

Yellow Medicine Soil and Water Conservation District

Resolution No. 2022-5-5

Resolution to adopt policy regarding the Wetland Conservation Act of Minnesota

Supervisor Darwyn Bach moved the adoption of the following resolution no. 2022-5-5

Whereas, the Yellow Medicine Soil & Water Conservation District (SWCD) has accepted the authority and administrative responsibility to implement the Wetland Conservation Act (WCA) within the legal boundaries of Yellow Medicine County and cities within Yellow Medicine County in accordance with Minnesota Rules, Chapter 8420; and

Whereas, the Yellow Medicine SWCD is authorized by Minnesota Administrative Rules Part 8420.0200, Subpart 2, Item C, to delegate certain functions with regard to implementation of WCA including the authority to make decisions on applications, with its staff.

Whereas, The Wetland Conservation Act mandates that counties and cities administer the Wetland Conservation Act. All cities in Yellow Medicine County have by resolution requested the county to administer the Wetland Conservation Act within its incorporated boundaries.

Whereas, In December of 1993, the Yellow Medicine Board of Commissioners accepted the responsibility as the Local Governmental Unit (LGU) for administering the permanent rules for the Wetland Conservation Act within the legal boundaries of the following cities:

Canby	Clarkfield	Echo
Granite Falls	Hanley Falls	Hazel Run
Porter	St. Leo	Wood Lake

Whereas, In January of 1994, the Yellow Medicine Board of Commissioners adopted a resolution stating that the Yellow Medicine Soil and Water Conservation District will act in place of the Yellow Medicine County as the local government unit to administer the Wetland Conservation Act.

THEREFORE; BE IT RESOLVED by the Yellow Medicine SWCD Board of Supervisors, that decision-making authority for WCA exemption, no-loss, wetland boundary and type, and sequencing applications is placed with the SWCD Director or their designee, and

BE IT FURTHER RESOLVED by the Yellow Medicine SWCD Board of Supervisors, that decision making authority for replacement and banking plans is placed with the SWCD Director or their designee.

BE IT FURTHER RESOLVED by the Yellow Medicine SWCD Board of Supervisors shall be provided with a report of WCA activity at least once per quarter.

BE IT FURTHER RESOLVED by the Yellow Medicine SWCD Board of Supervisors, that the authority to follow administrative procedures regarding notices and hearings is placed with the SWCD Director or their designee.

BE IT FURTHER RESOLVED by the Yellow Medicine SWCD Board of Supervisors establishes a Technical Evaluation Panel (TEP) as required by Minn. Rules 8420.0240. The TEP shall be comprised by the SWCD Director or their designee, the Yellow Medicine county ditch inspector, a representative of the Board of Water and Soil Resources, and for projects affecting public waters or public wetlands, the TEP shall also include a technical professional employee of the Department of Natural Resources (DNR). The SWCD

Director or their designee shall be responsible for notification and determination of the need for a TEP. The TEP may be used by the Yellow Medicine SWCD to assist in making the initial determination on an application or reconsideration.

recommendations of the TEP shall be in writing and shall include findings. Meetings of the TEP are not subject to Open Meeting requirements and may or may not be open to the public.

BE IT FURTHER RESOLVED by the Yellow Medicine SWCD Board of Supervisors establishes an appeal of a SWCD staff decision may be made to the Wetland Joint Powers Appeal Board. The Appeals Board shall follow the following procedures:

Consist of:

Three Yellow Medicine SWCD Supervisors

Two County Commissioners

A local government unit decision on a replacement plan, public road project notice, banking plan, exemption, or no-loss or wetland boundary or type may be brought before BWSR through an appeal. However, before BWSR will hear an appeal, all local administrative appeal options must first be exhausted. Generally, an appeal decision must have been made only after a Technical Evaluation Panel (TEP) recommendation was made to the LGU and a hearing was subsequently held. It is important to note that this does not mean all exemption and no-loss decisions would require a hearing, it just provides the appellant an opportunity for a hearing at the local level.

The determination made by staff becomes final if not appealed to the Yellow Medicine SWCD's Wetland Joint Powers Appeal Board within 30 days after the date of which the decision is mailed to those required to receive notice of the decision. Notwithstanding the time frames of Minnesota Statutes, section 15.99, or any other law to the contrary, the Appeal Board must make a ruling within 30 days from the date of the filing of the appeal, unless the appellant and Yellow Medicine SWCD mutually agree, in writing, to an extension of time beyond the 30 days. Appeal of a final determination made by staff may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

To appeal a decision made by the SWCD staff, a petition to appeal must be mailed to the Yellow Medicine SWCD at PO Box 545, Clarkfield, Minnesota 56223, within 30 days after the date on which the decision was mailed to those required to receive notice of the decision. The appeal of the SWCD Staff decision will be made to the Wetland Joint Powers Appeal Board. A hearing will be held within 30 days of receipt of the petition. The appellant will present, in writing, the facts and reasoning for their appeal.

The determination made by the Yellow Medicine SWCD Wetland Joint Powers Appeal Board becomes final if not appealed to the Board of Water and Soil Resources (BWSR) within 30 days after the date of which the decision is mailed to those required to receive notice of the decision. An appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located. The appeal is effective upon mailing to the BWSR the petition and payment of a nonrefundable filing fee of an amount otherwise determined by the BWSR not to exceed \$1,000 with evidence that a copy of the petition has been mailed to the Yellow Medicine Soil and Water Conservation District.

SWCD Director or their designee shall make sure that all notices required by WCA, the State Open Meeting Law, and any local laws or rules are properly given. The WCA rules specify the notice requirements for replacement plan determinations. Failure to comply with notice requirements can be grounds for reversal on appeal.

SWCD Director or their designee shall prepare a staff report that describes the facts, evaluates the application of the WCA to the facts, and makes a recommendation. The staff report will include proposed written findings for adoption by the LGU. The staff report will be circulated to the Wetland Local Joint Powers Appeal Board in the agenda packet prior to a hearing.

SWCD Director or their designee shall obtain a TEP report if required by the WCA Rules or if otherwise desirable. The TEP report will be submitted in writing to the Wetland Local Joint Powers Appeal Board. The TEP report will be accompanied by all documents that support the TEP report and findings, such as wetland delineation sheets.

Notice of the hearing will be given to the landowner, Wetland Joint Powers Appeal Board, and those required to receive notice of the LGU decision; and will be published in the designated newspaper for the year and the local newspaper where the project is located ten days before the hearing is to take place.

All persons will be given a full and fair opportunity to speak and submit documents and other exhibits to the Wetland Joint Powers Appeal Board. All speakers will be allowed to ask questions of other staff and speakers. Questions will be directed through the chair, rather than directly by one speaker to another.

LGU staff will deliver an oral staff report at the hearing. The staff report will provide the facts, evaluate the application of the WCA rules to the facts, and make a recommendation to the Wetland Joint Powers Appeal Board.

All documents that are submitted to or relied upon by the LGU will be identified on the record at the hearing. This will allow the LGU to identify and forward to BWSR the documents in the record, if needed for an appeal. The TEP report and any supporting documents relied upon by the TEP should be included in the record. It may also be desirable to have an oral report from the TEP at the hearing in addition to the written report.

The LGU must adopt formal written findings at the same time that the Wetland Joint Powers Appeal Board makes its final determination. The findings should state the relevant facts as found by the Wetland Joint Powers Appeal Board and state the Wetland Joint Powers Appeal Board's conclusions on the application of WCA statutes and rules to the facts, and the Wetland Joint Powers Appeal Board's determination should be consistent with the findings of fact and conclusions.

As required in Minnesota Rules, part 8420.0230, after the Wetland Joint Powers Appeal Board has made its final determination, a copy of the Wetland Joint Powers Appeal Board's decision must be mailed within 10 working days of the decision to those required to receive notice of the decision.

BE IT FURTHER RESOLVED that the following fees shall be established and may be charged by the Yellow Medicine SWCD for the purpose of covering the costs of implementing the Wetland Conservation Act. The SWCD may also bill an hourly fee of the most current SWCD grant billing rate not to exceed the amount listed below:

Full Application (Part 1 & Part II – Replacement Plan- Banking)	\$500.00
Full Application (Part 1 & Part II – Project Specific Replacement)	\$500.00
Local Restoration Order	\$500.00
Full Restoration Order	\$500.00
Delineation Review – without replacement plan	\$500.00
Appeal Process	\$500.00

BE IT FURTHER RESOLVED that this resolution negates and nullifies all previous motions and adopted resolutions of the Yellow Medicine SWCD Board of Supervisors regarding WCA. The policy shall be regarded as superseding all previous actions of the Board of Supervisors. Any incongruence with Minnesota Wetland Conservation Act related statute or rule, shall be deferred to and this policy shall be updated for congruence as soon as practicable.

Supervisor Tom Remmele seconds the adoption of the resolution and it is declared adopted upon the following votes:

Yeas: 4 Nays: 0

Witness: Jerry [Signature], Chair Date: 12/29/22

Attest: [Signature] office Admin Date: 12/29/22

This resolution was adopted by the Yellow Medicine Soil and Water Conservation District Board of Supervisors at the December 29, 2022 meeting.