



August 8, 2024

Lewis Brockette
Wetlands Policy Coordinator
Minnesota Board of Water and Soil Resources
520 Lafayette Road North
St Paul, MN. 55155

Dear Mr. Brockette,

This correspondence is in regard to the request for comments by the Minnesota Board of Water and Soil Resources (BWSR) related to Wetland Conservation Act (WCA) rulemaking as noticed in the State Register on July 8, 2024. The Red River Watershed Management Board (RRWMB) appreciates the opportunity to comment and offers the following comments and recommendations:

1. **Section 75:** No comments as this is a minor change.
2. **Section 76:**
 - a. **Statute Changes:** The RRWMB supports this change, which has the potential to make wetland impacts and replacement easier to manage. This change will allow for greater ease in replacing ecological functions. We believe that the benefits of including the HGM Classification system will outweigh mitigation challenges.
 - b. **Rule Changes:** The RRWMB requests that BWSR clarify the rules to allow for in-kind mitigation for the same HGM category, and to allow for in-kind replacement of the same Circular 39 category if the HGM category is not available within the Bank Service Area.
3. **Section 77:**
 - a. **Rules Changes:** The RRWMB requests provisions be incorporated to allow deepwater habitat mitigation to be the same HGM type as adjacent wetlands. This would allow a deepwater habitat to be replaced in-kind with impacts to the fringe pothole wetland areas. There should also be provisions to clarify impacts to deepwater habitat as fill and excavation only. We believe that water level changes should not be identified as adverse impacts.



4. Section 78:

- a. **Rule Changes:** The RRWMB recommends provisions that would allow impacts for sediment removal in ponds or channels, such as ditch repair projects.

5. Section 79:

- a. **Statute Changes:** The RRWMB does not support this change. Local Governmental Units (LGU) will have to depend on the USDA Natural Resources Conservation Service (NRCS) to make permitting decisions and LGUs do not have access to farm program files. Depending on NRCS to make timely decisions will only exacerbate permitting delays.
- b. **Rule Changes:** The RRWMB recommends provisions that direct LGUs to make exemption determinations based on NRCS rules if NRCS determinations are not available or were done incorrectly. The RRWMB requests that BWSR clarify that ditch cleanout activities allowed by NRCS also apply to legal drainage systems.

6. Section 80:

- a. **Statute Changes:** The RRWMB does not support this change as drainage authorities are tasked with the responsibilities of maintaining legal drainage systems. Drainage authorities manage these systems both technically and financially. Drainage law includes process and procedure for maintenance activities and tax assessments to ensure these systems are maintained. This new rule leaves drainage authorities with no choice but to schedule ditch cleanouts of the entire system every 20 years regardless of need. The methodology for determining drainage impacts for sediment removal within an existing channel is not technically feasible or reproduceable. Impacted areas that would require mitigation must be able to be identified if replaced through mitigation – these areas could then be impacted without regulatory requirements, which highlights the limitations of this type of negotiated impact assessment.

In addition, there is no way to delineate wetland boundary changes that occurred 20 years ago versus 30 years ago. Under the current rule the wetland boundary is critical in determining "wetlands that existed for 25 years". Hydric soil boundaries and many primary and secondary hydrology indicators cannot be documented using historic aerial photography. Most wetland/upland boundaries adjacent to ditch systems within northwest Minnesota are annually tilled. Avoidance and minimization are not feasible when drainage is the primary purpose of the project.



- b. Rule Changes:** The RRWMB recommends provisions that remove drainage as an impact in this section. Drainage is the primary purpose of these projects. Provide provisions that limit impacts in this section to fill material placed in wetlands. The RRWMB recommends pursuing additional legislation to exempt all repair activities under drainage law for consistency with the Clean Water Act Section 404 and Minnesota Protected Water Inventory Rules, and to prevent unintended consequences of repair work completed without need.

7. Section 81:

- a. Statute Changes:** The RRWMB does not support the change as LGUs need to be able to make their own determination and process applications per WCA rule. Waiting for the United States Army Corps of Engineers (USACE) is time consuming and this will delay projects with no real benefit.
- b. Rule Changes:** The RRWMB recommends provisions that direct the LGU to make the determination based on WCA rules or guidance if USACE permits are not processed within the timeline of the WCA (60-day rule).

8. Section 82:

- a. Statute Changes:** The RRWMB does not support the revisions to the de minimus areas and we do not support removing "draining and filling". The de minimus exemptions depend on specific area determinations of impact. Qualitative impacts are not easily converted into a measurable area.
- b. Rule Changes:** The RRWMB recommends provisions that clarify the de minimus exemption applies to wetland losses, converting wetlands to non-wetlands.

9. Section 83:

- a. Statute Changes:** The RRWMB does not support the change. Most of these areas are agricultural ditches or legal drainage systems, private ditch systems, or have subsurface drain tile. It is not clear how impact assessments will be determined. This will create regulatory burdens with little or no resource protection benefits. These areas are also not able to be delineated in the field. The boundaries are not clear and regulatory programs depend on clear identification of the resource to be regulated.



- b. Rule Changes:** The RRWMB recommends provisions that clarify and define the limits of intermittent and perennial watercourses. The RRWMB recommends provisions that exempt watercourses on agricultural fields, and impacts associated with installation and maintenance of public and private ditch or subsurface tile systems.

10. Section 84: No Comments.

11. Section 85:

- a. Statute Changes:** The RRWMB does not support the change as wetland banking projects have cost-benefit challenges making it costly to restore small wetland areas. Removing the banking process from the required timelines in Statute 15.99 will only add additional time and cost to the process. Efforts should be made to shorten and streamline the process rather than extend the timelines.
- b. Rule Changes:** The RRWMB recommends provisions that streamline and shorten the banking process.

12. Section 86:

- a. Statute Changes:** The RRWMB supports the change. An in-lieu fee program will allow credit purchases within Bank Service Areas that are short on credits allowing mitigation to be completed at a later date. This offers simplicity and efficiency for project permitting.
- b. Rule Changes:** The RRWMB recommends provisions that determine how the cost per credit will be determined. The RRWMB recommends provisions that prioritize Bank Service Areas with few credits to enable future restorations to be completed within the same Bank Service Area.

We have several multipurpose water storage projects constructed or in the RRWMB funding process located in the Red River Basin (RRB) of Minnesota that have gone through various levels of wetland delineation and review, wetland monitoring, development of preservation plans, and wetland replacement and/or mitigation. Some of the larger water storage projects in the RRB can involve 18 permits and approvals from all levels of government. Public drainage projects also involve various levels of permitting, environmental review, and field investigations depending on the complexity of the project and number of funding partners involved.



Once constructed, these water storage projects will result in approximately 100,000 acre-feet of new water storage along with thousands of acres of new habitat and significant water quality benefits. In addition, our member watershed districts are involved with ongoing water quality projects in the RRB that often include work within public drainage systems. We estimate that our membership has spent \$4.375 million in permitting and environmental review costs just for water storage projects in our funding process.

We realize that larger-scale projects take time, extensive financial resources, and involve permitting and environmental review. However, continued rulemaking by state agencies erodes our local financial capacity and hinders the ability of our members to move forward on public drainage, water storage, flood mitigation, habitat, and clean water projects. The RRWMB believes that the changes to WCA will place additional permitting and regulatory burdens on our drainage authorities and the taxpayers in the RRB of Minnesota.

The citizens of the RRB and State of Minnesota both want habitat and clean water and the RRWMB is committed to working on the meet these needs along with water storage and flood mitigation. Should you have questions or need clarification of these comments, please contact me at rob.sip@rrwmb.us or via cell at 218-474-1084.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Sip".

Robert L. Sip
RRWMB Executive Director

CC: Red River Basin Legislators
RRWMB Managers
RRWMB Membership