



# MINNESOTA IN- LIEU FEE PROGRAM PROSPECTUS

**m** BOARD OF WATER  
AND SOIL RESOURCES

prepared by  
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## Introduction

This prospectus addresses, to the greatest extent possible at this point in the review/development process, the establishment and operation of an in-lieu fee (ILF) mitigation program in the State of Minnesota. As the sponsor of the program, the Minnesota Board of Water and Soil Resources (BWSR) is seeking to establish an ILF program that will eventually operate throughout the State of Minnesota providing credits for the Local Government Road Wetland Replacement Program (LGRWRP) and non-LGRWRP projects in need of wetland credits (referred to as private banking in this document). However, this Prospectus, and any future submittals associated with the review of the program instrument, will be focused exclusively on Bank Service Area 6 (St. Croix River) with respect to the Compensation Planning Framework (CPF) requirement in the Federal Mitigation Rule. BWSR intends to amend the ILF program instrument in the future to expand the scope of the ILF into other bank service areas (BSAs) in Minnesota as other CPFs are completed.

## Objectives (33 CFR 332.8(d)(2)(i))

The primary objective of the Minnesota's In-Lieu Fee program (ILF) is to provide high quality and sustainable mitigation (replacement) to offset the loss of aquatic resource functions resulting from authorized impacts. The ILF will provide high quality mitigation credit through strategic site selection based on a watershed approach that incorporates stakeholder input. Mitigation credits generated through restoration, enhancement, creation, and preservation activities may be used to satisfy mitigation requirements under the Minnesota Wetland Conservation Act (WCA), Section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act of 1899. Specific objectives of the program include the following:

- Provide a timely and flexible source of mitigation credits for the LGRWRP in bank service areas where credit demand has exceeded the supply of banked credits;
- Provide a timely and flexible option for mitigation credits when the required amount of mitigation bank credits are not available to the public from the private banking market;

## Establishment and Operation of the ILF (33 CFR 332.8(d)(2)(ii))

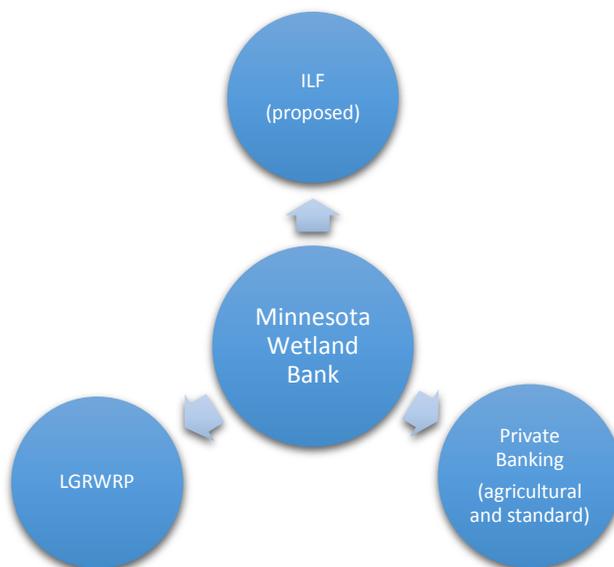
The State of Minnesota has a long history in the oversight and regulation of private wetland banking activity and in the development and establishment of mitigation sites. The current state wetland banking system was authorized in 1993 by Minnesota Statute 103G.2242 and is referred to as the Minnesota Wetland Bank (MWB). The MWB consists of two main functional areas: private banking and the LGRWRP. Private banking typically refers to mitigation completed in advance of the impact by individuals or organizations as a for-profit endeavor.<sup>1</sup> In recognition of certain program and policy differences associated with specific types of private banking, BWSR has divided it into two types: the agricultural wetland bank (a single user bank) and standard wetland banks. BWSR is the state agency responsible for administration of the MWB, including compliance with the specific requirements and procedures in WCA (MN Rule 8420). The ILF would add a third functional area to the MWB that will address situations where the appropriate number and/or type of credits are not available in a BSA

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<sup>1</sup> Mitigation banking is also undertaken by individuals or entities who use the credits exclusively for their own mitigation requirements.

where impacts occur (see Figure 1). The ILF would be positioned to provide advanced credits to the LGRWRP and the standard banking market when more preferred forms of wetland mitigation are not available to applicants in a BSA serviced by the ILF program. BWSR is not proposing that the ILF be accessible to offset impacts to wetlands associated with agricultural activities unless advanced or released credits are purchased as standard wetland bank credits.<sup>2</sup> BWSR does not intend to develop agricultural specific bank credits under the ILF.

**Figure 1**  
**Minnesota Wetland Bank Functional Areas**



Although the MWB was created to facilitate wetland replacement under WCA, it has evolved and matured alongside the federal mitigation program in Minnesota. Mitigation sites developed by bank sponsors are reviewed concurrently under both the state and federal programs and most approved sites result in credits that satisfy either program's mitigation requirements. The ILF program described in this Prospectus would provide advanced and released credits that would satisfy both WCA and Section 404 program requirements. Following program approval, BWSR intends to synchronize and simplify the review process for mitigation sites as much as possible through effective agency coordination and by recognizing and addressing potential programmatic differences early in the site development process.

### Use of ILF Credits

Once the final program instrument is signed, the ILF will be integrated into the MWB and advanced credits will be released and made available for purchase for both the LGRWRP and the private banking

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<sup>2</sup> BWSR does not intend for the ILF to generate credits using methods that are unique to the agricultural wetland bank (e.g. conservation reserve program rollovers). However, BWSR may choose to accept funds for advanced credit sales that are not associated with 404 regulated impacts. These sales and funds received would be tracked as supplemental ILF income as described later in this Prospectus.

market.<sup>3</sup> Advanced ILF credits will be shown on the available credit tool on the BWSR website and will also be identified as an option for Corps Project Managers as part of the interagency coordination that takes place during review of local road improvement projects that are eligible for the LGRWRP. The number of advanced credits for each BSA will be identified in the program instrument and will be based on BWSR's analysis of mitigation needs and the LGRWRP average annual demand calculated based on a 10-year rolling average (see the Compensation Planning Framework Section of this Prospectus for additional information on determining the amount of advanced credits).

Operationally, advanced credits will be used in two ways: (1) to address specific needs in a BSA resulting from a shortage of wetland bank credits in the private banking market; and, (2) to address LGRWRP wetland credit shortages. Outside of these two situations, BWSR does not intend to make available advanced credits for sale to permittees to satisfy WCA and/or Section 404 mitigation requirements. Each of these situations is discussed in more detail in the following paragraphs. Information on the collection and management of ILF funds is provided in the In-Lieu Fee Program Account Section of this Prospectus.

#### ILF Credits in the Private Banking Market

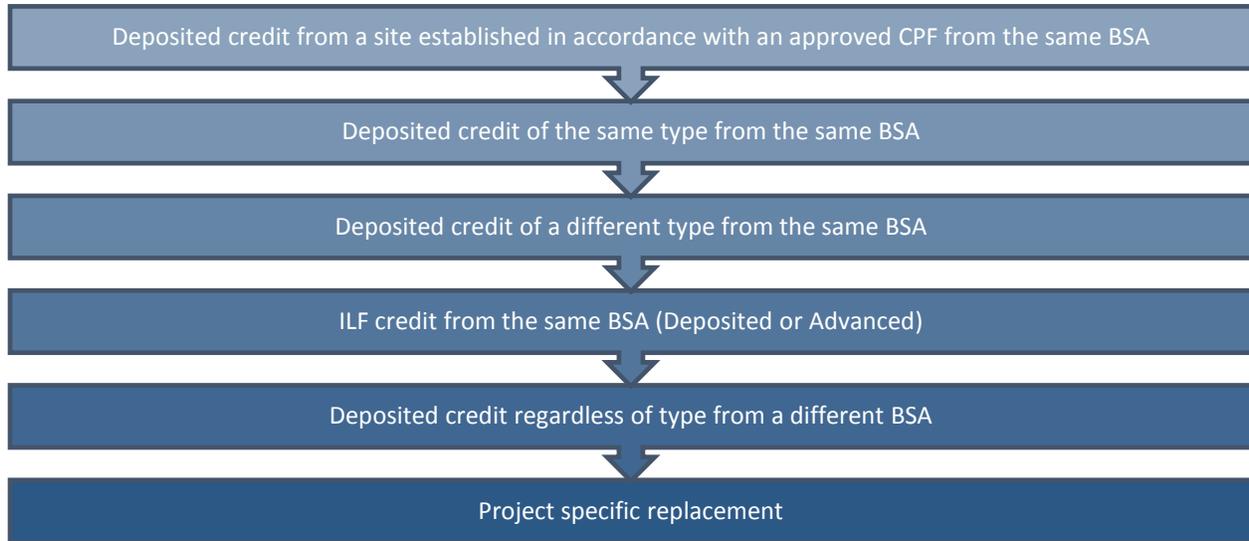
Consistent with BWSR's programmatic goal to avoid competition with the private banking market in Minnesota, the availability of ILF credits (both advanced and released) will be restricted to situations where an applicant demonstrates, with concurrence of the WCA local government unit and the Corps Project Manager, that there are no other practicable mitigation opportunities available using the mitigation sequencing hierarchy provided in Figure 2. Sales of advanced credits will not occur until the WCA LGU and Corps Project Manager independently reach a decision/determination under the respective programs that ILF advanced credits are the most practicable mitigation option available. In situations where mitigation is not required under WCA or by the Corps then approval under that program would not be required for the use of ILF credits.

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<sup>3</sup> BWSR would need to complete rule making prior to advanced credits being made available in the private banking market.

The hierarchy in Figure 2 is BWSR’s preferred operational scenario for the ILF. Consideration was given to making ILF credits accessible to applicants in situations where credits of the same type were not available in the BSA of impact (thus moving ILF credits up from the fourth position in the hierarchy to the third position). However, we are not in favor of this for several reasons. First, BWSR’s intent in operating the ILF in the private banking market is primarily to address situations where mitigation would be exported out of the BSA of impact if advanced credits were not available, or, to use federal

**Figure 2**  
**Wetland Mitigation Preferential Hierarchy for Private Banking**



terminology, to address only the in-place component of mitigation. BWSR is not proposing that ILF advanced credits be used to address issues associated with the type of credits available, or the in-kind component of mitigation siting. Second, utilizing the ILF credits to address in-kind replacement deficiencies in the private banking market will be viewed unfavorably by the banking community because it will be perceived, correctly or incorrectly, as competition with private banking. We also see potential issues with practicability determinations involving the cost of credits since ILF credits will most likely be available for less than what private bank credits will be sold. Finally, as CPFs are developed we anticipate that there will be less focus on the specific type of credit so long as the credit is generated consistent with the CPF. Therefore, we are reluctant to put forth an operational hierarchy that has components that would be rendered unnecessary or obsolete as the ILF program matures. In light of these considerations, BWSR is proposing the hierarchy in Figure 2 as the standard for determining when ILF credits can be accessed in the private banking market.

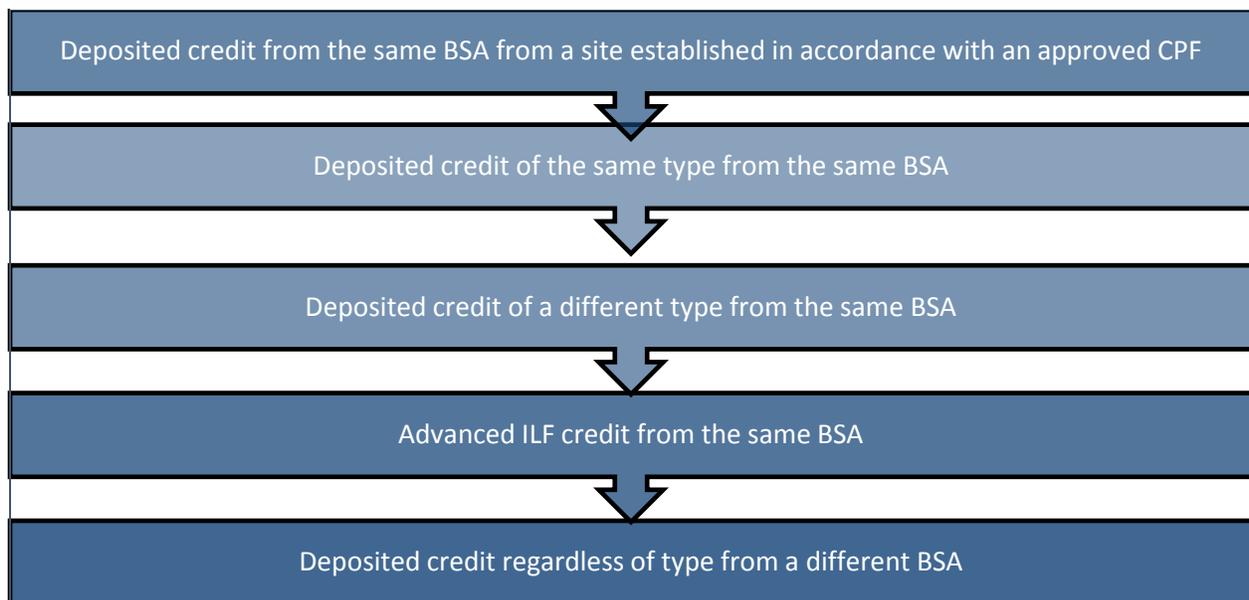
#### ILF Credits for the LGRWRP

The LGRWRP provides wetland mitigation for local road improvement projects with eligibility for the program determined by the road authority with oversight from BWSR and the Technical Evaluation Panel in the area where the impacts occur. Although the LGRWRP has historically been able to operate with an ample supply of wetland credits to satisfy mitigation requirements, funding shortfalls, fluctuations in credit demand, and uncertainties associated with mitigation bank site construction and

credit delivery timeframes have resulted in LGRWRP credit shortages in many BSAs. The ILF will address the immediate need for credits for the LGRWRP through advanced credit sales. When insufficient credits are available in LGRWRP wetland bank accounts, BWSR will purchase advanced credits from the ILF and apply them towards mitigation requirements for LGRWRP eligible projects under WCA and Section 404.

Figure 3 presents the proposed mitigation hierarchy for the LGRWRP. In this figure, a deposited credit can either be one from a mitigation bank site or one generated from an ILF site. As depicted in the figure, BWSR prefers that deposited credits within the same BSA be given priority over advanced credits from the ILF. We believe this is necessary to allow for a transition from banking in the absence of a CPF to a future condition where all credits would be developed consistent with the CPF. The hierarchy in Figure 3 would allow credits from existing and in-development LGRWRP wetland banks to be used before advanced credits from the ILF. Although this is, on the surface, inconsistent with current St. Paul District mitigation policy, it would allow for a timely and efficient transition to CPF guided credit development and would allow the LGRWRP to exhaust its supply of existing wetland bank credits before committing to development of additional credits.<sup>4</sup> The hierarchy also includes the option to utilize credits from an adjacent BSA when there are no other options available. Although BWSR’s goal is to manage the LGRWRP in a manner that would avoid this situation, the unpredictability of funding for the program and the constant demand for credits makes this situation a reality that should be recognized in the ILF instrument.

**Figure 3**  
**Wetland Mitigation Preferential Hierarchy for the LGRWRP**



<sup>4</sup> There is the potential for flexibility with this operational scenario. For example, if the Corps determined that an impact to a rare or difficult to replace wetland type should not be offset with a certain type of wetland credit in an existing bank account then BWSR would be amenable to using an advanced credit as the source of mitigation.

The sale of credits will be accomplished through a transfer of LGRWRP funds to a dedicated account set up specifically for the ILF using the credit price established in the approved instrument. Once advanced credit purchases have occurred, BWSR will move forward with identifying and developing mitigation sites as required by the Federal Mitigation Rule. We anticipate that the mitigation site development process would typically begin within two years of the purchase of advanced credits because site development activities in BSAs with low credit balances would already be prioritized in the LGRWRP and program funds would be available to supplement the funds from advanced credit sales in pursuit of a viable project. Any LGRWRP funds provided to the ILF in excess of the amount required for the purchase of advanced credits would be tracked separately to validate the credit sales price and/or to provide a basis for adjustment of the credit price as part of the annual review of the ILF. After repayment of the advanced credits used to offset project impacts, any excess credits would be identified as released credits in the ILF account. Released credits generated using supplemental LGRWRP funds would not be available for sale to the public unless the purchaser was a local road authority seeking credits for a local road project that was not eligible for the LGRWRP.

### ILF Site Selection and Corps Approval of Program Account Disbursements

All site selection processes would stem from the priorities and high priority areas identified in the CPF. BWSR's intent is to move forward with a process to generate wetland credits specifically targeting the priority areas identified in the CPF within two years of the sale of advanced credits. BWSR has used several different approaches to develop mitigation sites and will draw on our past experiences with these approaches to identify and pursue sites under the ILF. Using the CPF as a guide, BWSR will coordinate with local governments with jurisdiction in the CPF high priority areas to identify potential project sites. If no project sites are identified through this coordination process, BWSR will prepare a request for proposal (RFP) that describes the program needs in the BSA and requirements for partnering with BWSR. Prior to release, the RFP will be coordinated with the Corps to obtain concurrence that the RFP is targeting sites consistent with the CPF and will result in the identification of sites that, from a planning perspective, would satisfy the Federal Mitigation Rule requirement for fulfilling advanced credits.

Potential ILF sites that are identified through these processes will be independently evaluated and ranked by BWSR with respect to the following criteria: consistency with the CPF, credit potential, cost, technical feasibility, and sustainability. The results of the BWSR evaluation will be shared with the Corps along with a recommendation for which projects the Corps should approve for the disbursement of program funds associated with the sale of advanced credits. Once the Corps approves the use of funds for a ILF site, BWSR will proceed with the site development process, including preparation of a mitigation plan in accordance with WCA and 33 CFR 332.8(j)(1), utilizing one of the following methods.

### BWSR Managed Sites

BWSR enters into an agreement with a landowner to complete a project on their land that generates compensatory mitigation credits for the ILF program. Under this option BWSR prepares the mitigation plan for the site and is responsible for design, construction, and monitoring.

### BWSR Owned and Managed Sites

BWSR has statutory authority to acquire land in fee title for the purpose of restoring wetlands to generate credits. Unlike other options where BWSR would have an interest in a site through a conservation easement in favor of the state, this option would involve acquiring the land where the restoration would occur. BWSR would prepare the mitigation plan for the site and also be responsible for design, construction, and monitoring.

### Third Party Managed Sites

Under this option BWSR enters into an agreement with a landowner, and the landowner (or another entity that has secured the appropriate rights from the landowner) has responsibility for preparation of the mitigation plan as well as design, construction, and monitoring. In accordance with the agreement, BWSR pays for credits as they are approved for release to the ILF account.

### Partnerships

Another option is to partner with a local government unit, soil and water conservation district, or landowner to jointly develop a mitigation site. The financial contribution and associated number of credits would be closely tracked to ensure that ILF funds are resulting in the required amount of mitigation. Partnership style projects take advantage of the capabilities and manpower of each partner where there are available resources and a need for wetland credits. These projects maximize economies of scale for wetland mitigation projects by facilitating the pursuit of larger projects. Partnerships are an attractive option in the northeast, non-agricultural areas of the state where BWSR payments for conservation easements are lower, as a split of credits can provide additional incentive for the landowner.

### Wetland Credit Purchases

Although not anticipated, in certain circumstances BWSR may need to purchase credits from private wetland banks in order to fulfill advanced credit commitments within the timeframes specified in the Federal Mitigation Rule. BWSR has an established credit delivery process that has functioned well through the history of the LGRWRP but there may be situations where, because of external factors beyond the agency's control, the purchase of wetland credits in the private banking market may be the preferred method for repayment of advanced credits.

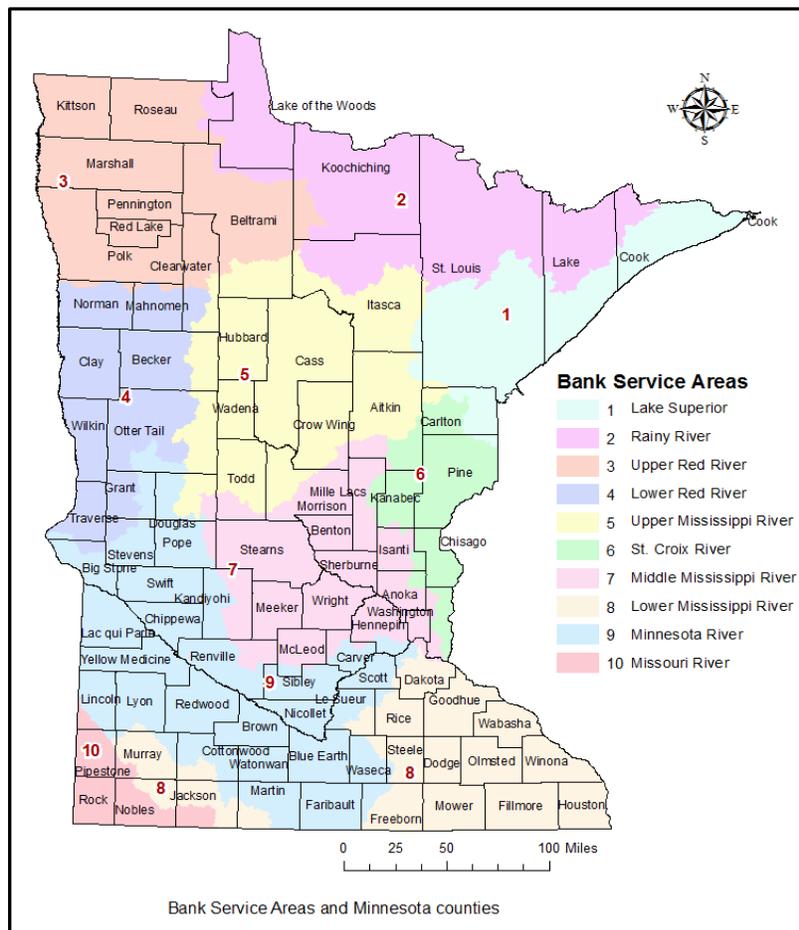
Funds collected through the sale of advanced credits may be supplemented through funding from the LGRWRP or the Minnesota Department of Transportation (MNDOT) to maximize the cost effectiveness of producing wetland credits. This approach will fulfill the advanced credit obligation and develop additional credits that, when released, will remain in the ILF account as released credits but will be specifically reserved for future LGRWRP or MNDOT needs within the respective BSA. As discussed in the Management of Funds and Accounting Section of this Prospectus, BWSR will maintain accurate and detailed project accounting records for each ILF site to validate credit costs for the program and to document the use of collected funds for repayment of advanced credits versus supplemental funds provided to generate additional credits.

### Proposed Service Areas (33 CFR 332.8(d)(2)(iii))

The ILF is intended to operate statewide when fully developed. The service areas will be consistent with those used by BWSR and the Corps for the WCA and Section 404 programs. The current BSAs in

Minnesota are identified on Figure 4. In the event that BSA boundaries are modified in the future, the ILF will be amended to recognize the revised boundaries.<sup>5</sup> BWSR has decided to implement the ILF on a BSA by BSA basis to make the initial program development review process more manageable, reduce agency review timeframes, and take advantage of ongoing watershed planning efforts in other parts of the state. Therefore, the current scope of the ILF will be focused exclusively on BSA 6. BWSR has also begun working on compensation planning frameworks for BSAs 4 and 9 and intends to add these and other BSAs to the ILF as the CPFs are completed.

**Figure 4**  
**Minnesota Bank Service Areas**



## General Need and Technical Feasibility (33 CFR 332.8(d)(2)(iv))

The LGRWRP was established in 1996 in response to State legislation directing BWSR to provide compensatory mitigation on behalf of public road authorities for impacts associated with the repair,

<sup>5</sup> This will be accomplished prior to program approval by updating the draft or final instrument or through a modification after approval.

rehabilitation, reconstruction, or replacement of currently serviceable existing state, county, or township public roads to meet state or federal design or safety standards. The program has since been providing compensatory mitigation to meet WCA replacement requirements while also satisfying most federal requirements under Section 404 of the Clean Water Act.

In or around 2009 the Corps and BWSR agreed that the LGRWRP would operate more efficiently under the Federal Mitigation Rule as either an umbrella mitigation bank or as an ILF. Neither option represented a perfect fit for the LGRWRP, but the ILF program emerged as a more attractive option to BWSR for three reasons. First, in the event that there was a shortage of credits, an ILF program would have access to advanced credits which would immediately provide credits for the LGRWRP provided that BWSR has adequate funding available to pay for the credits as they are withdrawn. The need for advanced credits was realized in 2016 and 2017 when several BSAs ran out of credits and several others had balances reduced to levels that would be insufficient to meet the average annual forecasted program demand. Using a traditional wetland banking model, where individual projects typically take a minimum of three years to begin delivering credits, the LGRWRP will be experiencing credit shortages for at least the next three to five years (assuming that sufficient funding is provided to restore an ample supply of credits). Second, establishing the LGRWRP as an ILF will streamline the review process for ILF sites. After program approval, sites developed as part of the ILF have a somewhat abbreviated review process under the Federal Mitigation Rule since the focus is on the mitigation plan itself and not the more programmatic content (land protection, long-term management, etc.) which would have already been approved as part of the ILF program instrument. The third reason that made ILF a more attractive option is the requirement for CPFs. Although a CPF requires a considerable amount of up-front analysis and documentation, BWSR believes that watershed planning can measurably improve the overall quality and value of wetland mitigation in Minnesota and development of the CPF will allow BWSR to integrate it into not only the LGRWRP but to all areas of wetland mitigation. In the future, we envision the CPF will function as a decision making tool for not only the ILF site prioritization and selection, but also for private banking. Thus, establishing the LGRWRP as an ILF will provide BWSR greater flexibility in meeting program demands, streamline the review and approval of mitigation sites, and serve as a vehicle for integrating watershed planning into the decision making process for all forms of wetland mitigation in Minnesota.

BWSR is uniquely situated in Minnesota as an agency involved in the review of wetland banks under WCA, as an IRT member under the Federal Mitigation Rule, and also as the largest wetland banker in the state via the LGRWRP. As an agency, BWSR has been performing most of these functions for over twenty years. The staff supporting the wetland banking program at BWSR have considerable experience in the identification, planning, design, and construction of wetland mitigation sites. This collective experience will be the basis for the technical aspects of the ILF implementation. Technical staff involved in program implementation will include engineers, soil scientists, botanists, biologist, ecologists, and environmental scientists.

## Ownership Arrangement and Long-term Management Strategy (33 CFR 332.8(d)(2)(v))

The land on which ILF sites are constructed will typically not be owned by BWSR. However, all of the sites would be required to have a recorded, perpetual conservation easement giving both the State and U.S. Government the right to enforce the easement conditions. The landowner will be responsible for maintenance of the project site in concert with the conservation easement. Enforcement of easement conditions will be the responsibility of the ILF sponsor. This arrangement is identical to the framework currently used for wetland banking in Minnesota.

After the initial monitoring period is completed, ILF sites will be monitored on an approximate five year interval to assess compliance with the conservation easement. Sites with compliance issues, including encroachment and potentially failing structures, are identified and inspected to determine the need for corrective actions. Once identified, BWSR works with the landowners to correct the problem and ensure that the site is maintained in accordance with the approved bank plan. In 2015, BWSR was granted statutory authority to charge a fee for the stewardship of wetland bank easements and will receive a percentage of the account balance each year to help pay for easement monitoring and enforcement. Until sufficient funds have been collected through the easement stewardship fee, BWSR funds the inspection program through other program funds.

Currently, long-term management accounts are typically not required in Minnesota because of the high level of involvement from the state in the review and oversight of constructed bank sites. However, it is a long-term goal for BWSR to pursue authority for a long-term management fund for the MWB that would be used for maintenance and corrective actions at sold-out bank sites to maintain their high level of function into the future. A statute change in 2015 does impose a requirement that any ILF program established by BWSR must conform with 33 CFR 332.8 but it is unclear if that could be construed as an authority to establish long-term maintenance accounts. BWSR is seeking a legal opinion regarding the scope of this requirement in statute and will address long-term management accounts in the draft program instrument consistent with the feedback received from the State of Minnesota Attorney General's Office. Until long-term management accounts can be legally established, BWSR will rely on its vast experience with wetland restoration projects in Minnesota to avoid and discourage mitigation sites that are reliant on structures and/or that are not sustainable over the long-term. On a case-by-case basis and to the extent the law allows, BWSR may require or establish a long-term management account for sites that have a higher potential to require maintenance in the future.

## Qualifications of the Sponsor (33 CFR 332.8(d)(2)(vi))

BWSR is the State's soil and water conservation agency. It administers programs that prevent sediment and nutrients from entering the State's lakes, rivers, and streams; enhance fish and wildlife habitat; and protect and restore wetlands. The 20-member board, consisting of representatives of local and state government agencies and citizens, sets a policy agenda designed to enhance service delivery through partnerships with local governments. Board members, including the board chair, are appointed by the governor to four-year terms. The board is the state's administrative agency for 90 soil and water conservation districts, 46 watershed districts, 23 metropolitan watershed management organizations, and 80 county water managers.

The BWSR mission is to: “Improve and protect Minnesota's water and soil resources by working in partnership with local organizations and private landowners.” Core functions include implementing the State's soil and water conservation policy, comprehensive local water management, and the Wetland Conservation Act.

As a State agency, BWSR has the authority to administer an ILF program, establish compensatory wetland mitigation sites, and accept conservation easements on behalf of the State of Minnesota. BWSR also has specific statutory authority to develop rules for the implementation of WCA and the State wetland banking program, and to provide compensatory wetland mitigation for eligible public road projects using bonding funds allocated by the legislature.

BWSR has hired and retained a pool of highly experienced staff to plan, design, construct, and manage wetland restoration projects. BWSR staff are located in nine field offices throughout the state. In addition to administrative and management positions, BWSR technical staff positions directly related to the implementation of wetland conservation and mitigation programs include: Wetland Specialists, Wetland Banking Specialists, Conservation Engineers and Technicians, Soil Scientists, Native Vegetation Specialists, Hydrologist, Easement Acquisition and Development Specialists, and Monitoring Specialists.

BWSR's local-state conservation delivery system also provides an opportunity to partner with and draw upon the expertise of local government staff with unique knowledge of local resource conditions and needs. This network includes over 400 local governments with various responsibilities in implementing State wetland conservation and/or regulatory programs. BWSR, together with the various local governments, have over 25 years of experience in restoring wetlands.

### Reinvest in Minnesota Program

In 1986, the Reinvest in Minnesota (RIM) Resources Act (M.S. 103F.505) was enacted to restore certain marginal and environmentally sensitive agricultural land to protect soil and water quality and restore fish and wildlife habitat. The RIM Reserve program, administered at the state level by BWSR, compensates private landowners for granting permanent conservation easements to restore and protect wetlands, adjacent native grassland wildlife habitat complexes, and riparian buffers on environmentally sensitive lands. RIM is the premier wetland restoration program in the State, and Minnesota is a national leader in wetland restoration. This program partners with public and private landowners, state, federal and local government entities, non-profit organizations, and the citizens of Minnesota. The Conservation Reserve Enhancement Program and the RIM-Wetland Reserve Program are examples of extremely successful state-federal program partnerships involving RIM.

BWSR is responsible for accepting applications, developing and accepting conservation easements, developing sustainable restoration design plans, project management and construction oversight, and long term monitoring and site inspections. Since 1986, BWSR staff have been involved with the establishment of more than 5,500 permanent easements, restoring and protecting over 230,000 acres of wetland and related habitat through the RIM program. For more information, see the BWSR website at: <http://www.bwsr.state.mn.us/easements/index.html>

### Minnesota Wetland Bank

The current State wetland banking system was authorized in 1993 by MN Stat. 103G.2242. Specific requirements and procedures for the bank are established in WCA Rules (MN Rule 8420). BWSR is the

State agency responsible for administration of the Minnesota Wetland Bank. Specific BWSR staff responsibilities include ensuring compliance with WCA (including sustainable construction design standards), establishing and accepting permanent conservation easements, accepting credit deposits, recording transactions and accounting of credits, collecting transaction fees, and performing long-term inspections. For the LGRWRP, BWSR staff also identify suitable sites that meet the needs of the program, develop restoration plans, and provide construction oversight and overall project management. Since 1993, over 300 bank sites have been approved for a total of over 10,000 acres of wetland mitigation credit.

## Compensation Planning Framework (33 CFR 332.8(d)(2)(viii)(A))

As indicated previously, the program instrument submitted for approval of the ILF will only include a CPF for BSA 6 (St. Croix River). Following approval of the instrument, BWSR will continue to prepare and submit CPFs to the Corps for approval in accordance with the modification procedures in the Federal Mitigation Rule. The following subsections provide a general overview of the approach proposed for CPF development and the methodology for the determination of advanced credits. More specific information on each of these topics will be provided in the CPF prepared for each BSA.

### Overall Approach to CPF Development

In 2015, the State Legislature amended the Wetland Conservation Act to direct BWSR to designate “high priority areas” for wetland replacement (Minnesota Statute 103B.3355). High priority areas, or HPAs, refer to areas of the state where preservation, enhancement, restoration, or creation of wetlands would have high public value. This is similar in concept to the goals of the CPF in that they both are focused on improving the value of wetland mitigation to the watershed through an in-advance planning process. In recognition of the similarities between these state and federal requirements, BWSR intends to merge the HPA concept under WCA with the CPF process required for a federally approved ILF. In general, this would be accomplished by establishing the CPF as the agency (state and federal) approved document governing the identification and prioritization of mitigation sites in each BSA, including the identification of HPAs. During the CPF development process, BWSR will comply with the statutory requirement to identify HPAs by conducting the necessary agency coordination, reviewing existing water management and natural resource plans, and completing any necessary analyses in support of a watershed approach. BWSR will combine this information with other watershed analyses completed in support of the CPF to generate a comprehensive watershed based mitigation plan for the BSA. The completed CPF will comply with the requirements in the Federal Mitigation Rule and will specifically identify HPAs where wetland mitigation will be pursued under the ILF, and apply it to all forms of mitigation. Completed CPFs would be approved with the program instrument (for BSA 6) or as an amendment to the program instrument after the initial program approval. The HPAs contained in the CPFs would be formally recognized by BWSR Board approval. BWSR fully anticipates that approved CPFs will be periodically amended in response to completion or update of local/regional watershed plans, changes in wetland mitigation priorities, or as a result of additional stakeholder coordination or input.

To the extent practicable, CPFs will incorporate information from local or regional planning efforts, including watershed studies that are in progress or have been completed. BWSR staff will evaluate each plan or report that applies to the geographic area addressed by a CPF and use information, as

applicable, in the site selection and prioritization process. Some of the planning studies and/or processes that may be consulted in the development of CPFs include the following:

#### Local and Regional Watershed Plans

Local government units can identify HPAs through their planning processes and request that they be formally recognized by BWSR. If BWSR concurs with the recommendation for establishment of a HPA, the recommendation will be coordinated with the Corps as a proposed amendment to the ILF instrument to update the CPF for that BSA. In this way, the CPF will be the mechanism to bring local, state, and federal mitigation prioritization efforts together in one comprehensive planning document.

#### One Watershed One Plan

In 2012 the Legislature, acting on recommendations from the Local Government Water Roundtable, passed a law authorizing BWSR to adopt methods to allow comprehensive plans, local water management plans, or watershed management plans to serve as substitutes for one another; or to be replaced with one comprehensive watershed management plan. The law also required BWSR to establish a suggested watershed boundary for the plans. BWSR's vision is to align local water planning primarily on major watershed boundaries with state strategies towards prioritized, targeted, and measurable implementation plans. The plans developed under this program cover many of the same requirements for CPFs outlined in the Federal Mitigation Rule (baseline conditions, stressor identification, stakeholder input, and prioritization) and thus serve as excellent sources of information for the development of CPFs. BWSR is currently working on a pilot study in the Yellow Medicine River Watershed in BSA 9 to develop a CPF in a watershed with a completed one watershed one plan report (1W1P). Although additional information and analyses will need to be completed, BWSR's preliminary assessment is that the 1W1P process is compatible with, and complimentary to, CPF development.

#### Minnesota Prairie Conservation Plan

The Prairie Conservation Plan (PCP) focuses efforts on grassland and wetland and demonstrates unprecedented cooperation between federal agencies, state agencies and the state's most active conservation organizations. The PCP spans a geography that includes the Prairie and Forest-Prairie Transition Planning Sections used by the Lessard-Sams Outdoor Heritage Council. It includes spatially explicit recommendations for protecting, enhancing and restoring Minnesota's prairie heritage that detail acreage goals and realistic budgets for sustaining functional systems. The primary focus of the PCP is prairie habitat but it also addresses the restoration and conservation of wetlands and adjacent grasslands throughout the Prairie Region.

#### Minnesota Wetland Restoration Strategy

The Wetland Restoration Strategy was developed to provide a statewide perspective and improved approach for restoration of wetlands. The key elements of the strategy include prioritization based on desired outcomes, improved coordination of wetland restoration efforts, and emphasis on projects that are self-sustaining. From a project identification standpoint the strategy emphasizes restoration of wetland functions lost as a result of conversion or degradation through re-establishment, rehabilitation, and in some cases enhancement. These types of activities are targeted for the Prairie Parkland, Tallgrass Aspen Parklands, and Eastern Broadleaf Forest ecological provinces. Maintaining the high quality of existing wetland resources was emphasized in the strategy for the Laurentian Mixed Forest ecological province.

## Comprehensive Wetland Protection and Management Plans

Under Minnesota Statutes, section 103G.2243 a local government unit may develop a comprehensive wetland protection and management plan (CWPMP) as an alternative to the rules adopted under 103G.2242. The goal of a CWPMP is to maintain and improve the quality, quantity, and biological diversity of wetland resources within watersheds by prioritizing existing wetlands and strategically selecting wetland replacement sites. The purpose of developing a plan is to provide a watershed and ecosystem-based framework to make wetland impact and replacement decisions that meet state standards and locally identified goals, and to support the sustainability or improvement of wetland resources in watersheds while providing local flexibility.

## Total Maximum Daily Load Studies

The Total Maximum Daily Load, or TMDL, is the maximum amount of a pollutant a body of water can receive without violating water quality standards, and an allocation of that amount to the pollutant's sources. The TMDL process identifies all sources of a pollutant and determines how much each source must reduce its contribution in order to meet the standard. Once a body of water is added to the Minnesota Impaired Waters List, a TMDL must be developed for it. After impaired waters are listed, the Minnesota Pollution Control Agency organizes them into TMDL projects. Each project may contain one or more waterbodies or segments of a waterbody. Federal and state regulations and programs require implementation of restoration measures to meet TMDLs.

In general, the CPFs for the ILF will follow the outline presented in Table 1. Topics may be added or removed, as necessary, in response to the characteristics of the BSA that is being studied.

Table 1 ILF Compensation Planning Framework Outline	
Major Section Headings	Specific Topics Covered
I. Introduction	
II. Geographic Service Area	General description of the area covered by the CPF including major watersheds and subdivisions used in the analysis.
III. Baseline Conditions	Wetlands, lakes, watercourses, water quality, land cover, perennial cover, sensitive species, permitting data.
IV. Aquatic Resource Loss	Wetland loss, wetlands and wetland banking analysis
V. Description of Threats	Specific to area being studied but could include urbanization, invasive species, hydrologic alteration, and pollutant loading
VI. Stakeholder Involvement Plan	Coordination with watershed stakeholders and incorporating input into site selection.
VII. Prioritization Strategy for Selecting and Implementing Mitigation Activities	Statement of aquatic goals and objectives, high priority areas, identification and justification for preservation areas (if applicable)
VIII. Long-term Protection	
IX. Evaluation Strategy	

Completed CPFs will be approved as part of the ILF through the amendment process in the Federal Mitigation Rule. Once a CPF is approved, it will be added as an appendix to the program instrument. The table identifying the amount of advanced credits approved for each BSA will also be updated as CPFs are approved by the Corps.

A preliminary draft of the CPF for the St. Croix River watershed (BSA 6) is provided as a companion document to this Prospectus. Currently, BWSR has completed most of the background and baseline analyses in support of the CPF and has also completed some initial coordination with the stakeholders in the watershed. Work on prioritization and site identification has not been pursued at this time pending Corps approval of the baseline analyses and our proposed framework for conducting the identification and prioritization of mitigation sites in the watershed. Once the Corps has had the opportunity to review and comment on the work completed to date and the proposed framework BWSR will consider any necessary changes to the approach and move forward with the remainder of the CPF development process. We anticipate having the additional analyses completed at the time the draft ILF program instrument is submitted.

### Method for Determining the Amount of Advanced Credits

The initial quantity of advanced credits in each BSA will be based on an analysis of the predicted future impacts and the associated mitigation requirements for both the LGRWRP and other development activities in each BSA using a five year projection. The LGRWRP mitigation needs are based on the average annual demand for credits as determined by BWSR using actual program data collected for the previous 10-year period (a 10-year rolling average of LGRWRP demand). The most recent demand forecast is provided in Table 2. The advanced credits for other development activities will be calculated as an average annual demand based on within-BSA credit withdrawal data from approved mitigation banks in the service area over the previous 5 year period (using data obtained from the BWSR database).

Table 2 ILF Preliminary Estimate of Advanced Credits					
BSA	LGRWRP Avg. Annual Demand	LGRWRP Five Year Demand	Non-LGRWRP Annual Demand <sup>1</sup>	Non-LGRWRP Five Year Demand	Total Advance Credits <sup>2</sup>
1	7	35	TBD	TBD	Minimum 35
2	7	35	TBD	TBD	Minimum 35
3	29	145	TBD	TBD	Minimum 145
4	10	50	TBD	TBD	Minimum 50
5	22	110	TBD	TBD	Minimum 110
6	13	65	TBD	TBD	Minimum 65
7	50	250	TBD	TBD	Minimum 250
8	5	25	TBD	TBD	Minimum 25
9	28	140	TBD	TBD	Minimum 140
10	2	10	TBD	TBD	Minimum 10
<b>Total</b>	<b>173</b>	<b>865</b>	<b>TBD</b>	<b>TBD</b>	<b>Minimum 865</b>
Notes					

<sup>1</sup> – Non-LGRWRP demand will be determined for each BSA as CPFs are prepared and will be provided to the Corps when approval is requested.

<sup>2</sup> – Total advanced credits requested represents the sum of the five year forecasted demand for the LGRWRP and Non-LGRWRP demand.

Because credit release schedules for mitigation projects last beyond the five year timeframe used for determining the amount of advanced credits and because mitigation demand is somewhat unpredictable, it is anticipated that the number of advanced credits may need to be revised periodically in response to the variability in program demand. If adjustments are necessary for the ILF to meet demand, BWSR will request a modification of the ILF instrument with supporting information documenting the need for additional advanced credits.

### In-Lieu Fee Program Account (33 CFR 332.8(d)(2)(viii)(B))

The unique role BWSR plays in wetland regulation and management in the State of Minnesota makes the planned operation of the ILF program account different from most ILF programs. The most significant difference compared to other programs is that BWSR is both the ILF sponsor and also the entity responsible under state law for providing the mitigation for eligible wetland impacts associated with local road improvement projects. Thus, BWSR will be both the Sponsor and one of the entities acquiring credits from the ILF. Although it is also being established to function as a more traditional ILF (where funds are collected from third parties to fulfill mitigation requirements), the majority of transactions anticipated under the ILF will be associated with the LGRWRP and will consist of a movement of funds from a dedicated LGRWRP account to an ILF program account.

### Accounting of Funds

The ILF program account will consist of two distinct and separate subaccounts in the state of Minnesota financial management system that will track funds received in exchange for wetland credits (advanced or released). One subaccount will be established for funds associated with the purchase of advanced credits for the LGRWRP and the other subaccount will hold funds from all other transactions, including MNDOT and other third party credit purchases. Funds from each credit purchase will be deposited into the respective subaccount when credits are sold. Information for each approved transaction will be entered into a database developed specifically for the ILF and will, at a minimum, include the following: purchaser name and contact information, impact location information, impact wetland size and type, number of credits purchased, date of purchase, Corps permit number, WCA Local Government Unit, date the wetland credit was provided or repaid, and the name of the project(s) the credit was obtained from. Since there is the possibility that the ILF will be used to provide mitigation for wetland impacts where the Corps is not requiring mitigation, the database will also track whether the credit is satisfying a state and/or federal requirement, or both.

Credits purchased from the ILF for the LGRWRP will, in most cases, utilize funds provided by the Legislature (typically via biennial bonding appropriations). These funds require the money to be encumbered (committed) to specific projects within 3.5 years, a timeframe that fits well with the requirements for initiating mitigation site construction in the Federal Mitigation Rule. When LGRWRP coordination between BWSR and the Corps results in a determination that advanced credits are acceptable mitigation for a project or projects in a BSA with an approved CPF, BWSR will encumber the

requisite funds for the advanced credit purchase into a dedicated account specifically assigned to that BSA. Once the funds have been encumbered, the advanced credits can be used for eligible LGRWRP project impacts. The amount of funds required will be determined by multiplying the number of advanced credits requested by the BWSR derived price per credit in the BSA of impact. Based on our experience with completing wetland restoration projects throughout the state, we anticipate developing a BSA specific credit cost that will take into account land values, typical construction methods and project types, and other BSA specific factors that affect project costs. The anticipated credit costs for each BSA will be provided with the submittal of the final CPF for that BSA.

Funds acquired through the sale of credits for non-LGRWRP transactions will be placed into a separate account and tracked according to the BSA of impact. Funds will not be accepted, and transactions will not be processed, until BWSR has completed the coordination process with the Corps described in the Credit Tracking section of this Prospectus. The amount required for each ILF credit will be based on the derived price per credit in the BSA of impact.

### Management of Funds

Funds obtained through the sale of credits will be used to cover administrative expenses associated with management of the ILF and for project implementation.<sup>6</sup> BWSR currently uses 5% as a standard rate for administration of the LGRWRP and plans to use this amount for the ILF subject to future adjustments based on inflation, program evaluation, and other agency or legislative directives. The administrative rate will be further developed by BWSR during the ILF review process. All other funds collected through credit sales will be dedicated to credit development consistent with the description of allowable costs outlined in the Federal Mitigation Rule. On a recurring basis BWSR will assess the potential for pursuing a wetland restoration project in each BSA by evaluating the available funds in each BSA account against anticipated costs (easement acquisition, application and review, engineering design, and construction). In general, if the combined balance in the BSA account is less than the minimum level needed to complete a viable project (i.e. \$200,000) BWSR will defer pursuit of a project until one or more of the following occur to increase the amount of available funds: (1) additional funds are acquired through advanced credit sales, (2) supplemental funds are available to the ILF (see the following paragraph for an explanation of supplemental funds), or (3) project development must be initiated to comply with the requirements in the Federal Mitigation Rule. The periodic evaluation conducted by BWSR will be coordinated with the Corps as part of the program review process. If BWSR determines that sufficient funds are available to pursue a project, the site identification and selection process described in this Prospectus will be initiated.

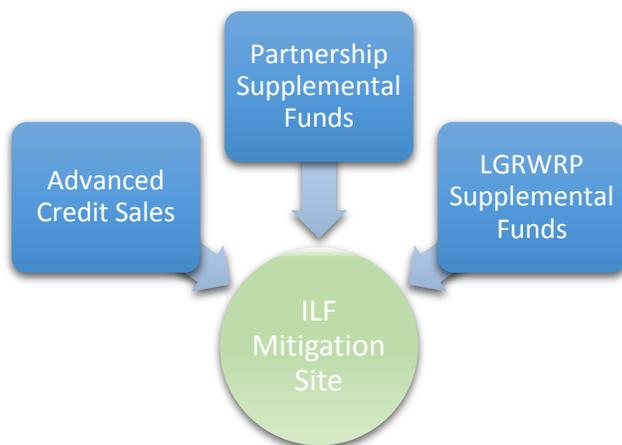
Given the funding challenges experienced by ILF programs nationwide, BWSR is including a mechanism for supplemental funding into the operation of the ILF. Supplemental funds are monies from outside the ILF that are contributed by BWSR or another source in order to pursue a project that could not otherwise be undertaken because of limited funds. Supplemental funds add flexibility to ILF programs and, when managed properly, are consistent with the requirements and restrictions in the Federal Mitigation Rule. Supplemented funding can be incorporated into the ILF in two ways. The first will be

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<sup>6</sup> BWSR is currently in discussions with Minnesota Management and Budget (MMB) to determine what costs can be reimbursed using LGRWRP bonding funds. Depending on the outcome of these discussions, the allocation of costs and use of funds under the ILF program may be revised.

through partnerships with other agencies, most likely MNDOT, who have a similar programmatic need to develop wetland credits. BWSR has considerable experience and success with projects involving partnerships with other state and local entities. Partnership projects typically involve cash or work in-kind contributions from each party with the resulting credits split between the partners based on their respective contributions. BWSR would remain the sponsor and would assume all responsibility for the establishment and operation of the mitigation site but credits generated by the project would be split between two accounts: one for the ILF with the required number of credits and one for the project partner. The credits in the partner's account would not be available for sale to third parties consistent with federal policy. The second supplemental funding mechanism for the ILF is additional funding from the LGRWRP. As discussed previously, BWSR will not purchase advanced credits from the ILF unless sufficient funds are available. Often, BWSR will have LGRWRP funding beyond that required for purchase of the advanced credits and could use these additional monies as supplemental funds to immediately initiate the site identification and development process. The excess credits generated from such a project, when released, would remain in the ILF and would be reserved for LGRWRP projects requiring mitigation in that BSA. In this capacity, the ILF would essentially serve as a vehicle to accelerate access to credits for the LGRWRP.

**Figure 5**  
**Potential Funding Sources for ILF Mitigation Sites**



Even with supplemental funding options built into the operation of the ILF there is still the possibility that insufficient funds would be available to construct a project within the timeframes established by the Federal Mitigation Rule. This is a commonly encountered problem of existing ILFs nationwide and one that BWSR believes should be addressed in the program instrument. Therefore, we are proposing the following as a means to address insufficient funds situations. Potential insufficient funds situations will be identified no later than eighteen months after an advanced credit sale. BWSR will track repayment timeframes and, when repayment of advanced credits seems improbable because of low fund balances within a BSA, will notify the Corps of the situation and provide a list of potential options for repayment of the advanced credits. Alternative options for advanced credit repayment will consist

of opportunities to combine funds from adjacent BSAs within the same HUC 4 drainages to complete an ILF mitigation site. The site will be located in the BSA that provides the majority of the funding for the project consistent with the CPF for that geographic area. The accounting for the ILF site will specifically identify the contributions from other BSAs and the amount of credits associated with those funds. This information will also be provided as part of the annual reporting for the ILF. As soon as possible after funds are used to develop credits in an adjacent BSA, BWSR will attempt, as funding and program credit needs allow, to return credits back to the BSA where mitigation was exported due to insufficient funds. This could be accomplished by conducting additional mitigation in that BSA when projects are identified and pursued or by rotating the BSA where projects are completed when funds are “swept” together in order to have a viable project. Because the demands of the LGRWRP will require project development in almost every BSA every 2 to 4 years we do not anticipate repayment of credits exported from one BSA to another BSA to be a challenge that cannot be overcome provided there is support from the Corps for this mechanism and the credits and funds are tracked appropriately.

### Credit Accounting

Advanced and released credits will be tracked using the Corps’ Regulatory In-Lieu Fee and Bank Tracking System (RIBITS) and the MWB database maintained by BWSR. Relying on administrative processes established for operation of the MWB, BWSR staff will enter withdrawal information for ILF transactions into the MWB database and RIBITS each time an approved transaction is submitted. Prior to approval of the program instrument, BWSR will review the Application for Credit Withdrawal Form currently used in Minnesota to ensure the form contains the information required for ILF program transactions. When the ILF is operational, BWSR staff will review withdrawal applications for completeness and, if necessary, coordinate with the Corps Project Manager for the proposed project to verify the ILF is an approved source of credits for the project. Once BWSR has verified that ILF credits have been approved as a source of mitigation credit for the project, the required number of credits will be debited from the BSA of impact in RIBITS and the MWB.

### Financial Accounting

BWSR will receive the ILF payments and deposit them into an account established for the program. Each BSA will have its own ILF account. The account shall be used exclusively for the purpose of generating mitigation credits including planning and design costs, construction costs, monitoring costs, maintenance costs, adaptive management and contingencies. BWSR shall maintain a running total of impacted and mitigated aquatic resources by type and watershed for which the ILF fund was used as the form of mitigation for those impacts. Credit generation, credit transactions, and financial transactions will be tracked both on a BSA basis and separately for each mitigation project.

Financial accounting and reporting shall be done in accordance with all applicable state laws and administrative policies.

### Annual Reporting

BWSR will provide a comprehensive annual report each year on November 1 to the Corps and IRT members. The ILF annual report will include, at a minimum, the following information.

- All income received, disbursements, and interest earned by the program account;

- A list of all permits for which ILF program funds were accepted including the Corps ORM number, BWSR transaction number, applicant name, major watershed in which the impacts occurred, amount of authorized impact, amount of mitigation required, amount paid to the ILF, and the date the funds were received;
- A description of the expenditure of funds from the program account including: land costs, planning and design costs, construction costs, monitoring costs, maintenance costs, adaptive management and contingencies, and administrative costs.
- A summary of the balance of advanced credits and released credits by each BSA.
- A debit ledger summary that contains a list of approved mitigation sites with the amount and type of credit, beginning and ending available credit amount with permitted/approved impact for each type, and other information determined necessary to accurately document transaction activity associated with each site.