

Red River Watershed Management Board - Minnesota Watersheds
Analysis of Wetland Conservation Act Changes
Prepared by Mark Aanenson - Senior Scientist/Principal - Houston Engineering, Inc.

Statute	Effect of Change	RRWMB - Minnesota Watersheds Talking Points	Recommended Action / Proposed Rule-Statute Changes
<p>Sec. 75. Minnesota Statutes 2022, section 103G.005, subdivision 14d, is amended. Removes the word "sole" in "sole purpose" . Changes to "purpose" relative to splitting projects to gain exemptions.</p>	<p>Clarifies that the restriction applies even when the gaining of additional exemptions was not the sole purpose for splitting a project into components or phases.</p>	<p>Support this revisions, it provides clarification.</p>	<p>This language revision is not anticipated to have a large effect on Watershed District Projects.</p>
<p>Sec. 76. Minnesota Statutes 2022, section 103G.005, subdivision 17b, is amended. Adds an option under the definition of wetland type to use the HGM classification system.</p>	<p>Allows for use of the Hydrogeomorphic Classification for Wetlands (HGM) for determining wetland type. MN Rules Chapter 8420 (WCA Rule) will be amended to incorporate the use of HGM. Circular 39 remains in statute as an optional wetland typing method and is relevant to the identification of public water wetlands under Minn. Stat. 103G.005, Subd. 15a. Deletion of the “Wetland type” summary does not affect the use of Circular 39. More information about HGM can be found at: HGM Approach (dren.mil)</p>	<p>Support the change, this has potential to make impact and replacement easier to manage. Better fit for replacing ecological functions.</p>	<p>Provide rules that in-kind mitigation requirements apply to the same HGM category, and to allow for in-kind replacement of the same Circular 39 category as an alternative.</p>
<p>Sec. 77. Minnesota Statutes 2023 Supplement, section 103G.005, subdivision 19, is amended. Adds deep water habitats to the wetland definition but excludes protected waters (PWI).</p>	<p>WCA regulatory authority will now apply to deepwater habitats that are not designated as public waters. All replacement requirements, exemptions, application procedures, etc. will apply to projects involving these deepwater habitats. Deepwater habitats are permanently flooded lands lying below the deepwater boundary of wetlands (generally greater than 8.2 feet of water depth) as defined in the “Classification of Wetlands and Deepwater Habitats of the United States” (adapted from Cowardin et al., 1979), which is available here: Classification of Wetlands and Deepwater Habitats of the United States.</p>	<p>Support the change from the context of potential future 404 assumption. Some of these areas are currently regulated by the 404 program. Have some concerns relative to the regulation of flood retention projects, specifically flood pools.</p>	<p>Provide rules that deepwater habitat impacts are categorized the same as adjacent wetlands. Provide rules to clarify impacts to deepwater habitat as fill and excavation only. Water level changes should not be identified as adverse impacts.</p>
<p>Sec. 78. Minnesota Statutes 2022, section 103G.222, subdivision 1, is amended. Removes the Type 3, 4, and 5 from the statement regarding excavation in permanently and semi permanently flooded areas in determining an impact.</p>	<p>Removes Circular 39 wetland type from consideration in determining whether excavation in permanently and semi-permanently flooded areas of a wetland is an impact. Applies the deed restriction prohibiting agricultural use for at least ten years to the new prior-converted cropland exemption (see changes to 103G.2241 subdivision 1). The reference to 103G.2241 subdivision 2(b-e) has been deleted, as those paragraphs were removed from statute. Clarifies that the Minnesota Department of Transportation is responsible for wetland replacement on public transportation projects that occur on state roads, regardless of who the project sponsor or co-sponsor is.</p>	<p>Support. This language revision is not anticipated to have a large effect on Watershed District Projects.</p>	<p>None</p>
<p>Sec. 79. Minnesota Statutes 2022, section 103G.2241, subdivision 1, is amended. Expands the Ag exemption to include PC's as determined by NRCS, allows maintenance activities as allowed by NRCS for FWs and Ws. Adds the deed restriction relative to nonagricultural use to the new ag exemptions.</p>	<p>Eliminates the exemption from WCA replacement requirements for activities that impact wetlands on agricultural land that is cropped 8 of the last 10 years, and on pasture land meeting certain wetland type and acreage requirements. Establishes an exemption for impacts to prior converted cropland as labeled by the USDA Natural Resources Conservation Service (NRCS) and for impacts resulting from drainage maintenance activities on areas labeled by the NRCS as farmed wetland, farmed-wetland pasture, and wetland. Changes to items 4 and 5 clarify that only those wetland impacts authorized under a U.S. Army Corps of Engineers permit are exempt.</p>	<p>Do not support the change. Only land enrolled in the federal farm program would be eligible for this exemption.</p>	<p>Provide rules that direct the LGU to make exemption determination based on NRCS rules if NRCS determinations are not available or were done incorrectly.</p>

Red River Watershed Management Board - Minnesota Watersheds
Analysis of Wetland Conservation Act Changes
Prepared by Mark Aanenson - Senior Scientist/Principal - Houston Engineering, Inc.

Statute	Effect of Change	RRWMB - Minnesota Watersheds Talking Points	Recommended Action / Proposed Rule-Statute Changes
<p>Sec. 80. Minnesota Statutes 2022, section 103G.2241, subdivision 2, is amended. Removes the drainage exemptions for Type 1 wetlands or up to 5 acres of Type 2 or 6 wetlands in the benefitting area of public drainage systems. Removes the exemption for draining of Type 1, 2, 6, and 7 for repairs of legal drainage systems. The 25 year rule now applies to all wetlands and deepwater habitats. Eliminates exemptions for repairs of private drainage systems.</p>	<p>Effect of Change: Eliminates the drainage exemptions in subdivision 2, except for the drainage of wetlands that have existed for 25 years or less resulting from maintenance and repair of existing drainage systems. The amended exemption eliminates wetland type as a consideration for eligibility and applies to both public and private drainage systems. Paragraph (b) clarifies that certain activities associated with repairs completed by public drainage authorities only apply to public drainage systems as defined under 103E.005 Subdivision 12 – this information was previously located in the now deleted paragraph (a).</p>	<p>Do not support this change. This revision is adverse to drainage authorities ability to manage legal ditch systems. It adds significant costs to ditch system management. The language is poorly worded i.e. "wetlands that have existed". There is no technical method to document and map wetland boundaries in the past, i.e. 24 years ago vs 26 years ago.</p>	<p>Pursue legislative changes that provide an exemption for all impacts associated with repairs of legal drainage systems per MN Statute 103E.701. This would be consistent with CWA Section 404 and PWI rules. Under current statutes: Propose rule clarification - For public ditch systems, a wetland replacement plan is not required for impacts from drainage if in the last 25 years 1) a repair of the ditch was completed per MN Statute 103E.701 or 2) a ditch inspection was completed under MN Statute 103E.705 and it was determined that a repair work was not required.</p>
<p>Sec. 81. Minnesota Statutes 2022, section 103G.2241, subdivision 6, is amended. Makes the utilities exemption dependent on getting a USACE permit. This is no longer an LGU decision.</p>	<p>Eliminates the acreage-based condition of the utilities exemption, and now subjects the exemption to a requirement that the wetland impacts be authorized by and conducted in accordance with a U.S. Army Corps of Engineers Section 404 permit. A local government unit can no longer issue a seasonal or annual exemption for a public utility as the exemption is now dependent on a Corps permit.</p>	<p>Do not support the change, LGU's need to be able to make their own determinations and process applications per WCA rule rather than wait for other agencies. This language revision is not anticipated to have a large effect on Watershed District Projects.</p>	<p>Provide rules that direct the LGU to make exemption determination based on WCA rules rather than requiring the applicant to wait for a decision by the USACE.</p>
<p>Sec. 82. Minnesota Statutes 2022, section 103G.2241, subdivision 9, is amended. Revises the de minimis limits, removes wetland type references.</p>	<p>Thresholds based on wetland type (Circular 39) and thresholds specific to the 11-country metro area have been eliminated from the de minimis exemption. Thresholds are now based on presettlement area (<50, 50-80, >80), shoreland zone, shoreland building setback zone, and permanently/semi-permanently flooded water regimes. Statute now clarifies that if project wetland impacts exceed the applicable de minimis threshold, all wetland impacts require replacement. The exemption restrictions related to the landowner's portion of the wetland and the cumulative area drained/filled since 1992 have been eliminated. Additional restrictions have been added to statute to prevent increasing de minimis amounts by dividing property. The statute now refers to all wetland impacts as opposed to just impacts caused by draining and filling.</p>	<p>Do support the revisions to the de minimis areas. Do not support removing "draining and filling". The de minimis exemptions depend on specific area determinations of impact. Qualitative impacts are not easily converted into a measurable area.</p>	<p>Provide rules that clarify this exemption, specifically, that it applies only to wetland losses where wetlands are converted to nonwetlands.</p>
<p>Sec. 83. Minnesota Statutes 2023 Supplement, section 103G.2242, subdivision 1, is amended. BWSR will now regulate intermittent and perennial watercourses outside of the PWI, rules to be developed.</p>	<p>Authorizes BWSR to amend the WCA rules to regulate reaches of intermittent and perennial watercourses that are not identified as public waters. The regulation of these watercourse reaches does not become effective until BWSR develops and adopts specific rules related to their protection and mitigation.</p>	<p>Do not support the change. This legislation could be detrimental to all agricultural drainage throughout Minnesota. This would add an additional layer of regulations to ag ditches and almost all legal drainage systems in the state. The identification and inventory of these resources is problematic.</p>	<p>Pursue legislation to repeal the statute change. Under the current Statutes, provide rules that exempt watercourses on agricultural fields, and impacts associated with installation and maintenance of public and private ditch or tile systems.</p>

Red River Watershed Management Board - Minnesota Watersheds
Analysis of Wetland Conservation Act Changes
Prepared by Mark Aanenson - Senior Scientist/Principal - Houston Engineering, Inc.

Statute	Effect of Change	RRWMB - Minnesota Watersheds Talking Points	Recommended Action / Proposed Rule-Statute Changes
<p>Sec. 84. Minnesota Statutes 2022, section 103G.2242, subdivision 2, is amended. Clarifies guidance on delineation manuals and guidance on classification of wetlands and deepwater habitats.</p>	<p>The edits update references to the Corps of Engineers wetland delineation manual and associated U.S. Fish and Wildlife Service wetland/deepwater habitat classification system. The statute now allows for the use of the HGM wetland classification system in wetland boundary/type determinations according to rules adopted by BWSR (WCA rules). The language also clarifies that future updates, supplements, and replacements of referenced documents can be used.</p>	<p>Support.</p>	<p>None</p>
<p>Sec. 85. Minnesota Statutes 2022, section 103G.2242, subdivision 2a, is amended. BWSR to establish wetland banking timelines for review and comment periods. Removes the banking process from the 60-day rule.</p>	<p>For wetland banking projects only, statute now directs BWSR to establish review and comment period timelines in WCA rule. These timelines will not take effect until formally adopted in rule. Once adopted, these review and comment period timelines for wetland banking projects would no longer be subject to Minnesota Statutes 15.99. This provision, however, does not apply to other WCA application types such as exemptions or replacement plans.</p>	<p>Do not support the change, removing the banking process from the required timelines in Statute 15.99 will only add additional time and cost to the wetland banking process.</p>	<p>Provide rules that streamline and shorten the banking process instead of extending the deadlines for agency review.</p>
<p>Sec. 86. Minnesota Statutes 2022, section 103G.2242, subdivision 3, is amended. Allows BWSR to establish an in-lieu fee program.</p>	<p>Clarifies BWSR's authority to develop, sponsor, and administer the wetland banking program, including an in-lieu fee program and/or the associated collection of payments. It also clarifies BWSR's ability to establish fee payment amounts and hold money associated with deposited wetland credits and in-lieu fee payments.</p>	<p>Support 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. We do have concerns on the value-pricing of existing credits held by WDs.</p>	<p>Provide rules that support consistent pricing of in-lieu fee credits relative to existing wetland banks.</p>