



September 27, 2012

Representative Bob Gibbs, Chairman
Transportation and Infrastructure Committee
Subcommittee on Water Resources & Environment
B-370A Rayburn HOB
Washington, DC 20515

Re: State Assumption of Clean Water Act 404

Dear Chairman Gibbs:

Thank you for holding the September 20, 2012 Subcommittee hearing on the potential for states to assume a lead role in wetland protection. This letter is written in support of your efforts to address this issue.

The State of Minnesota implements a comprehensive, stand-alone wetland protection program established in State law and rule entirely separate from Section 404 of the Federal Clean Water Act (404). The Minnesota Wetland Conservation Act (WCA), signed into law in 1991, operates similar to the 404 program in many respects, and because of that, and we have accomplished several coordination initiatives with the U.S. Army Corps of Engineers-St. Paul District. The WCA generally provides a greater level of protection and jurisdiction than 404 as it applies to all wetlands, including isolated wetlands and those affected solely by drainage.

The WCA relies on a network of trained State and local government staff to provide valuable expertise in program implementation, including site reviews and wetland impact authorizations or denials. The program includes a comprehensive wetland banking program that includes more restored wetlands than in any other state, including State funded wetland mitigation for public road projects. The State has also restored thousands of acres of wetlands through the Reinvest in Minnesota (RIM) program – mostly in the critical prairie pothole areas of western Minnesota.

In Minnesota, the WCA is implemented concurrent with the Federal 404 program. This can result in an extra layer of required regulatory approvals for landowners. For example, while the WCA includes specific time limits for decisions and administrative appeals, 404 decisions are often indeterminate. Minnesota is in a strong position to accomplish key 404 objectives through either a federally recognized state program or a coordinated approach that allows parts of the 404 program to be delegated to the State. With this in mind, we offer the following recommendations:

- 1. Remove barriers to 404 assumption.** The assumption process should recognize overall protection and service delivery outcomes rather than being focused only on process, and thus be easier for states to accept implementation responsibility.
- 2. Allow for formal recognition of state programs.** Provide a mechanism for federal recognition or delegation to state programs that achieve goals of the 404 program, without assuming all the federal processes.

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403 Fourth Street NW Suite 200 Bemidji, MN 56601 (218) 755-2600	1601 Minnesota Drive Brainerd, MN 56401 (218) 828-2383	394 S. Lake Avenue Suite 403 Duluth, MN 55802 (218) 723-4752	1004 Frontier Drive Fergus Falls, MN 56537 (218) 736-5445	1160 Victory Drive South Suite 5 Mankato, MN 56601 (507) 389-6784	1400 East Lyon Street Marshall, MN 56258 (507) 537-6060	261 Highway 15 South New Ulm, MN 56073 (507) 359-6074	3555 9 th Street NW Suite 350 Rochester, MN 55901 (507) 206-2889

Central Office / Metro Office

520 Lafayette Road North

Saint Paul, MN 55155

Phone: (651) 296-3767

Fax: (651) 297-5615

www.bwsr.state.mn.us

TTY: (800) 627-3529

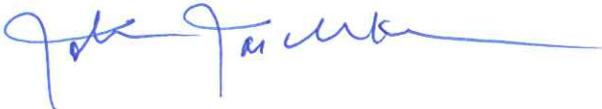
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3. **Allow for partial assumption.** Assumption or "certification" of certain elements of a state program should also be allowed. Minnesota's wetland banking program is one example.
4. **Provide federal funding for implementation.** A shared approach to funding wetland protection programs would be more efficient and cost-effective for both state and federal governments.

In summary, the State of Minnesota supports efforts for formal recognition of state wetland protection programs, like the WCA, that achieve the resource objectives of 404. We appreciate the Subcommittee's attention to this issue and the opportunity to provide comments.

Sincerely,



John Jaschke, Executive Director
Minnesota Board of Water and Soil Resources (BWSR)

Cc: Les Lemm, BWSR WCA Program Coordinator
Tamara Cameron, Regulatory Branch Chief, Corps of Engineers-St. Paul District
BWSR Wetland Committee Members
Minnesota Congressional Delegation