



## Office of Water Protection

David Weirens  
Minnesota Board of Water and Soil Resources  
520 Lafayette Road  
St. Paul, Minnesota 55155

30 October 2014

Dear Mr. Weirens:

I am encouraged by the State of Minnesota's desire to improve statutes, regulations and policies in protecting wetland resources within the state and hope the outcome of this process will result in better protection for wetland and stream resources. The following are my comments regarding the Stakeholder Input Process for Program Changes:

1) I am disappointed that at the start of this process, the State of Minnesota, and BWSR specifically, did not reach out to Tribes encouraging them to participate. Eleven Federally Recognized Indian Tribes and two Tribal organizations manage natural resources, including wetlands, within the state. Governor Mark Dayton issued Executive Order 13-10 on 08 August 2013 "Affirming the Government-to-Government Relationship between the State of Minnesota and the Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation..." I hope this oversight will not carry into the future. In addition, the way Fond du Lac was treated as an "Other" in this process at the Stakeholder meetings is very discouraging. Tribes are Sovereign Nations and should be treated with better respect in a Government-to-Government fashion.

2) The prioritization process during the first Stakeholder meeting (held in Cloquet, MN on 25 September 2014) was flawed. BWSR staff informed the group that each representative would be allowed to vote for up to five potential priorities. However, the group was also encouraged to vote for a potential priority even if they were against its implementation, so that a given item would then be "available" to discuss in later meetings. However, this process inherently provided BWSR with a mechanism to move controversial ideas forward as a priority rather than allow certain representatives to not vote on an item in hopes of it being dropped as a priority.

3) I will point out that at least one Tribe in Minnesota (Fond du Lac) has its own wetland regulations. It is possible that other Tribes may have ordinances or policies regarding wetland protection that I am not aware of at this time. I believe that the Shakopee Mdewakanton Sioux Community has some formal wetland regu-

lations and other Tribes may be considering their own in the future. In Minnesota's efforts to improve WCA and Clean Water Act Section 404 Consistency, that consistency may be improved to a higher degree if Tribal Governments are not excluded from coordination efforts with federal partners such as the U.S. Army Corps of Engineers.

4) The State of Minnesota leaning towards providing for a mechanism to allow large wetland impacts to be mitigated in other parts of the state is concerning. The northeast portion of Minnesota has always boasted about their clean water and other natural resources. A large wetland base can help continue to preserve this "clean water" into the future. However, if wetland impacts within this portion of the state are allowed to be mitigated in other areas of the state, water quality may suffer further from the degradation and loss of wetlands.

5) It appears the development of an In-Lieu Fee Program within Minnesota is another way to encourage the relocation of large wetland impacts to portions of the state outside of the impact area. The development of such a program should restrict where mitigation projects conducted by the program can be located. In addition, steps need to be taken to avoid the slippery slope of the state taking on the responsibility of compensatory wetland mitigation beyond their capacity to develop and implement enough quality wetland replacement projects to offset those obligations.

6) The expanded use of Preservation as mitigation is troubling. The proposed draft language for 103G.2251 states "...preservation of *potentially threatened* wetlands or *upland areas essential to the function and sustainability of aquatic resources that are protected by a permanent conservation easement...*" [Emphasis added]. The term "potentially threatened" appears to "water down" the concept of providing a demonstrable threat in the use of preservation. Using upland areas in conservation easements for Preservation is redundant. Why should mitigation credit under Preservation be granted if the upland adjacent to a wetland is already being protected by a conservation easement? Where then, is the demonstrable threat?

7) In "Starter Language" provided by BWSR, MN Rule 8420.0526, Subp. X (new), it states "Restoration of riparian buffers...re-establishing naturally occurring native vegetation adjacent to the following areas...E. wild rice lakes." While restoration of wild rice lakes is encouraged, it should be pointed out that the number of "wild rice lakes" in Minnesota, particularly northeast Minnesota has steadily diminished over the past several decades. It would be better to use the phrase "wild rice waters or waters that once sustained wild rice populations" or similar language to help restore this valuable resource Minnesota once enjoyed.

Thank you for the opportunity to comment on this Stakeholder process and the potential changes to wetland statute, rules, and/or guidance developed as a result.

Sincerely:



Richard D. Gitar  
Water Regulatory Specialist/Tribal Inspector  
Office of Water Protection  
Fond du Lac Reservation