



Local Road Wetland Replacement Program: Notification of Wetland Bank Service Area Opening

March 10, 2017

Effective March 11, 2017, the Board of Water and Soil Resources (BWSR) will provide wetland replacement statewide for eligible county, city and township road projects under the Local Road Wetland Replacement Program (LRWRP). The four wetland bank service areas (BSAs) that were previously closed or proposed to be closed are now open.

Background

BWSR adopted a Management Plan for the LRWRP on October 27, 2016. This Plan was adopted to strategically manage the remaining wetland credits in the LRWRP given the shortage of credits that resulted from systemic underfunding of this program. The Plan includes the following measures:

- Ended the practice of using credits from one BSA to replace eligible impacts in another BSA: and
- Established a process to close and open BSAs for providing wetland replacement based on the amount of credits available in that BSA.

Since adoption of the Plan, BWSR has closed or proposed closing the following wetland bank service areas:

- BSA 4 – Upper Red River (Effective December 2, 2016)
- BSA 6 – St. Croix River (Effective December 2, 2016)
- BSA 9 – Minnesota River (Effective February 2, 2017)
- BSA 7 – Middle Mississippi River (Effective March 15, 2017)

Status

The Minnesota Legislature has responded to the funding shortfall by passing legislation that has been signed by Governor Dayton. Laws of Minnesota 2017, Chapter 7 (HF434/SF326) contains the following provisions relevant to the LRWRP:

Section 1. Until BWSR establishes wetland bank credits in all BSA's that are adequate to meet the statutory obligation to replace wetland impacts resulting from eligible county, city and township road projects:

- (1) It must use wetland credits from one BSA to meet the wetland replacement obligation for local roads to the extent permitted under state and federal law; and
- (2) The draining and filling of wetlands for local road projects determined to be eligible for the LRWRP are exempt from replacement when authorized by a Clean Water Act Section 404 general permit and compensatory mitigation under the Section 404 program is not required.

Section 2. \$5.0 million is appropriated to BWSR to acquire wetland credits for the LRWRP.

Immediate Changes

This legislation and its associated funding will result in the following changes to BWSR management of the LRWRP.

Statewide Wetland Replacement will be provided for eligible projects

The immediate availability of funding, combined with Section 1, paragraph (1) eliminates the need for the Plan adopted by the BWSR Board on October 27, 2016. This means that BWSR will return to the practices employed prior

to the adoption of the Plan and use LRWRP credits to replace all eligible county, city and township road projects consistent with federal or state law.

This change should have little immediate impact on implementation of the LRWRP:

- Since the current replacement credit shortage leaves little potential to use credits from adjacent BSAs because of restrictions imposed under both state and federal law; and
- As project review and reporting requirements remained in place during implementation of the Plan, and only one project was formally notified that replacement would not be provided by the LRWRP.

Given the passage of this legislation, the BWSR Board will consider rescinding the Management Plan at its March 22, 2017 meeting.

Clean Water Act Section 404 General Permit Exemption

Section 1 paragraph (2) effectively exempts certain LRWRP eligible county, city, and township projects from needing to obtain WCA replacement when those projects are authorized by a Section 404 general permit and for which compensatory mitigation is not required under Section 404. Note that this does not affect the reporting of project impacts to BWSR. BWSR will obtain verification from the Corps of the Section 404 general permit authorization to proceed with compensatory mitigation and to ensure that replacement credits are not used for these activities.

Short-Term Actions

Purchase of Existing Credits from the Wetland Bank

BWSR has been appropriated \$5.0 million in State General Funds to acquire wetland credits currently available in the Wetland Bank to meet the immediate needs of the LRWRP. BWSR's goal is to ensure that a minimum one-year supply of credits is available in all wetland bank service areas based on historical program usage. Wetland credits will be acquired through a request for proposals process that will begin in late March and conclude with the acquisition of credits in May.

BWSR will continue to monitor the wetland credit status of each BSA and, to the extent funds and wetland credits are available, make additional acquisitions as the need arises.

Finally, BWSR will continue to coordinate regulatory processes associated with wetland replacement for local road projects as we have always done with the Corps. This coordination is important to make sure that local road projects are not delayed due to these processes.

Longer-Term Actions

The appropriation made in Laws of Minnesota 2017, Chapter 7 is a short term fix to the systemic funding shortfalls this program has experienced. Substantial additional funding is required this year, and continuing in future years, to develop wetland credit balances in all BSAs at a level that provides stability and confidence that this program will have the capacity to comply with statutory obligations and meet the needs of local road authorities.

To this point, Governor Dayton has proposed \$10 million in the capital budget for the LRWRP, and several bills have been introduced that include this level of funding.

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