Notice of Intent to Adopt Rules with a Hearing

Minnesota Board of Water and Soil Resources
Wetlands Section

Proposed Permanent Rules Relating to Wetland Conservation, *Minnesota Rules*, Chapter 8420; Revisor's ID Number: R-4356; CAH Docket Number: 45-9061-41929

Introduction. The Minnesota Board of Water and Soil Resources (BWSR or board) intends to adopt rules after a public hearing following the procedures in the rules of the Court of Administrative Hearings, *Minnesota Rules*, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. You may submit written comments on the proposed rules from November 30, 2026, until the close of the 60-day comment period at **4:30 p.m. on Friday, January 29, 2027**. You may also present comments at the hearing and during the post-hearing comment period, as described below.

Public Hearing. The board will hold a virtual public hearing on the above-named rules on **Tuesday, March 2, 2027,** at **3:00 p.m.** and will continue until 6:00 p.m. or until all interested persons have had the opportunity to speak, whichever occurs first.

You can participate in the virtual hearing, which will be conducted by Administrative Law Judge Portia Hampton-Flowers from the Court of Administrative Hearings, via Webex by using this link along with the associated access code and password:

For a video and audio connection, join the hearing through an internet connection:

- Web link: https://minnesota.webex.com/minnesota/j.php?MTID=m8cbc6a4a39c2d55e150890c3724347cb
- Meeting Number (access code): 2487 725 7969
- Password: BJrKmPE5Q77 (25756735 when dialing from a phone or video system)

For audio-only connection, join the virtual hearing by telephone:

- Call: +1-415-655-0003 (this is not a toll-free number)
- Access code: 2487 725 7969
- Password: 25756735

During the virtual hearing, the board will also provide an in-person participation site located at:

Minnesota Pollution Control Agency Office
Conference Room 102
7381 Airport View Drive SW
Rochester, MN 55902-1847

The site will connect to the virtual hearing through Webex, and board staff will be on site to help attendees join the hearing, ask questions, and provide comments for the hearing record.

The board will schedule additional days of hearing if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written comments, statements, or arguments. Statements may be submitted without appearing at the hearing.

If the public hearing is postponed or rescheduled, the board will send a notice of such a change to the organizations listed on its additional notice plan and post the notice of such a change on the board's rulemaking webpage at https://bwsr.state.mn.us/wca-rulemaking.

Administrative Law Judge. Administrative Law Judge Portia Hampton-Flowers will conduct the hearing. The judge can be reached by contacting William Moore, Rules Coordinator, Court of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7893, and william.t.moore@state.mn.us.

Subject of Rules. The board proposes to amend Minnesota Rules, chapter 8420, which governs administration of the Wetland Conservation Act (WCA). The board also proposes to repeal Minnesota Rules, part 8420.0840, Wetland Preservation Areas, in its entirety. The proposed amendments are described below by topic area.

- **Purpose and Scope.** The board proposes amendments to parts 8420.0100 (Purpose), 8420.0105 (Scope), 8420.0111 (Definitions), 8420.0112 (Incorporation by Reference), and 8420.0117 (Presettlement Wetland Acres and Areas). These amendments remove an outdated list of laws and unnecessary prescriptive language from the rule's purpose statement, conform the scope of regulated activities and the classification of presettlement wetland areas to statutory amendments, add, relocate, and remove definitions to improve clarity and consistency, and update incorporated reference documents.
- **Local Government Unit Duties and Procedures.** The board proposes amendments to parts 8420.0200 (Determining Local Government Unit; Duties), 8420.0240 (Technical Evaluation Panel Procedures), and 8420.0255 (Local Government Unit Application and Decision Procedures). These amendments clarify the roles and responsibilities of local government

units (LGUs) and technical evaluation panels (TEPs); designate the commissioner of natural resources as the LGU for wetland banking projects established solely to replace impacts under a permit to mine to conform the rule to statute; add a requirement for TEP members to disclose certain financial interests or management responsibilities related to wetland banks to conform the rule to statute; authorize electronic transmission of notices and documents to conform the rule to statute; extend the validity period of LGU decisions from three to five years to conform the rule to statute; correct an existing error requiring notice of a decision to be mailed within ten business days, where statute requires ten days; and add a Tribal notice requirement for applications affecting land within a reservation.

- **Application Procedures.** The board proposes amendments to parts 8420.0305 (General Application Requirements), 8420.0310 (Wetland Boundary or Type Applications), 8420.0315 (No-Loss Applications), 8420.0320 (Exemption Applications), and 8420.0330 (Replacement Plan Applications). These amendments correct erroneous cross-references, remove redundant or overly rigid application-content requirements, replace an unattainable "proof" standard with a more workable "information" standard for no-loss and exemption applications, and authorize the board to establish minimum replacement plan application requirements in place of the current, overly detailed list, improving flexibility and consistency with joint application forms used with the U.S. Army Corps of Engineers for implementation of Section 404 of the Federal Clean Water Act.
- **Boundary or Type, No-Loss, and Exemption Standards.** The board proposes amendments to parts 8420.0405 (Boundary or Type), 8420.0410 (No-Loss and Exemption Conditions), 8420.0415 (No-Loss Criteria), and 8420.0420 (Exemption Standards). These amendments conform several exemptions administered under part 8420.0420, including the agricultural activities, drainage, utility, de minimis, and wildlife habitat exemptions, to recent statutory amendments; establish implementation criteria to resolve a lack of clarity in how the agricultural "prior converted" cropland provision is applied; update cross-references; and clarify no-loss and boundary/type determination criteria, including by removing an outdated evidentiary restriction and eliminating an internally inconsistent no-loss condition under part 8420.0415.
- **Wetland Replacement.** The board proposes amendments to parts 8420.0500 (Purpose and Requirement), 8420.0515 (Special Considerations), 8420.0520 (Sequencing), 8420.0522 (Replacement Standards), 8420.0526 (Actions Eligible for Credit), 8420.0528 (Replacement Wetland Construction Standards), and 8420.0544 (Replacement for Public Transportation Projects), and proposes to add new part 8420.0512 (Establishing Bank Service Areas). These amendments establish an objective process for delineating bank service areas, revise and clarify provisions relating to rare natural communities, remove an unnecessary

procedural step from the sequencing flexibility process, and update replacement wetland construction and design standards.

- **Wetland Banking and Monitoring.** The board proposes amendments to parts 8420.0700 (Purpose of Wetland Banking), 8420.0705 (Establishing Wetland Banks), 8420.0725 (Certification and Deposit of Credits), 8420.0735 (Monitoring and Corrective Actions), 8420.0745 (Withdrawals and Transfers), 8420.0755 (Bank Account Administration and Management), 8420.0800 (Replacement Wetland Construction Certification), 8420.0810 (Replacement Wetland Monitoring), and 8420.0820 (Local Government Unit Monitoring Responsibilities). These amendments establish a wetland bank plan application and review process and timeline largely consistent with the Federal Mitigation Rule, implement a statutory directive to establish bank project review timelines, and provide greater flexibility in monitoring and reporting requirements while clarifying monitoring responsibilities for LGUs, the TEP, and applicants.
- **Wetland Planning.** The board proposes amendments to parts 8420.0830 (Comprehensive Wetland Protection and Management Plans) and 8420.0835 (High Priority Regions and Areas). These amendments remove provisions made obsolete by statutory amendments and incorporate terminology consistent with other parts of the rule. The board proposes to repeal part 8420.0840 (Wetland Preservation Areas) in its entirety. This part is proposed for repeal because 2011 statutory amendments eliminated the funding mechanism that made the wetland preservation area program operable, rendering the procedures in this part obsolete.
- **Enforcement, Appeals, and Compensation.** The board proposes amendments to parts 8420.0900 (Enforcement Procedures) and 8420.0905 (Appeals). These amendments reorganize and clarify enforcement roles, responsibilities, and procedures, including a new Tribal notification requirement for enforcement actions occurring within reservation boundaries, without materially changing the current enforcement process. Amendments to the Appeals part conform the rule to statutory amendments.
- **Activities Under Department of Natural Resources Authority.** The board proposes amendments to parts 8420.0930 (Mining) and 8420.0935 (Standards and Criteria for Identification, Protection and Management of Calcareous Fens). These amendments conform the rule to recent statutory amendments governing wetland replacement for permit-to-mine projects, consolidate redundant replacement standards, and clarify the commissioner of natural resources' role and management authority over calcareous fens.

Statutory Authority. The board's primary authority to develop rules governing wetland conservation is Minn. Stat. § 103G.2242, subdivision 1(a), which states: "*The board, in consultation with the commissioner, shall adopt rules governing the approval of wetland value*

replacement plans under this section and public-waters-work permits affecting public waters wetlands under section 103G.245. These rules must address the criteria, procedure, timing, and location of acceptable replacement of wetland values and may address the state establishment and administration of a wetland banking program for public and private projects, including provisions for an in-lieu fee program; mitigating and banking other water and water-related resources; the administrative, monitoring, and enforcement procedures to be used; provisions that protect, or mitigate impacts to, intermittent and perennial watercourses upstream of public waters identified under section 103G.005, subdivision 15, paragraph (a), clause (9) or (10); and a procedure for the review and appeal of decisions under this section."

The board also has authority to develop rules governing wetland conservation under Minn. Stat. § 103G.2241, subdivision 11(d), which states: "*The board shall develop rules that address the application and implementation of exemptions and that provide for estimates and reporting of exempt wetland impacts, including those in section 103G.2241, subdivisions 2, 6, and 9.*"

The board has authority under Minn. Stat. § 103G.2242, subdivision 12, paragraphs (c) and (d) to develop rules that designate which actions are eligible for replacement credit and establish different replacement ratios for restoration projects with exceptional natural resource value, and under Minn. Stat. § 103G.222, subdivision 3(c) pertaining to the priority order for the siting of wetland replacement through wetland banking.

The board has authority to develop rules under Minn. Stat. § 103B.3355(b) to determine the function and resulting public value of wetlands.

The board has authority to develop rules under Minn. Stat. § 103G.2251 that allocate replacement credit for the preservation of wetlands, riparian buffers, and watershed areas.

Finally, this rulemaking is not occurring under new rulemaking authority. The current rulemaking amends the rule that was already compliant with the timeframes in Minn. Stat. § 14.125, and thus, the 18-month time limit does not apply.

Publication of Proposed Rules. A copy of the proposed rules is published in the *State Register* and attached to this notice if physically mailed. The proposed rules may be viewed on the board's rulemaking webpage at https://bwsr.state.mn.us/wca-rulemaking. You may also request a free printed copy from the board contact person listed below.

Statement of Need and Reasonableness. The Statement of Need and Reasonableness (SONAR) contains a summary of the justification for the proposed rules, a description of who will be affected by the proposed rules, and an estimate of the probable cost of the proposed rules. You may obtain copies for the cost of reproduction by contacting the board contact person listed

below. The SONAR may be viewed on the board's rulemaking webpage at https://bwsr.state.mn.us/wca-rulemaking.

Board Contact Person. The board contact person is Lewis Brockette at BWSR, 525 South Lake Avenue, Suite 400, Duluth, MN 55802; telephone 651-539-2590, and lewis.brockette@state.mn.us. You may contact the board contact person with questions about the rules.

Public Comment. You and all interested or affected persons, including representatives of associations and other interested groups, will have an opportunity to participate. Administrative Law Judge Portia Hampton-Flowers will accept your views in writing during the comment period and the post-hearing comment period, and orally or in writing at the hearing.

Submit written comments to Administrative Law Judge Hampton-Flowers via the Court of Administrative Hearings Rulemaking eComments webpage at https://mn.gov/oah/forms-and-filing/ecomments/. All evidence that you present should relate to the proposed rules. If the proposed rules affect you in any way, the board encourages you to participate.

You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing, the Administrative Law Judge may order this five-day comment period extended for a longer period but for no more than 20 calendar days.

After the post-hearing comment period, there is a five-working-day rebuttal period during which the board and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period.

The Court of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the Court of Administrative Hearings Rulemaking e-comments webpage at https://mn.gov/oah/forms-and-filing/ecomments/ no later than 4:30 p.m. on the due date. If using the eComments webpage is not possible, you may submit comments in person or by United States mail addressed to Administrative Law Judge Portia Hampton-Flowers at the address listed above.

All comments or responses received are public data and will be available for review on the eComments webpage and on the board's rulemaking webpage at https://bwsr.state.mn.us/wca-rulemaking.

Hearing Procedure. The rule hearing procedure is governed by *Minnesota Statutes*, sections 14.131 to 14.20, and by the rules of the Court of Administrative Hearings, *Minnesota Rules*,

parts 1400.2000 to 1400.2240. You should direct questions about the rule hearing procedure to the Administrative Law Judge through William Moore, the CAH Rules Coordinator listed above.

Modifications. The board may modify the proposed rules either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted during the public comment and rule hearing process. The adopted rules may not be substantially different than these proposed rules unless the board follows the procedure under *Minnesota Rules*, part 1400.2110. If the final rules are identical to the rules originally published in the *State Register*, the board will publish a notice of adoption in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the board must publish a copy of the changes in the *State Register*.

Adoption Procedure after the Hearing. After the close of the hearing record, Administrative Law Judge Hampton-Flowers will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the board adopts the rules and the rules are filed with the Secretary of State, or register with the board to receive notice of future rule proceedings by requesting this at the hearing or by writing to the board contact person stated above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the board contact person at the address or telephone number listed above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: November 16, 2026
/s/ John Jaschke
John Jaschke
Executive Director
Minnesota Board of Water and Soil Resources