



DATE: December 2, 2014

TO: Board of Water and Soil Resources' Members, Advisors, and Staff

FROM: John Jaschke, Executive Director *John L. Jaschke*

SUBJECT: BWSR Board Meeting Notice – December 17, 2014

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, December 17, 2014, beginning at 9:00 a.m. The meeting will be held in the lower level Board Room at 520 Lafayette Road N., St. Paul. Parking is available in the lot directly in front of the building (see hooded parking area).

The following information pertains to agenda items:

COMMITTEE RECOMMENDATIONS

Water Management and Strategic Planning Committee

1. **Modification to the Local Water Plan Extensions Policy** - The Water Management and Strategic Planning Committee revisited the local water plan extensions policy on September 23, 2014, discussed the issues, and directed staff to modify the existing policy to broaden the applicability and expand the situations in which extensions will be supported. These modifications will be presented to the Committee on December 16; the revised policy recommendation will be presented to the Board on December 17, 2014. **DECISION ITEM**

Grants Program and Policy Committee

1. **Targeted Watershed Demonstration Program Funding Recommendations** – The Grants Program and Policy Committee met on November 24, 2014 to review the BWSR Senior Management Team’s proposed grant allocations for the Targeted Watershed Demonstration Program. The Grants Program and Policy Committee recommends approval of the grant allocations and authorizes staff to evaluate the availability of funds as part of the Clean Water Competitive Grants Allocation. **DECISION ITEM**

Wetland and Drainage Committee

1. **Wetland Conservation Act Federal Approvals Exemption** – The Wetland Conservation Act has included a Federal Approvals Exemption since enactment. The purpose of this Exemption is to reduce duplicative state-federal regulation of projects impacting wetlands. This Exemption has never been implemented, until now. The Board is being requested to approve the application of the Federal Approval Exemption to linear utility/pipeline projects. **DECISION ITEM**

NEW BUSINESS

1. **Durable & Targeted Ideas for Conservation Challenges in the Agricultural Regions of the Midwest and Minnesota** - Craig Cox, Senior Vice President, Environmental Working Group (EWG) – **INFORMATION/DISCUSSION ITEM**

If you have any questions regarding the agenda, please feel free to call me at 651-296-0878. The Board meeting will adjourn about noon. I look forward to seeing you on December 17th!

Bemidji	Brainerd	Detroit Lakes	Duluth	Mankato	Marshall	New Ulm	Rochester
403 Fourth Street NW Suite 200 Bemidji, MN 56601 (218) 755-2600	1601 Minnesota Drive Brainerd, MN 56401 (218) 828-2383	26624 N. Tower Road Detroit Lakes, MN 56501 (218) 846-8400	394 S. Lake Avenue Suite 403 Duluth, MN 55802 (218) 723-4752	12 Civic Center Plaza Suite 3000B Mankato, MN 56001 (507) 344-2821	1400 East Lyon Street Marshall, MN 56258 (507) 537-6060	261 Highway 15 South New Ulm, MN 56073 (507) 359-6074	3555 9 th Street NW Suite 350 Rochester, MN 55901 (507) 206-2889

Central Office / Metro Office 520 Lafayette Road North Saint Paul, MN 55155 Phone: (651) 296-3767 Fax: (651) 297-5615

BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD N.
LOWER LEVEL CONFERENCE ROOM
ST. PAUL, MINNESOTA 55155
WEDNESDAY, DECEMBER 17, 2014

PRELIMINARY AGENDA

9:00 AM CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA

MINUTES OF OCTOBER 22, 2014 BOARD MEETING

CONFLICT OF INTEREST DECLARATION

PUBLIC ACCESS FORUM (10-minute agenda time, two-minute limit/person)

REPORTS

- Chair & Administrative Advisory Committee – Brian Napstad
- Audit & Oversight Committee – Brian Napstad
- Executive Director – John Jaschke
- Dispute Resolution Committee – Gerald Van Amburg
- Grants Program & Policy Committee – Steve Sunderland
- RIM Reserve & Soil Conservation Committee – Gene Tiedemann
- Water Management & Strategic Planning Committee – Jack Ditmore
- Wetlands & Drainage Committee – Gerald Van Amburg
- Drainage Work Group – Tom Loveall/Al Kean

COMMITTEE RECOMMENDATIONS

Water Management and Strategic Planning Committee

1. Modification to the Local Water Plan Extensions Policy – Jack Ditmore and Doug Thomas – **DECISION ITEM**

Grants Program and Policy Committee

1. Targeted Watershed Demonstration Program Funding Recommendations - Marcey Westrick – **DECISION ITEM**

Wetland and Drainage Committee

1. Wetland Conservation Act Federal Approvals Exemption – Les Lemm – **DECISION ITEM**

NEW BUSINESS

1. Durable & Targeted Ideas for Conservation Challenges in the Agricultural Regions of the Midwest and Minnesota - Craig Cox, Senior Vice President, Environmental Working Group (EWG) – ***INFORMATION/DISCUSSION ITEM***

AGENCY REPORTS

- Minnesota Department of Agriculture – Matthew Wohlman
- Minnesota Department of Health – Chris Elvrum
- Minnesota Department of Natural Resources – Tom Landwehr
- Minnesota Extension Service – Faye Sleeper
- Minnesota Pollution Control Agency – Terry McDill

ADVISORY COMMENTS

- Association of Minnesota Counties – Julie Ring
- Minnesota Association of Conservation District Employees – Matt Solemsaas
- Minnesota Association of Soil & Water Conservation Districts – LeAnn Buck
- Minnesota Association of Townships – Sandy Hooker
- Minnesota Association of Watershed Districts – Ray Bohn
- Natural Resources Conservation Service – Don Baloun

UPCOMING MEETINGS

- Next BWSR Board Meeting, January 28, 2015, St. Paul

Noon **ADJOURN**

**BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD N.
LOWER LEVEL CONFERENCE ROOM
ST. PAUL, MINNESOTA 55155
WEDNESDAY, OCTOBER 22, 2014**

BOARD MEMBERS PRESENT:

Joe Collins, Jill Crafton, Jack Ditmore, Chris Elvrum, MDH; Doug Erickson, Christy Jo Fogarty, Kathryn Kelly, Tom Landwehr, DNR; Terry McDill, MPCA; Brian Napstad, Neil Peterson, Tom Schulz, Rob Sip, MDA; Faye Sleeper, MES; Steve Sunderland, Gene Tiedemann, Gerald Van Amburg

BOARD MEMBERS ABSENT:

Sandy Hooker
Tom Loveall

STAFF PRESENT:

Mary Jo Anderson, Angie Becker Kudelka, Don Buckhout, Tim Dykstal, Travis Germundson, Celi Haga, John Jaschke, Al Kean, Dan Shaw, Sarah Strommen

OTHERS PRESENT:

Stacie Christensen, Department of Administration

CALL MEETING TO ORDER – Chair Napstad called the meeting to order at 9:05 a.m.

PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA – Chair Napstad reported the revision to the agenda includes the addition of the Administrative Advisory Committee’s recommendation on SWCD Supervisor Districts-Delegation. Moved by Tom Schulz, seconded by Kathryn Kelly, to adopt the revised agenda as presented. *Motion passed on a voice vote.*

**
14-70

MINUTES OF SEPTEMBER 24, 2014 BOARD MEETING – Moved by Steve Sunderland, seconded by Doug Erickson, to approve the minutes of September 24, 2014 as circulated. *Motion passed on a voice vote.*

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14-71

REPORTS

Audit & Oversight Committee – Brian Napstad reported that the Audit & Oversight Committee met last night; the Committee recommendation is on the agenda later today. The Committee discussed the annual PRAP report that will be submitted to the legislature in February 2015; and the organizational risk assessment process that will be presented by Tim Dykstal at an upcoming meeting.

Executive Director’s Report – John Jaschke reviewed information in board members’ packets. John reported that he attended the Water Resources Conference on October 14-15. John stated that an assessment has been completed and is being reviewed regarding a systematic development of policies for Watershed Districts plans and program implementation. He will attend the MASWCD Area 1 meeting in Perham tomorrow with LeAnn Buck, MASWCD; and Don Baloun, NRCS; discussion will include technical assistance and capacity. John will attend the WCA Stakeholder meeting on October 27 in Sauk Rapids. John will also attend the BWSR Academy, October 28-30 at Breezy Point; registration is at the 400 person capacity.

Dispute Resolution Committee – Travis Germundson reported that there are presently 13 appeals pending. File #14-3, an appeal of a restoration order in Murray County, was affirmed and a request made to DNR to rescind the Restoration Order. Chair Napstad thanked Travis for his report.

Water Management & Strategic Planning Committee – Jack Ditmore reported that the Water Management & Strategic Planning Committee will meet on December 16 at 5:30 PM.

Wetlands and Drainage Committee – Gerald Van Amburg reported that the Wetlands and Drainage Committee met last night; discussion included the update of the drainage manual and drainage records modernization; the development of a federal exemption proposal, approved by the Committee, which will come before the Board in December; the 2015 legislative recommendations, and the WCA Stakeholder process. Gerald reported that the Wetlands and Drainage Committee will meet in December.

Drainage Work Group (DWG) – Al Kean provided a brief update of the Drainage Work Group meeting on October 9. The next meeting of the Drainage Work Group is November 13, 2014, 12:30 - 3:30 PM, at the AMC Building in St. Paul.

COMMITTEE RECOMMENDATION

Administrative Advisory Committee

SWCD Supervisor Districts – Delegation – John Jaschke reported that SWCDs will be undertaking a supervisor re-districting process per 2014 legislation (Chapter 264 – H.F. 2390 which requires that SWCD supervisors in the seven-county metro area be elected by population-based districts). Although other SWCDs can at any time, metro SWCDs (except for Washington Co. which is already compliant) will be doing so in time to address 2016 Supervisor Elections and there may be some time-sensitive filings that this proposed delegation of “agreeable” decisions can help stay on schedule. John stated that this is an administrative efficiency process. Moved by Joe Collins, seconded by Christy Jo Fogarty, to authorize and direct the Executive Director to sign approvals of supervisor districts for SWCDs when all of the following conditions exist: 1) The supervisor districts are drawn consistent with the requirements of Minnesota Statutes section 103C.311, subdivision 2; and 2) There is no disagreement brought forth by the soil and water conservation district, the county Board or by the governing body of a municipality. Discussion followed. ***Motion passed on a voice vote.***

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14-72

NEW BUSINESS

2014 Grants Monitoring Report – Tim Dykstal reported that the Board adopted the Grants Monitoring, Reconciliation and Verification Policy on June 22, 2011, to ensure its compliance with Office of Grants Management policies established by the Department of Administration. The policy calls for a report on grants monitoring activities to be delivered to the Board annually. This 2014 report includes data on the monitoring of 2013 grant activity that occurred by the February 3, 2014 reporting deadline. The report will also include data on the grant verification visits that are an important part of the overall policy, and a look ahead to the next steps in grants monitoring, reconciliation, and verification in BWSR. Discussion followed. Chair Napstad thanked Tim for his presentation.

Chair Napstad called for a break at 10:23 AM; the meeting reconvened at 10:34 AM. Tom Landwehr left the meeting at 10:23 AM to attend a special Cabinet meeting.

Open Meeting Law Workshop – Stacie Christensen, Department of Administration, lead a training session for BWSR Board members on Minnesota’s Open Meeting Law. The presentation covered general information on Open Meeting Law requirements customized to the Board’s operating procedures. It was noted that BWSR will include in its meeting notices, “the public may be required to provide identification to enter a secured building”. Discussion followed. Chair Napstad thanked Stacie for her informative presentation.

BWSR Pollinator Initiative and Tools – Dan Shaw reported that in 2013, BWSR Technical Services staff developed resources to assist local government partners in supporting pollinator habitat in their areas. A Pollinator Plan was developed in April of 2014 that detailed BWSR’s

efforts to date, and this month BWSR launched a pollinator initiative and webpage to provide additional pollinator resources for our conservation partners. Discussion followed. Chair Napstad thanked Dan for his presentation.

2015 Proposed BWSR Board Meeting Schedule – John Jaschke presented the proposed BWSR 2015 meeting schedule. Moved by Kathryn Kelly, seconded by Chris Elvrum, to approve the 2015 meeting dates as presented. *Motion passed on a voice vote.*

AGENCY REPORTS

Minnesota Department of Agriculture (MDA) – Rob Sip distributed factsheets on the “Nitrogen Fertilizer Management Plan”; and the “Proposed Rule on Nitrogen Fertilizer Use” for board members’ information. Rob also distributed a brochure on “Minnesota Agricultural Water Quality Certification Program”. Rob announced a Nitrogen Conference to be held March 6, 2015, more information to come.

Minnesota Department of Health (MDH) – Chris Elvrum reported that Legislative Water Commission meets tomorrow; agencies have developed a joint presentation.

Department of Natural Resources (DNR) – John Jaschke reported that Tom Landwehr left to attend a Cabinet meeting on Ebola. Tom asked John to announce the Governor’s Pheasant Summit, December 13 in Marshall.

Minnesota Extension Service (MES) – Faye Sleeper thanked Brad Wozney for his co-chair role at the Water Resources Conference, over 600 in attendance. The North Central Water Network hosted a successful event. Faye encouraged board member attendance at the Climate Adaption Conference, November 6.

Minnesota Pollution Control Agency (MPCA) – Terry McDill distributed the draft Watershed Restoration and Protection Strategy (WRAPS) map for board members’ information. John thanked MPCA for the comprehensive approach resulting in long-term usefulness and practicality.

UPCOMING MEETINGS

- Next BWSR Board Meeting, December 17, 2014, St. Paul
- BWSR Academy, October 28-30, 2014, Breezy Point, Brainerd
- MAWD Annual Convention, December 4-6, Alexandria
- MASWCD Annual Convention, December 7-9, Bloomington
- AMC Annual Convention, December 8-9, St. Cloud

Chair Napstad adjourned the meeting at 12:07 PM.

Respectfully submitted,

Mary Jo Anderson, Recorder



Conflict of Interest Disclosure Form for Board Members

Grant Program: Targeted Watershed Demonstration Program

Name of Review Group: Grants Program and Policy Committee

Before any review of grant applications, the chair of the meeting shall make this statement about conflict of interest:

Chair Statement: "A conflict of interest, whether actual, potential, or perceived, occurs when someone in a position of trust has competing professional or personal interests and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to declare conflicts of interest they may have regarding today's business."

This form gives grant application reviewers an opportunity to disclose any actual, potential or perceived conflicts of interest that may exist during a grant review process. It is the grant reviewer's obligation to be familiar with the Office of Grants Management (OGM) Policy 08-01, Conflict of Interest Policy for State Grant-Making, and to disclose any conflicts of interest accordingly. All grant reviewers *must* complete and sign a conflict of interest disclosure form. On the form, the grant reviewer must identify any grant applicant with which they have an actual, potential or perceived conflict, although they do not need to provide the reason for the conflict on the disclosure form.

A disclosure does not automatically result in the grant application reviewer being removed from the review process.

Please read the definitions of conflict of interest below and mark the appropriate boxes that pertain to you and your status as a reviewer of applications for this grant program.

Conflicts of interest may be actual, potential, or perceived:

ACTUAL CONFLICT OF INTEREST:

An actual conflict of interest occurs when a decision or action would compromise a duty to a party without taking immediate appropriate action to eliminate the conflict.

POTENTIAL CONFLICT OF INTEREST:

A potential conflict of interest may exist if a grant reviewer has a relationship, affiliation, or other interest that could create an inappropriate influence if the person is called on to make a decision or recommendation that would affect one or more of those relationships, affiliations, or interests.

PERCEIVED CONFLICT OF INTEREST:

A perceived conflict of interest is any situation in which a reasonable third party would conclude that conflicting duties or loyalties exist.

At a minimum, all internal parties who are involved in the grant review or grant management process must be made aware that an actual, potential, or perceived conflict has been disclosed and evaluated, even if it is not serious enough to remove or reassign the employee or grant reviewer. After reviewers have signed the conflict of interest form, therefore, the conflicts--if any--that have been disclosed shall be announced to the reviewing body as a whole. Disclosed conflicts and their resolution will also be noted in the meeting minutes, and the forms will be kept as documentation of the grant review.

As a grant reviewer, I certify that I have read and understand the descriptions of conflict of interest explained above and in OGM Policy 08-01. Check either box 1a or 1b **and** either box 2a or 2b.

- 1a. I have reviewed the list of applicants, and I do not have any conflicts of interest relating to this program's grant applicants or proposed projects.
- 1b. I have an ACTUAL, POTENTIAL, or PERCEIVED conflict of interest with the applicant(s) listed below. (Note: If you disclose a conflict, you must identify the applicant on this form, but a description is discretionary. Under Minnesota Statute 13.599, this form is considered public data.)

Applicant	Type of Conflict (ACTUAL, POTENTIAL, or PERCEIVED)	Description of Conflict (optional)

- 2a. After reviewing this form and OGM Policy 08-01, I CHOOSE to participate in this review process.
- 2b. After reviewing this form and OGM Policy 08-01, I CHOOSE NOT to participate in this review process. I will avoid discussing the applicant and/or applications from organizations with which I have disclosed a conflict of interest with other reviewers.

Reviewer's printed name: _____

Reviewer's signature: _____

Date: _____

Reviewer's Organization/Agency: _____

Revised, 5/13



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE:

Dispute Resolution Committee Report

Meeting Date:

December 17, 2014

Agenda Category:

Committee Recommendation

New

Business

Old Business

Item Type:

Decision

Discussion

Information

Section/Region:

Land and Water Section

Contact:

Travis Germundson

Prepared by:

Travis Germundson

Reviewed by:

Travis Germundson/Gerald

Committee(s)

Presented by:

Van Amburg

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments:

Resolution

Order

Map

Other Supporting Information

Fiscal/Policy Impact

None

Amended Policy Requested

New Policy Requested

Other:

General Fund Budget

Capital Budget

Outdoor Heritage Fund Budget

Clean Water Fund Budget

ACTION REQUESTED

None.

LINKS TO ADDITIONAL INFORMATION

SUMMARY (Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)

Dispute Resolution Committee Report. The report provides a monthly update on the number of appeals filed with the BWSR.

Dispute Resolution Report
December 1, 2014
By: Travis Germundson

There are presently **11** appeals pending. All of the appeals involve WCA except File 10-10. There has been **no** new appeals filed since the last report (October 22nd Board Meeting).

Format note: New appeals that have been filed since last report to the Board.
~~Appeals that have been decided since last report to the Board.~~

File 14-8 (9-17-14) This is an appeal of a restoration order in St. Louis County. The appeal regards the placement of just under an acre of fill in a wetland for the construction of a private access road. *The appeal has been placed in abeyance and the restoration order stayed until there is a final decision by the LGU on the submittal of a no-loss application.*

File 14-7 (6-23-14) This is an appeal of duplicate restoration orders in Otter Tail County. The appeal regards the alleged drainage alterations to a Type 4 wetland. The petitioners have filed after-the-fact wetland applications for an exemption and no-loss with the LGU concurrently with the petition. The appeal has been placed in abeyance and the restorations orders stayed until there is a final decision on the wetland applications.

File 14-6 (5-28-14) This is an appeal of a replacement plan decision by DNR Land and Minerals involving the Hibbing Taconite Mine and Stockpile Progression and Williams Creek Wetland Mitigation. The appeal regards the approval of a wetland replacement plan application for mining related activities. A similar appeal was also filed simultaneously with DNR under procedures required for permit to mine. The appeal has been placed in abeyance for completion of DNR's contested case proceedings.

File 14-5 (5-2-14) This is an appeal of an exemption determination in Kandiyohi County. The appeal regards the denial of a wetland exemption application. At issue is the wetland type determination. The appeal has been remanded for technical work and administrative proceedings.

File 14-4 (4-28-14) This is an appeal of a restoration and replacement order in McLeod County. The appeal regards alleged drainage improvements associated with the excavation of a private drainage system. At issue is a prior exemption determination. The appeal was placed in abeyance and the restoration and replacement orders stayed for the LGU to make a final decision on the after-the-fact wetland applications. *The application for exemption and no loss may have been granted via operation of law under Minn. Stat. § 15.99.*

File 14-1 (2-3-14) This is an appeal of a replacement plan decision in Stearns County. The appeal regards the approval of a wetland replacement plan application. Previous appeals (File 12-19 and File 13-5) were remanded for further technical work and administrative proceedings, and now the current approval is being appealed. The appeal was accepted and a pre-hearing conference took place on June 2, 2014. As a result the pre-hearing conference the appeal proceedings have been placed on hold by mutual agreement for additional survey work and an on-site visit (scheduled for August 19th). A verbal settlement agreement was reached during the 2nd pre-hearing conference. A final draft settlement agreement has been distributed to the parties for signature.

File 13-3 (3-19-13) This is an appeal of a restoration order in Big Stone County. The appeal regards impacts to DNR Public Waters and WCA wetlands on state property associated with an agricultural drainage project. The appeal has been placed in abeyance and the restoration order stayed until there is a final decision on an after-the-fact wetland application.

File 12-12 (7-16-12) This is an appeal of an exemption determination in Renville County. The appeal regards the denial of an agricultural drainage exemption associated with a 1.5 acre wetland. At issue is the wetland type determination. A previous appeal (File 12-5) was remanded for further technical evaluation and administrative proceedings, and now the current approval is being appealed. A verbal settlement agreement has since been reached that includes submittal of a replacement plan application. The appeal has been placed in abeyance by mutual agreement to determine the viability of a wetland replacement plan application.

File 11-1 (1-20-11) This is an appeal of a restoration order in Hennepin County. The appeal regards the filling of approximately 1.77 acres of wetland and 0.69 acres of excavation. The appeal has been placed in abeyance and the restoration order stayed until there is a final decision on an after-the-fact wetland application and confirmation of required mitigation.

~~File 10-10 (6-10-10) This is an appeal filed under Minn. Stat. 103D.535 regarding an order of the managers of the Wild Rice Watershed District not to proceed with the Upper Becker Dam Enhancement Project as proposed. Appeals filed under 103D.535 require that the Board follow the Administrative Procedures Act. The Act requires that the hearing be conducted by an Administrative Laws Judge through the Office of Administrative Hearings. A mediated settlement agreement was reached with the condition that if the watershed district fails to carry out Option D the appeal shall go forward. The appeal has been placed in abeyance. A letter was sent on October 24, 2014 notifying the appellant that due to the length of time with no action BWSR intends to close the appeal file within 30 days. Whereas, no correspondence was received stating reasons the appeal should remain pending. Thus, the file has been closed and the appeal dismissed.~~

File 10-7 (2-19-10) This is an appeal of a restoration order in Stearns County. The appeal regards draining and filling impacts to approximately 18.44 acres of Type 2/3 wetland and 3.06 acres of Type 2 wetland. The appeal has been placed in abeyance and the restoration order stayed for submittal of "as built" or project information pertaining to a public drainage system. A portion of the site has been restored and it appears the landowner is committed to restoring the remaining areas. *The appeal has been dismissed. A portion of the site was restored and the remaining area has been mitigated through the purchase of wetland replacement credits.*

File 09-10 (7-9-09) This is an appeal of a banking plan application in Aitkin County. The appeal regards the LGU's denial of a banking plan application to restore 427.5 acres of wetlands through the use of exceptional natural resource value. The appeal has been accepted and pre-hearing conferences convened on October 13 and 30, and December 14, 2009. Settlement discussions are on hold while the appellant addresses permitting issues with the Corps of Engineers. The appeal has been placed in abeyance by mutual agreement. A revised wetland bank plan application has been approved with conditions. Those conditions require the approval of partial ditch abandonment along with a Conditional Use Permit for alterations in the floodplain.

File 08-9. (03/06/08) This is an appeal of a replacement order in Pine County. The appeal regards impacts to approximately 11.26 acres of wetland. The replacement order has been stayed and the appeal has been placed in abeyance pending disposition with the U.S. Dept of Justice. A pending verbal settlement agreement is in place as a result of court ordered mediation.

Summary Table

Type of Decision	Total for Calendar Year 2013	Total for Calendar Year 2014
Order in favor of appellant		2
Order not in favor of appellant	2	
Order Modified	1	
Order Remanded	4	1
Order Place Appeal in Abeyance	2	3
Negotiated Settlement	3	
Withdrawn/Dismissed	1	1

COMMITTEE RECOMMENDATIONS

Water Management and Strategic Planning Committee

1. Modification to the Local Water Plan Extensions Policy – Jack Ditmore and Doug Thomas –

DECISION ITEM



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Modification to the Local Water Plan Extensions Policy

Meeting Date: December 17, 2014

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Section/Region: _____

Contact: Doug Thomas

Prepared by: Melissa Lewis and Doug Thomas
Water Management and Strategic

Reviewed by: Planning Committee(s)

Presented by: Jack Ditmore and Doug Thomas

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- None
- Amended Policy Requested
- New Policy Requested
- Other:
- General Fund Budget
- Capital Budget
- Outdoor Heritage Fund Budget
- Clean Water Fund Budget

ACTION REQUESTED

Adoption of the Local Water Plan Extensions Policy

LINKS TO ADDITIONAL INFORMATION

Attached – Draft Local Water Plan Extension Policy

SUMMARY (Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)

The Local Water Plan Extensions policy was adopted by the BWSR Board on June 25th, 2014. The purposes of the policy were to facilitate the transition to *One Watershed, One Plan* and allow for effective participation in and use of WRAPS, while maintaining eligibility in applying for and receiving grants. The policy applied to local water planning authorities “that are operating under a local water plan and have formally acknowledged intent to develop a plan within the One Watershed, One Plan framework.” The narrowness of the policy in contrast to the broad authority for water plan extensions within Minnesota Statutes §103B.3367 (*The board may grant extensions with or without conditions of the revision date of a comprehensive local water management plan or a comprehensive watershed management plan*) was causing confusion for local government staff, BWSR staff, and BWSR Board members.

The Water Management and Strategic Planning Committee revisited the policy on September 23, 2014, discussed the issues, and directed staff to modify the existing policy to broaden the applicability and expand the situations in which extensions will be supported. These modifications will be presented to the Committee on December 16, 2014. If the committee adopts, the revised policy will be recommended for approval by the full Board at its December 17, 2014 meeting.



Board Resolution # 14-_____

LOCAL WATER PLAN EXTENSIONS

WHEREAS, Minnesota Statutes §103B.3367, provides that the board may grant extensions with or without conditions of the revision date of a comprehensive local water management plan or a comprehensive watershed management plan; and

WHEREAS, Minnesota Statutes §103B.101. Subd. 14, provides that the board may adopt resolutions, policies, or orders that allow a comprehensive plan, local water management plan, or watershed management plan, developed or amended, approved and adopted, according to chapter 103B, 103C, or 103D to serve as substitutes for one another or be replaced with a comprehensive watershed management plan, generally referred to as One Watershed, One Plan; and

WHEREAS, the Board adopted resolution #14-45 One Watershed, One Plan Local Water Plan Extensions on June 25, 2014 for the purpose of facilitating the transition to One Watershed, One Plans through providing direction on local water plan extensions; and

WHEREAS, the One Watershed, One Plan Local Water Plan Extensions policy was found to be limiting in its applicability only to One Watershed, One Plan; and

WHEREAS, the Board's Water Management and Strategic Planning Committee (WMSP) met on September 23, 2014 and provided direction to staff to modify the existing policy and expand the situations in which extensions would be supported, consistent with Minnesota Statutes §103B.3367; and

WHEREAS, the development of the modified Local Water Plan Extensions policy has been informed by review and comment from BWSR Senior Management Team and BWSR Executive Team; and

WHEREAS, the WMSP met on December 16, 2014 to review a final draft of the Local Water Plan Extension policy and by consensus recommended its approval by the full Board.

NOW THEREFORE BE IT RESOLVED, the Board hereby:

Adopts the Local Water Plan Extensions policy dated December 17, 2014.

Date: _____

Brian Napstad, Chair
Board of Water and Soil Resources

Attachments:

Local Water Plan Extensions, December 17, 2014.



Local Water Plan Extension Policy

December 17, 2014

Purpose

The purpose of this policy is to provide direction to local water planning authorities regarding Minnesota Statutes §103B.3367 Water Plan Extensions. The primary goals of this policy are to: 1) facilitate the transition to One Watershed, One Plan by ensuring active participation by counties, soil and water conservation districts, and watershed districts in plan development; 2) allow for effective participation and use of the Minnesota Pollution Control Agency's Watershed Restoration and Protection Strategies; and 3) maintain eligibility of participating local government units in applying for and receiving grants under the Board's current and future grants policies. This policy was adopted by the BWSR Board through resolution.

1.0 Applicability

This policy applies to counties, soil and water conservation districts, watershed districts, and watershed management organizations (organizations) that are operating under a local water plan. Extensions of local water plans will be supported in one or more of the following circumstances:

- A. In order for an organization to participate in and more effectively utilize the Minnesota Pollution Control Agency's watershed-based 10-year approach of monitoring, assessment, and development of Watershed Restoration and Protection Strategy (WRAPS) documents.
- B. In order to synchronize water management efforts between partners for the purposes of developing and completing watershed-based plans through *One Watershed, One Plan*. Formal acknowledgement of intent to develop a plan within the One Watershed, One Plan framework in the form of a passed motion or resolution by the board of the water planning authority is required in this circumstance.
- C. All other purposes for requesting an extension will be considered on a case-by-case basis.

For purposes of this policy, "local water plan" means: a county water plan authorized under Minnesota statutes §103B.311, a watershed management plan required under §103B.231, a watershed management plan required under §103D.401 or 103D.405, a county groundwater plan authorized under §103B.255, or a soil and water conservation district "comprehensive plan" under Minnesota statutes §103C.331, Subd. 11.

2.0 Procedure

All requests for extensions to a local water plan must be initiated by petition to BWSR. Requests will be processed through the Board Conservationist, regional BWSR committee, and full BWSR Board; except for Soil and Water Conservation District Comprehensive Plans which will be processed through the Board Conservationist and Regional Supervisor.

Counties may request waivers to amendments required by BWSR Board Order approving the county water plan. Where the SWCD has adopted the county plan by resolution and the county plan has been extended, the SWCD may continue to adopt the county water plan, as extended, by resolution.

Extensions that substantially delay implementation of the requirements of local water plans will not be allowed.

COMMITTEE RECOMMENDATIONS

Grants Program and Policy Committee

1. Targeted Watershed Demonstration Program Funding Recommendations - Marcey Westrick – ***DECISION ITEM***



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Targeted Watershed Demonstration Program

Meeting Date: December 17, 2014

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Section/Region: Land and Water Section

Contact: Marcey Westrick

Prepared by: Marcey Westrick
Grants Program and Policy

Reviewed by: Committee Committee(s)

Presented by: Marcey Westrick

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- None
- Amended Policy Requested
- New Policy Requested
- Other:
- General Fund Budget
- Capital Budget
- Outdoor Heritage Fund Budget
- Clean Water Fund Budget

ACTION REQUESTED

The Board is requested to consider the recommendation from the Grants Program and Policy Committee to award Clean Water Funds to local government applications under the Targeted Watershed Demonstration Program.

LINKS TO ADDITIONAL INFORMATION

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

On June 25, 2014, the Board adopted resolutions #14-41 which authorized staff to conduct a Request for Interest for nominations for the Targeted Watershed Demonstration Program. Nominations were accepted from July 14 through August 29, 2014. Local governments submitted 19 nominations requesting \$30,038,923 in Clean Water Funds. Total available grants funds are \$5.41 million in FY2014.

The attached recommendation overview and resolution contain detail on applications and proposed funding recommendations.



Board Resolution # 14-

**TARGETED WATERSHED DEMONSTRATION PROGRAM:
FUNDING RECOMMENDATION**

WHEREAS, the Clean Water Fund (CWF) is established in M.S. 114D.50; and,

WHEREAS, Clean Water Funds have been appropriated to BWSR in Laws of Minnesota 2013, Chapter 137, Article 2, Section 7(a); and,

WHEREAS, the Board has authority under Minn. Stat. 103B.3369 to make grants to cities, townships, counties, soil and water conservation districts, watershed districts, joint powers organizations, and other special purpose districts or authorities with jurisdiction in water and related land resources management when a proposed project, practice or activity implements a county water plan, watershed management plan, or county groundwater plan; and

WHEREAS, BWSR implementation of appropriated CWF funds is based on the Minnesota Constitution, Article XI, Section 15 which provides that funds may be “spent only to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation”, and that “dedicated money under this section must supplement traditional sources of funding for these purposes and may not be used as a substitute”; and,

WHEREAS, the Board has previously endorsed an inter-agency granting strategy that included the MN Department of Agriculture (MDA), the Department of Natural Resources (DNR), the Pollution Control Agency (MPCA), the Department of Health (MDH), and the BWSR with the goal of effectively coordinating water quality projects or practices funded by the CWF, and

WHEREAS, the CWF implementation strategy incorporates the purpose of M.S. 114D.20 which directs the implementation of Clean Water Funds to be coordinated with existing authorities and program infrastructure; and,

WHEREAS, on June 25, 2014 (Board Resolution # 14-41) the Board:

1. Authorized staff to finalize, distribute and promote a Request For Information (RFI) for the Targeted Watershed Demonstration Program consistent with the provisions of appropriations enacted in 2013, Minn. Stat. 103B.3369 and this Board resolution; and,

WHEREAS, up to \$5.41 million in funds were made available to local governments through the RFI process that was open for applications from July 14 through August 29, 2014;

WHEREAS, local governments throughout the state submitted 19 nominations requesting \$30,038,923;

WHEREAS, nominations were first screened and scored by BWSR staff based on responses to the RFI, based on the following criteria:

Scoring Guidelines:

1) Strength of watershed as a candidate for this demonstration program	20
2) Extent of water quality and quantity monitoring	20
3) Local knowledge of pollution sources and pathways within the watershed	20
4) Landowner interest in the watershed	20
5) Financial and technical resources available, local expertise and project budget	20
Total Points Available	100

WHEREAS, as a second step, the 9 nominations that scored more than 75 points were invited to an interview with an interagency team consisting of staff from the MDA, DNR, MPCA, MDH and BWSR based on the following criteria:

- 1) efforts of proposer to address the long-term sustainability of soil and water resources within their jurisdiction;
- 2) a systematic way to identify and track non-point water quality efforts can be demonstrated;
- 3) an understanding of social and cultural barriers within the watershed can be demonstrated;
- 4) the amount of existing local effort occurring within the watershed and the commitment of other agencies, non-profits, and private interest; and
- 5) the evaluation plan for the project.

WHEREAS, the BWSR Senior Management Team reviewed the proposed Targeted Watershed Demonstration Program grant allocations on November 11, 2014; and

WHEREAS, the Grants Program and Policy Committee reviewed the Targeted Watershed Demonstration Program proposed grant allocations on November 24, 2014.

NOW THEREFORE BE IT RESOLVED, the Board hereby:

- 1) Approves the allocation of \$5,412,083 by fully funding Scott WMO (\$2,200,000), Nicollet SWCD (\$1,676,000) and Cook SWCD (\$829,000) and partially funding Chisago SWCD (\$707,083) according to the attached Targeted Watershed Demonstration Program Recommendation.
- 2) Authorizes staff to evaluate the availability of funds to fully fund Chisago SWCD as part of the Clean Water Competitive Grants Allocation.

Brian Napstad, Chair
Board of Water and Soil Resources

Date: _____

BOARD OF WATER AND SOIL RESOURCES

FY2015 Clean Water Fund Targeted Demonstration Program Recommendation

November 24, 2014

Background

Nominations for the FY2015 Clean Water Fund Targeted Watershed Demonstration Program were accepted from July 14 through August 29, 2014. Local governments submitted 19 nominations requesting \$30,038,923 in Clean Water Funds with \$5,412,083 available.

Two Phased Review Process

The Targeted Watershed Demonstration utilized a two-phased review process. The first phase consisted of interested candidates nominating a watershed through the Request for Interest (RFI). All nominated watersheds submitted for consideration were first screened by BWSR staff based on responses to the questions found in the RFI. The second phase of the review process consisted of interviews with watersheds that were deemed candidates for final selection as recommended by BWSR staff.

Phase I: Review

Clean Water Specialists met on September 11, 2014 to review, screen and score the watershed nominations submitted in response to the RFI. Two nominations were screened as ineligible and not reviewed further. Seventeen nominations were reviewed and scored using the scoring criteria identified in the RFI.

Scoring Guidelines:

1) Strength of watershed as candidate for this demonstration program	20
2) Extent of water quality and quantity monitoring	20
3) Local knowledge of pollution sources and pathways within the watershed	20
4) Landowner interest in the watershed	20
5) Financial and technical resources available, local expertise and project budget	20
Total Points Available	100

Information provided by the applicants in their nomination was assigned points in each category. Initial scoring resulted in 9 applications receiving recommendations for an interview with the applicant.

Applicant	\$ Grant Request	Score
Clearwater River WD	\$1,644,058	84
Scott WMO	\$2,520,000	81
Chisago SWCD	\$1,200,000	80
Cook SWCD	\$829,000	80
Ramsey Washington Metro WD	\$1,500,000	80
Becker SWCD	\$1,474,597	79
Shingle Creek	\$1,262,500	79
Nicollet SWCD	\$1,676,000	78
Chippewa River JPB	\$1,032,031	76
Riley Purgatory Bluff Creek WD	\$2,628,000	72
Buffalo-Red River WD	\$5,700,000	71
GBERBA	\$1,353,768	64
Lake SWCD	\$1,000,000	63
Snake River JBP	\$340,776	63
Dodge SWCD	\$183,100	60
Vermillion WMO	\$270,000	50
Benton SWCD	\$2,500,000	48
Capitol Region	\$2,000,000	IE
East Polk SWCD	\$925,093	IE

IE = Ineligible

Phase II: Interviews

The Interagency Selection Committee, consisting of staff from BWSR, DNR, MDA, MDH, and MPCA, met October 15-17 with interviewees. Prior to interviews, the Selection Committee was given for their review a copy of each of the RFIs submitted by the applicants to be interviewed. The Selection Committee was not given the scores from the first phase of the review process.

In addition to the responses to the RFI, additional criteria that was used during the interview process included 1) efforts of proposer to address the long-term sustainability of soil and water resources within their jurisdiction; 2) a systematic way to identify and track non-point water quality efforts can be demonstrated; 3) an understanding of social and cultural barriers within the watershed can be demonstrated; 4) the amount of existing local effort occurring within the watershed and the commitment of other agencies, non-profits, and private interest; and 5) the evaluation plan for the project.

A set of six standardized questions were sent to all interviewees one week prior to their interview. Interviewees were given up to 20 minutes to present on their overall proposal. After the presentation was over, 40 minutes was allowed for both the standardized questions and clarifying questions based on the RFI and presentation.

The Selection Committee convened on October 17th to make recommendations on funding. All information was reviewed. Funding recommendations were based on overall content and strength of the watershed as a candidate of the program with scores ranging from 0-5.

Applicant	Watershed Name	\$ Grant Request	\$ Grant Recommendation	Total Score	Average Score
Scott WMO	Sand Creek	\$ 2,200,000 - \$2,520,000	\$ 2,200,000	27	4.50
Nicollet SWCD	Seven Mile Creek	\$ 1,676,000	\$ 1,676,000	25.5	4.25
Cook SWCD	Poplar River	\$ 829,000	\$ 829,000	24.6	4.10
Chisago SWCD	Chisago Chain of Lakes	\$ 1,200,000	\$ 707,083	24.6	4.10
Shingle Creek	Ryan and Twin Lakes	\$ 1,262,500	\$ -	24.3	4.05
Becker SWCD	Detroit Lakes	\$ 1,474,597	\$ -	23.5	3.92
Clearwater River WD	Clearwater River	\$ 1,644,058	\$ -	23.2	3.87
Chippewa River JPB	Shakopee Creek	\$ 1,032,031	\$ -	19	3.17
Ramsey Washington MWD	Wakefield Lake	\$ 1,500,000	\$ -	16.5	2.75

Recommendations Considered:

1. Fund the 4 highest scoring applications to their grant request: Scott County WMO, Nicollet SWCD, Cook County SWCD, and Chisago SWCD. In order to do this, BWSR would need to shift \$492,917 in Soil Erosion and Drainage Law Compliance funds.

or

2. Fully fund Scott WMO (\$2,200,000), Nicollet SWCD (\$1,676,000) and Cook (\$829,000) and partially fund Chisago (\$707,083).

or

3. Fully fund Scott WMO (\$2,200,000) and Nicollet SWCD (\$1,676,000) and partially fund Cook SWCD (\$768,041) and Chisago (\$768,041).

or

4. Fully fund Scott WMO (\$2,200,000) and Cook SWCD (\$829,000) and partially fund, prorated amounts based on scores, Nicollet SWCD (\$1,549,004) and Chisago SWCD (\$834,079).

Recommendation:

Option #2: Fully fund Scott WMO (\$2,200,000), Nicollet SWCD (\$1,676,000) and Cook SWCD (\$829,000) and partially fund Chisago SWCD (\$707,083) and authorize staff to evaluate the availability of funds to fully fund Chisago SWCD as part of the Clean Water Competitive Grants Allocation.

COMMITTEE RECOMMENDATIONS

Wetland and Drainage Committee

1. Wetland Conservation Act Federal Approvals Exemption – Les Lemm – ***DECISION ITEM***



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Wetland Conservation Act Federal Approvals Exemption

Meeting Date: December 17, 2014

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Section/Region: Land and Water

Contact: Les Lemm

Prepared by: Dave Weirens

Reviewed by: Wetland and Drainage Committee(s)

Presented by: Les Lemm

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

The Board is requested to approve the Federal Approvals Exemption as recommended by the Wetlands and Drainage Committee.

LINKS TO ADDITIONAL INFORMATION

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

The Federal Approvals Exemption is intended to prevent dual state-federal regulation of projects impacting wetlands. This exemption has never been implemented during the history of the Wetland Conservation Act. Staff have been developing a proposal for over a year to implement this exemption for a specific set of projects: linear utilities/interstate pipelines. This exemption only becomes effective after approval by the Minnesota Department of Agriculture, Department of Natural Resources, Minnesota pollution Control Agency and the Board. Approval by these agencies is pending at this time. The Wetland and Drainage Committee reviewed the proposed exemption on October 21, 2014 and is recommending the Board approve the exemption.

Minnesota Wetland Conservation Act

Federal Approvals Exemption for Utilities

In accordance with MN Stat. § 103G.2241, Subdivision 3 and MN Rule Chapter 8420.0420, Subpart 4, a replacement plan is not required for wetland impacts resulting from the construction, maintenance, or repair of utility lines, including pipelines, and associated facilities when:

- (1) the applicant has provided notice to all Wetland Conservation Act local government units with jurisdiction over the proposed project, including a description of the project, the proposed alignment, the intent to utilize this exemption, and notification that comments may be provided to the U.S. Army Corps of Engineers, St. Paul District (Corps). The notice must be provided prior to or concurrent with application for a permit from the Corps. In the event the proposed work is eligible for a Corps non-reporting general permit, the applicant must submit an application and request verification from the Corps that the proposed work complies with the terms and conditions of the non-reporting general permit;
- (2) all affected wetlands are either jurisdictional under the federal Clean Water Act or the applicant agrees to proceed with the federal review using a preliminary jurisdictional determination which assumes that all aquatic resources in the project area, including any wetlands, are jurisdictional under the Clean Water Act;
- (3) the applicant receives a general permit verification letter or a signed individual permit (letter of permission or standard individual permit) from the Corps authorizing the work under Section 404 of the Clean Water Act and provides a copy to each local government unit; and
- (4) once authorized by the Corps, all work must be conducted and completed in accordance with the terms and conditions of the Corps' permit (33 U.S.C. §1344), including any conditions provided by Wetland Conservation Act local government units that the Corps determines are necessary to protect the public interest for a particular project, and the exemption conditions of MN Rule Chapter 8420.0410.

Failure to comply with conditions 1 through 4 will void eligibility for this exemption. Applicants are encouraged to coordinate with local government units early and throughout the project planning process.

For the purposes of this exemption, "utility line" has the meaning given in the St. Paul District regional general permit RGP-003-MN, which defines utility line as "any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission of electrical energy, telephone, electronic data, and radio or television communication."

This exemption applies only to the Minnesota Wetland Conservation Act. This exemption does not apply to public waters, to calcareous fens as identified by the commissioner, to activities that affect any of the special considerations identified in MN Rule Chapter 8420.0515, or to other circumstances identified in MN Rule Chapter 8420.0420, subpart 1, item B. Qualification for this exemption does not release the project sponsor from any rules, regulations, requirements, or standards of any applicable federal, state, or local agency.

Background

Wetland Conservation Act (WCA) Rules and related Statutes include a provision allowing for the establishment of an exemption for wetland-related projects that have gained federal approval under Section 404 of the Clean Water Act (administered by the U.S. Army Corps of Engineers). The Federal Approvals exemption is intended to reduce dual state-federal regulation of projects impacting wetlands. To become valid, this exemption must be approved by the Board of Water and Soil Resources, along with the Pollution Control Agency and Departments of Agriculture and Natural Resources (see MN Rule 8420.0420), noticed to local governments, and published in the State Register.

During stakeholder meetings held to obtain public input relating to Governor's Executive Order 12-04, numerous comments were received encouraging improved efficiency and coordination between State and Federal wetland regulatory programs. Some of these comments specifically included the WCA federal approvals exemption. BWSR staff have indicated a willingness to explore use of the exemption, and indicated that interstate pipelines and other linear utilities may be a good starting point.

BWSR staff have since developed an initial draft of potential language to implement a federal approvals exemption for utilities. The concept and initial draft language was discussed by the BWSR Wetland Committee on August 29, 2013. Committee members were very supportive of the exemption and recommended moving forward with it. After additional coordination with the Corps of Engineers, draft language was presented at the September 17, 2013 meeting of the Interagency Wetlands Group. The language was also provided directly to the State review agencies and select local governments on September 20, 2013 along with a request for review and comment. DNR provided comments pertaining to project size limitations under a Corps General Permit, noticing and review opportunities, calcareous fens, and clarification of the exemption's applicability. BWSR, DNR, and Corps staff have resolved these issues through amendments to the exemption language and an agreement to develop a memorandum of understanding (MOU) with the Corps outlining project notification responsibilities. A revised version of the exemption language was again shared with the Interagency Wetlands Group on October 9, 2014, after which time additional comments were provided by DNR and incorporated into the final draft. The next steps include final review agency approvals, development of the interagency MOU, final BWSR Board approval, and posting in the State Register.

U.S. Army Corps of Engineers, St. Paul District – Regulation of Discharges of Dredged or Fill Material for Work Affecting Navigable Waters for Construction or Maintenance of Utility Lines

Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act the U.S. Army Corps of Engineers has the authority to regulate the construction or maintenance of utility lines when: (1) the activity results in a discharge of dredged or fill material into a water of the United States (Section 404 of the Clean Water Act); and/or (2) the activity would involve work in, over, or under a navigable water of the United States or any other work that would affect the course, location, condition, or capacity of the water.

The St. Paul District has defined "utility line" in the regional general permit RGP-003-MN as "any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission of electrical energy, telephone, electronic data, and radio or television communication." This definition applies to activities that may be eligible for authorization under the regional general permit. Utility lines that are not covered under this definition

are eligible for authorization under letter of permission procedures or through the standard individual permit review process.

The current permitting framework provides the following avenues for obtaining Section 404/10 authorization for utility line projects.

1. Regional General Permit RGP-003-MN. Category C of this regional permit authorizes discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters for the construction, maintenance and repair of utility lines and associated facilities, including the following: (1) excavation, backfilling or placement of bedding material for the construction or maintenance of utility lines including outfall and intake structures; (2) foundations for overhead utility lines, utility poles or anchors; and (3) utility line substation or associated facilities. Under this category, project proponents must notify the Corps in advance if any of the following criteria are met: the utility line that is in or crosses waters of the U.S. totals more than 500 feet in length, the project would include mechanized land clearing of forested wetland or permanent conversion of forested wetlands, or activities that are conducted in/over/under navigable waters.

RGP-003-MN also contains a category for the time sensitive repair or maintenance of pipelines (Category V). This category authorizes discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters for the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that have been identified by the Pipeline and Hazardous Materials Safety Administration's Pipeline Safety Program (PHP) as time-sensitive (see 49 CFR parts 192 and 195). Project proponents must notify the Corps in advance of the work and receive written verification that the work complies with the terms and conditions of RGP-003-MN.

2. Letter of Permission. The St. Paul District has developed and issued letter of permission (LOP) procedures for discharges of dredged or fill material into waters of the U.S. regulated under Section 404. For utility line projects, LOPs could be used to authorize projects not eligible for authorization under RGP-003-MN with impacts totaling less than 3 acres to waters of the United States. Project proponents must submit an application to the Corps to obtain a permit prior to conducting the work. LOPs can also be used to authorize work regulated under Section 10.

3. Standard Individual Permits. Activities that are not eligible for authorization under either the regional general permit or our letter of permission procedures require a standard individual permit review. Utility line projects that impact greater than 3 acres of waters of the U.S. fall into this category. Standard individual permit reviews are the most comprehensive of the Corps' permit reviews.

Related Provisions of the Current WCA Rule

8420.0420 (Exemption Standards), Subp. 6. Utilities.

- A. A replacement plan is not required for impacts resulting from:
- (1) installation, maintenance, repair, or replacement of utility lines, including pipelines, if:
 - (a) the impacts have been avoided and minimized to the extent possible; and
 - (b) the proposed project significantly modifies or alters less than one-half acre of wetlands;
- or

(2) repair or updating of existing subsurface sewage treatment systems necessary to comply with local, state, and federal regulations. This exemption does not apply if the wetland impacts are the result of the treatment system being expanded to accommodate increased use.

B. For maintenance, repair, and replacement, a local government unit may issue a seasonal or annual exemption approval or the utility may proceed without local government unit approval if the utility is carrying out the work according to approved best management practices. Work of an emergency nature may proceed as necessary and any impacts must be addressed with the local government unit after the emergency work has been completed.

8420.0111 (Definitions), Subp. 69. Utility. "Utility" means a sanitary sewer; a storm sewer; potable water distribution; or transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, petroleum products, electricity, telephone, or radio service or communications.

8420.0420 (Exemption Standards), Subp. 4. Federal approvals. A replacement plan is not required for impacts authorized under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, or section 10 of the Rivers and Harbors Act of 1899, United States Code, title 33, section 403, and regulations that meet minimum state standards under this chapter and that have been approved by the board, the Department of Agriculture, the Department of Natural Resources, and the Pollution Control Agency. This exemption is not valid until such approval is obtained. If approved, the conditions and standards shall be noticed by the board to local government units and published in the State Register. The exemption takes effect 30 days after publication and remains in effect unless superseded by subsequent statute, rule, or notice in the State Register.

Questions and Comments

Please address all questions and/or comments to Les Lemm, BWSR Wetland Conservation Act Coordinator, at 651-296-6057 or les.lemm@state.mn.us.

NEW BUSINESS

1. Durable & Targeted Ideas for Conservation Challenges in the Agricultural Regions of the Midwest and Minnesota - Craig Cox, Senior Vice President, Environmental Working Group (EWG) – ***INFORMATION/DISCUSSION ITEM***



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Durable & Targeted Ideas for Conservation Challenges in the agricultural regions of the Midwest and Minnesota

Meeting Date: Dec 17, 2014

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Section/Region: N/A

Contact: John Jaschke

Prepared by: John Jaschke

Reviewed by: N/A Committee(s)

Presented by: Craig Cox, EWG

X Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

None General Fund Budget

Amended Policy Requested Capital Budget

New Policy Requested Outdoor Heritage Fund Budget

Other: Clean Water Fund Budget

ACTION REQUESTED

Information/Discussion Item.

LINKS TO ADDITIONAL INFORMATION

Craig Cox has devoted his working life to conservation. He began his career at the Minnesota Department of Natural Resources in 1977 as a field biologist and then moved to Washington DC where he served as Senior Staff Officer with the Board on Agriculture of the National Academy of Sciences and completed three major studies, including Soil and Water Quality: An Agenda for Agriculture. He then led the development of the conservation title of the 1996 farm bill while serving as staff of the Senate Committee on Agriculture, Nutrition and Forestry and has remained involved in farm bill efforts ever since. Craig then joined the USDA Natural Resources Conservation Service as a Special Assistant to the Chief and served briefly as Acting Deputy Under-Secretary for Natural Resources and Environment in the Department of Agriculture before moving to Iowa in 1998 to become Executive Director of the Soil and Water Conservation Society. In August 2008 he joined the Environmental Working Group (EWG) to direct EWG's Midwest office and lead the organization's research and advocacy work in agriculture, renewable energy, and climate change. Craig has degrees in Wildlife Ecology and Agricultural Economics from the University of Minnesota and is an avid fly fisherman, hunter and hiker.

<http://www.ewg.org/staff/craig-cox>

SUMMARY (Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)

Mr. Cox will overview some of EWG's recent findings ideas and recommendations related to conservation needs and challenges in the agricultural regions of the Midwest with special attention to factors most relevant to Minnesota.