



# State Assumption of Section 404 of Federal Clean Water Act 2022 Report on Funding Estimates



March 23, 2022

[www.bwsr.state.mn.us](http://www.bwsr.state.mn.us)

## Agenda

- 1) 404 Assumption Overview
- 2) Legislative Report Background
- 3) Cost Factors
- 4) Cost Estimates
- 5) Next Steps

## Primary Federal/State Water Regulatory Authorities in MN

Regulating activities in lakes, streams, and wetlands:

- 1) Federal Clean Water Act Section 404
  - U.S. Army Corps of Engineers
- 2) State Wetland Conservation Act
  - MN Board of Water and Soil Resources (BWSR) & Local Governments
- 3) State Public Waters Work Permit and Permit to Mine Programs
  - MN Department of Natural Resources (DNR)
- 4) State Water Quality Standards
  - MN Pollution Control Agency (MPCA)

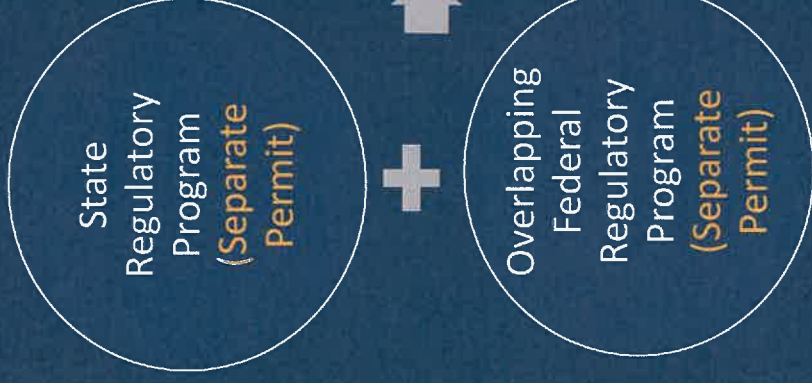
## What is “404 Assumption?”

Federal Clean Water Act, Section 404:

Allows state implementation of equivalent program, eliminating separate federal permits in most waters.

State must demonstrate adequate:

- ✓ Jurisdiction
- ✓ Enforcement authority
- ✓ Regulations
- ✓ Compliance with certain standards and procedural requirements
- ✓ Legal authority and staffing capacity



State  
Regulatory  
Program  
(Separate  
Permit)

+

Overlapping  
Federal  
Regulatory  
Program  
(Separate  
Permit)

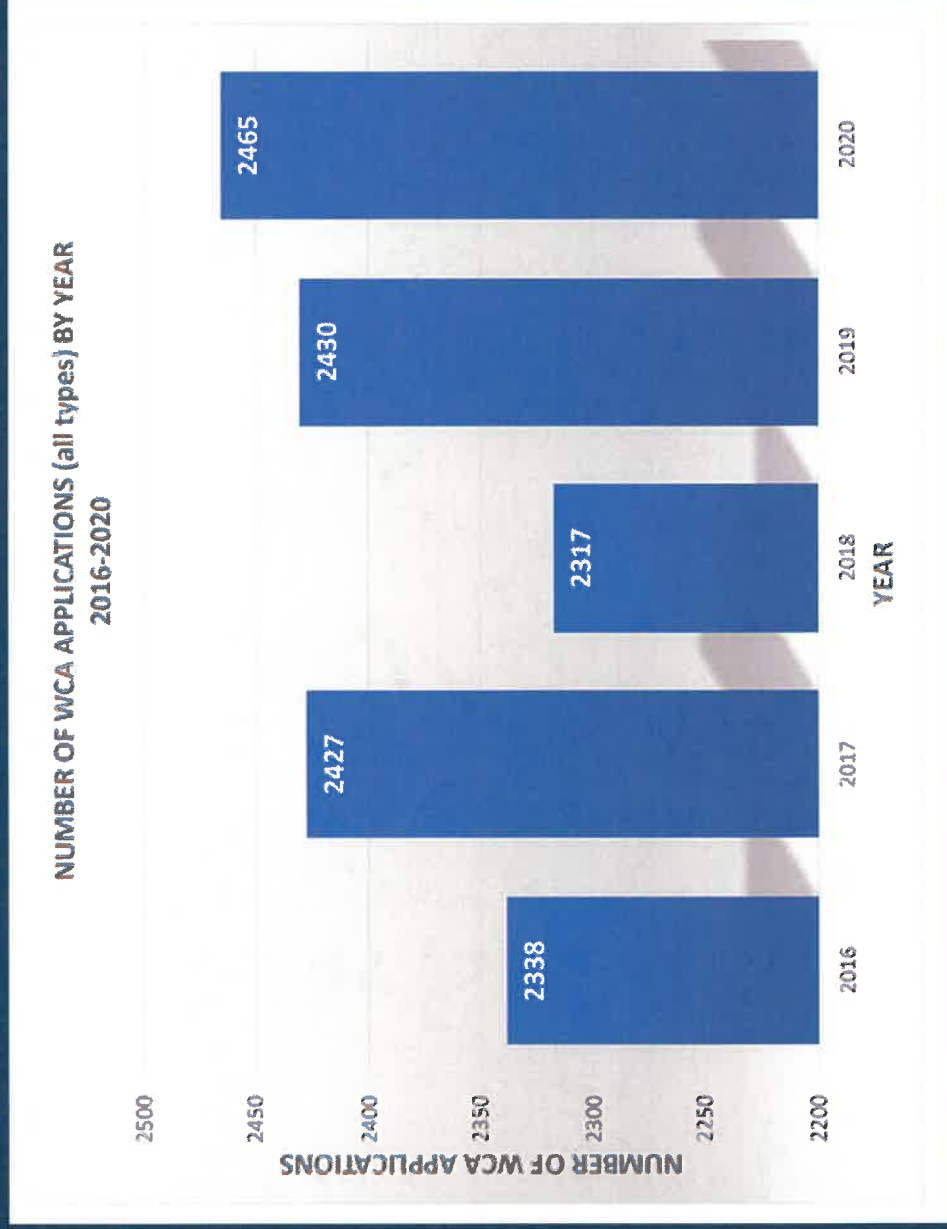
Comprehensive  
State Program  
(1 Permit)

## Why is Minnesota considering 404 assumption?

Those interested in assumption have cited the following:

- ✓ Faster Permit Decisions
  - ✓ Reduced Regulatory Redundancy
  - ✓ More Responsive Regulators (local/state vs. federal).
  - ✓ Reduced Applicant Costs
  - ✓ More Effective Resource Management (localized expertise and watershed planning)
- ❖ It is Congressional policy that the states implement the Section 404 permitting program (33 U.S.C. § 1251b).

# Minnesota has a busy regulatory program



## Recent Efforts to Explore 404 Assumption in Minnesota

- 1) Minnesota Federal Clean Water Act Section 404 Permit Program Feasibility Study (January 2017).
- 2) Analysis of Retained and Assumable Waters in Minnesota (May 2018).
- 3) NACEPT Assumable Waters Subcommittee Report (June 2017) and Department of the Army Memo (August 2018).

❖ Not a state effort, but relevant to assumable waters in Minnesota.

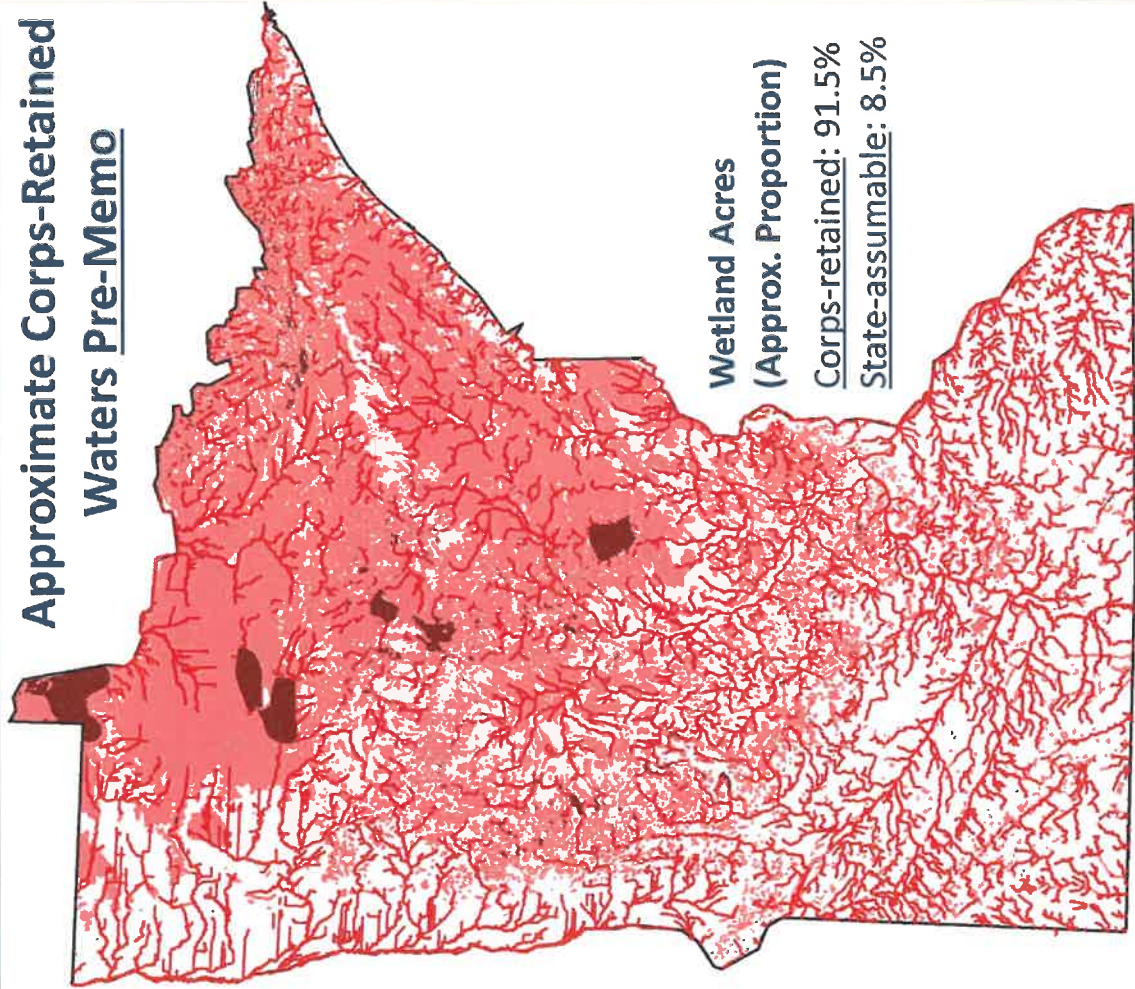
<https://bwsr.state.mn.us/404-assumption>

### Minnesota Federal Clean Water Act Section 404 Permit Program Feasibility Study

Report to the Legislature  
January 17, 2017

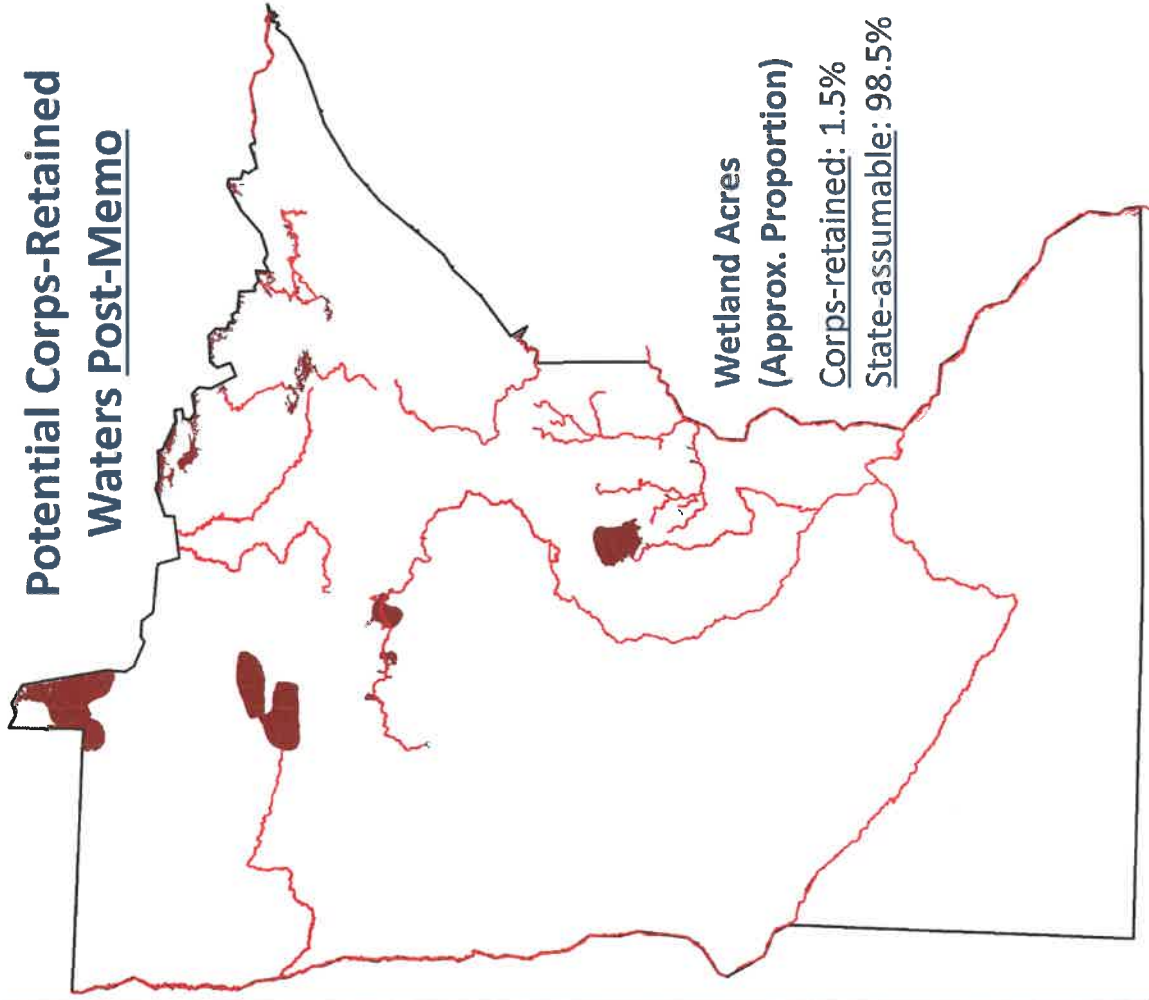


**Approximate Corps-Retained  
Waters Pre-Memo**



**Wetland Acres  
(Approx. Proportion)**  
Corps-retained: 91.5%  
State-assumable: 8.5%

**Potential Corps-Retained  
Waters Post-Memo**



**Wetland Acres  
(Approx. Proportion)**  
Corps-retained: 1.5%  
State-assumable: 98.5%



**Laws of MN 2021**  
**1st Special Session, Chapter 6, Article 2, Section 108, Subd. 9(a)**

\$200,000 to:

- 1) “begin to develop and assemble the material” to assume 404; and
- 2) **by February 1, 2022, report to the legislature on the funding needed:**
  - a) to secure section 404 assumption, and
  - b) to fully implement the state-assumed program.

## Primary Factors Affecting Cost

- ✓ BWSR must have “Permitting Authority” for the Wetland Conservation Act.
- ✓ Expansion of the Wetland Conservation Act regulatory scope to close gaps in state jurisdiction.
  - Non-Public Water basins
  - Non-Public Water stream reaches
  - Federal Lands
- Expanded mitigation standards and options.
- The state agencies would need to screen applications for potential impacts to Federal Threatened & Endangered Species and historic properties.

## Primary Factors Affecting Cost (Cont'd)

- Process to review state permits for compliance with state water quality standards (MPCA).
- Additional application coordination requirements (federal agencies, tribes, and other states as applicable).
- Annual reporting to EPA.
- Development/enhancement of online permitting systems.
- Staff training and public outreach.

## Additional Funding to Implement State-Assumed Program (In millions annually)

Agency	2022 Estimates of Additional Funding*
BWSR**	\$2.1
DNR	\$2.7
MPCA	\$0.0
<b>Total:</b>	<b>\$4.8</b>

\*Estimates based on information currently available. They will be refined if we continue this process.

\*\*BWSR estimate includes additional funding for local governments.

**Additional Funding to Secure 404 Assumption**  
(One-time funding in thousands to assemble 404 assumption application materials)

Agency	Funding Required
BWSR	\$580
DNR	\$100
MPCA	\$60
<b>Total:</b>	<b>\$740</b>

\*If appropriated, this funding is expected to cover work over at least the following biennium.

## **Additional Funding to Secure 404 Assumption** (One-time costs at program start-up)

- 1) Develop WCA online permitting system (\$1.5m).
- 2) Update DNR's MPARS permitting system (\$800k).
- 3) Programmatic changes & 404 assumption application
  - amending state statutes and rules
  - finalizing agreements with federal agencies
  - workload associated with the formal application process
  - training and outreach

## Summary of Progress on Important Issues

- ✓ Assumable waters clarified and expanded.
- ✓ WCA implementation model continues to utilize local governments.
- ✓ Expanded state jurisdiction determined (WCA).
- ✓ Review process for water quality standards developed.
- ✓ Cost estimates for BWSR/WCA implementation reduced from 2017 estimates.
- ✓ Anticipate accomplishing several administrative tasks through online permitting system, which would also benefit local governments.

# Steps/Timeline for Potential 404 Assumption

This step just completed.

Legislative Report on funding estimates.  
**Feb. 1, 2022**

Appropriation of funds to assemble remaining materials.

Complete program development work; assemble draft application materials.

Decision whether to assume.

Programmatic & statute changes with final cost estimates provided to legislature.

Statute changes enacted & funds appropriated.

Agency rulemaking, policy development, and interagency agreements.

Submit 404 assumption application to EPA.

EPA approval and state implements assumed program.



# Questions or Comments?



**Les Lemm**  
**Wetlands Section Manager**  
*Les.Lemm@state.mn.us*

**Lewis Brockette**  
**Wetlands Policy Coordinator**  
*Lewis.Brockette@state.mn.us*

**Ken Powell**  
**WCA Operations Supervisor**  
*Ken.Powell@state.mn.us*

