

Minnesota Board of Water and Soil Resources
520 Lafayette Road North
Saint Paul, Minnesota 55155

In the Matter of the review of the Watershed Management Plan for the **Valley Branch Watershed District**, pursuant to Minnesota Statutes Section 103B.231, Subdivision 9.

**ORDER
APPROVING
A WATERSHED
MANAGEMENT PLAN**

Whereas, the Board of Managers of the Valley Branch Watershed District submitted a Watershed Management Plan (Plan) on April 13, 2026, to the Minnesota Board of Water and Soil Resources (Board) pursuant to Minnesota Statutes Section 103B.231, Subd. 9, and;

Whereas, the Board has completed its review of the Plan;

Now Therefore, the Board hereby makes the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. **Watershed District Establishment.** The Valley Branch Watershed District (VBWD) was established on November 13, 1968, primarily to address existing flooding problems and prevent future flooding. Since that time, VBWD's role has expanded to address all facets of water resources management. In 1972, VBWD adopted rules and regulations and began reviewing proposed developments in the watershed. In 1975, VBWD began its formal permit program. The VBWD prepared its first-generation watershed management plan that the Board approved in March 1986.
2. **Authority of Plan.** The Metropolitan Surface Water Management Act requires the preparation of a watershed management plan for the subject watershed area, which meets the requirements of Minnesota Statutes Sections 103B.201 to 103B.251. The current VBWD watershed management plan was approved by Board Order on September 23, 2015. Subsequently, the VBWD completed two minor amendments in 2025.
3. **Nature of the Watershed.** The VBWD is located mostly within Washington County with a small portion extending into Ramsey County in the eastern portion of the Twin Cities Metropolitan Area. Its 70 square mile jurisdiction includes the entire drainage area of Valley Creek and covers portions of 15 cities and townships. VBWD is bounded by South Washington Watershed District to the south, Ramsey-Washington Metro Watershed District to the west, Rice Creek and Browns Creek Watershed Districts to the north, and the Middle St. Croix Watershed Management Organization and the St. Croix River to the east, the latter of which the entire VBWD drains to. Land use is developing steadily, with the majority (>25%) of the VBWD being classified as residential, and that number is expected to rise in the coming decades with anticipated population growth, putting increased pressure on the water resources within the watershed. Among the VBWD's water resources are 11 DNR public waterbody-designated lakes and two trout streams.
4. **Plan Development and Review.** On March 3, 2023, the VBWD sent notification of initiation of the planning process for the development of the 2026-2035 Watershed Management Plan (Plan) to the plan review agencies and other parties as required by MR 8410, and solicited each agency's priority issues, summaries of relevant water management goals, and water resource information. An initial planning meeting/public kickoff event was hosted by the Board of Managers on December 12, 2023. The VBWD

convened a Technical Advisory Committee that included the plan review authorities and other governmental units within the watershed that met on December 13, 2024 and June 25, 2025. VBWD continued to solicit input on the draft Plan from relevant stakeholders up to and during the release of the 60-day draft Plan in November of 2025.

The draft Plan was submitted to Board of Water and Soil Resources (BWSR), other state and regional review agencies, and local governments for the formal 60-day review period on November 24, 2025, pursuant to Minnesota Statutes Section 103B.231 Subd. 7. The VBWD prepared a written response to the 60-day comments and sent responses to reviewers on February 24, 2026. A public hearing was held on March 12, 2026. The VBWD sent a final draft Plan to State and Regional Review Agencies on April 13, 2026. Comments received during the 90-day review period indicated that most reviewers did not have additional comments, however, the Minnesota Department of Health (MDH) noted that one of their previous comments about listing the uppermost bedrock layers in chronological order should still be addressed. MDH recommends rewording during the next opportunity to edit the Plan.

5. **Local Review.** The VBWD distributed copies of the draft Plan to local units of government for their review pursuant to Minnesota Statutes Section 103B.231 Subd. 7. Local written comments and edits were received from the Rice Creek Watershed District, Brown's Creek Watershed District, and Washington County. VBWD responded in writing to all comments.
6. **Metropolitan Council (Council) Review.** During the 60-day review, the Council commended the VBWD for developing a watershed management plan that includes a thoughtful overview of the makeup of the watershed, as well as a discussion of what makes this watershed unique and with a comprehensive listing of issues, associated goals, policies, and strategies. Several comments were regarding typos in the plan or requesting additional clarity. The Council advised the VBWD to adopt more up-to-date data on population forecasting, and to make a clearer connection between some implementation items with goals. During the 90-day review, the Council again commended the VBWD for their work on this plan, and stated that all of their comments on the 60-day draft were incorporated.
7. **Department of Agriculture (MDA) Review.** MDA did not provide any comments on this Plan, but recommended approval during the 60-day review.
8. **Department of Health (MDH) Review.** During the 60-day review, MDH commended the VBWD for addressing MDH priority issues, including chloride in groundwater, flooding and climate change implications for drinking water and public health, the potential for infiltrated stormwater to transport pollutants to groundwater, and others. MDH recommended adding language tying public health considerations to water reuse goals, adding language identifying MDH as a potential grant source, modifying language relating to groundwater availability, and modifying language clarifying MDH's role in administration and enforcement for the MN Well Code. MDH also recommended adding additional language elucidating MDH's responsibilities in terms of groundwater protection. MDH recommended that the Plan differentiate between health risk levels and maximum contaminant levels, that the plan acknowledge that PFAS monitoring in private wells is a joint venture between MPCA and MDH, that the "Potential Pollutant Sources" section include chloride from water softeners, that a discussion should be added about the Lake Elmo/Oakdale Special Well Boring Constriction area in the associated subwatersheds, that the GRAPS report be referenced in the Lower St. Croix 1W1P section, and that a groundwater section be added to the St. Croix River subwatershed section to specifically mention PFOS. During the 90-day review, MDH recommended that uppermost bedrock layers be ordered from youngest to oldest. MDH again commended VBWD for the Plan, and recommended approval by the Board.
9. **Department of Natural Resources (DNR) Review.** During the 60-day review, the DNR provided several comments. The DNR provided more up-to-date data on Ordinary High-Water Levels for several waterbodies in the VBWD. The DNR recommended several sections to be revised, including a goal about

suitable areas for infiltration stormwater BMPs, a discussion on the benefits of native plants, and that more relevant online sources for native plants for stable shorelines be added. The DNR also recommended that a discussion on rare and natural communities be added into the narrative of the Plan, and that more information on threatened and endangered species regulation be added. During the 90-day review period, the DNR stated that all of their comments for the 60-day draft were incorporated.

10. **Pollution Control Agency (PCA) Review.** During the 60-day review period, the PCA commended the VBWD for creating a well-written plan that was concise and thorough. The PCA did not have any other comments.
11. **Department of Transportation (DOT) Review.** The DOT did not provide formal comment.
12. **Board Review.** During the 60-day review, Board staff thanked the VBWD for holding Technical Advisory Committee meetings during plan development to provide input on early drafts. Board staff commended the VBWD for including implementation activities related to important issues such as climate resiliency, chloride pollution, and water reuse. Board staff expressed interest in VBWD's plan to buy flood-prone properties in landlocked basins. Board staff suggested clarifications to several parts of the Plan for increased reader comprehension. Staff also had comments on goal measurability and other suggestions to help bring the plan into conformance with Minnesota Statutes Sections 103B.201 to 103B.251 and Minnesota Rules 8410. Staff also sent unofficial typographical, grammatical, and formatting comments. Staff felt the Plan was revised as necessary to provide required Plan content.
13. **Plan Summary.** The VBWD organized goals and implementation activities into six broad resource-based categories (in order from highest to lowest priority):
 - surface water quality
 - water quantity, flood risk, and climate resiliency
 - stormwater management
 - groundwater
 - wetlands
 - uplands/natural areas

Each goal included associated district tools to address specific issues. The newest iteration of this Plan is largely shaped from past accomplishments and progress toward meeting continuing goals. Plan priorities are mostly similar to those in the 2015 Plan. Water quality across the watershed remains stable in many basins but are still degraded in others. There are many properties with elevated flood risks due to prolonged wet conditions, underscoring the need for climate resiliency efforts in the watershed. There are planned studies that are aimed at understanding emerging issues such as chloride and climate resiliency and to identify areas for improvement. Several proposed water quality and quantity projects, such as a restoration of the main stem of Valley Creek and a landlocked basin flood risk reduction (acquisition/floodproofing), could greatly move the needle toward meeting goals if funding becomes available. Continuation of monitoring, inter-agency coordination, small scale BMP cost-share, and regulation will continue the success the VBWD has consistently achieved over the years.

14. **Central Region Committee Meeting.** On June 1, 2026, the Board's Central Region Committee and staff met in St. Paul and online to review and discuss the final Plan. Those in attendance from the Board's committee were Joe Collins, Jayne Hager-Dee, Jill Crafton, Mike Runk, Annie Felix, and Grant Wilson. Others in attendance included Board staff Josh Norman and Marcey Westrick, John Hanson and Greg Williams from Barr Engineering, representing VBWD, and Manager Rick Gelbmann from the VBWD Board of Managers. After presentation and discussion, the committee unanimously recommended approval of the Plan to the full Board.

CONCLUSIONS

1. All relevant substantive and procedural requirements of law and rule have been fulfilled.
2. The Board has proper jurisdiction in the matter of approving the Watershed Management Plan for the Valley Branch Watershed District (VBWD) pursuant to Minnesota Statutes Section 103B.231, Subd. 9.
3. The VBWD Watershed Management Plan, attached to this Order, defines the water and water-related problems within the VBWD's boundaries, possible solutions thereto, and an implementation program through 2035.
4. The attached Plan is in conformance with the requirements of Minnesota Statutes Sections 103B.201 to 103B.251.

ORDER

The Board hereby approves the attached Valley Branch Watershed District's Watershed Management Plan submitted on April 13, 2026.

Dated at Saint Paul, Minnesota this 24th day of June 2026.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

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Todd Holman, Chair
Board of Water and Soil Resources



BOARD ORDER

Fiscal Year 2026 and Fiscal Year 2027 Lake Superior Basin Implementation Grant Program

PURPOSE

Award Fiscal Year (FY) 2026 and FY 2027 Lake Superior Basin Implementation Grants to five Soil and Water Conservation Districts (SWCDs) in the Lake Superior Basin.

RECITALS/FINDINGS OF FACT

- A. The Laws of Minnesota 2025, Regular Session, Chapter 36, Article 2, Section 6 (q) appropriated \$500,000 in fiscal year 2026 and \$500,000 in fiscal year 2027 to provide support to SWCDs and other local governments and partner organizations in the Lake Superior Basin to leverage Great Lakes Restoration Initiative or other federal Great Lakes funding to implement prioritized activities.
- B. The Board has authorities under Minnesota Statute 103B.101 to award grants and contracts to accomplish water and related land resources management.
- C. The Board has authority under Minnesota Statute 103B.3369 to provide program-based grants to local governments who are responsible for implementing elements of applicable portions of watershed management plans, comprehensive plans, local water management plans, or comprehensive watershed management plans, developed or amended, adopted and approved, according to chapter 103B, 103C, or 103D.
- D. The Board has identified eligible recipients of these funds as soil and water conservation districts in the Lake Superior Basin to ensure the efficient implementation of funds using existing public infrastructure and for consistency with the FY26-27 Clean Water Fund and Policy Recommendations Report from the Clean Water Council.
- E. The Grants Program and Policy Committee, at their May 18, 2026, meeting, reviewed the proposed allocations and Board Order and recommended approval to the Board.

ORDER

The Board hereby:

1. Authorizes staff to develop the Lake Superior Basin Implementation Grant program requirements for the fiscal year 2026 and fiscal year 2027 appropriations.
2. Approves the proposed allocations for the Lake Superior Basin Implementation Grants to five SWCDs in the amounts listed in the attached table using the fiscal year 2026 and fiscal year 2027 appropriations. *(Table 1)*
3. Authorizes staff to approve work plans and enter into grant agreements for this purpose.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

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Todd Holman, Chair
Board of Water and Soil Resources

Date: June 24, 2026

Table 1: FY2026/FY2027 Lake Superior Basin Implementation Grant Allocations

Organization	FY2026/FY2027 Grant Amount
Carlton SWCD	\$190,000
Cook SWCD	\$190,000
Lake SWCD	\$190,000
North St. Louis SWCD	\$190,000
South St. Louis SWCD	\$190,000
Total	\$950,000

BOARD ORDER

Fiscal Year 2027 Clean Water Fund Competitive Grant Program Awards

PURPOSE

Authorize the Fiscal Year 2027 Clean Water Fund Competitive Grant Program Awards.

FINDINGS OF FACT / RECITALS

1. The Laws of Minnesota 2025, Chapter 36, Article 2, Section 6 (b) appropriated \$6,000,000 for the Clean Water Fund Projects and Practices Grant Program with up to 50 percent available for land-treatment projects and practices that benefit drinking water.
2. On January 28, 2026, the Board authorized staff to distribute and promote a request for proposals (RFP) for Clean Water Fund Competitive Grants and to utilize unallocated funds from prior Clean Water Fund fiscal years for the fiscal year 2027 Clean Water Fund Projects and Practices Grant Program (Board order #26-05).
3. A RFP was noticed on February 11, 2026 with a submittal deadline of March 25, 2026.
4. Applications were scored and ranked by the interagency committees on May 26, 2026.
5. On June 9, 2026, BWSR's senior management team reviewed staff's recommendation for allocations and recommended approval to the Grants Program and Policy Committee.
6. The Grants Program and Policy Committee, at their June 15, 2026 meeting, reviewed the recommendations for award allocations and recommended approval to the Board.

ORDER

The Board hereby:

- a) Approves the allocation of funds to each applicant in the amounts listed in the attached allocation tables.
- b) Authorizes staff to approve work plans and enter into grant agreements for these funds consistent with the appropriations and the RFP.
- c) Authorizes staff to fund additional applications fully or partially in rank order and may separately or in combination: i. reallocate funds returned from previous years' Clean Water Fund Competitive grant programs, ii. reallocate funds that become available if funded projects are withdrawn or do not receive work plan approval by September 18, 2026, unless extended for cause, or iii. reallocate funds that are modified due to a reduction in the state funding needed to accomplish the project.

Dated at St. Paul, Minnesota, this June 24, 2026.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES



Todd Holman, Chair
Board of Water and Soil Resources

Date: June 24, 2026

Attachments:

- FY2027 Clean Water Fund Projects and Practices Allocation Table
- FY2027 Clean Water Fund Projects and Practices - Drinking Water Allocation Table

FY2027 Clean Water Fund Projects and Practices Allocation Table

#	Grant ID	Title of Proposal	Grantee	Total (\$)
1	C27-0008	Blaine Parks Targeted WQ improvements Phase 1	Coon Creek WD	\$ 500,000
2	C27-0030	Fish Lake Alum Treatment	Prior Lake-Spring Lake WD	\$ 796,270
3	C27-0020	Phase III Project Implementation-Dobbins Creek Restoration	Cedar River WD	\$ 280,000
4	C27-0033	Spring Lake West Iron-Enhanced Sand Filter	Prior Lake-Spring Lake WD	\$ 1,034,825
5	C27-0039	Delisting Goose Lake	Carnelian-Marine-St. Croix WD	\$ 470,000
6	C27-0003	2027 Red Lake County SWCD Nonstructural Land Management Project	Red Lake SWCD	\$ 371,000
7	C27-0023	Reeds Lake Ravine and Shoreline Stabilization	Waseca SWCD	\$ 299,000
8	C27-0016	MSTR South Branch Snake River Priority Channel Stabilization Project	Middle-Snake-Tamarac Rivers WD	\$ 248,400
9	C27-0035	Eagle Lake Internal Load Reduction Project	Sherburne SWCD	\$ 704,234

TOTAL: \$ 4,703,729

FY2027 Clean Water Fund Project and Practices - Drinking Water Allocation Table

#	Grant ID	Title of Proposal	Grantee	Total (\$)
1	C27-0048	Drinking Water Protection Through SSTS Fix-Ups	Anoka CD	\$ 199,232
2	C27-0037	Hibbing Drinking Water Protection Implementation Action and Community Coordination Project	Hibbing, City of	\$ 85,000
3	C27-0002	2027 Dakota County Well Seal Grant Program	Dakota County	\$ 100,000
4	C27-0031	Thief River Falls SWAA Non-Structural Land Management	Pennington SWCD	\$ 210,000
5	C27-0028	Mt. Simon Aquifer Well Decommissioning	Watonwan SWCD	\$ 382,360
6	C27-0038	Nitrate and Water Use Reduction in Targeted Sherburne County DWSMAs and Townships - Phase II	Sherburne SWCD	\$ 231,225
7	C27-0027	Southeast MN Nitrate Reduction and Water Protection Program	Fillmore SWCD	\$ 309,000
8	C27-0036	Protecting Gem Lake's Groundwater: A Community Well Sealing Project	Vadnais Heights, City of	\$ 240,000
9	C27-0013	2027 Ramsey County Well Sealing Program	Ramsey County	\$ 125,000

TOTAL: \$ 1,881,817

**Minnesota Board of Water and Soil Resources
Dispute Resolution Committee
520 Lafayette Road North
St. Paul, Minnesota 55155**

In re: WCA Appeal of an Exemption and No-Loss
Decision, Brown County

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

BWSR File No. 25-10

This matter came to the Board of Soil and Water Resources (BWSR) for a final order from an appeal concerning the denial of an exemption and no-loss determination. The petitioner is Brian Domeier. The respondent is Brown County.

On May 9, 2025, Domeier applied for an after-the-fact/no-loss determination related to activities on his property that were subject to a restoration order. Separately, Domeier appealed the restoration order. On August 1, 2025 Brown County denied the application for an after-the-fact/no-loss determination (the “No-Loss Decision”). Domeier timely appealed the No Loss Decision to BWSR pursuant to Minn. R. 8420.0905. The parties submitted briefs, and the matter was referred to BWSR’s Dispute Resolution Committee for hearing, which was held on May 8, 2026.

STATEMENT OF ISSUES AND RESOLUTION

1. It is uncontested that Domeier placed fill in certain areas that he now operates as a campground. Domeier and the County dispute whether the area in question was a wetland.

Is Brown County’s decision that that impacted areas were wetlands protected by the Wetland Conservation Act (“WCA”) clearly erroneous?

- a. Brown County determined that the impacts were within a protected wetland based on: (1) a 2019 delineation; (2) a 2024 settlement agreement between the County and Domeier in which Domeier agreed not to work in the impacted areas; and (3) the absence of any new evidence that the impacted areas had ceased to be wetlands.

- b. The Dispute Resolution Committee voted 5-0 to recommend affirming the Brown County Decision. While the delineation from 2019 is not dispositive of the issue of whether the impacted areas were wetlands at the time they were impacted, it is reliable evidence of their status as wetlands. In addition, there were extensive prior enforcement proceedings between the County and Domeier based on the 2019 delineation that culminated in a settlement agreement to resolve the issues of where Domeier could and could not place fill. In that agreement, Domeier agreed not to place fill in the impacted areas as part of that settlement agreement.
 - c. The BWSR Board adopted the Dispute Resolution Committee's May 8, 2026 recommendation by roll call vote on June 24, 2026.
2. Domeier contends that even if the impacted areas were protected wetlands, his activities were exempt from the WCA either because they were impacts to prior converted agricultural lands pursuant to Section 103G.2241, subd. 1(1) of WCA (the "Prior Converted Agricultural Exemption"), or because they were impacts to lands that were planted with crops in six of the ten years prior to the adoption of the WCA in 1991 ("Six-in-Ten Exemption").

Is Brown County's decision that the areas impacted by the fill were being used as a campground, and not an agricultural property at the time of the fill, and therefore not subject to the Agricultural Exemption clearly erroneous?

- a. Brown County based its decision on evidence showing clear conversion of the impacted areas to a campground prior to the fill activities in question, and on the basis that the purpose of the fill was not agricultural, but rather to support camping activities.
 - b. The Dispute Resolution Committee voted 5-0 to recommend affirming the Brown County Decision. Substantial evidence supports a finding that Domeier had converted the areas of the property in question to use as a commercial campground prior to placement of the fill. The Dispute Resolution Committee also concluded that the purpose of the fill was not agricultural, making the Prior Converted Agricultural Exemption and Six-in-Ten Exemption unavailable.
 - c. The BWSR Board adopted the Dispute Resolution Committee's May 8, 2026 recommendation by roll call vote on June 24, 2026.
3. Domeier contends that Brown County staff were not authorized to make final decisions on his application.

Were Brown County staff authorized to make a final decision on the application at issue, or did the final decision need to go to the Brown County Board for final approval?

- a. Brown County concluded that staff was authorized to make final decisions on the application.
- b. The Dispute Resolution Committee voted 5-0 to recommend affirming the Brown County Decision. The Dispute Resolution Committee concluded that extant rules and statutes allow staff to make final determinations on the application.

- c. The BWSR Board adopted the Dispute Resolution Committee's May 8, 2026 recommendation by roll call vote on June 24, 2026.
4. Domeier sought to have additional materials not presented to Brown County entered into the record in this matter. In particular, Domeier tendered a report from a consultant opining that the entire impacted areas may not have been wetlands at the time of the fill, without reaching any final conclusion. Brown County opposes the inclusion of these materials.
 - a. The Dispute Resolution Committee voted 5-0 to recommend against admission of the additional materials into the record on the basis that no showing had been made by Domeier of any good reason why these materials were not presented to Brown County at the time of the decision. In addition, the materials are not dispositive of any issue, they merely opine that further delineation efforts may be warranted.
 - b. The BWSR Board adopted the Dispute Resolution Committee's May 8, 2026 recommendation by roll call vote on June 24, 2026.

FINDINGS OF FACT

1. Through an LLC he controls, Domeier owns operates a campground ("the Campground") in Brown County. Domeier purchased the property at issue in October 2018. (Ex. 126 at 1329.) The property is now known as Shirley's Park and Country Retreat, having a place of business at 17434 Lakeside Ave, New Ulm, MN 56073.

2. The Campground has been the subject of extensive prior enforcement activities by the county. These activities concern two wetlands, generally referred to in the record as "W1" and "W2."

3. Brown County completed a wetland delineation at the Campground in August 2019 ("2019 Delineation"). (Exs. 143 at 1401-1453; 144 at 1454.) At that time, Brown County marked the boundary of the wetland at issue in this appeal, identified as W1, using 2-foot lath stakes. (Ex. 143 at 1451.) The delineator also noted a potential second wetland in the area that became W2. (*Id.*)

4. After receiving the delineation report, Domeier applied for a joint no-loss and wetland boundary/type application. (Ex. 142 at 1385.) In the application, Domeier

stated he would be creating a campground “near a wetland” and he would “create roads/driveway near wetland.” (Ex. 142 at 1390. 1393.)

5. A technical evaluation panel (“TEP”) visited the property in September 2019 in connection with the no-loss application and concurred with the established W1 boundary. (Ex. 139 at 1380.)

6. At the time of the TEP’s September site visit, the TEP observed “recent fill” within the W1 boundary for a road. *Id.*

7. The County issued its decision on the no-loss application in November 2019. The County determined that Domeier’s proposal “for the creation of [a] campground” does not meet the criteria for a no-loss decision in W1. (Ex. 138 at 1377.)

8. Domeier placed additional fill into the W1 wetland in the spring/summer of 2020. (Ex. 134 at 1349.)

9. In July of 2021, Brown County caused a restoration order (the “2021 Restoration Order”) to be served by the Department of Natural Resources to correct the fill issues, after attempts at achieving voluntary compliance did not succeed. (Ex. 133 at 1344.)

10. The 2021 Restoration Order adopted the boundaries from 2019 Delineation. (Ex. 134 at 1355, 1357.) Domeier did not have an approved replacement plan for the fill impacts and no exemptions applied. The order required Domeier to remove the fill from W1 and W2, or submit an after-the-fact application to the County. *Id.* at 1350.

11. In response to the 2021 Restoration Order, Domeier asserted that the W1 wetland was not in fact a wetland. (Exs. 130-132.) The TEP revisited the site, and

reconfirmed the existence of wetlands W1 and W2. (Ex. 132 at 1341.) Domeier did not timely appeal the 2021 Restoration Order, which became final. (Ex. 126 at 1330.)

12. To resolve the restoration order, Domeier and Brown County negotiated towards a replacement plan. (*E.g.* Ex. 122, 126.) Domeier and Brown County initially agreed to a resolution pursuant to which Domeier would purchase .16 acres of wetland credits. (Ex. 118.) A TEP member appealed this resolution of the 2021 Restoration Order, and in a prior BWSR decision, BWSR remanded the case back to Brown County finding that insufficient evidence supported various determinations made by Brown County. (Ex. 115.)

13. After extensive negotiation and Brown County's denial of additional applications for a replacement plan by Domeier, Domeier appealed a denial of a replacement plan to BWSR in September of 2023. (Ex. 65.)

14. The DNR issued Domeier a cease and desist order in January of 2024 for additional violations of WCA at the site. (Exs. 62, 63.)

15. In March of 2024, Domeier and Brown County resolved the replacement plan issues with an agreement (the "2024 Settlement Agreement"). Under the 2024 Settlement Agreement, Brown County agreed not to pursue replacement for an already constructed turnaround located in W1, and Domeier agreed to submit a replacement plan application for wetland impacts associated with W2 and be bound by the W1 and W2 wetland boundaries of the 2019 delineation.

16. The W1 boundary was included in the 2024 Settlement Agreement as GPS coordinates on an aerial photograph, and Brown County agreed to not seek any further remedies for the turnaround already constructed in the W1 wetland (Ex. 60):



17. The 2024 Settlement Agreement also included an express provision about future work:

The landowner agrees that the County must agree in writing to any proposed impacts to WI or W2 before he conducts any further work that could result in a wetland impact. The landowner must submit a replacement plan, separate from the replacement plan outlined in [the 2024 Settlement Agreement], with his additional proposals and receive County approval before conducting such work.

18. Pursuant to the 2024 Settlement Agreement, Domeier submitted a new replacement plan for impacts to W2, which was approved by Brown County and there were no appeals to BWSR. (Exs. 53, 56, 57.)

19. In November of 2024, Brown County discovered that Domeier had constructed new accessways inside the W1 wetland to provide access from the turnaround to campsites he constructed outside the W1 wetland, in violation of the 2024 Settlement Agreement (Ex. 48):



20. After further investigation requiring a search warrant, the DNR issued a restoration order at the request of Brown County for the new work. (Exs. 22, 28.)

21. Domeier did not perform the work required by the new restoration order, and also constructed a new building inside the W1 wetland. (Ex. 21.) At Brown County's request, the

DNR issued an amended restoration order to encompass the new building on May 9, 2025 (the “2025 Restoration Order”).

22. Domeier appealed the 2025 Restoration Order, and made the application for an after-the-fact determination/no loss determination that led to this appeal. (Ex. 16.) The 2025 Restoration Order is the subject of a currently stayed appeal with BWSR. (Ex. 10.)

23. On August 1, 2025 staff for Brown County denied the exemption/no-loss application challenged here.

24. Domeier sought to supplement the record with a report from a consultant dated November 25, 2025 (the “Boll Report”). In the Boll Report, Wes Boll opines that there is available evidence that suggests the W1 wetland was misclassified as a wetland, and that additional study is warranted.

CONCLUSIONS OF LAW

1. BWSR has jurisdiction to hear this appeal pursuant to Minn. Stat. § 103G.2242, subd. 9, and Minn. R. 8420.0905, subp. 4.

2. The WCA and associated rules allow a party to seek a no-loss determination from the regulating local unit of government that activities in or adjacent to a wetland will not have an impact on them. Minn. Stat. § 103G.2242, subd. 2; Minn. R. 8420.0410.

3. The criteria for a no-loss determination are set forth in rule. Minn. R. 8420.0415. In general, the rule sets forth certain types of activities that will have only a temporary or allowable impact, and permits a no-loss determination as to these activities. Minn. R. 8420.0115(B-H). In the absence of a specific exemption, the burden is on the applicant to show that excavations within a covered wetland will not impact the wetland. Minn. R. 8420.0115(A).

4. Minn. R. 8420.0111, subp. 32 defines “impact” as follows:

“Impact” means a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling of wetlands, wholly or partially, or by excavation in the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, as defined in subpart 75, and in all wetland types if the excavation results in filling, draining, or conversion to nonwetland.

5. Brown County’s conclusion that Domeier’s fill activities impacted a wetland are supported by substantial evidence, and are not clearly erroneous. There is no dispute that Domeier placed gravel fill in the W1 wetland to construct access paths from the turnaround to additional campsites. Aerial photographs clearly show the fill. (Exs. 48, 60.)

6. Substantial evidence supports Brown County’s conclusion that the W1 wetland was a wetland at the time of the fill, based on the 2019 delineation and Domeier’s agreement in the 2024 Settlement Agreement that the area depicted in that agreement was a wetland.

7. Domeier’s argument that the delineation of a wetland cannot be achieved by agreement is not legally relevant here. Domeier is correct that collusive agreements between landowners and local units of government could be problematic, and in those circumstances not binding. But there is no argument here that the 2024 Settlement Agreement was collusive. To the contrary, the evidence establishes that it was the product of extensive, highly contentious enforcement actions and negotiations. In addition, the 2024 Settlement agreement was implemented through the submission of a replacement plan, which is subject to review and objection from members of the TEP. There was a past objection by a TEP member to a settlement between Brown County and Domeier. There was no objection to the 2024 Settlement Agreement.

8. The 2024 Settlement Agreement is admissible as an admission of Domeier that the areas in which he placed fill are wetlands. Domeier would also likely be estopped from contesting the status of the W1 wetland as a wetland given his entry into the 2024 Settlement Agreement which provided significant benefits to him, including Brown County’s agreement not to pursue violations for the turnaround and a reduced impact area and replacement ratio for W2.

9. BWSR concurs in Brown County's determination that the Prior Converted Agricultural Exemption and Six-in-Ten Exemption do not apply here. The evidence clearly shows that the impacted areas had been converted to use as a campground several years prior to the fill in question, and that the purpose of the fill is to provide access to campsites. BWSR also concurs in Brown County's conclusion that the Six-in-Ten Exemption appearing in rule has been superseded by the statutory Prior Converted Agricultural Exemption, and is no longer available.

10. BWSR concludes that Brown County staff had authority to make a final decision on Domeier's application. The relevant portions of the WCA define a "local unit of government" to include a county board of commissioners "or their delegate." Minn. Stat. § 103G.005, subd. 10i. Here, Brown County delegated decision-making on exemption and no-loss determinations to staff through Section 717.1 of its zoning ordinance.

11. BWSR concludes that Brown County was not required to provide an administrative appeal to the county board. While the requirement still appears in rule, the requirement was removed from statute in 2011. *See* Laws of Minnesota 2011, ch. 107, art. 1, sec. 68. The rule has not been amended to reflect the statutory change, but the intent of the statutory change to remove this requirement is clear.

12. BWSR concludes that Domeier has not met the requirements in statute or rule for the submission of the Boll Report as additional evidence in this appeal. The applicable rules provide that BWSR generally conducts an on-the-record review of the local unit of government's decision, using the same record materials. Minn. R. 8420.0905, subp. 4(F). An exception exists where there is new information that is material to the appeal and the party seeking the admission of the evidence can show good cause why the evidence was not presented below. Here, Domeier has shown no good cause for not presenting the Boll Report. While it did not exist at the time of

the county's August 1, 2025 decision, that is because Domeier did not hire Boll to prepare the report in time for the August 1, county decision -- and there was time to do so. There is nothing that would have prevented Domeier from securing the Boll Report or an actual delineation in time to present to Brown County. The report is also not material to the disposition of the appeal. The Boll Report is not a delineation and does not opine that the W1 wetland is not a wetland. Rather it suggests that the W1 wetland may not be a wetland. Given the 2019 delineation and Domeier's agreement in the 2024 Settlement Agreement not to perform work inside the W1 wetland, the Boll Report would not change BWSR's conclusion that substantial evidence supports Brown County's decision.

13. Any Finding of Fact more appropriately deemed a Conclusion of Law, or the reverse, should be deemed as such.

ORDER

The August 1, 2025 decision of Brown County denying the application of an exemption and a no-loss determination is affirmed.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Dated: June 24, 2026

By:


Todd Holman, Chair