



# Minnesota Wetland Conservation Act Rulemaking MN Rules Chapter 8420

Wetlands Advisory Committee

August 18, 2022

- 1) Introductions and attendance.
- 2) Process, roles, and responsibilities.
- 3) Rulemaking background & history.
- 4) Review of 2011-2017 statute changes.
- 5) Brief overview of progress on potential rulemaking topics.
  - a) Wetland Bank Service Areas
  - b) Wetland Classification System and Credit Types
  - c) Wetland Buffers & Crediting
  - d) Wetland Bank Plan Decision Process
  - e) Stream Restoration and Wetland Credits
  - f) Functional Assessment Initiative
  - g) In-Lieu Fee and Compensation Planning Frameworks
- 6) Next steps and approximate schedule.

# Meeting Protocol

- ✓ Keep your microphone muted except when you are speaking.
- ✓ Keep your camera off during the meeting to save bandwidth.
- ✓ This first meeting is primarily informational and we encourage questions. We'd like the meeting to be relatively informal and conducive to discussion. Just "raise your hand" if you have a question.
- ✓ Ken, Dave, and I will remain available after the meeting ends in case any of you have some questions/comments that you would prefer to discuss "offline." We also will be available to meet with you individually to bring you up to speed on any given topic.
- ✓ Be respectful - all perspectives are legitimate. In the end, the WCA policy goal is to consider all perspectives in improving outcomes for the public as a whole.

- Amber Hanson Glaeser MN Farm Bureau
- Beth Brown MN Department of Transportation
- Brian Martinson Association of MN Counties
- Brian Watson SWCD Staff (Dakota SWCD)
- Craig Johnson League of MN Cities
- Dan Larson MN Rural Counties Caucus
- Julie Lucas Mining MN
- Grace Keliher Builders Association of MN
- Jim Foldesi MN County Engineers Association
- John Cunningham Aggregate Ready-Mix Association of MN
- John Linc Stine Freshwater
- Josh Stromlund County Staff (Lake of the Woods)
- Kathryn Hoffman MN Center for Environmental Advocacy
- Kristen Vake Iron Mining Association of MN
- Margaret Levin Sierra Club
- Matt Massman MN Intercounty Association
- Ray Bohn MN Association of Watershed Districts
- Rob Sip Red River Watershed Management Board
- TBD MN Wetland Professionals Association
- Sheila Vanney MN Association of SWCDs
- Steve Morse MN Environmental Partnership
- Stu Lourey MN Farmers Union
- Tony Kwilas MN Chamber of Commerce
- Warren Formo MN Agricultural Water Resource Center

# BWSR Wetlands Advisory Committee

## Organizations & Participants

Representatives of the organizations at each meeting may vary somewhat as alternates can be used depending on availability.

# Guiding Principles of Rulemaking

BWSR will adhere to the following principles as we consider input and develop rule language:

- Consistency with statutory intent and the purpose of WCA
- Simplification and clarification
- Implementable
- Have a tangible result or outcome
- Improve accountability
- Minimize negative impacts to LGU workload
- Limit unintended consequences
- Balance public costs and benefits
- Seek stakeholder support
- Fairness and consistency

# Refresher - Statute vs. Rule

Statutes are the permanent laws of the state, incorporating new laws, amendments, or repeals of old law. They originate as bills passed by the legislature that are signed into law by the governor.



Administrative Rules are adopted by an agency to make the law it administers more specific or to govern the agency's organization or procedure. Authority must first be granted by the legislature. Rules have the effect of law.

# Wetland Conservation Act Statutes

- BWSR's authority stems from State Statute.
- Wetland Conservation Act statutes are primarily contained in:
  - Minn. Stat. Chapter 103G (Waters of the State)
- Relevant statutes also contained in Chapters:
  - 103A
  - 103B
  - 103F
  - 15
  - and others
- ***BWSR's rulemaking authority is limited by what statute allows or prescribes.***

# BWSR Rulemaking Authority

Minn. Stat. 103G.2242, Subdivision 1(a): **The board, in consultation with the commissioner, shall adopt rules** governing the approval of wetland value replacement plans under this section and public-waters-work permits affecting public waters wetlands under section 103G.245.

- BWSR is responsible for promulgation of the WCA rule.
- Local Government Units (LGUs) have primary implementation responsibility, with oversight and assistance from BWSR.

MN Rules Chapter 8420 (WCA Rules): Multiple rule amendments since 1992. Current rule adopted in 2009.

- WCA Statute changes in 2011, 2012, 2015, and 2017.



# Rulemaking Authority - Statute vs. Rule

## When do statute changes take effect?

- 1) Statute Prescribes Standard: Statute is specific and takes effect regardless of what is in rule (like the 2011 & 2012 WCA statute changes).
- 2) Statute Grants Authority: Statute provides an agency with authority or a directive, but does not take effect until action is taken by the agency in rule or otherwise (many of the 2015 WCA statute changes).



# The Role of the Advisory Committee

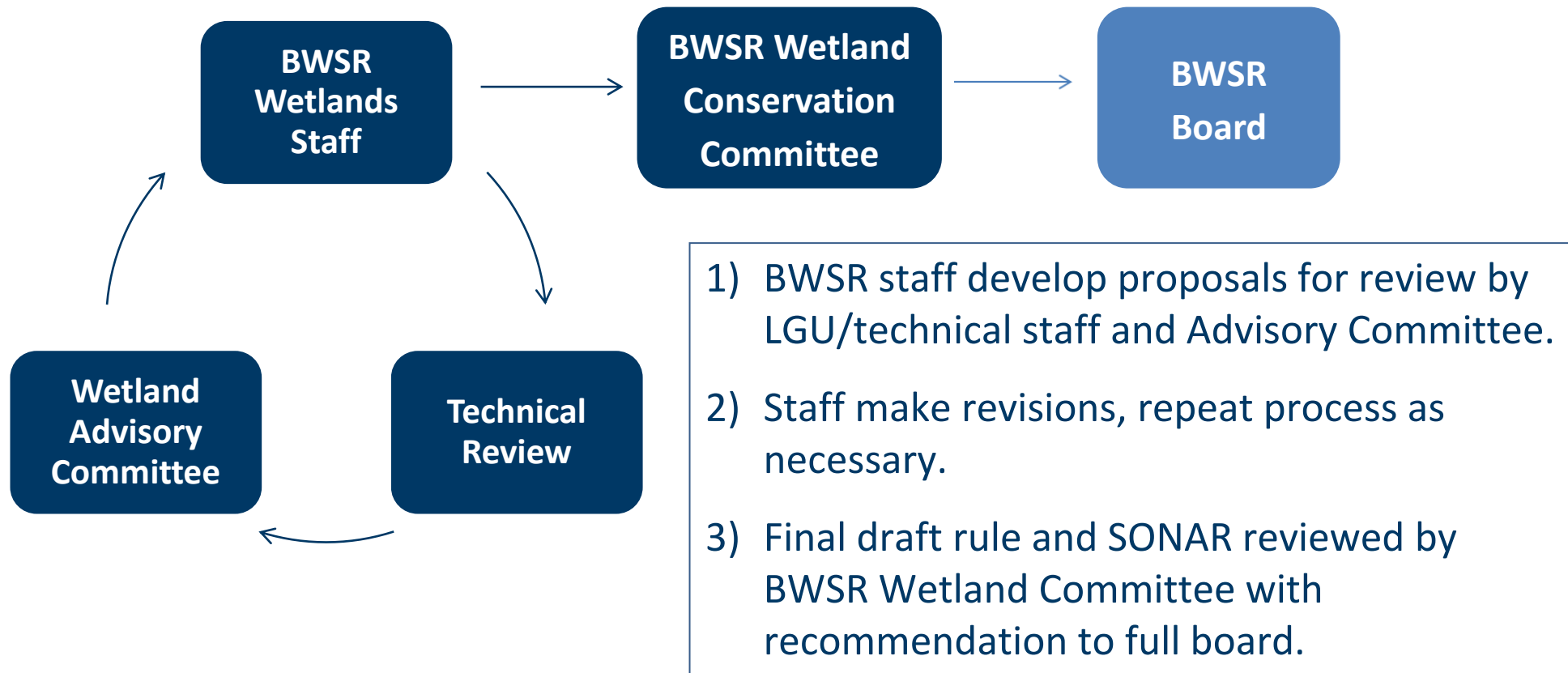
(from the Minnesota Rulemaking Manual)

- Advice, not voting. The advisory committee's role is to advise, and BWSR looks to the committee for its expertise. The committee has the power to inform and persuade the agency, but does not have voting authority - the BWSR board makes the final decision.
- Represent your interest group. Each of you likely represents an interest group in one way or another, be it business, agriculture, local government, and so on. We encourage you to maintain communication with others who share your interests.

# Roles and Responsibilities (Cont'd)

- BWSR staff: Develop proposals, inform stakeholders, consider feedback, develop draft rule language, and manage the process.
- WCA technical professionals and local gov't staff: Provide feedback and advice to BWSR, particularly in regards to technical feasibility, implementation, and unintended consequences/tradeoffs.
- State and federal agencies: Provide feedback and advice, particularly regarding their role in WCA and consistency with other programs. DNR, PCA, USACE, EPA, etc.
- Other stakeholders: Information will be shared and opportunities provided throughout the process for other interested individuals and groups to provide feedback and advice.
- BWSR Board and Wetland Conservation Committee: Review rulemaking progress, provide feedback, and make recommendation to full board for a decision to approve draft rules and ultimately adopt the final rules.
- Office of Administrative Hearings, Governor's Office, etc: Others have a role, particularly at the beginning of rulemaking and at the end in the formal rule review and adoption process.

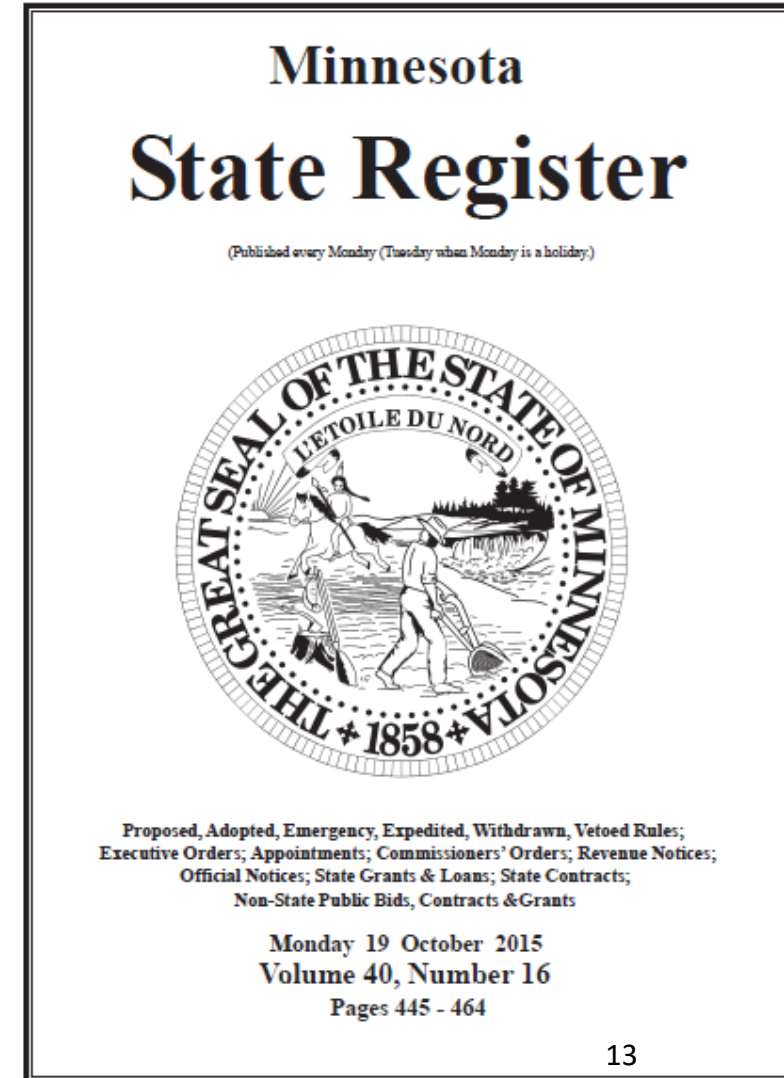
# Rule Development Process



Note: All information will be shared publicly and other stakeholders & interested individuals will be provided ongoing opportunity throughout the rule development process to provide input.

# WCA Rulemaking Requests for Comments

- 1) Initial Request for Comments (10/19/15).
    - Official start of rulemaking.
    - 11 comment letters received.
  - 2) Second Request for Comments (1/18/22).
    - Renewal of rulemaking.
    - 8 comment letters received.
- ❖ All comments posted on BWSR website.



# Rulemaking Background/History

2015 Request for Comments – official start of rulemaking.

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- 2016: Two Stakeholder Meetings.
- 2016: WCA Report to the Legislature.
- 2018: Three meetings of Technical Review Team.
- 2019-2222: 404 Assumption work (relevant to future rulemaking effort if the state moves forward with assumption).
- 2015-2022: Program development work on multiple topics, coordination with other agencies (e.g. USACE), meetings/presentations with local government staff and wetland professionals, etc.

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2022 Request for Comments – renewal of rulemaking.

# Scope of WCA Rulemaking

## 2011, 2012, 2015, & 2017 statute changes:

- Some of the statute changes can be incorporated into rule as-is, or with a realistic amount of work.
- Several of the statute changes require substantial additional program development work to implement – these items will be held for a future rulemaking.

Other misc. changes to improve the efficiency, effectiveness, and/or outcomes of the rule, particularly relating to replacement wetlands.

- Such changes will be assessed on a case-by-case basis.



# Review of 2011-2017 statute changes

- This may be a little tedious, but please bear with us!
- The details of the statute changes are important context for rulemaking.
- We'll do our best to provide some background for the existing statutes and the changes.
- Not all statute changes will be discussed, but we will focus on those that are most relevant to this rulemaking.



**103G.005, Subd. 10e. Local government unit.** "Local government unit" means:

- (1) outside of the seven-county metropolitan area, a city council, county board of commissioners, or a soil and water conservation district or their delegate;
- (2) in the seven-county metropolitan area, a city council, a town board under section [368.01](#), a watershed management organization under section [103B.211](#), or a soil and water conservation district or their delegate; ~~and~~

(3) for wetland banking projects established solely for replacing wetland impacts under a  
(4) permit to mine under section 93.481, the commissioner of natural resources.

103  
(1) The board may establish fees at or below the amounts in paragraph (a) for single-user  
(2) or other dedicated wetland banking accounts.  
tran  
(3) (c) Fees for single-user or other dedicated wetland banking accounts established  
(b) pursuant to section 103G.005, subd. 10, paragraph (e), clause (4) are limited to  
(c) establishment of a wetland banking account and are assessed at the rate of 6.5  
clat  
not percent of the value of the credits not to exceed \$1,000.

**103G.005, Subd. 10f. Electronic transmission.** "Electronic transmission" means the transfer of data or information through an electronic data interchange system consisting of, but not limited to, computer modems and computer networks. Electronic transmission specifically means electronic mail, unless other means of electronic transmission are mutually agreed to by the sender and recipient.

**103G.2373 ELECTRONIC TRANSMISSION.**

For purposes of sections 103G.221 to 103G.2372, notices and other documents may be sent by electronic transmission unless the recipient

~~has~~ within ten days of receiving an Application for approval of a replacement plan under this section must be reviewed by the local government according to Minnesota Statutes 15.99, subdivision , paragraph (a).

~~Minnesota Statutes 15.99, subdivision , paragraph (a).~~ Copies of the complete application must be mailed or sent by

~~electronic transmission.~~ Within ten days of receiving an application for approval of a replacement plan under this section for an activity affecting less than 10,000 square feet of wetland, a summary of the application must be mailed to the members of the Technical Evaluation Panel, individual members of the public who request a copy, and the commissioner of natural resources.

103G.2242, Subd. 2a. Wetland boundary or type determination.

(d) ~~Appeals of decisions made by designated local government staff must be made to the~~  
gov  
(e) ~~local government unit. Notwithstanding any law to the contrary, a ruling on an appeal~~  
veg  
103 ~~must be made by the local government unit within 30 days from the date of the filing~~  
or  
cos ~~of the appeal.~~

within 30 days, the decision becomes final. If the petition for hearing is accepted, the amount posted must be returned to the petitioner. Appeal may be made by:

(1) the wetland owner;

(2) a ~~person~~ decision is valid for three five years ~~or~~ electronic transmission under subdivision 7; or

(3) 1 ~~person~~ decision is valid for three five years

(b) Within 30 days after receiving a petition, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that:

(1) the appeal is ~~meritless~~ without sufficient merit, trivial, or brought solely for the purposes of delay;

(2) ~~the petitioner has not exhausted all local administrative remedies;~~

(3) In determining whether to grant the appeal, the board, executive director, or dispute

(4) resolution committee...

(5) resolution committee...  
(c) ~~the board shall grant the petition unless the board finds that:~~ s in  
controversy, any patterns of similar acts by the local government unit or petitioner, and the consequences of the delay resulting from the appeal.

(d) ~~All appeals~~ If an appeal is granted, the appeal must be heard by the committee for dispute resolution of the board, and a decision must be made by the board within 60 days of filing the local government unit's record and the written briefs submitted for the appeal and the hearing. The decision must be served by mail ~~on~~ or by electronic transmission to the parties to the appeal, and is not subject to the provisions of chapter 14. A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

103G.2242, Subd. 9a. **Appeals of Restoration or Replacement Orders.** A landowner or other responsible party may appeal the terms

A landowner or other responsible party may appeal the terms and conditions of a restoration or replacement order within 30 days of receipt of written notice of the order.

**103G.2251 STATE CONSERVATION EASEMENTS; WETLAND BANK CREDIT.**

In greater than 80 percent areas, preservation of wetlands ~~owned by the state or a local unit of government,~~

conservation easement must be established after May 24, 2008, and approved by the board. Wetland areas preserved under this section are not eligible for replacement or mitigation credit if the area has received financial assistance from public conservation programs.

**103G.222, Subdivision 1 (Requirements), Paragraphs c and d.**

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the prior use of the wetland, ), provided that a deed restriction is placed on the altered wetland is not converted to a nonagricultural use for at least ten years.

(d) If a wetland is replaced under paragraph (c), or drained under section 103G.2241, subdivision 2 , paragraphs paragraph (b) and or (e), the local government unit may require a deed restriction that prohibits nonagricultural use for at least ten years unless the drained wetland is replaced as provided under this section. The local government unit may require the deed restriction if it determines the wetland area drained is at risk of conversion to a nonagricultural use within ten years based on the zoning classification, proximity to a municipality or full service road, or other criteria as determined by the local government unit.

**103G.2241, Subdivision 1 (Agricultural activities), Clause 7.** A replacement plan for wetlands is not required for:

(f) consistent with a memorandum of understanding and related agreements between the board and the United States Department of Agriculture, Natural Resources Conservation Service.

**1 103G.2241, Subd. 9. De minimis.**

**103G.2242, Subd. 3. Replacement completion.** Replacement of wetland values must be completed prior to or concurrent with the

The board may establish, sponsor, or administer a wetland banking program, which may include provisions allowing monetary payment to the wetland bank for impacts to wetlands on agricultural land, for impacts that occur in greater than 80 percent areas, and for public road projects.

resources, agriculture, and the Pollution Control Agency.

**103G.2375. ASSUMPTION OF SECTION 404 OF FEDERAL CLEAN WATER ACT.**

Notwithstanding any other law to the contrary, the Board of Water and Soil Resources, in consultation with the commissioners of natural resources, agriculture, and the Pollution Control Agency, may adopt or amend rules establishing a program for regulating the discharge of dredged and fill material into the waters of the state as necessary to obtain approval from the United States Environmental Protection Agency to administer, in whole or part, the permitting and wetland banking programs under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344. The rules may not be more restrictive than the program under section 404 or state law.

Sec. 73. Minnesota Statutes 2014, section 103B.101, is amended by adding a subdivision to read:

Subd. 16. **Wetland stakeholder coordination.** The board shall work with wetland stakeholders to foster mutual understanding and provide recommendations for improvements to the management of wetlands and related land and water resources, including recommendations for updating the Wetland Conservation Act, developing an in-lieu fee program as defined in section 103G.005, subdivision 10g, and related provisions. The board may convene informal working groups or work teams to provide information and education and to develop recommendations.

Sec. 74. **[103B.103] EASEMENT STEWARDSHIP ACCOUNTS.**

### **103B.3355 WETLAND FUNCTIONS FOR DETERMINING PUBLIC VALUES.**

(e) The Board of Water and Soil Resources, in consultation with the commissioners of natural resources and agriculture and local government units, ~~may~~ must identify ~~regions~~ areas of the state where preservation, enhancement, restoration, and

The board, in consultation with the commissioners, ~~may~~ must identify high priority ~~wetland regions~~ areas for wetland replacement

local units of government with water planning authority of these high priority ~~regions~~ areas. Designation of high priority areas is exempt from the rulemaking requirements of chapter 14, and section 14.386 does not apply. Designation of high priority areas is not effective until 30 days after publication in the State Register.

(f) Local units of government, as part of a state-approved comprehensive local water management plan as defined in section 103B.3363, subdivision 3, a state-approved comprehensive watershed management plan as defined in section 103B.3363, subdivision 3a, or a state-approved local comprehensive wetland protection and management plan under section 103G.2243, may identify priority areas for wetland re-placement and provide them for consideration under paragraph (e).

Sec. 80. Minnesota Statutes 2014, section 103F.612, subdivision 2, is amended to read:

Subd. 2. **Application.**

(a) A wetland owner may apply to the county where a wetland is located for designation of a wetland preservation area in a high priority

In-lieu fee program. "In-lieu fee program" means a program in which wetland replacement requirements of section 103G.222 are satisfied through payment of money to the board.....

Sec. 81. Minnesota Statutes 2014, section 103G.005, is amended by adding a subdivision to read:

Subd. 10g. In-lieu fee program. "In-lieu fee program" means a program in which wetland replacement requirements of section 103G.222 are satisfied through payment of money to the board or a board-approved sponsor to develop replacement credits according to section 103G.2242, subdivision 12.

The board must establish wetland replacement ratios and wetland bank service area priorities to implement the siting and targeting of wetland replacement and encourage the use of high priority areas for wetland replacement.



Sec. 82. Minnesota Statutes 2014, section 103G.222, subdivision 1, is amended to read:

Subdivision 1. **Requirements.**

(a) ~~any wetland area that is destroyed or altered by a project, unless replaced by restoring or creating wetland areas of actions that provide at least equal public value .....~~

if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. For project-specific wetland replacement completed prior to wetland impacts authorized or conducted under a permit to mine within the Great Lakes and Rainy River watershed basins, those basins shall be considered a single watershed for purposes of determining wetland replacement ratios. Mining reclamation plans shall apply the same principles and standards for replacing wetlands ~~by restoration or creation of wetland areas~~ that are applicable to mitigation plans approved as provided in section 103G.2242. Public

~~valued wetland areas that are destroyed or altered by a project, unless replaced by restoring or creating wetland areas of actions that provide at least equal public value .....~~  
may be used in a ~~statewide banking program established in~~ for wetland replacement according to rules adopted under section 103G.2242, subdivision 1.  
(i) Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank wetland replacement.

wetland replacement.

Sec. 84. Minnesota Statutes 2014, section 103G.2242, subdivision 1, is amended to read:

Subdivision 1. **Rules.**

(a) The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value replacement plans under this section and public waters work permits affecting public waters wetlands and may address the state establishment and administration of a wetland banking program for public and private projects, ~~which may include~~ including provisions allowing monetary payment to the wetland banking program for alteration of wetlands on agricultural land for an in-lieu fee program;

review and appeal of decisions under this section. In the case of peatlands, the replacement plan rules must consider the impact on carbon balance described in the report required by Laws 1990, chapter 587, and Any in-lieu fee program established by the board must conform with Code of Federal Regulations, title 33, section 332.8, as amended.

Sec. 85. Minnesota Statutes 2014, section 103G.2242, subdivision 2, is amended to read:

Subd. 2. **Evaluation.**

(a) Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a Technical Evaluation Panel after an on-site inspection. The Technical Evaluation Panel shall be composed of a technical professional employee of the board, a

local government unit that must approve a replacement plan, ~~wetland banking plan~~  
sequencing, exemption determination,...

the local government unit reviewing replacement plan applications, ~~banking plan~~  
sequencing applications, and exemption or no-loss determination requests must act  
on all replacement plan applications, ~~banking plan~~ sequencing applications, a

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Sec. 87. Minnesota Statutes 2014, section 103G.2242, subdivision 4, is amended to read:

Subd. 4. **Decision.** Upon receiving and considering all required data, the local government unit reviewing replacement plan applications, ~~banking plan~~ sequencing applications, and exemption or no-loss determination requests must act on all replacement plan applications, ~~banking plan~~ sequencing applications, and exemption or no-loss determination requests in compliance with section 15.99.

Sec. 86. Minnesota Statutes 2014, section 103G.2242, subdivision 3, is amended to read:

Subd. 3. **Replacement completion.**

(a) Replacement of wetland values must be completed prior to or concurrent with the actual draining or filling of a wetland, unless:

(1) an irrevocable bank letter of credit or **other security financial assurance** acceptable to the local government unit or the board is given to the local government unit or the board to guarantee the successful completion of the replacement; or

(2) the replacement is approved **under an in-lieu fee program** according to rules adopted under sub-division 1. In the case of an in-lieu fee program established by a board-approved sponsor, the board may require that a financial assurance in an amount and method

**The board may acquire land in fee title, purchase or accept easements, enter into agreements, and purchase existing wetland replacement credits to facilitate the wetland banking program. The board may establish in-lieu fee payment amounts and hold money in an account in the special revenue fund, which is appropriated to the board to be used solely for establishing replacement wetlands and administering the wetland banking program.**

Sec. 88. Minnesota Statutes 2014, section 103G.2242, subdivision 12, is amended to read:

Subd. 12. **Replacement credits.**

(a) No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, ~~and is completed prior to any draining or filling of the wetland.~~

bank:

) in a greater than 80 percent area, restoration and protection of streams and riparian buffers that are important to the functions and sustainability of aquatic resources.

(4) water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies, provided that the water quality treatment ponds must be associated with an ongoing or proposed project that will impact a wetland and replacement credit for the treatment ponds is based on the replacement of wetland functions and on an approved storm water management plan for the local government; and

(5) in a greater than 80 percent area, restoration and protection of streams and riparian buffers that are important to the functions and sustainability of aquatic resources.

Sec. 89. Minnesota Statutes 2014, section 103G.2242, subdivision 14, is amended to read:

Subd. 14. Established

(d) The board may assess a fee to pay the costs associated with establishing conservation easements, or other long-term protection mechanisms prescribed in the rules adopted under subdivision 1, on property used for wetland replacement.

**103G.2251 STATE CONSERVATION EASEMENTS; WETLAND BANK CREDIT.**

In greater than 80 percent areas, preservation of wetlands, riparian buffers, and watershed areas essential to maintaining important functions and sustainability of aquatic resources in the watershed that are protected by a permanent conservation easement as defined under section 84C.01 and held by the board may be eligible for wetland replacement or mitigation credits

By March 15, 2016, the Board of Water and Soil Resources, in cooperation with the Department of Natural Resources, shall report to the committees with jurisdiction over environment and natural resources on the proposals to implement high priority areas for wetland replacement and in-lieu fees for replacement and modify wetland replacement siting and actions eligible for credit. In developing the report, the board and department shall consult with stakeholders and agencies.

Sec. 137. FEDERAL CLEAN WATER ACT SECTION 404 PERMIT PROGRAM FEASIBILITY STUDY.

Sec. 108.

Minnesota Statutes 2016, section 103G.005, subdivision 10b, is amended to read:

"Greater than 80 percent area" means a county or watershed, or, for purposes of wetland replacement, bank service area where 80 percent or more of the presettlement wetland acreage is intact and:

- (1) ten percent or more of the current total land area is wetland; or
- (2) 50 percent or more of the current total land area is state or federal land.

Sec. 109.

Minnesota Statutes 2016, section 103G.005, subdivision 10h, is amended to read:

Subd. 10h.

**Less than 50 percent area.**

"Less than 50 percent area" means a county or watershed, or, for purposes of wetland replacement, bank service area with less than 50 percent of the presettlement wetland acreage intact or any county or watershed, or bank service area not defined as a "greater than 80 percent area" or "50 to 80 percent area."

Sec. 110.

Minnesota Statutes 2016, section 103G.222, subdivision 1, is amended to read:

required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. Project-specific wetland replacement plans submitted as part of a project for which a permit to mine is required and approved by the commissioner on or after July 1, 1991, may include surplus wetland credits to be allocated by the commissioner to offset future mining-related wetland impacts under any permits to mine held by the permittee, the operator, the permittee's or operator's parent, an affiliated subsidiary, or an assignee pursuant to an assignment under section 93.481, subdivision 5. For project-specific

specific wetland replacement plans submitted as part of a project for which a permit to mine is required and approved by the

applicable to mitigation plans approved as provided in section 103G.2242. The commissioner must provide notice of an application for wetland replacement under a permit to mine to the county in which the impact is proposed and the county in which a mitigation site is proposed. Public value must be determined in accordance with section 103B.3355 or a comprehensive wetland protection and

and Rainy River watershed basins, those basins shall be considered a single watershed for purposes of determining wetland replacement ratios. Mining reclamation plans shall apply the same principles and standards for replacing wetlands that are

applicable to mitigation plans approved as provided in section 103G.2242. The commissioner must provide notice of an application for wetland replacement under a permit to mine to the county in which the impact is proposed and the county in which a mitigation site is proposed. Public value must be determined in accordance with section 103B.3355 or a comprehensive wetland protection and



(h) Wetland replacement sites identified in accordance with the priority order for replacement siting in paragraph (a) as part of the completion of an adequate environmental impact statement may be approved for a replacement plan under section 93.481, 103G.2242, or 103G.2243 without further modification related to the priority order, notwithstanding availability of new mitigation sites or availability of credits after completion of an adequate environmental impact statement. Wetland replacement plan

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applications must be submitted within one year of the adequacy determination of the environmental impact statement to be eligible for approval under this paragraph.

**Sec. 112.**

**Minnesota Statutes 2016, section 103G.223, is amended to read:**

**103G.223 CALCAREOUS FENS.**

(a) Calcareous fens, as identified by the commissioner by written order published in the State Register, may not be filled, drained, or otherwise degraded, wholly or partially, by any activity, unless the commissioner, under an approved management plan, decides some alteration is necessary or as provided in paragraph (b). Identifications made by the commissioner are not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

(b) The commissioner may allow water appropriations that result in temporary reductions in groundwater resources on a seasonal basis under an approved calcareous fen management plan.

(d) When making a determination under rules adopted pursuant to this subdivision on whether a rare natural community will be permanently adversely affected, consideration of measures to mitigate any adverse effect on the community must be considered.

(b) A member of the Technical Evaluation Panel that has a financial interest in a wetland bank or management responsibility to sell or make recommendations in their official capacity to sell credits from a publicly owned wetland bank must disclose that interest, in writing, to the Technical Evaluation Panel and the local government unit.

(d) The commissioner must remove a deed restriction filed or recorded under this section on homesteaded property if the owner requests that it be removed and a court has found that the owner of the property is not guilty or that there has not been a violation of the restoration or replacement order. Within 30 days of receiving the request for removal from the owner, the

violation of the restoration or replacement order. Within 30 days of receiving the request for removal from the owner, the commissioner must contact, in writing, the office of the county recorder or registrar of titles where the order is recorded or filed, along with all applicable fees, and have the order removed. Within 30 days of receiving notification from the office of the county recorder or registrar of titles that the order has been removed, the commissioner must inform the owner that the order has been removed and provide the owner with a copy of any documentation provided by the office of the county recorder or registrar of titles.

Minnesota Statutes 2016, section 103G.222, subdivision 3, is amended to read:

Subd. 3.

Wetl

>80% Presettlement Wetlands Remaining  
50-80% Presettlement Wetlands Remaining  
<50% Presettlement Wetlands Remaining



>80% Presettlement Wetlands Remaining  
<80% Presettlement Wetlands Remaining

~~than 80 percent area must not be replaced in a 50 to~~  
~~ands in a less than 50 percent area must be replaced in~~  
order:

~~great~~  
~~a less~~

(3) in the same county or wetland bank service area as the impacted wetland; and

(4) in another wetland bank service area.

(b) Notwithstanding paragraph (a), wetland banking credits approved according to a complete wetland banking application submitted to a local government unit by April 1, 1996, may be used to replace wetland impacts resulting from public transportation projects statewide.

Minor Watershed  
Major Watershed  
Bank Service Area (BSA)  
Another BSA



**Bank credits  
start here**

order for replacement by wetland banking begins at  
103G.2242, subdivision 1.

replacement opportunities are not available in siting  
the next level.

(e) For the purposes of this section, "reasonable, practicable, and environmentally beneficial replacement opportunities" are defined as opportunities that:

(1) take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration;

(2) have a high likelihood of becoming a functional wetland that will continue in perpetuity;

(3) do not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area; and

(4) are available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes.

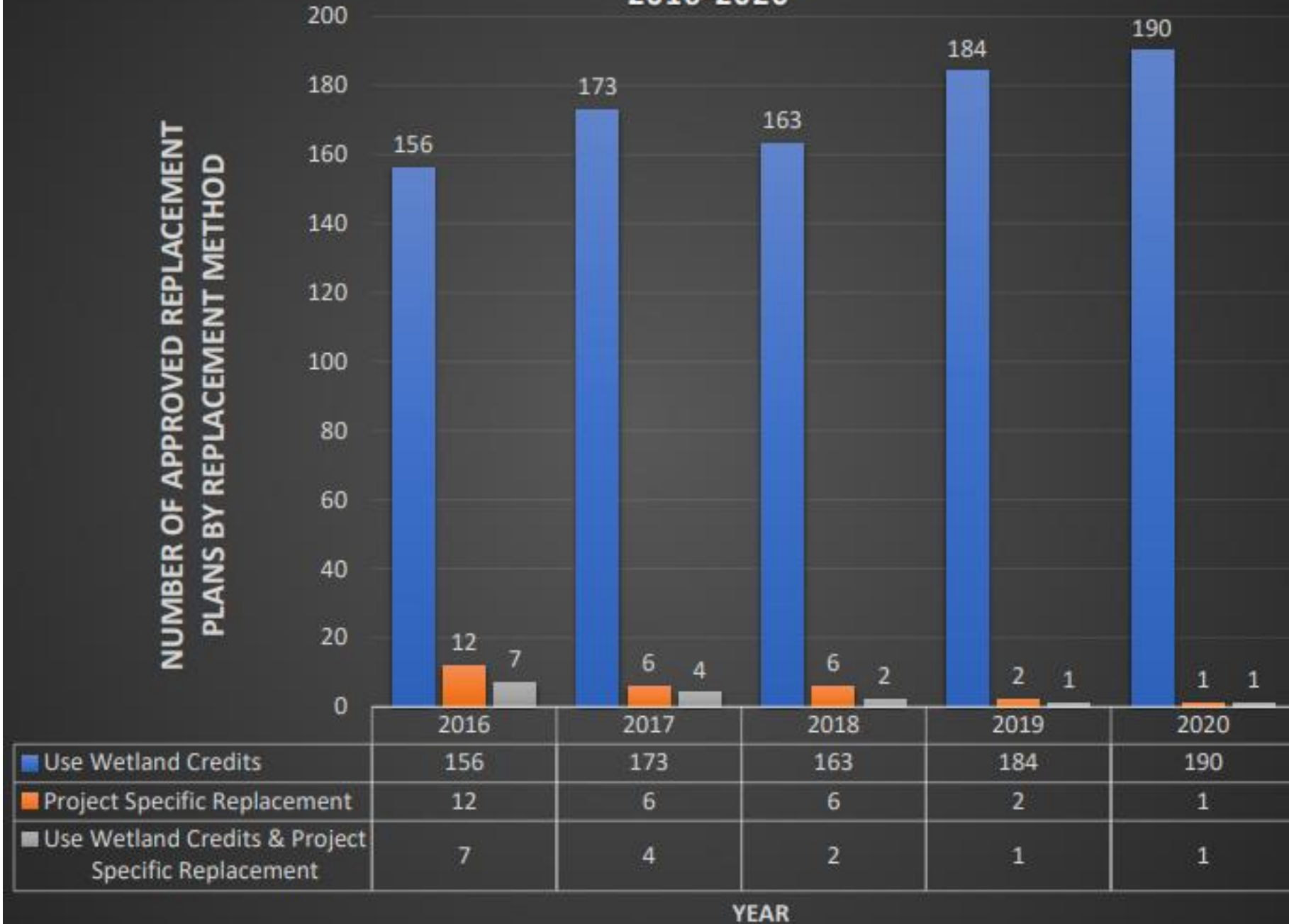


This is accounted for in wetland bank review, approval, and crediting process.

# Wetland Replacement

Use of Bank Credits vs. Project-Specific

## How Applicants Replace Wetland Impacts by Year 2016-2020



■ Use Wetland Credits	156	173	163	184	190
■ Project Specific Replacement	12	6	6	2	1
■ Use Wetland Credits & Project Specific Replacement	7	4	2	1	1

YEAR

10 Minute Break

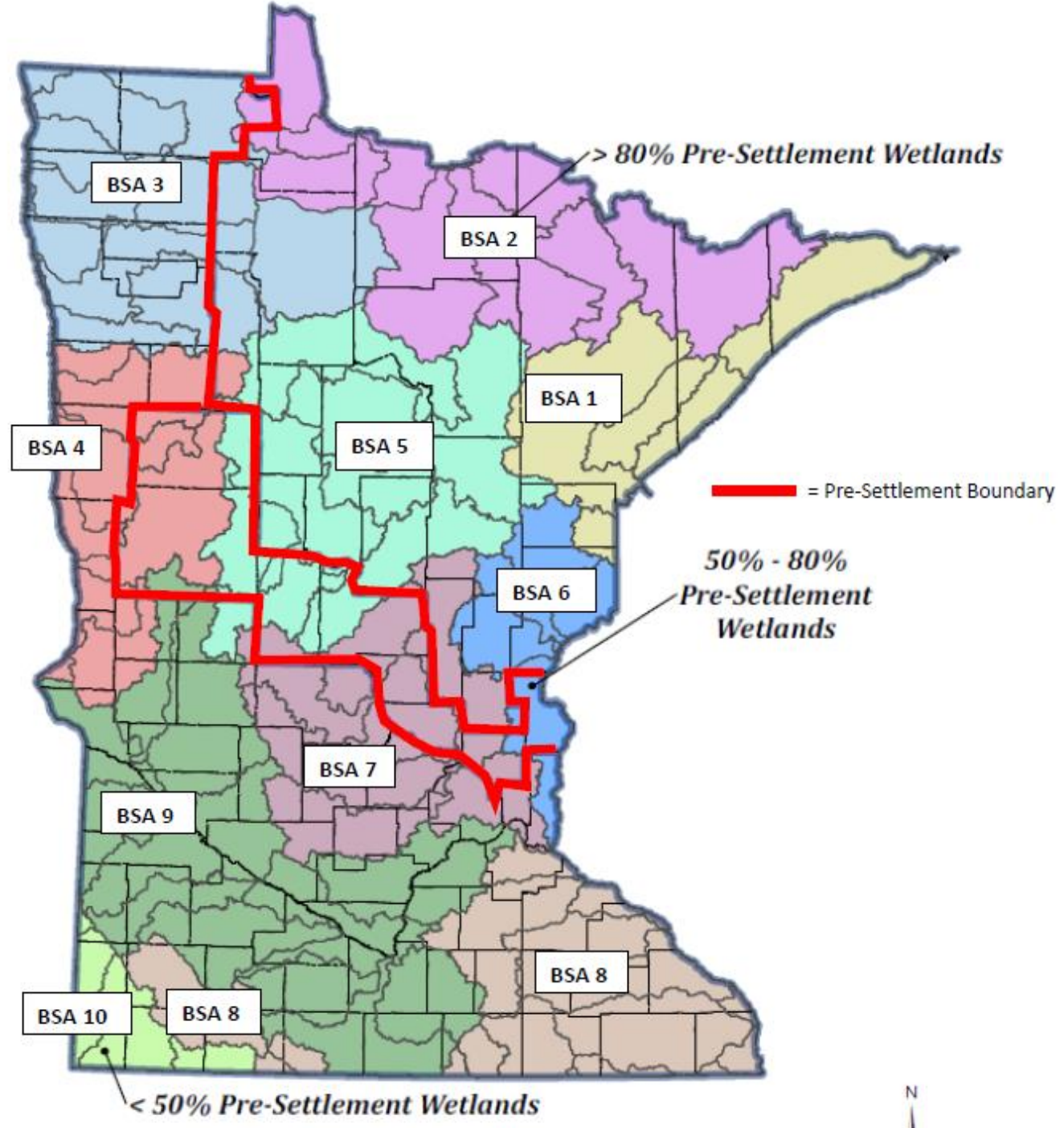
# Progress on Potential Rulemaking Topics

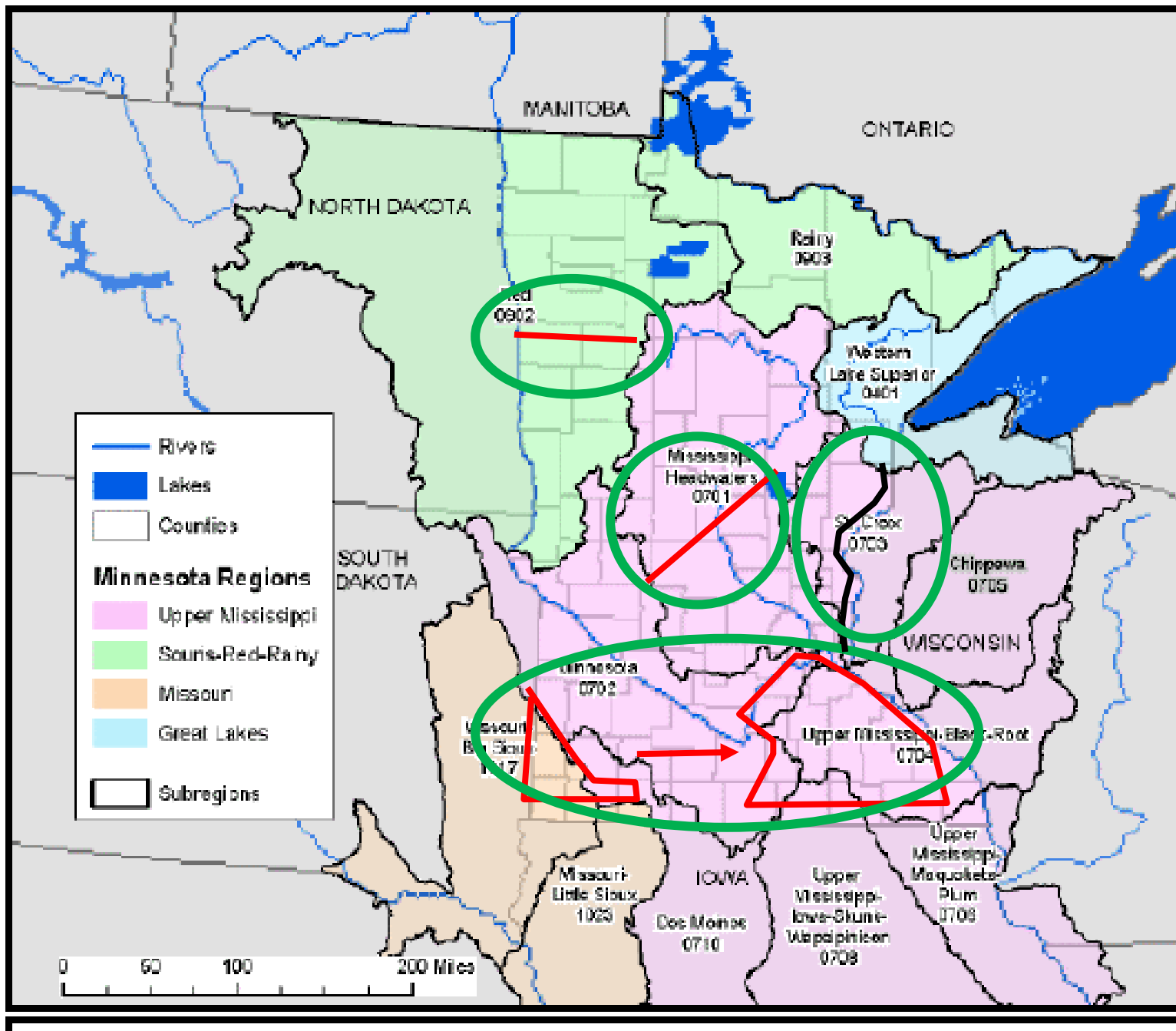
- Revised Bank Service Areas
- New Wetland & Credit Classification System
- Wetland Replacement Buffers
- Bank Plan Decision Process Alternatives
- Stream Restoration and Wetland Credits (Quantification Tool)
- New Functional Assessment Tool
- In-Lieu Fee Program and Compensation Planning Frameworks (High Priority Areas)



# BANK SERVICE AREAS

- Statute changes related to watersheds and presettlement areas
- Limited replacement opportunities in some BSAs (e.g. BSA 6)
- Need for marketable bank areas

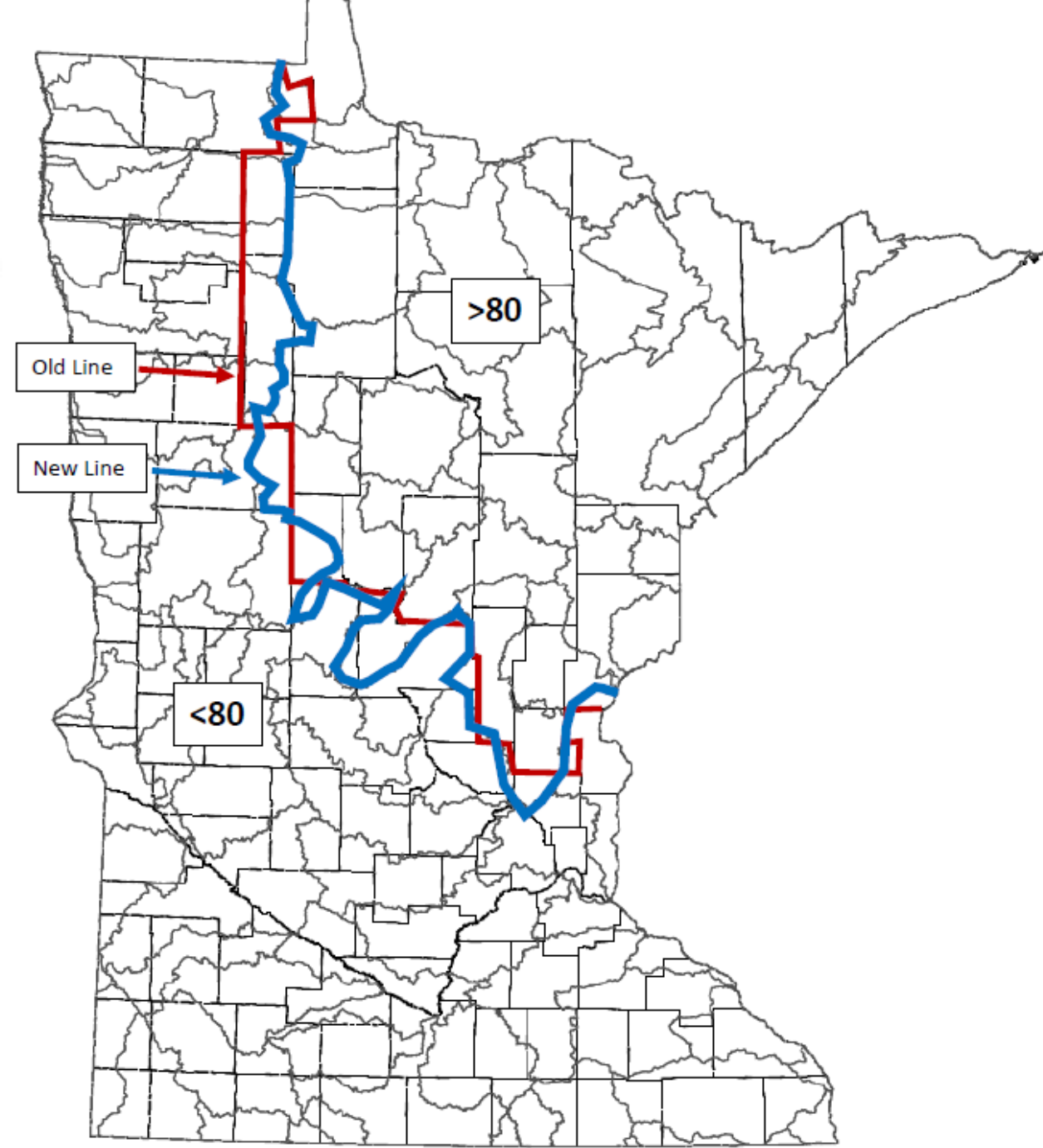
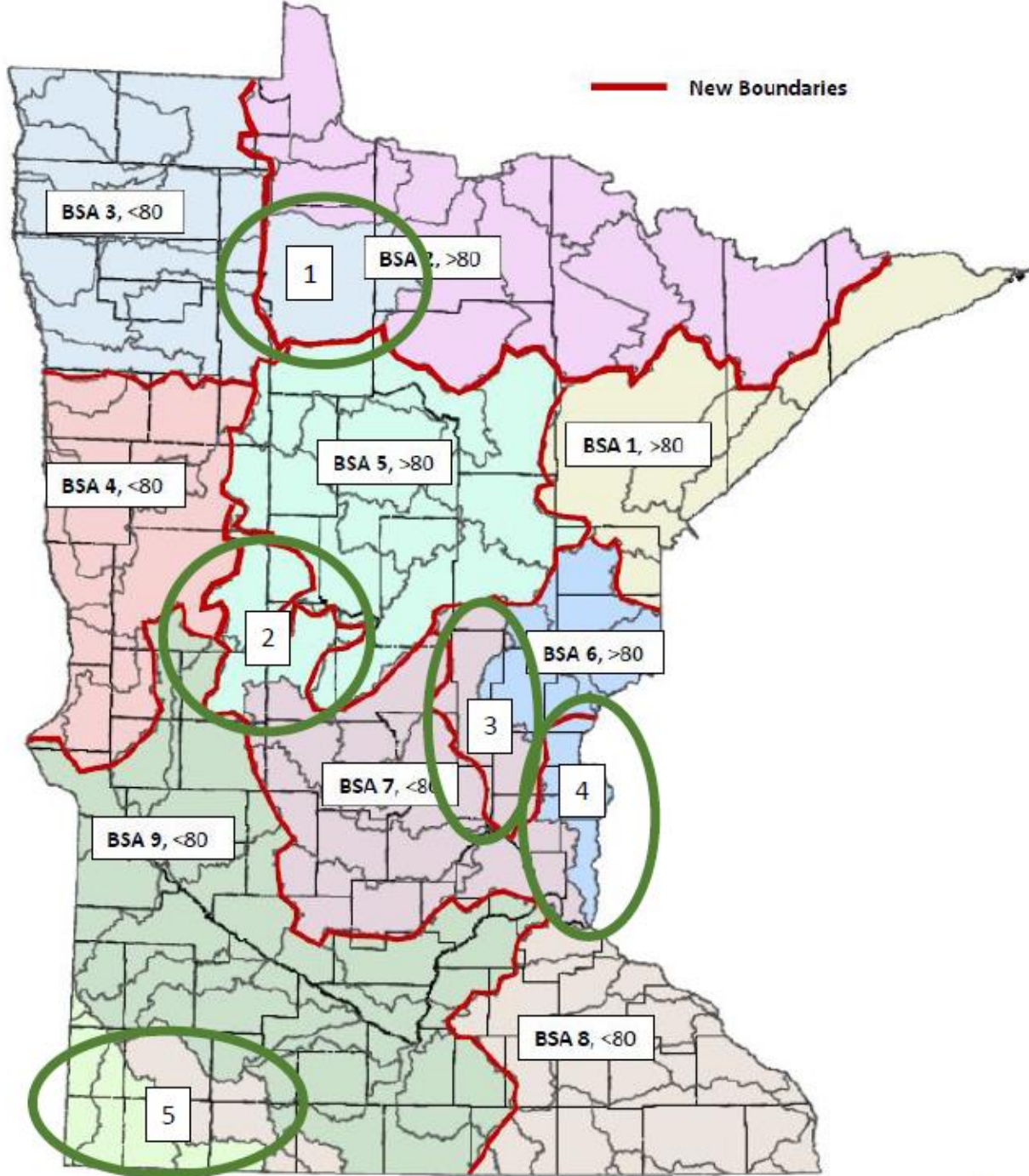




# Setting Bank Service Area Boundaries

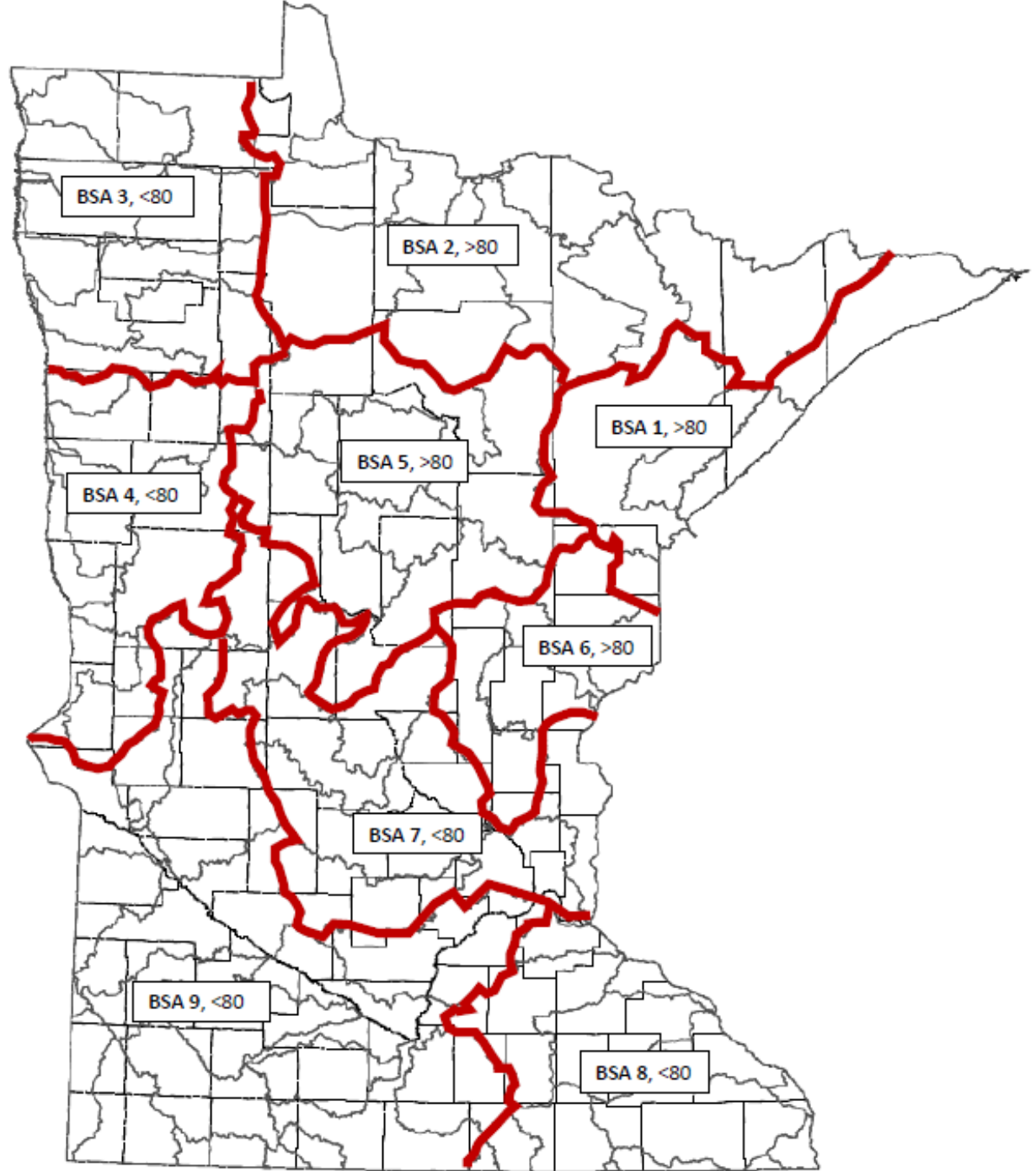
Minimize change to replacement ratios and consider:

- Watershed boundaries
- Ecological Section boundaries
- Land use (historic and current)
- Historic wetland loss
- Current wetland abundance and quality
- Restoration opportunities
- Geographic size
- Economic viability of private wetland banks and ILF markets



N

N



# WETLAND CLASSIFICATION SYSTEM

- Credits & Impacts classified by plant community
- Plant community not a good surrogate for function.
- Difficult to predict plant communities precisely.
- Plant communities change over time.
- HGM system is the best surrogate and widely used.
- Need to develop HGM system for MN.

Classification Name	Definition
Lacustrine	Wetland occurs within a topographic depression that has a closed elevation contour that allows the accumulation of surface water and is restricted to the margin of a depressional lake basin.
Riverine	Wetland occurs on a nearly level landform and lies along and is influenced by flooding from a stream, river or flow-through ditch.
Slope	Wetland occurs on a slope (generally >2%) with groundwater discharge as its primary source of hydrology.
Mineral Flat	Wetland occurs on a nearly level landform, is not significantly influenced by flooding from a stream, river or flow-through ditch and has predominately mineral soils.
Organic Flat	Wetland occurs on a nearly level landform, is not significantly influenced by flooding from a stream, river or flow-through ditch and has predominately organic soils.
Seasonal/Temporary Depression	Wetland occurs within a topographic depression that has a closed elevation contour that allows the accumulation of surface water, is not associated with the margin of a depressional lake basin and has a predominately seasonal and/or temporary hydrologic regime.
Non-Seasonal/Temporary Depression	Wetland occurs within a topographic depression that has a closed elevation contour that allows the accumulation of surface water, is not associated with the margin of a depressional lake basin and has a hydrologic regime that is not predominately seasonal and/or temporary.
Northern Cedar Swamp (Subclass)	White cedar-dominated swamps on wet peat soils in the northern floristic region of the state. Moss layer has > 50% cover and is characterized by hummocks and water-filled hollows. Canopy cover is variable, ranging from interrupted to continuous (50–100%). Canopy is typically dominated by white cedar, with balsam fir and black spruce frequently present. Balsam fir and black spruce are occasionally dominant in the canopy and sometimes form patches within large white cedar-dominated swamps.
Floodplain Forest (Subclass)	Deciduous riparian forests on sandy or silty alluvium on low, level, annually flooded sites along medium and large rivers in central and northern Minnesota. Characterized by pools and evidence of recent flooding, such as rows and piles of debris, ice scars on trees, and freshly deposited silt and sand. Canopy is interrupted to continuous (50–100% cover). In the northern floristic region of the state, strongly dominated by silver maple, with occasional green ash, black ash, or American elm. In the southern floristic region of the state, strongly dominated by silver maple with occasional green ash, cottonwood, or American elm.
Calcareous Fen (Subclass)	A peat-accumulating wetland dominated by groundwater inflows characterized as circumneutral to alkaline with high concentrations of calcium and low dissolved oxygen content. Must meet the technical criteria for identifying calcareous fens in Minnesota (Minnesota DNR 2016 and subsequent versions).
Southern Bedrock Outcrop (Subclass)	Rainwater pools in otherwise dry, open lichen-dominated plant communities on areas of exposed bedrock. Woody vegetation is sparse, and vascular plants are restricted to crevices, shallow soil deposits, and rainwater pools. Lichen and bryophyte cover is high. On exposed bedrock, crustose and foliose lichens predominate. Wet prairie species may occur in areas of deeper soil kept moist by water perched above areas of unfractured bedrock. Temporary rainwater pools in small depressions may contain emergent grasses and forbs. Deeper, more persistent rainwater pools may support submergent aquatic plants as well as

#### Dichotomous Classification System Key for Major Categories

1. Wetland does not occur on a nearly level landform .....	2
1. Wetland occurs on a nearly level landform .....	3
3. Wetland lies along and its hydrology is significantly influenced by flooding from a stream/river channel or a flow-through ditch1 .....	Riverine
3. Wetland does not lie along and/or is not significantly influenced by a stream/river channel or flow through ditch .....	4
4. Wetland has predominately organic soils .....	Organic Flat
4. Wetland has predominately mineral soils .....	Mineral Flat
2. Wetland occurs on a slope (generally >2%) with groundwater discharge as its primary source of hydrology .....	Slope
2. Wetland occurs within a topographic depression that has a closed elevation contour that allows the accumulation of surface water .....	5
5. Wetland is not restricted to the margin of a depressional lake basin .....	Depression
5. Wetland is restricted to the margin of a depressional lake basin .....	Lacustrine

Landscape Position/Landform Type from MN NWI	Class
Lentic Basin	Lacustrine
Lentic Flat	Lacustrine
Lentic Fringe	Lacustrine
Lentic Island	Lacustrine
Lotic Basin	Riverine
Lotic Flat	Riverine
Lotic Floodplain	Riverine
Lotic Fringe	Riverine
Lotic Island	Riverine
Terrene Basin	Depression
Terrene Flat	Mineral Flat
Terrene Fringe	Depression
Terrene Island	Depression
Terrene Peatland	Organic Flat
Terrene Slope	Slope

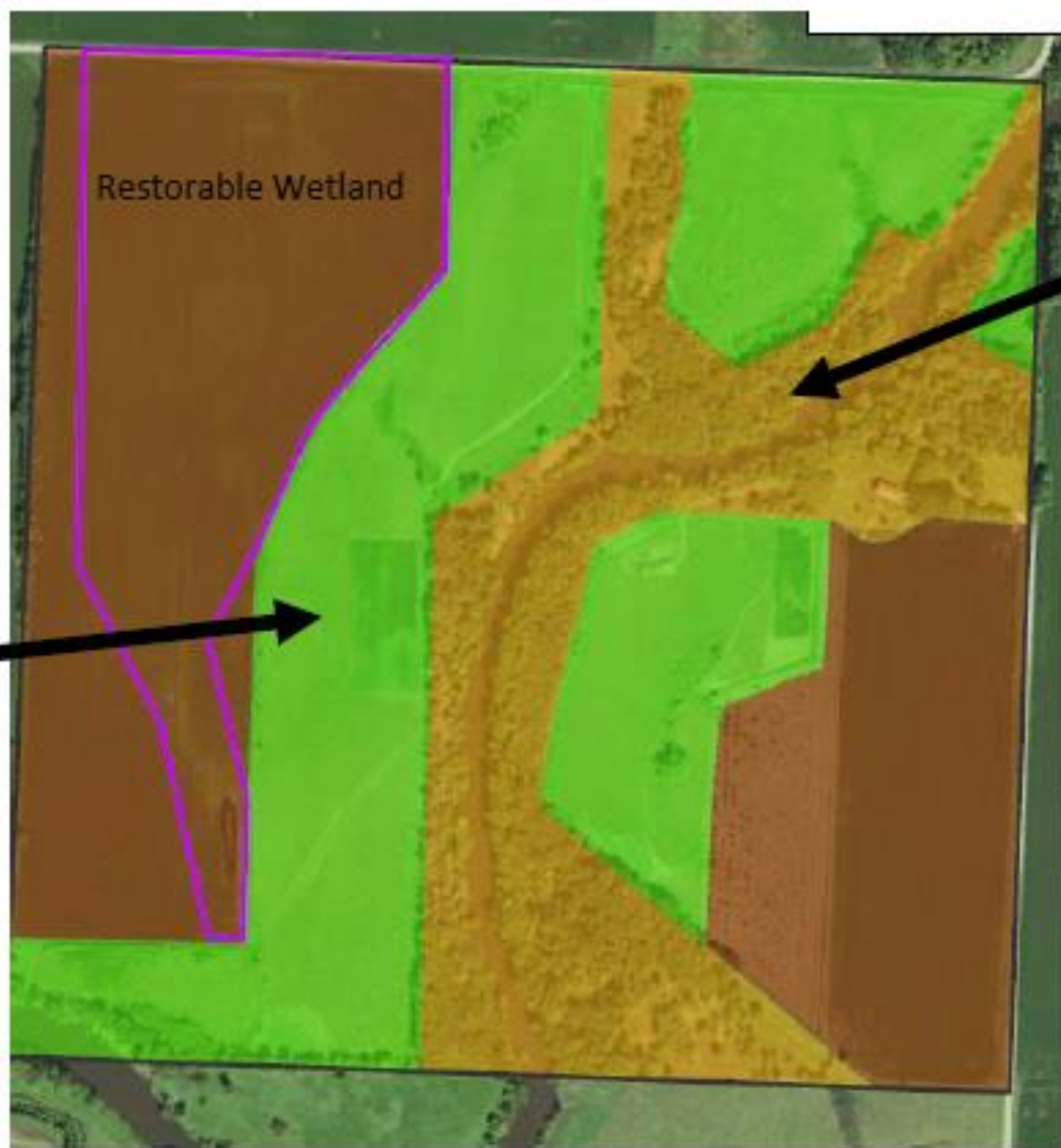


# Replacement Wetland Buffers

- Not enough buffer in high land value areas.
- Too much buffer in low land value areas.
- Limitations on the amount of buffer and credit amount discourages restoration of small prairie pothole complexes.



- Wetland Buffer
- Corridor Connection



Restorable Wetland

Forested  
river corridor

Possible Corridor  
Connection

# Wetland Bank Plan Decision Process

- Statute change – BWSR *may* make bank plan decisions for WCA.
- Discussed possible approaches with technical advisory team including hybrid LGU/BWSR decision process.
- Goal is to most effectively and efficiently make bank plan decisions that are consistent across bank service areas.
- Ease the workload associated with bank plan reviews for the LGU.

# Bank Plan Decision Process

Alternative Name	LGU Role	BWSR Role	Pros	Cons
Status Quo	Makes all decisions & recommendations at each phase of the bank plan.	Member of TEP, provides recommendations. Can reject easement.	<ul style="list-style-type: none"> <li>• Least amount of change.</li> </ul>	<ul style="list-style-type: none"> <li>• More difficult to <u>coord.</u> with Corps.</li> <li>• More statewide inconsistency leading to unfair private bank market.</li> <li>• Limited local technical expertise to make decisions.</li> <li>• Inconsistent with 404 assumption.</li> <li>• BWSR easement acquisition separated from LGU decision.</li> </ul>
Dual Approval	Makes decision on bank plan potential at prospectus/concept phase.	Makes final decision on bank plan.	<ul style="list-style-type: none"> <li>• LGU focuses on site suitability and potential while state focuses on plan details (division of labor and expertise).</li> <li>• Maintain strong LGU role while helping with statewide consistency.</li> <li>• Easier <u>coord.</u> with Corps.</li> </ul>	<ul style="list-style-type: none"> <li>• Creates dual approvals for same project and possible 15.99 issues.</li> <li>• Have to create new approval standards for prospectus/concept.</li> </ul>
Site Certification	Certifies (?) that site is consistent with local plans & ordinances at prospectus phase.	Makes final decision on bank plan.	<ul style="list-style-type: none"> <li>• LGU maintains authority over land use.</li> <li>• Ensures applicant coordination with LGU at early phase.</li> <li>• Easier <u>coord.</u> with Corps.</li> <li>• Helps with statewide consistency.</li> <li>• Minimizes LGU workload.</li> </ul>	<ul style="list-style-type: none"> <li>• Unsure how 15.99 applies to certification of site.</li> </ul>
Veto authority	Member of TEP with appeal rights.	Makes all decisions & recommendations at each phase of the bank plan.	<ul style="list-style-type: none"> <li>• Most consistent with 404 assumption.</li> <li>• Best option for statewide consistency and <u>coord.</u> with Corps.</li> <li>• Least amount of LGU workload, allows LGU to participate as much as they want.</li> <li>• Only one approval needed.</li> </ul>	<ul style="list-style-type: none"> <li>• Least amount of LGU authority to influence project.</li> <li>• LGU would need to appeal if did not like BWSR decision.</li> </ul>

# Stream Restoration as Replacement (>80 areas)

- Crediting system and assessment tools needed to implement.
- Received funding from EPA to develop stream quantification tool.
- Interagency team and consultant developed tool over 2 years.
- Finalized tool rolled out and being used by several entities for regulatory and conservation purposes (presentation at 2021 Water Resource Conference).
- Tool provides basis to develop crediting system for stream restorations under WCA.

# Minnesota Stream Quantification Tool and Debit Calculator



MENU

Current WCA Rulemaking

Wisconsin - Minnesota Wetland Functional Assessment Initiative

404 Assumption

Minnesota Stream Quantification Tool and Debit Calculator

## Minnesota Stream Quantification Tool and Use and Applicability

The Minnesota Stream Quantification Tool and Debit Calculator (MNSQT) are spreadsheet based tools used to assist in making mitigation decisions related to streams. The MNSQT can also be applied to restoration projects outside of the functional lift. The main goal of the MNSQT is to produce objective, verifiable, and repeatable results and quantitative measures of defined stream variables.

For the Wetland Conservation Act (WCA) specifically, Minnesota Statutes 103G.2242, subdivision 12 provides credits for the restoration and protection of streams in the northeastern portion of the state. The credit stream restoration and protection is being developed through BWSR's rulemaking authority. An essential tool necessary to equitably and consistently allocate replacement credit for stream restoration based on the rules, policies and guidance on generating credit for stream restoration projects can be found in the MNSQT.

The MNSQT and Debit Calculator are being made available on BWSR's website to allow for review and use in Minnesota. Although the mechanism to generate wetland replacement credits for stream restoration projects is not yet completed, BWSR intends to propose rules, policies and guidance based in part on the use of this tool.

The MNSQT is being used by the St. Paul District Army Corps of Engineers under their new stream mitigation (Corps Public Notice). In addition, it may help inform permitting decisions related to projects affecting streams.



*Kettle River; Falls above the Sandstone Dam, which were exposed when the dam was removed in 1995. With the removal of the Sandstone Dam, the Kettle River is now 'free-flowing' and is a tributary to the St. Croix River.*

## Minnesota Stream Quantification Tool and Debit Calculator User Manual (Version 2.0)



**m** BOARD OF WATER AND SOIL RESOURCES

**m** MINNESOTA POLLUTION CONTROL AGENCY

**m** DEPARTMENT OF NATURAL RESOURCES



**US Army Corps of Engineers**  
St. Paul District

**StreamMechanics**

**EPR** ECOSYSTEM PLANNING & RESTORATION

# Wetland Functional Assessment

- Assessing wetland functions critical to fulfilling general wetland replacement criteria of *replacing the public value of functions lost to an impact*.
- Minnesota Routine Functional Assessment Method (MnRAM) over 20 years old.
- BWSR in cooperation with MPCA, DNR and WDNR sought and received EPA grant to develop new functional assessment method(s).
- In year one of 3-year initiative. New tool(s) expected in 2024-25.
- Expected to improve mitigation outcomes.



# In-Lieu Fee Program and Compensation Planning Frameworks

## **In-Lieu Fee Program**

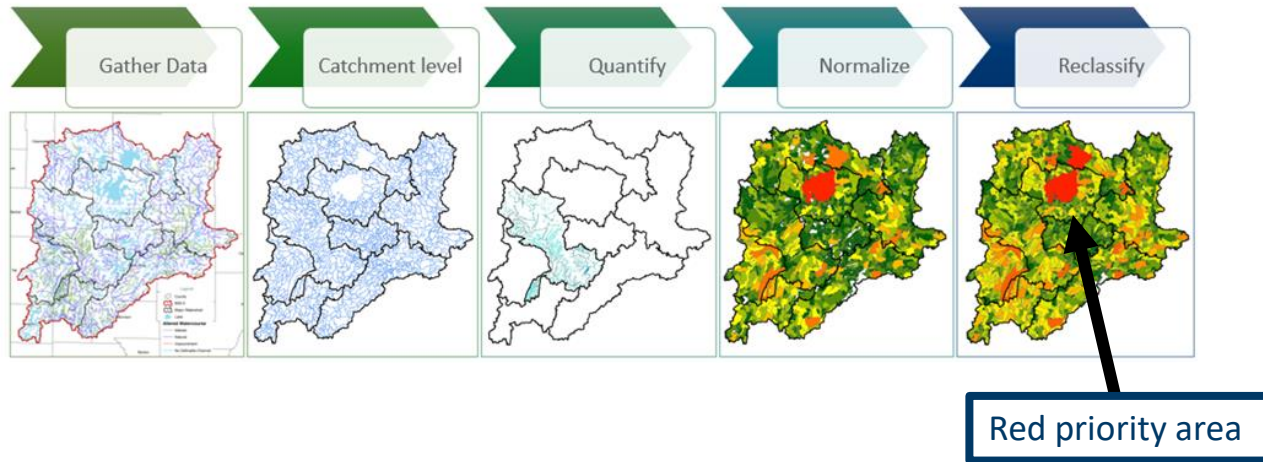
- “Prospectus” developed and submitted to USACE.
- Program “Instrument” being drafted.

## **Compensation Planning Frameworks (CPF)**

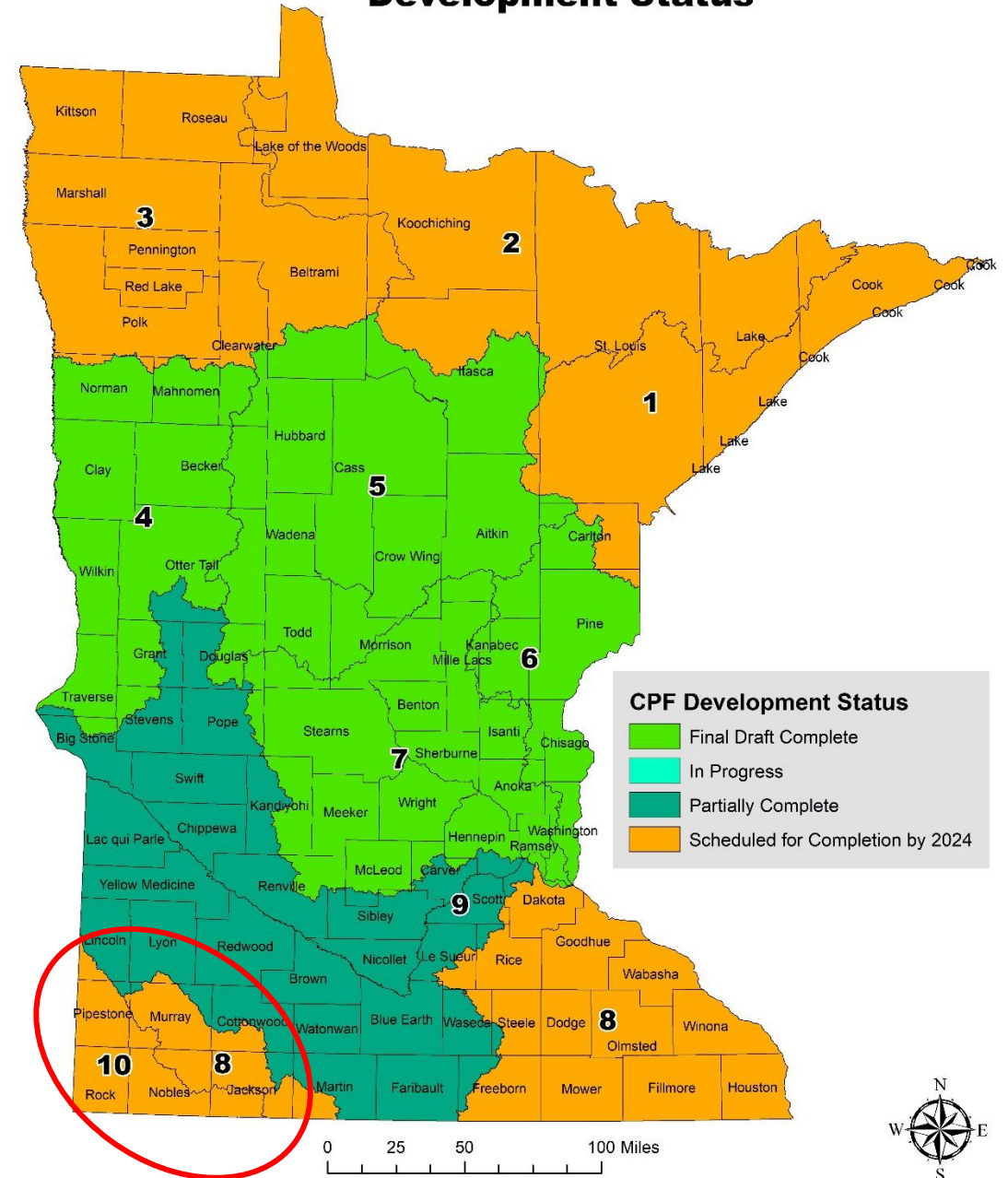
- Document that prioritizes wetland mitigation to meet watershed-based needs.
- Required for BWSR’s In-Lieu Fee Program (ILF).
- Will be used more broadly to prioritize and incentivize mitigation in areas of need (High Priority Areas).
- BWSR has completed CPFs for 4 BSAs and remaining 5 are partially complete, in-progress, or funded and scheduled for completion in 2024.

# Development Status

- Received funding to complete the CPFs
- Request for proposals to be published soon
- Plan to combine BSAs 9, 10, and SW portion of 8



## Compensation Planning Framework Development Status



# Next Steps

- 1) Advisory Committee meetings to “dive into the details” and provide feedback.
  - Approximately 4 additional mtgs in 2022.
- 2) BWSR staff develop draft rule language/amendments.
- 3) Obtain feedback from WCA technical staff.
- 4) Advisory Committee review draft rule language (2-4 meetings).
- 5) BWSR staff finalize rule language for BWSR Wetlands Conservation Committee recommendation and Board adoption.

Approximate Timeframe	Action(s)
<b>Summer/Fall 2022</b>	Outreach to stakeholders, Wetland Advisory Committee meetings, and interagency coordination. Develop draft rule amendments and SONAR.
<b>Winter 2023</b>	Wetland Advisory Committee Meetings to review final draft rule and SONAR.
<b>Winter/Spring 2023</b>	Finalize draft rule and SONAR.
<b>May-June 2023</b>	Seek Board authorization to adopt draft rule & SONAR, and issue Dual Notice of Intent to Adopt Rules.
<b>Summer 2023</b>	Publish notice and draft rules in the State Register.
<b>Late Summer 2023</b>	Hearings held if 25 or more requests are received.
<b>Fall 2023</b>	<p><b>If no hearing</b>, schedule Wetland Conservation Committee and Board consideration of final rule and SONAR. Submit Governor's Final Form.</p> <p><b>If hearing</b>, post hearing comment period, agency response, and report to Administrative Law Judge (ALJ).</p>
<b>Fall 2023</b>	<p><b>If no hearing</b>, sign Order Adopting Rules (executive director) and submit to OAH. OAH files rules with Secretary of State. Publish Notice of Adoption in St. Register.</p> <p><b>If hearing</b>, ALJ report completed within 30 days unless extended by Chief ALJ.</p>
<b>Winter 2023/2024</b>	<b>If hearing</b> , BWSR Wetland Committee review and Board authorization to adopt rules. Submit Governor's Final Form.
<b>Winter/Spring 2024</b>	<b>If hearing</b> , sign Order Adopting Rules (executive director) and submit to OAH. OAH files rules with Secretary of State. Publish Notice of Adoption in State Register.

# Questions or Comments?

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