

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/1Plan 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 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 WD s 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 Jan1, 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>	<p>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>
<p>Maps</p>	<p>DNR will create buffer protection maps for public waters and public drainage systems subject to buffer requirement.</p>
<p>Waters covered and buffer widths</p>	<p>Public waters – 50-foot average buffer width with a 30-foot minimum width. Public ditches - 16.5-foot minimum width. 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>
<p>Compliance</p>	<p>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>
<p>Soil erosion</p>	<p>Local/state enforcement with \$500 administrative penalty order, without local ordinance, unless cost share not available.</p>
<p>Timeline</p>	<p>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>
<p>Program funding: DNR mapping and BWSR/SWCD implementation</p>	<p>Legacy bill’s Clean Water Fund includes: \$5 million to BWSR for local government implementation; \$650,000 to DNR for mapping.</p>
<p>Landowner financial assistance</p>	<p>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>
<p>SWCD base funding</p>	<p>\$11 million annually in fiscal years 2016 and 2017 from Clean Water Fund in Legacy bill.</p>

Summary of 2015 WCA Statute Changes

Lemm, Les P (BWSR) <les.lemm@state.mn.us>

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_3-23-15.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

From runoff to ruin: The undoing of Minnesota's lakes

Land use did the damage; much of it can't be undone. In some parts of the state, however, there's still hope.

By Ron Way and Steve Berg

August 7, 2015 — 6:43pm



BRIAN PETERSON • brianp@startribune.com If 75 percent of a lakeshore remains mainly forested, the chance of maintaining lake quality is good. But when natural cover falls below 60 percent, lakes begin to deteriorate.

No one can deny the mystical bond that ties Minnesota's people to its lakes. "Going to the lake" evokes sensations so vivid that they define who we are: the lapping of water, the wail of a loon, the tug of a walleye on the line, a breeze in your face, the sun on your shoulder. Memories pass from one generation to the next.

And yet, we Minnesotans are in deep denial about the critical condition of our lakes and the culpability we share. We are loving our lakes to death.

Agriculture has drained or poisoned the prairie lakes and potholes of southern and southwestern Minnesota. Forget about them; they're gone.

A similar fate awaits the heart of lake country — the thousands of recreational lakes clustered around Brainerd, Detroit Lakes and Alexandria in central Minnesota. It's not the crush of shoreline development by itself that's killing them; it's the reckless way in which development has been allowed to proceed.

Over the last half-century, quaint lakeside cabins have been transformed, by the thousands, into mega-homes with large fertilized lawns running to the water's edge. Nearby towns have been converted to suburban-style strips with vast parking lots. Add in all the golf courses, faulty septic tanks and riprap barriers that replace natural shoreline vegetation, and you begin to realize how an exponential increase in unfiltered runoff has remade these lakes into a nutrient soup that's quite literally suffocating fish and other native species within them.



Mark Boswell

This year's early halt to walleye fishing on Mille Lacs, the state's most popular fishing lake, is a particularly ominous example.

"It's death by a thousand cuts," said Peter Sorensen, a fisheries expert at the University of Minnesota and one of a number of scientists who consider the damage irreversible, given the added realities of a warming climate and a stiff political resistance to land-use changes needed to restore central Minnesota's lakes. Over the next few generations, those lakes will die, too.

The best we can hope for, then, is to preserve the still relatively pristine tier of forest-encircled northern lakes that stretches roughly from Bemidji and Park Rapids, through the Leech Lake region and into the Arrowhead. But saving those lakes will require two extraordinary acts of courage: first, an acknowledgment that the laissez-faire path we've followed for 50 years has failed, and, second, a new resolve to pass and enforce land-use regulations that diminish the impact of human settlement.

The aim shouldn't be to inhibit future development but to change development's character in ways that protect lakes and their surrounding watersheds.

Those are monumental tasks. Admitting we've been wrong is a hard thing. We are like fugitives with "stop me before I kill again" tattooed on our chests; we can't seem to help ourselves. "Much of this has been unintentional and mostly inadvertent," Sorensen said, and he's right about that.

Local officials didn't set out to kill the lakes of central Minnesota. But desperate for tax base, they've encouraged hundreds of projects that, when considered cumulatively, have marred the character of lake country and irreparably damaged water quality in the process.

It has been a gradual transformation that most people regard simply as progress. Beginning in the years following World War II, the expansion of prosperity to a broader middle class opened lakefront property to the masses. A home on a lake came to signify the good life. There are no reliable numbers to measure the surge in lakeshore dwellings between, say, 1950 and 2010. But to suggest a tenfold increase, both in the number of dwellings and the volume of runoff, would draw few arguments.

The damage came less from numbers, however, than from careless design. The real-estate market and local governments treated lake country not as a delicate ecosystem but as an ordinary template for suburban excess. The jarring retail strip along Hwy. 371 between Baxter and Nisswa offers an ironic example. Its lineup of big boxes fronted by barren parking lots replicates the suburban sprawl that vacationers go north to escape.

Consider, too, the lakeshores themselves, now studded with triple-car garages and large-scale homes with broad, sloping lawns. We've rebuilt suburbia at the lake.

Understanding how this trend has affected lake water is crucial for any hope of avoiding similar degradation farther north.

If 75 percent of lakeshore remains mainly forested, the chance of maintaining lake quality is good, said Peter Jacobson of the state's Department of Natural Resources. But when natural cover falls below 60 percent, lakes begin to deteriorate.

Here's what happens: Runoff from farm fields and pavement creates a nutrient overload in nearby lakes. The process accelerates when natural buffers are replaced by lawns and riprap barriers at the water's edge. When air temperatures rise in the spring, the upper layer of lake water heats up, causing algae blooms that decay and consume oxygen that otherwise sustains fish and their habitat. Climate change compounds the problem by keeping the water warmer for longer periods.

By mid- to late summer, mats of green scum can dominate the upper layers, forcing rotting algae to seep into deeper, colder parts of the lake, depleting oxygen for the feeder fish like the fatty cisco needed to grow large sport fish. The lake "crashes" when sport fish can no longer thrive. Invasive species — like zebra mussels and Eurasian water milfoil — further complicate the situation.

The economic impact can be stunning. Sport fishing in Minnesota is conservatively valued at \$2 billion per year. According to Tom Watson, president of the Whitefish Property Owner's Association, tourists annually spend \$125 million directly and \$140 million indirectly in Crow Wing County alone. Lakeshore property values statewide run into the tens of billions of dollars.

Can't sick lakes be restored? Not realistically, so long as local officials continue to resist changes in land-use practices. The state's sales-tax-supported Clean Water and Legacy Fund was supposed to make a difference, but much of that money is being spent on collecting data to document problems that are already well-known.

Like people, lakes have a life cycle, Sorensen explains. A 60-year-old human body wracked by smoking and reckless living can't be restored to that of an energetic 30-year-old, he said. Abused lakes are like that, too.

Instead, the focus should shift to keeping clean lakes clean, insists Bill Patnaude, Beltrami County's environmental services director, pointing to his County Board's "full commitment" to maintaining high quality in its 300 lakes.

Indeed, resolving to mend our ways in order to save the lakes farther north will take an entirely new mind-set, bolstered by rules that are enforced, not ignored. That will be the hardest part, not because the needed rules are difficult but because northern Minnesotans have a cantankerous attitude about outsiders telling them what to do, especially if it's "for their own good." Anyone with an ounce of political savvy knows the history of hard feelings. Often, it's portrayed as a battle over property rights or between environmentalism and economic development, but that's an obsolete frame of mind. Truth is, preserving the quality of lake water in northern Minnesota is a huge component of economic development.

There's no mystery about what's needed: larger setbacks for new lakeside homes, natural buffers between lakes and yards, a prohibition against nitrogen fertilizers, frequent inspections of septic systems, and incentives for traditional town design that limits the size of paved parking lots while encouraging native plants, rain gardens, maximum tree coverage and permeable pavers. In short, what's required is a built environment that harmonizes with nature rather than defying it.

For years, the state had a planning agency to lead such efforts. But Minnesota Planning was eliminated in 2003, and the state's Environmental Quality Board was gutted. There are laws still on the books aimed at helping guide local governments toward achieving "sustainable development." The state offers a "model ordinance" and a "milestone report" to evaluate progress. Gov. Mark Dayton has now launched a new citizens' advisory board to help fill the void. But local governments often ignore the sustainable framework, or override it when development comes calling.

Objections from seasonal property owners are also routinely dismissed, said the Whitefish association's Watson, largely because most lakeshore homeowners are nonresidents and don't vote locally.

The need for rules is perhaps best illustrated by a recollection from Jim Erkel, an attorney for the Minnesota Center for Environmental Advocacy. When, in 1996, officials in Two Harbors asked the owner of a new fast-food restaurant why he had cut down a grove of beautiful pine trees (planted by Boy Scouts in the 1930s) near his new store while he'd been far more careful about the environment and history around his Duluth store, the owner replied that Duluth had rules and Two Harbors did not.

"It was a light-bulb moment," Erkel said. "He cut the trees because the town let him. That pretty much explains everything."

Ron Way is a former official with the Minnesota Pollution Control Agency and the U.S. Department of the Interior. He lives in Edina. Steve Berg is a writer and urban design consultant. He lives in Minneapolis.