



Minnesota Board of Water and Soil Resources.
Minutes.

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DATE: February 15, 1994

TO: Board of Water and Soil Resources Members, Advisors,
and Staff

FROM: Ronald D. Harnack, Executive Director

SUBJECT: February 23rd BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, February 23, 1994, beginning at 9:00 a.m. The meeting will be held in the University Room at the Crown Sterling Suites, 175 East 10th Street, St. Paul (see attached map). The agenda and informational materials are enclosed for your review.

SUMMARY OF FEBRUARY AGENDA

* ALLOCATION OF MINNESOTA RIVER BASIN COST-SHARE

In December, the Board decided to allocate the \$600,000 for Minnesota cost-share towards proposals that were watershed based and reflected priorities within the watershed. As we discussed, the clean-up of the Minnesota River is a 10-year objective supported by our member agencies and the Governor's office. The watershed proposals reflect the desire for a multi-year commitment to staffing and dollars that will provide the necessary incentives to work with landowners to establish and implement multi-year conservation practices to enhance water quality in the watershed. The staff report recommends a strategy that will move us in the direction of achieving the 10-year objectives (information attached).
DECISION.

* WETLAND CONSERVATION MEMORANDUM OF AGREEMENT

An interagency wetland committee has been meeting since the passage of the Wetland Conservation Act to ensure appropriate communication among agencies, federal and state, relating to implementation of the law. One element of the discussion has been the desire to streamline the process among the agencies for more effective administration with compromising the protection of wetlands. The committee has done a tremendous job and has developed a framework for significant streamlining to be formalized through the signing of a memorandum of agreement. The agreement provides for acceptance of the Wetland Conservation Act wetland banking process by all the agencies;

coordination of delineation of wetlands among the agencies; commitment to further streamlining based on experiences with the program; and agreement to support a federal process that accepts the state's Wetland Conservation Act for all activities of less than 1/2 acre and to pilot in several local governments the acceptance of select activities impacting less than three acres of wetlands. These are major strides towards improving wetlands administration in Minnesota. The Board's endorsement of the effort is requested (information attached). **DECISION.**

*** INTERAGENCY PARTNERSHIP AGREEMENT**

The Minnesota Association of Soil and Water Conservation Districts (MASWCD), the Soil Conservation Service (SCS), and the Board of Water and Soil Resources (BWSR) have a unique relationship in delivery of the soil and water conservation to landowners in Minnesota. This relationship is not without its growing pains and requires that we periodically sit back and assess the relationship and redefine the roles and responsibilities so that we can continue to provide effective and efficient delivery of services. Each of the partners bring a special element to the partnership and although are independent organizations we do have a degree of interdependence on each other with respect to soil and water conservation in Minnesota. The three organizations have agreed that it is important to undertake a formal assessment and renewed commitment to the partnership. The attached draft partnership agreement will set the stage for this effort. We envision that during the coming year we will develop specific recommendations that will be brought back to the Board and also be presented to the annual convention of the soil and water conservation districts for ratification. Each of the organizations is reviewing the draft. Staff recommends that the Board endorses this effort and the timeframes envisioned. **DECISION.**

*** METRO GROUNDWATER PLANNING UPDATE**

Groundwater planning for the metro area has been ongoing for several years. BWSR has a responsibility to provide some seed dollars for development of the plans; to provide assistance in the development of the plans; to coordinate state review of the plans; and to review and approve the plans. Ultimately, the groundwater plans become part of the surface water plans to provide for an integrated water management strategy. Annually we take the opportunity to update the Board on the status of the programs and discuss some of the issues relating to implementation of the individual programs. Eric Mohring will review the overall status of the groundwater planning in the metro area and provide a more in-depth update on the development of the Hennepin County groundwater plan. The Hennepin Conservation District is the lead in the development of the groundwater plan. As the plan approached its final development stages, municipal and WMO concerns were raised that has resulted in the plan going through additional local reviews. Numerous issues have been raised during the review, some of substance, some a delay tactic. No action is currently being asked of the Board; however, the issues that have surrounded this plan may lead to future decisions of the Board (summary attached). **DISCUSSION.**

BWSR Members, Advisors, and Staff
February 15, 1994
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*** REVIEW OF PER DIEM POLICY FOR THE BOARD**

The Board asked that we bring a draft policy for Board member expenses to the February meeting. The attached draft reflects state law relating to expenses and also sets forth some Board policies relating to when per diem and expenses are appropriate. **DECISION.**

*** RECONSIDERATION OF SPARTZ APPEAL DECISION**

After last months decision on the Spartz appeal, Mr. Spartz filed a letter with the BWSR asking that we reconsider the decision. It is staff recommendation that the Board **not** reconsider the matter. The Board has given due consideration to the matter and the order of the Board should stand. If the parties to the appeal are aggrieved by the decision of the Board they may appeal to the Court of Appeals as provided by law (letter attached). **DECISION.**

*** MINNESOTA RIVER ASSESSMENT - Tim Koehler, SCS**

Tim has been involved in the Minnesota River Assessment relating to non-point issues that impact the quality of the Minnesota River. He will review with the Board his perspective on the Minnesota River. **INFORMATION AND DISCUSSION.**

If you have any questions or need additional clarification, please feel free to give me a call. Travel safely, I look forward to seeing you on the 23rd!

RDH:mja
Enc.

**BOARD OF WATER AND SOIL RESOURCES
CROWN STERLING SUITES - UNIVERSITY ROOM
175 E. 10TH STREET
ST. PAUL, MINNESOTA 55101
FEBRUARY 23, 1994**

PRELIMINARY AGENDA

- | | |
|------------|---|
| 9:00 a.m. | 1. Call Meeting to Order |
| | 2. Adopt Agenda |
| | 3. Approve Minutes of January 27, 1994 |
| | 4. Reports <ul style="list-style-type: none">● Chairman's Report - Jim Nielsen● Executive Director's Report - Ron Harnack● Committee Reports |
| 9:30 a.m. | 5. Allocation of Special Minnesota River Funding - Wayne Zellmer |
| | 6. Wetland Conservation Memorandum of Agreement |
| | 7. Interagency Partnership Agreement - Ron Harnack |
| 10:30 a.m. | Break |
| | 8. Metro Groundwater Planning Update - Eric Mohring |
| | 9. Review of Per Diem Policy for Board - Ron Harnack |
| 11:30 a.m. | 10. Reconsideration of Spartz Appeal Decision - Ron Harnack |
| Noon | Lunch |
| 1:00 p.m. | 11. Minnesota River Assessment - Tim Koehler, SCS |
| | 12. Advisor Comments <ul style="list-style-type: none">● Curt Borchert, MACDE● Gary Nordstrom, SCS● Marlin Libbesmeier, MAT● Howard Peterson, MAWD● Allan Oehlke, MASWCD● Pat Wulff, MLA |
| | 10. Board Issues - discussion, comments, action needed |
| 3:00 p.m. | Adjourn |

ALLOCATION OF SPECIAL MINNESOTA RIVER BASIN FUND

BACKGROUND

The Board of Water and Soil Resources received additional funding this biennium to accelerate the installation of conservation practices that improve water quality in the Minnesota River Basin. We received \$600,000 for fiscal year 1994 and \$500,000 for fiscal year 1995. The funding was included in the appropriation for the state cost-share program. Consequently, that program must be used as the means of implementation.

On December 30, 1993, an invitation for applications was sent to all SWCDs in the MN River Basin. The BWSR received six applications. Those applying are:

Yellow Medicine SWCD
Cottonwood SWCD
Lincoln SWCD

Redwood-Cottonwood Rivers Control Area
Blue Earth River Basin Initiative
Brown SWCD

GENERAL CRITERIA

All applicants are required to follow general criteria as authorized by the Board in December:

- * Funds will be used for State Cost-Share Program approved practices.
- * Funds will be used in the Minnesota River basin.
- * Funds will be used to benefit water quality.

SUMMARY OF APPLICATIONS

Yellow Medicine SWCD - \$15,552 Funds are requested to improve water quality on the Hawk Yellow Medicine sub-watershed. Funds will be used to install 3,800 feet of terraces and 15,000 feet of field windbreak. Additional technical assistance not needed.

Cottonwood SWCD - \$133,380 Funds are requested to improve water quality in the Mound Creek watershed, above the previously BWSR funded Wellner-Hageman Reservoir. Funds will be used for the construction of four ag waste storage systems and eight erosion control structures. Available technical assistance is adequate.

Lincoln SWCD - \$25,000 Funds will be used to hire a technician specifically for the Yellow Medicine River watershed. This technician will be responsible for the needs, survey, layout, design, and construction supervision of conservation practices.

Redwood-Cottonwood Rivers Control Area - \$200,000 Funds will be used to improve water quality in the Redwood River watershed (\$160,000) for the installation of a multi-purpose dam, three sediment control basins, 800 acres of wetland restoration, 6 waste management systems, 5,000 acres of conservation tillage, 10,000 feet of livestock exclusion, 250 acres of riparian buffer strips, and 10,000 feet of grassed waterways. Funds will also be used for monitoring/evaluation, information/education, and (\$40,000) hiring technical assistance.

Blue Earth River Basin Initiative - \$300,000 Funds will be used to improve water quality in the Blue Earth River basin. \$60,000 will be used to hire an engineering technician, and the remainder (\$240,000) for conservation practice cost-sharing. This funding is a component of a larger long range plan and would be combined with other funds to install priority erosion control structures, storm water control systems, best management practices, animal manure management systems, and critical area stabilization practices.

Brown SWCD - \$73,100 Funds would be used to improve water quality by constructing a complete animal waste storage system in the Mounds Creek watershed and in the Little Cottonwood River watershed. Existing technical assistance is adequate.

Total funds requested - \$747,032

GRANTS TEAM REVIEW **

The Grants Team carefully reviewed each application with the following specific criteria:

- * The application should address the water quality concern by a watershed approach, as endorsed by the Board. The application should evidence a commitment by local government to support the project and for continued SWCD financial support
- * The application should address water quality initiatives with corresponding conservation practices. The application should relate to MRAP studies.
- * The application should respond to applicants/lgu's annual and long range plans.
- * The application should respond to an inventory or assessment, etc., and results should be measurable. If necessary, monitoring efforts beyond traditional cost-share requirements of before and after erosion rates and FLEVAL could be utilized.
- * Sufficient technical assistance should be available to complete objectives.

GRANTS TEAM FUNDING RECOMMENDATIONS

Redwood-Cottonwood Rivers Control Area	- \$185,000
Cottonwood SWCD	- \$133,380
Blue Earth River Basin Initiative	- <u>\$281,620</u>
Total	\$600,000

All three of these applications fully meet general and specific criteria. The total of funds requested exceeded the available \$600,000 so the Grants Team recommendation reduces the funding request of RCRCA \$15,000 and BERBI \$18,380.

Initial priority would be given to these three applicants for the \$500,000 available for FY 95, pending successful utilization of FY 94 funds.

**** Grants Team members :** Wayne Zellmer, Grants Coordinator
Dave Sill, Board Conservationist, Southern Region
Jeff Nielsen, Southern Regional Supervisor
Chris Hofstede, Program Specialist
Jeff St. Ores, SCS, Water Quality Specialist
Tim Larson, MPCA
Dave Peterson, Board Conservationist, Southern Region
Jim Haertel, Board Conservationist, Metro Region
Bruce Sandstrom, Metro Regional Supervisor

**BOARD OF WATER AND SOIL RESOURCES
WHITE TROUT LILY ROOM (LOWER LEVEL)
MOUNT OLIVET RETREAT CENTER
7984 - 25TH STREET WEST
FARMINGTON, MINNESOTA 55024
JANUARY 27, 1994**

Appointed Members Present: Jim Nielsen, Jim Rossman, Howard Peterson, Barbara Cobb, Warren Rodning, Dwain Otte, Tim Hvidsten, Glenn Annexstad, Ted Lovdahl, Kathleen Roer, Barbara Uppgaard, and Marvell Tripp.

Agency Members Present:

Paul Burns, Minnesota Department of Agriculture (MDA)
Wayne Edgerton, Minnesota Department of Natural Resources (DNR)
Fred Bergsrud, Minnesota Extension Service (MES)

Agency Members Absent:

Kim Benson-Johnson, Minnesota Department of Health (MDH)
Wayne Anderson, Minnesota Pollution Control Agency (MPCA)

Staff Present:

Ron Harnack
Jim Birkholz
Wayne Zellmer
Doug Thomas
Jeff Nielsen
Chris Hofstede
Ron Shelito
Al Kean
Bruce Sandstrom
Mary Jo Anderson

Chairman Nielsen called the meeting to order at 12:40 p.m.

Chairman welcomed and introduced new members: Marvell Tripp, Tim Hvidsten, and Glenn Annexstad. Jim Rossman was reappointed.

Adopt Agenda - Chairman stated that the Dispute Resolution Committee (DRC) will be moved to the end of the agenda. Moved by Lovdahl, seconded by Rossman, to adopt the agenda as presented. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Minutes of December 9, 1993 - Moved by Peterson, seconded by Otte, to approve the minutes of December 9, 1993, as circulated. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Executive Director's Report - Ron Harnack reported that agency Legislative Commission on Minnesota Resources (LCMR) proposals are to be submitted to the Department of Finance on Friday. Ron will update members on the proposals next month.

Ron reported that the Wetland Conservation Act (WCA) was a major issue in January, particularly how counties mitigate highway projects the cost of program administration. Ron attended the policy committee meetings of the Association of Minnesota Counties (AMC) last week.

Committee Reports - Chairman Nielsen commented on the committee assignment sheet dated January 17, 1994, (attached). He would like to review the committees again with Ron Harnack and will make assignments at the February meeting. He asked members to contact him with interest for committees.

Neal Dodd RIM Easement Modification - Al Kean presented and referred to the January 18, 1994 memo from Marybeth Block (attached). Moved by Dwain Otte, seconded by Jim Rossman, to approve the staff recommendation of Option #4 to release 1.8 acres (1.3 acre access land 33' wide and .5 acre parking area) in exchange for 7.1 acres of native prairie. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Cost-Share Roll-Over Allocation - Wayne Zellmer summarized the FY94 roll-over fund allocation (attached). Discussion followed. Wayne said that a synopsis of each project will be provided to members. Wayne explained the criteria that the grant team used to make the allocations, which is consistent with previous years. Moved by Lovdahl, seconded by Tripp, to approve the FY94 cost-share roll-over allocations as recommended by staff. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Pestorous Reinvest in Minnesota (RIM) Reserve Program Easement Violation - Ron Harnack summarized the attached violation and reported that Jennifer Park, Attorney General's office, recommended approval of the settlement agreement for the RIM violation. Discussion followed. Moved by Rodning, seconded by Uppgaard, to accept the Attorney General's recommendation to approve settlement agreement. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Otte, Rodning, Roer, Tripp, Uppgaard, and Nielsen. Opposed: Rossman. Carried.

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94-05

Block Grant/Wetland Conservation Act (WCA) - Doug Thomas summarized the status of the 1994 block grant application (list attached). Staff recommends option A - allowing the grants to be finalized with the understanding that the county is making progress towards adoption of WCA and needs additional time to coordinate with other units of government within the county before final adoption. Discussion followed. Moved by Rossman, seconded by Uppgaard, to accept staff recommendation to approve Option A, and send letter of allocation notification to counties. A letter noting the date of moratorium (March 15) will be sent to counties that have not adopted. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

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94-06

Dispute Resolution Committee Recommendation - Spartz vs. Minnehaha Creek Watershed District (MCWD) - Kathy Roer, chair of the DRC, updated the BWSR on the various appeals the DRC has been hearing. Kathy reported that after hearings and deliberation in the Spartz vs. Minnehaha Creek Watershed District appeal, the DRC's recommendation is to affirm the MCWD's offer to withdraw the contractor's conditional license on this project but continue to exist, and that the contractor will work with a certified engineer until March when he will need to reapply for a license; and reverse the order to repair the work. Moved by Rossman, seconded by Peterson, to adopt the recommendation of the DRC to affirm paragraphs 3, 4, and 5 and reverse paragraphs 1 and 2 of the Order of the MCWD dated January 27, 1993, in the matter of Shoreline Improvement Contractor's License of Landview Landscaping, Inc. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

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94-07

Watershed District Overall Plan Guidelines - Doug Thomas summarized the staff recommendation guidelines to work with watershed districts (attached). Moved by Peterson, seconded by Lovdahl, that BWSR endorse the proposed draft; staff directed to work with Minnesota Association of Watershed Districts (MAWD) to review guidelines and report back at a future BWSR meeting with recommendation. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

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94-08

Howard Peterson, on behalf of MAWD, invited BWSR to attend their legislative breakfast on March 10 at Kelly Inn, at 7:00 a.m.

Wetland Heritage Advisory Committee (WHAC) - Ron Harnack briefly reported on the

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94-09

WHAC proposed draft study and report on wetland issues (attached). Staff will distribute information to members when report is received. Discussion followed. Moved by Rodning, seconded by Rossman, that BWSR to receive the WHAC report. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

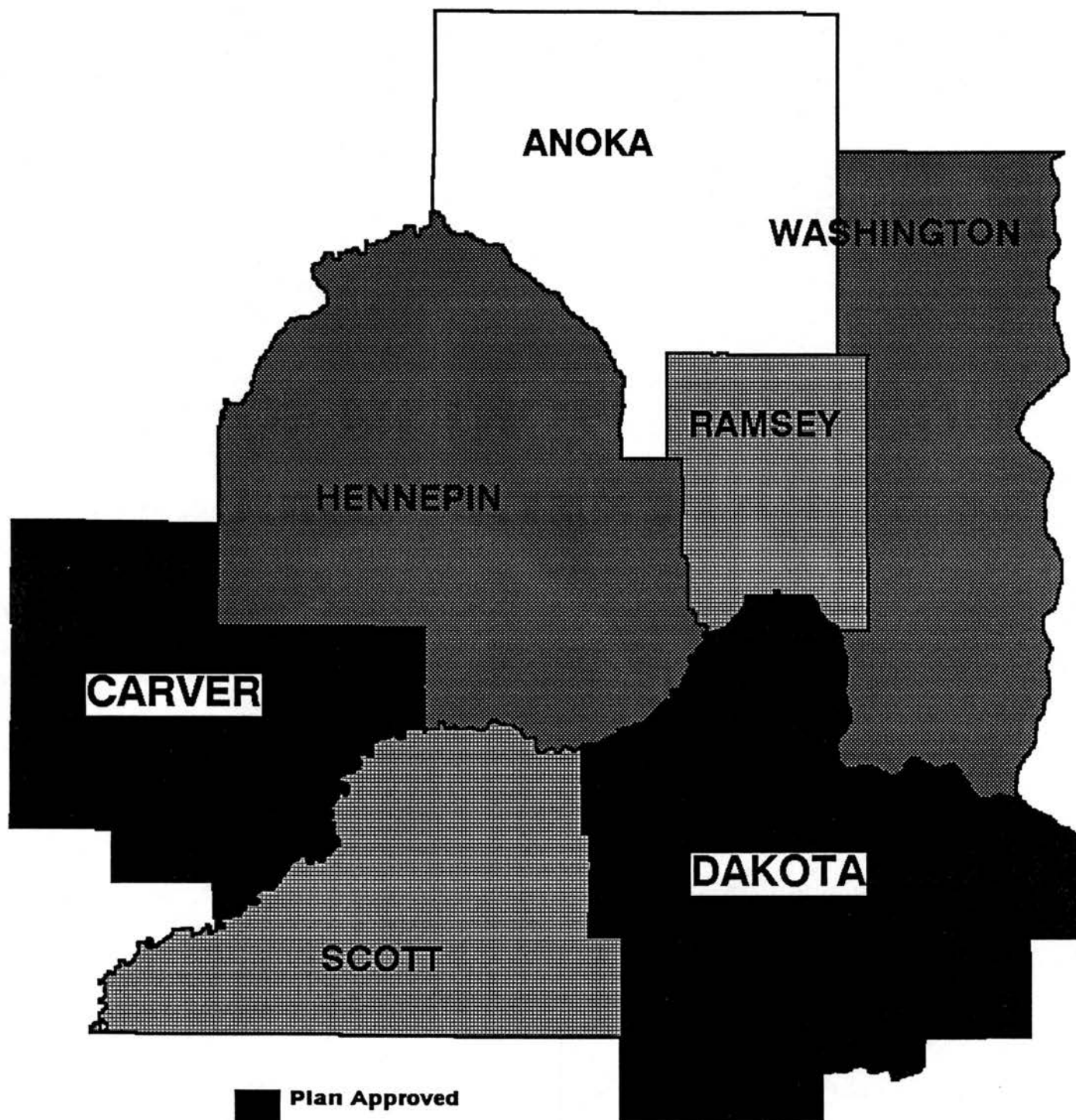
The BWSR's next meetings are scheduled for February 23, March 23, and April 27.

Chairman Nielsen adjourned the meeting at 2:40 p.m.

Respectfully submitted,

D. James Nielsen
Chairman

STATUS OF METRO COUNTY GROUND WATER PLANNING



Hennepin County Ground Water Plan Chronology

- 1988 - Hennepin County Commissioners resolve to prepare a county ground water plan, and assign the preparation of the plan to the Hennepin Conservation District (HCD)
- 1989 - Hennepin County Geologic Atlas published by the Minnesota Geological Survey and the HCD.
- 4/16/92 - Executive summary of the plan sent to municipalities and WMOs, who were invited to a series of meetings to offer comments and suggestions.
- 4/30/92 - First public meeting - general approach of the plan discussed.
- 5/26/92 - Entire draft ground water plan sent to municipalities and WMOs.
- 6/24/92 - Second informational meeting held.
- 8/20/92 - Third informational meeting held.
- 10/92 - Plan sent to local governments for review, and to state agencies and the Met. Council for preliminary review.
- 11/92 - Cities and WMOs provide comments, ask for extension in review time allowed. Several resolutions from cities and WMOs opposing plan.
- 12/92-2/93 State agencies provide comments to draft plan.
- 1/19/93 - County conducts workshop to hear city and WMO concerns.
- 2/4/93 - County Board conducts public hearing on plan. Directs staff to incorporate suggested changes into plan, analyze economic impacts of plan. Postpones consideration until June, 1993.
- 8/25/93 - New draft of plan finished.
- 12/14/93 - County Board resolves to forward the plan to the Met. Council and State agencies for final review.

EXECUTIVE GUIDE

to the

HENNEPIN COUNTY GROUND WATER PLAN

Introduction

Ground water is one of the most important natural resources of Hennepin County. Almost all ground water used within Hennepin County is recharged within the County. Hence, the people of Hennepin County have a direct influence on the quality of the ground water that they use.

Preventing contamination is much cheaper than cleaning a polluted resource. County ground water plans are guides to help local governments prevent ground water contamination. A basic premise of this plan is that decision-makers need accurate information about ground water resources as decisions become more complex and as activities present greater threats to ground water quality. A second premise is that local

ground water protection should use the licensing, permitting, and zoning authority that is already inherent in the powers of city government. This plan is the county ground water plan for Hennepin County as provided by Minnesota Statutes, §103B.255.

This plan presents five elements for ground water protection: 1) consider the location and nature of sensitive geologic areas and wellhead protection areas when making planning and management decisions; 2) inventory potential contaminant sources; 3) rank individual sites or types of sites according to the risk they present to ground water; 4) manage sites according to the risk they present; and 5) coordinate protection efforts with adjacent cities.

The Ground Water System

The ground water system in Hennepin County is complex but understandable and predictable. There are five major aquifers in the county lying one on top of the other like so many layers in a cake. Only the two deepest aquifers underlie the entire county. The other three underlie smaller areas of the county.

Protecting ground water on a county basis makes sense because the Hennepin County political boundaries are also ground water flow system boundaries. Most of the ground water used by county residents originates as precipitation that falls within the county and recharges aquifers. Ground water is removed either by pumping or by flowing toward the county boundaries where it

discharges into the Mississippi, Minnesota, and Crow rivers.

The natural hydrologic cycle of precipitation, recharge, ground water flow, discharge to surface water, evaporation, and precipitation varies on a time scale from days to tens of thousands of years. Deeper aquifers have longer circulation periods. Pumping on the scale which occurs in Hennepin County greatly accelerates the hydrologic cycle. The result is that ground water contamination problems are problems of the present. The majority of the present population will live to see, and perhaps drink, ground water that becomes contaminated today.

Contamination Problems

Ground water becomes polluted when a contaminant moves downward from the land

surface to an aquifer. Almost all sources of ground water contamination result from local

activities within Hennepin County. Many activities in the county pose a serious contamination threat to aquifers. Hazardous materials are more common than most people realize. Any material that is flammable, corrosive, reactive, or toxic is considered hazardous. A search of the typical household will reveal a surprising quantity and variety of

hazardous materials. Presently, more than 8,200 sites in Hennepin County are known to store fuels or handle hazardous materials. Releases of hazardous materials have occurred at thousands of sites in the county. These releases that range from minor to national importance.

Guide to Local Protection Efforts

The following list of practices for ground water protection are recommended in the ground water plan:

Make an inventory of all potential sources of contamination. Cities should know where potential contaminant sources are located before making management decisions. Most cities can perform an inventory by reviewing permit and licensing files and lists compiled for the fire department and for emergency response plans.

Manage according to geographic location and hazard potential. Cities must set priorities to use limited resources where they can be most effective. The threat that any particular potential contaminant source presents to ground water is directly related to its geographic location relative to wellhead protection areas and sensitive geologic areas, and to the amounts and types of hazardous materials it uses.

Implement wellhead protection for all public supply wells. A wellhead protection area (WHPA) is a boundary around the area from which a well pulls its water. Contaminants that enter the soil within the WHPA will eventually reach the well. WHPAs should become overlay zoning districts.

Apply existing authority to protect ground water. One or more management tools exist for any activity that can contaminate ground water. The plan indicates tools that cities can use for each type of activity or land use.

Understand the significance of sensitive geologic areas when making land use decisions. All areas are

geologically sensitive to some degree, but contaminants can reach ground water much faster in areas of high sensitivity than in other areas. Knowledge and understanding of geologic sensitivity can be a guide for planning and management decisions.

Rank and manage hazardous land use activities according to risk. To efficiently use limited resources, cities should concentrate management efforts on activities or sites which pose the highest risk. A single hazard ranking system will be developed and used throughout the county.

Use a GIS system to manage information. Information management is a vital asset to decision-makers. A geographic information system is unique in its ability to manipulate large amounts of data from various sources and produce maps displaying the data in a way that is meaningful.

Demand leak detection, spill containment, and good housekeeping practices to mitigate location and hazard ranking. These practices will help insure that hazardous materials or wastes released to the environment are promptly and properly captured before they can contaminate ground water.

Locate and seal abandoned wells. There are an estimated 121,000 to 147,000 abandoned wells in the county. Such wells are direct conduits for contaminants to reach aquifers, or move from one aquifer to another.

Implement conservation practices for water use. Discouraging wasteful consumption is always a good conservation practice.

The Ground Water Resources Board

A fragmented approach, where each city takes its own course without knowing what its neighbor is doing, will not protect ground water. The plan recommends that the Board of Hennepin County Commissioners appoint a Ground Water Resources Board consisting of elected local officials. The Ground Water Resources Board will be given significant self-determination to its operation. The Board will be funded by Hennepin County.

The Ground Water Resources Board will guide development of a hazard ranking system

for potential contaminant sources, of methods of contaminant source inventories, of methods of efficient data storage and transfer, and model ordinances for sensitive geologic areas and wellhead protection areas. The Ground Water Resources Board can also provide a formal mechanism for dispute resolution and joint management of special areas that overlap political boundaries, such as wellhead protection areas and sensitive geologic areas.

Hennepin County

The plan recommends that County ordinances related to solid and hazardous wastes be amended to require formal hydrologic investigations for certain licenses. The Hennepin County Department of Environmental Management (HC-DEM) will work with HCD to prepare the hazard ranking

system. Abandoned wells reported to HC-DEM will be prioritized for sealing. The Hennepin County Environmental Health Department will investigate the feasibility of a delegation of agreement with the Minnesota Department of Health regarding the state well code.

Hennepin Conservation District

Hennepin Conservation District (HCD) will provide technical services to cities including delineation of WHPAs and help with compliance with the state wellhead protection program, inventories of potential sources of contamination and abandoned

wells, GIS services, and transform computer data files into formats to meet city requirements. HCD will map geologic sensitivity. HCD will also assist in the organization, administration of the Ground Water Resources Board.

Some Concluding Thoughts

Citizens are demanding that ground water be protected. They realize that prevention is far more effective than remediation. This plan involves cities participating in ground water protection, an issue that many of them have not explicitly addressed in the past. The success of the county ground water plan is directly related to the commitment the cities make to protecting ground water. Should it fail, the Legislature is likely to require a process that is less palatable and more expensive to cities.

Today, the environment is deteriorating from the effects of human activities and man-made chemicals. Protecting ground water resources in Hennepin County is a good investment in the environmental and economic integrity of Hennepin County for the generations of today and the future.

Landview Landscaping
3670 Hwy 7
Excelsior, MN 55331
Office: (612) 470-5263
Owner: Stephen Spartz

Disputes & Resolutions Committee
Board of Water & Soil Resource
155 South Wabasha Suite 104
St Paul, MN 55101

DATE: January 31, 1994

RE: Request for rehearing.

Dear BWSR,

I, Mr. Spartz, would like to present this letter as a request for a rehearing for the following reasons. Mr. Spartz claims that BWSR did not have an adequate record to base their decision and were not fully informed (lack of Mr. Spartz's response to Louis Smith's cases regarding principle of law regarding licensing and conditions on licenses) and they proceeded against the substantial weight of the evidence (Conditions are specifically limited to the conditions contained in Rule M itself and the MCWD lacks the authority to License shoreline erosion contractors).

The Supreme Court has ruled that a party aggrieved by the action of an administrative body in connection with a license application must exhaust the available administrative remedies before resorting to the courts for relief. (See *City of Columbia v. Abbott*, 238 S. E. 2d 177, 269 S.C. 504.) I am asking for a rehearing, in doing so I attempt to exhaust the available administrative remedies before I resort to the courts for relief.

It is generally within the discretion of the board, officer, or administrative agency which has conducted a licensee disciplinary hearing to grant or deny a rehearing. (See *Baldrige v. Department of Registration and Ed.*, 367 N. E. 2d 95, Ill. Dec. 661, 52 Ill. App.3d 568.)

A rehearing may be granted where the board, officer, or administrative agency has proceeded against the substantial weight of the evidence and proceeded on the basis of an inadequate record or not fully informed. (See *Ulrey v. Department of Registration and E.*, 370 N. E. 2d 1, 12 Ill Dec. 378, 54 Ill. App.3d 408.)

As a statutory prerequisite to an appeal, it may be required that all administrative remedies be exhausted. (*One Way Liquors, Inc v. Byrne*, 435 N. E.2d 144, 61 Ill.Dec. 655, 105 Ill.App.3d 856.). After all administrative remedies have been exhausted, the time within which to perfect an appeal to the court starts to run, and the appeal must be perfected within such time or it is barred.

I would like to know if there are other available remedies available to me other than this

letter for you to consider a rehearing or reversal of the decision?

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of the ordinance itself. It was the case of upholding the denial of a parking lot owner's license renewal for failure of the licensee to provide adequate security for parked cars, even though the parking lot ordinance was silent on the issue of security and permitted license applications to be denied only "for cause.") Mr. Smith stated that his research has revealed no case in which a court has struck down the grant of a conditional license. This is simply false - There are cases. My research has shown that Mr. Smiths cases do not apply to Landview's conditional license. Matt Seltzer, BWSR's legal counsel, himself stated

that even though Mr. Smiths cases are good, they do not apply in this situation and the conditions imposed should be limited to Rule (M) itself.

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The Supreme Court has upheld that Statutes and ordinances imposing licensing and business taxes are generally to be construed liberally in favor of the citizen and strictly against the government, whether state or municipal, especially where they provide

penalties for their violation. Moreover, license laws cannot be extended by construction. (State v. Green, 460 A.2d 444, 143 Vt. 87.) (Thomson v. Georgia Power Co., 37 S.E.2d 622, 73 Ga. App. 587). Accordingly, if the enactment is not clear and positive in its terms, or if it

is reasonably open to different interpretations through the indefiniteness of its provisions, every doubt as to construction must be resolved in favor of the one against whom the enactment is sought to be applied. (Stone v. Rogers, 189 So. 810, 186 Miss. 53) (Thomson v. Georgia Power Co., 37 S.E.2d 622, 73 Ga. App. 587)

Furthermore the Supreme Court has ruled that the licensee is not bound to comply with invalid regulations. (U.S. v. McMurtry, D.C. N. Y., 48 F.2d 258)

The Supreme Court has concluded that under licensing authority, where a statute vests public officials with a discretion to grant, refuse, or revoke a license to carry on a ordinarily

lawful business and does not set an express standards to guide and govern the exercise of such discretion, the attempted delegation of licensing power is a nullity. (Town of New Milford v. SCA services of Connecticut, Inc., 348 A. 2d 337, 174 Conn. 146.)

Mr. Spart has stated several times that the MCWD Standards for shoreline restoration do not coincide with the DNR State Requirements or for that matter the clearly established engineering principles. (See Landview's 1st brief Facts 7-10, 25 or Landview's 2nd brief Fact 1)

A Licensing Authority, Board, or Municipality may not enact a licensing ordinance where such ordinance is in conflict with or inconsistent with the general laws or with the public policy of the State. (Lisenba v. Griffin, 8 So.2d 175, 242 Ala. 679), (Meridian, Limited, v. Sippy, 128 P.2d 884, 54 C.A. 2d 214.), (Richards v. City of Pontiac, 9 N.W.2d 885, 305 Mich. 666.), (In re Porterfield, 168, 168 P.2d 706, 28 C.2d 91.), (Schul v. King, Com.Pl., 70 N.E.2d 378, 35 O.O. 238).

It has been noted in the hearing that the MCWD's Jurisdiction covers approximately 14 municipalities specifically limited to 931.5 flood plain elevation. It has also been noted that

no other watershed has licensing in effect for any business or occupation. The Legislature

has not expressly authorized the MCWD to regulate Shoreline Restoration Contractors or Dredging through the use of Licensing.

Pursuant to Minnesota Statute 103D.335 Subdivision 1(5). A watershed district has the power, to the extent necessary for lawful conservation purposes: (5) to perform all acts expressly authorized, and all other acts necessary and proper for the watershed district to carry out and exercise the powers expressly vested in it. Pursuant to Minnesota Statute 103D.341 Subdivision 1. The managers must adopt rules to accomplish the purposes of this chapter and to implement the powers of the managers.

The MCWD has adopted Rule M which is/was not expressly authorized by the Legislature to carry out their watershed management plan.

The Supreme Court has upheld where the activity or subject of the regulation is not

peculiarly local in character, the regulatory power under the general welfare clause is not to be extended beyond its scope unless it clearly appears that the legislature so intended. (Village of Brooklyn Center v. Rippen (1959) 255 Minn. 334, 96 N.W.2d 585.) Where an activity, such as boating, by its nature is customarily engaged in over a wide area which encompassed a number of municipalities or governmental subdivisions, it presents a statewide problem and not a matter which is peculiarly subject to local regulations. Riprap is a statewide problem needing State (DNR) Licensing and Legislative approval. !!!!!!!!

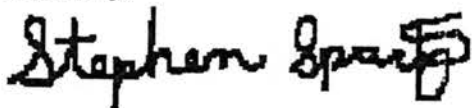
A rehearing should be granted if the BWSR decides it has proceeded against the substantial weight of the evidence and proceeded on the basis of an inadequate record or was not fully informed.

I, Stephen Spartz, believe that in order for the DNR, Watershed Districts, and the BWSR to operate effectively as a group or solve problems effectively the BWSR must take control of the problems and not throw them to the courts. This is one of the reasons why as a statutory prerequisite to an appeal, it may be required that all administrative remedies be exhausted. If the BWSR and Landview Landscaping do not take control and reprimand Watershed District Managers like the MCWD Managers for practicing Non, Mal and Misfeasance as demonstrated in Landview's case, it will actually promote the activity, and we will continually be bombarded by the MCWD or watersheds with similar cases. Cases are going to get out of control and the BWSR will lose its power and effectiveness. In turn you will be looked down upon by the State and Legislature for your ability to carry out your plan and purpose that the taxpayers are paying you for. Let's get the job done right the first time and solve the problems demonstrated in Landview's case.

1. Rewrite Rule F.
2. Remove Rule M and similar rules.
3. Focus on the Future and not the Past.
4. The BWSR, DNR and Watersheds with Contractors aid must come up with uniform standards in compliance with each other and the clearly established Engineering Principles. Deregulate and do not overlap authority as demonstrated by DNR and Watersheds. The Current plan equals double taxation.

Please accept this letter for a rehearing by your Board (DRC).

Sincerely,



Stephen Spartz
Contractor Landview Landscaping

cc: BWSR
MCWD, Coordinator, Ellen Sones
MCWD, Attorney, Louis Smith
Hennepin County Attorney, Arthur Katzman
Hennepin County Commissioner, Emily Anne Staples

custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

Sec. 23. APPLICATION.

Sections 7 and 21 apply in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington and are effective the day following final enactment.

Sec. 24. REPEALER.

Minnesota Statutes 1989 Supplement, section 16B.465, subdivision 5, is repealed.

Sec. 25. EFFECTIVE DATE.

Sections 15 and 16 are effective July 1, 1990.

Presented to the governor April 24, 1990

Signed by the governor April 26, 1990, 11:19 p.m.

*others
Eff.
8-1-90*

CHAPTER 507—S.F.No. 2424

An act relating to insurance; life; regulating policies with accelerated benefits; modifying the application of certain provisions; prescribing a penalty; amending Minnesota Statutes 1989 Supplement, section 61A.072, subdivision 3, and by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1989 Supplement, section 61A.072, subdivision 3, is amended to read:

Subd. 3. **PROHIBITION.** (a) No contract or supplemental contract providing for the payment of accelerated benefits may be offered or sold to an individual over the age of 65 years.

(b) This prohibition does not apply to a supplemental contract offered for no additional cost if the offer is made not less than one year after the effective date of the contract being supplemented. Further, when the original contract is

New language is indicated by underline, deletions by ~~strikeout~~.

Res
My

STATE OF MINNESOTA
Office of the Attorney General

TO : BRUCE SANDSTROM
BWSR

FROM : MATTHEW B. SELTZER 
Assistant Attorney General

DATE : February 10, 1994

PHONE : 296-0692 (Voice)
296-7000 (TDD)

SUBJECT: BWSR/Landview Appeal

Attached is the revised Order for the Landview appeal. This is substantially the same as the draft which I sent you on February 1, 1994. The only changes are as follows:

1. Second full paragraph on page 2 - expanded description of record to include reference to Findings of Fact and Conclusions.
2. Second full paragraph on Page 3 - clarified that the January 12, 1994 meeting was recessed and continued until January 27, 1994.

Kathy Roer said that she was satisfied with the Order and that it could be forwarded to the Chair for his signature. (As you can see, it should be signed in two places.) After it is signed, copies of the Order should be served upon the parties by first class mail. If your office does not have a form of an affidavit of service, I can provide you with the same.

In the letter of January 31, 1994 from Steve Spartz, Landview requested reconsideration by BWSR. There is no mention of a rehearing in Minn. Stat. § 103D.537. However, Minn. Stat. § 103D.537(b) specifies that a decision of BWSR is subject to judicial review by the Court of Appeals under Minn. Stat. §§ 14.63-14.69. Minn. Stat. § 14.64 provides, in part, as follows:

If a request for reconsideration is made within ten days after the decision and order of the agency, the 30-day period provided in Section 14.63 [for filing a petition for judicial review by the Court of Appeals] shall not begin to run until service of the order finally disposing of the application for reconsideration. Nothing herein shall be construed as requiring that an application for reconsideration be filed with and disposed of by the agency as a prerequisite to the institution of a review proceeding under Sections 14.63 to 14.68.

* [In light of the above provision of Minn. Stat. § 14.64, it would seem advisable for the BWSR Board to pass a resolution on whether or not the request for reconsideration should be granted. I assume that the BWSR Board would most likely rule against reconsideration. I could then prepare an Order denying the request for reconsideration. It would seem desirable, therefore, to have the matter on the agenda for the February 23rd meeting of the

Bruce Sandstrom
February 10, 1994
Page 2

BWSR Board. I discussed this issue with Kathy Roer. After weighing the pros and cons of various approaches, she agreed that this would probably be a prudent way to put to rest the issue of the request for reconsideration and the time period for filing a petition for judicial review.

Please let me know if you have any questions or comments on anything in this Memorandum or the attached Order.

Enclosure

cc: Ron Harnack
Kathleen Roer

selt:AF6

Minnesota Board of Water and Soil Resources
155 South Wabasha Street, Suite 104
St. Paul, Minnesota 55107

In the Matter of the Appeal of Landview
Landscaping, Inc. from an Order of the
Minnehaha Creek Watershed District

ORDER

On September 27, 1993, the Minnehaha Creek Watershed District (MCWD) issued an Order (MCWD Order) granting Landview Landscaping, Inc. (Landview) a conditional shoreline improvement contractor's license pursuant to MCWD Rule M. The MCWD Order provides as follows:

Landview Landscaping, Inc. is hereby granted a conditional license for a probationary period from September 23, 1993, to March 31, 1994, with the following conditions:

1. Landview must perform the following remedial work necessary for Project 93-32, Christopher Smith, 3650 Casco Avenue, Orono, Minnesota, to be completed on or before January 15, 1994:
 - a. the portion of the riprap wall extending into the neighboring property shall be removed and the shoreline restored to the original condition; or, reconstructed by a shoreline improvement contractor licensed under District Rule M, to conform with District standards, and only upon the filing and approval of a separate permit application by the neighboring property owner;
 - b. the elevation of the third tier of boulders must be lowered, the boulders must be moved back, and sufficient landscape rock and fill soil removed in order to achieve an overall slope of 2:1 and to return the shoreline to the permitted natural grade, as delineated by the diagram prepared by District Engineer Syverson and sent to Landview on June 15, 1993 (See Exhibit 22);
 - c. the existing voids between the boulders must be filled; the placement of hand-size boulders into existing voids will be acceptable as a remedial measure considering the difficulty associated with totally reconstructing the project;
 - d. the timber board must be lowered in elevation to fit along the repositioned tier three boulders;
 - e. all remedial work directed by this order shall be inspected by MCWD staff as necessary to assure compliance with District standards and permit conditions;

2. Landview must post a performance bond on or before October 1, 1993, in the amount of \$5,000, in addition to the bond posted with Landview's license application, (a) to guarantee the performance of the above-described remedial work on Project 93-32 on or before January 15, 1994; and (b) to remain in force and effect until September 15, 1994, to guarantee that there is no significant erosion. A copy of these Findings of Fact, Conclusions, and Order shall be attached to the bond;
3. Landview must comply with all MCWD Rules, license requirements (including insurance), and permit conditions on all future projects; any exceptional lakeshore circumstances must, pursuant to MCWD Rule F, be addressed specifically in the permit application and project design;
4. Each shoreline improvement project performed by Landview during this license term (until March 31, 1994) shall, at the expense of Landview, be inspected and certified by an independent licensed professional engineer selected by Landview that the project as built meets District rules and permit conditions;
5. The violation of any District Rules, permit conditions, license requirements, or other applicable law, as well as any of the above conditions, will result in the immediate suspension of this license and a hearing to consider revocation.

On October 26, 1993, Landview filed an appeal of the MCWD Order with the Minnesota Board of Water and Soil Resources (BWSR) pursuant to Minn. Stat. § 103D.537(a).

The record made in the proceeding before MCWD as received by BWSR includes: transcripts of public hearings on August 31, 1993, September 8, 1993, and September 15, 1993; a group of 76 exhibits numbered consecutively from Exhibit 1 through Exhibit 76; and, the MCWD Order with accompanying findings of fact and conclusions.

At a meeting on January 12, 1994 in St. Paul, Minnesota, the Dispute Resolution Committee (DRC) of BWSR heard oral arguments on Landview's appeal. Steven Spartz, President of Landview, appeared for Landview. Louis Smith, MCWD Legal Counsel, appeared for MCWD. Matthew B. Seltzer, Assistant Attorney General, attended the meeting as legal counsel for BWSR.

At the meeting of the DRC on January 12, 1994, Landview moved for the addition to the record of certain exhibits that were marked for identification as Exhibits 4A, 4B, 21A,

41A, 42A, 42B, 77, 78, 79 and 80. MCWD subsequently submitted an additional proposed Exhibit that was marked for identification as Exhibit 81.

The January 12, 1994 meeting of the DRC was recessed and continued until January 27, 1994.

The January 27, 1994 of the DRC was held in Farmington, Minnesota. Steven Spartz appeared for Landview. Louis Smith appeared for MCWD. Matthew B. Seltzer attended the meeting as legal counsel for BWSR. The DRC adopted a resolution recommending that the exhibits marked for identification as Exhibits 4B, 21A, 78, and 81 should be added to the record. The DRC also adopted a resolution recommending that BWSR should reverse Paragraphs 1 and 2 of the Order and affirm Paragraphs 3, 4, and 5 of the Order.

At a meeting of BWSR on January 27, 1994 in Farmington, Minnesota, BWSR adopted a resolution to accept the recommendations of the DRC and authorize the Chair of BWSR to issue an order consistent with the recommendations of the DRC.

Based on the entire record of this proceeding, BWSR makes the following:

ORDER

1. The exhibits marked for identification as Exhibits 4B, 21A, 78, and 81 are added to the record. The motion to add the other proposed additional exhibits to the record is denied.
2. Paragraphs 1 and 2 of the MCWD Order are reversed.
3. Paragraphs 3, 4, and 5 of the MCWD Order are affirmed, such that Landview is granted a conditional license for a probationary period from September 23, 1993 to March 31, 1994 with the conditions stated in Paragraphs 3, 4, and 5 of the MCWD Order.

Minnesota Board of Water and Soil Resources

Dated: February ____, 1994

By _____
Its Chair

MEMORANDUM

The record in this case demonstrates that it is reasonable to impose conditions upon Landview's license. Among other things, the record establishes that Landview failed to comply with applicable rules and permit conditions.

Since it is reasonable to impose conditions upon Landview's license, the question then arises as to what conditions are reasonable under the circumstances. At its meeting on January 27, 1994, the DRC considered whether the record provided a sufficient basis to support the reasonableness of all the conditions specified in the MCWD Order, especially the reasonableness of certain aspects of the remedial work ordered for the Smith property. The DRC considered the possibility of remanding this matter back to the MCWD to reconsider the reasonableness of certain conditions imposed upon Landview's license. At the meeting of the DRC on January 27, 1994, MCWD legal counsel stated that MCWD would not object to (and would not appeal) the reversal of Sections 1 and 2 of the MCWD Order pertaining to the remedial work on the Smith property if Sections 3, 4, and 5 of the MCWD Order were affirmed. BWSR finds that the record in this case provides a reasonable basis to impose the conditions specified in Sections 3, 4, and 5 of the MCWD Order. In particular, in circumstances such as the present case where the record shows a failure to comply with rules and permit conditions, it is reasonable to require certification by an independent licensed professional engineer in the manner required by Section 4 of the MCWD Order.

Minnesota Board of Water and Soil Resources

Dated: February ____, 1994

By _____
Its Chair

selt.AF3

Fax Cover Page

SUBJECT:**To: BWSR****From: Stephen Spartz****Re: Request for Rehearing**

Note: The BWSR made a mistake and I want you to know about it.

cc: BWSR**MCWD, District Coordinator, Ellen Sones****MCWD, District Attorney, Louis Smith****Hennepin County Attorney, Arthur Katzman****Hennepin County Commissioner, Emily Anne Staples**

To: Jim Haertel

From : Stephen Spartz

For Information Call: 612-470-5263

At: Landview Landscaping

Pages: 6

My Fax Number : 612-470-5263

Landview Landscaping
3670 Hwy 7
Excelsior, MN 55331
Office: (612) 470-5263
Owner: Stephen Spartz

Disputes & Resolutions Committee
Board of Water & Soil Resource
155 South Wabasha Suite 104
St Paul, MN 55101

DATE: January 31, 1994

RE: Request for rehearing.

Dear BWSR,

I, Mr. Spartz, would like to present this letter as a request for a rehearing for the following reasons. Mr. Spartz claims that BWSR did not have an adequate record to base their decision and were not fully informed (lack of Mr. Spartz's response to Louis Smith's cases regarding principle of law regarding licensing and conditions on licenses) and they proceeded against the substantial weight of the evidence (Conditions are specifically limited to the conditions contained in Rule M itself and the MCWD lacks the authority to License shoreline erosion contractors).

The Supreme Court has ruled that a party aggrieved by the action of an administrative body in connection with a license application must exhaust the available administrative remedies before resorting to the courts for relief. (See City of Columbia v. Abbott, 238 S. E. 2d 177, 269 S.C. 504.) I am asking for a rehearing, in doing so I attempt to exhaust the available administrative remedies before I resort to the courts for relief.

It is generally within the discretion of the board, officer, or administrative agency which has conducted a licensee disciplinary hearing to grant or deny a rehearing. (See Baldrige v. Department of Registration and Ed., 367 N. E. 2d 95, Ill. Dec. 661, 52 Ill. App.3d 568.)

A rehearing may be granted where the board, officer, or administrative agency has proceeded against the substantial weight of the evidence and proceeded on the basis of an inadequate record or not fully informed. (See Ulrey v. Department of Registration and E., 370 N. E. 2d 1, 12 Ill Dec. 378, 54 Ill. App.3d 408.)

As a statutory prerequisite to an appeal it may be required that all administrative remedies be exhausted. (One Way Liquors, Inc v. Byrne, 435 N. E.2d 144, 61 Ill.Dec. 655, 105 Ill.App.3d 856.). After all administrative remedies have been exhausted, the time within which to perfect an appeal to the court starts to run, and the appeal must be perfected within such time or it is barred.

I would like to know if there are other available remedies available to me other than this

letter for you to consider a rehearing or reversal of the decision?

Generally, the decision of the board or agency is subject to judicial review if it is found that procedural defects may have been present in the hearing, (*E & H Enterprises, Inc. v. Skaggs*, app., 607 S.W.2d 215.) if there is a question as to whether the board or agency exceeded its authority, (*Voelz v. Board of Engineering Examiners of Dept. of Commerce*, 586 P.2d 807, 37 Or.App. 113.) or whether its final judgement or order is supported by the substantial weight of the evidence (*Voelz v. Board of Engineering Examiners of Dept. of Commerce*, 586 P.2d 807, 37 Or.App. 113.) or if there may be problems of constitutional proportions (*Voelz v. Board of Engineering Examiners of Dept. of Commerce*, 586 P.2d 807, 37 Or.App. 113.).

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The Supreme Court has upheld that Statutes and ordinances imposing licensing and business taxes are generally to be construed liberally in favor of the citizen and strictly against the government, whether state or municipal, especially where they provide

penalties for their violation. Moreover, license laws cannot be extended by construction. (State v. Green, 460 A.2d 444, 143 W. 87.) (Thomson v. Georgia Power Co., 37 S.E.2d 622, 73 Ga. App. 587). Accordingly, if the enactment is not clear and positive in its terms, or if it

is reasonably open to different interpretations through the indefiniteness of its provisions, every doubt as to construction must be resolved in favor of the one against whom the enactment is sought to be applied. (Stone v. Rogers, 189 So. 810, 186 Miss. 53) (Thomson v. Georgia Power Co., 37 S.E.2d 622, 73 Ga. App. 587)

Furthermore the Supreme Court has ruled that the licensee is not bound to comply with invalid regulations. (U.S. v. McMurry, D.C. N. Y., 48 F.2d 258)

The Supreme Court has concluded that under licensing authority, where a statute vest public officials with a discretion to grant, refuse, or revoke a license to carry on a ordinarily lawful business and does not set an express standards to guide and govern the exercise of such discretion, the attempted delegation of licensing power is a nullity. (Town of New Milford v. SCA services of Connecticut, Inc., 348 A. 2d 337, 174 Conn. 146.)

Mr. Spartz has stated several times that the MCWD Standards for shoreline restoration do not coincide with the DNR State Requirements or for that matter the clearly established engineering principles. (See Landview's 1st brief Facts 7-10, 25 or Landview's 2nd brief Fact 1)

A Licensing Authority, Board, or Municipality may not enact a licensing ordinance where such ordinance is in conflict with or inconsistent with the general laws or with the public policy of the State. (Lisenba v. Griffin, 8 So.2d 175, 242 Ala. 679), (Meridian, Limited, v. Sippy, 128 P.2d 884, 54 C.A. 2d 214.), (Richards v. City of Pontiac, 9 N.W.2d 885, 305 Mich. 666.), (In re Porterfield, 168, 168 P.2d 706, 28 C.2d 91.), (Schul v. King, Com.Pl., 70 N.E.2d 378, 35 O.O. 238).

It has been noted in the hearing that the MCWD's Jurisdiction covers approximately 14 municipalities specifically limited to 931.5 flood plain elevation. It has also been noted that no other watershed has licensing in effect for any business or occupation. The Legislature has not expressly authorized the MCWD to regulate Shoreline Restoration Contractors or Dredging through the use of Licensing.

Pursuant to Minnesota Statute 103D.335 Subdivision 1(5). A watershed district has the power, to the extent necessary for lawful conservation purposes: (5) to perform all acts expressly authorized, and all other acts necessary and proper for the watershed district to carry out and exercise the powers expressly vested in it. Pursuant to Minnesota Statute 103D.341 Subdivision 1. The managers must adopt rules to accomplish the purposes of this chapter and to implement the powers of the managers.

The MCWD has adopted Rule M which is/was not expressly authorized by the Legislature to carry out their watershed management plan.

The Supreme Court has upheld where the activity or subject of the regulation is not

peculiarly local in character, the regulatory power under the general welfare clause is not to

be extended beyond its scope unless it clearly appears that the legislature so intended. (Village of Brooklyn Center v. Rippen (1959) 255 Minn. 334, 96 N.W.2d 585.) Where an activity, such as boating, by its nature is customarily engaged in over a wide area which encompassed a number of municipalities or governmental subdivisions, it presents a statewide problem and not a matter which is peculiarly subject to local regulations.

Riprap

is a statewide problem needing State (DNR) Licensing and Legislative approval. !!!!!!!!

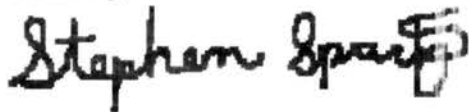
A rehearing should be granted if the BWSR decides it has proceeded against the substantial weight of the evidence and proceeded on the basis of an inadequate record or was not fully informed.

I, Stephen Spartz, believe that in order for the DNR, Watershed Districts, and the BWSR to operate effectively as a group or solve problems effectively the BWSR must take control of the problems and not throw them to the courts. This is one of the reasons why as a statutory prerequisite to an appeal, it may be required that all administrative remedies be exhausted. If the BWSR and Landview Landscaping do not take control and reprimand Watershed District Managers like the MCWD Managers for practicing Non, Mal and Misfeasance as demonstrated in Landview's case, it will actually promote the activity, and we will continually be bombarded by the MCWD or watersheds with similar cases. Cases are going to get out of control and the BWSR will lose its power and effectiveness. In turn you will be looked down upon by the State and Legislature for your ability to carry out your plan and purpose that the taxpayers are paying you for. Let's get the job done right the first time and solve the problems demonstrated in Landview's case.

1. Rewrite Rule F.
2. Remove Rule M and similar rules.
3. Focus on the Future and not the Past.
4. The BWSR, DNR and Watersheds with Contractors aid must come up with uniform standards in compliance with each other and the clearly established Engineering Principles. Deregulate and do not overlap authority as demonstrated by DNR and Watersheds. The Current plan equals double taxation.

Please accept this letter for a rehearing by your Board (DRC).

Sincerely,



Stephen Spartz
Contractor Landview Landscaping

cc: BWSR
MCWD, Coordinator, Ellen Sorens
MCWD, Attorney, Louis Smith
Hennepin County Attorney, Arthur Katzman
Hennepin County Commissioner, Emily Anne Staples



December 30, 1993

TO : SWCDs in the MN River Basin
FROM: Wayne Zellmer, Grants Coordinator
RE : Application for Special MN River Basin Fund

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A previous memo sent by Greg Larson, dated October 8, 1993, discussed a special funding to accelerate the installation of water quality practices in the Minnesota River basin. At the December, 1993, meeting of the Board of Water and Soil Resources, the Board moved to endorse the "watershed approach" in allocating funds.

The "watershed approach" means that the Board will give priority consideration to applications from SWCDs where SWCDs have taken a watershed approach by forming a joint powers group or similar cooperative type venture, and have identified potential projects via an inventory or assessment and developed an implementation plan.

All applications must indicate: 1) that funds will be used for State Cost-Share Program approved practices, 2) that funds will be used in the Minnesota River basin, and 3) how the project(s) will clearly benefit water quality (how will the results be measured or assessed?).

If the application includes a plan to **increase** the amount of technical assistance (up to 20% of total request), explain how that portion will be utilized. There is a maximum of \$120,000 available for technical assistance to all successful applicants, collectively.

Applications for funding will be accepted from Soil and Water Conservation Districts, now through February 11, 1994.

As a guide for applicants, the Special Project Application form found in the Operational Handbook, pages E-50 - E-54 may be used. Applicants should feel free to change, modify, or add to this form as necessary. The section, town, range, and sub-watershed (include map) of all planned practices should be noted in the application.

Successful applications will be chosen by the Board at their February 27, 1994, meeting and funds will be distributed in April.

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October 8, 1993

TO : SWCDs in the Minnesota River Basin

FROM : Greg Larson, Head-Water and Land Management
Section

RE : Allocation of special Minnesota River funding

As many of you are aware, we received additional funding this biennium to accelerate the installation of water quality practices in the Minnesota River basin. We received \$600,000 for fiscal year 1994 and \$500,000 for fiscal year 1995. The funding was included in the appropriation for the state cost-share program. Consequently, that program must be used as the means of implementation.

Jeff Nielsen, supervisor of our southern region, and I have been asked to develop a proposal for allocating the initial \$600,000 to SWCDs. That proposal would be forwarded to the BWSR for their consideration. Jeff organized a meeting of SWCD supervisors and officials to discuss funding options. A summary of that meeting and a map of the basin is provided.

We are seeking your suggestions! The ideas on the meeting summary are intended to provoke discussion and are by no means the only way that the money could be allocated. We ask that you give serious consideration to this issue and respond to Jeff. The timetable - that follows - indicates our desire to determine an allocation process by the the end of 1993.

- week of October 4th: mailing to SWCDs in the basin
- staff overview of this process to BWSR at their October 27th meeting
- SWCDs comments to Jeff Nielsen by November 10th
- BWSR staff prepares a recommendation for consideration by BWSR at their December 8th meeting [I envision the staff recommendation to BWSR to consist of 3 or more options----as suggested by SWCDs]

Please be advised that at least one group of SWCDs are preparing proposals that may reach the BWSR yet this month. However, I do not expect the BWSR to take final action on any proposal until their December meeting.

As a reminder: the \$600,000 must be spent in the Minnesota River basin through the existing state cost-share program. The program focus is water quality.

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Blue Earth
Proposals
include
91

This process involves ONLY fiscal year 1994 funding. The \$500,000 for fiscal year 1995 may be allocated differently although the option chosen for this year may limit the options for next year.

Contact Jeff or me if you have questions or comments.

CC: Ron Harnack
BWSR staff
Tim Larson, MPCA

Options to allocate the Minnesota River accelerated funding were generated by the following group which met on 9/22/93 in New Ulm:

Chuck Peterson, Blue Earth County SWCD Manager
Bruce Berger, Redwood SWCD Supervisor
Steven Breaker, SCS, DC Faribault County
Merle Anderson, Watonwan SWCD Supervisor (Area VI Director)
Kathy Krzmarzick, Brown SWCD Office Manager
Richard Zupp, Pipestone SWCD Supervisor (Area V Director)
Jim Schafer, Renville County SWCD Supervisor
Gerald Rodning, Nicollet SWCD Supervisor
Tim Larson, MPCA
Greg Larson, BWSR
Mary Mueller, BWSR
Jeff Nielsen, BWSR

The basis for the "new" Cost-Share money is:

- a. water quality driven and
- b. to be spent only in the Minnesota River Basin.

Several ideas were generated by the group with the following being agreed to as the best options (Note: these options are in no particular order):

1. Take the available funds and allocate them to SWCDs via a special project application. This would be similar to the special project applications currently used for the Cost-Share Program. SWCDs could apply for funds to install projects on "the books" or new projects.
2. Identify two or three watersheds that have developed an implementation plan and fund a joint powers group or similar cooperative ventures between SWCDs.
3. A variation of 1. Cost-share on an issue, such as feedlots, which has been identified by an SWCD or group of SWCDs as having a water quality impact. Funds would be allocated via a special project application.
4. Divide the available funds between options 1. and 2. with more money going to the one deemed by BWSR to be a higher priority.

Technical assistance to implement whatever option was acknowledged as very important. As allowed by the cost-share appropriation language, up to 20% can be used for cost-share administrative and technical services. It is the goal of BWSR staff to increase technical assistance through SWCDs. There are various ways to accomplish this. Ideas generated at the meeting are as follows (These options are in no particular order):

1. Fund SWCDs to contract with private engineers to design and install practices.
2. Fund SWCDs to hire new technicians to add to existing technical staff.

Regarding number 2., BWSR would consider proposals for a long-range agreement to share the cost of technicians.

Example: 20% of \$600,000 = \$120,000 available

SWCDs would hire three new technicians.

First Year: BWSR would pay \$40,000 per technician (BWSR pays 100%)

Second Year: BWSR would pay \$33,333 per technician

Third Year: BWSR would pay \$24,000 per technician

Fourth Year and Beyond: BWSR would pay \$20,000 per technician (BWSR pays 50%)

In about year three or four there would be enough money remaining to start another agreement to fund another new technician just like in year number one.

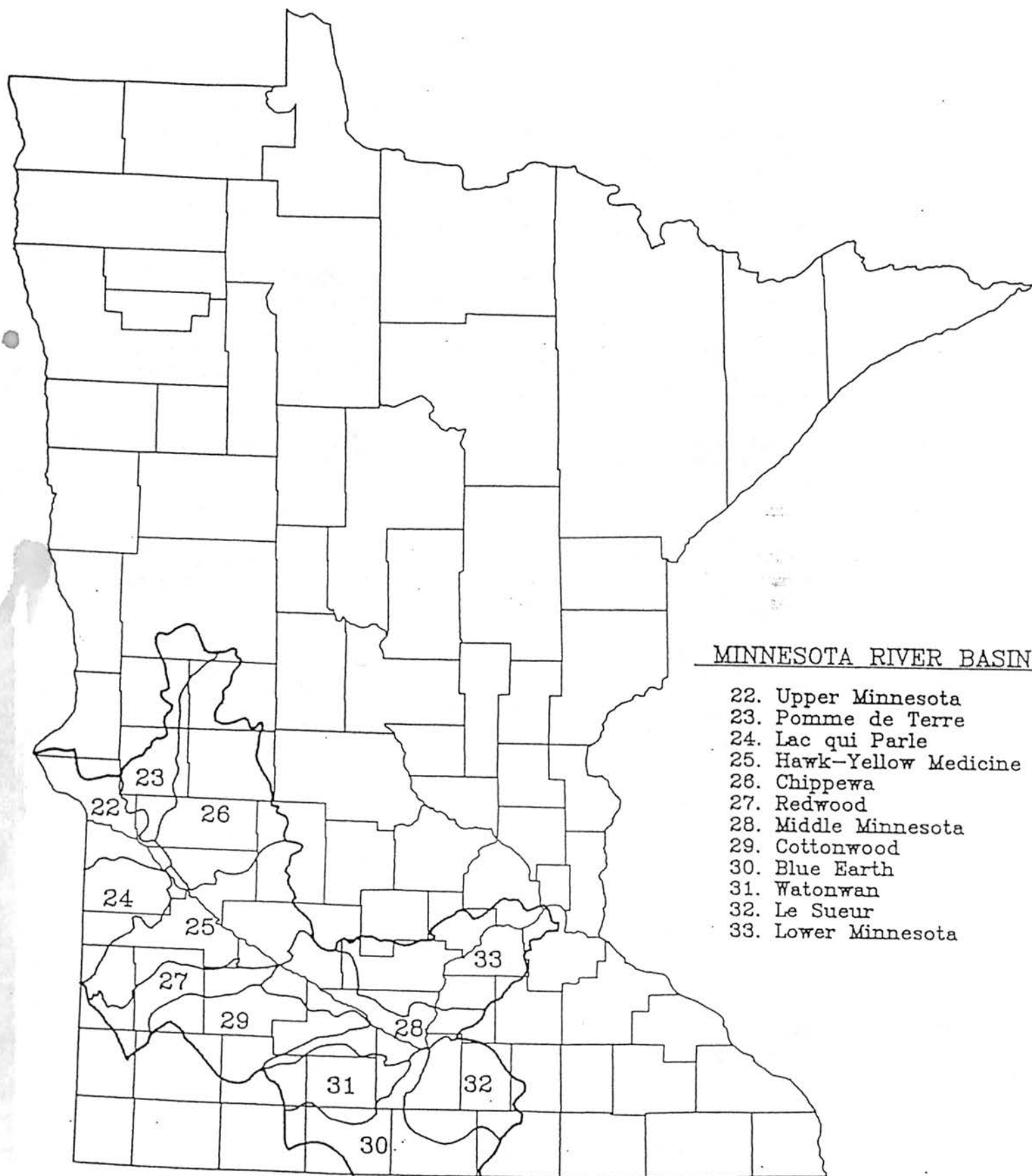
SWCDs would be expected to pick up more and more of the local cost as the years pass with an estimated state and local partnership fund at about a 50/50 rate in year four.

BWSR recognizes that during the first year there is more start-up costs, such as training and equipment, and less time to adjust local budgets. By BWSR defraying most of these costs the first few years, more time is available for an SWCD to establish their budget.

SWCDs, individually or in a group, would be eligible to apply for this technical portion of the grant based upon their needs, irrespective of their need for more cost-share practice funds.

3. Similar to number 2 except that the SWCD hired technicians would be certified engineers.
4. Require that all cost-share services (t/a) money be tied to the practice money. This means it would be business as usual allowing up to 20% of the cost-share grant to be used by each SWCD. Those with successful cost-share grant applications in the Minnesota River Basin would be allowed to take 20% for cost-share services.
5. Fund SWCDs to increase present part-time technical staff to a full-time status.

Summary prepared by Jeff Nielsen





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DATE: February 14, 1994

TO: Board Members

FROM:  Ronald D. Harnack, Executive Director

SUBJECT: **RECOMMENDED BOARD MEMBER EXPENSE CRITERIA**

* **PER DIEM (\$55/DAY):** Per diem is authorized for Board members for those days where members are actively carrying out the business of the Board. This includes monthly board meetings; committee meetings; attendance at statewide conventions; attendance at regional or area association meetings; attendance at special meetings. Per diem is not authorized for members who are in travel status the day prior to or after authorized meetings.

A few of the Board Members have inquired regarding what meetings and activities are allowable for per diem and expenses. I have suggested that it is reasonable to include the following:

- Regular Board Meetings.
- Subcommittee meetings to which the member is appointed.
- Attendance at statewide conventions of the Association of Minnesota Counties (AMC), Minnesota Association of Soil and Water Conservation Districts (MASWCD), and Minnesota Association of Watershed Districts (MAWD). The Board members who already attend as part of their association are already compensated by their local government. At least one of the members from the other representative groups should attend. (These conferences are planned far enough in advance that the Board at its October meeting can authorize attendance).
- Attendance at regional or area association meetings (AMC, MASWCD, MAWD). A Board Member who is a member of the association may already be compensated by his or her local government. Board member participation should include some formal acknowledgement at the meeting and a report at the next Board meeting.
- Attendance at statewide special meetings (these types of events are known in advance and the Board can take action to authorize attendance and participation).

Board Members
February 14, 1994
Page Two

- Attendance at general meetings of special interest groups, local government meetings should not be eligible. These types of meetings are the responsibility of BWSR staff. There are some of these meetings at which Board presence and participation may be requested, which are eligible for expenses.

- * **MILEAGE REIMBURSEMENT (\$0.27/MILE):** Mileage is limited by the laws reference to the commissioner's plan that authorizes \$0.27/mile. Mileage reimbursement is limited to that necessary to conduct the business of the board.

- * **MEALS:**
Breakfast - \$ 7.00
Lunch - \$ 8.50
Dinner - \$14.50

- * Refer to the attached statutes and the pages from the current commissioner's plan for more detail.

RDH:mja
Enc.

EXPENSE REIMBURSEMENT

General. The Appointing Authority may authorize payment of travel and other expenses and reimbursement of special expenses for managers in accord with the provisions of this Chapter, Chapter 8, and Administrative Procedure 4.4 for the effective conduct of the State's business. Such authorization must be granted prior to incurring the actual expenses.

Privately-Owned Vehicles and Aircraft. A manager shall be reimbursed for the use of privately-owned vehicles and aircraft under the situations, and at the rates specified below. In all cases, mileage must be on the most direct route according to Department of Transportation records.

<u>Situation</u>	<u>Rate Per Mile</u>
• Use of personal automobile when a State-owned vehicle is not available.	\$.27
• Use of personal automobile when a State-owned vehicle is available and declined by the manager.	\$.21
• Use of personal van or van-type vehicle specially equipped with a ramp, lift, or other level-changing device designed to provide wheelchair access.	\$.40
• Use of personal aircraft provided that the manager can demonstrate adequate liability coverage under the requirements of M.S. 360.59, subdivision 10.	\$.43
• Use of personal motorcycle or similar two-wheel motorized vehicle.	\$.13

When a manager does not report to the permanent work location during the day or makes business calls before or after reporting to the permanent work location, the allowable mileage is: (1) the lesser of the mileage from the manager's residence to the first stop or from his/her permanent work location to the first stop, (2) all mileage between points visited on State business during the day, and (3) the lesser of the mileage from the last stop to the manager's residence or from the last stop to his/her permanent work location.

Other Travel Expenses. Upon approval of the Appointing Authority, managers in travel status may be reimbursed for expenses described below in the amounts actually incurred not to exceed any maximum amounts specified below.

Where anticipated expenses total at least \$100.00, the Appointing Authority shall advance the manager the amount of the anticipated expenses upon the manager's request made a reasonable period of time prior to the travel date. If the amount advanced exceeds the actual expenses, the manager shall return the excess within two weeks of return from travel. The Appointing Authority may issue the manager a state-owned credit card in lieu of a travel advance.

Reimbursable expenses may include, but are not limited to, the following:

- Commercial transportation (air, taxi, rental car, etc.) provided that no air transportation shall be by first class (unless authorized by an Appointing Authority if no other seating is available) and that reimbursement for travel which includes more than one destination visited for State purposes and non-State purposes be in an amount equal to the cost of the air fare only to those destinations visited for State purposes.
- Meals including tax and a reasonable gratuity. Managers shall be reimbursed for meals under the following conditions:
 1. **Breakfast.** Breakfast reimbursements may be claimed if the manager leaves home before 6:00 a.m. or is away from home overnight.
 2. **Lunch.** Lunch reimbursements may be claimed if the manager is in travel status more than 35 miles away from his/her normal office or is away from home overnight.
 3. **Dinner.** Dinner reimbursements may be claimed if the manager cannot return home until after 7:00 p.m. or is away from home overnight.
 4. **Reimbursement Amount.** Except for the metropolitan areas listed below, the maximum reimbursement for meals including tax and gratuity shall be:

Breakfast	\$ 7.00
Lunch	8.50
Dinner	14.50

For the following metropolitan areas the maximum reimbursement shall be:

Breakfast	\$ 8.00
Lunch	9.50
Dinner	16.50

The metropolitan areas are:

Atlanta	Detroit	New York City
Boston	Hartford	Philadelphia
Chicago	Houston	San Diego
Cleveland	Los Angeles	San Francisco
Dallas	Miami	Seattle
Denver	New Orleans	Washington D.C.

Managers who are in travel status for two or more consecutive meals shall be reimbursed for the actual costs of the meals including tax and a reasonable gratuity, up to the combined maximum amount for the reimbursable meals.

- Hotel and motel accommodations provided that managers exercise good judgment in incurring lodging costs and that charges are reasonable and consistent with the facilities available.
- All work-related long distance telephone calls provided that the manager does not have a State telephone credit card or is unable to bill the call to the office telephone number.
- Actual, documented personal telephone call charges. The maximum reimbursement for each trip shall be the result of multiplying the number of nights away from home by two (2) dollars.
- Reasonable costs of dry cleaning and laundry services, not to exceed \$16.00 each week after the first week a manager is in continued travel status.
- Reasonable costs and gratuities for baggage handling.
- Parking fees and toll charges.

Receipts. The Appointing Authority may require receipts for any reimbursement requested by a manager under the provisions of this or any other chapter in this Plan.

New language is indicated by underline, ~~deletion~~

receive the ~~\$35 per day~~ daily payment, and if the major part of their activities occur during normal working hours for which they are also compensated by the state or political subdivision, the employer shall deduct the ~~\$35 daily~~ payment from the employee's compensation for that day. In no other case ~~shall~~ may a board member who is an employee of the state or political subdivision suffer a loss in compensation or benefits as a result of service on the board. Members who are state employees or employees of the political subdivisions of the state may receive the expenses provided for in this subdivision unless the expenses are reimbursed by another source. Members who are state employees or employees of political subdivisions of the state may be reimbursed for child care expenses only for time spent on board activities that are outside their normal working hours.

Sec. 21. Minnesota Statutes 1988, section 473.141, subdivision 3, is amended to read:

Subd. 3. **CHAIR.** The chair of each agency shall be appointed by the governor with the advice and consent of the senate, shall be the ninth voting member and shall meet all qualifications established for members, except the chair need only reside within the metropolitan area. The council, by resolution after a public meeting on the subject, shall provide the governor with a list of nominees for the position. Senate confirmation is as provided by section 15.066. The chair shall preside at all meetings of the agency, if present, and shall perform all other duties and functions assigned by the agency or by law. The chair is responsible for providing leadership in development policy, coordinating the activities of the agency board, establishing and appointing committees of the board, chairing the internal audit committee, ensuring effective communication between the agency and other governmental entities and the general public, ensuring that the board is fully informed of the activities of the chief administrator and the agency, ensuring that the chief administrator implements the policies of the board and is held accountable to the board, and evaluating the chief administrator's performance. Each agency may appoint from among its members a vice-chair to act for the chair during temporary absence or disability.

Sec. 22. Minnesota Statutes 1988, section 600.135, subdivision 1, is amended to read:

Subdivision 1. **RECORDS; DESTRUCTION, PHOTOGRAPHIC COPIES.** If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, optical disk imaging, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a

THE MINNESOTA CONSERVATION PARTNERSHIP

Jointly the Minnesota Association of Soil and Water Conservation Districts (MASWCD), Soil Conservation Service (SCS), and Board of Water and Soil Resources (BWSR) provide leadership in Minnesota on conservation issues. As partners, we are interdependent, have independent authorities, responsibilities, and strengths that collectively create a dependence on each other for the successful delivery of conservation programs and services.

VISION: A sustainable agricultural and urban economy in harmony with Minnesota's diverse natural resources

GUIDING PRINCIPLES:

We share a commitment to:

- Decision-making by the SWCD and landowner
- Enhancing our delivery system to local government and landowners
- Listen and respond to our customer's needs
- Promote a comprehensive approach to resource management
- Elimination of duplication services and programs
- Cooperation and coordination in the delivery of services and programs
- Implementation of a TEAM approach to program and service delivery
- Protection and enhancement of Minnesota's natural resources for future generations
- Seeking creative and innovative options to preserve and enhance Minnesota's economic and natural resource environment

We pledge to work together by:

- Promoting and practicing TEAM work
- Sharing the credit and responsibility, the leadership and ownership
- Promoting mutual respect, support, trust and honesty
- Shared decision-making, involving each partner in the decision-making process
- Communicating
- Coordinating programs and services to achieve greater effectiveness and efficiency for the customer
- Cooperating, building on the strengths of each partner, both technical and financial

We will improve our efficiency and effectiveness by:

- Putting quality first
- Empowering people to make decisions
- Demonstrating professionalism and dedication
- Striving for continuous improvement

DRAFT

We agree to proceed with assessing, redefining and formalizing a new partnership agreement within one year. The process will include:

- refining the theme, vision and guiding principals of the partnership;
- defining or redefine, understanding and acknowledging the roles of our respective organizations;
- establishing a forum for ongoing monitoring and fine-tuning of the partnership;
- establishing a partnership working group representing area & district conservationist; board conservationists; SWCD supervisors; SWCD employees; SCS managers and BWSR managers to provide input into reinvented partnership;
- facilitating discussions regarding the partnership process at AREA meetings; and
- issues for discussion include:
 - 1) technical assistance;
 - 2) communications between partnership;
 - 3) delineation of roles and responsibilities;
 - 4) priorities;
 - 5) delegation;
 - 6) training and funding "to building capability";
 - 7) state of art expertise;
 - 8) flexibility by SCS to accept state programs;
 - 9) conservation vs Farm Bill;
 - 10) flexibility on ACP programs
- identification of other organizations that may be important in carrying out the objectives of the partnership and development of a process for their involvement.

Ronald D. Harnack
Executive Director
Board of Water and Soil
Resources

Allan Oehlke
President
Minnesota Association of Soil
and Water Conservation
Districts

Gary Nordstrom
State Conservationist
Soil Conservation Service

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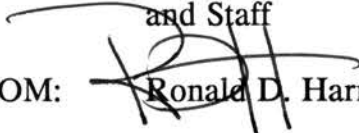
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Fax (507) 537-6368

Metro Region:

Southbridge Office Building
155 S. Wabasha Street
Suite 104
St. Paul, MN 55107
(612) 282-5116
Fax (612) 297-5615

DATE: March 15, 1994

TO: Board of Water and Soil Resources Members, Advisors,
and Staff

FROM:  Ronald D. Harnack, Executive Director

SUBJECT: March 23rd BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, March 23, 1994, beginning at 9:00 a.m. The meeting will be held in the Lexington/Summit Room at the Crown Sterling Suites, 175 East 10th Street, St. Paul (see attached map). The agenda and informational materials are enclosed for your review.

SUMMARY OF MARCH BOARD AGENDA ITEMS

* **RIM/PWP RETOOLING/RULES:** The retooling of the RIM program has been underway for the last several months. It was slowed a bit as a result of our decision to have an emergency sign-up relating to the flood disaster. The retooling did permit implementation of some revised procedures during the emergency sign-up and as a result provided some valuable information on how those procedures could be further refined. The retooling also provides for some amendments to the RIM rules. Staff has conducted meetings with SWCD's supervisors and staff and held one meeting with interests groups on the RIM retooling effort. It is our desire to have the RIM rules be published for adoption in May so that they are finalized for fall sign-up in 1994. Dave Behm and Marybeth Block will review with you the retooling effort and rule amendments that are being considered. The agenda is for information and discussion this month; discussion next month and approval for hearing in May. **INFORMATION & DISCUSSION.**

* **HENNEPIN COUNTY GROUNDWATER PLAN:** Last month we presented a brief summary of the status of groundwater plans in the metro area, including a status report on the Hennepin County plan. The plan review has been completed by the staff and approval of the plan is recommended. A summary of the plan is attached for your information. If you desire more detail please contact Eric Mohring or Jim Haertel who can make arrangements to get you more detail. **DECISION ITEM.**

* **COST-SHARE PROGRAM RETOOLING:** The cost-share program allocation and what projects are eligible has been before the Board in the past. We have made a commitment to review the allocation

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process and overall procedures relating to the cost-share program. However, due to the obligations of the wetlands program we have not been able to commit much time to the issue. There are some short-term and long-term options available to address the issues that have been raised by SWCD's and landowners. Greg will give some background and suggest some options for Board discussion. Attached is some additional background regarding the cost-share program that will aid your understanding of the program. Based on the issues that have been raised, we anticipate that complete retooling of the program would take about one year to complete. There will be some on-going refinements that will be able to be implemented along the way, however, the cost-share issues vary significantly across the state and we need to weigh all the options carefully in our deliberations. **DISCUSSION ITEM.**

* **WETLANDS GRANT UPDATE:** The adoption of the wetland rules by local governments is still moving forward. A few counties still have not adopted the act, however have indicated that they will do so in their applications. At this point the staff are not recommending that any of the grant \$'s be suspended. The next couple months will give us a better idea of which counties have met their projected timelines for adoption or not. If some haven't, the Board will need to consider what action if any should be taken with respect to the block grant funds. Attached is a status of adoption of the wetland rules and the status of the block grants. **DISCUSSION ITEM.**

* **POLICY INTERVENTION APPEAL:** As discussed briefly last month, the Board has received an intervention appeal relating to a DNR permit for a seaplane mooring on Whale Tail Lake in Hennepin County. Attached is a briefing on the issue and the recommendation of staff. We have consulted with the Board's attorney in development of the recommendation that this is not a **policy issue** and the request for intervention should be denied. Background on the intervention is attached. **DECISION ITEM.**

* **SNAKE RIVER WATERSHED JOINT POWERS ORGANIZATION:** Two months ago the Board heard from the interests involved with the Snake River water management initiatives. At that time the Joint Powers organization was struggling with development of a budget. The Board acknowledged the progress that was being made, however, was concerned that without a budget the efforts would be know more than words on paper. The Board encouraged the organization to be diligent about budget and the needs of the watershed and asked them to report back to the Board on the progress at the March meeting. In the mean time, the organization has adopted a budget and hired staff to support the work plan. Members of the Joint Powers organization, lake association interests and Board staff will be present to review the progress for the Board. It is staff desire that with this progress we can proceed to have all interests sign the agreement to dispose of the watershed district petition that is still pending before the Board. **DISCUSSION ITEM.**

* **PER DIEM:** The Chair appointed a committee to review what other boards do with respect to per diem and report back to the Board at the next meeting. We are still gathering information from other boards and have not yet scheduled a meeting of the committee. The issues for discussion relate to per diem for a preparation day and for in-transit days or both. We hope to have a recommendation for the Board meeting.
DISCUSSION/DECISION ITEM.

* **LEGISLATIVE POLICY ISSUES:**

1) **ELECTION OF WATERSHED DISTRICT MANAGERS:** The staff is opposing the election of watershed district managers. We believe that the appointment of the managers by county commissioners has been a very positive approach to selection of managers. The issues that managers address are often very controversial and extend across county and city boundaries. The current process we feel increases the credibility of water management decision making and reduces the influence of politics and relationships that can at times impede sound resources decisions.

2) **APPOINTMENT OF SWCD SUPERVISORS BY BWSR:** The staff is opposing the appointment of supervisors by the BWSR. We feel that the current election process has provided for a mechanism for the selection of supervisors.

3) **WETLAND CONSERVATION ACT (WCA) AMENDMENTS:** There have been three bills introduced to amend the WCA. All have been opposed by the staff in their current form.

One, changes the compensation to landowners that have the replacement plan denied. The compensation would require that BWSR determine the diminished value of the land as a result of the denial and compensate accordingly. This would require appraisals and frequent litigation regarding the value of the lands. We have suggested that the base for the compensation be the market value as reflected on the most recent tax statement and the state use a 50% value for compensation.

Two, includes type 6 (shrub) wetlands less than two acres on agricultural land as an exemption and includes type 6 wetlands for inclusion in the permanent wetland preserve. Staff opposes both amendments. The type 6 issue has not been documented as being a significant issue to date and the extension of the PWP to type 6 wetlands would greatly increase the cost of an already under funded program.

Three, would exempt certain cities in Crow Wing County from having to comply with some provisions of the act. Staff opposes these amendments as they would result in the loss of wetlands without replacement; and many would be in shoreland area where wetlands are critical to the preservation of the recreational lakes and rivers in the area.

Fourth, other amendments are likely to occur before the session ends. Staff has taken the position that the rules need time to be implemented and assessed and that next

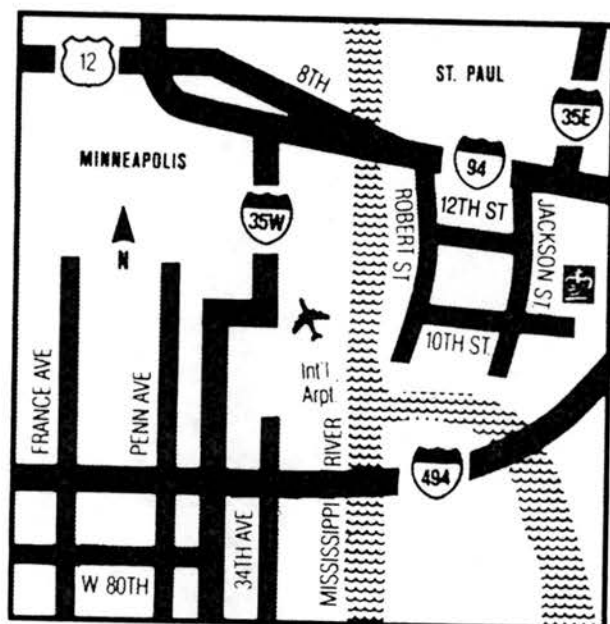
BWSR Members, Advisors, and Staff
March 15, 1994
Page Four

year is the time for refinement. However, we are likely to be put in a position to negotiate and compromise on some amendments as the session moves forward. Any Board guidance is appreciated. I have attached a response to the northern counties issues that were raised at a meeting I attended in Beltrami County a couple weeks ago. It gives a good perspective of the issues and the position staff has taken.

DISCUSSION ITEM.

If you have any questions or need additional clarification, please feel free to give me a call. Travel safely, I look forward to seeing you on the 23rd!

RDH:mja
Enc.



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 St. Paul, MN 55101
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BOARD OF WATER AND SOIL RESOURCES
CROWN STERLING SUITES - LEXINGTON/SUMMIT ROOM
175 E. 10TH STREET
ST. PAUL, MINNESOTA 55101
MARCH 23, 1994
PRELIMINARY AGENDA

- | | |
|------------|---|
| 9:00 a.m. | 1. Call Meeting to Order |
| | 2. Adopt Agenda |
| | 3. Reports <ul style="list-style-type: none">● Chairman's Report - Jim Nielsen● Executive Director's Report - Ron Harnack● Committee Reports |
| 9:30 a.m. | 4. RIM/PWP Retooling/Rules - Dave Behm and Marybeth Block |
| 10:00 a.m. | 5. Hennepin County Groundwater Plan - Jim Haertel |
| 10:30 a.m. | 6. Cost-Share Program Retooling - Greg Larson |
| | 7. Wetlands Grant Update - Doug Thomas |
| 11:30 a.m. | 8. Policy Intervention Appeal - Doug Thomas |
| Noon | Lunch |
| 1:00 p.m. | 9. Snake River Watershed Joint Powers Organization - Keith Grow and Doug Thomas |
| | 10. Per Diem - Howard Peterson |
| | 11. Legislative Policy Issues - Ron Harnack <ul style="list-style-type: none">● Election of Watershed District Managers● Appointment of SWCD Supervisors by BWSR● Wetland Conservation Act Amendments |
| | 12. Advisor Comments <ul style="list-style-type: none">● Dan Livdahl, MACDE● Gary Nordstrom, SCS● Marlin Libbesmeier, MAT● Howard Peterson, MAWD● Allan Oehlke, MASWCD● Pat Wulff, MLA |
| | 13. Board Issues - discussion, comments, action needed |
| 3:00 p.m. | Adjourn |

**BOARD OF WATER AND SOIL RESOURCES
CROWN STERLING SUITES - UNIVERSITY ROOM
175 E. 10TH STREET
ST. PAUL, MINNESOTA 55101
FEBRUARY 23, 1994**

APPOINTED MEMBERS PRESENT:

Jim Nielsen, Barbara Cobb, Ted Lovdahl, Marvell Tripp, Barbara Uppgaard, Jim Rossman, Tim Hvidsten, Howard Peterson, Warren Rodning, Glenn Annexstad, and Kathleen Roer.

MEMBERS ABSENT: Dwain Otte

AGENCY MEMBERS PRESENT:

Kim Benson-Johnson, Department of Health
Wayne Anderson, Pollution Control Agency
Paul Burns, Department of Agriculture
Wayne Edgerton, Department of Natural Resources

AGENCY MEMBERS ABSENT:

Fred Bergsrud, Minnesota Extension Service

OTHERS PRESENT:

Gary Nordstrom, Soil Conservation Service
Tom Casey, representing Whaletail Lake petition
Steve Spartz, Landview Landscaping, Inc.
Dan Livdahl, MACDE

STAFF PRESENT:

Ronald Harnack
Wayne Zellmer
Greg Larson
Jeff Nielsen
Al Kean
Mary Jo Anderson

Chairman Nielsen called the meeting to order at 9:15 a.m.

94-10 **Adopt Agenda** - Moved by Tripp, seconded by Lovdahl to adopt the agenda as presented. Affirmative: Cobb, Hvidsten, Lovdahl, Peterson, Rodning, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

94-11 **Minutes of January 27, 1994** - Howard Peterson stated that a correction needs to be made on page three, regarding the Dispute Resolution Committee's (DRC) recommendation on the Spartz vs. Minnehaha Creek Watershed District (MCWD) appeal. It should read that the DRC's recommendation is to affirm paragraphs 3, 4, and 5 and reverse paragraphs 1 and 2 of the Order of the MCWD dated January 27, 1994. Moved by Uppgaard, seconded by Cobb, to correct minutes of January 27, 1994, as presented. Affirmative: Cobb, Hvidsten, Lovdahl, Peterson, Rodning, Rossman, Tripp, Uppgaard and Nielsen. Opposed: None. Carried.

Chairman's Report - Chairman Nielsen attended the National Association of Conservation Districts (NACD) annual meeting in Phoenix, Arizona, January 30 - February 3. Chairman Nielsen stated that he attended the Legislative Water Commission (LWC) meeting on February 16. Discussion at the meeting involved the state revolving fund nonpoint source pollution initiative.

Chairman Nielsen received a thank you letter from Al Dornfeld regarding the award the BWSR presented to him.

Chairman Nielsen received a letter from Raymond Phelps, chairperson of the Blue Earth River Basin Initiative Joint Powers Board, supporting funding for the coordinator position.

Chairman Nielsen received a letter from Darold Neperman, Study Area II, supporting funding through the Minnesota River Watershed cost-share program.

Chairman Nielsen also received a thank-you letter from James Mulder, executive director, Association of Minnesota Counties, regarding the BWSR's action on the wetland program implementation grant match requirements.

Chairman Nielsen also received a thoughtful letter from Ron Shelito regarding the BWSR/staff retreat and how the northern regional staff in Minnesota conduct business. Chairman Nielsen said the outcome of the BWSR/staff retreat will be addressed again at the March meeting.

Glenn Annexstad entered the meeting at 9:25 a.m.

Executive Director's Report - Ron Harnack addressed the materials in the members informational packet.

Kathy Roer entered the meeting at 9:40 a.m.

Ron Harnack briefly reported on the feedlot issue. Ron reported that he, Tabor Hoek, and Wayne Zellmer attended the NACD annual convention in Phoenix. He stated that it was a very good meeting and a great opportunity to meet with other states. Ron was elected as the regional representative for the National Association of State Conservation Agencies (NASCA).

Ron reported that March 7 is the first budget bonding meeting with the Legislature. Ron will be attending a meeting in Bemidji on February 24 to meet with 13 northern tier counties regarding wetlands and hear and assess problems they are having. Ron stated that Al Dornfeld has retired as an active watershed district manager and a dinner was held in his honor. The BWSR presented him with an award for his leadership in the metro area and dealing with issues in watershed districts.

Ron stated that BWSR has authority to hear appeals for intervention on issues of water policy. A request for intervention on a DNR permit matter has been reviewed. Staff will prepare report for Board consideration at the March meeting. Tom Casey, representing the issue is here today.

Ron stated that a program schedule is being put together as a result of the BWSR/staff retreat; elements from the retreat will be part of board member's handbook.

Chairman Nielsen distributed committee assignments. Chairman Nielsen said he's proud of the Education Committee accomplishments. He thanked Tim Hvidsten for volunteering to head that committee, replacing Don Ogaard and Sharon Clark. Chairman Nielsen said that the Soil Conservation Strategic Committee's exceedingly important. If anyone does not like their assignments let Chairman Nielsen know.

Dispute Resolution Committee (DRC) Report - Kathy Roer, chair of the DRC, suggested that a regular standard meeting date be set for the DRC to meet, possibly the day (Tuesday) before the BWSR meeting, as matters come up more frequently now and it would be easier to adhere to a schedule. Chairman Nielsen asked that Kathy notify staff when the DRC plans to meet. Chairman Nielsen said that it's probably appropriate to let the Legislature know how busy the DRC is and that we may need to deal with this in another matter.

Allocation of Special Minnesota River Funding - Wayne Zellmer explained that this is a carry-over item. Staff recommended three applications be given high priority (attached) and be funded: 1) Redwood-Cottonwood Rivers Control Area \$185,000; 2) Cottonwood SWCD \$133,380; and 3) Blue Earth River Basin Initiative \$281,620 = total \$600,000 to be spent in fiscal year 1994. Moved by Rodning, seconded by Tripp, to accept the staff recommendation to approve the three applications. Howard Peterson would like copies of all applications for his information. Discussion followed. Watershed approach needs to be followed, said Peterson and Rossman. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl,

Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Wetland Conservation Memorandum of Agreement - Ron Harnack explained that the Wetland Interagency Committee, which consists of the U.S. Army Corps of Engineers (USACoE), Minnesota Pollution Control Agency (MPCA), Minnesota Department of Natural Resources (MDNR), U.S. Department of Agriculture (USDA), Minnesota Department of Transportation (MNDOT), U.S. Environmental Protection Agency (USEPA) and BWSR as the lead agency, has been meeting to discuss issues on wetland regulatory simplification relating to the Wetland Conservation Act (WCA). The attached Interagency Memorandum of Understanding deals with wetland banking; state programmatic general permit; and collaborative efforts. Supporting documentation will be circulated to members. Moved by Rossman, seconded by Lovdahl, to approve the Memorandum of Agreement, and that Jim Nielsen is authorized to execute the document. Harnack said the Fish & Wildlife Service (USF&WS) cannot legally sign this, but they are sending a letter of support of the Memorandum of Understanding. Barbara Uppgaard would like to get this started, she's pleased that all agencies are supportive. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Abstained: Peterson. Carried.

**
94-13

Chairman Nielsen adjourned the meeting for a break at 10:50 a.m. The meeting reconvened at 11:05 a.m.

Interagency Partnership Agreement - Ron Harnack explained that the Minnesota Association of Soil and Water Conservation Districts (MASWCD), Soil Conservation Service (SCS) and BWSR, would like an endorsement of the draft partnership agreement with final action taken at the March meeting. Moved by Lovdahl, seconded by Roer, to approve the draft Interagency Partnership Agreement. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

**
94-14

Metro Groundwater Planning Update - Eric Mohring gave an informational update on the status of metro county ground water planning. He stated that the Hennepin County Ground Water Plan will be before the BWSR at the March or April meeting for review and possible approval. Eric addressed the executive guide, which summarizes the Hennepin County Ground Water Plan.

Review of Per Diem Policy for Board - Chairman Nielsen had three issues to address regarding per diem for board members: 1) reimbursement of child care fees; 2) travel to meetings; 3) per diem for preparation of meetings. Per diem comes from the statute, said Ron; mileage and meals reference the commissioner's plan. Chairman Nielsen referred to statute. He stated that it's not inappropriate to ask for reimbursement for preparation of board meetings; for child care if a parent is normally at home with the children; or for travel to a board meeting. Discussion followed. Rossman asked for review of other board

policies on this. Jeff Nielsen asked for consideration when he invited board members to attend southern regional meetings. Nielsen appointed a committee - Howard Peterson as chair, Glenn Annexstad, Warren Rodning and Ted Lovdahl. The committee is charged with: 1) make a policy recommendation on per diem and; 2) issue of travel - the committee will check with other agencies and organizations. The committee will make their recommendation to the full BWSR at the March meeting.

Reconsideration of Spartz Appeal Decision - Ron Harnack stated that staff recommendation was to not reconsider, as addressed earlier by the DRC. Chairman Nielsen asked members their opinions. Kathy Roer stated that sufficient opportunity and time for discussion has been given. Chairman Nielsen asked for each of those concerned to briefly speak. Steve Spartz briefly argued his position for reconsideration. Lewis Smith, representing the Minnehaha Creek Watershed District, was in attendance to answer any questions, and did not speak. Moved by Lovdahl, seconded by Uppgaard, to deny Spartz's request for a rehearing. Kathy Roer explained that the party can then appeal to court of appeals. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Peterson, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

**
94-15

Chairman Nielsen adjourned the meeting for lunch at 12:05 p.m. The meeting reconvened at 1:00 p.m.

Chairman Nielsen stated that three members (Uppgaard, Roer, and Tripp) will not be available for the March 23 meeting. After discussion, it was decided to hold the meeting on March 23.

Advisor Comments

Minnesota Association of Conservation District Employees (MACDE): Dan Livdahl is replacing Curt Borchert. He reported that two new MACDE members are: Sandy Hessedahl from Wright SWCD, and Mark Aanenson from Mahnommen SWCD. Dan reported that MACDE will hold a training session in Alexandria in June.

Soil Conservation Service (SCS): Gary Nordstrom reported that the wetland restoration sign-up is scheduled for February 28 - March 11. He briefly commented on the SCS budget. He commented on the Memo of Agreement on wetland delineation.

Minnesota Association of Watershed Districts (MAWD): Howard Peterson invited members to attend the MAWD legislative breakfast on March 10. The breakfast is structured to allow watershed district people to discuss issues with legislators.

Minnesota River Assessment - Tim Koehler, SCS, distributed an executive summary of the recent Minnesota River Assessment Project Report and gave a slide presentation on the Minnesota River. Discussion followed.

Wayne Anderson distributed materials on the Minnesota River Assessment Project Report

(MNRAP).

Chairman Nielsen adjourned the meeting at 2:45 p.m.

Respectfully submitted,

D. James Nielsen
Chairman

Retooling . . .

Why did we do it?

To respond to program concerns voiced by SWCDs:

- **Dwindling local control of program**
- **Too stringent program eligibility requirements**
- **Excessive state oversight**
- **Frequent, piecemeal changes to the program**
- **Program handbook difficult to use & "out of control"**

Easement "Retooling" Objectives

- **Program Stability**
- **User-friendly Handbook**
- **Streamline the Process**
- **Locally-driven Program**

**Major Issues Identified by BWSR Staff to be Addressed in Rule Revisions
(Fall 1993)**

- Incorporate concepts and goals of "retooling" initiative
- Incorporate recodified statutory references
- Incorporate Permanent Wetlands Preserve (PWP) into the rule
- Ensure consistency of rule to existing statutes for RIM Reserve, Permanent Wetlands Preserve, and Wetland Conservation Act (e.g., incorporating "replacement wetland" provision from Wetland Conservation Act into RIM Reserve Program)
- Remove unnecessary administrative details from the rule and compile them as part of the revised handbook
- Define and reiterate "agricultural land" emphasis of RIM Reserve throughout rule
- Unless required in statutes, remove unnecessary and arbitrary eligibility criteria for RIM Reserve
- Establish parameters for SWCDs to accept applications for limited duration RIM Reserve easements
- Add clarification of "violation" and describe enforcement actions to be taken by SWCDs and BWSR
- Add an "appeals" section to the rule

ISSUES THAT WILL NOT BE MODIFIED BY A RULE REVISION

[NOTES: • The following issues would require statutory revisions; therefore, they will not be addressed in the proposed rule revisions.
• Please refer to Minnesota Statutes (M.S.) sections 103F.505- 103F.535.]

Can not alter definitions defined in statute:

8400.3030, Subpart 17; "Drained wetland"

8400.3030, Subpart 29; "Landowner"

8400.3030, Subpart 32; "Marginal agricultural land"

Can not modify that the highest priority for RIM Reserve enrollments must be perpetual easements:

8400.3110 (and 8400.3300, item F) [NOTE: Refer to M.S. section 103F.515, subdivision 2(f).]

Can not alter 20-year minimum OR mandated perpetual duration for specific eligible lands:

8400.3110 (and 8400.3300, item F)

[NOTE: Refer to M.S. section 103F.515, subdivision 3, & section 103F.516, subdivision 1.]

Can not alter acreage limits specified in statute:

8400.3160, Subpart 1 (item D on pages 11-12 or item 3 on page 12)

[NOTE: Refer to M.S. sections 103F.515, subdivision 2(b)(7), and 103F.515, subdivision 2(c)(2).]

8400.3160, Subpart 2 (item B on page 13)

[NOTE: Refer to M.S. section 103F.516, subdivision 2(b).]

8400.3200

[NOTE: Refer to M.S. section 103F.515, subdivision 2(d).]

Can not alter easement payment rates or practice payment rates in statute:

8400.3530 (easement payment rates) --

- RIM Reserve: Refer to M.S. section 103F.515, subdivision 6, clauses (3) through (5) of paragraph (a), and paragraph (b).

[NOTE: Statute authorizes the BWSR to determine "an alternative payment system for easements based on cash rent or a similar system" -- see clause (5) of paragraph (a).]

- PWP: Refer to M.S. section 103F.516, subdivision 3.

[NOTE: Statute mandates the BWSR to pay on the basis of specific percentages of the "township average equalized estimated market value of agricultural property as established by" the Commissioner of the Minnesota Department of Revenue.]

8400.3710 (practice payment rates) --

- RIM Reserve: Refer to M.S. section 103F.515, subdivision 6, clauses (1) and (2) of paragraph (a).

Can not alter PWP easement payment schedule in statute:

8400.3560

[NOTE: Refer to M.S. section 103F.516, subdivision 3(a).]

PROPOSED TIMELINE FOR REVISION OF RIM RESERVE/PWP RULES:

What has occurred so far?

- Fall 1993 = BWSR staff identify issues and propose initial revisions (staff prepared, reviewed and discussed four versions internally)
- November 1993 = BWSR convenes group of select SWCDs to discuss retooling initiative, including concepts needing revision in rules
- January 1994 =
 - (1) "January 1994" DRAFT sent to Conservation Easement Advisory Group and BWSR staff
 - (2) BWSR convenes Conservation Easement Advisory Group to discuss retooling initiative, including concepts needing revision in rules
- February 7, 1994 = Deadline for written comments on "January 1994" DRAFT (comments received from five SWCDs)
- February 18, 1994 = BWSR responds to all individuals who provided written comments on "January 1994" DRAFT
- February 25, 1994 = "February 1994" DRAFT sent to:
 - (1) all SWCDs,
 - (2) Conservation Easement Advisory Group,
 - (3) BWSR RIM Strategic Plan Committee, and
 - (4) BWSR staff
- March 10, 1994 = BWSR RIM Strategic Plan Committee meeting to review status of rule revision process
- March 21, 1994 = Deadline for written comments on "February 1994" DRAFT

PROPOSED TIMELINE FOR REVISION OF RIM RESERVE/PWP RULES:

What happens next?

- March 23, 1994 = Review overall rule revision process with BWSR Board
- April 1, 1994 = Packet mailed to BWSR Board members and staff:
 - (1) Synopsis of written comments received on "January 1994" DRAFT and "February 1994" DRAFT and BWSR staff responses
 - (2) Synopsis of "March 1994" DRAFT
- April 27, 1994 = BWSR staff request Board endorsement of "March 1994" DRAFT, as proposed rule
- May 1, 1994 = Formal rule revision process begins:
 - (1) Notice in State Register
 - (2) "March 1994" DRAFT sent to all SWCDs, Conservation Easement Advisory Group, BWSR Board members and staff, and to anyone requesting a copy
- May - June 1994 = Formal rule revision process continues (anticipate non-controversial rule revision process)
- July 1994 = BWSR Board adopts revised rule

Conservation easements

The Minnesota Board of Water and Soil Resources and your local soil and water conservation district...working together to protect Minnesota's resources



The mission of the Board of Water and Soil Resources (BWSR) is to provide leadership enabling local governments to properly manage water and soil resources and to help all citizens be stewards of our irreplaceable natural resources.

The mission of your soil and water conservation district (SWCD) is to take available technical, financial and educational resources, whatever their source, and focus on coordinating them so that they meet the needs of the local landuser.

For more information on conservation easements, PWP or RIM Reserve, contact your local SWCD; or call the BWSR at 612-296-3767. Hearing/speech impaired can call 612-297-5353 or 1-800-627-3529 and ask to be connected to 612-296-3767.

BWSR is an equal opportunity employer.

What is a conservation easement?

It involves the acquisition of specific land rights for conservation purposes. Landowners who offer the state a conservation easement receive a payment to stop cropping and/or grazing the land, and in turn the landowners initiate conservation practices such as establishing vegetative cover or restoring drained wetlands. The easement is recorded on the land title at the county courthouse and transfers with the land when the parcel is sold.

Two state programs that involve enrolling land in conservation easements are the Permanent Wetland Preserves Program (PWP) and the Reinvest in Minnesota (RIM) Reserve Program. The Minnesota Board of Water and Soil Resources (BWSR) administers these programs on a state level; locally, they are administered by soil and water conservation districts (SWCDs).

Who is eligible to enroll?

Any individual who has owned the land for at least one year and can provide evidence of a good and marketable land title can apply to enroll eligible land. Landowners must update their property abstract at their own expense. All liens and mortgages must be paid off, or released or consented to by the mortgage or lien holder, before the easement can be completed. Partnerships and corporations must be agricultural in nature and registered with the Minnesota Department of Agriculture to be eligible for the RIM Reserve Program.

What is the payment for a conservation easement?

Payments vary by township and land use history (cropped or non-cropped). They are based on the assessor's township average market value for tillable land. Contact your local SWCD for specific rates.

How long is the easement in effect?

Most easements purchased by the state are perpetual (forever). Some eligible lands may be enrolled under limited duration easements (not less than 20 years) in counties where certain local ordinances are in effect that will protect water and soil resources after the easement has expired.

How will the easement area be managed?

Depending on the site, a combination of conservation practices, such as establishing grass or trees, or restoring drained wetlands, will be required on the easement area. The state will provide financial assistance toward the establishment of the practices outlined in a conservation plan developed by the SWCD in cooperation with the landowner. The landowner is responsible for maintaining the practices and controlling noxious weeds. Any abandoned (unused) wells on the easement area must be properly sealed at the landowner's ex-

Easements continued...



pense and any contaminants, pollutants, or hazardous substances must also be cleaned up at the landowner's expense before enrolling the land.

Who pays the property taxes on the easement area?

The landowner is responsible for paying all taxes and any other levies and assessments that may be assessed on the enrolled land. Assessed values vary from county to county. Contact your local assessor for more information.

Who controls access to the easement acres?

Access is solely controlled by the landowner. No public access is allowed unless granted by the landowner.

Where can I get more information?

Contact the SWCD in the county where the land is located. The SWCD will assist in determining if the land is eligible and, if so, will assist with completing an application for enrollment. SWCDs may accept applications at certain times throughout the year; please contact your SWCD for specific information. Applications will be considered for funding by the state in the spring and the fall, and those meeting local and state resource protection goals will be prioritized based on resource benefits, local and state priorities and available funding.

RIM Reserve

The Minnesota Board of Water and Soil Resources and your local soil and water conservation district...working together to protect Minnesota's resources



The mission of the Board of Water and Soil Resources (BWSR) is to provide leadership enabling local governments to properly manage water and soil resources and to help all citizens be stewards of our irreplaceable natural resources.

The mission of your soil and water conservation district (SWCD) is to take available technical, financial and educational resources, whatever their source, and focus on coordinating them so that they meet the needs of the local landuser.

For more information on RIM Reserve, contact your local SWCD; or call the BWSR at 612-296-3767. Hearing or speech impaired can call 612-297-5353 or 1-800-627-3529 and ask to be connected to 612-296-3767.

BWSR is an equal opportunity employer.

The Reinvest in Minnesota (RIM) Reserve Program strives to protect and improve water quality by encouraging landowners to retire environmentally sensitive land from agricultural production. The program reimburses landowners for enrolling their land in a permanent conservation easement, and then provides assistance to restore the area to grass, trees or wetlands. Other benefits of the program include reduced soil erosion and sedimentation, enhanced fish and wildlife habitat, flood control and groundwater recharge.

The program is managed on the state level by the Minnesota Board of Water and Soil Resources (BWSR). Locally, soil and water conservation districts (SWCDs) implement the program.

Eligible lands:

Sensitive groundwater: lands where there is a significant risk of groundwater degradation from activities conducted at or near the land surface (e.g. sinkholes and areas adjacent to public supply wells).

Riparian lands: lands adjacent to public waters, drainage systems, wetlands or locally designated priority waters identified in a comprehensive local water management plan.

Wetland restoration areas: lands containing legally drained wetlands that are feasible to restore to their pre-drainage condition.

Marginal agricultural cropland: lands that are classified as highly erodible and have been cropped two of the five years prior to the date of application.

Other environmentally sensitive lands: lands such as pastured hillsides, agricultural woodlots and living snowfences, which provide protection of water and soil resources and furnish important fish and wildlife habitat.

Program accomplishments:

Nearly 2,000 private landowners enrolled 45,000 acres of land (including 10,000 acres of wetland restoration easements) into the RIM Reserve Program between 1986 and 1993. Strong partnerships with other agencies and organizations have contributed to the program's success. The following organizations have contributed to RIM Reserve with technical, administrative and financial assistance:

- Pheasants Forever
- Minnesota Waterfowl Association
- Izaak Walton League
- U. S. Fish & Wildlife Service
- North American Wetland Conservation Council
- Ducks Unlimited

Permanent Wetland Preserves

The Minnesota Board of Water and Soil Resources and your local soil and water conservation district...working together to protect Minnesota's resources



The mission of the Board of Water and Soil Resources (BWSR) is to provide leadership enabling local governments to properly manage water and soil resources and to help all citizens be stewards of our irreplaceable natural resources.

The mission of your soil and water conservation district (SWCD) is to take available technical, financial and educational resources, whatever their source, and focus on coordinating them so that they meet the needs of the local landuser.

For more information on the Permanent Wetland Preserves Program, contact your local SWCD; or call the BWSR at 612-296-3767. Hearing/speech impaired can call 612-297-5353 or 1-800-627-3529 and ask to be connected to 612-296-3767.

BWSR is an equal opportunity employer.

As wetlands continue to disappear from our landscape, more and more people are becoming aware of the unique benefits they provide and specific ecosystem functions they fulfill. Although this new awareness has led many landowners to think twice before draining or filling a wetland, financial considerations often make it difficult to allow these wetland areas to go undeveloped. The Permanent Wetland Preserves Program (PWP) helps balance these competing interests by offering compensation to landowners willing to enroll their wetlands in a permanent conservation easement that will protect the wetland and prohibit cropping and grazing of the easement area.

Program benefits:

- Store surface runoff and reduce flooding damages
- Provide food, shelter and habitat for fish and wildlife
- Replenish subsurface water
- Provide outdoor recreation areas
- Enhance the natural beauty and biodiversity of landscapes

Eligible wetlands:

Type 1 wetlands consist of seasonally flooded basins or upland flats. The soil is occasionally waterlogged or covered with water at various times, but is usually adequately drained during much of the growing season. Vegetation varies from bottomland hardwoods to herbaceous plants.

Type 2 wetlands are inland fresh meadows. The soil is usually without standing water but is waterlogged within a few inches of the surface. Vegetation includes grasses, sedges, rushes and various broad-leafed plants.

Type 3 wetlands are shallow marshes. The soil is often covered with water during the year. Plants such as cattails, arrowheads, pickerelweed, smartweeds, spikerushes and bulrushes are prevalent.

Only existing wetlands and adjacent uplands that provide a buffer for the wetland are eligible. Wetlands that have been partially drained, but are not feasible to restore, are also eligible.

The entire wetland area owned must be offered for enrollment. If the applicant owns only part of a wetland, it will be eligible only if there will be little or no adverse impact to the wetland area by activities that may take place in the non-enrolled portions of the basin.

Program accomplishments:

In 1991, the Legislature created the Permanent Wetland Preserves Program as part of the Wetland Conservation Act. During sign-up periods in the fall of 1992 and the spring of 1993, over 5,000 acres of wetlands and adjacent upland areas were enrolled in the program.



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DRAFT

Minnesota Board of Water and Soil Resources
Southbridge Office Building
155 South Wabasha, Suite 104
St. Paul, Minnesota 55107

In the Matter of Reviewing the Ground-Water Plan
for Hennepin County
(Minnesota Statutes Section 103B.255)

ORDER APPROVING
GROUND-WATER
PLAN

Whereas, the Hennepin County Board of Commissioners submitted a Ground-Water Plan (Plan) to the Minnesota Board of Water and Soil Resources (Board) on December 21, 1993 pursuant to Minn. Stat. 1990, 103B.255, and

Whereas, the Board has completed its review of the

Now Therefore, the Board hereby makes the following
Order:

FINDINGS OF

1. In March of 1988 the Hennepin County Board resolved to prepare a county ground water plan to the Hennepin Conservation District
2. On June 12, 1990, the County Board passed a Ground-Water Plan.
3. Chapter 103B.255 authorizes and encourages area to develop and implement ground-water plans.
4. HCD completed a draft Plan in April of 1992, and submitted it to affected local units of government for comments and suggestions.
5. On April 30, June 24, and August 20, 1992, HCD held public meetings on the draft Plan for the purpose of obtaining public input into the Plan.
6. In October of 1992 Hennepin County submitted its draft Plan to affected local units of government for review and comment pursuant to Section 103B.255 Subd. 8.

Mary Jo -
40 copies for
Board mailing

(Jim Haertel -
Hennepin Gw Plan
Approval)
- Eric M

DRAFT

Minnesota Board of Water and Soil Resources
Southbridge Office Building
155 South Wabasha, Suite 104
St. Paul, Minnesota 55107

In the Matter of Reviewing the Ground-Water Plan
for Hennepin County
(Minnesota Statutes Section 103B.255)

ORDER APPROVING
GROUND-WATER
PLAN

Whereas, the Hennepin County Board of Commissioners submitted a Ground-Water Plan (Plan) to the Minnesota Board of Water and Soil Resources (Board) on December 21, 1993 pursuant to Minn. Stat. 1990, 103B.255, and

Whereas, the Board has completed its review of the Plan,

Now Therefore, the Board hereby makes the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. In March of 1988 the Hennepin County Board of Commissioners (County Board) resolved to prepare a county ground water plan, and assigned the preparation of the Plan to the Hennepin Conservation District (HCD).
2. On June 12, 1990, the County Board passed a resolution accepting a grant to develop a Ground-Water Plan.
3. Chapter 103B.255 authorizes and encourages counties in the 7-county metropolitan area to develop and implement ground-water plans.
4. HCD completed a draft Plan in April of 1992, and submitted it to affected local units of government for comments and suggestions.
5. On April 30, June 24, and August 20, 1992, HCD held public meetings on the draft Plan for the purpose of obtaining public input into the Plan.
6. In October of 1992 Hennepin County submitted its draft Plan to affected local units of government for review and comment pursuant to Section 103B.255 Subd. 8.

7. In October of 1992 Hennepin County submitted its draft Plan to the Departments of Health, Natural Resources, Agriculture, the Pollution Control Agency, the Minnesota Geological Survey, the Board of Water and Soil Resources, and the Metropolitan Council for preliminary review and comment.
8. In November of 1992, cities and Watershed Management Organizations (WMOs) provided comments on the draft Plan to the county, and requested an extension in the review time allowed.
9. In the period November, 1992 through February, 1993, state agencies provided comments to the county on the draft Plan.
10. On January 19, 1993 the County conducted a workshop to hear the concerns of affected cities and WMOs.
11. On February 4, 1993 the County Board conducted a public hearing on the draft Plan. The County Board directed the HCD to conduct workshops for further city input.
12. On June 16, June 29, and July 14, 1993 workshops were held to obtain further input into the Plan.
13. On July 16, 1993 HCD staff revised the Plan in response to comments received and distributed revised sections to local governments.
14. On July 29, 1993 the County Board conducted a public hearing on the revised Plan.
15. In August of 1993 the County completed a new draft of the Plan.
16. On December 14, 1993 the County Board resolved to forward the Plan to the Metropolitan Council and State agencies for final review.
17. On December 21, 1993 the County submitted a revised Plan to the Departments of Health, Natural Resources and Agriculture, the Pollution Control Agency, the Minnesota Geological Survey, the Board of Water and Soil Resources, and the Metropolitan Council for final review and comment.
18. **Minnesota Pollution Control Agency Review:** On January 7, 1993, February 2, 1994, and March 8, 1994, the Minnesota Pollution Control Agency (MPCA) provided written comments on the Plan. In its February 2 and March 8, 1994 comments the MPCA recommended final approval of the Plan.

On March _____, 1994 Hennepin County responded to the MPCA Plan review comments.

19. **Minnesota Department of Natural Resources Review:** On December 15, 1992 and February 7, 1994 the Department of Natural Resources (DNR) Waters Division provided written comments on the Plan.

On March _____, 1994 Hennepin County responded to the DNR Plan review comments.

20. **Minnesota Department of Health Review:** On February 9, 1993 and February 23, 1994, the Minnesota Department of Health (MDH) provided written comments on the Plan. In its February 9, 1993 comments, the MDH pointed out some inconsistencies with rules and policies relating to wellhead protection and well management. The February 23, 1994 comments state that the MDH suggestions have been incorporated into the revised draft, and that the Plan is consistent with the ground-water protection programs administered by MDH. In the February 23 comments, the MDH recommends final approval of the Plan.

On March _____, 1994 Hennepin County responded to the MDH Plan review comments.

21. **Minnesota Department of Agriculture Review:** On February 8, 1994 the Minnesota Department of Agriculture (MDA) provided written comments on the Plan. The comments related to inconsistencies with Minnesota statutes, recommended minor changes, and recommended future amendments or programs the County may wish to consider in future Plan amendments. MDA found no inconsistencies with current law and rule, and recommended approval of the Plan.

On March, _____ 1994 Hennepin County responded to the MDA Plan review comments.

22. **Minnesota Geological Survey Review:** On January 6, 1993 the Minnesota Geological Survey (MGS) provided written comments on the Plan. MGS reviewed the Plan for accuracy and completeness of ground-water and geologic information, and for potential roles the MGS might play in plan implementation. MGS identified a number of suggested additions, changes, and corrections, which have been incorporated into revised drafts of the Plan.

On March, _____ 1994 Hennepin County responded to the MGS Plan review comments, and have incorporated MGS suggestions into the final Plan.

23. **Metropolitan Council Review:** On February 21, 1994, staff of the Metropolitan Council provided written comments on the Plan. On March 3, 1994, the Metropolitan Council, at its regular meeting, voted to recommend to BWSR that the Plan be approved contingent on: a) the County's determining and including estimated costs to cities for implementing the Plan; and b) incorporating suggested corrections.

DRAFT

On March _____, 1994 Hennepin County responded to the Metropolitan Council Plan review comments.

24. **Minnesota Board of Water & Soil Resources Review:** On December 21, 1992 and July 21, 1993, the Minnesota Board of Water & Soil Resources (BWSR) provided written comments on the Plan.

BWSR in its comments dated July 21, 1993, stated that its comments on the preliminary draft were addressed in the revised draft.

On March _____ 1994, Hennepin County provided final written changes to the Board.

25. **County Response to Agency Comments:** Hennepin County in its Plan submitted to the Board on December 21, 1993, has made numerous changes to the Plan as a result of state agency and local comments.

On March _____, 1994, the County provided final written changes to the Plan, together with a written response to the final state agency comments. For those suggested changes which were not incorporated into the final Plan, the County has provided written explanations.

The County has made all the changes deemed necessary by the BWSR staff.

26. The Board reviewed the Plan for conformance with the requirements of the Metropolitan Water Management Act at its March 23, 1994 regular meeting.

CONCLUSIONS

DRAFT

1. All relevant requirements of law have been fulfilled. The Board has proper jurisdiction in the matter of approving a Ground-Water Plan of Hennepin County pursuant to Minn. Stat. 103B.255.
2. The Hennepin County Ground Water Plan attached to this Order:
 - (a) covers the entire county area;
 - (b) describes existing and expected changes to the physical environment, land use, and development in the county;
 - (c) summarizes available information about ground water and related resources in the county;
 - (d) states the goals, objectives, scope, and priorities of groundwater protection in the county;
 - (e) contains standards, criteria, and guidelines for the protection of ground water from pollution and for various types of land uses in environmentally sensitive areas, critical areas, and previously contaminated areas;
 - (f) describes relationships and possible conflicts between the ground water plan and the plans of other counties, local units of government, and WMO's in the affected ground water system;
 - (g) sets forth standards and guidelines for the implementation of the plan by WMO's and local units of government;
 - (h) includes a procedure for amending the plan,as provided in Minnesota Statutes Chapter 103B.255.

ORDER

The Board hereby approves the attached Plan as the Ground-Water Plan of Hennepin County. Dated at St. Paul, Minnesota, this 23rd day of March, 1994.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

BY: D. James Nielsen
Chairman



March 11, 1994

TO : Board Members

FROM : Greg Larson, Head-Water and Land
Management Section

Subject : The state cost-share program

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As announced by Ron Harnack at the February meeting, we are seeking your guidance on the state cost-share program. There are two primary issues: revision of the program rules and the allocation of funds to soil and water conservation districts. These issues have been discussed--more or less-- for about three years and have been the subject of resolutions at two annual meetings of the Minnesota Association of Soil and Water Conservation Districts. These issues fall within my section but due to higher priorities such as the Wetland Conservation Act and activities associated with our easement programs, I have not been able to commit my staff to these concerns. Recently, the workload in my section has shifted and state priorities have changed necessitating a new look at the cost-share program.

Concerning the allocation of funds: It is my recommendation that several options be considered for distributing the fiscal year 1995 cost-share program allocations, scheduled for your action this June. Options could include regional block grants, which have been favored by a number of SWCDs. The current rule does not prohibit this--or other options--provided that at least 70 percent of the allocation addresses high priority problems. I refer you to page E-62 (8400.0600) of the cost-share rule which is included in your meeting packet.

Concerning the revision of the rule: It is my recommendation that the rule revision process formally begin this July. This timing would allow the cost-share revisions to incorporate those changes needed to make the best use of the State Revolving Loan program and consider the program changes needed to deal with expiring contracts from the Federal Conservation Reserve Program. Many other items also need attention as we seek to modernize the program to meet 1990s issues. Most concerns of SWCDs, to date, have focused on the type of practices and cost-share rates. As noted on page E-61 (8400.0300) of the rule, changes to the list of practices and cost-share rates can only be made pursuant to Minnesota Statutes, chapter 14. This is the rule-making chapter. I would expect that the rule revision could be completed by July 1, 1995.

I refer you to a backgrounder on the cost-share program which is included in your packet.

Given the interest of the Minnesota Association of Soil and Water Conservation Districts and the SWCD employees association in this topic, I am certain that they would participate in the development of allocation options and the rule revision process. In fact, I would expect them to assist!

Contact me if you have questions or comments prior to the meeting.

BACKGROUNDER: THE STATE COST SHARE PROGRAM

PURPOSE: To share the cost of installing land treatment practices to control soil erosion, sedimentation or water quality degradation.

LAW/AUTHORITY: MN Statutes Section 103C.501
Rules: Chapter 8400

- Eligibility requirements: Soil and Water Conservation Districts (SWCDs) requesting funds must submit to the BWSR an Annual Plan of Work, a Comprehensive Plan, and an Annual Report for the prior year and a financial statement showing the income and liabilities of the SWCD. These are reviewed and approved by the Board Conservationists.
- 70% of program funds must be used for high priority erosion, sedimentation or water quality problems identified in SWCD Comprehensive and Annual Plans. Cost-share rates may not exceed 75% of project costs (many SWCDs cost share projects at a rate lower than the maximum rate, so as to work with more landowners).
- Remaining funding may be used as follows:
 - no more than 20% of program funds may be used for the technical and administrative needs of the SWCDs, or for
 - secondary or "lower" priority erosion sedimentation and water quality problems as identified in the SWCD Comprehensive and Annual Plans. These cannot be cost-shared at a rate higher than 50% of total project costs.

WHAT PRACTICES ARE COST-SHARED?

- Erosion control structures
- Stripcropping
- Terraces
- Diversions
- Stormwater control systems
- Field windbreaks
- Animal waste control systems
- Critical area stabilization
- Streambank, lakeshore and roadside (SLR) stabilization

CURRENT FUNDING (FY 1994): \$1,461,000 (plus \$600,000 targeted for the Minnesota River and \$159,000 for SLR projects).

HISTORICAL FUNDING:

- Annual funding has averaged \$1.5M since 1977.
- Allocations to individual SWCDs average about \$16,000 and range from \$2,300 to \$42,000.

HISTORY:

- In 1977 the legislation establishing the program passed without a dissenting vote.
- The initial program rules were developed in 1978 and focused on the protection of soil productivity.
- In 1982, legislative changes included:
 - focusing on more aggressive landowner contacts by SWCDs; program funding related to SWCD plans
- A 1984 legislative change allowed for the State Board to retain funds until they were spent; the beginning of the "roll-over" (to the next year) of funds.
- In 1985, the Rule was revised and included:
 - incorporation of the 1982 legislative changes
 - introduction of the concept of Special Projects
 - an emphasis on water quality.
- Since 1985:

Local SWCD program goals and state priorities have not paralleled federal priorities. SWCDs have become more involved in helping counties and cities solve locally identified problems. Water quality related issues have replaced soil productivity concerns.

July 1, 1985

CHAPTER 8400
SOIL AND WATER CONSERVATION BOARD
COST-SHARE PROGRAM
RULES

8400.0100 DEFINITIONS.

Subpart 1. Scope. For purposes of parts 8400.0100 to 8400.2900, the definitions in this part, in addition to those in Minnesota Statutes, chapter 40, apply.

Subp. 1a. Adequately protected. "Adequately protected" means that soil erosion and other factors that influence the sustained productive use of the resource base are within acceptable limits, which are achieved through the use of soil and water conservation practices. With respect to soil erosion, the loss may not exceed "T."

Subp. 2. Agricultural Stabilization and Conservation Service. "Agricultural Stabilization and Conservation Service" means the United States Agricultural Stabilization and Conservation Service, an agency of the United States Department of Agriculture.

Subp. 3. Annual plan. "Annual plan" means a plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 4. Approved practice. "Approved practice" means a soil and water conservation practice which qualifies for state cost-sharing and which has been approved by the state board.

Subp. 5. Area conservationist. "Area conservationst" means the area conservationist of the Soil Conservation Service.

Subp. 6. Assigned Soil Conservation Service personnel. "Assigned Soil Conservation Service personnel" means the district conservationist or Soil Conservation Service personnel designated by the area conservationist to provide need and performance certification to the program.

Subp. 7a. Class I-IV soil. "Class I-IV soil" means soil generally suitable for field crop production according to United States Department of Agriculture Handbook No. 210, "Land Capability Classification" (Washington, D.C., September, 1961). That publication is not subject to frequent change, is available at the St. Paul Public Library, and is incorporated by reference. Soil in Class I has few limitations that restrict their use while Class IV soil has very severe limitations that require very careful management.

Subp. 8. Comprehensive plan. "Comprehensive plan" means a long-range plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9 and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 8a. Descriptive maps. "Descriptive maps" means computer-generated maps prepared by the land management information center of the State Planning Agency and provided to districts depicting high priority wind and water erosion and sedimentation areas. These maps are a tool for the district to identify high priority problem areas. These maps can and should be supplemented by the district as needed to more accurately reflect high priority erosion and sedimentation problems.

Subp. 9. District. "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. 10. District board. "District board" means the five supervisors of a district authorized to carry out the functions of the district.

Subp. 11. District conservationist. "District conservationist" means the district conservationist of the Soil Conservation Service.

Subp. 12. District cooperator. "District cooperator" means a land occupier who has requested the assistance of a district in controlling conservation problems. The request must be formalized by the signing of a district cooperator's agreement provided by the state board and approved by the district board.

Subp. 13. District technician. "District technician" means a district employee or county employee assigned to the district who possesses expertise in the design and application of soil and water conservation practices.

Subp. 14. Enduring practice. "Enduring practice" means a soil and water conservation practice which is designed for an effective life of ten years or more.

Subp. 14a. Feedlot model. "Feedlot model" means the analytical model contained in "An Evaluation System To Rate Feedlot Pollution Potential," publication no. ARM-NC-17, of the Agricultural Research Service of the United States Department of Agriculture (Peoria, Illinois, April 1982), designed for programmable hand-held calculators and used to determine the pollution potential rating of an animal feedlot. That publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 15. Field Office Technical Guide. "Field Office Technical Guide" means the document providing standards and specifications for technical requirements of soil and water conservation practices as provided by the Soil Conservation Service and adopted by the district board.

Subp. 16. Group spokesperson. "Group spokesperson" means an individual designated by the several individuals involved in a group project, who may speak for the entire group in negotiations with a district for cost-share assistance.

Subp. 16a. High priority erosion problems. "High priority erosion problems" means areas where erosion from wind or water is occurring on Class I-IV soils equal to or in excess of $2 \times T$ tons per acre per year or any area within 300 feet of a water course or within 1,000 feet of a water basin or wetland eroding by water in excess of T tons per acre per year. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Erosion problems occurring on nonshoreland areas in excess of T but less than $2 \times T$ tons per acre per year are classified as secondary priority.

Subp. 16b. High priority water quality problems. "High priority water quality problems" means areas where sediment, nutrients, chemicals, or other pollutants discharge to Department of Natural Resources designated protected waters or to a sinkhole or ground water so as to impair their quality or usefulness, including high priority feedlots and sedimentation problems.

"High priority feedlots" means feedlots where the pollution potential rating from the feedlot model is greater than or equal to one and which are

discharging pollutants to Department of Natural Resources designated protected waters or to a sinkhole or shallow soils overlying fractured or cavernous bedrock or within 100 feet of a water well. Feedlots not meeting these criteria are not eligible for cost-sharing assistance except as provided in part 8400.2600, subpart 3.

"High priority sedimentation problems" means areas within 300 feet of a water course or 1,000 feet of a water basin or wetland where the water erosion rate exceeds three tons per acre per year or areas where the districts can show that sediment delivery occurs from a watershed or direct conveyance structure such as a storm sewer or paved outlet channel discharging to these waters. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Sedimentation problems not meeting these criteria are not eligible for cost-sharing assistance.

Subp. 18. Land occupier. "Land occupier" means a person, firm, or corporation, including the governments of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the state, who possess lands lying within a district organized under Minnesota Statutes, chapter 40, whether as owner, lessee, renter, tenant, or otherwise, including, during the life of a practice, successors of a land occupier who received a cost-share payment. This definition also includes the federal government.

Subp. 19. Nonproduction practice. "Nonproduction practice" means a soil and water conservation practice which is installed or applied to control soil erosion or sedimentation or to protect or improve water quality. Practices installed or applied primarily to bring land into production or to increase the short-term productivity are not eligible for cost-sharing.

Subp. 20. Program plan. "Program plan" means a statewide plan developed by the state board, in consultation with the districts and appropriate agencies, for control of the soil and water conservation problems in the state.

Subp. 20a. Protected water. "Protected water" means those water basins, water courses, and wetlands, as defined in Minnesota Statutes, section 105.37, on the inventory of public waters and wetlands under Minnesota Statutes, section 105.391, subdivision 1, and identified on a protected waters and inventory map available in a county auditor's office.

Subp. 20b. Registered professional engineer. "Registered professional engineer" means a person who practices professional engineering within the meaning of Minnesota Statutes, sections 326.02 to 326.15, and who performs technical professional services such as, but not limited to, the planning, designing, or inspecting of the construction of erosion, sediment control, or water quality protection or improvement measures. A registered professional engineer may be designated by a district board and may use criteria in a recognized technical procedure to design, install, and certify practices which qualify for state cost-sharing.

Subp. 20c. Shallow soils overlying fractured or cavernous bedrock. "Shallow soils overlying fractured or cavernous bedrock" means areas where the soil depth or texture in conjunction with the condition of the bedrock will not provide treatment of agricultural waste sufficient to protect groundwater quality. Determination of these areas is made on an individual project basis by assigned Soil Conservation Service personnel or a registered professional engineer. Actual determination may be done by the district technician.

Subp. 20d. Sinkhole. "Sinkhole" means a depression or hole in the earth's surface caused by dissolving of underlying limestone; drainage is through joints and fractures in underlying bedrock.

Subp. 21. Soil and water conservation practice. "Soil and water conservation practice" means structural or vegetative practices applied to the land for the purpose of controlling soil erosion, sediment, agricultural waste, or other water pollutants.

Subp. 22. Soil Conservation Service. "Soil Conservation Service" means the United States Soil Conservation Service, an agency of the United States Department of Agriculture.

Subp. 22a. Special project. "Special project" means a conservation project including but not limited to a demonstration project, accelerated watershed or water quality project, long-term conservation agreement, planning technique, or nonstructural erosion or sediment control or water quality protection or improvement measure. Special projects may address nonshoreland secondary priority erosion problems and are submitted to the state board according to "Guidelines for Special Projects" published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 23. State board. "State board" means the state Soil and Water Conservation Board created in Minnesota Statutes, section 40.03.

Subp. 25. T. "T" means soil loss tolerance which is the maximum level of soil erosion that will permit a high level of crop productivity to be sustained economically and indefinitely. In Minnesota, "T" ranges from one to five tons per acre per year depending on the particular soil characteristics. "T" values for Minnesota soils are provided in the Field Office Technical Guide.

Subp. 26. 2 x T. "2 x T" means soil erosion at the rate of two times T.

8400.0200 AUTHORITY.

Minnesota Statutes, chapter 40, authorizes the state Soil and Water Conservation Board, in cooperation with the soil and water conservation districts, to administer a program of cost-sharing with land occupiers on the installation of soil and water conservation practices. Parts 8400.0100 to 8400.2900 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to districts, and standards and guidelines which the district boards shall use in allocating funds to land occupiers.

8400.0300 ESTABLISHING APPROVED PRACTICES.

The state board, in consultation with the districts, shall maintain a list of practices which are eligible for cost-share funds and a schedule of maximum rates. The list is contained in parts 8400.2000 to 8400.2700 and the schedule in parts 8400.2800 and 8400.2900. Changes to the list and schedule must be made pursuant to Minnesota Statutes, chapter 14.

8400.0400 CRITERIA FOR APPROVED PRACTICES.

Practices approved by the state board must meet the criteria in items A to C.

A. Their primary purpose must be the control of soil erosion or sedimentation, or protection or improvement of water quality.

B. They must be enduring in nature. All practices cost-shared under this program must be designed for a minimum effective life of ten years.

C. They must be nonproduction practices.

8400.0600 ALLOCATION OF FUNDS.

Subpart 1. Comprehensive plan. Before the state board can allocate cost-share funds to a district it must first approve the district's comprehensive plan, including its most recent amendment and the annual work plan which includes the application for needed cost-share funds. The plans must be in a format required by the state board.

Subp. 3. Review criteria. The state board shall review all district applications for cost-share funds with respect to the following criteria:

- A. the extent of high priority erosion or water quality problems in the district as outlined in the district comprehensive and annual plans;
- B. priorities for the control of soil erosion or water quality problems as established in the program plan of the state board;
- C. historical success of the district in applying soil and water conservation practices;
- D. availability of cost-share funds from other sources; and
- E. readiness of the district to effectively use the funds.

The state board shall review all district applications for special project funds with respect to criteria established in the most recent version of the Guidelines for Special Projects published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 4. Grants. Following review and approval of the annual and comprehensive plans, the state board shall allocate to districts in the form of grants at least 70 percent of the cost-sharing funds available statewide for conservation practices to address high priority erosion or water quality problems. The remaining cost-share funds may be allocated by the board to districts for technical and administrative assistance or special projects. Technical and administrative assistance grants may be used for controlling secondary priority nonshoreland erosion problems.

8400.0700 MONITORING.

For purpose of monitoring the progress of the program and use of funds, the state board shall receive from each district an annual report of the year's accomplishments by a date deemed reasonable by the state board. The state board may require additional special reports deemed necessary by the

state board to monitor the cost-sharing program. The reports must be on forms provided by the state board.

8400.0900 ADMINISTRATION OF FUNDS.

Following receipt of grant funds from the state board, a district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 40 and all other applicable laws. The district board may make all decisions concerning use of these funds in accordance with parts 8400.0100 to 8400.2900.

As a condition to receiving grant funds from the state board, the district shall ensure compliance with the maintenance provisions of part 8400.1700 and Minnesota Statutes, chapter 40 by monitoring all cost-share contracts made with land occupiers.

Prior to considering any applications from land occupiers for cost-share assistance, the district board shall establish the cost-share rates for practices to be installed under the program, which may not exceed the maximum rates established by the state board. This decision shall be based on the following factors:

- A. the extent of high priority erosion or water quality problems in the district as outlined in the district comprehensive and annual plans;
- B. advice of technical experts familiar with the district;
- C. cost-share rates currently in effect under the agricultural conservation program administered by the United States Agricultural Stabilization and Conservation Service and other assistance programs;
- D. district priorities as established in the districts' comprehensive and annual plans; and
- E. cost-share funds available.

8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.

Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the state board and available from the district office. Each application must be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner it must also bear the owner's signature. Applications must be submitted not later than June 1 to be considered for cost-sharing from the funds available

for the current fiscal year. After initial priority screening by the district board, assigned Soil Conservation Service personnel or a registered professional engineer are responsible for making a determination of need and cost estimate. Actual determination of need and cost estimate may be done by the district technician. Additional information on the desired practice which may be required by the district board in its consideration of the application shall be included.

8400.1100 GROUP PROJECT.

A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The district may share the cost of such a group project if all of the land occupiers are eligible as individuals and the practices satisfy the criteria of the program. The land occupiers must reach agreement on a division of payments and designate a group spokesperson. The spokesperson must be identified on the group cooperator agreement and shall file all forms with the district and negotiate all project details with the district. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

8400.1200 LAND IN MORE THAN ONE DISTRICT.

If a project involves land in more than one district, application must be made to the district containing the most land benefited by the practice.

8400.1300 CRITERIA FOR DISTRICT BOARD REVIEW.

Criteria for district board review:

- A. The applicant must be a district cooperator.
- B. The practice needed to solve the problem must be on the list of approved practices.
- C. The primary purpose of the requested practice must be the control of soil erosion or sedimentation, or the protection or improvement of water quality. In cases where the primary purpose is questionable, the district board shall make a determination of the acceptability of the application. Additionally, the district board shall make determination of the need for supplemental practices to protect any practice installed under this program,

such as fencing of water impoundment structures. If the district board determines that supplemental practices are necessary, it shall authorize cost-sharing for their installation.

D. The requested practice must be consistent with district plans and priorities.

E. The practice must be maintained by the land occupier, who is responsible for operation and maintenance of practices applied under this program.

F. Priority consideration shall be given to land occupiers or groups of land occupiers who demonstrate the ability to meet matching requirements. Cost-share funds may not be used for repair of practices installed solely with private or federal cost-sharing funds.

G. The practice must comply with the technical requirements of the Field Office Technical Guide. For practices not included in the Field Office Technical Guide, other recognized technical procedures may be used to design, install, and certify practices.

8400.1400 DISTRICT APPROVAL.

Subpart 1. General. After completion of a priority determination and cost estimate, the district board shall either approve or deny the application. If it is approved, the district board shall instruct the chairman or acting chairman to sign the application. Once it is signed, the application becomes the contract between the district and land occupier and serves as the authorization for work to proceed on the practice. Practices begun prior to district approval are ineligible for financial assistance. If it is denied, the district board shall notify the land occupier in writing within 30 days after board action of the reason for denial of the application. Changes in any provisions of the contract are subject to review and approval by the district board.

Subp. 2. High priority problems. In order to ensure compliance with part 8400.0600, subpart 4, the district board shall approve only those applications that involve the high priority problems for which they received funds.

8400.1405 STARTING AND COMPLETION DEADLINES.

Subpart 1. Time limit; cancellation. Projects not started within 18 months after district board approval must be canceled unless an amendment to the project has been approved by the district board. Projects not completed within two calendar years after initial approval must be canceled.

Subp. 2. Partial payment. In cases where weather or other unanticipated circumstances beyond the control of the land occupier, force postponement of certification of completion until the following construction season, the state board or its authorized representative may authorize a district board to issue a partial payment for the work that has been completed. The following conditions must be met before the state board or its authorized representative will consider authorizing a partial payment:

- A. The anticipated completion date will be in compliance with subpart 1.
- B. The completed work meets the requirements of part 8400.1300, item G.
- C. The state board's authorized representative must review the work and concur in the payment decision.

Subp. 3. Payment conditions. If the state board or its authorized representative authorizes a partial payment under subpart 2, the following conditions apply:

- A. Payment percentages must comply with part 8400.2800.
- B. The balance of the project must be paid by the district board upon the satisfactory completion of the total project.
- C. All expenses incurred in correcting damage caused to the project by virtue of its incompletion must be borne by the land occupier.
- D. Land occupiers receiving partial payments must complete the project within a time deemed reasonable by the district board.
- E. Land occupiers not completing partially paid projects are violating part 8400.1700 and shall be directed to return the amount of financial assistance received.
- F. Partial payment authorizations shall not be construed as precedent setting. Every request will be considered by the state board or its authorized representative on its own merits.

Subp. 4. Denial. If the state board or its authorized representative denies a request for partial payment under subpart 2, the district board shall be notified within 30 days of the reasons for denial of the request.

8400.1500 DISTRICT RECORDS.

The district shall maintain a current ledger of all cost-share contracts on forms provided by the state board. The ledger must specify the land occupiers with whom the district has contracted, the practices involved, the status of construction, and a total of funds encumbered.

8400.1600 PAYMENTS.

Subpart 1. Construction of practice. Construction of practices must be monitored by the district board to ensure compliance with part 8400.1300, item G. Upon completion, assigned Soil Conservation Service personnel or a registered professional engineer shall certify whether or not the practice has been satisfactorily performed, including a certification that the practice meets the requirements of part 8400.1300, item G. No certification shall be made until all specifications have been satisfied. Exceptions must be in accordance with part 8400.1405, subpart 2. Upon certification of completion, the land occupier shall contact the district for payment and shall present documentation of all costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 2. In-kind services. In-kind services provided by the land occupier such as, but not limited to, earth work, seedbed preparation, and seeding may be credited toward the land occupier's share of the total cost of the practice. The district board shall determine whether charges for in-kind services are practical and reasonable.

Subp. 3. Actual cost differing from estimated cost. In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the approved percentage of the estimated cost, except when an amendment to the cost-share contract has been approved. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the estimated cost, or postpone the starting or completion date of the practice. These changes must be approved by the supervisors in advance of completion of the work with an

amendment to the cost-share contract covering the changes. Amendments may not be authorized for providing final cost-sharing percentages in excess of the originally approved percentage or additional money for projects that were knowingly underfunded at the time of approval. Amendments may not be authorized after final approval of payment has been made on the original contract. Where the actual cost is less than the estimated cost, the district shall only share the approved percentage of the actual cost of the practice. The district board shall review the receipts or invoices provided by the land occupier to determine the actual cost of the practice. When the district determines that all claims are practical and reasonable, it shall authorize issuance of a check for the district share of the practice. If the district board determines that certain claims are not justified, it shall notify the land occupier in writing of the unjustified claims within 30 days. The district board shall then authorize the issuance of a check for the district share of the justified claims.

8400.1700 MAINTENANCE.

The land occupier is responsible for operation and maintenance of practices applied under this program to ensure that their conservation objective is met and the effective life of ten or more years is achieved. Should the land occupier fail to maintain the practices during their effective life, the land occupier is liable for the amount of financial assistance received for their installation. The district board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice. The land occupier is not liable for cost-share assistance received if the failure was caused by reasons beyond the land occupier's control, or if soil and water conservation practices are applied at the land occupier's expense which provide equivalent protection of the soil and water resources. In no case shall a district provide cost-share assistance to a land occupier for the reapplication of practices which were removed by the land occupier during their effective life or failed due to improper maintenance.

8400.1800 APPEALS.

If a land occupier feels he has been treated unfairly, he may request that the district board review its decision. Should the land occupier and the

district board reach an impasse, the land occupier may petition in writing for a hearing before the state board. If it grants the hearing, which shall be informal, the state board or a referee appointed by it shall hear all testimony offered, and shall accept written testimony for ten days after the hearing. The referee, if one is used, shall report his findings and recommendation to the state board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the district board.

8400.1950 VARIANCES.

If a district board feels that a particular requirement of parts 8400.0100 to 8400.2900 prevents an erosion or sedimentation control or water quality project from being installed, a request for a variance may be filed with the director of the state board. The request must be in writing and contain:

- A. the name and address of the district board making the request and the signature of the district chairperson;
- B. the nature of the variance being sought, including an identification of the applicable rule from which the variance is sought, the time period for which it is sought, and the reason for seeking the variance;
- C. a statement of alternatives for dealing with the installation of the affected project if the variance is not granted; and
- D. a statement of the effects on applicable natural resources and the public if the variance is granted.

Variance requests must be submitted to the director at least 30 days prior to the state board meeting at which the variance is requested to be heard. Within 45 days after the meeting, the state board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance will not be granted if it is in conflict with any statute. The state board may grant a variance upon such conditions as it may prescribe.

If a variance has been granted by the state board, the district board holding the variance may file with the state board at any time a written request for modification or amendment of the variance. The request for modification or amendment, and the state board's consideration of the request, shall comply with requirements of this part.

8400.2000 APPROVED PRACTICE: EROSION CONTROL STRUCTURES.

Subpart 1. Definition. "Erosion control structure" means a structure such as, but not limited to, floodwater retarding or multipurpose dams designed to provide temporary storage of floodwater, control the release rate of water providing downstream channel stability, or impound water.

Subp. 2. Purpose. The purpose of an erosion control structure is to control soil erosion or to protect or improve water quality. An erosion control structure may provide multiple benefits including, but not limited to, water supply for livestock, recreation, flood control, channel stability, wildlife habitat, and fire prevention.

Subp. 3. Applicability. Erosion control structures may be used on any lands where they are necessary for the control of soil erosion or water quality protection or improvement.

Subp. 4. Policies. Cost-sharing is authorized:

A. only for the construction of erosion control structures that provide for reduction of soil erosion or water quality protection or improvement;

B. for the installation of livestock watering facilities in conjunction with erosion control structures only if the facilities are necessary for the proper management and protection of the structure as determined by the district board;

C. for permanent fencing of an erosion control structure as determined by the district board;

D. for tree and shrub plantings adjacent to the structure and seeding necessary to stabilize an erosion control structure and adjacent critical areas, including, whenever possible, the use of those species that provide wildlife habitat and visual enhancement;

E. for erosion control structures which provide multiple benefits if the primary benefit is soil erosion control or water quality protection or improvement;

F. for temporary materials and seedings necessary to properly stabilize an erosion control structure during construction; and

G. for erosion control dams and ponds if a minimum of 50 percent of the contributing drainage area above the proposed project is adequately protected.

8400.2100 APPROVED PRACTICE: STRIPCROPPING.

Subpart 1. Definition. "Stripcropping" means the development and application of a cropping system for a farming unit which provides for planting row crops with the contour where practicable and incorporates alternate strips of row crops, close grown crops, sod crops, or fallow.

Subp. 2. Purpose. The purpose of stripcropping is to establish a system of farming with contour, field, or wind stripcropping to control soil erosion or protect or improve water quality. Stripcropping may provide additional benefits to wildlife.

Subp. 3. Applicability. Stripcropping may be used on any lands where it is necessary for the control of soil erosion or water quality protection or improvement.

Subp. 4. Policies Cost-sharing is authorized for equipment and labor costs involved in the marking of individual strip lines. Equipment and labor costs must not exceed equivalent total costs as listed in "Custom Rate Estimates for Minnesota," published annually by the University of Minnesota Agricultural Extension Service, and available in county agricultural extension offices. That publication is adopted by reference.

A Project is not eligible for state cost-share assistance if federal cost-share funds are used on the same project.

8400.2200 APPROVED PRACTICE: TERRACES.

Subpart 1. Definition. "Terrace" means an earth embankment, or a combination ridge and channel constructed across the slope at the required spacing.

Subp. 2. Purpose. Terraces are constructed to:

- A. reduce erosion;
- B. reduce sediment content in runoff water;
- C. intercept and conduct surface runoff at a nonerosive velocity to a stable outlet;
- D. prevent gully development;
- E. reduce flooding; or
- F. protect or improve water quality.

Terraces may provide additional benefits by creating wildlife habitat and retaining runoff for moisture conservation.

Subp. 3. Applicability. Terraces may be used on any lands where they are needed for the control of soil erosion or water quality protection or improvement.

Subp. 4. Policies. Cost-sharing is authorized:

A. for construction necessary to properly establish terraces, including earthwork, material, and seedings if necessary;

B. for temporary materials and seedings necessary to properly stabilize terraces during construction; and

C. for tile systems necessary for the establishment and operation of the terraces, including the outlet which shall be limited to 300 feet below the last terrace in a system.

8400.2300 APPROVED PRACTICE: DIVERSIONS.

Subpart 1. Definition. "Diversion" means a channel with a supporting ridge on the lower side constructed across the slope.

Subp. 2. Purpose. The purpose of a diversion is to divert water away from erosive areas or areas that pose a threat to water quality to areas where it can be used or disposed of safely. Diversions may provide additional benefit to wildlife.

Subp. 3. Applicability. A diversion may be used where:

A. runoff from higher lying areas is eroding cropland, pastureland, or farmsteads, or is needed to support conservation practices such as terraces or stripcropping in the control of erosion or sedimentation;

B. surface and shallow subsurface flow is damaging sloping upland or contaminating ground or surface water; or

C. it is required as a part of a pollution abatement system, or to control erosion or sedimentation on urban or developing areas and construction sites.

Subp. 4. Policies. Cost-sharing is authorized:

A. for tile systems necessary for the establishment and operation of diversions;

B. for construction necessary to properly establish diversions including earthwork, materials, and seedings;

C. for temporary materials and seedings necessary to properly stabilize diversions during construction; and

D. for permanent fencing of diversions as determined by the district board.

8400.2400 APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.

Subpart 1. Definition. "Stormwater control system" means a practice or

system of practices such as, but not limited to, grassed waterways, water and sediment control basins, and grade stabilization structures installed to convey storm runoff to a constructed or natural outlet in a nonerosive manner. This practice does not apply when the primary purpose is drainage to expand or improve crop production or making the cropping system more convenient.

Subp. 2. Purpose. The purpose of a stormwater control system is to provide a means of regulating or removing runoff to control erosion or protect or improve water quality. Additional benefit may be provided through creation of wildlife habitat.

Subp. 3. Applicability. A stormwater control system may be used on all lands by using vegetative or structural measures for control of erosion or protection or improvement of water quality.

Subp. 4. Policies. Cost-sharing is authorized:

A. For the construction of practices required in a complete stormwater control system. These practices include, but are not limited to a lined waterway or outlet, detention ponds, vegetative filter strips, permanent sod cover, and permanent vegetation including trees, shrubs, and grasses. At least 80 percent of the contributing drainage areas above grassed waterways on land owned or controlled by the applicant, must be adequately protected.

B. For tile systems necessary for the establishment and operation of stormwater control systems, including the outlet, which is limited to 300 feet below the end of the waterway.

C. For temporary materials and seedings necessary to properly stabilize a stormwater control system during construction.

D. For permanent fencing of stormwater control systems as determined by the district board.

8400.2500 APPROVED PRACTICE: FIELD WINDBREAKS.

Subpart 1. Definitions. "Field windbreak" means a strip or belt of trees, shrubs, or grass barriers established within or adjacent to a field.

Subp. 2. Purpose. The primary purpose of a field windbreak is to reduce wind erosion. Additional benefits may be the protection of crops, livestock, and wildlife, increased moisture conservation by controlling snow deposition, and beautification and enhancement of the landscape.

Subp. 3. Applicability. Field windbreaks may be used in or around open field which need protection against wind erosion. Additional benefits may be realized from the creation of wildlife habitat.

Subp. 4. Policies. Cost-sharing is authorized for site preparation, planting materials, planting, chemicals for weed control, and other applicable costs necessary to establish a field windbreak. The land occupier is responsible for controlling competitive vegetation for two years following planting and must bear the cost of control.

Cost-sharing is prohibited for plantings installed primarily for farm beautification, protection of buildings or livestock, energy conservation, or other uses where erosion control is not the primary purpose.

8400.2600 APPROVED PRACTICE: ANIMAL WASTE CONTROL SYSTEMS.

Subpart 1. Definition. "Animal waste control system" means a planned agricultural waste management system to contain and manage liquid and solid wastes including runoff from concentrated animal waste (feedlot) areas with ultimate disposal in a manner which does not degrade soil or water resources. This practice includes systems for safe disposal of livestock wastes through use of soil and plants.

Subp. 2. Purpose. Agricultural waste management systems are used to manage wastes in rural areas in a manner which prevents or minimizes degradation of soil and water resources and protects public health and safety. These systems are planned to preclude discharge of pollutants to surface or ground water and, to the fullest practicable extent, recycle wastes through soil and plants.

Subp. 3. Applicability. Animal waste control systems may be used with any high priority feedlot or where the land occupier was cited by the Minnesota Pollution Control Agency or other situations where that agency determines there is a potential feedlot pollution hazard.

Subp. 4. Policies. Cost-sharing is authorized for:

A. All structures and permanent shrubs, trees, or grasses necessary to store animal wastes or control stormwater runoff from animal confinement areas including storage facilities, diversions, waste storage ponds, and waterways. A complete system, controlling discharge of runoff from animal confinement areas to waters of the state is required.

B. Tile systems necessary for the establishment and operation of an animal waste control system.

C. Temporary materials and seedings necessary to properly stabilize an animal waste control system during construction.

D. Permanent fencing of an animal waste control system as determined by the district board.

Cost-sharing is prohibited on any costs normally incurred in the management of an animal confinement area. This includes buildings, yards, permanent or portable pumps, tank wagons, loaders, stackers, and similar items.

Holding tanks, collection basins, waste conveying pipe, and other animal waste facilities are eligible for cost-sharing if the district board determines that they are necessary to protect water quality and if the entire system needed to control pollution is installed.

A holding tank which will become an integral part of a building is eligible for cost-sharing if there is no other feasible alternative available for controlling pollution. The district board, with technical review completed by technicians available to it, shall make the final decision concerning the cost-sharing eligibility of such a system. For purposes of determining the cost-share payment, the cost of the building foundation and the cost of the building is not eligible for cost-sharing. The cost attributable to the foundation shall be represented by the top four feet of the storage tank walls.

8400.2700 APPROVED PRACTICE: CRITICAL AREA STABILIZATION.

Subpart 1. Definition. "Critical area stabilization" means planting permanent vegetation such as trees, shrubs, vines, grasses, or legumes or placing rock cover on highly erodible or severely eroded sites or in areas where vegetation is needed to protect or improve water quality.

Subp. 2. Purpose. The purpose of critical area stabilization is to provide permanent vegetative or rock cover to stabilize the soil, to control erosion or to protect or improve water quality. Additional benefit may be gained by improving wildlife habitat and enhancing natural beauty.

Subp. 3. Applicability. Critical area stabilization may be used on sediment-producing, highly erodible, or severely eroded areas or in areas where vegetation is needed to protect or improve water quality, such as, but not limited to, abandoned mine spoil, construction sites, and denuded or gullied areas where vegetation is difficult to establish.

Subp. 4. Policies. Cost-sharing for stabilizing streambank, lakeshore, and roadside areas must be addressed with the approved practice in part 8400.2705.

Cost-sharing is authorized for:

- A. earthwork, materials, seed, and seedings and other associated costs necessary to stabilize the area;
- B. temporary materials and seedings necessary to stabilize the area during construction; and
- C. permanent fencing of the area as determined by the district board.

8400.2705 APPROVED PRACTICE: STREAMBANK, LAKESHORE, AND ROADSIDE STABILIZATION.

Subpart 1. Definition. "Streambank, lakeshore, and roadside stabilization" means stabilizing and protecting streambank, lakeshore, and roadside areas against erosion by vegetative or structural means.

Subp. 2. Purpose. The purpose of streambank, lakeshore, and roadside stabilization is to control erosion or protect or improve water quality.

Subp. 3. Applicability. Streambank, lakeshore, and roadside stabilization may be used on eroding or sediment producing areas on streambank, lakeshore, or roadside sites where vegetative or structural measures are needed to correct the problem.

Subp. 4. Policy. Cost-sharing is authorized for:

- A. earthwork, materials, seed, and seedings necessary to stabilize the area;
- B. temporary materials and seedings necessary to stabilize the area during construction; and
- C. permanent fencing of the area as determined by the district board.

Permanent fencing may be used as the sole remedy if it is determined by the district board to be the most practical solution, except that fencing of property boundaries and roads is ineligible for cost-sharing.

Subp. 5. Cost-sharing limit. Cost-sharing may not exceed 50 percent of total eligible project costs.

8400.2800 MAXIMUM RATES.

The maximum percent of the total cost of a practice installed to control a high priority erosion or water quality problem that may be funded by state

cost-share funds is 75 percent except as stated in part 8400.2100, subpart 4. The maximum percent of the total cost of a practice installed to control a secondary priority nonshoreland erosion problem that may be funded by state cost-share funds is 50 percent except as stated in part 8400.2100, subpart 4. State cost-share funds may be matched with federal money or other state funds except as stated in part 8400.2100, subpart 4. The combined state and federal amount may not exceed the maximum rates in this part or part 8400.2705, subpart 5.

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to districts. The state board shall emphasize the determination of priority areas where erosion, sedimentation, and related water quality problems appear most in need of control and the development of the comprehensive public information program.

Subd. 2. ~~Informational hearing on plan.~~ To develop the program plan, the state board may request existing pertinent information from state agencies and may conduct hearings.

Subd. 3. ~~Coordination with state resource plans.~~ The program plan shall be coordinated as closely as possible with the statewide framework water resources plan, the statewide water quality management plan, and other statewide resource plans.

Subd. 4. ~~Review and revision.~~ The state board shall review and revise the program plan at intervals it deems appropriate.

HIST: 1990 c 391 art 3 s 22

COST-SHARING CONTRACTS

103C.501 COST-SHARING CONTRACTS FOR EROSION CONTROL AND WATER MANAGEMENT.

Subdivision 1. **Cost share authorization.** The state board may allocate available funds to districts to share the cost of systems or practices for erosion or sedimentation control or water quality improvement that are designed to protect and improve soil and water resources.

Subd. 2. **Request by district board.** (a) A district board requesting funds of the state board must submit an application in a form prescribed by the board containing:

- (1) a comprehensive plan;
- (2) an annual work plan; and
- (3) an application for cost-sharing funds.

(b) The comprehensive and annual work plans must be completed as provided in section 103C.331, subdivision 11. After review of the district's comprehensive plan, the state board must approve the comprehensive plan with necessary amendments or reject the plan.

Subd. 3. **Approval of application.** If the state board approves the comprehensive plan, including the plan's most recent amendment, the annual work plan, and the application of the district, the state board shall determine the specific amount of funds to allocate to the district for cost-sharing contracts.

Subd. 4. **Cost-sharing funds.** (a) The state board shall allocate at least 70 percent of cost-sharing funds to areas with high priority erosion, sedimentation, or water quality problems. The areas must be selected based on the statewide priorities established by the state board. The allocated funds must be used for conservation practices for high priority problems identified in the comprehensive and annual

work plans of the districts.

(b) The remaining cost-sharing funds may be allocated to districts as follows:

- (1) for technical and administrative assistance, not more than 20 percent of the funds; and
- (2) for conservation practices for lower priority erosion, sedimentation, or water quality problems.

Subd. 5. **Contracts by districts.** (a) A district board may contract on a cost-share basis to furnish financial aid to a land occupier or to a state agency for permanent systems for erosion or sedimentation control or water quality improvement that are consistent with the district's comprehensive and annual work plans.

(b) The duration of the contract may be the time required to complete the planned systems. A contract must specify that the land occupier is liable for monetary damages, not to exceed the amount of financial assistance received from the district, for failure to complete the systems or practices in a timely manner or maintain the systems or practices as specified in the contract.

(c) A contract may provide for cooperation or funding with federal agencies. A land occupier or state agency may provide the cost-sharing portion of the contract through services in kind.

(d) The state board or the district board may not furnish any financial aid for practices designed only to increase land productivity.

Subd. 6. **Rules.** The state board shall adopt rules prescribing:

- (1) procedures and criteria for allocating funds for cost-sharing contracts;
- (2) standards and guidelines for cost-sharing contracts;
- (3) the scope and content of district comprehensive plans, plan amendments, and annual work plans;
- (4) standards and methods necessary to plan and implement a priority cost-sharing program, including guidelines to identify high priority erosion, sedimentation, and water quality problems;
- (5) the share of the cost of conservation practices to be paid from cost-sharing funds; and
- (6) requirements for districts to document their efforts to identify and contact land occupiers with high priority erosion problems.

HIST: 1990 c 391 art 3 s 23

WORKS OF IMPROVEMENT

STATUS OF 1994 BLOCK GRANT APPLICATION
WCA ADOPTION & LOCAL MATCH

	DATE APPLICATION REC.	BC APPROVAL	BLOCK RESOLU. OK	COUNTY WCA ADOPTION	WCA CASH MATCH	WCA INKIND MATCH	BWSR WCA GRANT	H2O BASE GRANT BWSR	H2O BASE LOCAL LEVY	SHORELAND BWSR	SHORELAND LOCAL MATCH	1994 BLOCK GRANT	1993 REPORT REC'D
AITKIN	1/15/94	YES	YES	YES	9600.00	9600.00	19200.00	32823.00	4677.00	14216.99	14216.99	66239.99	YES
ANOKA	1/15/94	YES	YES	METRO	18000.00	18000.00	36000.00	0.00	74762.00	3000.00	3000.00	39000.00	YES
BECKER	1/14/94	YES	YES	YES	8350.00	8350.00	16700.00	30360.00	7140.00	14152.82	14152.82	61212.82	YES
BELTRAMI	1/14/94	YES	YES	3/15/94	18000.00	18000.00	36000.00	31138.00	6362.00	6969.40	6969.40	74107.40	YES
BENTON	1/5/94	YES	YES	YES	18000.00	18000.00	36000.00	30350.00	7150.00	3922.22	3922.22	70272.22	YES
BIG STONE	1/5/94	NO	YES	YES	5000.00	5000.00	10000.00	35860.00	1640.00	3104.51	3104.51	48964.51	YES
BLUE EARTH	1/14/94	NO	YES	2/94	96000.00	96000.00	19200.00	22179.00	15321.00	3863.55	3863.55	45242.55	YES
BROWN	1/12/94	YES	YES	YES	5000.00	5000.00	10000.00	30938.00	6562.00	3084.34	3084.34	44022.34	YES
CARLTON	1/13/94	YES	YES	YES	9600.00	9600.00	19200.00	30670.00	6830.00	4802.27	4802.27	54672.27	YES
CARVER	1/12/94	YES	YES	METRO		36000.00	36000.00	20798.00	16702.00	3000.00	3000.00	59798.00	YES
CASS	1/13/94	YES	YES	YES	6000.00	30000.00	36000.00	26845.00	10655.00	14097.82	14097.82	76942.82	YES
CHIPPEWA	1/14/94	YES	YES	YES	5000.00	5000.00	10000.00	33450.00	4050.00	3014.67	3014.67	46464.67	YES
CHISAGO	1/14/94	YES	YES	YES	0.00	26700.00	26700.00	29851.00	7649.00	6195.69	6195.69	62746.69	YES
CLAY	1/10/94	YES	YES	YES	3750.00	3750.00	7500.00	27130.00	10370.00	3452.86	3452.86	38082.86	YES
CLEARWATER	1/15/94	YES	YES	YES	9600.00	9600.00	19200.00	35058.00	2442.00	3753.54	3753.54	58011.54	YES
COOK	1/13/94	YES	YES	YES	0.00	12000.00	12000.00	34755.00	2745.00	5170.79	5170.79	52125.79	YES
COTTONWOOD	1/8/94	YES	YES	YES	0.00	10000.00	10000.00	32465.00	5035.00	0.00	3216.35	42465.00	YES
CROW WING	1/13/94	YES	YES	YES	6000.00	30000.00	36000.00	17905.00	19595.00	25668.66	25668.66	79573.66	YES
DAKOTA	1/11/94	YES	YES	METRO	36000.00	0.00	36000.00	0.00	115176.00	3000.00	3000.00	39000.00	YES
DODGE	1/14/94	YES	YES	YES	0.00	16700.00	16700.00	33508.00	3992.00	3082.50	3082.50	53290.50	YES
DOUGLAS	1/13/94	YES	YES	YES	9600.00	9600.00	19200.00	28844.00	8656.00	11140.48	11140.48	59184.48	YES
FARIBAULT	1/12/94	YES	YES	YES	5000.00	5000.00	10000.00	31512.00	5988.00	3165.01	3165.01	44677.01	YES
FILLMORE	1/14/94	YES	YES	YES	5000.00	5000.00	10000.00	33116.00	4384.00	3106.34	3106.34	46222.34	YES
FREEBORN	1/12/94	YES	NO	2/94	5000.00	5000.00	10000.00	29083.00	8417.00	3720.54	3720.54	42803.54	YES
GOODHUE	1/14/94	YES	YES	YES	8350.00	8350.00	16700.00	16073.00	21427.00	3216.35	3216.35	35989.35	YES
GRANT	1/13/94	YES	YES	YES	10000.00	0.00	10000.00	35247.00	2253.00	3606.87	3606.87	48853.87	YES
HENNEPIN	1/14/94	YES	YES	METRO	30000.00	6000.00	36000.00	0.00	440596.00	0.00	0.00	36000.00	YES
HOUSTON	1/12/94	YES	YES	YES	5000.00	7200.00	12200.00	34099.00	3401.00	3152.18	3152.18	49451.18	YES
HUBBARD	1/15/94	YES	YES	YES	13350.00	13350.00	26700.00	31572.00	5928.00	10988.30	10988.30	69260.30	YES
ISANTI	1/12/94	YES	YES	YES	0.00	26700.00	26700.00	32396.00	5104.00	4908.61	4908.61	64004.61	YES
ITASCA	1/11/94	YES	YES	YES	9600.00	9600.00	19200.00	20254.00	17246.00	13285.60	13285.60	52739.60	YES
JACKSON	1/14/94	YES	YES	YES	0.00	10000.00	10000.00	32087.00	5413.00	3544.53	3544.53	45631.53	YES
KANABEC	1/13/94	YES	YES	YES	13350.00	13350.00	26700.00	35203.00	2297.00	5025.95	5025.95	66928.95	YES
KANDIYOHI	1/10/94	YES	YES	YES	9600.00	9600.00	19200.00	26639.00	10861.00	8681.83	8681.83	54520.83	YES
KITTSON	1/13/94	YES	YES	1/18/94	2315.00	7014.00	9329.00	34015.00	3485.00	3045.84	3045.84	46389.00	YES
KOOCHICHING	1/15/94	YES	YES	2/28/94	0.00	19200.00	19200.00	N/E	4136.00	3146.68	3146.68	22346.68	NO
LAC QUI PARLE	1/15/94	YES	YES	YES	0.00	10000.00	10000.00	34505.00	2995.00	3020.17	3020.17	47525.17	YES

STATUS OF 1994 BLOCK GRANT APPLICATION
WCA ADOPTION & LOCAL MATCH

	DATE APPLICATION REC.	BC APPROVAL	BLOCK RESOLU. OK	COUNTY WCA ADOPTION	WCA CASH MATCH	WCA INKIND MATCH	BWSR WCA GRANT	H2O BASE GRANT	H2O BASE LOCAL LEVY	SHORELAND BWSR	SHORELAND LOCAL MATCH	1994 BLOCK GRANT	1993 REPORT REC'D
LAKE	1/12/94	YES	YES	EARLY 94	0.00	16700.00	16700.00	35025.00	2475.00	5746.49	5746.49	57471.49	YES
LAKE OF THE WOODS	1/13/94	YES	YES	YES	13350.00	13350.00	26700.00	36399.00	1101.00	4204.57	4204.57	67303.57	YES
LE SUEUR	1/13/94	YES	YES	YES	0.00	16700.00	16700.00	31438.00	6062.00	6162.69	6162.69	54300.69	YES
LINCOLN	12/28/93	YES	YES	YES	0.00	10000.00	10000.00	35369.00	2131.00	3210.85	3210.85	48579.85	YES
LYON	1/13/94	YES	YES	YES	0.00	10000.00	10000.00	30419.00	7081.00	3168.68	3168.68	43587.68	YES
MCLEOD	1/14/94	YES	YES	YES	0.00	16700.00	16700.00	30378.00	7122.00	3513.36	3513.36	50591.36	YES
MAHNOMEN	1/6/94	YES	YES	YES	0.00	12200.00	12200.00	36456.00	1044.00	4032.23	4032.23	52688.23	YES
MARSHALL	1/13/94	YES	YES	3/15/94	0.00	19200.00	19200.00	32905.00	4595.00	3000.00	3000.00	55105.00	YES
MARTIN	1/11/94	YES	YES	YES	5000.00	5000.00	10000.00	28243.00	9257.00	3562.87	3562.87	41805.87	YES
MEEKER	1/13/94	YES	YES	YES	2206.00	16994.00	19200.00	32573.00	4927.00	5911.50	5911.50	57684.50	YES
MILLE LACS	1/13/94	YES	YES	YES	9600.00	9600.00	19200.00	33761.00	3739.00	6012.34	6012.34	58973.34	YES
MORRISON	1/13/94	YES	YES	YES	13350.00	13350.00	26700.00	31710.00	5790.00	4826.11	4826.11	63236.11	YES
MOWER	1/13/94	YES	YES	YES	6100.00	6100.00	12200.00	28951.00	8549.00	3892.89	3892.89	45043.89	YES
MURRAY	1/12/94	YES	YES	YES	0.00	10000.00	10000.00	33668.00	3832.00	3832.38	3832.38	47500.38	YES
NICOLLET	1/11/94	YES	YES	YES	0.00	16700.00	16700.00	30446.00	7054.00	3091.67	3091.67	50237.67	YES
NOBLES	12/29/93	YES	YES	YES	5000.00	5000.00	10000.00	31263.00	6237.00	3064.17	3064.17	44327.17	YES
NORMAN	1/13/94	YES	YES	YES	6100.00	6100.00	12200.00	34503.00	2997.00	3012.83	3012.83	49715.83	YES
OLMSTED	1/14/94	YES	YES	1/25/94	0.00	26700.00	26700.00	2216.00	35284.00	3735.21	3735.21	32651.21	YES
OTTER TAIL	1/14/94	YES	YES	YES	0.00	19200.00	19200.00	24471.00	13029.00	23774.72	23774.72	67445.72	YES
PENNINGTON	1/15/94	YES	YES	YES	9616.00	7084.00	16700.00	35245.00	2255.00	3300.68	3300.68	55245.68	YES
PINE	1/12/94	YES	YES	YES	26700.00	0.00	26700.00	32404.00	5096.00	7508.43	7508.43	66612.43	YES
PIPESTONE	1/13/94	YES	YES	YES	0.00	10000.00	10000.00	35031.00	2469.00	3000.00	3000.00	48031.00	YES
POLK	1/10/94	YES	YES	YES	0.00	16700.00	16700.00	27943.00	9557.00	4156.90	4156.90	48799.90	YES
POPE	1/15/94	YES	YES	YES	0.00	12200.00	12200.00	34702.00	2798.00	5245.97	5245.97	52147.97	YES
RAMSEY	1/3/94	YES	YES	METRO	0.00	26700.00	26700.00	0.00	170829.00	0.00	0.00	26700.00	
RED LAKE	1/12/94	YES	YES	YES	0.00	12200.00	12200.00	36462.00	1038.00	3355.69	3355.69	52017.69	YES
REDWOOD	1/10/94	YES	YES	YES	0.00	10000.00	10000.00	30684.00	6816.00	3000.00	3000.00	43684.00	YES
RENVILLE	1/11/94	YES	YES	YES	0.00	10000.00	10000.00	29370.00	8130.00	3066.00	3066.00	42436.00	YES
RICE	1/13/94	YES	YES	1/28/94	5000.00	14200.00	19200.00	26654.00	10846.00	5161.63	5161.63	51015.63	YES
ROCK	1/14/94	YES	YES	YES	0.00	10000.00	10000.00	33916.00	3584.00	3000.00	3000.00	46916.00	YES
ROSEAU	1/14/94	YES	YES	YES	0.00	26700.00	26700.00	34120.00	3380.00	3113.67	3113.67	63933.67	YES
ST. LOUIS	1/13/94	YES	NO	YES	47515.00	0.00	26700.00	0.00	39891.00	26779.73	26779.73	53479.73	
SCOTT	1/15/95	YES	YES	METRO	27300.00	26000.00	36000.00	15510.00	21990.00	3000.00	3000.00	54510.00	YES
SHERBURNE	1/12/94	YES	YES	YES	18000.00	18000.00	36000.00	11637.00	25863.00	6100.35	6100.35	53737.35	YES
SIBLEY	1/14/94	YES	YES	YES	5000.00	7200.00	12200.00	33591.00	3909.00	3117.34	3117.34	48908.34	YES
STEARNS	1/14/94	YES	YES	YES	0.00	36000.00	36000.00	9044.00	28456.00	11771.18	11771.18	56815.18	YES
STEELE	1/11/94	YES	YES	YES	0.00	12200.00	12200.00	28951.00	8549.00	3346.52	3346.52	44497.52	YES

STATUS OF 1994 BLOCK GRANT APPLICATION
WCA ADOPTION & LOCAL MATCH

	DATE APPLICATION REC.	BC APPROVAL	BLOCK RESOLU. OK	COUNTY WCA ADOPTION	WCA CASH MATCH	WCA INKIND MATCH	BWSR WCA GRANT	H2O BASE GRANT BWSR	H2O BASE LOCAL LEVY	SHORELAND BWSR	SHORELAND LOCAL MATCH	1994 BLOCK GRANT	1993 REPORT REC'D
STEVENS	1/3/94	YES	YES	YES	0.00	10000.00	10000.00	34791.00	2709.00	3155.84	3155.84	47946.84	YES
SWIFT	1/14/94	YES	YES	YES	0.00	12200.00	12200.00	34555.00	2945.00	0.00	3177.84	46755.00	YES
TODD	1/12/94	YES	YES	YES	9600.00	9600.00	19200.00	34149.00	3351.00	6182.85	6182.85	59531.85	YES
TRAVERSE	1/12/94	YES	YES	YES	5000.00	5000.00	10000.00	35324.00	2176.00	3260.35	3260.35	48584.35	YES
WABASHA	1/14/94	YES	YES	YES	0.00	12200.00	12200.00	32855.00	4645.00	4241.24	4241.24	49296.24	YES
WADENA	1/6/94	YES	YES	YES	8350.00	8350.00	16700.00	35608.00	1892.00	3645.37	3645.37	55953.37	YES
WASECA	1/12/94	YES	YES	YES	0.00	12200.00	12200.00	32205.00	5295.00	3539.03	3539.03	47944.03	YES
WASHINGTON	1/6/94	YES	YES	METRO	14000.00	22000.00	36000.00	0.00	3458.00	3000.00	3000.00	39000.00	
WATONWAN	1/14/94	YES	YES	YES	0.00	10000.00	10000.00	34042.00	2826.00	3163.18	3163.18	47205.18	YES
WILKIN	1/14/94	YES	YES	YES	0.00	10000.00	10000.00	34674.00	9388.00	3025.67	3025.67	47699.67	YES
WINONA	1/15/94	YES	YES	YES	0.00	12200.00	12200.00	28112.00	23460.00	3051.34	3051.34	43363.34	YES
WRIGHT	1/7/94	YES	YES	YES	18000.00	18000.00	36000.00	14040.00	3794.00	12233.21	12233.21	62273.21	YES
YELLOW MEDICINE	1/13/94	YES	YES	YES	5000.00	5000.00	10000.00	33706.00		3020.17	3020.17	46726.17	YES

NOTES:

APPLICATION REC. - DATE RECEIVED BY BWSR

RESOLUTION OK - IS BLOCK GRANT APP. RESOLUTION CORRECT

WCA ADOPTION - DATE WCA LOCALLY ADOPTED BY COUNTY

DATES INDICATE TENTATIVE DATE OF ADOPTION BY COUNTY

LOCAL CASH - CASH MATCH IDENTIFIED IN PLAN

LOCAL INKIND - INKIND MATCH IDENTIFIED IN PLAN

WCA GRANT - AMOUNT COUNTY IS ELIGIBLE TO RECEIVE

ISSUE

Thomas E. Casey & Mark Ten Eyck
Petition for Intervention
DNR Permit Application No. 93-6130
Whaletail Lake, Hennepin County

The petition requests that the BWSR Board: (1) determine that an important question of water policy exists; (2) that intervention in the public interest is justified; and (3) that a written recommendation be rendered regarding the question of water policy described in the petition.

BACKGROUND

On February 17, 1994 the BWSR received a petition for intervention in a matter of water law or policy. The Board's authority to intervene in a matter of water law or policy exists under M.S. 103A.301-.341. The dispute centers around an application to DNR for a permit to dredge a portion of a protected waters (Whaletail Lake PW #27-184P) for access by a seaplane from the shoreline to the open water.

The petition for intervention is based on the question of does a riparian owner have any legal right to dredge in a protected waters to access his seaplane from a upland area, through wetland vegetation, to the open water area of the lake. The petitioners contend that the proposed activity will have detrimental effects on the environment, and that there is no legal precedent in Minnesota case law to grant the permit. The petitioners also raise questions about conflicting water uses, safety, and environmental impacts.

The following excerpt from M.S. 103A.325 explains the decision before the Board.

"After receiving a petition, the board must decide whether the petition and the record made before the agency show an important question of water policy according to the rules adopted by the board. If the board decides that there is not an important question of water policy, the board may not intervene and the proceeding continues in the agency as though the petition had not been made. If the board decides there is an important question of water policy and intervention in the public interest is justified, the board must issue a brief statement to the petitioner and the agency describing in general terms the questions of water policy it will consider."

FINDINGS

The following findings outline the relevant statutory and rule provisions that relate in this matter.

1. MS 103G.205, Effect of Public Waters Designation. Subpart 2 of this section states that designation as a public waters does not diminish the right of ownership or usage of the beds underlying the designated public waters.
2. MS 103G.245, Subd. 1, (2), requires a DNR permit to change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters.
3. MS 103G.245, Subd. 7, permits may only be issued if the project will involve a minimum encroachment, change, or damage to the environment. If a major change is justified, permits must include provisions to compensate for the detrimental aspects of the change.

The statute implies that there is never an absolute prohibition on the use of protected waters.

4. MS 103G.245, Subd. 8, states that permits that involve excavation in the beds of public waters may be granted only if the area is covered by a shoreland zoning ordinance and the permit includes provisions for the deposition of deposited materials. The City of Minitrista has a State approved shoreland ordinance.
5. 103G.301, Subd. 7, authorizes the commissioner to obtain written recommendations from municipalities, watershed districts, and soil and water conservation districts. In addition DNR permits are commented on internally by staff from the divisions of fisheries, wildlife, and ecological services. DNR has also in this matter provided a draft permit for review and comment to the parties mentioned above.
6. MS 103G.315, Denial and Issuance of Permits. This section describes the commissioner's authority. The section also directs the DNR to adopt rules prescribing standards and criteria for issuing and denying water use permits.

MS 103G.315, Subd. 3. Issuance of Permit, states that if the commissioner concludes that the plans of the applicant are reasonable, practical, and will adequately protect public safety and promote the the public welfare, the commissioner shall grant the permit.

7. MR 6115.0200 Excavation of Protected Waters, is the rule authority under which DNR operates when issuing or denying a permit that involves excavation in a public water.

MR 6115.0201, Subp. 4., B. Provides specific authority to Dnr to permit excavations for navigation related purposes.

8. The MN Department of Transportation has designated Whaletail Lake for seaplane use.

CONCLUSION

Staff concludes that the law and rule define policy in this matter in sufficient detail so that the BWSR Board does not need to intervene in this case.

Thomas E. Casey

Attorney at Law
2854 Cambridge Lane
Mound, Minnesota 55364
(612) 472-1099
Fax: (612) 472-4771

February 15, 1994

Board of Water and Soil Resources
Attn: Ronald Harnack, Executive Director
155 South Wabasha, Suite 104
St. Paul, MN 55107 VIA FAX (297-5615) & U.S. MAIL

and

Department of Natural Resources
Attn: Rodney Sando, Commissioner
500 Lafayette Road, Box 37
St. Paul, MN 55155-4037 VIA FAX (296-4799) & U.S. MAIL

RE: Petition For Intervention
DNR Permit App. No. 93-6130

Dear Mr. Harnack and Mr. Sando,

Pursuant to Minnesota Statute 103A.301-.341, I submit the enclosed Petition For Intervention for the above-entitled matter. According to yesterday's telephone conversation with Mr. Doug Thomas, Water Planning Coordinator, this matter will be placed on BWSR's February 23, 1994 agenda. Please advise us of the exact time and place of the meeting.

Thank you for your consideration.

Very truly yours,


Thomas E. Casey

TEC:rf

cc: Mark Ten Eyck
Land Preservation Society
file

Enclosure

PETITION FOR INTERVENTION

TO: Board of Water and Soil Resources
Attn: Ronald Harnack, Executive Director
155 South Wabasha, Suite 104
St. Paul, MN 55107

and

Department of Natural Resources
Attn: Rodney Sando, Commissioner
500 Lafayette Road, Box 37
St. Paul, MN 55155-4037

Pursuant to Minnesota Statute 103A.301-.341, the undersigned petitioners state as follows:

- A. Jurisdiction. The important question of water policy arises under Minn. Stat. 103G.245, an application to dredge a wetland area of Whaletail Lake (protected water #184P) for access by a seaplane from riparian land to the open water. The DNR permit application number is 93-6130.
- B. Project Proposer. Scott Powell, 2300 County Road 92, Minnetrista, MN 55359.
- C. Important Question of Water Policy. This protected waters permit application involves whether a riparian owner has any legal right to dredge a protected public water to access his seaplane from an upland area, through a sensitive wetland, to the open area of the lake, despite detrimental effects upon the environment. This is a case of first impression, with no legal precedent in Minnesota case law to grant the permit.
With the ever-increasing conflicts over water uses, the safety and environmental impacts of allowing seaplane owners to dredge public waters will be substantial.
- D. Petitioners' Right to Initiate Petition. Per Minn. Stat. 103A.311 Subd. 3(8), the undersigned petitioners are the attorney for the Land Preservation Society and a Minnetrista resident, respectively, who oppose the permit application.

THEREFORE, the undersigned request that the Board of Water and Soil Resources determine: (1) that an important question of water policy exists; (2) that intervention in the

public interest is justified; and (3) that a written recommendation be rendered regarding the question of water policy described in this petition.

Respectfully submitted,

Dated: February 15, 1994.



Thomas E. Casey
Attorney for Land
Preservation Society
2854 Cambridge Lane
Mound, MN 55364
(612) 472-1099

Dated: February __, 1994.

Mark Ten Eyck
Attorney Pro Se
7955 Deer Creek Road
Minnetrista, MN 55359
(612) 472-7328

LINDQUIST & VENNUM

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ATTORNEYS AT LAW

JOHN B. WINSTON
612/371-3521

March 8, 1994

Mr. Doug Thomas
Water Planning Coordinator
Board of Water and Soil Resources
155 South Wabasha, Suite 104
St. Paul, MN 55107

MAR 09 1994
BOARD OF WATER

Re: Petition for Intervention
DNR Permit Application No. 93-6130

Dear Mr. Thomas:

I represent Mr. and Mrs. Scott S. Powell who own a very large tract of land on the western shore of Whaletail Lake in Minnetrista, Minnesota. The area affected by the Permit Application, however, is only .23 acres, and the related channel opening is only 40 feet across. The Powells' land consists of approximately 120 acres, as shown on the half section map of the south one-half of Section 17, Township 117, Range 24, their property being both Government Lots 4 and 5, while the shoreline is meandering and therefore much longer than the north/south measurement of their property, the north/south measurement of the property is at least 2600 feet. Accordingly, what we have under consideration is 20 feet out of more than 2600 feet, and .23 acres out of total land holdings probably in excess of 120 acres. These facts alone indicate the special nature of what is under consideration, and while the petitioners for intervention would have the Board of Water and Soil Resources believe that the entire lake is being dredged to serve a flotilla of seaplanes, what is actually the case is that the Powells' plane will occasionally access their property from this 40 foot, .23 acre channel.

The Powells' first response, then, to the Petition for Intervention is that this is not the kind of issue that the Board of Water and Soil Resources should be spending its time on. Secondly, the Powells question how it is that the two individuals who signed the Petition have standing to raise this matter before the Board of Water and Soil Resources. Minnesota Statutes, Section 103A.311, sets forth a fairly limited number of persons who may petition for intervention. In this case, the two petitioners are a neighborhood attorney, in the person of Mr. Ten Eyck, and another attorney, Mr. Casey, who when addressing the City of Minnetrista City Council last night introduced himself as the attorney for another landowner in the

LINDQUIST & VENNUM

Mr. Doug Thomas
March 8, 1994
Page 2

neighborhood, and not as someone having anything to do with the "Land Preservation Society".

Even if these two individuals do have standing to petition the Board for intervention, the Powells cannot understand what water policy is at issue here. The Petitioners Casey and Ten Eyck would have the Board believe that this case would somehow set precedent for all "seaplane owners to dredge public waters". Again, what is at issue here is only the Powells' request to excavate an area of only .23 acres, involving only 20 feet of shoreline to serve a single seaplane from a tract of land consisting of approximately 120 acres. There are enough facts involved in this case to distinguish it from any other case that the Board has seen or will see in the future.

Finally, we do not understand the jurisdiction of the Board in this matter. To our knowledge, the Department of Natural Resources has assumed jurisdiction of the matter, this being a case involving "public waters wetlands", and the DNR has already decided that there is no significant detrimental impact caused by this project. I quote from Mr. Rodney W. Sando's letter of February 18, 1994 addressed to petitioner Ten Eyck, as follows:

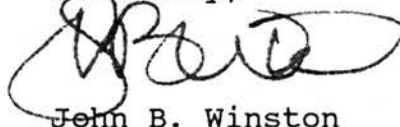
I am advised that DNR professional staff have not determined that the proposed project would cause significant detrimental impacts.

Unfortunately, the two individuals who have submitted the Petition for Intervention in this case are trying to use laws, rules and regulations designed for the protection of the state's water resources to delay a legitimate request involving an airplane and the air space over Whaletail Lake and its related wetlands.

Please provide the Board a copy of this letter, so that it is aware of the Powells' position. We honestly believe that public water and water resource policy is not involved, but rather aviation and air rights policies. Accordingly, we ask the Board to deny these individuals their request for intervention.

Thank you.

Sincerely, .



John B. Winston

JBW/tw

cc: Mr. and Mrs. Scott S. Powell

SNAKE RIVER WATERSHED MANAGEMENT BOARD

BACKGROUND:

The Joint Powers Agreement between the counties within the Snake River Watershed, include Aitkin, Mille Lacs, Pine and Kanabec Counties was formed to address non-point sources of pollution. The joint powers agreement was signed in May of 1993.

The purpose of the joint powers is to coordinate the four comprehensive county water plans and actions by providing a joint cooperative management of the plans. It will identify existing and potential problems and allow opportunities for protection of water and related land resources and develop objectives to promote sound management of the resources.

After a period of discussion the Snake River Watershed Management Board (SRWMB), along with recommendations from the Citizens Advisory Committee (CAC), approved the 1994 budget of \$40,405 cash and authorized a \$30,000 challenge grant application, totalling \$70,405 on December 13, 1993. There is a carryover of \$10,117 from 1993, thus the total budget available is \$80,522. Projects approved include hiring a part-time watershed coordinator, surface water monitoring conducted by the U.S. Geological Survey, completing a soil erosion inventory within the watershed and volunteer recruitment and educational programs.

PROJECTS TO BE COMPLETED IN 1994

Presently within the Snake River Watershed, the Soil and Water Conservation District's (SWCD), lake associations, and the counties are spending considerable time and money within the watershed.

The SWCD's annually contribute technical and financial assistance to landowners within the Snake River. Projects include pollution abatement systems, state cost-share program, streambank, lakeshore, and roadside (SLR) projects, RIM Reserve and Permanent Wetland Preserve (PWP) programs. Below is a listing of the proposed and approved projects within each SWCD:

DISTRICTS	FUNDS	PROJECTS
Aitkin SWCD	-	
Mille Lacs SWCD	-	
Kanabec SWCD	\$109,557	PWP/RIM, SLR, cost-share
Pine SWCD	17,603	SLR, cost-share
TOTAL	\$127,160	

Lake associations within the Snake River Watershed have become actively involved in protecting the resources. In Kanabec County, Fish Lake participated in MPCA's Lake Assessment Program in 1993. Knife Lake Improvement District was approved for a Clean Water Partnership Grant from MPCA for 1994. The project total is \$87,445 in which MPCA will contribute \$31,500 and Kanabec County, Kanabec SWCD, Knife Lake Improvement District and the MN DNR will contribute \$55,945 of in-kind

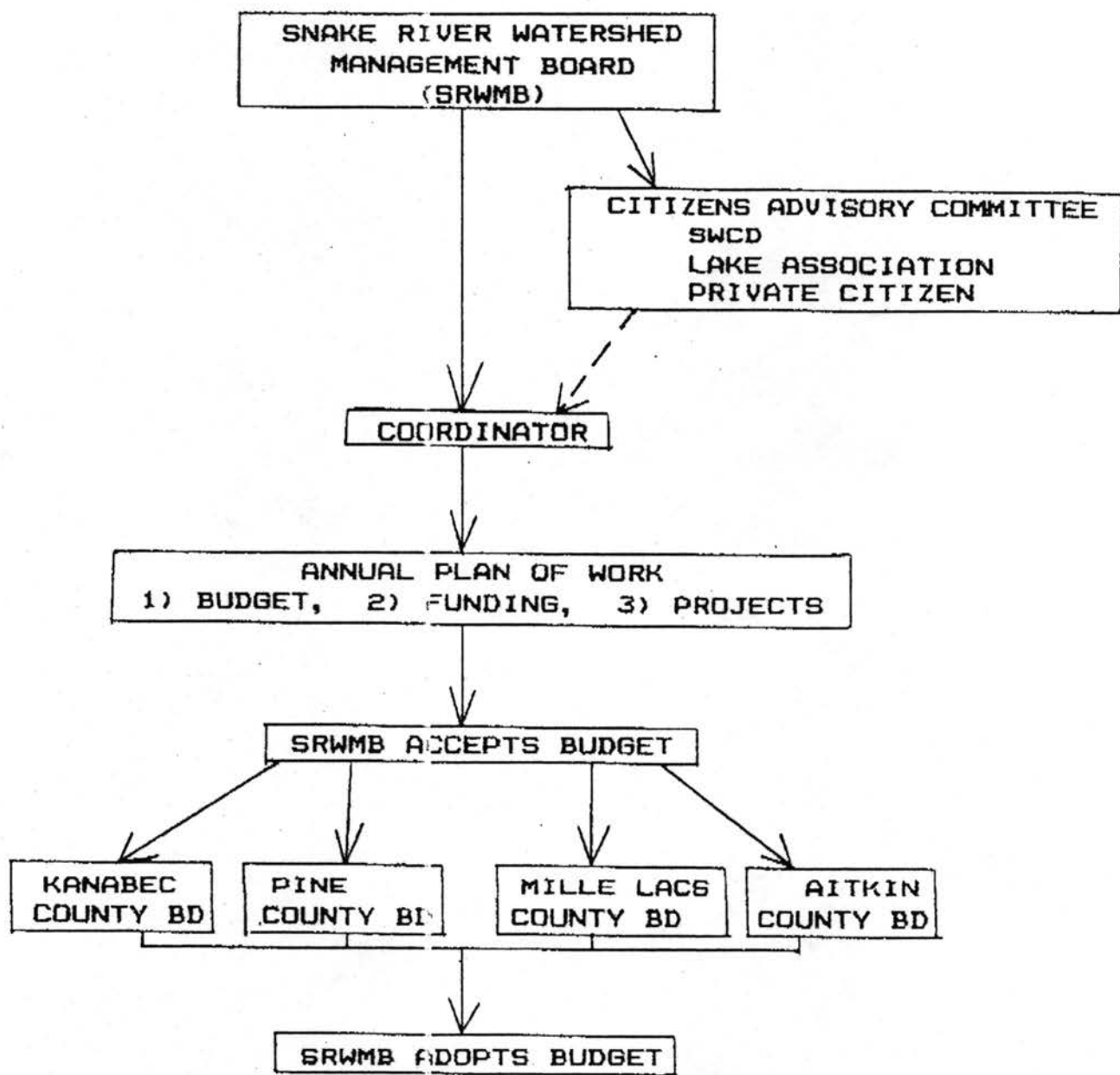
funds.

In Pine County the Pokegama Lake Association is contracting with the Pine SWCD to develop a water quality/quantity monitoring program for Pokegama Creek Watershed. The lake association is also working with the District to conduct a manure assessment program (MAP) on five feedlots within in the watershed. Pokegama Lake Association is contributing \$15,600 for these projects.

The counties involved in the Snake River Watershed all have approved Comprehensive Local Water Plans (CLWP). Mille Lacs county has identified \$6,000 for erosion inventory and surface water monitoring within the Snake River Watershed. 92% of Kanabec County is within the Snake River Watershed, all \$37,500 of the water plan will be spent this year in the Snake River Watershed. Projects to be implemented include cost-share assistance available for pollution abatement systems, well water testing, BMP's for shoreland, and soil survey. Aitkin County has identified \$3,500 to be used within the Snake River Watershed. Within Pine County \$4,000 will be used from the CLWP funds to help pay for the USGS monitoring in the Pokegama Creek Watershed.

BUDGET:

20.8%	Aitkin County CLWP	\$ 3,500
9.2%	Mille Lacs County CLWP	6,000
49.5%	Kanabec County SWCD	109,557
	CLWP	37,500
	Lake Associations	87,445
20.5%	Pine County SWCD	17,603
	CLWP	4,000
	Lake Associations	15,600
	Snake River Watershed Management Board	40,405
	BWSR Challenge Grant Application	30,000
	TOTAL DOLLARS	\$351,610



FAX

TO: MARY JO ANDERSON

FROM: KEITH GROW

RE: AGENDAS For Bush Board mtg. March 23, 1994

MARY JO:

INCLUDED IS A LIST OF MEMBERS OF THE SNAKE RIVER JOINT POWERS BOARD OR A ADVISORY COMMITTEE. WOULD IT BE POSSIBLE TO SEND AN AGENDA TO THE INDIVIDUALS THAT HAVE BEEN CHECKED IF YOU HAVE NOT ALREADY DONE SO.

THANKS

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ROUTE 2 BOX 3610
PALISADE MN 56469

✓ TOM ROESCHLEIN
RT 3 BOX 369
MORA MN 55051

✓ DAVE OBERFELD
ROUTE 1
ISLE MN 56342

ROBERT T KRUEGER
HC69 BOX 152C
ISLE MN 56342

RALPH WAHLSTROM
RT 1 BOX 173A
OGILVIE MN 56358

✓ ROBERT HOEFERT
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REY ECKSTROM
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PINE CITY MN 55063

JOHN McLOUTH
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STEVE HUGHES
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AITKIN MN 56431

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MCGRATH MN 56350

ART SCHULTZ
PO BOX 270
ROCK CREEK MN 55067

KEITH GROW
MINN BWSR
217 SOUTH 7TH ST
BRAINERD MN 56401

✓ BILL STRUSINSKI
POKEGAMA LAKE ASSO.
RT 2
PINE CITY MN 55063

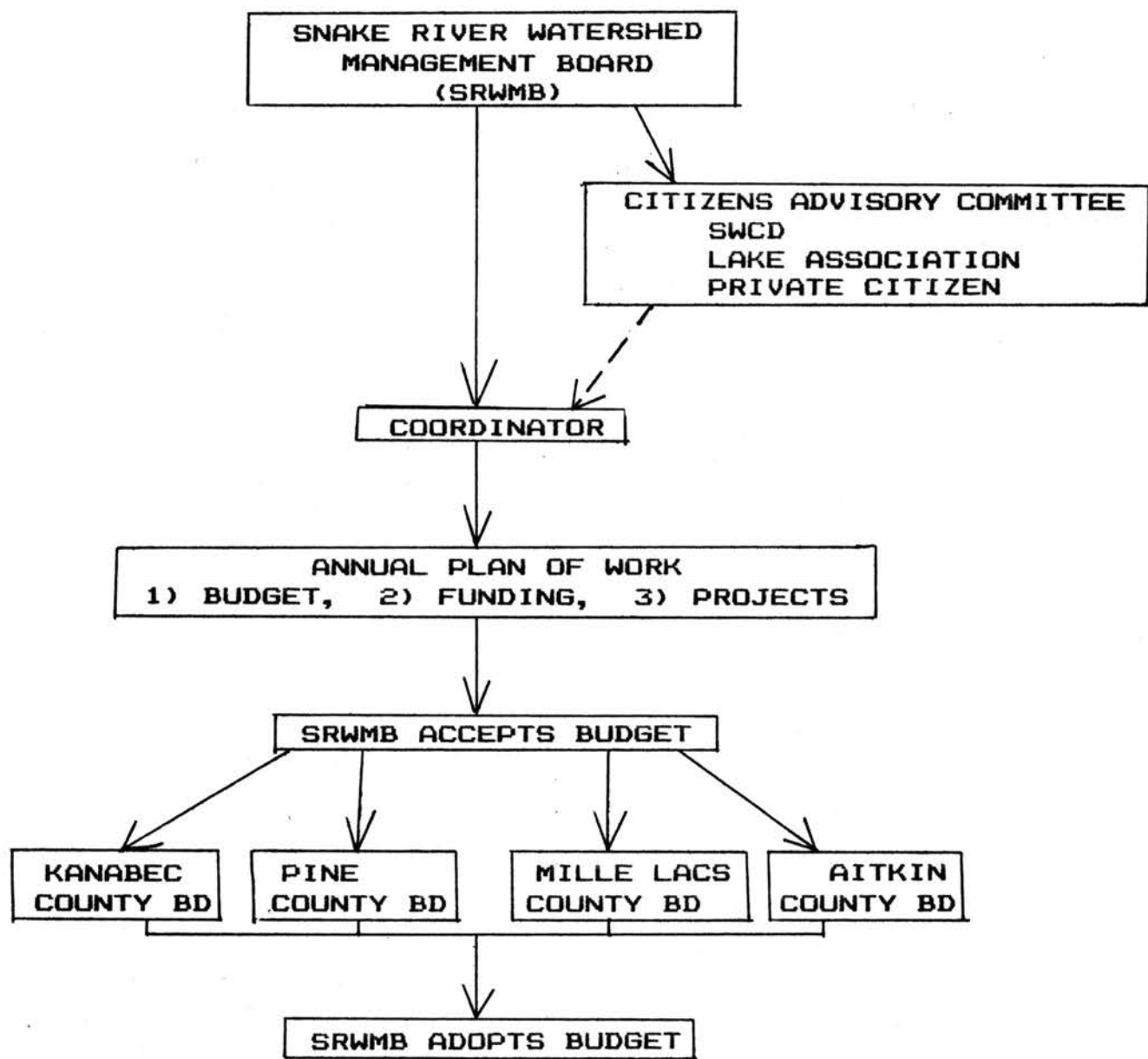
KAY JORGENSON
AUDITOR'S OFFICE
315 6TH STREET
PINE CITY MN 55063

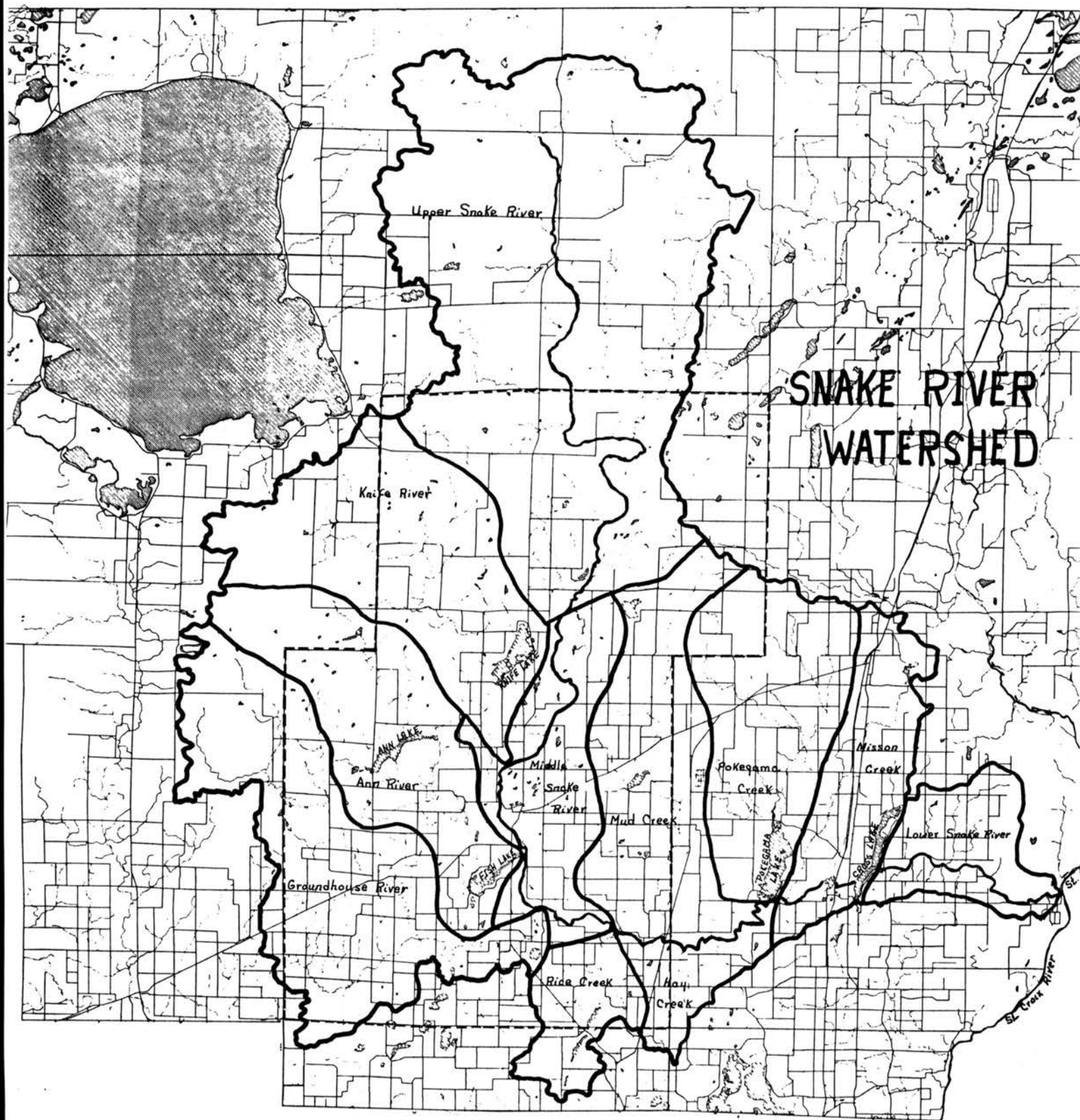
PETER SCHUTTE
AITKIN COUNTY COURTHOUSE
AITKIN MN 56431

DICK NOYES
PINE SWCD
PO BOX 276
HINCKLEY MN 55037

JERRY TVEDT
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18 NORTH VINE
MORA MN 55051

MILLE LACS CO AUDITOR
MILLE LACS COUNTY COURTHOUSE
MILACA MN 56353







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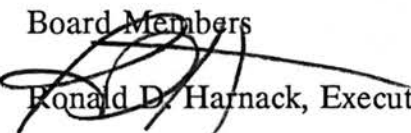
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DATE: February 14, 1994

TO: Board Members

FROM:  Ronald D. Harnack, Executive Director

SUBJECT: **RECOMMENDED BOARD MEMBER EXPENSE CRITERIA**

* **PER DIEM (\$55/DAY):** Per diem is authorized for Board members for those days where members are actively carrying out the business of the Board. This includes monthly board meetings; committee meetings; attendance at statewide conventions; attendance at regional or area association meetings; attendance at special meetings. Per diem is not authorized for members who are in travel status the day prior to or after authorized meetings.

A few of the Board Members have inquired regarding what meetings and activities are allowable for per diem and expenses. I have suggested that it is reasonable to include the following:

- Regular Board Meetings.
- Subcommittee meetings to which the member is appointed.
- Attendance at statewide conventions of the Association of Minnesota Counties (AMC), Minnesota Association of Soil and Water Conservation Districts (MASWCD), and Minnesota Association of Watershed Districts (MAWD). The Board members who already attend as part of their association are already compensated by their local government. At least one of the members from the other representative groups should attend. (These conferences are planned far enough in advance that the Board at its October meeting can authorize attendance).
- Attendance at regional or area association meetings (AMC, MASWCD, MAWD). A Board Member who is a member of the association may already be compensated by his or her local government. Board member participation should include some formal acknowledgement at the meeting and a report at the next Board meeting.
- Attendance at statewide special meetings (these types of events are known in advance and the Board can take action to authorize attendance and participation).

Board Members
February 14, 1994
Page Two

- Attendance at general meetings of special interest groups, local government meetings should not be eligible. These types of meetings are the responsibility of BWSR staff. There are some of these meetings at which Board presence and participation may be requested, which are eligible for expenses.

- * **MILEAGE REIMBURSEMENT (\$0.27/MILE):** Mileage is limited by the laws reference to the commissioner's plan that authorizes \$0.27/mile. Mileage reimbursement is limited to that necessary to conduct the business of the board.

- * **MEALS:** Breakfast - \$ 7.00
 Lunch - \$ 8.50
 Dinner - \$14.50

- * Refer to the attached statutes and the pages from the current commissioner's plan for more detail.

RDH:mja
Enc.

EXPENSE REIMBURSEMENT

General. The Appointing Authority may authorize payment of travel and other expenses and reimbursement of special expenses for managers in accord with the provisions of this Chapter, Chapter 8, and Administrative Procedure 4.4 for the effective conduct of the State's business. Such authorization must be granted prior to incurring the actual expenses.

Privately-Owned Vehicles and Aircraft. A manager shall be reimbursed for the use of privately-owned vehicles and aircraft under the situations, and at the rates specified below. In all cases, mileage must be on the most direct route according to Department of Transportation records.

<u>Situation</u>	<u>Rate Per Mile</u>
• Use of personal automobile when a State-owned vehicle is not available.	\$.27
• Use of personal automobile when a State-owned vehicle is available and declined by the manager.	\$.21
• Use of personal van or van-type vehicle specially equipped with a ramp, lift, or other level-changing device designed to provide wheelchair access.	\$.40
• Use of personal aircraft provided that the manager can demonstrate adequate liability coverage under the requirements of M.S. 360.59, subdivision 10.	\$.43
• Use of personal motorcycle or similar two-wheel motorized vehicle.	\$.13

When a manager does not report to the permanent work location during the day or makes business calls before or after reporting to the permanent work location, the allowable mileage is: (1) the lesser of the mileage from the manager's residence to the first stop or from his/her permanent work location to the first stop, (2) all mileage between points visited on State business during the day, and (3) the lesser of the mileage from the last stop to the manager's residence or from the last stop to his/her permanent work location.

Other Travel Expenses. Upon approval of the Appointing Authority, managers in travel status may be reimbursed for expenses described below in the amounts actually incurred not to exceed any maximum amounts specified below.

Where anticipated expenses total at least \$100.00, the Appointing Authority shall advance the manager the amount of the anticipated expenses upon the manager's request made a reasonable period of time prior to the travel date. If the amount advanced exceeds the actual expenses, the manager shall return the excess within two weeks of return from travel. The Appointing Authority may issue the manager a state-owned credit card in lieu of a travel advance.

Reimbursable expenses may include, but are not limited to, the following:

- Commercial transportation (air, taxi, rental car, etc.) provided that no air transportation shall be by first class (unless authorized by an Appointing Authority if no other seating is available) and that reimbursement for travel which includes more than one destination visited for State purposes and non-State purposes be in an amount equal to the cost of the air fare only to those destinations visited for State purposes.
- Meals including tax and a reasonable gratuity. Managers shall be reimbursed for meals under the following conditions:
 1. **Breakfast.** Breakfast reimbursements may be claimed if the manager leaves home before 6:00 a.m. or is away from home overnight.
 2. **Lunch.** Lunch reimbursements may be claimed if the manager is in travel status more than 35 miles away from his/her normal office or is away from home overnight.
 3. **Dinner.** Dinner reimbursements may be claimed if the manager cannot return home until after 7:00 p.m. or is away from home overnight.
 4. **Reimbursement Amount.** Except for the metropolitan areas listed below, the maximum reimbursement for meals including tax and gratuity shall be:

Breakfast	\$ 7.00
Lunch	8.50
Dinner	14.50

For the following metropolitan areas the maximum reimbursement shall be:

Breakfast	\$ 8.00
Lunch	9.50
Dinner	16.50

The metropolitan areas are:

Atlanta	Detroit	New York City
Boston	Hartford	Philadelphia
Chicago	Houston	San Diego
Cleveland	Los Angeles	San Francisco
Dallas	Miami	Seattle
Denver	New Orleans	Washington D.C.

Managers who are in travel status for two or more consecutive meals shall be reimbursed for the actual costs of the meals including tax and a reasonable gratuity, up to the combined maximum amount for the reimbursable meals.

- Hotel and motel accommodations provided that managers exercise good judgment in incurring lodging costs and that charges are reasonable and consistent with the facilities available.
- All work-related long distance telephone calls provided that the manager does not have a State telephone credit card or is unable to bill the call to the office telephone number.
- Actual, documented personal telephone call charges. The maximum reimbursement for each trip shall be the result of multiplying the number of nights away from home by two (2) dollars.
- Reasonable costs of dry cleaning and laundry services, not to exceed \$16.00 each week after the first week a manager is in continued travel status.
- Reasonable costs and gratuities for baggage handling.
- Parking fees and toll charges.

Receipts. The Appointing Authority may require receipts for any reimbursement requested by a manager under the provisions of this or any other chapter in this Plan.

To: Mary Jo From: Tam

record under state law; (3) The term "local record" means a record of an agency of a county, city, town, school district, municipal subdivision or corporation or other public authority or political entity; (4) The term "records" excludes data and information that does not become part of an official transaction, library and museum material made or acquired and kept solely for reference or exhibit purposes, extra copies of documents kept only for convenience of reference and stock of publications and processed documents, and bonds, coupons, or other obligations or evidences of indebtedness, the destruction or other disposition of which is governed by other laws; (5) The term "state archives" means those records preserved or appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of government or because of the value of the information contained in them, when determined to have sufficient historical or other value to warrant continued preservation by the state of Minnesota and accepted for inclusion in the collections of the Minnesota historical society.

Sec. 18. Minnesota Statutes 1988, section 138.17, is amended by adding a subdivision to read:

Subd. 9. OPTICAL DISK STANDARDS. The records disposition panel shall develop standards for storage of all government records on optical disk by January 1, 1991.

Sec. 19. Minnesota Statutes 1988, section 214.07, subdivision 2, is amended to read:

Subd. 2. SUMMARY OF BOARD REPORTS. Not later than December 15 of each even-numbered year, the commissioner of health with respect to the health-related licensing boards and the commissioner of administration with respect to the non-health-related boards shall prepare summary reports compiling the information required by subdivision 1, clauses (b) and (g) to (p) and contained in the reports submitted by the boards the preceding year pursuant to subdivision 1. The summary reports ~~shall~~ must also specify the staff and services provided by the ~~departments~~ department to each board. The summary reports ~~shall~~ must be distributed to the legislature ~~pursuant to~~ under section 3.195 and to the governor.

Sec. 20. Minnesota Statutes 1988, section 214.09, subdivision 3, is amended to read:

Subd. 3. COMPENSATION. Members of the boards ~~shall~~ must be compensated at the rate of \$35 ~~per~~ \$55 a day spent on board activities, when authorized by the board, plus expenses in the same manner and amount as authorized by the commissioner's plan adopted ~~according to~~ under section 43A.18, subdivision 2. Members who, as a result of time spent attending board meetings, incur child care expenses that would not otherwise have been incurred, may be reimbursed for those expenses upon board authorization. If members who are full-time state employees or employees of the political subdivisions of the state

New language is indicated by underline, deletions by ~~strikeout~~.

receive the \$35 ~~per day~~ daily payment, and occur during normal working hours for which state or political subdivision, the employer from the employee's compensation for that board member who is an employee of the state in compensation or benefits as a result who are state employees or employees of the state may receive the expenses provided for in this section are reimbursed by another source. Members of political subdivisions of the state may receive expenses only for time spent on board activities during working hours.

Sec. 21. Minnesota Statutes 1988, section 214.09, is amended to read:

Subd. 3. CHAIR. The chair of each agency shall be appointed by the governor with the advice and consent of the senate. The chair shall be a member and shall meet all qualifications established by law. The chair need only reside within the metropolitan area. After a public meeting on the subject, shall propose nominees for the position. Senate confirmation is required. The chair shall preside at all meetings of the board. The chair is responsible for providing leadership in the activities of the agency board, establishing a board, chairing the internal audit committee, ensuring that the board is fully informed of the activities of the agency, ensuring that the chief administrator of the board and is held accountable to the board for the administrator's performance. Each agency may appoint a vice-chair to act for the chair during temporary absences.

Sec. 22. Minnesota Statutes 1988, section 600.01, is amended to read:

Subdivision 1. RECORDS; DESTRUCTION. If any business, institution, member of a department or agency of government, in the regular course of business has kept or recorded any memorandum, writing or combination thereof, of any act, transaction, occurrence or regular course of business has caused any or all copies to be made, copied or reproduced by any photographic, photo miniature photographic, optical disk imaging, or other process, the original may be destroyed in the regular course of business.

New language is indicated by underline, deletions by ~~strikeout~~.

receive the ~~\$35 per day~~ daily payment, and if the major part of their activities occur during normal working hours for which they are also compensated by the state or political subdivision, the employer shall deduct the ~~\$35~~ daily payment from the employee's compensation for that day. In no other case ~~shall~~ may a board member who is an employee of the state or political subdivision suffer a loss in compensation or benefits as a result of service on the board. Members who are state employees or employees of the political subdivisions of the state may receive the expenses provided for in this subdivision unless the expenses are reimbursed by another source. Members who are state employees or employees of political subdivisions of the state may be reimbursed for child care expenses only for time spent on board activities that are outside their normal working hours.

Sec. 21. Minnesota Statutes 1988, section 473.141, subdivision 3, is amended to read:

Subd. 3. **CHAIR.** The chair of each agency shall be appointed by the governor with the advice and consent of the senate, shall be the ninth voting member and shall meet all qualifications established for members, except the chair need only reside within the metropolitan area. The council, by resolution after a public meeting on the subject, shall provide the governor with a list of nominees for the position. Senate confirmation is as provided by section 15.066. The chair shall preside at all meetings of the agency, if present, and shall perform all other duties and functions assigned by the agency or by law. The chair is responsible for providing leadership in development policy, coordinating the activities of the agency board, establishing and appointing committees of the board, chairing the internal audit committee, ensuring effective communication between the agency and other governmental entities and the general public, ensuring that the board is fully informed of the activities of the chief administrator and the agency, ensuring that the chief administrator implements the policies of the board and is held accountable to the board, and evaluating the chief administrator's performance. Each agency may appoint from among its members a vice-chair to act for the chair during temporary absence or disability.

Sec. 22. Minnesota Statutes 1988, section 600.135, subdivision 1, is amended to read:

Subdivision 1. **RECORDS; DESTRUCTION, PHOTOGRAPHIC COPIES.** If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, optical disk imaging, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a



MEMORANDUM

Date: March 8, 1994

To: Representative David Bishop
Representative Steve Trimble

From: B. (612) 297-7360

Subjects: W. Board
Po. leg. Packet
Co. '89 GW act

In response to your request for information regarding the program funding needs:

My staff has analyzed the program. We believe we could achieve a well-sealing cost-share grant program. A more reasonable approach would be to seal the program.

A statewide program is currently managed at the proposed level of \$200,000 per biennium, given the substantial interest in the program at the local level and the numbers of priority wells in need of sealing.

There are an estimated 950,000 abandoned wells in Minnesota. Based on abandoned well inventory work accomplished by counties, we estimate that around 30%, or 285,000 of these are priority wells for sealing. Around 15%, or 143,000 wells would be considered the highest priority for sealing.

At a funding rate of \$750,000 per biennium, the well-sealing cost-share program would result in the sealing of around 2500 priority wells per biennium. The "spinoff effects" of the cost-share program would result in approximately an additional 500 priority wells being sealed. Approximately 20,000 wells per biennium would continue to be sealed through the well disclosure/ property transfer process. Around 6,000 of these would be priority wells (using the 30% figure). At this rate of sealing (9,000 priority wells per biennium), it will require approximately 60 years to seal all of the estimated 285,000 priority wells in the state, or 30 years to seal the highest priority wells.

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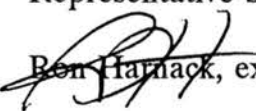
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MEMORANDUM

Date: March 8, 1994

To: Representative David Bishop
Representative Steve Trimble

From: , executive director (612) 297-7360

Subjects: Well-sealing program needs
Possibility of sales tax on drilling services
Comments on proposed amendments to the '89 GW act

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In response to your questions on the well-sealing cost-share program funding needs:

My staff has analyzed the most recent reports from counties. We believe we could run a functional, but bare-bones statewide well-sealing cost-share grant program for \$400,000 - \$500,000 per biennium. A more reasonable amount would be \$750,000 - \$1,000,000.

A statewide program could not be effectively managed at the proposed level of \$200,000 per biennium, given the substantial interest in the program at the local level and the numbers of priority wells in need of sealing.

There are an estimated 950,000 abandoned wells in Minnesota. Based on abandoned well inventory work accomplished by counties, we estimate that around 30%, or 285,000 of these are priority wells for sealing. Around 15%, or 143,000 wells would be considered the highest priority for sealing.

At a funding rate of \$750,000 per biennium, the well-sealing cost-share program would result in the sealing of around 2500 priority wells per biennium. The "spinoff effects" of the cost-share program would result in approximately an additional 500 priority wells being sealed. Approximately 20,000 wells per biennium would continue to be sealed through the well disclosure/ property transfer process. Around 6,000 of these would be priority wells (using the 30% figure). At this rate of sealing (9,000 priority wells per biennium), it will require approximately 60 years to seal all of the estimated 285,000 priority wells in the state, or 30 years to seal the highest priority wells.

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In response to Rep. Trimble's question on the possibility of a sales tax on drilling services to finance well sealing:

Currently, well drilling (or sealing) services are exempt from sales tax, as are most (but not all) consumer services. Sales tax on well drilling would require a change in statute 297A. It may be possible to generate approximately 2-4 million dollars per year for well sealing in this manner. The water well industry would be guaranteed to oppose such a proposal with all of their considerable energies. Water well contractors do pay sales tax on capital equipment, so if a sales tax were imposed on their services, they would argue that they were being doubly taxed.

Comments on proposed amendments to the '89 GW act

We have reviewed the bill and have provided comments to Susan Schmidt. Our comments included the following suggested language changes:

103I.331, Subd 4

(b) The county must use the funds allocated from the board of water and soil resources to pay up to 75 percent, but not more than \$2,000 of the cost of sealing priority wells. The board of water and soil resources, upon request from the county and in consultation with the commissioner of health, may waive the \$2000 limit for certain priority wells.

~~Subd 6. Repealer. This section is repealed effective June 30, 1995.~~

If you have any questions on items relating to well sealing, please contact Eric Mohring of my staff at 297-7360.



MEMORANDUM

Date: March 8, 1994

To: Representative David Bishop
Representative Steve Trimble

From:  Ben Harnack, executive director (612) 297-7360

Subjects: Well-sealing program needs
Possibility of sales tax on drilling services
Comments on proposed amendments to the '89 GW act

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In response to your questions on the well-sealing cost-share program funding needs:

My staff has analyzed the most recent reports from counties. We believe we could run a functional, but bare-bones statewide well-sealing cost-share grant program for \$400,000 - \$500,000 per biennium. A more reasonable amount would be \$750,000 - \$1,000,000.

A statewide program could not be effectively managed at the proposed level of \$200,000 per biennium, given the substantial interest in the program at the local level and the numbers of priority wells in need of sealing.

There are an estimated 950,000 abandoned wells in Minnesota. Based on abandoned well inventory work accomplished by counties, we estimate that around 30%, or 285,000 of these are priority wells for sealing. Around 15%, or 143,000 wells would be considered the highest priority for sealing.

At a funding rate of \$750,000 per biennium, the well-sealing cost-share program would result in the sealing of around 2500 priority wells per biennium. The "spinoff effects" of the cost-share program would result in approximately an additional 500 priority wells being sealed. Approximately 20,000 wells per biennium would continue to be sealed through the well disclosure/ property transfer process. Around 6,000 of these would be priority wells (using the 30% figure). At this rate of sealing (9,000 priority wells per biennium), it will require approximately 60 years to seal all of the estimated 285,000 priority wells in the state, or 30 years to seal the highest priority wells.

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If you have any questions on items relating to well sealing, please contact Eric Mohring of my staff at 297-7360.



January 21, 1994

Willard Munger
Chairman, Environment and Natural Resources Committee
Room 479
State Office Building
St. Paul, MN 55155

Dear Chairman Munger:

As required by Chapter 175, Laws of 1993, I am submitting a "Study and Report on Wetland Issues". As we have indicated, the Wetland Heritage Advisory Committee will be closely following implementation of the Wetland Conservation Act and may offer specific recommendations of Statute or rule changes at a future date.

Please feel free to contact me or any member of the Committee if you have questions or comments.

Sincerely,

Joan Miska
Joan Miska
Chairwoman

CC: D. James Nielsen, Chairman, BWSR

This letter was also sent to Senator Robert Lessard.

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**STUDY AND REPORT ON WETLAND ISSUES
MN WETLAND CONSERVATION ACT (WCA)**

Required by: MN Laws 1993, Chapter 175

PREAMBLE: The rule governing the implementation of the Wetland Conservation Act is being adopted by local units of government after January 1, 1994. Consequently, much of the information and data pertinent to the Chapter 175 report is not yet available. The Wetland Heritage Advisory Committee (WHAC) suggests that it is premature to recommend changes to the statute and rule. The WHAC will monitor program implementation during the calendar year 1994 by tracking the actions of local government units (LGUs) through information from LGU's and the Board of Water and Soil Resources (BWSR). The WHAC may then make recommendations to the BWSR based on those findings.

The issues that follow are the items that the WHAC was to address in the Chapter 175 report. As stated in the preamble, the WHAC will defer specific recommendations on changes to the statute and rule until a future date. The responses reflect the current views of WHAC on the issues.

ISSUE:

- (1) The appropriateness of requirements under existing state laws relating to replacement of drained and filled wetlands;

Response by the Committee:

The adopted replacement requirements were developed to maintain a "no-net-loss" of wetland acreage and public values. This is required by the Wetland Conservation Act (WCA). The adopted replacement method allows wetland replacement by wetland restoration or creation either directly or through a withdrawal from the state wetland "bank" established in the WCA rule.

The issue of whether the 2:1 replacement ratio for non-agricultural land in counties with < 80% of their presettlement wetlands remaining will offset the wetland loss from exemptions and discourage wetland draining and filling in developing areas is yet unknown as this provision did not become effective until January 1, 1994.

- (2) The advisability of establishing a minimum size of wetland that would not be subject to regulation under these laws;

The Chapter 175 revisions to the WCA included a "deminimus" exemption (#25) which allows wetland areas of up to 400 square feet to be drained or filled without replacement. To minimize the effects of cumulative use of this exemption on a wetland basin, the rule prohibits the use of

the exemption after five percent of a wetland basin has been drained or filled. To document these actions, LGUs must maintain records of the use of the exemption per wetland basin. Because of the record keeping burden, some LGUs may not offer the exemption. Changing the "deminimus" to a larger size would further complicate record keeping, contradict the "no-net-loss" legislative mandate and compromise efforts to streamline wetland regulations which are based on the belief of Federal officials that Minnesota is serious about wetland protection. Regulatory simplification will not be achieved unless Federal agencies such as the Corps of Engineers believe that the WCA and rule will be properly implemented.

- (3) The appropriate level of regulation of activities in wetlands located in counties in which a high percentage of presettlement wetland acreage is present;

The Chapter 175 revisions changed to 1:1 the minimum replacement ratio for counties with > 80% of their presettlement wetlands remaining. This change was made in recognition of the extensive wetland acreages in these counties and the difficulty of locating wetland replacement sites. The difficulty in suggesting a more flexible program in counties with large wetland acreages stems from regulatory simplification (which was addressed in the previous issue) and consistency of regulation while achieving the "no-net-loss" goal of the Act. It is doubtful that progress can continue to be made in the simplification of regulations if LGUs had more flexibility than currently provided for the WCA rule. With respect to consistency of regulation, members of the regulated public have stated repeatedly that they do not favor local flexibility if it means dealing with different regulations as they work across LGU boundaries.

- (4) The appropriate level of regulation for activities in type 1 wetlands, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition);

Type 1 wetlands, except for bottomland hardwoods, of any size on agricultural land are exempted from regulation under the WCA by Exemption #7. This exemption honors the investment agricultural landowners have made on property they planned to drain or fill for crop production. Type 1 wetlands typically have many of the same functions and values of other wetlands including those mentioned in the WCA: water quality, flood control, public recreation and commercial use. Given the manner in which all types of wetlands function as systems on the landscape, there is no scientific basis to protect type 1 wetlands with any less enthusiasm. The continuing argument about type 1 wetlands is grounded in conflicting values. Hence, the difficulty in bringing the issue to a resolution. Moreover, it is difficult to promote regulatory simplification -- which is based on our good faith effort to protect all wetlands--and at the same time deregulate additional wetlands. The WHAC recommends that the exemptions remain unchanged until more information is available for their evaluation.

- (5) The feasibility and advisability of allowing local units of government to establish alternative regulatory programs for wetlands that would operate in lieu of state law;

The WCA rule provides the minimum standards necessary to achieve the consistency among LGUs demanded by the regulated public and required for regulatory simplification. LGUs can adopt additional procedures and offer added protection through local official controls such as zoning ordinances. Also, LGUs have the option of developing and utilizing their own replacement methodology and including local public values into the replacement requirements. Further, LGUs are given encouragement to develop comprehensive wetland management plans by the offer of simplified wetland replacement. WHAC recognizes the need for creativity and flexibility in the implementation of WCA while acknowledging the limits imposed by regulatory simplification.

- (6) Other issues identified by the committee as deserving of comment:

- (a) The 1993 Legislature appropriated approximately one-half of the amount required to implement the WCA program. Many LGUs have stated that the amount is not adequate. The WHAC recommends that the Legislature re-examine the amount of funding necessary for LGUs to effectively administer the program.
- (b) Local officials have expressed concern that wetland regulations may have a negative effect on property values. The Committee recommends that this issue be monitored.
- (c) In view of the current efforts to achieve simplification of WCA and Corps of Engineers wetland regulations thru procedures such as the "programmatic general permit", the committee believes that it is no longer necessary to separately regulate DNR Protected Waters [note: this would require a statute change].
- (d) The committee believes that proposals to drain or fill wetlands should be subject to public review. However, the notice requirements of the WCA may unduly delay project review and approval [note: this would require a statute change].
- (e) The committee believes local decisions should be subject to appeal by the public. However, the appeal requirements of the WCA may unduly delay project approval [note: this would require a statute change].
- (f) The committee believes that all state regulatory agencies should use the same methodology when delineating the jurisdictional boundary of a wetland; DNR uses a different methodology than required by the WCA and Corps of Engineers [note: this would require a statute change].