



Minnesota State Bar Association

Environmental and Energy Law Update
November 5, 2015

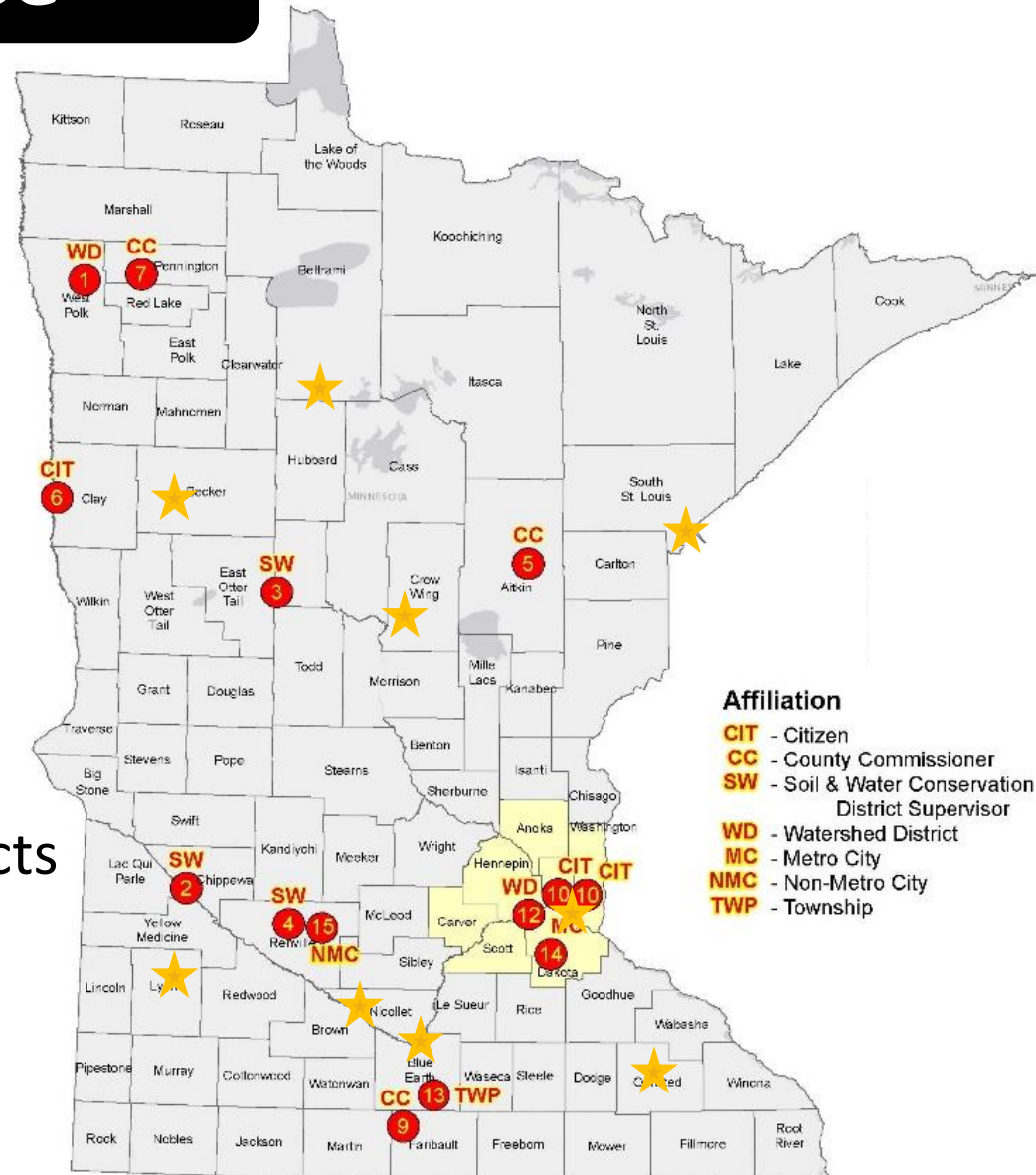
John Jaschke, BWSR Executive Director



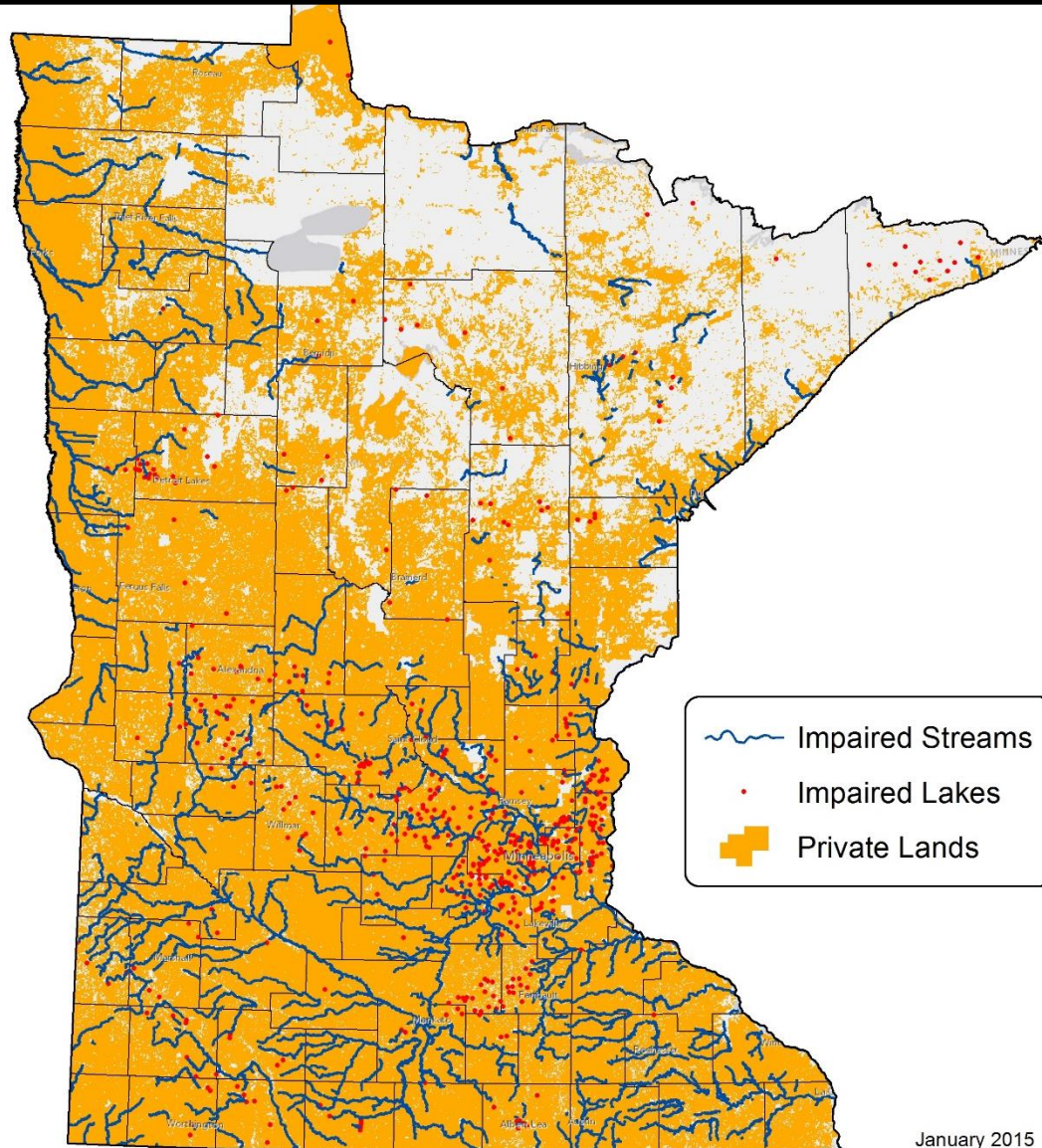
Improve and protect Minnesota's water and soil resources by working in partnership with local organizations and private landowners.

At –A Glance

- 20 member board
 - Local governments (12)
 - Citizens (3)
 - State Agencies (5)
- 103 staff in 9 offices
- Statutorily linked to:
 - 89 Soil and Water Conservation Districts
 - 46 Watershed Districts
 - 87 Counties
 - 19 Metro WMOs



Focus on Private Lands





Local Delivery System

	SWCD	WD/WMO	County
Create	✓	✓	
Boundary	✓	✓	
Plan Approval	✓	✓	✓
Funding	✓	✓	✓
Performance	✓	✓	✓
Program Oversight	✓	✓	✓

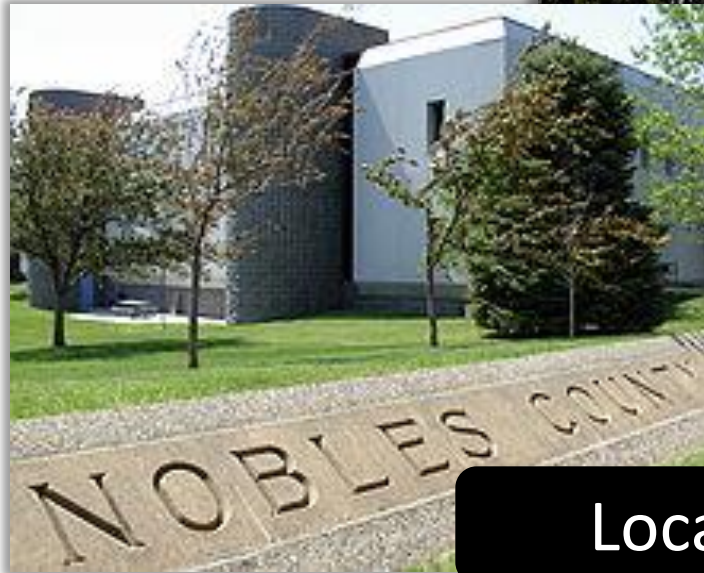
Agency Strategies



Federal



State



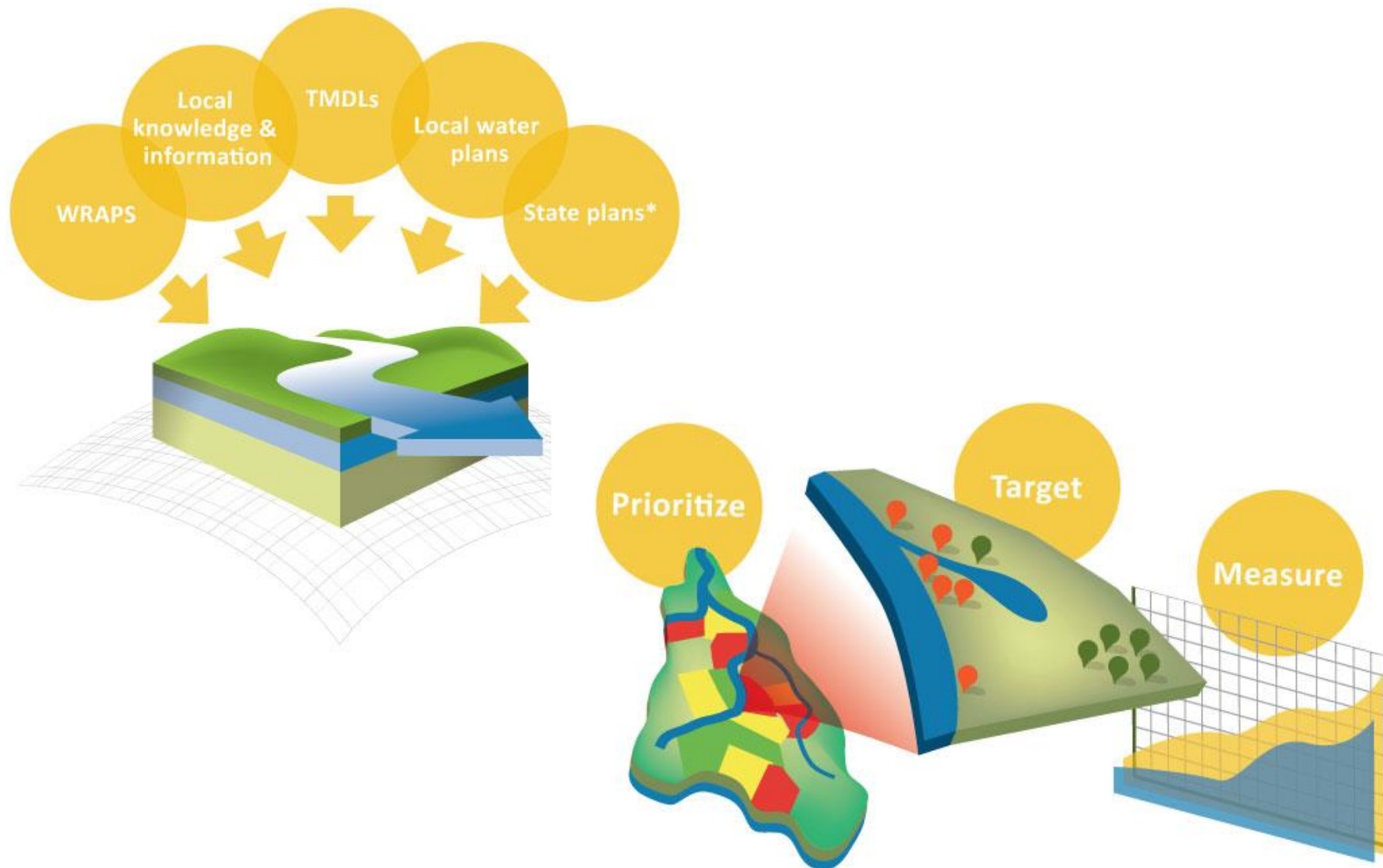
Local



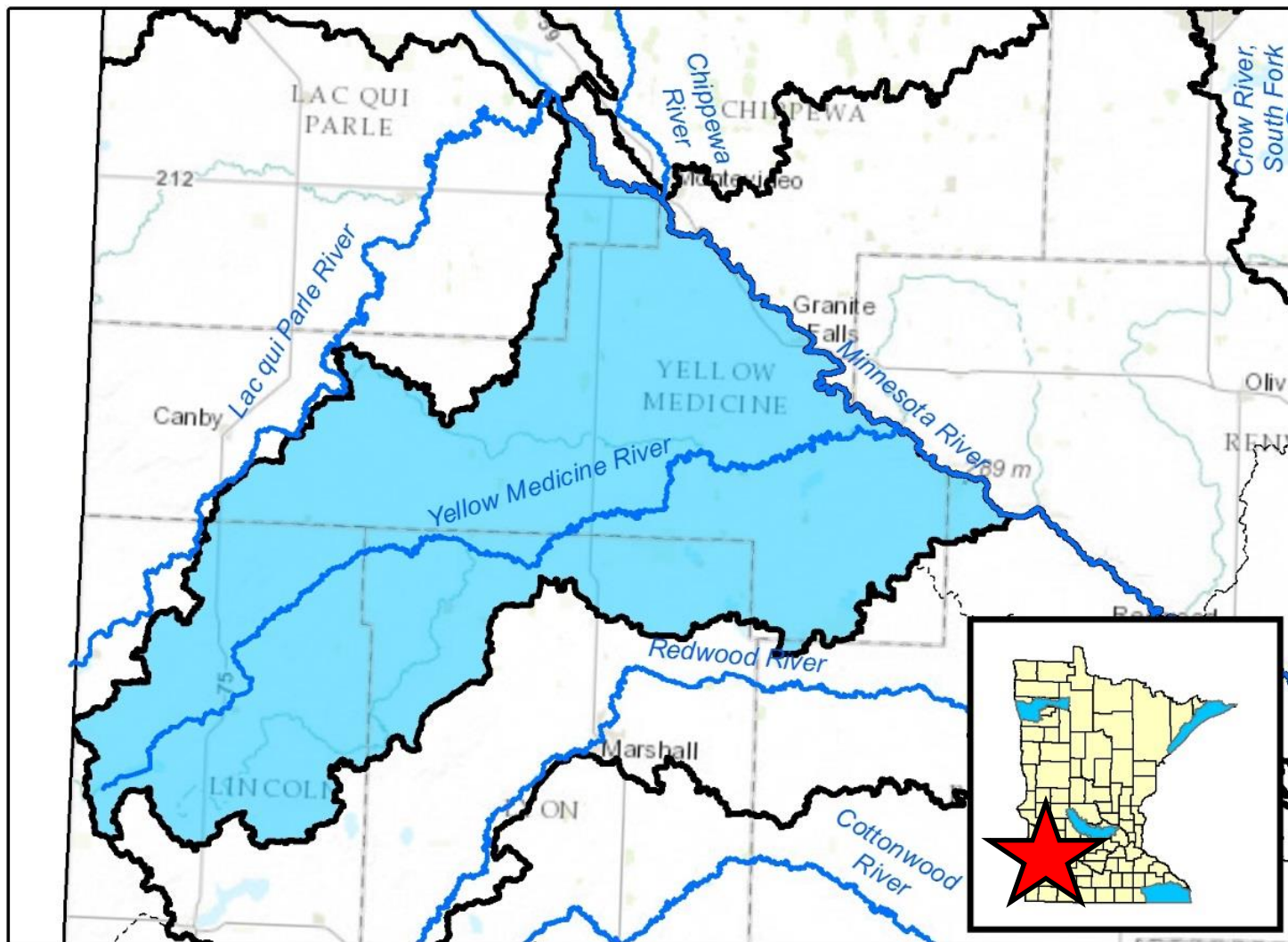
Relevant Legislative Activity

- One Watershed, One Plan
- Wetland Conservation Act
- Buffers and Soil Loss
- Drainage

The Watershed Approach

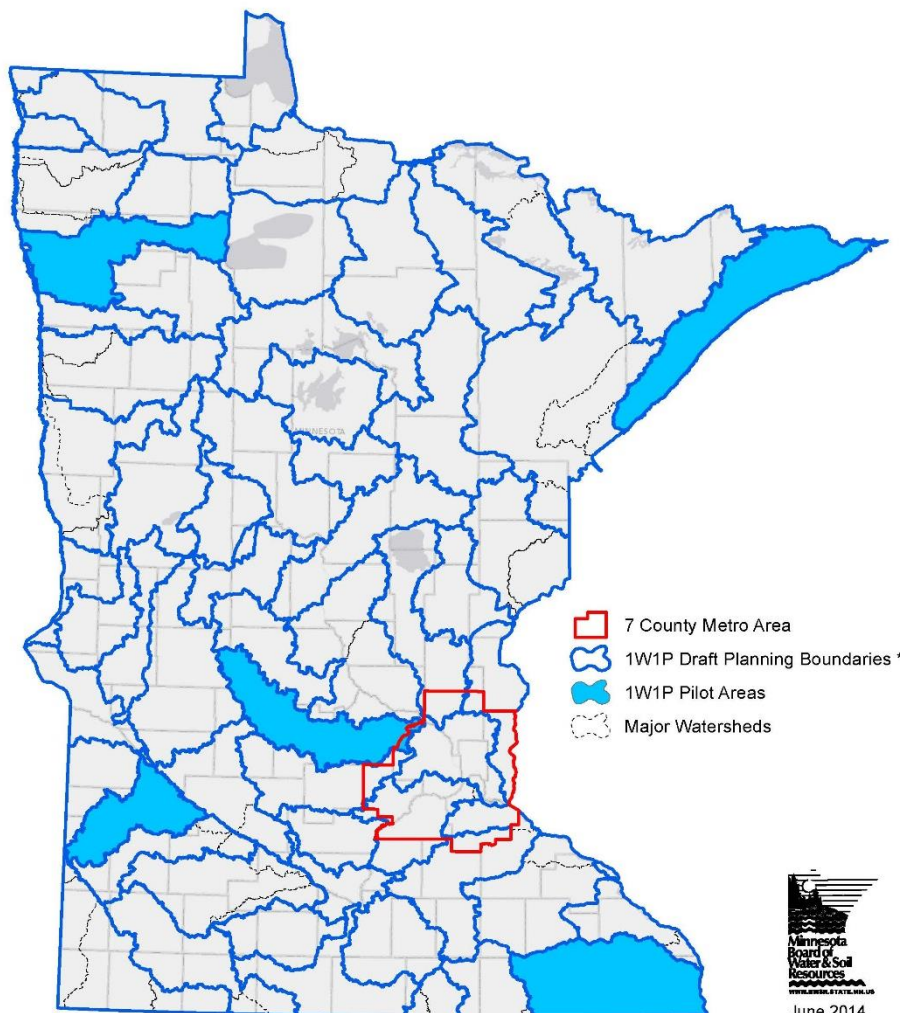


The Watershed Approach



1W1P Legislative Summary

One Watershed, One Plan *Suggested Boundary Map and Pilot Areas*





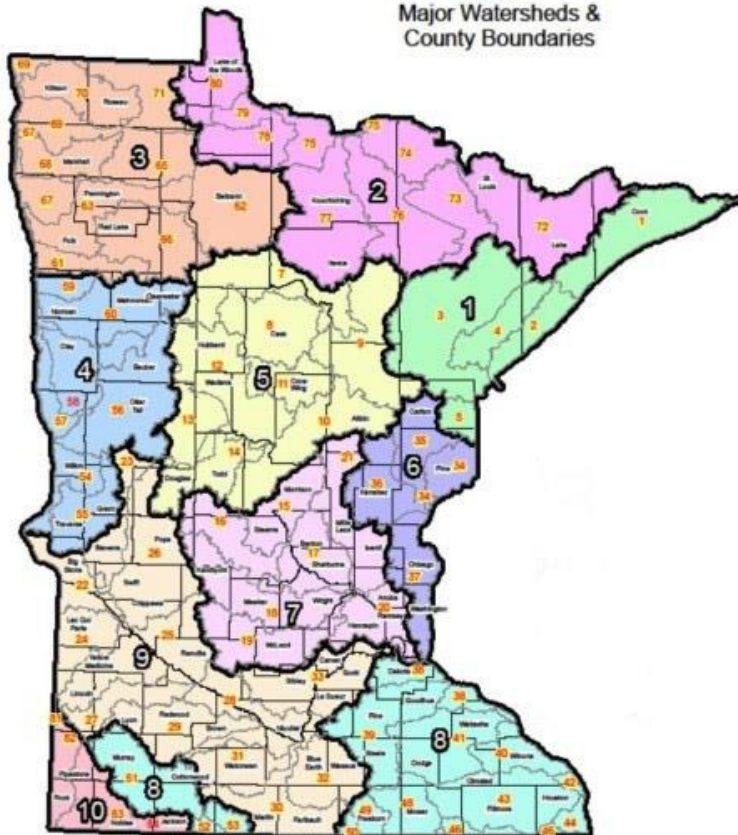
Wetland Conservation Act Overview

- No Net Loss
 - Avoid, minimize, mitigate wetland impacts.
- Coordinated implementation
 - BWSR oversight
 - Local governments implement
 - DNR Enforcement
 - Federal Agencies (COE, USDA)

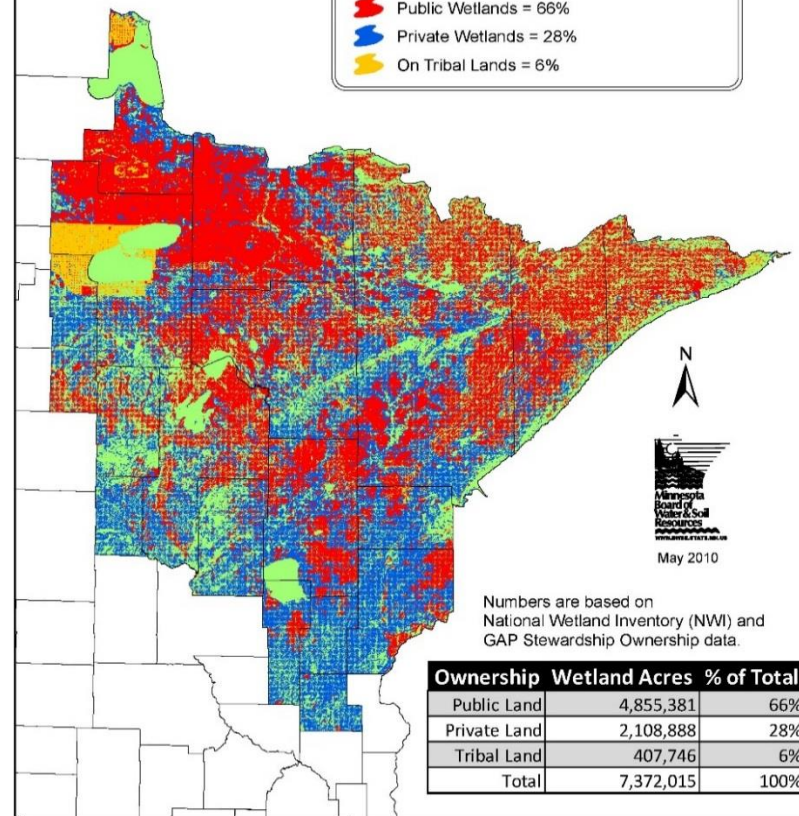
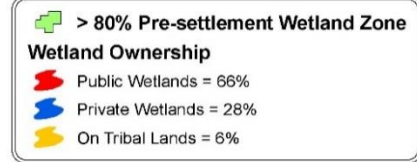
WCA Legislative Update

Wetland Bank Service Areas

With
Major Watersheds &
County Boundaries



Wetland Ownership within the >80% Pre-settlement Wetland Zone





WCA Legislative Summary

- Promotion of watershed-based wetland mitigation
- Improved targeting of wetland mitigation
- Diversification and enhancement of mitigation mechanisms



WCA Rulemaking

Official Notices

Minnesota Board of Water and Soil Resources (BWSR) REQUEST FOR COMMENTS on Possible Amendment to Rules Governing Wetland Conservation, *Minnesota Rules*, Chapter 8420; Revisor's ID Number R-04356

Subject of Rules. The Minnesota Board of Water and Soil Resources (Board) requests comments on possible amendments to the rules governing wetland conservation (i.e. the Wetland Conservation Act). The Board is considering rule amendments to:

- Ø reconcile the rule with statute changes from 2011, 2012, and 2015 – for details on these statute changes, see the wetlands page on the Board's website at <http://www.bwsr.state.mn.us/wetlands/index.html>;
- Ø improve outcomes relating to the replacement of unavoidable wetland impacts, including provisions to establish priorities and replacement ratios that encourage the use of high priority areas for wetland replacement, develop the standards and procedures for an in-lieu fee wetland replacement program, establish new actions eligible for wetland replacement credit in the greater than 80 percent pre-settlement wetland area of the state (northeast), and modify the requirements and process for wetland replacement; and
- Ø as time and capacity allows, implement changes identified during the rulemaking process and other miscellaneous changes that will improve the efficiency, effectiveness, and/or outcomes of the rule.

Persons Affected. The amendment to the rules will affect many sectors whose activities may influence Minnesota's wetland resources, including landowners and organizations proposing to impact wetlands; local governments responsible for implementing the Wetland Conservation Act; and individuals and organizations with an interest in wetland protection such as environmental, agricultural, development, and public advocacy groups.

Statutory Authority. *Minnesota Statutes*, section 103G.2242, requires the Board to adopt rules governing the approval of wetland value replacement plans. 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; the administrative, monitoring, and enforcement procedures to be used; and a procedure for the review and appeal of decisions under this section.

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing until 4:30 p.m. on December 18, 2015. The Board does plan to appoint an advisory committee to comment on the possible rules.

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Buffer Legislative Update



Buffers - Voluntary



Buffers (or Alternative Practice) - Needed





Buffer Analysis Results

Riparian classification	Linear miles	% Total stream/ditches	Buffer required (feet)
Shoreland Requirement	21,642	30%	50.0
Ditch Buffer Requirement	4,022	6%	16.5
No Buffer Requirement	44,850	64%	0.0



Buffer Law – What's New?

- **Expanding the scope of waters covered**
- **Setting timelines for implementation**
- **Providing for enforcement**
- **Strengthening soil erosion statutes**
- **Appropriating Funding**



Minnesota's Buffer Law

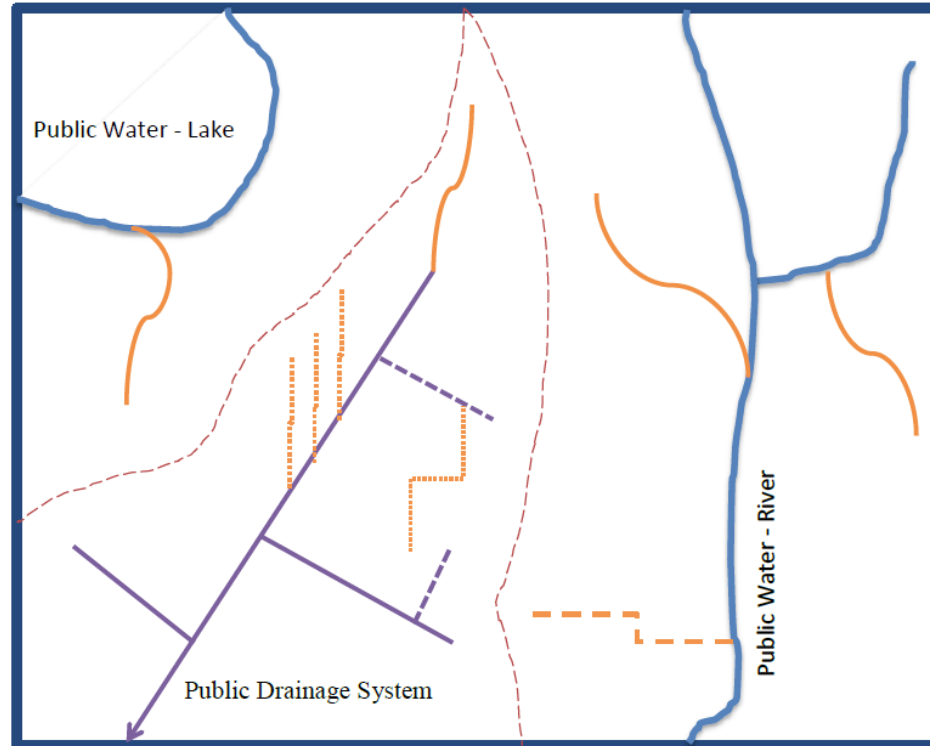
A Statewide, basic standard approach:	
Maps	DNR is creating buffer protection maps
Waters Covered and Buffer Widths	<ul style="list-style-type: none">• Public waters – 50-foot average, 30-foot minimum• Public ditch systems - 16.5-foot minimum ---- Or alternative practices ----• Other waters determined by SWCDs
Compliance	<ul style="list-style-type: none">• County or watershed district provides correction letters when noncompliance identified.• Local/state \$500 administrative penalty• State program funds can be withheld for failure to implement



Minnesota's Buffer Law

A Statewide, basic standard approach:	
Timeline	<ul style="list-style-type: none">• Public waters – Nov 2017• Public ditch systems – Nov 2018• Extension if waiting for funding
Exemptions	<ul style="list-style-type: none">• Roads, trails, building and structures• Inundated crops, alfalfa seeding• Enrolled in CRP• MS4 Areas covered by NPDES water-quality permits

Buffer Protection Map



Public Water (50' average , 30' minimum width buffer)



Public Drainage System Benefitted Area Boundary



Public Drainage Ditch (16.5' minimum width buffer)



Private Ditch in Benefitted Area (16.5' minimum width buffer)



Local Water Plan/SWCD determined buffer – unaltered (local regulation or voluntary approach)[^]



Local Water Plan/SWCD determined buffer – ditch/alterd (local regulation or voluntary approach)[^]



[^] Not part of BPM but to be included as data for SWCD consideration



Exemptions

General exemptions to the 50 foot buffer requirement:

- Land enrolled in federal Conservation Reserve Program (CRP)
- Public & private water access & recreational use areas
- Areas covered by a road, building or other structures
- Municipalities or others in compliance with federal and state storm sewer or storm water law (MS4)

2015 Buffer Law

For more information:

Minnesota Board of Water & Soil Resources A to Z Topics Contact Search

Home	Easements	Grants	Resource Management and Planning	Conservation Implementation	Wetlands
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2015 Buffer Legislation

Governor Mark Dayton's new landmark buffer initiative was recently signed into law, designating an estimated 110,000 acres of land for water quality buffer strips statewide. The law establishes new perennial vegetation buffers of up to 50 feet along rivers, streams, and ditches that will help filter out phosphorus, nitrogen, and sediment. The new law provides flexibility and financial support for landowners to install and maintain buffers, and boost compliance with buffer laws across Minnesota.

[Buffer Legislation at a Glance »](#)
[Buffer Legislative Language »](#)

Why is this important?

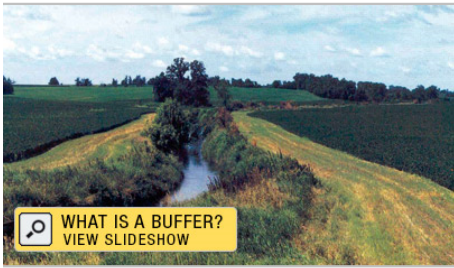
A new Minnesota Pollution Control Agency study found that few southwest Minnesota waters meet swimmable, fishable standards.


The Buffer Initiative web page and the information contained here is a collaboration with the Minnesota Board of Water and Soil Resources and the Minnesota Department of Natural Resource. The state departments of Agriculture and the Pollution Control Agency were also instrumental in formulating this initiative, a process that involved consultation with stakeholder groups, counties and other local governments.

[Read study »](#)

Landowner Resources

[Implementing the 2015 Law »](#)
[Alternative Practice Options for Landowners - Buffers »](#)
[Landowner Financial Options for Buffers »](#)
[SWCD technical assistance »](#)



 **WHAT IS A BUFFER?**
VIEW SLIDESHOW

Common questions and answers

[Download questions and answers as a PDF »](#)

Click on questions below to show answers. Click again to hide.

- [What is the bill's purpose and who helped craft it?](#)
- [Will it improve water quality?](#)
- [What is required?](#)
- [Where are buffers required?](#)
- [How will the new law be implemented, and enforced?](#)
- [When will this take effect?](#)
- [How will this be paid for?](#)
- [How will the DNR map areas that will now require buffers?](#)
- [And when will that happen?](#)
- [How will public water be defined under the law?](#)

Five key ways the new buffer initiative protects Minnesota waters

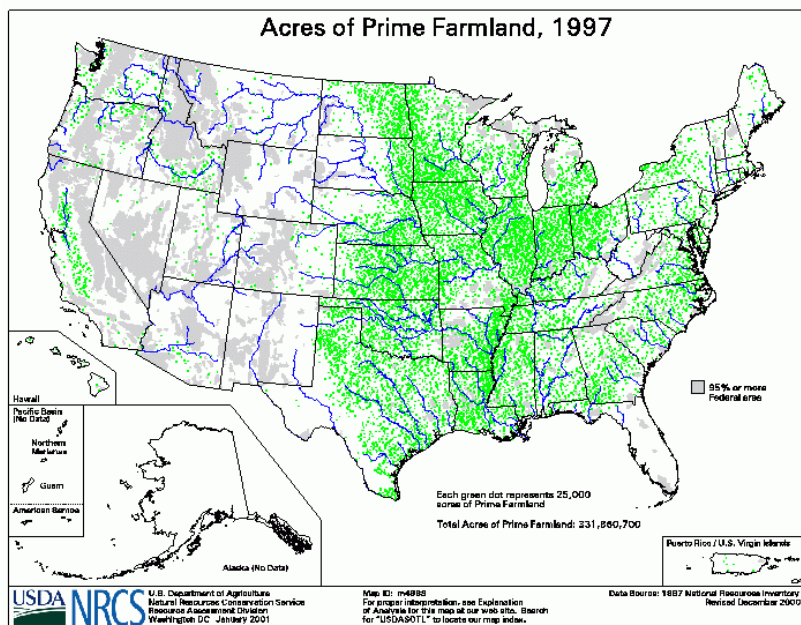
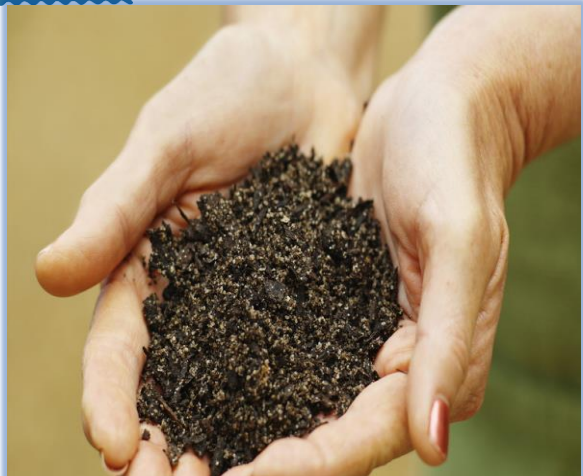
[Download the five key ways as a PDF »](#)

The new buffer Initiative enhances protection of Minnesota waters by building upon existing requirements in the following ways:

- [1. Expanding the Scope of Waters Covered](#)
- [2. Setting Timelines for Implementation](#)
- [3. Providing for Enforcement](#)
- [4. Strengthening soil erosion statutes](#)

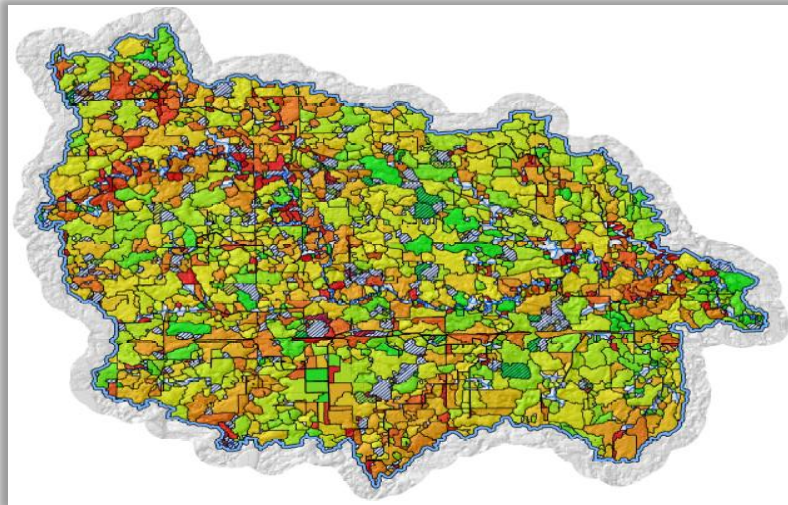
<http://bwsr.state.mn.us/buffers/>

Soil Loss – 2015 Legislative Update



Drainage

- Runoff based drainage assessments method
- Multipurpose Drainage Management Program





Legacy - Clean Water Fund



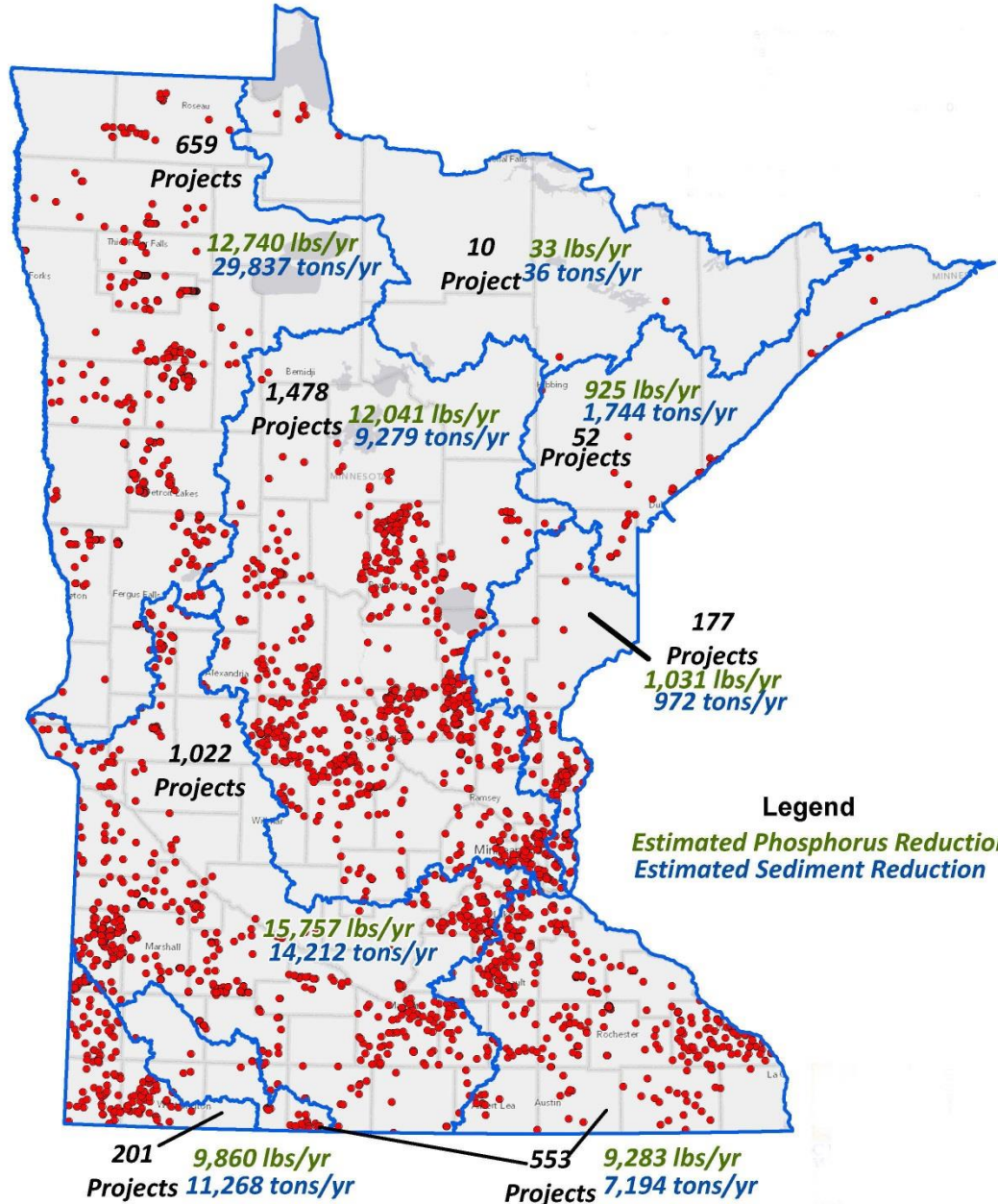
- Projects and Practices
- Accelerated Implementation
- Community Partners
- Soil Erosion and Drainage Law Compliance
- Targeted Watershed Demonstration Program
- One Watershed, One Plan

<http://www.bwsr.state.mn.us/cleanwaterfund/>



Clean Water Fund Projects 2010 - 2014

Projects and Estimated Pollution Reductions by Major Basin



Legend
Estimated Phosphorus Reduction
Estimated Sediment Reduction





www.bwsr.state.mn.us