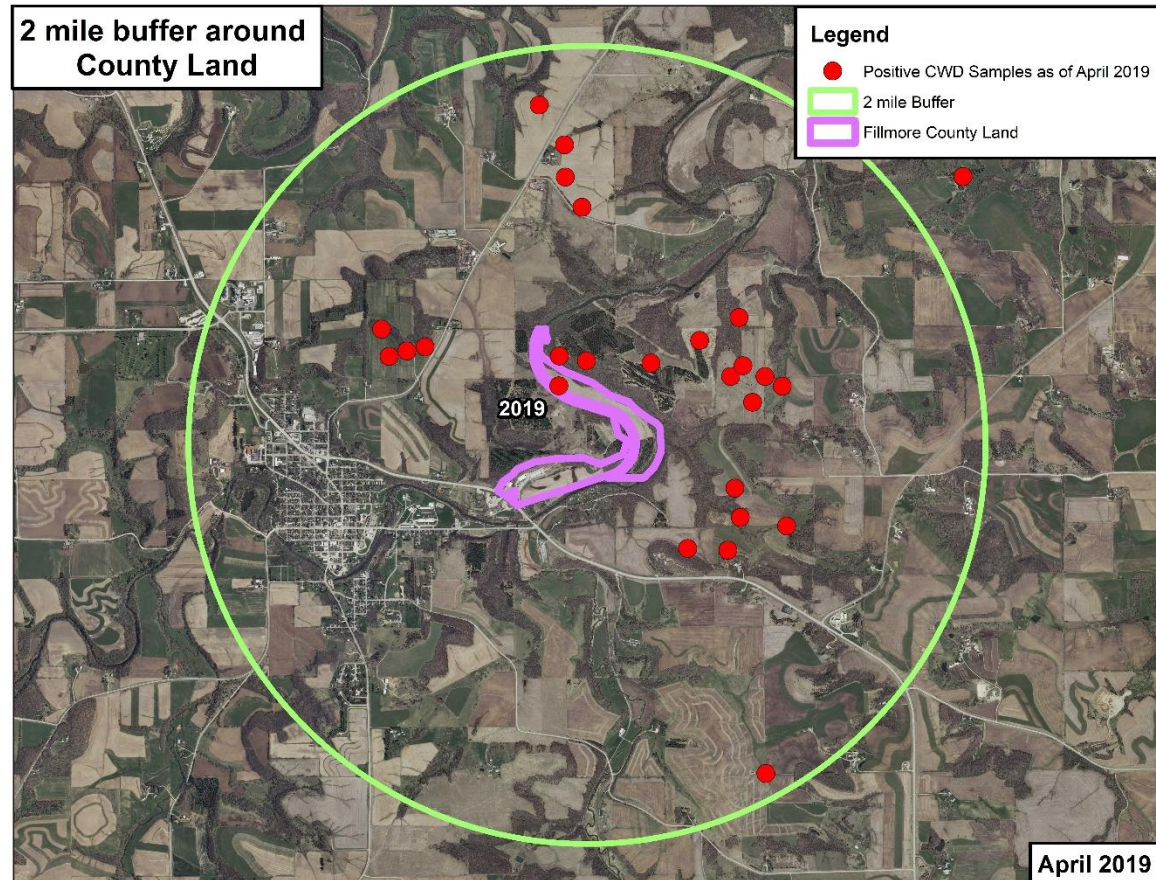
CWD Positive Locations (as of April 10, 2019)



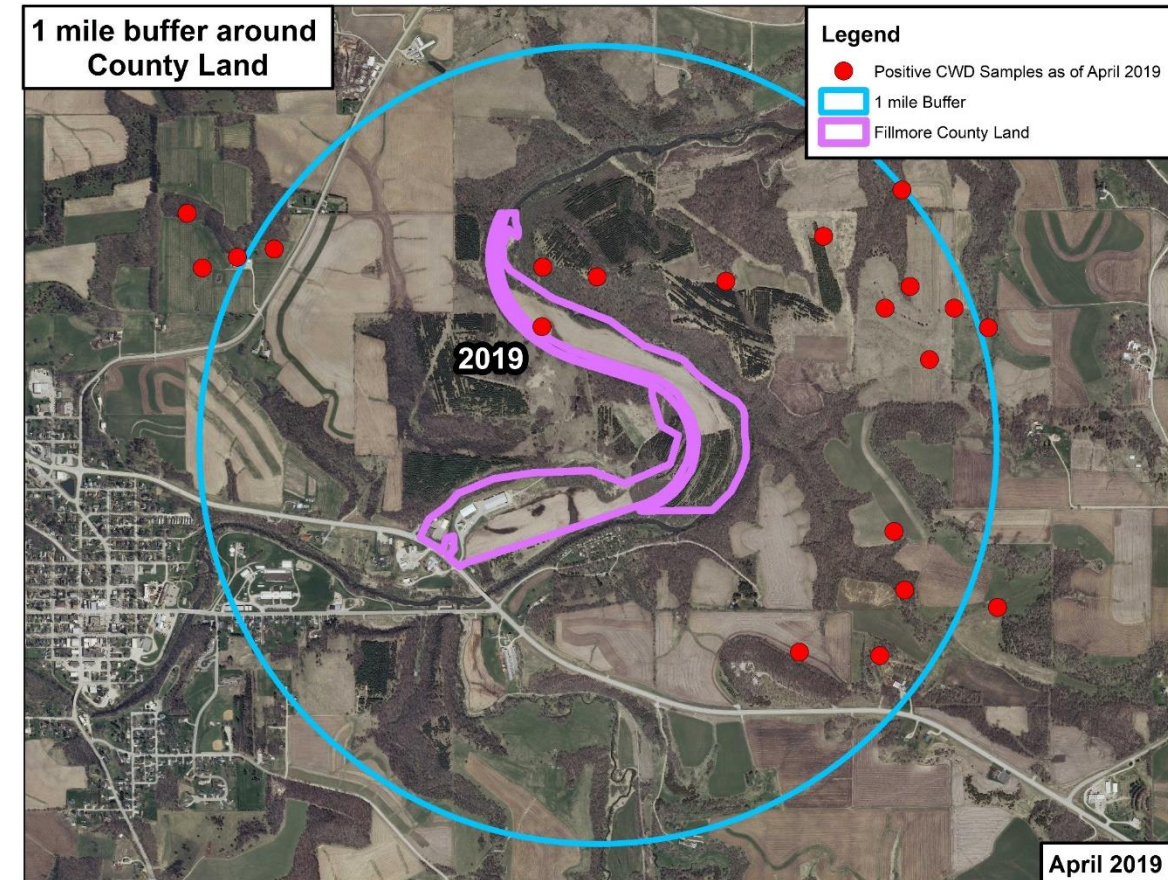


# CWD-Positive Deer near Fillmore County Land (2016 to present)

25 CWD-Positive deer within 2 miles  
(54% of all positives, 25/46)



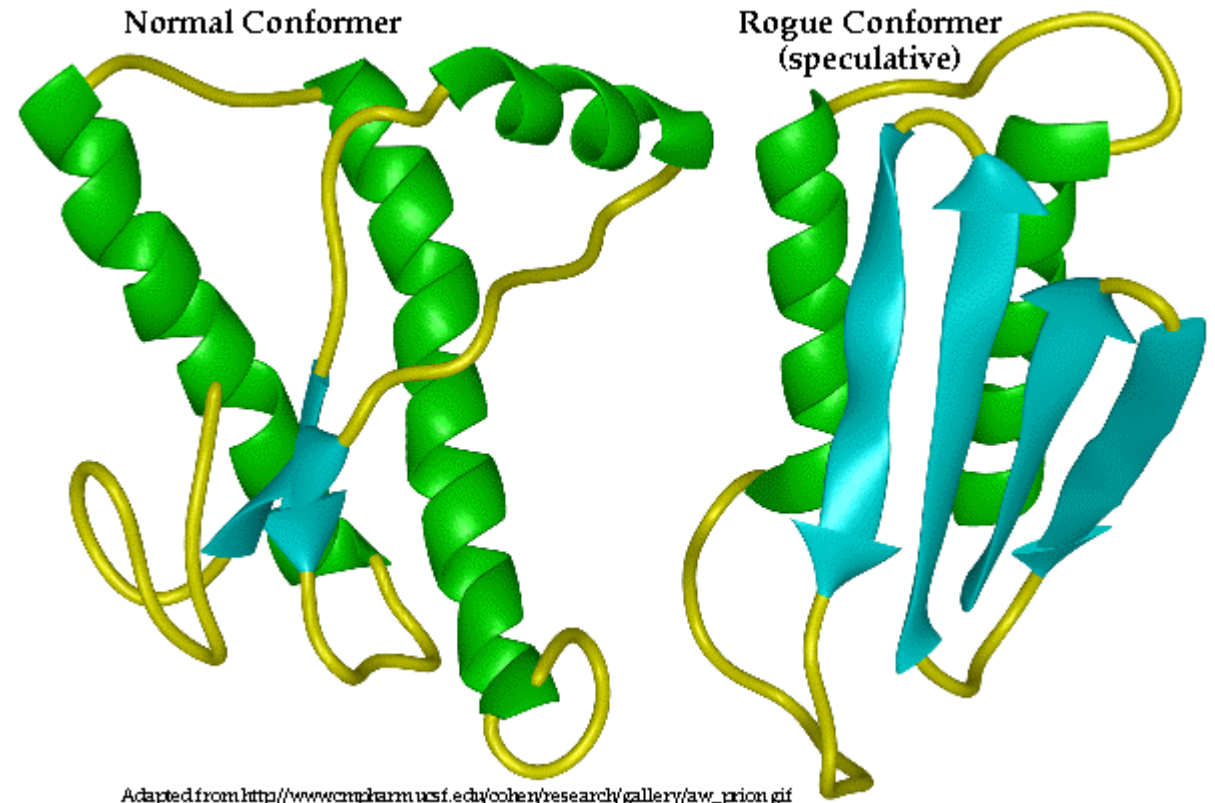
15 CWD-Positive deer within 1 mile  
(33% of all positives, 15/46)





# *Persistence of Prions in the Environment*

- The infectious agent of CWD is called a prion, which is a mis-shapen protein
- It can remain infectious for years outside of the host body, readily binds to soil and can even be uptaken by plant roots.
- Prions bind well to clay soil types near the soil surface and remain infectious for years
- Extremely difficult to denature
  - Heat must be  $>1300^{\circ}\text{F}$  to destroy
  - Normal disinfectants, such as bleach, do not destroy prions



# Managing the deer carcass waste streams of CWD-positive deer

- Approved methods for disposal of CWD-positive deer:
  - Alkaline digestion (University of Minnesota)
  - Lined landfills
  - Incineration (if temperatures exceed 1500°F)
- DNR has confirmed a total of 52 CWD+ wild deer since 2010, here's where the carcasses went:
  - Whole carcass to digester: 19
  - Meat to digester and butcher remains to lined landfill: 26
    - includes 1 from metro, remainder SE MN (all hauled to Olmsted County Landfill)
  - Meat processor waste stream: 2
  - Left on the landscape and mostly scavenged, remains recovered and digested: 5



# Processing Deer in Preston





# Share the Harvest – Venison Donation Program

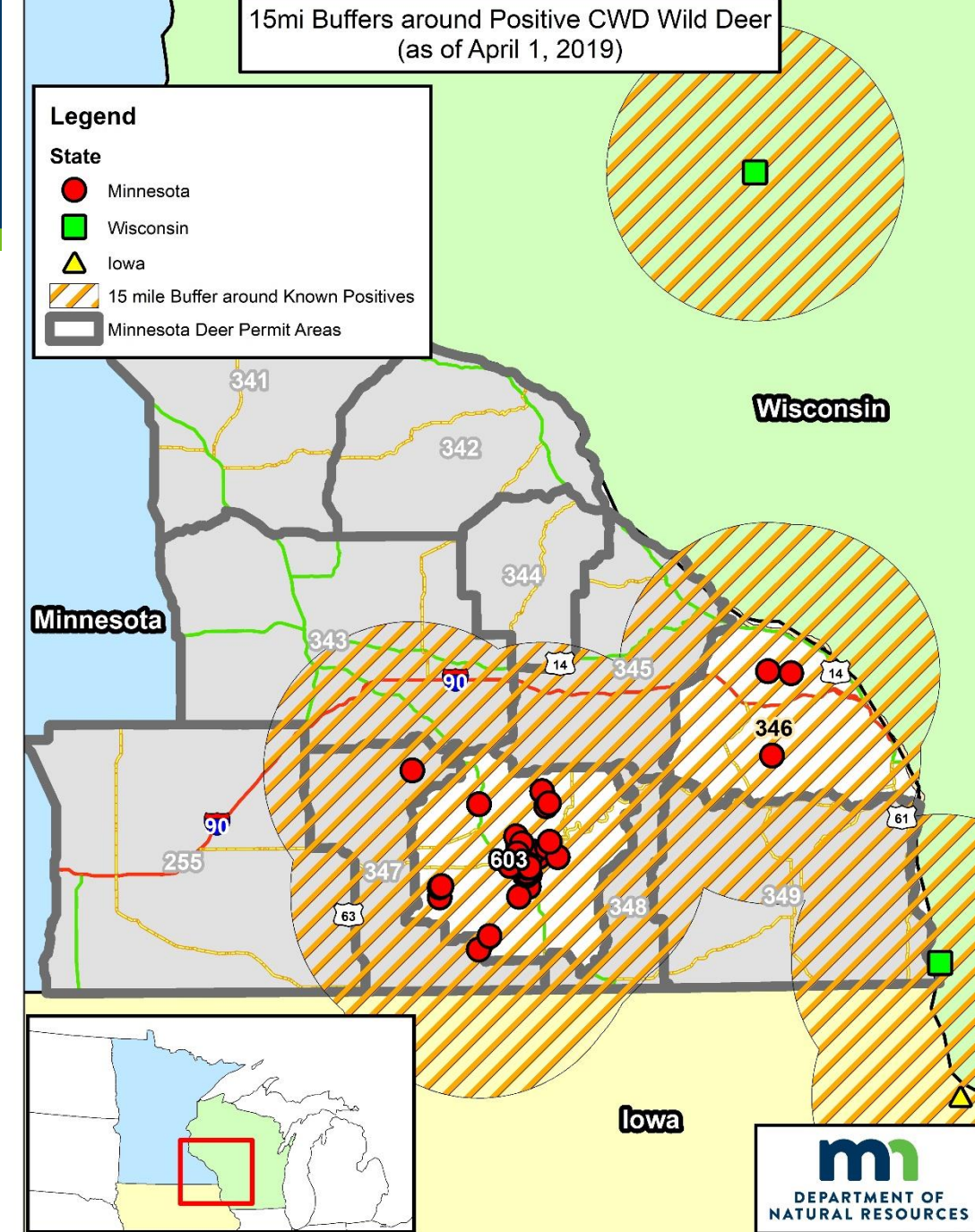
- The public can sign up to receive donated venison from the special hunt, landowner shooting permits, and deer removal efforts this winter
- This is a partnership with Bluffland Whitetails Association (SE MN) and Turn-in-Poachers (NC MN) to utilize deer taken through efforts to manage CWD
- Only deer with “Not-Detected” test results will be released into donation program
- Interested people can sign-up through DNR website:  
<https://www.dnr.state.mn.us/cwd/share-harvest.html>
- Venison will available either as whole carcass or boxed quarters and backstraps
- ~800 people signed-up to receive venison through the website; 553 deer donated in the southeast and 66 in the north-central CWD efforts





# Next Steps

- Evaluate data in all 3 area with CWD, as well as positives near borders (WI and IA)
- Draw new boundaries and formulated plans for fall 2019
- Implement strategies and actions laid out in our CWD Management Plan
- Public engagement and outreach



# KEEP MINNESOTA'S DEER HERD HEALTHY

STOP THE SPREAD  
OF CWD



DEPARTMENT OF  
NATURAL RESOURCES

# REQUEST FOR COUNTY BOARD ACTION

Agenda Date: 5/7/2019

Amount of time requested (minutes):

10 minutes

Dept.: County Attorney's Office

Prepared By: Brett Corson / bnp

State item(s) of business with brief analysis. If requesting multiple items, please number each item for clarity. Provide relevant material(s) for documentation. Please note on each item if documentation is needed and attached.

## Consent Agenda:

Documentation:

1. Update Board on the status of the Amish SSTS case
  - Will be bringing in most recent order in the septic cases To update the County Board. Order may be appealed so County needs to be prepared for variety of possibilities as We move forward with this matter.
2. Tank Removal at Preston Oil Products Site
  - Review and approve the proposed tank removal & inspection agreement between the City of Preston and Fillmore County.

**Yes**

**Yes**

## Regular Agenda:

Documentation:

All requests for County Board agenda must be in the Coordinator's office **No later than noon Thursday prior to the Board date.** Items received after this time **will** not be placed on the Board agenda. All requests should be sent to: [bvickerman@co.fillmore.mn.us](mailto:bvickerman@co.fillmore.mn.us); [ainglett@co.fillmore.mn.us](mailto:ainglett@co.fillmore.mn.us); and [kruesink@co.fillmore.mn.us](mailto:kruesink@co.fillmore.mn.us)

Filed in District Court  
State of Minnesota

Attwood, Jim  
Apr 23 2019 8:46 AM

State of Minnesota  
Fillmore County

District Court  
Third District

Court File Number: **23-CV-17-351**

Case Type: Civil Other/Misc.

FILE COPY

**Notice of:**

<input checked="" type="checkbox"/>	<b>Filing of Order</b>
<input checked="" type="checkbox"/>	<b>Entry of Judgment</b>
<input type="checkbox"/>	<b>Docketing of Judgment</b>

Amos Mast, Menno Mast, Sam Miller, Ammon Swartzentruber vs County of Fillmore, Minnesota Pollution Control Agency

You are hereby notified that the following occurred regarding the above-entitled matter:

<input checked="" type="checkbox"/>	An Order was filed on April 23, 2019.
<input checked="" type="checkbox"/>	Judgment was entered on April 23, 2019.
<input type="checkbox"/>	You are notified that judgment was docketed on at in the amount of \$. Costs and interest will accrue on this amount from the date of entry until the judgment is satisfied in full.

Dated: April 23, 2019

James D. Attwood  
Court Administrator  
Fillmore County District Court  
101 Fillmore Street, West  
Preston MN 55965  
507-765-3356

cc: BRETT ALLYN CORSON  
CHRISTINA MARIE BROWN  
BRIAN NELSON LIPFORD

A true and correct copy of this Notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

Filed in District Court  
State of Minnesota

Attwood, Jim  
Apr 23 2019 8:35 AM

STATE OF MINNESOTA

COUNTY OF FILLMORE

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Amos Mast, Menno Mast,  
Sam Miller, and Ammon Swartzentruber,

Plaintiffs,

vs.

County of Fillmore and  
Minnesota Pollution Control Agency,

Defendants.

IN THE DISTRICT COURT  
CIVIL DIVISION  
THIRD JUDICIAL DISTRICT

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
ORDER FOR JUDGMENT,  
AND JUDGMENT**

Court File No. 23-CV-17-351

**AND**

County of Fillmore, a Political  
Subdivision of the State of Minnesota,

Plaintiff,

vs.

Ammon J. Swartzentruber  
and Sarah J. Swartzentruber,

Defendants.

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Court File No. 23-CV-16-844

On November 26-30 and December 14 and 27, 2018, the above matters came before the Honorable Joseph F. Chase, Judge of District Court, for court trial. Attorney Brian N. Lipford, Southern Minnesota Regional Legal Services, Rochester, Minnesota, appeared on behalf of Plaintiffs Amos Mast, Menno Mast, Sam Miller, and Ammon Swartzentruber. Fillmore County Attorney Brent Corson, Preston, Minnesota, appeared on behalf of Fillmore County. Assistant

Attorneys General Christina M. Brown and Janine Kimble, Saint Paul, Minnesota, appeared on behalf of the Minnesota Pollution Control Agency.

(These cases are consolidated; but by agreement of the parties, the matters litigated at trial were limited to determination of the religious liberty question under the Minnesota Constitution and the Religious Land Use and Institutionalized Resources Act. Deferred for future determination were other issues relating to enforcement of Fillmore County's zoning provisions.)

Based upon the evidence heard and the arguments and the written submissions of counsel, the Court makes the following findings of fact, conclusions of law, and order for judgment:

### **FINDINGS OF FACT**

1. All Plaintiffs are members of the Swartzentruber Amish community living in Fillmore County, Minnesota.
2. The State of Minnesota Pollution Control Agency, and Fillmore County (collectively "the Government") require rural residences to have subsurface sewage treatment systems ("SSTS") for disposing of residential wastewater. The Government requires that "gray water"—household wastewater originating from laundry, bathing and kitchen activities—be disposed of through septic systems.
3. Plaintiffs object on religious grounds to installing the Government's required septic systems on their property to dispose of gray water.
4. Plaintiffs' objection to installing gray water septic systems required by the Government is based on a sincerely held religious belief.



5. The Government's regulation—that septic systems be installed on Plaintiffs' properties to dispose of gray water—substantially burdens Plaintiffs' exercise of their sincerely held religious beliefs.
6. The Government has a compelling interest in protecting human health and the environment. Specifically, the Government has a compelling interest in ensuring that gray water is properly treated so as not to transmit disease and introduce into the environment harmful chemicals and nutrients.
7. The Government's requirement that rural residents install gray water septic systems is the least restrictive means of ensuring that gray water is properly treated such that public health and the environment is protected. Plaintiffs' proposed mulch basin system is a less religiously burdensome alternative, but it does not adequately serve the Government's compelling interests in public health and environmental protection.

### **CONCLUSIONS OF LAW**

1. Plaintiffs' Claim under the Minnesota Constitution, art. I, § 16:
  - a. As the Government has established that there is no less religiously burdensome alternative that serves the Government's compelling interests, Plaintiffs are *not* entitled to relief declaring that the Government's septic system requirement violates Plaintiffs' religious liberties under the Minnesota Constitution.
2. Plaintiffs' Claim under the United States Constitution:
  - a. During trial, Plaintiffs withdrew Count II, a claim based on the United States Constitution. Pursuant to Minn. R. Civ. P. 41.01(b), it is appropriate for the Court to dismiss this count with prejudice.
3. Plaintiffs' Claim under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*:

- a. *See* Conclusion of Law § 1.a. The Government's septic system requirement is the least restrictive means of accomplishing its compelling interest in protecting public health and the environment. Plaintiffs' claim fails on this ground.

**ORDER:**

1. Judgment shall be entered for Defendants Fillmore County and MPCA denying Count I of Plaintiffs' Complaint, which seeks a declaration and injunction against Defendants pursuant to Minn. Const. art. I, § 16.
2. Count II of Plaintiffs' Complaint, which seeks a declaration and injunction against Defendants pursuant to the United States Constitution, is dismissed with prejudice.
3. Judgment shall be entered for Defendants Fillmore County and MPCA denying Count III of Plaintiffs' Complaint, which seeks a declaration and injunction against Defendants pursuant to RLUIPA, 42 U.S.C. § 2000cc *et seq.*
4. Determination of other issues relating to enforcement of Fillmore County's zoning provisions in File No. 23-CV-16-844 is deferred.

The Court's memorandum, filed herewith, is incorporated herein.

**LET JUDGMENT BE ENTERED ACCORDINGLY**

Dated: April 22, 2019.

BY THE COURT: **Chase,**  
**Joseph**

 **2019.04.22**

Joseph F. Chase

Judge of District Court

**16:09:31**

**-05'00'**



## JUDGMENT

I hereby certify that the forgoing Findings of Fact, Conclusions of Law, and Order for Judgment, dated April 22, 2019, by the Honorable Joseph F. Chase constitutes the judgment of this Court.

Dated:



Atwood, Jim  
Apr 23 2019 8:34 AM

BY THE DEPUTY CLERK

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James D. Atwood  
Court Administrator

MEMORANDUMLawMinnesota

The law that governs the Amish Plaintiffs' constitutional challenge to the Government's "gray water" septic system requirement is largely laid out in two prior Minnesota Supreme Court cases that also involved the religious liberty of Fillmore County Amish.<sup>1</sup> In *State v. Hershberger*, 444 N.W.2d 282 (Minn. 1989) ("*Hershberger I*"), the Minnesota Supreme Court ruled on *federal* constitutional grounds that the Amish defendants in that criminal prosecution could not constitutionally be required to display on their buggies the orange and red slow moving vehicle ("SMV") sign mandated by Minn. Stat. § 169.522. The applicable test under the federal constitution was described by the *Hershberger I* court as follows:

We address the Free Exercise Clause claim by observing that the United States Supreme Court has considered three factors to predominate in an evaluation of a Free Exercise Clause claim: (1) Is the objector's claim based on a sincerely held religious belief? (2) Does the government regulation burden the exercise of that religious belief? and, (3) Is the burden justified by a compelling state interest, which cannot be served by a less intrusive alternative?

*Hershberger I*, at 285.

In applying this test, the *Hershberger I* court found that the Amish defendants' objection to the display of SMV sign was based on a sincerely held religious belief, despite the fact that the objection was *not* shared "by the [Fillmore County Amish] community as a whole." *Id.* at 285-

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<sup>1</sup> I will use the term "Government" herein when I refer to both the State of Minnesota Pollution Control Agency and Fillmore County.

The constitutional dispute at issue here involves the Government's requirement that Plaintiffs install septic systems to treat the "gray water" that comes from their households in Fillmore County. "Gray water" is water that has been used in a home in sinks, washing machines, baths, and showers. The Government calls these systems "subsurface sewage treatment systems" (SSTS). "Sewage," as the Government uses that term, means *any* type of waste water from domestic activities, not just toilet waste water ("black water"), but also gray water. Amish households use outhouses for toilets, a practice that is permitted by law. The dispute here relates solely to gray water.

86. The court found no support for the idea that one asserting rights under the Free Exercise Clause of the First Amendment must "demonstrate that the sincerity of his or her belief comports with a religious tenet or principle uniformly and sincerely held by a religious community of which he or she is a member." *Id.* at 286. In fact, the court found that such a requirement had been "uniformly rejected" in federal constitutional cases.

For example, in *Thomas [v. Review Bd. of Indiana Employment Sec.]*, 450 U.S. at 714, 101 S.Ct. at 1430, the Supreme Court specified that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." Rather, the Court explained, the focus is on whether the one claiming the right individually has a sincere religious belief.

We see, therefore, that Thomas drew a line, and it is not for us to say that the line he drew was an unreasonable one. Courts should not undertake to dissect religious beliefs \* \* \*.

\* \* \* \* \*

Intrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences in relation to the Religion Clauses. One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause; but that is not the case here, and *the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect.* Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.

*Hershberger I*, at 286, quoting *Thomas*, 450 U.S. at 715-16 (emphasis added by *Hershberger I* court).

The *Hershberger I* court noted that the trial judge had:

[I]mplicitly determine[d] that application of the statute infringed upon the personal sincere religious beliefs of appellants although not all in the Fillmore County Amish community adhered to those same beliefs. The fact that at least one of the appellants has already actually suffered jail incarceration, and that the others have persistently expressed a willingness to do so rather than comply with the statute, must assuredly

buttress that implicit finding that the appellants individually possessed a personal sincerity of belief.

*Id.* at 287. Finding no requirement that "the claimant's belief be shared by the [Amish] community as a whole," the *Hershberger I* court held that:

[T]hese appellants have met the initial test enunciated in *Thomas* by establishing that their sincerely held religious beliefs protected them from displaying the reflectorized emblem or the alternates required by the statute.

*Id.*

The *Hershberger I* court also found "without question" that "the second factor of the *Thomas* test" -- that "application of the statute burdens the exercise of the appellants' religious beliefs" -- was satisfied. *Id.* at 287. The *Hershberger I* court based its finding of burden on "the potentiality, if not the certainty, of criminal sanctions including fines or jail time" that the Amish parties would face as the result of "choos[ing]...fidelity to religious belief" over compliance with state law.

Here, the burden on these Amish appellants is substantial. They face a choice of either adhering to their religious beliefs by refusing to adopt "worldly symbols" bearing "loud colors" and suffering the consequent criminal sanctions therefor, or rejecting those beliefs in order to comply with the SMV statute.

*Id.*

The *Hershberger I* court then turned to analysis of the third *Thomas* factor:

Even though a challenger who asserts a Free Exercise claim has succeeded in establishing the existence of a sincerely held belief and that the state's action has substantially burdened the Free Exercise Clause right, the third requirement of a *Thomas* analysis involves an inquiry into whether the burden is justified by a compelling state interest which cannot be served by a less intrusive alternative.

*Id.* at 287-88.

The *Hershberger I* court "judicially notice[d]" that "the state's concern for safety of the public using the highways, including these appellants, is a legitimate compelling state interest."

*Id.* at 288. But the court concluded that the State had "failed to establish that a less restrictive

alternative would not serve its public safety concerns." *Id.* at 289.<sup>2</sup> The Amish defendants in *Hershberger I* had proposed their own less restrictive alternative to the State's SMV sign requirement:

The appellants here assert that since they do not object on religious grounds to outlining the boxes of their buggies with silver reflective tape — a color they consider acceptable because not "loud" — or to displaying red lit lanterns as a supplement to the silver reflective tape, that there does exist a less restrictive alternative to serve the state's public safety concerns. They further point out that testimony at the hearing established that the silver reflectorized tape was at least as bright, if not brighter than that outlining either triangular emblem mandated by the statute.

*Id.* The State lost in *Hershberger I* because it failed to prove that the Amish-proposed silver tape/red lights alternative would not work. The court held: "We conclude that the state's public safety interest would not be significantly diminished were it to permit the use at night of silver reflective tape used in connection with the display of lighted red lanterns by these appellants."

*Id.*

The *Hershberger I* court summed up its decision as follows:

[W]e hold that these appellants have established that each has a sincerely-held religious belief that forbids him from displaying the SMV emblems required by Minn. Stat. § 169.522; that state enforcement of Minn. Stat. § 169.522 which subjects these appellants to criminal prosecution, with resultant potential fines or jail incarceration, burdens the appellants' rights under the Free Exercise Clause; that the state has a compelling public safety interest which Minn. Stat. § 169.522 seeks to serve; but that the state's compelling public safety interest can be served by a less restrictive alternative; and that, therefore, Minn. Stat. § 169.522 as applied against

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<sup>2</sup> The court first determined that a statutorily authorized "alternate emblem" and mode of marking Amish buggies, allowed via government-issued permit, was also "burdensome to the religious beliefs of these appellants who shun 'worldly ways.'" *Id.*

The alternate requirement that a black triangular sign be displayed during daylight hours and, as well, that permanently affixed red reflective tape be employed is no less anathema to the appellants and considered by them to be a burden on their personal religious beliefs than the "regular" statutory requirement of display of the emblem as provided in Section 169.522, Subdivision 1(a).

*Id.*

these appellants violates the Free Exercise Clause of the First Amendment to the United States Constitution.

*Id.* at 289.

*Hershberger I* was appealed to the United States Supreme Court and certiorari was granted. The U.S. Supreme Court then handed down its decision in *Employment Div., Dep't of Human Services of Oregon v. Smith*, 494 U.S. 872 (1990) ("*Smith II*"), which "significantly changed First Amendment Free Exercise Analysis" under the federal constitution. *State v. Hershberger*, 462 N.W.2d 393, 396 (Minn. 1990) ("*Hershberger II*"). The United States Supreme Court vacated the judgment in *Hershberger I* and remanded "for reconsideration in light of" *Smith II*. *Id.* at 395.<sup>3</sup>

On remand in *Hershberger II*, the Minnesota Supreme Court first declined to reconsider its *Hershberger I* findings that the Amish appellants held a sincere religious belief forbidding use of the SMV symbol, and that a less restrictive alternative to use of the symbol existed.

[T]he record before us remains as it was when we found the Amish appellants to have demonstrated a personal sincere religious belief in conflict with the SMV statute and the state to have failed to demonstrate that use of silver reflective tape

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<sup>3</sup> The Minnesota Supreme Court described the change wrought by *Smith II* in the federal constitutional analysis as follows:

The *Smith II* court held a law of general application, which does not intend to regulate religious belief or conduct, is not invalid because the law incidentally infringes on religious practices. This holding apparently does away with the traditional compelling state interest test for laws burdening the exercise of religion standing alone. 494 U.S. at \_\_\_, 110 S.Ct. at 1599-1603. The *Smith II* court limited the compelling state interest test used by this court in *Hershberger I* to claims involving not the free exercise clause alone, but free exercise in conjunction with other constitutional protections. *Id.* at \_\_\_, 110 S.Ct. at 1601. These so called "hybrid" cases involve free exercise claims that touch on other constitutional protections ranging from parental rights, *e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), to freedom of speech and press. *E.g.*, *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943). Section 169.522 does not intend to regulate religious conduct or belief. Accordingly, under the first amendment free exercise clause as now interpreted by *Smith II*, whether the compelling state interest test is applicable apparently depends on whether requiring the Amish to comply with the SMV statute infringes on rights other than the free exercise of religion.

*Hershberger II* at 396.

in conjunction with lighted red lanterns does not constitute a less restrictive alternative to the SMV symbol.

*Hershberger II* at 395.

In *Hershberger II* the court reached the same result it had come to in *Hershberger I*.

Now, however, the court based its decision entirely on the Minnesota Constitution. The *Hershberger II* court reviewed Article I, Section 16 of the Minnesota Constitution and found that "Minnesotans are afforded greater protection for religious liberties against governmental action under the state constitution than under the First Amendment of the federal constitution."<sup>4</sup>

*Hershberger II* at 397.

The *Hershberger II* court adopted as its analysis under the Minnesota Constitution the same religious-liberty-versus-compelling-state-interest balancing test it had employed in its federal constitutional analysis in *Hershberger I*. The court ruled that it must:

[B]alance competing values in a manner that the compelling state interest test we relied on in *Hershberger I* ably articulates: once a claimant has demonstrated a sincere religious belief intended to be protected by section 16, the state should be required to demonstrate that public safety cannot be achieved by proposed alternative means. *Hershberger I*, 444 N.W.2d at 288-89.

This analysis is similar to that applied to the claim for religious freedom based jointly on federal and state constitutional protection in *State v. Sports & Health Club*, 370 N.W.2d 844 (Minn.1985). While we did not expressly base our decision in *Sports & Health Club* on section 16 grounds, we held an exemption from the state Human Rights Act was not required, notwithstanding that sincere religious beliefs were burdened by the Act, because the state had a compelling interest in prohibiting discrimination and no less restrictive alternative existed.

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<sup>4</sup> Article I, section 16, of the Minnesota Constitutions provides that:

The right of every man to worship God according to the dictates of his own conscience shall never be infringed; . . . nor shall any control of or interference with the rights of conscience be permitted . . .; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state. . . .

Thus, while the terms "compelling state interest" and "least restrictive alternative" are creatures of federal doctrine, concepts embodied therein can provide guidance as we seek to strike a balance under the Minnesota Constitution between freedom of conscience and the state's public safety interest.

*Id.* at 398.

The *Hershberger II* court applied the *state* constitutional analysis to the Amish SMV objections as follows:

Competing values of such significance require this court to look for an alternative that achieves both values articulated in section 16. Specifically, if freedom of conscience and public safety can be achieved through use of an alternative to a statutory requirement that burdens freedom of conscience, in this case the SMV symbol, section 16 requires an allowance for such an alternative. As we found in *Hershberger I*, the state has failed to demonstrate that use of reflective tape and a lighted red lantern proposed by the Amish is an insufficient warning to other drivers of a slow-moving buggy. 444 N.W.2d at 289. The reflective tape and lighted lantern provides an alternative that achieves both of the important values embodied in section 16: freedom of conscience and public safety.

The record in this case demonstrates an important attribute of the balancing test we adopt today for purposes of analyzing article I, section 16 of the Minnesota Constitution. The state's interest in public safety cannot be disputed. Merely because public safety is articulated as a competing interest in section 16, however, does not establish that interest as paramount. To infringe upon religious freedoms which this state has traditionally revered, the state must demonstrate that public safety cannot be achieved through reasonable alternative means. It may be that a claim for a religious exemption from public safety laws will seldom prevail over the state's strong interest in protecting the lives of its citizens. Today we hold only that the state has failed to provide a record which demonstrates that both values embodied in section 16, freedom of conscience and public safety, cannot be achieved through use of white reflective tape and a lighted red lantern.

*Id.* at 399.<sup>5</sup>

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<sup>5</sup> The Religious Freedom Restoration Act of 1993 (42 U.S.C. § 2000bb *et seq*) and its sister statute, the Religious Land Use and Institutionalized Persons Act (42 U.S.C. § 2000cc *et seq*), were enacted to statutorily restore to federal law the broader protection of religious liberty that had been narrowed under the *Smith II* court's constitutional analysis. The RLUIPA analysis is substantially identical to the Minnesota constitutional analysis under *Hershberger II*, and thus the Court's decision herein under the Minnesota Constitution also determines Plaintiffs' RLUIPA claims.



The two *Hershberger* cases have obvious and close factual and legal similarities to the present case. But they are not the only Minnesota appellate decisions that are informative regarding this constitutional analysis. *Hill-Murray Federation of Teachers v. Hill-Murray High School*, 487 N.W.2d 857 (Minn. 1992) dealt with the constitutionality of applying the Minnesota Labor Relations Act ("MLRA") to a Roman Catholic-affiliated high school's labor-related dealings with its teachers. After determining that there was no federal constitutional obstacle to application of the MLRA to the school, the Supreme Court turned to analysis of the "greater protection for religious liberties against governmental action" afforded by the Minnesota Constitution. *Id.* at 865. The *Hill-Murray* court described the Minnesota constitutional analysis as follows:

Because the Minnesota freedom of conscience clause provides more protection than the Federal Constitution, we will not follow the United States Supreme Court's limited analysis and will retain the compelling state interest balancing test. This test has four prongs: whether the objector's belief is sincerely held; whether the state regulation burdens the exercise of religious beliefs; whether the state interest in the regulation is overriding or compelling; and whether the state regulation uses the least restrictive means.

*Hill-Murray* at 865.

Regarding the first factor -- the "sincerely held religious belief" issue -- the *Hill-Murray* court noted that "it is not the province of the court to examine the reason of religious beliefs or to resolve purely religious disputes." *Id.* The court also noted that "judicial intervention into the determination and interpretation of religious beliefs warrants caution." *Id.* The court "recognize[d] the presence of a sincerely held religious belief." *Id.*

On the second factor -- the question of "the burden on the exercise of religious beliefs" -- the *Hill-Murray* analysis arguably adds something to Minnesota case law. *Hill-Murray High School* had argued that application of the MLRA to the school "would result in significant

interference with the school's religious autonomy that would compel the school to negotiate and compromise its doctrinal positions." *Id.* at 866. The court was not persuaded. "Hill-Murray asserts that negotiations about conditions of employment will lead to negotiations about religion. This assertion is *remote* and an *insufficient basis* to exempt Hill-Murray from the regulatory laws of the state." *Id.* at 866 (emphasis added).

Negotiations under the limits of the MLRA do not possess the tendency to undermine Hill-Murray's religious authority. Hill-Murray retains the power to hire employees who meet their religious expectations, to require compliance with religious doctrine, and to remove any person who fails to follow the religious standards set forth.

While Hill-Murray may have demonstrated that the application of the MLRA interferes with their authority as an employer, *they have not established that this minimal interference excessively burdens their religious beliefs.*

*Id.* (emphasis added).

The *Hill-Murray* court found that the State's "overriding and compelling" interest "in promoting the peace and safety of industrial relations, the recognition of the statutory guarantees of collective association and bargaining, and the First Amendment protection of the right of association outweighs the *minimal infringement* of Hill-Murray's exercise of religious beliefs." *Id.* at 867 (emphasis added). Thus, the Supreme Court found no state constitutional problem with application of the MLRA to the religious school.

The *Hill-Murray* court addressed the burden issue differently than the court had done two years before in the *Hershberger* case. The *Hershberger* court had considered burden established by the simple fact that the Amish defendants in that case faced "criminal sanctions including fines or jail time" for following their religious beliefs instead of state law.

Unlike *Hershberger*, the *Hill-Murray* case did not arise in a criminal context. It is not clear that anyone would ever go to jail if Hill-Murray High School refused to cooperate with the

collective bargaining rights of its teachers under the MLRA. So in *Hill-Murray*, the burden issue was not settled by the specter of criminal penalties being imposed on the religious objector.

The *Hill-Murray* court addressed other supposed burdens described by the school, and found those arguments unpersuasive. It is not clear whether the *Hill-Murray* court was finding *no* burden whatsoever on religious beliefs (the only burden the court describes is on the school's "authority as an employer"); or rather, a burden on religion that was simply too small to create a constitutional problem. But the court used language which implies that *some* burden on religious rights might exist, but be insufficiently significant to require relief from the court. The *Hill-Murray* court termed the school's burden arguments "remote" and "insufficient." "[T]hey have not established that this *minimal* interference *excessively* burdens their religious beliefs." *Hill-Murray* at 866 (emphasis added.)

In *Edina Community Lutheran Church v. State*, 745 N.W.2d 194 (Minn. App. 2008), two churches objected on religious freedom grounds to application to them of certain provisions of state law dealing with the lawful carrying of firearms. The trial judge had enjoined enforcement against the objecting churches, finding that the law "excessively burdens the rights of [the churches] protected by" the federal and state constitutions. *Id.* at 198. The Court of Appeals affirmed on state constitutional grounds. Noting that the Minnesota Constitution affords greater protection against governmental action affecting religious liberties than does the federal constitution, the *Edina Community* court stated the test as follows:

Minnesota courts employ a heightened "compelling state interest balancing test" when determining whether a challenged law infringes on or interferes with religious practices. *Hill-Murray*, 487 N.W.2d at 865. The test has four prongs: (1) whether the objector's beliefs are sincerely held; (2) whether the state regulation burdens the exercise of religious beliefs; (3) whether the state interest in the regulation is overriding or compelling; and (4) whether the state regulation uses the least restrictive means.

*Edina Community* at 203.

It is again on the burden issue that the court's analysis in *Edina Community* is instructive here. The State in *Edina Community* argued "that the challenged provisions of the [law] present only a de minimis burden on the church's exercise of their religious beliefs." *Id.* at 204. The *Edina Community* court described the burden analysis as follows:

Under the second *Hill-Murray* factor, those challenging the application of a law have the burden of establishing that challenged provisions infringe on their religious autonomy or require conduct inconsistent with their religious beliefs. *Shagalow v. Minn. Dep't of Human Servs.*, 725 N.W.2d 380, 390-91 (Minn.App.2006), *review denied* (Minn. Feb. 28, 2007). To constitute such a burden, the challengers must establish that the risk of interference with religious beliefs or practice is *real and not "remote."* *Hill-Murray*, 487 N.W.2d at 866. Religious institutions can be required to comply with statutes of general application, and the focus is on whether compliance requires a change in "religious conduct or philosophy." *Rooney v. Rooney*, 669 N.W.2d 362, 369 (Minn.App.2003), *review denied* (Minn. Nov. 25, 2003).

*Id.* at 204 (emphasis added).

The *Edina Community* court undertook a detailed discussion of exactly how the statutory scheme collided with "the sincerely held religious beliefs of the respondent churches," refuting point-by-point the State's arguments that the statutory requirements pose "only a *de minimis* burden and do[] not force the churches to change their religious conduct or philosophy;" "do[] not substantially burden the exercise of religious beliefs;" and create only "a minimal burden on sincerely held religious beliefs." *Id.* at 204-05. In the course of that discussion, the *Edina Community* court took guidance from *Hershberger* as follows:

The Minnesota Supreme Court has recognized that the compelled use of a specific warning, whose color and meaning are mandated by the state, may sometimes be "antithetical to" sincerely held principles of religious faith. *Hershberger*, 462 N.W.2d at 396. The fact that religious adherents are willing to convey a warning or message on the same subject, using different methods or means of communication, did not preclude the supreme court in *Hershberger* from finding that the state-mandated slow moving vehicle symbol at issue *substantially burdened religious freedom*.

*Edina Community* at 205 (emphasis added).

The *Edina Community* court rejected each of the State's "*de minimis* burden" arguments, holding that application of the law to the churches "*significantly* burden[ed] the sincerely held religious beliefs of the respondent churches." *Id.* at 206, 208 (emphasis added). The *Edina Community* decision, like *Hill-Murray*, uses language at least implying that a religious objector may *not* be entitled to constitutional relief from application of a statute if the burden the statute imposes on his/her sincerely held religious beliefs is not "substantial" or "significant," but rather is "minimal," "remote," or "*de minimis*." Thus for purposes of analyzing the present case, I assume the Amish Plaintiffs are required to show that the statutory requirement places a "substantial," "significant," "real" and non-"remote" burden on or interference with the exercise of their religious beliefs or rights of conscience.

Minnesota courts have determined on at least one occasion that an individual's supposedly religious-based activity was, in fact, *not* connected with a sincerely held religious belief, but rather with a "personal, secular belief." *State v. Pederson*, 679 N.W.2d 368, 376 (Minn. App. 2004). Ariel Pederson was prosecuted criminally for marijuana possession. Ms. Pederson presented evidence that she used marijuana medicinally; that her use was "consistent with her religious beliefs as a Messianic Jew;" and that, therefore, her prosecution violated Article I, Section 16 of the Minnesota Constitution. *Id.* at 372.

The *Pederson* court rejected the constitutional defense. Quoting *Wisconsin v. Yoder*, the *Pederson* court noted that while determining "what is a 'religious belief' or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." *Id.* at 374. The *Pederson* court noted that a

number of jurisdictions had rejected similar religious liberty arguments in what might be termed "The Church of Marijuana" cases. *Id.* at 374-75. The court noted that in Ms. Pederson's case, as in prior similar matters in other jurisdictions, "no evidence" was presented that the defendant's "religious belief in smoking marijuana" "was espoused by any organization or was a principle, tenet, or dogma of any organization to which [she] was a member." *Id.* at 375. The *Pederson* court affirmed the district court's finding that "appellant's beliefs in connection with the use of marijuana are personal beliefs, based on a personal, rather than communal, interpretation of religious significance." *Id.* at 373-74. "Appellant's isolated and anecdotal citations to scriptures generally extolling the virtues of plant life are insufficient to prove that her medicinal use of marijuana is a communal religious belief." *Id.* at 376.

*In re the Matter of Jill Marie Newstrand*, 869 N.W.2d 681 (Minn. App. 2015) provides an example of just how cautious Minnesota courts are in questioning a religious objector's sincerity of belief, and in evaluating the degree to which state law burdens that belief. *Newstrand* involved a child custody dispute. There was reason to evaluate the father's mental health, as part of the court's analysis of the child's best interests, under Minn. Stat. Sec. 518.131, subdivision 1. The father refused to undergo a psychological evaluation on religious freedom grounds.

Father is Rastafarian and claims that the tenets of that religion prohibit him from obtaining a psychological evaluation. The district court did not question the sincerity of father's belief, and mother does not dispute the sincerity of father's belief on appeal. The record supports a determination that father's belief is sincerely held.

*Newstrand* at 687.

The father also contended that the statutory best interests analysis "unconstitutionally burdened the exercise of his beliefs by forcing him to violate a tenet of his religion by undergoing a psychological evaluation or suffer a restriction of his parenting time with J.J.I.A."



*Id.* With little discussion, the Court of Appeals in *Newstrand* held: "Based on the facts in this case, we conclude that the burden placed on father was real and not remote, potentially interfering with his father-child relationship." *Id.* at 687-88.

Ultimately, however, the *Newstrand* court declined to exempt the father from application of the statute. The court found that the State had a compelling interest in safeguarding the physical and psychological well-being of children; and that the required psychological evaluation was "the least-restrictive means available to verify [father's] mental capacity to parent J.J.I.A." *Id.*

Interestingly, while prior cases have made clear that it is the *State's* burden to prove that no less restrictive means was available, the *Newstrand* court faulted the *father* for "not provid[ing] the district court with any specific less-restrictive alternatives to a psychological evaluation." *Id.* at 690.

Based on the record before us, we conclude that none of father's vague alternatives for verification of his mental health and fitness to parent was a viable less-restrictive means to accomplish the state's compelling interest in protecting the children.

*Id.* The *Newstrand* court concluded "that Minnesota Statutes section 518.131, subdivision 1, as applied, does not impermissibly violate father's constitutional freedom of conscience." *Id.*

### **United States Supreme Court**

One cannot address a constitutional religious liberty-based argument made by Amish parties without recognizing the United States Supreme Court's decision in *Wisconsin v. Yoder*, 406 U.S. 205 (1972).<sup>6</sup> *Yoder* involved Wisconsin's criminal prosecution of Jonas Yoder and

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<sup>6</sup> Of course the *Yoder* court applied the *federal* constitutional test as it was still articulated in 1972. But the federal analysis used at that time was substantially the same as the *state* constitutional analysis Minnesota has applied since *Hershberger II*. *Yoder* was relied upon by the *Hershberger I* court for the "compelling interest -- least restrictive alternative test," *Hershberger I* at 287-88; and that analysis became, in *Hershberger II*, Minnesota's *state* constitutional analysis.

Wallace Miller for refusing to send their fourteen and fifteen-year-old children to school after they completed the eighth grade. Wisconsin law required parents to have their children attend school until they were sixteen. The Amish defendants declined to comply on religious grounds.

The trial testimony showed that [the Amish] respondents believed, in accordance with the tenets of Old Order Amish communities generally, that their children's attendance at high school, public or private, was contrary to the Amish religion and way of life. They believed that by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but, as found by the county court, also endanger their own salvation and that of their children. The State stipulated that respondents' religious beliefs were sincere.

*Yoder* at 209.

The *Yoder* court's description of the evidence about the Amish is informative and consistent with the evidence in the present case:

The history of the Amish sect was given in some detail, beginning with the Swiss Anabaptists of the 16th century who rejected institutionalized churches and sought to return to the early, simple, Christian life de-emphasizing material success, rejecting the competitive spirit, and seeking to insulate themselves from the modern world. As a result of their common heritage, Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence. This concept of life aloof from the world and its values is central to their faith.

A related feature of Old Order Amish communities is their devotion to a life in harmony with nature and the soil, as exemplified by the simple life of the early Christian era that continued in America during much of our early national life. Amish beliefs require members of the community to make their living by farming or closely related activities. Broadly speaking, the Old Order Amish religion pervades and determines the entire mode of life of its adherents. Their conduct is regulated in great detail by the *Ordnung*, or rules, of the church community. Adult baptism, which occurs in late adolescence, is the time at which Amish young people voluntarily undertake heavy obligations, not unlike the Bar Mitzvah of the Jews, to abide by the rules of the church community.

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[T]he record in this case abundantly supports the claim that the traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living. That the Old Order Amish daily life and religious practice stem from their faith is shown by the fact that it is in response to their literal interpretation of the

Biblical injunction from the Epistle of Paul to the Romans, "be not conformed to this world . . . ." This command is fundamental to the Amish faith. Moreover, for the Old Order Amish, religion is not simply a matter of theocratic belief. As the expert witnesses explained, the Old Order Amish religion pervades and determines virtually their entire way of life, regulating it with the detail of the Talmudic diet through the strictly enforced rules of the church community.

The record shows that the respondents' religious beliefs and attitude toward life, family, and home have remained constant—perhaps some would say static—in a period of unparalleled progress in human knowledge generally and great changes in education. The respondents freely concede, and indeed assert as an article of faith, that their religious beliefs and what we would today call "life style" have not altered in fundamentals for centuries. Their way of life in a church-oriented community, separated from the outside world and "worldly" influences, their attachment to nature and the soil, is a way inherently simple and uncomplicated, albeit difficult to preserve against the pressure to conform. Their rejection of telephones, automobiles, radios, and television, their mode of dress, of speech, their habits of manual work do indeed set them apart from much of contemporary society; these customs are both symbolic and practical.

As the society around the Amish has become more populous, urban, industrialized, and complex, particularly in this century, government regulation of human affairs has correspondingly become more detailed and pervasive. The Amish mode of life has thus come into conflict increasingly with requirements of contemporary society exerting a hydraulic insistence on conformity to majoritarian standards.

*Yoder* at 209-10, 216-17.

The *Yoder* court found that requiring Amish children to attend high school to age sixteen posed an existential threat to a society that seeks "separation from, rather than integration with, contemporary worldly society." *Id.* at 211. The court noted that "in the Amish belief higher learning tends to develop values they reject as influences that alienate them from God." *Id.* at 212. The *Yoder* court described the "impact" of the state statute on Amish beliefs -- what Minnesota courts call the "burden" on religious belief -- as follows:

The conclusion is inescapable that secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent stage of development, contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child.

The impact of the compulsory-attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law

affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs. See *Braunfeld v. Brown*, 366 U. S. 599, 605 (1961). Nor is the impact of the compulsory-attendance law confined to grave interference with important Amish religious tenets from a subjective point of view. It carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent. As the record shows, compulsory school attendance to age 16 for Amish children carries with it a very real threat of undermining the Amish community and religious practice as they exist today; they must either abandon belief and be assimilated into society at large, or be forced to migrate to some other and more tolerant region.

*Id.* at 218.

The *Yoder* court described the burden imposed by the law on Amish belief as a "severe interference with religious freedom." *Id.* at 227. In response, the State of Wisconsin argued that its "interest in universal compulsory formal secondary education to age 16 is so great that it is paramount to the undisputed claims of [the Amish] respondents that their mode of preparing their youth for Amish life, after the traditional elementary education, is an essential part of their religious belief and practice." *Id.* at 219.

The determinative question before the *Yoder* court was whether the State's "interest in its system of compulsory education is so compelling that even the established religious practices of the Amish must give way." *Id.* at 221. Because "fundamental claims of religious freedom [were] at stake," the *Yoder* court determined that it "must searchingly examine the interests that the state seeks to promote by its" statutory scheme. *Id.* at 221. After first acknowledging the Jeffersonian principle of the importance of education to the American political system and society, the *Yoder* court concluded that requiring an additional two years of compulsory education of Amish children "would do little to serve those interests." *Id.* at 222. The court also rejected Wisconsin's argument that the Amish position "foster[s] 'ignorance' from which the child must be protected by the State." *Id.* The court recognized the State's "duty to protect children from ignorance" (*Id.*), but rejected the "ignorance" argument as contrary to the facts. The

Amish, the court noted, were a "productive," "very law-abiding," and "highly successful social unit within our society, even if apart from the conventional mainstream." *Id.* The Amish, the court noted, did not oppose education in general, but only "conventional formal education of the type provided by a certified high school." *Id.* Their own "system of learning-by-doing" "ideal[ly]" "prepar[ed] Amish children for life as adults in the Amish community."<sup>7</sup> *Id.*

The State's argument that children who choose to leave the Amish community would be inadequately prepared for life in the outside world without the two additional years of compulsory education mandated by the statute, was found "highly speculative."

There is nothing in this record to suggest that the Amish qualities of reliability, self-reliance, and dedication to work would fail to find ready markets in today's society.

*Id.* at 224.

To the degree the school-until-sixteen state policy was in part a means of preventing exploitative child labor practices, the *Yoder* court found little to be concerned about in the "employment of children under parental guidance and on the family farm from age 14 to age 16 [which] is an ancient tradition that lies at the periphery of such [child labor] laws." *Id.* at 229.

The *Yoder* court concluded that "accommodating the religious objections of the Amish by foregoing one, or at most two, additional years of compulsory education will not...in any...way materially detract from the welfare of society." *Id.* at 234. The court summed up its decision as follows:

Aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society, the Amish in this case have convincingly demonstrated the sincerity of their religious beliefs,

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<sup>7</sup> The *Yoder* court was unpersuaded by Wisconsin's suggestion that the state law promoted "the substantive right of the Amish child to a secondary education" and should be upheld as a proper exercise of "the power of the state as *parens patriae* to extend the benefit of secondary education to children regardless of the wishes of their parents." *Id.* at 229. The court observed that this was not a case "in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or maybe properly inferred." *Id.* at 230.



the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization, and the hazards presented by the State's enforcement of a statute generally valid as to others. Beyond this, they have carried the even more difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of precisely those overall interests that the State advances in support of its program of compulsory high school education. In light of this convincing showing, one that probably few other religious groups or sects could make, and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish.

*Id.* at 235-36.

Before leaving *Yoder*, I would note a passage in that decision that has particular relevance to the present case:

[I]n the Middle Ages, important values of the civilization of the Western World were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is "right" and the Amish and others like them are "wrong." A way of life that is odd or even erratic ***but interferes with no rights or interests of others*** is not to be condemned because it is different.

*Yoder* at 223-24 (bold and italics added).

*Yoder* was not the Supreme Court's last word on Amish religious liberty. In *United States v. Lee*, 455 U.S. 252 (1982) an Amish employer<sup>8</sup> asserted that requiring him to participate in the social security system interfered with his rights of free exercise of religion under the federal constitution. The Supreme Court analyzed the sincerity of belief and burden prongs of the constitutional analysis as follows:

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<sup>8</sup> "[T]he Amish believe it sinful not to provide for their own elderly and needy and therefore are religiously opposed to the national social security system." *Lee* at 255. As the *Yoder* court had noted, there is a provision in the social security law specifically created to accommodate Amish beliefs, by "exempti[ng]...such groups as the Amish from the obligation to pay social security taxes." *Yoder* at 222 and fn. 11. The *Lee* court found, however, that the statutory social security exemption "is available only to self-employed individuals and does not apply to employers or employees." *Lee* at 256. The exemption did not, therefore, apply to Mr. Lee in his capacity as an employer of other Amish at his farm and in his carpentry shop.

Although the Government does not challenge the sincerity of this belief, the Government does contend that payment of social security taxes will not threaten the integrity of the Amish religious belief or observance. It is not within "the judicial function and judicial competence," however, to determine whether appellee or the Government has the proper interpretation of the Amish faith; "[c]ourts are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U. S. 707, 716 (1981). We therefore accept appellee's contention that both payment and receipt of social security benefits is forbidden by the Amish faith. Because the payment of the taxes or receipt of benefits violates Amish religious beliefs, compulsory participation in the social security system interferes with their free exercise rights.

*Id.* at 257. The *Lee* court noted, however, that this was:

[O]nly the beginning...and not the end of the inquiry. Not all burdens on religion are unconstitutional. [authority cited] The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.

*Id.*

The *Lee* court stated that "the government's interest in assuring mandatory and continuous participation in and contribution to the social security system is very high." In other words, the Government had a compelling interest. The court then analyzed "whether accommodating the Amish belief will unduly interfere with fulfillment of the governmental interest." *Id.* The court observed that "to make accommodation between the religious action and an exercise of state authority is a particularly delicate task...because resolution in favor of the state results in the choice to the individual of either abandoning his religious principal or facing...prosecution." *Id.* However, "to maintain an organized society that guarantees religious freedom to a great variety of faiths requires that some religious practices yield to the common good. Religious beliefs can be accommodated...but there is a point at which accommodation would 'radically restrict the operating latitude of the legislature.'" *Id.* The *Lee* court observed that congress had accommodated religious beliefs by "grant[ing] an exemption, on religious grounds, to self-employed Amish and others." *Id.* at 260. But noting that "the broad public

interest in maintaining a sound tax system is of such a high order," the court held that "every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice religious beliefs." *Id.* at 260-61. The court rejected the argument for a "constitutionally required exemption," ruling that "the tax imposed on employers to support the social security system must be uniformly applicable to all, except as congress provides explicitly others." *Id.* at 256, 261.

### Analysis

#### Plaintiffs' Objection Based Upon a Sincerely Held Religious Belief

Fillmore County contends that the Plaintiffs' objection to compliance with the Governmental mandate at issue here does not arise out of sincerely held religious beliefs, but rather from secular or cultural considerations. This was the threshold question addressed by the United States Supreme Court in *Yoder*:

[W]e must be careful to determine whether the Amish religious faith and their mode of life are, as they claim, inseparable and interdependent. A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief. Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests. Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses.

*Yoder* at 215-16.

People may be resistant to the use of new technologies for a number of reasons that are purely secular, philosophical, or personal. The cost of new technology may be high. It may be

challenging to learn to use it. Some New Age folks want to live off the grid. And some of us greet change with a reflexive and stubborn aversion that may stem from advancing age or simply a sentimental attachment to the ways we have always done things. These motivations have nothing to do with religion.

But the Amish objection to adoption of many aspects of modern technology is certainly religiously based. In *Hershberger I* the Minnesota Supreme Court stated as follows:

A principle tenet of [the Old Order Amish] religion is that its adherents remain separate and apart from the modern world. This concept of separation emanates from Christian biblical directions to "be not conformed to this world," *see Romans 12:2*; and "Be ye not unequally yoked together with unbelievers," *see II Corinthians 6:14*.

*Hershberger I* at 284. The evidence was the same in the present case. The Amish religion is part of the Anabaptist movement that arose in Europe in the Sixteenth Century. That movement was the source of a number of distinct religious groups, including Hutterites, Mennonites, as well as various Amish sects. Professor Johnson-Weiner, a retired professor from the Southern University of New York who has studied the Amish, described the Anabaptist movement as:

[B]ased on a belief that church membership was voluntary, that you signaled your membership in the church through baptism. You remained committed to a scriptural way of life following Christ's example. It was characterized by pacifism and nonresistance, a leadership with leaders chosen by lot, and it has evolved to this day. Today's Amish are characterized by a determination to remain separate from the world.

The way of life characteristic of the Amish results from their interpretation of scriptural passages that tell them that in order to live a Godly life, they must separate themselves from the world and adhere to the ways and practices of their forefathers and foremothers. *See Ephesians 6:2*:

"Honor your father and mother' (this is the first commandment with a promise), 'that it may go

well with you and that you may live long in the land.'" They follow and adhere to tradition in the practices of their daily lives as an important part of their religious beliefs.<sup>9</sup>

The Amish are the most conservative of the Anabaptist groups, meaning that they are the least willing to adopt new, worldly technologies, and are "most separate" from the outside world. But the Amish are not homogenous. The evidence indicated that there are some forty different Amish affiliations. All Amish share certain aspects of their way of life. At baptism -- around age 18 -- they commit to live a "scriptural life." They live in close fellowship and community because they think individuals by themselves are too weak to lead a scriptural life. They do not have insurance, because they all support others in need in their community in place of insurance. Amish all still drive horses and buggies for local transportation; speak "Deitsch" (their dialect of German) at home; use a German language bible and the *Ausbund Hymnal*; limit their interactions with outsiders; practice adult baptism; and men wear no mustaches (because mustaches were associated with the military in the 17th century). But they vary somewhat in the degree to which they have accepted technological innovation. There are Amish in Pennsylvania who have and use computers and indoor flush toilets; and some Amish bishops in Indiana own cell phones.<sup>10</sup>

The Plaintiffs are all members of the "Swartzentruber" Amish. Swartzentruber Amish make up seven percent of all Amish, and are among the most conservative of Amish people.

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<sup>9</sup> Dr. Johnson-Weiner testified that the Amish are "always in church" in the sense that their religious rules, arrived at through decision-making across time, dictate their clothing, haircuts, shoes, curtains, whether they burn oil or propane, and so forth. The result is that it is impossible to separate Amish religion from Amish culture.

<sup>10</sup> Prior cases, including *Yoder*, *Hershberger I*, and *Hershberger II* have described the Amish parties involved in those cases as being "Old Order Amish." The Amish Plaintiffs here are also "Old Order Amish." The evidence in the present case indicates that the distinction between "Old Order Amish" and "New Order" does not describe any difference in their adherence to "old" ways, or acceptance of "new" ways, as one might possibly infer. Rather, the distinction between "New" and "Old Order" lies in a more esoteric theological disagreement. Professor Johnson-Weiner testified that New Order Amish, an outgrowth of Old Order, believe that one can have a personal knowledge of one's salvation. "One can know one is saved." Old Order Amish do not share this belief. "The Old Order will say that they have a hope of salvation. Whether or not one is saved is something only God can know."



Swartzentruber Amish were the defendants in *Hershberger I* and *Hershberger II* objecting to the display of slow moving vehicle signs. Professor Johnson-Weiner testified that the Swartzentrubers "have remained the most separate from modern technology. They have considered very, very carefully what new innovations they will permit in their communities and have drawn the line at most."

The group of Fillmore County Swartzentruber Amish to which three of the four Plaintiffs belong is a particularly conservative Swartzentruber church called variously the "Original Canton"<sup>11</sup> or "Middle Canton" district or church (the terms district and church are used synonymously here and mean a group of some 15 to 30 families who worship together and have their own bishop and ministers). In all there are six Swartzentruber Amish districts or churches in Fillmore County.<sup>12</sup> The evidence indicates that until about 30 years ago, all six were "in communion" with each other -- meaning that they all would take communion at one another's worship gatherings and their sons and daughters married across district lines. But the Original Canton district separated from the other five in approximately 1986 or 1987. The evidence indicates that among the Fillmore County Swartzentruber Amish, the Original Canton church is the most conservative.<sup>13</sup>

The Amish, including the Swartzentrubers involved here, have not flatly rejected all technological innovations. The Amish have, as religious communities, made judgments about

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<sup>11</sup> "Canton" refers here to Canton, Minnesota, the Fillmore County town near which many Swartzentruber Amish live.

<sup>12</sup> In addition to the Original Canton church, they are the Northwest Canton, Northeast Canton, Southwest Canton, Southeast Canton, and Preston Churches.

<sup>13</sup> One example the witnesses were able to give of something permitted by the five more "liberal" Fillmore County Swartzentruber districts but prohibited by the Original Canton district, has to do with flashlight use. All six permit use of battery powered flashlights, but the Original Canton group requires that flashlights be handheld. The other five districts allow flashlights to be affixed to hats -- a "headlamp" -- that allows use of a flashlight while both hands remain free. Dan Swartzentruber also testified that Original Canton Amish do not "work in the towns" while Amish from the other five Fillmore County Swartzentruber churches do.

new technologies, machinery, devices, and practices, and decided whether or to what degree they will permit themselves to own or use these items. For example, while Swartzentruber Amish do not own or drive automobiles, they have determined it acceptable to *ride* in automobiles, trains, and buses. Swartzentruber Amish do not own telephones, but have decided it acceptable to *use* telephones, and to pay for telephone use. Swartzentruber Amish think it acceptable to use power tools, such as table saws, if the tool is powered by a gasoline engine rather than an electric motor.

The principle guiding these choices is keeping the Amish community separate from the world; and therefore decisions are made based on judgments as to how particular innovations would impact the community. For example, automobile ownership -- and the resultant ability to travel long distances fast and easily -- would unacceptably expand the geographical boundaries of Amish communities that the Amish intend to remain small and tightly knit.<sup>14</sup>

It might seem to an outside observer that these Amish choices and distinctions -- between technologies, and between ownership and use -- are inconsistent with a professed repudiation of worldly ways. Some "English" might gather that, for all their supposed disdain of the things of the world, the Amish are in fact willing, on the sly, to circumvent their own supposed religious principles via technicalities or crafty work-arounds. Thus, the non-Amish observer might interpret practices such as use of an "Amish phone booth" as proof that Amish religious beliefs are not so sincerely held after all; and that the claimed Amish rejection of worldly ways is to some degree a phony pretense.

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<sup>14</sup> I am reminded of a lyric in the opening song of Meredith Willson's *The Music Man*, in which the traveling salesmen on the train to River City, Iowa identify the cause of the changing business realities in the modernizing rural American Midwest: "Why it's the Model T Ford made the trouble, made the people wanna go, wanna get, wanna get up and go seven, eight, nine, ten, twelve, fourteen, twenty-two, twenty-three miles to the county seat."

A week-long trial does not make one an expert; and I claim no profound understanding of the Amish religion. But I am convinced that such a conclusion -- that Amish peoples' limited use of telephones, for example, or their acceptance of rides in automobiles for certain purposes, betrays an insincerity in their religious beliefs -- is mistaken. It is inaccurate to say that the Amish claim to use *no* modern technology. The Plaintiffs make no such claim. I am persuaded by Professor Johnson-Weiner's testimony that the Amish have long made and continue to make carefully considered judgments about the limits of permitted technology use in their lives. These choices are informed by the scriptural mandate to remain separate from the world, and are based on the judgments of the particular Amish church regarding what practices and technology use goes too far in that direction, bringing worldly ways unacceptably into Amish life. The Swartzentruber Amish understand themselves to be on a slippery slope of acceptance and use of modern conveniences and technology.<sup>15</sup> Their caution in allowing use of new technology is motivated in part by concern that a new step toward worldliness may accelerate a descent on that slope toward broader acceptance of worldly ways inconsistent with scripture. The care with which these decisions are made reflects Amish concern with the long-term Godliness of the community. One of the Amish witnesses testified as follows about the example change sets for the next generation: "[T]hey can look at me and I made this change...something that we never had in our history and you made this change, you aren't going to tell me now I can't make the next change."

This is a slow-changing but dynamic, rather than absolutely static, way of religious life when it comes to technology use. The fact that the Amish have, over generations, made choices

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<sup>15</sup> The testimony indicated that, in the last 40 years, the Swartzentruber Amish of Fillmore County have come to use telephones more than they did previously; accept (and make arrangements for) more automobile rides; and accept more off-the-farm work than they used to.

to allow some use of technology and prohibit other use, is not proof that their beliefs are a pretense. Those choices about worldly ways are an integral part of Amish religious practice.

This cautiously considered discrimination between the permitted and prohibited inevitably results in some fine distinctions being made (Shall battery flashlights be handheld only, or are hat-worn flashlights acceptable?) and one might be puzzled at where the particular Amish church draws the line. We might question its rationale or logic; it may not make sense to us. But questions about where the Amish have drawn those lines do not undermine the genuineness of the religious beliefs that necessitate the line-drawing. Nor am I persuaded that the Court may substitute its judgment for that of a particular Amish church as to what technology ought to be permitted consistent with Amish beliefs.<sup>16</sup> Religiously-based judgments are not matters in which a Minnesota court may indulge in second guessing. Courts do not demand "logical...consisten[cy]" of religiously-based beliefs entitled to constitutional protection.

While Swartzentruber Amish have found some limited use of modern technological conveniences to be acceptable, broad rejection of such conveniences plainly remains the principal reality and hallmark of their lives. To name a few: They do not drive automobiles, do not have electric lights in their homes and farm buildings, do not use tractors or combines in their fields, and -- this is the absolute deal breaker for many of us -- do not use modern flush toilets in their homes. Because they have made these choices, Swartzentruber Amish live a life that is

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<sup>16</sup> Fillmore County, citing the Dordrecht Confession and the Book of Deuteronomy, points out that the Amish also believe in following the law, respecting secular authority, not causing harm to their neighbors, cleanliness, and caring for God's creation. "Those beliefs," the County argues, "conflict with [Plaintiffs'] refusal to install a [state-mandated] gray water system." (Fillmore County's Memorandum/Final Argument, pp. 6, 11.)

If the County suggests, with this argument, that Plaintiffs are being dishonest in describing to the Court what they think their faith requires of them, I am not persuaded. I find the Plaintiffs' testimony about their beliefs credible. If, on the other hand, the County is contending that the Plaintiffs' are theologically *wrong* -- that they are placing too much emphasis on Paul's Epistle to the Romans ("Be not conformed to this world.") and too little on other scriptural passages -- that is not a judgment for any court to make. "Courts are not arbiters of scriptural interpretation." *Hershberger I*, at 286.

much more labor-intensive and less comfortable than do most non-Amish Americans. One cannot reasonably doubt the genuineness and sincerity of the Amish religious beliefs that cause them to choose a life that is so much more physically demanding and wearisome -- in a word, harder -- than that lived by most other Americans.

The Government argues that it is unclear that the Swartzentruber "Ordnung" is actually violated by installation of a state-required septic system. The Ordnung -- the code or set of rules governing Amish conduct and way of life -- is entirely unwritten. It is apparently orally reviewed twice a year at a meeting of the church. But that does not mean that there is a comprehensive recitation of all the existing rules; for example, no one has to announce biannually that the Ordnung *still* prohibits driving automobiles and wiring houses with electricity in order for those prohibitions to continue.

The Original Canton church has not voted on an Ordnung specifically prohibiting gray water septic systems. That does not mean, however, that this new practice is not contrary to the Ordnung. The response of the Amish parties at trial to Fillmore County's question asking what Ordnung specifically prohibits installation of a gray water septic system, was essentially: *This is a septic system, and septic systems have never been permitted.* The status quo for the Amish of the Original Canton church is that this technology has *always* been, and *remains*, prohibited. These people have never allowed themselves any septic systems, just as they have never allowed themselves any automobiles. The Government is now requiring the Plaintiffs to install a device they have never had, an innovation inconsistent with the Original Canton church's Ordnung which has never permitted septic systems.

In addition to the testimony of the Plaintiffs, their wives, and other members of the Original Canton church that installation of the state-required septic system violates their church's

rules, the Court was provided the August 31, 2015 letter of Bishop Jacob Swartzentruber (co-signed by 53 others, including the Plaintiffs) stating to the Government the church's position:

In regard to the septic system requirement. We feel this is the way of the world and we are not to go the way of the world as in Romans 12:2 it read and be not conformed to this world, but be ye transformed by the renewing of your mind: that ye may prove what is that good and acceptable and perfect will of God.

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If we take a step in the wrong direction and teach our children and grandchildren and lead them in that direction we will have to answer for it at the day of judgment[.] We are again asking in the name of our Lord to be exempt and for given this oppression that is being laid on us.

The Government points out that some other Swartzentruber Amish in Fillmore County do not share Plaintiffs' belief that installation of state-mandated septic systems is a worldly way forbidden by their faith. (See, for example, the testimony of Dan Gingerich.) Whether others share a religious belief has some relevance here. Part of the reason the court rejected marijuana use as a matter of religious belief in *Pederson* was that no "organization" of which the defendant was a member espoused that belief; the Court determined that it was a "personal" rather than "communal religious belief." *Pederson* at 376.

Here the evidence indicates that while not shared by some other Fillmore County Swartzentrubers, the belief that the state-required septic system is scripturally forbidden is the "communal religious belief" of the 30 families of the Original Canton church. This is not the "Church of Marijuana," the supposed "religious beliefs" of which were idiosyncratic to an individual. *Hershberger I* makes clear that a religious belief need not be "uniformly" held by all adherents of a faith in order to be constitutionally protected. Again: "Intrafaith differences...are not uncommon among followers of a particular creed, and the judicial process is singularly ill-equipped to resolve such differences.... [T]he guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect." *Hershberger I* at 286.



The Government, citing *Beechy v. Central Michigan Dist. Health Department*, 475 F.Supp.2d 671 (E.D. Mich. 2007), argues that not all Amish objections to state-mandated modernity are religiously based. *Beechy* is interesting to anyone analyzing the present controversy, because it dealt with Amish parties objecting to Michigan's gray water septic system requirements. The Amish in *Beechy* did not object to putting in septic systems. Rather, they objected to the requirement that a 750-gallon tank be part of that system. They asserted this was larger than necessary to handle the amount of gray water produced by Amish households, and they proposed the alternative of a septic system with a 300-gallon tank. They contended that the state's 750-gallon requirement "impinges upon [their] religious freedom." *Id.* at 672.

The court in *Beechy* granted summary judgment against the Amish objectors on the religious liberty claim. Asked at deposition why they objected to the 750-gallon tank, the Amish parties in *Beechy* had cited the higher cost of the larger tank; and that the smaller tank "wouldn't take as much work." *Id.* at 676-77. Religion was raised in their objections in only two respects. First, on the necessary tank-capacity issue, they contended "that the Amish faith prevented them from generating the amount of waste water necessitating a 750-gallon tank." *Id.* at 673. Second, one of the Amish parties testified that "having a tank with such excess capacity would create a temptation...to adopt more worldly ways." *Id.* Based on this record, the *Beechy* court concluded there was no dispute of material fact on the threshold question of "whether the plaintiffs' objections are based on religious beliefs" versus secular considerations. *Id.* at 679. The court ruled that the uncontested facts "demonstrate that the objection to a 750-gallon septic tank and the preference for a 300-gallon tank are based on secular, not religious concerns." *Id.*

[T]he [Amish parties] all cite to their religious beliefs and practices as support only for their claim that they would not generate enough wastewater so as to need a 750-gallon tank. Accepted in the light most favorable to the plaintiffs, the affidavits prove that the CMDHD-required tank size is not needed by Amish families (and

therefore the variance should be granted for practical reasons), but they do not state or imply that installation of the 750-gallon tank violates their Ordnung, contravenes a tenet of their faith, or interferes with the practice of their religion. Their religious beliefs, which dictate their lifestyle, are offered as explanations for *why* they do not need a larger tank, and nothing more.

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*[T]he [Amish] plaintiffs never have plainly stated that the practice the defendants seek to compel — installing a 750-gallon septic tank for the deposition of wastewater on residential property — itself violates the tenets of the plaintiffs' faith. Absent that declaration, the Court is left with the undisputed facts put forth in the depositions, namely, that the plaintiffs' primary and sole objection to the tank ordinance — and the reason they sought the variances — was based on cost, convenience, and the practical fact that they just did not need to comply with the capacity requirements ordained by the defendants. The Court must conclude, therefore, that the defendants have not interfered with the plaintiffs' religious practices, the ordinance does not substantially burden the plaintiffs' exercise of their religious rights.*

*Id.* at 674 (italics added).

*Beechy* stands for the proposition that not every Amish objection to government-mandated technology is necessarily based on religious belief. But the evidence in the present case is different than in *Beechy*. Here the Amish Plaintiffs, their wives, others from the Original Canton church, and some other Swartzentruber Amish testified that installation and use of the state-required septic system violates the tenets of their faith.

**DAN SWARTZENTRUBER:** "It's something that we feel would conform us with the world and our forefathers felt that we shouldn't have them. The church has never, in our congregation, has never had them. They haven't allowed them. It's -- we feel it's something that would lead to the world....

That is our beliefs to keep as much as at all possible what our forefathers left us. If we start straying from that, where will we stop? Honoring our forefathers is part of our beliefs.

[W]e were taught that it would put us closer with the world.... It would conform us with the world, we might say....

[W]hen our forefathers made the rules for the church, they went through what they felt would be less conforming to the world, and they made their set of rules. When

we joined the church, we agreed to those rules. We were baptized in those rules. We take them very serious." <sup>17</sup>

**EMERY MILLER:**

Q. Why didn't you just install a gray water system or a septic system if you were being threatened with all those things?

A. Because I feel that that is the way of the world and Romans 12:2 says "be not conform to this world.... \*\*\* That's something that's never been allowed in our church."

**MENNO MAST:** "It would burden my religious beliefs if I would put one in.... That is against my religious beliefs to put a septic system in."

**AMMON SWARTZENTRUBER:** "Well it's against my religious beliefs.... We've never had it before so we're not allowed to have it."

**SUZI MAST:** "Well I guess we want to do like our forefathers did."

**VERNA MILLER:** "We're afraid it's in the step of the wrong direction... I'd rather not have those worldly things."

**SARA SWARTZENTRUBER:** "It's against the church rules."

**ABE SWARTZENTRUBER:**

Q. Mr. Swartzentruber, did you want to install a gray water system?

A. Not really, no.

Q. Why?

A. Because it was a tradition of before that we never had.

Q. Is tradition important to your religion?

A. Yes.

Q. How so? Or why?

A. Because we go by -- we have regulation of our traditions from handed down from elders before.

**MATTIE MAST:** "It was against our religion."

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<sup>17</sup> Dan Swartzentruber has been one of the ministers of the Original Canton church since 2001. It was interesting to learn during the course of this trial that there are no formally trained clergy in the Amish faith. Amish ministers and even bishops are chosen by lot. No one goes to seminary. Few, if any, Amish are scriptural scholars in the way that clergy in other religions often are. The leaders and authorities in Amish religious communities are working farmers, farm wives, saw mill operators, carpenters, and so forth, all with less than a high school education. It is not surprising, given these facts, that their descriptions of their faith and the governance of their church might seem unsophisticated to outsiders.

As the evidence indicated in *Yoder* and here: "These people aren't purporting to be learned people." *Yoder* at 223. Professor Johnson-Weiner described this religion as a "lived faith, not an intellectual one." The Court would not expect an Amish farm wife to be able to explain her faith with the erudition of a Jesuit theologian. But of course her faith is nonetheless entitled to equal respect.

**ELI HERSHBERGER:**

Q. If you put in a gray water system, that's not going to change anything as far as how you're putting stuff down the drain, is it?

A. No, not putting it down the drain. Not if you're talking gray water, no. But it might. I could think of other things that wouldn't go down a drain. I mean, it -- it might put the good of the church down the drain.

The testimony of the Amish Plaintiffs and their witnesses might be disbelieved by the fact finder, just like anyone else's testimony. Courts are not authorized to "dissect religious beliefs," but courts *do* decide the credibility of testimony, by whomever offered. The trier of fact could conclude that purported Amish religious objections to septic systems are actually a disingenuous cover for the real, secular objection: The cost of putting in such a system.

But that is not my finding. To the contrary, I find credible the testimony of the Amish plaintiffs that their objection to the state-mandated septic system stems from their religious belief that these systems must be avoided as a way of the world, antithetical to a faith that tells them to be separate in order to live as God intends.

I find that the Plaintiffs sincerely hold religious beliefs that are the basis for their objections to the Government's mandate at issue herein.

**The Government Regulation Substantially Burdens Plaintiffs' Religious Beliefs**

The Government contends that its gray water septic system requirement does not actually burden -- or does not burden significantly -- the Plaintiffs' religious beliefs. In support of this argument, the Government points out that these Swartzentruber Amish use various items of "modern" technology: gasoline engines, some rubber tires, modern building materials (Tyvek, for example), power tools, washing machines, and so forth. More specifically, the Government points out that these Swartzentruber Amish move water *into* their houses using plastic piping and large (1,000 gallon) tanks. These components, the Government observes, are the basic items that

would make up the septic systems that would treat gray water coming *out* of the Plaintiffs' houses, if the Government prevails here. The *Hill-Murray* and *Edina Community* cases indicate that the burden element of the constitutional analysis involves a *quantification* of the burden: In order to infringe on religious rights, the burden must be "substantial[]," significant[]," and not "de minimis."<sup>18</sup> The Government asserts that since the Plaintiffs are already using some modern technology and, more specifically, already use most if not all of the components and materials that make up a gray water septic system, it cannot credibly be claimed that use of these same items to build a gray water septic system is anything more than a de minimis burden on their religious beliefs. So argues the Government.

The Amish Plaintiffs focus, however, on the sum of the parts -- the septic system -- rather than on the components used to build it. The materials are unobjected to. But the septic system built of those materials is a mechanism new to them and *is* religiously objected to. I find their testimony on this topic credible. I see no inconsistency or implausibility in the Plaintiffs drawing a distinction between plastic pipes and a tank and the septic system constructed of those materials.

I am convinced that requiring Plaintiffs to install gray water septic systems imposes a significant burden on their religious beliefs. First, the *Hershberger* test for burden is satisfied: The Plaintiffs can be criminally prosecuted for not installing gray water septic systems. The Government is requiring Plaintiffs, on pain of criminal penalties, to install on their properties a permanent apparatus that is antithetical to their religious beliefs. Second, refraining from ownership of worldly technology is central to Amish religious faith and practice. As Professor

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<sup>18</sup> Although *Hill-Murray* and *Edina Community* both describe this quantification aspect of the analysis, neither (and no other Minnesota case brought to the court's attention) found that a religious faith was in fact burdened, but that the burden was insignificant.

Johnson-Weiner testified, this is a "lived, not intellectual, faith." Religion does not comprehensively dictate for most of us what we own, the color of our shirts, how we wear our hair, how we travel, and the tools we use -- not to mention broader rules of conduct such as pacifism. For the Swartzentruber Amish, religion *does* control these things. Requiring these religious people to build, own, and use on their properties an item of technology unused and unknown to prior Amish generations, to which they sincerely object as a way of the world prohibited in their lives by scripture, is a significant burden on their faith. So they testified; and I believe them.

The Government points out that installation of a gray water septic system does not affect the Plaintiffs' ability to believe, pray, gather as a congregation, worship, and in all other outward respects continue to practice their religion in exactly their current manner. But it misses the point to contend that all the Government is requiring is a single, isolated practice at odds with the beliefs of this group of Swartzentruber Amish. A single deviation from religiously required conduct -- one defilement -- may weigh heavily on the mind and conscience of the devoutly religious believer.

The example that comes to mind is requiring an observant Jew who keeps kosher to eat a single pork hotdog. No one would dream of minimizing the significance of such a violation of religiously-based principles, even though that violation does not impede or prevent any other religious activity -- prayer, attendance at worship, study of scripture, and so forth. We recognize at once, in this context, that a single transgression of a sincerely believed religious dictate substantially and significantly burdens belief.<sup>19</sup> And the violation of a religiously-based code of

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<sup>19</sup> The significant burden placed on religious belief by the state requiring an individual to do a single act in conflict with that belief, is illustrated by the case of Sir Thomas More (the Roman Catholic patron saint of lawyers) who went to the block in 1535 rather than acknowledge Henry VIII as head of the church in England.



conduct in the present case is not transitory, as would be true of a one-time violation of a religious dietary restriction, but rather is permanent. I find that Government-required installation of gray water septic systems on Plaintiffs' farms will significantly burden their religious beliefs.

**State's Compelling Interest Cannot be Accomplished by Less Religiously Burdensome Means**

Having found that the Plaintiffs' objections are based on sincerely held religious beliefs, and that compliance with the Government's mandate significantly burdens those beliefs, the Court turns to the question of whether the Government's compelling interest in protecting public health and the environment can be accomplished by a means less burdensome to Plaintiffs' religious liberty. On this issue, the Government bears the burden of proof.

Let us begin with a description of the public health and environmental risks at issue here. Ms. Laura Allen, the Plaintiffs' expert witness on gray water treatment, testified that gray water poses a "very small risk" to public health and safety. Ms. Allen noted that "no cases of any disease have been documented to be caused by exposure to gray water" -- though she acknowledged that there has been little scientific research on that public health question.

The Government's witnesses disagreed with Ms. Allen's minimization of the gray water health risk. Dr. Sara Heger testified that while gray water is less dangerous from a human health standpoint than is toilet "black water" (black water waste can contain ten to a hundred times more coliform bacteria than gray water does), gray water carries contaminants and organic materials such as human fecal material, disease organisms (pathogens) in the form of harmful bacteria and viruses, and a variety of chemicals, commercial soaps and detergents (containing the environmentally-problematic nutrients nitrogen and phosphorous). Dr. Heger testified that 100 milliliters of gray water can contain 10,000,000 coliform bacteria (an indicator of potential for pathogenic bacteria and viruses). To put this number in perspective, it is considered unsafe to

swim in water with more than 200 coliform bacteria per 100 milliliters. Untreated gray water may carry a variety of pathogens that cause common illnesses like the flu and diarrhea, as well as less common threats such as e coli and cryptosporidium. Dr. Heger testified that "whatever might make you sick, that's also present in the gray water." MPCA soil scientist Brandon Montgomery testified similarly: "So gray water is still a subcomponent of sewage, so to speak, and there are still all of the pathogenic constituents found within that sewage; so there's bacteria and viruses, protozoa that I had mentioned earlier, all of those things are still found in gray water."

I find that untreated or inadequately treated gray water presents substantial and serious danger to public health and risk to the environment, and that the Government has a compelling interest in protecting against those dangers.

I also find that proper waste water treatment is of particular urgency in Fillmore County due to its karst topography. That topography -- characterized by fissures, fractures, and sinkholes in the slowly dissolving limestone bedrock -- permits much more rapid travel of waste water to both ground and surface waters than would be the case elsewhere. It is possible, in a karst area, for household waste water to reach a drinking water source in a time measured not in years or decades (as may be the case in non-karst areas) but in days. Dr. Heger testified that without "good treatment going on here with our septic systems, we could be contaminating that drinking water aquifer much quick[er]." She testified that our "water is all connected;" and in karst topography, that connection can be rapid.

Let us turn to the competing treatment technologies at issue here.

The Government requires a septic system for gray water treatment, though one that is smaller in size because it is not intended to handle black water. The gray water septic systems

permitted by ordinance in Fillmore County for Amish households are further reduced in size, based on an assumption that Amish homes have less water usage (100 gallons per day) than non-Amish homes. (Fillmore County zoning officials think that they made a significant compromise when they reduced the size of the required gray water system to accommodate the Amish.)

The alternative means of gray water disposal proposed by the Plaintiffs as less burdensome to their religious beliefs than septic systems, is the "mulch basin" system.<sup>20</sup> The Plaintiffs indicated that the mulch basin system is a gray water treatment technology they can use consistent with their religious beliefs. The line drawn by the Amish Plaintiffs based on their religious objection was: No septic tanks, and no pipe-utilizing drain fields. In other words, no septic systems.

To analyze whether mulch basin gray water treatment systems are up to the job of adequately protecting Minnesota's public health and environment, one must have some understanding of how household waste water gets treated in rural Minnesota. The evidence presented at trial provided the Court a primer on that subject matter.

In both systems -- the Government's septic system and the Plaintiffs' mulch basin system -- the gray water starts the treatment journey by coming out of the house in a buried PVC pipe, and it ends up going into the native soil where most of the treatment of farmhouse waste water really happens. What is different about the two systems is how they deal with the gray water between those beginning and ending points.

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<sup>20</sup> There is no religious liberty issue regarding the "straight pipes" the Plaintiffs were all using to dispose of their gray water until recently. The Plaintiffs do not all share the Government's belief that gray water flowing untreated from a straight pipe onto the ground surface poses a serious public health risk. (See the testimony of Menno Mast, who does not agree that straight pipe gray water disposal is unsafe, and who declined to categorically rule out ever again using a straight pipe in the future.) But recently the Plaintiffs have all given up straight pipe disposal of gray water. They claim no religious freedom-based constitutional right to keep or return to straight pipes.

With the septic system, the waste water flows from the house into an underground septic tank. In the tank the flow is slowed -- this is called "attenuation" -- during a period of "hydraulic retention." During this two or three day period of slow movement through the tank, some components in the effluent are sorted out. Heavy solids, lint, food particles and like debris sink to the bottom of the tank; and lighter oils, greases, and soaps float to the top. The tank is a "settling chamber" that provides initial "primary treatment" via this separation process, removing these heaviest and lightest elements of the sewage and sending cleaner water out to the soil for treatment. This reduces the contaminant load the soil is required to clean and extends the life of the system. The sealed below-ground tank prevents the gray water and the pathogens it contains from coming into contact with people. The contents of the tank are periodically pumped out and hauled away.

From the septic tank, the cleaner gray water goes out a pipe to a drain field -- a distribution bed made up of perforated pipes set either in trenches covered by at least one foot of topsoil, or in an elevated mound where conditions make that necessary. From the pipes the water flows out into a non-organic, non-biodegradable "distribution medium" -- often gravel -- the purpose of which is to maintain the excavation, support the distribution piping, and create a "void space" to store water (absorbing surges from the tank) until the soil can accept it for treatment. In the drain field the waste water is broadly distributed through the medium into the soil. The natural aerobic purification process, by which bacteria remove contaminants from waste water, occurs in a layer of unsaturated, oxygenated soil beneath the pipes and distribution medium.

The drain field must have sufficient capacity, meaning enough area to meet standard loading rates (calculations of the square footage necessary for the particular soil type to

adequately treat the volume of effluent flowing from the residence). And it must be at least three feet above both of two "limiting conditions:" "Redoximorphic features" and bedrock. This "three feet of separation" is required for proper treatment.

Treatment requires oxygen in the soil; and complete treatment requires an oxygenated soil layer at least three feet deep beneath the drain field. The oxygen necessary for treatment is not present in saturated soil. "Redoximorphic features" in the soil are distinctive, rust-colored bands that mark the upper limit of the "perched" or "standing" water table -- the level at which the soil is wet for extended periods of time. The redoximorphic features indicate, to those who know what they are looking at, the dividing line below which the soil is saturated and anaerobic (without oxygen); and above which the soil is dry and oxygenated enough to treat waste water. The bottom of the drain field -- the "soil interface" where the waste water reaches the soil for treatment -- must be located at least three feet above this line of demarcation -- the redoximorphic features -- in order for there to be enough dry, oxygenated soil to treat the gray water.

Bedrock, like saturated soil, does not treat waste water. Therefore the system-soil interface must also be at least three feet above bedrock, defined as a layer with "more than 50% rock." <sup>21</sup>

Septic systems in Minnesota, including gray water systems, are professionally designed and their siting is approved only after soil analysis is done. Properly constructed and timely pumped, a septic system can be expected to reliably function for 25 years with little or no maintenance. The Government's evidence convinced me that septic systems provide effective

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<sup>21</sup> There is also a depth limit of four feet from the ground surface to the interface, because the greater the depth from the surface, the less oxygen there is in the soil.

gray water treatment necessary to protect human health and the environment. The question is whether there is an alternative that is religiously acceptable to the Amish and that also accomplishes the compelling state interest of safeguarding public health and the environment.

Plaintiffs contend that mulch basin gray water systems are an equally effective and feasible alternative means of achieving the Government's public health and environmental objectives. In support of their position Plaintiffs presented the testimony of Ms. Laura Allen, an Oregon-based author, educator, and founder of an organization called "Gray Water Action." Twenty years ago Ms. Allen began to work in the gray water field because of her environmental concerns, her interest in ways people could use less water, and the idea that "we should at least reuse [the water] we already have." Ms. Allen has a bachelor's degree in environmental studies and a master's degree in environmental education. She does not hold a degree in soil sciences, hydrology, or engineering; but she has had extensive experience with mulch basin gray water systems in the Pacific coast states and Arizona. She has taught courses and written books and manuals on "water reuse" and the design and construction of "residential scale" gray water systems.<sup>22</sup> The typical users of these systems, in Ms. Allen's experience, are "environmentally aware" homeowners looking for "sustainable practices;" and homeowners in "water stressed regions" both urban and rural. Ms. Allen has worked with west coast states and cities (most of her work is in California and Oregon) developing codes for re-direction of gray water into the landscape for reuse, often to irrigate trees, bushes, and ornamental plants. She has worked with water utilities to educate customers about installing gray water systems.

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<sup>22</sup> For example, Ms. Allen was the main author of the San Francisco Public Utilities Commission's *Gray Water Design Manual*, created to teach a "do-it-yourself type population how to build their own gray water systems."



Ms. Allen's professional focus is on "simple [gray water treatment system] designs that don't require engineering" -- "we really don't want engineers involved because it makes the systems too expensive." In Ms. Allen's opinion the "best [gray water] management practices" are exemplified by Arizona's approach, which she considers "the safest way because it's easy to comply with, it can be protective of environmental and public health. And so I personally think that is the safest way. It allows for mass education, it's very low cost and low barriers for people to comply with it."

In the mulch basin gray water systems proposed by Ms. Allen, the outlet pipe carries the gray water out of the house to a large hole dug in the ground. This earthen "basin" -- an example presented here was approximately four feet long by six feet wide by up to four feet deep -- is filled to ground level with coarse woodchips or bark chips (the "mulch" in the "mulch basin" system). Inside the hole, the gray water-carrying pipe enters a plastic "valve box" through an opening in the side of the box; and the pipe terminates inside the box. This valve box sits on the mulch bed, surrounded by and buried in mulch. The box (approximately 12 inches by 17 inches by 12 inches in size), has no bottom; holes are drilled in its sides; and its interior is an empty "air space." The top of the valve box -- a removable lid -- is flush with ground level. (To position the lid at ground level, it may be necessary to lengthen the vertical dimension of the box with an extender.)<sup>23</sup>

The valve box serves to create a chamber inside the mulch basin into which the pipe delivers the gray water. Gray water runs out of the end of the pipe into the valve box; it drops

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<sup>23</sup> An alternative design for creating the air space inside the mulch-filled basin into which the gray water outlet pipe empties is depicted in Exhibit 42 (see diagrams 2 and 3 on the second page of that exhibit). This alternative design involves cutting a 55 gallon plastic barrel in half, lengthwise. Half of the barrel -- a trough-shaped structure -- is positioned on the mulch bed, open side down, with holes drilled in its sides. A hole is cut in the top of the half barrel, and over this hole a valve box is affixed. The outlet pipe enters the valve box in the same manner as in the "standard" design; and the effluent drops through the cavity created by both the valve box and the half barrel, to land on the mulch bed.

four to six inches through an "air gap" (which keeps the mulch from clogging up the end of the pipe); and falls onto the mulch bed on which the valve box sits. The woodchip mulch filters the water, with solids and greasy "gunk" sticking to the chips. The chips provide surge capacity, holding water like a sponge until it can percolate down to and into the underlying soil. The bacterial activity that treats the water begins in the air spaces in the mulch. The gray water trickles down to the dirt floor at the bottom of the basin -- the soil interface of this system -- and soaks into ("infiltrates") the soil where treatment happens in the same natural, aerobic manner that it does with a septic system.

Ms. Allen testified that in California, the mulch basin system must be "at least three feet above the ground water table." (She testified that in Arizona the requirement is five feet.) This sounds similar to the "three feet of separation" the Government's witnesses testified is necessary for effective treatment.

Diagrams of the configuration and elements a mulch basin system, explaining and illustrating Ms. Allen's testimony, were presented in Exhibit 7 (example C was described as the system most comparable to the Plaintiffs' systems and advocated by Ms. Allen for use here); and in Exhibit 42. The bottom of the basin -- the dirt floor of the hole -- should be no deeper than four feet from ground surface (this is consistent with the Government's evidence regarding the maximum depth of the soil interface in a septic system drain field); and no shallower than two feet, according to Exhibit 42.<sup>24</sup> The cross section diagrams on page 2 of Exhibit 42 indicate that

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<sup>24</sup> Whether Ms. Allen really believes that a two-foot depth would be sufficient to withstand freezing during a Minnesota winter is unclear. She pointed out that household gray water is still relatively warm when it arrives at the end of the outlet pipe in the valve box, even in winter. Ms. Allen acknowledged that Minnesota cold, something she has never dealt with in her work, is a "key design consideration" that would require "slightly different precautions" to avoid freezing. She contended, nonetheless, that mulch basin "gray water systems have been proven across the country in many different climates," including places that freeze.

The Court did not find persuasive Ms. Allen's testimony that the climate in Yosemite National Park is sufficiently similar to that of Fillmore County, such that her gray water experience in Yosemite translates and would apply to the present case. The evidence indicated that the average *high* temperature in Preston, (CONTINUED)

the outlet pipe should be at least 12 inches below ground surface; and that between the floor of the valve box air space (the mulch surface onto which the gray water falls from the pipe) and the soil interface (the dirt bottom of the basin) the mulch bed should be at least 12 inches in depth.

Ms. Allen agreed with the Government that a gray water treatment system must be appropriately sized -- meaning that it must have sufficient area of soil interface to handle the amount of gray water coming from a house. In the mulch basin system, capacity means adequate square footage of the dirt floor of the basin(s). Ms. Allen testified that a conservatively designed system would provide one square foot of soil interface per gallon of gray water produced per day by the household. (One square foot per gallon is the ratio necessary for a system dug in a heavy clay soil, in which the infiltration of water is slow. Less square footage would be necessary if the system were installed in faster infiltrating loam.) Thus for 100 gallons per day (the Fillmore County figure for Amish household gray water), the basin floor(s) would need to total 100 square feet in area.

The mulch basin system has no septic tank. Ms. Allen agrees that gray water contains solids, soaps and greases that a septic tank removes by settling and floating. But she asserts that the woodchips in the mulch basin system perform essentially the same function of removing these solids and greases from the effluent. The mulch catches and filters out this "gunk," allowing cleaner gray water to run through to the soil for the natural aerobic treatment process.<sup>25</sup>

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Minnesota in the months of December, January, and February is below freezing (with average monthly *low* temperatures of 11, 6, and 10 degrees Fahrenheit, respectively). In contrast, at Yosemite the average high temperature is not below freezing for any month (indeed, 47 degrees in December is as close as the average high comes to freezing). Yosemite undoubtedly has snow; but that does not mean its climate is like Minnesota's.

<sup>25</sup> It appears that in reaching and providing her initial opinions in this case, Ms. Allen may not have fully understood the content of Amish household gray water. She stated in her report: "The Amish gray water systems only contain water from their baths and washing machines." In fact, Amish gray water includes kitchen sink water, an element that is so contaminant-laden as not to be permitted in gray water systems in California. (California also prohibits putting laundry water from washing dirty diapers -- another not-uncommon element of Amish household gray water -- into a gray water system.) (CONTINUED)

Ms. Allen acknowledged that the mulch basin system requires more hands-on maintenance than does the Government's septic system. She testified that the mulch that has caught all the solids and grease dropping out of the pipe into the basin must be regularly removed, hauled away, and replaced with fresh woodchips. Usually the schedule for lifting the valve box lid to dig out and remove this dirty, decomposed mulch would be once per year. However, because Minnesota Amish household gray water includes the dirtier, greasier kitchen sink water, Ms. Allen testified that biannual basin maintenance would be necessary for the Fillmore County Amish systems. In contrast, a septic tank requires pumping only once every three to ten years.

Ms. Allen testified, however, that this twice-yearly maintenance would not require emptying the basin(s) of *all* their mulch contents. Rather, Ms. Allen testified that only "five or six shovel fulls" of decomposed mulch directly beneath the end of the outlet pipe would need to be removed and replaced that frequently. The rest of the mulch in the basin would not be so heavily loaded with contaminant material as to require such frequent change-out; it would decompose, she testified, more slowly and need replacement only once every ten years. Ms. Allen testified that mulch basin systems are "easy to maintain."

Ms. Allen was asked what assurance there is, in her experience, that this necessary, regular maintenance of mulch basin systems by the owners actually takes place? She testified that in the states in which she primarily practices, mulch basin gray water systems go essentially uninspected and unmonitored by state and municipal authorities once put in place; and Ms. Allen

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That kitchen water would be in Plaintiffs' gray water did not, however, change Ms. Allen's opinions. She testified that kitchen sink water (and dirty diaper water) is still just "residential." She noted that, unlike California, "Oregon would allow kitchen water, Washington allows kitchen water, Arizona allows it as long as it's subsurface."

finds this laissez-faire regulatory approach appropriate.<sup>26</sup> The state or municipality gets involved only if a system is not performing properly -- for example, by backing up and overflowing -- and such a malfunction comes to light only when someone "notifies and complains." Ms. Allen testified that in densely populated San Francisco, for example, "if there's a problem, if someone calls and is, like, my neighbor's dumping gray water in my yard, like, do something about it," the city can take action against the violator for not maintaining the required setback. Detection and enforcement require the "neighbors to notice something."

But what happens, Ms. Allen was asked, if the next-door neighbor lives a mile away, as might be the case in Fillmore County? In that scenario, how would a system malfunction be detected for correction? Ms. Allen responded: "It's probably not hurting anybody if they're not -- if it's not running into their neighbor's yard or somewhere else. It's most likely not causing a problem as long as they maintain the setbacks...."

While this litigation was pending, three of the Plaintiffs installed mulch basin gray water systems.<sup>27</sup> Prior to testifying, Ms. Allen visited Plaintiffs' farms to view those systems. She testified that Plaintiffs' systems included all the requisite components of serviceable mulch basin systems, and that the basic design of Plaintiffs' systems would be legal under the codes and practices of the western states with which she is most familiar. But she identified one principal problem with all of the Plaintiffs' systems as built: They were too small. Like the Government's witnesses, she observed saturated soil and pooling of waste water in Plaintiffs' systems. She

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<sup>26</sup> Ms. Allen advocates codes that "make it easy for people to install an affordable [mulch basin gray water] system with not a lot of regulatory oversight," and she recommends "low barriers for people to comply with" in installing and maintaining such systems.

<sup>27</sup> The Government faults Plaintiffs for constructing their mulch basin systems without seeking prior governmental approval. The Plaintiffs characterized the systems they installed as experiments intended to see if they would work. The Court does not find these experiments to be improper; this litigation was pending, and these systems were built in good faith as a "better-than-nothing" improvement upon the unacceptable straight-pipe status quo.

attributed these problems to a mulch basin floor area not large enough for the volume of flow. The systems lacked necessary capacity, resulting in system saturation and the backing up of untreated gray water in the basins.<sup>28</sup>

The remedy for this defect, according to Ms. Allen, was to create more capacity by dividing the flow and sending the gray water to multiple basins. Page one of Exhibit 42 is a diagram illustrating gray water flow being divided, and then divided again, to send the effluent to four separate mulch basins, each of which has a 25 square foot soil interface area. In Ms. Allen's opinion, the design of Plaintiffs' mulch basin systems was basically sound, but undersized.

Before turning to an analysis of the evidence and a statement of my reasoning, I will note that the Government argues, with some justification, that the Plaintiffs' proposed alternative was a moving target for the Government during this litigation, and even during the trial. The greater-capacity design diagramed in Exhibit 42 appeared for the first time during Ms. Allen's rebuttal trial testimony. The Plaintiffs' alternative design has evolved, to a degree, during the pendency of this case, and as a result the Government has had to adapt its position on the fly to respond to the latest iteration of Plaintiffs' proposed alternative. The Government has objected to this.

I have overruled this objection. The Government knew long before the trial that Plaintiffs proposed a mulch basin system, and the essentials of that system have not changed. The Exhibit 47 design is simply an enlarged version of the Exhibit 7 design. There is no indication here that Plaintiffs have purposefully hidden the ball or sandbagged the Government, holding back important information and revealing it only when it was too late for the Government to effectively respond. The Government has not been dealt with unfairly, nor has it

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<sup>28</sup> Ms. Allen also noted that in at least one of the Plaintiffs' systems, the woodchips were too fine (not sufficiently coarse). This had resulted in clogging and premature decomposition. Ms. Allen advocates use of a heavier, chunkier grade of chip that does not break down so quickly.

been prejudiced by the fact that Plaintiffs' design ideas have progressed as the case has developed. Further, the burden of proof is on the Government to establish that its compelling state interest cannot be served by "a less intrusive alternative." *Hershberger I* at 285. Plaintiffs have come forward with and advocated an alternative proposal -- just as the Amish defendants did in *Hershberger*. But the burden of proof *is not theirs*. If the evidence demonstrated that there is a workable, less religiously intrusive alternative that would serve the Government's compelling interests, I would find for the Plaintiffs and order the constitutional relief they seek; and I would do so even if that alternative only came to light for the first time at trial, and even if it was *not* one proposed or advocated by Plaintiffs.

So let us analyze the evidence. Part of the Government's case was a critique of what might be called procedural defects and potentially correctable operational shortcomings in Plaintiffs' mulch basin systems. For example, the systems Plaintiffs built were constructed without Plaintiffs having obtained permits from the Government -- permits that would certainly have been denied, if requested, because the systems are illegal under current law and regulations. Further, Plaintiffs' mulch basin systems were not designed by MPCA-certified designers, as required by Minnesota law. Plaintiffs' systems were built without the soil analysis necessary to determine that they had the requisite "three feet of separation" beneath the basins, and without the site inspections required to determine that they were properly set back from waterways and karst features. The systems used a distribution medium not approved by MPCA. And they were put into use without required post-installation inspections.

Let us put aside for purposes of this analysis the Plaintiffs' failure to ask the Government for permits. Plaintiffs could not have gotten permits to install mulch basins; and the constitutionality of the Government's insistence on septic systems is what this lawsuit is all



about. And let us assume that any future mulch basin systems would be installed only after Plaintiffs cooperate with procedural and technical steps to which they say they are agreeable: Use of a larger capacity design; pre-construction soil analysis to determine whether the bottom of the system has three feet of separation from redoximorphic features and bedrock; and Government inspections of the systems before, during, and after construction to ensure the systems have gone in according to plan. Setting aside for present purposes these more peripheral issues, let us address the central question: Is the mulch basin system an alternative that would accomplish the Government's compelling interest of ensuring public health and environmental safety?

The answer to that question is: **No**. Based on my consideration of the entire record, I find that the Government's compelling state interests cannot be achieved by less religiously burdensome means.

The finding with which I begin my analysis is that untreated household gray water presents a serious risk to public health via disease-causing viruses and bacteria, and endangers the environment with nitrogen and phosphorous. I conclude that the idea that gray water poses only a "very small risk" is erroneous. The gray water septic system required by the Government reliably and effectively treats household gray water over the long term with minimal maintenance, ensuring that contaminants and disease pathogens do not come into contact with people or enter the surface or ground waters untreated; and that problematic nutrients are not released untreated into the environment. The evidence convinces me that the mulch basin gray water system does *not* provide that same protection.

For more than 20 years Dr. Sara Heger has been a research engineer at the University of Minnesota Water Resources Center specializing in septic system research and education. Her

doctorate is in water resource science. She works in the university's Onsite Sewage Treatment Program. Dr. Heger persuasively testified to several problems with mulch basin systems and their feasibility in Fillmore County.

First, Dr. Heger testified to what is, in her opinion, the "biggest problem": It is questionable whether one could even find sites on the Plaintiffs' farms in Fillmore County that would provide three feet of separation from the perched water table and bedrock, beneath a two to four foot-deep mulch basin. The Court asked Dr. Heger a hypothetical question about the possibility of achieving the Government's public health and environmental goals using a mulch basin system, and the question required her to accept the premise that "we've got the three feet" of separation. Dr. Heger disputed the plausibility of that assumption, testifying as follows: "I actually think you're expecting a lot, because a lot of the soil conditions around here do not allow for a system in-ground with three foot of separation around them. So I think you're dreaming a dream that we -- that doesn't exist. And I can't say that a hundred percent, but that soil condition is very difficult to find." If one is convinced, as I am, that three feet of dry oxygenated soil is required beneath the system-soil interface, sites that would satisfy that requirement may simply not be available to the Plaintiffs, regardless of their willingness to otherwise comply with the Government's requirements.

Second, Dr. Heger testified that woodchip mulch would quickly saturate, break down, and plug up with solids: "It would seal up relatively quickly across the bottom." She testified that the mulch would "gum up" with solids, and "those solids are also going to travel to the interface where the sewage is going to the soil, and they will cause it to plug up."

- Q. And when it seals up, it backs up.  
A. Yep.  
Q. And it stops performing its job.  
A. Yes.

- Q. And the answer to that is frequent changing the mulch.  
A. Relocating.  
Q. Oh. Okay.  
A. It's not changing the mulch.  
Q. All right.  
A. If the soil plugs up, you'll have to move to another location unless you take that soil off, and then there's the risk of smearing and compacting that soil. When you do that, it may not take water as well again.

Dr. Heger does not believe that woodchips would adequately spread the waste water over the soil interface to get the unsaturated flow necessary for effective treatment. She also testified that because woodchips are organic, they break down and create their own oxygen demand, competing for the oxygen necessary for aerobic waste water treatment. Minnesota prohibits use of biodegradable substances such as woodchips as distribution media in waste water treatment systems because of the problems the decomposition of these materials creates. The evidence convinces me that that prohibition makes sense. I am persuaded by the Government's evidence that woodchip mulch is not suitable for this purpose.

But assuming sites satisfying the three feet of separation requirement *are* available on Plaintiffs' farms; and earthen basins dug at those locations are filled with biodegradable woodchips; could such a system provide ground water treatment that protects human health and the environment? Dr. Heger testified that this might be theoretically possible. But the maintenance required to keep such a system properly operating would be so burdensome as to render it unfeasible.

Ms. Allen had expressed the viewpoint that the twice-yearly maintenance required by mulch basins -- shoveling wet, dirty, decomposing mulch out of the basin, hauling it away, and replacing it with fresh mulch -- is not a big job. But in Dr. Heger's opinion, this maintenance requirement makes the mulch basin concept unworkably labor intensive. As Dr. Heger testified,

"Someone is going to need to do a very high level of maintenance."<sup>29</sup> I find Dr. Heger's opinion persuasive.

Dr. Heger testified that "we design systems here in Minnesota to have very little maintenance and to last with a design life of 25-plus years." The idea is not merely to afford Minnesota homeowners greater leisure time. This emphasis on maintenance-free system longevity is intended "to minimize the risk to public health and the environment in the...most long term way." Dr. Heger testified: "So it gets down to risk. That a system that needs this high a level of maintenance has a very high level -- has a much higher level of risk." In her opinion, to remain serviceable, the mulch basin system would require such "a very high level of maintenance and oversight" that the system is rendered unworkable. Such a system "would not last long term," according to Dr. Heger, and therefore would not provide reliable, long term protection of public health and the environment. Dr. Heger summed up her opinion on this point with: "I don't think it's practical."<sup>30</sup>

Ms. Allen, on the other hand, is confident that properly sized mulch basins would provide effective treatment of Amish household gray water in Fillmore County. I find Ms. Allen's opinions less persuasive and I give them less weight for several reasons.

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<sup>29</sup> Amish people are accustomed to taking more time and expending more physical labor than are their non-Amish neighbors, to accomplish the same result. A non-Amish farmer can turn a tractor key and plow in an hour more acres than an Amishman can plow in a week with his team of horses. A task that is seen as prohibitively labor intensive in the "English" world might be viewed differently by the Amish.

But there is no evidence that Amish farmers have any more *time* on their hands than do non-Amish farmers. And as Dr. Heger testified, "I have yet to find a farmer who has time... They're the hardest working people I know." Her point is that farmers are unlikely to have available time to devote to the extraordinary monitoring and upkeep requirements that would come with biannually maintaining mulch basins totaling 100 square feet in area.

<sup>30</sup> Dr. Heger stated the opinion that *if* such a high-maintenance gray water treatment system were allowed, the greater risk it poses would require that it be "check[ed] on frequently" to assure that it was continuing to operate properly. "We have determined that when there is a higher level of risk, we are going to then require something called an operating permit, so that's a way for the regulatory body to assure that that system is protecting public health and the environment."

The Plaintiffs have expressed willingness to cooperate with regulatory steps connected with the *installation* of mulch basin systems. But they have *not* indicated a similar willingness to cooperate with "a very high level of [continuing] oversight" of the operation of their systems, once constructed.

First, the credibility of Ms. Allen's opinions was undermined by the haziness of her understanding of the important "three feet of separation" concept. To be sure, Ms. Allen knew that three to five feet of separation between the bottom of the system and the "ground water table" is necessary. But she did not know the significance of redoximorphic features (she was not able to define that term) as the marker of the depth of the "standing" or "perched" water table relevant here. She opined that the level of the "ground water table" can be easily determined by simply "digging a hole to show that there is no water in the hole." She testified that no water at the bottom of a three-foot hole (dug beneath the basin) means "you have more than three feet separation." But Dr. Heger convincingly testified that the perched water table "fluctuates throughout the year," meaning that Ms. Allen's method of determining its location by digging a hole would be unreliable.

As an alternative to that method of identifying the location of the ground water table, Ms. Allen testified that she had consulted the Minnesota Well Index for information regarding the depth at which drillers had first encountered water in drilling nearby wells. She testified that she found most of the "ground water table depths" in the "really close geographic area [were] over 100 feet, most were between 100 and 200, some were 300 feet." She testified: "From looking at that I would assume that the ground water in that area is going to be much deeper than five feet needed."

The problem with this testimony is that Ms. Allen was confusing the shallower "standing" or "perched" water table -- the one that is important here, that is identified by redoximorphic features, and that can often be just two or three feet below the surface in Fillmore County -- with the deep aquifers that are reported in the Minnesota Well Index. Dr. Heger and MPCA soil scientist Brandon Montgomery testified, and I am persuaded, that the Minnesota

Well Index provides no information useable in determining whether there is three feet of separation beneath a waste water treatment system.<sup>31</sup>

The three-feet-of-separation requirement is central to an accurate assessment of the feasibility of the treatment methods at issue here; and Ms. Allen's understanding of what she termed "ground water table stuff" was revealed to be rudimentary and flawed. I do not imply that Ms. Allen made any misleading claim that she was a "ground water expert."<sup>32</sup> To the contrary, she specifically disclaimed such qualifications. I simply conclude that the confidence one might otherwise place in Ms. Allen's opinions regarding the serviceability of mulch basin gray water systems in Fillmore County is undercut by her lack of expertise on a subject crucial to the analysis.

The weight I give Ms. Allen's opinions is also influenced by her view that the risk gray water poses to public health is really very minimal. This idea was clearly on display when she testified that gray water is "probably not hurting anybody if they're not -- if it's not running into their neighbor's yard or somewhere else. It's most likely not causing a problem as long as they maintained the setbacks..."

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<sup>31</sup> Mr. Montgomery testified that the Minnesota Hydrogeology Atlas and Well Index "traditionally highlight or locate where ground water is found in what we call a water table, and when we say "water table" we'd be specifically talking about like a standing water table that you draw water -- well water from. That's different than the ground water that we're defining and characterizing in the SSTS program where we're highlighting those perched water tables, which tend to be a lot higher in the soil profile than the water tables that you would find in the Well Index or the Hydrogeology Atlas...So we would determine where the water table is located or ground water for an SSTS by doing the actual soil boring on site where you're looking to place the system, and then that is determined specifically by using the presence of redoximorphic features in the soil."

<sup>32</sup> Ms. Allen expressed an understanding that it is best to "keep the gray water as high up in the soil as possible because it is more biologically active," and that at a certain depth there are no longer "helpful bacteria." But asked about the significance of the "saturated soil" level to the efficacy of treatment, Ms. Allen acknowledged that she was "not equipped to answer questions, really detailed questions, about ground water table." Asked if she understood that the system needed to be three feet above the "level where you no longer have bacteria...for it to be an effective treatment system...and if you aren't, that then treatment is ineffective?" She answered: "I don't know. I don't know the answer to that." Cross examined about her understanding of Minnesota's definition of "ground water," and its relationship to the "water table," Ms. Allen indicated "that you might want to ask a different witness because I am not a ground water expert. I want to defer any ground water table questions...to the other expert that's coming up."

The notion that untreated gray water presents no real danger unless it is running onto someone else's property or into a river or stream was again evident when she described the reduced risk posed by gray water in rural settings:

I think the concerns around gray water really diminish when you get on to -- in a rural situation as long as you're not too close to a waterway because you don't have the neighbors, you don't have the impact of other people. You have the space. You don't have problems with meeting these setbacks typically.

Indeed, it seems to be Ms. Allen's opinion that the public health risk is so small that how one disposes of untreated gray water ought to be, at least in some circumstances, a matter of informed personal choice. Asked about the practice of simply throwing household water directly onto the ground, something that has occurred in Amish households in the past, Ms. Allen first pointed out that this was "technically" not "gray water," because it had "not gone down a drain." Asked if it would be appropriate, from a public health standpoint, to "just take all your water and...throw it out in a pail on the yard," Ms. Allen responded: "Well, I would think about what are the risks, if it's, you know, my gray water that I just made, I'm not going to get myself sick from anything. So if it's my gray water and I choose to dump it on my own yard, that would be my choice. And if it's -- you know, if my own yard is not by a creek or a waterway, I'm not potentially risking health to the broader environment. So as long as I'm aware of what I could potentially be doing that's risky and I still want to do it, then there is, in my opinion, nothing unsafe about the practice."

As I have stated above, I am persuaded by the Government's evidence that untreated gray water poses a significant public health risk. I think Ms. Allen is wrong in describing that risk as negligible. But the fact that she sees the risk as minimal helps explain her view that a do-it-yourself system is adequate to deal with it. The "very simple" system matches the "very small" risk.



I think there is also reason to question the overall objectivity -- and thus the accuracy and reliability, though certainly not the sincerity -- of the opinions Ms. Allen has provided. She is a proponent of mulch basin systems. All of us tend to underestimate the deficiencies and magnify the virtues of things we believe in. I detect some of that in Ms. Allen's opinions. She shrugs off objections to mulch basin systems as based on inexperience and a lack of knowledge.<sup>33</sup> Close governmental regulation and monitoring of mulch basin systems is unnecessary in her opinion; "honor system"-type self-regulation is sufficient. That Amish gray water contains kitchen and diaper water that California prohibits in its gray water systems will be no problem, in Ms. Allen's view, in Minnesota. But what about the fact that Plaintiffs' mulch basin systems all failed in their first year of operation? Just make them bigger and they will be fine, Ms. Allen assures us.<sup>34</sup>

Ms. Allen's opinions might be summed up as follows: She thinks that the risk posed by gray water to human health is overstated by inexperienced people like Dr. Heger; and that in the thirty states that do *not* permit mulch basin systems, gray water treatment is misguidedly over-regulated, over-engineered and overpriced. I am not convinced by these views and find the Government's evidence more persuasive on all of these points.

Ms. Allen testified that mulch basin gray water treatment systems are permitted in twenty states, but she acknowledged that most Upper Midwest states do not allow them. The climates of Arizona and California are so dissimilar in average temperature and precipitation to Minnesota's, that the Court can take little guidance from the experience of those states. The evidence

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<sup>33</sup> Ms. Allen's critique of Minnesota's rejection of mulch basins as a gray water treatment mechanism was as follows: "Some states don't have a lot of experience and so their rules don't really match up with what is protective of health and safety and what's reasonable for people to comply with." These inexperienced states had "create[d] a modified septic rule" because they have not "br[ought] in gray water experts and people using gray water."

<sup>34</sup> Perhaps it might be argued that Dr. Heger is similarly an advocate of the septic system model. She certainly believes, and strongly so, that septic systems are the only safe, practical, long-term option for gray water treatment in Minnesota. But Dr. Heger is a researcher at a major university, whose opinions, I am satisfied, have a firmer grounding in science and academic rigor.

indicated that mulch gray water systems are also permitted in Montana and Wyoming; but little or no evidence was presented about the extent of use, regulation, and performance of mulch systems in those states. On this record, mulch systems in Montana and Wyoming provide the court no direction.<sup>35</sup> In a water-stressed part of the country, with a warmer climate than Minnesota's and less annual rainfall to saturate mulch basins, with a topography not characterized by fissured limestone, allowing homeowners to use bath and laundry water to irrigate their trees and bushes with minimally regulated mulch basins may make sense. But the evidence does not convince me that such systems would be as workable in Minnesota as Ms. Allen contends.

Had Plaintiffs' own experimental mulch basin systems proved successful, they might have been strong evidence of a practical, less religiously intrusive alternative. But they did not work, and instead illustrate the Government's objections to mulch basin systems. The Court is presented, as an alternative, with a purely hypothetical mulch basin system, an unproven quantity the workability of which is at best speculative, and at worst a thrice-demonstrated failure.

This record contains no evidence of a single, properly working mulch basin system in Minnesota; or in any other northern tier state with polar vortex temperatures. I find that the only practical and proven means of accomplishing household gray water treatment on the farms of Fillmore County, including the Amish farms, is a septic system of the type required by Fillmore County and MPCA. The Government's evidence convinces me that the proposed mulch systems, even with the capacity expansion and siting improvements to which the Plaintiffs are agreeable, would not accomplish the Government's compelling public health and environmental safety purposes.

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<sup>35</sup> I note from a review of Exhibit 30 that some type of mulch basin system may be permitted in Wisconsin. However, no information about that neighboring state's experience with these systems was offered at trial.

### Conclusion

In *Yoder* the United States Supreme Court said: "A way of life that is odd or even erratic but *interferes with no rights or interests of others* is not to be condemned because it is different." *Yoder* at 223-24 (italics added). I would never characterize Amish beliefs and the way of life guided by those beliefs as either odd or erratic. But to the degree their way of life would introduce untreated gray water into the soil and waters of Fillmore County, it interferes with the rights and interests of others. This is a situation in which the Amish cannot, despite their most sincere efforts, be separate from the world. All water is connected, and all of us, Amish and English alike, drink from the same aquifers. Because I find that the Government's public health and environmental safety interests cannot be accomplished by a less religiously intrusive alternative means, I deny Plaintiffs the relief they seek under the Minnesota Constitution and RLUIPA.

J.F.C.

Assistance with research and preparation provided by Ingrid Bergstrom, J.D.

# **POP Property Tank Removal and Inspection Agreement**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between Fillmore County, a governmental subdivision organized and existing under the laws of the State of Minnesota (hereinafter “County”) and the City of Preston, a Minnesota municipal corporation (hereinafter “City”).

WHEREAS, the County is in possession of tax forfeited real property located at the intersection of St. Paul Street and Mill Street in the City of Preston, Fillmore County, Minnesota. Said tax forfeit property is the former business location of Preston Oil Products (Hereinafter “POP Property”) having tax ID # 17.0141.000 and legally described as:

Lots 4 and 5 of Block 2, Original Plat to the City of Preston, Fillmore County, Minnesota

WHEREAS, on one or more occasions a gas station and/or service station was operated on the POP Property and it is likely that one or more petroleum tanks were/are located on the property. It would be beneficial to remove any petroleum, kerosene, or other tanks and inspect the property to determine whether there is any contamination from those tanks or arising from operation of gas stations and/or service stations on the property.

WHEREAS, City requested pursuant to a letter dated June 20, 2018, that County withhold the tax forfeited POP Property from sale to the public for a period of 6 months in accordance with Minn. Stat. Sec. 262.01 Subd. 1a. City requested the opportunity to remove the petroleum tanks and inspect the property for contamination in order to determine if City could purchase the property for market value pursuant to Minn. Stat. Sec. 262.01 Subd. 1a(b) or for less than market value as a blighted property pursuant to Minn. Stat. Sec. 262.01 Subd. 1a(d).

WHEREAS, County and City would like to enter into an agreement whereby City would pay all expenses to remove any tanks on the property and inspect the premises for contamination in contemplation of a possible sale of the POP Property to City. City would be responsible for all injuries and damages related to removal and inspection, would indemnify and hold harmless County for all activities related to removal and inspection, and would complete removal and inspection within 6 months of the date of this agreement.

NOW THEREFORE, for the sum of One Dollar (\$1) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Terms:** City shall remove all petroleum tanks, kerosene tanks, or other tanks from the POP Property at City’s expenses. “Removal” means that at a minimum the City shall excavate and dig up any underground tanks, cut off and plug any pipes or outlets to and from the tanks to avoid leaking or spillage, remove the tank from the POP Property, and

properly dispose of the tank in accordance with Minnesota law and MPCA rules. Similarly, City shall at its own expense inspect and/or test the POP Property to determine whether there is any contamination or harmful materials on the property. County shall have no responsibility to pay any costs for tank removal or inspection and testing. City shall remove the tanks and complete inspection and testing in a professional and workmanlike manner. City shall provide County with copies of any reports or information regarding tank removal, testing results, and inspection procedures.

2. **Timeline for Removal and Inspection:** City shall complete the removal of the tanks, complete inspection and testing, and along with all related activities within 6 months from the date of this agreement and not later than October 30, 2019.
3. **Indemnification and Hold Harmless:** The City shall indemnify, defend, and hold the County harmless from and against any and all liability, loss, damage, claim or act based upon or arising out of injury to persons (including, but not limited to, death) or damage to property caused by or sustained in connection with the negligent, willful or other acts of the City, or the City's removal of the tanks and inspection or testing.
4. **Enforcement:** If any action at law or in equity shall be brought in court for or on account of any breach or to enforce or to interpret any of the covenants, terms or conditions of this lease, or for the recovery of the possession of the premises, the prevailing party shall be entitled to recover from the other party as part of its costs, its reasonable attorney's fees, the amount of which shall be fixed by the Court and shall be made part of any judgement or decree rendered.
5. **Maintenance of Property:** City shall provide lawn mowing, snow removal, and sidewalk care and maintenance to the POP Property commencing on the date this agreement is signed and continuing until termination of this agreement. All maintenance services shall be provided in a workmanlike and professional manner. County shall provide all other maintenance on the POP Property.
6. **Petroleum Products or Hazardous Materials Spillage:** City shall be responsible for cleaning up any petroleum products, hazardous materials or potentially hazardous materials that are spilled or leaked as a result of removing any tanks or as a result of testing and inspection of the POP Property.
7. **Liability and Workers Compensation Insurance:** At all times during the term of this Agreement, City shall have and keep in force Commercial General Liability, Professional Liability, Worker's Compensation and Employer's Liability Coverage. The Commercial General Liability and Professional Liability Insurance Coverage shall have liability limits of at least \$1,000,000 per claim. County shall be named as an additional insured on all policies covering liability that may arise out of tank removal and inspection/testing of the POP Property pursuant to this Agreement. Proof of both liability and workers compensation will be provided to the County Coordinator, Bobbie Vickerman.
8. **Waiver:** City knows, understands, and acknowledges that there are risks and hazards

associated with removal of underground petroleum tanks or inspecting and testing property which may have petroleum related contamination. City hereby waives any and all claims against County, its employees, and agents arising out of or in association with the tank removal and testing or inspection of the POP Property. This waiver does not waive liability for any injuries resulting from the willful, wanton or intentional misconduct by County, its employees or agents.

8. **Damages:** City shall be responsible for any and all injuries or physical loss or damage property arising from activities related to or arising from tank removal or inspection.
9. **Entire Agreement:** It is understood and agreed that the entire agreement between the parties is contained herein and that this agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items referred to in this agreement are incorporated in or attached and are deemed to be part of this agreement. Similarly, any material alterations, variations, modifications or waivers of provisions of this agreement shall be valid only when they have been reduced to writing as an amendment and signed by the parties.
10. **Persons Bound:** This agreement shall bind the parties, their heirs, personal representatives, successors and assigns.
11. **Termination:** This agreement shall terminate 6 months after the date this agreement is signed but no later than October 30, 2019, whichever is earlier. At that time, the parties may discuss whether the City wishes to enter into a separate agreement to purchase the property, whether the County wishes to sell the property at a public auction or to a third party, whether further cleanup or mitigation is warranted, or such other options as the County parties deem appropriate.
12. **Minnesota Law to Govern:** This Contract shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota. All proceedings related to this Contract shall be venued in Fillmore County, State of Minnesota.
13. **General:** Contractor shall abide by all Federal, State or local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which Contractor is responsible.
14. **Contract Rights/Remedies:**
  - a. **Rights Cumulative.** All remedies available to either party under the terms of this contract or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
  - b. **Waiver.** Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be construed to be

modification of the terms of this Contract unless stated to be such in writing and signed by authorized representatives of the Owner and Contractor.

(Seal)

**FILLMORE COUNTY**

By: \_\_\_\_\_  
Fillmore County Board Chairman

By: \_\_\_\_\_  
Fillmore County Auditor/Treasurer

**CITY OF PRESTON**

By: \_\_\_\_\_  
Kurt Reicks, Mayor

By: \_\_\_\_\_  
Joe Hoffman, Preston City Clerk



4/5 Year Budget vs Cash Flow Analysis for Fillmore County SI

ID	Use	Model Year	Odometer	Annual mileage	Model	Replace with model	Budget Needed with AME	Current Budget	Avg Maintenance
2302	admin	2013	85,000	18,889	Durango	Durango SXT	\$ 30,000.00	\$ 30,000.00	
2305	Patrol	2014	97000	27,714	Durango	Durango Pursuit	\$ 45,400.00	\$ 45,400.00	
17							\$ 75,400.00	\$ 75,400.00	\$ 24,300.00
2301	admin	2015	48000	19,200	Impala	Durango SXT	\$ 30,000.00		
2307	Patrol ERV	2016	62100	41,400	Impala	Durango Pursuit	\$ 45,400.00	\$ 45,400.00	
2308	Patrol ERV	2016	59000	39,333	Durango	Durango Pursuit	\$ 45,400.00		
2313	Patrol ERV	2014	102000	29,143	Impala	Durango Pursuit	\$ 45,400.00	\$ 45,400.00	
1505	transport	2013	77,500	17,222	Caravan	Caravan	\$ 30,000.00		
Totals							\$ 196,200.00	\$ 90,800.00	\$ 24,300.00
2301	admin	2016	74000	37,000	Durango	Durango SXT	\$ 45,400.00	\$ 45,400.00	
2303	Patrol	2016	79,500	53,000	Ram	Ram	\$ 45,400.00	\$ 45,400.00	
Totals							\$ 90,800.00	\$ 90,800.00	\$ 24,300.00
2315	Patrol ERV	2018	13500	25,000	Ford SUV	Durango Pursuit	\$ 45,400.00	\$ 45,400.00	
2317	Patrol ERV	2018	15300	28,000	Ford SUV	Durango Pursuit	\$ 45,400.00	\$ 45,400.00	
1510	Transport	2016	27500	18,333	Caravan	Caravan	\$ 30,000.00		
Totals							\$ 120,800.00	\$ 90,800.00	\$ 24,300.00

2304	Patrol ERV	2019	1901	25,000	Durango	Durango Pursuit	\$ 45,400.00	\$ 45,400.00	
2306	Admin	2018	4377	28,000	Equinox	Durango SXT	\$ 30,000.00		
2320	Patrol ERV	2019	100	25,000	Ford SUV	Durango Pursuit	\$ 45,400.00	\$ 45,400.00	
Totals				28,816			\$ 120,800.00	\$ 90,800.00	\$ 24,300.00

Does not include aftermarket customized options

\*\*Maintenance and fuel savings not illustrated

\*\*\*Safety & reliability\*\*\*

\*AME for ERV patrol is \$16900 non ERV is \$5000 estimated

	Need 4/5 year	7.5 yr	Maintenance
Budget totals	\$ 604,000.00	\$ 438,600.00	\$ 121,500.00
Estimated resale values	\$ 111,500.00	\$ 10,000.00	
Total Budget	\$ 584,300.00	\$ 428,600.00	\$ 550,100.00
Savings with Enterprise based on Budgets	\$ 142,660.00	\$ 108,460.00	

**Depreciation or early term maybe needed depending on actual mileage driven	** Avg Mileage at term	115263	216117
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heriff

Enterprise budget plan with AME	Avg Maintenance	ANNUAL CASH FLOW SAVINGS	Replace ment Year	Resale estimate at Replacement Year	Term		total of lease payments annually	estimated lease payments	
			2019	\$ 5,000.00	60	2019	\$ 12,360.00	\$ 430	
			2019	\$ 4,500.00	48		\$ 12,360.00	\$ 600	
\$ 24,760.00	\$ 22,980.00	\$ 49,960.00		\$ 9,500.00				\$ 1,030	\$ 12,360.00
			2020	\$ 5,000.00	60	2019	\$ 12,360.00	\$ 430	
			2020	\$ 8,000.00	48	2020	\$ 31,920.00	\$ 600	
			2020	\$ 8,000.00	48		\$ 44,280.00	\$ 600	
			2020	\$ 3,000.00	48			\$ 600	
			2020	\$ 4,000.00	60			\$ 430	
\$ 76,980.00	\$ 19,680.00	\$ 16,440.00		\$ 28,000.00				\$ 2,660	\$ 31,920.00
			2021	\$ 8,000.00	48	2019	\$ 12,360.00	\$ 430	
			2021	\$ 14,000.00	48	2020	\$ 31,920.00	\$ 600	
						2021	\$ 12,360.00	\$ 1,030	\$ 12,360.00
							\$ 56,640.00		
\$ 68,440.00	\$ 18,360.00	\$ 26,300.00		\$ 22,000.00					
			2022	\$ 8,500.00	48	2019	\$ 12,360.00	\$ 600	
			2022	\$ 8,500.00	48	2020	\$ 31,920.00	\$ 600	
			2022	\$ 7,500.00	60	2021	\$ 12,360.00	\$ 430	
\$ 90,500.00	\$ 16,380.00	\$ 6,220.00		\$ 24,500.00		2022	\$ 19,560.00	\$ 1,630	\$ 19,560

			2023	\$ 9,500.00
			2023	\$ 8,500.00
			2023	\$ 9,500.00
\$ 95,160.00	\$ 14,400.00	\$ 3,540.00		\$ 27,500.00
		\$ 102,460.00		\$ 111,500.00
Enterprise with resale	Maintenance			
\$ 355,840.00	\$ 91,800.00			Total of annual lease payments
\$ 6,000.00				1st wave of vehicles sold
\$ 349,840.00	\$ 441,640.00			Trade equity
				Total cash out lay

		\$ 76,200.00		
48	2019	\$ 12,360.00	\$ 600	
60	2020	\$ 31,920.00	\$ 430	
48	2021	\$ 12,360.00	\$ 600	
	2022	\$ 19,560.00	\$ 1,630	\$ 19,560
	2023	\$ 19,560.00		
		\$ 95,760.00	Less resale	
		\$ 285,240.00		
		\$ 6,000		
		\$ 111,500.00		
		\$ 167,740.00		

# REQUEST FOR COUNTY BOARD ACTION

Agenda Date: 5/7/2019

Amount of time requested (minutes): 10 minutes for discussion

Department: Highway and Airport

Requested By: Mr. Gregg

Presented By: Mr. Gregg

State item(s) of business. Please provide relevant material for documentation. Outline in detail any action requested of the County Board.

## **Highway Department**

1. Request the Fillmore Board of Commissioners reject all bids for the reconstruction of Grosbeak Road from TH16 to the Lanesboro Fish Hatchery, Project SAP 23-600-006.
2. Consider awarding the 2019 Rock Contracts.
3. Consider awarding the Project to replacement Bridge No. 449 on CSAH 12, Project number SP 23-612-041.

## **Airport Department**

Check e-mail for supporting documentation. **Bid results were send to the coordinator's by Trista Ruen.**

All requests for County Board agenda time must be received in the office of the County Coordinator by **12:00 p.m. (noon) on the Thursday prior to the scheduled meeting.**

**CP 23-19-02**  
**AGGREGATE ROCK BIDS**  
**2-May-19**

					Bruening Rock Products PO Box 127 Decorah, IA 52101		Milestone Materials PO Box 507 Onalaska, WI 54650	
QTY					Unit Price	Amount	Unit Price	Amount
<b>CR 102</b>	CSAH 5 to CR 101 Chatfield/Jordan Twps <b>4.6 miles</b>	4,347.0 Tons	MATERIAL & HAUL		\$ 10.1590	\$ 44,161.17	\$ 10.59	\$ 46,034.73
<b>CR 112 *</b>	CSAH 26 to CSAH 1 Preble Twp <b>2.0 miles</b>	1,400.0 Tons	MATERIAL & HAUL		\$ 9.3190	\$ 13,046.60	\$ 12.68	\$ 17,752.00
<b>CR 117</b>	TH 80 to Lantern Rd Fillmore/Fountain Twps <b>3.3 miles</b>	3,118.5 Tons	MATERIAL & HAUL		\$ 8.9390	\$ 27,876.27	\$ 10.17	\$ 31,715.15
<b>CSAH 7</b>	TH 80 to CSAH 5 Fillmore/Fountain/ Chatfield Twps <b>6.9 miles</b>	6,520.5 Tons	MATERIAL & HAUL		\$ 10.1590	\$ 66,241.76	\$ 10.17	\$ 66,313.49
<b>CSAH 11</b>	CR 118 to TH 52 Carimona/ Fountain Twps <b>5.2 miles</b>	4,914.0 Tons	MATERIAL & HAUL		\$ 9.3190	\$ 45,793.57	\$ 9.13	\$ 44,864.82
<b>CSAH 15</b>	CSAH 15/22 to CSAH 44 Pilot Mound Twp <b>6.4 miles</b>	6,048.0 Tons	MATERIAL & HAUL		\$ 9.3390	\$ 56,482.27	\$ 11.01	\$ 66,588.48
<b>CSAH 22</b>	CSAH 15 to CSAH 17 Carimona/Preston Twps <b>2.1 miles</b>	1,984.5 Tons	MATERIAL & HAUL		\$ 9.3390	\$ 18,533.25	\$ 10.17	\$ 20,182.37
<b>CSAH 29 *</b>	Blktop CSAH 29 to Houston Co Newburg Twp <b>2.1 miles</b>	1,470.0 Tons	MATERIAL & HAUL		\$ 8.9390	\$ 13,140.33	\$ 12.68	\$ 18,639.60
<b>CSAH 30</b>	CSAH 44 to CSAH 15 York/Bristol Twps <b>6.8 miles</b>	6,426.0 Tons	MATERIAL & HAUL		\$ 9.3390	\$ 60,012.41	\$ 10.17	\$ 65,352.42

<b>Stockpile rock by Contractor (Class II Quarry Rock)</b>	\$ 7.85		\$ 7.00	
<b>Additional charge for Contractor loading County trucks from stockpile (on a per ton basis)</b>	\$ 0.20		\$ 0.50	

\*Roads with (\*) are calculated on 700 ton per mile

# REQUEST FOR COUNTY BOARD ACTION

Agenda Date: 5/7/2019

Amount of time requested (minutes):

15 Minutes

Dept.: Coordinator

Prepared By: Kristina Kohn

State item(s) of business with brief analysis. If requesting multiple items, please number each item for clarity. Provide relevant material(s) for documentation. Please note on each item if documentation is needed and attached.

Consent Agenda:

Documentation  
(Yes/No):

Regular Agenda:

Documentation  
(Yes/No):

1. Voluntary resignation of Danea Murphy, GIS Coordinator, effective 5/22/19
  - a. Following 13 years' service

No

All requests for County Board agenda must be in the Coordinator's office **No later than noon Thursday prior to the Board date.** Items received after this time **will** not be placed on the Board agenda. All requests should be sent to: [bvickerman@co.fillmore.mn.us](mailto:bvickerman@co.fillmore.mn.us); [ainglett@co.fillmore.mn.us](mailto:ainglett@co.fillmore.mn.us); and [kruesink@co.fillmore.mn.us](mailto:kruesink@co.fillmore.mn.us)



Coordinator – 5/7/2019 Continued....

**4. Discussion with possible action regarding Canvassing Board for Primary and General Election:**

Auditor/Treasurer Jones has set up the Canvassing dates for the Primary as May 16<sup>th</sup> at 9am and Special Election as August 15<sup>th</sup> at 9am, would need two board members to serve on Canvassing Board for each date, can be the same ones.

**5. Update with possible action regarding Taxpayer Services:**

The Zoning/Feedlot area has been coming together well at this point only using Sentence to Serve to remove counter and push it back and painting. Will need the tiling to be completed by a contractor which is about 10 pieces. The location of desks has flipped around with the A/T and Land Records area.

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# FILLMORE COUNTY

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COURTHOUSE • P.O. BOX 466 • PRESTON, MINNESOTA 55965  
BOBBIE VICKERMAN • COUNTY COORDINATOR • (507) 765-4566  
Fax: (507) 765-2803

April 30, 2019

To: Mark Vagts  
Property Tax Division  
Minnesota Department of Revenue

From: Bobbie Vickerman  
Coordinator

RE: Extension and Assessor Appointment request

Dear Mr. Vagts;

I am writing this letter on behalf of Fillmore County requesting an extension for our County Assessor designation of duties. We officially have a signed agreement with Cindy Blagsvedt, our former Assessor, to work 4-16 hours per week and be appointed at the County Board meeting on May 7<sup>th</sup> as the Fillmore County Assessor for not to exceed 6 months. She began work on April 30<sup>th</sup> and we have in a contract to have her working through October 31<sup>st</sup>. As you are aware, Cindy Blagsvedt has her AMA and SAMA.

During the beginning part of this timeframe we expect and will encourage our current Land Records Director to finish the requirements to fulfill his AMA certification. If he is unable to fulfill the requirements within the next few months, we will work towards hiring the position out for a qualified AMA certified Assessor, which is why we sought a six month contract with Cindy Blagsvedt.

We appreciate your consideration for an extension and we will work to ensure that Fillmore County has a full-time AMA certified Assessor in place within the next 6 months.

Please let me know if you need any further information from Fillmore County and we appreciate the support and expertise you have provided us thus far.

Sincerely,



Bobbie Vickerman  
Coordinator/Clerk

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## BOARD OF COMMISSIONERS

*First District*  
Mitch Lentz

*Second District*  
Randy Dahl

*Third District*  
Vacant

*Fourth District*  
Duane Bakke

*Fifth District*  
Marc Prestby

• AN EQUAL OPPORTUNITY EMPLOYER •

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## **CONTRACT FOR PROFESSIONAL SERVICES**

This Contract for Professional Services is made and entered into this 30<sup>th</sup> day of April, 2019, by and between Cynthia Blagsvedt; 20195 Irish Ridge Road, Spring Grove, MN 55974 (hereinafter "Blagsvedt") and Fillmore County, a governmental subdivision organized and existing under the laws of the State of Minnesota, (hereinafter "County").

**1. EMPLOYMENT CLAUSE:**

County hereby retains and hires Blagsvedt to provide independent contractor services as Fillmore County Assessor. The services provided by Blagsvedt as Fillmore County Assessor shall include those duties outlined in Minn. Stat. Sec. 273.061 Subd. 8, Subd. 8a., and Subd. 9.

**2. COMPENSATION AND PAYMENT:**

The County shall compensate and pay Blagsvedt one hundred dollars (\$100.00) per hour for county assessor services as an independent contractor.

**3. SCHEDULE:**

Blagsvedt shall provide assessor services at least four (4) hours per week and a maximum of sixteen (16) hours per week.

**4. EXTRA SERVICES:**

Any additional services over 16 hours per week shall be paid as agreed upon between the parties and as outlined in addendum to this contract.

**5. TERM OF CONTRACT:**

This contract for professional services shall be for a period not to exceed six (6) months and shall commence April 30, 2019 and shall terminate no later than October 31, 2019. The term may be extended by mutual agreement of the parties as set forth in a new contract or addendum to this contract.

**6. TERMINATION OF CONTRACT:**

Either party hereto may terminate this contract at any time for cause or convenience, by giving the other party at least 30 days notice in writing. If the contract is terminated, Blagsvedt will be paid for assessor services provided up to the termination date as provided herein.

**7. INSURANCE:**

For the purpose of this contract, Blagsvedt shall be deemed an independent contractor, and not an employee of County. Blagsvedt must provide an original Certificate of Insurance as evidence of required coverages. A person authorized by the insurer to bind coverage should sign the Certificate. The Certificate should identify the County as an additional insured for relevant coverages, except workers' compensation.

**8. HOLD HARMLESS**

Blagsvedt agrees to defend, indemnify, and hold County, its employees and officials harmless from any claims, demands, actions or causes of action, including reasonable attorney's fees and expenses arising out of any act or omission on the part of Blagsvedt in the performance of or with relation to any of the work or services to be performed or furnished by Blagsvedt under the agreement.

**9. MINNESOTA LAW TO GOVERN:** This Contract shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota. All proceedings related to this Contract shall be venued in Fillmore County, State of Minnesota.

**10. COMPLIANCE WITH LAWS:** Contractor shall abide by all Federal, State or local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which Contractor is responsible.

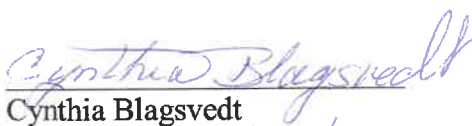
**11. CONTRACT RIGHTS/REMEDIES:**

- a. Rights Cumulative. All remedies available to either party under the terms of this contract or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- b. Waiver. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be construed to be modification of the terms of this Contract unless stated to be such in writing and signed by authorized representatives of the Owner and Contractor.

**12. MISCELLANEOUS PROVISIONS**

- A. This Contract has been entered into in the State of Minnesota and shall be interpreted in accordance with its laws.
- B. Each party executing this agreement does so by the authority granted to that party by the party being represented. Each signatory to this agreement has been legally authorized to sign this agreement and bind their respective party.
- C. Term of the contract will be from April 30, 2019 through October 31 2019, unless terminated earlier as per Subdivision 6 of this agreement.

In witness whereof, the parties herein have hereunto subscribed their names on the date first written above.

  
Cynthia Blagsvedt  
4/30/19

Fillmore County

By:  4/30/19  
Bobbie Vickerman, Coordinator/Clerk/Date