



Executive Order 12-04

Supporting and strengthening implementation of the state's wetland policy

Northwest Minnesota Regional Meeting

Bemidji City Hall, Bemidji, MN

Meeting Notes

October 10, 2012

Dave Weirens began the meeting by asking everyone in attendance to introduce themselves and briefly state why they came to today's meeting. He then reviewed the origination of Executive Order 12-04, its contents, and the process that is being used to comply with it. Mark Lindquist began the discussion of the Order's issues by reviewing the input that has been received at prior meetings.

Issue #1: De minimis Exemption.

- The de minimis exemption is not difficult to administer. Applying wetland type and location is not a big deal, 5% provisions also easy, especially with aerial photos and GIS.
- The 5% provision can be confusing depending on the circumstances, especially when the landowner owns a lot of land and wants to impact a small wetlands, and vice versa (small property owner and a big wetland). It makes it hard for landowners to understand.
- Applying for exemptions is not required under WCA, but is under Section 404. Does the local government have the responsibility to tell the landowner about the Corps? When the landowner does seek approval, it can be 15 days for a WCA decision but 60 to 90 days or more for a decision from the Corps.
- Is wetland type needed in the de minimis exemption? Different wetlands perform different functions, not necessarily related to type, and different people value those functions differently. Shoreland is more important than type, which should be eliminated.
- De minimis is complex, but I don't want a one-size-fits-all approach, such as going to a 400 square foot de minimis statewide. People that haven't drained as much shouldn't be penalized by having the same de minimis as those in the south who have already drained everything.
- Promises were made in the past to increase the exemption to one-half or one acre.
- Change the 20 square foot de minimis back to 400 square foot. Reducing the de minimis to that extent took away a negotiating tool from the local government. Previously, a landowner would come in and the LGU could explain the process and that, if they can keep their project under 400 sq. ft. and 10 cubic yards of fill, they can do it without a permit. The reduction to 20 square feet took that negotiating tool away.

- Some interest groups believe the de minimis exemption contributes to a net wetland loss – all the little “bites” add up.
- Why can’t a landowner deduct the de minimis amount from the amount needed for replacement?
- We can use a more localized county ordinance to address wetland values and de minimis.

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

No comments were made on this issue.

Issue #3: Consistent Review, Approval and Implementation.

- We need consistency over time.
- A better understanding of wetland regulations by the public is needed, along with more common sense regulations.
- Ease of compliance and consistent policies are issues. The problems occur when the landowner has complied with WCA, but then the Corps says there is a violation. The Corps always waits for WCA to do their work and then they make a decision or ask for more. Needs to be better state/federal clarity/coordination.
- Policy consistency is not enough, consistency within agencies is needed.
- Processes need to be simplified with fewer steps.
- Consistency is needed regardless of who the project proposer is – mining, BWSR, etc.
- The review of mining mitigation projects is getting better but it’s still a rubber stamp.
- It is important to get the federal government involved early, make them stick to a decision, and do it in a timely manner. The Corps should have the same decision timelines as the state.
- More consistency is needed among local governments, which gets worse the further south one goes.
- How many local governments have their own wetland ordinance? Local ordinances can often help to reduce problems.
- A lot of the animosity and delays come from the federal level. The State cannot control the federal government; Congress is needed to make their process timelier. Minnesota needs to talk to our federal congressional delegation.
- The Corps requires different paperwork and documentation than is submitted under WCA; there is a lack of clarity as to what the Corps wants for information.
- There is inconsistency between shoreland rules and WCA; WCA only allows 20 square feet above the ordinary high water level for a single project, but a much larger (400 sq. ft.?) sand blanket can be installed below this level each year.
- Is the issue with consistency or interpretation or a poorly written rule?
- Receiving many calls to clean out old ditches in Cass County, even when they’ve never been cleaned in the past. Interpretations of the drainage and agriculture exemptions are difficult (the 25-year rule is tough to determine, FSA photos can be hard to get, etc.).
- Better guidance on drainage exemptions would be helpful; repairs versus improvements on both public and private ditch systems.

- Consistency between and among local governments, consistency between WCA and 404. BWSR can assume the 404 program, but why would the state take on an unfunded liability?
- How effective are technical evaluation panels (TEP) at ensuring consistency?
- We have a very consistent TEP in our county, and we invite the Corps to help with that consistency.
- The TEP process is well founded and works well. The BWSR representative is consistent with findings and rule interpretations, and can explain tough policy issues. The Corps can be a wild card; sometimes the rules mesh well and sometimes they don't. It's hard to provide assistance to the landowner when the Corps is involved - there is a need to send a more consistent answer.
- Not all wetland replacement credits are allocated the same – wetland banking, mining, Local Government Road Wetland Replacement Program, and other projects.
- Landowner perspective – it's hard to manage the process when the rules change and the landowner doesn't know them. In addition, the local government can provide an answer for WCA, but the Corps can be a wild card. The local government can't speak on behalf of the Corps.
- The Corps' timelines are terrible, and they don't even follow their own timelines.
- The DNR is working on a major land exchange initiative. Land exchanges take a year or less if only the State is involved, but 4-years if the Corps is involved.
- There has been a better relationship with BWSR in the last couple of years than there has been since the passage of WCA.
- 404 Assumption makes the most sense for wetland mitigation. The Corps approval timelines are ridiculous (too long), and the Interagency Review Team process adds complexity and causes delays. The locals know more about the suitability of sites for banking than someone from EPA sitting in Chicago.
- Mining mitigation, and the lack adequate standards, is a concern. It is a separate process with no local involvement. When wetlands are impacted in one county but replaced in an entirely different county, doesn't it make sense for the county to make the decision on the mitigation? The local staff know the site better than some DNR person in a regional office or in St. Paul. The local government should make the decision on mitigation sites.
- For small wetland impacts, why should the landowner even have to deal with the Corps? Option – set a threshold under which the State would exert jurisdiction and the Corps would allow under a General Permit or some similar process. A similar process exists for feedlots, where counties handle all smaller feedlots but the MPCA has jurisdiction when over 1,000 animal units. In addition, county staff don't always have the capability to handle large, complex projects.
- Option – see if the Corps would issue a general permit for certain sectors, such as transportation.
- Wetland banking needs to be in one agency, not two. This process is too slow.
- The USDA-Natural Resources Conservation Service is different than WCA and the Corps.
- Landowners with influence over the process shouldn't have input on their project proposals. In other words, county commissioners shouldn't get special treatment because of the position they are in.

Issue #4: Adequacy of Wetland Bank Program Funding.

No comments were made on this issue.

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

- Mitigation by wetland banking gets away from the watershed; What is mitigation? Acre for acre, how does function and value factor in? Need to be more strategic in what is mitigation.
- Replacement close to the impact site is supported from a conceptual level, but banking requires significantly less staff time to oversee than project specific replacement. It is not practical to make applicants mitigate close to the impact. Also, most projects are a small enough scale that project-specific wetland replacement is not cost-effective (i.e. it is not cost-effective for landowners to do their own mitigation project).
- Can metro impacts be replaced in the north?
- Aitkin County has over 15,000 acres of mitigation for mining impacts. A 4,500 acre farm was recently purchased for wetland credit development, which will have no public benefit; no more ducks and no water quality benefits, just the loss of a farm and the associated tax base. In the Red River Valley they are doing big projects and need the money. The BWSR Board recently toured a flood reduction project that provides wetland functions. Public value is not used enough in mitigation. Which project (referred to above) is better for the state? There is no question. We have tied ourselves too rigidly to 1.5:1 or 1:1 acreage ratios.
- Less than 50% and 50-80% areas should be allowed to replace impacts in the greater than 80% area. An example of a current problem: A landowner in BSA 6 can't buy from a bank in BSA 3 and ended up paying 5 to 6 times as much for credits in the >80% area.
- Example: Beltrami County includes parts of 3 different BSAs. Why not be able to replace within the county (regardless of BSA) without penalty?
- A landowner needs to know up-front how many replacement wetland credits they will need, but current geographic requirements for replacement wetland siting makes it impossible to tell a landowner what the replacement ratio is going to be until you know where the mitigation is going to occur and what type it will be. Variables include in-kind (type), out of kind, within watershed, outside of watershed, county, presettlement area, etc. In addition to allowing replacement within the County without penalty, getting rid of wetland type as a consideration would reduce complexity.
- Wetland bank credits can be very limited. There are only 3 banks in BSA 2.
- If the priority is maintained to keep replacement wetlands close to the impact site, can the cropping history requirement be reduced? The current approach places a priority on converting the best cropland.
- Preventive planting should be targeted for mitigation areas. Winter-wheat or winter-rye is also planted in areas that will be too wet to get into in July. These are marginal agriculture areas. Target the wetter sites and not prime farmland.
- The Northeast strategy identified marginal croplands that have since been targeted for mitigation – which is not where the state needs wetlands.
- It makes no sense to add wetlands to an area that is already 80% wetland.
- It's hard to explain the importance of wetlands when there is already 1.5 million acres of swamp in the county.

- There is a lot of tiling happening. NRCS has more flexibility with on-site mitigation, but administratively it is easier to go to a bank. It would be good to piggyback with/better coordinate mitigation with NRCS in watersheds with a lot of impacts.

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

- How much land does the state need, public land acquisition spreads the property tax burden around to the remaining private property. State and federal land acquisition is an issue.
- Lots of problems on state acquired land and tax forfeited land. Private land is managed better.

Other Issues.

- Acres are easy to measure, however state law talks about wetland functions and value. Success is different in different parts of the state. Replacement should be driven by wetland value, high value impacts should require high value replacement, replacing a lower value with a higher value wetland should result in a lower replacement ratio.
- One individual discussed the history of exemptions, and promises that had been made in the past (particularly promises made to northern MN).
- Changes to exemptions have expanded them over time.
- How does non-reporting of exemptions affect no net loss?
- Regarding no net loss, some areas of the state are gaining wetlands; there is some farmland that was farmed 40-50 years ago that is no longer actively farmed, and beavers are flooding areas that were not flooded 40-50 years ago. Southern counties do not know what is happening with wetlands in the north.
- There is no point in talking about wetland plans if the Corps does not recognize them.
- Cropland is better habitat than wetlands. There is more wildlife now than in the 1920's due to cropland.
- WCA started out as a hunting issue supported by sportsmen. That's where the focus should be.