

Sent Via Email

April 1, 2022

Representative Rick Hansen, Chair  
Environment and Natural Resources Finance and Policy Committee  
407 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
Saint Paul, MN 55155

Dear Chair Hansen and Members of the House Environment and Natural Resources Finance and Policy Committee:

The Minnesota Inter-County Association (MICA) supports and urges approval of HF3311 (Ecklund) appropriating \$740,000 in FY2023 to develop and assemble the material required, under federal law, for the state to assume section 404 permitting under the federal Clean Water Act.

We appreciate the collaborative work among state agencies and stakeholders to assess how state assumption of section 404 permitting can eliminate redundancies in federal and state permitting processes.

Thank you to Representative Ecklund for authoring the bill, and thank you Chair Hansen and Committee members for hearing this legislation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Matt Massman', is written in a cursive style.

**Matt Massman**, *Executive Director*  
*Minnesota Inter-County Association*  
651-222-8737 (office)  
**763-458-1681** (cell)

# FRESHWATER

2550 University Ave Suite 212N | St. Paul, MN 55114 | 651.313.5800 | [freshwater.org](http://freshwater.org)

Freshwater Society is a nonprofit organization working to inspire and empower people to value and preserve our freshwater resources.

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March 29, 2022

Representative Rick Hansen  
Chair  
House Environment and Natural Resources Finance and Policy Committee  
407 Rev. Dr. Martin Luther King Jr. Boulevard  
St. Paul, Minnesota 55155

Dear Representative Hansen;

I write to express Freshwater Society's support for HF3311 that would provide funding to the Board of Water and Soil Resources (BWSR) to develop and assemble the material required under Code of Federal Regulations, title 40, section 233.10, for the state to assume the section 404 permitting program of the federal Clean Water Act (CWA).

Freshwater supports science-based implementation of water protection and restoration programs at the level of government closest to water resources, having demonstrated capacity to sustain the programs. Assumption of Section 404 authority would result in state-level implementation rather than federal implementation of the authority. Minnesota is a leader among states in water resource protection, having developed professional regulatory expertise and specific watershed studies to support such a program.

There are many details still to be fully understood about assuming Section 404 authority of the CWA in Minnesota. We appreciate the work that BWSR, the Department of Natural Resources and the Minnesota Pollution Control Agency have already done to study its feasibility, share information and seek input from governmental and non-governmental organizations. We will work with the BWSR Executive Director in hopes of continuing that process.

If you have any questions about Freshwater's position, please contact me.

Sincerely,

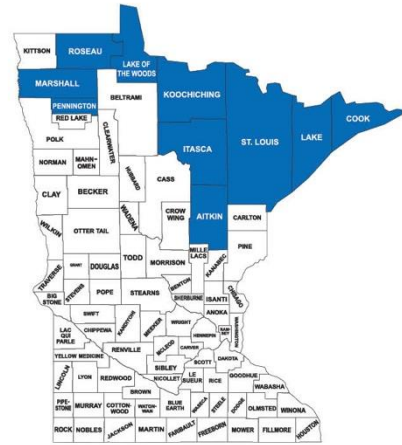


John Linc Stine, Executive Director  
Freshwater Society  
[jlstine@freshwater.org](mailto:jlstine@freshwater.org)  
(6510 468-7075 mobile)

cc: Representative Josh Heintzeman



# NORTHERN COUNTIES LAND USE COORDINATING BOARD



March 28, 2022

Representative Rick Hansen, Chair  
Environment and Natural Resources Finance and Policy  
407 Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Dear Representative Hansen:

**Re: Letter of Support, House File 3311**

Northern Counties Land Use Coordinating Board (NCLUCB), a ten-county member joint-powers board, wish to express our support for HF 3311. NCLUCB's region encompasses 45% of the state's regulated surface waters and 46% of the state's remaining wetlands. It is from the perspective of partners with the state and federal government in managing this vast landscape of water resources that we offer our support. Our member counties and our constituents are also frequent applicants and permittees within the complex regulatory structure, jurisdictional uncertainty, variable Federal policies, and multiple Supreme Court decisions governing this nation's water resources.

In a water resource management structure characterized at the Federal level by ambiguity and frequently contentious regulatory interactions between states and Federal agencies, Minnesota can become a model of clarity and coordination by aggressively pursuing 404 Assumption irrespective of the national turbulence over various definitions of Waters of the U.S. The State of Minnesota has a legislative and administrative history of strong water resource regulation and management which justifies our pursuit and ultimate assumption of a broader role in the 404 Assumption initiative. The HF 3311 appropriation is essential to this effort.

Thank you for your consideration.

Anne Marcotte, Chair of NCLUCB  
Aitkin County Commissioner



April 1, 2022

TO: House Environment and Natural Resources Policy and Finance Committee  
FROM: Andrea Lovoll, Legislative Coordinator, Minnesota Center for Environmental Advocacy  
RE: HF 3311 - Section 404 of the Clean Water Act Assumption

Chair Hansen and Members of the Committee:

Thank you for your service to the people of Minnesota and thank you for the opportunity to testify on HF 3311 (Ecklund). Minnesota Center for Environmental Advocacy (MCEA) is a nonprofit organization with almost 50 years of experience using law and science to protect Minnesota's environment and the health of its people.

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. The program aims to limit significant degradation to waters and wetlands and compensate accordingly if no alternatives are available for a proposed permit.

HF 3311 would allocate \$740,000 in funding to the Minnesota Board of Water and Soil Resources (BWSR) to prepare materials for the state to assume Section 404 of the Clean Water Act (CWA) and produce a report to the Legislature by December 31, 2024. It would also require the state to apply to the federal government to take over enforcement of federal wetlands laws and permitting by June 2025, regardless of the results of this study. At a bare minimum, if the Legislature is going to require a report, it should use the results to make a final decision, not decide three years in advance.

Today, only Michigan, New Jersey, and Florida assume this responsibility under Section 404 of the CWA. If Minnesota were to assume Section 404 of the CWA, the federal regulatory authority over wetlands in Waters of the United States would be outsourced to 87 counties for decisions about wetlands destruction and replacement, overseen by state agencies. This additional work will add approximately \$4.8 million annually to the state budget. This figure could vary depending on the final scope of Minnesota's new permitting responsibility, but it's clear that we would be taking on significant and permanent expenses.

Additionally, passing HF 3311 would also have unknown impact. The U.S. Supreme Court is taking up *Sackett v. EPA*, which will affect which waters are covered by the Clean Water Act. Requiring the state to apply for Section 404 assumption by June 2025 would therefore have unknown impact, and that alone is good reason to await the results of the study and this upcoming court decision before committing the state to a course of action..

Thank you for your consideration.

Andrea Lovoll, Legislative Coordinator, Minnesota Center for Environmental Advocacy

# Section 404 of the Clean Water Act



## PROBLEM

**Cost:** If Minnesota were to assume Section 404 of the CWA, the federal regulatory authority over wetlands in Waters of the United States would be outsourced to 87 counties for decisions about wetlands destruction and replacement, overseen by state agencies. This additional work will add approximately \$4.8 million annually to the state budget.

**Public access:** Counties do not have the same level of expertise or resources as federal regulators, and public involvement could be limited because access to information and decisions made by county governments will vary depending on the county.

**Uncertain impact:** The U.S. Supreme Court is taking up Sackett v. EPA, which will affect which waters are covered by the CWA. Requiring the state to apply for 404 assumption by June 2025 is unwise. Instead, the state should wait for this decision and then make a decision on 404 assumption.

## BACKGROUND

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. The program aims to limit significant degradation to waters and wetlands and compensate accordingly if no alternatives are available for a proposed permit.

HF 3311 and SF 3509 were introduced early in the 2022 legislative session. These bills would allocate \$740,000 in funding to the Minnesota Board of Water and Soil Resources (BWSR) to prepare materials for the state to assume Section 404 of the Clean Water Act (CWA) and require the state to apply to the federal government to take over enforcement of federal wetlands laws and permitting by June 2025, regardless of the results of this what this study shows. (BWSR Fact Sheet)

Today, only Michigan, New Jersey, and Florida assume this responsibility under Section 404 of the CWA.

404 assumption allows a state to regulate waters and wetlands and assume the jurisdictional responsibility to approve or deny permits rather than the United States Army Corps of Engineers (USACOE)



## How does this impact Minnesota?

Currently, the USACOE maintains authority in issuing permit applications and enforces permit provisions in Minnesota. Under assumption, the federal permit becomes a state or tribal permit.

BWSR would technically be the “permitting” authority under 404 assumption, but would use existing structures with power in local-government units (LGUs) to make permitting decisions.

Approval of this would also require approval by the Governor as well as the Legislature.

## RESOURCES

Association of Wetland Managers:

<https://aswm.org/wetland-programs/s-404-assumption>

Florida 404 Assumption:

<https://www.epa.gov/fl/floridas-clean-water-act-ss404-permit-program>

BWSR:

<http://bwsr.state.mn.us/404-assumption>

BWSR Fact sheet:

<http://bwsr.state.mn.us/sites/default/files/2022-01/404%20Assumption%20Report%20on%20Funding%20Estimates%20-%20Executive%20Summary%201-27-22.pdf>

EPA:

<https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404>

<https://www.epa.gov/cwa-404/state-or-tribal-assumption-cwa-section-404-permit-program>

## Minnesota Center for Environmental Advocacy contacts:

*Andrea Lovoll, Legislative Coordinator*

[alovoll@mncenter.org](mailto:alovoll@mncenter.org)

*Nadia Alsadi, Water Policy Associate*

[nalsadi@mncenter.org](mailto:nalsadi@mncenter.org)



**Distributed and produced by the Minnesota Center for Environmental Advocacy**

Contact: Andrea Lovoll, MCEA Legislative Associate | [alovoll@mncenter.org](mailto:alovoll@mncenter.org)