



Minnesota Wetland Conservation Act

Stakeholder Input for Program Changes

All-Sector Meeting #2

Input received on the Small Group Discussion Worksheets at the meeting on October 27, 2014, and via email afterwards.

A. What are some of the potential pros and cons of these proposals?

- Partnered mitigation (public/private) would advance quality mitigation.
- In-lieu fee (ILF) has limited benefit economically based on examples offered. However, if the current banking credit had operation and maintenance tied to it ILF may be more beneficial, Current banking is better.
- Sequencing needs to be modified with high priority areas as #1 & maybe ILF #2.
- Ratios need to provide incentive to reach high priority areas and ILF preferences.
- State 404 assumption has value.

- Pros – may provide additional opportunities in bank service area (BSA) 1
- Cons – continuing BSA’s 1 & 2 is politically driven not science based. Need to understand if creating this flexibility is going to change anything.
- Subd. 3 – criteria should be same minor/major watershed and then high priority areas statewide. Let one be a timeline to update – 5-10 years.
- Need in lieu fee program. Brian’s comments on ground “0” cost relates to size, the bigger the less cost.
- Technical assistance is needed. Where does funding come from – State General Fund?
- Going in right direction need time lines for each action.

- This is not a quick process. None of these matter if there is not a meaningful discussion about replacement ratios. I am not convinced that any of these provide an easier path to do mitigation in the NE.
- Too much left to TEP.
- TEP not a suitable expertise for many of the new decisions (stream values, upland watershed, etc.).
- WCA crossing over too far to other values than wetlands.
- Removal of existing options is foolish if goal is to promote more options. The counting of values is not well defined and needs a process that is vetted by outside expertise not just the agencies and board. Biting off too much.
- Pros: There is a recognition that things are not working well.
- Areas of interest/priority seem to have traction.
- Priority areas as a new siting step is fine without strings.

- Need to be driven with geographic information system value assessment
- Both upland and wetland areas should be included in preservation credit
- Seems the objective is to move away from WCA. These all make it easier to mitigate loss in one area with something in another.
- Seems the consequences are MN is writing off NE on wetlands. Mining is being given the tools to grow with no regard for loss.
- All this is happening without an understanding of the status of wetlands in NE MN functions lost since 1972!
- Pro – it could promote watershed planning and inventories.

- Certainty for the mines with ILF.
- Better public value.
- Lake of the Woods farmland stays in production.

- My reaction to everything was very positive. However, as we further discuss ILF, there are more & more question about its viability and alternative or complimentary approach of BWSR being the developer of wetland banks in areas where wetland credits are in short supply. Might be an alternative AKA the current local government road wetland replacement program.

- Flexibility is a big pro.
- Con would be things that take the focus off of doing a good look in-watershed for wetland replacement. This always needs to be first (Doug’s thought about being specific for >80% seems likely to help.)
- If so much alternative mitigation is required, it should be closely tied to the functions that are being impacted by the loss of wetlands. So we should still be looking closest to the impact site first. (Maybe the steps should stay unchanged even if mechanism changes).

- Overly complex
- BWSR/Corps have no business in upland forests
- ILF has possibilities but only if confined to creating replacement wetlands
- Some options take the “wetland” out of WCA.

- Industry may not use ILF program if incentives are not offered to bring costs in line with creating their own restorations.
- Strong pro is getting wetlands where needed.
- Con of these proposals is legacy language re: <50%, 80%+, BSA, etc. Why not update WCA to be watershed based.

- Alternatives for compensatory mitigation in NE. Pros: expands options to look more holistically at functions & values particularly water quality; gives more options to area currently low on mitigation sites. Cons: complicated, requires a lot of changes to statute, some options aren’t available in other parts of the state, reduces consistency across BSA’s, potentially even more difficult for John Q Public to understand.
- Siting: Pros: helps direct mitigation to where it gets most bang for buck. Cons: lot of work needs to go into identifying high priority areas.

- ILF: Pros: adds an option, flexibility, timing issues have more assurance. Cons: cost to set-up, staff, maintenance
- Pros: general permits would make lives so much easier & take less time for applicants. Cons: ?
- Alternative options for compensatory mitigation in NE MN. Pros: could take ambiguity of exceptional natural resource value and preservation rules. Cons: limited to just >80% area. In theory sounds good but in practice could be limited by individual TEP member views/opinions. Very few stream restoration opportunities in NE MN – needs to be open to whole state to have any positive impact.
- The proposals advocate splitting BSA 1 and BSA 2 into separate areas for mitigation. We support that action.
- The proposed language on alternative mitigation appears to give up on the idea of No Net Loss. The Executive Order 12-04 states, “undertake steps ... regarding how to maintain No Net Loss of Wetland as a State goal ...”. Each of the “optional” mitigations is desirable. Preservation is good; re-channeling streams is good. But in the proposed legislation, they all come with a loss of wetlands. The “optional mitigations” should be dropped or only allowed for a small percentage of mitigation credit (for example, 10%).
- The statewide priority area discussion is suspect. If priorities are identified, they should be used only within the watershed or BSA where the impairment occurred. The overall purpose is to “mitigate” damages to a watershed. Secondly, counties do not want mitigations from projects where they receive no economic benefit. If Aitkin County does not want them, why should Lac Qui Parle County?
- None of these proposals address the need for better information about wetlands, watersheds and mitigations. We need inventory and assessments of destroyed wetlands, mitigation acres, mitigation type. The proposals seem to be discussing other exemptions, but we do not know how much we are losing due to exemptions, currently. We also need good functional assessments of watersheds to identify, values, unique resources, and priorities.

B. Who might benefit and who might be negatively impacted if these proposals were implemented?

- Everyone who is interested in public value benefits should support.
- Those who prefer process vs outcomes would oppose.
- Benefit needs to focus on moving projects forward. Political motivation should not be a criteria.
- I think those entities needing to do mitigation are hurt by probably cost and new uncertainty introduced in the options.
- Benefit likely no one, it will cost everyone more.
- If it shifts wetland restoration away from the northern counties they win.
- Resource wins if you put priority areas in the mix

- The current banking system may be hurt.
- Mining benefits
- Public values lost – public loses especially in NE MN.
- The mines might pay more per credit.
- Areas of restored wetlands might see plant & animal species that are rare.
- I think impact will all be positive as long as ILF is only used when wetland bank credits are unavailable.
- It's clearly a benefit to industry and apparently LGUs.
- Negative impacts may be to waters & wetland functions unless that focus on equivalent functions is clear.
- Wetland quantity & quality will decrease if WCA “replacement” is replaced with non-wetland creating options.
- Flood prone areas, water quality challenged areas will benefit with new wetlands.
- Wetland rich areas will preserve precious remaining land diversity.
- If it is expanded to include all of the state – wetland resources would benefit. The agricultural community would have more of an incentive to preserve wetlands.
- Need to be realistic about ILF – will only benefit small mitigation needs.
- If WCA/404 efficiencies are not realistic let's be honest with ourselves and not say there will be vast improvements.
- Benefit: mining companies; counties that do not have “priority areas” may benefit economically; counties with “priority areas” may benefit because of additional wetland values
- Negative impact: The state will lose wetlands and the values they provide – we will fail at No Net Loss.

C. What alternatives to these proposals should be considered?

- Expand to all bank service areas 1, 2, 3, 4, & 5, not just NE.
- Ratio reduction to meet incentives for high priority areas (HPA) and in-lieu fee (ILF).
- Sequencing change – HPA #1; ILF #2.
- Establish a wetland technical & scientific advisory committee to focus on the science of wetland criteria rather than leaving to each technical evaluation panel (TEP).
- Establish a wetland working group similar to the drainage work group to flesh out details for statute and rule changes moving forward.
- Evaluation of how each priority will move the ball forward for > 80% counties (beyond BSA 1 & 2).

- The ratios have to be redefined so that the incentives to put wetlands where we want them match.
- Look at unavoidable impacts for some large projects (> something acres) are different than small ones, because they cause a different level of “problem”.
- Get rid of the idea that public conservation lands can’t be used for private mitigation. If you own it and can’t restore it, but a mitigation project could do it, why not?
- Get rid of the idea that conservation funds can’t be used in mitigation projects.
- Forge ways to get wetlands on the ground, quit worrying about the perfect!

- Why limit “stream restoration” just to the NE? Should be implemented on a statewide perspective
- “Watershed Plan Implementation projects” should be implemented statewide due to the benefits these projects will achieve.
- Combine BSA’s (i.e. BSA 3 & 4 are part of the Red River Basin).

- MN needs to understand status of functions.
- How effective has WCA been?
- Context for the WCA revision ~ what are the cumulative affects? When to say “no more loss.”

- Take ratios out of the picture.
- Set the dollar rate for a wetland credit.
- Double the de minimis from 10,000 square feet to 20,000 square feet.
- Any new mitigation in Lake of the Woods County must follow local water management plans.

- Sec 404 assumption or acquisition of general permit from the feds.

- We should consider 1.5:1 replacement ratio (or higher) – with a goal of 1:1 high quality “real” wetland mitigation somewhere (in priority areas) with the balance of the mitigation (0.5:1) going to mitigation within the watershed/BSA of the impact. This will achieve “no-net loss”, in MN while achieving some replacement of function (water quality, wildlife) in the BSA.

- For >80% counties: 1) Beef up statutory/rule language describing when replacement in the same watershed/BSA is not “practicable”. 2) BWSR designate “high priority” areas; 3) Allow replacement in high priority areas on a 1 to 1 ratio.

- Dump the <50%, 50-80%, >80% and move to 0-10% county 1 county 2; 11-20% county 3 county 4, 21-30% etc. This will give a clearer picture of statewide wetland impacts.

- Include all of MN – not just the NE, across all proposals.
- More flexibility w/exceptional natural resource value approvals.

- We would like to see legislative language that strengthens avoidance and minimization. When high quality, high value wetlands are destroyed, economic “practicability” criteria should not just be the “normal” cost of mitigation somewhere in the state. Especially for large projects, they should have to get over a higher bar to get to mitigation. It should cost more, and they should be more constrained to mitigate within the watershed to replace the value that is lost. Finally, we also would like to know what avoidance and minimization options were explored on any large project.

D. What other advice or perspectives do you have on improving the wetland mitigation process?

- See C.
- Ensure greater consistency with 404.
- Reconsider assumption.
- Provide greater certainty in do’s & don’ts. Use science-based approach to guide policy (see earlier comments).
- Complete a “state agency” perspective of HPA designation in a couple BSAs. Say 1 & 4 for example work with IWI.
- Ongoing wetland working group & wetland TSAC. Legislation is first priority & rule is another two years.

- I question whether tweaking the existing program will get us there. Let’s think bigger picture. Make priority areas a bigger focus and less on a state’s process see A-2. Focus on quality mitigation in regions. It is needed.
- Need to address ratios.

- Need to create public-private partnership on this whole system.
- With amount of time and effort going into siting, land suitability, property owner willingness, etc. that cannot be spent on actually restoring wetlands.
- Our model makes impacts equal across the state. Bad premise. Impacting the fish habitat value in the NE for wetlands is not the same as fish habitat value of wetlands in the MN River Valley.

- Make DNR lands & minerals an LGU.
- Mitigation under a permit to mine, needs to obtain local LGU approval.
- DNR land & minerals out of mitigation.

- Need the will and feds to say no more loss in a watershed.

- Find the best high priority areas.
- Identify species that could be positively impacted in certain areas of the state.

- It's unclear to me whether consistency between TEP's is a problem. There still are concerns of inter-agency/inter-program conflicts WCA vs public water, Swampbuster PCA/EPA Sec. 401.
- Need to check Minn. Rule – 7050.0186 (Minn. Stat. 115.03 & 115.44). 7050.0186 requires compensatory mitigation to be restoration or creation of wetlands; nothing else is listed. Also says “before or current” w/wetland impacts, which impacts ILF.
- Rule and statute language really needs to be closely evaluated for clarity and to be sure it says what it means.
- I like the idea of potentially stepping through mitigation in a different sequence depending on the area of impact. In the >80%, maybe you do non-wetland alternatives in priority areas in BSA first, but in <50%, prioritize wetlands in any <50% BSA first?
- Double de minimis in counties/BSA with >80%. Preferably determine which watersheds are greater than 90% and double de minimis in those.
- More flexibility in siting criteria by expanding beyond local watershed/BSA.
- Allow mitigation for NE MN impacts in central/southern MN – replace lost functions and values where we need it.
- BWSR should supply a summary of the preservation & exceptional natural resource value proposals that have been approved & denied. That will provide a basis of expectations going forward.
- Greater emphasis should be placed on minimization and mitigation within the watershed for high value wetlands. It should cost more, and it should be more difficult to go outside the watershed. They should expect to pay more. The mitigation might be more complex than flooding a field that was a former wetland -- it might entail several smaller projects within the watershed.
- We would like to point out that having a lot of wetlands in an area does not mean there is an excess of wetlands in that area. Watersheds and their associated wetlands have a dynamic equilibrium responding to their inputs, outputs, evapo-transpiration, gradients, and other factors. The streams and downstream wetlands have adapted to the geophysical situation. Maintaining stream flows in droughts, buffering the impacts of large precipitation events, restoring ground water, and providing habitat for animals and plants could all be affected by changes in the amount of wetlands in an area. These situations call for more study before destroying wetlands without careful mitigation. An approach such as the Ecological Limits of Hydrologic Alteration (ELOHA) could provide information about the critical resources for sustaining wetland values.
- Invest in and boost the banking system instead of starting up an in-lieu fee program. In-lieu fee programs have a checkered history, and often have challenges meeting their funding and cost goals. Considerable resources and time will be expended to establish the program and administer it. We would rather see the effort extended to improving wetland banking, assessing wetland losses since the WCA was established, a thorough study of the watersheds in NE Minnesota, and establishment of on-going data systems that provide information about wetland destruction and mitigation.

- We support the separation of the currently merged bank service areas one and two (Lake Superior and Rainy River watershed, respectively). Mitigations for mines in St. Louis County must take place in the BSA where the impairment is taking place.
- BWSR and DNR should be required to report to the public the losses of wetlands (by acreage and type) that have already taken place since WCA was passed in 1991. All information should be transparent and freely accessible to the public, preferably online. This is of pressing concern in NE Minnesota, but this should be documented statewide.
- The proposals do not address the geographic extent or cumulative impact of proposed mining projects. Simply looking at a map of the mineral leases and possible mining sites in the next twenty years makes it evident that we are facing the loss of wetlands in a broad swath of NE Minnesota. It is more important than ever to complete a thorough study of the functional values and hydrology of those wetlands and watersheds. We are lopping off wetlands on a project-by-project basis, but have no real information about what wetlands provide critical values. At a minimum, the Lake Superior Watershed should be thoroughly evaluated for critical wetlands and the cumulative effect of the destruction of wetlands in a transect across the watershed.
- The proposals do not consider the impact of climate change on the importance of wetlands and now is the time to do it. Dr. Lee Frelich, Director of University of Minnesota Center for Forest Ecology, is studying the changes to the forests of NE Minnesota due to climate change. Based on data from Don Wuebbles, PhD, at the Department of Atmospheric Sciences, University of Illinois, he is expecting increasing winter and spring precipitation, drier summers, and more frequent and intense periods of heavy rainfall. He also expects hotter (4 – 7 degrees F) June, July and August temperatures by 2070. Each of these factors raises the importance and value of wetlands. We need an investigation of these impacts in this region before we allow more wetland destruction.