



## **INTERAGENCY MEMORANDUM OF UNDERSTANDING**

### ***WETLAND CONSERVATION ACT AND SWAMPBUSTER COORDINATION***

This Memorandum of Understanding (MOU) is made and entered into by the Minnesota Board of Water and Soil Resources and the USDA Natural Resources Conservation Service.

**WHEREAS**, the Minnesota Board of Water and Soil Resources (BWSR) has state oversight responsibility for the Wetland Conservation Act (WCA) and its corresponding rules (Chapter 8420) which are implemented by local government units (LGU), including soil and water conservation districts (SWCD), to achieve the state policy of no-net-loss of wetlands; and

**WHEREAS**, the USDA-Natural Resources Conservation Service (NRCS) is responsible for administering the technical provisions of "Swampbuster" which generally withholds Federal farm program benefits from any person who (1) plants an agricultural commodity on a converted wetland, or (2) converts a wetland to make agricultural commodity production possible; and

**WHEREAS**, Section 1619 of the Food, Conservation and Energy Act of 2008 (Public Law 110-234); places significant limitations on the sharing of information between USDA agencies (NRCS and Farm Services Agency (FSA)) and other non-federal entities, including state and local governments; and

**WHEREAS**, the aforementioned local, state, and federal authorities all seek to protect wetlands on agricultural lands through regulation and incentives, respectively; and

**WHEREAS**, through coordinated program implementation, increased efficiency and effectiveness in program administration and reduced government costs can be achieved; and

**WHEREAS**, landowners who choose to take advantage of a coordinated wetland program will receive additional information on wetlands that will minimize the likelihood that activities in wetlands will be in violation of federal, state, or local regulations.

**NOW THEREFORE BE IT RESOLVED**, the undersigned agencies concur that it is in the public interest to coordinate, to the greatest extent possible, their respective programs as follows:

1. Communication, Information Sharing, and Coordination. The agencies will:

- a. Develop and distribute a joint factsheet for landowners and producers on program requirements, including a recommendation that landowners and producers contact both NRCS and the LGU/SWCD for guidance on projects that may affect wetlands.
- b. Develop a joint wetland information packet to provide landowners and producers with information including wetland identification, requirements of USDA and state wetland regulations, and landowners and producers rights concerning wetland information. BWSR will develop a WCA agricultural exemption self assessment tool as part of this packet.
- c. Develop procedures for LGUs to notify NRCS offices of WCA applications and decisions.
- d. Develop guidance for NRCS staff involvement with WCA Technical Evaluation Panels that involve wetlands on agricultural land.
- e. Coordinate wetland-related administrative and technical training opportunities for state, USDA, and local government staff, including private sector staff when applicable.
- f. Develop and share guidance and technical assessment tools in order to increase technical consistency and minimize duplication of effort. These items, include, but are not limited to, drainage lateral effect and encirclement guidance, hydric soils information, hydrologic tools, and remotely sensed imagery.

2. Delineation of Wetland Boundaries. The agencies agree:

- a. To delineate wetland boundaries according to the 1987 Corps of Engineers Wetland Delineation Manual, including regional supplements and appropriate technical guidance.
- b. That WCA approved wetland delineations performed by a Minnesota Certified Wetland Delineator are acceptable to NRCS when they meet NRCS documentation standards.
- c. That wetland boundaries delineated by NRCS staff as part of a Certified Wetland Determination, prior to the application of policy labels (PC, CWTE, etc.), can be accepted by local government units and Technical Evaluation Panels when appropriate documentation is included and when approved by the landowner.
- d. To develop guidance specifying when wetland determinations are acceptable for WCA and USDA purposes and including procedures for joint acceptance.
- e. To assess the 1994 Minnesota Mapping Conventions/USDA-Farm Service Agency imagery procedures for possible updates and improvements.

3. Wetland Violations. For wetland violations on agricultural land:

- a. WCA Restoration and Replacement Orders will be shared with the appropriate NRCS field office.
- b. NRCS staff will be invited to Technical Evaluation Panel meetings.
- c. The agencies will review restoration requirements and identify restoration standards that will be acceptable for both programs. The goal of wetland restoration completed in compliance with a WCA Restoration Order is for it to be sufficient to fulfill NRCS restoration agreement requirements.

4. Wetland Mitigation. The agencies agree:

- a. That wetland replacement via banking in accordance with WCA standards generally provides acceptable mitigation for wetland impacts that require replacement under respective program requirements.
- b. The goal is for a conservation easement held by BWSR and monitoring conducted by BWSR, on a replacement wetland to be sufficient for NRCS purposes.
- c. To conduct a joint review of corresponding wetland replacement requirements to identify and agree on replacement standards that will be mutually acceptable.

BE IT FURTHER RESOLVED, the undersigned agencies concur that the following provisions apply to the implementation of this agreement:

- 1. The policies and procedures contained within this MOU does not create any rights or obligations, either substantive or procedural, enforceable by any party or any third party. Deviation or variance from the wetland mitigation guidance included in this MOU will not constitute a defense for violators or others concerned with any State or Federal action.
- 2. Nothing in this MOU is intended to diminish, modify, or otherwise affect statutory or regulatory authorities of any signatory agencies. All formal guidance interpreting this MOU and background materials upon which this MOU is based will be issued after consultation with the signatory agencies.
- 3. All responsibilities identified in this MOU are subject and dependent on the availability of sufficient funds appropriated and allocated for that purpose.
- 4. This MOU will take effect on the date of the last signature below and will continue in effect until modified or revoked by the signatory agencies. Either signatory agency must provide the other a minimum notice of 30 days prior to revoking this agreement.
- 5. This MOU is based on the state and federal authorities as they exist on the date of signature. Subsequent changes to these authorities are not binding on the parties to this MOU.

  
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Randy Kramer      12/16/09  
Chair  
Minnesota Board of Water and Soil Resources

  
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William Hunt      12/23/09  
State Conservationist  
Natural Resources Conservation Service  
United States Department of Agriculture