

Minnesota Wetland Conservation Act



Stakeholder Input Process for Program Changes

July-August 2014

Purpose of Today's Meeting

1. Review background information and some example discussion topics.
 2. Discuss what's important to you and your ideas to improve the State's wetland programs.
 3. Discussion will be based on recommendations from Governor's Executive Order 12-04, the NE MN Interagency Siting Team, and BWSR staff.
- ❖ Please hold comments/discussion until after the presentation.



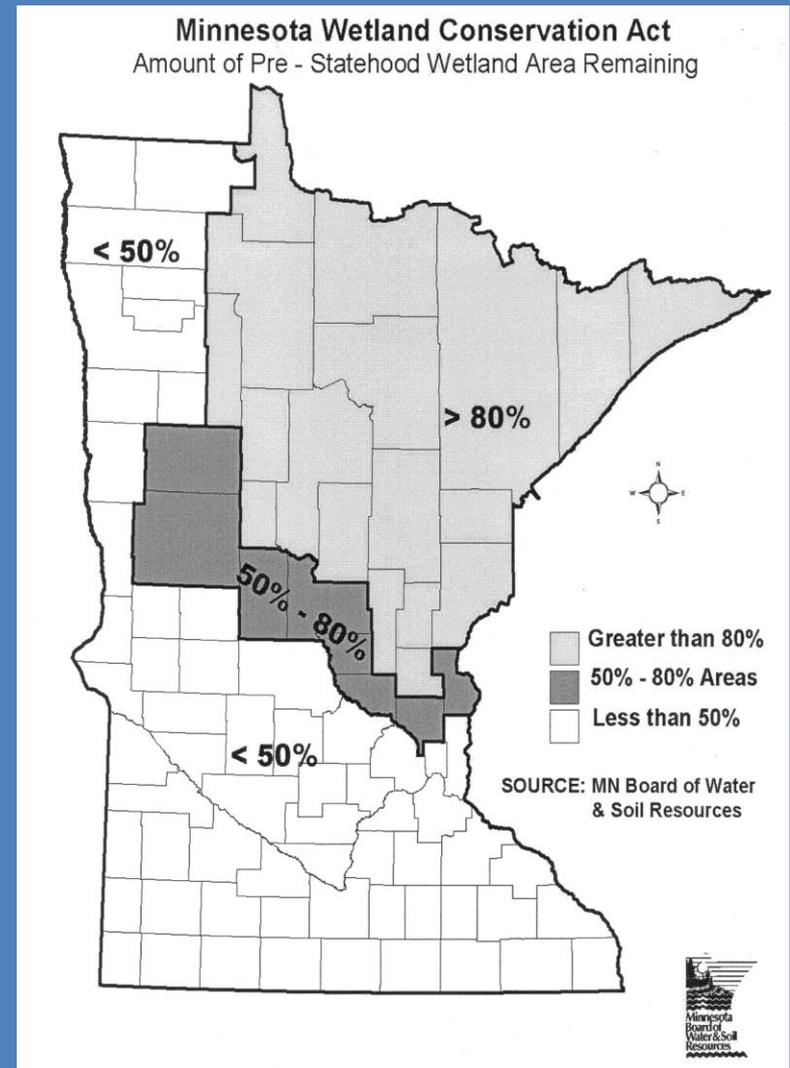
Governor's Executive Order: 12-04

Supporting and Strengthening the State's Wetland Policy

July, 2014

EO 12-04: Charge to Address

- WCA specific issues:
 - De minimis exemption
 - Pre-settlement wetland zones
 - Consistency
 - Targeting mitigation
- Interagency coordination.
- Effective use of wetland restoration funds.



EO 12-04: Recommendations

- No reduction in level of protection.
- Improved regulatory efficiency.

Recommendations in the following areas:

- De minimis exemption
- Alignment of Pre-Settlement Zones on Watershed Boundaries
- Consistent Review, Approval and Implementation

EO 12-04: Recommendations

- Adequacy of Wetland Bank Program Funding.
- Costs and Benefits of Wetland Mitigation Targeted to Specific Watershed.
- Strategic Use of Funding Sources and Tools to Achieve Continued Restoration of Drained Wetlands.
- No Net Loss.
- Agricultural Drainage.

Interagency Northeast Mitigation Siting Team Report

March, 2014

Siting of Wetland Mitigation in Northeast Minnesota

Issues, Recommendations, and Alternatives

From the Interagency Northeast Mitigation Siting Team

March 7, 2014



Interagency Northeast Mitigation Siting Team Members:

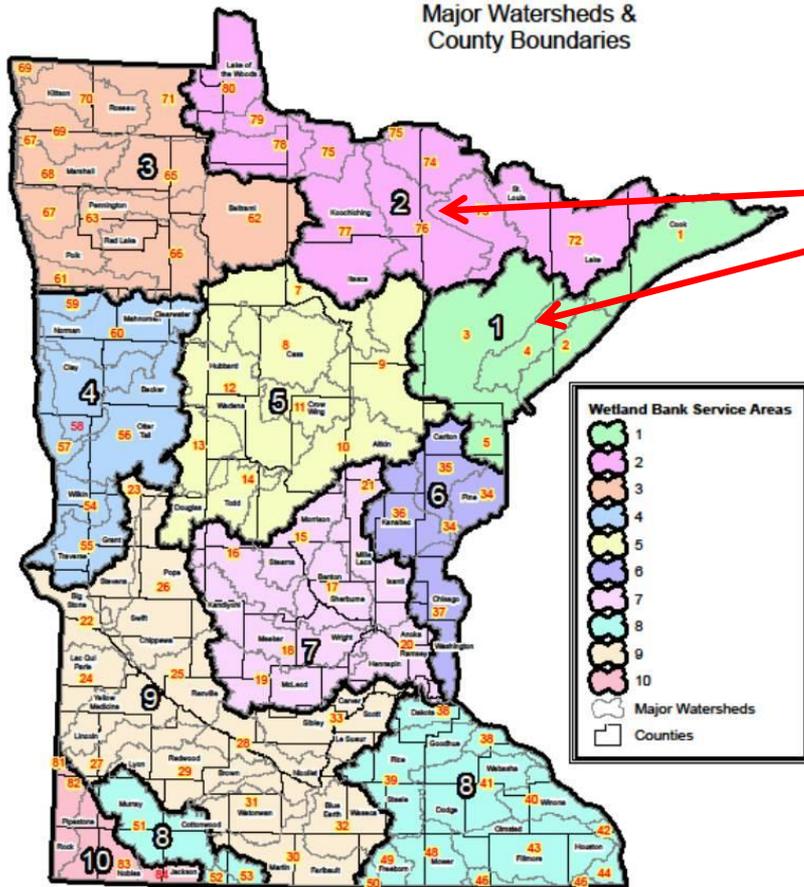
- Les Lemm, Board of Water and Soil Resources
- Dale Krystosek, Board of Water and Soil Resources
- Doug Norris, Department of Natural Resources, Ecological and Water Resources Division
- Kate Paul/Jennifer Engstrom/Colleen Allen, Dept. of Nat. Resources, Lands and Minerals Division
- Mark Gernes, Pollution Control Agency
- Tom Estabrooks, Pollution Control Agency
- Tim Smith, U.S. Army Corps of Engineers, St. Paul District
- Greg Larson, U. S. Army Corps of Engineers, St. Paul District
- Kerryann Weaver, U.S. Environmental Protection Agency Region 5

The primary authors of this report are Les Lemm, Doug Norris, and Tim Smith.

Northeast Minnesota = BSAs 1&2

Wetland Bank Service Areas

With
Major Watersheds &
County Boundaries



Bank Service Areas
1 and 2 are the
Lake Superior and
Rainy River
drainage basins.

Siting Report Recommendations

Five Main Areas for Consideration:

1. Wetland Mitigation Search Criteria
2. Alternative Options for Compensatory Mitigation within NE MN Watersheds
3. Replacement Wetland Siting Criteria
4. “Other” Recommendations for Program Improvement
5. Alternative Mechanisms for Providing Compensatory Mitigation

EO 12-04: No Net Loss

- Clarify the state policy goal of no net loss of wetland quantity, quality and biological diversity.
- Increase the availability of information relating to wetland quantity, quality and biological diversity.
- Voluntary restoration activities are primarily intended to restore wetlands that will contribute to an increase in wetland quantity, quality and biological diversity.

EO 12-04: Agricultural Drainage

- Better understand extent of impacts to wetlands on agricultural lands that are not subject to compensation requirements.
- Continue cooperative efforts with NRCS.
- Develop incentives and mechanisms for managed drainage projects that support wetland values and functions.

EO 12-04: De minimis Exemption

- Evaluate the following:
 - Eliminate some or all wetland type criteria;
 - Revise amounts in shoreland areas while improving coordination with other programs;
 - Simplify the 5% cumulative provision;
 - Allow road authorities to estimate small impacts that would otherwise qualify for this exemption that are reported to BWSR; and
 - Consider an in-lieu fee alternative for small impacts.

EO 12-04: De minimis (cont.)

- Allow local plans to deviate from state standards where the overall effect will be at least as protective.
- Work with state agencies and the Corps to develop a local government planning and local controls option.
- Increase state funding to support local gov't capacity.

EO 12-04: Alignment of Pre-settlement Zones on Watershed Boundaries

- Evaluate options for simplifying, with the Corps, the geography of wetland regulation by eliminating or adjusting current pre-settlement areas:
 - Rectify bank service areas along county lines and establish an 11-county metro bank service area.
 - Eliminate the 50-80% zone and establish an 11-county metro bank service area.

EO 12-04: Consistent Review, Approval and Implementation

- Improve WCA and Clean Water Act (CWA), Section 404 program coordination:
 - Reduce overlap between WCA and the CWA, Section 404 via the Federal Approvals Exemption and General Permits.
 - Evaluate State assumption of CWA Section 404.
 - Improve coordination through program specific changes.
- BWSR and DNR should evaluate opportunities to reduce overlap between WCA and the Public Waters Work Permit Program.

EO 12-04: Consistent Review, Approval and Implementation (cont.)

- Improve WCA and Natural Resources Conservation Service Coordination:
 - Continue current cooperative efforts between BWSR and NRCS.
 - Improve coordination between Swampbuster and WCA via improved communication to producers and further development of ag wetland banking.
- Review the Local Government Road Wetland replacement program to ensure it meets local road authority needs.

EO 12-04: Consistent Review, Approval and Implementation (cont.)

- Explore establishing an in-lieu fee wetland mitigation program.
- DNR shall convene stakeholders by January 31, 2013 to develop recommendations regarding input opportunities and processes related to off-site wetland replacement for mining projects.
- Increase state funding to support local government capacity.

EO 12-04: Costs and Benefits of Wetland Mitigation Targeted to Specific Watershed

- Continue to focus mitigation on wetland banking and watershed based service areas.
- Leverage work of interagency group currently addressing wetland mitigation, particularly in the NE.

Wetland Mitigation Search Criteria

(Siting)

- Practicability: What constitutes a reasonable search adequate to comply with Federal and State law?
 - Agencies agree on a single definition of practicability.
 - Cost considerations, existing technology, and logistics.
- “Quality” of Replacement Wetland: What is acceptable?
 - Functional gain and benefits to the watershed are adequate to replace lost wetlands.
- ❖ Additional clarification and/or guidance is recommended for both practicability and quality.

Replacement Wetland Siting Criteria

Source: Siting of Wetland Mitigation in Northeast Minnesota, March 2014, Interagency Report (Siting)

Concepts:

1. Maintain requirement/incentives to replace wetland impacts within the watershed of impact when practicable options are available.
2. Water quality is particularly important in the NE.
3. When adequate mitigation is not available within the same major drainage basin, it should be directed to areas of the state that will maximize public benefits.

Siting Criteria

Proposed Siting Criteria:

- 1) On-site or in the same minor watershed as the impact.
- 2) In the same major watershed as the impact.
- 3) In the same bank service area as the impact.
- 4) In an area of the state that has been designated as high priority for wetland restoration.*
- 5) In another bank service area.

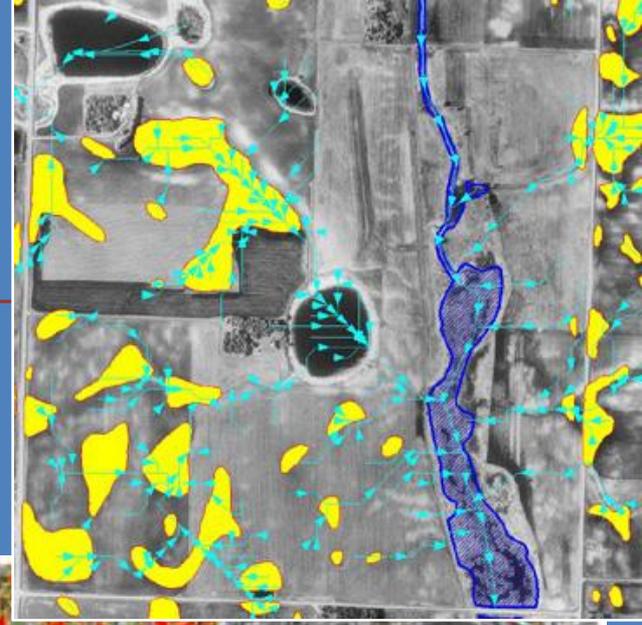
*Under current siting criteria, step 4 allows mitigation statewide.

Prairie Pothole Region

(Siting)

More drained wetlands =

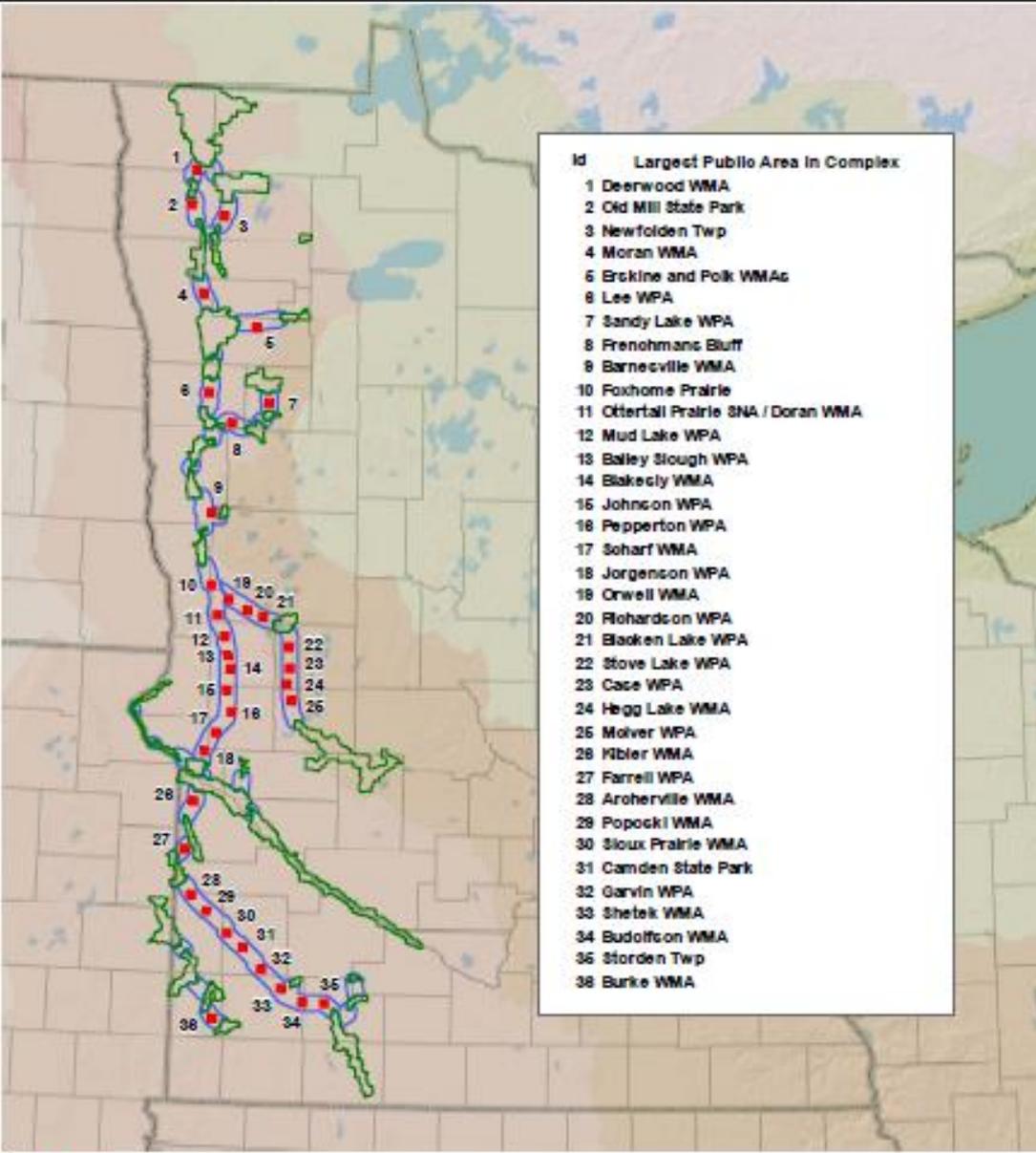
- More restoration opportunities.
- More available information.



Minnesota Restorable Wetlands



Map 7. Potential Corridor Complexes



Id	Largest Public Area in Complex
1	Deerwood WMA
2	Old Mill State Park
3	Newfolden Twp
4	Moran WMA
6	Erskine and Polk WMAs
8	Lee WPA
7	Sandy Lake WPA
8	Frenchmans Bluff
9	Barnevillie WMA
10	Foxhome Prairie
11	Ottertail Prairie SNA / Doran WMA
12	Mud Lake WPA
13	Bailey Slough WPA
14	Blakeely WMA
16	Johnson WPA
18	Pepperton WPA
17	Soharf WMA
18	Jorgenson WPA
18	Orwell WMA
20	Richardson WPA
21	Blacken Lake WPA
22	Stove Lake WPA
23	Case WPA
24	Hegg Lake WMA
26	Molver WPA
28	Kibler WMA
27	Farrell WPA
28	Archerville WMA
29	Popocki WMA
30	Sioux Prairie WMA
31	Camden State Park
32	Garvin WPA
33	Shetek WMA
34	Budoffton WMA
36	Storden Twp
38	Burke WMA

- Potential Corridor Complexes
- Prairie Core Areas
- Prairie Corridors

40 20 0 40 Miles



Prioritization and Targeting of Out-of-Watershed Mitigation (Siting)

- Priority areas can be broad or more specific.
- Example map from MN Prairie Conservation Plan.



One Possible Example of how the Siting Criteria could Work (Siting)

- 1) Replace wetland impacts within the same BSA at 1:1. All actions eligible for credit are available, including alternative actions, except the “Approved Watershed Plan Implementation Project” option. If adequate mitigation isn’t available, proceed to step 2.
- 2) Replace wetland impacts in a priority area at 1:1, and within NE MN, implement:
 - a. one or more approved watershed plan implementation projects focused on maintenance or improvement of water quality;
 - b. any alternative options for mitigation credit equivalent to a 0.5:1 ratio; or
 - c. any combination of a and b.
- 3) Replace wetland impacts in a priority area at 1.5:1.
- 4) Replace wetland impacts in another BSA at a higher ratio.

Alternative Options for Compensatory Mitigation within NE MN Watersheds (Siting)

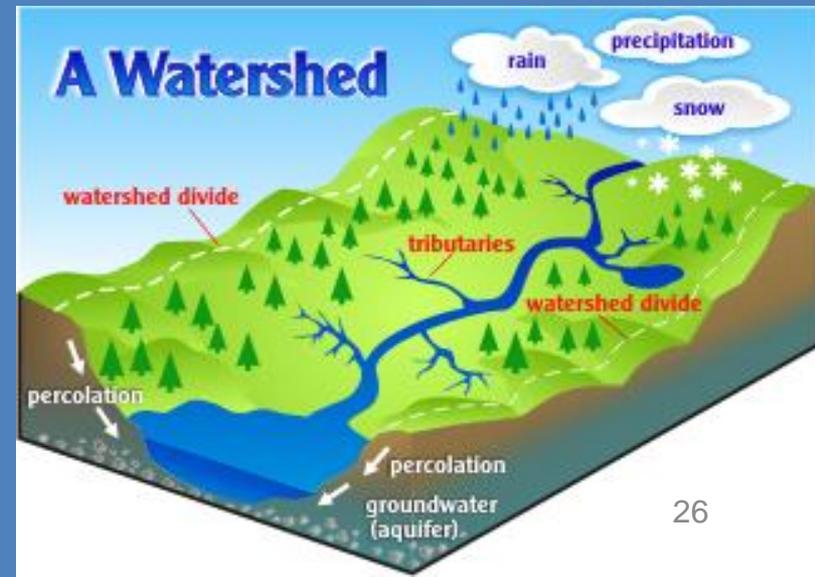
- There are fewer wetland restoration opportunities in the NE, but other “non-traditional” resource improvement and protection options exist that can provide value and at least partly mitigate for wetland impacts.

Alternative Option: Expanded Use of Preservation (Siting)

- Activities on adjacent uplands negatively affect wetlands and other aquatic resources, including lake and river fringe wetlands.
- Protecting some of the area's shoreline habitats and sensitive upland areas should be a priority.

Recommendations:

1. Clarify and utilize existing preservation options.
2. Allow credit for protection of sensitive upland areas (headwaters, riparian areas, important wildlife corridors, etc).



Protect NE MN Shallow Lakes/Streams/Wetlands

Benefits

Water quality

Habitat for aquatic and riparian species

Hunting and other recreation opportunities

Scaup and ringneck ducks; bay of Northeast Minnesota wild rice lake.

Example provided by DNR

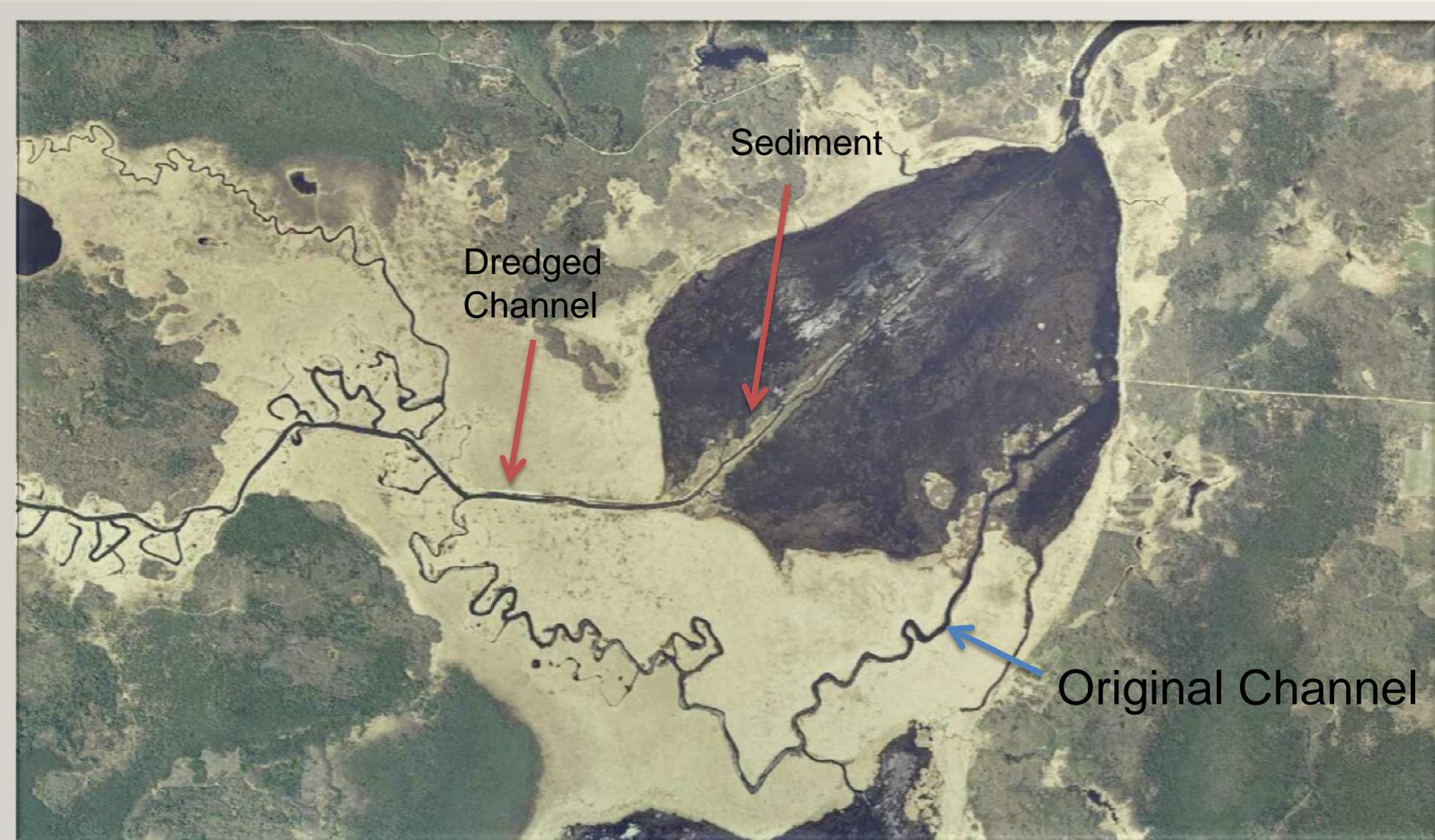
Alternative Option: Restoration/Protection of Riparian Corridors and Streams (Siting)

Recommendation: Allow mitigation credit for:

1. preservation of riparian buffers adjacent to trout streams and other sensitive NE streams.
2. buffer reforestation activities that improve shading, habitat, or water quality of trout streams and other sensitive northeast streams, including impaired streams with an established TMDL.
3. stream restoration projects that include such actions as re-meandering lost channels, stream bank stabilization, and day-lighting buried/piped streams.

Channel Restoration

Mud Lake (Mud-Goose WMA) Leech Lake River



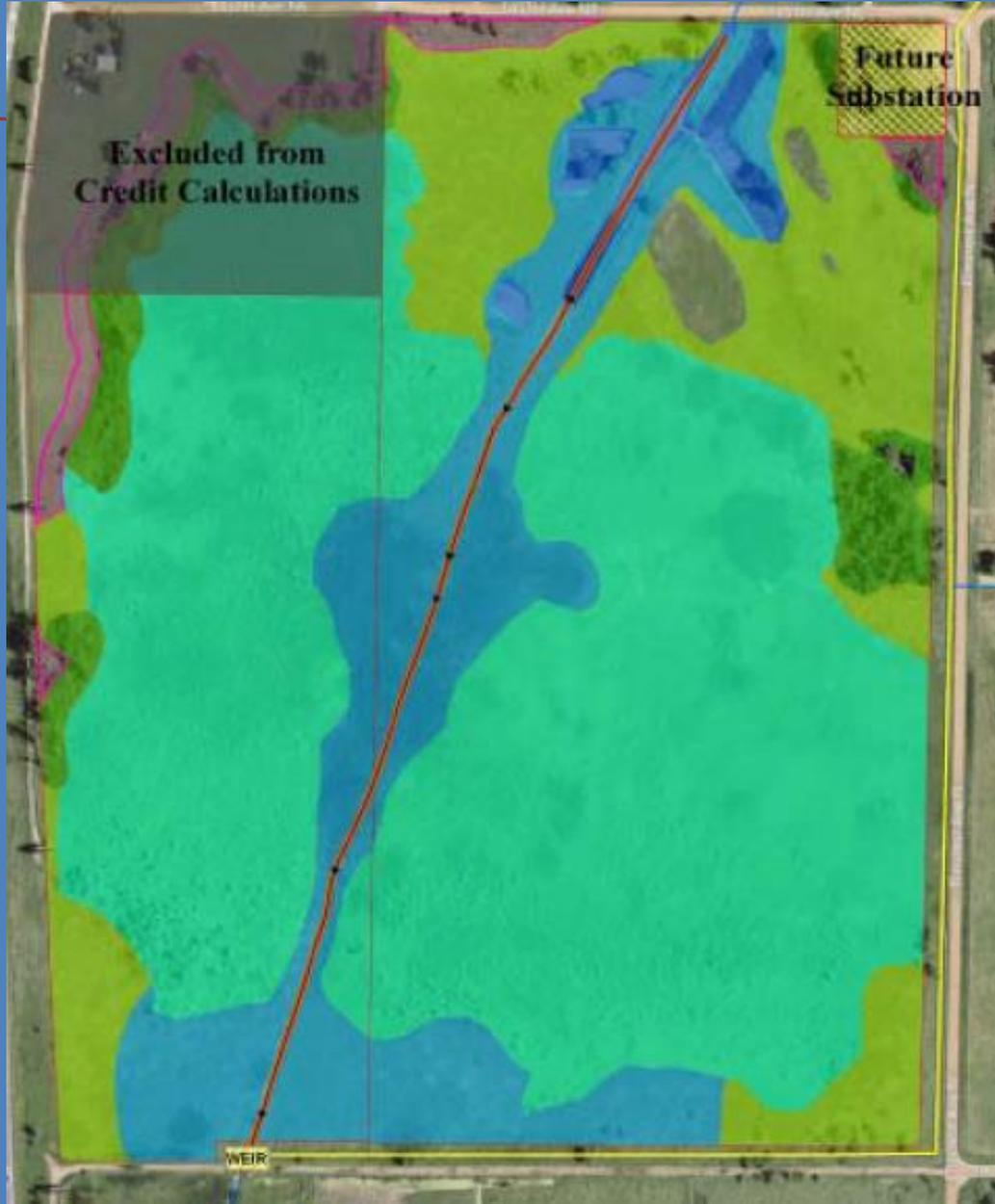
Alternative Option: Stabilization of Natural Hydrology (Siting)

Concepts:

- Nearby ditching, channelization, or other modifications can indirectly impact the hydrology of existing wetlands.
- Restoration of the natural hydrologic regime can restore functionality and stabilize the hydrology, providing benefits to the watershed.

Recommendation: Provide clarification to allow mitigation credit for stabilization of hydrology through ditch “de-coupling” or other means.

Example: Stabilization of Natural Hydrology



Excerpt from Rice Creek
Watershed District
Wetland Banking Plan

Alternative Option: Peatland Hydrology Restoration (Siting)

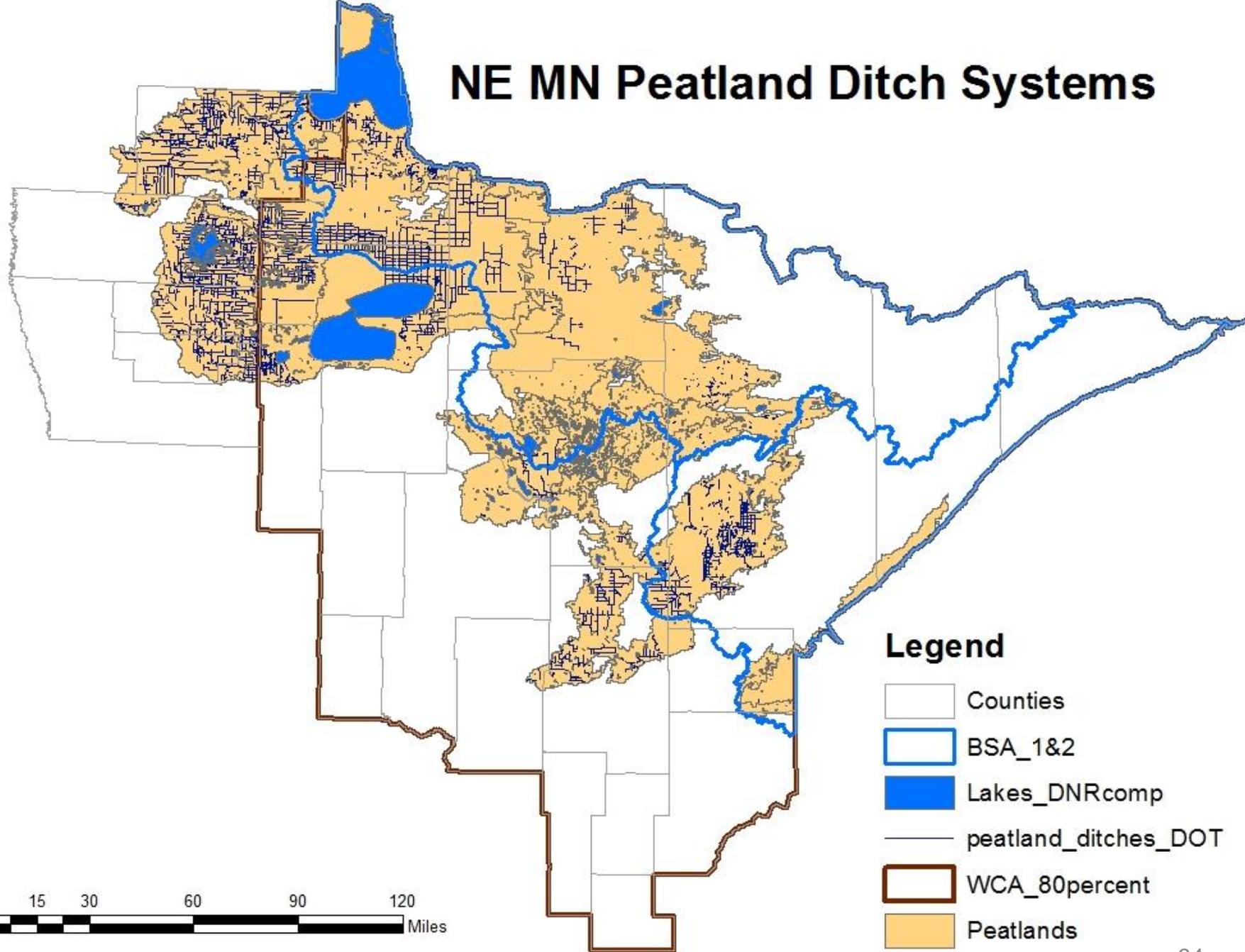
Concepts:

- Significant ditching of NE peatlands through early 1900s. Drainage efforts largely unsuccessful.
- Significant effects on peat quality, water quality, and peatland hydrology in some areas.
- Restoration of peatland hydrology can provide water quality and quantity benefits to the watershed and downstream resources.

Team Recommendation: Clarification and consistency in allowing mitigation credit for restoring peatland hydrology.

1. Functional evaluation
2. Guidance

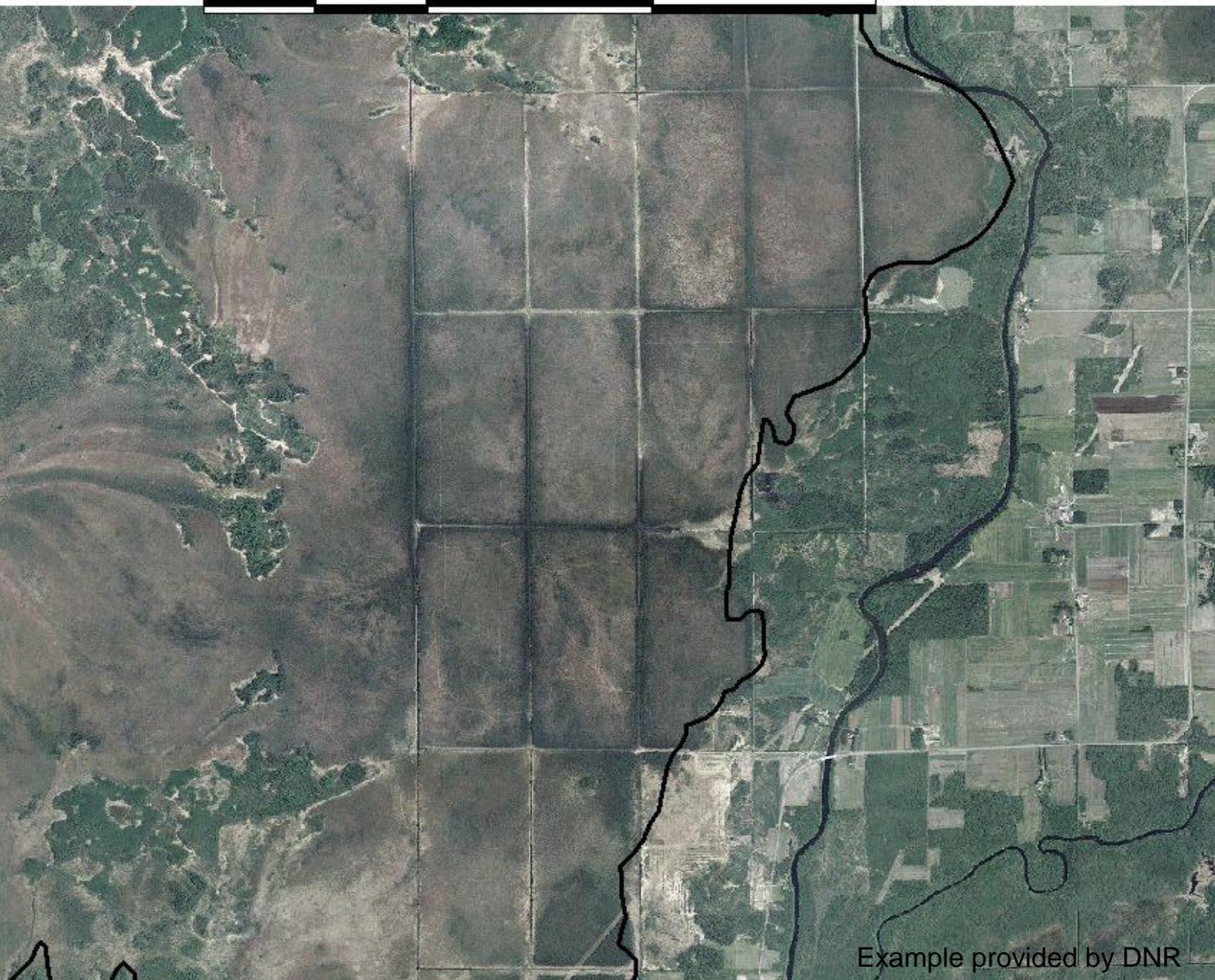
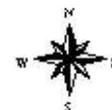
NE MN Peatland Ditch Systems



Legend

- Counties
- BSA_1&2
- Lakes_DNRcomp
- peatland_ditches_DOT
- WCA_80percent
- Peatlands

1 Restored Peatland Wetland Mitigation Site



Example provided by DNR

Alternative Option: Approved Watershed Plan Implementation Projects (Siting)

Concept: Approved watershed plans often identify specific projects that benefit the overall ecological functioning of aquatic resources.

- TMDL implementation plans, resource management plans, basin plans, local water plans, habitat conservation or improvement plans, etc.

Recommendation:

- Allow mitigation credit for the completion of certain approved watershed plan implementation projects.

Alternative Mechanisms for Providing Compensatory Mitigation (Siting)

1) NE Regional Wetland Mitigation Cooperative (Umbrella Bank) Option.

- Current option, statute/rule change not required.



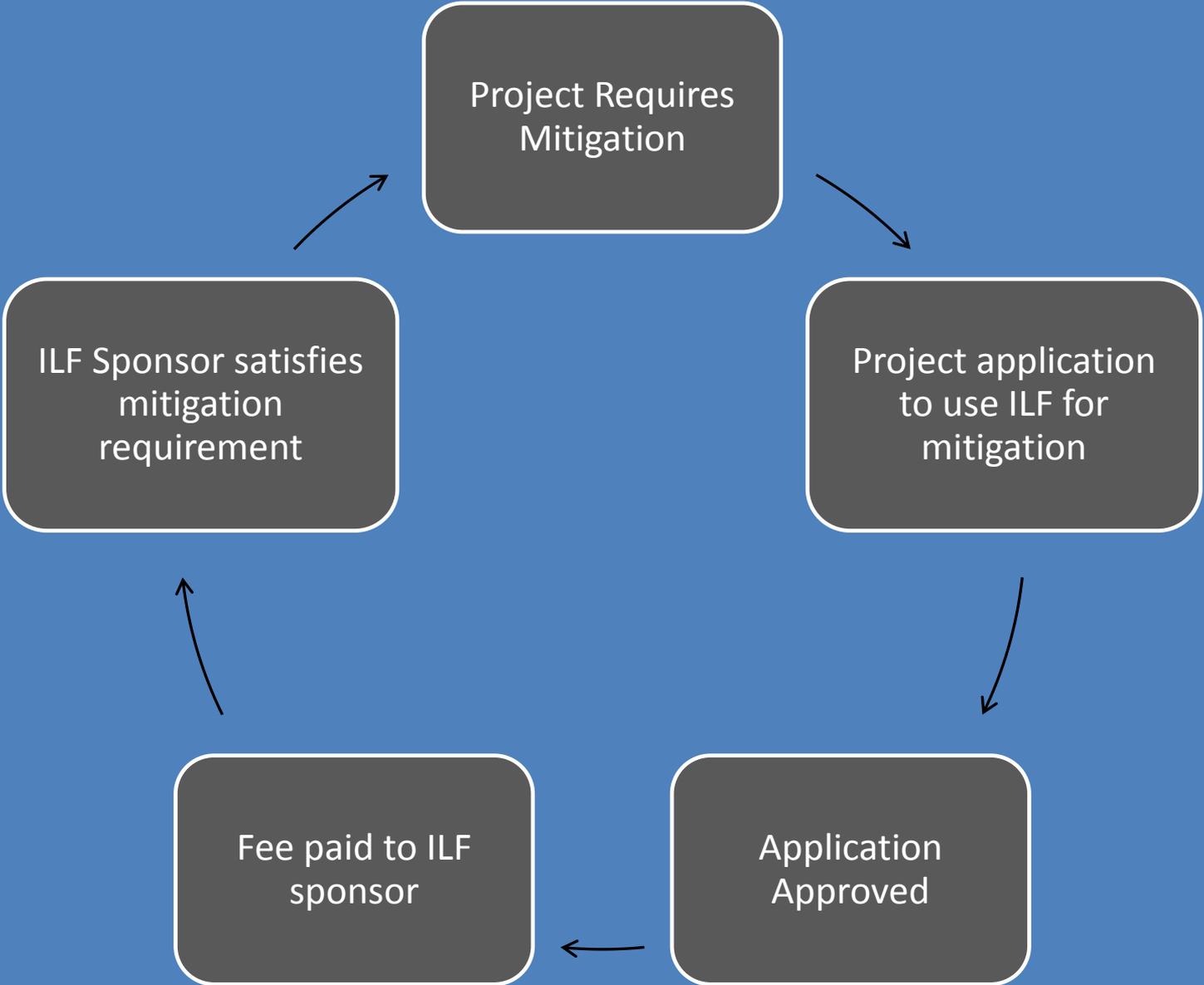
2) In-Lieu Fee Program Option.

- Some statute/Rule changes necessary.



What is an In-Lieu Fee Program?

- A sponsor (govt agency, nonprofit) assumes the mitigation responsibility on behalf of a permittee (applicant) in exchange for a fee.
- Sponsor uses fee to provide mitigation within specified timeframes. Fees from multiple impacts are typically accumulated over time and used to address those impacts comprehensively.
- Process and detailed requirements are laid out in the Federal Mitigation Rule. The program must be approved by the Corps of Engineers for federal Clean Water Act compliance via an agreement (ILF “instrument”) between the sponsor and the Corps.



Other Ideas for Program Improvement (Siting)

- Inventory of Siting Analyses and Potential Mitigation Sites Evaluated.
- “Rapid Response” Interagency Review Team.
- Promote Private Wetland Banking.

EO 12-04: Adequacy of Wetland Bank Program Funding

- BWSR should conduct a study to estimate future costs for wetland bank monitoring, maintenance, and compliance.
- Combine monitoring and maintenance responsibilities with other similar efforts.
- Use alternative methods, such as aerial imagery, to monitor wetland bank sites.

EO 12-04: Strategic Use of Funding Sources and Tools to Achieve Continued Restoration of Drained Wetlands

- Continue efforts to improve science and decision tools.
- Assess gaps in programs to manage wetlands on private lands.
- Evaluate current incentives and payment rates to determine if they are sufficient to attract landowner interest.
- Work with conservation partners evaluate how voluntary efforts can be enhanced with wetland bank funding .

EO 12-04: Strategic Use of Funding Sources and Tools to Achieve Continued Restoration of Drained Wetlands (cont.)

- Support planning efforts to provide strategic wetland protection and management.
- Target restorations to achieve multiple benefits using the many tools available.

WCA Implementation

BWSR Staff Program Review and Recommendations

- WCA LGU size and structure (economies of scale).
- LGU staff scope of work, SWCD requirements vs. funding.
- Noticing, reporting, and data collection mechanisms – develop online system & database.
- Bank/mitigation site approval process.
 - LGU approve site, BWSR approve restoration plan.
 - Treat all mitigation the same, de-couple from impact approval process.
 - Improve targeting through ILF and/or other mechanisms.
- Implementation of siting criteria for projects using bank credits.
- Adequate funding for program implementation.
- Public drainage exemption.

Local Government Road Program Implementation and Funding

- Siting Criteria (metro area) causing substantial shortage of credits and inconsistent with federal watershed approach.
- What components should the program cover (i.e. road repair, stormwater ponds, bike paths, etc.)?
- How can we ensure adequate funding?
- Are there administrative changes that can improve program efficiency?

PRIORITIZATION

Statute/Rule/Leg Issues to Address in 2015?

1. Siting Criteria and Targeting of Mitigation.
2. In-Lieu Fee Mitigation Mechanism.
3. Alternative Options for Mitigation.
 - WCA/PWW overlap.
 - Modification of public drainage exemption.
 - Increase WCA program funding.
 - WCA Program Implementation Staff Recommendations?

PRIORITIZATION

Administrative Issues to Address in 2015?

- WCA/404 Interagency Coordination (long term initiative).
- “Rapid Response” Interagency Review Team.
- Wetland Mitigation Search Criteria Guidance.
- Staff specialization, training, and workload prioritization.
- Long term monitoring and stewardship of bank sites (may also require statute change).
- Other?

Discussion

- What do you need to see from the proposals for statute, rule, and/or policy changes in order to support them?
- How can we implement changes to improve WCA in a way that works for all Minnesotans?



Discussion Topic

EO 12-04: De minimis

- Fixing de minimis means changing numbers, which means diverse and strong opinions. How can we come to agreement on ways to improve de minimis?

Potential Discussion Topics

Consistent Review, Approval, and Implementation

- What specific changes should be made to which programs to:
 - reduce regulatory redundancy?
 - improve consistency?
 - increase efficiency?
- WCA and CWA 404: What types or sizes of projects are best suited for which program?

Potential Discussion Topics

Mitigation Siting and Targeting

- How to identify/designate “High Priority Areas.”
- Replacement ratios: Incentives and Disincentives.
- Threshold for allowing wetland replacement to occur outside of BSAs 1 and 2.
- Alternative Approach: In-Lieu-Fee.

Potential Discussion Topics

Alternative Mitigation Options

- Should new “alternative actions” be limited to BSAs 1 & 2? >80% areas? Statewide?
- What criteria should be used to identify sensitive/important upland areas for protection?
- What constitutes “stream restoration” and how should credit be allocated?
- How much credit should be allocated for the preservation of sensitive upland areas and buffers?
- When does peatland “restoration” increase function enough to allocate credit and how much?

Potential Discussion Topics

Alternative Mitigation Options (cont'd)

Watershed plan implementation projects:

- How define “approved” plan?
- How specific does the plan need to be?
- What type of projects should be eligible and how should we define them?
- How should we determine/allocate credit?
- How should these projects be identified (applicant propose, choose from agency list, etc.)?

Potential Discussion Topics

In-Lieu Fee Mitigation

- What should be the scope of a MN ILF? Mining projects and/or NE MN only? All of MN?
- What factors should be used to determine the fee (varying land values, changing construction costs, etc.)?
- What role should LGUs play in ILF implementation?
- How do we deal with fluctuations in demand?
- Should the program seek “seed” money to establish wetlands up-front, allowing the program to maintain a positive balance?
- How should the program mesh with wetland banking?

Potential Discussion Topics

WCA Implementation

- What is the appropriate WCA LGU size and structure?
- Should an online noticing/reporting system & database be a priority?
- Thoughts on bank/mitigation site approval process?
 - BWSR approve restoration plan, de-couple from impact, consistent approval process, etc.
- How should BSA limitations and/or ratio incentives be set to make siting more efficient (for use of bank credits).

Thank You!

- Post-meeting comments can be sent to:
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