



Minnesota Wetland Conservation Act

Stakeholder Input for Program Changes

All Sector Meeting #2

10:00 a.m.
October 27, 2014

Sauk Rapids Government Center
250 Summit Avenue North
Sauk Rapids, Minnesota

Meeting Notes

Participants: Ron Harnack, Mn Association of Watershed Districts; Steven Ring, Sierra Club; Dale Krystosek, BWSR; Todd Miller, Mn Rural Counties Caucus; Larry Kramka, Iron Mining Association; Josh Stromlund, Lake of the Woods County; Brian Napstad, Aitkin County/Association of Minnesota Counties; Peter Miller, Asphalt Pavement Association/Minnesota Aggregate Ready-Mix Association; Jill Bathke, Mn Center for Environmental Advocacy; Anna Boroff, Mn Corn Growers Association; Wayne Brandt, Mn Forest Industries/Timber Producers Association; Keith Hanson, Mn Chamber of Commerce; Keith Carlson, Mn Inter-County Association; Dan Larson, MN Rural Counties Caucus; Ryan Siats, Cliffs Cleveland; Jess Richards, DNR; Joe Smentek, MN Soybean Growers Association; Doug Busselman, Mn Farm Bureau; Rick Gitar, Fond du Lac Band of Lake Superior Chippewa; Colleen Allen, DNR; Sheila Vanney, Mn Association of Soil and Water Conservation Districts; Bon Tammen; Pat Tammen; Representative Roger Erickson; Barry Draskowski, Izaak Walton League; Catherine Neuschler, MPCA; John Jaschke, BWSR; Sarah Strommen, BWSR; Jennifer Engstrom, DNR; Doug Norris, DNR; Tim Smith, U.S. Army Corps of Engineers; Les Lemm, BWSR; Dave Weirens, BWSR.

1. Call to Order/Introductions.

Dave Weirens opened the meeting and everyone in attendance introduced themselves.

2. Review Agenda

Dave Weirens and Brian Stenquist reviewed the agenda for today's meeting. A question was asked how the small group discussion will be collected. This input will be provided on the input sheets and by reporting back to the large group.

3. Review September 25, 2014 Meeting, Including the Issue Prioritization

Dave Weirens reviewed the results of the prioritization of issues conducted at the September 25, 2014 meeting. He reported that 4 stakeholders not in attendance provided their priorities following this meeting. The issues to be discussed today are the top five identified by stakeholders.

4. Review Implementation Proposals:

Les Lemm reviewed the implementation proposals developed for the top five priority issues as identified by stakeholders.

A. Alternative Options for Compensatory Mitigation within NE Minnesota Watersheds

Discussion:

- Does BWSR have the full scale of wetland functions that are being lost? Do we have a comprehensive inventory of mitigation sites? This is necessary to discuss alternatives. A key issue is how to compare nonwetland to wetland and use of the prior NE inventory. The amount of available mitigation in NE is fluid, dependent on landowner interest.
- How does Minn. Stat. 84C affect forested areas? 84C does not directly address forestry, but easement uses are provided in the easement and wetland bank plan.

Preservation

- What is the size of riparian buffers? These would be defined by rule.
- How well is preservation currently working? 4-5 banks have been established over the past 2-3 years.
- Leave the amount of credit up to the technical evaluation panel (TEP)? This is an interagency process that has worked well.
- Why only in the NE? Why not less than 50%? Preservation can be used in less than 50% areas through the exceptional natural resource value credit option.
- Would wetland and upland both need to be under threat? Yes
- How do these options fit under a local plan and permit to mine? How does permit to mine change a local government plan?
- DNR has the final say on permits to mine? Yes
- The language under B and C should add “enhance”. Improvement or enhancement fits under the next option – restoration of riparian buffers.
- Should we assume that preservation areas are already high value? Yes
- Is the TEP defined? Yes, in statute and rule.
- Is this an expansion of the duties of the TEP? No
- Who determines which activities are allowed after the easement is established? BWSR
- What about wild rice lakes?
- How does item B fit into the shoreland rule? This will need to be clarified that this would only be in addition to these requirements
- If the area is under shoreland regulations, then the area is not likely under threat.
- Easements need to be looked into in relation to project specific mitigation

Restoration of Riparian Buffers

- The language only refers to native vegetation, land manipulation is not included?
- If this is only allowed when enhancement occurs, how is significance determined?
- There would be value to have a public/private group to develop guidance and not just the TEP
- The program needs to move away from the case-by-case to a systematic methodology
- The purpose of this is to provide more mitigation options
- Math question – 50% means 2 acres equals 1 acre

Stream Restoration

- Limiting this only to the NE? If mitigation can't be done in NE, why not go to high priority areas that could include stream restorations
- Restoring water courses – mostly on tax forfeited lands – if so would the local government receive the credit? Do we know how many opportunities there are in the NE?
- More clarity is needed on what it means to restore a stream to “a more natural state”

Restoration of Partially Drained or Filled Wetland Areas

- Why is this provision statewide, when the rest are only in the NE?
- No consistency on determining impact of depth, duration, etc. Not comfortable in having the TEP do this on a case-by-case basis

Watershed Plan Implementation Projects

- Like the idea, how ensure consistency with the rest of the rule, the language says nothing about groundwater, etc. Would these issues go back to other parts of the rule?
- What does this have to do with replacing wetlands?
- Would these plans have BWSR approval – like grants?
- More elaboration is required on “methods established by the board”

B. Wetland Mitigation Siting

- Would this proposal separate bank service areas (BSA) 1 and 2?
- Does this proposal place a higher priority on in-lieu-fee (ILF) over banking?
- Are ILF programs watershed based?
- Is it known at the time of the use of the ILF where the credits are coming from?
- If we really want higher value the process should skip right to high priority areas or ILF
- Did we consider Subd. 2 (Restoration Project Priorities) when looking for criteria to establish high priority areas?
- Is this provision intended to be considered in isolation of replacement ratios?
- Be sure when interpreting 103B.3355 to make sure this can be nonwetland
- BWSR should not want to revise the high priority areas annually – does not create stability

The meeting broke for lunch.

C. In-Lieu Fee Program Option

- Provide background on why BWSR needs authority
- The costs of an ILF need to account for ongoing land costs, such as PILT or property taxes
- Counties are concerned over the loss of tax base
- Do we have any idea on the stewardship fee – could it be paid when the credits are deposited?
- Does the stewardship fee take the place of long-term financial assurance?
- If BWSR gets authority to buy land, should make sure it could pay more than assessed value
- Will this go for the new alternative credit actions, if so this is a system that would move us away from no net loss

- Local government fee proposals have a plan, the fee language needs to be tied to rough proportionality and nexus
- Needs to be a connection to fee from no net loss, program goals
- If the ILF is watershed-based, why not the same preference in mitigation siting as wetland banking?
- Should look into public/private partnerships in establishing ILF projects
- Has start-up money been used in other states?
- Has there been any financial analysis? To be advantageous for MN should try to get wetlands in places where we want wetlands
- 3 years has been a problem in some states, an ILF will not work when there is not enough volume
- Can an ILF partner with the Local Government Road Wetland Replacement Program?
- Concern that the mines would not find this program attractive due to costs, the cost to establish an acre of credit in Aitkin County is approximately \$10,000

D. Wetland Mitigation Search Criteria

- Stakeholders had no comments on this implementation proposal.

E. WCA and Clean Water Act Section 404 Consistency

- Who is paying the interagency personnel agreements?
- Has there been discussion over these items with local governments and private interests?
- What about consistency between WCA and permit to mine

5. Stakeholder Comments

Brian Stenquist stated that due to the good discussion occurring on the preliminary implementation proposals, the small group discussions would not be held today, but that we would close out the meeting by going around the room and asking for your final thoughts.

- Come up with separate siting criteria for NE; how many of the alternative options for credit would be in play with so much public land
- Shortcoming if limit to NE – not get quality mitigation, not enough value of process with this limitation, need to open the door to allow these proposals statewide
- Concerned over the impacts in BSA's 1 and 2 of the high priority areas
- Hard to discuss geography until know what high priority areas are
- There are priority areas with BSA 1
- Limit all mitigation options to BSA 1, there is enough traditional mitigation in BSA 2
- Need to define what we mean by high priority areas
- Which geography will these proposals apply to: BSA 1, BSA 1 and 2, greater than 80%?
- Too many steps in the siting criteria – should have fewer than 6, can get down to 2 pretty easily
- Presettlement areas are too granular, some less than 50% areas are in single digits
- Without an understanding of wetland functions we are using assumptions which cause problems
- Writing off BSAs 1 and 2
- Trying to force fit WCA into the watershed approach, scrap presettlement areas
- With so much wetland in some counties, it would take forever to make a dent in wetlands

- Public value looks different from one area to another
- Change resolution from BSAs to major watersheds
- Need to think of potential unintended consequences
- Wetland abundance and what kind of land ownership are other factors
- An app to work on modeling, use data to ID high priority areas
- Preservation and exceptional natural resource value projects-how many are proposed vs. come through the process
- Analysis of benefits of ILF vs banking program, concern that they are duplicative, no benefit of having two programs
- Priority areas – concerned that looking at as Feds, i.e. watershed approach. Minerals under areas that are parks is a concern; should make every effort to replace in the watershed of impact
- Appreciative of comments, comfortable with whatever happens
- Process better than first meeting, like samples of legislation, need to get beyond basics
- Main thing for counties is to protect the tax base
- Better process/discussion. Still many introductory pieces, need to see whole package
- Good process. Want to see how get to high priority areas
- Like watershed-based thinking, concerned of cumulative loss of function, that issue should drive what we do. If we can't say no more loss, then can't address problem, need spatial data to understand what we have lost
- Keep mitigation in NE, should be focus of these meetings, difficult to provide comments with short notice
- Appreciate draft proposals, bringing more fairness makes more complicated, difficult for public to understand the program
- No real opportunity to have a consensus does not mean tacit approval, mitigation ratios need to be part of solution and discussion. We either have good data, but don't know what could be done in NE
- Process going as good as could be expected, focus on reaching consensus to have flexibility to do the things we want to do. It will be 18-24 months before anything is implemented
- Appreciate flexibility of agencies to try new things, need more tangible information, hesitant to change geography due to impacts to ratios
- There are a lot a degraded waters in mine country, want to keep ways to address water quality issues in NE
- Wetland type plays into ratios, good discussion today, but a long ways to go
- Mostly here to listen, 7050 rules only speak to wetland restoration and creation, also what is an impact to water quality due to beneficial use

6. Summarize Results from Today's Meeting and Next Steps

Dave Weirens provided the following:

- Please submit comments on the input sheets and send them to me via email;
- Any other comments you may have can also be send by email; and
- The next meeting will be held on November 17, location still to be determined.