



## INTERAGENCY MEMORANDUM OF UNDERSTANDING

### ADMINISTRATION AND USE OF THE MINNESOTA AGRICULTURAL WETLAND BANK Including Implementation of MN Stat. § 103G.2241, Subdivision 1(7)

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

WHEREAS, BWSR has state oversight and implementation responsibilities for the Wetland Conservation Act (WCA) and its corresponding rules (Chapter 8420) which include the administration and operation of a wetland banking system; and

WHEREAS, NRCS is responsible for administering the wetland conservation provisions of the federal farm program (Swampbuster) and NRCS is authorized to cooperate and furnish assistance to the parties in the conservation of natural resources as referenced in the:

- Soil Conservation and Domestic Allotment Act of 1936, 16 USC 590a-590f, 590q and 7 CFR Part 610;
- authority to complete wetland mitigation is found in the Food Security Act of 1985, PL 99-198, as amended including the Federal Agricultural Improvement and Reform Act of 1996, PL 104-127; and
- authority to use this agreement instrument is found in PL 106-387, Section 714, and 7 USC 6962(A);

WHEREAS, MN Stat. § 103G.2241, Subdivision 1(7) allows the establishment of a WCA agricultural exemption for agricultural activities on agricultural land that is subject to the Swampbuster provisions of the federal farm program restrictions consistent with a memorandum of understanding and related agreements between the board and NRCS; and

WHEREAS, BWSR and NRCS have entered into previous agreements regarding WCA and Swampbuster coordination, including an MOU effective 12-23-09 and a contribution agreement effective 9-21-12;

WHEREAS, the agricultural wetland bank was established consistent with the aforementioned agency agreements; and

WHEREAS, the coordinated implementation of an agricultural wetland banking program is in the mutual interest of BWSR and NRCS to the benefit of the landowners and natural resources of Minnesota.

NOW THEREFORE BE IT RESOLVED, the undersigned agencies agree to implement the agricultural wetland bank, to the extent allowed under state and federal law, as follows:

The agencies agree on the following:

- I. Responsibilities.
  - A. BWSR will administer the Minnesota Agricultural Wetland Bank for WCA and Swampbuster mitigation purposes in accordance with the rules, guidance, and procedures developed by BWSR. BWSR responsibilities include overseeing the establishment of agricultural bank sites, the allocation, deposit, and use/withdrawal of credits for specific projects approved by either program, account tracking and maintenance, and other duties as defined in WCA or jointly agreed upon by the agencies. BWSR agrees to notify the appropriate NRCS staff of credit withdrawals completed for projects subject to federal farm program restrictions.
  - B. NRCS responsibilities include the promotion of agricultural wetland banking and the coordination and sharing of information to the extent allowable under federal law. NRCS agrees to provide verification to BWSR of NRCS authorizations to withdraw credits from the Minnesota Wetland Bank using the "Application for Replacement of Agricultural Wetland Impacts Using the Minnesota Wetland Bank" as amended.
- II. Use of the Agricultural Wetland Bank.
  - A. For farm program participants, the Agricultural Wetland Bank can be used to replace impacts to the following wetlands identified according to a certified wetland determination completed by NRCS:
    - 1) Farmed Wetland (FW);
    - 2) Farmed Wetland Pasture (FWP);
    - 3) a Wetland (W) impacted by an activity for which the landowner can provide evidence (i.e. Local Government Unit determination) of qualification for a WCA exemption under MN Rule 8420.0420, Subp. 2, Item A or Subp. 3, Item C(1);
    - 4) a Wetland (W) less than five acres in size that is predominantly bordered by land that has been cropped 8 of the last 10 years when the wetland is degraded according to the BWSR Agricultural Wetland Evaluation Tool, as amended (the tool assesses vegetative diversity, downstream water quality protection, floodwater attenuation, and wildlife habitat - a wetland qualifies as degraded when the tool results in a ranking of low for vegetation and one or more other functions, and no higher than medium for any function); or
    - 5) Converted Wetland (CW) that, prior to conversion, qualifies under items one through four above as determined by NRCS staff.
  - B. For non-farm program participants, the Agricultural Wetland Bank can be used to replace impacts to the following wetlands identified according to a wetland determination completed or approved by the WCA Local Government Unit:

- 1) Wetlands designated as FW or FWP on a certified wetland determination completed by NRCS during a period of prior farm-program enrollment when the landowner can provide adequate documentation of the certified determination and FW/FWP designation;
  - 2) a wetland on agricultural land that has been hydrologically modified and cropped prior to January 1, 1992; or
  - 3) a wetland less than 5 acres in size on a cultivated field (see MN Rule 8420.0111, Subp. 73) when the wetland is degraded according to the BWSR Agricultural Wetland Evaluation Tool, as amended (the tool assesses vegetative diversity, downstream water quality protection, floodwater attenuation, and wildlife habitat - a wetland qualifies as degraded when the tool results in a ranking of low for vegetation and one or more other functions, and no higher than medium for any function).
- C. Wetland size is determined according to the entire basin, regardless of property ownership or mapping extent. When wetlands extend across property boundaries, size can be determined based on off-site delineation methods.
  - D. Wetlands not listed in paragraphs A or B do not qualify for use of the Agricultural Wetland Bank.
  - E. Wetland areas impacted for use as agricultural land, and that use the Agricultural Wetland Bank for replacement in accordance with this memorandum, must remain in agricultural use for a minimum of 10 years (in accordance with MN Rule 8420.0522, Subp. 4, Item E) or until participation in the federal farm program ends, whichever is longer.

III. Bank Service Areas and Replacement Ratios.

- A. Mitigation of agricultural wetland impacts through banking will occur according to wetland bank service areas (BSAs).
- B. The minimum replacement ratio of Agricultural Wetland Bank credits to each acre of wetland impacted on agricultural land shall be the following:

Location of Ag Bank Relative to Impact	Replacement Ratio
Same BSA	1:1
Adjacent BSA*	2:1
Non-Adjacent BSA	Not Allowed

\*When replacement occurs outside of the BSA, impacts in a <80% area may not be replaced in a >80% BSA.

This item does not apply to credits withdrawn from bank accounts resulting from agricultural wetland bank sites that were approved prior to the effective date of this MOU. Such accounts may continue to operate according to the policies existing at the date of this MOU until all credits associated with the prior bank site approval are withdrawn or

transferred, or until this provision is superseded by a subsequent statute, rule, or MOU stipulation. BWSR will determine which accounts qualify for this provision and will maintain a list of such accounts.

- C. Wetland impacts in BSA 10 that are replaced in BSA 9 or the Des Moines River Basin in BSA 8 count as replacement in the same BSA for the purpose of determining replacement ratios.
- D. A BSA map and information about banking credits is available on the BWSR website at: [www.bwsr.state.mn/wetlands](http://www.bwsr.state.mn/wetlands).

IV. WCA Exemption for NRCS-Approved Mitigation.

In accordance with MN Stat. § 103G.2241, Subdivision 1(7), a WCA wetland replacement plan is not required for the mitigation of wetland impacts resulting from agricultural activities when:

- A. the activity impacts a wetland identified in Section II, Paragraph A of this memorandum that is subject to Swampbuster;
- B. wetland mitigation is required under Swampbuster and consists of the withdrawal of credits from the Minnesota Agricultural Wetland Bank in accordance with Section III of this memorandum;
- C. the activity and associated wetland credit withdrawal is authorized by NRCS using the "Application for Replacement of Agricultural Wetland Impacts Using the Minnesota Wetland Bank" (form) available on the BWSR website, as amended;
- D. the landowner agrees by signing the form to allow USDA to share information relating to the proposed activity and associated wetland bank credit withdrawal, and a copy of the completed and fully executed form with required attachments is provided to the BWSR Bank Coordinator; and
- E. the approved credits are withdrawn from the wetland bank and the landowner has received confirmation from BWSR of the withdrawal.

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

1. The policies and procedures contained within this MOU do not create any rights or obligations, either substantive or procedural, enforceable by any party or any third party. Deviation or variance from the wetland mitigation guidance included in this MOU will not constitute a defense for violators or others concerned with any State or Federal action.
2. Nothing in this MOU is intended to diminish, modify, or otherwise affect statutory or regulatory authorities of any signatory agencies. All formal guidance interpreting this MOU and background materials upon which this MOU is based will be issued after consultation with the signatory agencies.

3. All responsibilities identified in this MOU are subject and dependent on the availability of sufficient funds appropriated and allocated for that purpose.
4. Sections I through III of this MOU will take effect on the day after the date of the last signature below and will continue in effect until modified or revoked by the signatory agencies. Either signatory agency must provide the other a minimum notice of 30 days prior to revoking this agreement.
5. Section IV of this MOU will take effect 30 days after publication in the State Register and remain in effect unless superseded by subsequent statute, rule, or notice in the State Register.
6. This MOU is based on the state and federal authorities as they exist on the date of signature. Subsequent changes to these authorities are not binding on the parties to this MOU.



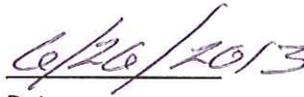
Don Baloun  
State Conservationist  
Natural Resources Conservation Service  
United States Department of Agriculture



Date



Brian Napstad  
Chair  
Minnesota Board of Water and Soil Resources



Date