



# 2017 Wetland Mitigation Fee Policy

## Effective June 1, 2017

Policy Approved May 24, 2017

### I. Background.

The Board of Water and Soil Resources (BWSR) has been granted statutory authority to assess fees to administer and oversee the state wetland bank and to acquire, monitor, and enforce conservation easements for wetland mitigation sites. The fees consist of two types: bank account fees and easement fees. Account fees are associated with establishment, maintenance, deposit, transfer, and withdrawals actions. Easement fees are associated with the acquisition, modification, or release of a conservation easement for a mitigation site and the monitoring and enforcement of the easement once it is acquired. The statutory authority for mitigation fees is provided in Attachment A.

### II. Definitions.

- A. Account or wetland bank account. "Account or "wetland bank account" means a record of wetland banking debits and credits established by an account holder within the state wetland banking system.
- B. Account Holder. "Account holder" in the state wetland banking system, is a person, corporation, government agency, or organization that has the right to use/sell credits for mitigation purposes.
- C. Mitigation. An approved action taken under MN Rule 8420.0526 for the purpose of replacing lost wetland functions and values.
- D. Wetland banking credit. Replacement credits resulting from the actions in MN Rule 8420.0526 that have been certified and deposited in the wetland bank. Wetland banking credits can be sold to a third party, or used by the account holder to meet a state or federal mitigation requirement.
- E. Wetland mitigation credit. "Wetland mitigation credit" means a unit of measure (e.g., a functional or areal measure or other metric) representing the accrual or attainment of wetland functions at a mitigation site, or as otherwise defined in MN Rule 8420.

### III. Fee Structure and Procedures.

- A. Account Establishment and Initial Deposit Fee. This fee is assessed at the time of the first credit deposit into the wetland bank account. The Account Establishment and Initial Deposit Fee will be assessed at 6.5% of the value of the credits deposited, not to exceed \$1,000. The value of the credit(s) and resulting per-credit fee will be determined according to Part III.H.
- B. Deposit Fees. Deposit fees will be assessed starting with the second credit deposit (the initial deposit is part of the Establishment fee). Credit deposit fees will be assessed at 6.5% of the value of the credits deposited, not to exceed a total of \$1,000 per deposit. The value of the credit(s) and resulting per-credit fee will be determined according to Part III.H. Wetland credits deposited into a wetland bank account cannot be used for replacement purposes until the deposit fees have been paid.

Requests for deposit containing all of the information required in MN Rule 8420.0725 that are received by a local government unit prior to the effective date of the Credit Fee Schedule developed under Part III.H will be subject to the deposit fees in place at the time the request was received, provided that the credits are deposited by December 31 of that calendar year.

- C. **Account Transfer Fee.** Account transfer fees will be assessed at 6.5% of the value of the credits transferred, not to exceed \$1,000 per transfer. The value of the credits and resulting per-credit fee will be determined according to Part III.H. Transfer fees are assessed when credits are transferred by any means (e.g. sale, gift, donation, exchange) from one account holder to a new account holder, but not used for replacement purpose. The Wetland Bank Administrator may be contacted to verify the amount of the transfer fee. BWSR will not transfer the credits until the fee is paid.
- D. **Withdrawal Fee.** Withdrawal fees are incurred when credits are withdrawn for the purposes of wetland replacement and will be assessed at 6.5% of the value of the credits withdrawn. The value of the credits and resulting per-credit fee will be determined according to Part III.H. Credits will not be withdrawn from the account and used for wetland replacement purposes until the applicable withdrawal fees have been paid.

Withdrawal transactions where a signed purchase agreement between the account holder and the buyer of the credits was received by a local government unit, as part of a complete wetland replacement plan application, prior to the effective date of the Credit Fee Schedule developed under Part III.H will be subject to the withdrawal fees in place at the time the replacement plan application was received by the local government unit, provided that the withdrawal is made by December 31 of that calendar year.

- E. **Account Maintenance Annual Fee.** Account maintenance fees will be assessed annually at 1% of the value of the credits in each account, not to exceed \$500. The value of the credits and resulting per-credit fee will be determined according to Part III.H. Account maintenance fees will be assessed at the time of the first transaction (withdrawal, transfer, or deposit) of each calendar year and will be based on the credits in the account at that time. If there are no transactions in an account for the year, then no maintenance fees will be assessed for that year. The account maintenance fee will not be assessed in the same calendar year during which an establishment fee is assessed and paid. No transactions will be processed until the assessed maintenance fee has been paid.
- F. **Easement Acquisition Fee.** Each wetland mitigation easement will be assessed an easement acquisition fee of \$3,400. The fee will be assessed in two installments: (1) an initial fee of \$1,000 will be assessed at the time the mitigation sponsor initiates the acquisition process. BWSR will not begin the easement acquisition process until the initial fee is paid; and, (2) the balance of the easement acquisition fee (\$2,400) will be assessed when BWSR prepares the conservation easement and transmits it to the landowner for signature. BWSR will not sign and accept the conservation easement until the easement acquisition fee is paid in full.

The easement acquisition fee will also apply to the modification, release, or partial release of the easement at the request of the account holder and/or landowner except the total fee will be the actual cost of the easement modification or release, not to exceed to \$3,400. Upon request, BWSR can provide an estimate of the total cost to modify or release the easement prior to

initiating the process. The fee will be assessed in two installments with the first being the initial fee of \$1,000 at the time the account holder and/or landowner submits a written request to initiate the process. The second installment is the balance of the fee based on the actual cost to BWSR to complete the process. BWSR will not sign and accept the modified conservation easement until the easement acquisition fee is paid in full.

Applicants that have received a wetland bank plan approval through a local government unit notice of decision and have initiated the easement acquisition process by submitting the required paperwork to BWSR prior to June 1, 2017 will not be charged the easement acquisition fee for that bank.

The easement acquisition fee will periodically be adjusted for inflation by BWSR using the U.S. Department of Labor Employment Cost Index (ECI) for Total Compensation for State and Local Government Workers (seasonally adjusted). Adjustments will be made relative to the January ECI of the year of the last adjustment (with January 2016 as the base year for the first adjustment). BWSR staff will provide notification, via a public announcement or equivalent method, of a fee adjustment no later than 30 days prior to the effective date of the fee change.

- G. Easement Stewardship Fee. The easement stewardship fee will provide a source of revenue to cover the costs of monitoring State-held wetland mitigation easements over time. The fee must be an amount sufficient to cover the costs of managing the easement at a level that neither significantly over recovers nor under recovers the cost to the State. The easement stewardship fee will be assessed as a per credit fee applied when credits are withdrawn from the account. The easement stewardship fee will be determined according to Part III. I. Credits will not be withdrawn from the account and used for wetland replacement purposes until the easement stewardship fee has been paid.
- H. Credit Value Determination. A single credit value shall be determined for each bank service area and will be used for all transactions involving credit value within that bank service area. The single credit value for each bank service area shall be calculated using a weighted average of the credit value for each county based on the total area of each county within the bank service area. The county credit value shall be calculated as the product of the land value (expressed as dollars per acre) in the county and the wetland credit value coefficient. In counties with a ratio of tillable acres to rural/vacant acres greater than 20%, the land value shall be the average agricultural ("tillable") land value. In counties with a ratio of tillable acres to rural/vacant acres less than 20%, the Rural/Vacant land value will be used in place of the average agricultural land value. In Ramsey and Hennepin counties, the county credit value shall be the average of the credit values in adjacent counties. For Ramsey this includes Washington, Anoka, and Dakota counties. For Hennepin, this includes Anoka, Carver, Dakota, Scott, and Wright counties. All land values used in the credit value determination shall be as reported by the Minnesota Department of Revenue.

The wetland credit value coefficient reflects the value added to the land encompassed by the mitigation bank easement as a result of the activities completed to generate wetland credits. It is determined by BWSR based on the average ratio of credit sale price to county land value, using credit sale price information available to BWSR. Upon enactment of this policy, the

coefficient shall be set at 6.0. This coefficient may be updated by BWSR Board Resolution or Policy to reflect the most recent wetland credit market values.

A Credit Fee Schedule will be posted on the BWSR website that identifies the per credit fee associated with each transaction based on the single credit value for each bank service area. The Credit Fee Schedule will be updated no later than June 1 of each year by BWSR staff using land values reported by the Minnesota Department of Revenue and the credit value coefficient established by the Board. BWSR staff will provide notification, via a public announcement or equivalent method, of the Credit Fee Schedule update no later than 30 days prior to the effective date of the Schedule.

- I. Easement Stewardship Fee Determination. The easement stewardship fee will be determined using the following formula:

$$\text{per credit fee} = \frac{\text{stewardship cost per easement} * \text{average number of easements per bank}}{\text{average number of credits per bank}}$$

Where:

*Stewardship cost per easement* is a BWSR derived estimate for monitoring, landowner contacts, records storage and management, processing landowner notices, and legal services associated with easement management activities;

*Average number of easements per bank* is derived from the banking database and used as a multiplier to account for banks that may have multiple conservation easements and thus higher management cost; and,

*Average number of credits per bank* is derived from the banking database and is used in the equation to arrive at a per credit fee that can be assessed when credits are withdrawn from the account.

As of August 2016 the stewardship cost per easement is set at \$7,800. Similar to the easement acquisition fee, this figure will periodically be adjusted for inflation by BWSR using the U.S. Department of Labor ECI for Total Compensation for State and Local Government Workers (seasonally adjusted). Adjustments will be made relative to the January ECI of the year of the last adjustment (with January 2016 as the base year for the first adjustment). BWSR staff will provide notification, via a public announcement or equivalent method, of a fee adjustment no later than 30 days prior to the effective date of the fee change. The average number of easements per bank and the average number of credits per bank used in the stewardship fee calculation also will be adjusted on a recurring basis to reflect changes in the bank program.

**Effective Date.** Unless specifically addressed in Section III, the effective date of these wetland mitigation fees shall be June 1, 2017.

## Attachment A

### Wetland Mitigation Fee Statutory Authority

#### 103B.103 EASEMENT STEWARDSHIP ACCOUNTS.

Subdivision 1. Accounts established; sources. (a) The water and soil conservation easement stewardship account and the mitigation easement stewardship account are created in the special revenue fund. The accounts consist of money credited to the accounts and interest and other earnings on money in the accounts. The State Board of Investment must manage the accounts to maximize long-term gain.

(b) Revenue from contributions and money appropriated for any purposes of the account as described in subdivision 2 must be deposited in the water and soil conservation easement stewardship account. Revenue from contributions, wetland banking fees designated for stewardship purposes by the board, easement stewardship payments authorized under subdivision 3, and money appropriated for any purposes of the account as described in subdivision 2 must be deposited in the mitigation easement stewardship account.

Subd. 2. Appropriation; purposes of accounts. Five percent of the balance on July 1 each year in the water and soil conservation easement stewardship account and five percent of the balance on July 1 each year in the mitigation easement stewardship account are annually appropriated to the board and may be spent only to cover the costs of managing easements held by the board, including costs associated with monitoring, landowner contacts, records storage and management, processing landowner notices, requests for approval or amendments, enforcement, and legal services associated with easement management activities.

Subd. 3. Financial contributions. The board shall seek a financial contribution to the water and soil conservation easement stewardship account for each conservation easement acquired by the board. The board shall seek a financial contribution or assess an easement stewardship payment to the mitigation easement stewardship account for each wetland banking easement acquired by the board. Unless otherwise provided by law, the board shall determine the amount of the contribution or payment, which must be an amount calculated to earn sufficient money to meet the costs of managing the easement at a level that neither significantly overrecovers nor underrecovers the costs. In determining the amount of the financial contribution, the board shall consider:

- (1) the estimated annual staff hours needed to manage the conservation easement, taking into consideration factors such as easement type, size, location, and complexity;
- (2) the average hourly wages for the class or classes of state and local employees expected to manage the easement;
- (3) the estimated annual travel expenses to manage the easement;
- (4) the estimated annual miscellaneous costs to manage the easement, including supplies and equipment, information technology support, and aerial flyovers;
- (5) the estimated annualized costs of legal services, including the cost to enforce the easement in the event of a violation; and
- (6) the expected rate of return on investments in the account.

103G.2242 WETLAND VALUE REPLACEMENT PLANS.

Subd. 14. Fees established. (a) Fees must be assessed for managing wetland bank accounts and transactions as follows:

- (1) account maintenance annual fee: one percent of the value of credits not to exceed \$500;
- (2) account establishment, deposit, or transfer: 6.5 percent of the value of credits not to exceed \$1,000 per establishment, deposit, or transfer; and
- (3) withdrawal fee: 6.5 percent of the value of credits withdrawn.

(b) The board may establish fees at or below the amounts in paragraph (a) for single-user or other dedicated wetland banking accounts.

(c) Fees for single-user or other dedicated wetland banking accounts established pursuant to section 103G.005, subdivision 10i, clause (4), are limited to establishment of a wetland banking account and are assessed at the rate of 6.5 percent of the value of the credits not to exceed \$1,000.

(d) The board may assess a fee to pay the costs associated with establishing conservation easements, or other long-term protection mechanisms prescribed in the rules adopted under subdivision 1, on property used for wetland replacement.

Subd. 15 Fees Paid to Board. All fees established in subdivisions 9 and 14 must be paid to the Board of Water and Soil Resources and are annually appropriated to the board for the purpose of administration of the wetland bank and to process appeals under section 103G.2242 subdivision 9.