



Minnesota Wetland Conservation Act

Stakeholder Input for Program Changes

Environment and Conservation Sector Meeting

1:00 p.m.

August 19, 2014

MPCA/BWSR Offices
520 Lafayette Road
St. Paul, MN

Meeting Notes

Participants: Rich Staffon, Izaak Walton League; Jane Reyer, Save Lake Superior Association; Judy Helgen, Sierra Club; Bob Tammen, Sierra Club; Pat Tammen, Sierra Club; Howard Markus, Izaak Walton League; Lori Andresen, Sierra Club; Tom Thompson, Sierra Club; Allison Wolf, Mn Center for Environmental Advocacy; Kristin Larson, Friends of the Cloquet Valley State Forest; Jon Schneider, Ducks Unlimited; Barb Jacobs, Mn Senate; Andy Robertson, Saint Mary's University; Bill Barton, Sierra Club; Scott Strand, Mn Center for Environmental Advocacy; Jill Bathke, Mn Center for Environmental Advocacy; Doug Norris, DNR; Colleen Allen, DNR; Joe Henderson, DNR; Tim Smith, U.S. Army Corps of Engineers; Les Lemm, BWSR; Dave Weirens, BWSR.

1. Background and purpose of this process and today's meeting.

Dave Weirens and Les Lemm provided an overview of the purpose of today's meeting and reviewed the following reports, with a focus on recommendations:

- Executive Order 12-04, Supporting and Strengthening the Implementation of the State's Wetland Policy; and
- Siting of Wetland Mitigation in Northeast Minnesota.

2. Discussion/Comments/Questions.

- Inconsistency in watershed approach between programs/reports, bank service areas on county lines vs. watershed approach.
- Does 401 stay with the MPCA if 404 assumption happens?
- What does "improve" mean? The slides should say change instead; improve is a value statement.
- How are new DNR Lands and Minerals positions paid for?
- Where in WCA does it say cost is a consideration for suitable mitigation (practicability), in statute and rule?
- Is mitigation about area or function?
- Quality/functional assessments – are assessments being conducted for wetlands that are being lost? How do the impacted wetlands compare to replacement wetlands? We should be looking at functional gain to the watershed.

- Look at current functional assessment methods available, other potential methods available, potential improvements to functional assessment mechanisms, and how they get used and implemented on a watershed basis.
- What does the 2nd to last bullet on page 15 (NE report) mean in the context of other recommendations (Mitigation of impacts to water quality functions must occur within the watershed, and may be accomplished through various mechanisms not limited to wetland mitigation)?
- What does “watershed” mean (a question of scale – e.g. Lake Superior or Sauk River)?
- Qualitative assessment – how are these done and applied? This is very important as area and quality work together to provide mitigation, need to understand what is being lost.
- We do have the gold standard at the MPCA – biological evaluation.
- MnRAM rates wetlands at higher quality than IBI (index of biological integrity).
- The relative value is lower in areas with a high level of wetlands (i.e. in greater than 80% areas), how can we ensure we get statewide public values?
- Lake of the Woods County lost 82,000 acres of wetlands; they’ve lost more wetlands than most.
- Wetlands support Lake Superior, the largest body of water in the continent.
- Need to value and identify functional assessment methods.
- Are some areas in the state more likely to support successful wetland restorations? For example, are wetland restorations in the prairie pothole region more likely to be successful than those in NE Minnesota?
- What does presettlement mean?
- Does the Corps agree with the high priority areas concept?
- If allowing the recommendations to go through, the entire state will be at the same level of wetlands.
- There should be an added safety factor (ratio) where the wetlands are more difficult to restore.
- The National Academy of Sciences recommends increased avoidance for difficult-to-replace wetlands.
- Transitioning from science-based to social-based increases the need for a qualitative assessment tool. Compare the public values lost to the replacement – they are different but we need to weigh each, know how “good” one is vs. the other, then make a value judgment.
- What is being gained if we lose wetlands in the NE and replace them in southwest, if we’re still allowing the drainage of agricultural wetlands?
- Where are we at with no net loss? Who does an audit of BWSR?
- Only consider restoration? There is lots of upland, why not creation?
- Where is the data on fewer opportunities in the NE?
We should not give credit for riparian areas that should otherwise be protected by law.
- All of the alternative options are terrific ideas, but they open the door for more impacts – where does it end?
- We need to eliminate the statute language that treats Bank Service Areas 1 and 2 the same for the siting of wetland mitigation for mining.
- Avoidance and minimization is not being adhered to as it should be and mitigation is not achieving functional replacement as required under the Clean Water Act; is mitigation replacing losses? There is concern as to whether avoidance and minimization is being

complied with for mining, and do we have to say “yes” to every bad mitigation proposal that comes forward? If the functions can’t be replaced, the permit should not be issued.

- PolyMet could avoid most losses with different type of mining; can the public say they must do the project a certain way? Cost is the only reason why the project is being proposed as it is, and cost is relevant to time – it’s a “today thing.”
- The Weeks Act is supposed to protect headwaters areas in perpetuity.
- Is practicality in the NE about not enough land or not enough willing landowners?
- Applicants have the burden of finding sites, is this the best way?
- Add specifics about mercury releases from partially drained peatlands. For an impairment in the NE, restoration of peatlands will reduce mercury releases.
- Probably not in favor of this option (in-lieu fee) because mitigation needs to happen before the impacts. If an ILF program is pursued, it should obtain “seed money” so it could keep a positive balance.
- Seed money for starting an in-lieu fee program would help to stay ahead of wetland impacts.
- The Wisconsin in-lieu-fee is proposed to be \$60,000/credit.
- Are water quality projects included in banking (in-lieu fee)?
- Does this allow going directly to a non-governmental organization (NGO) to do the mitigation? Does any fee go to the NGO?
- In an ILF program, does the project with the impact get to choose the mitigation site?
- What does “perpetuity” mean? It is inappropriate for multi-billion dollar companies to be off the hook in perpetuity.
- Are mineral rights reviews done for wetland banks?
- Don’t pay people who have messed up their watershed to go back and fix it, and don’t pay to do something they have to do anyways.
- Mixing regulatory fixes for small impacts by people without the capability to do the mitigation with large impacts by large corporations that have the ability to do the mitigation - it is irresponsible to allow corporations to use these tools.
- Allow small impacts to use the in-lieu fee, large impacts do something else.
- Perhaps legislators and agency staff should leave the room and have the groups identify what they can live with - we need to have a consensus - the current wetland mitigation process is broken.
- Identifying the dollar value (cost per acre) will be a challenge.
- The Mn GDP is \$300 billion, mining is \$1.0 billion, mining is a small part of the economy with powerful interests.
- Treating BSAs 1 and 2 the same is bad policy.
- There has been shoddy implementation by DNR Lands and Minerals - mining companies are running roughshod over the process, mixing solutions and problems.
- Having an in-lieu fee program creates no incentive for cooperation.
- What is fair for a large entity with large impacts may not be fair for small entity with small impacts (don’t treat everybody the same).
- Support the proposed siting criteria and targeting of mitigation when the functions in the watershed have been assessed and functionality will not be impacted.
- Generally opposed to out of watershed mitigation, but if it occurs, then it should go where its needed. The issue is the functions that are lost in the Lake Superior watershed.
- Impaired waters may require more replacement.

- We need a pie chart of the sources/causes of wetland impacts; this could help prioritize the biggest problems in the state.
- Does MnDOT or mining get special dispensation? If they can essentially go directly to replacement, they should have a higher replacement ratio.
- More discussion is needed before environmental groups can come in with proposals to support or oppose.
- There are some non-controversial recommendations here – you should start with items where consensus can easily be reached, and approach issues on two tracks: fast/easy and slow/hard.
- The 2005 Sierra Club report includes recommendations that should be looked at.
- The status quo is not acceptable.
- We need balance – if we change things and lose something, we need to gain something too.
- Any ILF program should take a watershed approach, focusing on the watersheds where the impacts occur.
- How do applicants find alternative mitigation options if there is no inventory or database? There needs to be an inventory to make opportunities known to applicants.
- The MPCA restorable wetlands prioritization tool can be useful and increase awareness of opportunities.
- The rapid response team is the best thing I've heard.
- We need more information, better data, and better science to know what the functions need to be replaced in the watershed. There should be a watershed plan for the Lake Superior watershed that includes real functional analysis of what we have there, analyze the watershed for what functions are critical, and plan for making mitigation decisions.
- Has a project ever been denied because of the large amount of impact? When does avoidance get addressed?
- Has it been considered for BWSR to oversee mitigation for mining projects? DNR has the dual purpose of promoting mining and regulating it. At least the wetland mitigation should fall under a separate agency.
- Look at the Weeks Act.