



Minnesota Board of Water and Soil Resources.
Minutes.

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STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES

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April 21, 1988

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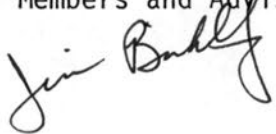
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TO: Board of Water and Soil Resources Members and Advisors
FROM: Jim Birkholz, Executive Director 
SUBJECT: April 27, 1988 Board meeting

Attached is a preliminary agenda and informational material for the April 27th meeting. The meeting will start at 9:00 a.m. in Conference Room A of the Department of Agriculture Building, 90 West Plato Blvd., St. Paul.

Following are some details on agenda items:

° Overview of Water Management Programs

The presentations will cover in some detail two water management programs passed by the legislature one year ago: The Flood Damage Reduction Program and the Clean Water Partnership. These programs are moving steadily toward implementation. They offer opportunities for local governments to take advantage of state grant funds to accomplish innovative natural resource protection efforts.

Also presented will be information on two water management initiatives accomplished by local government in cooperation with state and federal assistance. These are Basin Wide Planning and Engineering in the Red River Valley and the Big Stone Lake Clean Lakes project. While these local projects were initiated before either of the above state programs were created, they serve as models of what can be accomplished on a large scale by local government initiative. The BWSR and its local units of government are key players in future projects of these types.

° Proposed Rabbit-Mustinka-Boise de Sioux Watershed District

This is a continuation of this topic from the March meeting. Enclosed are two draft orders for your review, one for and one against the formation of the proposed district. Exhibits will be available for review during the meeting which convey additional information about the watershed area and water management problems. Time has been allowed for additional discussion. Board action is anticipated.

DEPARTMENT : Board of Water and Soil Resources

STATE OF MINNESOTA

Office Memorandum

DATE : April 19, 1988

TO : Members of Board of Water and Soil Resources

FROM : Mel Sinn *MS*

PHONE : 612 - 297-2622

SUBJECT : Mustinka-Rabbit Proceeding

Attached are two draft Orders on the proposed watershed district. The first is PRO, the second is CON. Chairman Ogaard suggested that both decision options be set forth in written form for your evaluation.

Preparation of the detailed boundary description required in the PRO Order is on hold, pending the Board's decision.

Please review the Orders and be prepared for final deliberations on the 27th. If you have any questions or concerns you would like to discuss with me prior to the meeting, please call.

Also attached are copies of all the manager nominee questionnaires received since the March Board meeting and an updated nominee location map. Please bring the set of nominee questionnaires you received last month, to the April meeting. If the proposed district is established, the initial board of managers must be selected. The list is down to 17 nominees. Sidney Bordson, who appeared at the March Board meeting, died suddenly from a heart attack. Bruce Rinke, Lawrence Menge, Mike Holte, and Dean Kjesbo did not return their questionnaires, and when contacted by phone, said they were not interested in being appointed.

Attach.

Minnesota Board of Water and Soil Resources
90 West Plato Boulevard
First Floor
St. Paul, Minnesota 55107

DRAFT

In the Matter of the Petition for the
Establishment of the Mustinka-Rabbit River-
Bois de Sioux Watershed District filed on
July 27, 1987 (Minnesota Statutes Section
112.37)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER

On July 27, 1987 a nominating petition for the establishment of a Mustinka-Rabbit River-Bois de Sioux Watershed District signed by Wilkin, Traverse, Big Stone, and Stevens Counties was filed with the Minnesota Water Resources Board pursuant to Minn. Stat. ch. 112 (1986). The territory of the proposed watershed district included all of the lands in the watershed of the Bois de Sioux River within the State of Minnesota. A contested case hearing on the proposed watershed district was held on January 11, 1988 in Wheaton, Minnesota. The report of Administrative Law Judge Peter C. Erickson was received by the Board of Water and Soil Resources (the Board of Water and Soil Resources superceded the Water Resources Board effective October 1, 1987) on March 11, 1988.

The Board of Water and Soil Resources (Board) provided parties to the proceeding an opportunity to present their exceptions to the law judge's report at a regular meeting on March 23, 1988.

Four Board members attended the entire hearing and reported to the full Board on March 23, 1988. The Board jointly reviewed the law judge's report and received copies of the post-hearing briefs from

Petitioners' Attorney Timothy E. J. Fox and Intervenors' Attorney Stephen F. Rufer on March 23, 1988. Board members reviewed all the exhibits in the record at a regular meeting on April 27, 1988.

Having considered the entire record of the proceeding, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

I. Findings 1 through 41 of the attached report of Administrative Law Judge Peter C. Erickson are adopted by the Board with the following exceptions:

- A. Strike the word "county" in the second sentence of Finding 7.
- B. After the words "published in" in the second sentence of Finding 8 insert "the Fergus Falls Daily Journal,".
- C. Strike the word "all" in the first sentence of Finding 9 and insert "most". After the word "River" in the second sentence of Finding 9 insert "within the State of Minnesota". At the end of Finding 9 insert "Roughly 900 square miles of land in North and South Dakota are also tributary to Lake Traverse and the Bois de Sioux River."
- D. Strike the words "many years ago" in the second sentence of Finding 12.
- E. Before the word "use" in the first sentence of Finding 13 insert "land".
- F. Strike the words "A pilot who had flown" in the third sentence of Finding 14 and insert "The Vice-Mayor of the City of Breckenridge who has taken three aerial surveillance flights".

- G. At the end of Finding 18 add "Pet. Ex. 10 (p. 39)."
- H. Strike the word "County" the first time it appears in the second sentence of Finding 19.
- I. Strike all of the wording of Finding 23 and insert "The clerk of Clifton Township in Traverse County reported that the local assessor had to reduce property valuations because of recurrent crop losses on area farms caused by flooding. At the same time, the Township had to raise additional money to replace washed-out bridges and repair flood-damaged roads."
- J. After the word "relations" in the third sentence of Finding 24 insert "--as happened between Traverse and Wilkin Counties on Judicial Ditch 11, and between Grant and Traverse Counties over work on a Grant County ditch near Herman (see, Tr. 16 and 110)".
- K. Strike the words "be effective" in the second sentence of Finding 27 and insert "raise an adequate administrative fund".
- L. Strike the first sentence of Finding 33 and insert "Testimony was given that watershed districts are not needed to manage inter-county drainage systems because counties can establish joint powers agreements or joint county ditches."
- M. Strike the words "do not hold other" in the first sentence of Finding 35 and insert "cannot serve as county commissioners or hold other state or federal".

- N. Strike the word "wasteland" in the first sentence of Finding 37 and insert "wetlands". Strike the words "protected against drainage" in the fourth sentence of Finding 37 and insert "subject to DNR regulations". Strike the fifth, sixth, seventh, eighth, and tenth sentences of Finding 37.
- O. Strike "individual ditch boards," in the first sentence of Finding 38.
- P. Strike the second sentence of Finding 39. Strike the fifth sentence of Finding 39 and insert "A person who wants a manager removed does not have the opportunity to vote for another candidate, but rather, must persuade the county board not to reappoint that manager."

II. The Board makes the following additional findings:

- 42. Attorney Stephen F. Rufer appeared before the Board on March 23, 1988 and presented exceptions to the law judge's report on behalf of Citizens Concerned for Water Management. He also filed written exceptions on April 14, 1988. Also appearing before the Board to present exceptions on March 23, 1988 were the following individuals: Charles Foss, Sidney Bordson, Gerald Lacey, Dennis Stock, and Lyle Alvstad. Several of the foregoing amendments to the law judge's findings are based on the exceptions presented.
- 43. Robert Richards, Grant County Commissioner, offered copies of minutes of Grant County Board meetings from

January 1977 to November 1987. He had highlighted the minutes wherever ditches and other water concerns were discussed. The minutes show that the Grant County Board discussed ditch problems a total of 114 times during the 10-year period. The problems affected 20 of the county's 24 public drainage systems. Mr. Richards also prepared a chart and map that provide a detailed breakdown of when and where the ditch problems were experienced. A total of 98 of the 114 problems occurred in the portion of Grant County within the proposed watershed district. Tr. 144. Ex. 105, 106, and 107.

44. In January 1987 the U.S. Army Corps of Engineers published their "Lake Traverse Reservoir Operation Plan Evaluation-Problems Appraisal Report" (87 Corps Report). The 87 Corps Report summarizes information on problems in the Bois de Sioux basin, and represented the initial phase of their reevaluation of the operational plan for the gated dams on Lake Traverse (Reservation Control Dam) and Mud Lake (White Rock Dam). The reevaluation was prompted by public concern over damages caused by high reservoir levels. The 87 Corps Report identified the following conditions and problems in the Bois de Sioux basin: that the flat topography in the central portion of the basin together with limited channel capacity contributes to widespread flooding; that the basin's flood conditions are seldom aggravated by Red River main stem flooding; that the basin on the average contributes about 6.5 percent of the total Red River flow at the

Canadian boundary; that high-intensity summer rains cause a significant amount of flood damage, which is significantly influenced by local drainage; that open ditching and tile installation has probably significantly increased the volume of runoff into the Bois de Sioux; that these practices have probably reduced the volume of natural water storage in the basin and increased flood damage potential in downstream areas; that significantly more acres of floodplain and marginal land, such as drained wetlands, have been placed into row crop production since the two Corps dams were built; that basin land use changes have probably increased the frequency of high flowrates in the Bois de Sioux River; that flood flows on the Rabbit River can induce flooding on the Bois de Sioux for up to 8 to 10 miles upstream due to backwater effects; that in 1986 high water levels on Lake Traverse caused about \$500,000 in damages to structures around the lake; that significant additional damage included lost resort business, evacuation of homes and cabins, and lost crop production; that other damages included shoreline erosion, debris deposits along the shoreline, and the spread of noxious weed seeds; that lake and stream habitats are being degraded by siltation; that algal blooms and high turbidities have limited habitat and spawning sites for game fish and panfish in Lake Traverse; that until Lake Traverse water quality is improved, fishing can be expected to continue to decrease in quality; that the Bois de Sioux,

Mustinka, and Rabbit Rivers all experience periods of no flow or low flow and are high in dissolved solids, and are inadequate to meet the needs of a municipal water supply; that the City of Moorhead (which along with Fargo relies on the Red River for its main municipal water supply) expended \$80,000 for added water treatment chemicals in December 1984 - January 1985 to deal with large releases of very poor quality water from Lake Traverse; that the Cities of Wahpeton and Breckenridge have both switched from river water to ground water for their main water supply; that long-term, comprehensive water supply planning is needed in the basin; that summer base flows into Lake Traverse and the Bois de Sioux are so limited that the Bois de Sioux has limited ability to help maintain summer flows in the Red River; that in 1986 the Corps of Engineers received several complaints from boaters about increased sediment deposition at the mouth of the Mustinka River in Lake Traverse; that Lake Traverse and Mud Lake have been declining in fishing, waterfowl hunting, and other water-related recreation activities; that given the importance of Lake Traverse and Mud Lake as recreational and economic resources measures to control water pollution and improve recreational opportunities should be actively pursued; and that the Corps of Engineers does not have authority to implement measures to reduce either point or nonpoint pollution.

45. Grant County resident Charles Foss testified that Grant County had decided to go along with the 15-county local water planning effort in the Red River Basin. All of the affected counties, except Big Stone, have passed resolutions to develop county water plans under the Comprehensive Local Water Management Act (Minnesota Statutes, Chapter 110B). The Legislative Commission on Minnesota Resources is providing state cost-share grants to 54 counties currently participating in planning efforts under Chapter 110B. There was no testimony from any of the affected counties on the status of their Chapter 110B planning efforts or its relevance to the need for the proposed watershed district.
46. On March 23, 1988 the Board members who attended the public hearing in Wheaton reported back to the full Board. The hearing panel recommended that: the Board accept the recommendation of the Administrative Law Judge and establish the proposed watershed district; the official name be the "Bois de Sioux Watershed District"; the principal place of business be located at Wheaton; the legal boundary be established as proposed by the petition; the board of managers have nine members; and the managers be distributed among the affected counties as recommended by the Administrative Law Judge.

CONCLUSIONS OF LAW

- I. Conclusions 1 through 3 of the attached report of Administrative Law Judge Peter C. Erickson are adopted by the Board.
- II. The Board makes the following additional conclusions:
 4. The record shows severe water-related problems in the Bois de Sioux basin but no commitment among all six affected counties to join forces to formulate and implement solutions.
 5. The record shows a strong need for a mechanism to coordinate water resources management in the Bois de Sioux basin. A watershed district can coordinate water management across political boundary lines through hydrologic data collection, watershed-wide planning and communication, public education, regulation of activities affecting water resources, and project implementation and maintenance.
 6. If the affected counties successfully complete comprehensive local water plans, they will benefit by having a watershed district in place to serve as a vehicle to facilitate implementation of multi-county improvements and other comprehensive watershed management activities.

IT IS THEREFORE ORDERED THAT

- I. The proposed watershed district is hereby established and given the corporate name of "Bois de Sioux Watershed District". The Bois de Sioux Watershed District shall have all the powers, duties, and purposes provided by law.

II. The territory of the Bois de Sioux Watershed District includes all of the tracts of land described below, including all bodies of water therein. The described lands may contain all or parts of quarter-quarter tracts, government lots, and lots within platted areas. The territory of the Bois de Sioux Watershed District is described as follows:

A. Wilkin County 5th Principal Meridian

1. Township 132 North, Range 47 West (Breckenridge)
2. Township 132 North, Range 46 West (Sunnyside)
3. Township 132 North, Range 45 West (Foxhome)
4. Township 131 North, Range 47 West (Brandrup)
5. Township 131 North, Range 46 West (Brandrup)
6. Township 131 North, Range 45 West (Bradford)
7. Township 130 North, Range 47 West (Campbell)
8. Township 130 North, Range 46 West (Campbell)
9. Township 130 North, Range 45 West (Champion)

B. Otter Tail County 5th Principal Meridian

1. Township 132 North, Range 43 West (Buse)
2. Township 131 North, Range 44 West (Western)
3. Township 131 North, Range 43 West (Aastad)
4. Township 131 North, Range 42 West (Tumuli)

C. Grant County 5th Principal Meridian

1. Township 130 North, Range 44 West (Lawrence)
2. Township 130 North, Range 43 West (Stony)
3. Township 130 North, Range 42 West (Brook)
4. Township 130 North, Range 41 West (Pomme de Terre)

5. Township 129 North, Range 44 West (North Ottawa)
6. Township 129 North, Range 43 West (Elbow Lake)
7. Township 129 North, Range 42 West (Sanford)
8. Township 128 North, Range 44 West (Gorton)
9. Township 128 North, Range 43 West (Delaware)
10. Township 128 North, Range 42 West (Lien)
11. Township 127 North, Range 44 West (Logan)
12. Township 127 North, Range 43 West (Macsville)
13. Township 127 North, Range 42 West (Roseville)

D. Traverse County

5th Principal Meridian

1. Township 129 North, Range 47 West (Taylor)
2. Township 129 North, Range 46 West (Taylor)
3. Township 129 North, Range 45 West (Tintah)
4. Township 128 North, Range 47 West (Monson)
5. Township 128 North, Range 46 West (Monson)
6. Township 128 North, Range 45 West (Redpath)
7. Township 127 North, Range 48 West ()
8. Township 127 North, Range 47 West (Lake)
9. Township 127 North, Range 46 West (Valley)
10. Township 127 North, Range 45 West (Clifton)
11. Township 126 North, Range 49 West ()
12. Township 126 North, Range 48 West (Windsor)
13. Township 126 North, Range 47 West (Walls)
14. Township 126 North, Range 46 West (Croke)
15. Township 126 North, Range 45 West (Dollymount)
16. Township 125 North, Range 49 West (Folsom)

17. Township 125 North, Range 48 West (Arthur)
18. Township 125 North, Range 47 West (Parnell)
19. Township 125 North, Range 46 West (Tara)
20. Township 125 North, Range 45 West (Leonardsville)

E. Stevens County

5th Principal Meridian

1. Township 126 North, Range 44 West (Eldorado)
2. Township 126 North, Range 43 West (Donnelly)
3. Township 126 North, Range 42 West (Rendsville)
4. Township 125 North, Range 44 West (Everglade)
5. Township 125 North, Range 43 West (Pepperton)
6. Township 124 North, Range 44 West (Baker)

F. Big Stone County

5th Principal Meridian

1. Township 124 North, Range 47 West (Toqua)
2. Township 124 North, Range 46 West (Graceville)
3. Township 124 North, Range 45 West (Moonshine)
4. Township 123 North, Range 47 West (Prior)
5. Township 123 North, Range 46 West (Almond)
6. Township 123 North, Range 45 West (Malta)

* (Detailed descriptions need to be completed)

III. The legal boundary of the Bois de Sioux Watershed District is defined as the perimeter of the whole land area described in the preceding paragraph and shown on the attached legal map. The District includes approximately 1,435 square miles.

* (Legal boundary map needs to be prepared)

IV. The board of managers of the Bois de Sioux Watershed District shall consist of nine managers. Managers shall meet the qualifications established by law.

V. The following persons are named as the initial managers of the Bois de Sioux Watershed District; their terms of office shall be for one year, effective the date of this Order:

<u>Name</u>	<u>Address</u>	<u>County</u>
1. Jerome Deal	Route 2, Herman, 56248	Traverse
2. Kenneth Baldry	1308 Fourth Avenue N. Wheaton, 56296	Traverse
3. George Ahlsten (Richard McClernon) (Dennis Keller)	Route 2, Wheaton, 56296	Traverse
4. Leonard Blume	Route 1, Herman, 56248	Grant
5. James Nelson (Lyndon Bruns)	Route 1, Elbow Lake, 56531	Grant
6. Ralph Cristenson (James Voss) (Larry Lyngaas) (Steen Wetherbee)	R.R., Campbell, 56522	Wilkin
7. Don Gieselman (Perry Anderson) (Nick Daly)	Route 1, Box 88 Donnelly, 56235	Stevens
8. Robert Taffe	Graceville, 56240	Big Stone
9. Dennis Stock	Route 4, Box 140 Fergus Falls, 56537	Otter Tail

(Listed by staff preference)

VI. The distribution of the power to appoint managers to the Bois de Sioux Watershed District, upon the expiration of the one-year term of the initial managers, shall be as follows:

Traverse County	-	Three Managers
Grant County	-	Two Managers
Wilkin County	-	One Manager
Stevens County	-	One Manager
Big Stone County	-	One Manager
Otter Tail County	-	One Manager

VII. After the initial managers have served their one-year terms, the first county-appointed managers shall be appointed to staggered terms as follows:

Traverse County	-	One manager for a one-year term; one manager for a two-year term; and one manager for a three-year term.
Grant County	-	One manager for a one-year term; and one manager for a three-year term.
Wilkin County	-	One manager for a two-year term.
Stevens County	-	One manager for a three-year term.

Big Stone County -

One manager for a two-year term.

Otter Tail County -

One manager for a one-year term.

VIII. Following the expiration of the managers' terms in the preceding paragraph, all succeeding apointments shall be for terms of three years.

IX. The principal place of business of the Bois de Sioux Watershed District shall be located in the City of Wheaton, Minnesota 56296.

Dated at Saint Paul, Minnesota, 55107, this ___ day of _____ 1988.

Minnesota Board of Water and Soil Resources

Donald H. Ogaard
Chairman

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF WATER AND SOIL RESOURCES

In the Matter of the Petition
for the Establishment of the
Mustinka-Rabbit River-Bois
de Sioux Watershed District
Filed on July 27, 1987

FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION
AND MEMORANDUM

The above-entitled matter came on for hearing before Peter C. Erickson, Administrative Law Judge, on January 11, 1988, in Wheaton.

Appearing on behalf of the Petitioners was Timothy E. J. Fox, Wilkin County Attorney, P. O. Box 214, Breckenridge, Minnesota 56520, and Jeanne L. Bringgold, Traverse County Attorney, P. O. Box 26, Wheaton, Minnesota 56296. Appearing on behalf of Citizens Concerned for Water Management, Inc., a nonprofit corporation opposed to the formation of the District, was Stephen F. Rufer, Rufer & Hefte, Attorneys at Law, 111 North Mill Street, P. O. Box 866, Fergus Falls, Minnesota 56537-0866. Appearing on behalf of the Dispute Resolution Committee of the Minnesota Board of Water and Soil Resources was Special Assistant Attorney General Paul Strandberg, 525 Park Street, S-200, St. Paul, Minnesota 55103. There were four Board members present at the hearing: Chairman Donald Ogaard, Loren Harste, William Cofell, and Jack Graba.

The record in this matter closed on February 10, 1988.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Minnesota Board of Water and Soil Resources, 90 West Plato Boulevard, First Floor, St. Paul, Minnesota 55107. The Board's next regularly scheduled meeting is set for March 23.

STATEMENT OF ISSUE

Have the petitioning counties demonstrated that the establishment of the proposed district would be for the public welfare and public interest and would serve the purposes of Minn. Stat. Chapter 112?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History and Jurisdiction

1. On July 27, 1987, a petition seeking the establishment of a Mustinka-Rabbit River-Bois de Sioux watershed district was filed with the Minnesota

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Water Resources Board. The Petition was signed by the chairman of the county boards of the counties of Wilkin, Traverse, Big Stone and Stevens. Attached to the Petition was an affidavit of service by mail of the Petition on the county auditors of Wilkin, Traverse, Stevens, Otter Tail, Grant and Big Stone Counties, as well as on the Commissioner of the Department of Natural Resources. Those were mailed on July 15, 1987.

2. On August 19, 1987, the Water Resources Board considered the Petition. The Board found the Petition sufficient, subject to receipt of proof of service on the Director of the Division of Waters of the Minnesota Department of Natural Resources. The Board granted the Director an extension of time to prepare his report, and directed its staff to begin the process for scheduling a hearing on the Petition.

3. On August 31, 1987, a copy of the nominating Petition, accompanied by an affidavit of service by mail on the Director of the Division of Waters of the Minnesota Department of Natural Resources, was filed with the Water Resources Board.

4. On October 27, 1987, the Director of the Division of Waters of the Department of Natural Resources filed his report on the Petition. The report concludes that the Department supports the formation of the proposed district because it would have the opportunity to provide coordinated water resource management over the entire hydrologic basin.

5. On November 30, 1987, a preliminary watershed map prepared by the Department of Natural Resources was filed with the newly created Minnesota Board of Water and Soil Resources.

6. On December 8, 1987, the Board issued its Notice of and Order for Hearing in this matter. The Notice set the hearing for January 11, 1988 in Wheaton, Minnesota.

7. On December 15, 1987, copies of the Notice of and Order for Hearing were mailed to the county auditors of Big Stone, Grant, Otter Tail, Stevens, Traverse and Wilkin Counties. Copies were also mailed to the mayors of cities and clerks of townships within the boundaries of the proposed district, to county soil and water conservation districts in the affected area, to legislators representing the affected area, to three newspaper editors in the affected area, and to various other interested individuals.

8. On December 16, and again on December 30, the Notice of and Order for Hearing was published in the Grant County Herald, accompanied by a map showing the boundaries of the proposed district. On December 17, and again on December 24, the Notice and map were published in the Daily News of Wahpeton-Breckenridge, the Wheaton Gazette, the Morris Tribune, and the Northern Star.

Description of the Proposed District

9. The proposed district is roughly rectangular in shape, and includes all of Traverse County, as well as portions of Wilkin, Otter Tail, Grant, Stevens and Big Stone Counties. It constitutes the drainage basins of Lake Traverse and the Bois de Sioux River. The major tributaries are the Mustinka River to the south and the Rabbit River to the north.

10. The area of the proposed district is approximately 1,435 square miles. This is broken down among the various counties as follows:

<u>County</u>	<u>Square Miles</u>	<u>% of Total</u>
Traverse	546	38 %
Grant	381	27
Wilkin	198	14
Stevens	144	10
Big Stone	103	7
Otter Tail	63	4
	<u>1,435</u>	<u>100</u>

11. The dominant geographical feature of the district is the very flat plain which was the bed of glacial Lake Agassiz. That flat plain covers approximately 80 percent of the proposed district. The remaining 20 percent consists of ridges (allegedly old beach lines) and "upland" areas to the east of the ridges. The ridges and upland areas are to the east of the flat plain.

12. The counties of Traverse and Wilkin have very few wetlands or lakes which can serve to hold water after spring snowmelt or a rainstorm. Parts of Wilkin and Traverse Counties had large shallow water basins in years past, but they were drained many years ago. On the other hand, the counties of Otter Tail, Grant, Stevens and, to a lesser extent, Big Stone have numerous water bodies ranging in size from only a few acres to several hundred acres. Most of the larger water bodies are above the ridge. Tr. 113.

13. Agriculture is the dominant use in virtually the entire area proposed for inclusion in the district. The land has been intensively drained over the years. One of the primary causes of the flooding (which will be discussed more fully below) is the piecemeal and unplanned nature of this drainage. As more and more acres have been taken from slough, pasture or hay into row crops, they have been drained without attention to the cumulative downstream effects. When larger county ditches or joint ditches were engineered in the past, they were not engineered to carry all the water which is now being placed in them. While the rivers are, for the most part, natural (there has been some channelization and cleaning), they suffer from the same problem--inadequate capacity. They may have been adequate to carry the water that was placed in them in 1930, but they are not adequate to carry all the water that is being placed in them today.

Current Problems: Flooding

14. The extreme flatness of the Lake Agassiz basin causes large areas to be flooded by relatively small quantities of water. In the absence of roads, dikes, or other obstructions, water moves from field to field and section to section with relative ease. A pilot who had flown over the Rabbit River area during times of very high water found that the river was out of its banks by up to one and one-half miles. Tr. 45. Even in normal years, Wilkin County has 15 sites where highways and bridges are damaged each spring by the normal spring runoff. These sites will also be under water if rainfall in the area exceeds three inches. Tr. 14.

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15. In serious flood years, up to 60 highways or bridges have been damaged in Wilkin County alone. Years such as 1969, 1978, 1979, 1984 and 1986 have all presented serious financial problems for Wilkin County and its townships. Tr. 15 and 70.

16. Traverse County has experienced similar damage to its highways and bridges. In 1969, there was \$80,061 in documented damages. In 1978, there was \$119,307; in 1984, \$55,100; in 1986, \$41,155. Tr. 94.

17. Similar damages have been imposed upon farmers and town people. The record is replete with photographs and testimony showing whole fields covered by water. Many of these flood problems have occurred after crops have been planted, oftentimes destroying the crop entirely. Ex. 10, p. 37. The Rabbit River came out of its banks seven times, for example, in the bad year of 1986. Tr. 56. In the city of Breckenridge, the Red River met or exceeded flood stage four different times that year. Tr. 33.

18. Long term residents report that prior to 1950, flooding was not too much of a problem (with some notable exceptions, such as 1916). But since 1950, flooding has become more intense and more frequent. Tr. 80. Some say there is too much water coming too fast, while others say that there is probably the same amount of water, but it's coming much faster than it used to. Tr. 81 and 109. It is found that there is both more water, and it is coming faster. The primary reason for this change is the evolution of high intensity agricultural practices which permit the growing of row crops on well drained soils which, in the past, were too wet to support them. Drainage has permitted these lands to become far more productive, but it has had a negative effect on the productivity of downstream lands. In summary, flooding is a problem, and artificial alteration of the natural drainage system is one of the causes.

Other Current Problems

19. Erosion caused by flood waters is a serious problem. A supervisor on the Traverse County Soil and Water Conservation District Board characterized the erosion problem in Traverse County as "massive". Tr. 103. The erosion is a direct result of the quantity of water and the velocity at which it travels.

20. Siltation is a serious problem in Lake Traverse, the Bois de Sioux and Red Rivers, and at least some of the rivers and ditches that feed them. In February of 1985, for example, the City of Breckenridge contacted the Army Corps of Engineers to inquire about the possibility of dredging the Red River in order to increase its capacity. The Corps responded with the suggestion that the City work with local soil conservation service units to reduce the amount of erosion upstream of the river. Ex. 9 and Tr. 95.

21. The Department of Natural Resources has documented fish kills in Lake Traverse which are the result of excessive algae. Non-point source runoff is a common contributor to algal populations. Heavy rains will frequently cause nutrients to be washed away along with the eroded soil, delivering the nutrients to algae and other organisms.

22. There is also concern about groundwater quality. At least one person who recently dug a new well to an 86-foot depth has found that excessive nitrates in the water make it unsuitable for human consumption.

23. The crop losses and soil erosion which result from flooding have caused landowners to seek reduced tax valuations from their local assessors. Assessors have lowered valuations, but township boards note that this occurs at the same time that they need to raise money for road and bridge repairs. Tr. 109.

24. Antagonisms, disputes and even litigation have arisen over water problems in this area. Landowners who are paying for ditches do not mind paying their fair share, but if the ditch is carrying water from upstream landowners who are not being assessed, those who are being assessed do object. While in some cases landowners have been able to cooperate across county boundaries -- as happened between Wilkin and Grant Counties in connection with County Ditch 20 (see, Tr. 19 and 25) -- other situations have resulted in litigation and unpleasant relations. Tr. 25 and 110.

History of Attempted Solutions

25. Approximately 25 years ago, a committee was formed to try to establish a watershed district. The project was dropped, however, in exchange for promises of informal cooperation. Tr. 75 and 78.

26. In August of 1984, the Wilkin County Board sent out a letter to adjoining counties soliciting their ideas about a possible watershed district. Ex. 31. All expressed interest, and in November of 1984, an initial meeting was held in Breckenridge.

27. During 1985, engineers and others were consulted about the feasibility of a watershed district. One of the ideas that arose from that consultation was that a district which encompassed only the Rabbit River Watershed was probably too small to be effective. Tr. 22.

28. In July of 1986, Senator Charlie Berg organized a meeting to hear complaints about Lake Traverse, and in September of 1986, the Corps sponsored a public meeting to attempt to define the problems. These meetings led to the Problem Appraisal Report, Ex. 10.

29. In January of 1987, the Corps of Engineers issued the Problem Appraisal Report on the Lake Traverse Reservoir Operation Plan. This report focused upon the details of the operations of the White Rock Dam and the Reservation Control Dam, but it verifies many of the problems outlined above. The report noted:

Water resources experts tend to agree that extensive drainage, such as found in the flat glacial Lake Agassiz area, can affect downstream flood levels under certain conditions. Comprehensive watershed planning, management, and public education in the project area could help control ditching, drainage, and abuse of marginal and flood plain lands . . . Watershed districts should be activated to accomplish the planning and management needed. The Soil Conservation Service and state resources agencies can help watershed districts to plan and implement land-use measures and runoff retention projects.

30. In February of 1987, the Traverse County Board of Commissioners initiated the formal actions necessary to establish a watershed district, and meetings were held in the spring and summer of 1987 to refine the proposal.

31. In July of 1987, the Petition was filed with the Board.

Other Factors Favoring the Establishment of the District

32. A watershed district would be able to coordinate water management across county lines, just as a county board is able to deal with problems that cross township lines. An obvious example of how this can be helpful occurs in connection with planning a ditch repair project. In a major project, the engineer is going to want to know how much water must be carried at different points along the ditch. A county board can figure out, with some certainty, how much water will be contributed by lands in the county. It is helpless, however, to determine how much water will be contributed by lands on the other side of the county line. It has no control over ditch work done by upstream counties or private landowners upstream. In a watershed district, the engineer can gather data and make projections on both sides of the county line. Tr. 14, 21, 50-51. Also, in a watershed district, an engineer can consider options that involve more than one county, and so the options presented can be those that are most technically feasible, without the limitations imposed by political boundaries. Tr. 106.

33. Joint powers agreements or joint county ditches are both alternatives to a watershed district. There are a fair number of joint ditches already in existence. There are ditches between Wilkin and Grant, Wilkin and Traverse, Wilkin and Otter Tail, Traverse and Big Stone, Traverse and Grant, and even one involving Traverse, Wilkin and Grant. Tr. 16, 51, 97, 98 and letter dated January 19 from Steven Raguse. Sometimes these units have worked well, and other times they have not. Tr. 97-98. Their scope, however, is limited to one ditch system, rather than a whole drainage basin. While they certainly can solve an immediate problem, they may just pass it on downstream, and not contribute to a basin-wide solution.

34. A watershed district can deal with a whole host of water-related problems, not just flooding. Water quality problems involving algae in Lake Traverse or nitrates in drinking water are caused by water flows well beyond the scope of any one ditch or ditch system. While they may even be caused by factors outside the boundaries of the proposed district, a district is better equipped to deal with them than a joint ditch board.

35. Watershed boards are made up of managers who, by law, do not hold other public offices. Oftentimes they are able to devote more time and attention to water problems than can reasonably be expected from a county board, which must deal with many other issues. The minutes of the Grant County Board in the record reflect frequent water-related discussions and decisions, but they are a very small percentage of the total work of the County Board. There are only so many meetings that officeholders can attend, and a watershed board allows others to share the work presently being borne by the county board. Tr. 16 and 30.

Other Factors Opposing the Establishment of the District

36. There is substantial opposition to the Petition from landowners in three of the affected counties. A watershed district was opposed by the

County Boards of Otter Tail and Grant Counties. Individuals from those counties stated they had no objection to Wilkin and Traverse forming a district, if they wanted to, but Otter Tail and Grant did not want it to include any of their lands. Big Stone County was one of the counties that signed the Petition in June of 1987. However, by letter dated January 26, 1988, the Big Stone County Board indicated a change of position. Petitions opposing the establishment of the district were signed by over 80 percent of the resident freeholders in Big Stone County whose lands would be included within the boundaries of the proposed district. Had the county board know that there was such strong opposition, it would not have joined in the signing of the Petition. The county board recognized, however, that the law specifically prohibits individuals, or a county, from withdrawing their names from a petition once it has been filed, unless all other petitioners consent to the withdrawal.

37. The rate of ditching to reclaim wasteland for agricultural purposes will not be as great in the future as it has been in the past, because there just isn't that much land left that can be legally and economically drained. In other words, it is wrong to assume that the increase in flows during the last 30 years, for example, will continue to get even bigger again. Many of the lands which are most attractive for drainage are protected by long-term easements or outright legal prohibitions against drainage. In Grant County, for example, the statewide inventory process for water bodies and wetlands identified a total of 188 basins which are protected against drainage. Tr. 114 and Ex. 104. The protection, however, is dependent upon a state law which can be changed whenever the legislature chooses to. At the present time, the lower limit for protection is ten acres. There is nothing to say the legislature could not change that number. But under current law, those water bodies and wetlands are protected from drainage. Additional protection comes from federal farm programs which have recently included provisions conditioning participation upon an agreement not to create additional cultivated acreage ("sodbuster-swampbuster"). This, too, may change in the future, but, for the present, it provides an incentive for farmers not to drain additional lands. Finally, additional drainage is limited by the practicalities of cost: at some point it becomes too expensive to drain in comparison to the expected return from the land. Digging 30 or 40 feet down for any substantial distance is simply not economical under current conditions. Tr. 141.

38. There are already a large number of governmental entities which have control over one or more parts of the total water management picture: the Army Corps of Engineers, the State's Department of Natural Resources, the counties, soil and water conservation districts, joint ditch boards, individual ditch boards, the Pollution Control Agency, and others. A watershed board has the possibility of overlapping and duplicating work already being done at taxpayer expense. Tr. 130 and Petitions, Ex. 100. As the DNR Director's report noted, the creation of a district does not diminish the authority of other agencies to carry out their jobs, unless there is a formal agreement to transfer responsibilities. If the problems of duplication and inconsistent regulation are to be avoided, communication channels must remain open and the district must limit its role to that assigned to it by law. If not, the fears of duplication expressed by the opponents can, in fact, come true.

39. A watershed district has the power to tax and the power of eminent domain. Both of these are powers traditionally reserved for elected units of

government, such as towns, counties, or the State. The board of managers is appointed, not elected and there is no easy way for citizens to cause a manager to be removed from office. Citizens may petition to increase the number of managers and they may petition for the termination of a watershed district at any time after five years from the date of its formation. As a practical matter, however, citizens do not have the direct control over watershed managers that they have over elected officials. On the other hand, this "distance" may result in the managers taking a broader view towards problems and solutions. One of the criticisms leveled at existing joint ditch boards was the parochial attitude that some had exhibited in the past. Tr. 97.

Managers

40. The original Petition proposed that the Board of Managers consist of nine members. It contained a list of 20 nominees for those nine positions. In addition to that list, two other persons have indicated a desire to serve as a manager. The first is Nick Daly, Route 1, Box 66, Donnelly, Minnesota 56235. Donnelly is in Stevens County. The second is Dennis Stock. Stock was nominated by a unanimous motion of the Otter Tail County Board on May 28, 1987. Tr. 142.

41. The Board is free to apportion the managers among the various counties in whatever form it chooses. In addition, the Board is free to set the number of managers at any number between three and nine. If the Board decided to go with nine managers as proposed in the Petition, and if the Board desired to apportion the managers as closely as possible to the percentage of land in the district (see Finding 10), but still give each county at least one manager, the apportionment would be as follows:

<u>County</u>	<u>% of Land</u>	<u># of Managers</u>
Traverse	38 %	3
Grant	27	2
Wilkin	14	1
Stevens	10	1
Big Stone	7	1
Otter Tail	4	1
	<u>100</u>	<u>9</u>

An alternative available to the Board would be to determine and identify manager areas within the territory of the district. Minn. Stat. § 112.42, subd. 3(d).

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The nominating Petition is valid in all respects. It meets the tests set forth in both Minn. Stat. §§ 112.37 (1986) and 112.37 (1987 Supp.).

2. Due, timely and proper notice of the hearing was given. All other relevant requirements of law or rule have been fulfilled. The Board and the Administrative Law Judge do have jurisdiction to determine the issues herein.

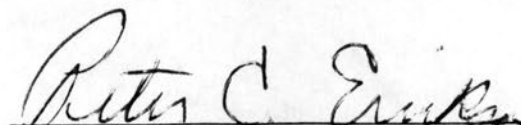
3. The establishment of a watershed district as proposed would be for the public welfare and public interest and would serve the purposes of Minn. Stat. ch. 112, particularly § 112.36, subds. 2 (1), (2), (3), (5), (6), (7), (9), (10), (11), (13) and (14) (1987 Supp.).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Board establish the Mustinka-Rabbit River-Bois de Sioux Watershed District, fix the boundaries thereof as proposed in the original Petition, and name the first Board of Managers of the District.

Dated this 11 day of March, 1988.


PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded, With Transcript Prepared By Jane I. Hosman.

MEMORANDUM

The boundaries of the proposed district were based upon science (hydrology) rather than on politics. It would have been easier for the Petitioners had they excluded lands in Grant and Otter Tail Counties in order to avoid the opposition that they must have known would come from those counties. That, however, would have been short-sighted and self-defeating. It is clear from the record that there have been a number of "ridge cuts" and tiles which allow water to flow from east to west across county lines. See, for example, Tr. 26, 61-62, and 83. Of course, a great deal of the water that is impacting the lowlands comes from the lowlands themselves; but there is no evidence as to what percentage comes from the upland and what percentage comes from the lowland, nor does it matter. What does matter is that there be a coordinated effort throughout the entire hydrologic basin to control the waters that are causing the flooding, erosion, siltation, ground water and water quality problems. Drawing the boundaries on a scientific basis, rather than on a political basis, at least gives the proposed district a chance at getting a handle on the problems. A different administrative law judge once recommended against the formation of a district because he believed the boundaries had been drawn improperly in order to exclude opponents of the proposed district. See, In the Matter of the Petition for the Establishment of the Rice-Koronis Watershed District (Counties of Stearns, Meeker and Kandiyohi), OAH Docket No. WRB-84-003-AK. Petitioners are commended for not taking that approach in this case.

P.C.E.

MAR 11 88

Minnesota Board of Water and Soil Resources
90 West Plato Boulevard
First Floor
St. Paul, Minnesota 55107

" CON "

In the Matter of the Petition for the
Establishment of the Mustinka-Rabbit River-
Bois de Sioux Watershed District filed on
July 27, 1987 (Minnesota Statutes Section
112.37)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER

On July 27, 1987 a nominating petition for the establishment of a Mustinka-Rabbit River-Bois de Sioux Watershed District signed by Wilkin, Traverse, Big Stone, and Stevens Counties was filed with the Minnesota Water Resources Board pursuant to Minn. Stat. ch. 112 (1986). The territory of the proposed watershed district included all of the lands in the watershed of the Bois de Sioux River within the State of Minnesota. A contested case hearing on the proposed watershed district was held on January 11, 1988 in Wheaton, Minnesota. The report of Administrative Law Judge Peter C. Erickson was received by the Board of Water and Soil Resources (the Board of Water and Soil Resources superceded the Water Resources Board effective October 1, 1987) on March 11, 1988.

The Board of Water and Soil Resources (Board) provided parties to the proceeding an opportunity to present their exceptions to the law judge's report at a regular meeting on March 23, 1988.

Four Board members attended the entire hearing and reported to the full Board on March 23, 1988. The Board jointly reviewed the law judge's report and received copies of the post-hearing briefs from

(THE FINDINGS OF FACT WOULD BE THE SAME AS IN THE PRO ORDER)

CONCLUSIONS OF LAW

I. Conclusions 1 through 3 of the attached report of Administrative Law Judge Peter C. Erickson are adopted by the Board with the following exception:

A. Strike all of the wording of Conclusion 3 and insert "The establishment of the proposed watershed district would not be for the public welfare and public interest, and would not serve the purpose of Minn. Stat. ch. 112."

II. The Board makes the following additional conclusions:

4. Although the record shows severe water-related problems in the Bois de Sioux basin, the petitioning county boards failed to set forth the contemplated improvements and management strategies the proposed watershed district could implement to alleviate those problems and fulfill the purpose of Chapter 112.
5. Passage of resolutions to develop local water plans by Otter Tail and Grant Counties demonstrates their commitment to formulating and implementing solutions to the water problems occurring in downstream counties, and establishment of the proposed watershed district would not be for the public welfare because it would diminish that commitment.
6. Establishment of the proposed watershed district would not be for the public interest because of the many landowners in Otter Tail, Grant, and Big Stone Counties that expressed opposition to its establishment.

IT IS THEREFORE ORDERED THAT

I. The petition for the establishment of the Mustinka-Rabbit
River-Bois de Sioux Watershed District is hereby dismissed.

Dated at Saint Paul, Minnesota 55107 this 27th day of April 1988.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Donald H. Ogaard
Chairman

RECOMMENDED RESOLUTION

That the Board approve the draft Order establishing the Bois de Sioux Watershed District, direct staff to complete the detailed list of included lands and legal boundary map for inclusion in the Order, and authorize the Chairman to approve and sign the final Order.

MANAGER NOMINEE LOCATION MAP (4-19-88)

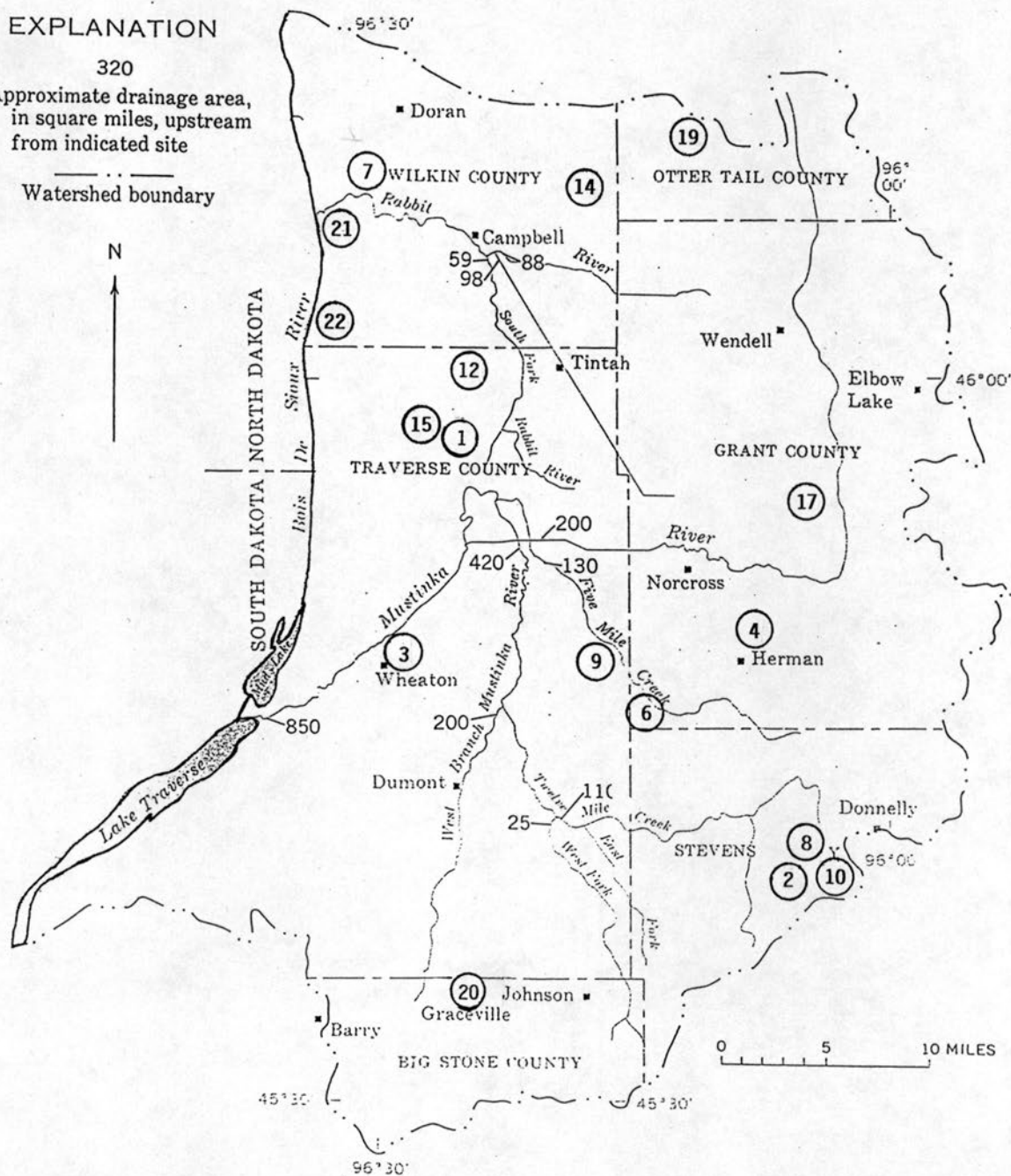
1	GEORGE AHLSTEN	9	JEROME DEAL	17	JAMES NELSON
2	PERRY ANDERSON	10	DON GIESELMAN	18	BRUCE RINKE
3	KENNETH BALDRY	11	MIKE HOLTE	19	DENNIS STOCK
4	LEONARD BLUME	12	DENNIS KELLER	20	ROBERT TAFFE
5	SIDNEY BORDSON	13	DEAN KOESBO	21	JAMES VOSS
6	LYNDON BRUNS	14	LARRY LYNKAAS	22	STEVEN WETHERBEE
7	RALPH CHRISTENSON	15	RICHARD McCLERNON		
8	NICK DALY	16	LAWRENCE MENGE		

EXPLANATION

320
Approximate drainage area,
in square miles, upstream
from indicated site

Watershed boundary

N



PROPOSED MUSTINKA-RABBIT RIVER-BOIS DE SIOUX WATERSHED DISTRICT

①
MAR 24 88

Questionnaire for Watershed District Manager Nominees

1. Full Name: GEORGE AHLSTEN
2. Mailing Address: Route 2@ Box 99 Street _____
3. Location of Primary Residence: County of Traverse; Township of E. Taylor, or City of _____ (If Township, give section number 25).
4. Telephone Number: Area Code 612 563-4340
5. Date of Birth: 2-22-38
6. Occupation: Farmer
7. Education: High School (Aviation) Pilot- SMEL Commercial A/P rated
8. Organizational Experience: Describe any experience you have had in connection with any governmental body, private association, board, cooperative, society, club, or other group. Please indicate if you have served as an officer of any organization:

9. Natural resource background: Describe any involvement or interest you have had in water, soil, fish and wildlife or other natural resource issues. Please indicate whether you have ever been directly involved in a water-related problem, such as flooding, erosion, sedimentation, water pollution, etc.:
Operation Pheasant 1972-3??, Aided Kay Ahlsten (wife) in the survey of Southern Red River Valley for the study and identification of pollution sources due to soil erosion, chemical dumping and improper field drainage. Information is available in master thesis (1983) Mutagenic Activity of Drinking and River Water, by Kay Alexander Ahlsten North Dakota State University, Fargo, N.D.
10. Record: Have you ever been convicted of an offense greater than a gross misdemeanor? If so, please describe: No
11. Eligibility: Do you hold any elected office, or any appointed policy-making position, with the county, state, or federal government? No
12. Availability: Would you be able to attend watershed district meetings and take an active role on the board of managers of the district? Yes

- Blank lined paper with a vertical margin line on the right side. Faint handwritten marks are visible at the bottom.

Signature _____

Date _____

PROPOSED MUSTINKA-RABBIT RIVER-BOIS DE SIOUX WATERSHED DISTRICT

APR 05 88

Questionnaire for Watershed District Manager Nominees

1. Full Name: PERRY J. ANDERSON
2. Mailing Address: Route 1 Box 57 Street _____
3. Location of Primary Residence: County of STEVEN; Township of DONNELLY, or City of DONNELLY (If Township, give section number 33).
4. Telephone Number: Area Code 612 246-3481
5. Date of Birth: 6-15-27
6. Occupation: Retired Farmer, now Sales Person
7. Education: 8 Years
8. Organizational Experience: Describe any experience you have had in connection with any governmental body, private association, board, cooperative, society, club, or other group. Please indicate if you have served as an officer of any organization:
Church Board M.F.O. ASC Chairman
9. Natural resource background: Describe any involvement or interest you have had in water, soil, fish and wildlife or other natural resource issues. Please indicate whether you have ever been directly involved in a water-related problem, such as flooding, erosion, sedimentation, water pollution, etc.:
I have farmed for many years I am interested in wildlife and water related problems
10. Record: Have you ever been convicted of an offense greater than a gross misdemeanor? If so, please describe: No
11. Eligibility: Do you hold any elected office, or any appointed policy-making position, with the county, state, or federal government? Chairman ASC, Steven County
12. Availability: Would you be able to attend watershed district meetings and take an active role on the board of managers of the district? Yes

Manager Questionnaire (Continued)

13. Interest: Would you accept appointment to the board of managers of the proposed watershed district? Yes

14. Any other information or comments you would like to provide (example - your personal thoughts, feelings, or ideas about water and related resources management):

I am interested in flooding, erosion, sedimentation,
water pollution, all natural resource issues.

Perry Anderson
Signature

3/26/88
Date

PROPOSED MUSTINKA-RABBIT RIVER-BOIS DE SIOUX WATERSHED DISTRICT

MAR 23. 88

Questionnaire for Watershed District Manager Nominees

1. Full Name: NICK DALY Nicholas Joseph Daly
2. Mailing Address: Route 1 Box 66 Street _____
3. Location of Primary Residence: County of Stevens; Township of Apperton, or City of Donnelly (If Township, give section number 6).
4. Telephone Number: Area Code 612 246-3390
5. Date of Birth: 5-1-34
6. Occupation: Farmer
7. Education: High School Graduate, 4 years Veterans Farm Management
8. Organizational Experience: Describe any experience you have had in connection with any governmental body, private association, board, cooperative, society, club, or other group. Please indicate if you have served as an officer of any organization:
School Board - 6 years
Donnelly Coop Board - 2 years
Church Council - 6 years
9. Natural resource background: Describe any involvement or interest you have had in water, soil, fish and wildlife or other natural resource issues. Please indicate whether you have ever been directly involved in a water-related problem, such as flooding, erosion, sedimentation, water pollution, etc.:
Served on Donnelly Rod & Gun Club board
Envelved in agriculture all my life.
10. Record: Have you ever been convicted of an offense greater than a gross misdemeanor? If so, please describe: No
11. Eligibility: Do you hold any elected office, or any appointed policy-making position, with the county, state, or federal government? No
12. Availability: Would you be able to attend watershed district meetings and take an active role on the board of managers of the district? Yes

Manager Questionnaire (Continued)

13. Interest: Would you accept appointment to the board of managers of the proposed watershed district? Yes
14. Any other information or comments you would like to provide (example - your personal thoughts, feelings, or ideas about water and related resources management): _____

Nick Dahy
re

3-21-88

Minnesota Board of Water & Soil Resources January 15, 1988
90 West Plato Boulevard
First Floor
St. Paul, Minnesota 55107

Dear Sir:

This is to inform you that, if the Mustinka -
Rabbit River - Bois de Sioux watershed is
established, I would be interested in serving
on the board of managers for the Stevens
County Area. I am located in the NW.
Quarter of Section 6 of Pepperton township,
Stevens County.

Thank you for your consideration.

Nick Daley

R.R. 1 Box 66

Donnelly, Mn.
56235

Phone 612-246-3390

JAN 19 88

12
APR 11 88

PROPOSED MUSTINKA-RABBIT RIVER-BOIS DE SIOUX WATERSHED DISTRICT

Questionnaire for Watershed District Manager Nominees

1. Full Name: Dennis Antone Keller
2. Mailing Address: Route 1 Box 92 Street 0
3. Location of Primary Residence: County of Traverse Township of Taylor, or City of Tinley (If Township, give section number 12).
4. Telephone Number: Area Code 218 369-2493
5. Date of Birth: 3-11-36
6. Occupation: Farming
7. Education: 8th grade
8. Organizational Experience: Describe any experience you have had in connection with any governmental body, private association, board, cooperative, society, club, or other group. Please indicate if you have served as an officer of any organization:
county Farm Bureau - President
Cass Lake Creamery Fargo ND - Secretary
Minnesota Extension Citizens' Advisory Committee
9. Natural resource background: Describe any involvement or interest you have had in water, soil, fish and wildlife or other natural resource issues. Please indicate whether you have ever been directly involved in a water-related problem, such as flooding, erosion, sedimentation, water pollution, etc.:

10. Record: Have you ever been convicted of an offense greater than a gross misdemeanor? If so, please describe: No
11. Eligibility: Do you hold any elected office, or any appointed policy-making position, with the county, state, or federal government? no
12. Availability: Would you be able to attend watershed district meetings and take an active role on the board of managers of the district? yes

13. Interest: Would you accept appointment to the board of managers of the proposed watershed district? yes

14. Any other information or comments you would like to provide (example - your personal thoughts, feelings, or ideas about water and related resources management): _____

Date _____

14

APR 05 88

PROPOSED MUSTINKA-RABBIT RIVER-BOIS DE SIOUX WATERSHED DISTRICT

Questionnaire for Watershed District Manager Nominees

1. Full Name: LARRY C. LYNGAAS
2. Mailing Address: Route 1 Box 49 Street Campbell, MN.
3. Location of Primary Residence: County of Wilkin; Township of Bradford, or City of _____ (If Township, give section number 26).
4. Telephone Number: Area Code 218 630-5504
5. Date of Birth: 5-7-48
6. Occupation: FARMER
7. Education: 2 yrs Technical School
8. Organizational Experience: Describe any experience you have had in connection with any governmental body, private association, board, cooperative, society, club, or other group. Please indicate if you have served as an officer of any organization:
4 yrs Church Board (Vikka) Lutheran 1 yr Deacon
3 yrs President.
9. Natural resource background: Describe any involvement or interest you have had in water, soil, fish and wildlife or other natural resource issues. Please indicate whether you have ever been directly involved in a water-related problem, such as flooding, erosion, sedimentation, water pollution, etc.:
Area water problems
member of Duck Unlimited + Pheasants Forever
10. Record: Have you ever been convicted of an offense greater than a gross misdemeanor? If so, please describe: NONE
11. Eligibility: Do you hold any elected office, or any appointed policy-making position, with the county, state, or federal government? NO
12. Availability: Would you be able to attend watershed district meetings and take an active role on the board of managers of the district? YES

41
Manager Questionnaire (Continued)

13. Interest: Would you accept appointment to the board of managers of the proposed watershed district? YES

14. Any other information or comments you would like to provide (example - your personal thoughts, feelings, or ideas about water and related resources management):

I know there are area water + soil
erosion problems that need to be
corrected.

Larry Lyngaas
Signature

3/29/88
Date

PROPOSED MUSTINKA-RABBIT RIVER-BOIS DE SIOUX WATERSHED DISTRICT

MAR 30 88

Questionnaire for Watershed District Manager Nominees

1. Full Name: JAMES NELSON
2. Mailing Address: Route 1 Box 39 Street Elbow Lake MN 56531
3. Location of Primary Residence: County of Grant; Township of Delaware, or City of _____ (If Township, give section number 15).
4. Telephone Number: Area Code 218 685-4293
5. Date of Birth: September 26, 1945
6. Occupation: Farming
7. Education: Master of Science, Nuclear Physics, University of Pittsburgh 1969
Bachelor of Science, Cum Laude, Physics, University of Minnesota 1967
8. Organizational Experience: Describe any experience you have had in connection with any governmental body, private association, board, cooperative, society, club, or other group. Please indicate if you have served as an officer of any organization:
Chairman, Elbow Lake Coop Grain Board of Directors (Director since 1983)
Chairman, Grant County Board of Adjustment (Board member since 1983)
Secretary, Grant County Fertilizer Board of Directors (Director since 1985)
Supervisor, Grant County Soil and Water Conservation District (since 1983)
Clerk, Delaware Town Board (since 1974)
9. Natural resource background: Describe any involvement or interest you have had in water, soil, fish and wildlife or other natural resource issues. Please indicate whether you have ever been directly involved in a water-related problem, such as flooding, erosion, sedimentation, water pollution, etc.:
Past President and Director, States United for Rural Environment (SURE), a
citizen environmental group organized to protect the rural environment
10. Record: Have you ever been convicted of an offense greater than a gross misdemeanor? If so, please describe: No
11. Eligibility: Do you hold any elected office, or any appointed policy-making position, with the county, state, or federal government? No
12. Availability: Would you be able to attend watershed district meetings and take an active role on the board of managers of the district? Yes

81
Manager Questionnaire (Continued)

13. Interest: Would you accept appointment to the board of managers of the proposed watershed district? Yes
14. Any other information or comments you would like to provide (example - your personal thoughts, feelings, or ideas about water and related resources management):

I believe that it is important that watershed district policy be
consistent with the Comprehensive Water Plans that are being developed
by several counties that are included in the proposed Mustinka-Rabbit
River-Bois De Sioux Watershed Districts. Additionally, any actions carried
out under the watershed district policy must be consistent with the economic
development of all the counties, cities and townships in the watershed
district. In order to assure this, watershed district managers should reflect
a complete cross section of the watershed district.

James F. Nelson
Signature

March 27, 1988
Date

PROPOSED MUSTINKA-RABBIT RIVER-BOIS DE SIOUX WATERSHED DISTRICT

Questionnaire for Watershed District Manager Nominees

1. Full Name: ROBERT TAFFE
2. Mailing Address: Route Box 186 Street 210 W 3rd Street
3. Location of Primary Residence: County of Big STONE; Township of , or City of GRACEVILLE (If Township, give section number).
4. Telephone Number: Area Code 612 748-7538
5. Date of Birth: OCT 5 1923
6. Occupation: Retired FARMER
7. Education: High School GRADUATE
8. Organizational Experience: Describe any experience you have had in connection with any governmental body, private association, board, cooperative, society, club, or other group. Please indicate if you have served as an ^{development} officer of any organization:
DIRECTOR of GRACEVILLE COOPERATION. PAST DIRECTOR
on COOP ELEVATOR BOARD. PAST MEMBER TOWNSHIP BOARD.
PAST CHAIRMAN TOWN BOARD & COUNTY FARM ORGANIZATION.
9. Natural resource background: Describe any involvement or interest you have had in water, soil, fish and wildlife or other natural resource issues. Please indicate whether you have ever been directly involved in a water-related problem, such as flooding, erosion, sedimentation, water pollution, etc.: Involved AS
A FARMER & TOWNSHIP BOARD MEMBER IN
DAMAGE DISPUTES.
10. Record: Have you ever been convicted of an offense greater than a gross misdemeanor? If so, please describe: NO
11. Eligibility: Do you hold any elected office, or any appointed policy-making position, with the county, state, or federal government? NO
12. Availability: Would you be able to attend watershed district meetings and take an active role on the board of managers of the district? USUALLY

Manager Questionnaire (Continued)

13. Interest: Would you accept appointment to the board of managers of the proposed watershed district? RELUCTANTLY
14. Any other information or comments you would like to provide (example - your personal thoughts, feelings, or ideas about water and related resources management): _____

Robert Raffe
Signature

Mar 23, 1988
Date

To: Board of Water and Soil
Resources Members and
Advisors
Page Two

April 21, 1988

° 509 Water Planning

Three items are included in the packet for your review. First, is a policy for reviewing 509 plans. Mel Sinn has drafted a proposed process based on discussions by the Board over the past several months. Board action on such a policy would set direction for future plan reviews to proceed in an orderly manner.

Secondly is a review of the Elm Creek Watershed Management Organization plan conducted by board staff. This plan will be reviewed at the meeting. Action on the plan is not requested until the May meeting.

Thirdly, is the staff analysis and recommended strategy for carrying out the Board directive to develop rules for erosion and sediment control only as it relates to 509 plans. Board direction on this strategy is required for staff to proceed.

° Licensing of State-wide Accounting Software

The enclosed handout explains this issue. If the Board decides to purchase rights to a package such as this, the source of funds would be the SWCD General Services grant account since this would be done as a direct service to SWCDs in the state. Also at issue is whether a rebate should be made to districts which have already purchased this software package.

° Legislative Action

Last night (April 20), both houses passed the Semi States Conference Committee report which contained the Board's Supplemental funding request. A copy of the language is enclosed. This action provides funding for the Board's administrative expenses, adds three staff positions to implement comprehensive local water planning and provides for the purchase of needed computer equipment. It is less than what we asked for but it represents a major step forward in providing services to local government as they prepare and implement water management plans. This is a big victory for the Board!

More details on this and other legislative action will be presented at the board meeting.

I look forward to seeing you on the 27th. Please travel safely.

JB:lb
Encs:

BOARD OF WATER AND SOIL RESOURCES
90 West Plato Boulevard
Conference Room A
St. Paul, Minnesota 55107

PRELIMINARY AGENDA

- 9:00 a.m. 1. Call to Order
2. Adopt Agenda
3. Approve Minutes of March 23, 1988
4. Chairman's Report - Don Ogaard
 - Legislative Update
- 9:30 5. Overview of Water Management Programs
- a) Flood Damage Reduction Program - Joe Gibson
- b) Basin-wide Planning and Engineering - Dan Thul
- c) Clean Water Partnership Program - Wayne Anderson
- d) Clean Lake Project, Big Stone Lake - Loren Harste
- 11:00 6. Proposed Rabbit-Mustinka Bois de Sioux Watershed District
- Review of Exhibits in Board Office
- Discussion
- Consideration of Draft Orders
- Board Member Identification Photos Will Also Be Taken
 At This Time And During Lunch
- NOON Lunch
- 1:00 p.m. 7. Decision on Proposed Watershed District Formation
8. EQB - Water Resources Committee - Loni Kemp
9. 509 Water Planning
- a) 509 Plan Review Policy - Mel Sinn
- b) Elm Creek WMO Plan Overview - Dan Steward
- c) Erosion and Sediment Control Rules - Greg Larson
10. Licensing of State-Wide Accounting Software - Dennis Pond
11. Strategic Planning Update - Jim Birkholz
- 4:00 12. Adjourn

1 individual and public property that is
2 eligible for payment assistance under
3 the presidential declaration of a major
4 disaster, FEMA-0797-DR. The
5 unencumbered balance remaining in the
6 first year does not cancel and is
7 available for the second year.

8 (c) \$5,000 is for printing of driver's
9 license renewal notice communications
10 about organ donation. The department
11 may accept materials or contributions
12 from voluntary or other organizations
13 to aid the organ donor program.

14 (d) \$538,000 is appropriated from the
15 bureau of criminal apprehension account
16 in the special revenue fund. Of this
17 amount, \$430,000 is for laboratory
18 activities and \$108,000 is for grants
19 to local officials for the cooperative
20 investigation of cross-jurisdictional
21 criminal activity.

22 Sec. 5. AGRICULTURE

23 Oak Wilt Control 20,000 40,000

24 This appropriation is added to the
25 appropriation for oak wilt control in
26 Laws 1987, chapter 358, section 7,
27 subdivision 2. The approved complement
28 of the department of agriculture is
29 increased by one position. The
30 department shall cooperate with the
31 department of natural resources and the
32 University of Minnesota in Oak Wilt
33 control activities. Any unencumbered
34 balance remaining in the first year
35 does not cancel but is available for
36 the second year.

Passed both houses,
sent to Governor for
signature 4/20/88

37 Sec. 6. BOARD OF WATER AND SOIL

38 RESOURCES

39 Comprehensive Local Water Planning 43,000 172,000

40 The approved complement of the board of
41 water and soil resources is increased
42 by three positions. The unencumbered
43 balance remaining in the first year
44 does not cancel but is available for
45 the second year.

46 Sec. 7. CHARITABLE GAMBLING

47 CONTROL BOARD

48 Increased Enforcement 250,000

49 The approved complement of the
50 charitable gambling control board is
51 increased by six positions.

52 The charitable gambling control board
53 shall promulgate emergency rules to
54 limit the amount charged for lease or
55 rental of space used for charitable
56 gambling purposes. The rules shall
57 include, but not be limited to, a

1 Pollution Control Agency

2 Water Quality Division

3

4 Proposed Permanent Rules Relating to Clean Water Partnership

5

6 Rules as Proposed (all new material)

7

CHAPTER 7076

8

MINNESOTA POLLUTION CONTROL AGENCY

9

WATER QUALITY DIVISION

10

CLEAN WATER PARTNERSHIP GRANTS

11 7076.0100 PURPOSE.

12 This chapter provides for the administration of the state
13 clean water partnership grant program and the federal nonpoint
14 source management program as provided by United States Code,
15 title 33, section 1329. Parts 7076.0100 to 7076.0290 implement
16 these programs by establishing the substantive criteria and
17 procedural conditions under which the agency may award state
18 matching grants and provide technical assistance for the
19 development and implementation of nonpoint source projects.

20 7076.0110 DEFINITIONS.

21 Subpart 1. Scope. The terms used in parts 7076.0100 to
22 7076.0290 have the meanings given them in Minnesota Statutes,
23 chapters 115 and 116, and rules adopted under those chapters and
24 the meanings given them in this part. If terms defined in this
25 part conflict with the definitions in Minnesota Statutes,
26 chapters 115 and 116 and the rules adopted under those chapters,
27 the definitions in this part govern.

28 Subp. 2. Agency. "Agency" means the Pollution Control
29 Agency.

30 Subp. 3. Best management practices. "Best management
31 practices" has the meaning given it in Minnesota Statutes,
32 section 115.093, subdivision 3.

33 Subp. 4. Commissioner. "Commissioner" means the
34 commissioner of the Pollution Control Agency.

35 Subp. 5. Land occupier. "Land occupier" means a person

1 who possesses lands in the project area whether as owner,
2 lessee, renter, tenant, or otherwise, including successors of a
3 land occupier who received a payment during the minimum
4 effective life of a best management practice.

5 Subp. 6. Local share. "Local share" means the
6 contributions of a local unit of government to the eligible cost
7 of a project, including the value of cash expenditures and
8 in-kind contributions of labor, equipment, material, and real
9 property used for and expended on eligible project activities.

10 Subp. 7. Local unit of government. "Local unit of
11 government" has the meaning given it in Minnesota Statutes,
12 section 115.093, subdivision 5.

13 Subp. 8. Local water plan. "Local water plan" means a
14 comprehensive water plan authorized under Minnesota Statutes,
15 chapter 110B; a surface water management plan required under
16 Minnesota Statutes, section 473.878; an overall plan required
17 under Minnesota Statutes, chapter 112; or until July 1, 1991,
18 any other local plan that provides an inventory of existing
19 physical and hydrologic information on the area, a general
20 identification of water quality problems and goals, and that
21 demonstrates a local commitment to water quality protection or
22 improvement.

23 Subp. 9. Nonpoint source. "Nonpoint source" has the
24 meaning given it in Minnesota Statutes, section 115.093,
25 subdivision 6.

26 Subp. 10. Official controls. "Official controls" has the
27 meaning given it in Minnesota Statutes, section 115.093,
28 subdivision 7.

29 Subp. 11. Person. "Person" has the meaning given it in
30 Minnesota Statutes, section 115.01, subdivision 10.

31 Subp. 12. Project. "Project" has the meaning given it in
32 Minnesota Statutes, section 115.093, subdivision 8.

33 Subp. 13. Project area. "Project area" means the area
34 identified as hydrologically contributing to the water of
35 concern for which the diagnostic study and implementation plan
36 are developed and implemented.

1 Subp. 14. Project continuation grant amendment. "Project
2 continuation grant amendment" means an amendment to an existing
3 project implementation grant to provide funds to continue
4 implementation of activities identified in an approved
5 diagnostic study and implementation plan that were not funded in
6 the initial project implementation grant.

7 Subp. 15. Project coordination team. "Project
8 coordination team" means the public interagency group
9 established in Minnesota Statutes, section 115.103, subdivision
10 1.

11 Subp. 16. Project development. "Project development"
12 means the development of a diagnostic study and implementation
13 plan.

14 Subp. 17. Project development grant. "Project development
15 grant" means a grant from the agency to the project sponsor for
16 the preparation of a diagnostic study and implementation plan.

17 Subp. 18. Project implementation. "Project implementation"
18 means the implementation of an approved diagnostic study and
19 implementation plan or their equivalent.

20 Subp. 19. Project implementation grant. "Project
21 implementation grant" means a grant from the agency to the
22 project sponsor for the implementation of a diagnostic study and
23 implementation plan or their equivalent.

24 Subp. 20. Project sponsor. "Project sponsor" means the
25 local unit of government that applies for a grant, enters into a
26 grant contract, and is responsible for development and
27 implementation of the project.

28 Subp. 21. Water pollution. "Water pollution" has the
29 meaning given it in Minnesota Statutes, section 115.01,
30 subdivision 5.

31 Subp. 22. Waters of the state. "Waters of the state" has
32 the meaning given it in Minnesota Statutes, section 115.01,
33 subdivision 9.

34 Subp. 23. Water of concern. "Water of concern" means the
35 specific water of the state which the project is focused on
36 improving or protecting.

1 7076.0120 AVAILABLE ASSISTANCE.

2 Subpart 1. Financial assistance. There are two types of
3 grants available for nonpoint source projects: (1) project
4 development grants, and (2) project implementation grants. The
5 grants are for a maximum of 50 percent of the eligible cost of
6 the project. Grants must be awarded, within the limits of
7 available appropriations, to those applicants having the highest
8 priority.

9 Subp. 2. Technical assistance. The agency may provide
10 technical assistance to local units of government in order to
11 ensure efficient and effective development and implementation of
12 projects. Technical assistance must be given to local units of
13 government that receive grants, within the limits of available
14 resources.

15 7076.0130 ELIGIBILITY CRITERIA.

16 Subpart 1. Eligible applicants. Only local units of
17 government are eligible to apply for grants and receive
18 technical assistance. A local unit of government is eligible to
19 apply for state matching grants and request technical assistance
20 if it has the following:

- 21 A. the authority to coordinate and enter into
22 contracts with local, state, and federal agencies and private
23 organizations for the purpose of carrying out a project;
24 B. the authority to generate cash revenues and
25 in-kind contributions for the local share of a project; and
26 C. the authority to adopt, implement, and enforce
27 official controls.

28 Subp. 2. Eligible costs. Project costs are eligible for
29 state matching grants if the costs are reasonable and necessary
30 and allocable for the development of a diagnostic study and
31 implementation plan, or for the implementation of the plan, and
32 if the costs are related to any of the following activities:

- 33 A. water quality monitoring, water resource and
34 project area data and information collection, data and
35 information analysis and assessment, and related tasks;

1 B. fiscal and management activities including report
2 preparation;

3 C. selection, design, layout, and installation of
4 best management practices;

5 D. development, review, and inspection of
6 installation, operation, and maintenance procedures for best
7 management practices;

8 E. development and implementation of public education
9 materials and activities;

10 F. development and implementation of official
11 controls;

12 G. acquisition of easements and property; and

13 H. other activities determined by the agency or
14 established by federal regulation to be necessary to develop and
15 implement the project.

16 Subp. 3. Ineligible costs. Ineligible costs include any
17 costs that are not related to the activities in subpart 2. In
18 addition, the following costs are ineligible whether or not they
19 relate to the activities in subpart 2:

20 A. installation of best management practices before
21 the grant award;

22 B. operation and maintenance of best management
23 practices;

24 C. activities regulated by the National Pollutant
25 Discharge Elimination System permit program, parts 7001.1000 to
26 7001.1100; the State Disposal System permit program; the
27 Petroleum Tank Release Clean-up Act, Minnesota Statutes, chapter
28 115C; the Environmental Compensation and Liability Act,
29 Minnesota Statutes, chapter 115B; the Comprehensive
30 Environmental Response, Compensation, and Liability Act, United
31 States Code, title 42, sections 9601 to 9675; and the Resource
32 Conservation and Recovery Act, United States Code, title 42,
33 sections 6901 to 6991;

34 D. activities regulated by a condition of a solid
35 waste or hazardous waste permit or the agency solid waste rules,
36 chapter 7035; or the agency hazardous waste rules, chapter 7045;

- 1 E. activities funded by state or federal grants for
2 wastewater treatment facilities;
- 3 F. regulated practices to control spills of
4 pesticides, fertilizer, petroleum, and related materials from
5 bulk storage facilities;
- 6 G. regulated practices to manage toxic or hazardous
7 materials;
- 8 H. commercial operations and industrial processes and
9 land use and land management activities directly related to
10 commercial operations and industrial processes including plant
11 yards, access roads, drainage ponds, refuse piles, storage
12 piles, and material product loading areas;
- 13 I. active and inactive mining activities;
- 14 J. building and utility construction;
- 15 K. highway and road construction;
- 16 L. dredging of harbors, lakes, and ditches;
- 17 M. activities intended primarily for flood control;
18 and
- 19 N. activities that violate local, state, and federal
20 statutes, rules, and regulations.
- 21 Subp. 4. Eligible local share. At least 30 percent of the
22 project costs must be derived from nonstate and nonfederal
23 sources. Costs incurred by a land occupier for the installation
24 of best management practices may be considered a part of the
25 local share paid by the local unit of government provided the
26 following conditions are met:
- 27 A. the primary purpose of the best management
28 practices is for improvement and protection of water quality;
- 29 B. the best management practices must be designed for
30 a minimum effective life of ten years;
- 31 C. the best management practices are a part of an
32 approved implementation plan; and
- 33 D. there must be an operation and maintenance plan
34 for the minimum effective life of the best management practices.
- 35 7076.0140 NOTICE OF GRANT AVAILABILITY.

1 Subpart 1. Notice. The agency will publish in the State
2 Register a notice that applications for project development
3 grants and project implementation grants will be accepted
4 whenever the agency determines that funds are available to award
5 the grants. The notice will contain a deadline for application
6 submittal, which must be no less than 60 days from the date of
7 publication.

8 Subp. 2. Notification list. The agency shall maintain a
9 list of those local governmental bodies that wish to be notified
10 of grant application periods. Any local governmental body that
11 wishes to be placed on the list shall notify the agency by
12 writing to the director of the public information office.
13 Whenever the agency publishes notice in the State Register, the
14 agency shall mail notice of the grant application period to
15 those local governmental bodies on the list.

16 Subp. 3. Grant application periods. The agency may
17 establish a grant application period from time to time but there
18 must be at least one application period each calendar year if
19 funds are available.

20 7076.0150 GRANT APPLICATION.

21 Subpart 1. General requirements. The grant application
22 must be submitted by the local unit of government that will be
23 the project sponsor. A grant application must be submitted in a
24 timely fashion to be considered. The grant application must be
25 submitted on a form provided by the agency and must contain the
26 information required in the form and by this part.

27 Subp. 2. Project development grant. An applicant
28 submitting an application for a project development grant must
29 submit the following information:

30 A. a resolution by the local unit of government that
31 will be the project sponsor, authorizing the filing of the
32 application and designating an official authorized to execute
33 the grant application, the grant contract, and other related
34 project documents;

35 B. written documentation that the project sponsor has

1 consulted with soil and water conservation districts and
2 watershed districts in the project area, in preparing the grant
3 application;

4 C. identification of agencies and organizations that
5 will be involved in project development;

6 D. resolutions from each participating local unit of
7 government which identifies their role in project development
8 and identification of their contribution to the local share of
9 project development costs;

10 E. the amount of grant funding requested;

11 F. a list identifying the amount, type, and source of
12 the local share;

13 G. a work plan and schedule that contain the
14 following:

15 (1) the identification of each water of the state
16 that will be affected by the project;

17 (2) a description of the existing or potential
18 surface and ground water problems that are to be addressed in
19 the project;

20 (3) a work plan listing the activities that the
21 grant would make possible; and

22 (4) a schedule containing milestones for project
23 development;

24 H. a local water plan that provides an inventory of
25 existing physical and hydrologic information on the project
26 area, a general identification of water quality problems, and
27 goals for resource use, and demonstrates a local commitment to
28 water quality protection or improvements; and

29 I. documents required by state or federal statutes,
30 rules, and regulations.

31 Subp. 3. Project implementation grant. An applicant
32 submitting an application for a project implementation grant
33 shall submit the following information:

34 A. a resolution by the local unit of government that
35 will be the project sponsor, authorizing the filing of the
36 application and designating an official authorized to execute

1 the grant application, the grant contract, and other related
2 project documents;

3 B. written documentation that the project sponsor has
4 consulted with soil and water conservation districts and
5 watershed districts in the project area, in preparing the grant
6 application;

7 C. a diagnostic study and implementation plan
8 approved under part 7076.0260, or an equivalent study and plan
9 that addresses the requirements of a diagnostic study and
10 implementation plan and that has been approved under part
11 7076.0260 and which contains a local water plan that provides an
12 inventory of existing physical and hydrologic information on the
13 project area, a general identification of water quality
14 problems, and goals for resource use, and demonstrates a local
15 commitment to water quality protection or improvements;

16 D. resolutions from each participating local unit of
17 government that identify their role in project implementation
18 and their contribution to the local share of project
19 implementation costs;

20 E. a detailed work plan and schedule for project
21 implementation during the grant period;

22 F. a detailed budget for the grant period including
23 the identification of the amount requested in the grant;

24 G. a list identifying the amount, type, and source of
25 the local share;

26 H. a description of the work and the budget for
27 project implementation beyond the grant period, including an
28 indication of whether the project sponsor anticipates applying
29 for a project continuation grant amendment; and

30 I. documents required by state or federal statutes,
31 rules, and regulations.

32 7076.0160 REJECTION OF GRANT APPLICATION.

33 Subpart 1. Grounds. An application for a project
34 development grant or a project implementation grant may be
35 rejected by the commissioner for the following reasons:

- 1 A. an ineligible applicant;
- 2 B. ineligible costs;
- 3 C. a late submittal; or
- 4 D. failure to comply with any requirement of statute
- 5 or rule.

6 Subp. 2. **Procedure.** The commissioner shall review each
7 grant application within 30 days after the deadline for
8 application submittal. The commissioner shall notify each
9 rejected grant applicant of the rejection of its application and
10 the reasons for the rejection.

11 Subp. 3. **Effect of rejection.** A grant applicant whose
12 application is rejected for a reason other than for late
13 submittal has 14 days from receipt of the notice of rejection to
14 correct any deficiencies, if correction is possible. If the
15 application is corrected within the 14 days, the application
16 must be accepted and the project must be ranked with other
17 approved grant applications. An application that cannot be or
18 is not corrected must not be further considered. A grant
19 applicant whose application is rejected and not corrected must
20 reapply in a subsequent application period in order to be
21 considered for a grant.

22 7076.0170 PROJECT RANKING.

23 Subpart 1. **Process of ranking.** Upon completion of the
24 commissioner's review of the grant applications for
25 acceptability, the agency shall rank the acceptable grant
26 applications in order of priority. Each project for which an
27 acceptable grant application has been submitted must be awarded
28 the number of priority points the project is entitled to under
29 subparts 2 and 3. The project with the highest number of
30 priority points will be given the highest priority. All
31 projects will be given a ranking depending on the number of
32 points awarded. The project development grant applications must
33 be ranked separately from the project implementation grant
34 applications.

35 Subp. 2. **Priority points for project development grant**

1 applications. The following criteria must be used to determine
2 the number of priority points a project for which a project
3 development grant application has been submitted is entitled
4 to. The agency shall award each project between zero and ten
5 points under each of the following criteria, depending on how
6 well the project satisfies the criterion. The number of points
7 awarded under each criterion must be added together to determine
8 the project's total point value. This total number must be used
9 to determine the project's overall ranking and priority. The
10 criteria are as follows:

11 A. the extent to which the proposed project
12 demonstrates a high potential for project success based on
13 community support and involvement as well as participation,
14 coordination, and cooperation of federal, state, and local
15 agencies and units of government for water quality protection
16 and improvement;

17 B. the extent to which the proposed project takes
18 place where local units of government have adopted and
19 implemented authorities or official controls to abate or prevent
20 water pollution from nonpoint sources;

21 C. the extent to which the water of concern is
22 identified as a priority water in the local water plan;

23 D. the extent to which the proposed project affects
24 waters identified in the statewide resource assessment conducted
25 under Minnesota Statutes, section 115.095, as waters that could
26 not be expected to attain or maintain compliance with applicable
27 water quality standards or goals without additional control of
28 nonpoint sources;

29 E. the extent to which the project demonstrates a
30 likelihood of transferability to similar resources;

31 F. the extent to which the project is of a size and
32 scale to promote successful project management and water quality
33 protection and improvement; and

34 G. the priority placed on each project by the project
35 coordination team.

36 Subp. 3. Priority points for project implementation grant

1 applications. The following criteria must be used to determine
2 the number of priority points a project for which a project
3 implementation grant application has been submitted is entitled
4 to. The agency shall award each project between zero and ten
5 points under each of the following criteria, depending on how
6 well the project satisfies the criterion. The number of points
7 under each criterion must be added together to determine the
8 project's total point value. This total number must be used to
9 determine the project's overall ranking and priority. The
10 criteria are as follows:

11 A. the extent to which the project demonstrates a
12 high potential for successful water quality protection and
13 improvement based on a comparison of existing water quality and
14 the project's goals and objectives with maximum contaminant
15 levels and recommended allowable limits for drinking water,
16 water quality standards, and regional lake and stream water
17 quality criteria published by the agency, the Minnesota
18 Department of Health, and the United States Environmental
19 Protection Agency;

20 B. the extent to which the project employs best
21 management practices which provide a technically and
22 economically feasible means to abate or prevent water pollution
23 from nonpoint sources;

24 C. the extent to which the project maximizes water
25 quality protection or improvement relative to the cost of
26 project implementation;

27 D. the extent to which the project goals and
28 objectives are consistent with state water quality management
29 plans and other applicable state and federal resource management
30 programs;

31 E. the extent to which the project demonstrates a
32 high potential for project success based on community support
33 and involvement as well as participation, coordination, and
34 cooperation of federal, state, and local agencies and units of
35 government for water quality protection and improvement;

36 F. the extent to which the project demonstrates a

1 significant degree of transferability to similar local units of
2 government; and

3 G. the priority placed on each project by the project
4 coordination team.

5 Subp. 4. Project coordination team. The project
6 coordination team has 60 days from the close of the application
7 period to assign points to each project seeking a grant. In the
8 event that the project coordination team fails to assign points
9 to all projects with approved grant applications, the projects
10 must be ranked without considering any points under the category
11 for the project coordination team. The project coordination
12 team must use the criteria established in Minnesota Statutes,
13 section 115.098, to assign points to each project seeking a
14 grant.

15 7076.0180 ALLOCATION OF FUNDING.

16 Subpart 1. Project continuation grant amendments. Each
17 year by March 1, the agency shall determine how much of the
18 available funds will be set aside to meet that year's
19 anticipated requests for project continuation grant amendments.
20 If the agency subsequently determines that the amount set aside
21 for project continuation grant amendments is more than is
22 required for grant amendments in that year, the agency may
23 reallocate this money to other project development grants and
24 project implementation grants or carry over the money to another
25 grant application period.

26 Subp. 2. Grant fund allocation. Within 90 days of the
27 close of an application period, the agency shall determine how
28 much of the remaining funds, after setting aside funds for
29 project continuation grant amendments, will be made available
30 for project development and project implementation grant
31 awards. In deciding how much money to make available for new
32 grant awards, the agency shall consider the necessity to have
33 money available for subsequent grant periods, the necessity to
34 have money available for anticipated project continuation grant
35 amendments in the next year, and other factors relating to the

1 agency's ability to ensure that money will be available for
2 upcoming projects.

3 Subp. 3. Development; implementation split. Within 90
4 days of the close of an application period, the agency shall
5 determine how much of the funds available for new grants in that
6 application period will be available for project development and
7 project implementation grants. In determining the allocation of
8 funds between project development and project implementation
9 grants, the agency shall consider:

10 A. the availability and conditions for use of federal
11 funds; and

12 B. the phasing in and continuity of projects in the
13 program.

14 If the money intended for project development or project
15 implementation grants, or both, is not awarded during a grant
16 period, the agency may reallocate the funds to the other kind of
17 grant or to a subsequent grant period.

18 7076.0190 SELECTION OF PROJECTS FOR GRANT AWARD.

19 Subpart 1. Ranking. The agency shall complete its ranking
20 of all projects for which an acceptable grant application has
21 been submitted within 90 days of the close of the application
22 period. The agency shall rank development projects separately
23 from implementation projects.

24 Subp. 2. Projects funded. The agency shall select those
25 projects that will be awarded grant funds by awarding grants to
26 the highest priority project development and project
27 implementation applications within the limits of available funds
28 established under part 7076.0180, subpart 2. A project that
29 receives less than 40 points will not be considered for award of
30 grant funds.

31 Subp. 3. Agency decision. All decisions of the agency in
32 ranking projects and awarding grants must be made at a regular
33 or special board meeting.

34 Subp. 4. Timing. The agency shall make its decision on
35 fund allocation, project ranking, and projects to which grants

1 will be awarded within 90 days of the close of the application
2 period.

3 Subp. 5. Reapplication. A grant applicant whose
4 application is not awarded grant funds must reapply in a
5 subsequent application period to be considered for a grant.

6 7076.0200 PROJECT CONTINUATION GRANT AMENDMENT.

7 Subpart 1. Eligibility. A project sponsor who has been
8 awarded a project implementation grant is eligible for a project
9 continuation grant amendment to continue the project after the
10 expiration of the initial grant. The requirements that applied
11 to the initial grant apply to the project continuation grant
12 amendment. A project sponsor is eligible for one project
13 continuation grant amendment on a particular project.

14 Subp. 2. Request. A project sponsor who seeks a project
15 continuation grant amendment shall submit a request for the
16 grant amendment in the year that the activities funded through
17 the initial project implementation grant will be completed and
18 additional funds will be required to continue project
19 implementation. The request must be submitted on a form
20 provided by the agency and may be submitted at any time during
21 the calendar year the funds will be needed. A project sponsor
22 who fails to submit a request for a project continuation grant
23 amendment in the year the funds are required forfeits the right
24 to an amendment. That project sponsor may apply in a subsequent
25 grant period to continue the project and compete with other
26 applicants for a project implementation grant.

27 Subp. 3. Approval. The agency shall approve the project
28 sponsor's request for a project continuation grant amendment if
29 it meets the following conditions:

30 A. the project sponsor has satisfied the terms and
31 conditions of the grant to date; and

32 B. the project sponsor has identified the source of
33 the local share of funds necessary for the project continuation
34 grant amendment.

35 7076.0210 GRANT CONDITIONS.

1 Subpart 1. Amount. A grant that is made must be for the
2 amount requested by the applicant, up to a maximum of 50 percent
3 of the eligible cost of project development or project
4 implementation.

5 Subp. 2. Grant period. The grant period for a project
6 development grant will be for a period of two years. The grant
7 period for a project implementation grant will be for a period
8 of three years and may be extended an additional three years
9 with agency approval of a request for a project continuation
10 grant amendment in accordance with part 7076.0200.

11 Subp. 3. Grant contract. The project sponsor must enter
12 into a contract with the agency before a grant will be awarded.
13 The contract must include the provisions in part 7076.0220.

14 Subp. 4. Records. The project sponsor shall maintain all
15 records relating to the receipt and expenditure of grant funds
16 for a period of at least three years from the date of
17 termination of the grant contract.

18 Subp. 5. Audit. The project sponsor must agree that the
19 books, records, documents, and accounting procedures and
20 practices of the project sponsor relevant to this program may be
21 examined at any time by the commissioner or the commissioner's
22 designee.

23 Subp. 6. Annual progress report. The project sponsor
24 shall submit an annual progress report to the commissioner by
25 February 1 of each year the grant is in effect. The report must
26 include the following information:

27 A. a discussion of work progress relative to the
28 schedule, and difficulties encountered meeting the schedule
29 during the year;

30 B. a discussion of the project findings appropriate
31 to the work conducted during the year;

32 C. a report of expenditures in the year and those
33 anticipated during the upcoming year;

34 D. a discussion and summary analysis of monitoring
35 data and a discussion of the changes in water quality that
36 appear to have resulted from the protective and restorative

1 activities implemented during the year; and

2 E. water quality monitoring data collected during the
3 year in the format required by the agency.

4 Subp. 7. **Mid-year update.** The project sponsor shall give
5 the commissioner a mid-year update by August 1 of each year the
6 grant is in effect. The mid-year update must include a brief
7 report on project progress and difficulties encountered in
8 meeting the project schedule.

9 Subp. 8. **Monitoring plan.** The project sponsor shall
10 submit a monitoring plan to the commissioner within 60 days of
11 the award of the grant. The monitoring plan must be revised
12 annually and submitted to the commissioner by January 31. The
13 monitoring plan must comply with part 7076.0230.

14 Subp. 9. **Diagnostic study and implementation plan.** The
15 project sponsor for a project development grant shall submit to
16 the commissioner before the final grant payment is made a
17 diagnostic study and implementation plan that meets the
18 requirements of parts 7076.0240 and 7076.0250.

19 Subp. 10. **Eligible costs.** No grant funds shall be used to
20 reimburse the project sponsor for costs incurred after the end
21 of the contract period.

22 **7076.0220 GRANT CONTRACT.**

23 Subpart 1. **Contents.** The agency and the project sponsor
24 shall enter into a grant contract. The grant contract must:

25 A. establish the terms and conditions of the grant;

26 B. provide that the project sponsor may enter into
27 contracts, under terms and conditions specified by the agency,
28 to complete the work specified in the contract;

29 C. provide that the cost overruns are the sole
30 responsibility of the project sponsor;

31 D. require that the project sponsor submit periodic
32 progress reports and a final report to the agency in a format
33 prescribed by the agency; and

34 E. incorporate terms and conditions required by
35 federal or state statutes, rules, and regulations.

1 Subp. 2. Amendments. A grant contract may be amended upon
2 agreement of the agency and the project sponsor.

3 Subp. 3. Contract period. Grant contracts for project
4 development will be for a period of up to two years. Grant
5 contracts for project implementation will be for a period of up
6 to six years. The agency may allow a one-year extension of
7 either of these grant contracts.

8 7076.0230 MONITORING PLAN.

9 Subpart 1. Requirements. The monitoring plan required to
10 be submitted to the commissioner as a condition of the grant
11 must:

12 A. identify and provide rationale for the selection
13 of monitoring sites, monitoring frequency, and parameters to be
14 monitored; and

15 B. identify laboratories that will do analyses and
16 explain their quality assurance and quality control procedures.

17 Subp. 2. Review. The commissioner will review the
18 monitoring plan and approve it or identify deficiencies in
19 writing within 45 days of its receipt. The project sponsor
20 shall have 15 days to correct any deficiencies.

21 Subp. 3. Grant payment. No grant payment shall be paid
22 after March 31 in any year in which a monitoring plan has not
23 been approved.

24 7076.0240 DIAGNOSTIC STUDY.

25 Subpart 1. General requirements. The diagnostic study
26 required to be submitted by a project sponsor under part
27 7076.0210, subpart 9, must include:

28 A. a detailed description of the water of concern;

29 B. a detailed description of the project area;

30 C. an analysis and assessment of the data and
31 information collected as a requirement of subparts 2 and 3; and

32 D. the identification and documentation of the
33 methods, procedures, model, and other tools used to prepare and
34 complete the diagnostic study.

35 Subp. 2. Description of water of concern. The diagnostic

1 study must contain a detailed description of the water of
2 concern that includes:

3 A. a summary of historical uses and changes resulting
4 from water quality degradation;

5 B. a discussion of previous studies and other
6 historic baseline physical, chemical, and biological data; and

7 C. current data or information for the following:

8 (1) if the water of concern is a lake, the
9 description shall include the following:

10 (a) identification or measurement of lake
11 surface area, maximum depth, average depth, one in ten year low
12 and high as well as average hydraulic residence time,
13 temperature profiles, secchi disk transparencies, the area of
14 the watershed draining to the lake, its tributaries, their
15 estimated contribution to inflows, and a hydrologic budget
16 including groundwater flow;

17 (b) measurement of dissolved oxygen, total
18 phosphorus, dissolved inorganic phosphorus, total Kjeldahl
19 nitrogen, nitrite plus nitrate nitrogen, total suspended solids,
20 total alkalinity, chloride concentrations, color, pH, and
21 conductivity; determination of mass loadings of total
22 phosphorus, total Kjeldahl nitrogen, and total suspended solids
23 from major tributaries and completion of nutrient and sediment
24 budgets for the lake;

25 (c) measurement of average summer
26 epilimnetic chlorophyll a, a description of predominant
27 phytoplankton, zooplankton, and submerged, floating, and
28 emergent vascular plant communities; measurement of fecal
29 streptococcus and fecal coliform bacteria where human health may
30 be impacted; and

31 (d) a summary of available fisheries
32 information;

33 (2) if the water of concern is a stream, the
34 description shall include the following:

35 (a) identification or measurement of stream
36 length, sinuosity, order, substrate, estimated maximum high flow

1 for 24 consecutive hours that has a recurrence interval of 25
2 years, mean flow for the available period of record, and annual
3 minimum flow for seven consecutive days that has a recurrence
4 interval of ten years;

5 (b) measurement of flow and biochemical
6 oxygen demand, total phosphorus, nitrite plus nitrate nitrogen,
7 ammonia nitrogen, organic nitrogen, total dissolved solids,
8 total suspended solids, and diurnal dissolved oxygen
9 concentrations, turbidity, pH, and conductivity;

10 (c) measurement of fecal streptococcus and
11 fecal coliform bacteria where human health may be impacted; and

12 (d) completion of invertebrate and fishery
13 assessments using standard benthological and ichthyological
14 techniques; identification of significant biological habitats
15 including riparian vegetation and spawnings areas; and

16 (3) if the water of concern is an aquifer, the
17 description shall include the following:

18 (a) identification or measurement of the
19 aquifer physical type, size, temperature, saturated thickness,
20 recharge sources, discharge sources transmissivity, hydraulic
21 residence time, range of hydraulic gradients, and underlying
22 lithology and stratigraphy;

23 (b) measurement of chemical oxygen demand,
24 total organic carbon, total Kjeldahl nitrogen, ammonia nitrogen,
25 nitrite plus nitrate nitrogen, total phosphorus, chloride,
26 sulfate, calcium, magnesium, iron, manganese, potassium, sodium,
27 bicarbonate, and alkalinity concentrations, oxidation potential,
28 pH, and specific conductance;

29 (c) measurement of organic compounds,
30 pesticides, and metals in areas where they are pollutants of
31 concern;

32 (d) measurement of fecal streptococcus and
33 fecal coliform bacteria where human health may be impacted; and

34 (4) if the water of concern is water other than a
35 lake, stream, or aquifer, the data and information requirements
36 will be determined jointly by the agency and the project sponsor.

- 1 Subp. 3. Description of project area. The diagnostic
2 study must contain a detailed description of the project area
3 that includes:
- 4 A. a map of the project area;
 - 5 B. an aerial photo of the project area;
 - 6 C. maps of general topographic relief based on United
7 States Geological Survey topographic maps;
 - 8 D. a map of the project area divided into subunits on
9 a hydrologic basis including boundaries and flow directions for
10 each subunit;
 - 11 E. a description of important aquifer systems,
12 confining layers, and flow characteristics;
 - 13 F. a description of ground and surface water
14 interconnections, such as recharge and discharge areas;
 - 15 G. a description of known geologic conditions, such
16 as karst areas, buried valleys, or sand plains that may pose
17 concerns relating to water quality;
 - 18 H. a description of waters of the state and public
19 drainage ditches, including dams and control structures;
 - 20 I. soil:
 - 21 (1) a general soils map and description of soils
22 infiltration characteristics; and
 - 23 (2) a map of erosion-prone soils;
 - 24 J. land use:
 - 25 (1) existing and future land uses;
 - 26 (2) areas served by storm sewers, sanitary
27 sewers, and public water systems;
 - 28 (3) the location of community public water
29 supply, intakes, and wells;
 - 30 (4) irrigated acreage;
 - 31 (5) domestic animal density and feedlots;
 - 32 (6) on-site wastewater treatment systems;
 - 33 (7) existing management practices;
 - 34 (8) known tiling and drainage systems;
 - 35 (9) estimates of pesticide and fertilizer use;
 - 36 (10) known closed and open sanitary landfills,

- 1 closed and operating open dumps, and hazardous waste sites;
- 2 (11) known abandoned wells not sealed in
- 3 accordance with state statutes and rules;
- 4 (12) underground storage tank sites;
- 5 (13) permitted wastewater disposal systems and
- 6 discharges under chapter 7001;
- 7 (14) wetlands identified under the National
- 8 Wetlands Inventory and a summary of applicable management plans;
- 9 (15) areas delineated as floodplains;
- 10 (16) areas with known flooding problems;
- 11 (17) a summary of the state ecological and
- 12 management classifications;
- 13 (18) a summary of state management plans for fish
- 14 and wildlife;
- 15 (19) unique features and scenic areas with
- 16 relationships to water including state designated natural and
- 17 scientific areas, outstanding resource value waters, areas
- 18 containing county, state, and federal rare and endangered
- 19 species and other features such as waterfalls and springs;
- 20 (20) the ownership of local, state, and federal
- 21 Indian tribal lands;
- 22 (21) lands with easements that relate to water
- 23 resources;
- 24 (22) population characteristics; and
- 25 (23) a summary of recreational land uses;
- 26 K. precipitation:
- 27 (1) a map and list of the location of
- 28 precipitation gauging stations in the project area;
- 29 (2) a map showing isolines of normal annual total
- 30 precipitation;
- 31 (3) a map showing isolines of normal
- 32 precipitation in inches for the period May to September; and
- 33 (4) a summary of precipitation information for
- 34 the project area; and
- 35 L. hydrology:
- 36 (1) an estimate of the maximum high flow for 24

1 consecutive hours that has a recurrence interval of 25 years,
2 mean flow for the available period of record, and annual minimum
3 flow for seven consecutive days that has a recurrence interval
4 of ten years;

5 (2) a description of permitted withdrawals from
6 lakes and streams, including location, source, use, and amounts
7 withdrawn;

8 (3) a description of protected levels or flows
9 that have been established for lakes and streams;

10 (4) a description of known water use conflicts,
11 including those caused by groundwater pumping, that affect
12 surface waters;

13 (5) a description of wells covered by state
14 appropriation permits including location, amounts of water
15 appropriated, type of use, and aquifer source;

16 (6) a description of known well interference
17 problems and water use conflicts; and

18 (7) a list of state observation wells including
19 location, unique well number, aquifers measured, years of
20 record, and average monthly levels.

21 Subp. 4. Analysis and assessment. The diagnostic study
22 must contain an analysis and assessment of the data and
23 information collected as a requirement of subparts 2 and 3
24 including the following:

25 A. the identification of existing and potential water
26 quality problems;

27 B. the identification of water quality goals for the
28 water of concern;

29 C. the identification of project objectives in terms
30 of:

31 (1) specific water chemical, biological, and
32 physical measurements; and

33 (2) economic, recreational, and health factors;

34 D. an estimate of the pollutants coming from the
35 subunit of project area defined on a hydrologic basis and the
36 identification of the target levels of pollutant reduction

1 necessary to meet the project objectives and water quality
2 goals; and

3 E. the identification and ranking of the subunit of
4 the project area defined on a hydrologic basis into priority
5 management areas on which to focus implementation of best
6 management practices.

7 Subp. 5. Exemption. Upon written request from the project
8 sponsor, the agency may allow an exemption from a specific
9 diagnostic study requirement that does not provide data or
10 information useful for diagnosis of the problem or solutions.

11 7076.0250 IMPLEMENTATION PLAN.

12 The implementation plan required to be submitted by a
13 project sponsor under part 7076.0210, subpart 9, must include:

14 A. an analysis of the need for best management
15 practices that will aid in the achievement of target levels of
16 pollutant reduction in the areas identified as priority
17 management areas, that includes:

18 (1) identification of best management practices;

19 (2) an estimate of costs for practice

20 installation;

21 (3) a schedule for implementation;

22 (4) an estimate of engineering and other

23 assistance needs, including best management practice design, and
24 inspection of installation, operation, and maintenance;

25 (5) an estimate of pollutant reduction; and

26 (6) identification of the standards and criteria
27 for best management practice design;

28 B. a project implementation water quality monitoring
29 and evaluation plan identifying procedures and schedules for
30 determine project progress and accomplishments, that includes:

31 (1) a monitoring plan that includes the chemical,
32 physical, and biological parameters that will be measured to
33 enable comparisons with goals and objectives established in the
34 diagnostic study;

35 (2) a procedure to document and evaluate the

- 1 implementation of best management practices; and
- 2 (3) a procedure to identify effectiveness of the
- 3 best management practices on water quality, and their impact on
- 4 water resources in the project area;
- 5 C. a plan and schedule to implement an information
- 6 and education program in the project area;
- 7 D. an identification of roles and responsibilities of
- 8 the project sponsor, its representatives, and cooperating
- 9 agencies in implementing the project;
- 10 E. a proposed schedule for project implementation,
- 11 segmented into three-year periods;
- 12 F. an estimated budget for project implementation
- 13 segmented into three-year periods;
- 14 G. a plan to maintain project goals and
- 15 accomplishments and prevent further nonpoint source pollution;
- 16 H. a list of any federal or state permits and
- 17 approvals required to complete the project; and
- 18 I. an opinion and supporting documentation from the
- 19 project sponsor's attorney that the project sponsor and
- 20 participating local units of government have the legal authority
- 21 to implement the project.

22 7076.0260 DIAGNOSTIC STUDY AND IMPLEMENTATION PLAN APPROVAL.

23 Subpart 1. Review and decision. The commissioner shall

24 review and approve or disapprove the diagnostic study and

25 implementation plan within 90 days of their receipt. The

26 commissioner shall approve the diagnostic study and

27 implementation plan if the commissioner determines that:

- 28 A. the diagnostic study and implementation plan meet
- 29 the requirements for a diagnostic study and implementation plan
- 30 identified in parts 7076.0240 and 7076.0250;
- 31 B. the diagnostic study provides information in
- 32 sufficient detail to technically define the water quality
- 33 problems, sources of pollution, and project goals and objectives
- 34 for water quality protection and improvement;
- 35 C. the implementation plan provides a technically

1 feasible means to abate nonpoint sources of water pollution and
2 achieve project objectives; and

3 D. the diagnostic study and implementation plan are
4 consistent with state and federal statutes, rules, and
5 regulations.

6 Subp. 2. **Reasons for disapproval.** If the diagnostic study
7 and implementation plan are disapproved, the commissioner shall
8 provide the project sponsor with a written statement of reasons
9 for disapproval.

10 Subp. 3. **Resubmittal.** A disapproved diagnostic study and
11 implementation plan must be revised by the project sponsor and
12 resubmitted to the commissioner. Upon receipt of the revised
13 diagnostic study and implementation plan, the commissioner shall
14 review the revised diagnostic study and implementation plan.

15 7076.0270 BEST MANAGEMENT PRACTICE EVALUATION.

16 In selecting best management practices for inclusion in an
17 implementation plan, the project sponsor shall consider the
18 following factors in evaluating the best management practices:

19 A. whether the best management practice will achieve
20 the desired project objectives;

21 B. whether the best management practice
22 implementation would create other water quality or environmental
23 problems;

24 C. the degree of nonpoint source control achieved for
25 the amount of resources allocated for that control;

26 D. whether a less costly best management practice
27 could achieve a similar result; and

28 E. whether the best management practice is reasonably
29 suited for the individual site.

30 7076.0280 GRANT PAYMENTS.

31 Subpart 1. **Reimbursement.** The project sponsor may submit
32 a request for reimbursement of expenditures for each of the
33 standard calendar quarters ending March 31, June 30, September
34 30, and December 31. The agency shall pay the reimbursement
35 within 45 days of the request if the grantee is in compliance

1 with conditions of the grant contract and requirements of parts
2 7076.0100 to 7076.0290.

3 Subp. 2. **Final payment.** The agency shall withhold
4 reimbursement on the final ten percent of the grant contract
5 amount until the agency is satisfied that the project has been
6 completed in accordance with the terms of the grant contract and
7 parts 7076.0100 to 7076.0290.

8 Subp. 3. **Withholding of reimbursement.** The agency may
9 withhold reimbursement if the project sponsor has failed to
10 comply with any requirements of the grant contract or parts
11 7076.0100 to 7076.0290. The funds will not be released until
12 the agency determines that the project sponsor has corrected the
13 deficiencies causing noncompliance.

14 Subp. 4. **Advance.** The project sponsor may submit a
15 request for an advance of grant funds after the commissioner
16 approves the project monitoring plan. The advance is limited to
17 ten percent of the grant award or \$50,000, whichever amount is
18 less.

19 7076.0290 GRANT RESCISSION.

20 The agency may rescind a grant if the project is not being
21 completed in accordance with the terms and conditions of the
22 grant, including time schedules.

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Clean Water Partnership

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7076

The attached rules are approved for publication
in the State Register

A handwritten signature in black ink, appearing to read "David S. Niss", written over a horizontal line.

David S. Niss
Assistant Revisor

Subd. 2b. [Repealed, 1987 c 267 s 5]

[For text of subds 3 to 5, see M.S. 1986]

History: 1987 c 267 s 1

MINNESOTA CLEAN WATER PARTNERSHIP ACT

115.091 CITATION.

Sections 115.091 to 115.102 may be cited as the "Minnesota clean water partnership act."

History: 1987 c 392 s 1

115.092 PURPOSE.

(a) It is the purpose of the legislature in enacting the Minnesota clean water partnership act to protect and improve surface and ground water in Minnesota, through financial and technical assistance to local units of government to control water pollution associated with land use and land management activities.

(b) It is also the purpose of the legislature to:

- (1) identify water quality problems and their causes;
- (2) direct technical and financial resources to resolve water quality problems and to abate their causes;
- (3) provide technical and financial resources to local units of government for implementation of water quality protection and improvement projects;
- (4) coordinate a nonpoint source pollution control program with elements of the existing state water quality program and other existing resource management programs; and
- (5) provide a legal basis for state implementation of federal laws controlling nonpoint source water pollution.

History: 1987 c 392 s 2

115.093 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 115.091 to 115.102.

Subd. 2. **Agency.** "Agency" means the pollution control agency.

Subd. 3. **Best management practices.** "Best management practices" means practices, techniques, and measures, that prevent or reduce water pollution from nonpoint sources by using the most effective and practicable means of achieving water quality goals. Best management practices include, but are not limited to, official controls, structural and nonstructural controls, and operation and maintenance procedures.

Subd. 4. **Director.** "Director" means the director of the pollution control agency.

Subd. 5. **Local unit of government.** "Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, an organization formed for the joint exercise of powers under section 471.59, and any other special purpose district or authority exercising authority in water and related land resources management at the local level.

Subd. 6. **Nonpoint source.** "Nonpoint source" is a land management activity or land use activity that contributes or may contribute to ground and surface water pollution as a result of runoff, seepage, or percolation and that is not defined as a point source in section 115.01, subdivision 15. Nonpoint sources include, but are not limited to rural and urban land management activities and land use activities and specialty land use activities such as transportation.

Subd. 7. **Official controls.** "Official controls" means ordinances and regulations that control the physical development of the whole or part of a local government unit or that implement the general objectives of the local government unit.

Subd. 8. **Project.** "Project" means the diagnostic study of water pollution caused by nonpoint sources of water pollution, a plan to implement best management practices, and the physical features constructed or actions taken by a local unit of government to implement best management practices.

Subd. 9. **Water pollution.** "Water pollution" means water pollution as defined in section 115.01, subdivision 5.

Subd. 10. **Waters of the state.** "Waters of the state" means waters as defined in section 115.01, subdivision 9.

History: 1987 c 392 s 3

115.094 CLEAN WATER PARTNERSHIP PROGRAM ESTABLISHED.

A clean water partnership program is established as provided in sections 115.091 to 115.102. The agency shall administer the program in accordance with those sections. As a basis for the program, the agency and the metropolitan council shall conduct an assessment of waters in accordance with section 115.095. The agency shall then provide financial and technical assistance in accordance with section 115.096 to local units of government for projects in geographical areas that contribute to surface or ground water flows. The projects shall provide for protection and improvement of surface and ground water from nonpoint sources of water pollution.

History: 1987 c 392 s 4

115.095 STATEWIDE RESOURCE ASSESSMENT.

The agency shall conduct an assessment of waters of the state that have been polluted by nonpoint sources and of geographical areas with waters of the state that have a high potential for water pollution caused by nonpoint sources. The metropolitan council shall conduct the assessment in the metropolitan area, as defined in section 473.121, subdivision 2, in cooperation with the agency. The assessment shall be completed by July 1, 1988.

History: 1987 c 392 s 5

115.096 FINANCIAL AND TECHNICAL ASSISTANCE: ELIGIBILITY.

Subdivision 1. **Financial assistance.** The agency may award grants for up to 50 percent of the eligible cost for (1) the development of a diagnostic study and implementation plan, and (2) the implementation of that plan. The agency shall determine which costs are eligible costs and grants shall be made and used only for eligible costs.

Subd. 2. **Technical assistance.** The agency may provide technical assistance to local units of government in order to ensure efficient and effective development and implementation of projects and coordination of projects with other water management activities.

History: 1987 c 392 s 6

115.097 ELIGIBILITY FOR ASSISTANCE.

Subdivision 1. **Generally.** To be eligible for the financial or technical assistance or both as provided in section 115.096, a local unit of government applying for assistance must (1) have authority to coordinate and enter into contracts with local, state, and federal agencies and private organizations, raise funds, and adopt and enforce official controls; and (2) provide the agency with those documents required in subdivision 2.

Subd. 2. **Documents required.** (a) An applicant for assistance shall submit the following to the agency:

- (1) an application form as prescribed by the agency;
- (2) evidence that the applicant has consulted with the local soil and water conservation districts and watershed districts, where they exist, in preparing the application; and

(3) one of the following documents:

- (i) the comprehensive water plan authorized under chapter 110B;
- (ii) a surface water management plan required under section 473.878;
- (iii) an overall plan required under chapter 112; or

(iv) any other local plan that provides an inventory of existing physical and hydrologic information on the area, a general identification of water quality problems and goals, and that demonstrates a local commitment to water quality protection or improvement. After July 1, 1991, only projects that are a part of, or are responsive to, a local water plan under chapters 110B, 112, or sections 473.875 to 473.883 will be eligible under this clause.

(b) The document submitted in compliance with paragraph (a), clause (2) must identify existing and potential nonpoint source water pollution problems and must recognize the need and demonstrate the applicant's commitment to abate or prevent water pollution from nonpoint sources in the geographic areas for which the application is submitted.

History: 1987 c 392 s 7

115.098 AGENCY REVIEW OF APPLICATIONS; RANKING OF PROJECTS.

The agency shall rank applications for technical and financial assistance in order of priority and shall, within the limits of available appropriations, grant those applications having the highest priority. The agency shall by rule adopt appropriate criteria to determine the priority of projects.

The criteria shall give the highest priority to projects that best demonstrate compliance with the following objectives:

(a) The project demonstrates participation, coordination, and cooperation between local units of government and other public agencies, including soil and water conservation districts or watershed districts, or both those districts.

(b) The degree of water quality improvement or protection is maximized relative to the cost of implementing the best management practices.

(c) Best management practices provide a feasible means to abate or prevent nonpoint source water pollution.

(d) The project goals and objectives are consistent with the state water quality management plans, the statewide resource assessment conducted under section 115.095, and other applicable state and local resource management programs.

History: 1987 c 392 s 8

115.099 PLAN IMPLEMENTATION.

Subdivision 1. Implementation according to law and contract. A local unit of government receiving technical or financial assistance or both from the agency shall carry out the implementation plan approved by the agency according to the terms of that plan, any contract or grant agreement made with the agency and according to sections 115.091 to 115.102, the rules of the agency, and applicable federal requirements.

Subd. 2. Review by agency. The director or the director's designee may, at any reasonable time, inspect any project and review the expenditure of financial assistance funds granted by the agency in order to determine whether the local unit of government has complied with subdivision 1.

Subd. 3. Enforcement of agreements. The agency may bring a civil action in district court to recover from a local governmental unit any financial assistance funds used in violation of subdivision 1.

History: 1987 c 392 s 9

115.10 RULES.

The agency shall adopt permanent rules necessary to implement sections 115.091 to 115.102. The rules shall contain at a minimum:

- (1) procedures to be followed by local units of government in applying for technical or financial assistance or both;
- (2) conditions for the administration of assistance;
- (3) procedures for the development, evaluation, and implementation of best management practices;

(4) requirements for a diagnostic study and implementation plan;

(5) criteria for the evaluation and approval of a diagnostic study and implementation plan;

(6) criteria for the evaluation of best management practices;

(7) criteria for the ranking of projects in order of priority for assistance;

(8) criteria for defining and evaluating eligible costs and cost-sharing by local units of government applying for assistance; and

(9) other matters as the agency and the director find necessary for the proper administration of sections 115.091 to 115.102, including any rules determined by the director to be necessary for the implementation of federal programs to control nonpoint source water pollution.

History: 1987 c 392 s 10

115.101 NONPOINT SOURCE POLLUTION CONTROL PLAN AND PROGRAM EVALUATION.

For the purpose of coordinating the programs and activities used to control nonpoint sources of pollution to achieve Minnesota's water quality goals, the agency shall:

(1) develop a state plan for the control of nonpoint source water pollution in order to meet the requirements of the federal Clean Water Act;

(2) work through the environmental quality board to coordinate the activities and programs of federal, state, and local agencies involved in nonpoint source pollution control and, where appropriate, develop agreements with federal and state agencies to accomplish the purposes and objectives of the state nonpoint source pollution control plan; and

(3) evaluate the effectiveness of programs in achieving water quality goals and recommend to the legislature, under section 3.195, subdivision 1, any necessary amendments to sections 115.091 to 115.102.

History: 1987 c 392 s 11

115.102 INTEGRATION OF DATA.

The data collected for the activities of the clean water partnership program that have common value for natural resource planning must be provided and integrated into the Minnesota land management information system's geographic and summary data bases according to published data compatibility guidelines. Costs associated with this data delivery must be borne by this activity.

History: 1987 c 392 s 12

115.103 PUBLIC AGENCY COORDINATION.

Subdivision 1. Project coordination team; membership. The director shall establish and chair a project coordination team made up of representatives of the pollution control agency, department of natural resources, soil and water conservation board, department of agriculture, department of health, state planning agency, Minnesota extension service, University of Minnesota agricultural experiment stations, United States Army Corps of Engineers, United States Environmental Protection Agency,

United States Department of Agriculture Agricultural Stabilization and Conservation Service, United States Department of Agriculture Soil Conservation Service, water resources board, metropolitan council, Association of Minnesota Counties, League of Minnesota Cities, Minnesota Association of Townships, and other agencies as the director may determine.

Subd. 2. Duties. The project coordination team shall advise the agency in preparation of rules, evaluate projects, and recommend to the director those projects that the team believes should receive financial or technical assistance or both from the agency. After approval of assistance for a project by the agency, the team shall review project activities and assist in the coordination of the state program with other state and federal resource management programs.

History: 1987 c 392 s 13

CHAPTER 115A

WASTE MANAGEMENT

- | | | | |
|----------|---|----------|--|
| 115A.03 | Definitions. | 115A.42 | Establishment and administration. |
| 115A.06 | Powers of the board. | 115A.43 | Repealed. |
| 115A.07 | Duties of the board; general. | 115A.44 | Repealed. |
| 115A.072 | Public education on waste management. | 115A.45 | Technical assistance. |
| 115A.11 | Hazardous waste management plan. | 115A.46 | Requirements. |
| 115A.12 | Advisory councils. | 115A.48 | Market development for recyclable materials. |
| 115A.13 | Repealed. | 115A.49 | Establishment; purposes and priorities. |
| 115A.14 | Legislative commission on waste management. | 115A.51 | Application requirements. |
| 115A.15 | State government resource recovery. | 115A.52 | Technical assistance for projects. |
| 115A.152 | Technical and research assistance to generators. | 115A.53 | Waste reduction and separation projects. |
| 115A.154 | Waste reduction grants. | 115A.54 | Waste processing facilities. |
| 115A.156 | Waste processing and collection facilities and services; development grants. | 115A.69 | Powers. |
| 115A.158 | Development of processing and collection facilities and services; requests for proposals. | 115A.81 | Definitions. |
| 115A.162 | Hazardous waste processing facility loans. | 115A.915 | Lead acid batteries; land disposal prohibited. |
| 115A.41 | Purpose. | 115A.916 | Used oil; land disposal prohibited. |
| 115A.411 | Solid waste management policy; consolidated report. | 115A.917 | Certificate of need. |
| | | 115A.921 | City or town fee authority. |
| | | 115A.94 | Organized collection. |
| | | 115A.95 | Recyclable materials. |
| | | 115A.96 | Household hazardous waste management. |

115A.03 DEFINITIONS.

[For text of subds 1 to 8, see M.S.1986]

Subd. 9. "Disposal" or "dispose" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

[For text of subds 10 to 20, see M.S.1986]

Subd. 21. "Mixed municipal solid waste" means garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities which is generated and collected in aggregate, but does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires, lead acid batteries, used oil, and other materials collected, processed, and disposed of as separate waste streams.

[For text of subds 22 to 37, see M.S.1986]

History: 1987 c 348 s 1,2

115A.06 POWERS OF THE BOARD.

[For text of subds 1 to 13, see M.S.1986]

Subd. 14. **Waste rendered nonhazardous and industrial waste.** The board shall encourage improved management of waste rendered nonhazardous and industrial waste that should be managed separately from mixed municipal solid waste, and may provide technical and planning assistance to political subdivisions, waste generators, and others for the purpose of identifying, developing, and implementing alternative management methods for those wastes.

History: 1987 c 348 s 3



Land & Water

Big Stone Lake Restoration Project Newsletter

Spring, 1987



No-till farmers

Clayton and Loren Tucholke of LaBolt, SD, are entering their fourth no-till year. They say it requires patience, experimentation and some good advice.

No-till provides long-term pay off

Why do La Bolt, S. D., farmers Clayton and Loren Tucholke plant two-thirds of their combined 1,200 acres with no-till methods?

Any number of reasons: Economics, soil conservation, crop diversification, time savings...take your pick. No-till planting methods makes them all possible.

"If anybody is looking for a good way to stay in business, this is a good way," Clayton said. "Un-

der a no-till operation, you need less equipment, less fuel, and you save your soil."

The Tucholkes have been planting no-till crops for the past three years. This spring will be their fourth. They say their switch from conventional tillage to no-till is permanent. It was something they began a little at a time, and they suggest that others start out the same way.

"You've got to give yourself time to learn how no-till works," Clayton said. "It really is something you have to go into with your eyes open. If you are going to try it with an attitude of self-doubt, you might as well forget it."

Tucholke says it takes time to "get used to" how no-till crops look and to discover what kind of problems can accompany no-

(Continued on page 2)

² Switch to no-till requires 'homework'

(Continued from page 1)

till operations. He says no-till doesn't necessarily require a higher degree of management, but that it does require a different kind of management.

"You've got to do your homework before you even get started," he said. "You should read as much as you can about no-till, and then when you do start out, start out small."

He also strongly recommends working with a soil consultant who can advise on proper fertilizer and chemical application rates.

No-till requires planning

"Having a soil consultant is just one more person out there in the field making sure things are going all right," Clayton said.

But if no-till farming requires a bit of homework and a reworking of the way you manage your farm, why do it at all? It may be a matter of survival. No-till is a more economical way to farm. Although a farmer will probably not save a bundle during the first couple of years, the Tucholkes say there is no doubt about the long-term benefits.

"Sure you save time and fuel by not having to go over the field as many times," Clayton said. "But what you save there is made up for by what you spend on the extra chemicals you need. But we're not talking about short-term savings here. No-till is an investment that will benefit you in the long-run

through savings on equipment and greater soil productivity - That's an important thing to remember: no-till is a long-term benefit, not a short-term benefit."

Another benefit the Tucholkes have discovered is an ability to raise crops that before no-till were, at best, "risky."

"No-till enables us to raise winter wheat, which is a risky crop in this part of the country because you don't always get the snow-cover you need," Clayton said. "Now we can plant winter wheat with confidence. It enabled us to diversify our farming operation."

While some people worry about the greater use of chemicals associated with no-till methods, the Tucholkes believe chemical use is safer with no-till than it is with conventional tillage.

"That's because your chemicals can't leach in or run off the field as easily on a no-till field," Clayton said.

Chemical uses may also be brought down to a minimum once more experience is gained with no-till. In some cases, no-till methods actually require less chemical applications. The Tucholkes say a soil consultant is helpful in establishing the best application rates.

With proper application rates, weed control has not been a problem for either Loren or Clayton. In fact, they say weeds can be more of a problem with conventional tillage methods. A recent incident provided a vivid illustration of this on Loren's

farm.

"I plowed two strips in a field with a moldboard plow, but I had to leave it off because there was a snowfall," Loren said.

When spring came, Loren planted the rest of the unplowed field with a no-till drill.

"It turned out that those two plowed strips had more weeds than the rest of the field," he said. "Those were the only two strips of grass in the field."

No-till means less weeds

Needless to say, the Tucholkes are sold on no-till and think other farmers may begin to follow suit. For those that do, they have this advice:

"Do your homework, use a soil consultant, talk to other people who have done it, start out small and keep fine tuning your operation until everything works."





It pays to know your SCS man

Steve Woltjer works for the Soil Conservation Service - that's the SCS - not the ASCS or the SWCD. And even though Steve's title is District Conservationist, he is not actually employed by the Big Stone Soil and Water Conservation District (SWCD). He is an employee of the federal government and works in cooperation with the district personnel.

Many people think the SCS is the "lead agency" or main conservation entity which directs all district efforts. This isn't true. The SCS works within the SWCD at the SWCD's invitation. Each agency - local, state and federal - works in cooperation with the others.

So Steve works for the SCS. Let's take a look at what he does.

These days, most of Steve's time is dedicated to implementing the federal Conservation Reserve Program, more popularly known as CRP. But CRP is only one part of a wide range of services he administers for the SCS. In addition to CRP, he is responsible for directing and approving the technical work and designs of various conservation structures, including terraces, conservation strips, feedlot improvements, and others.

Steve also spends a good deal of time working with the Federal Waterbank Program, which pays landowners to maintain wetlands on their property. The waterbank program is a big part of the SCS's efforts in Big Stone County, with about 170 contracts.

Another major part of

Steve's job is to provide technical assistance to farmers who want to upgrade their animal feedlots. Big Stone County currently has more than 70 completed animal waste control structures, and there are more to that need to be done.

The SCS is often confused with another federal agency - the Agricultural Stabilization and Conservation Service, or ASCS. Both are agencies of the federal government, but have different functions. The ASCS is involved more with the financial aspects of government programs, while the SCS works with the technical, "in the field" aspects. The ASCS is the agency which provides the cost-share funds for the conservation practices that Steve helps in-

(Continued on page 4)

4 Woltjer

(Continued from Page 3)

stall.

An important function that Steve and his office will soon undertake is the administration of the new guidelines of the 1985 Farm Bill, which requires all farmers with highly erodible land who wish to remain eligible for federal farm programs adopt an SCS-approved conservation plan by 1990. You'll be hearing much more about this in the future.

We encourage you to get to know Steve and all of the various conservation workers at the Ag Services Center in Ortonville. Watch this space for features on the other members of the agencies who are working to keep your farmland productive and profitable.



No-till corn

This corn sprouting up amid heavy residue cover shows how effectively no-till crops grow. Leaving residue controls weeds and prevents soil erosion as well as runoff of expensive farm chemicals.



Winter wheat got him started..."When I first tried winter wheat in the late seventies, I got severe winter kill. But demonstration plots showed that no-till reduces winter kill and results in a good spring stand of winter wheat. That's what got me started." - John Nelson, Claire City.

Fewer passes, less fuel...According to a University of Illinois estimate, the moldboard plow system requires 7.75 gallons of fuel per acre; the chisel plow, 7.05 gallons of fuel per acre; the disc, 5.35 gallons per acre; and no-till, only 2.50 gallons per acre.

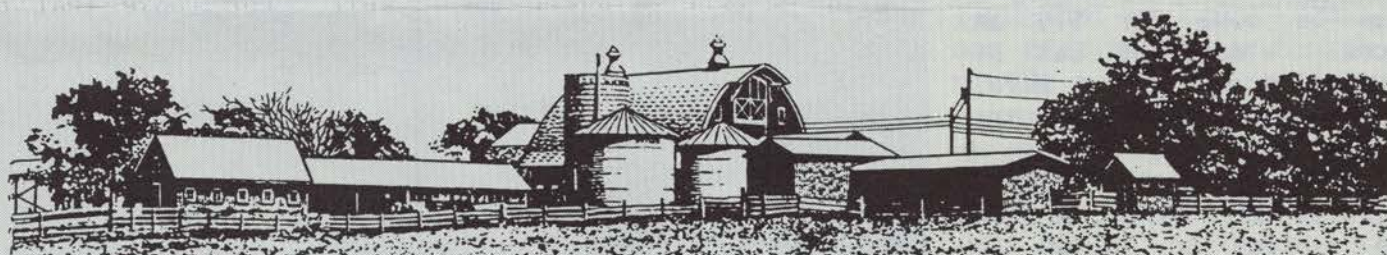
No-till fuel savings tremendous..."I changed my drill for better soil penetration to save money with conservation tillage,

not just to try no-till. I've discovered that the time and fuel savings are tremendous." - Mike Nigg, Sisseton, S. D.

Getting around rocks..."I need a tillage system that works with rocks, because my fields have got all kinds of them. No-till seems like a sensible approach. Plus, I'm trying to save soil and expenses." - Bill Whippel, Milbank, S. D.

It's catching on... No-till plantings have increased 509% since 1972, according to the No-Till Farmer Magazine. A 1972 survey showed 3.3 million no-till acres planted in America with 16.8 million expected this year. That makes up 5.8 percent of all tilled acres in America. Last year's no-till percentage was 4.9 percent.

Check sprayers carefully...A recent North Dakota State University sprayer check found 60 percent of those sprayers checked had serious calibration errors. Some 48 percent had uniformity of discharge from nozzles varying plus or minus 10 percent; 32 percent had travel speeds different than what the operator predicted; 27 percent had improper boom height for the nozzle spacing and nozzle discharge angle; 13 percent had inaccurate pressure gauges showing lower than actual pressure; 8 percent had inadequate hose size to supply nozzles. When large discharge nozzles are installed on a boom, hoses may be too small and cause extreme pressure drop in the system.



Conservation costs a mystery to most

How much does conservation cost? More specifically, how much does it cost to install certain conservation practices on your farm?

What, for example, does it cost to install a terrace system? How about grassed waterways? Field windbreaks? Or what about animal waste control systems?

Do you know any of the answers? If you don't, you're not alone. A recent

survey of Minnesota farmers has shown that most farmers either have no idea or very distorted ideas about the costs of installing conservation structures.

In a survey conducted in the Upper Minnesota Watershed District, for example, farmers were asked to estimate the costs of installing 100 feet of terrace. The answers they gave were surprising.

While some estimated the cost of 100 feet of

terraces at \$75, others thought it would cost \$10,000! In fact, less than 2 percent of those interviewed gave the correct estimate of about \$150 to \$200 dollars.

Installing terraces generally costs from \$1.50 to \$2.00 a linear foot, although this varies considerably from site to site. But in general, a 100-foot terrace would cost between \$150 and \$200.

(Continued on Page 6)

6 Costs

(Continued from Page 5)

How about grassed waterways? Again, only a small portion of farmers could correctly give the real cost of installing a grassed waterway. Responses ranged from \$5 to \$5,000!

The real answer: Grassed waterways cost about \$1 per linear foot to install. A 100-foot grassed waterway would cost about \$100.

Here are the cost of some other conservation measures you may have been wondering about:

Installing a half-mile long, one-row field windbreak cost a landowner between \$75 and \$100 after reimbursement through federal or state cost-share payments.

Contour strip cropping can be done for \$10 an acre. Windstrips can be installed for \$5 an acre. (Smaller windstrips are less expensive).

Animal waste control systems are installed for an average of \$8,000 to \$10,000.

It is probably even more important to remember that cost-share and other types of assistance are available from both the federal and state governments, which offset most installation costs.

In Grant and Roberts counties of South Dakota, for example, up to 85 percent of the \$8,000 to \$10,000 for an animal waste control structure can be obtained through a Community Block Development Grant. The Agricultural Stabilization and Conservation Service (ASCS) also will cost share up to 75 percent of animal waste control systems.

Seventy-five percent cost sharing is available for field windbreaks, terraces, strip cropping and most other conservation measures. The person to contact for information about installing any of these practices is Soil Conservation Service SCS District Conservationist Steve Woltjer. He works out of the Ag Services Center in Ortonville, telephone (612) 839-6151.

In Grant County, S.D.

you can contact Dale Johnson in the Milbank Ag. Service Center, his phone number is 432-5672. If you live in Roberts County you can contact the Soil Conservation office in the Federal Building at Sisseton, their phone number is 698-7431.

Remember, too, the other conservation agents who can direct you to the conservation questions and assistance you need, including employees of the Soil and Water Conservation Districts (SWCD) in Minnesota and the Soil Conservation Districts (SCD) of South Dakota.

Steve Dingels
Project Director

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(612)-839-6151

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S.D. Project Coordinator
Big Stone City, SD 57216
(605)-862-8246

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Big Stone Lake Restoration Project
342 NW 2nd St.
Ortonville, Minnesota 56278

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FLOOD HAZARD MITIGATION GRANT ASSISTANCE PROGRAM

What is the program?

During the 1987 Legislative Session, Laws of Minnesota Chapter 306 Sections 3-5 established within the Department of Natural Resources a flood hazard mitigation program to provide state technical and financial assistance to local government units for conducting flood damage reduction studies and for planning and implementing structural and non-structural flood damage reduction measures.

What flood hazard mitigation measures are eligible for funding assistance?

Financial assistance may be available for conducting flood damage reduction studies and for planning and implementing structural and non-structural measures including: dams, dikes, levees, flood bypass channels, flood storage and retardation structures, water level control structures, acquisition of floodplain lands, relocations, floodproofing, development of flood warning systems and evacuation procedures, adoption and enforcement of land use control ordinances and building codes, signs and other notifications of regional flood areas, provision of flood insurance and public education.

What measures are not eligible for funding assistance?

Certain measures are excluded from this program including deepening or straightening existing stream channels, cleaning out public ditches and clearing and snagging natural watercourses.

Who may apply for funding assistance?

Applications for financial assistance must be made by a local government unit including a county, statutory or home rule charter city, town, watershed district or lake improvement district. Financial assistance is not available directly to individuals, companies or corporations.

How much financial assistance is available?

The Department of Natural Resources may award grants up to \$75,000. Grants for more than \$75,000 must be submitted for consideration by the governor and the legislature before each odd numbered year. Grants awarded under this program may not exceed one-half of the total cost of the proposed flood damage reduction project.

How are grant requests evaluated?

Grants are to be based on the following considerations:

1. the extent and effectiveness of mitigation measures already implemented by the local government requesting the grant;
2. the feasibility, practicality, and effectiveness of the proposed mitigation measures and the associated non-flood related benefits and detriments;
3. the level of grant assistance that should be provided to the local government, based on available facts regarding the nature, extent, and severity of flood problems;

4. the frequency of occurrence of severe flooding that has resulted in declaration of the area as a flood disaster area by the President of the United States;
5. the economic, social, and environmental benefits and detriments of the proposed mitigation measures;
6. whether the floodplain management ordinance or regulation adopted by the local government meets the minimum standards established by the commissioner, the degree of enforcement of the ordinance or regulation, and whether the local government meets the minimum standards established by the commissioner, and whether the local government is complying with the ordinance or regulation;
7. the degree to which the grant request is consistent with local water plans developed under chapters 110B and 112 and sections 273.875 to 473.883;
8. The financial capability of the local government to solve its flood hazard problems without financial assistance; and
9. the estimated cost and method of financing of the proposed mitigation measures based on local money and federal and state financial assistance.

The DNR is required to prioritize all grant requests according to the above considerations.

When will the flood hazard mitigation grant funds be distributed?

Applications for grants this biennium will be accepted until December 31, 1987 by DNR Regional Hydrologists. One half of the available funds will be distributed by March 31, 1988. The other one half of the funds will be distributed by September 15, 1988. The same applications will be used for both of these funding cycles.

How do I get more information or get assistance in making an application for a flood damage reduction grant?

Contact your local DNR Area Hydrologist. The Area Hydrologist will be able to help you evaluate your flooding problems and may have ideas about how to best solve your flooding problems. The area hydrologist may also be able to suggest improvements to the application before it is submitted for the formal review process. A list of Regional Hydrologists, Area Hydrologists and their locations is attached.

If you want general information about the program please contact:

Joe Gibson
Supervisor - Flood Plain Management Unit
Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4032
(612) 296-2773

REGION 1 (& BEMIDJI Area)

Regional Hydrologist
DNR-Division of Waters
2115 Birchmont Beach Road N.E.
Bemidji, MN 56601
(218) 755-3973

Detroit Lakes Area

Area Hydrologist
DNR-Division of Waters
P.O. Box 823
Detroit Lakes, MN 56501
(218) 847-1579

Fergus Falls Area

Area Hydrologist
DNR-Division of Waters
1221 Fir Avenue East
Fergus Falls, MN 56537
(218) 739-7576

Thief River Falls Area

Area Hydrologist
DNR-Division of Waters
123 Main Ave. N.
Thief River Falls, MN 56701
(218) 681-7789

REGION 2 (& GRAND RAPIDS Area)

Regional Hydrologist
DNR-Division of Waters
1201 East Highway 2
Grand Rapids, MN 55744
(218) 327-4416

Duluth Area

Area Hydrologist
DNR-Division of Waters
French River Hatchery
10029 North Shore Drive
Duluth, MN 55804
(218) 723-4786

REGION 3 (& BRAINERD Area)

Regional Hydrologist
DNR-Division of Waters
424 Front St., Box 648
Brainerd, MN 56401
(218) 828-2605

Cambridge Area

Area Hydrologist
DNR-Division of Waters
915 South Highway 65
Cambridge, MN 55008
(612) 689-2832

St. Cloud Area

Area Hydrologist
DNR-Division of Waters
3725 12th St. North
P.O. Box 370
St. Cloud, MN 56302
(612) 255-4278

REGION 4 (& NEW ULM Area)

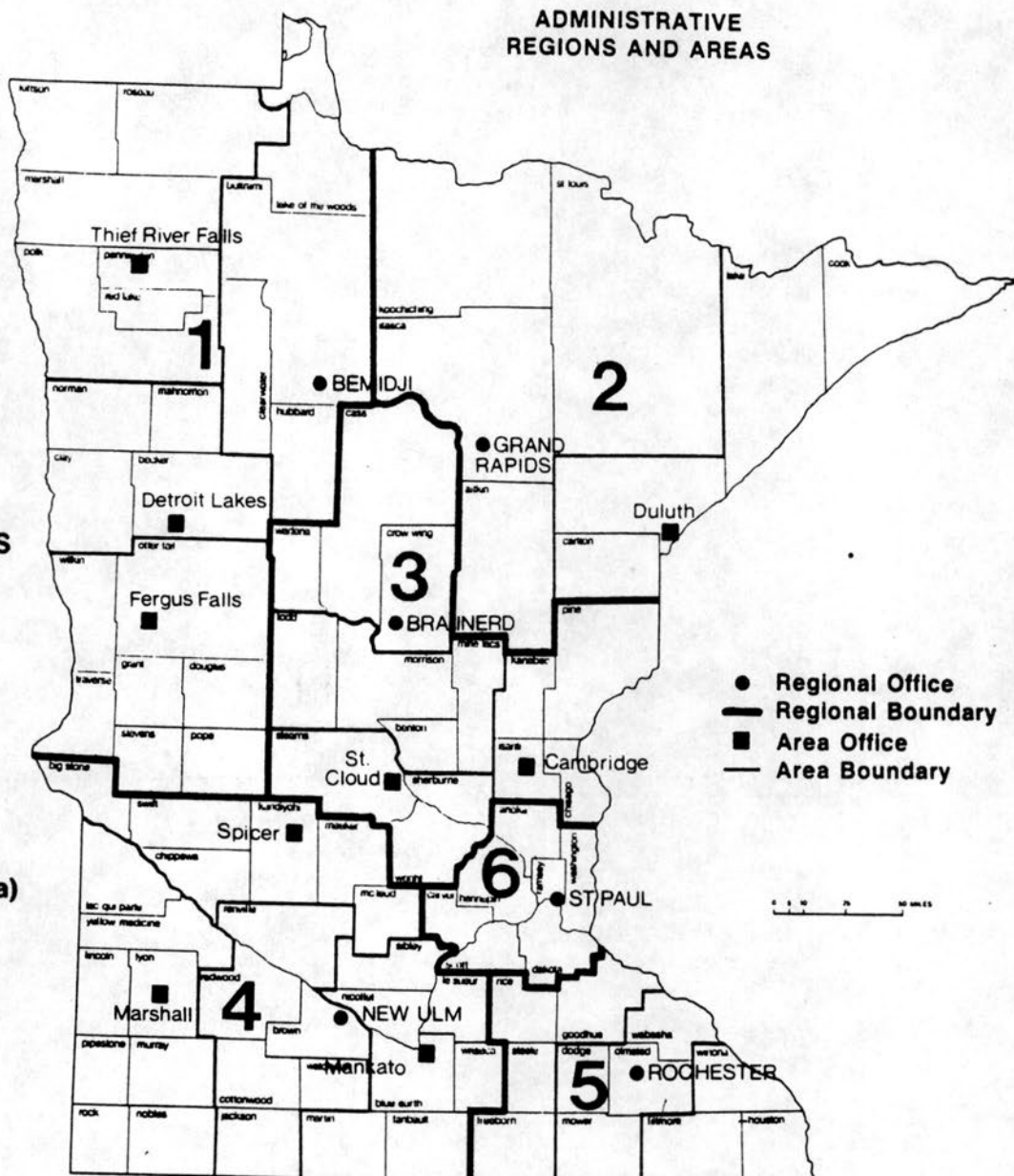
Regional Hydrologist
DNR-Division of Waters
Box 756, Highway 15 South
New Ulm, MN 56073
(507) 354-2196

Spicer Area

Area Hydrologist
DNR-Division of Waters
P.O. Box 457
232 Lake Ave. South
Spicer, MN 56288
(612) 231-5435

DIVISION OF WATERS

ADMINISTRATIVE REGIONS AND AREAS



REGION 4 Cont'd

Mankato Area

Area Hydrologist
DNR-Division of Waters
Nichols Office Center
Suite 180, 410 Jackson St.
Mankato, MN 56001
(507) 389-2151

Marshall Area

Area Hydrologist
DNR-Division of Waters
Box 111, 1400 E. Lyon
Marshall, MN 56258
(507) 537-7258

REGION 5

Regional Hydrologist
DNR-Division of Waters
P.O. Box 6247
Rochester, MN 55903
(507) 285-7430

REGION 6

Regional Hydrologist
DNR-Division of Waters
1200 Warner Road
St. Paul, MN 55106
(612) 296-7523

CENTRAL OFFICE

DNR-Division of Waters
500 Lafayette Road
DNR Building
St. Paul, MN 55155-4032
(612) 296-4800

RECOMMENDED RESOLUTION

That the Board approve the revised draft "Metropolitan Water Management Act Plan Review Procedures and Policies".

Metropolitan Water Management Act
Plan Review Procedures and Policies

In reviewing 509 plans, Board of Water and Soil Resources staff shall:

1. Read the plan and all written comments submitted by local governmental units, the metropolitan council, pollution control agency, department of natural resources, department of health, and any other interested agencies, organizations, or individuals.
2. Determine how pertinent comments have been responded to by the WMO or incorporated into plan amendments.
3. Review the plan's content for consistency with the requirements of the Metropolitan Water Management Act and other pertinent laws and rules, using the guidelines developed in cooperation with the "509 Local Advisory Committee" as a general checklist.
4. Place special emphasis on determining how the plan addresses:
 - a. Preservation and use of wetlands and other natural water storage and retention systems;
 - b. Recognition of existing local, state, and federal water management programs and regulations;
 - c. Conflicts and gaps between the WMO plan, local comprehensive plans, and other existing plans of affected local governmental units;
 - d. Communication and coordination between the WMO and other local governmental units, and state and federal resource agencies; and
 - e. Use of local authorities to manage existing problems and prevent potential water and related resource problems.
5. Ensure that the WMO has incorporated into its plan:
 - a. An executive summary that concisely describes the WMO's primary problems, opportunities, goals, and the future management responsibilities assigned to the WMO and the affected local units;
 - b. A summary of available information on groundwater resources;
 - c. A chart showing whether the existing local controls of affected local governmental units conform to the policies and standards of the WMO plan;

- d. A requirement that the WMO or local units exercising planning and zoning authority incorporate the Board's minimum urban erosion and sediment control criteria into their local controls;
 - e. A statement of wetland values; *and a requirement that they be reflected in local plans.*
 - f. A requirement that each local unit exercising planning and zoning authority: maintain a copy of the national wetland inventory map at their principal place of business; notify persons proposing or carrying out filling or other development activity in areas identified as wetlands on the national wetland inventory map that their activity may require a Corps of Engineers 404 permit; and notify the Corps of Engineers regulatory branch of any proposed or initiated activity that would result in placement of fill in any area identified as wetland on the national wetlands inventory map;
 - g. A requirement that each local unit exercising planning and zoning authority amend the zoning map in their local comprehensive plan to reflect DNR-regulated public waters;
 - h. A requirement that the WMO or local units exercising planning and zoning authority adopt a wetland ordinance that prohibits drainage, grading, or filling of wetlands without a permit; and that requires consideration of the affected wetlands' values for stormwater runoff storage and detention, sediment and nutrient trapping and retention, fish and wildlife habitat, and the recreation and open space needs of the community before a permit is issued;
 - i. A section describing any conflicts between the watershed plan and existing plans of local units; and standards and schedules for local units to follow in making any needed amendments to existing comprehensive plans and official controls or in adopting new local controls.
6. Discuss any significant issues, or recommended additions or amendments, with the WMO and any affected local unit person or agency. If no significant problems are anticipated, proceed to publish notice of filing of the plan pursuant to Minnesota Statutes Section 112.401. If staff determines that a public hearing should be ordered, staff should consult with the Chairman before proceeding to publish notice of and order for hearing.

7. Prepare a concise plan summary that includes a section explaining any significant plan deficiencies and unresolved issues. Place the plan on the Board's regular meeting agenda and include the plan summary in the Board meeting mailing. Transmit a copy of the plan summary to the WMO along with a notice of the Board meeting. Make a presentation about the plan at the Board meeting.
8. If a public hearing is required, place the matter on the Board's regular meeting agenda and determine which Board members will attend the hearing. Make all necessary hearing arrangements and assist the Board member hearing panel in conducting the hearing and reporting its recommendations back to the full Board.
9. Consult with the WMO to resolve issues through negotiation. Offer the WMO advice, ideas, examples from other WMO plans, and general assistance in bringing the plan into conformance with the requirements of state law and rule. Make use of the review principles listed at Minnesota Rules, part 9300.0170, subpart 4 in analyzing plan issues.
10. If plan approval is recommended, present a draft Order for Board action at the regular meeting following the meeting at which the Board receives its initial plan briefing (or a later meeting if needed).
11. If disapproval of parts of a plan would be recommended due to failure to reach agreement with the WMO on one or more significant issues, present the Board with a written report on the disputed plan elements. Provide notice and opportunity for the WMO to address the Board at a regular meeting.
12. Provide notice to all affected local units, agencies, interested organizations, and individuals of Board approval of the plan.

TWIN CITIES
STAR - TRIBUNE
Mpls. — Hennepin Co.

MAR 24 1988

Eagan plan will preserve ponds and wetlands

By Jim Adams
Staff Writer

After a bit of state prodding, Eagan is working on a plan to preserve its wetlands, lakes and ponds. State officials say the fast-growing city is the only one they know of doing its own comprehensive water-quality plan.

A 1982 state law requires most cities and townships in the metropolitan area to develop water-quality and flood-control plans within the next few years for approval by area watershed organizations, said hydrologist Dan Steward of the state Board of Water and Soil Resources.

Eagan's plan will give it a head start, Steward said. "We probably will hold that up as a model for others to use," he added.

"I'm not aware of any other cities planning at this level," said Steve Heiskary, a senior biologist in the water-quality division of the Minnesota Pollution Control Agency (MPCA).

Eagan has created an inventory of the physical and chemical characteristics

of the 340 bodies of water within its 32 square miles, said Tom Colbert, city public works director. The city is sampling runoff from commercial and other developments to use in setting water quality standards.

The plan "will tell us which ponds are suffering the most and let us take steps to protect those bodies of water," said Mayor Vic Ellison. Money will have to be raised for improvement projects, he said.

Hearings are to be held on the plan this fall, and Ellison said he expects the City Council to vote on the plan by the end of the year.

Ellison and other residents have noticed lakes and ponds turning green with algae earlier in the summer as nutrient-rich runoff increases from new homes and other development. Lawn fertilizers are a major source of plant nutrients.

Ellison said Carlson Lake near his home greens up about a month earlier than when he moved in five years ago. "Everybody wants a nice clean pond, but they also want nice green grass," Ellison said. "It is a fact that when you fertilize lawns, it runs into ponds and makes them green faster."

It was largely because of MPCA concerns about rapid growth in Eagan that the suburb got an early start on its water-quality plan. Eagan is the state's fastest growing city with a population projected to reach 43,000 in the 1980s.

Housing and commercial developments were being built so fast a few years ago that the city had difficulty complying with the environmental regulations of the Pollution Control Agency. The agency discovered two years ago that Eagan had failed several times to apply for permits needed to build sanitary sewer extensions, said Mike Sandusky of the agency's water-quality compliance division.

State rules require a city to have an MPCA permit for sewer extensions before construction is started, Sandusky said. But Colbert said that part of the problem was that the agency took up to 10 weeks to process permits. Meanwhile, developers had construction schedules to meet.

The agency fined Eagan \$5,000 for its violation and discussed a larger fine of about \$50,000, Sandusky said. Rather than lose more money, the city chose instead to do a water quality study, now estimated to cost more

than \$60,000, Colbert said. The agency accepted the study in place of a larger fine, said Sandusky.

The MPCA "was trying to make Eagan a whipping boy on the issue," Ellison said.

But Sandusky said Eagan was the worst offender of a handful of cities the agency has caught breaking the rules. He said that Burnsville also broke the rules, about a year ago, though to a lesser extent. It was given a notice of violation but no fine. Eagan has hired another person to improve permit monitoring, Colbert said.

An early benefit of the water-quality study is that the city has "strongly encouraged" developers to preserve the quality of ponds near their sites, Colbert said. They have all done so, he said.

Before the water-quality study started, the main concern was flood control, Colbert said. The long-planned Cliff Lake Galleria development initially was to discharge parking lot runoff into nearby Cliff Lake. But as Eagan learned more about water quality, it encouraged the developer to build a holding pond to settle nutrients and to direct runoff into storm sewers instead of Cliff Lake, Colbert said. The developer agreed.

"We want to make sure development doesn't ruin the water quality of the ponds in the years ahead," Ellison said.

Most of the city's storm water flows into city ponds and other bodies of water so sediment can settle before the water reaches the Minnesota River, Ellison said.

133 13 000

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A reprieve for flood victims

City to buy Simon's Ravine homes inundated 4 times

The forces of nature have won the battle for Simon's Ravine in South St. Paul.

The ravine was plagued by a rainstorm in 1977 which wiped out 19th Avenue and heavily damaged four homes downstream in the 1300 block of North Concord Street, struck twice in 1978 and again in 1979. The city council has called it quits.

The council March 7 directed the city's Housing and Redevelopment Authority to begin the process of acquisition of the home and body shop at 1300 N. Concord and adjacent homes at 1306, 1310 and 1312.

Simon's Ravine has been identified as a natural water course providing an outlet for a 2,000 acre water shed. Eighty percent of which is within the city limits of neighboring West St. Paul and extends east of South Robert Street.

Residents of the homes in the path of the deluge were evacuated in 1977. The homes were flooded twice in 1978.

A lawsuit brought by residents

against the cities of SSP and WSP was settled out of court.

Nineteenth Avenue was rebuilt in 1978 with its new role also as a holding pond.

The Minnesota Department of Natural Resources (DNR) and

the U.S. Corps of Engineers classified the barrier as a "high hazard dam" because of the proximity downstream of homes, businesses and transportation facilities.

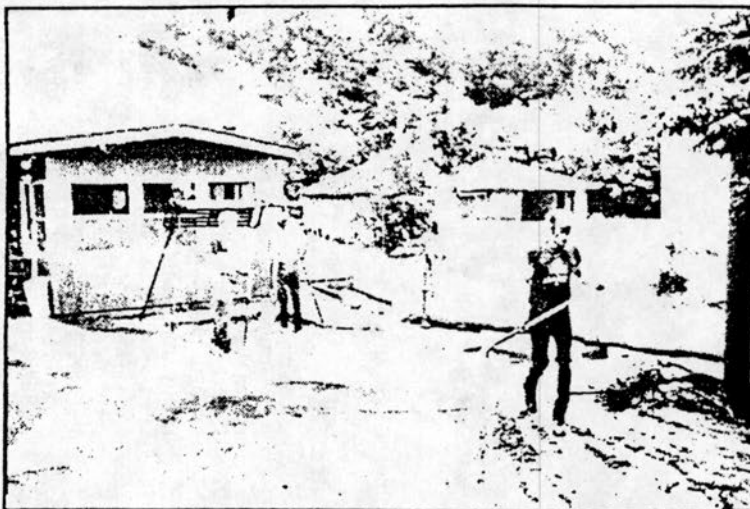


Photo by Dave Petek

This was the scene at Lee Karg Auto Body on North Concord Street in late-July, 1987. A night-long rain inundated the area.

The latter includes North Concord Street and tracks of the Chicago Northwestern Railroad.

The rainfall last July brought erosion material off the slopes of the ravine and sufficient water down to flood the homes.

Thus, over the last 11 years, the homes have been inundated four times.

A recent report to the Lower Mississippi River Water Management Organization by Barr Engineering recommended the homes be removed or floodproofed. It was concluded that removal would be more economical.

The land is zoned light industrial where the homes are located.

The HRA has budgeted monies for 1988 acquisition.

The surface water sink

Are cities insurers against flood damages?

Stanley G. Peskar



Developing wetlands can cause drainage problems and flooding, leaving cities open to law suits. Photo by Jean Mehle Goad.

Assume the following situation. There is a pond or wetland with no outlet at recent historical levels. A city permits or does not prohibit (it probably has no power to prohibit) development which covers 25 percent of the ground surface in this small water shed with roofs, driveways, and streets. An unusually heavy rainfall, eight inches in six hours, raises the pond level to flood homes which are normally well above the pond. A hydrologist that the flooded homeowners hired states that the impervious soil surfaces created by development caused the pond level to rise high enough to reach the homes. The landowners sue the city for flood damage. Because of recent unfavorable precedent from the courts, and because it may be cheaper to buy the flooded homes than litigate, the city decides to buy out the flooded owners. A scenario somewhat similar to this happened in a central Minnesota city within the last year.

Assume a slightly different scenario. What if drainage was to a natural creek

which rose to flood basements and contributed to general flooding down stream. Again, recent case law suggests that the city may be liable to pay damages in inverse condemnation at least in cases where the rainfall was not intense or prolonged enough to reach the same levels regardless of physical changes the city caused or accepted. Inverse condemnation means the courts may force the city to pay for use of property it has taken or occupied. How far down stream the liability may extend is not clear, given the current state of law.

What has changed from former law?

A number of recent court cases have expanded the liability of public entities for surface water damages as well as ground water damage in certain situations. The Minnesota Supreme Court in *Wilson v. Ramacher* significantly

altered prior law which held that cities, like private owners, can make reasonable use of publicly controlled lands and not be liable for resultant damages to other owners. The *Ramacher* court held that while a private landowner may reasonably divert surface waters off his property, even to the detriment of another landowner, the state ordinarily may not, because "the state, in taking or damaging property by drainage proceedings, does not have the rights of a landowner because it has no estate. It proceeds, not as an owner of property, but in the exercise of sovereign right. That right is conditioned upon compensation."

The decision states that this risk applies when the diversion occurs as part of a public drainage project. However, the courts will almost always determine that streets or other public improvements are public drainage projects when they create extra run off and the city cannot construct or operate them without dealing with surface waters.

If cities in their drainage projects no longer have a right of reasonable use, must all public drainage system be capable of handling all expectable rainfalls or other natural or man made occurrences?

The older cases tend to give cities immunity from design or planning liabilities, saying that city decisions are legislative or discretionary. The old rules may continue to play an important role when a claimant says the city negligently designed the public drainage system. But in the future plaintiffs are increasingly likely to plead both negligence and inverse condemnation. They are likely to emphasize whichever claim maximizes their potential money gain and minimizes the difficulty of their proof.

The *Ramacher* opinion implies that in order for invasion of surface waters to give rise to inverse condemnation, the impact on the claimants land must be substantial and permanent. However, this decision occurred before the U.S. Supreme Court approved of inverse condemnation remedies for temporary takings. Now presumably, even temporary flooding or other invasion of waters from a city storm drainage system could lead to inverse condemnation damages if the invasion is substantial.

If *Ramacher* shows the direction the Minnesota courts are headed, defenses like discretionary immunity and comparative negligence, which now play a major role in defense of tort claims, may not save cities from future inverse condemnation claims.

Some defenses remain even to claims of inverse condemnation. For example, a claimant would still need to show that city drainage activities caused the invasion of surface or sub-surface water on their property. If the claimants' property is not in any worse condition than if the city had not constructed drains, the public jurisdiction will not be liable. In other words, if a city uses natural water courses as part of its drainage facility and if the evidence shows that similar water damage would have occurred even if the city-initiated (or city-approved) changes to the drainage system had not occurred, no liability would ensue. The unanswered question is the extent to which the courts will hold public entities responsible for the consequences of development which impacts on drainage which they approved or had the power to shape.

How can cities deal with the new liability

Some cities may consider backing away from all involvement in planning for or operating surface water drainage systems. They may even consider getting out of land use regulation to avoid claims that the city chose to regulate but did it imperfectly. However, unless they also can avoid acceptance of dedication of streets and other public facilities which derange natural drainage patterns, such a strategy may not be successful.

Perhaps a better alternative is to try to harmonize development with existing drainage and ground water discharge patterns, clustering development in areas where excess run off will have little impact down stream, or minimizing development in areas where runoff is likely to cause problems when future development and extra runoff is likely. This approach would almost certainly mean the city needs a good comprehensive development plan that integrates surface water changes necessary to accommodate future growth and other changes. Then this plan needs review with each proposed development to be sure the proposal will not upset watershed functioning. As city comprehensive plans

change, cities must update surface water drainage plans. State law already contemplates watershed plans for all parts of the state. This process must receive priority attention because it will save cities money and grief.

Conclusion

Developers and other landowners can treat surface water as a common enemy. As long as their use is "reasonable" they can increase harm to adjacent and down stream properties without tort liability. However, cities and other governmental entities that accept dedication of streets, storm water drains and holding areas, and other public facilities which may concentrate surface waters, discharge them more rapidly, or increase areas flooded are, in many cases, liable for resulting damages. In order to protect city taxpayers, most cities have little choice other than to plan very carefully for disposition of surface water at or before the time of development. By so doing, the city can force the developer to pay for planning of surface water disposition, to dedicate lands necessary for surface water storage and conveyances, and to construct the public facilities necessary to handle it without damages.

References

- Highview North Apartments v. County of Ramsey*, 323 N.W.2d 65 (Minn. 1983). The court found that Ramsey County and the city of Maplewood created a nuisance by building a public drainage system which raised groundwater levels on neighboring property.
- Wilson v. Ramacher*, 352 N.W.2d 389 (Minn. 1984).
- Pye v. City of Mankato*, 36 Minn. 373, 31 N.W. 863 (1887) articulated the old rule. In this case the court decided that a city may be held liable for damages caused to private property by grading streets if a private owner of the soil over which the streets are laid would be liable if improving it for his own use.
- Miles v. City of Oakdale*, 323 N.W.2d 51 (Minn. 1982). The court remanded for trial as to the reasonableness of constructing facilities to convey surface water from a street concentrated by a flume. The case was decided before *Ramacher* but may give an indication as to whether the courts view street drains as part of a public drainage system.
- Dudley v. Buffalo*, 73 Minn. 347, 76 N.W. 44 (1898). The court stated that there is no liability imposed on a municipality for failing to "wholly relieve the premises at all times from the burden of surface water naturally resting thereon, by making its drains of sufficient capacity so as to secure such result."
- McClure v. Red Wing*, 28 Minn. 186, 9 N.W. 767 (1881). (The court implies that liability cannot be predicated on mere under-capacity city design of storm sewer.)
- First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. , 107 S. Ct. 2378, 96 L. Ed. 250 (1987).
- Chabot v. City of Sauk Rapids*, 412 N.W.2d 371 (Minn. App. 1987). Petition for review granted.
- Pye v. City of Mankato*, 36 Minn. 373, 31 N.W. 863 (1887).
- Minnesota Statutes* 473.875 - 473.883 and Ch. 110B. ■

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April 20, 1988

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To: Board Members
From: Mel Sinn *MS*
Subject: 509 Plan Review Policy

I. Revised 509 Plan Review Policy

From the discussion at the March Board meeting it was apparent that written policy on metro watershed plan review is needed. Once written policy is adopted, it can always be fine-tuned as we review the remaining 40 initial watershed management organization plans.

Attached is a revised draft of "Metropolitan Water Management Act Plan Review Procedures and Policies." The original draft was distributed to Board members and discussed back at the December Board meeting.

It stresses preservation and use of "natural water storage and retention systems," which is the fundamental purpose of the Metro Act. Keeping development out of wetland and floodplain areas is the most cost-effective and environmentally sound approach we have to stormwater management.

A couple of recent articles that document the importance of this issue are enclosed.

II. Background on the 509 Planning Effort

As background, I'd like to point out again some of the actions that have taken place regarding 509 planning:

1. The Metropolitan Surface Water Management Act was enacted as Chapter 509, Laws of 1982. The Act mandated local preparation of watershed plans over nearly all of the seven-county metro area. Cities and towns were given three organization options: 1) establish watershed districts; 2) establish watershed management organizations by joint powers agreement; or 3) do nothing and let the responsibility fall on county government. Virtually all cities and towns opted for the joint powers approach.

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2. No state funding was provided to either local units or the Water Resources Board to carry out the mandate. Due to severe state budget shortfalls, the WRB's staff complement was reduced from 3 positions down to 2 positions for the first year and a half following enactment of 509.
3. Chief House author, Connie Levi, was opposed to agency rulemaking for 509. Her position was accepted by the WRB members, who directed staff to proceed with "guidelines" rather than "rules." She envisioned a process of "negotiation" between the Board and local units for WMO plan review.
4. WRB staff prepared a 32-page booklet titled "Water Planning and Management Required by the Metropolitan Surface Water Management Act" for distribution to local units. Later, the Metropolitan Council published a similar document titled "Watershed Planning Guide." Both publications were intended to help local officials and staff understand 509 and prepare effective surface water plans.
5. While some areas began working almost immediately, other areas were slow to respond and repeatedly questioned the need for the law. The planning deadline in the law was moved back twice in subsequent legislative sessions, although the mandate remained.
6. The legislature did not build any significant incentives or penalties into the law, so it was easy for some areas to continue their foot-dragging.
7. In response to complaints about the lack of a "bottom line" from certain WMO's, the WRB decided to take a more structured approach by appointing a 25-member "509 Advisory Committee" to help it prepare detailed plan content guidelines. Ten pages of guidelines were developed out of that process and distributed to all 46 WMOs.
8. Other related actions have included three 509 conferences; informational mailings from the Board's office; and staff attendance at various local WMO meetings.

III. Current Status

Because no 509 rules are currently in place, we must continue operating with guidelines and Board policy for the time being.

At some point in the future, I believe the Board should reconsider development of comprehensive 509 rules for the content of second generation WMO plans.

Elm Creek WMO 509 Plan Review

- . Notice of Filing of WMO Plan was published in the Champlin-Dayton Press on March 17 and March 24, 1988. If no requests for hearing are received by April 25, 1988 the Board can handle the matter administratively (without a hearing) at the May Board meeting.
- . April 5, 1988 - Mel Sinn and Dan Steward of MBWSR staff toured the Elm Creek WMO watershed with Leon Zeug, of the Hennepin SWCD staff.
- . April 19, 1988 - Pat Kennedy, Leon Zeug, and Joel Settles of the Hennepin SWCD staff, and Mel Sinn and Dan Steward met to discuss Board staff comments and recommendations concerning the Elm Creek WMO Plan.
- . Hennepin SWCD staff agreed to furnish written copies of the agreed upon Plan additions to MBWSR staff prior to the May Board meeting.

Staff Summary of the Elm Creek WMO Water Management Plan

The Elm Creek Watershed Management Organization (ECWMO) is a joint powers agreement between eight cities, one township, and the Hennepin County Soil and Water Conservation District (HSWCD). The ECWMO covers 109 square miles in north-central Hennepin County. The attached map shows the location of the ECWMO's member communities, and the WMO's lakes, streams, principal highways, and monitoring stations. The ECWMO watershed management plan (Plan) was prepared by the HSWCD.

The ECWMO has four main subwatersheds. The Plan classifies the WMO's nine lakes into one of three groups depending on water quality and the recreational uses the lake supports. Fish and Weaver Lakes are Group I lakes that support fishing and body contact recreation. The other seven lakes are Group II or III lakes and have poorer water quality. One of the "lakes" is the 15-acre Champlin Mill Pond. The Mill Pond has been the focus of considerable local controversy over the past several years, as a neighborhood group has expressed concerns about poor water quality and heavy sedimentation.

The WMO's topography ranges from nearly level to gently rolling to short steep slopes. Wetlands are scattered throughout the watershed and vary from one acre potholes to marshes several hundred acres in size. Local relief of 30 to 40 feet in one 40-acre tract is common.

The Plan includes several excellent maps including: Soils, Soil Suitability for urban development, soil suitability for agricultural production, and 1980 and 1990 land use.

The ECWMO is a watershed in transition from rural or agricultural land uses to urban land uses. Although 1980 land uses were dominated by cropland (46%) and Grass/Woods (20%), projections for 1990 land use indicate reductions in cropland (38%) and Grass/Woods (13%) while residential land use doubles (20%). The Metropolitan Urban Services Area (MUSA) line, by which the Metropolitan Council controls extension of sewer and water lines, currently includes only 10-20% of the WMO, but long-term projections are for almost complete urban development. The Plan includes a detailed analysis of the development limitations associated with the WMO's soils. Half the WMO's soils are well suited for urban development, and an additional 20% are marginally suited for urban development. 28% of the WMO consists of wetlands that are suitable for wetland preservation. Soils can influence development suitability in several ways. Soils with high water tables can cause water seepage into basements and cause septic systems to fill. Steeply sloping lands in agricultural production or urban development may erode, excessively causing sediment buildups in drainage systems and harming water quality. The suitability section of the Plan recognizes the limitations of the WMO's soils for various land uses. Recognition of soil limitations for certain uses, however, doesn't protect the ECWMO's resources from unwise development. The Plan proposes the WMO's resources be protected by the adoption of the ordinances identified in the management plan section.

Volume II - Management Plan - includes the general policies which will direct implementation of the management plan. The general policies are attached (page V-15). Policy 1, which states the preventative approach will be used for protecting the watershed, is very consistent with the "...preserve and use natural retention systems..." purpose of Chapter 509. Policy 1 ties the prevention approach to cost savings through comprehensive planning and local regulations. In general, policies 1, 3, and 4 are excellent and if implemented can go a long way towards preventing water resources problems in the ECWMO.

Policies 3 and 4 in particular summarize how the WMO will act to prevent the potential problems discussed in the suitability and land use sections of Volume I - Resources.

Critical overlay districts have been mapped for Construction Site Erosion, Cropland Erosion, Lake Drainage Basins, Wet Soils, Flood Plains, and Upland Flood Storage. The critical overlay district maps identify the areas of the watershed where city or township enforced regulations will control development or land disturbing activities with locally adopted ordinances.

The Plan states that member communities will be required to adopt the applicable overlay districts in order to be consistent with the WMO Plan. Attached are portions of the maps identifying areas subject to construction site and cropland erosion control ordinances. Each ordinance required by the Plan includes the procedures by which the ordinances will be implemented. Volume III - Standards - details the design specifications that the communities must use in implementing their ordinances. The policies for implementation of the construction site erosion ordinance are attached (P. VI-I).

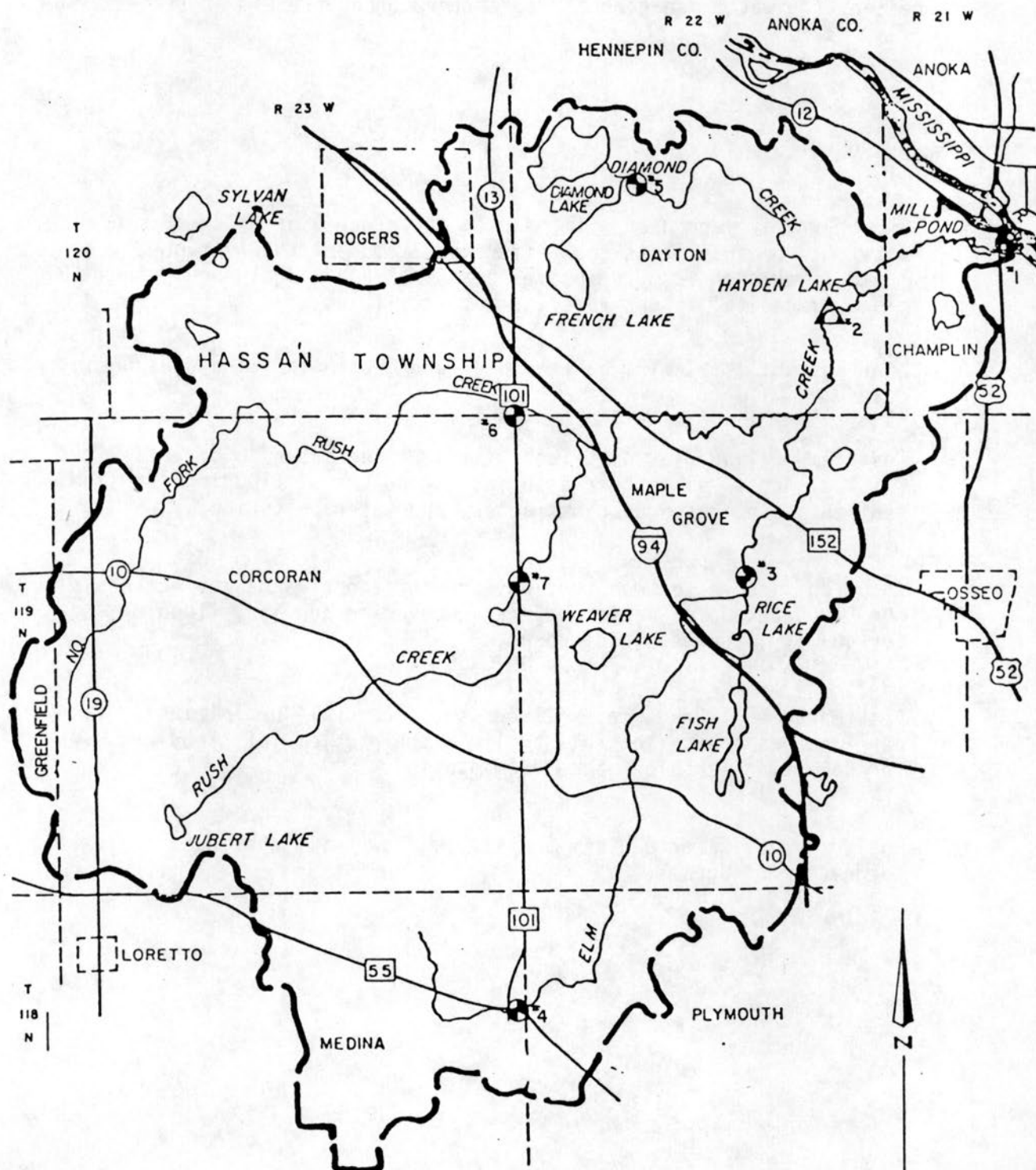
In general, the critical overlay districts are an attempt to control problems associated with the management or development of sensitive areas by requiring the landowner to submit plans to the local community for conformance with the standards set out in Volume III - Standards.

The Plan's agricultural erosion control provisions may be triggered by complaints from ECWMO residents and local or state officials. The critical lake drainage basin overlay requires a sediment control plan for all developments in critical lake drainage basins. The critical wet soils ordinance will require a permit for the installation of septic systems on soils identified as wet.

The critical flood plain district and ordinance will require WMO communities to restrict or prohibit uses of designated flood plain areas. The critical upland flood storage ordinance requires WMO communities to protect designated flood storage basins from encroaching land uses.

FIGURE VIII-1

ELM CREEK MONITORING STATIONS



- - Water quality monitoring station.
- △ - Water quality and flow monitoring station.

The Elm Creek Joint Powers Watershed Commission will monitor all systems where problems of flooding, erosion, sedimentation, and water pollution are likely to occur and will continually evaluate the effectiveness of the water management program throughout the Elm Creek watershed.

GENERAL POLICIES

1. The preventive approach will be used for protection of the Elm Creek watershed because it is cost-effective, emphasizing less costly solutions through comprehensive planning and local regulations in place of capital-intensive treatment facilities.
2. Land suitabilities will be examined and potential land uses designated.
3. Environmental overlay districts will be established to cover all the Critical Areas, with their associated problems of flooding, erosion, sedimentation, resource constraints, and water pollution.
4. Adoption and enforcement of environmental ordinances by members of the Elm Creek Joint Powers Watershed covering erosion, flooding, water quality, and sewage disposal.
5. Best Management Practices will be used for rural, urbanizing and urban lands as source controls to limit the problems of flooding, water pollution, erosion, and sedimentation.
6. Monitoring of water quality and stream flows will continue to assess adequacy of programs.

Critical Areas Construction Site Erosion

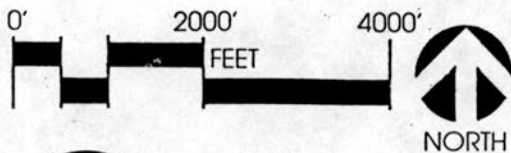


Estimated soil loss over 5 tons per acre, per year
(each cell - 2½ acres)

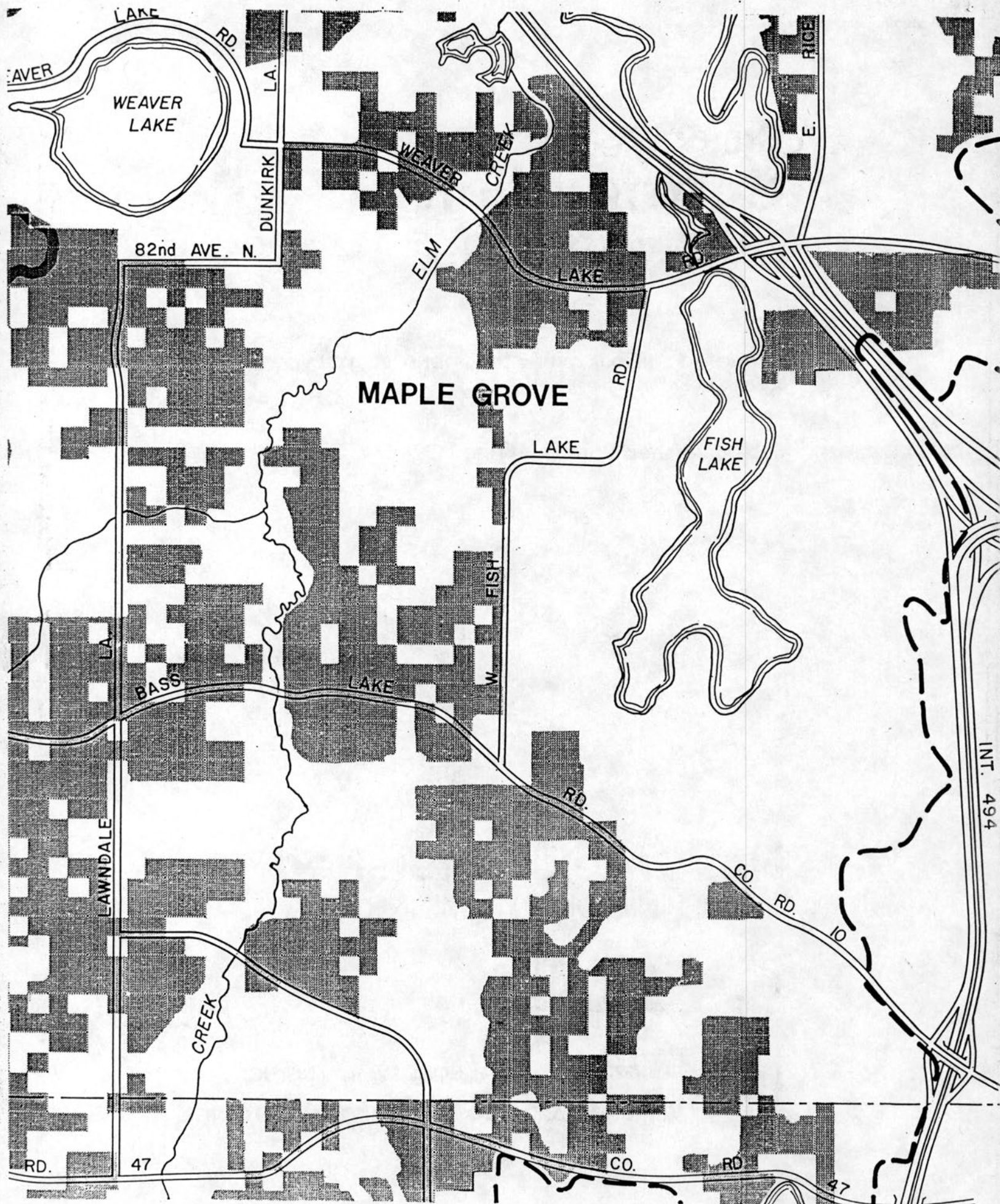


Sub-Watershed Boundary Line

Elm Creek Watershed HENNEPIN COUNTY – MINNESOTA



prepared by:
HENNEPIN SOIL & WATER CONSERVATION DISTRICT
and
MINNESOTA LAND MANAGEMENT INFORMATION CENTER
December 1, 1982



Critical Areas Cropland Erosion

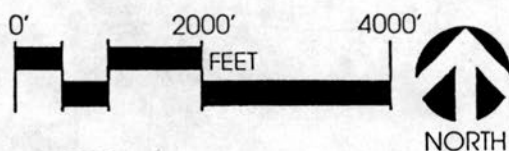


Estimated soil loss over 5 tons per acre, per year
(each cell - 2½ acres)

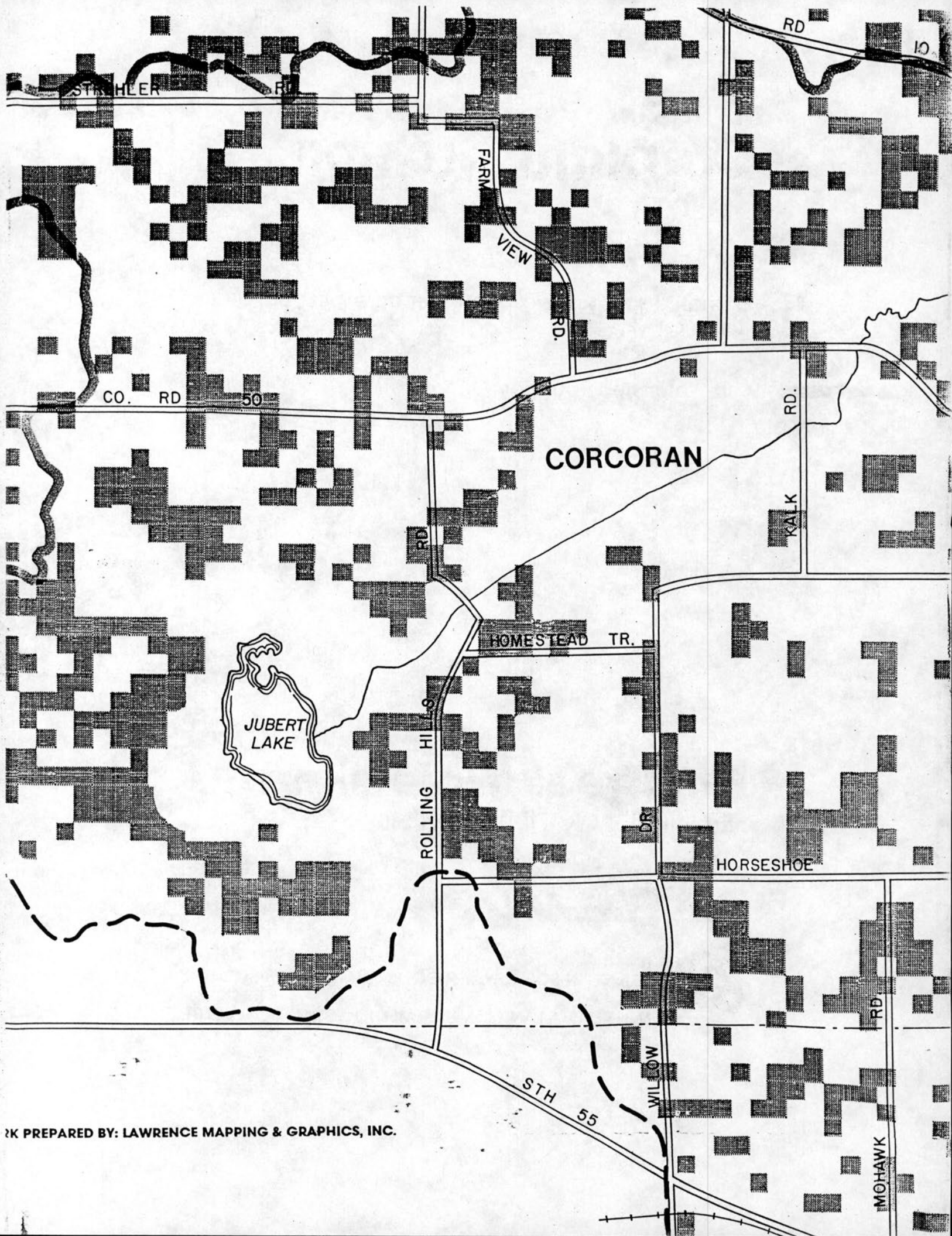


Sub-Watershed Boundary Line

Elm Creek Watershed HENNEPIN COUNTY – MINNESOTA



prepared by:
**HENNEPIN SOIL & WATER CONSERVATION DISTRICT
and
MINNESOTA LAND MANAGEMENT INFORMATION CENTER**
December 1, 1982



A. GENERAL

Introduction

With the urbanization expected to occur in the Elm Creek watershed, erosion and sedimentation occurring during urban development can be expected to have a detrimental effect on the waters in the watershed. It is the Elm Creek Commission's intent that this detrimental effect, to the extent possible, be eliminated or minimized. To accomplish this goal, the Commission has adopted policies, identified critical construction site erosion areas, and developed standards and specifications for erosion and sediment control.

Policies for Urban Erosion Control

The policies below are directed toward the objectives of providing protection from erosion and sedimentation within the watershed during the period when urban construction activities are taking place, i.e., urban development.

- Policy 1 All cities within the Elm Creek watershed shall adopt erosion control ordinances and/or official policies in conformance with the Elm Creek Commission's policies.
- Policy 2 All cities shall establish a construction erosion district based on the Elm Creek Commission's analysis.
- Policy 3 The Elm Creek Commission shall develop standards, specifications, and design criteria for erosion control practices, which shall be the basis for individual municipal ordinances.
- Policy 4 An Erosion Control Plan shall be required for all subdivisions containing five acres or more in the Critical Erosion Overlay District or where sediment conveyed in storm water discharge would have adverse impact on lakes, streams, or other water bodies.
- Policy 5 An Erosion Control Plan shall be submitted to the Elm Creek Commission for comment and review.

Elm Creek WMO 509 Plan - MBWSR Staff Comments and Recommendations

MBWSR staff has reviewed the ECWMO plan and makes the following comments and recommendations. The ECWMO 509 Plan is in general a very good water management plan. The ECWMO has been in existence since 1973, 10 years prior to the passage of 509 in 1982. The WMO is well staffed by the HSWCD. The Plan's clear, straight-forward approach reflects the WMO's experience and commitment to comprehensive water management.

The ECWMO Plan was published in June 1983, and needs to be updated in regard to certain issues. For example, the ECWMO is participating in an effort to establish minimum erosion control standards in Hennepin County. A review of this effort and other changes in the WMO's philosophy, direction, or policies can be conveniently addressed in an executive summary.

Staff recommends that the executive summary also include a date of Plan application or extension.

The strength of the Plan is the requirement that the member communities adopt ordinances in order to protect the WMO's water resources. Staff commends the ECWMO for their "critical overlay district" approach to preventing water resources problems.

The WMO's critical areas appear to be adequately protected by the proposed critical overlay districts with the exception of wetlands. Preservation and use of wetlands is the primary purpose of 509. Although the critical upland storage overlay district protects about 20 designated wetlands, and some of the WMO's low-lying wetlands are protected by the floodplain overlay district, the Plan doesn't provide protection for the numerous upland wetlands.

Staff recommends the WMO augment the proposed critical overlay districts with a critical overlay district for wetlands. Wetlands are clearly one of the most critical water resources in the metropolitan area, and are under intense development pressure. The purpose of 509 is to "...preserve and use natural retention systems...". Wetland ordinances in the metropolitan area wouldn't necessarily preserve any wetlands, but would set up a process whereby local units of government would be required to think about wetland values, before allowing filling. Without wetland ordinances, local government loses the opportunity to protect the wetlands that provide significant benefits, and consequently, constrict their choice of options for dealing with complicated water resources issues.

A list summarizing MBWSR staff recommendations for additions to the Plan is attached.

Attach.

MBWSR Staff Recommendations For Additions to the
Elm Creek 509 Plan

1. Executive Summary

Summarize planning process, philosophy, problems considered, proposed solutions, uniform erosion control update, principal means of plan implementation (community adopted ordinances), date of plan application, summary of timeline and process for preparation and implementation of local plans.

2. National Wetland Inventory (NWI)

Include a copy of the NWI map to the list of local plan standards. Include language stating communities will notify the Corps of Engineers when aware of proposed projects that may affect a wetland on the NWI; communities will also commit to notifying landowner or developer that they may need a Corps permit.

3. Comprehensive Plan Amendments

Include as a local plan standard the requirement that, as part of local plan preparation, communities must amend the zoning maps in their comprehensive plans to identify the DNR protected waters.

4. Wetland Overlay District

Add a wetland overlay district to the plan's proposed critical overlay districts. The wetland overlay district could be adopted as part of local shoreland ordinances. The ordinance would prohibit drainage or filling of wetlands without a permit from the local unit of government exercising land use controls.

5. Date of Plan extension or application.

6. Plan amendment procedure

7. Table summarizing existence of local ordinances and extent to which they are consistent with the Plan.

April 20, 1988

509 RULES

Strategy to implement BWSR resolution 88-64, March 23, 1988

Consistent with Board action at the March meeting, staff prepared this strategy for developing rules dealing with erosion and sediment control in Chapter 509 water management plans. The proposed strategy has two components:

1. Preparation of legislation to amend Chapters 40 and 473;
and
2. Revision of existing soil loss limits rules.

The revisions would incorporate the erosion and sediment (E & S) control planning process that Mark Nelson discussed at the January Board meeting and urban Best Management Practices being developed by MPCA in cooperation with the Soil Conservation Service and several other agencies and groups. (Attachment A describes general criteria to be included in the previously mentioned E & S process.) The revised soil loss limits rules would apply to amendments of previously approved 509 plans. In the interim - before amendments - BWSR staff would facilitate meetings between SWCDs, WDs, and WMOs to discuss erosion and sediment control. If these discussions are as productive as staff anticipates, E & S control will be voluntarily incorporated into most of the plans currently being developed as well as a number of plan amendments. Several activities are currently underway in the Twin Cities metropolitan area which complement this strategy and require continued BWSR involvement. Efforts include the recently enacted Ramsey County pilot E & S control program, Hennepin SWCD coordination of local E & S control planning efforts and Scott County municipalities adoption of E & S control ordinances.

Although informal revisions^{1]} of the soil loss limits rule could begin immediately, legislative changes are needed to Chapters 40 and 473 before formal revision can begin. Chapter 40.19 to 40.28 relates to the soil loss limit rule. Staff feels that Chapter 40.19 is a good basis upon which to implement E & S controls for 509 plans. Moreover, promotion of Chapter 40 E & S controls has statewide applicability which could enhance BWSR encouragement of erosion and sediment controls for development sites outside the Twin Cities metropolitan area. As currently written however, E & S controls for development activities are not easily accommodated by the agriculturally oriented language in 40.19 to 40.28.

Chapter 473 addresses metropolitan water management programs (509). Watershed management plans "shall extend through the year 1990 or any year evenly divisible by five." This open-ended 509 plan deadline is silent about amendments and is too flexible if

1]

Informal revision includes establishing a work group and gathering background information.

April 20, 1988

erosion and sediment control rules are to apply only to amendments and yet be uniformly implemented within a reasonable period of time. As an example, a plan expiring in the year 2000 would not insure timely adoption of erosion and sediment controls, particularly if adjoining WMO plans have earlier deadlines. Another issue concerns amendment review scheduling. Without a deadline, BWSR staff cannot anticipate amendments. With a deadline, amendment review could be scheduled to make best use of WMO and BWSR staff. Using the previous example, staff is uncertain when the plan will be amended and thus cannot schedule needed reviews. As stated earlier, staff believes E & S adoption can be successfully promoted during plan development. However, to insure uniform and timely adoption of E & S controls and aid in planning the amendment review workload, an amendment deadline is needed. For these reasons, the soil loss limits rule revision process should be structured to accommodate legislative changes.

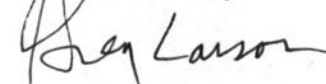
Following is a suggested timetable for developing rules dealing with erosion and sediment control in 509 plans:

April BWSR meeting - Action is taken on the strategy *for purpose of circulation for comment.*
June
May through August - Staff begins informal revision of the soil loss limit rule by soliciting ideas from WMOs and other interested parties, gathering information and continuing related activities.

September through the 1989 legislative session - Preparation and passage of E & S revisions to Chapters 40 and 473.

After the 1989 legislative session - Formal revision of the soil loss limits rule begins.

Submitted by:



Greg Larson
for the 509 workgroup

Recommended Board action:

Adoption of the proposed timetable for developing rules dealing with erosion and sediment control in Chapter 509 water management plans.

GL:lb

Attachment A

General Criteria For Erosion And Sediment Control

An E & S control plan should consider:

- ° Stabilization of denuded areas and soil stockpiles
- ° Establishment of permanent vegetation
- ° Protection of adjacent properties
- ° Timing and stabilization of sediment trapping measures
- ° Sediment basins
- ° Cut and fill slopes
- ° Stormwater management for controlling off-site erosion
- ° Stabilization of waterways and outlets
- ° Storm sewer inlet protection
- ° Working in or crossing watercourses
- ° Underground utility construction
- ° Construction access routes
- ° Disposition of temporary measures
- ° Maintenance

Purchase of State-Wide License for Accounting Software

In 1986, the Soil and Water Conservation Board (SWCB) tested an accounting software system for use by SWCDs. The system was developed by the Minnesota Educational Computing Corporation (MECC) in cooperation with the State Auditor's Office for use by non-profit organizations. It is a governmental fund accounting system modeled after generally accepted accounting principles.

The system proved to be extremely compatible with the uniform accounting system for SWCDs. An agreement was reached with MECC to make this system available to SWCDs at a price of \$900 as compared to the list price of \$2,495.00. Training would be provided by the staff of the SWCB. There are presently 16 SWCDs using this system.

In January, 1988, MECC sold the rights to this system to The Software Library, a private corporation in Minneapolis. The Software Library is willing to issue a state-wide perpetual license agreement to the BWSR for rights to the copyrighted accounting system. This would allow the BWSR to provide unique capabilities and capacities in simplifying the accounting and reporting requirements of SWCDs while maintaining uniformity and compliance with the accounting procedures developed. The cost of purchasing the license is \$50,000 with installments over a 3-year period. The state-wide cost to SWCDs if purchased individually would be \$66,600. By purchasing a site-license, SWCDs would be protected from further price increases and the adoption of computerized bookkeeping would be accelerated.