

Mitigation Newsletter

Wisconsin and Minnesota

U.S. Army Corps of Engineers
Wisconsin Department of Natural Resources
Environmental Protection Agency
Minnesota Department of Natural Resources
Minnesota Board of Water and Soil Resources



Site Protection for Stream Restorations

Sponsors must permanently protect mitigation banks to prohibit incompatible uses such as clear cutting or mineral extraction. For wetland-only banks, the Board of Water and Soil Resources, or BWSR, in Minnesota and the Wisconsin Department of Natural Resources, WDNR, in Wisconsin hold the conservation easements for all banks. For banks proposing stream credits, sponsors should coordinate with Dennis Rodacker at BWSR or Tom Nedland at WDNR early in the process to determine whether their state agency will hold the easement over stream(s) and effective riparian areas. If the state cannot hold the stream conservation easement, there are other entities like local conservation districts, non-profit conservation groups, accredited land trusts, or other natural resource-based organizations who may be interested in holding conservation easements. We encourage sponsors to explore these alternative solutions when necessary.



Wetland Credit in Effective Riparian Areas Associated with Stream Lift

The effective riparian area, or ERA, is a component of the Stream Quantification Tool that can be influenced by both stream restoration and wetland restoration activities. The effects of a project's stream and wetland restoration activities often benefit both wetland and stream functions, and result in a potential overlap of stream and wetland credit generation. Per state and federal rules, sponsors cannot receive multiple types of regulatory credits for providing the same or similar environmental benefits on a piece of land. The WI and MN Programmatic Interagency Review Team, or IRT, have developed the following method to differentiate stream functional lift from wetland functional lift within an ERA:

1. Sponsors proposing wetland credit areas within the ERA involving *only* the enhancement or establishment of native, non-invasive wetland vegetation can propose the same amount of wetland credit as that proposed for wetland vegetation enhancement areas outside the ERA.
2. Sponsors proposing wetland credit areas within the ERA involving *both* vegetative and hydrologic lift can propose half the amount of wetland credit as that proposed for vegetative and hydrologic lift outside the ERA.
3. Sponsors cannot receive buffer credit within the ERA.

Credit Withdrawal Reminders

To ensure timely and accurate entry of sponsors' credit sales into the state and federal databases, sponsors must:

1. Fill out the document (e.g. appropriate form/affidavit) completely and accurately.
 - ◆ Identify whether the credit purchaser is seeking a Corps permit. If a Corps permit is required, you **must** identify the Corps file number. If the document you are using does not have a space for this information, write in the Corps file number somewhere on the first page.
 - ◆ Clearly identify the wetland credit type (Eggers and Reed type). In Minnesota, this is in addition to identifying the BWSR database Group Type. This must match what is shown in both databases.
2. Cross-check your available balance information in both the state database AND RIBITS before submitting. Do not submit a withdrawal for the sale of more credits than BOTH databases show in your available balance. As the sponsor of a bank site, you may only sell available federal or state credits. Sponsors are responsible for tracking your sales and selling more credits than what is available may result in the agencies suspending further credit sales.
3. Submit your document to the appropriate contacts:
 - ◆ Minnesota – Solimar Garcia Barger [Solimar.Garcia.Barger@state.mn.us]
 - ◆ Wisconsin – Karen Eklund [karen.m eklund@usace.army.mil] and Tom Nedland [Thomas.nedland@wisconsin.gov] concurrently

Check these Databases

- <https://ribits.ops.usace.army.mil/ords/f?p=107:2:.....>
- <https://apps.bwsr.state.mn.us/AvailableCredit/dashboard>
- <https://dnr.wisconsin.gov/topic/Wetlands/mitigation/bankingRegistry.html>

Find the Documents for your state

MN: <https://bwsr.state.mn.us/wetland-bank-transaction-forms>

WI: <https://dnr.wisconsin.gov/sites/default/files/topic/Wetlands/WetlandCompensatoryMitigationGuidelines.pdf> on Page 59

Mineral Rights

The Mineral Rights sections of the Fall 2020 Newsletter for Minnesota and Spring 2020 Newsletter for Wisconsin contain important information on site protection for sponsors proposing mitigation banks in their respective state. It is crucial for sponsors to complete and submit title opinions on their proposed bank parcels early in the bank review process (i.e. draft prospectus or prospectus). Early title opinions give sponsors the opportunity to discover if severed mineral rights, or other conflicting property rights, are present and take the necessary steps to remedy these potential fatal flaws.

Fall 2020 Minnesota Newsletter:

https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/Mitigation/Fall_2020_Mitigation_Newsletter_MN_20201118.pdf?ver=D2fQgU8LtJTOrgjKvU5okQ%3d%3d

Spring 2020 Wisconsin Newsletter:

<https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/Mitigation/Spring%202020%20Mitigation%20Newsletter%20WI.pdf?ver=2020-05-14-114811-553>

WDNR and MN DNR Hydrologic Studies

The WDNR conducted a pilot study of wetland hydrologic regimes of southern sedge meadows and wet-mesic prairies in the southern portion of the state. The goal was to study the hydrologic regimes of commonly restored wetlands to inform wetland compensatory mitigation performance standards. WDNR collected water level data from wetlands selected for their reference-quality vegetation. They also assessed each site's floristic quality and evaluated species composition to assess what relationships exist between hydrologic regimes and plant species assemblages. The MN DNR has also initiated a wetland hydrologic regime monitoring project. They will monitor 60 wetlands across the state across many years. The IRT expects this data will inform monitoring and performance standards decisions.

You may find the WDNR report here: <https://dnr.wi.gov/water/wsSWIMSDocument.ashx?documentSeqNo=304154392>

You may find the MN DNR study here: <https://www.dnr.state.mn.us/wetlands/wetlands-hydrology-monitoring.html>

Minnesota Wetland Conservation Act Rulemaking Updates

BWSR has re-initiated the state's rulemaking process to incorporate statute changes from 2011, 2012, and 2015 and 2017. Some changes were effective immediately and others are only effective upon further development of Wetland Conservation Act rules. Of particular interest to those involved in wetland banking are changes to the following:

- ◆ wetland replacement siting
- ◆ pre-settlement wetland areas
- ◆ in-lieu fee replacement
- ◆ decision authority for wetland bank plans

Other BWSR initiatives associated with rulemaking include potential changes to wetland typing for wetland impacts and replacement credits and changes to bank service area boundaries. BWSR has established a [WCA rulemaking page](#) for the public to access relevant information. BWSR held two Wetland Advisory Committee meetings this year with more to come in 2022 and 2023. In addition to advisory committee meetings and other outreach and public input efforts, BWSR plans to hold a virtual session in the near future on those issues most relevant to wetland bankers. If you are interested in participating, please send us an e-mail with your name, contact information, and a request to participate in the wetland banking rulemaking session to: bwsr.wcarulemaking@state.mn.us.

Mitigation Method Series: Preservation

Preservation, as described in rule, is the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources via the implementation of appropriate legal (e.g. conservation easement) and physical (e.g. signage, fencing) mechanisms to protect and maintain those resources. Preservation does not result in a gain of aquatic resource area or function and is best utilized in conjunction with reestablishment, rehabilitation, and enhancement. To qualify for preservation credit, the resources onsite must meet specific criteria: 1. provide important physical, chemical, or biological functions for the watershed 2. contribute significantly to the ecological sustainability of the watershed, and 3. be under threat of destruction or adverse modification. If you are considering proposing preservation for credit, contact the IRT to discuss what site specific information you should provide to demonstrate eligibility under these criteria. Sponsors can find further information on evaluating eligibility at the following location: <https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/Guidance%20on%20Evaluating%20Potential%20Wetland%20Preservation%20Sites.pdf?ver=2017-10-05-133019-620>. Be on the lookout for more on this series.