



Minnesota Wetland Conservation Act Rulemaking MN Rules Chapter 8420

Wetlands Advisory Committee

November 20, 2024

- 1) Ground Rules and Advisory Committee Membership
- 2) Refresher on Rulemaking Authority and Background
- 3) Recent Rulemaking Progress/History, Next Steps
- 4) Begin Review of Preliminary Draft WCA Rule

Meeting Protocol

- ✓ Keep your microphone muted except when you are speaking.
- ✓ Keep your camera off during the meeting to save bandwidth.
- ✓ We'd like the meetings to be relatively informal and conducive to discussion. Just "raise your hand" if you have a question.
- ✓ We will remain available after the meeting ends in case any of you have questions/comments that you would prefer to discuss "offline." We also will be available to meet with you individually to discuss any 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.
- ✓ If you want to think about the changes more before commenting, you are welcome to contact us at a later time with your comments or questions. We'd like to receive feedback on this preliminary draft by December 20.

Organization

- MN Farm Bureau
- MnDOT
- Assoc. of MN Counties
- SWCD Staff (Wright SWCD)
- League of MN Cities
- MN Rural Counties
- Mining MN
- Builders Assoc. of MN
- MN County Engineers Assoc.
- Aggregate Ready-Mix Assoc. of MN
- County Staff (LOW County)
- MN Center for Env. Advocacy
- Iron Mining Assoc. of MN
- Sierra Club
- MN Intercounty Assoc.
- MN Watersheds
- Red River Watershed Mgmt. Board
- MN Wetland Professionals Assoc.
- MN Assoc. of SWCDs
- MN Environmental Partnership
- MN Farmers Union
- MN Chamber of Commerce
- MN Ag Water Resource Center

Member

Hunter Pederson
Beth Brown
Brian Martinson
Andrew Grean
Craig Johnson
Neil Peterson
Julie Lucas
Grace Keliher
Jim Foldesi
John Cunningham
Josh Stromlund
Carly Griffith
Joel Asp
Margaret Levin
Matt Massman
Jan Voit
Mark Aanenson
Curt Kleist
Sheila Vanney
Steve Morse
Stu Lourey
Andrew Morley
Warren Formo

BWSR Wetlands Advisory Committee

Organizations & Participants

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

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 will inform and can 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.

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.***

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 and most of the 2024 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).



Scope of WCA Rulemaking



- 1) Reconcile the rule with statute changes, incl. those from 2024.
- 2) Clarify requirements and procedures, update and modernize outdated rule provisions, improve wetland mitigation outcomes, and increase consistency with federal wetland regulations.
- 3) As time and capacity allows, implement changes identified during the rulemaking process to improve efficiency, effectiveness, and/or outcomes.

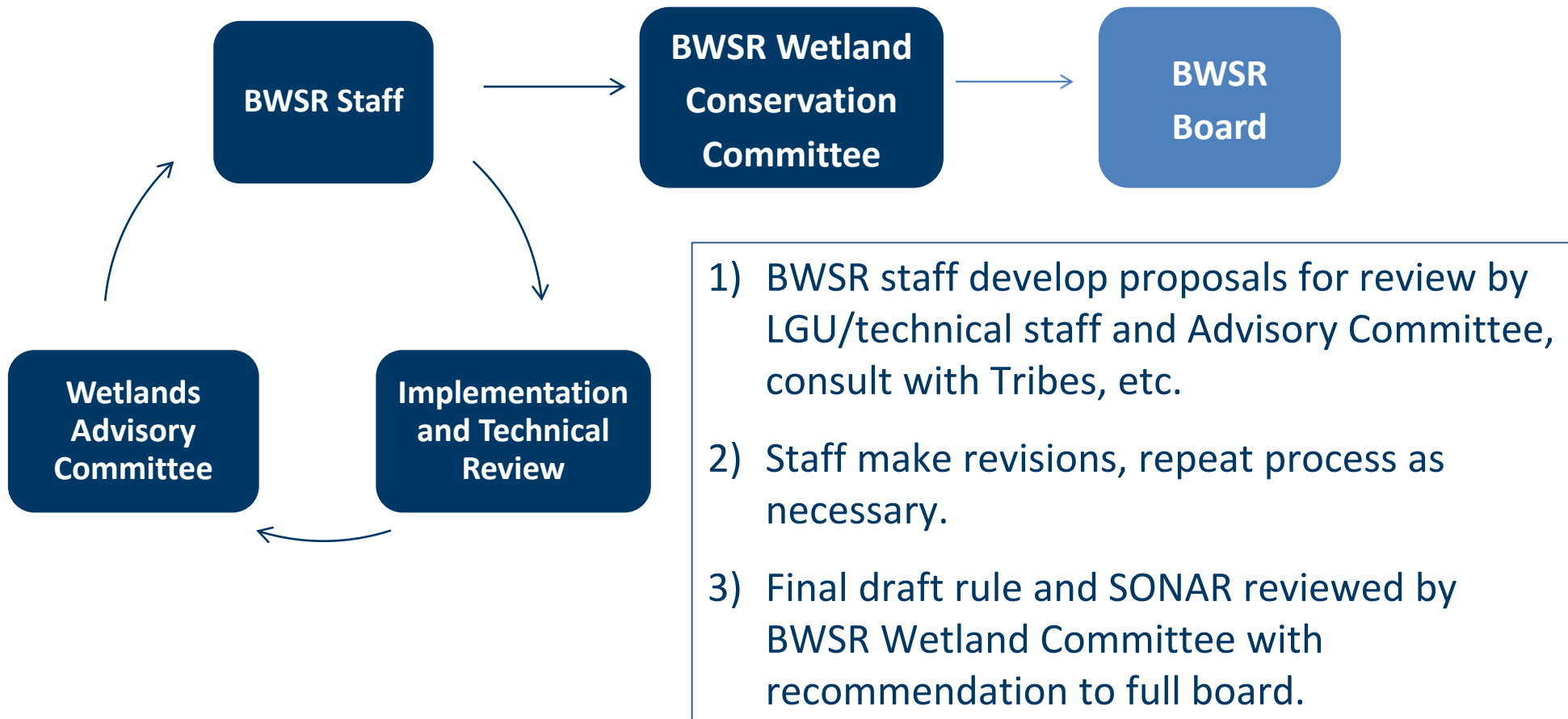
- ❖ Some statute changes can be incorporated as-is, or with a limited amount of work.
- ❖ Several statute changes require substantial program development work to implement and will be held for a future rulemaking.

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

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. 11

Recent Rulemaking History/Progress

2022 Request for Comments – renewal of rulemaking.

- 2022-2023: Three meetings of the Wetlands Advisory Committee; multiple meetings with various stakeholders and state/federal agencies.
 - 2023: Wetland bankers meeting.
 - Late 2023/2024: WOTUS Assessment.
 - First half 2024: Multiple WCA statute changes.
 - July 2024: Request for comments, expansion of scope.
 - Summer 2024: Training and outreach on 2024 statute changes.
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- November 2024: Preliminary draft WCA rule completed.

Topics to be Held for Future Rulemaking

- 1) Regulatory provisions for certain non-public water stream segments (2024 statute change).
- 2) Implementation of an In-Lieu Fee mitigation program for private sector use.
- 3) Compensation Planning Frameworks and High Priority Areas for wetland replacement.
- 4) Wetland Banking Plan decision-making roles/responsibilities.
- 5) Stream restoration and wetland replacement credits.

Next Steps

- 1) Seek input on Preliminary Draft Rule.
 - Additional Advisory Committee meeting(s).
 - LGU Listening Sessions.
 - Multiple other meetings/mechanisms.
- 2) Develop second Preliminary Draft, seek input (incl. Advisory Committee).
- 3) Develop final draft rule for consideration by BWSR Board.
- 4) Official rulemaking process starts upon approval of draft rule by BWSR Board and publication in state register.
- 5) Additional opportunities for public review and comment during official rulemaking process.

Questions or Comments?

E-mail: bwsr.wcarulemaking@state.mn.us

Website: <https://bwsr.state.mn.us/wca-rulemaking>

Lewis Brockette

Wetlands Policy Coordinator

Lewis.brockette@state.mn.us

Les Lemm

Wetlands Section Manager

les.lemm@state.mn.us

Ken Powell

WCA Operations Supervisor

ken.powell@state.mn.us