

12/16/2024

Minnesota Board of Soil and Water Resources
Attn: Lewis Brockette, Wetlands Policy Coordinator
520 Lafayette Rd
St. Paul, MN 55155
Via Email: bwsr.wcarulemaking@state.mn.us

RE: Public Comment on Preliminary Draft WCA Rule (11/12/24)

Ecosystem Investment Partners (“EIP”) is grateful for the opportunity to review and submit the following comment on the Preliminary Draft WCA Rule (“WCA Rule”). EIP has established five wetland banks within Minnesota and has nationwide experience with sponsorship of over 80 mitigation banks, including both wetlands and streams.

As part of the on-going rulemaking process the Board of Water and Soil Resources (“BWSR”) is proposing to change the boundaries of several bank service areas (“BSAs”) in Minnesota. Although EIP recognizes the process for changing BSA boundaries is done by a formal action by the BWSR Board and publication in the State register, the WCA Rule includes language regarding how the changes will be implemented that EIP believes would benefit from further clarification and revision. The WCA Rule at 8420.0522 Subpart 7.F states, *“For purposes of this subpart, a wetland bank is within the same bank service area as the proposed impact if, at the time the bank was approved by the local government unit, the bank was within the same bank service area as the proposed impact.”* As stated, this subpart defines the service area for a bank as the service area in place at the time the bank was approved. In combination with the additional text in Subpart 4.G of this section, which states *“For purposes of determining replacement ratios, a wetland bank is within the same bank service area as the proposed impact if, at the time the bank was approved by the local government unit, the bank was within the same bank service area as the proposed impact”*, these additions “grandfather” existing banks affected by BSA changes and allows them to sell credits in the BSA that was in place at the time their bank was approved.

EIP understands the need to address the potential effects of changing BSA boundaries and does not object to the “grandfathering” of existing banks to allow bank sponsors to continue to sell their credits in the market that existed at the time their bank was approved. However, EIP believes the proposed rule falls short of addressing all the potential adverse effects resulting from BSA boundary changes by failing to directly address the issue of pending banks in the review process. If approved in the current form, proposed banks currently in the review process face considerable risk and uncertainty if they are in areas where new BSA boundaries could change either a) the geographic extent of the BSA, or market, that those banks can service, and/or b) the actual BSA within which the proposed bank may reside. The BSA where credits can be sold is *critical* to evaluating the economic viability of the investment required to develop a mitigation bank. Furthermore, bank sponsors have limited ability to manage the uncertainty introduced by the draft WCA Rule because bank sponsors lack control over certain aspects of the review process and a clear and reliable date for the completion of the rule making process has not been established. Despite the intended outcome of Minnesota Statutes, Section 15.99, obtaining bank approvals within the specified timeframes is not common and sponsors are frequently asked to agree to extensions to provide local government units additional review time. In this context, a proposed bank that is in an

area affected by the proposed BSA boundary changes is at significant risk of not being able to sell credits into the market in which the investment was intended to service. EIP believes a more equitable approach to the implementation of the BSA boundary changes is to retain the proposed text in 8420.0522 Subpart 7.F for existing banks and also add an additional provision for proposed banks which “grandfathers” the BSA in place at the time the local government unit received a complete bank plan application and subsequently issued a notice of application pursuant to Minnesota Rule 8420.0255, Subpart 3. This addition would benefit the State by encouraging continued investment in mitigation banking without disruption from the rulemaking process. This change would also significantly reduce risk and uncertainty for bank sponsors with banks currently in the review process and provide a straightforward and equitable process for implementing the BSA boundary changes.

In addition to the grandfathering issue, EIP also considered the draft language in WCA Rule at 8420.0522 Subpart 7.B, which aims to implement statute changes relating to wetland mitigation siting. 8420.0522 Subpart 7.B states “*Notwithstanding item A, clauses (1) and (2), the priority order for replacement by wetland banking begins at item A, clause (3). This item does not apply to the siting of wetland replacement for wetlands impacted within the seven-county metropolitan area until January 1, 2028.*” While EIP appreciates the challenges associated with implementing the statute changes while the banking program is operating, we would like to take this opportunity to provide some feedback and state our concerns regarding the proposal to defer implementation of the statute change for replacement siting in the seven-county metro area until 2028. EIP believes the approach to further delay implementing the statute change in the metro area is unnecessary and unfair to bankers who have invested in the affected bank service areas (BSAs) subsequent to the statute change. As stated during the meeting with the banking industry on November 15, 2023, the statute change was codified in 2015 which has provided ample time for bankers with approved bank plans and those engaged in the review/approval process at that time to manage their project in anticipation of the change in the siting sequence. Wetland bankers who invested in the seven-county metro area subsequent to the statute change have been aware of the imminent siting change and the associated risks to their investment. Further deferring implementation of the siting change until 2028 benefits those who failed to research and understand the market and changes in statute while penalizing those who took the time to understand the forthcoming changes and invested accordingly. We fully support a phase in period for those who invested prior to the statute change and the nine-year period that has passed to date is, in our opinion, sufficient accommodation.

Thank you again for the opportunity to review and comment on the draft rule. If you have any questions or need additional information, please contact Nick Dilks at 443-921-9441, or by email at nick@ecosystempartners.com.

Sincerely,



Nicholas Dilks

Managing Partner

Ecosystem Investment Partners

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Final Audit Report

2024-12-18

Created:	2024-12-18
By:	Trygg Danforth (trygg@ecosystempartners.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAn1Lh6_24BHEUOrkTT7RfyYwdMDZVZh1y

"EIP Comment on WCA draft rule_12_16_24" History

-  Document created by Trygg Danforth (trygg@ecosystempartners.com)
2024-12-18 - 7:41:32 PM GMT
-  Document emailed to Nick DILKS (nick@ecosystempartners.com) for signature
2024-12-18 - 7:42:17 PM GMT
-  Email viewed by Nick DILKS (nick@ecosystempartners.com)
2024-12-18 - 7:47:16 PM GMT
-  Document e-signed by Nick DILKS (nick@ecosystempartners.com)
Signature Date: 2024-12-18 - 7:48:58 PM GMT - Time Source: server
-  Agreement completed.
2024-12-18 - 7:48:58 PM GMT