



**Executive Order 12-04:  
Supporting and Strengthening Implementation of the State's Wetland Policy**

**Comments Received on the Draft Report.**

1. Jay Leitch
2. R.A. Salo, Chairman, Aurora Housing and Redevelopment Authority
3. Rich Libbey
4. MPCA, submitted by Mark Tomasek
5. DNR, submitted by Doug Norris
6. Tim Gile, Coon Creek Watershed District
7. Deric Deuschle and Allyz Kramer, SEH
8. Matt Holland, Pheasants Forever
9. Sierra Club, Northstar Chapter
10. Minnesota Center for Environmental Advocacy, Audubon Minnesota, the Minnesota Conservation Federation, Minnesota Division of the Izaak Walton League, the Fish and Wildlife Legislative Alliance, and Minnesota Trout Unlimited
11. Minnesota Center for Environmental Advocacy, Audubon Minnesota, the Minnesota Conservation Federation, Minnesota Division of the Izaak Walton League, the Fish and Wildlife Legislative Alliance, and Minnesota Trout Unlimited
12. David Flink and Rebecca Humphries, Ducks Unlimited
13. Kevin Paap, Minnesota Farm Bureau Federation
14. Sue Elston, U.S. Environmental Protection Agency
15. David Skolasinski, Cliffs Natural Resources Inc.
16. Terry Neff, Aitkin County
17. Representative Rick Hansen
18. Tim Smith, U.S. Army Corps of Engineers



## Weirens, David (BWSR)

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**From:** Leitch, Jay [Jay.Leitch@ndsu.edu]  
**Sent:** Monday, November 19, 2012 11:46 AM  
**To:** Weirens, David (BWSR)  
**Cc:** Sip, Rob (MDA)  
**Subject:** EO 12-04

Mr. Weirens,

I have a few general comments on "Ex Ord 12-04: Supporting and Strengthening Implementation of the State's Wetland Policy", draft report, November 2012.

1. The tone of the Ex Ord and the draft report seem to be: How to get more wetlands using public resources and policy. I believe the appropriate perspective should be: How government wetland policies and programs can be made more efficient and effective while achieving no-net-loss.
2. The Ex Ord calls for an evaluation of "the costs and benefits of wetland mitigation ...." This isn't addressed very well in the draft report. Evaluating costs and benefits is an economic exercise, not one of using a checklist of wetland 'values' and replacement ratios.
3. A comment on page 12 of the draft report, "wetland regulations need to be based on science," should be interpreted as employing economic science as well as an oft-biased, or poorly interpreted, wetland science.
4. Another comment on page 12, "public value needs to be central to wetland mitigation", is the heart of the matter. However, those public values need to be objectively evaluated and justified on a site- or area-specific basis. I've seen countless wetland value studies that claimed all or most of the items on the long list of 'wetland benefits' for each and every wetland, which clearly is not the case. This is called 'benefits transfer' in the economic literature--transferring a legitimate benefit from one area to another area where data may be scarce. This principle is grossly overused and mis-interpreted in the implementation of wetland policies.
5. The above two comments relate to another comment on page 12, "replacement ratios should be modified to take into account the actual benefit offered by a particular wetland rather than an arbitrary ratio". The rules say 'no-net-loss', not 'gain a little from each replacement'. An objective analysis of wetland replacements in Minnesota over the past 10 years would clearly show that the regulated public, including LGUs, has been paying considerably more in replacement costs than they should have been. That's not the meaning, nor the intent, of no-net-loss, and clearly is not efficient from a public policy perspective.
6. The draft report included a statement that 'voluntary restorations' shouldn't count toward the no-net-loss goal. Why not, if the goal is no-net-loss and someone voluntarily restorations a wetland, that's one more the state has, and at no cost.
7. In general, I saw the draft report as a whole lot of re-shuffling the rules and regulations around, with little substantive improvement in the lives of the people of Minnesota.

Jay A Leitch  
1313 40th Avenue North  
Moorhead, MN 56560  
218-236-1596 (home)  
701-552-2166 (cell)



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**Weirens, David (BWSR)**

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**From:** aurdec@frontiernet.net  
**Sent:** Wednesday, November 21, 2012 9:57 AM  
**To:** Weirens, David (BWSR)  
**Subject:** wetlands

In my opinion, the wetlands conservation act was developed as the result of farmers in Minnesota plowing up acreage on their property for planting of crops even if the land was low. During dry years they would get further into the low areas and also drain lowlands for more planting.

It seems like we, in the Northeastern part of Minnesota, have to pay for their lust for more crops and more money. The result for us is a totally out of control bureaucracy that has arisen to curb our economic development. Since St.Louis County is comprised of over 50% of "wetlands", this set of regulations does nothing but hamper most any development. We have to get tangled in a process that is very cumbersome, and sometimes impossible, to further any development.

The HRA in the City of Aurora began developing a portion of land to plat out for building lots. We hired an engineering firm to do the platting process. After a period of time they came back to the HRA with a comment that they ran into a wetland issue. They contacted someone with the St Louis County planning agency to confirm their findings. This was about 5 years ago and to this date we have not been told what we can do to resolve this issue. We paid the engineering company a large sum of money for nothing.

It seems like everyone is afraid of confronting this issue because they are afraid of fines and other penalties that can be handed down by your agency.

We cannot afford the big bucks to pursue a small issue as this and hire a consultant or attorney to solve the problem.

Your agency should pursue something in your upcoming draft to help small towns and small business overcome the wetland issue.

R.A. Salo, Chairman  
Aurora Housing and Redevelopment Agency  
Aurora, MN 55705

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**Weirens, David (BWSR)**

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**From:** Rich Libbey [rdlibbey@mchsi.com]  
**Sent:** Sunday, November 25, 2012 9:46 PM  
**To:** Weirens, David (BWSR)  
**Cc:** Randy McCarty; Pat and Bill Davis; Bill Berg; Rich Libbey; Jonphoneemail Libbey  
**Subject:** comment on executive order 12-04 by Gov. Dayton

Dear Sirs: I hope you will strengthen the wetland protection in Minnesota. You can not have a "no net loss" when you have a de minimis exemption. The de minimis exemption should be eliminated. Riparian wetlands deserve extra protection as they directly impact larger water bodies when filled in. Wetland filling in the shore land zone-1000 feet- should be eliminated or have multiple replacement within the shore land zone affected. Drain tiles in the agricultural zone need to be addressed and treated as point source discharges. Highway and street culvert systems should also be point source discharges requiring effective treatment basins. The highway 169 bridge on Pokegama Lake in Itasca county has a recently installed drainage system that drains miles of ditch directly into a class 7050 waters. MNDOT installed a curb and gutter system that drains directly into the lake delivering sediment and road salt. A totally inadequate setting basin was installed and overwhelmed by small rainfalls. This runoff used to go to wetlands and ditches not directly into Pokegama lake. MNDOT was exempt from point source discharge regulations and ignored any attempts to mitigate the situation. Wetland replacements should at a minimum be in the watershed in which they occurred. Richard Libbey 18603 Hale Lake Drive Grand Rapids MN 55744



**MPCA Comments to:**

Executive Order 12-04: Supporting and Strengthening Implementation of the State's Wetland Policy  
Draft Report for Comment November 2012

Submitted by Mark Tomasek

11/26/12

The MPCA appreciates the opportunity to participate directly in the EO 12-04 Stakeholders process and looks forward to continued ongoing and future related wetland policy development forums and processes. The process that BWSR has directed in response to the Executive Order has been well handled, particularly given the relatively short timeline available to address these complex issues. Please find below comments and suggestions from the MPCA relating to the Executive Order.

**Deminimus Exemptions Recommendations**

Any changes to the de minimis exemption that may result in less restrictive requirements should be carefully considered and be fully vetted for potential effects before they are enacted. This should especially include high quality and rare or difficult to replace wetlands. In addition to protecting wetlands for their intrinsic value is the benefit to downstream water quality. Downstream water quality impacts should also be considered in any changes to de minimus exemptions. Additionally, if there are other locations in the report (e.g., introduction, other) to note downstream water quality benefits of wetland protections and restoration it would be useful to highlight.

The MPCA supports comprehensive wetland planning, in that a well planned approach has an excellent chance to provide environmental protection. However, MPCA is concerned about the state of existing science and adequacy of methods to measure and assess wetland functions, particularly cumulative water quality effects with respect to many small actions that may occur under de minimus actions. Plans which are allowed to be less restrictive than state standards may be acceptable if well developed and correctly implemented. Unfortunately in most cases inadequate data exists to demonstrate wetland water quality response to existing standards, thus to potentially make them less restrictive is a concern. The MPCA suggests deleting this item language from the final recommendations or at a minimum providing cautionary language that function and value protection analysis is a complicated undertaking.

**Alignment of Pre-settlement Zones**

Rectifying bank service areas (BSA) which largely follow major drainage basin delineations to fit closest/majority county area appears appropriate for much of the southern and western regions of the state. However in the north, particularly the northeast region this could be problematic. Currently BSA 1 and 2 are very different in their landscape and water quality context. The large counties of St. Louis, Lake and Cook would be combined into one BSA even though their existing water quality context is different. Even with respect to proposed mining projects which present wetland replacement challenges combining BSA 1 and 2 into a single BSA could be detrimental to water quality, particularly to BSA 2.

**Consistent Review, Approval and Implementation**

The same comment submitted to the earlier draft is again provided requesting the 401 language be changed to the following to be similar to language of similar reports - The MPCA CWA 401 certification process improvements started in May 2012, should continue to be implemented to fit within existing

wetland processes, reduce redundancy, and focus on larger projects with more significant environmental risks.

As additional background on the topic it should be noted that the draft language regarding 401 certification in the report is largely outdated and inaccurate. The draft report on water permitting for transportation projects has a much more detailed and up to date view. Following is an excerpt from that report:

Incorporate Section 401 certifications within the 150-day timeline goal for permits: State agencies are already working to fully comply with the Governor's Executive Order 11-04 for Permitting Efficiency that requires permitting agencies to meet 150-day permitting timelines. One issue of note is that the MPCA does not consider Section 401 water quality certification to be a state permit. However, in May 2012, after discussions with local road authorities, the MPCA agreed to follow, track, and report on the goal to better meet the needs of road projects. In addition, the MPCA implemented a number of process improvements designed to speed up Section 401 water quality certifications. At this time, all 401 certifications meet the goals of the executive order.

The current average time for 401 certification of all high-risk, individually permitted projects is 91 days. There are generally about 50 high-risk individual projects per year, and transportation projects are a subset of those high-risk individual projects. There are about 2,000 "low risk" projects per year; these are handled through general permits. The time for 401 certification for these projects is 0 days because they are "pre-certified." For all projects (low- and high-risk combined), the average time for certification is slightly more than two days.

While it is desirable to reduce or eliminate program redundancy and overlap it would be worth noting in the narrative of the report that while there may be the appearance of program redundancy and overlap program goals and requirement may be sufficiently varied that elimination of some apparent redundancy and overlap may not be possible or improve administrative review and approval.

The MPCA supports BWSRs ongoing partnership with the NRCS and believes it is very beneficial to the interests of the state in protecting and restoring natural resources, particularly water quality. Development of an in lieu fee program would be an appropriate step toward augmenting the State's ability to improve and enhance wetland mitigation siting and crediting needs, particularly to target priority areas to benefit water quality.

### **Wetland Bank Program Funding**

MPCA supports the proposal to complete and actuarial study for wetland banks. This is particularly true with regard to adequacy of monitoring and long term maintenance. The wetland banking program continues to improve and is resulting in many high quality restorations which is improving the state's wetland resource. Looking to the future to assure this can be maintained is vital to water quality challenges the state will likely face in the future.

### **Costs and Benefits of Watershed Targeted Wetland Mitigation**

The MPCA supports the conceptual watershed targeting recommendations included under this issue, though we reserve the opportunity to follow the outcomes of the interagency workgroup depending on the alternatives specified from that effort.

#### **Strategic Use of Funding Sources to Achieve Continued Restoration of Drained Wetlands**

The MPCA supports the items included in issue 6 and would welcome the opportunity to work with BWSR in developing and implementing these recommendations

#### **Other Issues – No Net Loss**

The goal of no net loss of wetlands in Minnesota should be closely aligned and managed on the basis of watersheds since wetland loss has the potential to adversely affect water quality. Proposals that result in wetland loss should be responsibly reviewed and considered within such regulatory context. Thus regions (BSAs, watersheds) with significant historic wetland resources remaining should be encouraged to protect these resources and not be given some latitude up to a certain threshold. By the same token, areas with significant historic wetland loss should be encouraged to restore many of these wetland resources.

It is strongly suggested that the language of Part i. a. of this section be modified to reflect the following:

- i. Clarify the state policy goal of no net loss applies to state wetland protection programs on a statewide basis with a requirement to first consider sequencing on a watershed basis.
  - a. The statewide no net loss goal should recognize that there are areas, such as northeast Minnesota, that may not be materially impacted by some ~~can tolerate some~~ loss of wetlands, while other areas of the state already face a significant deficit of wetland resources.

#### **Other Issues – Agricultural Drainage**

The MPCA supports the recommendations included under this topic and believes they have the potential to benefit protection and restoration of water quality.



**Weirens, David (BWSR)**

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**From:** Norris, Doug J (DNR)  
**Sent:** Monday, November 26, 2012 11:43 AM  
**To:** Weirens, David (BWSR)  
**Cc:** Ekman, Julie C (DNR); Hovey, Tom E (DNR); Nelson, Casey (DNR); Quinn, Ed M (DNR); Erickson-Eastwood, Linda (DNR); Lien, Ricky (DNR); Rossman, Dick C (DNR); Waldof, Kim W (DNR); Palmer, Cory J (DNR); Paul, Kate (DNR); Engstrom, Jennifer N (DNR); Ouska, Kath (DNR); Dowling-Hanson, Lori (DNR); Engwall, Craig (DNR); Parker, Keith (DNR); Frederickson, Dennis (DNR); Buesseler, Peter J (DNR); Peloquin, Mike L (DNR); Yearwood, Terri L (DNR); Collett, Robert G (DNR); Japs, Jim M (DNR); Hirsch, Steve A (DNR); Landwehr, Tom (DNR); Schad, Dave R (DNR); Sip, Rob (MDA); Tomasek, Mark (MPCA); Tiedeken, Nicklas (DOT); Lindquist, Mark (DNR)  
**Subject:** Draft Executive Order 12-04 Report -- DNR Comments

Dave,  
 Following are DNR comments on the EO 12-04 Draft Report for Comment, dated November 2012. I expect that we may want to have some additional discussion on the concerns expressed by DNR Division of Lands and Minerals, perhaps at the Wetland Committee meeting Nov. 28 or at another time prior to finalizing the report for the Governor.

**Comments on content:**

page iii -- "Project staff . . . identified potential policy solutions where there appears to be potential common ground to support further detailed policy development. Concepts have been vetted and refined with cooperating agencies and with additional input from stakeholders." Given the opposition of DNR Lands & Minerals to some of the recommendations (see next comment), you may want to consider clarifying these statements.

pages vi and 14, Issue #3: Consistent Review, Approval and Implementation, Part D., Recommendations --

- Recommendation vi, a. -- This option is unacceptable to DNR, Division of Lands and Minerals. Note that the DNR is acting as an LGU under the permit to mine (8420.0930) in terms of notification and comment review, but appeals are handled under DNR procedures.
- Recommendation vi, b. -- Delegating appeals to BWSR for DNR decisions related to WCA under the Permit to Mine is unacceptable to DNR, Lands and Minerals.
- Recommendation vi, c. -- Delegating the approval of wetland mitigation to BWSR is unacceptable to DNR, Lands and Minerals.

page 18, Issue #5: Costs and Benefits of Wetland Mitigation Targeted to Specific Watershed, Part B -- for the bullet at the bottom of the page, "Large impacts in NE Minnesota, primarily mining projects, are particularly problematic," we suggest replacing the word "problematic" with "complex."

pages viii and 25, Other Issues -- No Net Loss -- Under item i.a., we suggest the following revision: "The statewide no net loss goal should recognize that there are areas, such as in northeast Minnesota, that may be able to tolerate some loss of wetlands without affecting watershed ecological integrity, while other areas of the state already face a significant deficit of wetland resources."

pages 25-26, Other Issues: Agricultural Drainage -- As supporting information for this section, I have received from DNR Area Wildlife Managers and USFWS Refuge Managers many examples of wetlands that are currently being adversely affected by input of tile drainage from surrounding lands.

**Editorial comments:**

page 16, part D. -- start recommendations with "i" (instead of "iv")

page 18 – “In the past year a BWSR-DNR-MPCA-US Army Corps of Engineers staff team have has begun . . .”

page 23 – first bullet on page - “Are is the existing array of programs getting the desired results . . .”

Thanks for your and other BWSR staff (including Mark Lindquist) efforts to prepare this report in a relatively short period of time. Please contact me if you have any questions concerning our comments.

Doug Norris  
Wetlands Program Coordinator  
Division of Ecological and Water Resources  
Minnesota Dept. Natural Resources  
500 Lafayette Road, Box 25  
St. Paul, MN 55155  
651-259-5125  
[Doug.Norris@state.mn.us](mailto:Doug.Norris@state.mn.us)

**Weirens, David (BWSR)**

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**From:** Tom Gile [TGile@cooncreekwd.org]  
**Sent:** Monday, November 26, 2012 11:47 AM  
**To:** Weirens, David (BWSR)  
**Subject:** Comments for BWSR Report and Draft for Review

Dave, Below are comments from the Coon Creek Watershed District on the Draft Report

My apologies for these being rather hastily put together but I was not made aware of the report for review until last night (Sunday November 25<sup>th</sup>) and comments are due at Noon (Monday the 26<sup>th</sup>).

While it was not specifically listed in the Executive order the first item on the list is one which has been a fairly significant hassle in Coon Creek for the past several years and I have had more than a half dozen property owners request that I bring this to the attention of BWSR Staff during any potential review of rule revisions. (Please feel free to contact me for clarification on this item/request!!)

1)Allowing excavations in type 1,2 wetlands gives home owners an opportunity to create "Ponds" of open water type 3,4,5 wetland on their property via excavation and conversion to the 3,4,5. However now the property owners have created a wetland on their property which does not allow additional excavation. Current or future owners commonly have desires to expand or dig these "ponds" deeper to ensure a permanent pool of water. Such activity is not allowed under WCA. This leads to all too common problems in working with property owners to understand the nuances of the WCA and why they could excavate a "pond" in a wetland area before, but now they cannot. Or a new owner of the property who wishes to modify the "pond" or fill it back in because they don't want it. Allowing excavation of type 1,2 wetlands has its place, but clarification of the intent for excavation should be made such that excavation simply for a "reflecting pond" or "wildlife pond" are either not allowed or need to meet certain criteria such as creation of a sustainable wetland complex as a part of a mitigation plan or wetland bank site.

2)The varying percentages of eligible creation credits depending on the type of area which is used for wetland mitigation/banking and the type of vegetative cover for the wetland or buffer areas can be confusing and commonly leads to frustration by the applicant. Does the documentation from BWSR account for the actual created wetland or just the % credit while trying to meet the goal of No Net Loss?

3)There has been significant discussion whether or not Anoka County should be moved to a less than 50% county. This should be reviewed by BWSR as it would also open up more options for wetland mitigation and banking in the County since it is currently the only of the 7 county metro area which is outside of the less than 50% zone. This may be addressed in the current proposal of doing away with the 50-80% zone and adding a 11 county metro zone.

4)Issue #5 Sub 2, 1, C. Floodwater retention should be mitigated as closely as is possible to the impacts. It would not be appropriate to create more localized flooding issues via filling wetlands with flood retention functions and values in the interest of simplifying mitigation needs on a larger scale. Flood retention should trump WCA as it can have significant effects on people outside of the scope of any individual wetland impact application.

5)Issue #5 Sub 2, 1, D. It may be appropriate to expand this data base state wide. It would be conceivable that land owners may be interested in having mitigation created on their properties which are used primarily for recreational purposes. (I.E. waterfowl, pheasant, deer habitat created on parcels which are owned primarily as hunting property)

6)Basing various de minimus exemption amounts on quality of a wetland and the "science" may simplify things for some wetland experts but if there is interest in simplifying this exemption for the benefit of property owners let's just make it simple; not scientifically simple which can and often is VERY confusing for the common property owner. This would be

especially important if the actual goal is to “simplify the law so that it would improve landowner understanding and compliance and reduce enforcement and local government costs.” As it states earlier in the section

7)When and where were the stakeholders meetings held? How were people notified? Who was notified?

Thomas Gile  
Regulatory Affairs Coordinator  
Coon Creek Watershed District  
12301 Central Ave. NE  
Blaine, MN 55434  
[tgile@cooncreekwd.org](mailto:tgile@cooncreekwd.org)  
763-755-0975



Building a Better World  
for All of Us™

November 26, 2012

RE: Executive Order 12-04: Supporting and  
Strengthening Implementation of the  
State's Wetlands Policy  
**Formal Comments on Draft Report**

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

Dear Mr. Weirens:

Thank you for this opportunity to review and provide comments on the Draft Report for *Executive Order 12-04: Supporting and Strengthening Implementation of the State's Wetland Policy*. Together, we have reviewed the Draft Report, and appreciate the level of effort put forth by the Board of Water and Soil Resources and the Executive Order 12-04 Work Team Members to prepare this document. We recognize the complexity of the issues surrounding Minnesota's wetlands and water policies, as well as the diversity of landscapes and land uses across our state that drives these policies. We applaud you and the Executive Order 12-04 Work Team for taking the time to visit with us, the various invited stakeholders and other interested Minnesota citizens, and to really hear our concerns about wetlands and water policies when considering how conservation, protection, and management practices should proceed into the future.

At this time, we wish to provide a few comments on the Draft Report and clarifying points from our original formal comment letter sent to you on October 22, 2012, and how we wish that these comments are addressed in the Final Report being prepared for Governor Dayton. Several recommendations have been made throughout the Draft Report, in which we have also provided specific comments, as follows:

- *Executive Summary, page iii, paragraphs 2 and 3 and I. Introduction Process, Stakeholder Participation, page 2* – We appreciate the more detailed description in the Draft Report that describes how invited stakeholders were requested to participate in this process to provide substantive and timely concerns and suggestions. This description as we read it now in the Draft Report is also clearer as to how we, as citizens of Minnesota, were encouraged to participate through providing formal written comments. However, we believe that at the time the process was implemented, encouraging members of the public that were *not* invited stakeholders to provide formal comment was not readily publicized. We believe the Final Report should describe where and when comments were requested from the public based on Executive Order 12-04 comments. Also as the process continues, and BWSR and the other state and federal cooperative agencies proceed with discussions on Minnesota's wetlands and water policies, we encourage you to provide this same type of transparent detail early on in the process to gather further input from the citizenry of Minnesota. In particular, for those individuals that have taken the time to provide

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 3535 Vadnais Center Drive, St. Paul, MN 55110-5196

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formal and substantive written comments on the process to date, we believe that these individuals deserve to remain on any distribution lists for future public engagement. Our contact information is provided below, and we request that we remain part of the distribution lists encouraging public comments in the future.

*Allyz Kramer*  
Sr. Biologist | Associate  
Short Elliott Hendrickson Inc.  
418 W. Superior Street, Suite 200  
Duluth, MN 55802  
[akramer@sehinc.com](mailto:akramer@sehinc.com)

*Deric Deuschle*  
Sr. Biologist  
Short Elliott Hendrickson Inc.  
3535 Vadnais Center Drive  
St. Paul, MN 55110  
[ddeuschle@sehinc.com](mailto:ddeuschle@sehinc.com)

- *Issue #3: Consistent Review, Approval and Implementation. D. Recommendations, page 13* – We believe that this section should address how the state wetland policies that are managed between local government units and BWSR for the Wetland Conservation Act (WCA), Department of Natural Resources for the Public Waters Works Permit Program, and Minnesota Pollution Control Agency (MPCA) for M.R. 7050 Waters of the State are going to be addressed to reduce redundancies and duplicative reviews by these agencies. Specifically, we requested that the Executive Order address our concerns about M.R. 7050.0186, which is the Rule administered by the MPCA for replacement of wetland impacts in the state. The Final Report should address how *all* of these statutes, rules, and policies for the WCA, Public Waters Works Permit Program, and M.R. 7050 are going to be streamlined. To date, the recommendations in the Draft Report remain silent how these agencies are planning to work together to eliminate their duplicative reviews. However, this was addressed throughout the public stakeholder involvement meetings and through formal written comments. We would like to see how the Final Report will consider use of waivers or other applicable streamlining mechanisms that reduce duplicative and redundant reviews and permits.
- *Issue #5: Costs and Benefits of Wetland Mitigation Targeted to Specific Watershed. A. Background, page 18, paragraph 1.* – In reference to the BWSR-DNR-MPCA-U.S. Army Corps of Engineers staff team addressing wetland regulations in Northeast Minnesota, we believe the Final Report should provide a timeline for when the proposed work team will be providing recommendations to address Issue #5.
- *Issue #5: Costs and Benefits of Wetland Mitigation Targeted to Specific Watershed. D. Item ii.1.a. – c.* – We believe these recommendations should also include exploring potential mitigation sites that encourage restoration of degraded or fragmented wetlands as a priority. We believe project sites that have drained, degraded, or otherwise fragmented wetlands oftentimes have higher likelihood of success if they are reconnected with otherwise intact natural landscapes. We also believe these degraded landscapes, particularly those affected by partial drainage, should be looked at as potentially having higher wetland credit eligibility if restored because of their greater likelihood for successful ecological restoration, long-term viability, and reduced overall costs for management. It is a worthy discussion, and we encourage BWSR to lead that discussion with the citizenry of Minnesota and the other local, state, and federal stakeholders involved with wetland and waters policy in our state.

Mr. David Weirens  
November 26, 2012  
Page 3

Thank you for this opportunity to provide public comment on the Draft Report for Executive order 12-04. We also thank you for your role in coordinating and preparing this informative report and list of recommendations to Governor Dayton. We look forward to receiving information about when the Final Report is available, and continuing to provide substantive and timely comments on the process in the future.

Respectfully submitted,

SHORT ELLIOTT HENDRICKSON INC.



Deric Deuschle, MS, CWD  
Sr. Biologist | Manager, Natural Resources Services

drd/ak



Allyz Kramer, MS, PWS, CWD  
Sr. Biologist | Associate





**Matt Holland, Sr. Field Coordinator**  
Pheasants Forever, Inc.  
679 West River Drive  
New London, MN 56273  
Phone: 320.894.5391  
Email: [mholland@pheasantsforever.org](mailto:mholland@pheasantsforever.org)

November 26, 2012

Mr. John Jaschke, Executive Director  
Minnesota Board of Water and Soil Resources  
520 Lafayette Road North  
St. Paul, Minnesota 55155

Dear Mr. Jaschke:

Thank you for the opportunity to provide input on the implementation of Governor Dayton’s Executive Order 12-04, “Supporting and Strengthening Implementation of the State’s Wetlands Policy”. Pheasants Forever (PF) has been a partner in wetland habitat conservation in Minnesota for the past 30-years. We are highly concerned about the future of our wetland and associated upland habitats in the state, both from a quantity and a quality standpoint. Wetlands function in many ways and their benefits are well documented from a habitat, diversity, and water quality perspective. As pressure on our land & natural resources continues, and as increased drainage impacts the habitat quality of existing wetlands, it is vital that the State of Minnesota increase its efforts to maintain and restore the functions of our precious wetland resources.

Thus, PF supports Governor Dayton’s efforts to strengthen wetland conservation in Minnesota. PF would provide the following input:

In general, PF support efforts to streamline and improve wetland regulatory processes related to law, permitting, interagency coordination & communication provided that those changes strengthen wetland habitat conservation in Minnesota. In all efforts, the State should specifically recognize and further protect the multiple public benefits wetlands provide to the people of Minnesota while considering future threats to the State’s wetland resource.

PF supports increased protection, restoration and enhancement through strategic easement and fee-title acquisition of wetlands and associated uplands. The benefits of these habitat restoration and protection efforts often go unnoticed. These functions will continue to be critical in our state’s long-range approach to wetland conservation. The Re-Invest in Minnesota program is an ideal vehicle to restore and enhance wetlands and uplands in a long-term strategic way to achieve our wetland

conservation objectives. Additionally, our Wildlife Management Area System, federal Waterfowl Production Areas, and federal private land easement programs are recognized programs that support long-term wetland conservation.

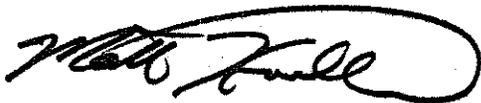
We further recommend a major buffer initiative to enhance existing efforts to treat our water before it reaches public waters. We know that we need to keep soil on the land, nutrients out of our wetlands and waters, and work with private landowners to provide sustainable long-term solutions to our resource issues. Consideration also needs to be made for the huge increase of drainage of agricultural lands and the related impacts at a watershed level. The State should proactively work with our producers to incorporate wetland and upland restoration/protection as part of treating the increased discharge into wetlands, streams, rivers and lakes.

PF recommends that any and all mitigation efforts (where absolutely necessary) be done with highest ecological benefits for soil, water and wildlife. Additionally, the cost for completing mitigation, including the long-term monitoring and habitat management should be collected at the time of mitigation so that the State has the ability to properly maintain and manage mitigation sites for the benefits of the State.

There is also tremendous value of working together as partners within this state towards the shared vision of what we want our Minnesota to look like for future generations. We hope that this coordinated effort continues as we move forward on specific aspects of this Executive Order.

We thank Governor Dayton for his leadership on wetland conservation and we look forward to working as a partner to achieve a net gain in the quantity and quality of wetlands in Minnesota. Please feel free to contact me at any time to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Holland", enclosed within a large, loopy oval flourish.

Matt Holland, Sr. Field Coordinator  
Pheasants Forever, Inc.

Cc: Joe Duggan  
Dave Nomsen



**SIERRA  
CLUB**  
FOUNDED 1892

2327 East Franklin Avenue, Minneapolis, MN 55406  
TEL: 612-659-9124 FAX: 612-659-9129 www.northstar.sierraclub.org

November 26, 2012

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

Dear Mr. Weirens:

Please accept the following comments from the Sierra Club, Northstar Chapter, concerning the draft final recommendations addressing the *Executive Order 12-04: Supporting and Strengthening Implementation of the State's Wetland Policy*.

**Issue #1: De Minimis Exemption**

We believe that "simplification" of the de minimis standards should not occur without adequate justification and without requiring that those seeking to meet an exemption standard are required to notify the local government unit (LGU). As with any exemption in the Wetland Conservation Act (WCA), landowners need not apply or notify the LGU if they believe the extent of wetland impacts would meet an exemption standard. The only time wetland impacts which occurred under exemption are accounted for is if an application is made and a certificate has been issued. It is impossible to assess the extent to which de minimis, or any other exemption for that matter, has on wetland loss or no-net-loss. It is very likely that formal and permanent exemptions have little effect on net loss/no-net-loss of wetlands because there are very few applications for formal and permanent exemptions. Consequently, until landowners are required to apply, or at minimum notify, LGUs of their intent to impact wetlands under a WCA exemption, the full extent of wetland impacts will be unknown.

With respect to applying different de minimis amounts to different wetland types, we believe this is appropriate. However, we do not believe that using the U. S. Fish and Wildlife Service Circular 39 classification system is appropriate. The Circular 39 classification system does not distinguish between wetlands having high function and value from wetlands having low function and value. For example, we believe that a type 2, sedge meadow, wetland has higher functions and values than a reed canary grass dominated, type 2, fresh meadow, wetland. And yet, under the current WCA rule, both wetland types are treated in the same manner. In addition, we do see the reasoning behind assessing a greater value to type 3, 4, 5 and 8 wetlands and a lesser value to type 1, 2, 6, and 7 wetlands. In contrast, we would propose that before the de minimis exemption is applied to a wetland impact, that the functions and values of the wetland are assessed. Unfortunately, this would likely make WCA administration more complex; however, we feel the concept of assessing the functions and values of wetlands prior to applying the de minimis exemption to a wetland-related project should be considered.

Simplification would simply not provide protection or help meet the over-arching goal of not reducing the quality, quantity or biological diversity of our wetlands.

Regarding the 20 square foot de minimis exemption standard that applies to those areas located within the shoreland/wetland protection zone and the building setback, we strongly encourage the elimination of this standard. Common sense dictates that this standard cannot be met. We believe that wetland impacts so close to lakes and streams should be strongly discouraged. The de minimis exemption should not apply in these sensitive, ecologically important areas.

We believe the cumulative impact provisions remain important and we would not support elimination of the cumulative impact standard. Rather, the BWSR should be more proactive in training LGU staff on appropriate application of the standard. With the 2009 WCA statute and rule change, the application of cumulative impacts and combining exemptions changed. MN Rules 8420.0420, Subpart 8, Item B states that exemptions may not be combined on a project. The introduction to the WCA exemption standards restrict the cumulative use of the de minimis exemption on a wetland. This is confusing and leads to various interpretations of statute and rule. We recommend that statute and rule are changed to reflect that the de minimis exemption cannot be combined with other exemptions on a project or on a wetland.

#### **Issue #2: Alignment of Pre-Settlement Zones on Watershed Boundaries**

WCA administration is set up along political boundaries, and the public is familiar with such boundaries. We believe WCA administration should remain along political boundaries. However, wetlands impacted within a specific watershed should be replaced within that same watershed. If wetland impacts cannot be replaced within the same watershed where impacts occurred, then we suggest the replacement ratio should be increased, perhaps doubled or tripled.

#### **Issue #3: Consistent Review, Approval and Implementation**

We believe there should be consistent review, approval and implementation of the WCA rule. We believe the BWSR, in its capacity as the state agency responsible for implementation of the rule, is accountable for the perceived (or real) lack of consistency between LGUs. Our members hear about landowners being allowed to complete a project in one county or city, but then, a similar project is not allowed in a neighboring county or city. This knowledge is frustrating for landowners and it must be frustrating for those who administer the rule.

An item that has helped to begin to change the aforementioned perception and helps LGUs to pass information to other state and federal agencies who may regulate wetland activities is the WCA joint application form. The downside of using this form is that it appears to be confusing and complicated to landowners. We suggest that the BWSR explore ways to simplify the form or to provide a form which asks applicants to state, specifically, the nature of the application.

#### **Issue #4: Adequacy of Wetland Bank Program Funding**

We have no opinion on funding for the wetland bank program, but we do believe it is necessary to maintain wetland banks in perpetuity. We would recommend that the BWSR explore creating a

volunteer bank monitoring program. Volunteers would monitor banks only to ensure the provisions in recorded wetland bank easements were being maintained by landowners. We also believe that each wetland bank should have signs marking bank boundaries whether past versions of the WCA rule required signs or not. In this way, landowners subsequent to the landowners who created the wetland banks would be on notice that their land contains a wetland bank.

**Issue #5: Costs and Benefits of Wetland Mitigation Targeted to Specific Watersheds**

We believe and strongly support the premise that wetland replacement should happen in the same watershed where impacts occurred. However, we understand that sometimes this manner of replacement is not available. In cases where replacement must be outside of the major watershed where wetland impacts occurred, the ratio should be increased—doubled or even tripled. There should be an economic penalty for replacement outside of the major watershed where wetland impacts occurred.

Alternatively, we may consider supporting an “in lieu of” fee program for landowners who cannot accomplish wetland replacement within the same watershed, bank service area or county. There are several “in lieu of” fee programs around the United States which could provide a model for an alternate mode of wetland replacement.

**Issue #6: Strategic Use of Funding Sources to Achieve Continued Restoration of Drained Wetlands**

We support of use of public funds for restoration of drained wetlands. However, wetlands restored by use of public funds should be permanent. Unfortunately, current public funding does not adequately offset high commodity prices. High commodity prices are one of the drivers of the tremendous amount of wetland drainage activity occurring in south, central and western Minnesota. Public funds must be sufficiently attractive to agricultural producers to persuade them to restore wetlands rather than drain wetlands.

Thank you for your consideration and for the opportunity to submit comments.



November 12, 2012

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

Dear Mr. Weirens:

We provide these comments on behalf of the Minnesota Center for Environmental Advocacy, Audubon Minnesota, the Minnesota Conservation Federation, Minnesota Division of the Izaak Walton League, the Fish and Wildlife Legislative Alliance, and Minnesota Trout Unlimited. Our organizations have a long history of engagement with wetland conservation and protection and some of our members have been engaged in wetland issues long before the Wetland Conservation Act (WCA) was enacted.

We begin this comment with a first-hand understanding that the Governor's Executive Order (EO) was the outcome of a dispute over legislation proposed last year that would have weakened the WCA under the guise of "streamlining". At the time, our organizations expressed deep concern over the effects that proposed changes would have on achieving the WCA goal of "no net loss" and the casual manner in which statutory changes were being proposed, especially given history of making changes to this important law. We are also deeply interested in "supporting and strengthening implementation of the State's wetland policy" as indicated by the title of the Executive Order and support changes that would enable citizens, local governments, and state agencies to better implement the law and achieve the goal "no net loss".

### **Factual background information to consider with the Executive Order.**

- 1) Wetlands remain an important feature on Minnesota's landscape. Within each watershed of the state, the remaining wetlands continue to serve important functions including flood water runoff retention, groundwater recharge, water quality improvement, and providing essential habitat for diverse wildlife communities. These indisputable wetland services provide many benefits to society. The WCA is critical for ensuring these services are maintained in the future and if losses cannot be avoided or minimized that these functions and the resulting services are replaced.
- 2) There is no evidence that we are achieving "no net loss" of wetland resources in the state. In fact, there is compelling evidence that we are not achieving this goal. The Board of Water and Soil Resources (BWSR) wetland reports have acknowledged that "no net loss" is not being achieved and these reports indicate that "exemptions" and underreporting of violations are a primary cause.<sup>1</sup> The U.S. Fish and Wildlife Service also recently

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<sup>1</sup> Minnesota Wetland Report. See section on "wetland gains and losses" in the 1997/1998 report; and the executive summary of the 2001-2003 report. Board of Water and Soil Resources. Available at <http://www.bwsr.state.mn.us/wetlands/publications/index.html>

released the results of an investigation that makes it clear that wetland losses have occurred in some regions of Minnesota from 1985 through 2007 (Figure 1).<sup>2</sup>

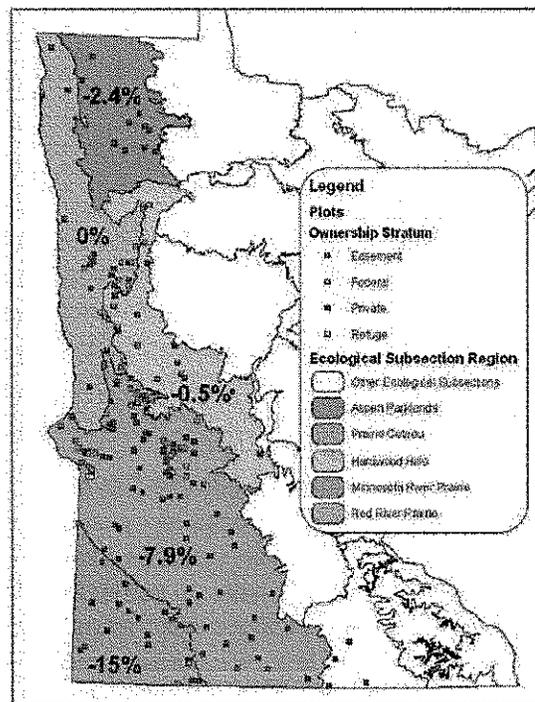


Figure 1. The Prairie Pothole Region (PPR) of western Minnesota showing locations of sample plots and percent change by Ecological Subsections (ES) evaluated 1985–2007.

We note that these losses in the agricultural regions of the state were documented despite the Swampbuster provisions of the federal farm bill enacted in 1985, the WCA enacted in 1991, and widespread restoration of many thousands of acres of wetlands with public funding of conservation programs such as the Conservation Reserve Program (CRP), the Wetland Reserve Program (WRP), the Minnesota River Conservation Reserve Enhancement Program (CREP), and the Reinvest in Minnesota (RIM) program. Discussion of changes to the WCA to strengthen the law and its implementation must acknowledge that we are not achieving the goal of “no net loss”.

- 3) The pressures to drain and fill wetlands in the agricultural regions of the state are likely at their highest point since the WCA was enacted. We are going through a period of time with high commodity prices,<sup>3</sup> ready availability of advanced drainage technologies, and

<sup>2</sup> Assessing Wetland Changes in the Prairie Pothole Region of Minnesota From 1980 to 2007. Fred Oslund, Rex Johnson, and Dan Hertel. 2010. Journal of Fish and Wildlife Management. Available at [http://www.fws.gov/midwest/hapet/documents/AssessingWetlandChangesinthePPRofMN1980\\_2007.pdf](http://www.fws.gov/midwest/hapet/documents/AssessingWetlandChangesinthePPRofMN1980_2007.pdf)

<sup>3</sup> Commodity prices move significantly higher over past 10 years. Andrea Johnson. Minnesota Farm Guide. June 2012. Available at [http://www.minnesotafarmguide.com/news/regional/commodity-prices-move-significantly-higher-over-past-years/article\\_480b2e10-b427-11e1-9cfc-001a4bcf887a.html](http://www.minnesotafarmguide.com/news/regional/commodity-prices-move-significantly-higher-over-past-years/article_480b2e10-b427-11e1-9cfc-001a4bcf887a.html); Corn and Soybeans Reach Records. Liam Plevin and Owen Fletcher. Wall Street Journal. July 18, 2012.

high land prices.<sup>4</sup> This situation has created economic conditions and incentives to further drain the landscape for crop production. In the past two years our members in Minnesota have observed the accelerated installation of new tile, construction of new tile manufacturing facilities, extensive replacement of old tile, and such high demand for the certified wetland determinations needed to drain lands that the Natural Resources Conservation Service (NRCS) has received an unprecedented 34,713 requests from 2009 to 2011 in four Upper Midwest states including Minnesota.<sup>5</sup> Discussion of changes to the WCA to strengthen the law and its implementation must acknowledge that pressures to drain the few remaining wetlands within the agricultural regions of the state have increased, not diminished.

- 4) Proposed mining operations in Northeast Minnesota may lead to many thousands of additional acres of wetland impacts over the next 25-50 years. For example, the proposed PolyMet mine is expected to result in unavoidable impacts to 1,522 acres of wetlands.<sup>6</sup> Among the new mining projects being considered in what is known as the "Duluth complex" that stretches across much of Northeast Minnesota, PolyMet is not one of the larger project. In addition to these new mining projects under consideration, many existing mining operations are currently expanding and have an increased need to replace impacted wetlands.
- 5) State and local funding for staff necessary to interpret and implement wetland regulations locally have been declining during the past decade, hindering responsiveness of local governmental units to citizens.

These facts make it clear that we are at a critical period of time for considering the future implementation of the WCA and achieving "no net loss" in the long term.

### **Specific feedback on the primary "Discussion Issues"**

This section of our comments track the September 7, 2012 "Stakeholder Discussion Issues" document that were generally used during presentations at the various stakeholder meetings.

#### **Issue #1: De minimis Exemption (EO 2a).**

The De minimis exemption is one of nine categories of exemptions in the WCA which create a series of large and small loopholes in the law. These exemptions were expanded in 1996 legislation. These exemptions do not require any reporting, are impossible to track, and undermine any assessment of whether "no net loss" is being achieved.

The most straightforward way to simplify the WCA regarding the De minimis exemption is to eliminate this exemption from the law. If there is a demonstrated need for this exemption to continue, our preferred option would be that basic reporting be required any time this exemption

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<sup>4</sup> High cropland prices in Midwest sow fortune and worry. J. Bjorhus and M. Hughlett. The Republic. June, 2012. Available at <http://www.therepublic.com/view/story/FARM-LAND-BIZPLUS-8343219/FARM-LAND-BIZPLUS-8343219>

<sup>5</sup> Easing wetland designation backlog. M. Pates. AGWEEK. May, 2012. Available at: <http://www.agweek.com/event/article/id/19785/>

<sup>6</sup> PolyMet draft Environmental Impact Statement. Table 4.2-4. Page 4.2-15.

is claimed. Without a reporting requirement for this exemption and the other exemptions, there is no way to account for small wetland losses and the sequencing process which BWSR has described as one of the “most important successes”<sup>7</sup> of the law does not apply. BWSR wetland reports have clearly documented that 30-40% of all proposed projects have avoided wetland impacts because project proponents consulted with their local governments. If consultation with local government on activities that are not exempt from the law has resulted in avoidance of 30-40% of wetland impacts, we believe that we should empower local governments to work with landowners proposing even smaller impacts to help them avoid impacts to wetlands whenever possible. Requiring consultation with local governments would also provide landowners with additional certainty as they make plans for projects.

In addition to supporting recording of exemptions, we could support efforts to simplify the De minimis exemption but only if they are needed and if they do not weaken the law (i.e. expand). We note that BWSR has discussed “simplification” in every one of their wetland reports and that simplification of the law was a general goal in the recent year-long rulemaking process. In our experience, the reason that the exemption section of the law, including De minimis, is never simplified is because special interests have carved out and want to maintain “their” exemption.

While we understand that there is much political rhetoric about how complicated the De minimis exemption is, we have seen no evidence that it is causing implementation problems. As a SWCD staff member stated at the Bemidji stakeholder meeting, “What is so complicated? We are in a greater than 80% area. You get 10,000 square feet unless you are in the shoreland zone or are dealing with type 3, 4, 5, or 8 wetlands”.

If simplification is needed, BWSR should explore several options and discuss them with stakeholders in the future. The current De minimis exemption amount depends on four factors:

1. Area of the state,
2. Wetland type,
3. Whether you are in a shoreland zone,
4. Whether you are in the building setback zone or impacting a white cedar or tamarack wetland.

Given these factors, the options for simplification should include:

- 1) For ultimate simplification, certainty, and wetland protection, eliminate this exemption or keep it at some minimal level such as 400 square feet.
- 2) Simplify and clarify the “areas of the state” factor. As was discussed at the regional and core meetings, the best approach may be to replace the area requirement with the bank service area boundaries. This watershed based approach would make more sense than the County-based approach of today and is discussed further in Issue 2 below.
- 3) Eliminate wetland type as a factor. While this would simplify this exemption, this could also result in a great expansion or reduction in the De minimis exemption. There is currently a wide range of De minimis amounts based on wetland type (Table 1). We believe the goal of De minimis exemption should be to put strong disincentives in place to impact rare types of wetlands and those that provide critical functions for habitat and

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<sup>7</sup> 2001-2003 Minnesota Wetland Report. WCA Activity. Page 2. Minnesota Board of Water and Soil Resources.

water quality but to allow small impacts to some wetlands. There should be no De minimis allowed for rare wetlands.

Table 1. De minimis table based on August 2007 data from BWSR.

Area (s)	Wetland Types	Shoreland Zone	Conditions	De minimis amount
>80% including Isanti County	1, 2, 6, or 7	Outside	Not White Cedar & Tamarack	10,000 sq. ft.
		Inside	Not White Cedar & Tamarack Inside Bldg. Setback Zone	400 sq. ft. (LGU may increase to 1,000 if no surficial connection) 20 sq. ft.
	3, 4, 5, 8 (and White Cedar & Tamarack)	Outside	Outside Bldg. Setback Zone	100 sq. ft.
		Inside	Inside Bldg. Setback Zone	20 sq. ft.
50 -80% (Outside of the 11-County Metropolitan Area)	1, 2, 6, or 7	Outside	Not White Cedar & Tamarack	5,000 sq. ft.
		Inside	Not White Cedar & Tamarack Outside Bldg. Setback Zone Inside Bldg. Setback Zone	400 sq. ft. 20 sq. ft.
	3, 4, 5, 8 (and White Cedar & Tamarack)	Outside	Outside Bldg. Setback Zone	100 sq. ft.
		Inside	Inside Bldg. Setback Zone	20 sq. ft.
< 50% (Outside of the 11-County Metropolitan Area)	1, 2, or 6	Outside		2000 sq. ft.
		Inside	Outside Bldg. Setback Zone	400 sq. ft.
	7		Outside Bldg. Setback Zone	100 sq. ft.
	3, 4, 5, 8 (and White Cedar & Tamarack)	Outside	Outside Bldg. Setback Zone	100 sq. ft.
Inside		Inside Bldg. Setback Zone	20 sq. ft.	

Since we have no records for historic use of the De minimis exemption it is impossible to assess the use or demand for the exemption based on wetland type. As a more comprehensive option, we propose to change the De minimis exemption as outlined in Table 2. This would maintain some consistency with the established De minimis amounts and wetland protections, increase reporting and engagement with LGU's, simplify areas, remove type, and allow some additional De minimis in the >80% areas.

Table 2. Proposed simplification to the De minimis exemption.\*

Bank Service Area	Shoreland Zone-unrecorded	Shoreland Zone-recorded	De minimis amount-unrecorded	De minimis amount-recorded
1, 2, 5, 6	20 sq. ft	up to 200 sq. ft. with stormwater controls	5,000	up to 10,000
3, 4, 7, 8, 9, 10	20 sq. ft	up to 200 sq. ft. with stormwater controls	400	up to 2,000
Metro Region	20 sq. ft	up to 200 sq. ft. with stormwater controls	200	up to 1,000

\*Assumes no De minimis for rare wetlands such a rich fens, cedar and tamarack swamps, and others located near state designated areas of biodiversity significance.

In addition to these suggested changes we believe that measures need to be continued that prohibit the repeated use of this exemption by multiple landowners on the same wetland.

**Issue #2: Alignment of Pre-Settlement Zones on Watershed Boundaries (EO 2b).**

It would be good to base wetland management and protection on watershed boundaries rather than the county boundaries. This change would also allow for simplification of the current pre-settlement area system so that the state is divided into three areas as indicated in our suggested Table 2. Creating a clear metropolitan-based service area will also resolve issues related to the St. Croix watershed by leaving the upper portions of the basin in the >80% region. This approach is also consistent with the one watershed one plan approach to land and water management planning that is being advocated by agencies and the legislature.

**Issue #3: Consistent Review, Approval and Implementation (EO 2c).**

The stakeholder discussion issue document and the discussion of this issue at various meetings suggest that consistency is an issue at multiple jurisdictional levels as follows:

- Inconsistencies among local governments. If there are real inconsistencies among local governments in their implementation and decision making related to the WCA we offer two solutions: 1) increase state oversight where these inconsistencies have been identified or 2) eliminate local government control and put WCA implementation in the hands of a state agency. This latter option would not only increase the consistency of decisions but it would also remove the financial burden imposed on local governments by the WCA.

We also believe that more frequent use of Technical Evaluation Panels and Local Comprehensive Wetland Protection and Replacement Plans would increase consistency among local governments and state and federal agencies.

- Inconsistencies among state agencies. Under the WCA, MN DNR has jurisdiction over wetlands that are included in the public water inventory and BWSR and local governments have jurisdiction over all other non-exempt wetlands. In addition, DNR has

jurisdiction for wetland replacement related to wetland impacts under the permit to mine process whereas BWSR has authority over all other wetland replacement activities.

Regarding the first inconsistency, if there is a demonstrated need to reduce it, either DNR needs to be given authority over all wetland regulatory decisions or BWSR needs to be given authority to regulate public water wetlands. Neither of these options seems to be practical solutions given our regulatory framework and may, in fact, make the regulatory process more confusing. The public water works permit system is well established and known. An applicant needs to submit the exact same application whether or not they are working in public water and similar exemptions and conditions apply.

Regarding the inconsistencies between replacing wetland impacts under a permit to mine compared to replacing all other impacts, the comments at some of the regional meetings and the final core meeting supported the idea that the replacement requirements under a permit to mine were lower than those for other activities. DNR-regulated wetland replacement for mining impacts is not satisfying any of the parties: counties where mitigations occur, conservation interests, or mining interests. We believe more consistent higher quality replacement could be better achieved if the BWSR assumed regulation of replacement requirements. While this might be viewed as adding another agency to mining regulation, it also should be noted that from a statewide perspective, using one agency with a track record of recent success vs. one with failure in this regard, is preferable. We recommend in the interest of simplification and consistency that oversight of all wetland mitigation be placed under the authority of the BWSR.

- Inconsistencies between state drainage law (M.S. 103E) and the WCA. State drainage laws, written more than 50 years ago, continue to be very effective at facilitating wetland drainage. Not only does drainage law promote drainage, it can also make it difficult for landowners to restore wetlands along drainage systems and often provides disincentives to wetland restoration in benefitted areas since drainage payments are not reduced after wetland restoration unless there is a costly redetermination of benefits. Similarly, our members are aware of numerous legal drainage systems in Minnesota that have undergone "improvement through systematic repair" which has drained numerous wetlands and they are also aware of many miles of drainage ditch that have not had repairs for up to 100 years which have reverted to a naturalized condition with many adjacent wetlands. All these wetlands are at risk of being lost through "repair" of these systems given current implementation of 103E.015 and disincentives for redetermination of benefits and abandonment of drainage systems. A statewide review of the potential wetland impacts for repair of old drainage systems is needed. Further, the inconsistencies between the WCA goal of "no net loss" should be examined to determine their contribution to the balance of loss and restoration of wetlands under this Executive Order.
- Inconsistencies between state and federal laws. The WCA is now 21 years old. The 404 program is 40 years old. The Swampbuster program is more than 25 years old but should not be realistically compared to these other laws since it is a disincentive program not an effective regulatory program for wetland protection. In addition, the future existence of

any conservation compliance incentives such as Swampbuster faces great uncertainty in any future farms bills.

The agencies responsible for implementing and enforcing WCA and 404 have worked together for a long time. In 2007, the state and federal agencies adopted the use of a single application form for any project that affects a lake, river, stream, or wetland.<sup>8</sup> The BWSR and Army Corps of Engineers also have an Interagency Memorandum of Understanding to guide wetland mitigation.<sup>9</sup>

If there is a real need to remove the inconsistencies between these laws there seem to be two basic options:

- 1) Have the state assume 404 authority. Recent legislation allows the BWSR to investigate this option. We look forward to the results of their investigation. We are aware that this has been done in several other states and from talking with our contact in those states we know that at least one state has subsequently relinquished this authority. We also are concerned that this would be a costly self-imposed unfunded mandate to implement a federal program.
- 2) As discussed at the last core meeting, the state and federal agencies engaged in wetland regulation have established an interagency team to maintain communications and identify ways to better implement the law. If this team has proposals to reduce inconsistencies among state and federal laws, their ideas should be the basis for future discussion.

#### **Issue #4: Adequacy of Wetland Bank Program Funding (EO 2d).**

The fundamental principle from our perspective is that the state should not subsidize the wetland banking program except for the public road banking program. Funding for all private activities related to the establishment, maintenance, and monitoring of banking credits need to come from those that impact wetlands.

If the BWSR is charged to manage and monitor private banks for private impacts from agriculture, mining, or other industries, it is critical that sufficient fees are charged to those participating to fully fund state costs.

#### **Issue #5: Costs and Benefits of Wetland Mitigation Targeted to Specific Watershed (EO 2e).**

This issue primarily applies to the large wetland impacts expected from proposed mines in Northeast Minnesota. The stakeholder discussion document states, "a BWSR-DNR-MPCA-Corps of Engineers staff team have begun working to addressing wetland regulations in Northeast Minnesota, with a focus on mining and other large projects. It is proposed that the work of this team will provide recommendations to address issue #5." We look forward to this group's recommendations.

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<sup>8</sup> Minnesota Local/State/Federal Application Forms for Water/Wetland Projects. Available at <http://www.bwsr.state.mn.us/wetlands/wca/index.html>

<sup>9</sup> Interagency Memorandum of Understanding between US Army Corps of Engineers and Mn Board of Water and Soil Resources. 2007. Available at <http://www.bwsr.state.mn.us/wetlands/BWSR-COEmemo.pdf>

At this time we believe that some allowances could be made for variance from current requirements for wetland replacement within a bank service area; however, such variances would need to come with clear conditions. For example, to protect the integrity of the water quality and reduce impacts to the hydrology of the impacted watershed, a project proponent would have to implement activities on or near-site to meet water quality and runoff performance standards. If these types of conditions could be met, there may be an opportunity for a variance for replacing the habitat functions in another watershed at a minimum of a 2:1 ratio. It is important to keep in mind that the vast majority of wetland being impacted by mines are of very high quality. The current system for replacing impacts under a permit to mine is woefully inadequate and does not even come close to replacing lost values. There should be no expectation that out of area replacement would be allowed without a minimum of a 2:1 replacement ratio.

#### **Issue #6: Strategic Use of Funding Sources to Achieve Continued Restoration of Drained Wetlands (EO 3)**

The 2009 Wetland Restoration Strategy<sup>10</sup> presents a framework for strategic wetland restoration in the state. The Prairie Pothole Region Integrated Landscape Conservation Strategy<sup>11</sup> (PPRILCS) is an ongoing effort being led by the US Fish and Wildlife Service that will build on this framework given new landscape data and modeling technologies. We believe that strategic wetland restoration can be implemented to achieve multipurpose benefits such as flood damage reduction, water quality improvement, and wildlife habitat restoration. We encourage the BWSR to identify this issue and seek solutions in the future.

#### **Other Issues Identified in the Executive Order Stakeholder Process**

##### **NPDES permit issues.**

A critical function of wetlands is to improve and protect water quality. The diminished number of wetlands in many watersheds is a key reason why, particularly in heavily-drained agricultural watersheds, we are facing serious water quality impairments. The exemption of drainage tile outlets from point source Clean Water Act regulation and WCA should be reconsidered in light of the need to clean up our waters.

##### **Funding for Local Governmental Units Implementing State Wetland Policies.**

We encourage the administration to recommend, and the legislature to fund a significant (several million dollars) increase in "pass-through" funds for local governments to effectively and efficiently implement the WCA. Significant cuts to this assistance over the past decade have impeded the ability of LGUs to address the inquiries and needs of their local constituency in an efficient and timely manner. This funding should be put in place during this next biennial budget and does not need to wait for a policy review nor revisions. Significant governmental efficiencies have been lost and permit decisions delayed due to staff cuts at a local level, which will not be solved with policy changes.

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<sup>10</sup> Wetland Restoration Strategy: A Framework for Prioritizing Efforts in Minnesota. 2009. Available at: [http://www.bwsr.state.mn.us/wetlands/Restoration\\_Strategy.pdf](http://www.bwsr.state.mn.us/wetlands/Restoration_Strategy.pdf)

<sup>11</sup> Information available at: <http://www.fws.gov/midwest/hapet/PPRILCS.html>

Thank you for the opportunity to provide input into the Governor's Executive Order. Our members who attended the meetings appreciated the constructive meeting format used during this stakeholder process. We believe that there are opportunities to simplify the WCA and make it more effective in achieving "no net loss". We look forward to seeing the final report to the Governor and working with BWSR on future constructive changes to the WCA.

Sincerely,

**Scott Strand**  
Executive Director  
Minnesota Center for Environmental Advocacy

**Don Arnosti**  
Policy Director  
Audubon Minnesota

**Gary Botzek**  
Executive Director  
Minnesota Conservation Federation

**Larry Dolphin**  
President  
Minnesota Division - Izaak Walton League

**Lance Ness**  
President  
Fish and Wildlife Legislative Alliance

**John P. Lenczewski**  
Executive Director  
Minnesota Trout Unlimited

November 26, 2012

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

Dear Mr. Weirens:

We provide these comments on behalf of the Minnesota Center for Environmental Advocacy as a follow-up to comments previous submitted by our organization along with Audubon Minnesota, the Minnesota Conservation Federation, Minnesota Division of the Izaak Walton League, the Fish and Wildlife Legislative Alliance, and Minnesota Trout Unlimited. This earlier comment letter provides a detailed perspective on the issues based on our participation in the stakeholder process. We have reviewed the draft report and provide the following additional comments.

Issue #1: De minimis Exemption

- Existing local comprehensive wetland planning provisions in the WCA already provide a mechanism for local governments to deviate from the WCA. We are unaware of any need to modify existing statute further.
- We question the magnitude of the need for further alignment of local government wetland planning efforts with the USACE. Outside of comments from one or two counties, our members heard no discussion of this issue at the meetings and believe that the current wetland planning provisions are working at the state level.
- As discussed in our original comments, we support additional funding for local governments to effectively implement the WCA.

Issue #2: Alignment of Pre-settlement Zones on Watershed Boundaries.

- Our previous letter provided a detailed comment on this issue. We are generally supportive of aligning these zones based on watershed boundaries.

Issue #3: Consistent Review, Approval, and Implementation.

- We provided a detailed comment on this issue in our previous letter which is consistent with many of the recommendations on this issue.
- We generally support making changes which will coordinate implementation of the WCA and 404 but also recognize that they are different laws with different specific goals and objectives. We also strongly believe that there must be a demonstrable need for any changes. Since we attended the meetings, we are well aware of the rhetoric which surrounds these issue and the statements that there is "inconsistency". We were not presented with any quantitative data on these subjects. If changes are needed, then the amount of inconsistency out there needs to be quantified to justify the resources needed to change the laws. For example, data needs to be presented that compares WCA permit decisions to 404 permit decisions in order to quantify the extent of the inconsistencies. Similarly, comparisons could be made with the public water works permit program and the MPCA CWA 401 program. We should not rely on simple rhetoric or a few voices at public meetings as a basis for making substantial changes to the law.

#### Issue #4: Adequacy of Wetland Bank Program Funding

- Our previous letter provided a detailed comment on this issue. We are generally supportive of the recommendations in this section.

#### Issue #5: Costs and Benefits of Wetland Mitigation Targeted to Specific Watersheds

- Our previous letter provided a detailed comment on this issue. We support the ongoing interagency work that we expect to provide more detailed recommendations on this issue.

#### Issue #6: Strategic Use of Funding Sources to Achieve Continued Restoration of Drained Wetlands

- Our previous letter provided a detailed comment on this issue. We support the recommendations in this section.

#### Other Issues – No Net Loss

- A primary goal of the WCA is to achieve no net loss; however, the stakeholder meetings generally did not discuss this goal or our current understanding of whether we are achieving it. As these recommendations move forward, some basic reporting of information needs to be prepared and presented to the public and policy makers so that they are aware of the current understanding of losses, gains, and trends regarding the wetlands of Minnesota. Previously, the BWSR has prepared reports which include this information.
- Our previous letter provided detailed comments on the current facts as they relate to achieving “no net loss”. As presented in that letter, there is no evidence that we are meeting this goal and this should be a primary concern moving forward with ways to improve WCA implementation.
- We are pleased to see the recommendation “improve wetland accounting within WCA”. The State is not able to track wetland losses because no reporting is required. Requiring reporting of exemptions would provide the data needed to make better decisions in the future regarding the ability of the WCA to achieve “no net loss”.

#### Other Issues – Agricultural Drainage Recommendations

- As described in our previous comment letter, there is a tremendous amount of evidence that we are in period of increased agricultural drainage. Reports like this one given since our original comments were sent in provide additional evidence of this intensification and expansion of drainage and give us even more certainty that drainage of wetlands in agricultural areas of the state should be of even greater concern  
*Backlog of 1026 Requests — The Natural Resources Conservation Service is swamped, responding to the 1026 requests. Producers need to fill out the 1026 form if they want to undertake a drainage project, like tiling. Minnesota State Conservationist Don Baloun says there is a major backlog. "Over 12,000," said Baloun, "We are doing the best we can, we have some targeted efforts going on." Baloun says some farmers have been waiting for six to seven months. "What I'm encouraging farmers to do, if they have a historic determination, go ahead; if they know where their wetlands are, don't wait for us and we will catch up to you." If farmers are uncertain, Baloun wants them to come*

*into their local NRCS office for a quick review. "We know tilers are busy and once you take a pass, they might not come back for months."<sup>1</sup>*

- The agricultural drainage issue is clearly a substantial issue of concern and deserves more than to be listed as an "other issue" in the context of future recommendations for the WCA.

Thank you for the opportunity to provide comments on these issues again.

Sincerely,

**Scott Strand**  
Executive Director  
Minnesota Center for Environmental Advocacy

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<sup>1</sup> Red River Farm Network News, November 19, 2012. <http://www.rrfn.com/news.php#7783>





Mr. David Weirens  
Minnesota Board of Water and Soil Resources  
520 Lafayette Avenue N.  
St. Paul, MN 55155

Dear Mr. Weirens:

Ducks Unlimited appreciates the opportunity to comment on the draft report on Governor Dayton's Executive Order 12 – 04 "Supporting and Strengthening Implementation of the State's Wetland Policy". We appreciate the immense amount of time, effort and coordination BWSR invested in this process, especially reaching out to stakeholders to secure their input and opinion. On behalf of our 38,000 members in Minnesota, we offer the following comments and recommendations, as well as our willingness to continue to work with you and other agencies and stakeholders to improve the state's wetland policy.

Ducks Unlimited strongly supports the overall No Net Loss of Wetlands (NNL) policy for Minnesota. DU and many of our partners have worked tirelessly to increase wetland protection, restoration, enhancement and management so that the needs of waterfowl and other wetland-dependent wildlife and those of our citizens are sustained and met. However, we do not have a good process to evaluate current status NNL, which needs to be remedied as soon as possible.

Additionally, and perhaps more importantly, wetland goals and objectives for several national, regional and state-based conservation plans calls for a *net increase in prairie wetlands* to meet the needs of waterfowl, other wildlife, and water quantity and quality concerns. From DU's standpoint, the North American Waterfowl Management Plan, Prairie Pothole All Bird Joint Venture Plan, Upper Mississippi River/Great Lakes All Bird Joint Venture Plan, Minnesota's Prairie Conservation Plan and Long Range Duck Plan, and other state plans call for a greater investment in adding wetlands to the landscape, especially in the prairie pothole region where wetland losses exceed 90 percent. In our view, Minnesota should strive to both protect and restore healthy wetland landscapes that sustain environmental, economic and social needs of our citizens. From a duck perspective, it is imperative that we increase both the quantity and quality of our prairie wetlands in Minnesota as we strive to increase and sustain **duck abundance here**. In this regard, DU encourages the consideration for developing of a "Net Gain" policy for wetlands in prairie Minnesota.

The environmental impact of wetlands to our society is essential and critical. Wetland contributions to waterfowl, fish and other wildlife is dramatic and significant, supporting robust populations that are enjoyed by more than 1.28 million Minnesota hunters and anglers. Wetlands provide necessary ecological goods and services such as improved water quality, flood attenuation, sediment reduction, groundwater recharge and clean drinking water, often cheaper and more efficient than human-based services.

Economically, the benefit of the 1.28 million hunter and anglers (much of which is derived from healthy wetland systems) is \$3.4 billion annually, or an average of \$ 9.5 million spent per day. Jobs supported from hunters and anglers are estimated at 55,000 in Minnesota, more than the combined employment of 3M, Hormel Foods and the University of Minnesota combined. Annual spending by Minnesota sportsmen is more than the cash receipts from corn and dairy products - the state's #1 and #4 agricultural commodities (\$3.5 billion vs. \$3.1 billion)!

Socially, wetlands ensure our landscapes are healthy, productive and contribute to economic and environmental benefits to all citizens. It is essential that Minnesota's wetland policy maintains and restores the integrity of Minnesota's wetlands for these economic, environmental and social benefits for this and future generations.

In regards to the issues areas identified in the Draft Report, we offer the following comments:

1. De minimus exemptions – it is important that de minimus exemptions be tracked and reported so that we can evaluate NNL. We also support simplifying the process, and believe the simplification proposed by the Minnesota Center for Environmental Advocacy (their Table 2) provides a good starting point for additional discussions.
2. Alignment of Pre-Settlement Zones – We support the draft plan's option ii, with an attempt to maximize efficiency of watershed and political boundaries.
3. Consistent Review, Approval and Implementation – This is probably the biggest issue of need, and many of the recommendations will require additional consideration and evaluation. State assumption of the 404 program should be strongly considered.
4. Adequacy of Wetland Bank Program – We support the draft report's recommendation i, and strongly encourage BWSR to ensure that long-term costs associated with the program come from non-public sources involved in the bank program.
5. Costs/Benefits of Wetland Mitigation – DU strongly supports the "avoid, minimize and mitigate" sequencing established by federal agencies. We also support the pursuit of an "in lieu" fee program to assist the difficult issues of mitigating in the >80 percent region, as stated in recommendation 2 in this section.
6. Strategic Use of Funding Resources to Achieve Continued Restoration of Drained Wetlands – DU supports all draft plan recommendations in this category. As stated in our introduction, DU strongly supports the formalization of a "Net Gain" policy for wetlands in Minnesota's prairie region.
7. Other Issues – No Net Loss – we agree in concept with recommendations i and ii, although again strongly support the "avoid, minimize and mitigate" concept throughout the state.

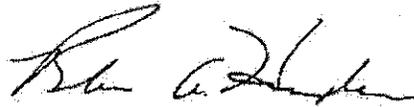
We also encourage further discussion and development of recommendations regarding agricultural drainage, including review and revision of state drainage law, specifically related to ensuring adequate wetlands on the landscape to meet the diverse needs related to habitat, water quality, quantity and flooding issues.

Again, thank you for the opportunity to comment. DU stands ready to work with the BWSR and other agencies and partners to ensure a healthy and productive landscape that meets the diverse need of Minnesota citizens, and that sustains the environmental, economic and social values of our great state.

Sincerely,



David Flink  
Minnesota DU State Chairman  
[dflink@mnducksvolunteer.org](mailto:dflink@mnducksvolunteer.org)  
320-237-7007



Rebecca A. Humphries  
Director of Operations – Great Lakes/Atlantic Region  
[bhumphries@ducks.org](mailto:bhumphries@ducks.org)  
734-623-2000

Cc: L. Ness, MN DU Policy Chairman  
G. Tori, R. Terry & J. Schneider – DU conservation staff





**Minnesota Farm Bureau® Federation**  
Farmers • Families • Food

November 26, 2012

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

Dear Mr. Weirens,

RE: Supporting and Strengthening Implementation of the State's Wetland Policy Draft Report

Thank you for the opportunity to comment on the November 12 Draft Report. Minnesota Farm Bureau Federation (MFBF) is a general agricultural organization consisting of 78 county and regional units representing nearly 30,000 family members.

We appreciate the effort the Board of Water and Soil Resources (BWSR) put forth in the preparation of this report and the opportunity for MFBF and other agricultural organizations to meet with BWSR and other agency staff as this process unfolded.

We offer the following comments to specific recommendations of the March 12 Draft Report.

Issue #2: Alignment of Pre-settlement Zones on Watershed Boundaries.

We support efforts to simplify the geography of the Wetlands Conservation Act (WCA) by eliminating or adjusting current pre-settlement wetland zones. The current reliance on pre-settlement zones can, at times, be a deterrent to effective and economic wetland replacement and banking activities. Any proposed adjustments should account for a balance between a watershed approach and a realization that wetland governance is based on local government boundary lines. A more user-friendly system should serve all parties more efficiently.

Issue #3: Consistent Review, Approval and Implementation.

One of the options discussed is implementation of a new US Army Corp of Engineers (Corp) programmatic general permit and the WCA Federal Approvals Exemption. MFBF supports efforts to streamline the permitting process that results in greater transparency and consistency.

Any new Corp permit must not expand the current jurisdiction of the Corp. The construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance of drainage ditches are excluded from Clean Water Act jurisdiction and not subject to Corp permit requirements. The Corp's regulatory authority extends only to waters of the U. S. In 1993, the Corp and the Environmental Protection Agency amended their Clean Water Act regulations to state that waters of the U. S. do not include prior converted cropland.

WCA contains certain exemptions for agricultural activities. In addition, agricultural activities on agricultural land subject to the swampbuster provisions of the federal farm program are exempt from WCA. We fully support continuation of the agricultural exemptions in WCA.

We support an improved communication effort to explain how WCA intersects with agricultural land for both farmers and ranchers and the general public. There also needs to be a concentrated effort to ensure all levels of government are interpreting, implementing and enforcing WCA in a consistent and uniform manner.

The efforts to establish an Agricultural Wetland Bank need to continue. A cost effective, user friendly program will benefit farmers and the environment. Long-term management and maintenance costs should be accounted for in the implementation of this program.

Other Issues – No Net Loss.

On the surface no net loss of wetlands in Minnesota seems to be an understandable goal. In reality, it is not. We need to know what we are working towards as a state goal. Is there a certain point in time that we are looking at as the base line number for amount of wetlands in Minnesota? Is that the right date? How are restored wetlands counted in relationship to the state "no net loss" goal? Clarifying the state policy goal of "no net loss" needs to be a part of the discussion as this process moves forward.

Other Issues – Agriculture Drainage Recommendations.

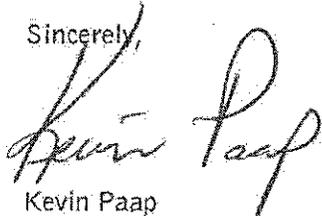
Again, we support continuation of the agricultural exemptions contained in WCA.

General Comment.

What criteria were used by BWSR to highlight only two of the eleven other issues identified in the Draft Report?

Thank you for consideration of our comments.

Sincerely,



Kevin Paap  
President

KP/kfo

**Weirens, David (BWSR)**

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**From:** Elston.Sue@epamail.epa.gov  
**Sent:** Monday, November 26, 2012 4:28 PM  
**To:** Weirens, David (BWSR)  
**Cc:** Tim Smith; Norris, Doug J (DNR)  
**Subject:** Comments on Supporting and Strengthening the Implementation of MN wetland Policy Report

Dave,

We have reviewed the report referenced above. Our review of the report focused on issues where the Clean Water Act Section 404 program would have some direct connection with the recommendations made in the report. The report focused on identifying potential changes to the state's administration of WCA including issues such as the de minimus exemption and issues associated with wetland mitigation in Minnesota.

The de minimus exemption is a state rule and its implementation is a state matter, unless the discharges to wetlands fall under the jurisdiction of Section 404 of the Clean Water Act (Section 404) at which point there would be federal involvement as well. Our comments are limited to those areas where there is Section 404 jurisdiction. The report includes a number of recommendations relating to mitigation bank service areas, siting of mitigation in relation to the project impacts and discusses the possibility of implementing a state wide in lieu fee program. The report also suggests looking into state assumption of the Section 404 program and looking into working with the Corps of Engineers to reduce regulatory program overlap.

With regard to evaluating Assumption of the Section 404 program, EPA is willing to work with the BSWR to provide preliminary information regarding state statute changes that may need to be amended to meet the requirements for assumption, and answer other questions regarding how an assumed program is implemented. EPA would support streamlining efforts where there is program overlap between the state and federal programs, however, and actions take must ensure that all projects reviewed are assessed for compliance with the Section 404(b)(1) Guidelines.

A number of the issues addressed in the report touched on wetland mitigation. There was discussion regarding the need to change mitigation bank service areas to fit county boundaries and look into eliminating the 50- 80% wetland loss zone going instead to two zones, one where 80% or more of presettlement wetlands remain and areas where less than 80% presettlement wetlands remain. The federal mitigation rule implemented in 2008, requires a watershed approach be used to site mitigation projects and define mitigation bank service areas. In order to be consistent with this part of the mitigation rule we recommend that the state base mitigation siting criteria on watersheds. We acknowledge that finding wetland restoration sites in northern Minnesota can be a challenge, however, the mitigation rule supports the use of a watershed approach in order to ensure that wetland functions and values are not exported out of the watershed, regardless of how much wetland loss has occurred historically. For this reason we would recommend that the state use a watershed approach for bank service areas and as the basis for siting project specific mitigation.

The possibly of the state establishing an in lieu fee program (ILF) was discussed in the report as well. In order to ensure that any projects developed under an ILF are also eligible for use as mitigation for projects under the jurisdiction of Section 404, an ILF program would have to meet the requirements for ILF programs established in the federal mitigation rule. Here again a watershed approach would be required. If the state does decide to pursue an in lieu fee program that could be used for Section 404 impacts, EPA would provide technical guidance and support through participation on the Interagency Review Team.

Thank you for the opportunity to provide comments on this report. We are committed to working with Minnesota to help them continue to implement their wetland protection program. If you have any questions regarding these comments please feel free to contact me at the number below.

Sue Elston  
Wetland Coordinator, Region 5

Sue Elston  
U.S. EPA (ww-16j)  
77 W. Jackson Blvd  
Chicago, Illinois 60604  
312-886-6115  
NEW FAX # 312-692-2582



CLIFFS NATURAL RESOURCES INC.  
Cliffs Shared Services  
227 West 1st Street, Suite 500, Duluth, MN 55802-5054  
P 218.279.6100 F 218.279.6102 cliffsnaturalresources.com

November 26, 2012

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

**RE: Executive Order 12-04 – Supporting and Strengthening Implementation of the State’s Wetland Policy, Draft Report for Comment, November 2012**

Dear Mr. Weirens:

Cliffs Natural Resources (Cliffs) operates the Hibbing Taconite, United Taconite, and Northshore mines in Northeastern Minnesota and has varying ownership interests in these operating iron ore mines and associated ore processing facilities. By their nature, these mines impact wetlands because of the wetlands that lie above the ore bodies that are mined. For this reason, Cliffs has a vested interest in the wetland policies within the state. In this regard, Cliffs offers the following comments on Board of Soil and Water Resources’ (BWSR) recommendations pursuant to Executive Order 12-04.

**Issue #2: Alignment of Pre-Settlement Zones on Watershed Boundaries**

- *Page 10, Recommendation i: Rectify bank service areas along county lines to a “nearest county boundary fit” and establish an 11-county metropolitan area -----*  
Cliffs is unfamiliar with all of the issues related to this recommendation, but it strongly recommends that further study be done before implementing this approach. For example, would this create a discrepancy between the bank service area boundaries administered by the Corps and those administered under the Wetland Conservation Act (WCA)? If so, it would create significant confusion for permittees as well as involved agencies.

**Issue #3: Consistent Review, Approval and Implementation**

- *Page 12, last bullet on the page: DNR Permit to Mine authority is not implemented consistent with WCA wetland mitigation requirements.*  
Cliffs does not understand the basis for statement, because to its knowledge the Department of Natural Resources (DNR) consistently implements WCA in accordance with its authority and pursuant to the WCA rules.

- *Page 13, first bullet on the page: Local governments should be involved in mitigation site selection related to Permits to Mine.*

Cliffs disagrees with this statement because it would add further unnecessary complexity to already complex permitting process where a state permit must be obtained from either the DNR or BWSR, a federal permit must be obtained from the U.S. Army Corps of Engineers (Corps), and the Minnesota Pollution Control Agency (MPCA) issues a 401 Certification for the federal permit. In addition, where a mining company purchases land to develop wetland mitigation credits, local governments have no right to dictate to the company or to any other land owner, what it can or cannot do with its land as long as the company complies with zoning ordinances and other laws and regulations.

- *Page 14, Item v: BWSR should explore the possibility of establishing an in lieu fee wetland mitigation program consistent with MNN. Stat. §103G.2242, Subd.3. The possibility of amending this statute to expand BWSR's authority statewide to all project types, including mining should be considered.*

Cliffs agrees that this concept should be considered but only as an option to permittees. Details of the extent BWSR's authority would be expanded must be clearly understood. In addition, such a program must be optional and must be demonstrated to be financially competitive with credits available from private bankers and with credits produced from project specific mitigation. If the credits would not be financially competitive, they would merely increase the cost of wetland mitigation.

- *Page 14, Item vi: Clarify and strengthen the local government role in the approval of off-site wetland replacement projects completed to replace wetland impacts occurring under a Permit to Mine. BWSR should discuss the options outlined below with the DNR and integrate the resulting recommendations into the northeast mitigation options discussed under Issue #5.*

*a. Designate DNR as a WCA Local Government Unit for wetland impacts occurring under*

*a permit to mine. The procedures for off-site mitigation would then be consistent with all other projects under WCA, meaning local governments would approve wetland mitigation sites.*

*b. Modify DNR Permit to Mine processes to establish a formal notification and comment process for actions associated with wetland regulations; DNR would be required to respond to all timely comments. DNR decisions relating to wetland mitigation would be appealable to BWSR.*

*c. DNR retains Permit to Mine Authority, but approval and management of wetland mitigation would be delegated to BWSR.*

Cliffs disagrees with virtually all aspects of this recommendation for the following reasons:

- Because of the large scale of its operations, large acreages of wetlands are often impacted and avoidance and minimization of impacts are seldom possible because the ore must be mined where it occurs. Based on recent experience, there is high probability that many proposed large-scale wetland banks would not be approved by

local governments. As previously stated, the legal authority of local governments to dictate to a landowner what it can or cannot do on its land is questionable.

- If BWSR can deal with appeals to wetland permits it issues, there is no rational reason why the DNR should not continue to deal with appeals to permits it issues. The DNR is fully capable of handling such appeals, and to add BWSR to the appeal process for DNR issued permits would add further complexity to the permitting process.
- The DNR has handled approval and management of wetland mitigation quite well and there is no need to transfer this authority to BWSR. Once again, to do so would add further complexity to the wetland permitting and management process. When the DNR issues wetland permits pursuant to a permit to mine, the Corps virtually always issues a federal wetland permit for the same wetland impact and mitigation project. Both the Corps and the DNR monitor the performance of the mitigation project. Adding a third government agency to this process is simply unnecessary and it would place an additional burden on the permittee to deal with the third Agency.
- It is Cliffs' position that WCA provisions that authorize the DNR to issue wetland permits pursuant to a permit to mine is working very well. The DNR Division of Lands and Minerals has an in-depth understanding of the mining industry and the large scale of the operations and any impacts that occur. There is a long, established history of issuing permits to mine, implementing the Mineland Reclamation Rules as well as the WCA rules and wetland permits for mines. Cliffs opposes any effort to diminish the authority of the DNR to implement the WCA rules for mines.

#### **Issue #5: Costs and Benefits of Wetland Mitigation Targeted To Specific Watershed**

- *Page 21, Item ii.1.d: Pursue funding to establish an electronic database to develop a running inventory of potential wetland mitigation sites that have been considered (by project proponents and regulatory agencies) in the northeast, including relevant information on each. This inventory will help applicants in their search for wetland mitigation sites and agencies in determining the availability of potential mitigation sites with specific watersheds.*

The pros and cons of this recommendation must be considered carefully. While it would appear to eliminate the need to conduct multiple studies by multiple entities on the technical viability of a site, it may also result in driving land prices very high for viable sites, which would increase the cost of mitigation. Would an entity that is conducting technical surveys of a prospective mitigation site at its own cost be mandated to provide the survey results to a state agency for input to a database? Would it be financially advantageous for those coming behind to just rely on the work previously conducted by others, therefore creating an unfair financial advantage?

**Other Issues -- No Net Loss**

- *Page 25, Item i.a.: The statewide no net loss goal should recognize that there are areas, such as Northeast Minnesota, that can tolerate some loss of wetlands, while other areas of the state already face a significant deficit of wetland resources.*

Cliffs supports this position and recommends that serious consideration be given to providing for the implementation of this approach.

Cliffs appreciates the opportunity to provide comments on the BWSR recommendations pursuant to Executive Order 12-04. Should you have any questions regarding these comments, please call me at 218-279-6128 or at e-mail [david.skolasinski@cliffsnr.com](mailto:david.skolasinski@cliffsnr.com).

Sincerely,



David Z. Skolasinski  
District Manager-Environmental & Regulatory Planning/Analysis

**Weirens, David (BWSR)**

---

**From:** Terry Neff [tneff@co.aitkin.mn.us]  
**Sent:** Monday, November 26, 2012 4:40 PM  
**To:** Weirens, David (BWSR)  
**Subject:** comments to exec order 12-04

Dave,

Sorry this is late but I thought I would get you a few comments to the proposed recommendations.

Issue #1 – I don't see the de minimis exemption being that complicated from a LGU perspective but for landowners that is a different story (you could never teach WCA to a landowner). If there is a way to simplify the de minimis (5%) and not reduce the wetland protections all the better.

Increasing state funding to LGU's is a great idea and very much needed in Aitkin County. If you compare the time and money Aitkin County spends on WCA related activities we would far exceed most if not all counties in the state. If there is no increase in the funding the state should look at re-allocating existing funding and put the money where the activities and money are being spent.

Issue 2 – Aligning the presettlement zones on watershed boundaries will make WCA more difficult to administer. An impact in Aitkin County will have most LGU time spent in Aitkin but they may have to go to another LGU because of watershed (duplication of government).

Issue #3 – Good comments. Better coordination always a plus. Good luck getting the Corps on board, this would be great if they recognize local plans. Really good comments on the role of the LGU in permits to mine. Good idea to increase BWSR's role in wetland mitigation for mining projects. These impacts need to be replaced outside of greater than 80% counties and where replacement will have a greater environmental benefit.

Issue #4 – All good ideas.

Issue #5 – Really good ideas for water quality enhancement. Could easily be used for greater than 1:1 mitigation projects. BWSR should set up guidance to ensure projects are legitimate improvements. Looking forward to recommendations from the Interagency Group in spring of 2013.

As a side comment, when wetland impacts are created we forget about downstream impacts. This needs to be a considered in the big picture.

BWSR did good coordination with the different stakeholder groups and kept the LGU's informed through the entire process. I think the recommendations by BWSR will improve the WCA program and although it is not a perfect fix, there are innovative ideas in the proposal that will move the program forward.

Terry Neff  
Environmental Services Director  
209 2nd St NW Rm 100  
Aitkin, MN 56431  
218.927.7342

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**Weirens, David (BWSR)**

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**From:** Rick Hansen [rep.rick.hansen@house.mn]  
**Sent:** Monday, November 26, 2012 5:24 PM  
**To:** Weirens, David (BWSR)  
**Cc:** Jean Wagenius; Jaschke, John (BWSR)  
**Subject:** Comments on Draft Wetlands Report

Thank you for the opportunity to review this 46 page document, "Supporting & Strengthening Implementation of the State's Wetland Policy".

As noted in the report, the Minnesotans were not generally invited into the process used to prepare this report, instead it was compiled based on the input of stakeholders (special interests). The special interests are referred to only in general means throughout the report. As a public agency tasked with compiling this report, I am requesting that you list the individuals providing input to the preparation of this report and these meetings they attended. This would involve detailing the Appendices B and C. Registered lobbyists should also list the clients they are representing as they are "on the clock" providing their input. Anonymous special interest input does not benefit this process, the report or any recommendations provided. Sunshine is needed here on who attended, when, where and how.

Issue # 1: De minimus Exemption; how does the recommendation support and strengthen implementation by providing less restrictions and more public money?

Issue # 2: Alignment of pre-Settlement Zones on Watershed Boundaries: this recommendation mixes regulation and banking without indicating how it would support and strengthen implementation.

Issue #3: Consistent Review, Approval & Implementation: Under this heading there are major recommendations that appear to go beyond the tasks assigned to this report; specifically state and federal regulatory interactions and state and local funding commitments without documented needs or outcomes.

Issue #4: Adequacy of Wetland Bank Program Funding: wow...\$\$\$...what is the role of private versus public money. Should project proposers bear the cost or does the public?

Issue #5: Costs and Benefits of Wetland Mitigation Targeted to a Specific Watershed: see #4

Issue #6: Strategic Use of Funding Sources...: define how this will result in support and strengthen implementation.

Other Issues: the agricultural drainage recommendations here do not meet the mission of this report and are extraneously added to encourage public financing of drainage and facilitate it.

In general, this report also does not appear to have incorporated any scientific literature review, best available research or even case studies on implementation of the Minnesota wetland policy. You were tasked with using "existing information to the greatest extent practicable." It does not provide any specific, documented implementation examples for the policy or recommendations. Where is the science?

Rick



**Weirens, David (BWSR)**

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**From:** Smith, Tim J MVP [Tim.J.Smith@usace.army.mil]  
**Sent:** Tuesday, November 27, 2012 4:16 PM  
**To:** Weirens, David (BWSR)  
**Cc:** Lemm, Les P (BWSR); Lindquist, Mark (DNR); Cameron, Tamara E MVP  
**Subject:** RE: Draft Report: Executive Order 12-04 Supporting and Strengthening Implementation of the State's Wetland Policy (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Dave:

As you may be aware, we were unable to meet your deadline of November 26th for providing comments on the draft report to the Governor. With the holiday during the review period and the work going on here on other matters I was unable to put together and coordinate comments on the draft version. However, we feel that our initial comment letter addresses many of the points we would raise on the draft version of the report. We also believe that there will be further discussions between the Corps and BWSR regarding the recommendations and that an absence of comments from us on the draft should not be construed as concurrence in full with the recommendations contained therein. We remain supportive of the effort undertaken in response to the Governor's order and we look forward to working with BWSR and the other state agencies to insure the protection of Minnesota's wetland and aquatic resources while improving our respective permit processes. If there is opportunity to provide any additional input prior to finalizing the report please let me know and we will try to accommodate your schedule.

Thanks again for allowing us to participate in the process,

Tim

Classification: UNCLASSIFIED

Caveats: NONE

