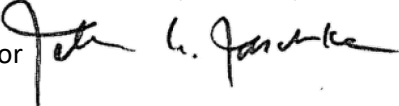




DATE: January 18, 2022

TO: Board of Water and Soil Resources' Members, Advisors, and Staff

FROM: John Jaschke, Executive Director 

SUBJECT: BWSR Board Meeting Notice – January 26, 2022

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, January 26, 2022, beginning at 9:00 a.m. The meeting will be held in the lower level Board Room, at 520 Lafayette Road North, St. Paul and by WebEx. Due to COVID-19, access to the MPCA/BWSR office is limited. Individuals interested in attending the meeting should do so by either 1) logging into WebEx by going to the following website: <https://minnesota.webex.com/minnesota/onstage/g.php?MTID=e7df8df82d36e2e57a493793120831f20>, and entering the password: webex, or 2) join by audio only conference call by calling telephone number: 415-655-0003 and entering the access code: 2496 698 3462.

The following information pertains to agenda items:

COMMITTEE RECOMMENDATIONS

Southern Region Committee

1. **Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan** – The BWSR Area 53 was selected by BWSR for a One Watershed, One Plan Planning Grant in August of 2018. A Memorandum of Agreement was established on April 1, 2019 between the planning partners for the purposes of writing a Comprehensive Watershed Management Plan, which was initiated on May 17, 2019. The watershed partnership members have attended regularly scheduled meetings and submitted the Hawk Creek - Middle Minnesota Comprehensive Watershed Management Plan (Plan) to BWSR on November 11, 2021 for review and approval. The Southern Regional Committee (Committee) met on December 20, 2021 to review the content of the Plan, State agency comments on the Plan, and to make a recommendation for approval. The Committee recommends approval by the full Board. **DECISION ITEM**

Northern Region Committee

1. **Red River Basin Commission Grant** – In 2021 the Legislature appropriated funds to the Board for grants to the Red River Basin Commission (RRBC) for waters quality and floodplain management, including administration of programs. The Northern Regional Committee (Committee) met January 5, 2022, to review and discuss the RRBC 2021 Annual Report, the RRBC 2022/23 Workplan, the current status of the RRBC, and to make a recommendation of the Order authorizing the FY2022/223 grant to the Red River Basin Commission to the full Board. The Committee recommends approval by the full Board. **DECISION ITEM**
2. **Bois de Sioux Watershed District and Upper Minnesota River Watershed District Boundary Change Petition** – BWSR received a petition from the Bois de Sioux Watershed District (BdSWD) and Upper Minnesota River Watershed District (UMRWD) to change their shared boundaries. The proposed boundary change will achieve a more accurate alignment between the hydrologic and legal boundaries of the BdSWD and the UMRWD. The Northern Regional Committee recommended approval by the full BWSR Board. **DECISION ITEM**

Grants Program and Policy Committee

1. **Water Quality and Storage Pilot Grant Program** – In 2021 the MN Legislature passed a law requiring BWSR to develop a Water Quality and Storage Program. BWSR staff have completed outreach to interested parties and will be recommending program details to the board. Additional background is included in the attached board memo. The program policy and RFP have been reviewed by the SMT and internal Grants Team, and also have a recommended approval by the GP&P committee. ***DECISION ITEM***

Audit and Oversight Committee

1. **2021 Performance Review and Assistance Program Legislative Report** – BWSR is required to provide a report annually to the legislature on Performance Review and Assistance Program activities as prescribed by Minnesota Statutes Chapter 103B.102, Subdivision 3, effective February 1, 2008. BWSR staff have prepared a report that describes the program activities for 2021, including summaries of the activities of BWSRs local government partners, and goals and objectives for future PRAP activities. The report was presented to and has recommendation from the BWSR Audit and Oversight Committee for BWSR Board approval. ***DECISION ITEM***

NEW BUSINESS

1. **Clean Water Act Section 404 Assumption – Report on Funding Estimates** – Laws of Minnesota 2021, 1st Special Session, Chapter 6, Article 2, Section 108, Subd. 9(a) required the Minnesota Environmental Quality Board (EQB) to begin to develop and assemble the material required to assume the section 404 permitting program of the Federal Clean Water Act (404 assumption), and to submit a report on the additional funding required to apply for and secure 404 assumption and to fully implement the state-assumed program. EQB entered into an agreement with the Board of Water and Soil Resources, who then entered into subsequent agreements with the Department of Natural Resources and the Pollution Control Agency, to coordinate the work and complete the report. Staff will summarize the results of that work and the cost estimates contained in the report. ***INFORMATION ITEM***
2. **Vice Chair Nomination** – According to bylaws, the Vice Chair will be elected to a two-year term by the members of the Board. Nominations will be made at the meeting. After the vote to close nominations, voting ballots will be mailed to board members along with a prepaid envelope to return their ballot by March 1, 2022. The Vice Chair will be announced at the March board meeting. ***DECISION ITEM***

If you have any questions regarding the agenda, please feel free to call me at 651-297-4290. We look forward to seeing you on January 26.

**BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
WEDNESDAY, JANUARY 26, 2022**

PRELIMINARY AGENDA

9:00 AM CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA

MINUTES OF DECEMBER 16 BOARD MEETING

PUBLIC ACCESS FORUM (10-minute agenda time, two-minute limit/person)

INTRODUCTION OF NEW STAFF

- Lucy Dahl, Easement Supervisor
- Michelle Jordan, Board Conservationist
- Kristin Brennan, Southern Region Training Conservationist

CONFLICT OF INTEREST DECLARATION

A conflict of interest, whether actual, potential, or perceived, occurs when someone in a position of trust has competing professional or personal interests, and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to declare conflicts of interest they may have regarding today's business. Any member who declares an actual conflict of interest must not vote on that agenda item. All actual, potential, and perceived conflicts of interest will be announced to the board by staff before any vote.

REPORTS

- Chair & Administrative Advisory Committee – Gerald Van Amburg
- Executive Director – John Jaschke
- Audit & Oversight Committee – Joe Collins
- Dispute Resolution and Compliance Report – Travis Germundson/Rich Sve
- Grants Program & Policy Committee – Todd Holman
- RIM Reserve Committee – Jayne Hager Dee
- Water Management & Strategic Planning Committee
- Wetland Conservation Committee – Jill Crafton
- Buffers, Soils & Drainage Committee – Kathryn Kelly
- Drainage Work Group – Neil Peterson/Tom Gile

AGENCY REPORTS

- Minnesota Department of Agriculture – Thom Petersen
- Minnesota Department of Health – Steve Robertson
- Minnesota Department of Natural Resources – Sarah Strommen
- Minnesota Extension – Joel Larson
- Minnesota Pollution Control Agency – Katrina Kessler

ADVISORY COMMENTS

- Association of Minnesota Counties – Brian Martinson
- Minnesota Association of Conservation District Employees – Nicole Bernd
- Minnesota Association of Soil & Water Conservation Districts – LeAnn Buck
- Minnesota Association of Townships – Eunice Biel
- Minnesota Association of Watershed Districts – Emily Javens
- Natural Resources Conservation Service – Troy Daniell

COMMITTEE RECOMMENDATIONS

Southern Region Committee

1. Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan – Jeremy Maul, Mark Hiles, and Ed Lenz – ***DECISION ITEM***

Northern Region Committee

1. Red River Basin Commission FY22/23 Grant Approval – Henry Van Offelen – ***DECISION ITEM***
2. Boundary Change Petition for Bois de Sioux Watershed District and Upper Minnesota River Watershed District – Pete Waller – ***DECISION ITEM***

Grants Program and Policy Committee

1. Water Quality and Storage Pilot Grant Program – Rita Weaver – ***DECISION ITEM***

Audit and Oversight Committee

1. 2021 Performance Review and Assistance Program Legislative Report – Jenny Gieseke and Brett Arne – ***DECISION ITEM***

NEW BUSINESS

1. Clean Water Act Section 404 Assumption – Report on Funding Estimates – Les Lemm – ***INFORMATION ITEM***
2. Vice Chair Nomination – John Jaschke – ***DECISION ITEM***

UPCOMING MEETINGS

- BWSR Board meeting is scheduled for Wednesday, March 23, 2022, at 9:00 a.m. in the Lower Level Conference Rooms at 520 Lafayette Road North, St. Paul and by WebEx.

ADJOURN

**BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD NORTH
LOWER LEVEL BOARD ROOM
ST. PAUL, MN 55155
THURSDAY, DECEMBER 16, 2021**

BOARD MEMBERS PRESENT:

Joe Collins, Jill Crafton, Andrea Date, Jayne Hager Dee, Kathryn Kelly, Neil Peterson, Rich Sve, Gerald Van Amburg, Ted Winter, LeRoy Ose, Kelly Kirkpatrick, Eunice Biel, Todd Holman, Ronald Staples, Mark Zabel, Katrina Kessler, MPCA; Joel Larson, University of Minnesota Extension; Thom Petersen, MDA; Steve Robertson, MDH; Sarah Strommen, DNR

BOARD MEMBERS ABSENT:

STAFF PRESENT:

John Jaschke, Angie Becker Kudelka, Rachel Mueller, Kevin Bigalke, Tom Gile, Travis Germundson, Dan Shaw, Shaina Keseley, Mark Hiles, Brad Wozney, Steve Christopher, Sharon Doucette, Dave Weirens, Dave Copeland, Marcey Westrick, Ryan Hughes

OTHERS PRESENT:

Jeff Berg, MDA; Brian Martinson, AMC; Emily Javens, MAWD; Troy Danielle, NRCS; Glenn Skuta, MPCA; Jason Garms, DNR; Don Bajumpaa, Amanda Bilek, Jan Voit

Chair Gerald VanAmburg called the meeting to order at 9:02 AM

PLEDGE OF ALLEGIANCE

21-53 **ADOPTION OF AGENDA** - Moved by Rich Sve, seconded by Todd Holman, to adopt the agenda as presented. ***Motion passed on a roll vote.***

21-54 **MINUTES OF OCTOBER 27, 2021 BOARD MEETING** – Moved by Neil Peterson, seconded by Jill Crafton, to approve the minutes of October 27, 2021, as amended. ***Motion passed on a roll vote.***

PUBLIC ACCESS FORUM

No members of the public provided comments to the board.

CONFLICT OF INTEREST DECLARATION

Chair Van Amburg read the statement:

“A conflict of interest, whether actual, potential, or perceived, occurs when someone in a position of trust has competing professional or personal interests, and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to declare conflicts of interest they may have regarding today’s business. Any member who declares an actual conflict of interest must not vote on that agenda item. All actual, potential, and perceived conflicts of interest will be announced to the board by staff before any vote.”

REPORTS

Chair & Administrative Advisory Committee – Chair Gerald Van Amburg reported the committee has not met. Attended MAWD annual conference virtually and thanked BWSR staff that were involved and helped with programs.

Congratulated Rich Sve for serving a historic two year presidency with the Association of Minnesota Counties. Chair Van Amburg stated Governor Walz declared a Rich Sve Day at the convention. Rich Sve thanked Chair Van Amburg for acknowledging it and stated it was an honor.

Executive Director’s Report - John Jaschke reported the annual meetings of the Counties, Watershed Districts, and Soil and Water Conservation Districts have been completed. Conservation awardees for the AMC/BWSR acknowledgment were tied this year and were presented to Lower St. Croix Watershed Partnership (Anoka, Chisago, Isanti, Pine and Washington Counties) and to Community Conservation Partnerships by the Crow Wing County Highway Department. MAWD held their conference virtually and was well put together. Information from the conference has been made available on their website. SWCD had their meeting this week in Bloomington and stated it was also very well put together.

A petition from the Watershed Association regarding rulemaking was received. It is being evaluated with legal counsel and will be responded to between now and early January.

Kevin Bigalke will be taking a position in the private sector and BWSR will work to get that Assistant Director position filled along with other vacancies. Annie Felix-Gerth has filled the position vacated by Marcey Westrick as the Clean Water Coordinator.

John stated they are working along with other agencies on ideas for the Governor’s consideration on budget and policy. State has a budget surplus with a number of components to it.

Executive Director Jaschke thanked Andrea Date for her service on the BWSR Board. Andrea will be stepping aside from her board position as the Metro City representative at the end of December.

Jill Crafton stated she attended the SWCD meeting and that it was a great experience and would encourage more people to attend.

Audit and Oversight Committee – Joe Collins reported they have not met. Meeting is scheduled for January 20th.

Dispute Resolution and Compliance Report – Travis Germundson reported there are presently five appeals pending. All the appeals involve the Wetland Conservation Act (WCA). There have been four new appeals filed since the last Board Meeting. Two are identified in the current report in the board packet.

File 21-7 appeal of WCA notice of a decision in Poke County. Appeal regarding the approval of tile lines around water of a US Fish and Wildlife Service property allegedly impacting wetlands. Issue is the elevation at which the tile lines were approved. No decision has been made on this appeal.

File 21-6 appeal of WCA restoration order in Brown County, filling and grating of two alleged wetland areas. Petition states they are not wetlands and alterations that occurred were approved previously by local unit of government. No decision has been made on this appeal.

File 19-7 (12-20-19) This is an appeal of a WCA replacement plan decision in Hennepin County. The appeal regards the denial of a replacement plan application associated with wetland impacts described in a restoration order. The restoration order was appealed and placed in abeyance until there is a final decision on the wetland application (File 18-3). The appeal has been placed in abeyance until there is no longer mutual agreement on the viability of proposed actions for restoration. The LGU has since notified BWSR that there is no longer mutual agreement on continuing to hold the appeal in abeyance. As a result, a decision was made to grant and hear the appeal. The hearing proceedings have been extended by mutual agreement. A settlement agreement was executed and it dismisses the appeal filed with BWSR.

File 18-3 (10-31-18) This is an appeal of a WCA restoration order in Hennepin County. The appeal regards the alleged filling and draining of over 11 acres of wetland. Applications for exemption and no-loss determinations were submitted to the LGU concurrently with the appeal. The appeal has been placed in abeyance and the restoration stayed for the LGU to make a final decision on the applications. That decision has been amended several times to extend the time frame on the stay of the restoration order. The LGU decision was appealed (File 19-7). A settlement agreement was executed and it dismisses the appeal filed with BWSR.

Buffer Compliance Status Update: BWSR has received Notifications of Noncompliance (NONs) on 93 parcels from the 12 counties BWSR is responsible for enforcement. Currently there are no active Corrective Action Notices (CANs) and 6 Administrative Penalty Orders (APOs) issued by BWSR that are still active. Of the actions being tracked over 86 of those have been resolved.

Statewide 31 counties are fully compliant, and 50 counties have enforcement cases in progress. Of those counties (with enforcement cases in progress) there are currently 701 CANs and 67 APOs actively in place. Of the actions being tracked over 1,915 of those have been resolved.

Grants Program & Policy Committee – Todd Holman thanked Andrea Date for chairing the previous two committee meetings. Last meeting was on November 29 and will have action items later in the agenda. The next meeting is January 10. Todd stated they will be looking at the watershed based

implementation funding formula again at a future meeting. Todd congratulated and thanked Kevin for his service.

Todd thanked staff for their participation at the MASWCD conference. Stated the Mark Crampton family was nominated by the Wadena Soil and Water Conservation District for a certificate of achievement using the Crow Wing River Healthy Water Partnership RIM program.

RIM Reserve Committee – Jayne Hager Dee reported they met and there is an action item on the agenda.

Water Management & Strategic Planning Committee – Andrea Date reported they met November 29 and there is an action item on the agenda.

Chair Van Amburg thanked Andera for all her work on the board.

Wetland Conservation Committee – Jill Crafton reported they had a 404 Assumption Workshop and hope to be hearing more about it in the future.

Buffers, Soils & Drainage Committee - Kathryn Kelly reported the committee has not met. Kathryn Congratulated and thanked Kevin and Andrea for their work. Kathryn stated she attended the AMC conference and congratulated Rich Sve. Kathryn stated she is at the end of serving her two year term and thanked everyone.

Drainage Work Group (DWG) – Neil Peterson and Tom Gile reported the Drainage Work Group has not met and is planning to meet January 13.

AGENCY REPORTS

Minnesota Department of Agriculture – Thom Petersen reported the Ag Water Quality Certification Program continues to move toward their goal. Stated they have started to form teams for the Groundwater Protection Act in areas that have high nitrate. Department is still looking at some kind of drought package to provide some relief to farmers. Stated fertilizer could be an issue this spring; farmers are looking at rates and alternative practices. Stated Bob Patton is retiring from the Department and oversees agriculture preserve programs. They will be bringing in new people to help run the programs.

Minnesota Department of Health – Steve Robertson reported he went to Minnesota Ground Water Association conference. Content from the conference was recorded and is available on their website. Steve stated the Infrastructure bill passed and will bring money to Minnesota for drinking water and clean water activities. The PFAS monitoring program is about 50% done, results will be available in January. EPA announced they will be working on developing maximum contaminant levels (MCLs) for PFO and PFAS. Also indicated they will be revising their approach towards health risk where values will be lower than what they have now for the health advisory levels.

Minnesota Department of Natural Resources – Sarah Strommen reported it was nice to see people in person at the MASWCD and AMC conferences. In partnership with MPCA, a press event was held at Medicine lake in the Three River Parks District at French Park to talk about new data around climate and in particular the loss of ice days on Minnesota Lakes. On average Minnesota lost 10-14 lake ice days over the last 50 years.

Sarah stated she spent two days in Lac qui Parle County talking with members of the Lac qui Parle County Board and staff from the Lac qui Parle Yellow Bank Watershed District. Stated it was a great two days spent trying to figure out better ways to work together.

Minnesota Extension – Joel Larson reported at the Minnesota Groundwater Association there was a presentation from Jeff Broberg from the Minnesota Well Owners Organization. They have been working on a project with the Groundwater Association with running a series of drinking water testing clinics for different regions across the state. Joel stated they have been talking with them on how to build up that program in partnership with them. They are in the early stages of those conversations and as it develops Joel will bring back more information.

Joel stated they will be holding their Nutrient Management Conference on February 8 in Mankato. The Nitrogen Conference will be February 25 in St. Cloud. Both will have online options.

They are continuing to work through Minnesota Climate Adaptation Partnership efforts. One of the projects they are working on is to develop a statewide more detailed and fine downscaled climate projection data. Climate Adaptation Awards Ceremony is being held on January 31 and looking to hold a broader conference in April.

Minnesota Pollution Control Agency – Glenn Skuta reported the 2022 Agriculture-Urban Partnership Forum on Water Quality is being held January 18.

ADVISORY COMMENTS

Association of Minnesota Counties – Brian Martinson reported AMC recently held its annual conference in Bloomington. Thanked Executive Director Jaschke and Commissioners Petersen, Kessler, Strommen, and their staff for participating and contributing to various events during the conference. Conservation awards were presented to Lower St. Croix Watershed Partnership (Anoka, Chisago, Isanti, Pine, and Washington Counties) and to a Community Partnership via the Crow Wing County Highway Department.

Brian stated they are setting priorities for next year and updating their platform. The top two priorities they will focus on are mental health and behavior health issues as well as updates to legislature dealing with the recent opioid settlement. For the Environmental and Natural Resources there are two priorities, one is dealing with the public waters inventory. The second is maintaining and reinforcing county ability to manage solid waste. The Resources Committee reviewed nine potential platform changes or additions and adopted seven. One is to update and expedite the ability to get septic system professionals onboarded and trained. Need for more septic systems professionals around the state and want to see that addressed.

Underground utility mapping is a new item that came from language adopted by the Clean Water Council and comes from collaborated work at the state with Geospatial and Gopher State One to provide more environmental protection and safety.

Minnesota Association of Conservation District Employees – No report was provided.

Minnesota Association of Soil & Water Conservation Districts – No report was provided.

Minnesota Association of Townships – Eunice Biel reported this fall they had district meetings throughout the state that went well. There was a presentation on American Rescue Plan Act of 2021 (ARPA) funding. Stated the spending for the ARPA money in township is limited on how it can be spent. Stated they are involved in a Workman's Compensation audit for townships.

They will be offering web classes through MAP for township officer; 2022 is an election year. There will also be training on best practices.

Minnesota Association of Watershed Districts –Emily Javens reported they submitted a legal petition on November 8 in regard to a rulemaking item from the last board meeting. Stated their platform for the next year is to make sure that all Watershed Districts have the capacity to fund their work.

Emily stated they held their annual conference virtually and all sessions were recorded. Stated that MAWD gave two awards, the project of the year was awarded to Sand Hill River Ecosystem Enhancements. The Watershed District Program of the year was awarded to Comfort-Lake-Forest Lake for their citizen assisted tributary monitoring program. DNR awarded Valley Branch for Watershed District of the year. The Administrator Award went to Jamie Byer, Bios de Sioux Watershed District. BWSR gave an award for an Outstanding Employee awarded to Cody Fox who is a program manager for Cedar River. The Video Award for best picture was awarded to Bassett Creek.

Chair Van Amburg thanked Emily and Maddy Bohn for their work on the conference.

Natural Resources Conservation Service – Troy Daniell reported he attended the MASWCD conference and stated almost every presentation talked about partnerships. Troy thanked the BWSR Board and staff for their partnerships.

COMMITTEE RECOMMENDATIONS

RIM Committee

Amendment to Board Order #19-34 Wellhead Protection Partner Grants (Pilot) – Sharon Doucette presented Amendment to Board Order #19-34 Wellhead Protection Partner Grants (Pilot).

ML21 1st Special Session, Ch.1, Art. 2, Sec. 6(g) designated the following:

\$2,500,000 the first year and \$2,500,000 the second year are for permanent conservation easements on wellhead protection areas under Minnesota Statutes, section 103F.515, subdivision 2, paragraph (d), or for grants to local units of government for fee title acquisition to permanently protect groundwater supply sources on wellhead protection areas or for otherwise ensuring long-term protection of groundwater supply sources as described under alternative management tools in the Department of Agriculture Minnesota Nitrogen Fertilizer Management Plan, including using low-nitrogen cropping systems or implementing nitrogen fertilizer best management practices. Priority must be placed on land that is located where the vulnerability of the drinking water supply is designated as high or very high by the commissioner of health, where drinking water protection plans have identified specific activities that will achieve long-term protection, and on lands with expiring conservation reserve program contracts.

ML17 Ch. 91, Art. 2 Sec. 7(g) and ML19 1st Special Session, Ch. 2, Art. 2, Sec. 7(g) both contained similar language allowing for grants to local units of government for wellhead protection.

In 2019, the Board approved a pilot Wellhead Protection Partner Program to utilize all available options given by the legislature for wellhead protection. The board order for the pilot authorized \$1 million for the pilot program. Since that time, we have funded 3 successful local acquisition projects which have utilized most of the \$1M, but we have not piloted a long-term easement/contract via a local partner. Staff is requesting that the pilot grant program continue with added funding to learn from these additional options provided in the program as well as to allow for development of a wellhead specific RIM rate that will be in conjunction with updated RIM rates presented to the board within the next 6 months.

Jill Crafton stated she supports this order and was glad to hear the need of inspections and building in accountability.

**
21-55 Moved by Jill Crafton, seconded by Jayne Hager Dee, to approve the Amendment to Board Order #19-34 Wellhead Protection Partner Grants (Pilot). **Motion passed on a roll call vote.**

Chair Van Amburg recessed meeting at 10:30 a.m. and called the meeting back to order at 10:35 a.m.

Grants Program and Policy Committee

Habitat Enhancement Landscape Pilot (HELP) – Dan Shaw presented Habitat Enhancement Landscape Pilot (HELP).

Declines of bees, butterflies, dragonflies, and other at-risk species that support ecosystems and food systems have raised significant alarm among scientists and conservation professionals both locally and globally. This cost share grant program is made possible through an appropriation from the Environment and Natural Resources Trust Fund (ENRTF). The program is focused on restoring and enhancing strategically located, diverse native habitat across Minnesota to benefit populations of pollinators and beneficial insects as well as overall plant and animal diversity.

Kathryn Kelly thanked Dan for his work and asked if the grant money is approved, can it be marketed to CRP landowners to enhance their CRP lands. Dan stated CRP land is eligible for this program.

Jill Crafton stated this would be good opportunity to do sampling for soil organic matter and asked if we could implement it into policy. Dan stated this is something they have been talking about for a variety of programs. They are working with conservation districts to do more testing of soil before and after installation of projects.

Ron Staples asked if the deadline of February 3 is a short period of time or if that's a normal time frame for submittals. Dan stated for this type of grant they provide around 2 months for applications. Most of the potential applicants are aware this is happening. Another email will be going out letting them know it was passed by the board and more detail about the grant will be provided.

Joe Collins asked if this was applicable for urban areas. Dan stated city and park lands are eligible for the program.

Jill Crafton asked if the Lawns to Legumes Program is still going on. Dan stated it is still going on and there is currently an RFP out now. Might have a little bit of overlap, more applicants for this program will be on larger more intact natural habitat where lawns to legumes has more of an urban focus to it.

**
21-56 Moved by Kathryn Kelly, seconded by Jill Crafton, to approve the Habitat Enhancement Landscape Pilot (HELP). **Motion passed on a roll vote.**

Cooperative Weed Management Areas (CWMA) – Dan Shaw presented Cooperative Weed Management Areas (CWMA).

Cooperative Weed Management Areas are partnerships of federal, state and local government agencies along with tribes, individual landowners and various other interested groups that manage noxious weeds or invasive plants in a defined area. The BWSR Cooperative Weed Management Area (CWMA) Program was developed in 2008 to establish strong and sustainable CWMAs across Minnesota for the collaborative and efficient control of invasive species and protection of conservation lands and natural areas. \$200,000 is proposed for FY2022 and FY2023 for newly developing and existing CWMAs/terrestrial weed management partnerships in Minnesota.

Kathryn Kelly noted a couple typos on page 7, under number 15, Conflict of Interest, under number 1 completing duties is run together and under number 3 all competitors is also run together.

**
21-57 Moved by Neil Peterson, seconded by Kathryn Kelly, to approve the Cooperative Weed Management Areas (CWMA). **Motion passed on a roll vote.**

FY 2022 Clean Water Fund Competitive Grant Award – Shaina Keseley and Mark Hiles presented FY 2022 Clean Water Fund Competitive Grant Award.

The purpose of this agenda item is to allocate FY22 Clean Water Competitive Grants. On June 23, 2021, the Board authorized staff to distribute and promote a request for proposals (RFP) for eligible local governments to apply for Clean Water Fund Competitive Grants in three program categories: Projects and Practices, Projects and Practices Drinking Water Subprogram and Multipurpose Drainage Management (Board order #21-16).

Applications for the FY2022 Clean Water Fund Competitive Grants were accepted from June 30 through August 17, 2021. Local governments submitted 66 applications requesting \$22,066,713.66 in Clean Water Funds. BWSR Clean Water staff conducted multiple processes to review and score applications and involved staff from other agencies to develop the proposed recommendations for grant awards. The BWSR Senior Management Team reviewed the recommendations on November 9th, 2021 and made a recommendation to the Grants Program and Policy Committee. The Grants Program and Policy Committee reviewed the recommendation on November 29th, 2021 and made a recommendation to the full Board. A draft Order is attached based on that recommendation of the Grants Program and Policy Committee.

Jill Crafton asked if the funds going forward will stay with competitive grants and won't get diverted to other programs. Shaina stated what is in those application tables is what it will go to it. John Jaschke stated shifting would need to be done though a future board order.

**
21-58 Moved by Jill Crafton, seconded by Joe Collins, to approve the FY 2022 Clean Water Fund Competitive Grant Award. **Motion passed on a roll vote.**

General Fund Feedlot Grant to TSA 7 – Kevin Bigalke presented General Fund Feedlot Grant to TSA 7.

Since 2016, BWSR has partners with TSA 7 (SE Minnesota) and the NRCS on a Regional Conservation Partnership Program (RCPP) grant to address feedlot management in the Lower Mississippi River Watershed. The RCPP grant has been completed and the project generated more interest than the RCPP grant could fund. During the 2021 Legislative Special Session, BWSR was appropriated general fund dollars for feedlot water quality grants for feedlots under 500 animal units and nutrient and manure management projects. This request is to provide the \$260,000 in FY2022 & \$260,000 in FY2023 General Fund Feedlot grant dollars to TSA 7 to continue the work started with the RCPP project. The Grants Program and Policy Committee met on November 29, 2021 and recommended approval to the full Board.

Thom Petersen asked if they could talk more about the interest and the demands for these grants. Dave Copeland stated they have done a good job of communicating the availability of funds and projects. With this grant they anticipate addressing two or three feedlots that are backlogged. They will also look at the potential to work with NRCS to coordinate state money with Federal EQIP dollars. In talking to TSA staff, they don't see any issue in being able to get projects done and utilize the funds. It won't address all the back log but will certainly help.

Ted Winter asked about the current feedlot grants and if there is any percent of local interest that has to be a part of it and if there are there any guidelines. Kevin stated in the past these grants matched with RCPP and have a been a 90/10 split. Landowner would be contributing 10% of the overall cost of the project and the grant would cover up to 90%.

**
21-59 Moved by Thom Petersen, seconded by Joe Collins, to approve the General Fund Feedlot Grant to TSA 7.
Motion passed on a roll vote.

Water Management and Strategic Planning Committee

Revision of the Nonpoint Priority Funding Plan (NPPF) – Brad Wozney presented Revision of the Nonpoint Priority Funding Plan (NPPF).

Since late 2020, BWSR staff have evaluated the current NPPF to determine its value and relevance. From this evaluation staff believe in taking the necessary time to revise it to better reflect and align with the changes in state planning and programming since the last revision in 2018. Staff are proposing another extension to December 2023. Senior Management Team approved the proposed board order deferring development of the NPPF to the Water Management and Strategic Planning Committee (WMSP). The WMSP discussed the proposed process and basis for alternative content and recommended approval of the order for the NPPF to the Board.

Jill Crafton stated she would like to see this come to the Water Management Strategic Planning Committee and the Grants Program and Policy Committee. Brad stated it is on the schedule to bring to the committees to get their involvement as well.

Joe Collins stated in the metro they have comprehensive watershed management plans. Joe asked what the reference to local comprehensive watershed management plan via 1W1P program is and if they are trying to focus only on 1W1P with this. Brad stated they will not be exclusively citing the 1W1P. One of the components of the non-point priority funding plan is estimating the need for non-point costs so they will be using metro plans as well as 1W1P comprehensive plans to help acquire that estimated need. It won't be exclusive to outstate plans.

Ted Winter asked why we don't list them, instead of via the 1W1P. Kevin stated it wasn't the intent to have it exclusive of metro water plans but linking local comprehensive water management plans via the 1W1P program but a matter of stating 103b.801 1W1P and the 103b.235, which is the metro comprehensive watershed management plans. They are locally driven and state supportive. John Jaschke stated it might be simpler in the board order, sub item 2b, to remove the specific reference to that program and link to local watershed plans in general so it would be inclusive to both.

Language in the board order under number 2b in the Order section will be changed to read: linking to local watershed management plans which are locally driven and state supported.

Ted Winter asked for clarity on going from the traditional clean water fund competitive grants to noncompetitive watershed based implementation funding approach.

Kevin stated the nonpoint priority funding plan is a statutorily required plan that talks about how clean water funds in a general sense of project and programs activities would be prioritized for utilization. With the proposed revision to the nonpoint priority funding plan, it's providing a better context to the more comprehensive watershed based planning approach that Minnesota is now undertaking and is utilizing those plans that incorporate the state driven data. This information is put into a prioritized approach at the local level, balancing both state priorities with local priorities and initiatives. The watershed based implementation approach utilizes comprehensive watershed management plans to

allocate funds. The local government uses their implementation plans that are prioritized and targeted to determine how to use those funds based on the development and what their comprehensive plans say. It eliminates and provides a more stable predictable level of funding for each biennium. With watershed based implementation funding a particular set of local government partners in a watershed area, there will be a relative sense based on legislative appropriations every year and an amount of money that will be going to the watershed for utilization partnership. They'll know based on their priorities that are set in their plan where they're going to be working and which projects they are going to be working on without needing to go through the competitive process.

**
21-60 Moved by Joe Collins, seconded by Jill Crafton, to approve the Revision of the Nonpoint Priority Funding Plan (NPPF). **Motion passed on a roll vote.**

Central Region Committee

Lower Rum River Watershed Management Organization Watershed Management Plan – Steve Christopher presented Lower Rum River Watershed Management Organization Watershed Management Plan.

Background:

The Lower Rum River Watershed Management Organization (LRRWMO) is approximately 56 square miles in the southwestern portion of Anoka County, bisected by the Rum River. It is bound by the Mississippi River to the south, Sherburne County to the west, the Upper Rum River Watershed Management Organization to the north and the Coon Creek Watershed District to the east. The WMO includes all or part of the Cities of Andover, Anoka, and Ramsey. The LRRWMO is moderately developed with suburban land use.

The LRRWMO was formed in 1985 through a Joint Powers Agreement (JPA) signed by the Cities of Andover, Anoka, Coon Rapids, and Ramsey. Since establishment, the JPA has been revised and amended to incorporate statutory and rule changes, the Wetland Conservation Act, and cost sharing on LRRWMO projects. The JPA was also revised in 2014 to revise its legal boundary as the City of Coon Rapids was transferred to the Coon Creek Watershed District.

Plan Process and Highlights:

The LRRWMO initiated the process on updating its Watershed Management Plan (Plan) in 2019 soliciting input from its stakeholders, holding kickoff meetings, and convening Citizen Advisory and Technical Advisory Committee meetings. The LRRWMO also completed an analysis of potential 2011 Plan gaps.

Through the process identified above, the LRRWMO Board identified the following as the most relevant issues:

- Adverse impacts from stormwater runoff
- Degraded water quality of lakes, streams, and rivers
- Flood risk and water quantity issues
- Excessive erosion and sedimentation
- Integrity of wetlands, shoreland, and natural areas
- Groundwater contamination
- Efficacy and efficiency of the LRRWMO permit program
- Limited funding and capacity
- Opportunities for increased education and engagement

The Plan states measurable goals associated with each of the issues identified including those related to the LRRWMO's organizational effectiveness/capacity such as funding and engagement.

The Plan's Implementation Program is structured around Administration, Programs and Projects which is consistent with the current Plan, however it adds specificity to the actions the LRRWMO will undertake. The identified projects will largely rely on grant funds for implementation. The LRRWMO partners and the Watershed-based Implementation Funding program should provide strong opportunities for advancement recognizing that need.

Joe Collins thanked Kevin Bigalke, Andrea Date, and Kathryn Kelly for their work.

Jill Crafton stated she appreciated the Metropolitan Council and the MPCA pushing for specificity.

**
21-61

Moved by Joe Collins, seconded by Kathryn Kelly, to approve the Lower Rum River Watershed Management Organization Watershed Management Plan. ***Motion passed on a roll vote.***

Gerald Van Amburg thanked Kevin Bigalke for all his work and Kathryn Kelly and Andrea Date for their time on the board.

Kevin Bigalke thanked Board Members for their work.

UPCOMING MEETINGS

- Southern Region Committee is scheduled for Monday, December 20, 2021, at 9:00 a.m. at Murray Soil and Water Conservation District, 2740 22nd Street, Slayton and by Microsoft Teams.
- Audit and Oversight Committee is scheduled for January 20, 2022, at 3:00 p.m. in Conference Room 101 at 520 Lafayette Road, North, St. Paul and by WebEx.
- BWSR Board meeting is scheduled for Wednesday, January 26, 2022, at 9:00 a.m. in the Lower Level Conference Rooms at 520 Lafayette Road North, St. Paul and by WebEx.

Chair Van Amburg stated in the day of packet there is a letter from the Minnesota Campaign Finance Board. John Jaschke stated each board member should be receiving a letter directly.

Chair VanAmburg adjourned the meeting at 12:01 PM.

Respectfully submitted,

Gerald Van Amburg
Chair

Dispute Resolution and Compliance Report

January 26, 2022

By: Travis Germundson

There are presently **six** appeals pending. All the appeals involve the Wetland Conservation Act (WCA). There have been **three** new appeals filed since the last Board Meeting.

Format note: New appeals that have been filed since last report to the Board.
~~Appeals that have been decided since last report to the Board.~~

File 22-1(1-7-2022) This is an appeal of a WCA Restoration Order in Steele County. The appeal regards the alleged placement of agricultural drain tile through multiple wetlands. No decision has been made on the appeal.

File 21-9 (12-17-2021) This is an appeal of a WCA notice of decision involving a no-loss determination in Pope County. The appeal regards the approval of a 36' inlet structure/tile to reduce inundation and saturated soil on agricultural fields. At issue is the elevation that was approved (to high). The petition request that the appeal be placed in abeyance until technical data can be gathered. Note, this involves the same notice of decision being appealed under File 21-07. *The appeal has been combined with file 21-7 and placed in abeyance to allow the Technical Evaluation Panel to develop written finding of fact following the submission of additional technical analyses.*

File 21-8 This is an appeal of a WCA Restoration Order in Rock County. The appeal regards the alleged placement of tile lines through wetlands. The petition request that the appeal be placed in abeyance for the submittal of an after-the-fact wetland application. *No decision has been made on the appeal.*

File 21-7 (12-14-2021) This is an appeal of a WCA notice of decision involving a no-loss determination in Pope County. The appeal regards approval of a 36" inlet structure/tile that allegedly rout water around U.S. Fish and Wildlife Service property and impact wetlands. At issue is the elevation that was approved (to low). *The appeal has been combined with file 21-9 and placed in abeyance to allow the Technical Evaluation Panel to develop written finding of fact following the submission of additional technical analyses.*

~~File 21-6 (12-1-2021)~~ This is an appeal of a WCA restoration order in Brown County. The appeal regards the filling and grading of two alleged wetland areas. The petition contains that the areas are not wetland and any alterations in those areas were approved by the local unit of government. *The appeal was dismissed and the Restoration Order deemed final because it was not filed within the extended time frame to appeal.*

~~File 21-5 (11/2/2021)~~ This is an appeal of a WCA restoration order in Waseca County. The appeal regards the alleged excavation/improvement of a private ditch located on private and public land. *No decision has been made on the appeal. The appeal was denied and the Restoration Order affirmed.*

File 21-4 (10-26-2021) This is an appeal of a WCA restoration order in Morrison County. The appeal regards alterations to a private ditch and excavation of wildlife ponds. The project allegedly exceeded the project scope and authorization granted by the local unit of government for ditch maintenance under a no-loss determination. *The appeal was placed in abeyance and the restoration order stayed to determine viability of proposed actions for restoration.*

File 21-1 (8-16-2021) This is an appeal of a WCA Notice of Decision involving a no-loss_determination in Kittson County. The appeal regards the denial of a no-loss determination for wetland impacts associated with the construction of road, ditch, and additional fill material. *The appeal was placed in abeyance and the restoration order stayed for submittal of an after-the-fact wetland restoration and replacement plan application. The appellant’s legal counsel has since notified BWSR that there they are no longer interested in pursuing a new application. As a result, a decision was made on November 3, 2021 to grant and hear the appeal.*

Summary Table for Appeals

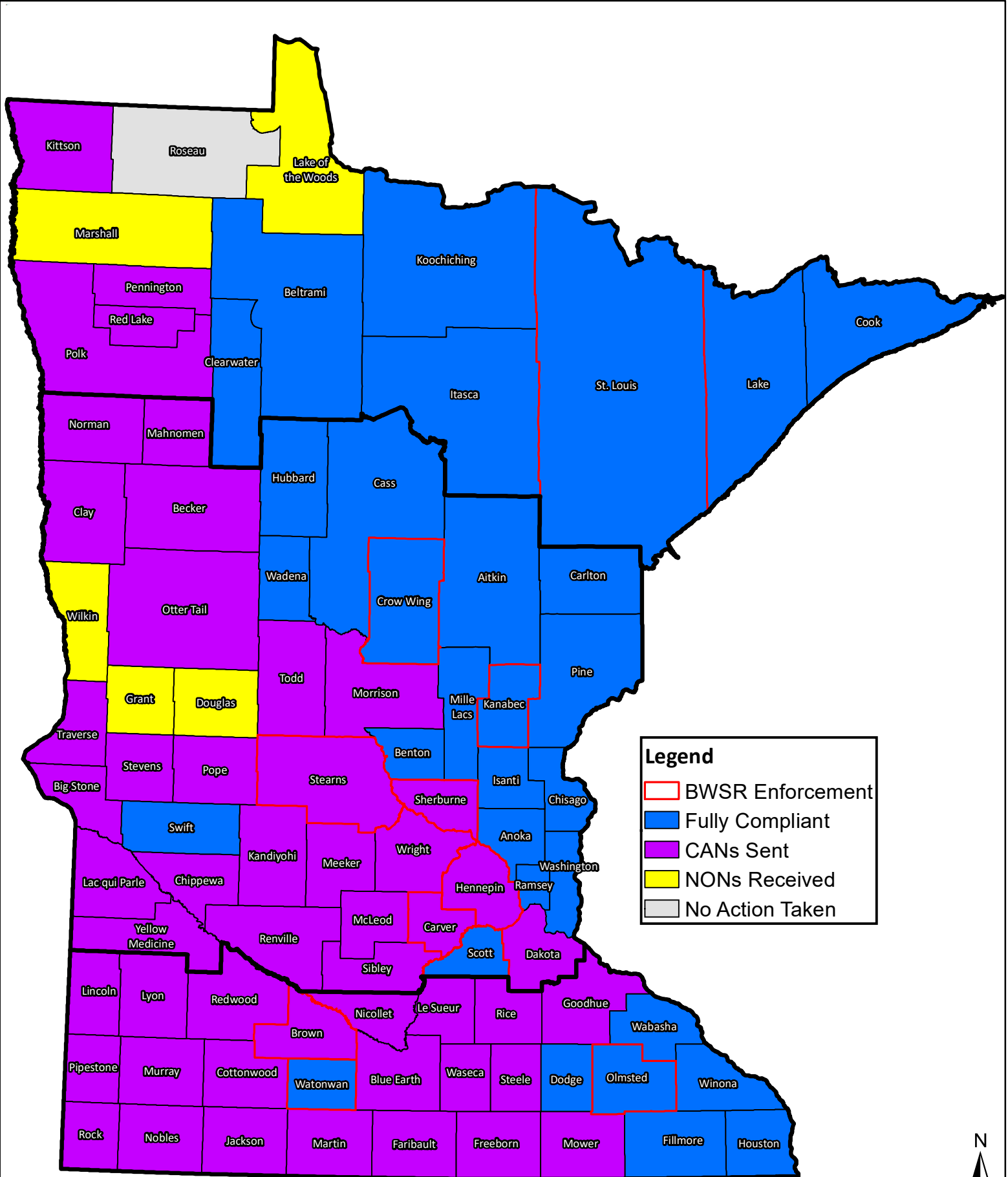
Type of Decision	Total for Calendar Year 2020	Total for Calendar Year 2021
Order in favor of appellant		
Order not in favor of appellant	7	2
Order Modified		
Order Remanded	3	
Order Place Appeal in Abeyance	4	2
Negotiated Settlement		
Withdrawn/Dismissed	5	2

Buffer Compliance Status Update: BWSR has received Notifications of Noncompliance (NONs) on 93 parcels from the 12 counties BWSR is responsible for enforcement. Currently there are no active Corrective Action Notices (CANs) and 6 Administrative Penalty Orders (APOs) issued by BWSR that are still active. Of the actions being tracked over 86 of those have been resolved.

*Statewide 31 counties are fully compliant, and 50 counties have enforcement cases in progress. Of those counties (with enforcement cases in progress) there are currently 776 CANs and 70 APOs actively in place. Of the actions being tracked over 1,930 of those have been resolved.

**Disclaimer: These numbers are generated monthly from BWSR’s Access database. The information is obtained through notifications from LGUs on actions taken to bring about compliance and may not reflect the current status of compliance numbers.*

STATEWIDE COUNTY BUFFER ENFORCEMENT



COMMITTEE RECOMMENDATIONS

Southern Region Committee

1. Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan – Jeremy Maul, Mark Hiles, and Ed Lenz – ***DECISION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan

Meeting Date: January 26, 2022

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: 1W1P, Renville, Kandiyohi, Chippewa, Water Plan

Section/Region: Southern Region

Contact: Ed Lenz

Prepared by: Jeremy Maul

Reviewed by: Southern Regional Committee(s)

Presented by: Jeremy Maul, Mark Hiles, Ed Lenz

Time requested: 15 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Approval of the Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan as recommended by the Southern Regional Committee.

LINKS TO ADDITIONAL INFORMATION

Plan Weblink: https://www.kcmn.us/departments/environmental_services/onewatershedoneplan/index.php

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan (Plan) – The BWSR Area 53 (Partnership) was selected by BWSR for a One Watershed, One Plan Planning Grant in August of 2018. The Partnership established a Memorandum of Agreement on April 1, 2019 for the purposes of watershed planning. Planning was initiated on May 17, 2019 via notification to designated Plan review authorities. The Partnership has followed One Watershed, One Plan Operating Procedures and the Policy Committee, Technical Advisory Committee, and Planning Work Group members have attended regularly scheduled meetings and kept open communication throughout Plan development. The Partnership submitted the Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan (Plan) to BWSR on November 11, 2021 for review and approval. The Southern Regional Committee (Committee) met on December 20, 2021 to review the planning process, the content of the Plan, State agency comments on the Plan, and to make a recommendation for approval. The Committee recommends approval by the full Board.

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

In the Matter of the review of the Comprehensive Watershed Management Plan for BWSR Area 53 CWMP, pursuant to Minnesota Statutes, Sections 103B.101, Subdivision 14 and 103B.801.

**ORDER APPROVING
COMPREHENSIVE
WATERSHED
MANAGEMENT PLAN**

Whereas, the Policy Committee of the BWSR Area 53 CWMP (Partnership) submitted the Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan (Plan) to the Minnesota Board of Water and Soil Resources (Board) on November 11, 2021 pursuant to Minnesota Statutes, Sections 103B.101, Subdivision 14 and 103B.801 and Board Resolution #16-17, and;

Whereas, the Board has completed its review of the Plan;

Now Therefore, the Board hereby makes the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. **Partnership Establishment.** The Partnership was established in 2019 through adoption of a Memorandum of Agreement for the purposes of developing a Comprehensive Watershed Management Plan. The membership of the Partnership includes Renville County, Renville Soil and Water Conservation District (SWCD), Kandiyohi County, Kandiyohi SWCD, Chippewa County, and Chippewa SWCD.
2. **Authority to Plan.** Minnesota Statutes, Sections 103B.101, Subdivision 14 allows the Board to adopt resolutions, policies or orders that allow a comprehensive plan, local water management plan, or watershed management plan, developed or amended, approved and adopted, according to Chapter 103B, 103C, or 103D to serve as substitutes for one another or be replaced with a comprehensive watershed management plan. Minnesota Statutes, Sections 103B.801 established the Comprehensive Watershed Management Planning Program; also known as One Watershed, One Plan. And Board Resolution #16-17 adopted the One Watershed, One Plan Operating Procedures and Plan Content Requirements policies.
3. **Nature of the Watershed.** The planning area encompasses five counties (Chippewa, Kandiyohi, Nicollet, Renville, and Sibley) and is nearly 1,262 square miles. There are three distinct zones in this watershed differentiated by their geographic and ecological characteristics. These zones include the “Lakes Zone,” the “Agricultural Zone,” and the “Minnesota River Zone.” The Lakes Zone of the Hawk Creek-Middle Minnesota planning area is in the northernmost region of the watershed in Kandiyohi County and the predominant land uses in this zone include lakes and wetlands, grasslands and hay, agriculture, and developed land. The Agricultural Zone is the largest zone in the Hawk Creek-Middle Minnesota planning area, encompassing portions of all five counties and the majority of the farmed acres in the watershed. The Minnesota River Zone is composed of the land draining directly to the Minnesota River. This zone is distinguished by the Minnesota River, the large bluffs, and bedrock outcroppings of gneisses and diorites.

4. **Plan Development.** The partnership initiated Plan development on May 17, 2019 by notifying designated Plan review authorities (State agencies, counties, cities, SWCDs, watershed districts, etc.) and other watershed stakeholders of their intent to plan. The notification included an invitation to submit priority issues and plan expectations by July 16, 2019. Five letters were received. Additional public input and prioritization of issues was collected at two public kickoff meetings held on September 5 and 6, 2019. A Technical Advisory Committee (TAC) was established by the partnership to assist in identifying the priority areas and priority issues and development of measurable goals for each. Measurable goals were based on the Yellow Medicine-Hawk Creek and Minnesota River-Mankato Watershed Restoration and Protection Strategies (WRAPS) reports, the Hawk Creek-Middle Minnesota Groundwater Restoration and Protection Strategies (GRAPS) report, Total Maximum Daily Loads (TMDLs), local water plans, other studies and reports, and local expertise. Rational for goals was provided in part by results from modeling through the Hydrological Simulation Program-FORTRAN (HSPF)-Scenario Application Manager (SAM) which was completed for five priority areas. The reduction estimates from the priority subwatersheds along with the measurable goals established for each subwatershed provide an estimated pace of progress that can be expected through the ten-year planning period. Additionally, implementation projects, programs, and strategies were detailed to identify where funds will be utilized to accomplish the measurable goals within the targeted implementation schedule.

5. **Plan Review.** On November 11, 2021, the Board received the Plan, a record of the public hearing, and copies of all written comments pertaining to the Plan for final State review pursuant to Board #16-17. State agency representatives attended and provided input at advisory committee meetings during development of the Plan. The following state review comments were received during the comment period.
 - A. Minnesota Department of Agriculture: No comments received.
 - B. Minnesota Department of Health (MDH): MDH does not have any additional comments or concerns and recommends approval of the Hawk Creek – Middle Minnesota CWMP.
 - C. Minnesota Department of Natural Resources: No comments received.
 - D. Minnesota Pollution Control Agency (MPCA): Overall, the MPCA is satisfied with the Plan. The Steering Committee was receptive to incorporating much of the MPCA’s earlier comments and revisions and the MPCA recommends approval of the Plan, with one potential edit.

In Table 4-2, please double check phosphorus load goals for Willmar Lake as they appear to be the same as the existing loads even though the total phosphorus concentrations levels changed.

Moving forward, the MPCA encourages the Hawk Creek-Middle Minnesota River planning team and its partners to continue to adapt and improve the Plan. Prior to the final approval of the Plan or in subsequent updates, the MPCA would encourage the following comments to be addressed:

1. Reference and utilize the Watershed Restoration and Protection Strategy (WRAPS) reports that were developed by the Local Partners from both the Hawk Creek and Middle Minnesota River groups, specifically the public participation activities identified by the Local Work Groups that build off the hard work and efforts the local government units (LGUs) have already implemented.
2. In the Implementation Table(s), MPCA suggests moving state and federal agencies to the supporting column. As cited in the Board of Water and Board of Water and Soil Resources (BWSR’s) One Watershed, One Plan (1W1P) Guidebook, State and Federal agencies will have a supporting role, and the LGUs will serve as the Lead.

3. Consider budgeting more funds for the monitoring work that was identified in the Plan. Establishing and maintaining monitoring sites (especially flow sites) is costly and the \$5,000 per station over the 10-year life of the plan seems inadequate.

E. Minnesota Board of Water and Soil Resources (BWSR) regional staff: BWSR does not have any additional comments or concerns and recommends approval of the Hawk Creek – Middle Minnesota CWMP.

F. Local Review: No local comments were received.

6. **Plan Summary and Highlights.** The highlights of the plan include:

- Executive Summary – provides a high-level overview of the watershed and planning partners, a summary of the issue identification and prioritization process, a description of the processes used to develop the measurable goals and target projects and practices, an overview of the targeted implementation schedule programs and actions and the estimated funding needed, and the anticipated roles and responsibilities of partnership members in the implementation process.
- Section 1 – Contains a high-level discussion of the purpose and scope of the Plan and the 1W1P Program as a whole. Includes geographic information of the extend of the planning area for each planning partnership and their level of involvement in the Plan development. It also contains information on the various committees established to develop the Plan and a list of all formal meetings held during Plan development.
- Section 2 – Serves as the Land and Water Resources Narrative to give a summary of watershed characteristics and issues. Information was included on geology, precipitation, surface water, groundwater, stormwater, drainage, recreation, habitat, land use, and socioeconomics. Broke the Plan area into three zones - the Lakes Zone, the Agricultural Zone, and the Minnesota River Zone - and discussed the geography and hydrology for each.
- Section 3 – Identification and Prioritization of Issues and Resources describes the information and process used to develop watershed resources and issues. Particularly important resources included the WRAPS, GRAPS, TMDLs, existing water plans, other management plans, studies and reports, and local expertise. Public input was utilized via invitation to comment, and two public kickoff meetings. Five priority areas were established (Upper Hawk Creek, Chetomba Creek, Beaver Creek, Fort Ridgely Creek, and Swan Lake, which is located in Sibley County) and a Tiered Priority ranking of issues was established based on the concerns in the five priority areas.
- Section 4 – Establishment of Measurable Goals explains how both ten-year and long-term goals were developed for each of the priority issues. BATHTUB (Version 6.1) was used to establish goals for lakes in the lake region of the priority areas. HSPF modeling was used to estimate pollutant reduction values and project costs. This was done primarily through WRAPS data, TMDL data, GRAPS data, HSPF-SAM results, Policy Committee input, and local expertise provided by Planning Work Group members.
- Section 5 – Targeted Implementation Program describes the combination of projects, studies, programs, and practices intended to achieve the measurable goals. The implementation schedule is organized by priority areas/issues. The implementation schedule has a total estimated cost of approximately \$53,604,000 with a local contribution of \$14,264,096.
- Section 6 – Discussion of existing implementation programs, including Incentive Programs, Regulation and Enforcement Programs, Capital Improvement Projects, Public Participation and Engagement Programs, Operation and Maintenance Programs, and Data Collection and Monitoring.
- Section 7 – This section also provides some details on how the Partnership will administer and coordinate the implementation of the Plan, including a process for amending the plan. The Partnership is in the process of establishing a Joint Powers Entity to work under a Joint Powers Agreement for Plan implementation.

7. **Southern Regional Committee.** On December 20, 2021, the Southern Regional Committee met to review and discuss the Plan. Those in attendance from the Board’s Committee were Ted Winter, Jeffrey Berg, Eunice Biel, Kathryn Kelly, Kelly Kirkpatrick, Steve Robertson, and Scott Roemhildt. Board staff in attendance were Southern Regional Manager Ed Lenz, Board Conservationist Jeremy Maul, and Clean Water Specialist Mark Hiles. The representatives from the Partnership were Zach Bothun, Eric VanDyken, JoAnne Blomme, and Holly Hatelwick. Board regional staff provided its recommendation of Plan approval to the Committee. After discussion, the Committee’s decision was to present a recommendation of approval of the Plan to the full Board.
8. This Plan will be in effect for a ten-year period until January 26, 2032.

CONCLUSIONS

1. All relevant substantive and procedural requirements of law have been fulfilled.
2. The Board has proper jurisdiction in the matter of approving a Comprehensive Watershed Management Plan for the BWSR Area 53 CWMP pursuant to Minnesota Statutes, Sections 103B.101, Subd. 14 and 103B.801 and Board Resolution #16-17.
3. The Hawk Creek – Middle Minnesota CWMP Plan attached to this Order states water and water-related problems within the planning area; priority resource issues and possible solutions thereto; goals, objectives, and actions of the Partnership; and an implementation program.
4. The attached Plan is in conformance with the requirements of Minnesota Statutes Section 103B.101, Subd. 14 and 103B.801 and Board Resolution #16-17.
5. The attached plan when adopted through local resolution by the members of the Partnership will serve as a replacement for the comprehensive plan, local water management plan, or watershed management plan, developed or amended, approved and adopted, according to Chapter 103B, 103C, or 103D, but only to the geographic area of the Plan and consistent with the One Watershed, One Plan Suggested Boundary Map.

ORDER

The Board hereby approves the attached Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan of the BWSR Area 53 CWMP, dated January 26, 2022.

Dated at St Paul, Minnesota, this 26 of January 2022.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: Gerald Van Amburg, Chair

January 26, 2022

BWSR Area 53 CWMP
c/o Zach Bothun, Technical Manager
Chippewa Soil and Water Conservation District
629 North 11th Street, Suite 7
Montevideo, MN 56265

RE: Approval of the Hawk Creek - Middle Minnesota Comprehensive Watershed Management Plan

Dear BWSR Area 53 CWMP (Partnership):

The Minnesota Board of Water and Soil Resources (BWSR) is pleased to inform you the Hawk Creek - Middle Minnesota Comprehensive Watershed Management Plan (Plan) developed through the One Watershed, One Plan Program was approved at its regular meeting held on January 26, 2022. Attached is the signed Board Order that documents approval of the Plan and indicates the Plan meets all relevant requirements of law, rule, and policy.

This Plan is effective for a ten-year period until January 26, 2032. Please be advised, the partners must adopt and begin implementing the Plan within 120 days of the date of the Order in accordance with Minnesota Statutes §103B.101, Subd. 14, and the One Watershed, One Plan Operating Procedures.

The members of the Partnership and participants in the Plan development process are to be commended for writing a plan that clearly presents water management goals, actions, and priorities of the Partnership. The BWSR looks forward to working with you as you implement this Plan and document its outcomes.

Please contact Board Conservationist Jeremy Maul of our staff at 507-344-2824 or jeremy.maul@state.mn.us for further assistance in this matter.

Sincerely,

Gerald Van Amburg, Chair
Minnesota Board of Water and Soil Resources

Enclosure: BWSR Board Order

CC: Aicam Laacouri, MDA (via email) Margaret Wagner, MDA (via email)
Amanda Strommer, MDH (via email) Carrie Raber, MDH (via email)
Ethan Jenzen, DNR (via email) Tim Gieseke, DNR (via email)
Barbara Weisman, DNR (via email) Mike Weckwerth, MPCA (via email)
Jeff Risberg, MPCA (via email) Erik Dahl, EQB (via email)
Ed Lenz, BWSR (via email) Jeremy Maul, BWSR (via email)
Mark Hiles, BWSR (via email) Julie Westerlund, BWSR (via email)
Rachel Mueller, BWSR (file copy)

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403 Fourth Street NW Suite 200 Bemidji, MN 56601 (218) 755-2600	1601 Minnesota Drive Brainerd, MN 56401 (218) 203-4470	26624 N. Tower Road Detroit Lakes, MN 56501 (218) 846-8400	394 S. Lake Avenue Suite 403 Duluth, MN 55802 (218) 723-4752	11 Civic Center Plaza Suite 300 Mankato, MN 56001 (507) 344-2826	1400 East Lyon Street Marshall, MN 56258 (507) 537-6060	3555 9 th Street NW Suite 350 Rochester, MN 55901 (507) 206-2889	110 Second St. South Suite 307 Waite Park, MN 56387

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www.bwsr.state.mn.us TTY: (800) 627-3529 An equal opportunity employer

EXECUTIVE SUMMARY

The Hawk Creek–Middle Minnesota Comprehensive Watershed Management Plan (HCMM CWMP) also referred to as the “Plan”, represents over two years of collaborative work between six entities that have sought to understand, improve, and protect the surface and groundwater resources of the region. The planning area (displayed in the map on the following page) encompasses five counties (Chippewa, Kandiyohi, Nicollet, Renville and Sibley) and is nearly 1,262 square miles. It is home to three watershed zones that encompass both high-valued recreational lakes and streams, as well as many impaired waters impacted by intensive row crop agriculture and increased sediment and pollutants transported by rainfall. These waters drain to the Minnesota River, one of ten major river basins in Minnesota, and then ultimately to the Mississippi River.

The land use and climate-related issues identified in this Plan are not unique to the Hawk Creek–Middle Minnesota planning area, and in fact, affect the health of watersheds throughout the Upper Midwest. Addressing these challenges will require a new way of thinking and a strong commitment from private landowners, local municipalities, and government agencies alike.

The Hawk Creek–Middle Minnesota Partners responsible for this Plan development include Chippewa, Kandiyohi and Renville counties, along with each county’s respective Soil and Water Conservation District. With the approval of this Plan by the Minnesota Board of Water and Soil Resources (BWSR) local government units that adopt the Plan will meet minimum eligibility requirements for state funds for the implementation of projects and programs needed to achieve the restoration and protection goals included in this Plan.



Granite outcropping, Minnesota River

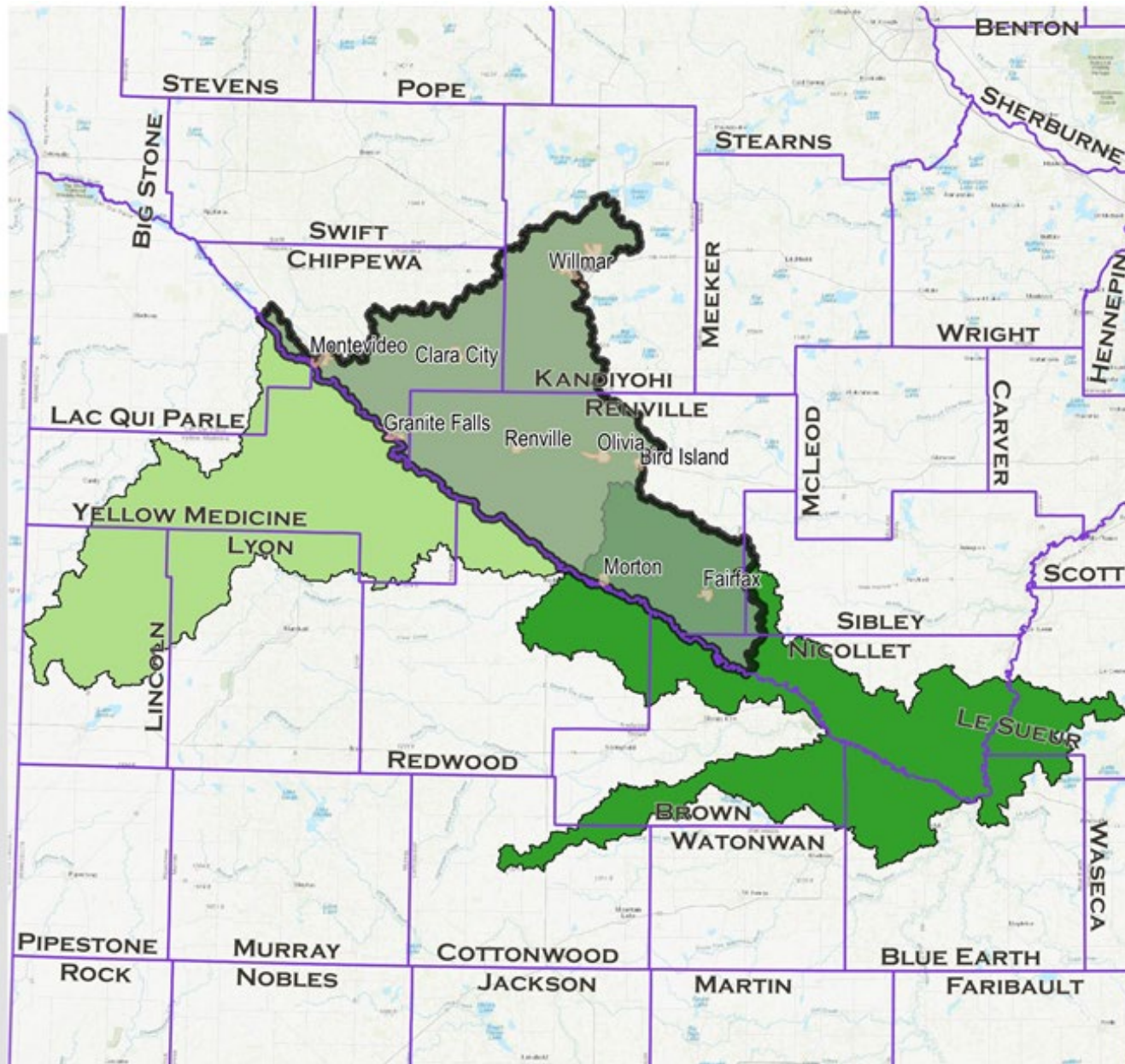
Hawk Creek-Middle Minnesota One Watershed, One Plan

Planning Area

-  Minnesota River -Mankato
-  Minnesota River -Yellow Medicine
-  Hawk Creek -Middle Minnesota (Planning Boundary)



0 10 20 mi



COMMITTEE RECOMMENDATIONS

Northern Region Committee

1. Red River Basin Commission FY22/23 Grant Approval – Henry Van Offelen – ***DECISION ITEM***
2. Boundary Change Petition for Bois de Sioux Watershed District and Upper Minnesota River Watershed District – Pete Waller – ***DECISION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Red River Basin Commission FY22/23 Grant Approval

Meeting Date: January 26, 2022

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: Grant Approval

Section/Region: Regional Operations/Northern

Contact: Ryan Hughes

Prepared by: Henry Van Offelen

Reviewed by: Northern Region Committee(s)

Presented by: Henry Van Offelen

Time requested: 5 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Board approval of the FY2022-2023 Red River Basin Commission Grant

LINKS TO ADDITIONAL INFORMATION

[Home | Red River Basin Comm \(redriverbasincommission.org\)](http://redriverbasincommission.org)

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

In 2021 the Legislature appropriated funds to the Board for grants to the Red River Basin Commission (RRBC) for waters quality and floodplain management, including administration of programs. The RRBC has submitted an updated report of 2021 activities related to their Natural Resources Framework plan and has developed a work plan and budget for 2022 and 2023. The RRBC has secured the required matching funds from the State of North Dakota and Province of Manitoba. BWSR staff have reviewed these materials and found that they are consistent with previous materials submitted to secure these funds.

The Northern Regional Committee (Committee) met January 5, 2021, to review and discuss the RRBC 2021 Annual Report, the RRBC 2022/23 Workplan, the current status of the RRBC, and to make a recommendation of the Order authorizing the FY2022/223 grant to the Red River Basin Commission to the full Board. The Committee recommends approval by the full Board.

BOARD ORDER**FY2022-2023 Red River Basin Commission Grant****PURPOSE**

Provide fiscal year 2022 and 2023 legislatively allocated general funds to the Red River Basin Commission.

RECITALS /FINDINGS OF FACT

1. The Laws of Minnesota 2021, 1st Special Session, Chapter 6, Section 4(f) appropriated funds to the Board for grants to the Red River Basin Commission for water quality and floodplain management, including administration of programs.
2. The proposed allocations in this order were developed consistent with this appropriation.
3. The Board Northern Regional Committee reviewed the order between December 28, 2021 and January 5, 2022 and recommended approval at their January 5, 2022 meeting.
4. The Board Executive Director has authority to approve the proposed allocations in this order.

ORDER

The Board hereby:

1. Approves the allocation of \$100,000 for fiscal year 2022 and \$100,000 for fiscal year 2023 to the Red River Basin Commission for water quality and floodplain management, including administration of programs.

Dated at St. Paul, Minnesota, this January 26, 2022.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Gerald Van Amburg, Chair
Board of Water and Soil Resources



Red River Basin Commission 2022 and 2023 Work Plan

The Red River Basin Commission (RRBC) is a charitable; not-for-profit organization designed to help facilitate a cooperative approach to water management within the Basin and is an established forum for identifying, developing, and implementing solutions to cross-boundary land and water issues.

The RRBC is led by 44 directors from Manitoba, Minnesota, North Dakota and South Dakota representing the diversity of this multi-jurisdictional Basin. The board is comprised of local, state, provincial, the environmental community and at-large members dedicated to innovation in the management of the Red River Basin's water resources.

4 Centers of Activity

1. Administration/Finance

Administration (5100) \$40,000 (\$20,000 each year of FY2022 FY2023 BWSR Funds)

- Board Meetings: March, June, September, November
- Board Retreat: March 2 & 3; In Grand Forks with a focus, by facilitator, on current strategic goals for future projects and fiscal stability.
- Summer Tour and Board Meeting in Gimli MB area June 1-2 to include to see the pilot project in the Netley -Libau Marsh Restoration and several smaller efforts. The Board meeting will address future water quality projects/efforts. (Tour location for 2023 to be determined in November 2022.)
- Executive Committee: Monthly, 3rd Thursday, additional meetings as needed
- Workplan Development: January – March Finalized in March based on feedback from RRBC Board Retreat
- Audit scheduled April through June by Widmer Roel
- Staff Evaluations: November-December

Finance (5400) \$27,200 (\$13,600 each year of FY2022 FY2023 BWSR Funds)

- Prepare Annual Budgets: Draft budget presented November 2022, for board approval. Begin 2023 budget process in July 2023.
- Manage budgets. Report Monthly Income and expenditures, approval by Board when they meet and Executive Committee the other months.
- Prepare workplans for the agreements for base funding with states and province.
- Request and report to local units of government base funding supports annually.
- Manage existing project funding.
- Develop and prepare new project funding as appropriate for RRBC mission. Focus on fostering water quality through soil conservation and flood retention.
- Manage Annual Audit in Canada, United States and Combined, board approval June/July.
- Develop agreements for charitable endowments in both U.S. Dollars and Canadian Dollars.
- Manage Red River Watershed Center expenses and payments, for all the partners located jointly with RRBC at our current location. Seek out new partners for 1 vacant space. (IWI, River Keepers, ND DOH, ND SWC and RRRRA).

Partnerships (7000) \$64,000 (\$32,000 each year of FY2022 FY2023 BWSR Funds)

- Integrate additional stakeholders into the goals, objectives and action items into the Natural Resource Framework Plan (NRFP). Continue to develop state of the basin documents on the various NRFP goals.
- Facilitate Basin groups including the following in Minnesota: Roseau River International Watershed, MN Counties Red River Joint Powers Board, International Red River Board and South Valley Initiative.
- Coordinate with the MN Red River Watershed Management Board on flood damage reduction and natural resource enhancement and communication activities by participating at RRWMB monthly meetings as well as committee work.
- Leverage partnerships to bring stakeholders into processes like the Adaptive Water Quality Management framework.
- Coordinate outreach to local government entities in MN with administrator of RRWMB.
- Seek to leverage successes of One Basin One Governance Conference in Winnipeg to further integrate indigenous voices in water management decision throughout the basin.

NRFP Workings Groups (7100) \$4,800 (\$2,400 each year of FY2022 FY2023 BWSR Funds)

The NRFP was written with the intent of providing a vision for the Red River Basin as a whole – for citizens, local governments, and water management agencies. The complex nature of the Red River Basin has resulted in challenges to effective, integrated land and water management. As such, the Red River Basin Commission has developed the “Natural Resources Framework Plan” – to aid in achieving a basin-wide approach to integrated natural resource management and provide a framework for overcoming political barriers. Primary issues of concern identified by the RRBC with input from citizens, governments and agencies included: Flood Damage Reduction; Fish, Wildlife, Aquatic and Riparian Ecosystem Health; Water Quality; Water Supply; Recreation; and Soil Conservation. Goals and objectives were developed and refined based on the identification of these issues of concern and the need for comprehensive, integrated watershed stewardship and management for the Basin. Focus in 2020 will continue to be on Water Supply and Water Quality Committees

Flood Damage Reduction and Hydrology

- Focus during 2022 final publication and outreach on the update to the Long Term Flood Solutions, USACE collaboration on new Hydrologic Modelling of 200 & 500 year floods.
- Additionally, continue work on the Lower Red River Retention modelling project which includes modelling of retention in the northern portion of the basin similar to what was conducted for the Halstead Upstream report as well as refine all of the modeling to reflect a more consistent run-off model throughout the basin. This additional study will be completed in early 2023.
- The USACE & ND Floodplain Management collaboration to gather bathymetry on the mainstem from the South Dakota border to the Canada border grew out of an RRBC effort. The RRBC will be seeking partners for phases 2 in 2022 with the intent of collecting bathymetric data for all the major US tributaries and continuing to the Canadian mainstem and tributaries as phases 3 & 4 in 2023.
- Continue to work on integrated water management on a watershed scale for the Drainage integration project in the Cass County area of ND as a way to support the concepts and promulgate the ideas for the draft project in the Buffalo Red Watershed.

- Work with broader community to better integrate existing sensor networks for forecasting as well as minimize gaps in coverage.
- Continue efforts to integrate newly acquired LiDAR data in Manitoba and MN as well as developing education materials to help municipal and employees understand what LiDAR does and does not provide.
- Participate where appropriate in the discussions and ongoing planning for the Fargo-Moorhead Diversion Project.
- Continue outreach on the IWI lead, Basin Technical and Scientific Committee working on surface drainage and continue to work with that group on the implementation of the tile drainage guidelines.

Fisheries, Wildlife, Aquatic and Riparian Ecosystem Health

- Continue working with partners to leverage newly acquired Bathymetry for understanding of habitat in the Red River.
- The USACE & ND Floodplain Management collaboration to gather bathymetry on the main stem from the South Dakota border to the Canada border grew out of an RRBC effort. The RRBC will be seeking partners for phases 2 in 2022 with the intent of collecting bathymetric data for all the major US tributaries and continuing to the Canadian main stem and tributaries as phases 3 & 4 in 2023.
- Continue work on the watershed AIS LCCMR Project, leveraging local resources, and completing the pilot watershed risk assessments for AIS. Promote, organize and bring together basin-wide participants from Minnesota, North Dakota and Manitoba to address AIS issues within the basin.
- Work with International Water Institute to expand River Watch program across the basin including targeted efforts in the Pembina and Roseau International Watersheds.

Water Quality

- Continue Wastewater Treatment Project in cooperation with the International Joint Commission and Environmental Protection Agency. In Spring 2022, will host mechanical plant optimization site visits throughout the basin and the MB lagoon optimization seminar and site visits.
- Seek out opportunities like the January 2022 Ag/ Urban partnership workshop and participate.
- In 2022 seek renewed partnership and funding to carry forward the work of the BMP workshop in Crookston in 2019. Foster continued focused research as well as education and outreach on the findings of the workshop.
- Continue working toward establishing an Adaptive Water Quality Management program that includes point and non-point source effort to measurably improve water quality throughout the basin. Elements of a “WQ trading plan” as well as voluntary efforts that are co-funded by urban and rural stakeholder should be included in the program that must be prioritized for demonstrable improvement.
- Continue to assist and work with the IRRB-Water Quality Committee on the Nutrient Reduction initiatives that they, the individual states and province are advancing.
- Participate in the Red River Water Management Board’s Water Quality committee and foster their efforts to creatively finance multi-benefit projects.

Water Supply

- Continue with meeting of the Water Supply Working group to integrate voices from all jurisdictions as they consider drought management studies.

- Continue work with the COE Comprehensive Plan to integrate our water supply work of our NRFP into COE Comprehensive Plan.
- Facilitate discussions with Minnesota and Manitoba on North Dakota's Eastern Water Supply project where they propose to bring water to Fargo from the Missouri River.
- Work with International Red River Board's initiative to develop low-flow protection levels and drought preparedness work for the entire Red River basin.

Recreation

- Work with the COE Comprehensive Plan to integrate our NRFP recreation work into COE Comprehensive Plan. This will involve identifying problem areas, developing recreation goals and an implementation strategy.
- Collaborate with River Keepers in the Moorhead/Fargo area and other water recreation orientated organizations within the basin to improve water related recreational opportunities.

Soil Conservation and Land Use

- Work with the COE Comprehensive Plan to integrate our Soil Conservation/Soil Health work of the NRFP into COE Comprehensive Plan.
- Coordinate with SWCDs within the basin that are working on specific soil conservation grants from BWSR and others that are targeted to make improvements to soil health and water quality within the basin.

Education & Information/Communication (7700) \$64,000 (\$32,000 each year of FY2020 FY2021 BWSR Funds)

- Press releases, Ripple Effect newspaper columns and Water Minutes completed monthly.
- Annual Summit Conference: January 11-13, 2022 and January 17-19, 2023. Gathering of 300-400 participants basin stakeholders.
- Continue synergistic activities through co-location effort. Efforts include coordination with NRCS and Red River Retention Authority on implementation of Federal Farm Bill provisions for the Red River Basin. Coordinate, volunteer and supplement work being done with all co-location partners including River Keepers, ND Department of Health and ND State Water Commission. Explore the potential for future co-location efforts with MN funders and partners.
- RRBC website continues as a connection for organizations and is updated with reports.
- Participate in annual meetings of: MAWD, MN Assoc. SWCD, RRWMB/FDRWG and joint RRRRA meetings.

Other Grants

- Pending - \$450,000 from NRCS to develop a Water Quality Offset Program in the Basin

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Boundary Change Petition for Bois de Sioux Watershed District and Upper Minnesota River Watershed District

Meeting Date: January 26, 2022

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information Non-Public Data

Keywords for Electronic Searchability: Boundary change, Bois de Sioux, Upper Minnesota River

Section/Region: Regional Operations/Northern

Contact: Ryan Hughes

Prepared by: Ryan Hughes

Reviewed by: Northern Regional Committee(s)

Presented by: Pete Waller

Time requested: 5 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Approval of the boundary change petition for the Bois de Sioux Watershed District and the Upper Minnesota River Watershed District as submitted

LINKS TO ADDITIONAL INFORMATION

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

The public hearing for the petition was held November 22, 2021 in Graceville and no written or verbal comments were received during the public comment period of the meeting. The record remained open two weeks after the hearing until 4:30pm on December 6, 2021. No written comments were received while the record was open. The petition, record of comments and the draft Board Order were reviewed by the Northern Region Committee (Committee) at their January 5, 2022 meeting. After discussion the Committee recommended approval of the petition as submitted by the full Board.



BOARD ORDER

Boundary change for the Bois de Sioux Watershed District and the Upper Minnesota River Watershed District

PURPOSE

Approve a boundary change between the Bois de Sioux Watershed District (BdSWD) and the Upper Minnesota River Watershed District (UMRWD).

RECITALS /FINDINGS OF FACT

1. The Bois de Sioux Watershed District (BdSWD) and the Upper Minnesota River Watershed District (UMRWD) filed a joint petition (Petition) for a boundary change with the Board of Water and Soil Resources (Board) on August 11, 2021.
2. The Petition proposes to change the common boundaries of the BdSWD and the UMRWD. The proposed boundary change will result in the transfer approximately 200 acres from the BdSWD to the UMRWD and the transfer of approximately 4,575 acres from UMRWD to BdSWD.
3. The Petition is valid in accordance with Minn. Stat. §§ 103D.251.
4. A Legal notice of hearing on the Petition, pursuant to Minn. Stat. §§ 103D.251, was published in the Wheaton Gazette on November 3, 2021 and November 10, 2021, the Ortonville Independent on November 2, 2021 and November 9, 2021, the Northern Star on November 4, 2021 and November 11, 2021, and the Sisseton Courier on November 2, 2021 and November 9, 2021. Further, a copy of the notice of filing was mailed to several addressees, including the affected counties and watershed districts.
5. A public hearing was held November 22, 2021 at 2:00 PM in the Graceville Community Center at 415 Studdart Ave, Graceville, MN. The hearing proceedings were recorded. The hearing was presided over by the Northern Region Committee (Committee) including Todd Holman, Rich Sve, Neil Peterson, Ron Staples, Gerald Van Amburg, LeRoy Ose, and Theresa Haugen. After all people present at the public hearing were given opportunity to speak and enter exhibits, the hearing record was left open for two weeks until 4:30 PM on December 6, 2021 for receipt of written comments. Exhibits a through f below were entered into the record at the hearing. Zero (0) people provided or submitted oral or written comments at the hearing or while the record remained open for two weeks after the hearing. The following list of exhibits comprises the hearing record:
 - a. Email containing resolutions for a boundary change from the BdSWD and the UMRWD, dated August 11, 2021.
 - b. Email containing the joint petition for a boundary change, dated August 27, 2021.
 - c. Board of Water and Soil Resources' Order for public hearing to be held on the boundary change petition for the BdSWD and the UMRWD, dated November 1, 2021.

- d. Memorandum dated November 1, 2021 from Annie Felix-Gerth, Board of Water and Soil Resources to several addressees providing notice of the public hearing including legal notice, and list of addresses.
 - e. Email dated August 20, 2021 from Ryan Hughes, Board of Water and Soil Resources, to the Board of Water and Soil Resources' Northern Region Committee on the petition, hearing date, location and supporting documentation.
 - f. Email dated November 17, 2021 from Ryan Hughes, Board of Water and Soil Resources, to the Board of Water and Soil Resources Northern Region Committee containing the hearing Order, hearing notice memorandum, and the submitted petition.
 - g. Affidavit of publication for Ortonville Independent dated December 13, 2021.
 - h. Affidavit of publication for Northern Star dated December 13, 2021.
 - i. Affidavit of publication for Sisseton Courier dated December 9, 2021.
 - j. Affidavit of publication for Wheaton Gazette dated November 11, 2021.
6. Board staff assisted the watershed districts and their legal counsel through the Petition process providing guidance, comments, and recommendations. All relevant, substantive, and procedural requirements of law and rule have been fulfilled. The Board has proper jurisdiction in the matter of approving a boundary change. The requested boundary change is consistent with the purpose and the requirements of Minn. Stat. §§ 103D.251. The boundary change, as proposed in the Petition, would be for the public welfare and public interest and would advance the purpose of Minnesota Statutes Chapter 103D. The boundaries of the BdSWD and the UMRWD as proposed in the Petition are more accurately based on the hydrology of the subject area than the present boundaries. The proposed boundary change should be approved per the Petition. Therefore, staff recommends approval of the boundary change as petitioned.
7. On January 5, 2022, Committee members were provided an update on the hearing record and consulted on the Petition. Members of the Committee that participated in the discussion included Committee Chair Rich Sve, Todd Holman, Neil Peterson, Ron Staples, Gerald Van Amburg, LeRoy Ose, Theresa Haugen, Theresa Ebbenga and Jeff Berg. Following review of the hearing record, and discussion of the draft Order, the Committee recommended approval of the Petition.

ORDER

The Board hereby orders that the boundaries of the Bois de Sioux Watershed District and the Upper Minnesota River Watershed District are changed per the Petition as depicted on the map and parcel information attached to this Order.

Dated at St. Paul, Minnesota, this January 26, 2022.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

 Gerald Van Amburg, Chair
 Board of Water and Soil Resources

Date: _____



January 26, 2022

Board of Managers
Bois de Sioux Watershed District
704 Hwy 75 South
Wheaton, MN 56296

Board of Managers
Upper Minnesota River Watershed District
211 2nd Street SE
Ortonville, MN 56278

Dear Boards of Managers,

The Minnesota Board of Water and Soil Resources (BWSR) is pleased to inform you that your petition to change the boundaries of the Bois de Sioux Watershed District (BdSWD) and Upper Minnesota River Watershed District (UMRWD) was approved at the regular Board meeting held January 26, 2022. This boundary change will advance the purpose of M.S. 103D and is for the public welfare and public interest.

The Board's decision and this letter is in response to the petition submitted by BdSWD and UMRWD to change the watershed districts' boundaries to more accurately align the hydrologic and legal boundaries of the two watershed districts. BWSR appreciates the coordination by the BdSWD and UMRWD for their efforts to inform affected landowners.

Sincerely,

Gerald Van Amburg
Chairperson

Enclosed: BWSR Order

CC: Jamie Beyer, Administrator BdSWD (via email)
Amber Doschadis, Administrator UMRWD (via email)
Ryan Hughes, BWSR (via email)
Pete Waller, BWSR (via email)

Equal Opportunity Employer

Bemidji Brainerd Detroit Lakes Duluth Mankato Marshall Rochester St. Cloud St. Paul

Bemidji Office 403 Fourth Street NW Suite 200 Bemidji, MN 56601 Phone: (218) 755-2600

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STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES
520 Lafayette Road North
St. Paul, MN 55155

In the Matter of:

**Petition Changing Watershed
District Boundaries**

BOUNDARY CHANGE PETITION

The undersigned respectfully request that the Minnesota Board of Water and Soil Resources (BWSR) change the boundaries of the Upper Minnesota River Watershed District and the Bois de Sioux Watershed District as hereinafter set forth:

1. The proposed boundary change affects the Bois de Sioux Watershed District (BdSWD) and the Upper Minnesota River Watershed District (UMRWD). As a result of the recent generation of more precise topographic data, the hydrologic boundaries of BdSWD and UMRWD can be more precisely ascertained which allows for the respective districts' legal boundary to be caused to more closely follow the hydrologic boundary.
2. Certain land parcels presently within the boundaries of the districts have been identified to flow into the other respective district. BdSWD and UMRWD desire to allocate and remove parcels from the respective districts as best conforms to hydrologic boundaries. The lands affected by this proposed boundary change lay in Folsom Township, Arthur Township, Parnell Township, Toqua Township, Prior Township, and Almond Township, as illustrated on the map attached as Exhibit A. The proposed change will result in transferring approximately 200 acres (5 quarter-quarters) from BdSWD to UMRWD; and approximately 4575 acres (135 quarter-quarters) from UMRWD to BdSWD.
3. The proposed lands to be changed from BdSWD to UMRWD are described on Exhibit B. The proposed lands to be changed from UMRWD to BdSWD are described on Exhibit C.
4. The proposed boundary change will benefit the public welfare and public interest and serve the purposes of Minn. Stat. Chpt. 103D. The proposed boundary change will achieve a more accurate alignment between the hydrologic and legal boundaries of BdSWD and UMRWD. This updated boundary is necessary to allow for the watershed districts to correctly permit landowner projects that may affect neighboring properties within each respective watershed. The requested boundary change is consistent with the purposes and requirements of Minn. Stat. § 103D.251.

NOW THEREFORE, the Bois de Sioux Watershed District and Upper Minnesota River Watershed District request that BWSR issue its order granting the following relief:

1. That BWSR hold a public hearing pursuant to Minn. Stat. § 103D.251, subd. 6.

2. That the boundaries of BdSWD and UMRWD be changed to include and remove the areas set forth on the parcel lists attached as **Exhibit B** and **Exhibit C**, which are illustrated in the map attached as **Exhibit A**.
3. That the areas proposed to be included in BdSWD and UMRWD shall be guided and managed consistent with the current comprehensive watershed management plans of the respective watershed district.

Dated: July 15, 2021

**BOIS DE SIOUX
WATERSHED DISTRICT**

Date: July 15, 2021



Linda Vavra, President

ATTEST:

Date: July 15, 2021



Jamie Beyer, Administrator

[Signatures continue on the following page.]

**UPPER MINNESOTA RIVER
WATERSHED DISTRICT**

Date: August 25, 2021

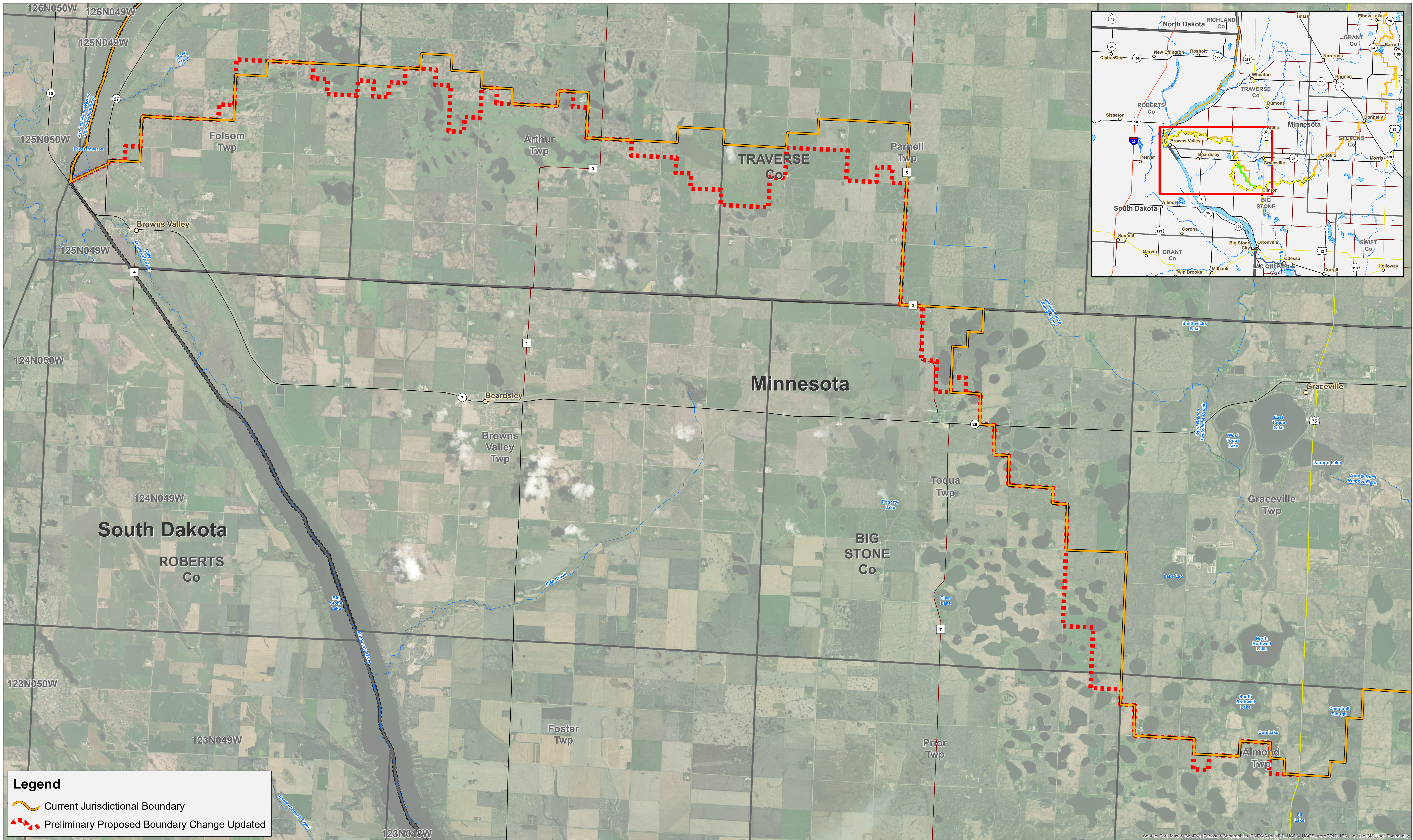
Wanda Holker
Wanda Holker, President

ATTEST:

Date: August 25, 2021

Amber Doschadis
Amber Doschadis, Administrator

EXHIBIT A
BOUNDARY CHANGE MAP

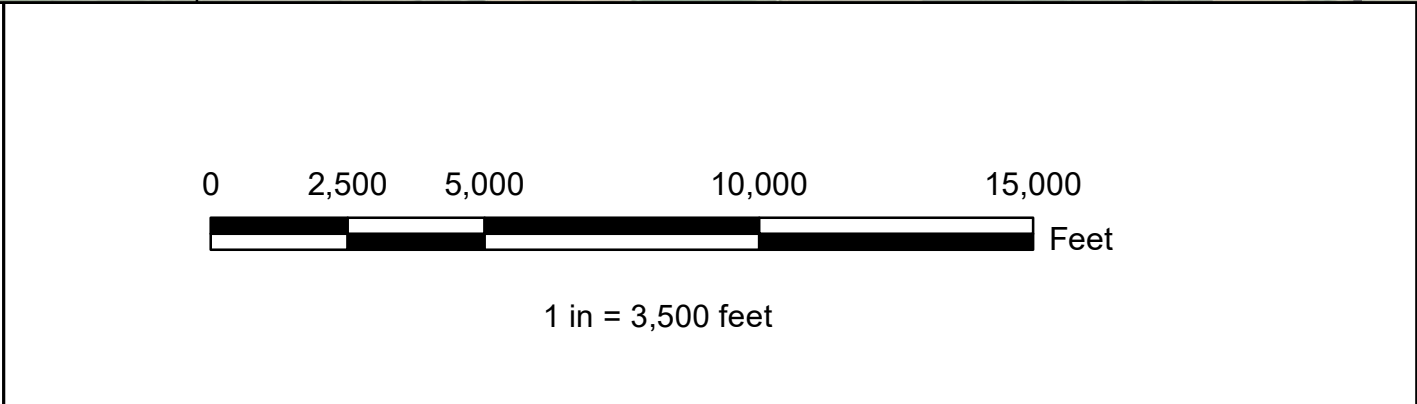
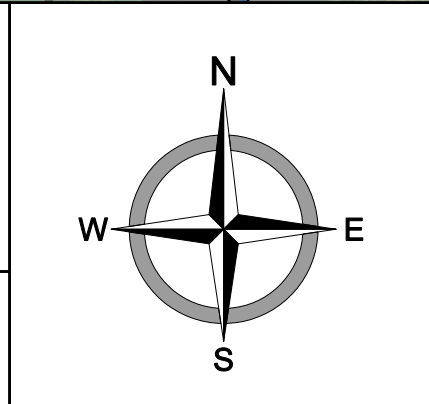


Legend

- Current Jurisdictional Boundary
- Preliminary Proposed Boundary Change Updated

BdSWD / UMRWD BOUNDARY REDETERMINATION

Created By: TJS/NHT Date Created: 04/08/21 Date Saved: 07/23/21 Date Plotted: 08/08/17 Date Exported: 07/23/21
 Plotted By: nathan.trosen Parcel Date: N/A Aerial Image: ESRI Elevation Data: N/A
 Horizontal Datum: NAD 1983 UTM Zone 15N Vertical Datum: NAVD1988
 T:\Projects\18100\18139\18139-905 - Boundary Change\UMRWD - West of Hwy 75\Prelim Boundary Redetermination - Updated 2.mxd



UPPER MINNESOTA RIVER
WATERSHED DISTRICT



EXHIBIT B
LANDS FROM BdSWD TO UMRWD

Quarter-Quarter's Changing from BdSWD to UMRWD

County	Township Name	Township No	Range No	Section No	Quarter	Quarter-Quarter
Traverse	Folsom	125	49	14	SW	NE
Traverse	Folsom	125	49	14	SW	NW
Traverse	Folsom	125	49	22	NE	SE
Traverse	Folsom	125	49	28	NW	NE
Big Stone	Toqua	124	47	10	NW	SW

EXHIBIT C
LANDS FROM UMRWD TO BdSWD

Quarter-Quarter's Changing from UMRWD to BdSWD

County	Township Name	Township No	Range No	Section No	Quarter	Quarter-Quarter
Traverse	Folsom	125	49	13	SE	NE
Traverse	Folsom	125	49	13	SE	NW
Traverse	Folsom	125	49	13	SE	SE
Traverse	Folsom	125	49	13	SE	SW
Traverse	Folsom	125	49	13	SW	NE
Traverse	Arthur	125	48	18	SW	NW
Traverse	Arthur	125	48	18	SW	SW
Traverse	Arthur	125	48	18	SW	SE
Traverse	Arthur	125	48	18	SE	NW
Traverse	Arthur	125	48	17	SE	NE
Traverse	Arthur	125	48	17	SE	NW
Traverse	Arthur	125	48	17	SE	SW
Traverse	Arthur	125	48	17	SE	SE
Traverse	Arthur	125	48	17	SW	NE
Traverse	Arthur	125	48	17	NW	SW
Traverse	Arthur	125	48	17	NW	SE
Traverse	Arthur	125	48	20	NE	NE
Traverse	Arthur	125	48	20	NE	NW
Traverse	Arthur	125	48	20	NE	SW
Traverse	Arthur	125	48	16	SW	SE
Traverse	Arthur	125	48	15	SE	SW
Traverse	Arthur	125	48	23	SE	NE
Traverse	Arthur	125	48	23	SE	NW
Traverse	Arthur	125	48	24	NE	SW
Traverse	Arthur	125	48	24	NE	SE
Traverse	Arthur	125	48	24	NW	SE
Traverse	Arthur	125	48	24	SW	NW
Traverse	Arthur	125	48	24	SW	NE
Traverse	Arthur	125	48	24	SW	SE
Traverse	Arthur	125	48	24	SE	NE
Traverse	Arthur	125	48	24	SE	NW
Traverse	Arthur	125	48	24	SE	SW
Traverse	Arthur	125	48	24	SE	SE
Traverse	Arthur	125	48	25	NE	NE
Traverse	Arthur	125	48	25	NE	NW
Traverse	Parnell	125	47	19	SW	NE
Traverse	Parnell	125	47	19	SW	NW
Traverse	Parnell	125	47	19	SW	SW
Traverse	Parnell	125	47	19	SW	SE
Traverse	Parnell	125	47	19	SE	NE
Traverse	Parnell	125	47	19	SE	NW
Traverse	Parnell	125	47	19	SE	SW
Traverse	Parnell	125	47	19	SE	SE

Quarter-Quarter's Changing from UMRWD to BdSWD

County	Township Name	Township No	Range No	Section No	Quarter	Quarter-Quarter
Traverse	Parnell	125	47	30	NW	NE
Traverse	Parnell	125	47	30	NW	NW
Traverse	Parnell	125	47	30	NW	SW
Traverse	Parnell	125	47	30	NW	SE
Traverse	Parnell	125	47	30	NE	NW
Traverse	Parnell	125	47	30	NE	SW
Traverse	Parnell	125	47	20	NW	SW
Traverse	Parnell	125	47	20	NE	NE
Traverse	Parnell	125	47	20	NE	NW
Traverse	Parnell	125	47	21	NE	NE
Traverse	Parnell	125	47	21	NE	NW
Traverse	Parnell	125	47	21	NE	SE
Traverse	Parnell	125	47	21	NE	SW
Traverse	Parnell	125	47	21	NW	NE
Traverse	Parnell	125	47	21	NW	NW
Traverse	Parnell	125	47	21	NW	SE
Traverse	Parnell	125	47	21	NW	SW
Traverse	Parnell	125	47	21	SW	NE
Traverse	Parnell	125	47	21	SW	NW
Traverse	Parnell	125	47	21	SW	SE
Traverse	Parnell	125	47	21	SW	SW
Traverse	Parnell	125	47	21	SE	NE
Traverse	Parnell	125	47	21	SE	NW
Traverse	Parnell	125	47	21	SE	SE
Big Stone	Toqua	124	47	4	NE	NE
Big Stone	Toqua	124	47	4	NE	NW
Big Stone	Toqua	124	47	4	NE	SE
Big Stone	Toqua	124	47	4	NE	SW
Big Stone	Toqua	124	47	4	SE	NE
Big Stone	Toqua	124	47	4	SE	NW
Big Stone	Toqua	124	47	4	SE	SE
Big Stone	Toqua	124	47	4	SE	SW
Big Stone	Toqua	124	47	3	NW	NE
Big Stone	Toqua	124	47	3	NW	NW
Big Stone	Toqua	124	47	3	NW	SE
Big Stone	Toqua	124	47	3	NW	SW
Big Stone	Toqua	124	47	3	SW	NW
Big Stone	Toqua	124	47	9	NE	NW
Big Stone	Toqua	124	47	9	NE	NE
Big Stone	Toqua	124	47	15	NE	NW
Big Stone	Toqua	124	47	15	NE	SW
Big Stone	Toqua	124	47	15	SE	NE
Big Stone	Toqua	124	47	15	SE	NW
Big Stone	Toqua	124	47	15	SE	SE
Big Stone	Toqua	124	47	15	SE	SW

Quarter-Quarter's Changing from UMRWD to BdSWD

County	Township Name	Township No	Range No	Section No	Quarter	Quarter-Quarter
Big Stone	Toqua	124	47	22	NE	NE
Big Stone	Toqua	124	47	22	NE	NW
Big Stone	Toqua	124	47	23	NE	NW
Big Stone	Toqua	124	47	23	NE	SE
Big Stone	Toqua	124	47	23	NE	SW
Big Stone	Toqua	124	47	23	NW	NW
Big Stone	Toqua	124	47	23	NW	SE
Big Stone	Toqua	124	47	23	SW	NE
Big Stone	Toqua	124	47	23	SW	NW
Big Stone	Toqua	124	47	23	SW	SE
Big Stone	Toqua	124	47	23	SE	NE
Big Stone	Toqua	124	47	23	SE	NW
Big Stone	Toqua	124	47	23	SE	SE
Big Stone	Toqua	124	47	23	SE	SW
Big Stone	Toqua	124	47	26	NE	NE
Big Stone	Toqua	124	47	26	NE	NW
Big Stone	Toqua	124	47	26	NE	SE
Big Stone	Toqua	124	47	26	NE	SW
Big Stone	Toqua	124	47	26	NW	NE
Big Stone	Toqua	124	47	26	NW	SE
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Big Stone	Toqua	124	47	25	NE	NE
Big Stone	Toqua	124	47	25	NE	NW
Big Stone	Toqua	124	47	25	NE	SE
Big Stone	Toqua	124	47	25	NE	SW
Big Stone	Toqua	124	47	25	NW	NE
Big Stone	Toqua	124	47	25	NW	NW
Big Stone	Toqua	124	47	25	NW	SE
Big Stone	Toqua	124	47	25	NW	SW
Big Stone	Toqua	124	47	25	SW	NE
Big Stone	Toqua	124	47	25	SW	NW
Big Stone	Toqua	124	47	25	SW	SE
Big Stone	Toqua	124	47	25	SW	SW
Big Stone	Toqua	124	47	25	SE	NE
Big Stone	Toqua	124	47	25	SE	NW
Big Stone	Toqua	124	47	25	SE	SE
Big Stone	Toqua	124	47	25	SE	SW
Big Stone	Toqua	124	47	36	NE	NE
Big Stone	Toqua	124	47	36	NE	NW
Big Stone	Toqua	124	47	36	NE	SE
Big Stone	Toqua	124	47	36	NE	SW
Big Stone	Toqua	124	47	36	NW	NE
Big Stone	Toqua	124	47	36	NW	SE
Big Stone	Toqua	124	47	36	SE	NE
Big Stone	Toqua	124	47	36	SE	NW

Quarter-Quarter's Changing from UMRWD to BdSWD

County	Township Name	Township No	Range No	Section No	Quarter	Quarter-Quarter
Big Stone	Toqua	124	47	36	SE	SE
Big Stone	Toqua	124	47	36	SE	SW
Big Stone	Prior	123	47	1	NE	NE
Big Stone	Prior	123	47	1	NE	NW
Big Stone	Almond	123	46	8	NW	SE
Big Stone	Almond	123	46	9	NE	SW

COMMITTEE RECOMMENDATIONS

Grants Program and Policy Committee

1. Water Quality and Storage Pilot Grant Program – Rita Weaver – ***DECISION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Water Quality and Storage Pilot Grant Program

Meeting Date: January 26, 2022

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: Grants, Pilot, Water Storage,

Section/Region: Engineering

Contact: Rita Weaver

Prepared by: Rita Weaver

Reviewed by: Grants Program and Policy Committee(s)

Presented by: Rita Weaver

Time requested: 40 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|--|---|
| <input type="checkbox"/> None | <input checked="" type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input checked="" type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Adopt the recommendation of the Grants Program and Policy Committee to approve the Board Order to adopt the Water Quality and Storage Pilot Program policy.

LINKS TO ADDITIONAL INFORMATION

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

In 2021 the MN Legislature passed a law requiring BWSR to develop a Water Quality and Storage Program. BWSR staff have completed outreach to interested parties and will be recommending program details to the board. Additional background is included in the attached board memo. The program policy and RFP have been reviewed by the SMT and internal Grants Team, and also have a recommended approval by the GP&P committee.

BOARD ORDER

Fiscal Year 2022 Water Quality and Storage Pilot Grant Program Policy

PURPOSE

Authorize a fiscal year 2022 Water Quality and Storage Pilot Grant Program and adopt fiscal year 2022 Water Quality and Storage Pilot Grant Program Policy.

RECITALS /FINDINGS OF FACT

1. Laws of Minnesota 2021, 1st Special Session, Chapter 6, Article 1, Sec. 4(l), appropriated \$1 million in Fiscal Year 2022 to a water quality and storage program.
2. Laws of Minnesota 2021, 1st Special Session, Chapter 6, Article 2, Sec. 80 provides the statutory authority for the Water Quality and Storage Program (Minn. Stat. 103F.05), and includes the purposes of the Program that are “to control water volume and rates to protect infrastructure, improve water quality and related public benefits, and mitigate climate change impacts”, identifies eligible practices, and establishes that the priority areas for the program are the Minnesota River basin and the lower Mississippi River basin.
3. In November 2021, staff completed an outreach program to receive input from environmental groups, agricultural groups, SWCD staff, watershed district staff, the Drainage Work Group, other state agency staff, and landowners on the development of the program. Outreach activities included:
 - A. virtual meetings;
 - B. an online survey; and
 - C. in-person meetings.
4. Following completion of the activities outlined in item 3, staff reviewed the feedback received and developed program details.
5. The program policy, request for proposals and frequently asked questions documents were created to provide expectations for application to the fiscal year 2022 Water Quality and Storage Pilot Grant Program and subsequent activities conducted with these funds.
6. The Grants Program and Policy Committee, at their January 10, 2022 Meeting, reviewed the proposed Water Quality and Storage Pilot Grant Program Policy and associated documents and recommended approval to the Board.

ORDER

The Board hereby:

1. Adopts the attached *Water Quality and Storage Pilot Program Policy*.
2. Authorizes staff to issue the Request for Proposals, score and rank the responses, and enter into grant agreements consistent with the RFP criteria in an amount up to \$1,000,000.
3. Direct staff to provide a pilot program update prior to the FY23 continuation.

Dated at St. Paul, Minnesota, January 26, 2022.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Gerald Van Amburg, Chair
Board of Water and Soil Resources

Date: _____

Internal Memo

Date: January 4, 2022

To: BWSR Board

From: Rita Weaver, BWSR Chief Engineer

RE: Water Quality and Storage Pilot Program

Program Overview

The Minnesota legislature passed a law in 2021 requiring BWSR to develop a Water Quality and Storage Program ([103F.05 Water Quality and Storage Program](#)). The legislature appropriated \$2 million for this program, with \$1 million in FY 2022 and \$1 in FY 2023.

Among the details included in the statute are two specific items that guided our discussions on program development:

- 103F.05 Subd. 2. (a) – “The board must establish a program [...] to control water volume and rates to protect infrastructure, improve water quality and related public benefits, and mitigate climate change impacts.”
- 103F.05 Subd. 2 (b) – “The board must give priority to the Minnesota River basin and the lower Mississippi River basin in Minnesota.”

The statute did not state which types of practices should be allowed under this program, but examples of water storage practices were listed (103F.05 Subd. 1 (d)), including retention structures and basins, soil and substrate infiltration, and wetland restoration, creation, or enhancement. Other basic information regarding a grant program are included in the statute such as requiring a match and that BWSR evaluate federal programs to supplement or complement this program.

Outreach

Since the Water Quality and Storage program is new and the statute only provided limited details, staff decided outreach was necessary to get feedback from our partners; including local government, environmental and ag groups, and landowners. Outreach included three main components: virtual meetings, an online survey, and in-person meetings.

Four questions were asked during the meetings, which were similar to those used for the online survey. The following are the questions presented in the meetings, along with highlights of the feedback received during the meetings.

1. *Where a water storage the project is located within a watershed is a very important question to answer. Should the available funds be used for this planning work? Should funds only be used for construction? How about easements and other land rights acquisition costs?*
 - A majority of responses suggested that funds should be used for “shovel-ready” projects at this time. If additional funding becomes available, then respondents would like to see funding also go to planning or feasibility studies, but with the limited funds for the first two years of the program, they felt it was important to show that projects were going to get constructed.
 - While there were no objections to funds covering easements or land rights acquisition costs, it was a lower priority. However, it will likely be necessary to fund some type of easement or land acquisition to construct these projects.
2. *Statute provides that the program is to “control volumes and rates” and certain types of projects are more likely to control rates and other projects to control volumes. Should we limit what kind of practices we’ll fund to those that will show the greater reduction of rates and volumes?*
 - Most respondents felt that it was important to fund all kinds of projects through this program, from soil health practices to larger structural projects.
 - There was some feedback that suggested if projects could be funded under other state programs (i.e. – CREP wetland restorations) they should not be funded with this new program.
3. *How should allocation of funds be prioritized? Is it for the proposal that has the most water volume and rate control? Is it reasonable to ask applicants to provide hydrographs showing what their projects will do?*
 - Nearly all respondents felt that funding priority should go to projects that show the most reduction in peak flow rates and volumes.
 - Other suggestions for prioritizing included multi-benefits (i.e. reduced flooding and improved water quality) or a comprehensive watershed approach, where the applicant was using other types of conservation practices in the watershed.
 - Respondents felt it was appropriate to ask for a hydrograph showing the effects of the project.
4. *There are concerns from some that putting in projects with drainage systems will allow for more drainage in the future. Should projects be allowed as part of drainage system improvements? How do we separate or connect the two interests?*
 - Some respondents felt very strongly that this program’s funds must be completely separate from 103E proceedings, whereas other felt projects should be constructed as drainage improvements are made. Many respondents felt that a middle ground could be achieved.

Recommended Program Details

BWSR staff recommend this begin as pilot program, so changes can be made in future years based on the applications received, the questions/issues that arise, and the need for different practices. As required by statute, this program must be open to all municipalities, towns, counties, soil and water conservation districts, watershed districts, or organizations formed for the joint exercise of powers, as defined under section 103B.035, subdivision 5, including tribal governments, and a 25% match will be required. Priority will be given to projects in the Minnesota River basin or the Lower Mississippi River basin in Minnesota, but we suggest that funding be allowed statewide if there are not adequate project applications in these areas.

We suggest that applicants be required to have a feasibility study completed showing how their project will reduce flow rates and/or volumes, and that applicants should describe how their project will reduce flood

impacts, improve water quality, or mitigate for climate change. All types of practices should be allowed, but a 25-year lifespan including a maintenance plan by the applicant is recommended, so this will likely limit the applications to longer term projects such as structural storage projects, wetland restorations, and land use changes.

Partner input did not provide a clear path relating to coordinating water quality and storage projects with drainage improvements, therefore, we recommend that this not be allowed under the pilot program. BWSR staff will continue to discuss how this can occur in the future and include any such recommendations as part of future proposed Board program authorizations.

During the pilot phase we propose that applications be scored by BWSR staff. Scoring criteria is explained in detail in the RFP, but in summary, projects would score higher in the following situations:

- Projects with more flow rate reduction or volume of runoff reduction.
- Projects that show flood reduction, water quality improvement, AND mitigation climate change impacts.
- There are other conservation practices in the drainage area to the project, or the applicant shows they are taking a comprehensive approach to flow reductions in their watershed.
- Projects that can be implemented soon after the grant is awarded.

Recommended Next Steps

BWSR staff will update the Board on the number of applications received and the types of projects reviewed and selected for FY22 when the FY23 Board Order is presented. BWSR staff will also propose modifications to the pilot program based on applications received and additional partner input.

Water Quality and Storage Pilot Program Policy

From the Office of Board of Water and Soil Resources, State of Minnesota

Version: 1.0
Effective Date: TBD
Approval: Board Order #

Policy Statement

The Water Quality and Storage Program was established to provide financial assistance to local units of government to control water volume and rates to protect infrastructure, improve water quality and related public benefits, and mitigate climate change impacts. This program is authorized by Minnesota Session Laws 2021, Article 3, Section 3, Sub 2.

Reason for the policy

The purpose of this policy is to provide clear expectations for the implementation of grants delivered through this program. More specific requirements or criteria may apply when specified by statute, rule, funding sources, or appropriation language.

Grantees are responsible for the administration and decisions concerning the use of these funds in accordance with applicable Minnesota Statutes, state agency policies, and other applicable laws. BWSR will use grant agreements as contracts for assurance of deliverables and compliance with applicable laws and program policies.

The BWSR Grants Administration Manual provides the primary framework for management of these funds.

Applicant Eligibility

Eligible applicants include municipalities, towns, counties, soil and water conservation districts, watershed districts, or organizations formed for the joint exercise of powers, as defined under section 103B.035, subdivision 5, and includes tribal governments. Applicant must have a State or tribal approved and locally adopted local water management plan, comprehensive watershed management plan, watershed district plan, or soil and water conservation district (SWCD) comprehensive plan.

Applicant must have calculated the reduction in runoff due to the project at a downstream area of interest (to be determined by the applicant) and at the HUC12 outlet downstream of the project.

Match Requirements

A minimum 25% match is required from non-state funds. The anticipated source(s) for the match shall be identified in the grant proposal. Activities listed as ineligible (see below) may not be counted towards match. Match can be provided by a landowner, land occupier, local government or other non-State source and can be in the form of cash or the cash value of services or materials contributed to the accomplishment of grant objectives.

Eligible Activities

Eligible activities must result in a reduction to peak flow rates and/or volumes to demonstrate a decrease in downstream flooding, improvement of water quality or related public benefits, or to mitigate climate change impacts. Grants may include any number of practices, but the practices cumulatively must reduce the hydrograph peak at an area of interest (to be determined by the applicant) AND at the HUC12 watershed scale. The area of interest must be identified at the time of application and an explanation provided of the flooding, water quality, or climate vulnerabilities at that location. A feasibility study must already be completed that shows the effect of the storage practice on the runoff hydrograph.

Examples of eligible practices include, but are not limited to:

- Ponds without permanent pools (Dry detention ponds)
- Ponds with permanent pools (Wet detention ponds)
- WASCOBs
- Wetland Construction or Restorations
- Improvements or retrofits of existing storage areas to increase storage capacity or retention time

Project lifespan must be at least 25-years and the applicant must develop an Operation and Maintenance plan that includes an inspection schedule, expectations for routine maintenance, and a financing system to ensure the design function of the project.

Eligible activities also include construction costs, project development, grant management, and administration. Technical and engineering assistance necessary for design of these practices is essential and may be included in the project cost.

Payments for land protection including easement payment (temporary, perpetual, or flowage), pre-title acquisition payments, property acquisition costs, survey, title, and recording fees are eligible expenses under this grant. If a perpetual easement is acquired, it must be approved by the Board of Water and Soil Resources (BWSR) for entire contiguous storage practice. Total state easement payment rates, shall not exceed regular 2018 Reinvest in Minnesota (RIM) rates if the easement will be used as match.

Ineligible Expenses

- Activities that do not demonstrate a reduction in the hydrograph peak at an area of interest AND at the HUC12 scale.

- Activities that are multi-phase, multi-year storage systems (i.e. – the project must not rely on components that will be constructed at a later time in order to get the reduction in peak flow rates and/or volumes)
- Maintenance or repair of existing structures/storage projects.
- Activities that would negatively affect drinking water.
- Meeting the minimum requirements of Chapter 103E or MS4 plans.
- Feasibility studies and/or hydrology and hydraulic modeling are not eligible during the pilot phase of this program.
- Activities that are constructed as part of 103E proceedings will not be eligible during the pilot phase of this program until criteria can be developed to evaluate the project separately from the drainage improvement activities.

Technical Quality Assurance

Grantees must identify the technical assistance provider(s) for the practice or project and their credentials for providing this assistance. The technical assistance provider(s) must have appropriate credentials for practice investigation, design, and construction. Credentials can include conservation partnership Job Approval Authority (JAA), also known as technical approval authority; applicable professional licensure; reputable vendor with applicable expertise and liability coverage; or other applicable credentials, training, and/or experience.

BWSR reserves the right to review the qualifications of all persons providing technical assistance and review the technical project design if a recognized standard is not available. See also the Technical Quality Assurances section of the Grants Administration Manual.

Grant Work Plan and Reporting Requirements

To ensure the success of the program, development of grant work plans, regular reporting of expenditures, and technical assistance and accomplishments are required.

- a. **Grant Execution.** Grant agreement must be executed before work can begin on this grant and all work must occur within the grant period.
- b. **Grant Work Plan.** Work plans shall be developed in eLINK and must be approved before work can begin on this grant. Work plans shall reflect each eligible activity, a description of the anticipated activity accomplishments, and grant and match funding amounts to accomplish each of the activities.
- c. **Grant Reporting.** Descriptions of actual results and financial expenditures for each work plan activity must be reported in eLINK by February 1 of each year.
- d. **Grant Closeout.** Within thirty (30) calendar days of the expiration of each grant agreement or expenditure of all grant funds, whichever occurs first, grantees are required to:

- a. Provide a summary of all work plan accomplishments with grant funding in eLINK; and
- b. Submit a signed eLINK Financial Report to BWSR.

BWSR Grant Administration Requirements

BWSR staff is authorized to review grant applicant’s financial records to establish capacity to successfully manage state grant funds, develop grant agreements, including requirements and processes for work plans, project outcomes reporting, closeouts, and fiscal reconciliations. All grantees must follow the grant agreement and other applicable sections of the Grants Administration Manual.

In the event there is a violation of the terms of the grant agreement, BWSR will enforce the grant agreement and evaluate appropriate actions, up to and including repayment of grant funds at a rate up to 100% of the grant agreement.

History

Version	Description	Date
1.0	Water Quality and Storage Program Policy - new	TBD

Contact

Questions regarding this policy can be directed to your area Board Conservationist or Clean Water Specialist (contact information available at [BWSR Maps and Apps Gallery](#)) or BWSR’s Chief Engineer, Rita Weaver (rita.weaver@state.mn.us).



FY 2022

Water Quality and Storage

Pilot Program

Competitive Grants Request for Proposal (RFP)

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Purpose and Application Information

The Water Quality and Storage Program grants will establish storage practices in the Minnesota River basin and the Lower Mississippi River basin in Minnesota. Eligible practices must control water rates and/or volumes to protect infrastructure, improve water quality and related public benefits, and mitigate climate change impacts. Given the current funding levels, this program is being established as a pilot that will provide funds for design and construction of storage projects. Based on the outcomes and feedback of this pilot program, adjustments to the program may be made once future funding is in place.

Proposal Requirements

A. Applicant Eligibility

Eligible applicants include municipalities, towns, counties, soil and water conservation districts, watershed districts, or organizations formed for the joint exercise of powers, as defined under section 103B.035, subdivision 5, and includes tribal governments. Applicant must have a State or tribally approved and locally adopted local water management plan, comprehensive watershed management plan, watershed district plan, or soil and water conservation district (SWCD) comprehensive plan.

Applicant must have calculated the reduction in runoff due to the project at a downstream area of interest (to be determined by the applicant) and at the HUC12 outlet downstream of the project.

B. Match

A minimum 25% match is required from non-state funds. The anticipated source(s) for the match shall be identified in the grant proposal. The match must be cash or in-kind cash value of goods, materials, and services directly attributed to project accomplishments.

Activities listed as ineligible under Section E (Ineligible Activities) may not be counted towards match. Match can be provided by a landowner, land occupier, local government or other non-State source and can be in the form of cash or the cash value of services or materials contributed to the accomplishment of grant objectives.

C. Project Period

The project period starts when the grant agreement is executed, meaning all required signatures have been obtained. Work that occurs before this date is not eligible for reimbursement with grant funds and cannot be used as match. All grants must be completed by December 31, 2024.

D. Payment Schedule

Grant payments will be distributed in three installments to the grantee. The first payment of 50% of the grant amount will be paid after work plan approval and execution of the grant agreement provided the grant applicant is in compliance with all BWSR website and eLINK reporting requirements for previously awarded BWSR grants. The second payment of 40% of the grant amount will be paid once the grantee has provided BWSR with notification and BWSR has reconciled expenditures of the initial payment. The last 10% will be paid after all final

reporting requirements are met, the grantee has provided BWSR with a final financial report, and BWSR has reconciled these expenditures.

E. Reporting and Administration Requirements

- All BWSR funded grants are managed through eLINK. All applications will be submitted electronically through eLINK. Successful applicants will be required to complete a work plan in eLINK. All required reporting will be completed through eLINK. For more information go to <https://bwsr.state.mn.us/elink>.
- Water Quality and Storage Pilot Program grants will be administered via a standard grant agreement. BWSR will use grant agreements as contracts for assurance of deliverables and compliance with appropriate statutes, rules and established policies. Willful or negligent disregard of relevant statutes, rules and policies may lead to imposition of financial penalties on the grant recipient.
- All grantees receiving funds for BWSR programs must follow the BWSR Grants Administration Manual, which can be found at <https://bwsr.state.mn.us/grants/manual/>

F. Incomplete Applications

Applications that do not comply with all application requirements will not be considered for funding, as provided below.

- Components of the application are incomplete or missing, including information on the reduction in the hydrograph peak flow or volume;
- Any required documentation is missing including uploading required feasibility study;
- The match amount does not meet grant requirements;

Application Guidelines

A. Deadline and Timeline

No late submissions or incomplete applications will be considered for funding.

- | | |
|----------------------|---|
| ■ January 31, 2022 | Application period begins |
| ■ April 4, 2022 | Application deadline at 4:30 p.m.* |
| ■ June 22, 2022 | BWSR Board authorizes grant awards (proposed) |
| ■ July/August, 2022 | BWSR grant agreements sent to recipients (proposed) |
| ■ September 19, 2022 | Work plan submittal deadline |
| ■ October 17, 2022 | Grant execution deadline |

*The application must be submitted by 4:30 PM. Late responses will not be considered. The grant applicant is responsible for proving timely submittal.

B. Permitting

The applicant is responsible for obtaining and complying with all permits necessary to execute the project. If applicable, successful applicants will be required to provide sufficient documentation prior to work plan approval that the project expects to receive or has received all necessary federal, state and local permits and meets all water quality rules, including those that apply to the utilization of an existing water body as a water quality treatment device. ***Applicants are strongly encouraged to contact the appropriate regulatory agencies early in the grant application development process to ensure potential projects can meet all applicable regulatory requirements.***

For information regarding MPCA storm water permitting requirements, please go to:

Construction stormwater permit overview

<http://www.pca.state.mn.us/index.php/view-document.html?gid=7386>

Common Plan of Development

<http://www.pca.state.mn.us/index.php/view-document.html?gid=7396>

Untreated Stormwater Runoff to Lakes, Streams, and Wetlands

<http://www.pca.state.mn.us/index.php/view-document.html?gid=11864>

For information regarding DNR public waters permitting requirements, please go to:

Public Waters Work Permit Program

https://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/index.html

C. Applications

1. Applications need to be submitted via **eLINK**. Eligible applicants without a current eLINK user account must submit a request to establish an eLINK account ***no later than 7 days prior to the application deadline***. As part of the application, eLINK will require applicants to map the location of the proposed project area.
2. Proposals may include one image files to be submitted within their eLINK application. If your feasibility study does not include a hydrograph image please use the Application Image feature to upload this item. **Only .jpg, .tiff, or .png file types are allowed**. All other file types of images are not accessible to reviewers.
3. Proposals should clearly articulate the applicant's "area of interest" and the location of the next downstream HUC12 outlet. Proposals must include pre-project and post-project runoff or stage hydrographs at these two locations for the critical 100-year event and the critical 10-year event. These hydrographs may be attached as an image file if they are not included in the attached feasibility study.
4. A feasibility study that provides more detail on the project evaluation and development must be included as an attachment with the proposal.

5. Proposed projects must be of long-lasting public benefit. LGUs must provide assurances that the landowner or land occupier will keep the project in place for a minimum of 25 years.
6. Proposals must have plans for long-term maintenance and inspection for the duration of the life of a project as part of their project files. Work plans developed for funded applications will rely on this information for operation, maintenance and inspection requirements after the project is completed.
7. Applicants should evaluate the impacts that climate change (such as fluctuating precipitation patterns and drought) may have on the ability of the proposed project to meet objectives and whether the proposed project increases landscape resiliency.
8. Applications may receive partial funding for the following reasons: 1) an absence of or limited identification of specific project locations, 2) budgeted items that were not discussed in the application or have no connection to the central purpose of the application were included by an applicant; 3) to address budget categories out of balance with the project scope and 4) insufficient funds remaining in a grant category to fully fund a project. Prior to final selection, the Board may engage applicants to resolve questions or to discuss modifications to the project or funding request.
9. Applicant will need to demonstrate organizational capacity to design and construct, or work with a contractor to design and construct, the proposed project within the grant timeline.

D. Eligible Activities

Eligible activities must result in a reduction to peak flow rates and/or volumes to demonstrate a decrease in downstream flooding, improvement of water quality or related public benefits, or to mitigate climate change impacts. Grants may include any number of practices, but the practices cumulatively must reduce the hydrograph peak at an area of interest (to be determined by the applicant). The area of interest must be identified at the time of application and an explanation provided of the flooding, water quality, or climate vulnerabilities at that location. Pre-project and post-project runoff (or stage) hydrographs must be provided to quantify the reduction in peak flow rate and/or volume.

Examples of eligible practices include, but are not limited to:

- Ponds without permanent pools (Dry detention ponds)
- Ponds with permanent pools (Wet detention ponds)
- WASCObS
- Wetland Construction or Restorations
- Improvements or retrofits of existing storage areas to increase storage capacity or retention time

Project lifespan must be at least 25-years and the applicant must develop an Operation and Maintenance plan that includes and inspection schedule, expectations for routine maintenance, and a financing system to ensure the design function of the project.

Eligible activities include construction costs, project development, grant management, and administration. Technical and engineering assistance necessary for design of these practices is essential and may be included in the project cost.

Payments for land protection including easement payment (temporary, perpetual, or flowage), pre-title acquisition payments, property acquisition costs, survey, title, and recording fees are eligible expenses under this grant. If a perpetual easement is acquired, it must be approved by the Board of Water and Soil Resources (BWSR) for entire contiguous storage practice. If the easement will be used as match, match amount will be capped at the regular 2018 Reinvest in Minnesota (RIM) easement payment rates.

E. Ineligible Activities

- Proposed activities that do not demonstrate a reduction in the hydrograph peak at an area of interest.
- Activities that are multi-phase, multi-year storage systems (i.e. – the project must not rely on components that will be constructed at a later time in order to get the reduction in peak flow rates and/or volumes).
- Maintenance or repair of existing structures/storage projects.
- Activities that would negatively affect drinking water.
- Activities needed to meet the minimum requirements of Chapter 103E or MS4 plans.
- Feasibility studies and/or hydrology and hydraulic modeling are not eligible during the pilot phase of this program.
- Activities that are constructed as part of 103E proceedings will not be eligible during the pilot phase of this program.

F. Technical Expertise

Grantees must identify the technical assistance provider(s) for the practice or project and their credentials for providing this assistance. The technical assistance provider(s) must have appropriate credentials for practice investigation, design, and construction. Credentials can include conservation partnership Job Approval Authority (JAA), also known as technical approval authority; applicable professional licensure; reputable vendor with applicable expertise and liability coverage; or other applicable credentials, training, and/or experience.

BWSR reserves the right to review the qualifications of all persons providing technical assistance and review the technical project design if a recognized standard is not available. See also the Technical Quality Assurances section of the Grants Administration Manual.

Funding Priorities and Ranking

Priority for funding will be given to projects that meet the following criteria (in order of priority):

1. Project is located in the Minnesota River basin or the Lower Mississippi River basin in Minnesota (as required by Mn Statute 103F.05 Subd.2 (b)).
2. The applicant shows they are taking a comprehensive approach to flow reduction in the watershed, by implementing soil health or other conservation practices.
3. Practices that show higher levels of flood protection, improvement of water quality, etc.
4. Practices that demonstrate reduction in flood potential, improvement of water quality, AND mitigation for climate change.

5. Evidence of project installment readiness, which may include local letters of intent from government partners, evidence of support from willing landowners, and permitting agencies have been consulted regarding project permitability.

Water Quality and Storage Program Ranking Criteria	
Ranking Criteria	Maximum Points Possible
<u>Project Description:</u> The project description succinctly describes the project purpose, the results the applicant is trying to achieve, and how they intend to achieve those results.	5
<u>Prioritization:</u> The project is referenced within a watershed management plan locally adopted and approved by the state or tribal government. The feasibility study demonstrates that a comprehensive approach is being taken to water management and the placement of the practice will support that management. Other measures or actions are being taken in the watershed to reduce peak flooding or improve water quality, such as soil health practices or other structural practices and a variety of funding sources is being used to implement these practices.	20
<u>Targeting:</u> The applicant describes how the peak flow or volume reduction will reduce flooding, improve water quality, or mitigate climate change impacts at a local point of interest. Applicant also describes how the project location will affect flow rates and/or volumes at the HUC12 outlet and/or at other areas downstream of the project.	15
<u>Measurable Outcomes:</u> The proposed project peak flow rate or volume reduction has been quantified and directly addresses flooding, water quality, or climate change issues.	20
<u>Project Readiness:</u> The proposed project has a set of specific activities that can be implemented soon after grant award. Project locations have been identified and coordination with landowners has begun. Permitting and environmental review requirements have been identified and early coordination with permitting agencies has taken place.	20
<u>Cost Effectiveness:</u> The application identifies a cost-effective solution to address the issue at the area of concern. The cost per acre-foot of storage is reasonable and the cost for the resulting flow reduction is reasonable.	20
Total Points Available	100

FY 2022 Water Quality and Storage Pilot Program Questions

FY 2022 Water Quality and Storage Pilot Program Competitive Grants

(Answers to each question are limited to 2000 characters.)

Note that the following questions need to be answered in eLINK. The character limit in eLINK is NOT the same as Microsoft Word.

Project Abstract: Succinctly describe what you are trying to achieve and how you intend to achieve those results, including describing the area of concern and anticipated outcomes based on your project.

Technical Capacity: Explain your organization's capacity (including available FTEs or contracted resources) to effectively implement the proposed project(s). Identify the technical assistance provider(s) for the project and provide credentials for providing this assistance. The technical assistance provider(s) must have appropriate credentials for practice investigation, design, and construction.

Project Impact: Identify the area of interest and the next downstream HUC12 outlet and provide pre-project and post-project hydrographs at these locations for the critical 100-year and 10-year storm events.

Project Description 1. (5 points): Describe the purpose and outcomes of the proposed project, including: 1) the flooding, water quality, or climate vulnerabilities at the area of interest, 2) the eligible activities that would be implemented, and 3) the public benefits of the project. Also include the acre-feet of live storage (storage above the normal outlet elevation) that the practice or project will create. Other volumes totals of storage created can be included if the applicant feels they are significant.

Prioritization 2 (20 points): For the proposed project, what is/are the specific, applicable state approved and locally adopted water management plan reference(s) by plan organization, plan title, section and page number? Briefly describe the feasibility study that was completed for this project and how the project fits into a broader plan for the watershed (if applicable). Make sure to include other practices, such as soil health or other conservation practices, being implemented in the watershed and include their funding source.

Targeting 3. (15 points): How much does the proposed practices or combination of practices reduce peak flows or volumes downstream? Explain how the reduction in peak flows or volumes will reduce flooding, improve water quality, or mitigate climate change at an area of interest. Describe the effect of the proposed practices at the outlet of the HUC12. Does the project consider how storage can negatively impact downstream areas by changing the timing of the peak flow or shifting the hydrograph volume?

Measurable Outcomes 4. (20 points): This section should quantify the benefits of the project. What is the expected reduction in downstream flooding? What is the estimated annual reduction in pollutant(s) being delivered to the water resource(s) of concern by this project? If there have been specific pollutant reduction goals set for the pollutant(s) and resource(s) of concern, please indicate the goals and the process used to set them. How is this project expected to make the watershed more resilient to climate change?

Project Readiness 5. (20 points): What steps and actions have been taken to ensure that project implementation can begin soon after grant award, such as partner coordination, preliminary identification of potential conservation practice/activity locations, coordination with landowners, and preliminary discussions with permitting authorities, including the DNR Area Hydrologist.

Cost Effectiveness 6. (20 points): Describe why the proposed practices/activities or combination of practices/activities are considered to be the most cost effective and reasonable means to attain water quality improvement or protection benefits. Consider factors such as, but not limited to, BMP effectiveness, timing, site feasibility, practicality, property owner willingness, and public acceptance.

General Information

A. Grants and Public Information

Under Minnesota Statute 13.599, responses to an RFP are nonpublic until the application deadline is reached. At that time, the name and address of the grantee, and the amount requested becomes public. All other data is nonpublic until the negotiation of the grant agreement with the selected grantee is completed. After the application evaluation process is completed, all data (except trade secret data) becomes public. Data created during the evaluation process is nonpublic until the negotiation of the grant agreement with the selected grantee(s) is completed.

B. Prevailing Wage

It is the responsibility of the grant recipient or contractor to pay prevailing wages on construction projects to which state prevailing wage laws apply (Minn. Stat. 177.42 – 177.44). All laborers and mechanics employed by grant recipients and subcontractors funded in whole or in part with state funds included in this RFP shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality. Additional information on prevailing wage requirements is available on the Department of Labor and Industry (DOLI) website <https://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>. Questions about the application of prevailing wage rates should be directed to DOLI at 651-284-5091.

C. Conflict of Interest

State Grant Policy 08-01, (see <https://mn.gov/admin/government/grants/policies-statutes-forms/>) Conflict of Interest for State Grant-Making, also applies to BWSR grantees. Grantees' conflicts of interest are generally considered organizational conflicts of interest. Organizational conflicts of interest occur when:

1. A grantee is unable or potentially unable to render impartial assistance or advice due to competing duties or loyalties,
2. A grantee's objectivity in carrying out the grant is or might be otherwise impaired due to competing duties or loyalties, or
3. A grantee or potential grantee has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors.

D. Questions

This RFP, the FY2022 Water Quality and Storage Program Grant Policy adopted by the BWSR, and the Grants Administration Manual (<https://bwsr.state.mn.us/grants/manual/>) provide the framework for funding and administration of the FY2022 Water Quality and Storage Program ([link when available](#)).

Questions regarding grant applications should be directed to your area Board Conservationist, or Clean Water Specialist; a map of work areas and contact information is available at [BWSR Maps and Apps Gallery](#). Responses will be posted on the BWSR website as a "Frequently Asked Questions" (FAQ) document and updated weekly throughout the RFP. The final update will be posted on March 18, 2022.

COMMITTEE RECOMMENDATIONS

Audit and Oversight Committee

1. 2021 Performance Review and Assistance Program Legislative Report – Jenny Gieseke and Brett Arne – ***DECISION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE:	<u>2021 Performance Review and Assistance Program Legislative Report</u>		
Meeting Date:	<u>January 26, 2021</u>		
Agenda Category:	<input checked="" type="checkbox"/> Committee Recommendation	<input type="checkbox"/> New Business	<input type="checkbox"/> Old Business
Item Type:	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Discussion	<input type="checkbox"/> Information
Section/Region:	<u>Organizational Effectiveness</u>		
Contact:	<u>Jenny Gieseke</u>		
Prepared by:	<u>Brett Arne</u>		
Reviewed by:	<u>Audit and Oversight Committee</u>	Committee(s)	
Presented by:	<u>Jenny Gieseke & Brett Arne</u>		
Time requested:	<u>15 Minutes</u>		

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Approval

LINKS TO ADDITIONAL INFORMATION

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

BWSR is required to provide a report annually to the legislature on Performance Review and Assistance Program activities as prescribed by Minnesota Statutes Chapter 103B.102, Subdivision 3, effective February 1, 2008. BWSR staff have prepared a report that describes the program activities for 2021, including summaries of the activities of BWSRs local government partners, and goals and objectives for future PRAP activities. The report was presented to and has recommendation from the BWSR Audit and Oversight Committee for BWSR Board approval.



BOARD ORDER

Performance Review and Assistance Program 2021 Report to the Minnesota Legislature

PURPOSE

Adopt 2021 PRAP Legislative Report

FINDINGS OF FACT / RECITALS

1. The 2007 Legislature directed the Board of Water and Soil Resources (Board) to develop and implement an ongoing program to evaluate and report on the performance of each local water management entity.
2. In 2007 the Board developed a set of guiding principles and directed staff to implement a program for reviewing performance, offering assistance, and reporting results, now called the Performance Review and Assistance Program (PRAP), in consultation with stakeholders and consistent with the guiding principles as published on the BWSR website.
3. According to Minnesota Statutes Chapter 103B.102, Subdivision 3, beginning February 1, 2008, and annually thereafter, the Board shall provide a report of local water management entity performance to the chairs of the House and Senate committees having jurisdiction over environment and natural resources policy.
4. The 2021 PRAP Report to the Minnesota Legislature contains the summaries of the 16 local water management entity performance reviews conducted by BWSR staff in 2021 and a summary of findings describing the performance of local water management entities regarding compliance with plan status and basic reporting requirements.
5. The 2021 PRAP Report to the Minnesota Legislature was reviewed by the Board's Audit and Oversight committee on January 20, 2022 and was recommended for Board adoption by the committee.

ORDER

The Board hereby:

Adopts the 2021 Performance Review and Assistance Program Report and directs staff to submit the to the Minnesota Legislature and publish it on the Board's website, with allowance for any minor editing modifications necessary for finalization.

Dated at St. Paul, Minnesota, this January 26, 2022.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Date: _____

Gerald Van Amburg, Chair
Board of Water and Soil Resources

NEW BUSINESS

1. Clean Water Act Section 404 Assumption – Report on Funding Estimates – Les Lemm – ***INFORMATION ITEM***
2. Vice Chair Nomination – John Jaschke – ***DECISION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Clean Water Act Section 404 Assumption – Report on Funding Estimates

Meeting Date: January 26, 2022

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: Clean Water Act 404 Assumption

Section/Region: Wetlands

Contact: Les Lemm

Prepared by: Les Lemm

Reviewed by: _____ Committee(s)

Presented by: Les Lemm

Time requested: 20 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

LINKS TO ADDITIONAL INFORMATION

<https://bwsr.state.mn.us/404-assumption>

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

Laws of Minnesota 2021, 1st Special Session, Chapter 6, Article 2, Section 108, Subd. 9(a) required the Minnesota Environmental Quality Board (EQB) to begin to develop and assemble the material required to assume the section 404 permitting program of the Federal Clean Water Act (404 assumption), and to submit a report on the additional funding required to apply for and secure 404 assumption and to fully implement the state-assumed program. EQB entered into an agreement with the Board of Water and Soil Resources, who then entered into subsequent agreements with the Department of Natural Resources and the Pollution Control Agency, to coordinate the work and complete the report. Staff will summarize the results of that work and the cost estimates contained in the report.

Minnesota Federal Clean Water Act Section 404 Assumption

Report on Funding Estimates

January 11, 2022 *DRAFT*



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DRAFT

This page reserved for credits and information about report development and availability.

DRAFT

Chapter 1. Introduction

This report fulfills the reporting requirement of Laws of Minnesota 2021, 1st Special Session, Chapter 6, Article 2, Section 108, Subd. 9(a). This law required the Minnesota Environmental Quality Board (EQB) to begin to develop and assemble the material required to assume the section 404 permitting program of the Federal Clean Water Act (404 assumption), and to submit a report on the additional funding required to apply for and secure 404 assumption and to fully implement the state-assumed program. The full text of the legislation is shown below.

\$200,000 the first year is from the environmental fund to begin to develop and assemble the material required under Code of Federal Regulations, title 40, section 233.10, to have the state of Minnesota assume the section 404 permitting program of the Federal Clean Water Act. The Board may execute contracts or interagency agreements to facilitate developing the required agreements and materials. By February 1, 2022, the board must submit a report on the additional funding necessary to secure section 404 assumption and the additional funding needed to fully implement the state-assumed program to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the environment and natural resources. This is a onetime appropriation and is available until June 30, 2022.

To fulfill the requirements of the legislation, EQB entered into an agreement with the Minnesota Board of Water and Soil Resources (BWSR), who in turn developed agreements with the Minnesota Department of Natural Resources (DNR) and the Minnesota Pollution Control Agency (MPCA) to participate in this work.

The purpose of this report is to provide the funding estimates required by law, including a summary of progress made on the program development needs that directly affect these funding estimates. This report does not address all issues or information related to 404 assumption, discuss advantages or disadvantages, or provide recommendations related to state assumption of the Section 404 permitting program.

The processes and funding estimates contained in this report are based on the best available information at this time. Areas of uncertainty regarding assumption, such as technical complexities, public engagement needs, tribal interest considerations, and federal coordination, have limited the ability to provide greater accuracy for some of the funding estimates. Prior to making any recommendations on whether or not to pursue 404 assumption, state agencies would need to collect this additional information to provide increased certainty for program development needs and funding estimates. Consequently, projections contained in this report would need to be refined if additional program development or implementation is directed.

Chapter 2. Background

2.1. State Assumption of Section 404 of the federal Clean Water Act

Section 404 of the federal Clean Water Act (CWA) is the primary federal program regulating placement of fill material into waters of the U.S. (33 USC §1344), such as rivers, streams, lakes, and wetlands, for the purpose of avoiding adverse impacts to those waters and waters downstream. In Minnesota and

other states that have not assumed the program, the Section 404 Program is administered by the U.S. Army Corps of Engineers (USACE) with oversight by the U.S. Environmental Protection Agency (EPA).

Section 404(g) of the CWA allows states or tribes to apply to the EPA to administer their own state/tribal regulatory program to meet Section 404 requirements, thereby eliminating the need for separate, federally issued permits. This process is known as Section 404 Program assumption. To clarify, when a state assumes the federal Section 404 Program, the state does not administer Section 404 and does not issue Section 404 permits. Rather, the state issues permits under the state's own regulatory program, which has been approved by EPA to meet Section 404 requirements.

2.2. Current state surface water regulatory authorities in Minnesota

There are three primary state surface water regulatory laws in Minnesota: the Wetland Conservation Act (WCA) administered by BWSR and implemented by local governments and, for activities associated with a permit to mine, the DNR; the Public Waters Work Permit Program (PWWPP) administered by the DNR; and state water quality standards administered by the MPCA. Each of these regulatory authorities would have a role in implementing 404 assumption in Minnesota and are described in further detail below.

2.2.1. State Wetland Conservation Act (WCA)

Overview: WCA was enacted in 1991 to contribute to the achievement of no net loss to, an increase in, and avoidance of direct or indirect impacts to the quantity, quality, and biological diversity of Minnesota's existing wetlands, while replacing wetland values where avoidance of activity is not feasible and prudent. The Minnesota Board of Water and Soil Resources (BWSR) is responsible for promulgating and administering the WCA rule (MN Rule Chapter 8420). Local Government Units (LGUs) are primarily responsible for implementing WCA, including issuing decisions as to whether proposed activities can be authorized under the WCA rule. A Technical Evaluation Panel (TEP), consisting of technical staff from BWSR, the LGU, the Soil and Water Conservation District, and the DNR (when public waters are present), reviews proposed activities and makes findings and recommendations to the LGU.

Jurisdiction and Regulated Activities: WCA prohibits the draining or filling of wetlands, excavation in certain wetland types, and excavation in all wetland types if the excavation results in filling, draining, or conversion to non-wetland, unless exempt or replaced under an approved replacement plan.

Enforcement: DNR enforcement officers and other licensed peace officers.

Legal Authorities: Primarily Minn. Stat. §103G. and other related sections; Minnesota Rules Chapter 8420.

2.2.2. DNR Permit to Mine

Overview: Wetland impacts associated with metallic mineral mining are regulated under "permits to mine" issued by the DNR. In regulating such impacts, the DNR is required to apply WCA standards for wetland impacts, but the permitting process follows the permit to mine rules (e.g. MN Rules Chapters 6130 and 6132). Currently, peat mining operations that exceed 40 acres under MN Rules Chapter 6131 are not subject to WCA (in most cases) because reclamation requires wetland areas to be returned to wetland areas. The typical 404 permit issued by the St. Paul District of the USACE can require mitigation

for temporal loss of the wetlands. Under assumption, this aspect would also be added to the DNR's authority.

Jurisdiction and Regulated Activities: While the permit to mine program covers a broader set of mining-related activities, the regulatory authority applies to wetlands affected by activities authorized under the permit to mine.

Enforcement: DNR

Legal Authorities: Minn. Stat. § 93.44 - 93.51; Minn. Stat. § 103G.222, Subdivision 1; Minnesota Rules Chapters 6130, 6131, 6132, and 8420.

2.2.3. State Public Waters Work Permit Program (PWWPP)

Overview: The Minnesota DNR Ecological and Water Resources Division oversees the administration of the Public Waters Work Permit Program. This program, begun in 1937, regulates water development activities below the ordinary high-water level (OHWL) in public waters and public waters wetlands. Public waters were inventoried by DNR and mapped for each county under a process completed in the early 1980's. Field staff serve as the primary contacts for this program, and most activities can be authorized at either DNR Ecological and Water Resources area or regional offices.

Jurisdiction and Regulated Activities: The PWWPP regulates activities below the OHWL in public waters (lakes), public waters wetlands, and public water streams/streams. The PWWPP requires a permit for work affecting the course, current, or cross-section of such waters. Such work may include fill, excavation, shore protection, bridges and culverts, structures, marinas, water level controls, dredging, and dams.

Enforcement: DNR

Legal Authorities: Minn. Stat. § 103G and Minnesota Rules Chapter 6115.

2.2.4. State Water Quality Standards (WQS)

Overview: The CWA requires states to designate beneficial uses for all waters and develop water quality standards to protect each use. The MPCA is the agency responsible for developing and maintaining water quality standards in Minnesota. Water permits issued by the MPCA must ensure compliance with water quality standards (WQS). Section 401 of the CWA requires that any person applying for a federal permit or license, for which the activity may result in a discharge of pollutants into waters of the United States, must obtain a state water quality certification that the activity complies with all applicable state WQS, limitations, and restrictions. In Minnesota, the application of WQS associated with federal permits or licenses is administered by the MPCA's "401 Certification Program." The program applies state WQS to federally authorized projects by requiring a certification or waiver for federal permits or licenses that cause a potential discharge to Waters of the U.S. from a "point source." Certifications with conditions become an enforceable part of a federally issued permit. If the state denies certification, a federal permit cannot be issued. The most common requirement for certification is a Clean Water Act Section 404 Permit application to the USACE.

Jurisdiction and Regulated Activities: WQS identify the designated beneficial uses for each water body and describe the criteria to protect each beneficial use. These standards can be applied through permitting programs to ensure protection of waters. The 401 Certification Program regulates water

quality impacts from federally permitted/licensed projects discharging pollutants into waters of the United States.

Enforcement: The MPCA has broad enforcement authority to enforce WQS. Specific to the 401 Certification Program, the MPCA may enforce WQS associated with a 401-certified project, however, enforcement of 401 conditions falls to the federal permitting/licensing agency (typically the USACE).

Legal Authorities: Federal: CWA Section 401 and Title 40 of the Code of Federal Regulations (CFR), Part 121 Section 303 and 40 CFR Part 131. State: Minn. Stat. § 115.03 assigns establishment and protection of water quality standards to the MPCA; Minnesota Rules Chapters 7050 and 7052 codify the state water quality standards; and Minnesota Rules Chapter 7001 addresses the procedural requirements for the 401 Program.

2.3. Basic requirements for Section 404 assumption

To receive approval from EPA to assume responsibility for implementation of Section 404, the state must demonstrate, among other requirements:

- jurisdiction over all waters of the United States, including wetlands, excluding those waters to be retained by the USACE (the USACE retains permitting responsibility over certain navigable waters relating to their authority under Section 10 of the Rivers and Harbors Act of 1899);
- regulation of at least the scope of activities required by applicable federal statute and rule;
- adequate legal authority and staffing capacity to implement the program(s);
- adequate enforcement authority; and
- compliance with certain permitting standards, and procedural, noticing, and reporting requirements.

A state's application for 404 Assumption must include:

- a complete description of the state's regulatory program(s);
- copies of state statutes and regulations;
- a Memorandum of Agreement with the USACE describing USACE-retained and state-assumable waters;
- a Memorandum of Agreement with the EPA setting forth state and federal responsibilities for administration and enforcement; and
- an Attorney General's statement of authority.

After the additional assessment identified in Chapter 1, a final decision can be made by the state to decide whether to apply for 404 assumption. The application would then be submitted to EPA, which would have to be accompanied by a letter from the Governor requesting program approval.

2.4. History of 404 Assumption in Minnesota

Recent efforts to explore 404 assumption in Minnesota include completion of the Minnesota Federal Clean Water Act Section 404 Permit Program Feasibility Study (2017) and the Analysis of Retained and Assumable Waters in Minnesota (2018). In addition, the 2017 federal Assumable Waters subcommittee

report and subsequent memo from the Department of the Army regarding the identification of USACE-retained and state-assumable waters is relevant to potential 404 assumption in Minnesota.

2.4.1. 2017 Feasibility Study

The study was conducted with substantial stakeholder involvement and culminated in the January 2017 *Minnesota Federal Clean Water Act Section 404 Permit Program Feasibility Study*. The study provided significant findings for the legislatively required study elements, which included:

- the federal requirements for state assumption of the (Section) 404 program;
- the potential extent of assumption, including those waters that would remain under the jurisdiction of the United States Army Corps of Engineers due to the prohibition of 404 assumption in certain waters as defined in section 404(g)(1) of the federal Clean Water Act;
- differences in waters regulated under Minnesota laws compared to waters of the United States, including complications and potential solutions to address the current uncertainties relating to determining waters of the United States;
- measures to ensure the protection of aquatic resources consistent with the Clean Water Act, Wetland Conservation Act, and the public waters program administered by the Department of Natural Resources;
- changes to existing state law, including changes to current implementation structure and processes, that would need to occur to allow for state assumption of the 404 program;
- new agency responsibilities for implementing federal requirements and procedures that would become the obligation of the state under assumption, including the staff and resources needed for implementation;
- the estimated costs and savings that would accrue to affected units of government;
- the effect on application review and approval processes and time frames; and
- options for financing any additional costs of implementation.

During the study, stakeholders were asked to identify their desired outcomes relating to the potential assumption of Section 404 implementation by the state. Generally, the desired outcomes are 1) efficient and timely permitting that is well coordinated between state and federal programs (less redundancy), and 2) effective protection of water/wetland resources.

With regard to the stakeholder's desired outcomes, the results of the study found that: 1) state assumption of Section 404 would streamline permitting for applicants, since projects would no longer require both a state and a federal permit on state-assumed waters; 2) applicants would likely receive permit decisions more quickly and at a lower cost; and 3) effective protection of water resources would be ensured by increasing regulatory compliance through the reduction of regulatory redundancy, complexity, and delays associated with current multi-agency (state and federal) permitting processes. The 2017 report is available on the BWSR website at: <https://bwsr.state.mn.us/404-assumption>

2.4.2. Assumable Waters

On May 3rd, 2018, BWSR, DNR, and MPCA provided the "Analysis of Retained and Assumable Waters in Minnesota" report to the state legislature as a supplement to the 2017 Feasibility Study report. The report included estimates of the amounts of waters that were likely to be retained by the USACE, and

those assumable by the state under 404 assumption. The underlying analysis found that, under the USACE interpretation at that time, there would be relatively few waters and wetlands for the state to assume and that the process to identify them would be impracticable. Specifically, although being able to assume approximately 88% of streams, other state assumable waters would consist of only 8.5% of the state's wetlands and 1.3% of lakes and other basins. The 2018 report is available on the BWSR website at: <https://bwsr.state.mn.us/404-assumption>

In June of 2015, the EPA established the Assumable Waters Subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to “provide advice and develop recommendations on how the [EPA] can best clarify for which waters the state/tribe has CWA section 404 permit responsibilities, and for which waters the USACE retains CWA section 404 permit responsibility, under an approved state/tribal program.”

The Subcommittee's final report was completed in May of 2017 and submitted to the EPA Administrator on June 2, 2017. In general, acceptance of the report's majority recommendations would result in a significant majority of waters being assumable in Minnesota, utilizing a process that both provides certainty and is implementable on the ground. These recommendations would significantly improve the feasibility of 404 assumption in Minnesota. The Assumable Waters Subcommittee's Final Report is available on the EPA website at: <https://www.epa.gov/cwa-404/submission-assumable-waters-subcommittees-final-report>

On August 7, 2018, the U.S. Army released a memorandum from the Assistant Secretary of the Army for Civil Works (dated July 30, 2018) that clarifies the waters that would be retained by the USACE under state assumption. The memo is consistent with the Assumable Waters Subcommittee's majority recommendations regarding the scope of retained waters.

Adoption of the Assumable Waters Subcommittee majority recommendations changed the outcome of the State's 2018 Assumable Waters Analysis significantly, removing a practical barrier to 404 assumption. Although a more precise number would not be available until after a Memorandum of Agreement is developed with the USACE, an initial estimation completed by BWSR indicates that the proportion of state-assumable wetlands increases from approximately 8.5% to approximately 98.5% as a result of this action.

Chapter 3. Program Development Progress.

As development of the material required under Code of Federal Regulations, title 40, section 233.10 and corresponding funding estimates began, several state program development and underlying policy considerations had to be addressed. In some instances, multiple options existed to address a particular issue. The following principles were used to aid in the decision-making process as staff assessed options to implement 404 assumption requirements:

- Maintain (or streamline) existing state permitting processes and approaches to the greatest extent possible while meeting 404 assumption requirements.
- Generally, the option that represents the least amount of change to the current structure of state programs is preferred (the least amount of change will typically also correlate to the least amount of additional cost).

- The state agencies should not use 404 assumption to expand jurisdiction or increase current state regulatory requirements beyond what is necessary for the state to assume.

3.1. Equivalent Jurisdiction

Under 404 assumption, a state must ensure regulatory jurisdiction over all waters of the United States, except those retained by the USACE. In Minnesota, the current gaps between state and federal jurisdiction that would need to be addressed include:

- 1) Stream reaches with watersheds that are under two square miles and/or are not mapped on PWWPP maps.
- 2) Water basins that are too deep to be entirely wetland but are not public waters according to Minn. Stat. 103G.005, Subd. 15, due to a lack of adequate size or other criteria.

The above waterbodies are not regulated by the PWWPP and those waterbodies, or portions of waterbodies, that do not meet the criteria to be classified as wetland are not regulated by WCA. These gaps can be addressed through revisions to the jurisdiction of existing state regulatory programs. The regulatory option that minimizes the amount of change to current state programs, processes, and costs is to add these waterbodies to the regulatory scope of WCA, as most of these resources partly consist of wetlands or are otherwise associated with wetlands, already involving them in WCA implementation to some extent.

Expansion of WCA jurisdiction over non-public waters stream reaches and the resulting review of stream impacts and mitigation (both associated and unassociated with wetlands) would result in an increase in workload for BWSR, DNR, and, to a lesser extent, LGUs.

With regard to non-wetland, non-PWWPP water basins, since the vast majority, if not all, of the non-public water basins have some extent of a wetland fringe that is currently regulated by WCA, expanding WCA jurisdiction to cover the remainder of the waterbody is not expected to cause any discernable increase in the cost of implementation for BWSR or LGUs.

Impacts to incidental wetlands are exempt from WCA and typically have not required mitigation under CWA Section 404 due to regulatory allowances or lack of jurisdiction. If the state assumed 404, it is expected that a similar regulatory approach and outcome could apply. However, subsequent changes at the federal level could require modification to the state's regulations for incidental wetlands.

If the state were to apply for and assume the Section 404 program and subsequent federal rulemaking or court actions altered the extent of waters of the United States, the state would need to assess whether those changes would require corresponding changes to the state's programs. Any such changes to state programs could in-turn necessitate additional staff training and public outreach.

3.2. Permitting Authority and Implementation Structure

DNR is the permitting authority for the PWWPP and for Permits to Mine, but BWSR is currently not a permitting authority for WCA as local governments make decisions on WCA applications. Only state agencies can be permitting authorities for an assumed 404 program. Therefore, BWSR would need to become a permitting authority for WCA under an assumed program. In addition, as MPCA has authority over state water quality standards and is authorized to review federally issued permits for compliance

with these standards, a process would need to be established for the MPCA review of state issued permits to ensure state water quality standards, including antidegradation, are met.

3.2.1. Board of Water and Soil Resources

Transferring the primary responsibility for WCA implementation from local governments to a state agency (BWSR) was identified in the 2017 Feasibility Study as one of the likely changes that would be necessary to allow for assumption of the 404 program. The need for this change is based on the Section 404 assumption requirement that, under an approved state program, permit decisions must be made by a state agency or agencies, identified as the “permitting authority.” Both a state-only and a shared state-local implementation model were evaluated in the 2017 Feasibility Study, and the estimated costs to implement the two options are shown in Table 1. However, many of the details of how these models would work in practice were unknown at the time, as were other options that could comply with the 404 assumption permitting authority requirement. Since that time, further coordination with the EPA has resulted in the development of a more cost-effective implementation approach (which is reflected in the cost estimates contained in Table 2) that largely maintains the existing local government role in WCA implementation while ensuring that BWSR meets the federal requirement that a state agency act as the permitting authority.

The newly developed WCA implementation approach would utilize a series of general permits (GPs) issued by BWSR to authorize categories of similar activities, and that would encompass all WCA decisions (exemption, no-loss, replacement plan, etc.) and standards within a certain limit or limits of wetland fill acreage. These GPs would include permit conditions related to the discharge of dredged/fill material (i.e. wetland fill) and other potential impacts, that are required for 404 assumption, but would be structured to allow for the continuation of existing WCA LGU application and processing procedures.

The federally required permit conditions include the avoidance of impacts to federally threatened and endangered species and historic properties. BWSR would be responsible for coordinating the review of GPs, at the time of their development, as it pertains to federal requirements for assumption above and beyond current WCA standards and procedural requirements. The GPs would encompass all WCA decisions and standards within a certain limit or limits of fill within those waters regulated by the program. All projects involving fill would be authorized under a GP provided the limit for fill specified in the GP is not exceeded and the federally required permit conditions related to the fill are met.

Projects that cannot be authorized under a GP would be reviewed and processed by BWSR as an Individual Permit (IP). Aside from additional public notice and coordination requirements, BWSR would follow the same basic procedures for processing WCA applications that local governments currently use. This includes providing notice of complete applications, seeking a recommendation from the Technical Evaluation Panel, determining the consistency of the proposal with appropriate rules and statutes, and final decision making.

The additional public notice and coordination requirements referenced above would include coordination with MPCA on water quality standards (Section 2.1.3), posting of notices on a publicly accessible webpage, and coordination with adjoining states or tribes, the EPA, the U.S. Fish and Wildlife Service, and the State Historic Preservation Office as applicable.

While the above-described implementation structure should result in little change for LGUs processing WCA applications, the workload for BWSR will increase due to the following:

- Screening WCA applications for meeting general permit requirements related to assumption (i.e. threatened and endangered species and historic property impacts);
- Creation of, justification for, and issuance of general permits every 5 years, including responding to public comments and coordination with relevant state and federal agencies;
- Implementation of WCA on federal lands;
- Processing and review of individual permits, including noticing, ensuring compliance with federal requirements related to federally threatened and endangered species, historic properties, state WQS, and coordination with federal agencies and tribes;
- Preparation of decision documents for individual permits in compliance with 404(b)(1) guidelines;
- Preparation of annual report to EPA on assumption activities;
- Coordination with USACE on projects that impact both USACE-retained and state-assumed waters per a memorandum of agreement ; and
- Coordination with EPA whenever changes are made to state statutes or rules affecting the state regulatory programs.

3.2.2. Department of Natural Resources

The DNR's PWWPP program could be carried out substantially as it currently exists, although there are some consequential changes that would need to be adopted and federally compliant GPs would likely need to be developed to expedite the authorization of most activities. The DNR's Permit to Mine program could require substantial changes and the utilization of GPs may not be the most suitable approach for Permit to Mine projects. For example, the 404 program requires mitigation for excavation associated with a discharge of dredged or fill material in a wetland, including mining projects. The existing and proposed mitigation requirements for mining projects are substantial and are reflected in the cost estimates for DNR provided in Table 2. Like WCA, these programs regulate many more activities and impacts than required by Section 404 of the CWA. These programs could develop federally compliant GPs for activities that involve the discharge of dredged/fill material into an aquatic resource. For projects that involve fill but are not covered by a GP, the DNR would have to process those as individual permits utilizing the same noticing, coordination, and documentation requirements described above for BWSR under assumption. DNR is already a permitting agency with staff in place to issue permits, however, assumption would result in a significant increase in workload for DNR, to meet these additional federal requirements under assumption.

Similar to the GPs BWSR would need to develop, DNR's GPs would include several permit conditions related to the discharge of dredged/fill material (i.e. wetland fill) that are required for 404 assumption, but would be structured to allow for the continuation of existing Public Waters permit application and processing procedures. The federally required permit conditions include the avoidance of impacts to federally threatened and endangered species and historic properties. DNR would be responsible for coordinating the review of GPs, at the time of their development, as it pertains to federal requirements for assumption above and beyond current Public Water permitting standards and procedural requirements. The GPs would encompass all public waters decisions and standards within a certain limit

or limits of fill within those waters regulated by the program. All projects involving fill would be authorized under a GP provided the limit for fill specified in the GP is not exceeded and the federally required permit conditions related to the fill are met (DNR would have the authority to process any application as an individual permit if the GP conditions are not met).

Projects that cannot be authorized under a GP would be reviewed and processed by DNR as an Individual Permit (IP). Aside from additional public notice and coordination requirements, DNR would follow the same basic procedures for public water permitting as in the past. This includes collection of permit fees, seeking comment from local units of government, determining the consistency of the proposal with appropriate rules and statutes, and final decision making.

The additional public notice and coordination requirements referenced above would include coordination with MPCA on water quality standards (Section 2.1.3), posting of notices on a publicly accessible webpage, and coordination with adjoining states or tribes, the EPA, the U.S. Fish and Wildlife Service, and the State Historic Preservation Office (SHPO) as applicable. SHPO is required to coordinate with the Tribal Historic Preservation Office. Additional and ongoing tribal consultation will be important to several aspects of continued efforts regarding 404 assumption.

The above-described implementation structure would result in some change for DNR staff processing PWWPP applications and the workload for DNR staff would increase due to the following:

- Screening permit applications for meeting general permit requirements related to assumption (i.e. threatened and endangered species and historic property impacts);
- Creation of, justification for, and issuance of general permits every 5 years;
- Processing and review of individual permits, including assuring compliance with federal requirements related to federally threatened and endangered species, historic properties, state WQS, and coordination with federal agencies and tribes;
- Preparation of decision documents for individual permits in compliance with 404(b)(1) guidelines;
- Ongoing training of DNR staff and public outreach;
- Preparation of annual report to EPA on assumption activities;
- Coordination with USACE on projects that impact both USACE-retained and state-assumed waters per a memorandum of agreement; and
- Informing EPA of proposed or actual changes to the state's regulatory authority or any significant modifications to the administration of the program.

3.2.3. Pollution Control Agency

Included in the requirements of 404 assumption is compliance with 40 Code of Federal Regulations (C.F.R.) Part 230 Section 404(b)(1), *Guidelines for Specification of Disposal Sites for Dredged or Fill Material*. The 404(b)(1) guidelines prohibit the issuance of a permit for the discharge of dredged/fill material if it will violate state water quality standards (WQS). Currently, the USACE satisfies this requirement when they issue 404 permits by following the requirements and procedures of Section 401 of the CWA, which stipulates that a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a Section 401 water quality certification is issued, or certification is waived. States and authorized tribes where the discharge

would originate are generally responsible for issuing water quality certifications. The MPCA has adopted water quality standards for protection of waters of the state (Minnesota Rules, chapter 7050), including procedures for Section 401 certifications of federal individual permits (Minnesota Rules, part 7050.0285) and general permits (Minnesota Rules, part 7050.0305).

Under 404 assumption, the state (BWSR and DNR) would issue permits for discharges of dredged/fill material in regulated waters. The Section 401 requirements, procedures, and legal authorities administered by MPCA do not apply to state-issued permits because they are specifically tied to the issuance of a federal permit. However, state-issued permits must comply with 404(b)(1) guidelines, which includes a provision that prohibits the issuance of a permit that violates WQS. Therefore, the state would have to develop a process to review proposed permits that involve the discharge of dredged/fill material into assumed waters for compliance with WQS. This process would require some additional time for BWSR and DNR staff coordination with MPCA when an individual permit is reviewed for water quality certification.

For those waters not assumed by the state (i.e. retained by the USACE), the MPCA will continue to use the Section 401 process to issue, waive, or deny certification for compliance with WQS for 404 permits issued by the USACE for discharges of dredged/fill material into those waters. The mechanism and process developed for ensuring compliance with WQS for state-issued permits in assumed waters is similar to the Section 401 process and will provide consistency for permittees and MPCA staff. However, the mechanism and process for state-issued permits under 404 assumption will operate independent of, and separate from, the Section 401 process and requirements for federally issued 404 permits.

The 2017 Feasibility Study estimated no additional implementation costs for MPCA under 404 assumption. That estimate remains valid assuming the current average number of individual permits requiring evaluation for water quality standard compliance certification does not increase under 404 assumption. Since the goal of the state agencies is to utilize general permits to the extent possible, the number of individual permits issued by the state under 404 assumption is not expected to increase based on current projections. However, as the potential permitting structures of WCA, the PWWPP, and the Permit to Mine program are further developed, additional information could warrant a revision to MPCA cost estimates.

3.3. Development and Modification of Online Permitting Systems

To implement an assumed 404 Program, the development and use of an online WCA permitting system by BWSR would be necessary to:

- i. facilitate EPA's oversight responsibilities;
- ii. enable efficient coordination among affected agencies and LGUs for purposes of review of jurisdiction, coordination for permit development and issuance, and oversight;
- iii. provide an efficient method for applications to be prepared and submitted;
- iv. facilitate the efficient screening of projects for potential affects to federal threatened and endangered species;
- v. ensure transparency; and
- vi. conduct reporting both within the state and to meet the reporting requirements to EPA under the federal regulations for state-assumed 404 Programs.

During completion of the 2017 Feasibility Study, the cost for development of the online WCA permitting system was estimated to be approximately \$3.4 million¹, with approximately \$225 thousand² required annually to support the new system. These estimates were based primarily on the cost of developing the Minnesota DNR Permitting and Reporting System (MPARS). However, technology has improved since that time, staff have further investigated other similar systems, and a new wetland banking database has been developed (which would become a component of the larger permitting system). These factors allow for a substantial downward revision to the estimates included in the 2017 Feasibility Study. In consultation with MNIT staff, we currently estimate a one-time development cost of approximately \$1.5 million, with ongoing annual maintenance costs of approximately \$90 thousand.

The DNR's Water Permitting and Reporting System (MPARS) would also require modifications to implement an assumed 404 Program. The programming might not be as extensive as what would be necessary to develop the entirely new WCA online permitting system but, nonetheless, substantive changes to the existing system would be needed to address additional requirements. The changes would include tracking general permit authorizations, facilitating the efficient screening of projects for potential affects to federal threatened and endangered species, required noticing when an individual permit is needed, conducting annual reporting to EPA, and other miscellaneous changes. One-time funding in the amount of approximately \$800,000 would be required to develop the necessary changes.

The above systems do not include permitting for DNR's Permit to Mine program. Either the new WCA permitting system or MPARS could potentially be designed to allow for inclusion of permits to mine if the DNR so chooses.

3.4. Mitigation

Some aspects of the state's current approach to the mitigation of impacts to streams and wetlands would need to be addressed as summarized below.

3.4.1. Public Waters Work Permit Program

Compensatory mitigation is required for permitted impacts to public waters regulated under the PWWPP. However, for impacts to public waters, generally being lakes and streams, the PWWPP rules contain no specific standards for the required mitigation. Mitigation specifications for lakes and waterways would need to be developed and implemented, including addressing the Section 404 preference and current state WQS requirement that compensatory mitigation be "in-kind" to the extent possible (i.e., impacts to streams be compensated by restoring or enhancing stream habitat and that mitigation for impacts to lakes be focused on lake habitat).

Currently, the process of arriving at mitigation requirements for impacts to public waters is flexible, determined on a case-by-case basis, and protective. Any mitigation specifications developed for assumption of the 404 program would ideally include 404 preferences and allow the flexibility and protection of existing public water rules and statutes regarding mitigation.

¹ The 2017 estimate was adjusted for inflation using Consumer Price Index data from 2017 through 2021.

² The 2017 estimate was adjusted to account for 2022 staffing costs.

3.4.2. Wetland Conservation Act

The WCA rules contain specific standards for wetland mitigation (replacement) that are substantially equivalent with the requirements of Section 404. However, if WCA jurisdiction is expanded to cover non-PWWPP stream segments as discussed in section 3.1, standards would need to be developed for instances when mitigation would be required for impacts to those resources. It is expected that the state agencies would continue to coordinate consistent standards for stream mitigation between the PWWPP and WCA. Such standards could be established in the WCA rules, the PWWPP rules, or both. Additional information on how those mitigation standards could be implemented is contained in section 3.4.3 below.

3.4.3. Minnesota Stream Quantification Tool and Debit Calculator

Unlike wetlands, there have been no consistent and quantifiable methods for assessing impacts to streams and determining the resulting compensatory mitigation requirements in place in Minnesota. For 404 assumption, the state must implement function-based policies and assessment methods when evaluating permit applications for the discharge of dredged/fill material into streams in accordance with the Federal Mitigation Rule (40 CFR Part 230).

In response to a need for a specific mechanism to assess and inform permitting and compensatory mitigation decisions related to streams, staff from BWSR, the MPCA, and the DNR collaborated with federal agencies and an expert stream consultant hired by EPA to develop the Minnesota Stream Quantification Tool and associated Debit Calculator (MNSQT). The MNSQT is a spreadsheet-based tool that includes a user manual, spreadsheets, and workbooks to produce quantitative measures of stream functions. It uses function-based parameters and metrics to assess stream functions. Through function-based measures and observations, the MNSQT can be used to calculate the change in condition before and after an impact to a stream has occurred or stream restoration activities are implemented. The MNSQT includes 24 metrics within 12 parameters that can be evaluated at a project site. A basic set of metrics within five parameters is required at all project sites evaluated. The user manual provides data collection methods related to each metric. For some metrics, methods include both rapid and more detailed forms of data collection, allowing the tool to be used for rapid or more comprehensive site assessments.

This tool is a key component for which the state can develop policies, rules, and procedures to address the issuance of permits for projects that impact streams under both the PWWPP and WCA. It provides the basis for assessing stream impacts, determining compensatory mitigation requirements for streams, and generating stream credits that can be banked and sold for compensatory mitigation purposes. Similar SQTs have been developed and are being used in other states. The state could learn from these other states and develop more refined policies and procedures to be implemented under assumption.

3.4.4. The State Wetland Bank

In addition to specifying the mitigation requirements for lakes and streams, a mechanism would need to be established to allow for the effective development and use of the prescribed mitigation. The most efficient option for establishing such a mechanism, and the option that represents the least amount of change from current state program structure, would be to add additional categories of waters to the

State Wetland Bank established pursuant to Minn. Stat. 103G.2242 Subdivision 1. While the bank is already established for wetlands and specific procedures for its use are in place, additional coordination would be required amongst the state agencies for the approval and use of banked mitigation across programs.

3.5. External Coordination

Under an assumed 404 program, EPA is responsible for coordinating with the federal agencies when potential impacts to threatened or endangered species may occur. The state would seek to implement measures to facilitate EPA's coordination to ensure an efficient and effective process for the agencies and applicants. During permit development, the state would also need to screen for potential impacts to sites listed or eligible for listing on the National Register of Historic places and notify EPA if impacts to those sites may occur. Under 404 assumption, the state must also regulate dredge and fill activities occurring in waters located on federal lands, with such activities consisting primarily of projects completed by federal agencies.

3.5.1. Threatened and Endangered Species

Section 404 permit applications are currently reviewed for potential impacts on federally listed threatened and endangered (T&E) species under Section 7 of the Endangered Species Act (ESA). Under an Assumed 404 program, EPA cannot waive their review of state permits that may affect federally listed threatened or endangered species and their designated critical habitat. Further, under the program, EPA is responsible for coordinating with the federal agencies when potential impacts to threatened or endangered species may occur. However, existing state permitting programs do not explicitly require determination of whether such species are present or consideration of impacts to these species, although some federally listed species are also listed under the Minnesota Endangered Species Act and are considered under state permitting programs.

If Minnesota assumed the Section 404 program, the state would need to implement a procedure to screen permit applications for both state and federally listed species and notify EPA accordingly. Further, the state would implement measures to facilitate EPA's coordination with the federal agencies, ensuring an efficient and effective process for permit applicants.

3.5.2. Historic Places

Similar to the Endangered Species Act requirements, the EPA cannot waive their review of state permit applications involving activities within sites identified or proposed under the National Historic Preservation Act. If Minnesota assumed the Section 404 program, the state permit programs (WCA and the PWPP) must ensure that adequate screening for potential impacts on historic/cultural sites occurs, in coordination with the State Historic Preservation Office. Specifically, during permit development, the state would review projects for potential impacts to sites listed or eligible for listing on the National Register of Historic places and notify and coordinate with EPA if impacts to those sites may occur.

3.5.3. Federal Lands

To date, the state has generally not asserted WCA jurisdiction for activities occurring on federal lands. However, under assumption, such activities must fall under the purview of a state-assumed program.

While relatively few projects that impact wetlands occur on federal lands, the distribution of federal lands in the state would disproportionately affect certain counties. Consequently, the most likely option for permitting WCA wetland impacts on federal lands would be for BWSR, rather than the LGU, to coordinate with the federal agencies and to verify eligibility for a given general permit, in addition to issuing individual permits for projects on federal lands. Given the relatively low occurrence of projects impacting wetlands on federal lands, the workload associated with such permit applications under 404 assumption is expected to be low.

The DNR currently has the authority to regulate and manage the public waters and public waters wetlands located inside areas under federal jurisdiction (e.g., national forests). It is DNR's position that the federal government must obtain PWWPP permits for work in public waters and public waters wetlands just as other private landowners must. Consequently, the State's cost of reviewing permit applications for projects on federal lands would not be expected to change under 404 assumption. Regarding the Permit to Mine program (which applies WCA standards through its mining permits), the number and size of metal mining projects on federal lands is currently unknown.

3.5.4. State Program Administration

Implementation of an assumed 404 program would require the state agencies to undertake coordination and consultation with entities such as the EPA, USACE, Tribal Governments, and other states. Direct government to government consultation with tribal governments would be a necessary component of subsequent program development and implementation in MN. The state has increased and improved tribal coordination in recent years and is committed to continue doing so on this topic as well.

Coordination is multifaceted and would be necessary to carry out the daily routine functions of the program as well as to ensure the successful overall administration of the program, including:

- Conducting routine coordination with the EPA for the processing and review of individual permits and issuance or reissuance of general permits, issuance of public notices, responses to comments received during formal comment periods, and so on.
- Coordinating with the Tribes and/or other states when a proposed discharge may affect the biological, chemical, or physical integrity of the waters on Tribal lands or of another state.
- Monitoring and providing oversight for revisions to the state program, memorandums of agreement, or potential changes to the status of assumed or retained waters, coordinating with the office of the EPA Regional Administrator and/or the USACE District Engineer, when applicable.
- Carrying out other facets of coordination with EPA, including oversight of the state's response to EPA objections to permit issuance or requirements for permit conditions, and to represent the state at public hearings held by the EPA Regional Administrator.
- Ensuring that the state fulfills its requirement to provide to the EPA a draft annual report including tabular data, evaluating the State's administration of its program, identifying problems the State has encountered in the administration of its program, and making recommendations for resolving these problems.
- Consulting with the USACE for projects that will impact both state-assumed and USACE-retained waters.

Chapter 4. Funding Estimates

According to the 2019 legislation: “By February 1, 2022, the board must submit a report on the additional funding necessary to secure section 404 assumption and the additional funding needed to fully implement the state-assumed program to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the environment and natural resources.”

4.1. Methods

The 2017 Feasibility Study contained estimates of the cost to implement a State-assumed program. However, in developing these estimates the state agencies and stakeholders were unable to anticipate revisions to the framework of the prospective state-assumed program that have since been developed. The most significant of these improvements are discussed in Chapter 3. These recent improvements will provide the basis for developing more accurate cost estimates.

To develop the funding estimates for this report, the 2017 cost estimates were adjusted to account for current (2022) staffing costs. The estimates were then further refined to develop the new 2022 estimates where progress in developing the state assumed program framework is expected to change the amount of staffing needed and/or other costs. The adjusted 2017 cost estimates are summarized in Table 1 and the new 2022 estimates are addressed in section 4.2.

Table 1. Adjusted 2017 Feasibility Study estimates of annual funding (\$mil) required for 404 assumption.

Agency	2017 Additional Funding Estimates ¹	
	Full State Scenario (\$M)	State\Local Scenario (\$M)
BWSR	\$6.1	\$3.4
DNR ²	\$1.9	\$1.9
MPCA	\$0.0	\$0.0
Total State Agency	\$8.0	\$5.3

1. The 2017 cost estimates were adjusted to account for 2022 staffing costs.
 2. Funding for expanded jurisdiction and the operation and maintenance of the WCA online permitting system were listed under the DNR in the 2017 cost estimates.

Since the extent to which the WCA implementation structure (utilizing local governments) would need to change to comply with 404 assumption requirements was not yet known, the 2017 Feasibility Study included funding estimates for two potential scenarios (see Chapter 3.2.1). The full state WCA implementation scenario assumed elimination of WCA LGU authority and a cost increase of \$6.10 million annually for BWSR to fully implement the program. Under the shared state-local implementation scenario, the study estimated that there would be an increased cost to the State of \$3.4 million annually.

Cost estimates for DNR were not affected by the WCA implementation scenarios as local governments do not have permitting authority for DNR programs. The cost for MPCA implementation of State WQS

was not expected to increase, as it was anticipated that a state process similar to the existing 401 certification process would be developed. The 2017 Feasibility Study also estimated that annual funding in the amount of \$225,000 would be required to implement and maintain the online WCA permitting system described in Chapter 3.3.

The 2017 Feasibility Study did not address the cost to develop the structure of a State-assumed program and assemble the 404 assumption application materials.

4.2. Additional funding needed to fully implement the state-assumed program

For purposes of this section, “additional funding” refers to the annual funding needed to implement the requirements of 404 assumption. As stated above, because of the remaining unknowns, these costs are estimates, subject to change. The estimated additional funding needed by BWSR to implement a state-assumed program is approximately \$2.1 million. This funding estimate corresponds to recent progress made in developing the WCA implementation structure under 404 assumption; specifically, the development and use of WCA general permits based on existing state regulations, the continued involvement of local governments under this structure, and the estimated cost of developing an online WCA permitting and reporting system.

Existing funding for DNR permitting programs is already inadequate to handle existing workload. In addition, the 2017 report estimates did not include any additional funding for implementation of the Permit to Mine program. The funding needed by DNR to implement a state-assumed program is currently estimated at approximately \$2.7 million dollars annually, which includes additional permitting positions for the PWWPP and Permit to Mine programs. This funding is necessary to administer new requirements related to the permitting process, including federal coordination, recurring training of staff, periodic legal review, ongoing maintenance of MPARS, and screening for threatened and endangered species and historic places.

As discussed in Chapter 3.2.3, the MPCA’s costs to administer the state water quality standards under 404 assumption are not expected to increase based on our current expectations for the structure of state programs. However, revisions to the MPCA cost estimates could be warranted as the details of the permitting structure of WCA and the PWWPP are refined and finalized.

Table 2. 2022 additional funding (\$mil) required for 404 assumption implementation.

Agency	2022 Additional Funding Estimates
BWSR	\$2.1 ¹
DNR	\$2.7
MPCA	\$0.0
Total State Agency	\$4.8
1. The funding estimate for BWSR includes additional costs of implementation for WCA local government units, implementing expanded state jurisdiction, and ongoing maintenance costs for the online WCA permitting system.	

The above cost estimates are arranged by agency. However, the benefits of certain costs incurred by a given agency may be shared between agencies to meet 404 assumption requirements more effectively. Opportunities may also exist for the state to use some identified funding to contract for services where such services would more efficiently meet program requirements. For example, BWSR and/or DNR could contract with the State Historic Preservation Office to ensure that permits do not adversely affect historic properties/sites as the need arises. The most effective way to utilize funding to meet 404 assumption requirements would become clearer as implementation procedures and processes are further refined and reviewed by EPA as part of the process to develop a full 404 assumption application package.

In summary, total additional funding required to implement the assumed 404 program is currently estimated at \$4.8 million. However, it is expected that these funding estimates would be refined further if additional progress is made in developing the specific implementation structure and procedures for the state programs as would be necessary for 404 assumption.

4.3. Additional funding necessary to secure section 404 assumption

The additional funding that would be necessary to determine whether to apply for and secure section 404 assumption includes costs associated with completing program development activities, including development of the additional information outlined in Chapter 1 which would need to be completed prior to making a decision on whether to pursue an application. If a decision were made to proceed, there would also be one-time costs for executing programmatic changes, developing and enhancing online permitting systems, and completing the 404 assumption application process. The additional state funding necessary to develop additional analysis, make a recommendation on whether or not to pursue 404 assumption and then, if necessary, the assembling the 404 assumption application materials is projected at approximately \$740 thousand (Table 3).

4.3.1. Assembly of the 404 assumption application materials

Substantial progress has been made in developing the state program structure and processes necessary for 404 assumption. To continue that progress, additional funding would be required beyond June 30, 2022 if the decision is made to complete the assembly of the required assumption application materials. Upon completion of the application materials and review by EPA, the required cost to assume can be further refined to allow for fully informed decision making by the legislative and executive branches of state government. The additional funding would be used for the following tasks:

- A. Continued development of the program structure, including tasks such as further refinement of WCA draft general permits, drafting of general permits for PWWPP, refinement of mitigation requirements for WCA and PWWPP, refinement of enforcement procedures, and so on.
- B. Finalization of ongoing research of, and draft changes to, applicable state statutes and rules necessary to receive authorization for 404 assumption. If this requires changes to reclamation rules (Chapters 6130, 6131 or 6132), the effort could be a substantial workload, particularly for the metallic mining rules which have not been revised since promulgation and tend to garner public interest.

- C. Continue to develop and complete all materials to satisfy the administrative requirements for 404 assumption. Examples include draft agreements with the USACE and the EPA, a detailed state-federal regulatory comparison, and development of application forms and procedures to be used in the administration of the program.
- D. Continuation of ongoing coordination with the EPA and other federal agencies for all aspects of program development and prospective application.
- E. Coordination and consultation with Tribes, affected state agencies, local governments, and interested stakeholders on multiple aspects of program development.

The additional state funding necessary to finish assembling the 404 assumption application materials is projected at approximately \$740 thousand (Table 3).

Table 3. Additional funding (\$thousands) required to assemble 404 assumption materials.

Agency	Funding Required ¹
BWSR	\$580
DNR	\$100
MPCA	\$60
Total State Agency	\$740
<small>1. Required funding calculated using an average cost of \$150,000 per FTE based on total agency staffing costs (including salary, benefits, and overhead) in 2022. 2. BWSR funding includes costs for contractual work and work for all three agencies.</small>	

4.3.2 Additional one-time costs

If, after review and consideration of the fully assembled materials, the state makes a decision to formally submit a 404 assumption application to EPA, certain one-time costs would be incurred in addition to those provided above. These costs will result primarily from the following activities:

- 1) Development of an online WCA permitting system as described in Section 3.3. One-time funding in the amount of approximately \$1.5 million would be required to develop and execute the online system. The annual cost of maintaining and administering the permitting system, once established, is included in Section 4.3.
- 2) Updates to the DNR’s existing MPARS online application system will be required to account for changes to existing permit requirements and processes. One-time funding in the amount of approximately \$800,000 would be required to develop the necessary changes. Ongoing costs of system maintenance and administration are not expected to change.
- 3) Execution of programmatic changes and the 404 assumption application, including:
 - adoption of amendments to state statutes,

- revisions to administrative rules,
- finalization of agreements with federal agencies,
- workload associated with the formal application process, and
- staff training and stakeholder outreach for implementation of the assumed program.

The cost of executing the programmatic changes identified in paragraph 3 above will depend on the final structure of permitting systems and authorities, the method of change (statute vs. rulemaking vs. permit condition, etc.), and the extent of any potential uncertainties relating to the proposed programmatic structure. Estimates for these additional costs would be provided as part of the process to reach a decision on whether to proceed with a state application for 404 assumption.

Chapter 5. Next Steps

Laws of Minnesota 2021, 1st Special Session, Chapter 6, Article 2, Section 108, Subd. 9(a) provided \$200,000 for the state agencies to “begin to develop and assemble the material required... to have the state of Minnesota assume the section 404 permitting program of the Federal Clean Water Act.” As stated in the introduction, there remain some aspects that would need to be assessed further before deciding whether the state should apply for 404 assumption. The funding described in Table 3 would provide the necessary resources for state agency staff to finish developing and assembling the application materials. The following is a summary of the next steps for the state to continue moving forward with a potential 404 assumption application:

- 1) Legislative appropriation of funds identified in Table 3.
- 2) Prepare additional analysis needed to make the decision on whether to pursue assumption.
- 3) If decision is yes, agency staff continue assembly the draft 404 application materials, including the preparation of drafts of the program description, interagency agreements, Memorandums of Agreement with federal agencies, necessary policy changes, and other required materials.
- 4) A summary of the necessary programmatic changes, required statute changes, and final cost estimates provided to the legislature.
- 5) Decision on whether to apply for 404 assumption, consisting of approval from the Governor and concurrence by the Legislature as legislative action would be needed to accomplish the necessary statute changes and appropriation of funding identified in Table 2.
- 6) Completion of agency rulemaking as necessary for 404 assumption and execution of interagency agreements.
- 7) Assemble and submit formal application package to the EPA, including the required Attorney General’s statement and letter from the Governor requesting EPA approval of the state’s application.
- 8) EPA review and decision to approve or deny the state’s 404 assumption application.
- 9) State acceptance and implementation of the assumed program.

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Vice Chair Nomination

Meeting Date: January 26, 2022

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Section/Region: _____

Contact: Rachel Mueller

Prepared by: Rachel Mueller

Reviewed by: John Jaschke Committee(s)

Presented by: John Jaschke

Time requested: 5 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Nominate Vice Chair for the Board of Water and Soil Resources

LINKS TO ADDITIONAL INFORMATION

Board of Water and Soil Resources Bylaws
https://bwsr.state.mn.us/sites/default/files/2018-12/BWSR%20Board%20bylaws%20accessible_0.pdf

SUMMARY *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*

According to bylaws, the Vice-Chair will be elected to a two-year term by the members of the Board. Nominations will be made at the meeting. After the vote to close nominations, voting ballots will be mailed to board members along with a prepaid envelope to return their ballot by March 1, 2022. The Vice-Chair will be announced at the March board meeting.