



MEMO

Date: June 27, 2013

To: WCA Local Government Units (LGU)
Soil and Water Conservation Districts
Other interested individuals and stakeholders

From: Les Lemm
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Subject: Interagency MOU for the Administration and Use of the MN Agricultural Wetland Bank

For over a year now, BWSR and the USDA Natural Resources Conservation Service (NRCS) have partnered on the establishment of a Minnesota Agricultural Wetland Bank (Ag Bank). The Ag Bank initiative has seen early success, with 414 acres of credit approved to date and a substantial demand for credits. Many of you have been involved in providing assistance and/or approving bank sites or the use of credits. Information regarding the approval and allocation of credits for Ag Bank sites is available on the BWSR website. Specific criteria and procedures for use of the Ag Bank for mitigation have now been established as well.

On June 26th, a memorandum of understanding (MOU) for the administration and use of the Ag Bank was signed by BWSR Chair Brian Napstad and NRCS State Conservationist Don Baloun. The MOU took effect today, June 27th, except for a provision providing for a Wetland Conservation Act (WCA) exemption that will not take effect until 30 days after publication in the State Register. The MOU is located on the BWSR WCA web page and under Agricultural Wetland Banking at the following link:
http://www.bwsr.state.mn.us/wetlands/agbanking/BWSR-NRCS_Ag_Bank_MOU_signed_6-26-13.pdf.

The MOU has three primary outcomes:

- 1. Defines the wetlands that can use the Ag Bank for mitigation.** These wetlands include farmed wetlands (FWs), WCA exempt wetlands, and other degraded wetlands determined by a functional assessment. These criteria take effect today, June 27, 2013.

The goals of the Ag Bank use criteria are to:

- allow the use of the Ag Bank (and related flexibility) for farmed wetlands and other degraded agricultural wetlands, while continuing to protect and discourage the drainage of larger and/or higher quality wetlands,
- ensure that the functions gained from the Ag Bank are greater than the functions lost from the impacts, and
- establish similar criteria for farm program participants and non-program participants.

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- 2. Establishes applicable bank service areas and replacement ratios for the Ag Bank.** The Ag Bank will continue to use the existing bank service areas (BSAs). However, the replacement ratio for the ag bank is 1:1 within the same BSA, 2:1 in an adjacent BSA, and not allowed in a non-adjacent BSA. Existing ag banks will be “grandfathered in” under current replacement ratio policies, as they were established prior to the MOU. BWSR will establish a list of those banks. The replacement ratios and BSA restrictions will apply to all new ag bank sites and credit transfers approved after June 26, 2013.

The goals of the replacement ratio provisions are to:

- use a consistent, watershed-based approach to replacement siting,
- offset the influences of statewide land value variation on credit price,
- encourage ag bank establishment in all areas of the State where ag impacts occur, and
- be fair to current bank owners.

- 3. Establishes a WCA Exemption for NRCS-approved projects that use the Ag Bank for mitigation.** BWSR’s authority for establishing this exemption is contained within MN Stat. § 103G.2241, Subdivision 1(7). It is different than a typical exemption, however, because the wetland impacts are being replaced. In effect, it works more like a “general permit” that eliminates the need for obtaining LGU approval when NRCS has approved a project that uses the Ag Bank for mitigation.

The new “*Application for Replacement of Agricultural Wetland Impacts Using the Minnesota Wetland Bank*” form allows for the sharing of pertinent information, so the LGU and BWSR staff will be notified of credit withdrawals and will be able to verify that mitigation for a project has been approved by NRCS. This portion of the MOU will take effect 30 days after publication in the State Register. We will notify you when the exemption takes effect (expected on or around August 7th).

The goals of the exemption are to:

- eliminate multiple public agency review/decisions on the same project and improve programmatic efficiency and consistency,
- reduce some of the workload for LGUs in agricultural areas, and
- allow BWSR and LGU staff to focus more on promoting and providing assistance to landowners in the establishment of good bank sites, while NRCS handles the majority of agricultural wetland mitigation project approvals.

Note that this exemption only applies to agricultural land that is subject to Swampbuster for which the landowner has obtained approval from NRCS and purchased/withdrawn credits from the Ag Bank. Land that is not subject to Swampbuster, and wetland mitigation projects that do not meet these criteria (nor qualify for another WCA exemption), do not qualify for the MOU exemption and must obtain LGU approval just as in the past.

Please review the MOU (see above link) for the specific details. Additional information regarding implementation of the MOU will be provided when the exemption takes effect, and will also be incorporated into future training opportunities. Please contact your BWSR wetland specialist with any questions.

Thank you.

8-7-13 Update: The MOU was published in the State Register on July 8, 2013, and the WCA agricultural exemption took effect today, August 7, 2013. As of today, NRCS-approved wetland impacts completed and replaced in accordance with the criteria described in the MOU will not require separate approval by the WCA LGU. Please contact your BWSR Wetland Specialist if you have any questions.

Note: The MOU and WCA exemption contained in it only apply to the implementation of WCA and Swampbuster. Landowners who propose impacts to wetlands jurisdictional to the Federal Clean Water Act (404) must comply with all related federal regulations and permit requirements of the U.S. Army Corps of Engineers, St. Paul District (Corps). It is the landowner's responsibility to obtain and comply with all necessary Corps permits. For more information, see: <http://www.mvp.usace.army.mil/>