

MAWD Legislative Update
Jul 20, 2015

The 2015 Legislative Session is now history but was certainly a historical ride by anyone's measure. The Clean Water Funding started out well, but turned into a bit of a disaster for WD's, and the Governor's surprise buffer initiative that we all had great hopes for was passed but included some bad public policy and even a worse funding source, the Clean Water Fund, all this calumniated by the postponement of our sales tax exemption from Jan 1, 2016 to Jan. 1, 2017 via the Education Bill. All with little or no input from local governments.

Now all they ask is that we do all the work to try and make sense of it all and make it work. I will explain all in greater detail a bit later in this update.

We did however, have some bright spots. A bonding bill was passed that include funding for our Flood Hazard Mitigation projects in the Red River Valley and funding for additional disaster relief for Prior Lake WD and others in that area.

There were a number of bills that we worked on or monitored during the session but essential all were part on one of the three bills noted below during the 2015 1st Special Session. They include:

1. HF2, SF4, Chapter 5, Bonding Legislation;

* \$10 million for Ottertail County for FHM, \$13.549 million for other projects as prioritized by DNR.

*\$1.2 million for Prior Lake-Spring Lake WD for the Prior Lake Outland Channel repair.

* RIM - \$4.7 million

* Erosion, sediment and water quality control: \$10.6 million

* BWSR to work with various stakeholders to "foster mutual understanding and provide recs" on water quality and soil conservation protection.

* Comp Watershed Management Planning Program; 1 Watershed/1 Plan program update requiring BWSR to develop policies for coordination and development on comp plans, develop content requirements, and timelines.

* Modified membership on CW Council to withdraw voting membership from the U of M member and the Met Council, and both now make their own appointment instead of Governor.

2. HF5, SF1, Chapter 2, Legacy/Clean Water Fund appropriations:

* Appropriates \$56.841 million to BWSR. Follows Clean Water Council recs except where funds were decreased to fund the Govs/BWSR Buffer Program.

- \$22 million for SWCD's for the Buffer law

- \$5.6 million to local governments to help fund the program

- \$.65 million to DNR for the buffer Maps

* Program items decreased because of buffer appropriation included: Surface & Drinking water Protection, Watersheds with Multi-year Plans, Community Partners Program, and Riparian Buffer Permanent Conservation Easement, etc.

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3. HF4, SF5, Chapter 4, Ag, Environment & Natural Resources - Budget & Policy Bill

After a Governor's veto on the Legislative Session legislation, several provisions were removed or reworked and the follow bill emerged:

*Funding for the various state agencies budgets

*AIS .. Modified version of the AIS training that will replace the trailer decal requirement with a requirement for affirmation of the person's knowledge on AIS law when a person purchases a watercraft license and when a non-resident purchases a MN fishing license.

*AIS - replaces the word "listed" with "designated" where it refers to species ID'd as prohibited, regulated, unlisted, and unregulated invasive species; allows the DNR to require decontamination, allows DNR to issue decontamination permits under the invasive species law, allows money in the invasive species account to be used for habitat improvement.

* WCA changes -- **see attached info sheet;**

*Buffer legislation -- **see below and attached info sheet.**

MAWD and the Assn of MN Counties were both left out of the final negotiations and do not own one word in the buffer legislation so I can only report what the end result is. In addition, it is our understanding that three statewide farm groups did sign off on the buffer legislation so I guess our input wasn't needed.

The basic premise behind this legislation is that it is landowner driven and the responsibility for putting in the buffers actual lies with the landowner ... thus Chapter 103F ... but, WD's and counties are clearly expected to participate in and provide guidance in that effort, even though we can legally decide not to participate in the buffers program.

SWCDs actually received funding to work with individual landowners (\$22 m) to assist and encourage them to put in buffers, but we did not support it coming from the Clean Water Fund.

If the landowner doesn't, or refuses to put in buffers, they are referred to the WD or County (if implementing) for penalty through a newly acquired APO authority that allows for a \$500 penalty for violators (if WDs and Counties apply for that authority). But, we are told that local governments can decide if they want to take on the implementation role under Chapter 103F, or just pass that responsibility on to the state (BWSR). If the WD or County passes on participation in the program, the SWCD then forwards the offending party to BWSR for them to take enforcement action.

WD's and counties have no responsibility under the drainage law under this legislation, but can consider reimbursing landowners back for their buffers on ditches when a redetermination of benefits occurred.

The only mandate that WD's and counties have with this legislation is to to place the buffer map that DNR is creating into their local plans.

We have a load of questions regarding how this law will be interpreted, and under what authority are they doing it?? Because BWSR believes rules are not needed, I believe they are going to be in for a big surprise when this complex and confusing law is implemented And they and anyone involved is going to face large legal bill unless some serious changes are made in the future.

Presently the MAWD Board recommends that all WDs not take any action in terms of moving toward implementation of this legislation at this point. We need to see a lot more in writing and presently the law puts all state funding provided to WDs at risk of being defunded if you are not properly implementing their buffers program. I am sure we will know more about this program by our Annual Meeting and that will allow us to have some more informed discussions on this legislation and where it is going or not going to take us. I will try to keep you informed of any developments until then.

- * Exempts the need for a public water work permit to replace a culvert of like size and elevation.
- * Modifies the dates when the DNR must not restrict groundwater permits, unless the water appropriation will endanger a domestic water supply.
- * Allows for a 404 feasibility study to assume 404 authority by the state. Would allow the state to issue federal permits for draining and filling wetlands under federal jurisdiction.
- * Eliminates MPCA Citizen Board
- * Directs the MPCA, after consultation with MMB, to contract for an analysis of the increased cost of PCA water quality rules.
- * Directs the DNR to develop a proposal to be submitted to the Lessard Sams Council and the LCCMR for significant large-scale flood water retention projects.
- * Directs the DNR to submit a report to the LWC on recommending standards for negative impacts to surface water from ground water use.

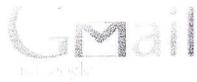
Misc Legislation: HF1, SF3, Chapter 3, Education Bill, Article 6, Sect 7. Page 162 changes the effective date of special units of government sales tax exemption from Jan 1, 2016 to Jan 1, 2017.

Please share this MAWD Legislative Update with your managers, staff and key partners.

Buffer Legislation at a Glance

June 2015

<p>Exemptions and areas and activities not requiring buffers</p>	<ul style="list-style-type: none"> ■ Roads, trails, building and structures. ■ Inundated crops, alfalfa seeding, enrolled in CRP. ■ Tile line installation and maintenance. ■ Areas covered by NPDES water-quality permits. ■ “No-fault” clause to address acts of nature. ■ No permit, permission needed; SWCD validation optional. <i>Lawns, forests, hayed land and other areas with perennial vegetation meet requirement.</i>
<p>Maps</p>	<ul style="list-style-type: none"> ■ DNR will create buffer protection maps for public waters and public drainage systems subject to buffer requirement.
<p>Waters covered and buffer widths</p>	<ul style="list-style-type: none"> ■ Public waters – 50-foot average buffer width with a 30-foot minimum width. ■ Public ditches - 16.5-foot minimum width. <ul style="list-style-type: none"> ● Or alternative practices (applies to both public waters and public ditches). ■ Other waters determined by SWCDs and adopted into water management plans to accomplish targeted voluntary or local regulatory measures.
<p>Compliance</p>	<ul style="list-style-type: none"> ■ County or watershed district provides correction letters when noncompliance identified. ■ Local/state \$500 administrative penalty for public waters, ditches. ■ State program funds can be withheld for failure to implement.
<p>Soil erosion</p>	<ul style="list-style-type: none"> ■ Local/state enforcement with \$500 administrative penalty order, without local ordinance, unless cost share not available.
<p>Timeline</p>	<ul style="list-style-type: none"> ■ Public ditch buffer requirements not dependent on redetermination trigger. ■ Buffers need to be installed on Public Waters by November 2017; on Public Drainage Systems by November 2018. ■ Landowners who have applied for conservation programs or initiated a ditch authority process can be granted a one-year extension.
<p>Program funding: DNR mapping and BWSR/SWCD implementation</p>	<ul style="list-style-type: none"> ■ Legacy bill’s Clean Water Fund includes: <ul style="list-style-type: none"> ● \$5 million to BWSR for local government implementation; ● \$650,000 to DNR for mapping.
<p>Landowner financial assistance</p>	<ul style="list-style-type: none"> ■ Drainage law more flexible to provide compensation for buffers. ■ RIM buffer easements – Clean Water Fund and Outdoor Heritage Fund in Legacy bill. ■ U.S.D.A. Conservation Reserve Program (CRP) – federal funds available for contracts to riparian landowners. ■ RIM/CREP easements – Clean Water Fund in Legacy bill; SWCDs are point of contact for requirements and technical assistance.
<p>SWCD base funding</p>	<ul style="list-style-type: none"> ■ \$11 million annually in fiscal years 2016 and 2017 from Clean Water Fund in Legacy bill.



Summary of 2015 WCA Statute Changes

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Tue, Jun 30, 2015 at 3:58 PM

WCA Stakeholders,

First of all, thank you for your interest and participation in this last year's efforts to explore and vet potential changes to the Wetland Conservation Act (WCA). This interest carried over to this legislative session, which resulted in several modifications to WCA - most of which were discussed at various points in the stakeholder review process. While the legislation as a whole may not be perfect or complete depending on your perspective, we believe it is a clear improvement that will result in a more efficient process and improved conservation outcomes. A summary of the 2015 WCA statute changes, including a brief explanation of each, is now posted on the main Wetlands page of the BWSR website at: http://www.bwsr.state.mn.us/wetlands/wca/Summary_of_2015_WCA_Statute_Changes_6-23-15.pdf

Most of the changes will not have any significant effect until incorporated into the WCA Rules, but some will take effect August 1, 2015. Key changes include:

Gmail - Summary of 2015 WCA Statute Changes

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- **Wetland Stakeholder Coordination** – a requirement for BWSR to continue to work with stakeholders on policy issues and recommendations.
- **Mitigation Easement Fees and Stewardship Account** – BWSR now has the authority to 1) charge a fee to recoup costs associated with establishing a mitigation easement, and 2) to assess a stewardship fee to cover the costs associated with its' long term oversight and management. The stewardship fee is to be deposited in a designated account that produces an annual revenue stream from investment returns.
- **High Priority Areas** – BWSR is required to identify and designate high priority areas for wetland replacement, and must establish priorities and replacement ratios to encourage their use.
- **Siting Criteria** – Separate criteria for public transportation projects was eliminated, and the order for replacement via banking was modified.
- **In-Lieu Fee Program** – Clear authority was provided for BWSR to establish or approve an ILF program.
- **Wetland Banking Process** – BWSR now has greater flexibility to modify the wetland banking process in rule to potentially include final approval by BWSR.
- **"Rapid Response Team"** – BWSR will establish an expanded TEP process for the early scoping and review of potential mitigation sites.
- **Actions Eligible for Credit** – New actions will be available for >80% areas, including actions related to the restoration and protection of streams and riparian buffers and others established in rule.
- **404 Assumption Study** – BWSR and DNR are directed to study the feasibility of assuming the federal Clean Water Act Section 404 Permit Program.
- **Report to Legislature** – BWSR will report to the relevant legislative committees by March 15, 2016 regarding proposals for the implementation of new policies.

This is the third year of legislative changes since the 2009 WCA Rule (Chapter 8420) became effective. Statutes changes occurred in 2011, 2012, and 2015 (summaries for each of these years can be found on the BWSR website). The rules are in need of an update to address these statute changes and other issues. As such, BWSR plans to initiate WCA rulemaking in 2015 – likely sooner rather than later. We value the input you have provided in the past, and hope that you will take advantage of upcoming opportunities to provide your feedback and ideas for the WCA Rule update.

Feel free to forward this e-mail to others interested in WCA, and contact myself or Dave Weirens if you have any questions. Thanks!

Les Lemm

Wetland Conservation Act Coordinator