

2015-2016 Wetland Conservation Act Rulemaking Plan

Scope

- 1) Reconcile the rule with statute changes from 2011, 2012, and 2015.
- 2) Improve outcomes relating to wetland replacement, including provisions to:
 - establish priorities and replacement ratios that encourage the use of high priority areas for wetland replacement,
 - develop the standards and procedures for an in-lieu fee wetland replacement program,
 - establish new actions eligible for wetland replacement credit in the greater than 80 percent pre-settlement wetland area of the state (northeast), and
 - modify the requirements and process for wetland replacement.
- 3) Changes identified by staff or during the rulemaking process that will improve the efficiency, effectiveness, and/or outcomes of the rule.

Rulemaking Goals

To the extent possible, proposed changes should address the following general goals of rulemaking:

- Consistency with the purpose of WCA.
- Simplification.
- Implementable.
- Clarification.
- Have a tangible result or outcome.
- Improve Accountability.
- Minimize negative impacts to LGU workload.
- Limit unintended consequences.
- Balance public costs and benefits.
- Seek stakeholder support.
- Fairness/treat landowners consistently.

Process for Rule Development

BWSR Staff Rule Team

The BWSR staff “Rule Team” will develop and propose specific rule requirements, processes, and language to implement rulemaking priorities. Team members will also be responsible for presenting and interacting with the WCA Rule Advisory Committee and technical staff, including the consideration and vetting of comments/recommendations and the development of appropriate modifications and responses. The Team will utilize smaller sub-teams for specific issues, several of which will include assistance from other wetland and/or technical services staff. The initial topics for the Team to address first have been identified as:

- High Priority Areas (Designation)
- High Priority Areas (Implementation)
- In-Lieu Fee Program
- Actions Eligible for Credit (Northeast)
- Actions Eligible for Credit (statewide)
- Wetland Mitigation Approval Process
- Application Noticing/Re-Noticing

Stakeholder Input and WCA Rule Advisory Committee

The review process will provide a forum for stakeholders and agencies to provide input and advice on proposed rule changes. Invited stakeholders will include representatives from statewide groups and organizations with an interest in the WCA rules. State and Federal government entities will also be invited to participate and additional coordination will occur outside of committee meetings, particularly with the Corps (Clean Water Act Section 404) and NRCS (Swampbuster).

The stakeholder input process will occur in two phases. Initially, a broad range of stakeholder organizations will be invited to participate in the review of issues and proposals related to the March 15, 2016 legislative report. General input on other issues will also be considered. BWSR will utilize the list of stakeholder organizations that was developed during the last WCA rulemaking and subsequent stakeholder coordination efforts, including the development of 2014 statute proposals. However, other interested organizations will be welcome to participate if interested.

After the March 15, 2016 report, work on rule language will become more specific and detailed. At this point, BWSR will establish a formal WCA Rule Advisory Committee. This committee will initially focus entirely on rulemaking. However, after adoption of the new WCA Rule, BWSR intends that the Advisory Committee continue to operate outside of rulemaking as a standing wetland advisory committee to provide opportunities for stakeholder input in accordance with Minnesota Statutes § 103B.101, Subd. 16. The size of the advisory committee will be limited in order to assure a workable group, but opportunities will also be provided for non-committee members to participate and provide input.

Implementation and Technical Review

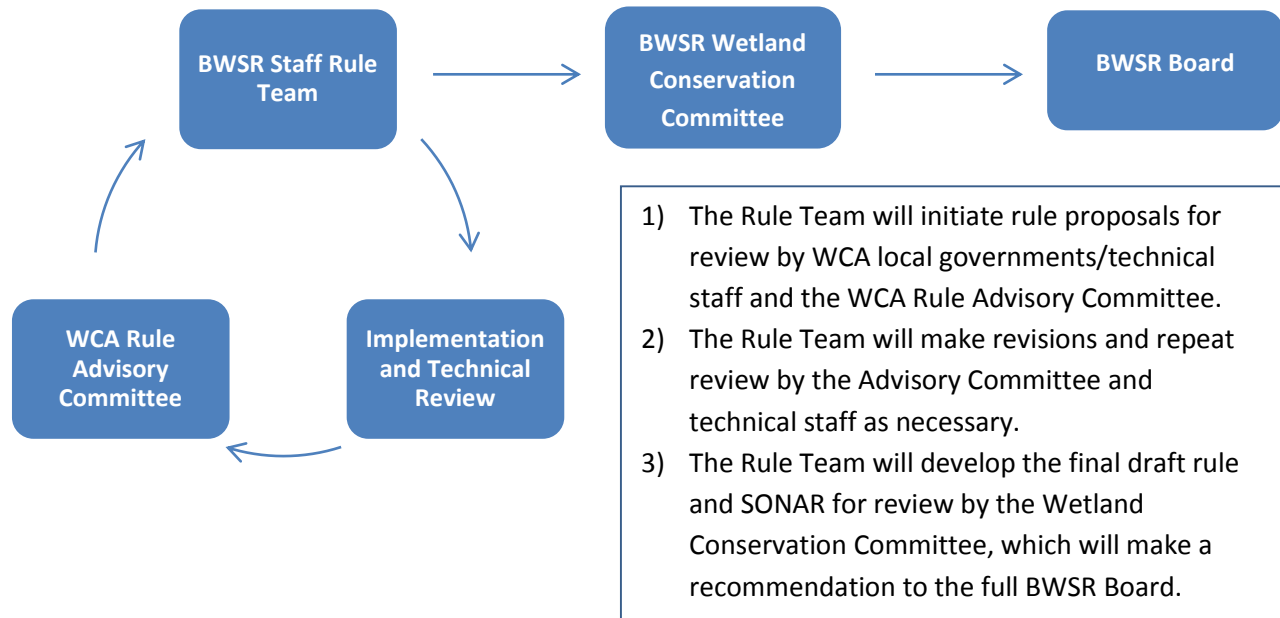
BWSR will also seek additional review and comment from local governments and consultants who work with WCA. A primary focus of this review will be to vet ideas and recommendations originating from the Rule Team and Advisory Committee for technical feasibility, unintended consequences, and the potential for effective implementation.

A technical review team was established for this purpose in 2014 as part of the process for developing recommendations for WCA statute changes. It consisted of a diverse group of staff and consultants with direct responsibilities implementing and/or complying with WCA. BWSR intends to utilize the nucleus of that group as part of the process to obtain technical input on rulemaking proposals. Technical input will also be solicited at training events (i.e. BWSR Academy) and/or through direct communications with local governments.

BWSR Wetland Conservation Committee

The Wetland Conservation Committee of the BWSR Board will meet regularly to review rulemaking progress, advise on specific issues, and make a recommendation to the full Board regarding adoption of the final draft rule. The Committee will also review the March report to the legislature.

Summary of Rule Development Process



Prioritization of Issues

Work relating to the March 15 report to the legislature will be prioritized and addressed by the BWSR Rule Team and reviewed first by interested stakeholders. The report requirement was included in 2015 WCA legislation as follows:

By March 15, 2016, the Board of Water and Soil Resources, in cooperation with the Department of Natural Resources, shall report to the committees with jurisdiction over environment and natural resources on the proposals to implement high priority areas for wetland replacement and in-lieu fees for replacement and modify wetland replacement siting and actions eligible for credit. In developing the report, the board and department shall consult with stakeholders and agencies.

General Timeline

2015	October	Send Preliminary Proposal to Governor’s Office. Publish Request for Comments in State Register.
	December	Comment period closes December 18 (60 days). BWSR Rule Team begins work on initial proposals. Begin interagency coordination efforts.
2016	January	BWSR Wetland Conservation Committee meets.
	February	Stakeholder input process begins. Focus on issues in upcoming legislative report.
	March	BWSR Wetland Conservation Committee meets. Report progress and recommendations regarding high priority areas, ILF, siting, and actions eligible for credit to legislative committees by March 15.
	April	Establish WCA Rule Advisory Committee. Address any feedback from legislative report, potential statute changes (if any), and remaining rule issues. BWSR Rule Team, Advisory Committee, and BWSR Wetland Conservation Committee meet as needed.
	May	
	June	
	July	
	August	
	September	Begin development of final draft rule and SONAR.
	October	
	November	
December		
2017	January	404 Assumption Study report to legislative committees by January 15. Evaluate need for continued rulemaking and adjust remaining timeline as necessary.
	February	BWSR Wetland Conservation Committee reviews draft rule and SONAR, makes recommendation to Board.
	March	Board reviews and adopts rule and SONAR.
	April	Submit proposed rule and SONAR to Governor’s office and MMB.
	May	Obtain approved draft of rules from the Revisor.
	June	Request to schedule a hearing and submit the draft Dual Notice of Intent to Adopt Rules to the ALJ. After ALF approval, finalize Dual Notice and publish in State Register.
	July	Pre-hearing comment period ends.
	August	Hearings (if necessary).
	September	Adopt rules: Response to comments, ALJ report and approval, Governor’s office approval, submit “Order Adopting Rules” to OAH, give agency “notice of filing,” and submit “Notice of Adoption” to the State Register.
	October	
	November	
December	New rules take effect.	

Note: The above timeline is approximate and is not a comprehensive list of rulemaking requirements or related meetings. It can and will be amended to address or accommodate issues and needs identified during the rulemaking process. It does, however, roughly identify the timeframe and order of activities as currently expected.