



2022 BWSR Rulemaking Comments

1. Who are “Stakeholders”? 2015 changes to section 103B.101 require BWSR to work with wetland stakeholders. Wetland bankers need to be included as a stakeholder throughout BWSR’s rulemaking process. The significant investments and risks undertaken by wetland bankers allow for an efficient wetland replacement process for applicants, LGUs, and BWSR, and there is no greater stakeholder in the wetland banking system than wetland bankers themselves.
2. Siting Criteria: One statute change that will significantly affect wetland bankers and their investments is the 2015 siting criteria change to 103G.222, Subdivision 3(c). Since WCA’s inception, wetland replacement has been structured and touted as a “watershed-based” system. When the statute was changed in 2015 to eliminate minor and major watersheds from the siting priority order WCA walked away from this watershed-based replacement priority. Wetland bankers have made significant financial investments based on this watershed-based siting priority and rule changes could nullify these investments, especially in developing areas where wetland losses and land values are high. Wetland bankers need to be at the table when siting rules are discussed and drafted.
3. BWSR Conflicts of Interest: Section 103G.2242, subdivision 2(b) was amended in 2015 to require TEP members with a financial interest in a wetland bank to disclose that interest, in writing, to the TEP and LGU. BWSR and LGUs have a conflict of interest when they have a financial interest in, or propose, wetland bank projects and then review and approve projects they directly benefit from financially. These conflicts are not currently disclosed as required by statute and for an LGU or BWSR to disclose a financial interest to themselves has no effect. Any time an entity is allowed to propose, review, and decide on their own project or a project they have an existing financial interest in creates a conflict of interest. No LGU or decision making authority should be allowed to review or approve their own project or a project they have direct interest in, financial or otherwise. WCA rules need to include information about conflicts of interest and procedures for the public and affected parties to learn of these conflicts and seek administrative remedies when they exist.
4. BWSR Fees and Fiscal Responsibility: As noted previously, wetland bankers and their credits generate and pay significant fees to BWSR. Statute directs BWSR to spend wetland bank fees to administer the wetland bank. Despite this the wetland bank review and approval process is often delayed by BWSR review times, information demands, and slow response times. WCA rule should require BWSR to provide an annual reporting of all fees collected and how these fees are used. 2015 statute changes allowed BWSR also collects easement stewardship fees (separate from easement acquisition fees) from wetland banker’s and annual reporting of all easement stewardship fees collected and used for long term protection activities should be required.
5. Public Notices: BWSR should implement, similar to the Corps of Engineers, a public notice process for all new wetland banking projects. This should occur immediately upon receipt of a new Draft Prospectus and include an online repository of documents available for public download and review.

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