



# WETLAND CONSERVATION ACT

## Coordination with the Public Waters Permit Program



BWSR/DNR Technical Guidance, May 2012

### Overview

**Rule Reference:** MN Rules Chapters 8420 and 6115

**Applicability:** This document identifies and provides guidance on the interrelationships between the Wetland Conservation Act (WCA) and the Public Waters Permit Program (PWPP). It does not carry the weight of rule and is not binding on any party; it should be used as a supplement to the applicable program rules.

**Intended Use:** To improve coordination between WCA and PWPP by providing explanation and guidance on applicable program components to DNR and BWSR staff, Technical Evaluation Panels (TEPs), Local Government Units (LGUs), landowners and applicants.

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## I. Background

Impacts to wetlands in Minnesota are regulated by several programs. The primary state wetland regulatory programs are the Wetlands Conservation Act (WCA), the Public Waters Permit Program (PWPP), and state water quality regulations. Many wetlands in the state are also regulated by the U.S. Army Corps of Engineers under the Federal Clean Water Act Section 404 Program.



The focus of this guidance is on WCA and PWPP. Important characteristics of these two programs are highlighted in the table on the following page. Despite their differences, WCA and PWPP regulate similar resources and it's not uncommon for a single project to require authorization under both programs. Recognizing this, both WCA and PWPP contain provisions to enhance efficiency and promote regulatory consistency. These provisions are identified below, with guidance on their application

## Comparison of WCA and PWPP

	Public Waters Permit Program	Wetland Conservation Act
<b>Administered by:</b>	Mn. Dept. Natural Resources, specifically area hydrologists in the Division of Ecological and Water Resources.	Local government units (LGU) with oversight by Board of Water and Soil Resources (BWSR)
<b>Applicable rules:</b>	Chapter 6115	Chapter 8420
<b>Jurisdiction over:</b>	Public waters identified on Public Waters Inventory (PWI) maps. Public waters includes public waterbasins (typically lakes), public watercourses and public waters wetlands. <sup>1</sup> See Part IX, Additional Resources for information on availability of PWI maps.	All naturally occurring wetlands (as determined by the Corps of Engineers Wetland Delineation Manual) that are not Public Waters
<b>Jurisdictional boundary determined by:</b>	Ordinary High Water Level	Corps of Engineers Wetland Delineation Manual (1987 and Regional Supplements)
<b>Impact defined as:</b>	Alteration of course, current or cross-section	Draining, filling, and in some cases excavation
<b>Exemptions:</b>	Several - mostly activities that are regulated by other programs or de minimis-type activities <sup>2</sup>	Several (see 8420.0420)
<b>Noticing requirements:</b>	Applications and decisions sent to Soil & Water Conservation District, Watershed District (if one exists) and mayor of municipality (if applicable)	Applications and decisions sent to Soil & Water Conservation District, Watershed District or Watershed Mgmt. Organization (if one exists), BWSR, DNR, and members of public that request
<b>Permit application review standards:</b>	Riparian rights, evaluation of alternatives, minimize environmental damage, appropriate mitigation. Filling public waters for private development is prohibited. See Part III regarding public waters wetlands.	Sequencing (avoid and minimize impacts; replace unavoidable impacts with wetlands of equal or greater public value
<b>Appeal procedures:</b>	Contested case hearings with administrative law judge	Appeal to BWSR

## II. Waivers of Regulatory Authority

The rules for WCA and PWPP allow the regulatory authority for a given impact to be waived from one program to the other under certain circumstances. The purpose of these waivers is to reduce regulatory duplication by consolidating the regulatory authority in one agency when a project affects wetlands under the jurisdiction of both programs. In general, it's appropriate to consider waiving regulatory authority when:

- One program has jurisdiction over only a small portion of the wetland area affected
- Waiving will result in a more efficient permitting process with no loss of wetland protection
- Staff from the DNR and the WCA LGU have communicated and mutually agree to the waiver

**Good communication between DNR and WCA LGU staff is essential when considering regulatory waivers. Waivers should not result in inequitable shifts in workload.**

The table on the following page outlines the various rule provisions and procedures pertaining to waivers.

## Rule provisions and guidance regarding regulatory authority waivers.

<b>Waiver of WCA authority to PWPP (WCA → PWPP)</b>	<b>Waiver of PWPP Authority to WCA (PWPP → WCA)</b>
<p><u>Applicability.</u> May be done on a project-specific basis or on a government unit, watershed or waterbody basis, subject to a written agreement as described below.</p> <p><u>Written agreement required.</u><sup>3</sup> Waiver of WCA authority to PWPP may be done by written agreement between the LGU implementing WCA and the DNR if:</p> <ul style="list-style-type: none"> <li>• the project affects both public waters and WCA wetlands with the majority of the impact to public waters;</li> <li>• a public waters permit is required;</li> <li>• the DNR incorporates the WCA rule provisions relating to Sequencing, Replacement and Banking (if applicable) in the public waters work permit process.</li> <li>• the LGU that administers WCA in the project area provides to DNR specific requirements pertaining to the WCA impacts for incorporation into the Public Waters Program permit.</li> <li>• the local government unit agrees to assist the commissioner should appeals be brought against the DNR based on the provisions in the public waters work permit pertaining to WCA impacts.</li> </ul> <p>A template for project-specific written agreements is included as an appendix to this guidance.</p> <p><u>DNR Procedures Apply.</u> If WCA authority is waived to the DNR, then PWPP procedures are to be followed, including DNR provisions for noticing and appeals.</p>	<p><u>Applicability.</u> The DNR may waive its permitting authority to LGUs administering the WCA for:</p> <ul style="list-style-type: none"> <li>• Projects affecting public waters wetlands, except public waters wetlands that are eligible to be reclassified as public waterbasins (see Part VI of this guidance) <sup>4</sup></li> <li>• Public transportation projects affecting the wetland areas of public waters <sup>5, 6</sup></li> </ul> <p>Regulatory authority may not be waived for projects affecting watercourses or the non-wetland areas of public waterbasins. A written agreement is not required; if the DNR waives its authority, the LGU administering WCA in the project area <i>must</i> regulate the impact under WCA authority and procedures.<sup>7</sup> However, PWPP authority should not be waived unless DNR and LGU representatives have consulted in advance.</p> <p><u>Categorical waivers.</u> Projects involving the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads affecting 10,000 sq. ft. or less of public water wetlands, except for public waters wetlands eligible to be reclassified as public waters (see Part VI of this guidance) are categorically waived. <sup>8</sup> For public transportation projects that qualify for replacement through the BWSR transportation wetland bank, there is no formal LGU decision. See Part III of this guidance.</p> <p><u>Discretionary waivers.</u> For projects that are not categorically waived and that are otherwise eligible, the DNR may, at its discretion, waive permitting authority to the WCA LGU or to the public transportation authority, provided the activity does not qualify for any WCA exemptions other than the de minimis exemption. <sup>9</sup></p> <p><u>Notice required.</u> For <b>discretionary waivers</b>, the DNR must provide a notice of the waiver to the project applicant/sponsor and to the applicable WCA LGU or public transportation authority within 15 days of receipt of the application or road project report.<sup>10</sup> For public transportation projects, a waiver notice should also be sent to BWSR. Waiver notices are not required by rule for <b>categorical waivers</b>; however, to ensure proper replacement of public water impacts, a notice should nonetheless be sent to the applicable public transportation authority, the applicable LGU and to BWSR. A waiver notice form is provided in the appendix to this guidance.</p> <p><u>“Key” to DNR Waivers.</u> A key for determining waivers of DNR permitting authority is provided in the appendix to this guidance.</p>
<b>For all waivers</b>	
<p>For all projects where waivers are being considered or implemented, it is strongly recommended that representatives from all involved agencies participate in TEP reviews. The DNR is an official member of the TEP for such projects since they involve a public water (see Section V).<sup>11</sup> Participation in TEP reviews will ensure that all parties understand who will be responsible for the regulation and, in the case of public transportation projects, which agency will be responsible for providing replacement.</p>	

### III. Road Projects: Replacement for Wetland Impacts

Under WCA, BWSR is required to provide replacement for wetland impacts resulting from the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads, provided that impacts are minimized, consideration is given to on-site replacement of important site-specific functions, and the project is properly noticed. This includes impacts to the *wetland areas of public waters*<sup>12</sup> and to *public waters wetlands* when DNR authority has been waived.

**When DNR authority is waived for public road projects, it's important that DNR, BWSR and the public road authority communicate to verify which agency is responsible for replacement of impacts. This is often best accomplished by participation on TEPs.**

As shown in the table on the previous page, projects involving the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads affecting 10,000 sq. ft. or less of public water wetlands, except for public waters wetlands eligible to be reclassified as public waters (see Part VI of this guidance) are categorically waived by the DNR.<sup>8</sup> Therefore, nearly all DNR categorical waivers will qualify for replacement by BWSR.

Public road projects that are discretionarily waived by the DNR may also qualify for BWSR replacement if they involve the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads.

For public road projects that are waived by the DNR but do not qualify for BWSR replacement, the impacts must be replaced by the sponsoring road authority or applicant under a replacement plan approved by the applicable WCA LGU. (Note: Public road projects that qualify for replacement by BWSR do not involve an LGU decision, however, LGUs coordinate the TEP review.)

For public waters impacts resulting from transportation projects that are not waived, replacement provisions consistent with WCA requirements must be included as a DNR permit requirement (see Part IV of this guidance).

**There are no provisions in statute or rule that allow BWSR to provide replacement for transportation impacts to non-wetland areas of public waters (watercourses and lake areas lacking wetland vegetation).**

See the “Key to DNR Waivers” and the “Notice of Waiver of DNR Permitting Authority for Public Transportation Projects” in the appendix to this guidance. The distribution of waiver notices is to help ensure that all agencies clearly understand who is responsible for providing replacement for the public waters impacts.

### IV. WCA Provisions Required for Public Waters Wetland Permits

To improve regulatory consistency between programs, PWPP rules<sup>13</sup> require that as a condition of approval for a DNR permit for impacts to public waters wetlands the application must comply with WCA sequencing requirements<sup>14</sup> and replacement standards.<sup>15</sup> If wetland bank credits from the state wetland bank administered by BWSR are to be used for replacement, the WCA banking procedures<sup>16</sup> must also be followed. To emphasize, **these requirements apply to all DNR permits for impacts to public waters wetlands – not just WCA-regulated wetlands that have been waived to the DNR.** This means that DNR permits for impacts to public waters wetlands must:

- ensure that the project has adequately avoided and minimized wetland impacts,
- require wetland replacement consistent with WCA provisions for the type, amount, location and timing of the replacement,
- include monitoring and reporting requirements,
- if applicable, follow WCA provisions for use of wetland bank credits.



If the DNR permit authorizes wetland replacement through the use of wetland bank credits, please note the following requirements and procedures:

- The applicant must provide to the DNR a completed “Application for Withdrawal of Wetland Bank Credits,” signed by the applicant and the owner/seller of the credits (see Section IX, Additional Resources for information on obtaining WCA forms).
- The DNR area hydrologist must sign Box 7 of the “Application for Withdrawal” form as the regulatory authority and submit the form, along with a copy of the issued permit to the BWSR Wetland Bank Administrator in St. Paul.
- The DNR permit must explicitly authorize the use of the subject credits in the “authorized to” or “special conditions” section of the permit, or in a separate cover letter and must clearly note that the approval is conditional upon receipt by the applicant of a copy of the “Application for Withdrawal” form that has been signed by BWSR in Box 9 of the form.

## V. WCA Technical Evaluation Panel Membership

Under WCA, a Technical Evaluation Panel (TEP) is responsible for making findings and providing recommendations to LGUs on a variety of technical matters such as the size, location, type, and functions of

wetlands, as well as on issues such as sequencing and replacement plan adequacy.<sup>17</sup> The TEP is comprised of a representative of the applicable LGU, the county Soil and Water Conservation District, and a representative of BWSR. For impacts affecting public waters, including public waters wetlands, and impacts within a shoreland protection zone, the TEP is expanded to include a “technical professional employee” of the DNR.<sup>18</sup> The DNR has identified specific TEP representatives or a point of contact for all areas of the state (see Part IX of this guidance – Additional Resources). Depending on the project or expertise required, alternative or additional DNR representatives may become involved, although only one DNR representative can serve as the official TEP member.



## VI. Public Waters OHWL Determinations and Public Waters Wetlands Reclassification

DNR jurisdiction on public water basins and public waters wetlands extends to the ordinary high water level (OHWL). The OHWL is defined as, “an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.”<sup>19</sup> Wetland areas (as determined by the 1987 Federal Manual) that occur landward of the OHWL of public waters fall under WCA jurisdiction. The OHWL of a basin reflects long term water level conditions. Occasionally, due to changes in the watershed, local climate, or outlet conditions, formerly determined OHWLs may not reflect current conditions. If no OHWL has been determined, or if the existing OHWL elevation appears to be in error, the DNR Area Hydrologist should be contacted to evaluate the situation and work towards a solution.

M.S. 103G.201 authorizes the DNR to reclassify public waters wetlands as, 1) public waters (public water basins) or, 2) wetlands regulated under the WCA. Public waters wetlands may be reclassified as public waters only if they meet any of the following conditions:

- they are assigned a shoreland management classification by the commissioner under sections 103F.201 to 103F.221;
- they are classified as lacustrine wetlands or deepwater habitats according to Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition);
- the state or federal government has become titleholder to any of the beds or shores of the public waters wetlands, subsequent to the preparation of the public waters inventory map filed with the auditor of the county, and the responsible state or federal agency declares that the water is necessary for the purposes of the public ownership.

The commissioner must provide notice of the reclassification to the local government unit, the county board, the watershed district, if one exists for the area, and the soil and water conservation district. The decision to reclassify a public waters wetland as a WCA-regulated wetland should be done in consultation with other DNR Divisions, particularly Fish and Wildlife, since it may have a bearing on other programs, such as aquatic plant management and wildlife lake designation.

There are cases where wetlands have been removed from the Public Waters Inventory (and therefore became subject to WCA jurisdiction) when there was clear evidence that the basin did not meet the size or wetland type criteria when it was included in the Public Waters Inventory (erroneously inventoried). The DNR does not consider these situations to be “reclassifications” under 103G.201 because the Department has no regulatory authority over these basins. Nonetheless, Area Hydrologists should coordinate with the applicable WCA Local Government Unit when making such corrections to the PWI so that the LGU is aware of the change in regulatory authority.

## VII. WCA Replacement Credit Involving Public Waters

For both ecological and policy reasons, replacement credit under WCA generally cannot be granted for actions taken within public waters. From an ecological standpoint, it’s generally not appropriate to award wetland replacement credit for actions in public waters that are lakes (deepwater habitat), rivers, or streams because these resources are ecologically dissimilar to wetlands. From a policy standpoint, credit usually cannot be granted for actions within public waters wetlands or the wetland areas of public waters because both rule<sup>20</sup> and statute<sup>21</sup> state that “wetlands” (for the purposes of the WCA) specifically do not include public waters wetlands or public water(basins) unless formally reclassified as “wetlands” by the DNR (see Part VI). All of the actions eligible for credit under WCA apply only to *wetlands* as defined by the WCA. Credit typically cannot be granted for buffer around public waters or public waters wetlands as the buffers must be “adjacent and contiguous to replacement *wetlands* receiving credit.”

One exception to this is that under the WCA replacement provision for Exceptional Natural Resource Value (ENRV), credit could be granted for activities on wetlands or uplands adjacent to a public water that has been identified as an exceptional natural resource. For example, an ENRV project could include the restoration of a forested upland buffer adjacent to a trout stream. The amount of credit awarded for ENRV replacement projects is determined case-by-case by the LGU with TEP concurrence and, in the case where a public water has been determined to be an exceptional natural resource, is based on the increased value and sustainability of the public water itself. For more information on ENRV replacement, see the guidance referenced in Part IX, Additional Resources.

## VIII. Decision Timeframes

Decisions on applications made under WCA must be made in accordance with the timeframes established in M.S. Chapter 15.99, which generally requires a decision within 60 days of receiving a *complete* application. The application of Chapter 15.99 to public waters permits is not as clear, but nonetheless the DNR attempts to make permit decisions within 60 days. For projects affecting both public waters and WCA wetlands where coordination is required between the DNR and the LGU, employees of both agencies should be cognizant of this

timeframe. This is particularly important if a waiver is being considered so that the agency accepting regulatory responsibility is not unduly delayed in acting on the application. For discretionary waivers of DNR authority to WCA LGUs, the DNR must send a waiver notice to the applicable LGU within 15 days of receipt of the application. Although there is no clear statutory/rule guidance or case law at this time to clarify when the 60-day clock starts in cases where DNR authority is waived to an LGU, the Minnesota Attorney General's Office has suggested the following:

- The Chapter 15.99 60-day time period starts when the LGU receives the DNR waiver notice, assuming the WCA application is complete, including accounting for the impacts to public waters. If the WCA application requires revision to account for public waters impacts that have been waived, the LGU must notify the applicant within 15 days of receipt of the DNR waiver notice and the 60-day time period starts when the LGU receives the revised, complete application.

The Attorney General's office has not offered guidance addressing the timeframe for when an LGU waives WCA authority to the DNR. However, it would be reasonable to apply a similar standard: the DNR goal will be to issue the permit within 60 days of signing a waiver agreement and receiving a complete application.

## IX. Additional Resources

Public Waters Inventory maps: [http://www.dnr.state.mn.us/waters/watermgmt\\_section/pwi/maps.html](http://www.dnr.state.mn.us/waters/watermgmt_section/pwi/maps.html)

DNR Technical Evaluation Panel Contacts: [http://www.bwsr.state.mn.us/wetlands/wca/DNR\\_TEP\\_contacts.pdf](http://www.bwsr.state.mn.us/wetlands/wca/DNR_TEP_contacts.pdf)

BWSR WCA Work Areas and Contact Info: [http://www.bwsr.state.mn.us/contact/WCA\\_areas.pdf](http://www.bwsr.state.mn.us/contact/WCA_areas.pdf)

Guidance on Exceptional Natural Resource Value wetland replacement:  
[http://www.bwsr.state.mn.us/wetlands/wca/ENRV\\_Guidance7-1-10.pdf](http://www.bwsr.state.mn.us/wetlands/wca/ENRV_Guidance7-1-10.pdf)

WCA Forms: <http://www.bwsr.state.mn.us/wetlands/wca/index.html>  
<http://www.bwsr.state.mn.us/wetlands/wetlandbanking/forms.html>

"Guidelines for Ordinary High Water Level (OHWL) Determinations," available at:  
[http://files.dnr.state.mn.us/waters/surfacewater\\_section/hydrographics/ohwl.pdf](http://files.dnr.state.mn.us/waters/surfacewater_section/hydrographics/ohwl.pdf)

# Endnotes

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<sup>1</sup> For definitions, see M.R. 6115.0170 subparts 31 – 31d. Public waterbasins are identified on public waters inventory maps with a “P” designation; public water wetlands have a “W” designation.

<sup>2</sup> M.R. 6115.0160, items A – E; 6115.0190 Subp. 4; 6115.0200 Subp. 4; 6115.0202 Subp. 4; 6115.0215 Subp. 4; 6115.0220 Subp. 4; 6115.0230 Subp. 4

<sup>3</sup> M.R. 8420.0105, Subp. 2.E.(2) and M.R. 6115.0250, Subp. 7

<sup>4</sup> M.R. 6115.0250, Subp. 5.D and E.

<sup>5</sup> “Wetland areas of public waters” are areas contiguous with (and below) the ordinary high water level and that generally exhibit emergent vegetation (M.R. 6115.0250 subp. 6.A).

<sup>6</sup> M.R. 6115.0250 Subp. 6

<sup>7</sup> M.R. 8420.0105, Subp. 2.E.(1)

<sup>8</sup> M.R. 6115.0250, Subp. 5.E.(1)

<sup>9</sup> De minimis exemption – see M.R. 8420.0420, Subp. 8. As a result of WCA rule revisions in 2009, the current (2009) public waters rule at 6115.0250, subp. 5.D(2)(a) contains an incorrect reference to the WCA rule provisions regarding exemptions. The correct reference in the public waters rule should be to WCA rule chapter 8420.0420, subparts 2 to 7 and 9.

<sup>10</sup> M.R. 6115.0250 Subp. 5.D.(1) and E.(2). The 15-day waiver notice requirement is to ensure that the local government unit administering the permit will be able to meet the Administrative Procedure Act (M.S. 15.99) requirement to make a decision within 60 days of receiving a complete application. Presumably, DNR permitting authority could still be waived after the 15-day period if the WCA LGU agrees to accept it.

<sup>11</sup> M.R. 8420.0240, item A

<sup>12</sup> There is an error in the current (2009) WCA rules. M.R. 8420.0544, para. I indicates that BWSR must replace impacts to *public waters* when authorized by the DNR. However, Minn. Statutes 103G.222, subd. 1(m), which takes precedence over the rule, limits BWSR’s responsibility to the *wetland areas* of public waters.

<sup>13</sup> 6115.0250, subp. 5.B.(1); see also M.S. 103G.221

<sup>14</sup> M.R. 8420.0520

<sup>15</sup> M.R. 8420.0522 through 8420.0544, 8420.0810 and 8420.0820

<sup>16</sup> M. R. 8420.0745

<sup>17</sup> see M.R. 8420.0240

<sup>18</sup> M.R. 8420.0240, item A

<sup>19</sup> M.S. 103G.005, Subd. 14.

<sup>20</sup> M.R. 8420.0111, Subp. 72. item C

<sup>21</sup> M.S. 103G.005, Subd. 19(b)

# Appendix

- Sample written agreement for waiver from LGU to DNR
- DNR Key to Waivers and DNR Waiver Notice Form

**Agreement for Waiving Wetland Conservation Act (WCA) Authority to the Minnesota Department of Natural Resources for Projects Affecting Both WCA-Regulated Wetlands and Public Waters**

Under Minnesota Rules Chapters 8420.0105, Subp. 2.E.(2) and 6115.0250, Subp. 7, for projects affecting both public waters and WCA-regulated wetlands, a local government unit (LGU) administering the WCA may, by written agreement with the Minnesota Department of Natural Resources (DNR) waive the requirement for a replacement plan, no-loss, or exemption decision if a public waters work permit is required and the DNR includes the appropriate WCA provisions in the public waters work permit.

**Project Name:**

**Project Location:**

**Public Waters ID:**

**Project Description:**

**Agreement:**

{LGU Name}, as the LGU responsible for administering WCA within the project area, hereby waives the requirement for a WCA decision for wetlands that may be affected by the above-named project and the DNR Division of Ecological and Water Resources agrees to:

- 1) incorporate the applicable WCA requirements in any public waters work permit issued for the above project, and/or;
- 2) in the case of a restoration order, incorporate requirements to restore or replace the WCA jurisdictional wetlands.

In addition, {LGU Name} agrees to assist the DNR should appeals be brought against the DNR based on the WCA Decision incorporated in the public waters work permit.

\_\_\_\_\_  
{LGU Authorized Representative}    date  
{LGU Name}

\_\_\_\_\_  
{DNR Authorized Representative}    date  
Minnesota Dept. of Natural Resources

## Key for waivers of Public Waters permitting authority

For activities affecting Public Waterbasins (P's) – go to Section 1

For activities affecting Public Waters Wetlands (W's) – go to Section 2

For activities affecting Public Watercourses – authority cannot be waived

### Section 1 – for activities affecting Public Waterbasins

1. Is the activity a public transportation project?
  - Yes – go to Q.2
  - No – authority cannot be waived. Process a public waters permit
  
2. Does the project affect both the public waterbasin and WCA wetlands (wetlands above the ordinary high water level (OHWL))?
  - Yes – go to Q. 3
  - No – if the activity affects only the public waterbasin, authority cannot not be waived. Process a public waters permit.
  
3. For the activities that will occur below the OHWL, determine which of the following applies:
  - a. The project affects *only* the “wetland area of the public waterbasin” (areas contiguous with and below the ordinary high water level and that generally exhibit emergent vegetation) – Go to Q.4
  - b. The project affects *both* the “wetland area of the public waterbasin” and non-wetland (deepwater) areas – Go to Q.4; however, only the impacts occurring within the wetland area of the public water can be waived. Process a public waters permit for impacts to the non-wetland areas. Consider whether WCA authority should be waived to the DNR.
  - c. The project affects *only* the non-wetland (deepwater) area of the public water – Authority cannot be waived. Process a public waters permit. Consider whether WCA authority should be waived to the DNR.
  
4. Will any WCA exemptions other than the de minimis exemption be applied to the project (see Minn. Rules 8420.0420)? (May require consultation with the LGU or public transportation authority.)
  - Yes – authority cannot be waived. Process a public waters permit.
  - No – authority can be waived at DNR’s discretion. If not waived, process a public waters permit. If waived, consult with the LGU or public transportation authority to determine whether the project qualifies for wetland replacement through the BWSR public road wetland bank<sup>1</sup> or if replacement will be determined based on a wetland replacement plan application. Complete and distribute a waiver notice (Notice of Waiver of DNR Permitting Authority for Public Transportation Projects - attached) within 15 days of receiving application.

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<sup>1</sup> Qualifying projects are those that involve repair, rehabilitation, reconstruction or replacement of currently serviceable existing public roads and that minimize impacts and consider replacing important site-specific functions on site, as determined by the TEP

## Section 2 – for activities affecting Public Waters Wetlands

1. Is the public water wetland eligible for reclassification to a public waterbasin? A public waters wetland is eligible for reclassification if any of the following apply: 1) assigned a shoreland classification; 2) classified as a lacustrine wetland or deepwater habitat according to Cowardin, et al.; 3) the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and where the responsible state or federal agency declares that the water is necessary for purposes of public ownership.  
Yes – authority cannot be waived. Process a public waters permit.  
No – go to Q. 2
2. Does the activity qualify for any exemption under WCA other than the de minimis exemption (see Minn. Rules 8420.0420)?  
Yes – authority cannot be waived. Process a public waters permit.  
No – go to Q. 3
3. Is the activity a public transportation project?  
Yes – go to Q. 4  
No – waiver is discretionary. If not waived, process a public waters permit. If waived, complete and distribute a waiver notice (Notice of Waiver of DNR Permitting Authority for Activities other than Public Transportation - attached) within 15 days of receiving application.
4. Does the public transportation project qualify for replacement through the BWSR public road wetland bank? <sup>2</sup> (May require consultation with the road authority or LGU.)  
Yes – go to Q. 5  
No – waiver is discretionary. If not waived, process a public waters permit. If waived, complete and distribute a waiver notice (Notice of Waiver of DNR Permitting Authority for Public Transportation Projects – attached) within 15 days of receiving application.
5. Is the impact to the public water wetland 10,000 sq. ft. or less?  
Yes – authority is categorically waived. Complete and distribute a waiver notice (Notice of Waiver of DNR Permitting Authority for Public Transportation Projects – attached) within 15 days of receiving application.  
No – (impact is > 10,000 sq. ft.) Waiver is discretionary. If not waived, process a public waters permit. If waived, complete and distribute a waiver notice (Notice of Waiver of DNR Permitting Authority for Public Transportation Projects – attached) within 15 days of receiving application.

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<sup>2</sup> Qualifying projects are those that involve repair, rehabilitation, reconstruction or replacement of currently serviceable existing public roads and that minimize impacts and consider replacing important site-specific functions on site, as determined by the TEP.



## Notice of Waiver of DNR Permitting Authority for Activities Other Than Public Transportation

**Project applicant/sponsor:**

**Project name and description:**

**Project location:**

**Public Water Wetland Affected (ID and name, if applicable):**

**Date application received:**

Under Minnesota Rules Chapter 6115.0250, the Minnesota Department of Natural Resources is authorized to waive its permitting authority for certain activities in public waters wetlands to local government units administering the Minnesota Wetland Conservation Act. This notice is to inform you that the DNR is waiving its permitting authority for this project as follows:

**Authority waived to:** *[name of LGU]*

Future regulatory action regarding the public waters wetland affected by this project will be handled by the above-named local government unit under authority of the Minnesota Wetlands Conservation Act as implemented through Minnesota Rules Chapter 8420.

\_\_\_\_\_  
[Name]

Area Hydrologist  
Minnesota Department of Natural Resources

\_\_\_\_\_  
Date

Distribution:

- Project applicant/sponsor
- Board of Water and Soil Resources local wetland specialist
- Soil and water conservation district (Technical Evaluation Panel representative)
- Local Government Unit administering WCA



## Notice of Waiver of DNR Permitting Authority for Public Transportation Projects

**Project applicant/sponsor:**

**Project name and description:**

**Project location:**

**Public Water affected (ID and name, if applicable):**

**Date application received:**

Under Minnesota Rules Chapter 6115.0250, the Minnesota Department of Natural Resources is authorized to waive its permitting authority for certain activities in public waters to local government units and public transportation authorities administering the Minnesota Wetland Conservation Act. This notice is to inform you that the DNR is waiving its permitting authority for this project as follows:

**Type of waiver:**

- Categorical waiver – for public transportation projects involving the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads affecting 10,000 sq. ft. or less of *public waters wetlands*
- Discretionary waiver

**Authority waived to:** *[name of LGU or public transportation authority]*

**Wetland replacement provided through:**

- BWSR Public Road Wetland Banking Program
- Project-specific replacement or use of wetland bank credits identified in a wetland replacement plan

Future regulatory action regarding the public waters affected by this project will be handled by the above-named agency under authority of the Minnesota Wetlands Conservation Act as implemented through Minnesota Rules Chapter 8420.

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*[Name]*  
Area Hydrologist  
Minnesota Department of Natural Resources

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Date

Distribution:

- Public transportation authority (Project applicant/sponsor)
- Board of Water and Soil Resources local wetland specialist
- Soil and water conservation district (Technical Evaluation Panel representative)
- Board of Water and Soil Resources Wetland Bank Administrator (520 Lafayette Rd. N., St. Paul, MN 55155)
- Local Government Unit administering WCA