



BWSR 2012 Legislative Review

May 17, 2012

Clean Water Fund

BWSR received an additional Clean Water Fund appropriation of \$4.2M for FY2013 in the following categories and there were some minor language changes to provide greater flexibility in program delivery options. These provisions are contained in SF 2493, now Session Law 2012, Chapter 264.

- An additional \$1.6M for a total appropriation of \$15.35M in FY 2013 for Clean Water Assistance Grants. The funds are to protect, enhance, and restore water quality in lakes, rivers and streams and to protect groundwater and drinking water. Grants are targeted toward priorities identified in local water plans, and local capacity for on-the-ground implementation will be increased through technical and engineering assistance. These funds are for keeping water on the land, protecting and restoring streams, groundwater, surface water, and upgrading feedlots and SSTS Imminent Health Threat systems.
- An additional \$0.6M for a total of \$3.6M in FY 2013 for Clean Water Accelerated Implementation Grants. These grants are for non-structural practices and activities that will enhance local efforts to develop and implement, on a local or regional basis, water resource protection and management measures or initiatives that go beyond state minimum standards for water quality and include SSTS inventory and program enhancement activities. GIS and related tools and models will be used to optimize project effectiveness based on multiple benefits analysis with a minimum of \$1.5M for county SSTS program implementation.
- An additional \$0.7M for a total of \$1.7M in FY 2013 for Conservation Drainage practices and projects. *The language of this appropriation was changed to accommodate recently approved NRCS Conservation Drainage Practice Standards. Additionally, these practices now can be installed on existing system or new systems. Funding of new tiling is prohibited.*
- An additional \$1.0M for a total of \$2.3M in FY2013 for wellhead protection: *the language for this appropriation was expanded to include acquiring easements in communities along the Decorah and St Lawrence Edge areas in the southeastern counties in areas having the most vulnerability to groundwater contamination.* Funding can also still be used for acquiring permanent conservation easements in wellhead protection areas on land with high or very high vulnerability of drinking water supply contamination.
- An additional \$0.3M for a total of \$1.8M in FY 2013 for Measures, Results and Accountability. Quality assurance for CWF projects by providing oversight, assessment, assistance and reporting of outcomes using standardized, scientific evaluation of resource indicators (such as soil erosion and pollutant migration studies). A mentoring, training and certification program will be developed and implemented to build capacity for future conservation program results.

Outdoor Heritage Funds

BWSR total Outdoor Heritage Fund appropriation for FY 2013 is \$16.38M. These provisions are contained in SF 2493, now Session Law 2012, Chapter 264.

- **\$2.09M for the Riparian Buffers:** this program will complement the Clean Water Fund riparian buffers by expanding buffer widths to enhance wildlife habitat. This program will be implemented in cooperation with Pheasants Forever.
- **\$13.81M for Wetland Restoration:** this is Phase III of this program utilizing Outdoor Heritage Funds. Funding will be used to restore wetlands and associated upland for the purposes of enhancing and restoring habitat. The program is implemented through a partnership with the Natural Resources Conservation Service (NRCS) Wetland Restoration Program (WRP) which leverages approximately \$1.6 in federal funding for every state dollar invested.
- **\$0.48M for the Mississippi River Corridor Habitat ACUB Partnership:** this is a partnership with the Minnesota National Guard Army Compatible Use Buffer (ACUB) project with a goal to permanently protect land in this buffer zone.

Bond Funds:

BWSR has two appropriations in the bonding bill, HF 1752, now Session Law 2012, Chapter 293, for a total of \$12.0M.

- **\$6.0M for the RIM Reserve program:** This appropriation will be targeted to flood retention, addressing the long term protection for critical expiring CRP parcels containing wetlands and riparian buffers and implementation of other matching and leveraging opportunities.
- **\$6.0M for the Local Road Wetland Replacement Program:** BWSR is responsible for replacing wetlands lost as a result of local public road improvement projects that are required by law to meet safety requirements. This funding allows for BWSR to continue to develop these wetland bank sites so projects meeting this criteria can move forward while achieving efficiencies and streamlining the wetland replacement process for local road authorities.

BWSR Specific Environmental Policy Legislation

BWSR's environment policy legislation is contained in Session Law 2012, Chapter 272 (HF2164). This law contains the changes outlined below.

BWSR Board:

- Removes the provision for Board member appointments to be based on SWCD regions.
- Allows for the BWSR Board to issue orders and requires the adoption of conflict of interest bylaws.
- Provides flexibility in the selection of Dispute Resolution Committee members through the adoption of bylaws that will govern the committee's membership and duties

Local Water Management:

Counties, watershed districts, and soil and water conservation districts, with BWSR facilitation, had some challenging but productive sessions regularly over the past two years with a major item being agreement on moving toward a watershed approach for the state's implementation of comprehensive water management responsibilities. This is a big deal as it represents *the most significant overall water policy change since the mid-1980's* when counties and metro cities, via separate but similar legislation, were charged with water planning roles and responsibilities that were to integrate with their land use authorities. MPCA leaders have also helped in evaluating alignment with Clean Water Legacy Act elements. This watershed approach, implemented through local governments, will move Minnesota's resource management strategies into the future and provide a more coordinated approach for state assistance to local governments. A quick summary is that this legislation will:

- Achieve a **consolidation of water plans** from over 200 to less than 100.
- Accelerate **science-based, comprehensive management** of water resources on a watershed basis.
- Expand **local government partnerships** for program delivery efficiency and effectiveness gains.

More specific details are that this legislation:

- Allows for plans developed by Counties, Watershed Districts and Soils and Water Conservation Districts to substitute for each other to reduce planning work and increase coordinated implementation work.
- Provides for BWSR to utilize local government and other stakeholders to develop and carry out the "one-watershed-one plan" approach
- Establishes and defines the "comprehensive watershed management plan" at approx. the 81-major (8 digit HUC) scale, provides consistency with existing Watershed Management Policy and provides for the watershed plan to address additional purposes of wetlands, hydropower, groundwater, conservation for rainwater/runoff, soil and water conservation, floodplain management, scenic river protection, marginal/erodible land retirement, water law, and watershed management.
- Keeps all current plans to be in place as they exist now for the expected three-ten years it will take to work through the transition.
- Encourages, but not require, TMDL implementation plans – or equivalent alternatives – to be addressed as part of comprehensive watershed management.
- Establishes a process for plan boundary establishment and appeals and dispute resolution. Boundary establishment can occur as part of plan approval or beforehand separately so that fundamental decision is in hand before the plan is locally developed, state approved and locally adopted.
- Provides for extensions of existing watershed district and county water plans to align with the "comprehensive watershed management plan" and work through the five-ten years it will take to complete the transition.
- Updates provisions for BWSR to award CWF and other grants to local governments to be based on one-watershed plans.
- 7 county metro watershed plans are mostly unaffected.
- Does not affect existing authorities of local governments, the existing processes to approve, adopt and amend plans or the petition procedures to establish and adjust boundaries.

Wetland Conservation Act:

- Removes the deed restriction requirement for wetland replacement on agricultural land but prohibits the land from being converted from agricultural use for 10 years. Now a deed restriction is only required when the local government deems that the where there is risk of conversion from agricultural use to another use within ten years.
- The Swampbuster exemption changes assure that state standards for wetland protection on ag-land remain unchanged and prevents any future ties to potential “Swampbuster” rollbacks at the federal level. The existing language was not viable because it did not connect to the federal agency, USDA-NRCS.
- The de minimis exemption language has been simplified and the exemptions have been kept at the same level for all but a very few Type 7 (forested) wetlands in the <50% of the state. Additionally there are some creative parts of this section that allow for increased impacts within the shoreland building setback zone but only when an off-set of a permanent infiltration and water quality practices are installed that are approved by the shoreland authority.
- The state (BWSR) can now to implement an in-lieu fee program for wetland banking, meaning we can pursue, independently (for the road program) or in partnership with public and private sector interests (for mining or ag banking), more cost-effective and ecologically beneficial wetland replacement/mitigation. A coordinated sector-specific approach could supplement the current ad hoc wetland banking option.
- The state can now pursue greater coordination with federal wetland protection standards through complete or partial assumption of Clean Water Act section 404 resulting in more consistent and more responsive decisions for landowners seeking approvals. This would allow the Corps of Engineers to acquiesce to all or parts of state standards if approved by the EPA. The law does not compel this approach, but sets the stage for improved coordination via alignment of resource protection, public service and budget factors. It will require a comprehensive state proposal and a federal response/decision. This would take a few years to accomplish unless there were federal changes allowing it to take place sooner. The 404 assumption effort has been wholly in place in Michigan and New Jersey for 10-20 years and both have very strong programs. Recently, there have been considerations to establish a partial assumption option (e.g. Wetland Banking) which might work well for MN.

Executive Order 12-04

This Executive Order was signed by Governor Dayton at the same time he signed the Environmental Policy Bill. The purpose is to support and strengthen the implementation of the state’s wetlands policy. This executive order establishes a process for stakeholders to assess and recommend action regarding how to maintain the State’s goal of “no net loss of wetland.” BWSR is directed to work in cooperation with the DNR, DOT, MPCA, MPDA, and with the invited participation of stakeholders, to undertake the following steps by December 15, 2012:

1. Assess potential changes to current policies that will improve wetland conservation in Minnesota in a manner that maintains and restores the integrity Minnesota’s wetlands, while recognizing that the ecology, distribution and type of wetland resources vary statewide.
2. Evaluate and develop recommendations to improve current wetland protection, restoration, and mitigation provisions regarding:
 - a. de minimis exemption allowances and flexibility options allowable with Board-approved Comprehensive Wetland Management Plans according to Minnesota Statutes, section 103G.2243;
 - b. alignment of pre-settlement wetland zones on watershed boundaries
 - c. consistent review, approval, and implementation for projects subject to wetland replacement requirements;
 - d. the adequacy of funding mechanisms to cover costs of inspection, monitoring and oversight of wetland bank sites; and
 - e. the costs and benefits of wetland mitigation targeted to specific watershed.
3. Develop recommendations to provide for the continued restoration of drained wetlands using various funding sources to achieve the multiple benefits that wetlands provide for strategic conservation purposes.
4. Identify opportunities to improve coordination of wetland regulatory efforts between state and federal agencies by improving the processes for landowners, permit applicants, local governments and regulators so that greater efficiency and cost-effectiveness are realized.

BWSR is currently developing a proposed process to accomplish these tasks in the specified time. More information will be provided on the BWSR website as it becomes available.

Additional Statute and Policy Changes of Interest

Lester is designated at the Minnesota State Soil: This provision was contained in the Ag Omnibus Bill (HF 2398), now Session Law 2012 Chapter 244.

Rulemaking: SF 1922, now Session Law 2012 Chapter 238, contains the provisions outlined below that BWSR and all agencies must follow:

- By January 15 of each year, each agency must submit its rulemaking docket and official rulemaking record to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter.
- Notice of intent to adopt rules must now be sent to the Legislative Coordinating Commission in addition to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter.
- The SONAR (Statement of Need and Reasonableness) must include an assessment of the cumulative effect of the rule with other federal and state regulations related to the purpose of the rule
- By January 15, 2013 BWSR and other agencies must submit a report containing the items below to the Governor, the Legislative Coordinating Commission, and legislative policy and budget committees with jurisdiction over the subject matter.
 - List of any rules recommended for repeal
 - List and brief description of rationale for current rules to remain in effect
 - Any suggestion changes to rules that would improve the agency's ability to meet prescribed objectives while reducing burdens on regulated parties

Game and Fish Law: HF 2171, now Session Law 2012 Chapter 277, contains the following provisions:

Walk-In Access Program: Establishes walk-in area access program and regulations; re-directs the \$5 surcharge on nonresident hunting licenses from the venison donation program to the walk-in program; allows small game and deer license purchasers to donate \$1, \$3, or \$5 to the walk-in program.

Temporary Drawdowns: clarifies that permits for temporary drawdowns may include shallow lakes managed for fish, wildlife, or ecological purposes. Public hearings must be conducted presenting the management plan and outlining when and how temporary drawdowns will be conducted. Periodic temporary drawdowns are not considered takings from riparian landowners.

Beaver Control Program: Removes the requirement for BWSR to be consulted prior to a local authority to implement a beaver control program. The law expands the removal of beavers by road authorities and local governments to include silviculture and drainage purposes on property owned or managed by the local government.