Minnesota Board of Water & Soil Resources

DATE: March 14, 2016

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

FROM: John Jaschke, Executive Director

SUBJECT: BWSR Board Meeting Notice – March 23, 2016

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, March 23, 2016, 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

Buffers, Soils & Drainage Committee

1. **Buffer and Soil Erosion and Implementation Plan and Timeline** – Staff have developed an implementation plan for the Buffers and Soil Erosion Programs, which includes conducting a request for information (RFI). This plan and RFI will be reviewed with the Board including a request to authorize staff to conduct the RFI. ***DECISION ITEM***

2. **Buffer Establishment and Management Toolbox** – To support local government staff in their efforts to plan, establish and manage riparian buffers, BWSR has developed a "Buffer Establishment and Management Toolbox". The toolbox covers basic buffer concepts and ways to combine conservation practices to maximize effectiveness and methods to develop buffers with multiple benefits. The toolbox also includes approximately fifty links to additional information including the Minnesota Wetland Restoration Guide; BWSR's Pollinator Toolbox; and BWSR's What's Working website. ***INFORMATION ITEM***

3. **Buffer Tracking Tool Prototype** — As a part of Minnesota Statute 103F.48 (Riparian Protection and Water Quality Practices) Soil and Water Conservation Districts (SWCDs) will be responsible to track progress toward compliance with the requirements in this legislation. Staff has begun development of a compliance tracking database and tools. The tools would provide SWCDs and BWSR with almost real time tracking and compliance data and could take the place of annual reporting by the SWCDs. Currently a prototype has been developed and we are in the process of field testing the programs with several SWCD staff and BWSR field staff. ***INFORMATION ITEM***

Water Management & Strategic Planning Committee

1. **One Watershed, One Plan Operating Procedures and Plan Content Requirements** – One Watershed, One Plan was adopted by the Board as a pilot program in June 2014, through the authorization of five pilot areas and adoption of Operating Procedures for Pilots. Plan Content Requirements for Pilots were adopted by the Board in September 2014. The Water Management and Strategic Planning Committee (Committee) reviewed the edits to these documents based on the pilot experiences and the new Comprehensive Watershed Management Program, Minnesota Statutes §103B.801. A public comment period was held January 28 – March 4, and minimal comments were received. The Committee will meet on March 22, 2016 to review and provide a final recommendation to the Board. ***DECISION ITEM***

2. **Local Water Plan Extension and Amendment Policy** – The Local Water Plan Extension Policy was adopted by the BWSR Board on December 17, 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 Water Management and Strategic Planning Committee revisited the policy on January 27, 2016 and discussed modifying the existing policy to broaden the applicability to include amendments and delegate authority for approval of extensions and amendments, under specific circumstances, to the Executive Director. These modifications will be presented to the Committee on March 22, 2016; and provide a recommendation for adoption by the full Board at its March 23, 2016 meeting. ***DECISION ITEM***

Grants Program and Policy Committee

1. **One Watershed, One Plan Grant Program Policy and Request for Proposals** – Clean Water Funds were appropriated to BWSR in Laws of Minnesota 2015, 1st Special Session, Chapter 2, Article 2, Sec. 7(j) for assistance, oversight, and grants to local governments to transition local water management plans to a watershed approach, also known as the One Watershed, One Plan Program. The proposed Fiscal Year 2016 Grant Policy was modeled after both the overall Clean Water Fund policies of the Board and the policy used for the One Watershed, One Plan pilot program. The proposed Request for Proposals was modeled after the Request for Interest used in the pilot program. The Water Management and Strategic Planning Committee provided a high-level review of the proposed documents as part of the One Watershed, One Plan program development, prior to the recommendation from the Grants Program and Policy Committee. ***DECISION ITEM***

Wetland Conservation Committee

1. **Wetland Conservation Act Rulemaking Report** – In 2015, several legislative changes were made to the Minnesota Wetland Conservation Act (WCA). That legislation included a requirement for the BWSR to report to the committees with jurisdiction over the environment and natural resources on the progress developing policy for several issues, including high priority areas for wetland mitigation, an in-lieu fee wetland replacement program, replacement wetland siting, and actions eligible for credit. WCA rulemaking began in fall 2015, and staff have been working on the initial concepts for implementation of these and other items. This legislative report summarizes this initial work, providing direction for the next stage of rulemaking. ***DECISION ITEM***

NEW BUSINESS

1. **Wetland Restoration Programs and New Wetland Restoration Guide** - In recent years, BWSR has incorporated many advances in our wetland restoration programs and our approach to restoring drained and altered wetlands. These advances include development of more sustainable and ecological-based restoration practices and strategies, in addition to new, updated technical methods, standards, and products. These new concepts, strategies, and techniques are incorporated into the new Minnesota Wetland Restoration Guide. ***INFORMATION 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. We look forward to seeing you on March 23rd!

P.S.

Doug Thomas will be Acting Executive Director for the 3/23/16 Board meeting.

T.A.

BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD N.
LOWER LEVEL CONFERENCE ROOM
ST. PAUL, MINNESOTA 55155
WEDNESDAY, MARCH 23, 2016
PRELIMINARY AGENDA

9:00 AM CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA

MINUTES OF JANUARY 27, 2016 BOARD MEETING

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

INTRODUCTION OF NEW EMPLOYEES

- Amy Waters, OAS, St. Paul Office

REPORTS

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

COMMITTEE RECOMMENDATIONS

Buffers, Soils & Drainage Committee

1. Buffer and Soil Erosion and Implementation Plan and Timeline – Dave Weirens and Tom Gile – ***DECISION ITEM***

2. Buffer Establishment and Management Toolbox – Dan Shaw and Tom Gile – ***INFORMATION ITEM***

3. Buffer Tracking Tool Prototype – Tom Gile and Aaron Spence – ***INFORMATION ITEM***

Water Management & Strategic Planning Committee

1. One Watershed, One Plan Operating Procedures and Plan Content Requirements – Melissa Lewis – ***DECISION ITEM***

2. Local Water Plan Extensions and Amendment Policy – Melissa Lewis – ***DECISION ITEM***

Grants Program and Policy Committee

1. One Watershed, One Plan Grant Program Policy and Request for Proposals – Melissa Lewis – ***DECISION ITEM***

Wetland Conservation Committee

1. Wetland Conservation Act Rulemaking Report – Les Lemm and Dave Weirens – ***DECISION ITEM***

NEW BUSINESS

1. Wetland Restoration Programs and New Wetland Restoration Guide – Tom Wenzel and Dan Shaw – ***INFORMATION ITEM***

AGENCY REPORTS

- Minnesota Department of Agriculture – Matt Wohlman
- Minnesota Department of Health – Chris Elvrum
- Minnesota Department of Natural Resources – Tom Landwehr
- Minnesota Extension Service – Faye Sleeper
- Minnesota Pollution Control Agency – Rebecca Flood

ADVISORY COMMENTS

- Association of Minnesota Counties – Jennifer Berquam
- Minnesota Association of Conservation District Employees – Tiffany Determan
- 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 – Cathee Pullman

UPCOMING MEETINGS

- BWSR Board Meeting, May 25, 2016, St. Paul

Noon **ADJOURN**

BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD N.
LOWER LEVEL CONFERENCE ROOM
ST. PAUL, MINNESOTA 55155
WEDNESDAY, JANUARY 27, 2016

BOARD MEMBERS PRESENT:
Patty Acomb, Joe Collins, Jill Crafton, Jack Ditmore, Chris Elvrum, MDH; Doug Erickson, Sandy Hooker, Kathryn Kelly, Tom Landwehr, DNR; Tom Loveall, Terry McDill, MPCA; Brian Napstad, Neil Peterson, Tom Schulz, Rob Sip, MDA; Faye Sleeper, MES; Steve Sunderland, Gerald Van Amburg, Paige Winebarger

BOARD MEMBERS ABSENT:
Gene Tiedemann

STAFF PRESENT:
Mary Jo Anderson, Angie Becker Kudelka, Steve Christopher, Bill Eisele, Travis Germundson, Nicole Gebheim, Jenny Gieseke, Jim Haertel, Ryan Hughes, Al Kean, John Jaschke, Dave Johnson, Melissa Lewis, Ken Powell, Dan Steward, Renee Sutton, Dave Weirens

OTHERS PRESENT:
Jason Garms, DNR
Todd Holman, The Nature Conservancy

DRAFT

Chair Napstad called the meeting to order at 9:00 a.m.

PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA – Chair Napstad reported one addition to the agenda, the Conflict of Interest Declaration process is being used today for the FY2014 St. Louis County Natural Resources Block Grant
** Amendment. Moved by Sandy Hooker, seconded by Neil Peterson, to adopt the agenda as amended.
16-01 ***Motion passed on a voice vote.***

** **MINUTES OF DECEMBER 16, 2015 BOARD MEETING –** Moved by Steve Sunderland, seconded by Doug
16-02 Erickson, to approve the minutes of December 16, 2015 as circulated. ***Motion passed on a voice vote***.

INTRODUCTION OF NEW EMPLOYEES
Bill Eisele introduced Nicole Gebheim, Human Resources Officer; and Renee Sutton, Accounting Officer. Chair Napstad welcomed Nicole and Renee to BWSR.

REPORTS
Chair's Report - Brian Napstad reported that EQB met January 12, 2016 at the St. Paul Science Museum to discuss worldwide climate change. The EQB had a planning retreat in the afternoon, discussions provided direction for the executive director to move forward on activity prioritization, Environmental Congress, climate change, pollinators and issues affecting Minnesota from an interagency perspective. EQB's International Climate Adaptation Team (ICAT) consisting of PCA, EQB, BWSR, Met Council, DNR met the following week to discuss pollinators, great multi-agency presentations on pollinators and climate changes. Chair Napstad suggested a presentation to BWSR on climate change in the near future.

Chair Napstad requested board members participate in John Jaschke's annual performance review. Angie Becker Kudelka will provide an anonymous confidential survey to board members. Chair Napstad and Vice-Chair Van Amburg will conduct the executive director's performance evaluation prior to the March Board meeting.

Audit & Oversight Committee – Chair Napstad reported that the Audit & Oversight Committee met this morning to review the 2015 PRAP Report; the Committee's recommendation is on the agenda later today.

Executive Director's Report – John Jaschke provided a staffing update. John briefly commented on the Climate Change Adaptation Conference on January 28, and the Governor's Water Summit on February 27. John reported that the Governor's bonding bill includes BWSR's CREP initiative; and Local Roads Wetlands Replacement Program. John stated that BWSR is developing the buffer implementation process. John reviewed information in board members' packets.

Jill Crafton asked about DNR mapping. Jason Garms, DNR, provided a brief update on the DNR mapping process, the maps will be maintained. He stated that Phase 1 is about public waters; Phase 2 is data collection of ditches; some drainage authorities have digital information, some counties have useful information on benefited areas and public ditches, LIDAR will be useful for other drainage ditch areas. Tom Landwehr explained the public ditch and benefited areas, stating the legislative interpretation of the law differs. Discussion followed. Chair Napstad thanked Jason for the update.

Dispute Resolution Committee (DRC) – Travis Germundson provided a brief overview of the appeals filed with BWSR, currently eight appeals are pending; a new appeal File 16-1, is a no-loss decision in Wright County.

Grants Program & Policy Committee – Steve Sunderland reported that the Grants Program & Policy Committee met January 26; recommendations are on the agenda later today. Steve stated that Marcey Westrick presented an overview of the Clean Water Funds process. The Committee would like to meet with the Water Management & Strategic Planning Committee in the near future. The next Grants Program & Policy Committee meeting will be April 26.

Water Management & Strategic Planning Committee – Jack Ditmore reported that the Water Management & Strategic Planning Committee met January 26; a recommendation is on the agenda later today regarding One Watershed, One Plan (1W1P). Jack provided a brief update on the 1W1P pilot program review process, will start to see results in the spring. The next Committee meeting will be in March. The Water Management & Strategic Planning Committee will be meeting with the Grants Program & Policy Committee.

Wetland Conservation Committee – Gerald Van Amburg reported that the Wetland Conservation Committee will meet today immediately following adjournment of the Board meeting.

Drainage Work Group – Tom Loveall reported that the Drainage Work Group met on January 14. Tom provided an overview of the meeting. Al Kean reported that the Drainage Work Group's next meeting is March 3.

CONFLICT OF INTEREST DECLARATION

Chair Napstad explained that the Conflict of Interest Disclosure process is being used today for the FY2014 St. Louis County Natural Resources Block Grant Amendment.

Chair Napstad read the 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."

COMMITTEE RECOMMENDATIONS

Central Region Committee

Carver County Groundwater Plan – Steve Christopher reported that the Central Region Committee met on January 7, 2016. Carver County submitted a Groundwater Plan to BWSR for review and approval. The Plan defines the County's role in groundwater resource management for the next ten years and focuses on how to meet today's needs as well as expected growth within the County while protecting its resources. The Central Region Committee recommends approval of the Carver County Groundwater
** Plan. Moved by Joe Collins, seconded by Jill Crafton, to approve the Carver County 2016 – 2025
16-03 Groundwater Plan. ***Motion passed on a voice vote.***

Riley-Purgatory-Bluff Creek Watershed District Watershed Management Plan Amendment – Steve Christopher reported that the final draft Amendment to the Riley-Purgatory-Bluff Creek Watershed District Watershed Management Plan was filed with the Board on December 4, 2015. The Amendment proposes to revise the District's current implementation program by adding two capital improvement

projects. The total estimated cost of the projects is $2,050,000 and would be funded through the District's watershed-wide levy. The Central Region Committee met on January 7, 2016 and unanimously
** recommends approval of the Plan Amendment. Moved by Joe Collins, seconded by Jill Crafton, to
16-04 approve the amendment dated December 2015 to the Riley- Purgatory-Bluff Creek Watershed District Watershed Management Plan. ***Motion passed on a voice vote.***

Wright County Local Water Management Plan Extension – Steve Christopher reported that approximately two-thirds of Wright County is located within the North Fork Crow River Watershed which is currently participating as a pilot for the One Watershed, One Plan program. Wright County and Wright SWCD have been active planning participants in the North Fork Crow River Planning Partnership group for the program since it started the planning area in early 2015. Wright County is requesting an extension for their Local Water Management Plan to allow for the County to adopt the One Watershed, One Plan locally. The Central Region Committee met January 7, 2016 to discuss the Plan and unanimously recommend approval of the extension to December 31, 2017. Moved by Joe Collins,
** seconded by Sandy Hooker, to approve the Wright County Local Water Management Plan extension to
16-05 December 31, 2017. ***Motion passed on a voice vote.***

Isanti County Local Water Management Plan Extension – Joe Collins reported that on May 24, 2006, the BWSR approved Isanti County's Comprehensive Local Water Management Plan for a ten year period until May 31, 2016. On March 18, 2015, the County passed a resolution to begin the plan update process. On September 24, 2015, the County requested an extension to allow for the inclusion of data from the Rum River WRAPS to be included in the planning process. This extension request was within the BWSR policy guidelines. The Central Region Committee met on January 7, 2016 reviewed the
** extension request and recommend approval of the extension to May 31, 2018. Moved by Joe Collins,
16-06 seconded by Faye Sleeper, to approve the Isanti County Local Water Management Plan extension to May 31, 2018. ***Motion passed on a voice vote***.

Chair Napstad called for a break in the meeting at 10:22 AM. The meeting reconvened at 10:40 AM.

Chair Napstad acknowledged Sandy Hooker's service as a BWSR board member representing townships. Chair Napstad and John Jaschke presented Sandy with a Distinguished Service Award plaque for her dedicated service to Minnesota's water and soil resources from 2009-2016. Chair Napstad thanked Sandy for her service and membership on the Board. Sandy stated that she enjoyed serving on the Board.

Northern Region Committee

Bois de Sioux WD and Buffalo-Red River WD Boundary Change Petition – Gerald Van Amburg reported that August 3, 2015, BWSR received a petition to change the boundaries of the Bois de Sioux Watershed District (BdSWD) and Buffalo-Red River Watershed District (BRRWD). The petition was filed by the two Watershed Districts and Otter Tail County. The proposed boundary change, encompassing approximately 8,433 acres of land, would achieve a more accurate alignment between the hydrologic and legal boundaries of the BdSWD and the BRRWD. The Northern Region Committee met on January 13, 2016 and unanimously recommend approval of the BdSWD and the BRRWD boundary change
** Petition. Moved by Gerald Van Amburg, seconded by Kathryn Kelly, to approve the order changing the
16-07 boundaries of the Bois de Sioux WD and Buffalo-Red River WD per the petition and depiction on the map. ***Motion passed on a voice vote.***

Wadena County Priority Concerns Scoping Document – Tom Schulz reported that the Wadena County submitted the Priority Concerns Scoping Document for state review and comment as part of updating their Comprehensive Local Water Management Plan. The Northern Region Committee met January 13, 2016, after the state agencies comment period ended. The Committee recommends approval of the Wadena County Priority Concerns Scoping Document. The State's expectations of the final plan must be
** sent to Wadena County. Moved by Tom Schulz, seconded by Terry McDill, to approve Wadena County
16-08 Priority Concerns Scoping Document for the Comprehensive Local Water Management Plan Update. Discussion followed. ***Motion passed on a voice vote.***

Hubbard County Comprehensive Local Water Management Plan Update – Tom Schulz reported that Hubbard County submitted their Comprehensive Local Water Management Plan Update for State review. The Northern Region Committee met January 13, 2016 to review the content of the plan, state agency comments, and recommends approval of the Hubbard County Comprehensive Local Water
** Management Plan Update. Moved by Tom Schulz, seconded by Kathryn Kelly, to approve the update of
16-09 the Hubbard County Comprehensive Local Water Management Plan 2016 – 2026; with Goals, Objectives, and Action Items being amended prior to January 27, 2021. ***Motion passed on a voice vote.***

Todd County Comprehensive Local Water Management Plan Update – Tom Schulz reported that Todd County submitted the revised Todd County Comprehensive Local Water Management Plan for State review and comment. The Northern Region Committee met on January 13th after the State agencies comment period ended. The Committee unanimously recommends approval of the Todd County
** Comprehensive Local Water Management Plan five-year update. Moved by Tom Schulz, seconded by
16-10 Joe Collins, to approve the update of the Todd County Comprehensive Local Water Management Plan 2016 - 2021. Discussion followed. ***Motion passed on a voice vote.***

Audit & Oversight Committee

2015 Performance Review and Assistance Program (PRAP) Report to the Legislature – Jenny Gieseke reported that the annual PRAP Report is required by M.S. 103B.102, subd. 3. The Report presents a summary of PRAP reviews and activities conducted during 2015. The Audit & Oversight Committee met this morning to review the draft Report, and recommends approval of the 2015 PRAP Report, to be
** submitted to the Legislature by the February 1 deadline. Discussion followed. Moved by Kathryn Kelly,
16-11 seconded by Sandy Hooker, to approve the 2015 PRAP Report to the Minnesota Legislature for transmittal to the Legislature and publication on the Board's website, with allowance for any minor editing modifications necessary for publication. ***Motion passed on a voice vote***.

Paige Winebarger left the meeting at 11:27 AM.

Chair Napstad stated that board members have submitted their completed Conflict of Interest Disclosure forms; the documents will be filed for the grant decision item. All board members are eligible to vote on the grant item.

Grants Program & Policy Committee

St. Louis County FY2014 NRBG Amendment – Dave Weirens reported that a proposal to reimburse St. Louis County for a portion of its costs to approve the Lake Superior Wetland bank arose during the 2015 Legislative session. The County raised concerns regarding the scale of the project and the decision-making authority transferred from the DNR to St. Louis County; which resulted in costs to the County significantly higher than any prior wetland bank. A method to address these concerns that was initially proposed was to provide a portion of wetland bank fee revenue to the counties that host wetland

banks. These funds provide significant financial support to BWSR's wetland banking activities, any reduction would have a significant negative impact on this critical WCA program. The issues of scale and decision authority along with the restoration methods, extensive ditch abandonment and public outreach are rationale for this amendment. Dave reported that the Grants Program & Policy Committee met on January 26, 2016 to review the proposed NRBG amendment and recommends approval of the
** one-time reimbursement to St. Louis County for FY2014 NRBG Amendment. Moved by Joe Collins,
16-12 seconded by Steve Sunderland, to authorize staff to amend the FY2014 St. Louis County NRBG to add up to $300,000 to reimburse St. Louis County for a portion of its costs associated with oversight and approval of the Lake Superior Wetland Bank.

Discussion followed. Tom Landwehr suggested a potential policy consideration regarding large wetland banks from private investors. Tom Loveall stated the need to address profit and expense issues. Chair Napstad suggested the BWSR wetland section consider guidance for county fee schedules. Dave stated that an alternative, accepted by the County and legislators, was to grant BWSR authority to make one-time payments for unique circumstances, such as the one presented, along with the repeal of an ongoing BWSR General Fund repayment that had been in place since 2008. Dave stated that future changes will grant BWSR authority to engage in wetland mitigation issues. ***Motion passed on a voice vote.***

Water Management & Strategic Planning Committee

One Watershed, One Plan Request for Public Comment – Melissa Lewis reported that the Water Management and Strategic Planning Committee met January 26, 2016 and recommends the Board proceed with announcing public review and comment periods for the One Watershed, One Plan Operating Procedures and Plan Content documents from January 28, 2016 through March 4, 2016. The One Watershed, One Plan Transition Plan to be initiated after final review of the Plan at the March 26,
** 2016 Committee meeting. Moved by Jack Ditmore, seconded by Sandy Hooker, to authorize staff to
16-13 initiate review periods for the purpose of seeking comment prior to formal adoption by the Board of the One Watershed, One Plan: a) Operating Procedures; b) Plan Content Requirements; and c) Transition Plan. Discussion followed. John Jaschke stated that BWSR has authority by statute with no rulemaking authority. Tom Loveall suggested clarification to the branding name, is it One Watershed, One Plan or Comprehensive Watershed Management Planning Program. Jack Ditmore stated that at this point it is One Watershed, One Plan (1W1P). ***Motion passed on a voice vote.***

NEW BUSINESS

Vice-Chair Nomination – John Jaschke reported that the BWSR Bylaws state: "The Vice-Chair shall be elected to a two-year term by the members of the Board. The Vice-Chair shall be elected by majority vote at the first regularly scheduled meeting of every EVEN calendar year." Chair Napstad stated that
** Gerald Van Amburg is Vice-Chair. Chair Napstad called for nominations. Moved by Tom Schulz,
16-14 seconded by Joe Collins, to nominate Gerald Van Amburg. Chair Napstad made three additional calls for nominations. No additional nominations were made. Chair Napstad declared nominations closed. Gerald Van Amburg received a unanimous vote to serve as Vice-Chair. ***Motion passed on a voice vote.*** Gerald Van Amburg will continue to serve as Vice-Chair of BWSR.

AGENCY REPORTS

Minnesota Department of Agriculture (MDA) – Rob Sip announced that MDA is working with the Agricultural Water Resources Center to host the Minnesota Crop Nutrient Management Conference, February 9 in Mankato. Rob reported that the Red River Basin Commission is holding a series of five

statewide meetings on the nutrient management plan. Rob distributed a flyer on the AgBMP Loan Program.

Minnesota Department of Natural Resources (DNR) – Tom Landwehr reported that the Governor's Water Summit on February 27, in St. Paul will have approximately 1000 people in attendance. Tom reported that the Governor has directed DNR to be more diverse, and so DNR is now engaged in a pilot program working with urban youth, providing an internship program and scholarships. Tom provided a brief update on the Pheasant Plan initiated at the 2015 DNR Roundtable. The 2016 Roundtable presented a Pheasant Plan report card showing great success; accomplishments include Buffers initiative, the Walk-In Access Program; and the CREP proposal.

Minnesota Pollution Control Agency (MPCA) – Terry McDill distributed a map of the Watershed Restoration & Protection Strategies (WRAPS) completed and upcoming milestones. Terry stated that loan applications are open on an ongoing basis at 2%. John asked that a message be provided at the drainage authority level.

ADVISORY COMMENTS

Minnesota Association of Townships (MAT) – Sandy Hooker stated that MAT is preparing for the 2016 Legislative Session, and conducting statewide training sessions in the spring.

UPCOMING MEETINGS

- BWSR Board Meeting, March 23, 2016, St. Paul
- Water Management & Strategy Planning Committee Meeting, March 22, 2016

Chair Napstad adjourned the meeting at 12:24 PM.

Respectfully submitted,

Mary Jo Anderson
Recorder

DRAFT

Minnesota Board of Water & Soil Resources

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: **Dispute Resolution Committee Report**

Meeting Date: March 10, 2016

Agenda Category: ☐ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☐ Decision ☐ Discussion ☒ Information

Section/Region: Central Office

Contact: Travis Germundson

Prepared by: Travis Germundson

Reviewed by: _____ Committee(s)

Presented by: Travis Germundson
Gerald 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*)

The report provides a monthly update on the number of appeal filed with BWSR.

Dispute Resolution Report
March 11, 2016
By: Travis Germundson

There are presently **8** appeals pending. All of the appeals involve WCA except File 16-2. There has been **1** new appeal filed since the last report (January 27, 2016 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 16-2 (2-11-16) This is an appeal filed under Minn. Stat. §103D.535 regarding Rice Creek Watershed District Board of Managers' decision to initiate repair proceedings for Anoka County Ditch 46. *No decision has been made on the appeal.*

~~File 16-1 (1-15-16). This is an appeal of a no-loss decision in Wright County. The appeal regards the denial of a no-loss application for wetland impacts within the shoreland district of Charlotte Lake.~~ *The appeal has been denied.*

File 15-10 (10-14-15). This is an appeal of a restoration order in Chisago County. The appeal regards the unauthorized placement of fill in a wetland resulting in approximately 1.5 acres of impact. The alleged impacts are associated with the construction of motor cross/ATV track. The appeal has been placed in abeyance and the restoration order stayed for the Technical Evaluation Plan to convene on site and develop written findings of fact on the area of impact.

File 15-9 (9-17-15) This is an appeal of a replacement plan decision in Crow Wing County. The appeal regards the denial of a replacement plan application for wetland impacts associated with the construction of a residential driveway and structure within the Shoreland Management District of South Long Lake. A previous decision approving a similar replacement plan application had been appealed (File 15-5). The appeal was remanded for additional technical evaluation on impact avoidance including a no-build alternative, and now the current denial is being appealed. A pre-hearing conference convened on January 14, 2016 and the parties mutually agreed to stay further administrative proceedings, and continue to discuss settlement options.

File 15-7 (7-20-15) This is an appeal of a Restoration Order in Olmsted County. The appeal regards the unauthorized placement of drain tile in a purported wetland. Applications for exemption and no-loss determinations have been submitted to the local unit of government concurrently with the appeal. The appeal has been placed in abeyance until the LGU makes a final decision on the applications for exemption and no-loss.

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. DNR's February 11, 2016 final decision has been appealed to the Court of Appeals. The appeal will remain in abeyance pending judicial review.

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 applications were determined to be approved by operation of law under Minn. Stat. §15.99. That decision has been appealed (File 14-9). The appeal will continue to be held in abeyance until there is a final decision by the Court of Appeals on File 14-9.

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. Site certification is scheduled to take place during the 2016 growing season.

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 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.

Summary Table

Type of Decision	Total for Calendar Year 2015	Total for Calendar Year 2016
Order in favor of appellant		
Order not in favor of appellant	4	1
Order Modified		
Order Remanded	1	
Order Place Appeal in Abeyance	4	1
Negotiated Settlement		
Withdrawn/Dismissed	2	

COMMITTEE RECOMMENDATIONS

Buffers, Soils & Drainage Committee

1. Buffer and Soil Erosion and Implementation Plan and Timeline – Dave Weirens and Tom Gile – ***DECISION ITEM***

2. Buffer Establishment and Management Toolbox – Dan Shaw and Tom Gile – ***INFORMATION ITEM***

3. Buffer Tracking Tool Prototype – Tom Gile and Aaron Spence – ***INFORMATION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: **Buffer and Soil Erosion Programs Implementation Plan and Request for Information**

Meeting Date: March 23, 2016

Agenda Category: X Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☐ Decision ☐ Discussion ☐ Information

Section/Region:

Contact: Dave Weirens

Prepared by: Dave Weirens

Reviewed by: Buffers, Soils and Drainage Committee(s)

Presented by: Dave Weirens and Tom Gile

☐ **Audio/Visual Equipment Needed for Agenda Item Presentation**

Attachments: ☐ Resolution ☐ Order ☐ Map x 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 adopt the recommendation of the Buffers, Soils and Drainage Committee to authorize staff to conduct a request for information on certain specific components of the Buffers and Soil Erosion Programs implementation.

LINKS TO ADDITIONAL INFORMATION

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

The Buffer Program was enacted in the 2015 legislative session as were amendments to the Soil Loss statute. Staff have developed an implementation plan that is built around the March, June and August Board meetings and contains the following projects and/or work areas: (1) Buffer Implementation Tracking and Monitoring; (2) Technical Requirements: (3) Administrative Processes; (4) Other Waters Procedures and Criteria; (5) Drainage Policy and Procedure; (6) Buffer Implementation Funding; (7) Enforcement and Compliance; (8) Communications; and (9) Soil Erosion Program Implementation.

One of the first steps is to conduct a request for information from the public, local governments, interest groups, etc. to provide an opportunity for the public-at-large to participate in BWSR's implementation activities. In addition, we will be asking specific questions that need to be addressed as part of implementation in an effort to solicit ideas that can be incorporated into our work.

Board Resolution #_____

Buffer and Soil Erosion Programs: Implementation Request for Information

WHEREAS, Minnesota Statutes 103B.101 authorize the Board of Water and Soil Resources (BWSR) to coordinate water and soil resources planning and implementation activities of counties, soil and water conservation districts, watershed districts, watershed management organizations and other local units of government and to hold public hearings and adopt rules and orders necessary to execute its duties;

WHEREAS, Minnesota Statutes 103F.48 establishes a riparian protection and water quality practices program, commonly referred to as the Buffer Program; and

WHEREAS, Minnesota Statutes 103F.48 establishes several authorities and responsibilities for the BWSR to ensure this law is efficiently complied with and implemented; and

WHEREAS, Minnesota Statutes 103F.401-103F.455 establishes a program to control soil erosion, including authorizing BWSR to adopt rules; and

WHEREAS, BWSR has adopted Minnesota Rules Chapter 8400.4000 – 8400.4080 to implement this program; and

WHEREAS, Minnesota Statutes 103F.401-103F.455 were amended as a result of the 2015 legislative session necessitating the development of interim guidance to assist local governments in implementing the law as amended; and

WHEREAS, BWSR staff have developed a draft implementation plan that includes the following work activities: (1) Buffer Tracking and Monitoring Tool; (2) Technical Aspects of the Buffer Program; (3) Administrative Processes; (4) Other Waters/Water Plan Amendments; (5) Drainage Procedures; (6) Implementation Funding; (7) Enforcement and Compliance; and (8) Communications; and (9) Interim Soil Erosion Program Guidance; and

WHEREAS, a draft of the implementation schedule and plan was discussed with the Local Government Roundtable on February 25, 2016; and

WHEREAS, the BWSR Buffers, Soils and Drainage Committee reviewed the draft implementation plan and schedule, including a request for information process on March 9, 2016.

NOW, THEREFORE, BE IT RESOLVED THAT, the Minnesota Board of Water and Soil Resources authorizes staff to conduct a request for information to be published in the State Register on specific implementation components of the Buffer and Soil Erosion Programs.

By: _____ Date: _____

Brian Napstad, Chair
Minnesota Board of Water and Soil Resources

BWSR Buffer and Soil Erosion Programs
Preliminary Schedule

March 8, 2016

Program Milestones

March BWSR Board Meeting
Review and Request for Input

Board action expected on items 2, 3, 4 & 7a.

June BWSR Board Meeting
Review & Requests Formal Comments on Draft Policy/Guidance

Board action expected on items 2, 3, 4 & 7a.

August BWSR Board Meeting
Reviews & Approves Final Policy/Guidance

Board action expected on items 2, 3, 4 & 7a.

Program Development

1) Buffer Tracking and Monitoring Tool
And Associated Guidance
When: Feb 16 – Summer 16

2) Technical Aspects of the Buffer Program; Alternative Practices

3) Administrative Processes
Alternative Practices, Jurisdiction, Validation of Compliance

4) Other Waters/Water Plan Amendments
And Associated Guidance

5) Drainage Procedures
And Associated Guidance
When: Summer/Fall 16

6) Implementation Funding
When: ONGOING

7a) Enforcement & Compliance/ Establishment of Local Jurisdiction

7b) Enforcement & Compliance; including APO
When: Aug 16 - Nov 17/18

8) Communications
When: ONGOING

9) INTERIM
Soil Erosion Program Implementation
When: Mar 16 – May 16

Buffer and Soil Erosion Programs Implementation Planning

February 28, 2016

Projects.

1. Buffer Implementation Tracking and Monitoring

A. **Tasks:**
   i. Identify data to be collected and managed (Need/Want/Nice to have)
   ii. Develop data collection and management tools, including a prototype
   iii. Identify/evaluate current SWCD tracking/monitoring systems and how they can be used in conjunction with the BWSR data collection/management system
   iv. Develop policy/guidance/procedures for use by BWSR staff/LGUs for collecting and submitting compliance data

B. **Key Dates:**
   i. Draft Policy/Guidance/Procedures – April 2016
   ii. Final Policy/Guidance/Procedures – May 2016

2. Technical Requirements for compliance with the Buffer Requirement: Alternative Water Quality Practices; Minimum Buffer Requirements

A. **Tasks:**
   i. Develop criteria and methodology for defining comparable water quality protection
   ii. Evaluate assessment tools
   iii. Identify minimum buffer width requirements, including measurement of average widths
   iv. Identify practices that can be used as an alternative to a buffer based on the NRCS Field Office Technical Guide
   v. Identify other practices that can be used as an alternative to a buffer that are not in the NRCS Field Office Technical Guide

B. **Key Dates:**
   i. BWSR Board Review Plan/Request for Information– March 23, 2016
   ii. State Register Request for Information – April 2016
   iii. BWSR Board Review Draft Policy/Guidance/Procedures – June 22, 2016
   iv. Request for Comments – July 2016
   v. Board Request to Approve Policy/Guidance/Procedures – August 25, 2016

3. Administrative Processes: Alternative Water Quality Practices; Validations of Compliance; Exemptions; Initial Implementation Waivers

A. **Tasks:** Develop policy/guidance/procedures/forms for administrative implementation of Alternative Practices, Validations of Compliance, Exemptions, Initial Implementation Waivers

B. **Key Dates:**
   i. BWSR Board Review Plan/Request for Information– March 23, 2016
   ii. State Register Request for Information – April 2016
   iii. BWSR Board Review Draft Policy/Guidance/Procedures – June 22, 2016
   iv. Request for Comments – July 2016
   v. Board Request to Approve Policy/Guidance/Procedures – August 25, 2016

4. Other Waters: Criteria; Process/Procedures; Data and Mapping Tools

A. **Tasks:**
   i. Identify/develop data products and maps to be used by SWCDs
   ii. Develop policy/guidance for BWSR staff and SWCDs

B. **Key Dates:**
   i. BWSR Board Review Plan/Request for Information– March 23, 2016
   ii. State Register Request for Information – April 2016
   iii. BWSR Board Review Draft Policy/Guidance/Procedures – June 22, 2016
   iv. Request for Comments – July 2016
   v. Board Request to Approve Policy/Guidance/Procedures – August 25, 2016

5. Drainage Policy and Procedure

Purpose: Identify and evaluate barriers and impediments of establishing buffers and/or alternative practices adjacent to drainage ditches to be forwarded to the Drainage Work Group

A. **Tasks:**
   i. Identify policy/statutory changes necessary to further Buffer Program goals as they relate to drainage management, specifically addressing water management needs regarding establishing buffers adjacent to public and private ditches
   ii. Identifying and developing guidance for less costly and quicker redetermination of benefit processes

B. **Key Dates:** TBD

6. Buffer Implementation Funding

A. **Tasks:** Develop implementation plans for state and federal options to support LGU and landowner implementation and administration of the Buffer Program. Funding options to be evaluated include use of existing and future state funds to cost share with landowners, MDA Ag BMP Loan Program, Clean Water Partnership loans, Federal RCPP and EQIP; etc.

B. **Key Dates:** TBD

7. Enforcement and Compliance

A. **Tasks:**
   (a) Define State-Local Enforcement roles and responsibilities
   (b) Develop BWSR Enforcement procedures and Board Order, and BWSR APO Plan

B. **Key Dates:**
   i. BWSR Board review and support proposed compliance and enforcement approach – March, 23, 2016
   ii. BWSR adopts its enforcement order and APO Plan – January 25, 2017
   iii. Counties and watershed districts notify BWSR of their enforcement elections - March 31, 2017
   iv. Counties and watershed districts may modify their of their enforcement elections relating to public drainage ditches and notify BWSR - March 31, 2017
   v. Counties must have implemented their enforcement elections – November 1, 2017
   vi. Counties and watershed districts must have implemented their enforcement elections – November 1, 2018

8. Communications

A. **Tasks:** Develop communications plan for buffer program, including efforts targeted to LGUs, landowners and the general public
B. **Key Dates:** TBD

9. Soil Erosion Program Implementation

A. **Tasks:** Finalize Interim Guidance; Initiate rule-making process
B. **Key Dates:**
   i. BWSR Board Review Interim Guidance/Request for Information– March 23, 2016
   ii. State Register Request for Information – April 2016
   iii. BWSR Board Approve Interim Guidance/Authorize Rulemaking – May 25, 2016
   iv. State Register Request for Comments – July 2016
   v. Rulemaking Schedule - TBD

Minnesota Board of Water & Soil Resources

Minn. Stat. 103F.48
Buffer Compliance and Enforcement: Assessment, Options and Process

February 22, 2016

Statutory Overview.
Minnesota Statutes 103F.48 provide for the enforcement of the buffer requirement. Authorities relating to enforcement and landowner compliance are shown below:

- SWCD: Issue a validation of compliance to a landowner when requested. (Subd. 3(d))
- SWCD: Track landowner progress towards compliance. (Subd. 6)
- SWCD: Notify the county or watershed district with jurisdiction over the noncompliant site when it determines a landowner is not in compliance. (Subd. 7a)
- County or Watershed District: The county or watershed district with jurisdiction must provide the landowner that has been determined to be out of compliance by the SWCD with a list of corrective actions and a practical timeline to come into compliance. (Subd. 7a)
- County or Watershed District: Must adopt an administrative penalty order (APO) plan before using the authority provided in Minn. Stat. 103B.101, Subd 12a to enforce the buffer requirement. (Subd. 7b)
- BWSR: May use the APO authority provided in Minn. Stat. 103B.101, Subd 12a to enforce the buffer requirement when the county or watershed district have not adopted an APO plan. (Subd. 7b)
- BWSR: Must receive and decide on appeals of SWCD validations or APO's issued by a county, watershed district or BWSR. (Subd. 9)
- BWSR: May withhold funding from an SWCD, watershed district or county that fails to implement 103F.48. (Subd. 8) See BWSR Board Policy adopted December 16, 2015: http://bwsr.state.mn.us/buffers/assets/failure-to-implement-policy.pdf

Options.
BWSR has identified two options for efficiently and consistently carrying out compliance and enforcement responsibilities:

1. Local Enforcement Option: *Counties/Watershed Districts* issue corrective action notices that are enforced through locally adopted APO plans or existing county ordinance and watershed district rule authorities. County and watershed district APO plans are subject to BWSR approval prior to local adoption. Under this option, all or a portion of the work could be delegated to another local unit of government. Current statute allows this option.

2. State Enforcement Option: There are two routes to follow for this option:

A. *Counties/Watershed Districts* issue corrective action notices that are enforced through a *BWSR* adopted administrative penalty order plan. Current statute allows this option.

B. *BWSR* issues corrective action notices that are enforced through a *BWSR* adopted administrative penalty order plan. Existing statute does not expressly mention this option, however, it would be prescribed as a practical means to make BWSR APO authority effective. (Note: Could also be part of a technical clarification to statute in future legislation.)

These options need not be used exclusively on a statewide basis. The approach under consideration allows counties and watershed districts to choose whether to enforce the buffer law or not. BWSR would accept compliance and enforcement responsibilities in those counties and/or watershed districts that elect to defer to state enforcement.

Process.

To ensure a statewide compliance and enforcement system is in place by the first compliance deadline, the following processes must be completed by:

- *counties* by November 1, 2017 relating to **buffers adjacent to public waters;** and
- *counties and watershed districts* by November 1, 2018 for **buffers adjacent to public drainage ditches.**

Spring, 2016: Counties, watershed districts, SWCDs and drainage authorities are encouraged to meet following the preparation of the preliminary Buffer Protection Maps to validate them, and to discuss implementation of the buffer law including compliance and enforcement responsibilities. This implementation discussion should include compliance and enforcement to ensure a coordinated approach.

January 25, 2017: BWSR adopts its enforcement order and APO Plan.

Note: BWSR will develop its enforcement order and APO plan through Board Committees and a transparent process of engagement with local governments and stakeholders. This plan and order will include procedures to carry out the full suite of compliance and enforcement responsibilities from receipt of the notice from an SWCD that a landowner is not in noncompliance through the completion of any appeal following issuance of an APO. The plan will include procedures for BWSR receipt and acceptance of county and watershed district compliance and enforcement elections and approval of county and watershed district APO plans. This plan and order would only be put into effect in counties and watershed districts that elect to not enforce the buffer law as discussed below.

March 31, 2017: All counties and watershed districts must notify BWSR of their intention to:

(1) adopt an APO plan that is subject to approval by BWSR;

(2) use existing county ordinance and watershed district rule authorities, or;

(3) defer to state enforcement.

In providing a statement of intent, counties and watershed districts are encouraged to coordinate to ensure consistency and minimize landowner uncertainty.

Note: BWSR needs to know the intentions of counties and watershed districts by this date to ensure the required capacity is in place to carry out any required enforcement duties on November 1, 2017 and to ensure that compliance and enforcement responsibilities and procedures can be communicated to local governments and landowners.

BWSR will institute a process by which the governing body of every county and watershed district must provide documentation of their intent to:
(1a) adopt an APO plan by November 1, 2017 for enforcement relating to buffers adjacent to public waters and/or
(1b) by November 1, 2018 for enforcement relating to buffers adjacent to public drainage ditches; or
(2) use existing ordinance and rule authorities to ensure landowner compliance, including completion of any necessary official control processes by November 1, 2017 for county ordinances relating to shoreland management or November 1, 2018 for county ordinances and watershed district rules relating to public drainage ditches; or
(3) defer to enforcement by BWSR.

March 31, 2018: Counties and watershed districts may make adjustments or changes to the notice of intent relating to public drainage ditch compliance and enforcement provided to BWSR prior to March 31, 2017.

November 1, 2017: All counties that have elected to do either 1a or 2 above, must have adopted and implemented a BWSR approved APO plan by November 1, 2017 or November 1, 2018 or has enacted any necessary amendments to county ordinances relating to shoreland management and provide appropriate documentation to BWSR of this action.

November 1, 2018: All counties and watershed districts, that have elected to do either 1b or 2 above, must have adopted and implemented a BWSR approved APO plan by November 1, 2018 or has enacted any necessary amendments to county ordinances and watershed district rules relating to buffer requirements for public drainage ditches and provide appropriate documentation to BWSR of this action.

Request for Information
Minnesota Buffer Program Implementation

April 2016

Subject: Technical Aspects of Compliance

I. Overview

The Minnesota Board of Water and Soil Resources (Board) requests information and comments on the development of orders, guidance and procedures to support the implementation of Minnesota Statutes 103F.48, relating to water resources riparian protection requirements on public waters and public drainage systems. The Board will be considering orders, guidance and procedures relating to:

1) Technical aspects for compliance with the buffer requirement;
2) Administrative procedures, including for alternative water quality practices, validations of compliance, exemptions, and initial implementation waivers;
3) The identification of other waters, including criteria and processes for use by soil and water conservation districts; and
4) Compliance and enforcement.

Each of the items 1-4 above will have a separate document available on the BWSR website (www.bwsr.state.mn.us/buffers) providing additional details on the topic, including specific questions and issues for which information and comment is being requested.

II. Public Comment. Interested persons or groups may submit information and comments on these matters in writing until 4:30 p.m. on May 1, 2016.

III. Specific Information and Comment: Minn. Stat. 103F.48, Technical aspects of compliance with the buffer requirements, including alternative practices

While all comments relating to buffer compliance and enforcement are welcome and encouraged, the following specific issues the Board is specifically requesting comment on, these include:

- Methodologies for determining if a buffer meets the 50' average requirements?
- How to delineate/determine the top of bank?
- How to delineate/determine the "Normal Water Level"?
- How to define "comparable water benefit"?
- How to evaluate if a proposed alternative practice meets the "comparable water quality" definition?
- At what scales would it be appropriate for alternative practices to be considered and/or evaluated?
- What evaluation tools exist which should be considered as a means of evaluating the water quality, bank stability and riparian corridor benefits of an alternative practice?

- What other options, considerations and proposals should the Board evaluate in developing an effective means to determine if a proposed alternative practice would be permissible for meeting the buffer requirement of Minn. Stat. 103F.48?
- Acceptable practices for perennial crop rotations (I.E. Sod, alfalfa etc).

IV. Statutory Overview: Minn. Stat. 103F.48, Technical aspects of compliance

Minnesota Statutes 103F.48 provide for averaging of 50' buffer widths, consideration of alternative practices and temporarily non-vegetated conditions. Authorities relating to these aspects are shown below:

- Required Buffer Width: 50-foot average width, 30-foot minimum width, continuous buffer of perennially rooted vegetation. (Subd. 3(a)(i))
- Top of Bank/Normal Water level: The width of a buffer must be measured from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level. (Subd. 3(c))
- Alternative Practices: A landowner owning property adjacent to a water body identified in a buffer protection map and whose property is used for cultivation farming may meet the buffer requirements by adopting an alternative riparian water quality practice, or combination of structural, vegetative, and management practices, based on the Natural Resources Conservation Service Field Office Technical Guide or other practices approved by the board. (Subd. 6(b))
- Comparable Water Quality Benefit: Alternative water quality practices may be used where they provide water quality protection comparable to the buffer protection for the water body that the property abuts. (Subd. 3(b))
- Temporary non-vegetated due to perennial crop rotation: An exemption provides that a buffer is not required for land that is in a temporary non-vegetated condition due to alfalfa or other perennial crop or plant seeding. (Subd. 6)

V. Implementation Timeline

BWSR has established an implementation timeline for the development of the orders, guidance and procedures to support the implementation of Minnesota Statutes 103F.48, relating to water resources riparian protection requirements on public waters and public drainage systems. This schedule is generally:

March 23, 2016	BWSR Board Review Implementation Plan and Authorize Seeking Request for Information
June 22, 2016	BWSR Board Approve Preliminary Board Orders/Guidance
August 25, 2016	BWSR Board Approve Final Board Orders/Guidance

Request for Information
Minnesota Buffer Program Implementation

April 2016

Subject: Local Resource Riparian Protections (Other Waters)

I. Overview

The Minnesota Board of Water and Soil Resources (Board) requests information and comments on the development of orders, guidance and procedures to support the implementation of Minnesota Statutes 103F.48, relating to water resources riparian protection requirements on public waters and public drainage systems. The Board will be considering orders, guidance and procedures relating to:

1) Technical aspects for compliance with the buffer requirement;
2) Administrative procedures, including for alternative water quality practices, validations of compliance, exemptions, and initial implementation waivers;
3) The identification of other waters, including criteria and processes for use by soil and water conservation districts; and
4) Compliance and enforcement.

Each of the items 1-4 above will have a separate document available on the BWSR website (www.bwsr.state.mn.us/buffers) providing additional details on the topic, including specific questions and issues for which information and comment is being requested.

II. Public Comment. Interested persons or groups may submit information and comments on these matters in writing until 4:30 p.m. on May 1, 2016.

III. Specific Information and Comment: Minn. Stat. 103F.48, Subd. 4; Local Water Resources Riparian Protection (Other Waters)

While all comments relating to the development of a summary of watercourses for inclusion in the local water management plan are welcome and encouraged, the following specific issues the Board is specifically requesting comment on:

- What criteria should an SWCD consider when developing a list/map of "other waters"?
- What/if any review process should be a part of the development of the summary of watercourses?
- In what format should the "other waters" map(s) be provided to the water planning authority?

IV. Statutory Overview: Minn. Stat. 103F.48, Subd. 4; Local Water Resources Riparian Protection (Other Waters)

Minnesota Statutes 103F.48, Subd. 4 requires SWCDs to develop, adopt and submit to each local water management authority (generally counties and watershed districts) a summary of watercourses for inclusion in the local water management plan by July 1, 2017. This subdivision

further requires the local water management authority to revises is local water plan to incorporate the SWCDs recommendations.

V. Implementation Timeline

BWSR has established an implementation timeline for the development of the orders, guidance and procedures to support the implementation of Minnesota Statutes 103F.48, relating to water resources riparian protection requirements on public waters and public drainage systems. This schedule is generally:

March 23, 2016	BWSR Board Review Implementation Plan and Authorize Seeking Request for Information
June 22, 2016	BWSR Board Approve Preliminary Board Orders/Guidance
August 25, 2016	BWSR Board Approve Final Board Orders/Guidance

March 10, 2016

Request for Information
Minnesota Buffer Program Implementation

April 2016

Subject: Administrative Procedures

I. Overview

The Minnesota Board of Water and Soil Resources (Board) requests information and comments on the development of orders, guidance and procedures to support the implementation of Minnesota Statutes 103F.48, relating to water resources riparian protection requirements on public waters and public drainage systems. The Board will be considering orders, guidance and procedures relating to:

1) Technical aspects for compliance with the buffer requirement;
2) Administrative procedures, including for alternative water quality practices, validations of compliance, exemptions, and initial implementation waivers;
3) The identification of other waters, including criteria and processes for use by soil and water conservation districts; and
4) Compliance and enforcement.

Each of the items 1-4 above will have a separate document available on the BWSR website (www.bwsr.state.mn.us/buffers) providing additional details on the topic, including specific questions and issues for which information and comment is being requested.

II. Public Comment. Interested persons or groups may submit information and comments on these matters in writing until 4:30 p.m. on May 1, 2016.

III. Specific Information and Comment: Minn. Stat. 103F.48, Administrative Procedures for implementing the buffer requirements, including alternative practices, exemptions, and validations of compliance

While all comments relating to buffer compliance and enforcement are welcome and encouraged, the following specific issues the Board is specifically requesting comment on:

- How should a request for a validation of compliance be submitted, including supporting information?
- What documentation should be required to support a validation of compliance?
- How should a validation of compliance be appealed to the Board of Water and Soil Resources?
- Should prior approval be required for a landowner to use an alternative practice?
- How should a request to use alternative practices be submitted, including information to support the request?
- How would a request for a conditional compliance waiver be submitted?
- What form of response would be required for a conditional compliance waiver request?

IV. Statutory Overview: Minn. Stat. 103F.48, Administrative Procedures for implementing the buffer requirements, including alternative practices, exemptions, and validations of compliance

Minnesota Statutes 103F.48 establishes requirements for buffers adjacent to public waters and public drainage ditches. This statute includes associated provisions which will require the development of administrative procedures for use by BWSR, local governments and landowners to establish clear expectations on the implementation of this law. These provisions include:

- Validation of Compliance: A landowner may request and the SWCD may issue. The SWCD validation mat be appealed to BWSR. (Subd. 3(d))
- Alternative Practices: A landowner owning property adjacent to a water body identified in a buffer protection map and whose property is used for cultivation farming may meet the buffer requirement by adopting an alternative riparian water quality practice, or combination of structural, vegetative, and management practices, based on the Natural Resources Conservation Service Field Office Technical Guide or other practices approved by the board. (Subd. 6(b))
- Exemptions: Subd. 5 provides six exemptions to the buffer requirement: (1) enrolled in the Conservation Reserve Program; (2) shoreland management; (3) road, trail, or structure; (4) regulated under the National Pollutant Discharge Elimination System/State Disposal System; (5) part of a water-inundation cropping system; and (6) temporary nonvegetated condition for certain specified activities.
- Initial Implementation Waiver: Landowners that have applied for and maintained eligibility for financial assistance and are subject to certain drainage proceedings must be granted a conditional compliance waiver. The waiver if valid no later than November 1, 2018. (Laws of Minnesota 2015, 1st Special Session, Chapter 4, Article 4, Section 146)

V. Implementation Timeline

BWSR has established an implementation timeline for the development of the orders, guidance and procedures to support the implementation of Minnesota Statutes 103F.48, relating to water resources riparian protection requirements on public waters and public drainage systems. This schedule is generally:

March 23, 2016	BWSR Board Review Implementation Plan and Authorize Seeking Request for Information
June 22, 2016	BWSR Board Approve Preliminary Board Orders/Guidance
August 25, 2016	BWSR Board Approve Final Board Orders/Guidance

Request for Information
Minnesota Buffer Program Implementation

April 2016

Subject: Buffer Enforcement and Compliance

I. Overview

The Minnesota Board of Water and Soil Resources (Board) requests information and comments on the development of orders, guidance and procedures to support the implementation of Minnesota Statutes 103F.48, relating to water resources riparian protection requirements on public waters and public drainage systems. The Board will be considering orders, guidance and procedures relating to:

1) Technical requirements for compliance with the buffer requirement;
2) Administrative procedures, including for alternative water quality practices, validations of compliance, exemptions, and initial implementation waivers;
3) The identification of other waters, including criteria and processes for use by soil and water conservation districts; and
4) Compliance and enforcement.

Each of the items 1-4 above will have a separate document providing additional details on the topic, including specific questions and issues for which information and comment is being requested.

II. Public Comment. Interested persons or groups may submit information and comments on these matters in writing until 4:30 p.m. on May 1, 2016.

III. Specific Information and Comment: Minn. Stat. 103F.48, Buffer Compliance and Enforcement

While all comments relating to buffer compliance and enforcement are welcome and encouraged, the following specific issues the Board is specifically requesting comment on, these include:

- Are there other models or enforcement structures that should be evaluated and considered?
- Will the options presented below effectively address any circumstances of noncompliance that may be identified?
- What potential problems might the options outlined below present to the Board, local governments and landowners, and what actions should the Board consider to address these problems?
- What other options, considerations and proposals should the Board evaluate in developing an effective means to ensure effective compliance and enforcement of the buffer requirement of Minn. Stat. 103F.48?

IV. Statutory Overview: Minn. Stat. 103F.48, Buffer Compliance and Enforcement

Minnesota Statutes 103F.48 provide for the enforcement of the buffer requirement. Authorities relating to enforcement and landowner compliance are shown below:

- SWCD: Issue a validation of compliance to a landowner when requested. (Subd. 3(d))
- SWCD: Track landowner progress towards compliance. (Subd. 6)

- SWCD: Notify the county or watershed district with jurisdiction over the noncompliant site when it determines a landowner is not in compliance. (Subd. 7a)
- County or Watershed District: The county or watershed district with jurisdiction must provide the landowner that has been determined to be out of compliance by the SWCD with a list of corrective actions and a practical timeline to come into compliance. (Subd. 7a)
- County or Watershed District: Must adopt an administrative penalty order (APO) plan before using the authority provided in Minn. Stat. 103B.101, Subd 12a to enforce the buffer requirement. (Subd. 7b)
- BWSR: May use the APO authority provided in Minn. Stat. 103B.101, Subd 12a to enforce the buffer requirement when the county or watershed district have not adopted an APO plan. (Subd. 7b)
- BWSR: Must receive and decide on appeals of SWCD validations or APO's issued by a county, watershed district or BWSR. (Subd. 9)
- BWSR: May withhold funding from an SWCD, watershed district or county that fails to implement 103F.48. (Subd. 8) See BWSR Board Policy adopted December 16, 2015: http://bwsr.state.mn.us/buffers/assets/failure-to-implement-policy.pdf

V. Implementation Options and Procedures: Minn. Stat. 103F.48, Buffer Compliance and Enforcement

BWSR has identified two options for efficiently and consistently carrying out compliance and enforcement responsibilities:

1. **Local Enforcement Option:** *Counties/Watershed Districts* issue corrective action notices that are enforced through locally adopted APO plans or county ordinance and watershed district rule authorities. County and watershed district APO plans are subject to BWSR approval prior to local adoption. Under this option, all or a portion of the work could be delegated to another local unit of government.

2. **State Enforcement Option:** There are two routes to follow for this option:
   A. *Counties/Watershed Districts* issue corrective action notices that are enforced through a *BWSR* adopted administrative penalty order plan.
   B. *BWSR* issues corrective action notices that are enforced through a *BWSR* adopted administrative penalty order plan.

These options need not be used exclusively on a statewide basis. This approach allows counties and watershed districts to choose whether to enforce the buffer law or not. BWSR would accept compliance and enforcement responsibilities in those counties and/or watershed districts that elect to defer to state enforcement.

To ensure a statewide compliance and enforcement system is in place by the first compliance deadline, the following processes must be completed by:

- *counties* by November 1, 2017 relating to **buffers adjacent to public waters;** and
- *counties and watershed districts* by November 1, 2018 for **buffers adjacent to public drainage ditches.**

Spring, 2016: Counties, watershed districts, SWCDs and drainage authorities are encouraged to

meet following the preparation of the preliminary Buffer Protection Maps to validate them, and to discuss implementation of the buffer law including compliance and enforcement responsibilities. This implementation discussion should include compliance and enforcement to ensure a coordinated approach.

January 25, 2017: BWSR adopts its enforcement order and APO Plan.

Note: BWSR will develop its enforcement order and APO plan through Board Committees and a transparent process of engagement with local governments and stakeholders. This plan and order will include procedures to carry out the full suite of compliance and enforcement responsibilities from receipt of the notice from an SWCD that a landowner is not in compliance through the completion of any appeal following issuance of an APO. The plan will include procedures for BWSR receipt and acceptance of county and watershed district compliance and enforcement elections and approval of county and watershed district APO plans. This plan and order would only be put into effect in counties and watershed districts that elect to not enforce the buffer law as discussed below.

March 31, 2017: All counties and watershed districts must notify BWSR of their intention to:

(1) adopt an APO plan that is subject to approval by BWSR;

(2) use existing county ordinance and watershed district rule authorities, or;

(3) defer to state enforcement.

In providing a statement of intent, counties and watershed districts are encouraged to coordinate to ensure consistency and minimize landowner uncertainty.

Note: BWSR needs to know the intentions of counties and watershed districts by this date to ensure the required capacity is in place to carry out any required enforcement duties on November 1, 2017 and to ensure that compliance and enforcement responsibilities and procedures can be communicated to local governments and landowners.

BWSR will institute a process by which the governing body of every county and watershed district must provide documentation of their intent to:

(1a) adopt an APO plan by November 1, 2017 for enforcement relating to buffers adjacent to public waters and/or

(1b) by November 1, 2018 for enforcement relating to buffers adjacent to public drainage ditches; or

(2) use existing ordinance and rule authorities to ensure landowner compliance, including completion of any necessary official control processes by November 1, 2017 for county ordinances relating to shoreland management or November 1, 2018 for county ordinances and watershed district rules relating to public drainage ditches; or

(3) defer to enforcement by BWSR.

March 31, 2018: Counties and watershed districts may make adjustments or changes to the notice of intent relating to public drainage ditch compliance and enforcement provided to BWSR prior to March 31, 2017.

November 1, 2017: All counties that have elected to do either 1a or 2 above, must have adopted and implemented a BWSR approved APO plan by November 1, 2017 or November 1, 2018 or has enacted any necessary amendments to county ordinances relating to shoreland management and provide appropriate documentation to BWSR of this action.

November 1, 2018: All counties and watershed districts, that have elected to do either 1b or 2 above, must have adopted and implemented a BWSR approved APO plan by November 1, 2018 or has enacted any necessary amendments to county ordinances and watershed district rules relating to buffer requirements for public drainage ditches and provide appropriate documentation to BWSR of this action.

VI. Implementation Timeline

BWSR has established an implementation timeline for the development of the orders, guidance and procedures to support the implementation of Minnesota Statutes 103F.48, relating to water resources riparian protection requirements on public waters and public drainage systems. This schedule is generally:

March 23, 2016	BWSR Board Review Implementation Plan and Authorize Seeking Request for Information
June 22, 2016	BWSR Board Approve Preliminary Board Orders/Guidance
August 25, 2016	BWSR Board Approve Final Board Orders/Guidance

However, as outlined in IV above, the schedule for compliance and enforcement does not follow this implementation schedule which provides for BWSR adoption of an enforcement order and APO Plan by January 25, 2017.

DRAFT

Request for Information
Minnesota Excessive Soil Loss Program Implementation

April 2016

Subject: Interim Guidance: Excessive Soil Loss Complaints for Agricultural Activities

I. Overview

The Minnesota Board of Water and Soil Resources (Board) requests information and comments on the development of interim guidance to support the implementation of Minnesota's Excessive Soil Loss Program.

Minnesota's soil erosion law is found in Minnesota Statutes (M.S.) sections 103F.401 through 103F.455. The law, which dates back to 1984, sets forth a strong public policy stating that a person may not cause excessive soil loss. However, the law was entirely permissive in that it only encouraged local governments to adopt soil erosion ordinances and could not be implemented without a local government ordinance. The soil erosion law was amended in 2015 when a number of revisions were made by the Legislature and approved by the Governor to broaden its applicability.

Minnesota Laws 2015, regular and 1st special sessions changed the law by:

1) Repealing M.S. 103F.451 "Applicability", which eliminates the requirement that the law is only applicable with a local government ordinance;
2) Creating specific Administrative Penalty Order (APO) authority in M.S. 103B.101, subd. 12a. for BWSR and counties to enforce the law; and
3) Amending M.S. 103F.421 "Enforcement" to remove local enforcement through civil penalty and to revise requirements for state cost-share of conservation practices to prevent excessive soil loss.

The result of the combined changes now authorizes statewide regulation of excessive soil loss regardless of whether or not a local government has a soil loss ordinance[1].

II. Public Comment. Interested persons or groups may submit information and comments on these matters in writing until 4:30 p.m. on May 1, 2016.

III. Specific Information and Comment

While all comments relating to Excessive Soil Loss Program implementation are welcome and encouraged, the following are issues the Board is specifically requesting comment on:

- Are there other models or enforcement structures that should be evaluated and considered?
- Will the guidance presented below effectively address any circumstances of excessive soil loss?
- What potential problems might the proposal outlined below present to the Board, local governments and landowners, and what actions should the Board consider to address these problems?
- What other options, considerations and proposals should the Board evaluate in developing an effective means to implement the changes to the Excessive Soil Loss Statute?

[1] Counties with an existing soil loss ordinance are Fillmore, Goodhue, Mower, Olmsted and Winona

IV. Interim Guidance: Excessive Soil Loss Complaints for Agricultural Activities

The following procedural steps are guided by M.S. 103F.401 – 103F.455 (Soil Erosion Law), together with the companion Minnesota Rules (M.R.) Parts 8400.4000 through 8400.4080 (Excessive Soil Loss Control).

Procedural Steps for Complaints Associated with Agricultural Activities:

Step 1 - County (or soil and water conservation district (SWCD), if a designated agent of the county) receives written complaint which complies with part 8400.4040, subpart 1. Complaints are confidential data and are not public information.

a. The law allows a county to designate the SWCD as its agent for carrying out administrative and mediation duties (103F.401, subd. 8., 8400.4002, subpart 13. & 103F.405, subd. 2.). This is an option for counties that do not want to administer the law directly. M.S. section 103C.331, subd. 19 provides SWCDs authority to accept delegation from a county to administer soil and water conservation-related official controls. If delegated, then the SWCD could be the recipient of the complaint.

Step 2 - County forwards complaint to SWCD to initiate investigation and report (8400.4040, subparts 2. & 3.)

b. The SWCD starts a confidential file documenting correspondence and records relating to the complaint filed.

c. SWCD contacts BWSR Board Conservationist for assistance.

d. SWCD notifies landowner of complaint and provides opportunity for landowner to be at a site visit (8400.4040, subpart 2.).

e. SWCD makes a site visit to investigate evidence of excessive erosion and/or sedimentation. (Permitted soil loss and sedimentation limits are defined in 8400.4025, subparts 1. & 2.)

f. SWCD conducts an investigation in accordance with M.S. 103F.421, subd. 2. and M.R. 8400.4040, subpart 3. to evaluate and prepare a written report that includes:

   i. Presence of rill and/or gully erosion

   ii. Extent of adverse impacts from sedimentation

   iii. Average rate of soil loss from water or wind erosion in tons per acre per year

   iv. If excessive soil loss is determined, a conservation plan with applicable BMPs to prevent excessive soil loss or reduce the soil loss to the most practicable extent

   v. A summary of the findings, and a conservation plan with one or more options, as applicable

Step 3 - SWCD submits report to County and BWSR. If the report documents that excessive soil loss is not occurring, the county, or SWCD as its designated agent, dismisses the complaint.

Step 4 - If the report documents excessive soil loss, written notice, by the county, must be given to landowner, in accordance with part 8400.4040, subpart 4.

Step 5 - If the report documents excessive soil loss, then the county can choose one of the following two paths to proceed with reaching agreement on a conservation plan and timeframe for completion of corrective actions and enforcement.

COUNTY PATH	SWCD/BWSR PATH
County adopts local Administrative Penalty Order Plan	**Request SWCD/BWSR to proceed under BWSR Administrative Penalty Order Plan**
1. SWCD offers technical assistance and State Cost-Share is offered for financial assistance. The SWCD and landowner are encouraged to seek additional funding, if needed, through other applicable state, federal or local programs.	1. SWCD offers technical assistance and State Cost-Share is offered for financial assistance. The SWCD and landowner are encouraged to seek additional funding, if needed, through other applicable state, federal or local programs.
2. The landowner has 90 days after the complaint is substantiated to apply for State Cost-Share program assistance or the cost-share is reduced to 50 percent, unless the SWCD or the board approves an extension. An extension must be granted if funds are not available. (M.S. 103E.421, subd. 4.)	2. The landowner has 90 days after the complaint is substantiated to apply for State Cost-Share program assistance or the cost-share is reduced to 50 percent, unless the SWCD or the board approves an extension. An extension must be granted if funds are not available. (M.S. 103E.421, subd. 4.)
3. If the landowner does not agree with SWCD findings of excessive soil loss and an associated conservation plan, the County requests the landowner to participate in a mediation process with the county, in accordance with M.S. 103F.421, subd. 3.	3. If the landowner does not agree with SWCD findings of excessive soil loss and an associated conservation plan, the SWCD requests the landowner to participate in a mediation process as defined in the BWSR APO plan.
4. When State Cost-Share program funds are available and the landowner does not comply with the mediated agreement/conservation plan and recommended BMPs, the landowner may be subject to a County APO plan and penalty up to $500. If the landowner refuses to participate in mediation or the landowner and local government do not agree to a mediated settlement, the local government forwards the complaint to the county attorney. The county attorney may dismiss the complaint or petition for a	4. When State Cost-Share program funds are available and the landowner does not comply with the conservation plan and recommended BMPs, the landowner may be subject to a BWSR APO plan and penalty up to $500. 5. Administrative penalties may be appealed in accordance with section 116.072, as indicated in section 103B.101, subd. 12.

district court hearing under M.S. 103F.425.	

Step 6 - SWCD certifies BMP installation or conservation plan completion, as applicable.

V. Implementation Timeline

BWSR's implementation timeline for the development of the orders, guidance, procedures and rules to support the implementation of the Excessive Soil Loss Program:

March 23, 2016	BWSR Board Review Interim Guidance and Authorize Request for Information
May 25, 2016	BWSR Board Approve Interim Guidance and Authorize Rulemaking
Summer/Fall 2016	Commencement of Rule Amendment Process

DRAFT

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: **BWSR Buffer Establishment and Management Toolbox**

Meeting Date: March 23, 2016

Agenda Category: ☐ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☐ Decision ☐ Discussion ☒ Information

Section/Region: Statewide

Contact:

Prepared by: Dan Shaw/Tom Gile

Reviewed by: N/A Committee(s)

Presented by: Dan Shaw/Tom Gile

☒ **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*)

To support local government staff in their efforts to plan, establish and manage riparian buffers BWSR has developed a "Buffer Establishment and Management Toolbox". This toolbox is a web based document with ten key sections including links to "Watershed Planning", "Partnerships and Funding", "Site Identification", Design Considerations", "Plant Selection", "Plan Development", "Earthworks and Site Preparation", "Buffer Planting", and "Buffer Management". The toolbox covers basic buffer concepts but also covers ways to combine conservation practices to maximize effectiveness and methods to develop buffers with multiple benefits. The toolbox also includes approximately fifty links to additional information including the Minnesota Wetland Restoration Guide, BWSR's Pollinator Toolbox and BWSR's What's Working website.

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: **Buffer Tracking Tool Prototype**

Meeting Date: March 23, 2016

Agenda Category: ☐ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☐ Decision ☐ Discussion ☒ Information

Section/Region: Programs and Policy

Contact: Tom Gile

Prepared by: Tom Gile

Reviewed by: N/A Committee(s)

Presented by: Tom Gile

☒ **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*)

As a part of Minnesota Statute 103F.48 (Riparian Protection and Water Quality Practices) Soil and Water Conservation Districts (SWCDs) will be responsible to track progress toward compliance with the requirements in this legislation. Staff has begun development of a compliance tracking database and tools. The tools would provide SWCDs and BWSR with almost real time tracking and compliance data and could take the place of annual reporting by the SWCDs. Currently a prototype has been developed and we are in the process of field testing the programs with several SWCD staff and BWSR field staff.

COMMITTEE RECOMMENDATIONS

Water Management & Strategic Planning Committee

1. One Watershed, One Plan Operating Procedures and Plan Content Requirements – Melissa Lewis - ***DECISION ITEM***

2. Local Water Plan Extensions and Amendment Policy – Melissa Lewis – ***DECISION ITEM***

Minnesota Board of Water & Soil Resources

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: **One Watershed, One Plan Operating Procedures and Plan Content**

Meeting Date:

Agenda Category: ☒ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☒ Decision ☐ Discussion ☐ Information

Section/Region: statewide

Contact: Melissa Lewis

Prepared by: Melissa Lewis

Reviewed by: Water Management and Strategic Planning Committee(s)

Presented by: Melissa Lewis

☐ **Audio/Visual Equipment Needed for Agenda Item Presentation**

Attachments: ☒ Resolution ☐ Order ☐ Map ☐ Other Supporting Information

Fiscal/Policy Impact

x 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 One Watershed, One Plan Operating Procedures and Plan Content Requirements.

LINKS TO ADDITIONAL INFORMATION

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

One Watershed, One Plan was adopted by the Board as a pilot program in June 2014 through the authorization of five pilot areas and adoption of Operating Procedures for Pilots. Plan Content Requirements for Pilots were adopted by the Board in September 2014. The Water Management and Strategic Planning Committee (Committee) reviewed the edits to these documents based on the pilot experiences and the new Comprehensive Watershed Management Program statute (Minnesota Statutes §103B.801). A public comment period was held January 28 – March 4, and minimal comments were received. The Committee will review the documents at their March 22, 2016 meeting and provide a final recommendation to the Board for adoption of a full One Watershed, One Plan Program at the March 23rd Board meeting.

Minnesota Board of Water & Soil Resources

Board Resolution # 16-

COMPREHENSIVE WATERSHED MANAGEMENT PLANNING PROGRAM / ONE WATERSHED, ONE PLAN
Operating Procedures and Plan Content Requirements

WHEREAS, Minnesota Statutes §103B.801 establishes the Comprehensive Watershed Management Planning Program which is also known as One Watershed, One Plan; and

WHEREAS, Minnesota Statutes §103B.801, Subd. 3 provides that the Board shall develop policies for coordination and development of comprehensive watershed management plans; and

WHEREAS, Minnesota Statutes §103B.801, Subd. 4 provides that the Board shall develop policies for required comprehensive watershed management plan content consistent with the Board's other comprehensive local water management planning authorities; and

WHEREAS, the Water Management and Strategic Planning Committee (Committee) has met multiple times since 2013 for the purpose of developing operating procedures and plan content requirements to guide organization and development of comprehensive watershed management plans; and

WHEREAS, the development of these operating procedures and plan content requirements has been informed by review and comment from pilot watersheds, the Interagency Watershed Restoration and Protection Strategies Team, the Local Government Water Roundtable Workgroup, BWSR Senior Management Team, and BWSR Executive Team; and

WHEREAS, on January 27, 2016 the Board authorized a public review and comment period for the final One Watershed, One Plan Operating Procedures, consistent with Minnesota Statutes §103B.801, Subd. 3, and Plan Content documents, consistent with Minnesota Statutes §103B.801, Subd. 4, from January 28, 2016 through March 4, 2016.

WHEREAS, upon review and consideration of comments received on the One Watershed, One Plan Operating Procedures and Plan Content documents, the Committee recommends approval of the final documents by the full Board.

NOW THEREFORE BE IT RESOLVED, the Board hereby:

Adopts the One Watershed, One Plan Operating Procedures, dated March 23, 2016, and Plan Content Requirements, dated March 23, 2016.

_____ Date: _____

Brian Napstad, Chair
Board of Water and Soil Resources

Attachments:
One Watershed, One Plan – Operating Procedures, March 23, 2016
One Watershed, One Plan – Plan Content Requirements, March 23, 2016

DRAFT

One Watershed, One Plan

Operating Procedures

March 23, 2015

Purpose: This document outlines processes for initiating a planning effort through the One Watershed, One Plan program as per Minnesota Statutes §103B.101 Subd. 14 and §103B.801.

Introduction

The State of Minnesota has a long history of water management by local government. One Watershed, One Plan is rooted in this history and in work initiated in 2011 by the Local Government Water Roundtable (Association of Minnesota Counties, Minnesota Association of Watershed Districts, and Minnesota Association of Soil and Water Conservation Districts). Roundtable members determined that it is in the public interest to manage groundwater and surface water resources from the perspective of watersheds to achieve protection, preservation, enhancement, and restoration of the state's valuable water resources. Supporting this determination, the Roundtable recommended that the local governments charged with water management should organize and develop focused implementation plans on a watershed scale.

The recommendation was followed in 2012 by the One Watershed, One Plan legislation (Minnesota Statutes §103B.101 Subd. 14) that permits the Minnesota Board of Water and Soil Resources (BWSR) to adopt methods to allow comprehensive plans, local water management plans, or watershed management plans to serve as substitutes for one another, or to be replaced with one comprehensive watershed management plan. The legislation also requires BWSR to establish a suggested watershed boundary framework for these plans. Additional legislation was passed in 2015 (Minnesota Statutes §103B.801) that outlines the purpose of and requirements for comprehensive watershed management plans.

One Watershed, One Plan is the next logical step in the evolution of water planning in Minnesota. The One Watershed, One Plan vision is to align local planning and implementation with state strategies over a ten year transition period into plans built largely around the state's major watersheds. The operating procedures in this document outline processes to achieve this vision.

Additional information about One Watershed, One Plan can be found on the BWSR website: http://www.bwsr.state.mn.us/planning/1W1P/index.html.

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NOTE: Plan Content requirements provided in separate document.

I. Overview

Participation in One Watershed, One Plan is voluntary. Initiation and scheduling development of plans within the framework should be coordinated to the extent possible with existing plan update and amendment schedules and development or completion of Watershed Restoration and Protection Strategies (WRAPS). The timing and order of the steps below are for the most part suggested and some may be iterative. BWSR staff are available to assist at all steps and may be able to bring additional facilitation resources to the process if requested.

Step 1. Review the Suggested Boundary Map (see II. Boundary Framework) and gather potential local government participants based on the watershed selected.

Step 2. Initiate discussion(s) with potential participants and BWSR. This step may include multiple and variable sub-steps such as a number of formal and informal meetings and discussions between participants. The sub-steps will vary by the local governments involved, their history of partnership and/or collaboration, and other potential factors.

a. Informally notify BWSR staff of intent to explore developing a plan through the One Watershed, One Plan process.

b. Convene potential local government participants to consider the following items. Assistance with preparation and neutral facilitation of meeting(s) may be available.

i. Select a lead, shared lead, and/or a procedure for convening participants through this step.

ii. Confirm intended planning boundary with participants and BWSR staff. Invite additional local government participants if necessary (see II. Boundary Framework and III. Participation Requirements).

iii. Discuss the requirement for formal agreement between partners (see III. Participation Requirements and IV. Formal Agreement).

iv. Consider requesting resolutions from the boards of the participating local governments as a means of confirming support.

Step 3. Finalize discussion(s) with potential participants and BWSR by:

a. Formally notifying BWSR of intent to initiate planning. Formal notification can be made electronically and must include confirmation of the:

i. Local government participants or partners (see III. Participation Requirements);

ii. Planning boundary with proposed changes as applicable (see II. Boundary Framework); and

iii. May include requested plan extensions and waivers for participants' existing plans as applicable. BWSR's policy for Plan Extensions can be found at www.bwsr.state.mn.us/planning/index.html.

b. Finalizing formal agreement(s) between local government participants (see IV. Formal Agreement). Formal agreements must be finished prior to formal initiation of planning.

c. Consider applying for a BWSR Plan Development grant as available. If receiving a Plan Development grant, the formal agreement will need to be in place before the grant will be executed.

Step 4. Formally initiate planning (see V. Plan Development Procedures). A thorough stakeholder process is required and should not be any less than procedures of water plans being substituted for or replaced.

a. Identify stakeholders, notify state agencies, and establish committees

b. Gather preliminary issues and priorities through review of existing plans and information and response from stakeholders and agencies.

c. Hold initial planning meeting (often called a 'kickoff meeting') to review and discuss the information gathered and input received.

Step 5. Draft plan (see V. Plan Development Procedures). Specific requirements for plan content can be found in the *One Watershed, One Plan – Plan Content for Comprehensive Watershed Management Plans* (Plan Content) document. Steps may be iterative and will include input from stakeholders.

a. Review and aggregate information from existing plans, land and water resource inventories, and WRAPS. Use the process to identify commonalities and gaps.

b. Review state goals and strategies for water and related land use. Use the process to determine identify where local priorities can contribute attaining state goals.

c. Consider the aggregated information in setting priorities and targets.

d. Develop implementation plan and schedule. Assess if implementation actions are capable of producing measurable results.

e. Finalize draft plan. Consider informal review by stakeholders if time allows and/or unresolved issues exist.

Step 6. Submit draft plan for formal review and hold public hearing.

a. After the plan has been drafted, submit the plan to plan review authorities (see V. Plan Development Procedures).

b. Schedule and hold a public hearing on the draft plan after the 60-day review period of the draft plan. A summary of comments received in the review period and the responses to those comments should be made available to all stakeholders and commenters prior to the hearing.

Step 7. Approval by BWSR

a. Submit the final plan to the plan review agencies (see V. Plan Development Procedures).

b. The BWSR Board will review the plan for conformance with the plan content requirements found in the *Plan Content* document.

c. Appeals and dispute of plan decision follow existing authorities and procedures of BWSR Board.

Step 8. Adopt the plan. Local adoption is required within 120 days of BWSR Board approval. Procedures for local adoption will vary by plan type and the formal agreement between the local governments. See also V. Plan Development Procedures for more information.

Step 9. Implement, evaluate, and revise the plan. Additional information on plan content and evaluation requirements can be found in the *Plan Content* document.

a. Local development and use of an annual and/or biennial work plan and report between partners is recommended for accountability, e.g. holding an annual meeting in the watershed to discuss the previous year's accomplishments and confirm direction for the next year. Additional annual/biennial reporting requirements can be found on the BWSR website.

b. Five year evaluation of performance is required and updating (amendment) of implementation plan and schedule as needed.

c. Revisions required every 10 years. Depth of revision dependent on evidence that implementation is occurring. BWSR can issue 'findings' when a plan is good enough that complete revision is not required.

II. Boundary Framework

The One Watershed, One Plan Boundary Framework consists of three parts: the suggested boundary map; procedures for establishing boundaries, requesting variances on boundaries, and appealing boundaries; and the criteria used to establish and consider requested variances from the suggested boundary map.

1. Suggested Map

Local governments partnering to develop a One Watershed, One Plan, must begin with the planning boundaries identified in the Suggested Boundary Map adopted by the BWSR Board on April 23, 2014 (see figure 1). This map was developed by through a formal comment period held January 1 through February 28, 2014. Boundaries within this map are recommended but not mandated; procedures for establishing and deviating from the boundaries can be found within the Boundary Procedures of this section. Alternative formats of the map are available on the BWSR website: http://www.bwsr.state.mn.us/planning/1W1P/index.html.

Figure 1: Suggested Boundary Map

*Not legal boundaries; intended for planning purposes through One Watershed, One Plan only.

2. Boundary Establishment and Adjustment Procedures

As per Minnesota Statutes §103B.101 Subd. 14, BWSR *"shall, to the extent practicable, incorporate a watershed approach when adopting the resolutions, policies, or orders, and shall establish a suggested watershed boundary framework for development, approval, adoption, and coordination of plans."* The procedures for determining boundaries will conform to the following:

A. **Planning Boundary Establishment.** BWSR Board adopted the One Watershed, One Plan Suggested Boundary Map on April 23, 2014. This map establishes the suggested planning boundaries for plans developed through One Watershed, One Plan.

   a. Before commencing planning under Minnesota Statutes §103B.101 Subd. 14, local governments participating in the plan (participants; see also III. Participation Requirements) shall notify the BWSR Board Conservationist and Regional Supervisor of the intent to initiate planning. This notification shall include:

      i. Local concurrence of all participants within the planning boundary established in the BWSR Board adopted map; or

      ii. A new map delineating the intended planning boundary with local concurrence of all participants. If submitting a new map, participants must provide written documentation of the rationale and justification for deviation from the BWSR Board adopted map. BWSR staff may request additional information needed to make a plan boundary determination.

   b. BWSR staff shall have 60 days to determine if a proposed plan boundary conforms with the requirements of Minnesota Statutes §103B.101 Subd. 14 and notify the participants of the determination.

   c. If the participants disagree with the determination, they may submit a request for review to the executive director. The executive director may bring the issue before the BWSR Board if resolution cannot be found.

   d. The final planning boundary will be approved by the BWSR Board concurrent with plan approval and incorporated into the BWSR Board order and adopted map.

B. **Planning Boundary Amendment or Adjustment**. After a planning boundary has been established, participants may find adjustments or amendments to the boundary are necessary. Procedures for changing a boundary will follow the establishment procedure above. The final adjusted boundary will be approved by the BWSR Board concurrent with a plan amendment or next plan approval. BWSR comments on the boundary may include findings that an amendment to the plan is necessary to address the newly included or excluded area(s).

C. **Appeals.** Participants may appeal a BWSR Board decision to deny approval of a plan or the establishment of a plan boundary. Appeals and disputes of decisions follow existing authorities and procedures of the BWSR Board.

3. Boundary Criteria

The following criteria, based on the criteria used for establishing the Suggested Boundary Map, are recommended for use in justifying adjustment to planning boundaries.

A. The adjustment will not leave small, orphaned watershed areas between planning boundaries.

B. Smaller than the suggested planning boundary:

- Smaller area does not conflict with the purposes/intent of 1W1P.
- Significant dissimilarities or complexities in resource issues and solutions within suggested planning boundary justify the smaller area.

- Suggested planning boundary crosses a major river, e.g. on both sides of the Mississippi River.
- Existing watershed district in the area.
- Suggested planning boundary crosses Metro Water Planning area
- Boundary for the smaller area closely follows a minor watershed, e.g. a 10 or 12 digit hydrologic unit code or watersheds defined by drainage systems managed pursuant to Minnesota Statutes §103E.

C. Larger than a suggested planning boundary, e.g. one boundary plus additional minor or major watershed(s)

- Inclusion of a partial watershed on a state line.
- Confluence of major basins.
- Efficiencies due to similarity of issues and solutions.
- Existing watershed district that includes larger area.
- Major watersheds/8-digit hydrologic unit codes already lumped for PCA 10-year watershed approach/WRAPS.
- Boundary for the larger area closely follows a minor watershed, e.g. a 10 or 12 digit hydrologic unit code.

D. When a suggested planning boundary crosses into the seven-county metro:

- The area within the seven-county metro may or may not be considered for inclusion in the boundary. If included, the area within the seven-county metro is not excluded from Metro Surface Water Management Act.

III. Participation Requirements

Two Guiding Principles of One Watershed, One Plan include: *"One Watershed, One Plan must involve a broad range of stakeholders to ensure an integrated approach to watershed management,"* and, *"One Watershed, One Plan implementation will be accomplished through formal agreements among participating local governments on how to manage and operate the watershed."* When the One Watershed, One Plan planning process is initiated within a watershed area, all potentially affected local units of government within the given planning boundary should be invited to participate. This section outlines participation requirements for local units of government in order to meet these guiding principles while still providing realistic and pragmatic balance for required participation.

In order to balance the need to maximize participation of all affected water planning authorities in watershed-based planning with the reality of the constraints on that participation (particularly in the transition period to One Watershed, One Plan) this section outlines flexibility in participation requirements. For the purposes of this section, levels of participation are defined as:

> **Required Participant**: the local government unit must formally agree to a role in plan development and subsequent implementation. "Formally agree" means an in-writing consent to participate (see IV. Formal Agreement).
>
> **Optional Participant**: the local government unit is encouraged to be directly involved in the planning process, but is not required to formally agree. All municipalities (cities and townships) are optional participants.

Table 2: Participation Requirements by Local Government

	Participation Requirement
Soil & Water Conservation District	Required (Metro* SWCDs optional)
County	Required (Metro* counties optional)
103D Watershed District	Required
103B (Metro*) Watershed District or Watershed Management Organization	Optional
Municipality (city or township)	Optional

*Metro means seven-county metropolitan area.

All local governments with land area within the watershed are given the opportunity to participate in the One Watershed, One Plan and implementation. However, small areas may or may not be critical or practical in management of the watershed to achieve the goals of the plan. If only a small portion of the local government unit is within the watershed planning boundary, the criteria listed in A and B below can be used to determine when participation is required. C and D below outline options for involvement when participation is optional.

A. If less than 5% of the jurisdictional land area of the local government is within a One Watershed, One Plan planning boundary, participation is optional.

B. If 5% or greater and less than 10% of the jurisdictional land area of the local government is within the One Watershed, One Plan planning boundary, participation is optional unless:

i. The area is identified as a priority area as per the Watershed Restoration and Protection Strategies (WRAPS) document, a completed TMDL, a local diagnostic study, and/or other studies or plans. If the WRAPS is not completed additional factors or criteria such as the anticipated impact to the planning process, or perceived challenges with implementation of the resulting plan if certain critical stakeholders are unwilling to participate may also be considered.

ii. The area contains or is in close proximity to the watershed outlet or a priority resource(s) as per the Watershed Restoration and Protection Strategies (WRAPS) document, a completed TMDL, a local diagnostic study, and/or other studies or plans such that lack of participation will be detrimental to implementation of the plan.

C. Required participants are encouraged to:

i. Keep all local governments within the watershed informed in plan development and encourage participation as practical;

ii. Overtly identify a process in the watershed plan for involving optional participants in implementation when applicable; and

iii. Consider incorporating streamlined procedures for including optional participants in formal agreements in the future.

D. Optional participants for those areas that meet A or B above are encouraged to:

i. Keep themselves informed of plan development as practical;

ii. For areas where the local government is not a required participant (e.g. not part of a formal agreement to plan where A or B above applies), the local government is encouraged to adopt the plan for these areas once approved by BWSR, and to consider becoming part of future agreement(s) to implement the plan in these areas if applicable.

1. Participation Requirements Procedure

Participation requirements will be discussed as part of the plan initiation process with final determinations made by the Board Conservationist in consultation with the local government participants and BWSR Regional Manager. Disputes of staff decisions will be reviewed by the executive director and brought before the BWSR Board if resolution cannot be found.

Lack of willingness or interest of one local government unit should not be used as an initial basis for denying participation of the majority in One Watershed, One Plan. Additional factors or criteria may be considered, including the anticipated impact to the planning process or perceived challenges with implementation of the resulting plan if certain critical stakeholders are unwilling to participate. At the request of the majority of participants, BWSR may conduct an assessment of the potential impact of the nonparticipation and make a determination as to if the remaining participants should be able to proceed. This assessment and the final recommendation will be reviewed by the executive director and brought before the BWSR Board if resolution cannot be found. In some situations, a watershed planning group may not be able to proceed until One Watershed, One Plan participation requirements are met.

2. Participation Requirements and Plan Adoption

After a plan has been completed by participants and approved by the BWSR Board, it will need to be formally adopted within 120 days by all parties. Whether the plan is adopted individually by each county, soil and water conservation district, and/or watershed district; or if it is adopted by an established joint powers board on behalf of the participants; is a decision of the participants as outlined in the formal agreement and the authorities provided therein (see V. Formal Agreement).

In the case that a required participant decides not to formally adopt the plan after it has been approved by BWSR, the remaining local governments will need to reassess whether or not the plan can be successfully implemented without

adoption by the particular local government. If it is possible the plan will work to a degree without the participant, the plan may need to be amended to function without the participant, and/or the remaining participants may need to work with the non-participant to address issues or concerns. BWSR staff may be available to assist in assessment or mediation at the request of the local governments involved. The decision to adopt the plan or not is a local decision. Any repercussions, such as ineligibility for state grants, will be specific to the individual participant(s) who chose not to adopt the plan.

See also VI. Plan Development Procedures for more detailed and specific plan adoption information.

IV. Planning Agreement and Organizational Structures for Implementation

A Guiding Principle of One Watershed, One Plan is that *"One Watershed, One Plan implementation will be accomplished through formal agreements among participating local governments on how to manage and operate the watershed."* The purpose of this principle is to provide assurances that decision making spanning political boundaries is supported by an in-writing commitment from participants. This section outlines options for this commitment through a formal agreement.

A Formal Agreement in the context of One Watershed, One Plan refers to the participating partners and processes these partners will use to write and implement a watershed-based plan, and is not intended to address or mandate consolidation or changes to existing authorities of local governments. The details of formal agreements between participating organizations establishing the process for plan development and subsequent implementation will vary by the goals of the participants; with recommended overarching goals of maximizing efficiency, minimizing redundancy, preventing duplication of efforts, and clearly outlining the intent and responsibilities of the participants.

1. Planning Agreement. A Memorandum of Agreement (MOA) is recommended as the type of formal agreement to describe the relationships, responsibilities and structure of the partners (i.e., local governments) during the development of the One Watershed, One Plan. If the partners already have a formal agreement in place that encompasses all of the required elements below and includes the authority to conduct planning (e.g. a Joint Powers Agreement), they may use that agreement in place of the recommended Memorandum of Agreement.. Planning agreements must include the following:
   a. Purpose that includes participation in planning;
   b. Inclusion of all required participants (see III. Participation Requirements; agreement may include more than the required participants, e.g. a regional agreement that encompasses multiple One Watershed, One Plan planning boundaries);
   c. Operating procedures and/or bylaws outlining, at a minimum, the means and method for decision making, including plan submittal (see V Plan Development, 3. Formal Review and Public Hearing), and potentially procedures for stakeholder processes, committees, etc.;
   d. Identification of a fiscal agent and/or requirement for an audit meeting the provisions of Minnesota Statutes §6.756 if the agreement creates an entity or organization that will be receiving funds directly; and
   e. Formal agreements for the purposes of planning should be in place prior to initiating plan development.

   A template for a MOA and template bylaws, containing the items in a-e above, are available on the BWSR website at: www.bwsr.state.mn.us/planning/1W1P/index.html.

2. Organizational Structures for Implementation. During the planning process, partners will identify programs essential to achieving goals and implementing the projects for the watershed. The partners must determine and identify in the plan the organizational structures, whether existing or new, that will most effectively and efficiently implement the plan. Assistance from the Minnesota Counties Insurance Trust (MCIT) and/or the legal counsel of the participating organizations may be required. See V. Plan Development Procedures.

1. Agreement Formats and Recommended Use

The information in Table 3 should not be considered legal advice; assistance from MCIT and/or the legal counsel of the participating organizations is recommended.

Table 3: Formal Agreement Types and Recommended Uses

Type of Agreement	General Description	Recommended use in relation to *One Watershed, One Plan*
Memorandum of Agreement (MOA)	• Minimum requirement of plan development through One Watershed, One Plan. • Method of formally recognizing a partnership(s). • Specifies mutually-accepted expectations and guidelines between parties. • Generally not considered legally binding; the significance of an MOA is typically in the visibility.	• Recommended to signal intent of participants & outline the decision-making process during plan development. • Cannot be used if the intent is to directly receive state funds as an organization. • Likely not sufficient for collaborative grant applications and sharing of services (JPA recommended for these). • Can be sufficient if the final plan will be adopted individually by each participant, e.g. each participant adopts the completed plan as the organization's own plan.
Joint Powers Agreement (JPA)	• Agreement to jointly deliver a service or product, or manage or own property. • Legally binding. • Must meet requirements of Minnesota Statute § 471.59.	• Recommended if the intent is for the resulting organization to apply for and receive state funds directly for planning and implementation. • Recommended if future sharing of services is anticipated. • Necessary/required/recommended if the final plan will be adopted collectively, e.g. one plan is "held" through the JPA/by the JPE and the participants adopt one plan by reference. • JPA or JPE depends on the purpose and intent of the agreement and amount of risk and liability acceptable to the participants; consult legal counsel.
Joint Powers Entity (JPE)	• Type of JPA that specifically establishes a new entity or board that operates autonomously from the members. Risk is transferred to this entity. • Legally binding. • JPA of 7-county Metro Watershed Management Organizations must establish JPE and include provisions required by MN Statutes §103B.211 and MN Rule, Chapter 8410.0030.	

V. Plan Development Procedures

Once formal agreements are in place, plan development may begin. The vision of the Local Government Water Roundtable for plan development is a future of limited updates to watershed-based plans. The vision consists of a streamlined process to incorporate or reference collected data, trend analysis, changes in land use, and prioritization of resource concerns into the watershed-based plan; and an emphasis on watershed management and implementation through shorter-term work plans and budgeting. This vision includes acknowledging and building off of existing plans and data (including local and state plans and data), as well as existing local government services and capacity.

This vision and the consideration that development of a plan through One Watershed, One Plan should not be any less than the implementation requirements of plans that are being substituted for or replaced is reflected in these procedures. Specific content requirements can be found in the *Plan Content document*.

1. Committees, Notifications and Initial Planning Meeting

One of the Guiding Principles of One Watershed, One Plan is that the process "*must involve a broad range of stakeholders to ensure an integrated approach to watershed management.*" The first actions in achieving this principle are to establish committee(s) and notify stakeholders. The following steps assume the formal agreement and/or bylaws establishing the planning partnership, and outlining the process and procedures for committee involvement and decision-making are in place. If this process has not been established, additional actions to do so should be included.

Step 1. Establish committees and workgroups. The following committees and workgroups are all critical to successful development and implementation of the plan.

a. Planning Workgroup – This workgroup is **not a requirement** of the plan development process; however, a smaller workgroup of local staff, typically the local water planners and lead staff from participating local governments, BWSR Board Conservationist, and possibly consultant(s) is strongly recommended for the purposes of **logistical (not policy)** and process decision-making in the plan development process and in formulating recommendations for consideration by the Advisory Committee.

b. Policy Committee – This is a required committee of local plan authorities for the purposes of **making final decisions** about the content of the plan and its submittal and regarding expenditure of funds allocated for plan development. The committee membership and the committee's decision-making process must clearly be a part of the formal agreement for planning and associated bylaws (see IV. Formal Agreement). This committee may or may not continue after plan adoption.

c. Advisory Committee(s) – An advisory committee is required to meet public and stakeholder participation goals and requirements identified in rule and statute for existing local water plans. The purpose of an advisory committee is to **make recommendations** on the plan contents and plan implementation to the Policy Committee. Full establishment of the Advisory Committee may not be finalized until after Steps 2 and 4 (below).

   i. Depending on size and scope, more than one advisory committee may be necessary. Consider multiple advisory committees when the watershed is large enough to justify regional committees, and/or specialized enough to split into specialty areas such as separate citizen and technical advisory subcommittees.

   ii. Advisory committee members should include members of the planning workgroup, drainage authority representatives, county highway and planning and zoning staff, and potentially other stakeholders as noted in Step 2 below.

   iii. Advisory committee membership must include state agency representatives. The state's main water agencies, or plan review agencies, are committed to bringing state resources to the planning process. Each agency will designate a lead contact for their agency to participate on

the advisory committee; however, specific participation may vary depending on local needs. Consideration should also be given to including federal agency representatives.

iv. In the initial meeting of the advisory committee(s), a basic set of ground rules should be adopted that identify a decision-making process, and a chair should be appointed. Consensus or modified consensus decision-making is recommended for the advisory committee and the position of chair can be rotating.

Step 2. Notify plan review authorities and other stakeholders. Prior to the development of the plan, notification must be sent to the plan review authorities of plan initiation. The notification must include an invitation to submit priority issues and plan expectations, and must allow 60 days for response to the notification. The notification may also be sent to other stakeholders or alternative methods for receiving input may be used for these interested parties.

a. Stakeholders: drainage authorities, federal agencies, tribal governments, lake or river associations, citizen-based environmental group(s), sporting organization(s), farm organization(s) and agricultural groups, other interested and technical persons such as current and former county water plan taskforce members.

b. Additional methods for public input should also be considered in addition to the formal notification process, such as web surveys, workshops with specific interest groups, and other citizen surveys.

Step 3. Start to aggregate watershed information. Make use of existing local water plans, input received from agencies, TMDL studies, WRAPS, and other local and agency plans. Information to be aggregated includes land and water resources inventories, data, issues, goals, strategies, actions, etc. This aggregation of plan information is not intended to be exhaustive, but rather a compilation for the purposes of understanding current priorities and goals for the watershed and orientation to the watershed. This step and the previous step generally occur concurrently.

Step 4. Hold initial planning meeting. The meeting is often referred to as the public information meeting for county water planning or a kickoff meeting in watershed district planning after the priority issues of stakeholders have been gathered; and should be held after steps 2 and 3 above.

a. The planning meeting must be legally noticed to meet the requirements of MN Statutes §103B.313, Subd. 3 (county water planning).

b. In consideration of the size of the watersheds, participants may want to consider more than one initial planning meeting and/or options for participating through video conference. Be sure to thoroughly document this participation.

c. Talk to BWSR staff about potential resources available to assist in planning and facilitating this initial planning meeting in order to achieve effective participation.

2. Draft Plan

This section outlines only the high-level steps for drafting the plan. Specifics on the plan content requirements can be found in the *One Watershed, One Plan – Plan Content Requirements* document. Also keep in mind that the steps are not always linear; some steps may be repeated more than once throughout the planning process and others may occur concurrently.

Step 1. Review and assess aggregated watershed information for commonalities, conflicts, and gaps; and to better support understanding, discussion, and prioritization. Make use of input received at the initial planning meeting, existing local water plans, input received from agencies, TMDL studies, WRAPS, and other local and agency plans. .

Step 2. Analyze gathered information and start writing the plan using available tools for prioritizing, targeting, and assessing measurability. The following is an overview of the content requirements; details can be found in the *One Watershed, One Plan – Plan Content Requirements* document.

a. **Data and Inventory Information.** Most data and inventory information will be incorporated into the plan by reference, with a general description and information on where to find the data and inventory information. If gaps in inventory information are identified through the plan development process, consider implementation action(s) to fill the gaps rather than delaying the planning process to generate new data.

b. **Analyze and Prioritize Issues.** Prioritization is the act of ranking something in order of importance, typically such that the more important things are addressed first. This part of the plan writing process is used to reach understanding and agreement on the watershed issues and priorities that will be addressed within the lifespan of the plan.

c. **Establish Measurable Goals.** After gaining understanding of the issues and priorities in the watershed, measurable goals are developed to address the priority issues. These goals will describe where the planning partners want to be or what they want to achieve within the 10-year timeframe of the plan. Keep in mind that a watershed-based plan may include both goals that are common to the watershed as a whole as well as goals individual to the specific local government participant(s).

d. **Develop a Targeted and Measureable Implementation Plan and Schedule.** Targeting takes a closer look at the priority issues and goals and identifies specific actions and management practices to achieve the goals. The targeted implementation schedule is a table of specific actions that are planned to be implemented, including items such as location, responsibility, cost, schedule, and potential funding sources of the actions. The implementation plan describes the coordination and programs necessary for achieving the actions in the schedule. The implementation plan and schedule are developed in consideration of available technical skills and capabilities and funding resources, and will:

   i. Have targeted and measurable actions;

   ii. Cover a period of 10 years and be designed in a way that supports creation of shorter term work plans and budgets for participating local governments. Depth of future revisions will be dependent on evidence that implementation is occurring. BWSR can issue 'findings' when a plan is good enough that complete revision is not required; and

   iii. Coordinate local water management responsibilities, activities, and necessary technical services across jurisdictional lines while maintaining core local government services on jurisdictional boundaries.

Step 3. Determine the most effective and efficient organizational structure(s), existing and/or new, to implement the actions identified in the plan, such as shared services or collaborative grant-making. Modifications to an existing agreement and/or a new agreement may or may not be necessary depending on the implementation plan and needs of the participating local governments. The Minnesota Counties Intergovernmental Trust and/or legal counsel of the participating organizations may be consulted to assist in this determination.

Step 4. Consider informal review of the plan, specifically if there were local governments within the watershed who chose not to participate in the planning process, stakeholders interested in the process but not on an advisory committee, or any other issues or concerns that merit broader informal review.

3. Formal Review and Public Hearing

After the plan has been drafted, the Policy Committee submits the plan on behalf of the local plan authorities to the plan review authorities (see definitions below) for formal review. Depending on the decision-making outlined in the

formal agreement for plan development, the participating local governments may need to approve the draft prior to submittal.

A. The draft plan may be submitted to the plan review authorities electronically via email attachment, website link, or CD. BWSR must receive a paper copy, email attachment or CD of all submitted documents (website link not acceptable) in order to maintain a record of the submittal. If paper copies are requested, they must be provided. It is also encouraged to make a copy of the draft plan available online with a clear process for stakeholder comments.

B. Plan review authorities have 60-days to provide comment on the plan. Comments must be submitted to both the Policy Committee (can be via a staff or consultant contact; does not mean submitting to each member of the policy committee) and BWSR (Board Conservationist).

C. The Policy Committee will schedule and hold a public hearing(s) on the draft plan no sooner than 14 days after the 60-day review period of the draft plan. A summary of comments received during the review period must be provided to BWSR, the state review agencies, and anyone who provided comments, and must be made available to all others online or upon request.

   i. Depending on the formal agreement, the participating local governments may need to hold individual public hearings.

   ii. If the formal agreement allows the Policy Committee to 'host' the public hearing, the committee may want to consider more than one hearing in a large watershed.

4. Approval by BWSR

After the public hearing, the Policy Committee submits the final draft plan on behalf of the local plan authorities: a copy of all written comments received on the draft plan, a record of the public hearing(s), and a summary of responses to comments including comments not addressed and changes incorporated as a result of the review process to the plan review agencies for final review. Depending on the decision-making outlined in the formal agreement, the participating local governments may need to approve the final draft prior to submittal.

A. The BWSR Board shall review the plan for conformance with the requirements of Minnesota Statutes §103B.101, Subd. 14 and §103B.801, final input from the state review agencies, this policy, and the *One Watershed, One Plan – Plan Content Requirements* document. Review process includes BWSR staff review and recommendation to a regional BWSR Committee where the plan will be presented to the committee by representatives of the participating local government(s). The Regional BWSR Committee makes a recommendation to the BWSR Board where final decision is made.

B. The BWSR Board may approve or disapprove a plan which it determines is not in conformance. The BWSR Board shall complete its review and approval within 90 days or the next scheduled BWSR Board meeting.

C. Appeals and dispute of plan decision follow existing authorities and procedures of BWSR Board.

5. Local Adoption

Local adoption by the local plan authority is required within 120 days of BWSR Board approval. If so granted through a joint powers agreement, the adoption may be by a watershed joint powers entity. If no joint powers entity with the authorities of the local plan authority was created, each local government unit shall adopt the plan individually. Implementation may occur individually or cooperatively for all or parts of the plan depending on ongoing agreement(s) between the planning partners. A copy of resolution(s) to adopt the plan must be sent to BWSR in order to be eligible for grants.

6. Plan Development Definitions

The following definitions are used in this section:

Local plan authority. For purposes of this policy, a local plan authority means: a county, soil and water conservation district, or watershed organization with authority to write and implement a local plan. County local water planning may be delegated with restrictions as per Minnesota statutes §103B.311.

Local water plan. For purposes of this policy, "local water plan" or "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.

Metropolitan Council. "Metropolitan Council" means the Metropolitan Council created by Minnesota Statutes, section 473.123.

Plan review agencies. "Plan review agencies" means the Department of Agriculture, the Department of Health, the Department of Natural Resources, the Pollution Control Agency and the Board of Water and Soil Resources; and the Metropolitan Council if substituting for or replacing a plan under MN Statutes §103B.231. The Environmental Quality Board must also receive final submittal.

Plan review authorities. "Plan review authorities" means the Department of Agriculture, the Department of Health, the Department of Natural Resources, the Pollution Control Agency, the Board of Water and Soil Resources, counties, cities, towns, soil and water conservation districts, watershed districts, and watershed management organizations partially or wholly within the watershed; and the Metropolitan Council if substituting for or replacing a plan under MN Statutes §103B.231.

One Watershed, One Plan

Plan Content Requirements

March 23, 2015

Purpose: This document outlines plan content requirements for developing comprehensive watershed management plans, as per Minnesota Statutes §103B.801, through the One Watershed, One Plan Program.

Introduction

This document contains specific content requirements for drafting a comprehensive watershed management plan through the One Watershed, One Plan program. Full operating procedures for developing the plan - including initiating the planning process through review, approval, and adoption - are contained in the *One Watershed, One Plan Operating Procedures* document.

The following Guiding Principles provided sideboards and direction in the plan content requirements outlined in this document:

- One Watershed, One Plan will result in plans with prioritized, targeted, and measurable implementation actions that meet or exceed current water plan content standards.
- One Watershed, One Plan will strive for a systematic, watershed-wide, science-based approach to watershed management, driven by the participating local governments.
- Plans developed within One Watershed, One Plan should embrace the concept of multiple benefits in the development and prioritization of implementation strategies and actions.
- One Watershed, One Plan planning and implementation efforts will recognize local commitment and contribution.
- One Watershed, One Plan is not intended to be a one-size–fits-all model.

The requirements in this document are also supported by the vision of the Local Government Water Roundtable that future watershed-based plans will have sufficient detail that local government units can, with certainty, indicate a pollutant of concern in a water body, identify the source(s) of the pollutant, and provide detailed projects that address that particular source. This vision also includes a future of limited wholesale updates to watershed-based plans; with a streamlined process to incorporate collected data, trend analysis, changes in land use, and prioritization of resource concerns into the watershed-based plan; and an emphasis on watershed management and implementation through shorter-term work plans and budgeting. This vision includes acknowledging and building off of existing plans and data (including local and state plans and data), as well as existing local government services and capacity.

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NOTE: Operating Procedures for establishing planning boundaries, requirements for participation and formal agreement between local governments within the boundary, and procedures for plan development are provided in a separate document.

I. Overview

The organization of this document includes background information and guidance about the requirements with the specific plan content requirements contained in a shaded box. The primary planning terms used are: priority issues, goals, and actions. These terms are defined within the sections they are used.

Plan development procedures and steps such as: initiating a plan, establishing a planning boundary, requirements for participation and formal agreements between local governments within the boundary, and procedures for formal review and approval can be found in the *One Watershed, One Plan Program Operating Procedures* document. Overall organization and format of the plan is a local decision unless otherwise specified in these requirements.

Planning partners are strongly encouraged to consider the potential for more extreme weather events and their implications for the water and land resources of the watershed in the analysis and prioritization of issues. While these events cannot be predicted with certainty as to time and occurrence, the meteorological record shows increased frequency and severity of extreme weather events, which has a direct effect on issues in local water planning.

Minnesota Statutes, Section 103B.801, subdivision 4 indicates that comprehensive local water plans should consider and discuss several issues as part of the watershed planning process. These issue areas include:

- Surface water and ground water quality protection, restoration, and improvement, including prevention of erosion and soil transport into surface waters.
- Restoration, protection, and improvement of surface water and groundwater storage and retention systems.
- Promotion of groundwater recharge.
- Flood damage reduction, especially to minimize future public expenditures needed to correct flooding problems.
- Wetland enhancement, restoration, and establishment.
- Shoreland and riparian zone management and buffers.
- Protection and enhancement of fish and wildlife habitat and water recreational facilities.

However, the local water planning process is not limited to these issues. Broad issues areas likely to be identified and discussed through the watershed planning process include:

- Soil health
- Altered hydrology
- Maintenance of core services; understanding of local capacity
- Water supply (protect, provide and conserve)
- Drinking water supply
- Drainage system management
- Wastewater management
- Drought mitigation
- Education, outreach and civic engagement
- Contaminants of emerging concern
- Emerging issues (e.g. land cover, climate change, etc.)
- Invasive species prevention and/or management

The list above is not all-inclusive. Any land and water related issue could be part of the plan. Further, issues may also include addressing administrative priorities (e.g., establishment of uniform local policies and controls in the watershed) or fiscal challenges (e.g., minimizing public capital expenditures in resolving problems in areas such as flood control or water quality protection).

Although not required, recommended steps in the planning process include developing an overarching mission or vision statement for the watershed, as well as higher-level guiding principles or purposes. The purpose of establishing a vision, mission, and/or guiding principles is to provide a sense of direction for the plan and participants in the planning process.

An underlying theme within these requirements is the intent for watershed-based plans developed through One Watershed, One Plan to be succinct, with a thorough and science-based process used in development, and an emphasis in the resulting plan on the implementation schedule and implementation programs. For example, the information found in a Land and Water Resources Inventory is extremely valuable to the planning process and ultimate implementation of the actions in the plan; however, the majority of this information can be incorporated into the final plan document by reference.

Finally, through the development of the One Watershed, One Plan program, BWSR partnered with the University of Minnesota to assess tools and models available to assist in plan development. Models and tools were assessed based on: the complexity of the tool, scale at which the tool is best used, ability of scenarios to be evaluated with the tool, ability for the tool to evaluate multiple constituents, and whether the tool has historical use or support in Minnesota. The resulting recommendations will be available on the BWSR website, and assistance with selecting and using models and tools for plan development may be available. More than one tool or model may be used in a planning effort and different tools may be used in subsequent implementation. However, the tools utilized in developing a capital improvements program must be able to demonstrate prioritized, targeted and measurable outcomes

II. Plan Content Requirements

Each watershed-based plan will contain the elements outlined in the following sections.

1. Executive Summary

Each plan will have a section entitled Executive Summary. The purpose of the executive summary is to provide a condensed and concise plain language summary of the contents of the overall plan. A well-written executive summary is beneficial for current and future elected officials, staff, citizens, and stakeholders to achieve an understanding of the plan and its intent.

Plan Content Requirement: Executive Summary

Each plan will have a section entitled Executive Summary. The purpose of the executive summary is to provide a brief look at the contents of the plan. The summary will include:

A. Purpose, mission, or vision statement if developed;
B. A general map or description of the planning boundary and smaller planning or management units if used;
C. A summary of the priority issues and goals that are addressed in the plan;
D. A summary of the implementation actions and programs;
E. A brief description of the process used to identify the measurable goals and targeted implementation actions; and
F. An outline of the responsibilities of participating local governments.

In addition to the Executive Summary, the plan may need a table of acronyms and a definitions section; however, these are not required and may be included in the appendices.

2. Identification and Prioritization of Resources and Issues

This section of the plan is intended to summarize the process that the planning partners used to reach agreement on the watershed resource issues that will be addressed within the lifespan of the plan. Prioritizing is needed because not all identified issues can be addressed in the timeframe of a ten year plan—some will be addressed before others.

The process for considering and prioritizing issues generally has two parts: agreement on priority natural resources, sometimes called geographic targeting, and agreement on priority issues impacting those resources. Examples of priority resources include high quality recreational lakes, the main stem of the primary river in the watershed, or a specific groundwater aquifer that is the primary drinking water source in the watershed. Identifying priority issues goes a step further by describing the issue(s) that impact or threaten the priority resources of the watershed, such as: "high quality recreational lakes showing a downward trend in water quality" or "sedimentation in the main stem of the priority river."

In general, the process for identifying the priority resources and issues will follow four steps:

1. Aggregate priority resources and issues from: existing local plans, studies, and reports; modeling, data collection, and assessment completed through the WRAPS and/or TMDLs; state plans or studies; feedback received from the initial notifications to the plan review authorities and stakeholders; and comments submitted by citizens at the initial planning meeting(s) held in the watershed (see *One Watershed, One Plan Operating Procedures*).
2. Apply local knowledge and information and consider the following factors to describe potential priority issues:
    - Science and data generated through modeling, data collection, and assessment such as WRAPS, TMDLs, or equivalent;

- Anticipated future impacts or land use changes that may provide an opportunity or escalate a risk if nothing occurs;
- Understanding of trends and/or tipping points for individual water resources;
- Understanding of precipitation frequency as per National Oceanic and Atmospheric Administration (NOAA) Atlas 14;
- Understanding of citizen and local landowner willingness to participate in potential changes to watershed management;
- Local values which may recognize specific water or landscape resources as a priority.

3. Consider the high-level state priorities identified in the state's Nonpoint Priority Funding Plan for Clean Water Implementation Funding. These are the priorities identified by state agencies for investing Clean Water Fund nonpoint implementation money:
   - Restore those impaired waters that are closest to meeting state water quality standards.
   - Protect those high-quality unimpaired waters at greatest risk of becoming impaired.
   - Restore and protect water resources for public use and public health, including drinking water.
4. Select priority resources and issues to be addressed in the plan, based on analysis of the sources and factors identified in Steps 1 – 3.

Plan Content Requirement: Identification and Prioritization of Resources and Issues

The plan must contain:

1. A summary of the issues and resource concerns identified from all sources for consideration in this section;
2. The steps used to consider and prioritize the identified resources and issues; and
3. A list of the agreed upon priority resources and issues for the watershed and a brief description of why the issue was selected.

Priority issues can be articulated in the plan through both a list/descriptions and map(s). The format and exact planning terminology used in the plan for presenting priority issues may vary as long as the plan covers the three requirements above and the terminology used is defined in the plan (the summary and steps are suggested to be included as appendices). The plan is not expected to address all identified issues; however, it should include a brief explanation as to why certain issues were rejected as priorities for this planning cycle.

In the event that conflicts exist in the interpretation of issues and/or selection of priority issues, consider whether the conflict can be addressed by defining both watershed-wide priorities as well as individual priorities of the participating local governments.

Plans that do not demonstrate a thorough analysis of issues, and that do not use available science and data, will not be approved. BWSR will consider the guidance and recommended tools outlined in *Section 2 Analysis and Prioritization of Issues* in assessing if analysis has been thorough.

3. Establishment of Measurable Goals

The plan must contain measurable goals, sometimes called objectives in planning, to address each of the priority issues. Measurable goals articulate what the planning partners want to achieve and allow for evaluation of progress. A useful method for assessing if a goal is measureable is to ask the question for each goal: "will we be able to measure / show / report that we have been successful in achieving this goal when we assess implementation of the plan in the future?"

The development of measurable goals and the resulting implementation actions will be an iterative process. Goals from existing local water plans and information should be summarized and discussed for potential inclusion as part of this process. WRAPS, TMDLs, and the models used for the prioritization process noted above should all be used in the setting of goals. The implementation programs and schedule for achieving the goals should be considered and goals adjusted to reflect which are achievable within the timeframe of the plan versus goals that may reflect a longer view.

Formatting, terminology, and organization in the plan to meet this requirement can vary. For example, a goal to "maintain clean drinking water for future generations" by itself is too broad to be measurable and may better serve as a guiding principle. However, a broad goal such as this could be acceptable if it is supported by a series of measurable sub-goals or objectives. The plan may contain a blend of goals common to the watershed as a whole, goals individual to a specific local government participant(s) and/or resource, and goals that persist beyond the timeframe of the plan.

Not every goal can be measurable within the timeframe of the plan; however, the aggregate of goals in the plan should together articulate an intended pace of progress. For example, if a water quality standard is unable to be met within the lifespan of the plan, the plan should contain longer-term goals with interim points at which progress can be examined and methods and models to establish the goal can be reevaluated. Ideally, these interim points would use some measure to show attainment of an interim goal.

The timeframe of goals may also need to recognize unique settings and situations across the state. As an example, The Minnesota Geological Survey notes that response time of nitrate concentrations to changes in land use practices in southeast Minnesota will likely vary in different hydrogeologic settings, and may lag behind land use changes by decades. In addition, some water quality or designated use support goals may take decades to achieve (e.g. changes in stream biota or altered base flow hydrology).

Plan Content Requirement: Establishment of Measurable Goals

Each priority issue must have associated measurable goals for addressing the issue. Some goals will be watershed-wide; however, the majority should be focused on a specific subwatershed, natural resource, or local government. Goals for prevention of future water management problems should also be considered.

Plans that do not contain sufficient measurable goals to indicate an intended pace of progress for addressing the priority issues will not be approved.

BWSR will consider Minnesota Statutes §103B.801, Subd. 4 (2), and the balance of broad versus focused goals and shorter-term versus longer-term goals and detail in the targeted implementation schedule to assess whether goals are sufficient. Additionally, the pace of progress towards achieving goals will be used in determinations of the extent or depth of future ten year plan revisions. BWSR may consider issuing findings when a plan and associated implementation is sufficient that a complete revision will not be required.

Specific Goal Requirements:

- Consistent with the Clean Water Council policy, these plans must establish water storage goals, expressed in acre-feet, and standards for water storage, retention, and infiltration.

4. Targeted Implementation Schedule

Targeting takes a closer look at the priority issues and identifies cost-effective, targeted, and measurable actions necessary to achieve the goals. These actions are included in the plan in consideration of available technical skills and capabilities, knowledge of landowner willingness, funding resources available, implementation items or projects from existing local water plans, and information and the Strategies and Actions table from the WRAPS. Actions are entered into a schedule or table that provides the details of:

- A brief description of each action;
- Location targeting where the action will occur;
- Identification of roles and who is responsible for the action;
- An estimate of cost and potential sources of funding for implementing the action;
- An estimate of when the implementation will occur within the ten year timeframe of the plan; and
- How the action will be measured.

The purposes of the implementation schedule are to: clearly indicate an intended pace of progress for achieving the goals; support development of shorter term work plans and budgets for the planning partners; and to support budget requests to the state through BWSR's Biennial Budget Request (BBR). The schedule should be supported by maps indicating the location(s) of the targeted activities.

The development of a targeted implementation schedule and associated actions is an iterative process. Additionally, BWSR recognizes that some actions may require a prior feasibility study to refine a potential implementation strategy.

The depth and specificity of targeted actions identified in the plan will vary. For example, capital improvement projects and best management practices to be implemented on public land can generally be specifically located and identified in the plan. By contrast, conservation practices proposed for private lands may be specifically identified through the use of models and tools for purposes of developing measurable goals and the targeted implementation schedule, but those locations are only generally described in the plan itself. For these private lands, the plan must overtly describe actions to work with landowners in these critical areas and tailor conservation practices.

Plan Content Requirement: Targeted Implementation Schedule

Each plan will have a targeted implementation schedule for achieving the goals with:

1. A brief description of each action;
2. Location targeting where the action will occur;
3. Identification of roles and the responsible government unit for the action;
4. An estimate of cost and potential sources of funding for implementing the action;
5. An estimate of when the implementation will occur within the ten year timeframe of the plan; and
6. How the outcomes of the action will be measured.

The schedule must clearly identify the actions the planning partners will undertake with available local funds versus the actions that will be implemented only if other sources of funds become available, and should be supported by maps indicating the location(s) of the targeted activities.

5. Implementation Programs

The implementation programs described below support the targeted implementation schedule by describing the overarching program(s) that will be used to implement actions identified in the schedule and how these programs will be coordinated between the local water management responsibilities. In addition, partners must decide what organizational structures are best suited to administer the various programs. In some cases new arrangements may be needed or desired. All programs described in this section must be included in the plan.

A. **Plan Administration and Coordination**: The plan must describe the following administration and coordination programs.

i. **Decision-making and Staffing:** Describe how the partners will transition from a planning partnership to implementation of a watershed-based plan through descriptions of roles and responsibilities of participating local governments.

a. **Policy Committee** (decision-making): Describe if the policy committee created to develop the plan will continue through plan implementation, or clearly outline an alternative method to provide oversight and maintain accountability throughout plan implementation.

b. **Advisory Committee** (advising): Describe if the advisory committee(s) created for plan development will continue through plan implementation and/or describe alternative methods to ensure: a dependable forum to exchange information and knowledge about the watershed and implementation of the plan, and meet the statutory requirements for ongoing advisory committees of counties (Minnesota Statutes §103B.301-103B.3355) and watershed districts (Minnesota Statutes §103D.331-103D.337).

The plan should also establish procedures for engaging state agencies, and describe the ongoing role and commitments of the state agencies for plan implementation.

c. **Identification and Coordination of Shared Services** (staffing): Describe specialized and shared service areas that will be used in the watershed to implement the actions identified in the schedule and achieve greater efficiencies in service delivery. This may include shared services for program management, such as if a plan action requires forest resource management technical assistance, but the local government where the action is occurring does not have a staff forester. The watershed plan and associated formal agreements should describe how the service will be shared and/or the need met. Or the plan may include project management. For example if one county has history and experience implementing a large-scale multipurpose drainage project, another county in the watershed may want to contract for services with staff from the experienced county to implement a similar project. Shared services may also include partnership with non-governmental organizations.

ii. **Collaboration with other Units of Government:** Describe relationships with other units of government not part of the formal agreement for plan development, including the drainage authorities within the planning boundary. For example, cities and townships are not required participants. However, recognition and inclusion of cities and townships is important and especially critical to recognize for actions involving waste water treatment plants, source water and wellhead protection for population centers, and MS4s, for example. Additionally, federal government partners are not required participants. However, federal programs and partnerships are very important resources in watershed management.

iii. **Funding:** Describe how actions in the implementation schedule will be funded. Both the state and local governments have responsibility for funding water management. All funding methods currently available to

participants remain available to the participants and/or to the organization as a whole through the participants.

a. **Local Funding:** The local government planning partners have variable methods and options for generating funds to implement watershed management and to leverage state and other funding. The funding sources and commitments of participants must be clearly outlined in the plan.

b. **State Funding:** Describe state funding needed for implementation of the plan. This can be achieved through separation in the targeted implementation schedule of locally funded projects versus projects that will proceed only with state funds.

c. **Collaborative Grants:** Describe the intended approach to coordinated submittal of state grant applications. Collaborative funding and implementation is a goal of One Watershed, One Plan.

d. **Federal Funding**: Federal sources of funds can be important to watershed management. The plan should describe what type of federal funding resources may be pursued to implement the plan.

e. **Other Funding Sources**: Other sources of funds, such as from non-governmental organizations and private landowner funding, can be important to watershed management. The plan should describe what other types of funding may be pursued to implement the plan.

iv. **Work Planning:** Describe how the targeted implementation schedule and the implementation programs will be used for work planning. For example, describe if a collaborative work plan for the watershed, individual work plans for each local government participant, or some combination of work planning will be used; and describe how the work plan will be finalized and approved.

a. **Local Work Plan Purpose:** Include a frequency, method, decision-making, and local purposes for work planning. Frequency is suggested to be annual in order to be incorporated into local budgeting and staffing decisions related to implementation of the plan. Purposes depend on the extent of collaboration intended in the implementation schedule, programs, and subsequent agreements, as well as the extent of collaborative grant-making intended.

b. **State Work Plan Purpose:** Describe a biennial commitment to collaboratively review and submit a BWSR biennial budget request (BBR) from the watershed. Future BBRs should be generated from the Targeted Implementation Schedule.

v. **Assessment and Evaluation:** Describe the frequency, method(s), purposes, decision-making, and procedures for periodic assessment and evaluation of plan implementation. Periodic understanding of accomplishments—based on the targeted implementation schedule—is needed to measure progress, drive the work plan, and provide accountability. If a Watershed Restoration and Protection Strategies report is completed within the planning area after the plan is complete, this report must be considered at the next scheduled evaluation.

a. **Annual Evaluation:** Describe an annual commitment to collaboratively review and submit to BWSR's Level I Performance Review and Assistance Program (PRAP) plans and reports for each local government in the partnership. Additionally, describe sufficient baseline local evaluation of previous years' work to support generation of the local work plan in iv.a above (if an annual local work plan is being used) and reporting requirements in v.d below.

b. **Biennial Evaluation:** If the partnership chooses a biennial work plan, a biennial evaluation must be described to evaluate the previous years' work and support the work plan. It is recommended that this baseline evaluation is tied to the requirement for measurability in the targeted implementation schedule and that a method for tracking implementation consistently across the watershed be described.

c. **Five Year Evaluation:** Include a schedule for a thorough five year assessment and potential revision to implementation schedule. The purpose of this evaluation is to determine progress and consider whether staying the course or resetting direction is necessary. It may also include revisions to models and considerations of new monitoring data. If a WRAPS has been completed or revised since the plan was originally adopted, this evaluation must include an assessment of any changes necessary due to the WRAPS. BWSR involvement in this evaluation may include Level II PRAP.

d. **Reporting:** Describe collaborative approaches to provide accountability to stakeholders and to meet annual reporting requirements of local governments, grant reporting requirements, and specific program and financial reporting requirements. Information on required annual reporting can be found on the BWSR website: www.bwsr.state.mn.us/grants/reporting/reporting.html. Consider a periodic 'state of the watershed report,' or individualized 'waterbody report cards' or other methods to provide accountability and demonstrate outcomes locally. See also the Education and Information requirements below.

vi. **Plan Amendments:** Describe procedures for considering plan amendments, who can propose amendments, what criteria will be used in considering amendments, and who makes the decision to proceed with amendments.

vii. **Organizational Structures or Formal Agreements:** List and briefly describe the organizational structures or entities that will be used to implement the plan's projects and programs. Indicate whether these are existing entities or new ones. In either case, indicate any formal agreements between local governments that are needed and whether these will be modifications of existing agreements or new agreements. For example, prior to completion of the plan, the Memorandum of Agreement (MOA) between partners for planning purposes could be revised for on-going coordination among entities responsible for plan implementation. . Consultation with Minnesota Counties Intergovernmental Trust (MCIT) and legal counsel is recommended. MCIT may recommend revising the planning agreement, establishing separate agreements or contracts for specific services or actions and/or developing a broader, watershed-wide agreement for ongoing partnership.

B. **Plan Implementation Programs**: Describe the following programs to support the targeted implementation schedule, including necessary feasibility studies.

i. **Incentive Programs:** Describe local voluntary cost share or grant programs necessary to achieve the goals, including the general purpose and scope, criteria that will be used to select projects/disperse funds, actions to work with landowners in these critical areas to tailor conservation practices, and how the program(s) will be implemented across the watershed to provide consistency and achieve goals. Incentive programs may be targeted to specific issues, e.g. grants for sealing abandoned wells, or specific areas, e.g. a watershed of priority lakes.

ii. **Capital Improvements:** Describe opportunities for watershed-wide collaboration (e.g. sharing of specialized services and/or lessons learned on these large-scale projects) on capital improvements (physical/structural improvement with an extended life) identified in the targeted implementation schedule. Consider including opportunities for improved water management associated with county and township roads and within drainage systems managed through Drainage Law.

a. **Drainage**: Describe opportunities for enabling large-scale, multi-purpose projects on a watershed basis and for engaging drainage authorities and drainage inspectors in implementation of the watershed plan. Describe local procedures for ensuring future drainage projects are not inconsistent with the goals of the plan

b. **Capital Improvement Programs (CIPs) for Watershed Districts:** CIPs are required in the plan when a watershed district is included, consistent with the requirements of Minnesota Statutes §103B and

103D. A CIP is an itemized program for at least a five-year prospective period, and any amendments to it, subject to at least biennial review, that sets forth the schedule, timing, and details of specific contemplated capital improvements by year, and, together with their estimated cost, the need for each improvement, financial sources, and the financial effect that the improvements will have on the local government unit or watershed management organization. This requirement can be incorporated into the targeted implementation schedule if the specific requirements of Minnesota statutes §103B and 103D are clearly met.

c. **Permanent Protection:** Describe opportunities for permanent land protection necessary to meet the resource needs and achieve the goals for the watershed.

iii. **Operation and Maintenance:** Include a description of who is responsible for inspection, operation and maintenance of capital projects, stormwater infrastructure, public works, facilities, and natural and artificial watercourses. Specify any new programs or revisions to existing programs needed to accomplish the goals or that may benefit from watershed-wide collaboration.

iv. **Regulation and Enforcement:** Describe existing regulations, controls, and authorities relevant to water management for the purposes of highlighting areas of duplication, gaps, and opportunities. Use this analysis to identify areas to maximize effectiveness and build efficiencies through improved coordination and consistent application of regulations, and/or to develop new regulation or enforcement in support of meeting plan goals. Consider also opportunities for efficiencies in required annual reports related to regulation, and enforcement and connections to possible data gaps. Include a description of drainage authorities and responsibilities and local implementation of the buffer law, passed in the 2015 1st Special Session. Regulatory areas to consider include, but are not limited to: shoreland, floodplain, septic, Wetland Conservation Act, Protected Waters Inventory, erosion control, municipal wastewater, Minimum Impact Design Standards (MIDS), land use, aggregate mining, feedlots, hazard mitigation, buffers, and prescription drug drop off locations.

a. **Regulation and Enforcement for Watershed Districts:** Describe the rules and associated permit programs of watershed districts in the watershed, consistent with and as necessary to meet the requirements of Minnesota statutes §103B.337-103D.345.

b. **Comprehensive or land use plans:** Describe the land use authorities within the watershed as well as potential opportunities to achieve goals through, or potential conflicts with, comprehensive land use plans.

v. **Data Collection and Monitoring:** Describe data collection and monitoring activities necessary to support the targeted implementation schedule and reasonably assess and evaluate plan progress.

a. **Inventory:** Describe additional inventories needed in the watershed to address any gaps in the land and water resources inventory support actions in the targeted implementation schedule.

b. **Monitoring:** Describe the locations, frequency, and parameters of existing water quality, quantity and other monitoring programs in the watershed. Describe if these established monitoring programs are capable of producing an accurate evaluation of the progress being made toward the goals, including improved calibration of model(s), and any new monitoring needed to improve understanding of the watershed baseline or assess particular resources. State agencies are available to assist with identification of state monitoring activities.

Include a requirement for periodic analysis of the data, a commitment to collect data consistent with state compatibility guidelines, and a commitment to submit locally collected data to the appropriate state agency for entry into public databases.

vi. **Information, Outreach, and Education Programs:** The plan must describe information, outreach, and education program(s); specifically, opportunities where there are benefits from watershed-wide collaborations and areas where focused or targeted actions will support the priority issues and goals of the plan. At a minimum, include the purpose, targeted audiences, and a description of the actions or methods. Consider development of an education plan for the overall watershed using an approach currently successfully used in Minnesota, an adaptation of the U.S. Environmental Protection Agency guidance "Getting in Step: A Guide for Conducting Watershed Outreach Campaigns" available at: www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf.

6. Plan Appendix - Land and Water Resources Inventory

A land and water resource inventory is simply an account of the water resources and physical factors affecting the water resources within the watershed. In most cases, adequate data, inventories, and general analysis of land and water resources already exist; new information does not necessarily need to be generated and the majority of resource information can be incorporated by reference with a brief general description. At a minimum, the plan should acknowledge the resource information from existing local water plans and the Watershed Restoration and Protection Strategies Report (WRAPS) and NOAA Atlas 14 data. This information is important not just to understand the historic status of the watershed, but is useful in considering the future.

Going forward, wholesale updates and/or revisions to land and water resource inventories should be limited. Instead greater flexibility and a streamlined process for more frequent updates to incorporate collected data, updated trends analysis, and changes in land use typically associated with land and water resource inventories are envisioned.

Plan Content Requirement: Land and Water Resources Inventory

The plan must contain sufficient land and water resources information to inform the planning process and support actions in the plan. Specifically, the plan must include a brief general description of—and reference where to find—the typical and available land and water resource information. This information includes, but is not limited to:

- Topography, soils, general geology;
- Precipitation;
- Water Resources
  - Surface water resources, including streams, lakes, wetlands, public waters and public ditches;
  - Groundwater resources, including groundwater and surface water connections if known;
  - Water quality and quantity, including trends of key locations and 100-year flood levels and discharges, regulated pollutant sources and permitted wastewater discharges;
  - Stormwater systems, drainage systems and control structures;
  - Water-based recreation areas;
- Fish and wildlife habitat, rare and endangered species; and
- Existing land uses and proposed development.

Inventory information critical to supporting the priorities and actions of the plan may need to be more thoroughly described. For example, a description of results of trend analysis may need more in-depth description to support a priority issue in the plan; however, the data behind the analysis can be referenced.

If gaps in inventory information are identified through the plan development process, consider implementation action(s) to fill the gap rather than delaying the planning process to generate new data.

Minnesota Board of Water & Soil Resources

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: **Local Water Plan Extensions and Amendment Policy**

Meeting Date: March 23, 2016

Agenda Category: ☒ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☒ Decision ☐ Discussion ☐ Information

Section/Region: statewide

Contact: Melissa Lewis

Prepared by: Melissa Lewis

Reviewed by: Water Management and Strategic Planning Committee(s)

Presented by: Melissa Lewis

☐ **Audio/Visual Equipment Needed for Agenda Item Presentation**

Attachments: ☒ Resolution ☐ Order ☐ Map ☐ Other Supporting Information

Fiscal/Policy Impact

x 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 revised Local Water Plan Extension and Amendment Policy.

LINKS TO ADDITIONAL INFORMATION

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

The Local Water Plan Extension Policy was adopted by the BWSR Board on December 17, 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 Water Management and Strategic Planning Committee revisited the policy on January 27, 2016 and discussed modifying the existing policy to broaden the applicability to include amendments and delegate authority for approval of extensions and amendments, under specific circumstances, to the Executive Director. These modifications will be presented to the Committee on March 22, 2016, anticipating a recommendation for adoption by the full Board at its March 23, 2016 meeting.

Board Resolution # 16-

Local Water Plan Extensions and Amendments Policy Approval and Delegation of Authority to the Executive Director

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, the Board adopted resolution #14-76 Local Water Plan Extension Policy on December 17, 2014 for the purpose of facilitating the transition to One Watershed, One Plans, allowing for effective participation and use of the Minnesota Pollution Control Agency's Watershed Restoration and Protection Strategies, and maintaining eligibility of participating local government units in applying for and receiving grants; and

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

WHEREAS the Board's Buffers, Soils and Drainage Committee and Water Management and Strategic Planning Committee both recognized a need to streamline processing of plan extensions and amendments and directed staff to investigate delegation of approval of these actions, under certain circumstances, to the Executive Director; and

WHEREAS, the Water Management and Strategic Planning Committee met on March 22, 2016 to review a final draft of the Local Water Plan Extension and Amendments policy and recommended its approval by the full Board; and

WHEREAS, M.S. 103B.101, Subd. 4, authorizes its employees to act on behalf of the Board; and

WHEREAS, the Board in its adopted bylaws dated May 26, 2010 includes a provision for the Executive Director to sign documents as designated by the Board.

NOW THEREFORE BE IT RESOLVED, the Board hereby adopts the Local Water Plan Extensions and Amendments Policy dated March 23, 2016, and replaces Board Resolution #14-76; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Executive Director, for purposes of implementing the Local Water Plan Extension Policy dated March 23, 2016, to approve and sign extension requests; place conditions on extension approvals; to approve and sign local water management plan amendments to incorporate 103F.46 summary of watercourses; to approve and sign amendments to local water plans required by Board order; and to approve and sign waivers to amendments required by Board order.

_____ Date: _____

Brian Napstad, Chair
Board of Water and Soil Resources

Attachments:
Local Water Plan Extension and Amendment Policy, dated March 23, 2016.

DRAFT

Local Water Plan Extension and Amendment Policy

March 23, 2016

Purpose

The purpose of this policy is to provide direction to local water planning authorities regarding Minnesota Statutes §103B.3367 Water Plan Extensions and water plan amendments or extensions required by §103F.48 Riparian Protection and Water Quality Practices. 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 (WRAPS); 3) maintain eligibility of participating local government units in applying for and receiving grants under the Board's current and future grants policies; and 4) streamline incorporation of the summary of watercourses into local water plans required by Minnesota Statutes, §103F.48.

1.0 Applicability

This policy is retroactive to extension and amendment requests received on or after January 1, 2016. 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. 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, a soil and water conservation district "comprehensive plan" under Minnesota statutes §103C.331, Subd. 11, or a comprehensive watershed management plan under §103B.801.

A. Extensions of local water plans will be supported in one or more of the following circumstances:

   i. 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 WRAPS.

   ii. In order to synchronize water management efforts between partners for the purposes of developing and completing comprehensive watershed management plans through the One Watershed, One Plan Program. Formal acknowledgement of intent to develop a comprehensive watershed management plan under §103B.801 in the form of a passed motion or resolution by the board of the water planning authority is required in this circumstance.

   iii. All other purposes for requesting an extension will be considered on a case-by-case basis.

B. Amendments of local water plans will be supported in one or more of the following circumstances:

   i. To incorporate the summary of watercourses into local water plans as required by Minnesota Statutes, §103F.48, Subd. 4.

   ii. As required by a BWSR Board order in association with an extension request.

   iii. All other amendments will be considered on a case-by-case basis in consideration of the authorizing local water plan statute.

2.0 Extension 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 the following:

A. Soil and Water Conservation District Comprehensive Plans. These requests will be processed through the Board Conservationist and approved by the Regional Manager; and

B. Extension requests associated with WRAPS or transition to comprehensive watershed management planning consistent with Minnesota Statutes §103B.801. These requests will be processed through the Board Conservationist and Regional Manager with final approval delegated to the Executive Director.

   i. For the purposes of transition, requests will be considered only when a resolution committing to transitioning to comprehensive watershed management planning has been adopted by the board of and/or a comprehensive watershed management plan has been adopted for a portion of the organization's area.

   ii. The Executive Director may condition the extension approval with a requirement for a subsequent amendment to address new data and information that may substantially change implementation of the local water plan. Extension requests will be processed within 60 days. Appeals of decisions on extension requests will be processed through the Regional Committee and full Board.

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.

3.0 Amendment Procedure

Amendments to local water plans must follow the requirements of the authorizing local water plan statute and will be processed through the Board Conservationist, Regional BWSR Committee, and full BWSR Board; except for:

A. Amendments to local water plans to incorporate the summary of watercourses, as provided by the SWCD, into local water plans as required by Minnesota Statutes, §103F.48, Subd. 4. must follow the requirements of the authorizing statute [for public notices].

   i. Amendments limited to incorporation of the summary of watercourses will be processed through the Board Conservationist and Regional Manager with final approval delegated to the Executive Director.

   ii. Amendments incorporating additional changes to the local water plan must follow the requirements of the authorizing local water plan statute and will be processed through the Board Conservationist, Regional BWSR Committee, and full BWSR Board.

B. Amendments to local water plans as required by BWSR Board order or condition of approval from the Executive Director, in association with an extension request, must follow the requirements of the authorizing statute [for public notice]. These amendments will be processed through the Board Conservationist and Regional Manager with final approval delegated to the Executive Director.

C. Counties may request waivers to amendments required by BWSR Board Order approving the county water plan. These requests will be processed through the Board Conservationist and Regional Manager with final approval delegated to the Executive Director.

   i. Decisions will be made based on the extent of implementation occurring, the availability or not of new data or information, or commitment to transitioning to comprehensive watershed management planning.

Amendment requests noted in the exceptions above will be processed within 60 days. Appeals on decisions will be processed through Regional Committees and the full Board.

COMMITTEE RECOMMENDATIONS

Grants Program and Policy Committee

1. One Watershed, One Plan Grant Program Policy and Request for Proposals – Melissa Lewis – ***DECISION ITEM***

Minnesota Board of Water & Soil Resources

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: **One Watershed, One Plan Planning Grants**

Meeting Date: March 23, 2016

Agenda Category: ☒ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☒ Decision ☐ Discussion ☐ Information

Section/Region: statewide

Contact: Melissa Lewis

Prepared by: Melissa Lewis

Reviewed by: Grant Program and Policy Committee(s)

Presented by: Melissa Lewis

☐ **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
X Clean Water Fund Budget

ACTION REQUESTED

Adoption of the Fiscal Year 2016 Grant Policy for One Watershed, One Plan Planning Grants and authorization to finalize, distribute and promote a request for Proposals for the One Watershed, One Plan Program.

LINKS TO ADDITIONAL INFORMATION

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

Clean Water Funds were appropriated to BWSR in Laws of Minnesota 2015, 1st Special Session, Chapter 2, Article 2, Sec. 7(j) for assistance, oversight, and grants to local governments to transition local water management plans to a watershed approach, also known as the One Watershed, One Plan Program. The proposed Fiscal Year 2016 Grant Policy was modeled after both the overall Clean Water Fund policies of the Board and the policy used for the One Watershed, One Plan pilot program. The proposed Request for Proposals was modeled after the Request for Interest used in the pilot program. The Water Management and Strategic Planning Committee provided a high-level review of the proposed documents as part of the One Watershed, One Plan program development, prior to the recommendation from the Grants Program and Policy Committee.

Minnesota Board of Water & Soil Resources

Board Resolution # 16-

COMPREHENSIVE WATERSHED MANAGEMENT PLANNING PROGRAM / ONE WATERSHED, ONE PLAN
Planning Grants Policy and Request for Proposal

WHEREAS, the Clean Water Fund was established in Minnesota Statutes §114D.50; and

WHEREAS, Clean Water Funds have been appropriated to BWSR in Laws of Minnesota 2015, 1st Special Session, Chapter 2, Article 2, Sec. 7(j) for assistance, oversight, and grants to local governments to transition local water management plans to a watershed approach as provided for in Minnesota Statutes, chapters 103B, 103C, 103D, and 114D; and

WHEREAS, the Board has authority under Minnesota Statutes §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, the Comprehensive Watershed Management Planning Program authority, also known as One Watershed, One Plan, is established in Minnesota Statutes §103B.801; and

WHEREAS, on March 23, 2016 the Board adopted the One Watershed, One Plan Operating Procedures and Plan Content Requirements; and

WHEREAS, on January 26, 2016 the Grants Program and Policy Committee reviewed and recommended approval of the Fiscal Year 2016 Grant Policy for One Watershed, One Plan Grants Planning Grants and the One Watershed, One Plan Request for Proposals.

NOW THEREFORE BE IT RESOLVED, the Board hereby:

1) Adopts the Fiscal Year 2016 Grant Policy for One Watershed, One Plan Planning Grants.

2) Authorize staff to finalize, distribute and promote a Request for Proposals for the One Watershed, One Plan Program.

_____ Date: _____

Brian Napstad, Chair
Board of Water and Soil Resources

Attachments:

FY2016 Grants Policy - One Watershed, One Plan Planning Grants, March 23, 2016
One Watershed, One Plan Planning Grants – FY2016 Request for Proposal, March 23, 2016

FY 2016 Grants Policy
One Watershed, One Plan Planning Grants

Purpose

The Clean Water Fund was established to implement part of Article XI, Section 15, of the Minnesota Constitution, with the purpose of protecting, enhancing, and restoring water quality in lakes, rivers, and streams and to protect groundwater and drinking water sources from degradation. The purpose of this policy is to provide expectations for One Watershed, One Plan Planning Grants conducted via the Board of Water and Soil Resources (BWSR) Clean Water Fund (CWF) grants to facilitate development and writing of Comprehensive Watershed Management Plans consistent with Minnesota Statutes §103B.801.

BWSR will use grant agreements for assurance of deliverables and compliance with appropriate statutes, rules and established policies. Willful or negligent disregard of relevant statutes, rules and policies may lead to imposition of financial penalties or future sanctions on the grant recipient.

1.0 Applicant Eligibility Requirements

Eligible applicants include counties, watershed districts, watershed management organizations, and soil and water conservation districts working in partnership within a single One Watershed, One Plan planning boundary, meeting the participation requirements outlined in the One Watershed, One Plan Operating Procedures. Application for these funds is considered a joint application between participating local governments and may be submitted by a joint powers organization on behalf of local government members (partners). Formal agreement between the partners, consistent with the One Watershed, One Plan Operating Procedures, is required prior to execution of a grant agreement.

2.0 Match Requirements

No match will be required of the grantees. Grantees will be required to document local involvement in the plan development process.

3.0 Eligible Activities

Eligible activities must be directly for the purposes of providing services to the plan development effort and may include activities such as: contracts and/or staff reimbursement for plan writing; technical services; preparation of policy committee, advisory committee, or public meeting agendas and notices; taking meeting minutes; facilitate and prepare/plan for facilitation of policy or advisory committee meetings, or public meetings; grant reporting and administration, including fiscal administration; facility rental for public or committee meetings; materials and supplies for facilitating meetings; reasonable food costs (e.g. coffee and cookies) for a public meeting; publishing meeting notices; and other activities which directly support or supplement the goals and outcomes expected with development of a comprehensive watershed management plan.

4.0 Ineligible Expenses

Ineligible expenses include staff time to participate in committee meetings specifically representing an individual's local government unit; staff time for an individual, regularly scheduled, county water plan

task force meeting where One Watershed, One Plan will be discussed as part of the meeting; and stipends for attendance at meetings.

5.0 Grantee Administration of Clean Water Fund Grants

The grantee for these funds includes the partners identified in the formal agreement establishing the partnership, consistent with the One Watershed, One Plan Operating Procedures. The formal agreement is required prior to execution of a grant agreement and must identify the single local government unit which will act as the fiscal agent for the grant and identify a grantee authorized representative. Grant reporting, fiscal management, and administration requirements are the responsibility of the grantee.

a. All grantees are required to report on the outcomes, activities, and accomplishments of Clean Water Fund grants.

b. Grantees have the responsibility to approve the expenditure of funds within their partnership. The local government unit fiscal agent administering the grant must approve or deny expenditure of funds and the action taken must be documented in the governing body's meeting minutes prior to beginning the funded activity. This responsibility may be designated to a policy committee if specifically identified in the formal agreement establishing the partnership.

c. BWSR recommends all contracts be reviewed by the grantee's legal counsel. All contracts must be consistent with Minnesota statute and rule.

d. Grantees are required to document local involvement in the plan development process in order to demonstrate that the grant is supplementing/enhancing water resource restoration and protection activities.

6.0 BWSR Grant Reporting, Reconciliation, and Verification Requirements

BWSR staff is authorized to develop grant agreements, including requirements and processes for project outcomes reporting, closeouts, fiscal reconciliations, and grant verifications.

6.1 BWSR Grant Reconciliation and Verification Procedures

a. BWSR staff will review grant recipient compliance with contractual requirements in a manner which is consistent with the policies established by the Office of Grants Management and adopted by the BWSR Board.

b. Elements described in the project work plan will be reviewed during grant reconciliation.

c. Project files for CWF expenditures must be retained by the grant recipient pursuant to MS 138.17 and consistent with ongoing record retention schedules.

d. In the event there is a violation of the terms of the grant agreement, BWSR will enforce the grant agreement and evaluate appropriate actions, up to and including repayment of grant funds at a rate up to 150% of the grant agreement.

For additional information, see the BWSR grants manual at: http://www.bwsr.state.mn.us/grants/manual/

One Watershed, One Plan Planning Grants

FY 2016 Request for Proposal

March 23, 2016

Request for Proposal (RFP) General Information

The Clean Water Fund was established to implement part of Article XI, Section 15, of the Minnesota Constitution, with the purpose of protecting, enhancing, and restoring water quality in lakes, rivers, and streams in addition to protecting ground water and drinking water sources from degradation. The appropriation language governing the use of these funds is in Laws of Minnesota 2016, 1ST Special Session, Chapter 2. These funds must supplement traditional sources of funding and may not be used as a substitute to fund activities or programs. Final funding decisions will be dependent on the actual funds available. Up to $1,500,000 is available.

Application Guidelines

- Applications must be in PDF format and will be submitted electronically via: BWSR.Grants@state.mn.us.
- Applications are subject to a five-page limit, minimum font size 11 pt.
- Applications must include a one page map of the watershed (maps are not included in the page limit) in PDF format. The map may be letter, legal, or ledger size and should identify the planning boundary, the boundaries of the planning partners, and any requested changes to the boundary. The One Watershed, One Plan Suggested Planning Boundaries, including a geodatabase, can be found at: www.bwsr.state.mn.us/planning/1W1P/index.html.
- Applications may be submitted by one or more of the eligible local governments on behalf of others in the watershed area. Applicants should demonstrate that a sufficient commitment exists to implement the project through a supporting motion or resolution from the board of each identified participant. A formal agreement between participants establishing a partnership to develop a plan will be required prior to execution of the grant agreement. If a formal agreement is unable to be established within six months of successful grant notification, the grant may be rescinded and funds redistributed.
- Applicants who were previously awarded Clean Water Funds and have expended less than 50% of previous award(s) at the time of this application may need to demonstrate organizational capacity to finalize current projects and complete new project concurrently.
- Applicants are required to submit an estimated budget for the project. The final grant amount for successful applicants will be determined upon completion of a grant work plan. No cash match will be required of grant recipients.

Project Period

The project period starts when the grant agreement is executed, meaning all required signatures have been obtained. Work that occurs before this date is not eligible for reimbursement with grant funds. All grants must be completed by December 31, 2019.

Payment Schedule

Grant payments will be distributed in three installments to the grantee. The first payment of 50% of the grant amount will be paid after work plan approval and execution of the grant agreement provided the grant applicants are in compliance with all BWSR website and eLINK reporting requirements for previously awarded BWSR grants. The second payment of 40% of the grant amount will be paid once the grantee has provided BWSR with notification

and BWSR has reconciled expenditures of the initial payment. The last 10% will be paid after all final reporting requirements are met, the grantee has provided BWSR with a final financial report, and BWSR has reconciled these expenditures.

Incomplete Applications

Applications that do not comply with all application requirements, including incomplete or missing application components, will not be considered for funding.

CWF Project Reporting Requirements

- All grantees are required to report on the outcomes, activities, and accomplishments of Clean Water Fund grants. All BWSR funded projects will be required to develop a work plan, including detail relating to the outcome(s) of the proposed project. All activities will be reported via the eLINK reporting system. Grant funds may be used for local grant management and reporting that are directly related to and necessary for implementing this activity. For more information go to www.bwsr.state.mn.us/outreach/eLINK/index.html.
- BWSR Clean Water Funds will be administered via a standard grant agreement. BWSR will use grant agreements as contracts for assurance of deliverables and compliance with appropriate statutes, rules and established policies. Willful or negligent disregard of relevant statutes, rules and policies may lead to imposition of financial penalties on the grant recipient.
- When practicable, grantees shall prominently display on their website the legacy logo. Grant recipients must display on their website either a link to their project from the Legislative Coordinating Commission Legacy Site (http://legacy.leg.mn) or a clean water project summary that includes a description of the grant activities, including expenditure of grant funds and measurable outcomes (www.bwsr.state.mn.us/cleanwaterfund/stories/)
- When practicable, grantees must display the Legacy Logo on printed and other materials funded with money from the Clean Water Fund. The logo and specifications can be found at http://www.legacy.leg.mn/legacy-logo
- Grantees will be required to document local involvement in the plan development process in order to demonstrate that the grant is supplementing/enhancing water resource restoration and protection activities and not supplanting.

Grants and Public Information

Under Minnesota Statute 13.599, responses to an RFP are nonpublic until the application deadline is reached. At that time, the name and address of the grantee, and the amount requested becomes public. All other data is nonpublic until the negotiation of the grant agreement with the selected grantee is completed. After the application evaluation process is completed, all data (except trade secret data) becomes public. Data created during the evaluation process is nonpublic until the negotiation of the grant agreement with the selected grantee(s) is completed.

Conflict of Interest

State Grant Policy 08-01, (see http://www.admin.state.mn.us/ogm_policies_and_statute.html) Conflict of Interest for State Grant-Making, also applies to BWSR grantees. Grantees' conflicts of interest are generally considered organizational conflicts of interest. Organizational conflicts of interest occur when:

1. A grantee is unable or potentially unable to render impartial assistance or advice due to competing duties or loyalties,
2. A grantee's objectivity in carrying out the grant is or might be otherwise impaired due to competing duties or loyalties, or

3. A grantee or potential grantee has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors.

Submittal

All responses must be electronically delivered to: BWSR.Grants@state.mn.us and must be received no later than 4:30 p.m. on June 17, 2016. Late responses will not be considered. The burden of proving timely receipt is upon the responder.

Comprehensive Watershed Management Plan Development Proposals

To propose a watershed area, provide a written response to the following questions.

1. Describe and provide a general watershed map of the proposed planning boundary (map may be separate from the written information). If the proposed planning boundary deviates significantly from the draft planning boundaries being considered by BWSR, provide a brief narrative of the reasons for the deviation.
2. In consideration of the local government units (LGUs) within the boundary, provide a table with:
    a. A list of all counties, soils and water conservation districts, watershed districts, and watershed management organizations; and whether the LGU has expressed interest in participation in the planning effort;
    b. Level of interest of each LGU (e.g. verbal, letter, resolution, etc.) or why a given LGU is not interested (e.g. haven't had opportunity to respond, unwilling to commit until the LGU has more information, not willing to participate at all, may participate on limited basis but area too small to be a required participant, etc.); and
    c. Identification and contact information for a lead staff person(s) and/or primary contact(s) for each LGU.
3. Briefly describe at what point the planning boundary is in strategy development for the MPCA's ten year water approach. List and provide a brief description of any other TMDLs, diagnostic studies, and/or local studies and plans have been completed that will help inform the development of the Comprehensive Watershed Management Plan.
4. Briefly describe how comprehensive watershed management planning is anticipated to benefit the participating LGUs.
5. Briefly describe how a comprehensive watershed management plan is anticipated to benefit resource management within the planning area.
6. Briefly describe how a comprehensive watershed management plan might be used to develop collaborative implementation approaches, sharing of services, and developing and submitting requests for Clean Water Funds.
7. Provide a generalized outline of the approach the participating organizations will take in:
    a. The development of the required formal agreement; and
    b. Development of the plan, including anticipated major steps or milestones (see the One Watershed, One Plan Operating Procedures and Plan Content Requirements).
8. Provide an anticipated budget for development of a comprehensive watershed management plan. Be sure to include anticipated local activities as well as potential contract expenses for activities consistent with the eligible activities outlined in the Program Policy.

Selection Criteria

All complete applications submitted by the deadline will be reviewed by BWSR staff, with assistance from an inter-agency review committee. The successful watershed areas will be selected by the Board of Water and Soil Resources on:

- Geographic distribution;
- Status of the WRAPS Report development (overlapping development of the WRAPS Report and the comprehensive watershed management plan is not desired).
- Recommendation of the BWSR staff and inter-agency review committee; and
- Responses to questions in this RFP will be considered as follows:
  - Inclusion of general watershed map and description of any boundary changes consistent with question 1. (Not including a map will be considered an incomplete application.)
  - Inclusion of a table of local government information consistent with question 2. (Not including this table will be considered an incomplete application. The level of interest indicated of the required partners, consistent with Operating Procedures, is the primary consideration.)
  - Pertinence of existing studies, plans, and information consistent with question 3 to the development of the comprehensive watershed management plan.
  - Demonstration of understanding of the multiple benefits of developing a comprehensive watershed management plan consistent with questions 4, 5, and 6.
  - Demonstration of understanding of the scope of work required for development of a comprehensive watershed management plan, consistent with question 7.
  - Demonstration of realistic approach and estimate of needed grant funds, what the funds will be used for, and that the funds will not supplant existing funds for similar activities, consistent with question 8.

BWSR Grant Administration

BWSR reserves the right to partially fund any and all applications based on the number of eligible applications submitted, anticipated staff time requirements, and the amount of funding available.

Timeline

- March 24, 2016 – Application period begins
- June 17, 2016 – Application deadline at 4:30 PM
- June – August, 2016 - Review of applications
- August 24, 2016 - BWSR Board approval of planning grant recipients
- November 1, 2016 – Work plan submittal deadline
- December 31, 2016 – Grant execution deadline. Formal agreement between the partners, consistent with the One Watershed, One Plan Operating Procedures, is required prior to execution of a grant agreement.

Questions

Question concerning the request for proposal may be submitted to Melissa Lewis, Melissa.K.Lewis@state.mn.us or 651-297-4735.

COMMITTEE RECOMMENDATIONS

Wetland Conservation Committee

1. Wetland Conservation Act Rulemaking Report – Les Lemm and Dave Weirens – ***DECISION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: **Wetland Conservation Act Rule Report**

Meeting Date: March 23, 2016

Agenda Category: ☒ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☒ Decision ☐ Discussion ☐ Information

Section/Region:

Contact: Les Lemm

Prepared by: Dave Weirens

Reviewed by: Wetlands Conservation Committee(s)

Presented by: Les Lemm

☐ **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 accept the report as recommended by the Wetlands Conservation Committee.

LINKS TO ADDITIONAL INFORMATION

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

Legislative action in 2015 included a number of amendments to the Wetland Conservation Act, one being to report to the Legislature by March 15, 2016 "on the proposals to implement high priority areas for wetland replacement and in-lieu fees for replacement and modify wetland replacement siting and actions eligible for credit". Staff have coordinated the development of this report with the Department of Natural Resources and stakeholders.

Board Resolution #_____

Minnesota Wetland Conservation Act Rulemaking Report

WHEREAS, Laws of Minnesota 2015, 1st Special Session, Chapter 4, Article 4 requires the Board of Water And Soil Resources by March 15, 2016 to report to the Legislature on the proposals to implement high priority areas for wetland replacement and in-lieu fees for replacement and modify wetland replacement siting and actions eligible for credit; and

WHEREAS, Staff discussed the WCA rulemaking and this associated report at the BWSR Academy on October 28, 2015, the Interagency Wetland Group on January 26, 2016, and two stakeholder meetings on February 3 and 24, 2016; and

WHEREAS, as required by statute, BWSR staff have coordinated the development of this report with DNR, Including review and approval by DNR leadership; and

WHEREAS, the BWSR Wetlands Conservation Committee reviewed the draft report on March 9, 2016 and recommend the Board accept it.

NOW, THEREFORE, BE IT RESOLVED THAT, the Minnesota Board of Water and Soil Resources accepts the WCA rulemaking report.

By: _____ Date: _____

Brian Napstad, Chair
Minnesota Board of Water and Soil Resources

Minnesota Wetland Conservation Act

Report to the Legislature

Minnesota Board of Water & Soil Resources

March 9, 2016 DRAFT

Prepared by Les Lemm.

This report was prepared to comply with 2015 Laws of MN, 1st Special Session, Chapter 4, Article 4:
Sec. 133. WETLAND CONSERVATION ACT REPORT.

By March 15, 2016, the Board of Water and Soil Resources, in cooperation with the Department of Natural Resources, shall report to the committees with jurisdiction over environment and natural resources on the proposals to implement high priority areas for wetland replacement and in-lieu fees for replacement and modify wetland replacement siting and actions eligible for credit. In developing the report, the board and department shall consult with stakeholders and agencies.

Estimated cost of preparing this report (as required by Minn. Stat. § 3.197) was $XXXXXXX.

BWSR is reducing printing and mailing costs by using the Internet to distribute reports and information to wider audiences. This report is available at www.bwsr.state.mn.us/cleanwaterfund and available in alternative formats upon request.

Minnesota Board of Water and Soil Resources
520 Lafayette Road North
St. Paul, MN 55155-4194
651-296-3767

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Introduction

This report was prepared to comply with 2015 Laws of MN, 1st Special Session, Chapter 4, Article 4, which directed the Board of Water and Soil Resources (BWSR) to report to the committees with jurisdiction over environmental and natural resources on the proposals to implement certain aspects of the Wetland Conservation Act (WCA); specifically high priority areas for wetland replacement, in-lieu fee wetland replacement, wetland replacement siting, and actions eligible for credit. The primary purpose of the report is to summarize progress and challenges with policy development and implementation of these items.

2015 Wetland Conservation Act Statute Changes

In 2015, several changes were made to WCA statutes, including amendments to Minn. Stat. § 103G and 103B. The primary purpose of these statute changes was to improve the targeting and public value outcomes of wetland mitigation. The changes were the result of several years of work by agency staff and coordination with other state and federal agencies and stakeholders. The impetus for most of the changes can be found in the "Siting of Wetland Mitigation in Northeast Minnesota" interagency report. The report is available on the BWSR website at: http://www.bwsr.state.mn.us/wetlands/wca/NE_MN_mitigation/siting_NE_MN_mitigation.html

In addition, several issues relating to the 2015 WCA statute changes were addressed in the Governor's Executive Order 12-04 final report, "Supporting and Strengthening Implementation of the State's Wetland Policy." The report is available on the BWSR website at: http://www.bwsr.state.mn.us/wetlands/executive_order_12-04/

The concepts contained within the siting report, and other issues, were explored and further developed in direct consultation with stakeholders leading up to the 2015 statute changes. For specific information, presentations, and comments regarding this effort, see the BWSR website at: http://www.bwsr.state.mn.us/wetlands/2015_leg_recommend/2015_leg_recommend.html

Significant WCA statute changes in 2015 included:

- creating a mitigation easement stewardship account and authority for BWSR to recoup costs incurred for establishing mitigation easements;
- requiring BWSR to designate high priority areas for wetland mitigation;
- additional authorities for BWSR to develop an in-lieu fee wetland mitigation program;
- modifying the wetland mitigation siting criteria to improve consistency with the watershed approach;
- requiring BWSR to establish wetland replacement ratios and wetland mitigation service area priorities to implement the siting and targeting of wetland mitigation and encourage the use of high priority areas;
- directing BWSR to establish an interagency team to review potential wetland mitigation sites;
- creating new actions eligible for mitigation credit in northeastern Minnesota; and
- adjusting local government responsibilities relating to the approval of wetland mitigation.

For the specific statute changes, see the "2015 WETLAND CONSERVATION ACT STATUTE CHANGES, Summary of Key Statute Changes and Related Legislation with Explanations" on the Wetlands page of the BWSR website: http://www.bwsr.state.mn.us/wetlands/index.html

Report Development Process

BWSR assigned a core team of experienced wetland staff the task of further developing the 2015 statutes and related concepts, which formed the basis for this report. The BWSR staff team presented ideas, options, and proposals to stakeholders, local governments, and staff of other agencies for review and feedback. Staff from the

Department of Natural Resources were consulted and participated in the presentations to stakeholders. In addition to the substantial stakeholder coordination leading up to the 2015 statute changes, further review opportunities associated with the preparation of this report included:

- State Register request for comments on WCA Rulemaking (see below) - October 19, 2015
- Local government staff presentation and discussion at BWSR Academy - October 2015
- Interagency Wetlands Group meeting for identifying High Priority Areas for Wetland Mitigation – January 26, 2016
- Stakeholder meeting and presentation – February 3, 2016
- Stakeholder meeting and presentation – February 24, 2016
- BWSR Wetland Committee – March 9, 2016

The presentations and materials associated with the February 2016 stakeholder meetings can be viewed on the BWSR website at:
http://www.bwsr.state.mn.us/wetlands/2016_Leg_Report/2016_WCA_Legislative_Report.html

On October 19, 2015, BWSR initiated the administrative rulemaking process via an initial request for comments published in the State Register. This report, and the work leading up to it, will form an important basis for developing the more specific implementation details in the WCA Rule. The rulemaking process will provide considerable opportunities for input by stakeholders and local governments, including the formation of a rulemaking advisory committee. See Appendix 1 for the "2015-2017 WCA Rulemaking Plan." Interagency coordination with the St. Paul District of the U.S. Army Corps of Engineers (Corps) will also be vital to maximize consistency with Corps policy for implementation of Section 404 of the Federal Clean Water Act.

This report will also be reviewed by the BWSR Board on March 23, 2016.

Framework and Context for Implementation

The issues discussed in this report are all interrelated components of the State's WCA policy and rule implementation, as modified by recent statute changes. This section addresses the items specified by the 2015 legislation to be included in the report, and discusses several other issues directly related to those items.

Designating High Priority Areas for Wetland Mitigation

The primary purpose of the 2015 WCA statute changes was to improve the targeting and public value outcomes of wetland mitigation. Originating as a recommendation in the "Siting of Wetland Mitigation in Northeast Minnesota" interagency report, the designation of High Priority Areas is intended to prioritize areas for wetland mitigation consistent with state and local planning efforts.

Statewide High Priority Areas

The 2015 WCA statute amendments provided clear direction for BWSR to designate "High Priority Areas" for wetland replacement (Minn. Stat. 103B.3355, Paragraph (e)) as one mechanism to improve the targeting and public value outcomes of wetland mitigation. BWSR has stated the intention to utilize available information regarding wetland functions, the historic loss and abundance of wetlands, and current state and local plans and studies (e.g. the Minnesota Prairie Conservation Plan) to identify these High Priority Areas. See Appendix 2 for a summary planning document regarding the "Identification of Statewide High Priority Areas for Wetland Mitigation."

The identification of High Priority Areas for wetland mitigation should, to the extent possible, draw from existing State natural resource plans and priorities. Targeting wetland mitigation to these areas can help achieve objectives already identified in previous planning efforts, resulting in mitigation that is of greater value to the public, and provides direction to regulated parties on where to look for and site required wetland mitigation. One of the most important considerations for identifying High Priority Areas is scale. The appropriate scale must balance the need to provide ample wetland restoration opportunities, with the need to target mitigation to priority areas small enough to where the cumulative benefit of mitigation and other conservation projects will improve public value outcomes (i.e. the benefits will not be diluted over too large an area).

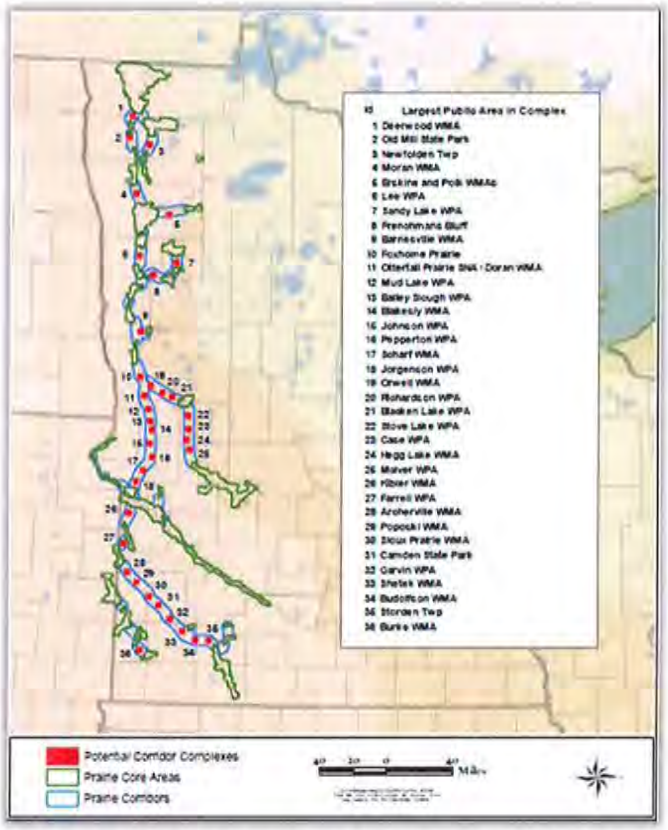


Figure 1: Prairie Conservation Plan Corridor Complexes

Through the Interagency Wetlands Group, BWSR intends to utilize the expertise of State and Federal agency staff to assemble information and present agency priorities for consideration in the development of statewide High Priority Areas. Initial group discussions have indicated general agreement on the usefulness of the Minnesota Prairie Conservation Plan (Figure 1) to accomplish the goals of multiple State plans and priorities. The Prairie Conservation Plan was the result of significant agency and stakeholder coordination, and also seems to offer the proper scale - providing substantial project opportunities while allowing for greater cumulative benefits.

BWSR and its partners are also cognizant that agricultural production occurs within and adjacent to priority areas outlined in the Prairie Conservation Plan. Appendix 3 illustrates prime soils and other soil classifications that have been determined by the USDA based on soil type and other soil characteristics. Based on this map, prairie conservation efforts can be focused on marginal agricultural lands that are less productive and that do not frequently provide positive economic returns. As an example, the beaches ridges of glacial Lake Agassiz in Northwest Minnesota are often comprised of wetland complexes or coarse-textured soil areas that are marginal for agriculture. The Prairie Conservation Plan focuses on areas such as this for wetland and prairie restorations and enhancements.

BWSR intends to further explore utilization of the Prairie Conservation Plan as the basis for establishing statewide High Priority Areas, with the potential for expansion of core areas to accommodate other priorities or local planning information as appropriate.

Local Watershed Planning Priorities

The 2015 WCA statute changes included a provision allowing local governments to identify local priority areas for wetland replacement and provide them for consideration as High Priority Areas. Specifically, Minn. Stat. § 103B.3355, Paragraph (f) states:

> *Local units of government, as part of a state-approved comprehensive local water management plan as defined in section 103B.3363, subdivision 3, a state-approved comprehensive watershed management*

plan as defined in section 103B.3363, subdivision 3a, or a state-approved local comprehensive wetland protection and management plan under section 103G.2243, may identify priority areas for wetland replacement and provide them for consideration under paragraph (e).

These planning processes provide an opportunity for enhanced watershed planning and prioritization, consistent with the watershed approach of the Federal Mitigation Rule (33 CFR Part 332), which can result in better targeting of wetland mitigation to areas and projects that best address watershed needs. As discussed in the In-Lieu Fee Wetland Replacement section below, a Compensation Planning Framework can serve as the link between these local planning efforts and State implementation policy. In order to facilitate the appropriate planning activities consistent with the watershed approach of Federal Mitigation Rule, BWSR, in consultation with the Corps, would develop guidance to local governments for the development of wetland replacement priorities through local water planning.

In-Lieu Fee Wetland Replacement

Similar to wetland banking, an In-Lieu Fee (ILF) program can provide mitigation for wetland impacts. Wetland banking provides an option for applicants to replace unavoidable wetland impacts by withdrawing wetland "credits" from an account in the State wetland bank. The "credits" represent previously restored or created wetlands that have been deposited in the bank for use by the entity that established the credits, or to be offered for sale to other applicants proposing to impact a wetland.

An ILF program provides an option for landowners to replace wetland impacts by purchasing credits from an ILF program sponsor before the replacement wetlands have been restored or created. The ILF sponsor must then develop the replacement wetlands in accordance with all applicable requirements and timeframes established in State and Federal regulations. Like banking, ILF programs are managed solely to establish mitigation, and do not affect the requirements of State and Federal laws to avoid and minimize wetland impacts before pursuing wetland mitigation. One of the primary differences between ILF and wetland banking is timing (ILF mitigation can occur after-the-fact) and an associated need for greater oversight.

WCA statutes have ostensibly allowed for the development of an in-lieu fee (ILF) wetland replacement program by BWSR since 1994, however those statutes were unclear and arguably lacked the full range of authorities necessary to effectively implement an ILF program. In 2012, Minn. Stat. § 103G.2242, Subd. 3 was amended to provide clear authority for BWSR to establish an ILF. However, further clarifications and authorities were identified and incorporated into the 2015 amendments to Minn. Stats. §§ 103G.005 and 103G.2242.

The Federal Mitigation Rule contains specific rules and procedures for establishing and operating ILF programs (see 33 CFR Part 332.8) to comply with Section 404 of the Federal Clean Water Act. As of the date of this report, there are 77 current and pending ILF programs nationally according to the Corps' Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS) website (https://ribits.usace.army.mil/ribits_apex/f?p=107:2).

Establishment and Operation of the ILF Program

It is both advantageous and required that mitigation under an ILF program in Minnesota comply with Section 404 requirements. Since these requirements are well laid out in the Federal Mitigation Rule, BWSR intends to rely on the existing federal rule language as much as possible rather than recreating new structure and requirements. The WCA Rule will, whenever possible, cite the appropriate section(s) of the Federal Mitigation Rule, and focus on language necessary to mesh those requirements with State laws and priorities.

The ILF program in Minnesota, including a Compensation Planning Framework discussed below, could be integrated into the overall implementation of State wetland planning and policy. Also, the ILF program could take a longer term, planned approach to targeting and achieving both State and local watershed goals in regards to

mitigation. As such, BWSR will further explore operating as the ILF program sponsor, with implementation occurring through agreements and contracts with other organizations and landowners as appropriate.

BWSR, acting as the ILF program sponsor, will ensure involvement of agency technical staff in the areas of site selection, hydrology, vegetation, soils, and engineering. In this situation, the ILF program will also be situated to take advantage of partnership opportunities with local governments, conservation organizations or programs, and projects requiring coordination among multiple landowners. Of particular importance is the opportunity for coordination with the BWSR Local Government Roads Wetland Replacement Program, typically funded by the legislature on the biennium.

Compensation Planning Framework

The "Compensation Planning Framework" is a fundamental component of an ILF program. The framework provides a basis for establishing replacement wetlands that will provide the greatest watershed benefits, and is a requirement of the Federal Mitigation Rule. 33 CFR Part 332.8(c) requires that:

> *"The approved instrument for an in-lieu fee program must include a compensation planning framework that will be used to select, secure, and implement aquatic resource restoration, establishment, enhancement, and/or preservation activities. The compensation planning framework must support a watershed approach to compensatory mitigation. All specific projects used to provide compensation for [Corps] permits must be consistent with the approved compensation planning framework."*

The Federal Rule identifies ten specific elements that must be included in an ILF program Compensation Planning Framework. One of those requirements is particularly notable given the current statutory direction to improve the targeting and outcomes of wetland mitigation in Minnesota. Item (vi) of Part 332.8(c) requires the framework to include *"A prioritization strategy for selecting and implementing compensatory mitigation activities."*

Essentially, the Compensation Planning Framework can be the mechanism to implement wetland mitigation priorities as identified through watershed planning. In the context of the Federal Mitigation Rule, it is a requirement for an ILF program. However, applying the framework only to the ILF program could create disparities between mitigation types and disincentives for its use. In order to improve the targeting and outcomes of *all* mitigation, the framework should be applicable and utilized regardless of the mitigation type (banking, ILF, or project-specific mitigation). The applicability of the Compensation Planning Framework will be addressed in WCA rulemaking.

The Compensation Planning Framework can also serve as the link between local watershed planning and State wetland policy. In accordance with Minn. Stat. § 103B.3355, Paragraph (f), as discussed above, local governments, as part of a state-approved comprehensive water, watershed, or wetland management plan, may identify priority areas for wetland replacement and provide them for consideration as High Priority Areas for wetland mitigation. The local watershed planning mechanisms currently exist to assess and prioritize the resource needs of watersheds; the Compensation Planning Framework can provide the mechanism to guide wetland mitigation in line with those priorities.

Use of the ILF Program

Currently, landowners and other entities proposing unavoidable impacts to wetlands have the option of establishing their own replacement wetlands corresponding directly to specifically identified wetland impacts (project-specific replacement), or utilizing the State wetland bank if appropriate credits are available (wetland banking). The ILF program would provide another mitigation option.

All wetland mitigation (banking, ILF, and project specific) will benefit from the improved targeting of locations and types of mitigation projects. However, wetland banking is generally recognized as a successful means of

mitigation with the least risk due to the fact that the replacement wetlands have already been established when credits are made available. Since the inception of the State Wetland Bank, Minnesota local governments have approved more wetland bank sites than any other state in the nation.

The establishment of an ILF program does not change the general preference for wetland banking, particularly if future bank sites are established in High Priority Areas or in accordance with the Compensation Planning Framework discussed above. This general preference for wetland banking is also part of federal policy. The Federal Mitigation Rule, 33 CFR Part 332.3(b), specifically establishes the following priority for wetland mitigation types:

1. Mitigation bank credits.
2. In-lieu fee program credits.
3. Permittee-responsible mitigation* under a watershed approach.
4. Permittee-responsible mitigation through on-site and in-kind mitigation.
5. Permittee-responsible mitigation through off-site and/or out-of-kind mitigation.

*Note: "Permittee-responsible mitigation" is a term used in federal policy that corresponds to the term "project-specific replacement" in the WCA Rule.

The current WCA Rules provide incentives for wetland replacement via the State Wetland Bank. However, BWSR will explore other options to minimize conflicts between the banking and ILF programs and to ensure continued viability of the wetland banking program in Minnesota. These options will include establishing a similar mitigation priority order in the WCA Rule that is consistent with the Federal Mitigation Rule cited above, and others that may best achieve State goals in regards to improving mitigation.

By establishing this priority order, utilization of the ILF program will primarily occur when the appropriate bank credits are not practicably available in the watershed. This will provide another opportunity to search for mitigation opportunities within the watershed, and to utilize High Priority Areas for mitigation when in-watershed opportunities are not available.

Necessary Elements for Effective ILF Implementation

The Federal Mitigation Rule contains numerous specific requirements for the establishment and operation of an ILF program. Two issues in particular are notable for Minnesota, and not able to be fully addressed through rulemaking alone.

Planning Timeframes and Program Funding. ILF programs can produce some or all of the required mitigation after the wetland impacts have occurred. This increases potential risks associated with project failure and/or ILF sponsor solvency. The Federal Mitigation Rule attempts to limit this risk in-part by including a requirement that the ILF wetland mitigation project construction begin within three years of the first wetland impact. Specifically 33 CFR Part 332.8(n)(4) requires that:

> *Land acquisition and initial physical and biological improvements must be completed by the third full growing season after the first advance credit in that service area is secured by a permittee, unless the district engineer determines that more or less time is needed to plan and implement an in-lieu fee project.*

While important to reduce risk, this requirement can have the unintended consequence of limiting an ILF's effectiveness as a mechanism to take a longer-term, planned approach to improve the targeting and outcomes of wetland mitigation. Given the timeframes typically associated with completing a wetland restoration project for mitigation credit, the ILF sponsor must begin the process of searching for mitigation opportunities immediately upon the sale of the first credits (or even before). At this point, it is difficult to predict how many credits will be

sold and where the associated impacts will occur (and thus how large of a site to pursue and where). At this early stage, it is also unlikely that the ILF has accumulated enough funds to cover costs associated with planning, design, permitting, easement establishment, contracts, and other project components. In addition, credits are typically not fully released until several years later. These factors can create challenges for ILF programs.

For the ILF program to be effective at improving the targeting and outcomes of wetland mitigation through more proactive planning and site selection, **it is imperative that the program obtain implementation funding**. BWSR intends to pursue funding from the legislature and/or other sources. Implementation funding would allow the program to begin the mitigation site search and development process earlier, effectively expand the planning timeframes, and allow for improved targeting of mitigation. Funds would be recovered (with interest) through the sale of credits based on full cost accounting as required by the Federal Mitigation Rule, and re-invested in the development of targeted mitigation. The funds would essentially act as a revolving loan within the program that will provide multiple recurring natural resource benefits over time.

Consistent Mitigation Standards and Maintenance Requirements. All wetland mitigation, regardless of the mechanism by which it is established, is equally important. As such, the standards and procedures should be consistent for all wetland mitigation mechanisms. Differences in standards and procedures can create artificial incentives and disincentives for different mitigation mechanisms. In order for the ILF to be successful, to maintain the viability of wetland banking, and to improve programmatic efficiency, consistent standards and procedures are important.

The 2009 amendments to the WCA Rules made significant progress to develop consistent standards but, particularly with the addition of the ILF program, additional consistency is warranted. For example, 33 CFR Part 332.8(k)(3) of the Federal Mitigation Rule specifies that:

> *An in-lieu fee program sponsor is responsible for the implementation, long-term management, and any required remediation of the restoration, establishment, enhancement, and/or preservation activities, even though those activities may be conducted by other parties through requests for proposals or other contracting mechanisms.*

Currently in Minnesota, long term maintenance requirements are the responsibility of the landowner. Land ownership and circumstances change over time, creating uncertainties regarding the capability of that landowner to perform maintenance, and even concerns about potential tax forfeiture. In this situation, all of the benefits accrue to the initial landowner, while some of the costs are borne by future landowners and/or the public.

The ILF program must incorporate the costs of long-term maintenance into the fee in order to comply with federal rules and to ensure that the future risk does not fall to the public. Given the fact that those same risks exist with wetland banking and project-specific mitigation, coupled with the need for consistent standards, provisions for the funding of long-term maintenance need to be developed for all mitigation types.

Replacement Wetland Siting

Landowners proposing wetland impacts that require replacement under WCA are generally required to begin their search for wetland replacement opportunities as close to the impact site as possible. When suitable wetland replacement opportunities are not available, the search can be expanded to a broader area in accordance with the replacement wetland sting criteria established in statute and rule. The siting criteria apply, although somewhat differently, to both project-specific wetland replacement and mitigation accomplished using wetland bank credits. Both federal and State rules utilize Wetland Bank Service Areas (Figure 2), which are partly based on major drainage basins, in the siting of wetland mitigation.

Summary of Current Siting Criteria

The replacement wetland siting criteria, established in Minn. Stat. § 103G.222, Subd. 3, generally require the search for wetland replacement to follow this priority order:

1) on site or in the same minor watershed as the impacted wetland;
2) in the same watershed as the impacted wetland;
3) in the same county or wetland bank service area as the impacted wetland; and
4) in another wetland bank service area.

When wetland impacts are proposed via the withdrawal of wetland bank credits, the search for available credits can generally begin at step #3 above in accordance with WCA Rules. The above siting criteria are also limited by presettlement wetland area (Figure 3). Impacted wetlands in a 50 to 80 percent area must be replaced in a 50 to 80 percent area or in a less than 50 percent area. Impacted wetlands in a less than 50 percent area must be replaced in a less than 50 percent area.

Presettlement wetland areas are established based on the percentage of wetlands remaining in each county compared to the amount of wetlands that county contained prior to European settlement. The percentages originate from a 1984 report by Anderson & Craig (Growing Energy Crops on Minnesota's Wetlands: The Land Use Perspective), which determined that there are 8.8 million acres of wetlands in Minnesota, compared to 18.6 million acres of original wetlands. The amount of original wetlands is based on 1969 land use and soils data using 40 acre parcels. Although this study is dated, it remains the only statewide estimate of original vs. remaining wetlands. See Figure 4 for a map of remaining wetlands by county.

Challenges Associated with Current Siting Language

The replacement wetland siting criteria have existed in statute, similar to their current structure, since the early days of WCA. Since that time, wetland science has evolved, bank service areas were created, the watershed approach to mitigation was established in federal rule, and clear direction to improve the targeting and public value outcomes of wetland mitigation was provided in State statute.

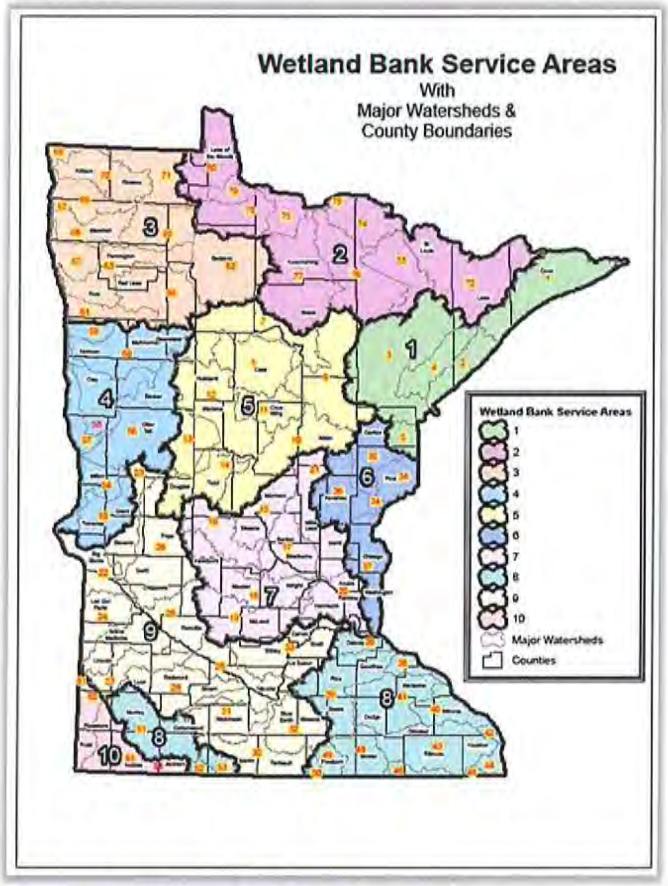


Figure 2: Wetland Bank Service Areas.

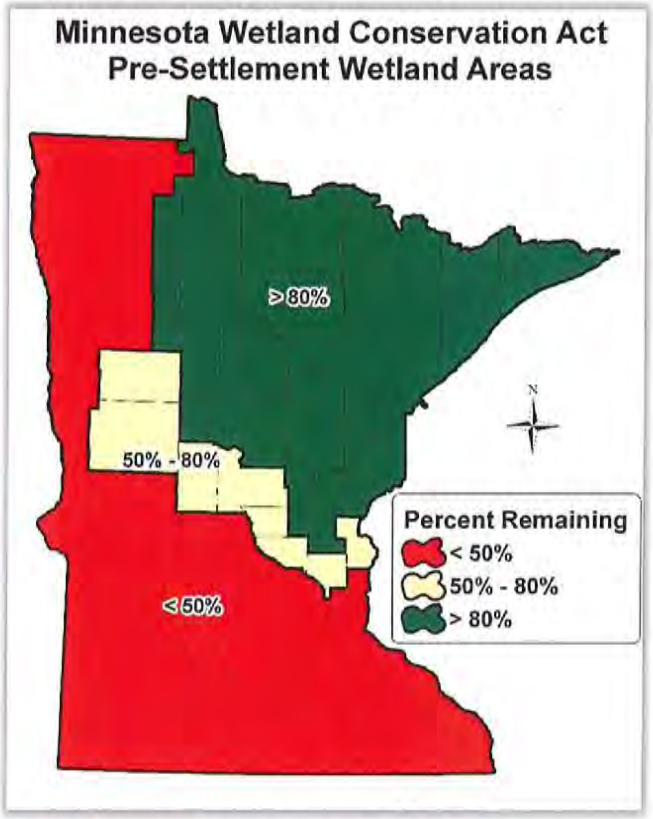


Figure 3: Pre-settlement wetland areas.

While the general concepts behind the siting criteria are still appropriate, the criteria may not be adequate to achieve the current State goals of mitigation. In addition, the current structure can create conflicts with current science, with Federal policy, and within State law.

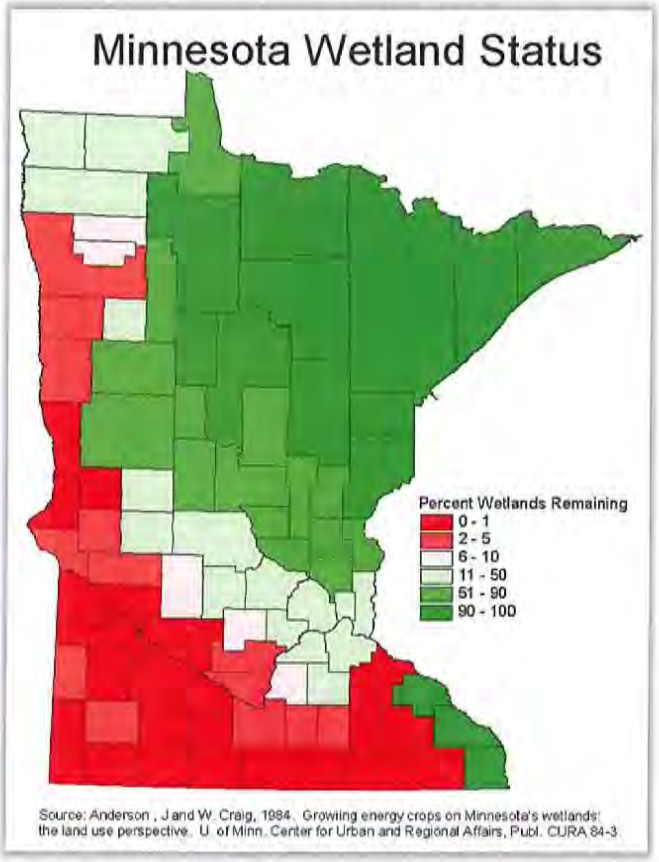


Figure 4: Wetland Loss by County

Targeting. Consistent with the concepts outlined in this report, BWSR can establish statewide mitigation priorities primarily through the designation of High Priority Areas, and local watershed mitigation priorities primarily through watershed planning efforts. However, the existing siting criteria only consider location; not the types of mitigation projects and public value outcomes that can best achieve watershed goals. The criteria also do not address statewide or local watershed priorities, as they are currently undefined. It may prove difficult to incent the establishment of mitigation consistent with these priories absent a requirement in the siting criteria to search for them.

Siting Criteria for Replacement via Wetland Banking. When wetland mitigation is proposed via the withdrawal of wetland bank credits, the search for available credits can generally begin at the third step of the siting criteria (the "same county or wetland bank service area") in accordance with the WCA Rules. This provision, part of the 2015 statute changes, is intended to:

1) promote wetland banking by providing greater certainty for wetland bank account owners regarding their potential markets, and
2) reduce conflicts arising from local governments having to determine when it is feasible to allow an applicant to use one bank over another based on different credit prices.

Currently, Minnesota's bank service areas are quite large as compared to nationally. However, the approach to replacement wetland siting via banking described above should work in Minnesota, with one possible exception: the Twin Cities metropolitan area.

The Twin Cities are located at the confluence of four different bank service areas (see Figure 2 above). Those bank service areas stretch as far west as Big Stone County (BSA 9), as far southeast as Houston County (BSA 8), and as far north as Carlton County (BSA 6). The bank service areas that contain the Twin Cities cover more than one third of the State.

An additional challenge that the Twin Cities area presents is the extreme differences in land values between the Twin Cities metro area and non-metro areas within the same bank service area (particularly in the far reaches of the bank service areas). Land values are the single greatest factor in determining the cost of wetland mitigation, including bank credits. Absent some other limitation or incentive, the vast majority of impacts occurring in the Twin Cities metropolitan area will likely be replaced farther out in the bank service areas. However, the extent and significance of this potential migration of wetland functions associated with mitigation away from the Twin Cities will be modified to some degree by two primary factors:

1) Wetland impacts in the Twin Cities area are typically associated with some form of development, for which stormwater treatment regulations apply. These regulations may provide at least some mitigating effects for the lost water quality and quantity functions of wetlands.
2) The Twin Cities area is covered by the Metropolitan Surface Water Management Act, which requires the establishment of Watershed Districts or Watershed Management Areas over the entire metropolitan area. These watershed organizations typically have additional requirements for water quality and quantity, and often have more stringent local standards for wetland impacts and replacement.

BWSR intends to further discuss this issue with stakeholders, local governments, and the Corps during the rulemaking process. Possible options for addressing it in rule include:

- Adjusting bank service area boundaries and/or establishing a metro service area.
- Establishing separate metro area mitigation siting criteria.
- Developing replacement ratio incentives/dis-incentives to encourage wetland mitigation within the metro area.
- No limitations except those developed by metro watershed management organizations through the local planning process.

Presettlement Wetland Areas and Siting. As discussed above, there are limitations to replacement wetland siting based on presettlement wetland area. The basic purpose of these limitations remains sound: to prevent wetland impacts in wetland-poor areas of the state (south and west) from being replaced in wetland-rich areas of the state (northeast). However, the structure of these limitations often conflicts with the watershed approach and the Federal Mitigation Rule.

For example, a wetland impact in Washington County (a <50% area) cannot be replaced in Anoka County (a 50-80% area), even when the impact and replacement site are in the same watershed. This can force applicants to look elsewhere for mitigation, often outside the watershed, despite the fact that a viable mitigation option exists in the immediate watershed of the impact. This exact situation occurs in Rice Creek Watershed District (see Figure 5).

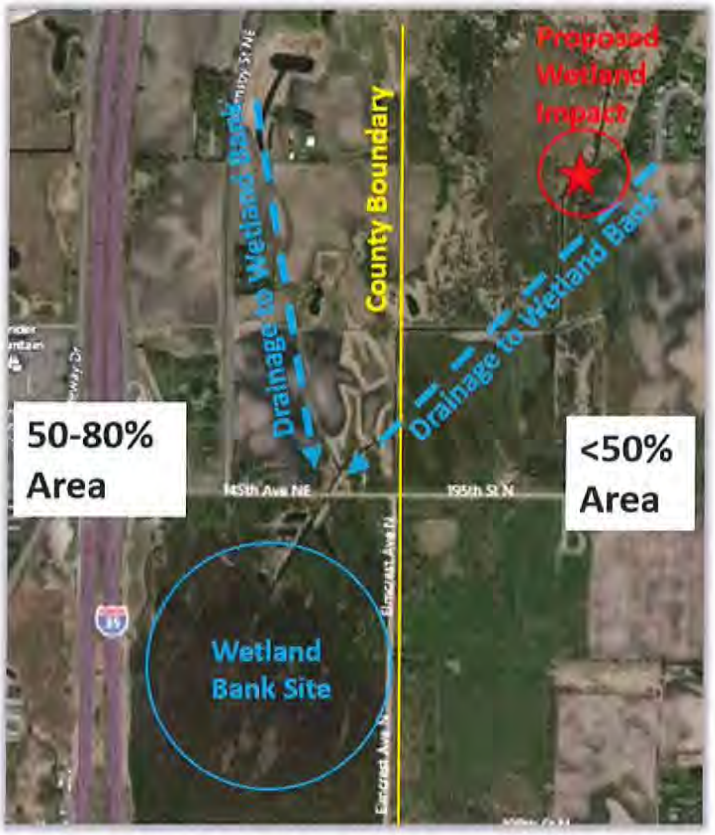


Figure 5: Rice Creek Watershed District Presettlement Area Example. Proposed wetland impacts in the same watershed and immediately upstream of this wetland bank cannot use the bank for mitigation according to current siting criteria.

A wetland was restored and banked in Anoka County. The hydrology source of the wetland includes a public drainage system that crosses the adjacent road (and county boundary) into Washington County. According to the siting criteria, wetland impacts associated with that same drainage system cannot use the bank across the road in Anoka County for mitigation, despite being in the same watershed. In these situations, the siting criteria actually prevent the use of ecologically preferable mitigation and conflict with the watershed approach required by the Federal Mitigation Rule.

A similar situation exists where bank service areas are split by presettlement areas. The presettlement area boundary introduces a county-based divide into a watershed-based service area (effectively creating two service areas). Establishing wetland mitigation options that are only available in a certain presettlement zone (i.e. >80% areas), rather than establishing availability by service areas, create further complications.

Since the presettlement areas, and their limitations on replacement wetland siting, are established in statute, changes to those statutes may be necessary to properly address this issue. However, BWSR does intend to explore the issue further during rulemaking in order to identify all available options, which could include a recommendation for a future statute change.

Potential Options for Addressing Problems with Replacement Wetland Siting

BWSR intends to continue discussions of the above issues associated with replacement wetland siting with stakeholders, local governments, and the Corps during the rulemaking process. Since the current siting criteria are established in statute, the ability to modify the criteria via the WCA Rules may be somewhat limited. However, in addition to statute changes, possible options for partly addressing siting issues via rulemaking may include any or all of the following:

- Revise wetland bank service area boundaries to take into consideration watersheds, ecological considerations, and historic wetland losses.
- Address Twin Cities metropolitan area siting issues as discussed in the "Siting Criteria for Replacement via Wetland Banking" section above.
- To the extent WCA rulemaking authority allows, expand or limit the availability of certain actions eligible for credit to match bank service area boundaries and/or federal policies.
- Other options identified during the rulemaking process.

Replacement Ratios and Targeting

Minn. Stat. § 103G.222, Subd. 3 (g) directs BWSR to *"establish wetland replacement ratios and wetland bank service area priorities to implement the siting and targeting of wetland replacement and encourage the use of high priority areas for wetland replacement."*

The establishment of varied replacement ratios is currently the primary mechanism available to guide wetland mitigation to priority locations and projects. However, two additional mechanisms were discussed above that, in combination with replacement ratios, will contribute to the improved targeting and public value outcomes of wetland mitigation:

1) implementation of the In-Lieu Fee Wetland Replacement Program, and
2) the identification of local priority areas through local water planning processes and development of a statewide Compensation Planning Framework.

Minimum replacement ratios are currently established in Minn. Stat. § 103G.222, Subd. 1, with the specific ratios and criteria established in MN Rule Chapter 8420.0522, Subp. 4. Current replacement ratios are as follows:

Minimum Replacement Ratios: Banking		
Location of Impact	**Replacement**	**Minimum replacement ratio**
> 80% area or agricultural land	Outside bank service area	1.5:1
	Within bank service area	1:1
< 50% area, 50 – 80% area, and nonagricultural land	Outside bank service area	2.5:1
	Within bank service area	2:1

Minimum Replacement Ratios: Project-Specific		
Location of Impact	Replacement	Minimum replacement ratio
> 80% area or agricultural land	Outside major watershed or out-of-kind	1.5:1
	Within major watershed and in-kind	1:1
< 50% area, 50 – 80% area, and nonagricultural land	Outside major watershed or out-of-kind	2.5:1
	Within major watershed and in-kind	2:1

The current replacement ratios do not provide any incentive for targeting within watersheds or bank service areas. While there is an increase in ratio for leaving the bank service area, it applies across the board regardless of the service area chosen and is not always adequate to compensate for differences in land values and associated mitigation costs. The current ratios are neither tied to priority locations or projects, nor are they adequate to offset other factors such as varying land values.

In order to improve the targeting of wetland replacement as directed by statute, including the use of high priority areas, BWSR intends to explore structuring replacement ratios as follows:

1) Within Bank Service Areas:
   - Utilize a watershed approach to establish priorities for wetland mitigation within watersheds. Watershed priorities would be developed as part of the Compensation Planning Framework discussed above, and/or through incorporation of local watershed plan priorities into the framework.
   - Set replacement ratios according to the priorities established in the Compensation Planning Framework (i.e. highest priority replacement = lowest replacement ratio).
   - For areas in which watershed priorities are not yet established, allow "in-kind" wetland replacement (replacement of lost functions) as a surrogate.
   - Consider encouraging certain projects of statewide significance and value (i.e. white cedar restoration) through ratios and/or other means.
2) High Priority Areas:
   - Incent the use of Statewide High Priority Areas by establishing a replacement ratio comparably less than other out-of-service area options. The ratio must balance the need to first look for projects that will replace the functions and value lost to impacts within watersheds, with the desire to better target mitigation projects that are allowed to leave the service area.
3) Other Bank Service Areas (non-priority areas):

- Comparably higher replacement ratios must be established for out-of-service area replacement that is not located in a Statewide High Priority Area.

Depending on the circumstances, numerous factors can influence the establishment of replacement ratios, including both ecological and economic considerations. However, to be effective, the ratios must serve as adequate incentives/disincentives to improve the targeting of mitigation. Relying on replacement ratios as the primary mechanism to target wetland mitigation does present some challenges, including:

- The ability to set ratios within bank service areas that provide adequate incentives for targeting without being onerous when such projects are not available.
- The ability to set ratios across bank service areas that adequately address land values and other factors that change over time.
- The ability to incent the targeting of mitigation associated with mining projects in northeast Minnesota through replacement ratios may be limited. Minn. Stat. § 103G.222, Subd. 1(a) generally allows wetland impacts authorized or conducted under a permit to mine within the Great Lakes watershed (BSA 1) to be replaced within the Rainy River watershed (BSA 2), and vice-versa, without any replacement ratio increase.
- The effectiveness of variable replacement ratios may be limited given the structure of the current siting criteria, which do not incorporate any consideration of priority areas or projects.

Actions Eligible for Credit

The "Actions Eligible for Credit" section of the WCA Rules (MN Rule 8420.0526) defines the actions that landowners can take to restore or create wetlands and associated aquatic resource functions in exchange for "credits" that can be used to replace wetlands lost to regulated activities. "Credits" serve as a rough surrogate for the functional gains accruing from the project. Some actions eligible for credit are established in statute with the implementation details provided in the WCA Rule. Other actions are established in Rule only.

It is important to note that the new actions, and potential changes to existing actions, discussed below are largely conceptual. They are intended to provide the current status and general direction for developing the specific implementation details, which will be developed in close cooperation with the Corps.

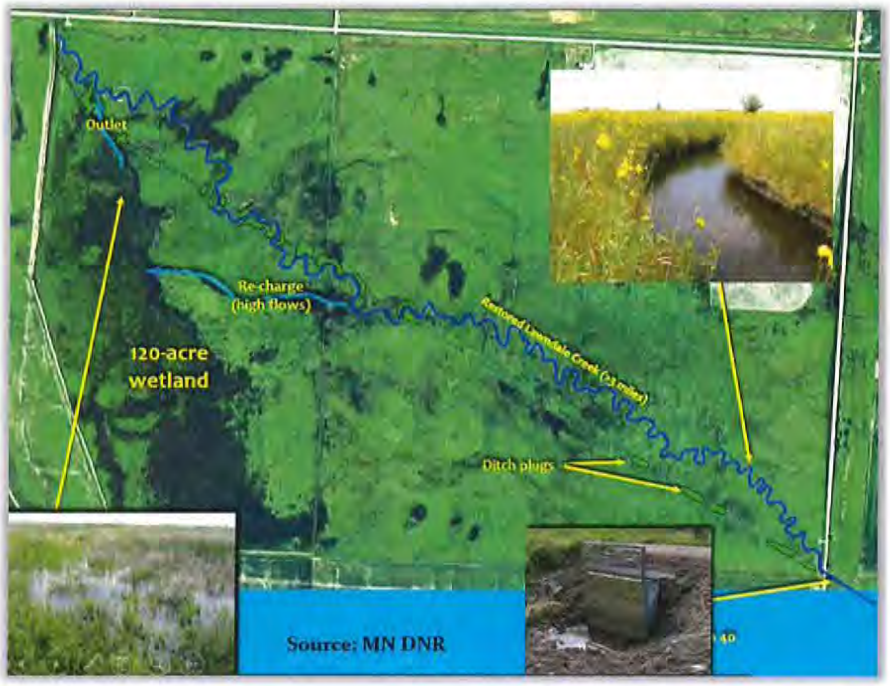
BWSR intends to work closely with the Corps to review all actions eligible for credit. Consistency between the State and Federal programs is of particular importance in regards to how the programs define eligibility and allocate credit to wetland replacement projects. Greater consistency will not only improve program effectiveness, but will be more efficient for the agencies and project proposers.

New Actions Eligible for Credit in Northeast Minnesota

The *restoration and protection* of streams and riparian buffers were established as actions eligible for credit in the 2015 amendments to Minn. Stat. § 103G.2242, Subd. 12. The *preservation* of riparian buffers and essential watershed areas were established as actions eligible for credit in the 2015 amendments to Minn. Stat. § 103G.2251. The criteria for implementing these new actions will be established in the WCA Rules (MN Rule Chapter 8420).

These new actions were largely based on the recommendations contained within the "Siting of Wetland Mitigation in Northeast Minnesota" interagency report, in order to provide additional wetland mitigation options in an area of the state where traditional wetland restoration opportunities are limited. Statute limits their availability to the greater than 80 percent pre-settlement wetland area of the state (essentially the northeast).

By their nature, these new actions are not as straight-forward as a typical wetland restoration. However, based on investigation of the scientific literature and procedures in other states, along with consultation with appropriate resource professionals, BWSR staff have made substantial progress towards defining the potential implementation structure of these actions.



This is an example of a stream restoration project completed in northern Minnesota that, in restoring the natural stream channel, also restored the stream's floodplain and adjacent wetlands, providing multiple benefits to both the stream/wetland complex and downstream aquatic resources.

Restoration and Protection of Streams and Riparian Buffers. Many streams have been degraded by direct channelization, changes in land use occurring near the stream or in its watershed, or both. Stream degradation often includes associated degradation of floodplain and/or adjacent wetland hydrology and function, providing opportunities for restoration actions that result in multiple aquatic resource benefits within watersheds. Identifying eligible projects, developing a restoration and protection strategy, and determining the corresponding amount of credits that the project will generate will require planning and analysis. This planning process will begin by identifying:

1) a degraded stream or stream reach eligible to be restored for credit;
2) the source(s) of degradation; and
3) the action(s) necessary to:
    a. restore the stream to a natural condition,
    b. address direct and indirect factors that caused the stream to become degraded, and
    c. ensure sustainability (i.e. protect the stream from future degradation).

Defining what qualifies as a "degraded" stream that is eligible to be restored in exchange for wetland replacement credit will be critical. In general, common symptoms of stream degradation include:

- Unstable Channel
- Incised Channel
- Loss of Floodplain Connectivity
- Aggraded Channel
- "Over-Wide" Channel
- Unstable Width-to-Depth Ratio
- Loss of Stream Sinuosity

The actions necessary to restore a stream will vary, but in general, both developing and reviewing the proposed corrective actions will require expertise in fluvial geomorphology. The conceptual model for completing stream restoration projects for wetland replacement credit will involve:

1) the meander corridor (the area in which the stream is allowed to naturally move and bend over time),
2) other areas receiving hydrologic benefits from the stream restoration project, and
3) buffers and adjacent areas that are important for sustainability and/or related aquatic resource functions.

Substantial scientific information and expertise exists in regards to the restoration of streams, and even stream mitigation (stream-for-stream). However, little information or expertise exists to translate the restoration of a stream (linear) into credits to be used to replace impacts to wetlands (area), or to compare functions gained by stream restoration to functions lost to wetland impacts. In general, BWSR believes that credit could be allocated according to the following concepts:

- Greater credit would likely be allocated to areas within the meander corridor and other areas hydrologically restored.
- Lesser credit would likely be allocated to areas outside the meander corridor and/or only partially hydrologically restored.
- Credit may be allocated based on functional lift (i.e. improvements to water quality or habitat) if adequate functional assessment or alternative evaluation methodologies are identified or developed.
- Stream restoration projects will likely be completed as part of a package of restoration activities, which will be credited separately according to the applicable sections of WCA Rule.

Stream restoration projects may also be good candidates for cooperative projects between the ILF program, private entities, and/or conservation programs.

Given the specific skillset required, and the general need for more proactive watershed planning and analysis, two procedural components will be important for this action to be utilized and successful:

1) The Compensation Planning Framework discussed above should identify and prioritize watersheds, streams, and to the extent possible, specific stream restoration projects that could be completed for wetland replacement credit.
2) The process will require greater agency involvement to determine eligibility, appropriate restoration actions, and credit allocation. BWSR will explore the possibility of establishing interagency agreements to utilize the substantial stream expertise currently available in Minnesota.

In addition to stream degradation, the loss or degradation of riparian buffers can cause negative impacts to water quality, habitat, and other aquatic resource functions. In these instances, restoring and protecting those buffers will improve both the function and sustainability of the aquatic resource.

Stream restoration projects will invariably involve either the restoration or preservation of riparian buffers, but there may be other instances where restoring riparian buffers alone will remove a source of degradation, improve function, and provide protection for important streams, lakes, or wetlands. When not associated with a stream restoration project, eligibility for the restoration of riparian buffers will be largely based on the improvement and protection of important aquatic resources consistent with the discussion below.

Preservation of Riparian Buffers and Essential Watershed Areas. Existing buffers are often vital to the current function and sustainability of the adjacent aquatic resource (lakes, streams, and wetlands). Loss of those buffers can lead to degradation of the resource. Similarly, other areas in the watershed of a stream or lake often play an

important role in the function and sustainability of that water body, and those areas may currently have little or no protection.

For example, upstream watershed areas and stream headwaters can play an essential role in groundwater infiltration, maintaining temperature, and augmenting low flows necessary to support fish and other aquatic species. Other resources, such as wild rice lakes, may be very sensitive to changes in water quality and require a greater area of watershed protection. Many wildlife species also depend on larger blocks of habitat with connections to other aquatic resources.

Existing aquatic resources can vary significantly in regards to their current quality, function, and value. As such, it will be important that buffers and watershed areas for preservation be targeted to address high priority resources in order to ensure that the public value benefits that accrue from their preservation are adequate to replace the wetlands being lost to regulated projects. Priority resources under consideration for preservation credit eligibility in northeast Minnesota currently include:

- Wild rice lakes and streams,
- Cisco lakes,
- Critical Waterfowl Lakes,
- Headwaters of designated trout streams and their tributaries,
- Headwaters or reaches of streams beyond the Public Waters classification,
- Groundwater recharge areas important for trout stream flow and temperature,
- Critical habitat for important or threatened species, and
- White cedar riparian plant communities.

Wild rice lakes like this one in Carlton County could be priorities for protection via the preservation of buffers and essential watershed areas.

The WCA Rules currently include criteria for the eligibility and crediting of the preservation of certain exceptional wetland areas in northeast Minnesota. That existing language and process will be expanded to include the preservation of riparian buffers and essential watershed areas as described above.

Other Actions Eligible for Credit

BWSR intends to review all existing actions eligible for credit for potential clarifications and improvements during rulemaking. In order to achieve the goals of WCA it is important that credit is allocated commensurate with the functional gains achieved by the action and, for wetland restoration, the full restoration of lost wetland functions is necessary to achieve full replacement credit. Ensuring that credit is allocated based on functional gain also creates an incentive to improve the public value outcomes of mitigation.

Replacement wetland buffers is one existing action eligible for credit that BWSR has already identified for likely amendments. Potential proposals include:

- Allocate credit commensurate with actions taken to improve the buffer (i.e. preservation vs. reestablishment of native vegetation).
- Improve the function and sustainability of replacement wetlands by determining minimum and maximum buffer widths based on site-specific factors.

- Address instances where the restoration of buffers adjacent to existing aquatic resources in northeastern Minnesota (discussed above) can qualify for replacement credit in accordance with the 2015 statutory amendments.

Consistent with the recommendations contained within the "Siting of Wetland Mitigation in Northeast Minnesota" interagency report, BWSR will also explore, in consultation with the Corps, the potential of establishing an action eligible for credit for the implementation of certain watershed plan projects. A recent study by the U.S. Environmental Protection Agency, "Northeastern Minnesota Compensation Siting: Alternative Wetland Mitigation Options" (August 2015), reviewed currently approved local water management plans in Northeast Minnesota and identified numerous plan implementation projects as potential wetland mitigation opportunities. These projects may not necessarily result in the restoration or creation of new wetland acres, but they would improve the function and sustainability of aquatic resources in northeast watersheds. The EPA report can be found on the Wetlands page of the BWSR website (http://www.bwsr.state.mn.us/wetlands/index.html).

By definition, the eligibility and crediting for these projects will not be as well defined as other actions, necessitating greater agency involvement. These projects may be most valuable when completed as part of a larger suite of actions that, when packaged together, will collectively restore and protect the aquatic resource functions in a watershed. Given these factors, if this action eligible for credit is established, it may likely be implemented only via the ILF program discussed above.

Next Steps and Considerations for Future Discussion

BWSR initiated the WCA Rulemaking process via publication of the initial request for comments in the State Register on October 19, 2015. Initial work has focused on the issues discussed in this report, which will provide an important basis for rulemaking. However, the next step in the rulemaking process will be the development of specific implementation details for these and other issues.

The 2015 WCA statute changes, including the overall direction to improve the targeting and outcomes of wetland mitigation, are both significant and ambitious. This next phase of WCA rulemaking will be challenging. BWSR plans to utilize current science, incorporate administrative efficiencies, and consider the varying priorities and opinions of stakeholders in crafting implementation details that best achieve the overall public interest.
During the next phase of WCA rulemaking, work and discussion will continue regarding the issues identified in this report and others. The following list summarizes some of the challenges identified in this report that merit further attention as the WCA Rule amendments are developed:

- The establishment of High Priority Areas for wetland mitigation consistent with the direction and process outlined in this report.
- Establishing consistent procedures and standards for all mitigation mechanisms (banking, ILF, and project-specific).
- Addressing the siting of wetland replacement via banking in the Twin Cities metropolitan area.
- The adequacy of replacement ratios alone to achieve goals relating to the improved targeting and outcomes of wetland mitigation.
- The potential need for additional statutory authority to address long-term maintenance of wetland mitigation sites.
- Potential alternatives to the current replacement wetland siting criteria, including options to address issues related to presettlement wetland areas.
- The implementation and geographic limitations of the new actions-eligible for credit in northeast Minnesota, including coordination and consistency with federal policy.

In addition to the policy challenges above, obtaining the necessary implementation funding is critical to achieving the State's goals of targeted, improved wetland mitigation outcomes. Specifically, BWSR will pursue:

- Funding for development of the wetland Compensation Planning Framework.
- Funding for the implementation and operation of the In-Lieu Fee Program.

For additional copies of this report or for more information about WCA Rulemaking, see the Wetlands page of the BWSR website at: http://www.bwsr.state.mn.us/wetlands/index.html

Appendix 1: 2015 – 2017 WCA Rulemaking Plan

2015-2017 Wetland Conservation Act Rulemaking Plan

Scope

1) Reconcile the rule with statute changes from 2011, 2012, and 2015.

2) Improve outcomes relating to wetland replacement, including provisions to:
   - establish priorities and replacement ratios that encourage the use of high priority areas for wetland replacement,
   - develop the standards and procedures for an in-lieu fee wetland replacement program,
   - establish new actions eligible for wetland replacement credit in the greater than 80 percent pre-settlement wetland area of the state (northeast), and
   - modify the requirements and process for wetland replacement.

3) Changes identified by staff or during the rulemaking process that will improve the efficiency, effectiveness, and/or outcomes of the rule.

Rulemaking Goals

To the extent possible, proposed changes should address the following general goals of rulemaking:

- Consistency with the purpose of WCA.
- Simplification.
- Implementable.
- Clarification.
- Have a tangible result or outcome.
- Improve Accountability.
- Minimize negative impacts to LGU workload.
- Limit unintended consequences.
- Balance public costs and benefits.
- Seek stakeholder support.
- Fairness/treat landowners consistently.

Process for Rule Development

BWSR Staff Rule Team

The BWSR staff "Rule Team" will develop and propose specific rule requirements, processes, and language to implement rulemaking priorities. Team members will also be responsible for presenting and interacting with the WCA Rule Advisory Committee and technical staff, including the consideration and vetting of comments/recommendations and the development of appropriate modifications and responses. The Team will utilize smaller sub-teams for specific issues, several of which will include assistance from other wetland and/or technical services staff. The initial topics for the Team to address first have been identified as:

- High Priority Areas (Designation)
- High Priority Areas (Implementation)
- In-Lieu Fee Program
- Actions Eligible for Credit (Northeast)
- Actions Eligible for Credit (statewide)
- Wetland Mitigation Approval Process
- Application Noticing/Re-Noticin

Stakeholder Input and WCA Rule Advisory Committee

The review process will provide a forum for stakeholders and agencies to provide input and advice on proposed rule changes. Invited stakeholders will include representatives from statewide groups and organizations with an interest in the WCA rules. State and Federal government entities will also be invited to participate and additional coordination will occur outside of committee meetings, particularly with the Corps (Clean Water Act Section 404) and NRCS (Swampbuster).

The stakeholder input process will occur in two phases. Initially, a broad range of stakeholder organizations will be invited to participate in the review of issues and proposals related to the March 15, 2016 legislative report. General input on other issues will also be considered. BWSR will utilize the list of stakeholder organizations that was developed during the last WCA rulemaking and subsequent stakeholder coordination efforts, including the development of 2014 statute proposals. However, other interested organizations will be welcome to participate if interested.

After the March 15, 2016 report, work on rule language will become more specific and detailed. At this point, BWSR will establish a formal WCA Rule Advisory Committee. This committee will initially focus entirely on rulemaking. However, after adoption of the new WCA Rule, BWSR intends that the Advisory Committee continue to operate outside of rulemaking as a standing wetland advisory committee to provide opportunities for stakeholder input in accordance with Minnesota Statutes § 103B.101, Subd. 16. The size of the advisory committee will be limited in order to assure a workable group, but opportunities will also be provided for non-committee members to participate and provide input.

Implementation and Technical Review

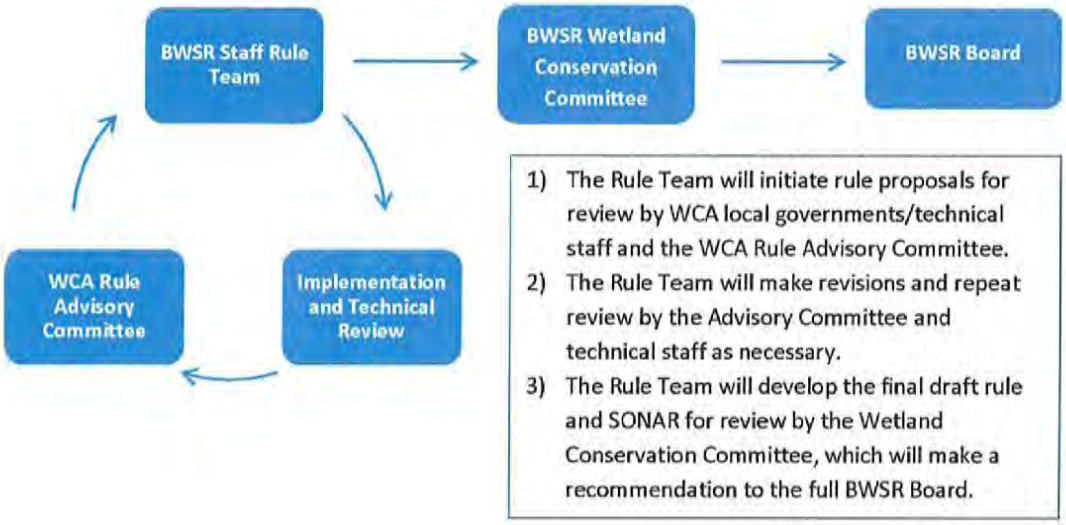
BWSR will also seek additional review and comment from local governments and consultants who work with WCA. A primary focus of this review will be to vet ideas and recommendations originating from the Rule Team and Advisory Committee for technical feasibility, unintended consequences, and the potential for effective implementation.

A technical review team was established for this purpose in 2014 as part of the process for developing recommendations for WCA statute changes. It consisted of a diverse group of staff and consultants with direct responsibilities implementing and/or complying with WCA. BWSR intends to utilize the nucleus of that group as part of the process to obtain technical input on rulemaking proposals. Technical input will also be solicited at training events (i.e. BWSR Academy) and/or through direct communications with local governments.

BWSR Wetland Conservation Committee

The Wetland Conservation Committee of the BWSR Board will meet regularly to review rulemaking progress, advise on specific issues, and make a recommendation to the full Board regarding adoption of the final draft rule. The Committee will also review the March report to the legislature.

Summary of Rule Development Process



Prioritization of Issues

Work relating to the March 15 report to the legislature will be prioritized and addressed by the BWSR Rule Team and reviewed first by interested stakeholders. The report requirement was included in 2015 WCA legislation as follows:

> *By March 15, 2016, the Board of Water and Soil Resources, in cooperation with the Department of Natural Resources, shall report to the committees with jurisdiction over environment and natural resources on the proposals to implement high priority areas for wetland replacement and in-lieu fees for replacement and modify wetland replacement siting and actions eligible for credit. In developing the report, the board and department shall consult with stakeholders and agencies.*

General Timeline

2015	October	Send Preliminary Proposal to Governor's Office. Publish Request for Comments in State Register.
	December	Comment period closes December 18 (60 days). BWSR Rule Team begins work on initial proposals. Begin interagency coordination efforts.
2016	January	BWSR Wetland Conservation Committee meets.
	February	Stakeholder input process begins. Focus on issues in upcoming legislative report.
	March	BWSR Wetland Conservation Committee meets. Report progress and recommendations regarding high priority areas, ILF, siting, and actions eligible for credit to legislative committees by March 15.
	April	Establish WCA Rule Advisory Committee. Address any feedback from legislative report, potential statute changes (if any), and remaining rule issues. BWSR Rule Team, Advisory Committee, and BWSR Wetland Conservation Committee meet as needed.
	May	
	June	
	July	
	August	
	September	
	October	Begin development of final draft rule and SONAR.
	November	
	December	
2017	January	404 Assumption Study report to legislative committees by January 15. Evaluate need for continued rulemaking and adjust remaining timeline as necessary.
	February	BWSR Wetland Conservation Committee reviews draft rule and SONAR, makes recommendation to Board.
	March	Board reviews and adopts rule and SONAR.
	April	Submit proposed rule and SONAR to Governor's office and MMB.
	May	Obtain approved draft of rules from the Revisor.
	June	Request to schedule a hearing and submit the draft Dual Notice of Intent to Adopt Rules to the ALJ. After ALF approval, finalize Dual Notice and publish in State Register.
	July	Pre-hearing comment period ends.
	August	Hearings (if necessary).
	September	Adopt rules: Response to comments, ALJ report and approval, Governor's office approval, submit "Order Adopting Rules" to OAH, give agency "notice of filing," and submit "Notice of Adoption" to the State Register.
	October	
	November	
	December	New rules take effect.

Note: The above timeline is approximate and is not a comprehensive list of rulemaking requirements or related meetings. It can and will be amended to address or accommodate issues and needs identified during the rulemaking process. It does, however, roughly identify the timeframe and order of activities as currently expected.

Appendix 2: Identification of Statewide High Priority Areas for Wetland Mitigation

Identification of Statewide High Priority Areas for Wetland Mitigation

Draft - 1-21-16

Background

In 2015, the State Legislature amended Minnesota Statutes § 103B.3355 to require the Board of Water and Soil Resources (BWSR) to identify and establish "high priority areas for wetland replacement" (mitigation). The intent of this change is to improve the targeting and public value outcomes of wetland mitigation, particularly when that mitigation occurs outside the watershed or bank service area of the impact. The new statute also provides the opportunity for local governments to establish priority areas for wetland replacement in local water plans, which can be submitted to BWSR for statewide consideration.

These and other 2015 WCA statute changes can be found on the BWSR website at: http://www.bwsr.state.mn.us/wetlands/wca/Summary_of_2015_WCA_Statute_Changes.pdf See also the "Relevant Statutes" section at the end of this document for the specific statute language.

Designation of High Priority Areas was one of the recommendations included in the *"Siting of Wetland Mitigation in Northeast Minnesota"* report developed by the Interagency Northeast Mitigation Siting Team (March 7, 2014). Specifically, the report recommended improved targeting of mitigation by establishing priority areas for wetland restoration based on recognized and approved state planning documents. See the full report on the BWSR website at: http://www.bwsr.state.mn.us/wetlands/wca/NE_MN_mitigation/siting_NE_MN_mitigation.html

Process for Statewide High Priority Area Designation

The focus of this process will be solely to identify and establish statewide High Priority Areas for wetland mitigation; it will not address siting criteria, replacement ratios, or other considerations of rule and/or statute. BWSR intends to develop the requirements or incentives to use High Priority Areas for out-of-watershed mitigation through the Wetland Conservation Act Rulemaking process. Identification and establishment of High Priority Areas, however, will occur outside of rulemaking.

In accordance with statute, BWSR must consider the functional benefits that wetlands provide, the historic abundance and loss of wetlands, current applicable natural resource plans, and any relevant watershed studies that identify watershed needs. Designation of High Priority Areas should consider all reasonably available, relevant information and agency priorities.

To ensure a fully informed process, BWSR proposes to utilize multi-agency expertise similar to the collaborative process of the Interagency Northeast Mitigation Siting Team, for the purposes of providing information and recommendations for the designation of High Priority Areas for wetland mitigation. Specifically, BWSR proposes to utilize the Interagency Wetlands Group (IWG) to achieve this interagency coordination. At a minimum, the following agencies will be requested to participate on an ad hoc IWG team:

- MN Department of Natural Resources
- MN Pollution Control Agency
- MN Department of Agriculture
- US Army Corps of Engineers, St. Paul District
- US Environmental Protection Agency
- US Fish and Wildlife Service

- USDA Natural Resources Conservation Service

BWSR will also request information and feedback from local governments and non-governmental organizations as appropriate. Utilizing the information and recommendations obtained in the interagency process, BWSR staff will recommend approval/designation of the High Priority Areas by the BWSR Board. Board-designated High Priority Areas will be noticed in the State Register and posted on the BWSR website.

Goals of Interagency Process

The objective of this process it to provide information, agency priorities, and to the extent possible, interagency consensus recommendations to BWSR for designating Statewide High Priority Areas. Such designation will consist of the identification of specific geographic areas on a map. Agency staff should consider the following goals in developing recommendations:

- Historic Loss - Areas of the State that have experienced the greatest loss of wetlands (i.e. the prairie pothole region) should be the starting point for HPA.
- Targeted - The statewide HPA designation(s) need to be small enough to be effective in achieving the benefits of targeting, but large enough to ensure adequate landowner interest and availability of quality mitigation projects.
- Stability – The Statewide HPA needs to be relatively stable over time. Frequent changes would increase risk and inhibit investment in establishing wetland mitigation in HPAs.
- Consistency – Target areas that will complement existing plans and associated priorities.
- Functional Benefits - Prioritize areas that will provide multiple functional benefits related to functional impairments or watershed and statewide needs.
- Multi-Purpose – HPA designation should identify areas important for wetland restoration regardless of purpose (i.e. mitigation of regulated impact vs. voluntary conservation program). This will provide greater opportunities for coordination between programs and will make the HPA designation more useful and effective.

Meetings and Timeline

BWSR is required to report on proposals to implement High Priority Areas (and other initiatives) to the legislature by March 15, 2016. This report will not contain final High Priority Area designations, but it will need to indicate progress and direction in the designation process. As such, BWSR would like to convene a meeting in late January and a second meeting in mid to late February. The need for additional meetings would be assessed after the March report has been submitted and reviewed. Ultimately, the Statewide High Priority Areas will need to be designated at or before the effective date of the new WCA Rule (likely late 2017).

Statute does not establish minimum or maximum timeframes for review and potential update of Statewide HPA boundaries. BWSR will establish guidelines for potential updates, with the goal of consistency in mind, through rule or policy. Any future updates would likely include review by the same IWG team or something similar. Feedback from the IWG will also be solicited for this and other items.

Info/Plans with Potential Relevance to Establishing HPAs

- MN Prairie Conservation Plan
- MN Wetlands Conservation Plan
- Mn Wetlands Restoration Strategy
- Minnesota Statewide Conservation and Protection Plan
- MN Nutrient Reduction Strategy

- Restorable Wetlands Inventory
- Pheasant Action Plan
- Impaired Waters
- State (DNR) Wildlife Action Plan
- MN DNR Long Range Duck Recovery Plan
- Working Lands Initiative
- Locations of existing public lands/easements
- Available info on groundwater recharge/discharge
- Other

Relevant Statutes

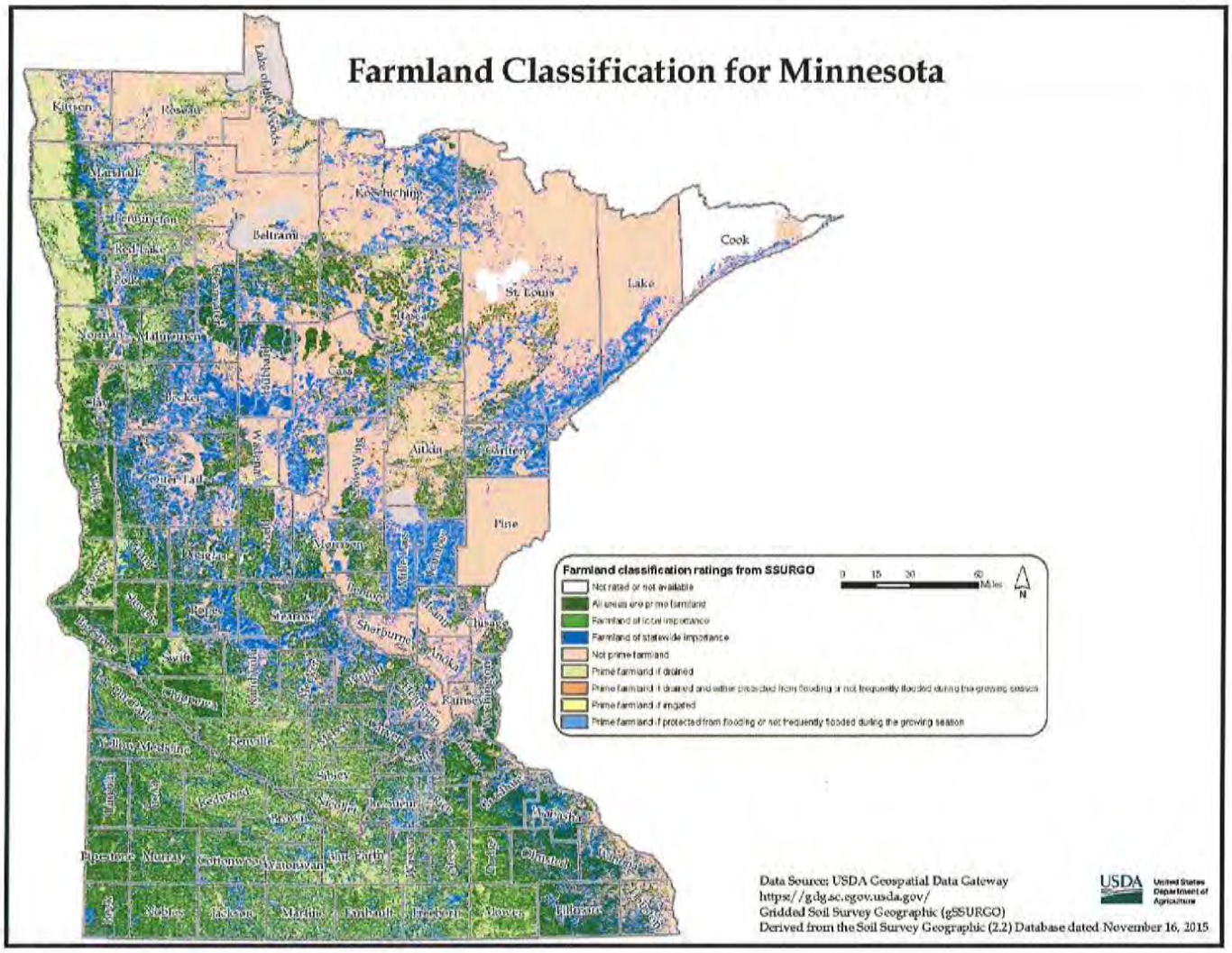
2015 amendments to Minn. Stat. § 103B.3355, Wetland Functions for Determining Public Values:

(e) The Board of Water and Soil Resources, in consultation with the commissioners of natural resources and agriculture and local government units, may must identify regions areas of the state where preservation, enhancement, restoration, and establishment of wetlands would have high public value. The board, in consultation with the commissioners, may must identify high priority wetland regions areas for wetland replacement using available information relating to the factors listed in paragraph (a), the historic loss and abundance of wetlands, current applicable state and local government water management and natural resource plans, and studies using a watershed approach to identify current and future watershed needs. The board shall notify local units of government with water planning authority of these high priority regions areas. Designation of high priority areas is exempt from the rulemaking requirements of chapter 14, and section 14.386 does not apply. Designation of high priority areas is not effective until 30 days after publication in the State Register.

(f) Local units of government, as part of a state-approved comprehensive local water management plan as defined in section 103B.3363, subdivision 3, a state-approved comprehensive watershed management plan as defined in section 103B.3363, subdivision 3a, or a state-approved local comprehensive wetland protection and management plan under section 103G.2243, may identify priority areas for wetland re-placement and provide them for consideration under paragraph (e).

The changes to paragraph (e) eliminate the optional BWSR identification of high priority wetland regions, replacing it with clear direction for BWSR to designate "high priority areas" for wetland replacement (mitigation).

Appendix 3: USDA Farmland Classification for Minnesota



Minnesota Board of Water & Soil Resources

NEW BUSINESS

1. Wetland Restoration Programs and New Wetland Restoration Guide – Tom Wenzel and Dan Shaw – ***INFORMATION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: **BWSR Wetland Restoration Programs and New Wetland Restoration Guide**

Meeting Date: March 23, 2016

Agenda Category: ☐ Committee Recommendation ☐ New Business ☐ Old Business

Item Type: ☐ Decision ☐ Discussion ☒ Information

Section/Region: Statewide

Contact:

Prepared by: Tom Wenzel/Dan Shaw

Reviewed by: N/A Committee(s)

Presented by: Tom Wenzel/Dan Shaw

☒ **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

New Wetland Restoration Guide Web Page

http://bwsr.state.mn.us/restoration/

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

In recent years, BWSR has incorporated many advances in our wetland restoration programs and our approach to restoring drained and altered wetlands. These advances, based on years of staff experience, include development of more sustainable and ecological-based restoration practices and strategies, in addition to new, updated technical methods, standards, and products. These new concepts, strategies, and techniques are all incorporated into the new Minnesota Wetland Restoration Guide located on the BWSR Website (http://www.bwsr.state.mn.us/restoration/). The Guide provides a comprehensive multidisciplinary document that offers sound engineering and ecological principals and strategies for restoring functional and sustainable wetlands in Minnesota.